

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**IA No.69/2019  
in  
Petition No. 202/MP/2018**

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

**Date of Order: 9<sup>th</sup> of June, 2020**

**In the matter of**

Application under Section 94 of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 seeking amendment of pleadings/prayers and bringing on record subsequent facts with documents.

**And  
In the matter of**

Lanco Amarkantak Power Limited (LAPL)  
397, Udyog Vihar, Phase-III, Gurgaon,  
Haryana - 122 016.

.....**Petitioner/Applicant**

**Vs.**

1. Power Grid Corporation of India Limited (PGCIL)  
B-9, Qutub Institutional Area,  
Katwaria Sarai, New Delhi - 110 0016

2. Allahabad Bank  
Industrial Finance Branch,  
6-3-850/3, 1st Floor,  
Hyderabad

.....**Respondents**

**The following were present:**

Shri Deepak Khurana, Advocate, LAPL



Shri Tejasv Anand, Advocate, LAPL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri V. Srinivas, PGCIL  
Shri Vipin Joseph, PGCIL

## **ORDER**

The Petitioner, Lanco Amarkantak Power Limited, has filed the instant IA seeking amendment to the pleadings/ prayers and for bringing on record subsequent facts along with documents in Petition No. 202/MP/2018.

### **Background of the case**

2. The Petitioner is setting up a 2x660 (1320) MW (Unit 3 & 4) coal based thermal power project (hereinafter referred to as 'the generating station') at Village-Pathadi, District Korba, in the State of Chhattisgarh, with Lanco Infratech Limited being the EPC Contractor and the promoter of the Petitioner's Company. The Petitioner has entered into Bulk Power Transmission Agreement (BPTA) dated 24.2.2010 with Respondent No.1, Power Grid Corporation of India Limited (PGCIL) for availing Long-Term Access (LTA) for transfer of power and furnished Bank Guarantee (BG) of Rs. 42.90 crore in favour of PGCIL under the provisions of the BPTA. On 6.8.2012, the Petitioner and PGCIL also entered into the Transmission Service Agreement (TSA) in terms of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as the "Sharing Regulations").

3. As per the BPTA, the transmission system required for direct evacuation of power from respective generating units to the pooling points of PGCIL (Annexure 2 to the BPTA) was to be built, owned, operated and maintained by the Petitioner and the



common transmission system to evacuate and dispatch power to respective beneficiaries (Annexure 3 to the BPTA) was to be built, owned, operated and maintained by PGCIL. As per various sub-clauses of Clause 2.0 of the BPTA, the Petitioner is required to share and pay the transmission charges in accordance with the regulations/ tariff orders issued by the Commission in respect of PGCIL transmission system from the date of commissioning of the respective transmission system which shall not be prior to the schedule date of commissioning of the generation projects, and irrespective of the actual dates of commissioning of the units of the generation project. As per Clause 6.0 of the BPTA, in the event of the Petitioner failing to construct the generating station/ dedicated transmission system or making an exit or abandoning the project, PGCIL shall have the right to collect the transmission charges and/or damages and may encash the bank guarantee in case of adverse progress of individual generating units assessed during the coordination meetings.

4. The Petitioner and PGCIL also entered into an Agreement dated 20.12.2010 under which PGCIL was to provide consultancy services for turnkey execution of 2 nos. of 400 kV bays at new 765/400 kV Champa Pooling Station of PGCIL for evacuation of power from Units 3 and 4 of the generating station of the Petitioner.

5. The Petitioner vide its letter dated 4.4.2016 issued a notice to PGCIL under Clause 9 of the BPTA and Clauses 14 and 15 of the TSA claiming that the execution of its project was affected by unexpected delays in getting various statutory clearances/ approvals from the Central/ State Authorities and land from State Government that were beyond the control of the Petitioner and these led to delay in commissioning of the



generation project including dedicated transmission lines. The Petitioner has mentioned such reasons as (a) change in location of PGCIL pooling station; (b) delay in obtaining forest clearance of the transmission line; (c) delay in possession of land; (d) post-award change in specification due to statutory requirements for coal handling plant and ash handling plant; (e) railway siding approval; and (f) Ministry of Environment, Forest & Climate Change (MoEF&CC) Notification regarding Environment (Protection) Rules, 2015. The Petitioner through the said notice sought extension of time for commissioning of the Units in respect of BPTA and TSA and also informed that owing to said delay which was beyond its control, the Petitioner would not be liable to pay any charges to PGCIL.

6. PGCIL vide its letter dated 4.7.2017 intimated the Petitioner to open a Letter of Credit of Rs.4792 lakh in terms of the BPTA and TSA which was followed by letters dated 23.8.2017 and 12.9.2017 as the required transmission system for evacuation of power from the generating units of the Petitioner was to be commissioned shortly.

7. In response to the said letters, the Petitioner vide its letter dated 30.8.2017 claimed that it was not liable to pay the transmission charges on account of various change in law and force majeure events. In the said letter, *inter-alia*, the Petitioner also informed PGCIL that it had delayed the augmentation of certain elements of transmission system as well as the implementation of bays at Champa Pooling station.

8. Subsequently, Corporate Insolvency Resolution Process (CIRP) was initiated against Lanco Infratech Limited, promoter company of the Petitioner and EPC contractor for execution of the project including the transmission line, pursuant to the



order of National Company Law Tribunal (NCLT), Hyderabad bench dated 7.8.2017 leading to the project works being completely stalled. According to the Petitioner, the above circumstances were brought to the notice of PGCIL by the Petitioner in various Joint Co-ordination Committee Meetings for High Capacity Corridor for IPPs in Western Region, which were also duly noted and acknowledged in the minutes of the meetings.

9. However, on account of non-opening of LC and non-payment of transmission charges, PGCIL invoked the Bank Guarantee of Rs. 42.90 crore vide its communication dated 27.6.2018 to Allahabad Bank, Industrial Finance Branch, 6-3-850/3, 1<sup>st</sup> Floor, Hyderabad which was forwarded by the Bank to the Petitioner on 29.6.2018.

10. Being aggrieved by the aforesaid action of PGCIL, the Petitioner filed the Petition No. 202/MP/2018, *inter-alia*, for setting aside/quashing of PGCIL's invocation communication dated 27.6.2018 and to restrain PGCIL from taking any coercive steps/actions under the BPTA dated 24.2.2010 including in respect of BG dated 29.1.2010.

### **Submissions of the Petitioner**

11. The Petitioner has submitted that 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 further vide its letter dated 13.12.2018 revoked the Long-Term Access for 858 MW granted to the Petitioner. The Petitioner has mainly submitted as under:

- (a) The Petitioner vide its letter dated 13.12.2018, *inter-alia*, had brought to notice of PGCIL its earlier correspondences and minutes of meetings of Joint Coordination Committee, wherein it had been brought out and acknowledged that



reasons for delay in the project work were beyond the control of the Petitioner. The Petitioner also referred to Report of High Level Empowered Committee's (HLEC) of November, 2018, wherein it was recommended to the Discoms, PGCIL, MoEF&CC and appropriate Govt. not to cancel PPA, FSA, transmission connectivity, EC/FC and other approvals of stressed Thermal Power Projects, which includes the project of the Petitioner. It was also brought to the notice of PGCIL that the disputes concerning the very same project and same set of facts and circumstances are sub-judice before the Commission in Petition No. 202/MP/2018 and as such the action of termination of TSA was erroneous and illegal.

(b) PGCIL vide letter dated 13.12.2018 revoked the Long-Term Access 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 overall progress of generating station being 84% and of dedicated transmission line being around 70%. Therefore, there was no default on the part of the Petitioner in terms of the BPTA.

(c) Accordingly, the Petitioner has sought amendments 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 by addition of paragraphs 19A to 19F, 20(H) to 20(M), 21 and prayer (dd) in the main Petition. The Petitioner has submitted that amendments sought for are necessary for the purpose of determining the real question in controversy between the parties and would facilitate the final decision and reliefs, if any, in the present matter. The amendments sought for concern the very same project and the same set of facts and circumstances on the basis of which Petitioner has filed the subject Petition. The Petitioner has further submitted that the amendments sought for are very much relevant and important to the background of the pleadings and controversy involved and on allowing of the such amendments, PGCIL shall not be prejudiced in any manner.



## **Reply of PGCIL**

12. PGCIL in its reply dated 14.8.2019 has submitted as under:

(a) In Petition No. 202/MP/2018, the Petitioner has sought relief with respect to the invocation of BG by PGCIL furnished under BPTA dated 24.2.2010. Thus, the only cause of action with which the Petitioner approached this Commission is against the invocation of BG by PGCIL.

(b) Pursuant to the Commission`s order dated 3.3.2018 refusing to grant any stay on invocation of BG, PGCIL had encashed the subject BG of the Petitioner on 5.8.2018.

(c) 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 encashed the BG as per the provisions of the BPTA.

(d) 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 (BCD Procedure). Such failure on part of the Petitioner also constituted an event of default under Clause 16 of TSA, entitling PGCIL to terminate TSA.

(e) Further, on account of failure on the part of the Petitioner to complete the construction of the generation project, which constituted a default under the terms of the BPTA, vide letter dated 13.12.2018, PGCIL also revoked the LTA granted to the Petitioner w.e.f. 1.10.2017. The above facts were brought to the notice of the Commission by PGCIL vide its reply to main Petition. However, instead of filing rejoinder to reply filed by PGCIL, the Petitioner has chosen to file the instant IA seeking amendments to main Petition so as to include the distinct and separate causes of actions arising out of the termination of TSA and LTA in the present

Petition.

(f) As per Order 6 Rule 17 of the Code of Civil Procedure, 1908, leave to amend the pleadings is granted so as to enable the real question in issue between the parties to be raised on the pleadings for their determination. However, as per settled legal principles, the amendment must not be such as would create a distinct cause of action. However, the Petitioner's own submissions in IA make it evident that it has sought an amendment in the causes of action in main Petition.

(g) 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 in respect of termination of TSA and revocation of LTA. Under the garb of present amendments, 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. Even though being related to the same generation project, the termination of TSA and revocation of LTA constitute a distinct cause of action on account of being made under different facts and circumstances and applicable contractual/ regulatory provisions.

(h) It is settled position of law that amendments which give rise to a distinct cause of action or substitute one cause of action, which change the subject matter of the Petition should not be allowed. In this regard, PGCIL has relied upon the judgment of the Hon`ble Supreme Court in the case of State of Andhra Pradesh & others Vs. Pioneer Builders [(2006) 12 SCC 119] and the judgment of the Hon`ble High Court of Delhi in Marble Art V. China Shipping Contained Co .Ltd. & Another [(ILR (2009)4 Del 480)]. Accordingly, the amendment sought by the Petitioner is liable to be disallowed on account of an attempt to introduce new and unconnected cause of action so as to delay the proceedings before the Commission.

### **Rejoinder of the Petitioner**

13. The Petitioner in its rejoinder dated 28.11.2019 has mainly reiterated the submissions made in the IA and has additionally submitted as under:





The Petitioner had augmented all its resources for proper and timely execution of the Project. However, despite the Petitioner being committed to complete the project on priority, certain timelines of the project could not be achieved on account of unexcepted delays in getting various statutory clearances/ approvals from the Central/ State Authorities and land from the State Govt. etc., all of which were known to PGCIL as per the BPTA and TSA.

(b) PGCIL vide its letters dated 23.8.2017, 12.9.2017 and 4.7.2019, had requested to open LC for operationalization of 858 LTA granted to the Petitioner for transfer of power. However, on one hand, PGCIL was raising the demand of opening of LC, on the other hand, in the same communications, PGCIL itself acknowledged and admitted non-completion of the requisite transmission system for evacuation of work.

(c) Despite informing PGCIL time and again about the reasons for delay in execution of project, it illegally invoked BG vide its letter dated 27.6.2018. Subsequent to invocation of BG, PGCIL vide its communication dated 28.11.2018 terminated the TSA dated 6.8.2012. In response, the Petitioner vide its letter dated 13.12.2018, again brought to the notice of PGCIL its earlier correspondences and minutes of meeting of the JCC, wherein it was acknowledged that the reasons for delay was beyond the control of the Petitioner. However, PGCIL vide its letter dated 13.12.2018 revoked 858 MW LTA granted to the Petitioner. The Petitioner vide its letter dated 7.1.2019 requested PGCIL to withdraw the revocation of LTA as well as the termination of TSA along with the information that as per PGCIL's notice the generating station/ dedicated transmission line was in advance stage of construction, with the overall progress of generating station being around 84% and of dedicated transmission line being around 70%.

(d) The impugned termination (which is subsequent to filing of present Petition) arises from the same set of facts and sequence of events as also concerns the very same project qua which the original petition (*inter-alia* seeking relief qua the BG) had been filed, as the said aspect of termination has been

sought to be placed before the Commission by way of the present application seeking amendment. The case laws referred to by PGCIL do not come to its rescue, which in fact supports the case for amendment sought for by the Petitioner.

(e) The amendments sought for by the Petitioner are in terms of and in line with the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908. The objections raised by PGCIL in the present IA seeking amendments are wholly erroneous, misconceived and unsustainable. PGCIL has failed to plead, much less show, that how the present amendments prejudice the case of PGCIL.

### **Analysis and Decision**

14. The matter was heard on 21.5.2020. During the course of hearing, learned counsels for the parties mainly reiterated submissions made in their respective pleadings. In addition, learned counsel for PGCIL submitted that 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. PGCIL had lodged its claim of Rs 173 crore before the 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. Due to this, PGCIL's claim against the Petitioner towards LTA relinquishment charges of Rs. 173 crore has also become uncertain. The amendment sought by the Petitioner is of no consequences and is only an attempt to defeat the claims of PGCIL in the IBC (Insolvency and Bankruptcy Code) proceedings. Per contra, 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 amendments 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 way of amendments. 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 for the Petitioner 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.

15. Based on the pleadings and the submissions of the learned counsels for the parties, the issue that arises for our consideration is whether the prayers in the IA seeking amendment of the Petition should be allowed or not.

16. As per sub-section (1) of Section 92 of the Electricity Act, 2003 (the Act), the Commission shall observe such rule of procedure in regard to the transaction of business at its meeting as it may specify. The Commission has specified the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 as amended from time to time (CBR) under the Electricity Regulatory Commission Act, 1998 which has been saved under Section 185(2)(a) of the Electricity Act, 2003. The CBR does not have any provision with regard to the amendment of pleadings by the parties in the proceeding before the Commission. Per force, the Commission has been



relying on the provisions of the Code of Civil Procedure, 1908 (CPC) for issues which are not covered in the CBR. In the past also, the Commission has considered the issue of amendment of the pleadings by the parties in terms of Order 6 Rule 17 of the CPC.

Order 6 Rule 17 of CPC is extracted as under:-

*“17. Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial.”*

17. As per the above provisions, pleadings can be amended at any stage of the proceedings if in the view of the Court, the amendments are necessary for the purpose of determining the real questions in controversy between the parties. The proviso to the said rule says that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. The Hon`ble Supreme Court in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors. [(2009) 10 SCC 84] has laid down the broad parameters for consideration of the applications for amendment of the pleadings as under:-

*“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

*(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;*

*(2) Whether the application for amendment is bona fide or mala fide;*

*(3) The amendment should not cause such prejudice to the other side which cannot be*



*compensated adequately in terms of money;*

*(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*

*(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

*(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.*

*64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments”*

19. Also, while considering the request of the parties for amendment of the pleadings, the court is not required to go into the merit of the amendment. In this connection, the Hon'ble Supreme Court in *Rajesh Kumar Aggarwal & Ors. Vs. V.K.K. Modi*, (2008) 4 SCC 385, Para 19 has held as under:-

*“19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”*

20. Further, Hon'ble Supreme Court in *Andhra Bank Vs. ABN Amro Bank N.V.7 Ors.* (2007) 6 SCC 167 has held as under:-

*“5.... So far as the second ground is concerned, we are also of the view that while allowing an application for amendment of the pleadings, the Court cannot go into the question of merit of such amendment. The only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit. From a perusal of the amendment application, we find that the appellant in their prayer for amendment has only taken an additional defence that in view of Section 230 of the Indian Contract Act, the suit itself is*



*not maintainable. It is well settled, as noted herein earlier, that at the time of considering the prayer for amendment of the written statement it would not be open to the Court to go into the fact whether in fact the suit in view of Section 230 of the Indian Contract Act was or is not maintainable.*

21. In view of the settled law as noted in para 19 above, the Commission is not required to consider the proposed amendments on merit at the stage of deciding whether the amendments to the Petition should be allowed or not. Accordingly, the Commission is confining itself to the consideration whether the amendments sought by the Petitioner meet the requirements of Order 6 Rule 17 of the CPC in the light of principles laid down by the Hon`ble Supreme Court in *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors.* [(2009) 10 SCC 84].

22. The first test for allowing the amendment is whether the amendment sought is imperative for proper and effective adjudication of the case. The Petitioner has made its claims against termination of TSA and revocation of LTA by PGCIL. According to the Petitioner, during the pendency of the present Petition, despite being aware about delay in project works due to various force majeure events/ reasons beyond the control of the Petitioner, PGCIL vide its letter dated 28.11.2018 unilaterally and illegally terminated the TSA dated 6.8.2012. Subsequently, PGCIL vide its letter dated 13.12.2018 also revoked LTA of 858 MW granted to the Petitioner. The Petitioner has, through the instant IA, sought amendments to pleading and prayers of the main Petition so as to include the challenge to the termination of TSA and revocation of LTA by PGCIL. Per contra, PGCIL has submitted that subsequent to filing of the Petition, PGCIL terminated the TSA vide its letter dated 28.11.2018 on account of Petitioner's failure to open the LC as mandated under Clause 3.6 of BCD (Billing, collection and Disbursement) Procedure

under the CERC (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 and revoked the LTA vide its letter dated 13.12.2018 on account of its failure to complete the generation Project. PGCIL has contended that the termination of TSA/ revocation of LTA are separate and distinct cause of action from the prayer of the Petitioner in the main Petition that related to invocation of BG. PGCIL has submitted that the present amendment being sought is not connected with the original cause of action. Accordingly, such amendments ought not to be allowed.

23. We have noted the submissions of parties. It is not in dispute that in the main Petition, the Petitioner has sought relief only in respect of invocation of BG by PGCIL. The Petitioner has claimed that delay in commissioning of its power plant is on account of reasons beyond its control viz. unexpected delays in getting various statutory clearances/ approval from Central/ State Authorities, acquisition of land by the State Government, initiation of insolvency proceedings against the Petitioner's promoter company (which is also the EPC contractor) before the NCLT etc. However, no interim relief against invocation of BG had been granted by the Commission. During the pendency of the main Petition, PGCIL vide its letters dated 28.11.2018 and 13.12.2018, terminated the TSA and LTA respectively, alleging default on the part of the Petitioner. Through the instant IA, the Petitioner has sought to include prayers related to subsequent developments, namely termination of TSA and revocation of LTA by PGCIL in the main Petition. In this regard, we note that the basis of inclusion of these new prayers by the Petitioner has remained the same as that in the main Petition and that is the delay in commissioning of its power plant on account of various Force Majeure events. Invocation of BG and subsequent cancellation of TSA and revocation of LTA of



the Petitioner have all been on account of non-commissioning of its power plant. In our view, the main issue for adjudication involved in the matter remains as to whether the various events cited by the Petitioner constitute Force Majeure events under the contractual arrangement between the Petitioner and PGCIL, leading to invocation of BG or subsequent developments viz. termination of TSA and invocation of LTA. Therefore, the subsequent developments need to be considered together for a proper and effective disposal of the main Petition.

24. The next test is whether the application for amendment is bonafide or mala fide. Prima facie, we do not find any malafide intent on the part of the Petitioner. PGCIL has also not pleaded mala fide on the part of the Petitioner for seeking to amend its reply. Therefore, we find no reason to deliberate on this issue.

25. The next test is whether the proposed amendments would cause any prejudice to the other party which cannot be compensated adequately in terms of money. The Petitioner has submitted that PGCIL shall not be prejudiced in any manner if the amendments sought for are allowed by the Commission. Though PGCIL, in its reply, has not pleaded that the said amendments, if allowed, would cause prejudice to PGCIL, the learned counsel for PGCIL, during the hearing, argued that PGCIL's claim towards LTA relinquishment charges of Rs. 173 crore has become uncertain on account of this pending Petition. Learned counsel of the Petitioner submitted that though it is at liberty to file a separate petition in respect of its claims regarding cancellation of TSA and revocation of LTA, it would only prolong the proceedings. He, therefore, submitted that the prayers related to amendment of the Petition may be allowed. Learned counsel for



PGCIL submitted that when the Petitioner files a separate Petition, the Petitioner would require to clarify its stand regarding the Project and accordingly PGCIL's claim towards transmission charges/ relinquishment charges shall be admissible by Resolution Professional (RP) appointed under IBC. In our view, the admissibility or otherwise of PGCIL's claim before the RP is not an issue before this Commission. Further, prejudice to PGCIL, if at all any, will not be of such nature which cannot be adequately compensated in terms of money. Besides, if the Petitioner files a separate Petition the same would lead to further delay in adjudication of the issues involved.

26. The next test is whether disallowing the proposed amendment would in fact lead to injustice or lead to multiple litigations. It is a well settled position that dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of proceedings. We recognize that if the amendments sought for are not allowed, the Petitioner would be at liberty to file a separate Petition challenging the termination of TSA and LTA. In fact, PGCIL has itself contended that the Petitioner ought to file a separate Petition on this account, since they are separate causes of actions and cannot be raised in the instant Petition. We have already observed that the termination of TSA and revocation of LTA are only subsequent developments or causes of action to the cause of action in the main Petition and . disallowing the amendments sought would only lead to multiplicity of proceedings.

27. The next test is whether the proposed amendments fundamentally changes the nature and character of the case. PGCIL has submitted that, 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 Petition, should not be allowed. PGCIL has submitted that under the garb of the present application, the Petitioner is trying to introduce fresh and distinct cause of action which is not connected with original cause of action. In this regard, PGCIL has relied upon the judgment of the Hon`ble Supreme Court in the case of State of Andhra Pradesh & others Vs. Pioneer Builders [(2006) 12 SCC 119]. The relevant extract of the said judgment is as under:

*"Nevertheless, one distinct cause of action cannot be substituted for another nor the subject-matter of the suit can be changed by means of an amendment. The following passage from the decision of the Privy Council in Ma Shwe Mya. v. Maung Mo Hnaung [(1920-21) 48 IA 214 : AIR 1922 PC 249] succinctly summarises the principles which may be kept in mind while dealing with the prayer for amendment of the pleadings: (IA pp. 216-17)*

*"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit"*

28. However, as already observed above, the proposed amendments sought for are in continuation of the main Petition and does not either substitute the main cause of action or alter the primary subject matter of the main Petition. The cause of action forming basis of the pleadings and prayer sought to be amended is in fact subsequent cause of action and is in continuance of the cause of action in the main Petition. In this regard, it is pertinent to refer to the observation of the Hon'ble Supreme Court in the case of Rajesh Kumar Aggarwal & Ors. Vs. V.K.K. Modi, (2008) 4 SCC 385.

*"17. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. In our view, since the*



*cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.*

*18..... In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court."*

29. The cause of actions, namely, termination of TSA and revocation of LTA have arisen during the pendency of the main Petition. Incorporating the same in the present Petition, in our view, would not alter the basic structure of the Petition which as noted above, pertains to the issue as to whether various events/ circumstances cited by the Petitioner for delay in completion of project amount to Force Majeure events or not.

30. The next test is that as a general rule, the court should decline amendment if a fresh suit on the amended claims would be barred by limitation on the date of application. It is undisputed that the events of termination of TSA and revocation of LTA are subsequent events after filing of the main Petition. Also, the termination of TSA was effected by PGCIL vide its letter dated 28.11.2018, whereas LTA was revoked by PGCIL vide its letter dated 13.12.2018. Therefore, as on date of filing of the instant IA i.e. 16.7.2019, the right of the Petitioner to file the fresh Petition on the subject matter was not barred by the limitation.

31. In the light of the above discussions, we are of the view that the proposed amendments sought by the Petitioner through the IA deserve to be allowed for the purpose of determining the real questions in controversy between the parties and for



proper adjudication of the case. Accordingly, the Petition filed by the Petitioner shall stand modified to the extent prayed in the IA. The Respondents are directed to file their reply to the amended Petition within three weeks. PGCIL is at liberty to take all such objections as it may consider appropriate in its reply to the amended Petition. It is clarified that in this order, the Commission has decided the issue whether amendment sought by the Petitioner should be allowed or not. The Commission has not expressed any view on merit of the case and the same will be decided after hearing the parties at the stage of final disposal of the Petition.

32. IA No. 69 of 2019 in Petition No. 202/MP/2018 is disposed of in terms of the above.

33. The Petition No. 202/MP/2018 shall be listed for hearing on merits in due course.

**Sd/-**  
**(Arun Goyal)**  
**Member**

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

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

