

**CENTRAL ELECTRICITY REGULATORY COMMISSION**

**NEW DELHI**

**I.A. No. 71/IA/2019**

**in**

**Petition No. 124/MP/2017**

**Coram:**

**Shri P. K. Pujari, Chairperson**

**Dr. M. K. Iyer, Member**

**Shri I.S. Jha, Member**

**Date of Order: 9<sup>th</sup> of August, 2019**

**In the matter of**

Application under Section 94 (2) of the Electricity Act, 2003 read with Regulations 111, 112 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for Interim Protection and Stay of the impugned letter dated 2.8.2019 issued by the Respondent No. 1, Himachal Pradesh Power Transmission Corporation Limited.

**And**

**In the matter of**

Kanchanjunga Power Company Limited  
B-37, 3<sup>rd</sup> Floor, Gautam Budh Nagar  
Sector 1, Noida – 201 301

**....Applicant**

**Vs**

- 1) Himachal Pradesh Power Transmission Corporation Limited  
Himfed Bhawan, Panjari (Below Old MLA Quarters)  
Shimla – 171 005
- 2) Allain Duhangan Hydro Power Limited  
Bhilwara Towers, A-12  
Sector -1, Noida – 201 301
- 3) Power Grid Corporation of India Limited  
Central Transmission Utility  
B- 9, Qutub Institutional Area  
Katwaria Sarai, New Delhi – 110 006
- 4) Directorate of Energy  
Government of Himachal Pradesh



Through its Director,  
Shanti Bhawan, Phase 3  
Sector 6, New Shimla – 171 009

- 5) Government of Himachal Pradesh  
Through its Principal Secretary (Power)  
Armsdale Building, H.P Secretariat  
Shimla – 171 002

....Respondents

**Parties present:** Shri Sanjay Sen, Sr. Advocate, Kanchanjunga Power  
Shri Hemant Singh, Advocate, Kanchanjunga Power  
Shri Nishant Kumar, Advocate, Kanchanjunga Power  
Shri Ambuj Dixit, Advocate, Kanchanjunga Power  
Dr. Seema Jain, Advocate, ADHPL  
Shri Sumit Garg, ADHPL  
Ms. Kakoli Sengupta, ADHPL  
Ms. Swapna Seshardi, Advocate, HPPTCL  
Shri Amal Nair, Advocate, HPPTCL  
Dr. V. N. Paranjape, Powergrid  
Ms. Jyoti Prasad, Powergrid

### **ORDER**

The Applicant, Kanchanjunga Power Company Private Limited, has filed the present Interlocutory Application (IA) along with the following prayers:

“(a) Stay the operation of Impugned Letter dated 02.08.2019 issued by the Respondent No. 1, till final order is passed in Petition No. 209/MP/2017; and

(b) Direct the Respondent No. 1 and the Respondent No. 2 to not take any coercive actions, whatsoever, pursuant to the impugned letter, till final disposal of Petition No. 209/MP/2017.”

2. Brief background of the case is that the Applicant has filed Petition No. 124/MP/2017 *inter-alia* seeking declaration that the terms of the Interim Power Transmission Agreement dated 28.4.2016 entered into between the Applicant and Himachal Pradesh Power Transmission Corporation Limited (HPPTCL) and Allain Duhangan Hydro Power Limited (ADHPL) as well as the invoices issued thereunder are void and *non est* insofar as they are inconsistent with the applicable inter-State transmission Regulations including the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations,



2008, Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

3. I.A. was heard on 8.8.2019. During the course of hearing, learned senior counsel for the Applicant submitted as under:

(a) The Commission in its Record of Proceedings for the hearing dated 20.6.2017 in Petition No. 124/MP/2017 had directed the Applicant to make 80% payment of outstanding bills raised by HPPTCL/ ADHPL and continue to pay the monthly charges, subject to adjustment after outcome of the Petition. As per the above direction, the Applicant made payment of the outstanding invoices at the rate of 80% and continued to pay the monthly charges at the rate of 80% of the invoices raised by HPPTCL/ ADHPL.

(b) In the meantime, Respondent No. 2, ADHPL filed Petition No. 209/MP/2017, for determination of tariff of transmission assets which are part of ISTS. During the pendency of the above Petition, ADHPL filed an IA No. 69/IA/2017 seeking direction to Everest Power Pvt. Ltd., who is a beneficiary of the ADHPL transmission line, to make payment of the outstanding due towards the transmission charges for use of the said line. While disposing of the said IA, the Commission in its order dated 22.12.2017 directed Everest Power Pvt. Ltd. to make payment of 60% of the outstanding dues and continue to make payment of the monthly transmission charges at the said rate for use of the ADHPL line, subject to determination of tariff of the said line.

(c) Pursuant to the said order dated 22.12.2017, the Applicant made payment at



the rate of 60% against the invoices raised by ADHPL for usage of the ADHPL line. Since, the same transmission assets are being used by both the Applicant and Everest Power Pvt. Ltd., there cannot be two different principles for payment towards the usage of the same transmission line. Therefore, the Applicant may also be allowed to make payment of the monthly charges at the rate of 60% to ADHPL till the outcome of the decision in Petition No. 209/MP/2017, based on the principle of parity. Learned senior counsel requested for time to liquidate outstanding monthly charges to be calculated at the rate of 60%.

(d) Due to pendency of order in Petition No. 209/MP/2017, the Applicant is paying unregulated and self-assessed tariff imposed through interim Power Transmission Agreement.

(e) The Applicant is also using the HPPTCL transmission assets and as per the Commission`s direction dated 20.6.2017, the Applicant has made payment of monthly charges to HPPTCL at the rate of 80%.

4. Learned counsel appearing on behalf of Respondent No. 2, ADHPL submitted that the Applicant has failed to comply with the Commission`s order directing the Applicant to make 80% payment of the invoices raised by ADHPL. Learned counsel submitted that the Commission`s order dated 20.6.2017 in Petition 124/MP/2017 cannot be modified in these proceedings to enable the Applicant to make payment at the rate of 60% instead of 80% of the monthly charges.

5. We have heard the learned senior counsel and learned counsel appearing for the parties. Learned senior counsel submitted that the Applicant has complied with the

Commission's direction dated 20.6.2017. However, pursuant to order dated 22.12.2017 in IA/69/2017 directing the Everest Power Pvt. Ltd. to make the payment at the rate of 60% of the monthly charges, the Applicant has made payment of the monthly charges to ADHPL at the rate of 60%. Learned counsel for ADHPL submitted that the Applicant is also not even paying the monthly charges at the rate of 60%. Considering the submission of the learned senior counsel for the Applicant and learned counsel for ADHPL, we direct the Applicant to pay monthly charges within time at the rate of 60% to ADHPL and HPPTCL subject to adjustment after the outcome of the Petition No. 209/MP/2017. The Applicant is also directed to pay outstanding monthly charges, if any, to ADHPL at the rate of 60% within 10 days from the date of this order. The Respondents, HPPTCL and ADHPL are further directed not to take any coercive measures against the Applicant till disposal of the Petition No. 209/MP/2017.

6. The IA No.71/IA/2019 is disposed of in terms of the above.

Sd/-  
**(I. S. Jha)**  
Member

sd/-  
**(Dr. M. K. Iyer)**  
Member

sd/-  
**(P. K. Pujari)**  
Chairperson

