

**Central Electricity Regulatory Commission,
New Delhi**

Petition No. 227/MP/2017

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member**

Date of Order: 30.05.2019

In the matter of:

Petition under Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act, 2003 read with regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999.

**And
In the matter of**

Lanco Amarkantak Power Limited (LAPL)
Plot No. 397, Phase-III, Udyog Vihar,
Gurgaon, PIN: 122016, India.

....Petitioner

Versus

1. Power Grid Corporation of India Limited
Qutub Institutional Area, Katwaria Sarai,
New Delhi - 110016
2. Power Trading Corporation India Limited
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,
New Delhi – 110 066
3. Haryana Power Purchase Centre
2nd Floor, Shakti Bhawan, Sector-6,
Panchkula- 134 016,
Haryana
4. Chhattisgarh State Power Trading Company Limited
2nd Floor, Vidyut Sewa Bhawan,



Danganiya, Raipur– 492 013,
Chhattisgarh...**Respondents**

Parties present:

Shri Deepak Khurana, Advocate, LAPL
Shri Tejas V. Anand, Advocate, LAPL
Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri Divyanshu Bhatt, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Apoorv Kurup, Advocate, CSPTCL
Shri G. Kaushal, Advocate, CSPTCL
Shri Ravi Kishore, Advocate, PTC India

ORDER

The Petitioner, Lanco Amarkantak Power Limited (LAPL) has filed the present Petition under Section 79 (1) (c) read with Section 79(1) (f) of the Electricity Act, 2003 (hereinafter referred to as the “Act”) read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999, with the following prayers:

“(a) pass an Order directing Respondent No. 1 to charge transmission charges commensurate to power being supplied from Unit-II of the Petitioner's Power Project to Respondent No.2 for onward supply to Respondent No.3 i.e. 95% of 300 MW and not for the entire 300 MW; and

(b) pass an Order directing the Respondent No. 1 to revise the invoices and refund the excess transmission charges collected by it from the Petitioner/Respondent No. 2 from the date of commencement of supply of power i.e. commencing from 05.12.2015, along with interest @ 1.50% per month in accordance with the provisions of late payment surcharge specified in the CERC Tariff Regulations, 2014;

Background

2. The Petitioner has mainly submitted as under:



(a) The Petitioner has established a 600 MW (2 x 300 MW) coal-based thermal power station at Village-Pathadi, District Korba, in the State of Chhattisgarh. The Petitioner has executed a Power Purchase Agreement (PPA) dated 19.10.2005 with Respondent No. 2, PTC India Limited (hereinafter referred to as "PTC") , for sale of entire power from its Unit-II of the generating station. PTC has executed a separate Power Sale Agreement (PSA) dated 21.9.2006 with Haryana Power Generation Corporation Limited (which was subsequently assigned to HPPC, the Respondent No. 3 herein). The Petitioner had terminated the said PPA with PTC on 11.1.2011 and the matter relating to termination of the PPA is pending before the Hon'ble High Court of Delhi.

(b) Haryana Electricity Regulatory Commission (HERC) had directed the Petitioner to supply the entire power from its Unit-II to PTC for onward supply to HPGCL disregarding the Implementation Agreement having been executed by the Petitioner with the Home State (Chhattisgarh) under which it was required to supply 35% power as Home State obligation from its Unit-II to Chhattisgarh.

(c) The Appellate Tribunal for Electricity (hereinafter referred to as the "Appellate Tribunal") vide its interim order dated 23.3.2011 in I.A. No. 27/2011 in Appeal No. 15/2011 (Lanco Power Limited versus Haryana Electricity Regulatory Commission & Others) directed the Petitioner to supply 35% of power from its Unit-II to the State of Chhattisgarh/ CSPTCL and the balance 65% of power to PTC for onward supply to HPPC. The Appellate Tribunal vide



its final Order dated 4.11.2011 remanded back the matter to HERC to consider the Implementation Agreement executed between the Petitioner and the Respondent No. 4, Chhattisgarh State Power Trading Company Limited (hereinafter referred to as "CSPTCL") and also directed that interim Order dated 23.3.2011 shall be continued till the disposal of Petition by HERC.

(d) Aggrieved by the Appellate Tribunal's judgement dated 4.11.2011, the Petitioner approached the Hon'ble Supreme Court through Civil Appeal No. 10329/2011 (Lanco Amarkantak Power Limited versus Haryana Electricity Regulatory Commission). The Hon'ble Supreme Court vide Order dated 16.12.2011 directed the Petitioner to continue supplying power from its Unit-II in term of the interim order dated 23.3.2011 passed by the Appellate Tribunal. The Hon'ble Supreme Court further directed HERC to fix the interim tariff for supply of power from the date of supply till the disposal of the Appeal. Consequently, the Petitioner started supplying power in terms of Hon'ble Supreme Court Order dated 16.12.2011.

(e) Meanwhile, South Eastern Coalfields Limited (SECL) vide its letter dated 17.5.2012 stopped the supply of linkage coal to the Petitioner's Unit- II on the ground that the Petitioner did not have a long term PPA with Discoms as required in terms of the directives issued by the Ministry of Coal and Coal India Limited.



(f) Pursuant to the Hon'ble Supreme Court Order dated 16.12.2011, HERC vide Order dated 17.10.2012 determined the tariff for the supply of power by the Petitioner at Rs. 2.32/kWh as the PPA contains a capped tariff of Rs. 2.32/kWh. The Appellate Tribunal vide Order dated 3.1.2014 set aside the above-mentioned HERC Order dated 17.10.2012 and directed HERC to re-determine the tariff. Consequently, HERC vide Order 23.1.2015 re-determined the ad-hoc interim tariff of Unit-II of the Petitioner's generating station.

(g) The long-term access (LTA) granted by PGCIL to PTC could not be operationalized and the power from the Petitioner's generating station was being scheduled through short-term open access (STOA) on daily basis. On account of constraints in the transmission system due to non-operationalization of LTA, it was not possible to evacuate full capacity to HPPC.

(h) The Petitioner approached the Hon'ble Supreme Court through I.A No. 9/2015 in Civil Appeal No. 10329/2011 for seeking direction to SECL to commence supply of linkage coal to Unit-II of its generating station and for direction to PGCIL to ensure unhindered transmission of power, treating the supply of power from the Petitioner's Unit-II to PTC for onward supply to HPPC as supply made on long-term basis.

(i) The Hon'ble Supreme Court vide Order dated 18.9.2015 directed SECL to supply coal to the Petitioner. In order to restart the stranded Unit-II of the generating station, the Petitioner agreed to open the LC in favour of PGCIL on



behalf of PTC, without prejudice to its legal right. Consequently, the operation of Unit-II started from 5.12.2015 and the supply of power commenced to PTC/HPPC. However, CSPTCL agreed to avail only 5% of power from the Unit-II of the Petitioner's generating station as against the agreed 35%. PTC agreed to purchase the balance 95% of power from the Unit-II of the Petitioner's generating station.

(j) Since only 95% of 300 MW power was being supplied using the LTA granted by PGCIL to PTC, PGCIL is entitled to charge the transmission charges only for 95% of 300 MW and not for the full quantum of 300 MW. However, PGCIL raised the invoices for the full quantum of 300 MW to PTC, which was objected by the Petitioner as well as PTC. The Petitioner and PTC informed PGCIL that they would make the payment of the invoices raised by PGCIL under protest.

(k) PGCIL vide its letter dated 22.1.2016 informed PTC that in accordance with the TSA and LTA, PTC is required to pay the transmission charges for the full quantum of 300 MW despite the fact that only 95% of 300 MW was being transmitted as per LTA from the Unit-II of the Petitioner's generating station. In response, the Petitioner vide its letter dated 16.5.2016 informed PGCIL that since supply of power was being made pursuant to the Orders of the Hon'ble Supreme Court, PGCIL should charge the transmission charges to the extent of 95% of 300 MW.



(l) The Petitioner vide letter dated 15.4.2016, informed PTC that CSPTCL has already commenced scheduling of its 5% Home State share w.e.f. 17.4.2016 on short-term basis and has been paying transmission charges for the same directly to PGCIL through WRLDC. Therefore, in addition to transmission charges of 300 MW from PTC, PGCIL is also collecting transmission charges from CSPTCL for scheduling of 5% Home State share, which is equivalent to 105% transmission charges from Unit-II of the Petitioner's generating station. The Petitioner requested PTC to take up the matter with PGCIL.

(m) Since power supply from the Petitioner's generating station is being made pursuant to interim Order passed by the Hon'ble Supreme Court in Civil Appeal No. 10329 of 2011, the transmission charges are to be paid on quantum of power supplied. Although, CSPTCL had option to purchase 35% of the power generated through Unit-II, it has agreed to purchase only 5% of power and the Petitioner has already filed affidavit before the Hon'ble Supreme Court in this regard. Therefore, in terms of the Hon'ble Supreme Court Order dated 16.12.2011, the balance power i.e. 95% is required to be supplied to HPPC. Accordingly, the operationalization of the LTA and consequent payment of transmission charges would be to the extent of 95% of power being supplied to HPPC.



(n) PGCIL is collecting transmission charges for scheduling 5% of Home State share from the CSPTCL separately in addition to the transmission charges for supply of 95% of 300 MW from Unit-II of the Petitioner's generating station to PTC for onwards sale of power to HPPC. Therefore, PGCIL is collecting 105% transmission charges for the supply of power through Unit-II of the Petitioner's generating station, which is not permissible. The demand of 100% transmission charges for supply of 95% power to the HPCC is not justifiable as there cannot be double charge of transmission charges for transmission of same power and any such action would be without authority of law.

3. Notices were issued to the Respondents. PGCIL and PTC have filed their replies and the Petitioner has filed the rejoinders to the replies of the Respondents.

Submission of PGCIL

4. PGCIL vide its affidavit dated 19.6.2018 has filed its reply. The gist of the submissions in the reply is as under:

a) The present Petition is not maintainable as the Petitioner through the present petition is seeking modification of the Hon'ble Supreme Court Order dated 18.9.2015 in Civil Appeal No.10329 of 2011. The Hon'ble Supreme Court in the said Order has recorded the assumption of responsibilities under the TSA by the Petitioner with respect to the transmission charges and security thereof for utilization of ISTS. Since, pursuant to the Order of the Hon'ble Supreme Court, PGCIL is providing LTA to the Petitioner and PTC for 300 MW, any



alteration to the existing scheme of LTA quantum being utilized by the Petitioner/ PTC including the payment obligations can be carried out by the Hon'ble Supreme Court only.

b) PTC had made application to PGCIL for grant of 273 MW LTA for transfer of power from the generating station of the Petitioner to HPPC. PGCIL vide letter dated 16.6.2008 intimated the PTC for the grant of 300 MW LTA. Subsequently, PTC entered into Bulk Power Transmission Agreement (BPTA) dated 27.7.2009 with PGCIL. As per Article 1(a) of the BPTA, PTC is required to make the payment for the transmission charges including regional transmission charges, corresponding to LTA of 300 MW. Subsequently, PTC entered into TSA dated 22.6.2011, which reiterated the obligations as laid down in the BPTA. Hence, from the very beginning the understanding between the parties was that 300 MW LTA would be required by PTC and the Petitioner.

c) Pursuant to Hon'ble Supreme Court's Order dated 18.9.2015, the Petitioner had agreed to discharge the payment and security obligations of the PTC enshrined under the TSA, which was also brought to the knowledge of this Commission in Petition No. 166/MP/2015 (PGCIL Vs PTC India Limited). The Commission in its order dated 11.4.2017 in Petition No. 166/MP/2015 had observed that the Petitioner had taken over the responsibility of discharging the payment and security obligations of PTC and had also opened the LC in favour



of PGCIL on the behalf of PTC. Accordingly, PGCIL is entitled to recover transmission charges on the total LTA quantum of 300 MW.

d) The fact that CSPTCL chose to exercise Home State obligation for the purpose of availing 5% of power from the Petitioner's Unit-II cannot be the reason for the reduction in payment of the transmission charges. The responsibility for bearing the transmission charges was upon PTC after operationalization of 300 MW LTA , which had been taken over by the Petitioner.

e) As per Regulation 8(1) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges) Regulations, 2010 (hereinafter referred to as "Sharing Regulations"), the concerned Designated ISTS Customers (DIC) is liable to pay the transmission charges on the entire quantum of LTA which has been operationalized, without any exception. Further, Regulation 8(5) of the Sharing Regulations provides that where the Approved Injection is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations. Therefore, inability on the part of the DIC to fully use the LTA quantum does not affect its liability to pay the transmission charges. The DIC is required to pay the transmission charges irrespective of whether the LTA has been used fully, partly or not used at all.



f) The Petitioner is supplying 95% of total quantum of power under LTA to PTC for onward supply to HPPC. The remaining 5% of the total quantum of power of 300 MW is being supplied to CSPTCL through Short-Term Open Access (STOA). The LTA and STOA are two different transactions and DICs are also different. Since, there is no overlapping of LTA transaction and STOA transaction, the contention of the Petitioner that PGCIL is receiving transmission charges for 105% of the total allocated quantum is not sustainable.

g) PTC was granted LTA for the total quantum of 300 MW and the same has been operationalized. The obligation with respect to payment and security for the entire quantum of 300 MW has been taken over by the Petitioner. Further, the Petitioner's plea for revision in transmission charges to the extent of 95% of 300 MW is inconsistent with Regulation 8 of the Sharing Regulations which provides that liability to pay the transmission charges exists on the entire quantum of LTA capacity which has been operationalized by the CTU to the Applicant. Therefore, inability to utilize the entire LTA capacity does not, in any manner, affect the computation and levy of transmission charges.

Rejoinder of the Petitioner

5. The Petitioner vide its affidavit dated 16.10.2018 has filed its rejoinder to the reply filed by PGCIL. The gist of the submissions in the rejoinder is as under:

a) The contention of PGCIL that the Petitioner through the present Petition is seeking the alteration of Hon'ble Supreme Court Order dated 18.9.2015 in Civil



Appeal No. 10329 of 2011 is misplaced. The present proceeding and the proceeding before the Hon'ble Supreme Court are completely different. The Hon'ble Supreme Court did not fix any quantum and nowhere recorded that the Petitioner was assuming any kind of liability under the TSA.

b) PGCIL was a party in the proceedings before the Hon'ble Supreme Court in Civil Appeal No. 10329 of 2011 and was fully aware of the interim arrangement between the parties that 35% of 300 MW would be supplied to CSPTCL under Home State Obligation and remaining capacity to PTC for onward supply to HPPC. The said arrangement was never objected by PGCIL. Further, PTC vide its letter dated 30.11.2015 informed PGCIL about the arrangement between the PTC and HPPC that 95% of 300 MW was to be scheduled to PTC for onward supply to HPPC and the remaining 5% to CSPTCL. It was also made clear that the transmission charges for 5% of power would be borne by CSPTCL itself.

c) With regard to PGCIL's contention that the Petitioner has not disputed the bills raised by PGCIL, the Petitioner has submitted that it had raised the dispute regarding the inflated invoices and had made the payment under protest in order to ensure that the supply of electricity remained uninterrupted.

d) As per the Sharing Regulations, even in a situation where LTA is granted by the CTU, only the installed capacity of the generating unit can be considered for the purpose of computing the approved injection. However, in the present



case, PGCIL is seeking to recover transmission charges over and above the installed capacity i.e. to the tune of 105%, which is not permissible under the regulations.

e) PGCIL is deliberately misconstruing the Commission's Order dated 11.4.2017 in Petition No. 166/MP/2015. The Commission's Order nowhere mentions the LTA quantum to be utilized or the transmission charges on the LTA quantum. Since, the entire arrangement of 95% power supply to PTC/HPPC and 5% to CSPTCL was within the knowledge of the PGCIL and was not objected, PGCIL at this stage cannot misinterpret the Commission's Order dated 11.4.2017 in Petition No. 166/MP/2015. A bare perusal of the Commission's Order would reveal that although LC for the entire capacity was opened by the Petitioner, the Order nowhere mentioned that the Petitioner was liable to pay the transmission charges on the entire LTA capacity.

f) The Commission in its Order dated 11.4.2017 in Petition No. 166/MP/2015 had observed that LTA was being utilized in terms of the Hon'ble Supreme Court Order dated 18.9.2015 and PGCIL was getting the transmission charges to the extent of usage of LTA. Since, as per the arrangement between the parties and the Order of the Hon'ble Supreme Court, the LTA quantum of the Petitioner can only be 95% of 300 MW power, the Petitioner is liable to pay transmission charges only to this extent.



g) With regard to PGCIL's contention that the Petitioner had taken over the obligation of PTC, the Petitioner has submitted that although the LC had been opened by the Petitioner, it does not mean that the Petitioner had also assumed the entire obligation of the Petitioner under the TSA and BPTA. The Petitioner has agreed to open the LC on account of inaction and non-commitment on the part of PTC. Further, even before the Supreme Court, the Petitioner had agreed to open the LC on behalf of PTC without prejudice to any of its legal rights. Since, the entire arrangement between the parties was approved by the Hon'ble Supreme Court in the presence of PGCIL, PGCIL cannot be permitted to contend at this stage that the Petitioner is successor of the obligations of PTC. Further, the opening of LC was without prejudice to the legal rights of the Petitioner.

6. PTC vide its affidavit dated 21.6.2018 has submitted that the present Petition is not maintainable before the Commission as the entire scheme of the arrangement has been reached between the parties as per the directions of the Hon'ble Supreme Court. Therefore, all the disputes will fall under the exclusive jurisdiction of the Hon'ble Supreme Court. The Petitioner has already terminated the PPA with PTC and matter regarding termination of PPA is pending before the Hon'ble High Court of Delhi. PTC has further submitted that power is not being supplied under the PPA as the PPA is not valid and has been terminated by the Petitioner. Since power is being supplied pursuant to the Hon'ble Supreme Court's Order, this Commission does not have jurisdiction to deal with the dispute. PTC has further submitted that payment for transmission charges



are reimbursed to PTC by HPPC to the extent of 95% of power being supplied under the interim orders of the Hon'ble Supreme Court and balance 5% is being reimbursed by the Petitioner.

7. The Petitioner in its rejoinder to the reply filed by PTC has submitted that merely because the Hon'ble Supreme Court has placed an interim arrangement between the parties for supply of power pending dispute relating to jurisdiction of HERC, it does not mean that this Commission is denuded of its jurisdiction to adjudicate upon disputes under Section 79 of the Act between a generating company and a transmission licensee pertaining to inter-State transmission of electricity. The Hon'ble Supreme Court Order has not taken away jurisdiction of this Commission. The Petitioner has further submitted that even if PPA has been terminated between the parties, the Commission still exercises the jurisdiction under Section 79 of the Act. The present dispute relates to inter-State transmission of electricity and Section 79 of the Act does not require that inter- State transmission of electricity must take place under PPA to enable the Commission to exercise its jurisdiction.

Analysis and Decision:

8. We have considered the submissions of the Petitioner and the Respondents. Based on the pleadings and submissions of the parties, the following issues arise for our consideration:

a) Issue No.1: Whether the present Petition is maintainable?



b) Issue No. 2: Whether PGCIL is entitled to charge transmission charges commensurate to power being supplied from Unit-II to PTC for onward supply to HPPC or for the quantum for which LTA has been granted?

c) Issue No. 3: Whether any direction is required to be issued to PGCIL for revision of invoices and refund of excess transmission charges by PGCIL?

Issue No.1: Whether the present Petition is maintainable?

9. PGCIL has raised the question of the maintainability of the present Petition. PGCIL has contended that entire arrangement with respect to the supply of power from Unit-II of the Petitioner's generating station has been admitted by the Petitioner pursuant to the Order of the Hon'ble Supreme Court dated 18.9.2015 in Civil Appeal No. 10329 of 2011 which also records the assumption of responsibilities under the TSA by the Petitioner with respect to payment of transmission charges and security thereof for the utilization of ISTS. Therefore, the Petitioner through the instant Petition cannot seek modification of the Hon'ble Supreme Court Order dated 18.9.2015, which can be done only by the Hon'ble Supreme Court.

10. PTC has raised its objection on the maintainability of the instant Petition on the ground that entire scheme of arrangement between the parties has been brought through the Hon'ble Supreme Court vide its Order dated 18.9.2015 in Civil Appeal No. 10329 of 2011. Therefore, all the disputes would fall within the exclusive jurisdiction of the Hon'ble Supreme Court. PTC has further contended that the PPA between the PTC and the Petitioner has already been terminated and power is being supplied by the



Petitioner to HPPC through PTC and not under any PPA and PSA but under the directions of the Hon'ble Supreme Court. Therefore, this Commission does not have any jurisdiction to entertain the present Petition.

11. The Petitioner has submitted that the present proceeding and the proceeding before the Hon'ble Supreme Court are completely different. The Hon'ble Supreme Court did not fix any quantum and nowhere recorded that the Petitioner was assuming any kind of liability under the TSA. According to the Petitioner, the Commission exercises adjudicatory jurisdiction to decide disputes between generating company and transmission licensee as long as the same pertains to inter-State transmission of electricity. According to the Petitioner, there is no requirement either in Section 79 of the Act, or in any other provision of the Act that inter-State transmission of electricity must take place under a long term PPA to enable the Commission to exercise jurisdiction under Section 79 of the Act. Therefore, the Petitioner has submitted that the present Petition is maintainable before this Commission.

12. Before we consider the maintainability of the Petition, it is appropriate to understand the background of the dispute. The Petitioner has established a 600 MW generating station consisting of two units of 300 MW each in the State of Chhattisgarh. The Petitioner, LAPL entered into a PPA dated 19.10.2005 with PTC for supply of 273 MW power from Unit-II of Lanco Amarkantak Thermal Power Project. PTC in turn entered into a PSA dated 21.9.2006 with HPGCL for supply of 273 MW power to Haryana.



13. For evacuation of power from the generating station to HPPC, PTC applied for LTA of 273 MW to PGCIL. However, PGCIL vide its letter dated 16.6.2008 granted LTA for 300 MW capacity of the generating station and consequently, PTC along with LAPL entered into a BPTA dated 27.7.2009. However, as per clause 1(a) of the BPTA, PTC was liable to make payment of the transmission charges including the regional transmission charges corresponding to LTA of 300 MW and LAPL was liable to pay the LTA charges for the free power supplied to Chhattisgarh. PTC has also entered into a Transmission Service Agreement dated 22.6.2011 with PGCIL in terms of the Sharing Regulations.

14. Citing change in Chhattisgarh Government Policy, LAPL gave a notice to PTC regarding its inability to supply power as per the existing terms of the PPA. PTC filed a Petition before HERC seeking direction to HPGCL to purchase electricity determined in accordance with the Tariff Regulations of the Central Commission. HPGCL filed a separate Petition with HERC seeking direction to LAPL and PTC to honour the terms of the PSA and not to sell power to third parties. LAPL objected to the jurisdiction of HERC in the matter since the dispute was between a generating company and trading licensee. The matter was heard by HERC and order was reserved.

15. In the meantime, LAPL had entered into an Implementation Agreement dated 1.8.2009 with the Government of Chhattisgarh for supply of 35% of power at variable cost. On 3.1.2011, LAPL received a notice from Chhattisgarh State Power Trading



Corporation Limited (CSPTCL) to enter into a PPA with it for supply of 35% of power from Unit-II failing which Government of Chhattisgarh would withdraw all facilities and concession granted to the plant of LAPL. LAPL terminated the PPA with PTC vide letter dated 11.1.2011 for the failure of PTC to fulfil a Condition Precedent. On 12.1.2011, LAPL entered into a PPA with CSPTCL for supply of 35% of net power generated from Unit-II. On 2.2.2011, HERC passed the order holding that it has jurisdiction in the matter and directed LAPL to supply 300 MW power from Unit-II and restrained LAPL from selling power to third parties. Being aggrieved with the decision with regard to jurisdiction, LAPL filed Appeal No.15 of 2011 and CSPTCL being aggrieved by the order for non-supply of power to third party, filed Appeal No.52 of 2011 before the Appellate Tribunal. LAPL filed IA No. 27 of 2011 seeking a stay of the order dated 2.2.2011 passed by HERC. The Appellate Tribunal in its order dated 23.3.2011 granted an interim stay of the said order and permitted LAPL to supply 35% power from Unit-II to CSPTCL and balance power to PTC for onward supply to HPGCL to meet the commitment under the PSA. The Appellate Tribunal vide its judgement dated 4.11.2011 dismissed Appeal No.15 of 2011 (filed by the Petitioner) and upheld the jurisdiction of HERC to adjudicate the dispute between LAPL and HPGCL as both PPA and PSA were held to be inter-connected and inextricably linked to each other. The Appellate Tribunal in the said judgement allowed Appeal No. 52 of 2011 and remanded the matter to HERC to decide the matter about Implementation Agreement and the PPA entered into by LAPL with CSPTCL.



16. LAPL filed Civil Appeal No.10329 of 2011 against the Appellate Tribunal's orders dated 23.3.2011 and 4.11.2011 before the Hon'ble Supreme Court. The Hon'ble Supreme Court in its order dated 16.12.2011 directed that pending hearing and final disposal of the case, LAPL shall continue to supply power in terms of the directions of the Appellate Tribunal in order dated 23.3.2011. The Hon'ble Supreme Court also stayed the termination proceedings before HERC and directed HERC to fix/ approve the tariff for sale and purchase of power during the period of dispute. LAPL moved IA No.9 of 2015 in the said appeal seeking the following directions:

“(a) Pass on order directing Southern Eastern Coalfields Ltd. (SECL) to commence supply of linkage coal to Unit-II of the Applicant so that the Applicant can supply power to the APTEL identified beneficiaires (HPPC and Chhatisgarh) as per the interim order dated 16.12.2011 of this Hon'ble Court.

(b) Pass an Order directing respondent No. 2 (PTC) and PGCIL to arrange and ensure unhindered transmission of power treating the supply of power from the Applicant's Unit-II to Haryana (HPPC) as supply made on long term basis;

(c) Pass an order directing SECL and PGCIL to consider the supply of power to the APTEL identified beneficiaires (Haryana and Chattisgarh) pursuant to order dated 16.12.2011 equivalent to long term supply, for the purpose of supplying coal by SECL and transmission of power by PGCIL.

(d) In the alternative, vacate the interim Order dated 16.12.2011 and allow the Applicant to sell power from its Unit-II to third parties.”

17. Hon'ble Supreme Court vide order dated 18.9.2015 made the following observations and directions in the IA:

“The brief factual background of the instant application is that the applicant has a power generating unit somewhere in Chattisgarh with a generating capacity of 300 MW. It is a coal based thermal power plant. The applicant entered into an agreement for the sale of power generated by it with the Power Trading Corporation, respondent No. 3 herein. Respondent No. 3 entered into an agreement for supply of the power to respondent no. 2 for various reasons, the details of which are not relevant for the purpose of this order.



The applicant took a decision to terminate the agreement with respondent no. 3, the validity of such termination is one of the issues in the main appeal.

By interim order dated 16.12.2011, this Court directed the applicant to continue supply of power in terms of earlier interim order passed by the Appellate Tribunal for Electricity (APTEL) dated 23rd March, 2011 subject to various conditions specified in the said order.

For the purpose of the generation of electricity, the applicant had another agreement with respondent No. 8 herein for the supply of coal. The instant application came to be filed because respondent no. 8 is not willing to supply coal to the applicant on the ground that the applicant does not have a subsisting "power purchase agreement", therefore, not entitled for supply of coal in terms of the earlier agreement between the applicant and respondent no. 8.

In the result, the applicant is faced with a situation where the applicant is neither permitted to rescind his agreement with respondent no. 3 nor is he in a position to fulfill the obligations arising out of such an agreement and the interim order of this Court dated 16.12.2011 because in the absence of supply of coal, it is impossible for the applicant to generate power, hence the present application.

Respondent no. 9 who owns the transmission lines (infrastructure) for the transmission of the power generated by the applicant submitted that in order to utilise the infrastructure of respondent No. 9, the third respondent is required to open a Letter of Credit for an amount of Rs. 13.82 crores and pay the actual charges from time to time for availing the benefit of the infrastructure owned by respondent no. 9. The learned counsel for the respondent no. 9 therefore submitted that this Court may take into consideration the above-mentioned factors before passing any order on the instant application.

The learned counsel for respondent no. 8 submitted that the power generating plants for the supply of coal fall into two categories specified in the office memorandum of the Government of India, Ministry of Coal dated 30th June, 2015. The first category is of the generating companies which have a subsisting long term power purchase agreements and the second which do not have such agreements. In view of the fact that the applicant chose to terminate his existing power purchase agreement with respondent no. 3, the applicant is not entitled to claim supply of coal under the first category. In response to a specific query, the learned counsel for respondent no. 8 made a clear statement that they have enough coal to supply to the applicant herein subject to the various legal objections of the respondent.

Shri Harish Salve, learned senior counsel appearing for the appellant submitted that though the legal obligations to open a Letter of Credit for an amount of Rs. 13.82 crores in favour of respondent no. 9 is that of respondent no. 3 in view of the predicament in which the application is placed, the applicant is prepared to open a Letter of Credit on behalf of respondent no. 3 without prejudice to the applicant's legal rights in this behalf.



In the circumstances mentioned above, in view of the interim order dated 16.12.2011 of this Court under which the applicant is obliged to continue to supply of power, we deem it appropriate to direct respondent No. 8 to supply coal to the appellant treating the appellant to be falling under category No. 1 referred to earlier during the pendency of this appeal without prejudice to the legal rights of respondent no. 8 which can be determined at the time of the disposal of the appeal.”

18. Subsequent to the issue of the above directions by the Hon'ble Supreme Court, PTC vide its letter dated 30.11.2015 submitted the Letter of Credit for an amount of Rs. 13.82 crore opened by LAPL on 13.10.2015 in favour of CTU, intimated CTU that 95% of power would be supplied to HPPC (successor of HPGCL in the matter of power procurement) and balance 5% would be supplied to CSPTCL (for which transmission charges will be borne by Chhattisgarh/LAPL), submitted consents of all parties (LAPL, HPPC and PTC) and requested CTU to operationalize LTA. After the bill for PoC charges for 300 MW were raised by CTU for the month of December 2015, PTC vide its letter dated 9.1.2016 took up the matter with CTU and requested to revise the bill as 95% of power is scheduled to HPPC in pursuance of the order of the Hon'ble Supreme Court. PTC vide its letter dated 14.1.2016 has paid the PoC charges for 300 MW under protest and after getting a confirmation from LAPL that it would bear 5% of the transmission charges. CTU vide its letter dated 22.1.2016 clarified to PTC that in terms of the LTA granted to PTC for 300 MW and the proceedings before the Hon'ble Supreme Court and CERC, the liability to pay the transmission charges for the entire 300 MW is that of PTC. Subsequently, the bills are being paid to CTU by PTC under protest and after getting a confirmation from LAPL that it would bear 5% of the transmission charges.



19. Against this background, the present Petition has been filed. The Petitioner has submitted that being a dispute involving a generating company with regard to inter-State transmission of electricity, the Petition is maintainable under Section 79(1)(c) and (f) of the Act. According to CTU, LAPL has opened the LC on behalf of PTC on specific directions of the Hon`ble Supreme Court and any dispute for payment liability of transmission charges corresponding to 300 MW shall be in violation of the directions of the Hon`ble Supreme Court. CTU has also cited the order dated 11.4.2017 in Petition No.166/MP/2015 to contend that the issue has been settled in the said order. PTC has questioned the maintainability of the Petition on the ground that since the PPA has been terminated by the Petitioner and the entire scheme of arrangement of power has come into existence on account of Hon`ble Supreme Court Order dated 18.9.2015, all disputes in the present Petition would fall under the exclusive jurisdiction of the Hon`ble Supreme Court.

20. In our considered view, the Petition is maintainable for the following reasons:

(a) The contention of PGCIL before the Hon`ble Supreme Court was that the PTC (the third Respondent therein) was requested to open a Letter of Credit for an amount of Rs 13.82 crore and pay the transmission charges from time to time for availing its infrastructure for transmission of 300 MW of power generated by the Petitioner. Learned senior counsel for the Petitioner submitted before the Hon`ble Supreme Court that though the legal obligation to open the Letter of Credit is that of PTC, it was prepared to open the Letter of Credit



without prejudice to its rights. In other words, while the rights and obligations for opening the LC and payment of transmission charges under the BPTA continues with PTC, the Petitioner has voluntarily accepted the liability to open the LC without prejudice to its legal rights. The direction of the Hon'ble Supreme Court is extracted as under:

“Shri Harish Salve, learned senior counsel appearing for the appellant submitted that though the legal obligations to open a Letter of Credit for an amount of Rs. 13.82 crore in favour of respondent No. 9 is that of respondent No. 3 in view of the predicament in which the applicant is placed, the applicant is prepared to open a Letter of Credit on behalf of respondent No. 3 without prejudice to the applicant's legal rights in this behalf.”

Thus, the liability to open the LC for the contracted capacity of 300 MW in terms of the contractual arrangement under the Regulations was that of PTC. However, in view of the peculiar circumstances of the case, the Petitioner herein undertook the liability to open the LC on behalf of PTC so that the power transfer could take place and directions of Appellate Tribunal (23.3.2011) and the Hon'ble Supreme Court (16.12.2011) can be complied with. Even though the LC amount of Rs 13.82 crore pertained to entire LTA quantum of 300 MW, the issue whether LTA charges are payable for entire 300 MW, or for a lesser quantum for supply to HPPC was never the subject matter of the dispute before the Hon'ble Supreme Court. PTC is trying to link the acceptance of opening of LC for full quantum as agreed by the Petitioner in the Hon'ble Supreme Court with payment of transmission charges for availing the ISTS infrastructure. In our view, the present petition has a fresh cause of action and needs to be considered in accordance with the provisions of the BPTA/ Regulations of the



Commission. We are of the view that objection taken by PGCIL and PTC with regard to maintainability of the Petition before the Commission with regard to LTA quantum cannot be sustained.

(b) With regard to PTC's contention that the PPA has been terminated by the Petitioner and the entire scheme of arrangement of power has come into existence on account of Hon'ble Supreme Court Order dated 18.9.2015. Therefore, all disputes in the present Petition would fall under the exclusive jurisdiction of the Hon'ble Supreme Court. We notice that the Hon'ble Supreme Court has not made any observations as regards jurisdiction of this Commission nor was the jurisdiction under challenge as regards payment of transmission charges. The Hon'ble Supreme Court in its Order dated 18.9.2015 has only put an interim arrangement for supply of power from the Petitioner's generating station to PTC, without giving any observation on the transmission charges. Therefore, the present proceeding and proceeding before the Hon'ble Supreme Court are entirely different. In absence of any observations by the Hon'ble Supreme Court as regards jurisdiction, we are of the view that the power of adjudication of disputes by the Central Commission can be traced to clauses (a) to (c) of sub-section (1) read with clause (f) of Section 79 of the Electricity Act. Section 79(1)(f) empowers the Commission to adjudicate upon the dispute between the generating company or transmission licensee in regard to the matter connected with clause (a) to (d) of sub-section (1) of Section 79 of the Act. Section 79 (1) (c) of the Act empowers the Central Commission to



regulate inter-State transmission of electricity. The dispute involved in the present Petition relates to transmission charges payable with respect to actual usage of LTA granted to PTC, which is within the jurisdiction of this Commission.

21. Therefore, in the light of above discussion, the present Petition is maintainable and objections of PGCIL and PTC in this regard are rejected. Having decided on maintainability of this Petition, we now proceed to discuss the issue no. 2 and issue no. 3 together.

Issue No 2: Whether PGCIL is entitled to charge transmission charges commensurate to power being supplied from Unit-II to PTC for onward supply to HPPC or for the quantum for which LTA has been granted? and

Issue No. 3: Whether any direction is required to be issued to PGCIL for revision of invoices and refund of excess transmission charges by PGCIL?

22. The Petitioner has mainly contented that since supply of power and operationalization of LTA from its Unit-II is pursuant to Hon'ble Supreme Court Order dated 18.9.2015, the transmission charges ought to be levied on the quantum of power supplied i.e. 95% of 300 MW and not upon the entire 300 MW. Whereas, PGCIL has submitted that the entire scheme of arrangement for supply of power has been agreed before the Hon'ble Supreme Court and the Petitioner has agreed to open the LC for the entire 300 MW and the Petitioner has agreed to discharge the payment and security obligations laid down under the TSA dated 22.6.2011, on behalf of PTC. PGCIL has further submitted that the Commission in its order dated 11.4.2017 in Petition No. 166/MP/2015 has already observed that the Petitioner had taken over the responsibility



of discharging the payment and security obligation under the TSA dated 22.6.2011 and in compliance of the same, the Petitioner had also opened the LC in favour of PGCIL for the entire quantum of 300 MW. Therefore, PGCIL is entitled to recover the transmission charges on the total LTA capacity of 300 MW for which BPTA was signed.

23. We have heard the learned counsels for the Petitioner and the Respondents. We observe the chronology of events pertaining to supply of power from the Unit-II of the Petitioner`s generating station to HPPC through PTC as under:

a) The entire scheme of arrangement of power supply from Unit-II of the Petitioner`s generating station can be traced back to HERC Order dated 2.2.2011, whereby HERC directed the Petitioner to supply entire 300 MW power to HPPC and restrained the Petitioner from supplying the power to CSPTCL under Implementation Agreement which binds the Petitioner to supply 35% of power from its Unit-II to CSPTCL, under Home State obligation.

b) Aggrieved by above HERC Order, the Petitioner approached the Appellate Tribunal through Appeal No. 15/2011. The Appellate Tribunal in its interim order dated 23.3.2011 in I.A. No. 27/2011 allowed the Petitioner to supply 35% of the power to discharge its obligations to CSPTCL and the balance 65% power to PTC. The relevant portions of the said Order dated 23.3.2011 is extracted as under:

“10 (e). Under those circumstances we feel that the appellant must be allowed to supply 35% of the power to discharge its obligation to the Chhatisgarh Power Company. At the same time, in view of the PPA entered into between the Appellant (LAPL) and the PTC (R-3) earlier, though the same is said to have



been terminated, we deem it appropriate to direct the Appellant (LAPL) to supply the balance power to the PTC (R-3) so that the said power can be used for meeting the needs of the people of the state.

11. Thus we are inclined to grant interim stay of impugned order to the extent indicated above. The Appellant (LAPL) is permitted to supply 35% of power to Chhattisgarh Government Company and is directed to supply the balance power to the PTC (R-3) so that PTC (R-3) can discharge its obligation to the Power General Corporation (R-2) (Now HPPC) in pursuance of the PSA entered into between them.

12. We must make it clear that we have not decided the main issues in this application as the same can be decided only at the time of final disposal of the Appeal and this interim arrangement is subject to the outcome of this Appeal.....”

c) The Appellate Tribunal in its final Order dated 4.11.2011, while disposing of the above said Appeal No. 15/2011 upheld the jurisdiction of HERC to fix the tariff for the purchase of power by the PTC from the Petitioner for onward sale to HPPC. However, the Appellate Tribunal set aside the portions of the Order whereby HERC did not allow the Petitioner to sell 35% of power to CSPTCL and thus remanded back the matter to HERC to decide about the issue relating to the Implementation Agreement entered between the Petitioner and CSPTCL. The Appellate Tribunal further directed that its interim order dated 23.3.2011 shall be continued till the disposal of the Petition by HERC. The relevant portion of the said Order is extracted as under:

“97. Consequently, we deem it appropriate to remand the matter to the Haryana State Commission to decide about the said issue which has been framed as the 4th issue raised by the Commission relating to the implementation agreement and PPA entered into between the Lanco and Chhattisgarh Trading Company after giving an opportunity to the parties concerned and decide the same according to law. Accordingly, while holding that, the State Commission has got the jurisdiction to go into the disputes in question, we direct the State Commission to decide the issue relating to the agreement entered into between the Lanco Power Limited and Chhattisgarh Trading Company and decide the matter, in accordance with law on the basis



of the materials furnished by the parties concerned uninfluenced by the earlier findings on this point rendered by the State Commission. We make it clear that we are not expressing any opinion in this regard. Pending the said proceeds before the State Commission, the interim order dated 23.3.2011 passed by us will be in force till the final order is passed by the State Commission.”

d) Meanwhile, pending hearing and final disposal of the Appeal No. 10329/2011, the Hon'ble Supreme Court vide its Order dated 16.12.2011 directed the Petitioner to continue supply of electricity as per the Interim Order dated 23.3.2011 passed by the Appellate Tribunal. The relevant portion of the Hon'ble Supreme Court order dated 16.12.2011 is extracted as under:

“Pending hearing and final disposal of the appeal, we issue following directions:

(i) The appellant will continue to supply electricity as per the interim Order of the Tribunal dated 23rd March, 2011;

(ii) Without prejudice to the rights and contentions of the parties and pending further orders, the State Electricity Regulatory Commission, Haryana will fix/approve the tariff for sale and purchase of power for the period in question about which there is a dispute between the appellant and PTC.

The State Electricity Regulatory Commission, Haryana will decide the dispute uninfluenced by the observations made in the impugned Orders passed before today, by the Appellate Tribunal and/or any other Authority in this case. All arguments on both sides are kept open. Liberty is given to the parties to make a proper application supported by relevant documents before the State Electricity Regulatory Commission, Haryana, within four weeks.”

24. After going through the above Orders of the Appellate Tribunal and Hon'ble Supreme Court, we observe that the Petitioner has been allowed to supply 35% power to CSPTCL under its Home State obligation and the balance 65% power to PTC for onward supply to HPPC. However, the Hon'ble Supreme Court as well as Appellate Tribunal have not made any observations with regard to the liability towards payment of transmission charges and the quantum for which transmission charges shall be levied



by PGCIL. It is amply clear that all the other conditions with respect to the supply of power are to be governed by the provisions of the Sharing Regulations and Detailed Procedure made thereunder.

25. The Petitioner approached the Hon'ble Supreme Court through I.A. No. 9/2015 in Civil Appeal No. 10329/2011 seeking direction against the South Eastern Coalfields Limited (SECL) to start coal supply to the Petitioner and further direction to PGCIL to operationalize the LTA granted by PGCIL to PTC. The Hon'ble Supreme Court vide its interim order dated 18.9.2015 directed that the interim order dated 23.3.2011 passed by the Appellate Tribunal shall be continued and further directed SECL to supply coal to the Petitioner.

26. The Petitioner has submitted that pursuant to the Hon'ble Supreme Court order dated 18.9.2015, the power supply from Unit-II of the Petitioner's generating station resumed from 5.12.2015. However, CSPTCL agreed to offtake only 5% of 300 MW instead of 35%. Consequently, HPPTC agreed to buy the balance 95% of power through PTC. PGCIL has contended that it is entitled to recover the transmission charges for the entire LTA quantum of 300 MW despite the fact that only 95% of LTA is being utilized.

27. We have gone through the Hon'ble Supreme Court order dated 18.9.2015. Relevant portion of the Order is reproduced as under:

“Shri Harish Salve, learned senior counsel appearing for the appellant submitted that though the legal obligations to open a Letter of Credit for an amount of Rs. 13.82 crores in favour of respondent no. 9 is that of respondent no. 3 in view of the



predicament in which the application is placed, the applicant is prepared to open a Letter of Credit on behalf of respondent no. 3 without prejudice to the applicant's legal rights in this behalf."

We note from the above that during the hearing before the Hon`ble Supreme Court, learned counsel for the Petitioner agreed to open the LC for an amount of Rs. 13.82 crore in favour of PGCIL on the behalf of PTC, in view of predicament faced by the Petitioner without prejudice to its legal right. The Petitioner in the present Petition has submitted that it had opened the LC in view of the fact that its generating station had remained stranded and the LC was not being opened by PTC in view of the pending dispute. We observe from recordings in the Hon'ble Supreme Court Order that the Petitioner has not taken the liability towards the payment of transmission charges on the behalf of PTC and has only agreed to open LC as demanded by PGCIL . The Hon'ble Supreme Court did not give any finding upon liability towards payment of transmission charges and the quantum for which transmission charges shall be levied by PGCIL. Therefore, it cannot be interpreted that merely because the Petitioner has opened LC for the entire quantum of 300 MW, it shall be liable towards the payment of the transmission charges for the full quantum.

28. The liability for the payment of transmission charges arises from the BPTA and the TSA executed between the PTC and PGCIL. BPTA entered into between PTC and PGCIL dated 27.7.2009 clearly records that PTC shall bear the applicable regional transmission charges for the transmission of the power from Unit-II of the Petitioner's generating station. The relevant portions of the BPTA is extracted as under:



“PTC shall bear the applicable regional transmission charges of WR and NR corresponding to 300 MW power from Pathadi stage –II power project.”

29. PGCIL has argued that the Petitioner has taken full responsibility for payment of transmission charges as observed by the Commission in its order dated 11.4.2017 in Petition No. 166/MP/2015 (Power Grid Corporation of India Limited versus PTC India Limited). The relevant portions of the said order is extracted as under:

“8. Clause 2 of the LTA Agreement entered into between the Petitioner and PTC provides as under:

“2.0 (a) Long term transmission customer shall share and pay the transmission charges in accordance with the regulation/tariff order issued by Central Electricity Regulatory Commission from time to time of POWERGRID transmission system of concerned applicable Region i.e. Southern Region/Eastern Region/Western Region/Northern Region/North Eastern Region including charges for inter regional links/ULDC/NLDC charges and any additions thereof. These charges would be applicable corresponding to the capacity of power contracted from the said generation project through open access from the scheduled date of commissioning of generating projects as indicated at Annexure-I irrespective of their actual date of commissioning.

(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in Annexure-3 in accordance with the sharing mechanism detailed in Annexure-4. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at Annexure-3 (subject to technical feasibility), he/they would also share the applicable transmission charges.

(c) Each Long term transmission customer its successor/assignee shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the scheduled commissioning date of generating units as indicated by of the respective developer as per Annexure-1. The commissioning of transmission system would be preponed only if the same is agreed mutually by concerned parties.

(d) In addition to opening of LC for 105% of estimated average monthly billing for charges mentioned at 2(a) and 2(b) above, Long-Term Transmission customer would provide security in the form of irrevocable Bank Guarantee (BG), in favor of POWERGRID, equivalent to two months estimated average monthly billing, three months prior to the scheduled date of commissioning of generating units as indicated at Annexure-1. Initially the security mechanism shall be valid for a minimum period of three (3) years and shall be renewed from time to time till the expiry of the open access.

(e) The estimated average transmission charges would be reviewed every six months and accordingly the amount of security would be enhanced/ reduced by long term transmission customers.



(f) In case the long term transmission customer defaults in payment of the monthly charges of POWERGRID bills then, POWERGRID shall be entitled to encash/adjust the BG immediately.

(g) In case of encashment/adjustment of the BG by POWERGRID against non-payment of monthly charges by long-term transmission customer, the same should be immediately replenished/recouped by long-term transmission customers before the next billing cycle.”

As per the above provisions, a long term transmission customer is required to share and pay the transmission charges in accordance with the regulation/tariff orders issued by the Commission from time to time. PTC has signed the LTA Agreement and therefore, PTC is a Long Term Transmission Customer and is liable to open the LC and pay the transmission charges.

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13. Learned counsel for LANCO submitted during the hearing that LANCO has opened the LC for the entire capacity of 300 MW and has been paying transmission charges in order to avail the LTA for evacuation of power from its generating station. We are of the view that PTC had obtained the LTA for transmission of power from the generating station of LANCO for supply to HPGCL. LANCO is presently utilizing the LTA for supply of power to HPGCL under the interim direction of the Hon'ble Supreme Court. In so far as the LTA has been utilized and the Petitioner is getting the transmission charges, its concern has been addressed. Only in the event of LANCO not paying the transmission charges or not availing the LTA, it will be responsibility of PTC to pay the transmission charges. If PTC fails to honor its obligations under the LTA Agreement/TSA, the Petitioner will be at liberty to take any actions as may be available to it under the law or the agreement.

14. The Petitioner in the second prayer has sought direction that PGCIL is entitled for compensation due to non-compliance of the regulations and breach of the obligations under the TSA. In the third prayer, the Petitioner has requested for amendment of the Regulation to enable the Petitioner to terminate the LTA and claim compensation in similar cases of non-compliance. We are not inclined to issue any directions with regard to these prayers in the present petition. We keep the issues open to be dealt with in future in appropriate application.”

We do not find that the Commission has fixed any responsibility upon the Petitioner to pay transmission charges in the above order. The argument of PGCIL is contrary to the records and is rejected.

30. We have already observed in the above order dated 11.4.2017 that the PTC shall be liable to pay the transmission charges and to open the LC towards transmission charges.



31. The Petitioner has submitted that since only 95% of power is being transmitted using the LTA granted to PTC, PGCIL shall be entitled for transmission charges only for 95% and not for the entire 100%. Whereas, PGCIL has submitted that the liability towards transmission charges shall be for the entire LTA capacity of 300 MW unless the same is duly relinquished wholly or in part by PTC.

32. During the hearing of Petition No. 166/MP/2015, the Petitioner had submitted that it has opened the LC for the entire capacity of 300 MW and has been paying 5% transmission charges under protest in order to avail the LTA for evacuation of power from its generating station. The Petitioner vide letter dated 13.1.2016 requested PTC to release the payment for supply of power from its Unit-II of the generating station to HPPC through PTC, after deduction of 5% transmission charges and also made it clear to PTC that the payment for 5% transmission charges is being made under protest. Perusal of invoices raised by PGCIL reveals that PGCIL is raising invoices to PTC for transmission charges of the entire 300 MW LTA and PTC is making payment for the same to PGCIL. PTC in its reply dated 21.6.2018 has also submitted that the payment for transmission charges is being reimbursed to PTC by HPPC to the extent of power being supplied and balance 5% is being reimbursed by the Petitioner. Therefore, at present, the Petitioner is reimbursing the payment of 5% transmission charges to PTC, under protest.



33. The limited issue which remains now is that as to whether PGCIL is entitled to raise the invoices for the transmission charges of 300 MW despite the fact that only 95% is being transmitted through the LTA granted to PTC.

34. From submissions of the parties, we observe that PTC had made application to PGCIL for grant of 273 MW LTA for transfer of power from the generating station of the Petitioner to HPGCL (subsequently HPPC). PGCIL vide letter dated 16.6.2008 intimated the PTC for the grant of 300 MW LTA. Subsequently, PTC entered into Bulk Power Transmission Agreement (BPTA) dated 27.7.2009 with PGCIL. As per Article 1(a) of the BPTA, PTC was required to make the payment for the transmission charges including regional transmission charges, corresponding to LTA of 300 MW. Subsequently, PTC entered into TSA dated 22.6.2011.

35. We note that the LTA was not operationalised by PGCIL until the Hon'ble Supreme Court passed its Order dated 18.9.2015 in IA No. 9 of 2015 (in Civil Appeal No. 10329 of 2011) filed by the Petitioner as is clear from following extract of the Order:

“Respondent no. 9 who owns the transmission lines (infrastructure) for the transmission of the power generated by the applicant submitted that in order to utilise the infrastructure of respondent No. 9, the third respondent is required to open a Letter of Credit for an amount of Rs. 13.82 crores and pay the actual charges from time to time for availing the benefit of the infrastructure owned by respondent no. 9. The learned counsel for the respondent no. 9 therefore submitted that this Court may take into consideration the above-mentioned factors before passing any order on the instant application.”

LTA was operationalized only after the Petitioner opened LC for 13.82 crore as agreed in the Hon'ble Supreme Court.



36. We also note that one of the prayers of the Petitioner in the above IA before Hon'ble Supreme Court was:

“(b) Pass an Order directing respondent No. 2 (PTC) and PGCIL to arrange and ensure unhindered transmission of power treating the supply of power from the Applicant's Unit-II to Haryana (HPPC) as supply made on long term basis;”

37. We further note that the Order of the Hon'ble Supreme Court observed as under:

“By interim order dated 16.12.2011, this Court directed the applicant to continue supply of power in terms of earlier interim order passed by the Appellate Tribunal for Electricity (APTEL) dated 23rd March, 2011 subject to various conditions specified in the said order.

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Shri Harish Salve, learned senior counsel appearing for the appellant submitted that though the legal obligations to open a Letter of Credit for an amount of Rs. 13.82 crores in favour of respondent no. 9 is that of respondent no. 3 in view of the predicament in which the application is placed, the applicant is prepared to open a Letter of Credit on behalf of respondent no. 3 without prejudice to the applicant's legal rights in this behalf.

In the circumstances mentioned above, in view of the interim order dated 16.12.2011 of this Court under which the applicant is obliged to continue to supply of power, we deem it appropriate to direct respondent No. 8 to supply coal to the appellant treating the appellant to be falling under category No. 1 referred to earlier during the pendency of this appeal without prejudice to the legal rights of respondent no. 8 which can be determined at the time of the disposal of the appeal.”

38. The relevant portions of the Order dated 23.3.2011 (referred to by the Hon'ble Supreme Court in the above Order dated 18.9.2015) of the Appellate Tribunal is extracted as under:

“10 (e). Under those circumstances we feel that the appellant must be allowed to supply 35% of the power to discharge its obligation to the Chhatisgarh Power Company. At the same time, in view of the PPA entered into between the Appellant (LAPL) and the PTC (R-3) earlier, though the same is said to have been terminated, we deem it appropriate to direct the Appellant (LAPL) to supply the balance power to the PTC (R-3) so that the said power can be used for meeting the needs of the people of the state.



11. Thus we are inclined to grant interim stay of impugned order to the extent indicated above. The Appellant (LAPL) is permitted to supply 35% of power to Chhattisgarh Government Company and is directed to supply the balance power to the PTC (R-3) so that PTC (R-3) can discharge its obligation to the Power General Corporation (R-2) (Now HPPC) in pursuance of the PSA entered into between them."

39. Thus, it is clear that the Appellate Tribunal vide order dated 23.3.2011 permitted the Petitioner to supply 35% of power to CSPTCL. The Hon'ble Supreme Court vide order dated 16.12.2011 in Civil Appeal No. 10329 of 2011 directed that the interim arrangement (as decided by Appellate Tribunal vide order 23.3.2011) should continue. PGCIL was a party in Hon'ble Supreme Court while Order dated 18.9.2015 in IA No. 2015 (in Civil Appeal No. 10329 of 2011) was passed and interim order dated 16.12.2011 was referred to. Subsequently, CSPTCL agreed to offtake only 5%. After PTC agreed to buy 95% of power from Unit-II of the generating station of the Petitioner, supply of 95% of power began to HPPC. Thus, PGCIL was aware that the Petitioner required LTA for only 65% of its 300 MW capacity, which later became 95% due to CSPTCL agreeing to offtake only 5%. There is no document on record from which it can be inferred that the Petitioner has taken over the liability to pay transmission charges for full 100% of LTA. In such a situation, the claim of PGCIL that the Petitioner has taken such responsibility is not correct.

40. PGCIL has claimed that it should get transmission charges for 100% of LTA operationalized and it has nothing to do with the quantum of power actually being supplied. We note that PGCIL has not placed on record the reasons for not operationalizing LTA until the Order dated 18.9.2015 of the Hon'ble Supreme Court.



PGCIL has also not placed on record details regarding completion of associated transmission systems for operationalization of LTA. If associated transmission system was ready even before the Order of Hon'ble Supreme Court, PGCIL has not stated as to how the transmission charges were being paid till LTA operationalization. We also note that PTC had requested for only 273 MW LTA; in such a case neither PTC nor PGCIL has placed on record the circumstances that led to revision of this quantum to 300 MW.

41. Article 1.0 (a) of the BPTA provides as under:

“1.0 (a) Long term transmission customer shall share and pay the transmission charges including FERV, incentive, income tax, any other charges and taxes etc. of POWERGRID transmission system of Western, Northern Region and WR-NR inter-regional charges including ULDC/NLDC charges, etc.”

As per the above provision, Long Term Transmission Customer is required to share and pay the transmission charges. It is noted that the Petitioner is not a party to the BPTA or the TSA. The BPTA and the TSA have been executed between PGCIL and PTC, who is the Long Term Transmission customer, as mentioned in the BPTA and the TSA.

42. We have already held in our order dated 11.4.2017 (quoted earlier in para 29 of this order) in Petition No. 166/MP/2015 that PTC is liable to pay the transmission charges for the entire quantum of LTA. PTC has not contested this issue. On the other hand, the Petitioner vide letter dated 13.1.2016 has stated that it has agreed to make payment of only 95% of transmission charges and that payment for 5% transmission charges was being made under protest.



43. In view of the above, we direct that PGCIL shall keep raising bills to PTC corresponding to 100% of LTA of 300 MW operationalized by PGCIL. Of this only 95% shall be payable by the Petitioner who shall do so through PTC. PTC is liable to make payment of transmission charges for remaining 5% of LTA and shall not charge the same to the Petitioner.

44. The Petitioner has prayed for revision of invoices and refund of the excess transmission charges collected from the date of commencement of power supply i.e. 5.12.2015. It has also claimed interest @1.50% per month in accordance with the provisions of late payment surcharge specified in the 2014 Tariff Regulations. We have held earlier that PGCIL is raising bills for transmission charges for 300 MW of LTA as per LTA operationalized and that the charges for the same is payable by PTC. Therefore, we do not find merit in claim of refund of any excess charges collected by PGCIL to the Petitioner.

45. However, PTC has been collecting the transmission charges for full quantum of LTA from the Petitioner and in turn paying it to PGCIL. Since we have held that the Petitioner is responsible only for payment of transmission charges corresponding to 95% of LTA, we direct PTC to refund the excess transmission charges collected from the Petitioner (w.e.f. 5.12.2015) corresponding to 5% of LTA immediately and in any case no later than within 30 days of issue of this Order. If the amount remains unpaid



after 30 days of issue of this Order, PTC shall also pay interest @9% on such unpaid amount.

46. Petition No. 227/MP/2017 is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

Sd/-
(P. K. Pujari)
Chairperson

