

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 202/MP/2018 along with IA No. 69/2019

Subject : Petition under Section 79(1)(c) read with 79(1)(f) of the Electricity Act, 2003, *inter-alia*, seeking setting aside of communication dated 27.6.2018 issued by Respondent No. 1.

Petitioner : Lanco Amarkantak Power Limited (LAPL)

Respondents : Power Grid Corporation of India Limited (PGCIL) and Anr.

Date of Hearing : 21.5.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Deepak Khurana, Advocate LAPL
Shri Tejasv Anand, Advocate, LAPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Shri Vipin Joseph, PGCIL

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioner submitted that the Petitioner has filed IA No. 69/2019, *inter-alia*, seeking amendment to pleadings/prayers of Petition No. 202/MP/2018 and to place on record subsequent facts with documents. Learned counsel submitted as under:

(a) The Petitioner is setting up a 2x 660 MW (Units 3 & 4) coal based thermal power Project in the State of Chhattisgarh. On 24.2.2010, the Petitioner entered into Bulk Power Transmission Agreement (BPTA) with PGCIL for the purpose of evacuating the power from the generating station. The Petitioner also furnished a Bank Guarantee (BG) of Rs. 42.90 crore in favour of PGCIL in terms of the BPTA.

(b) Despite best efforts, the Petitioner could not complete the said Project on account of various reasons beyond its control as detailed in the main Petition and PGCIL vide its communication dated 27.6.2018 sought to invoke the BG furnished under the BPTA. The aforesaid action of PGCIL has been challenged by the Petitioner, *inter-alia*, seeking setting aside of communication dated 27.6.2018 in the main Petition. The Petitioner had also prayed for an ad-interim order restraining PGCIL from invoking the BG. However, the Commission vide its order dated 3.8.2018 refused to grant



injunction and allowed PGCIL to take action with regard to the BG subject to final decision in the main Petition.

(c) During the pendency of the main Petition, PGCIL vide its letter dated 28.11.2018 unilaterally terminated the Transmission Service Agreement (TSA) dated 6.8.2012 and vide letter dated 13.12.2018 revoked the Long-Term Access (LTA) for 858 MW granted to the Petitioner despite the Petitioner having pointed out to PGCIL that the Project was delayed due to various reasons beyond its control and that it was already at advance stage of construction with over all progress of generating station being 84% and of dedicated transmission line being around 70%.

(d) Accordingly, the Petitioner has sought amendment to pleadings and prayers of the main Petition so as to include the challenge to the illegal and arbitrary termination of TSA and revocation of LTA by PGCIL within the scope of the present Petition.

(e) Amendments sought for by the Petitioner would be necessary for the purpose of determining the real question in controversy between the Parties. Also, the amendments concern the very same project and the same set of facts and circumstances relating to the LTA, on the basis of which the Petitioner has filed the instant Petition, and would not alter the nature of the Petition.

(f) PGCIL in its reply has opposed the IA contending that termination of TSA and revocation of LTA are separate and distinct cause of actions and are not connected with the original cause of action i.e. invocation of bank guarantee. PGCIL has also contended that the Petitioner is trying to replace one cause of action with another. However, aforesaid contentions are misplaced. Inclusion of challenge to termination of TSA and revocation of LTA by PGCIL in the main Petition would not alter one cause of action with another and they are subsequent/connected cause of actions to the original cause of action.

(g) The principles governing amendments of pleadings are well settled. As long as the amendments sought for would be necessary for the purpose of determining the real question in controversy, the court should allow such amendments. Dominant object to allow the amendment to pleadings liberally is to avoid the multiplicity of proceedings. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of Andhra Pradesh & Ors. v. Pioneer Builders [(2006) 12 SCC 119].

3. Learned counsel for the Respondent, PGCIL argued at length and submitted as under:

(a) Pursuant to the Commission's order dated 3.3.2018, PGCIL had encashed the subject BG of the Petitioner on 5.8.2018.

(b) As per the BPTA, PGCIL is entitled to encash the BG in case of adverse progress of individual generating units assessed during co-ordination Meetings. Since there was no progress in the construction of the Petitioner's Project beyond 85% after 2017, PGCIL was entitled to encash the said BG.



(c) During the pendency of the main Petition, PGCIL vide its letter dated 28.11.2018 terminated the TSA on account of Petitioner's failure to open the Letter of Credit (LC) as mandated under Clause 3.6 of Billing, Collection and Disbursement Procedure. Further, vide letter dated 13.12.2018, PGCIL also revoked the LTA granted to the Petitioner on account of its failure to complete the generation Project.

(d) The aforesaid cause of actions are separate and distinct cause of actions. If the amendments in the instant Petition are allowed then they would alter the subject matter of the present Petition.

(e) Leave to amend the Pleadings is granted so as to enable the real question in issue between the parties to be raised on the pleading for their determination. However, as per settled legal position, the amendments which give rise to a distinct cause of action or substitute one cause of action, which change the subject matter of the Petitioner, should not be allowed.

(f) Lis between the parties in the main Petition pertains to invocation of BG and by way of the proposed amendments, the Petitioner is seeking relief towards termination of TSA and revocation of LTA. Under the garb of present amendment, the Petitioner is trying to introduce a fresh cause of action despite being aware that the termination of TSA and revocation of LTA are not a consequence of invocation of BG or have any nexus thereto.

(g) Subsequent to filing of IA, the Resolution Process for the Petitioner has been initiated pursuant to the order of the National Company Law Tribunal (NCLT), Hyderabad Bench dated 5.9.2019 whereunder the Resolution Professional (RP) has been appointed. Due to this, PGCIL's claim against the Petitioner towards LTA relinquishment charges of Rs. 173 crore has also become uncertain. PGCIL had lodged its claim before RP. However, RP has only accepted notional sum of Rs.1 against the liability of Rs. 173 crore on account of revocation of LTA being subject matter of pending litigation. The amendment sought by the Petitioner is of no consequences and is only an attempt to defeat the claims of PGCIL in the IBC proceedings.

4. In rebuttal, learned counsel for the Petitioner submitted that submission made by PGCIL regarding raising its claims towards relinquishment charges before RP is not part of its reply/pleadings. Also, these submissions are extraneous to the issue of allowing amendment to the pleadings wherein the court is not required to go into merits of the case. The Petitioner is entitled to challenge the termination of TSA and LTA by PGCIL by amending the instant Petition as these are subsequent actions and events, which can be brought on record by amendment. In any event, if PGCIL has any grievance in regard to its claim filed before the RP, the competent court is NCLT and not this Commission. Learned counsel further submitted that assuming that PGCIL's argument has some merit, if the intention of the Petitioner was to delay the proceedings/defeat the claims of PGCIL, if any, it would have filed a separate Petition on the subject matter rather than seeking amendment to the instant Petition.

5. In response to the specific query of the Commission as to would not the Petitioner be at liberty to file a separate Petition if the amendment is not allowed, learned counsel for PGCIL submitted that in filing a separate Petition, the Petitioner would require to clarify its stand regarding the Project as to whether the Petitioner



intends to go ahead with the Project or not, and on the basis, PGCIL's claims towards transmission charges/ relinquishment charges shall be admitted by RP. Learned counsel for the Petitioner submitted that all objections which PGCIL is seeking to raise in opposition to the amendment application pertain to merits of the matter and if at all, can be raised in the reply to the amended Petition. Therefore, no prejudice would be caused to PGCIL if the amendment is allowed. Rather, it would avoid multiplicity of proceedings.

5. After hearing the learned counsels for the Petitioner and PGCIL, the Commission reserved order in IA No. 69/2019.

6. The main Petition shall be listed for hearing after the decision on IA for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

