

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.** : **701/MP/2020 Along with I.A 72/2020**

**Subject** : Petition under Section 79 of the Electricity Act, 2003 seeking declaration that the Transmission Service Agreement dated 28.8.2019, Transmission Connectivity Agreement dated 5.3.2019 and Long-Term Access Agreement dated 28.8.2019 are rendered impossible to perform and thereby void and directions to restrain the Respondent from invoking the bank guarantees and return the same to the Petitioner.

**Date of Hearing** : 15.5.2023

**Coram** : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri A.K Goyal, Member  
Shri P.K. Singh, Member

**Petitioner** : Shapoorji Pallonji Infrastructure Limited (SPICCP)

**Respondent** : Power Grid Corporation of India Limited (PGCIL)

**Parties present** : Shri Sujit Gosh, Advocate, SPICCP  
Shri. Mohd Munish Siddique, Advocate, SPICCP  
Ms. Manna Wariach, Advocate, SPICCP  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri Tushar Mathur, Advocate, PGCIL  
Ms. Divya Sharma, Advocate, PGCIL  
Ms. Priyansi Jadiya, PGCIL  
Shri Swapnil Sharma, PGCIL  
Shri Ranjeet Singh Rajput, PGCIL

**Record of Proceedings**

The learned counsel for the Petitioner made a detailed oral argument during the course of hearing. The gist of the submissions made by him are as follows:

- (a) The basis for obtaining the Stage-II Connectivity and Long Term Access (LTA) and consequently entering into Connectivity Agreement (CA) and Long Term Access Agreement (LTAA) was the Power Purchase Agreement (PPA) dated 22.11.2018, entered between the Petitioner and SECI. As the PPA has already



been terminated, the performance under the CA, LTAA and TSA has become void in terms of Section 56 of the Indian Contract Act, 1872 (Contract Act).

- (b) The impossibility in performance of its obligation by the Petitioner is on account of non-availability of the generating station to generate electricity. Hence, the contract has become void.
- (c) Placing reliance on Section 56 of the Contract Act and Hon'ble SC judgment of Satyabrata Ghose Vs. Mugneeram and Energy watchdog Vs. CERC, Commission's order dated 4.5.2023 in Petition No. 580/MP/2020, he submitted that since no relief is provided under the Agreements on account of Force Majeure, the Petitioner has no option but to take to recourse of Section 56 of the Contract Act. All the agreements like LTA, TSA and CA were predicated on the existence of PPA, and as the PPA has been terminated requested to consider the application of Section 56 of the Contract Act to the present situation and return the Bank Guarantee (BG) to the Petitioner.
- (d) The Revised Procedure is applicable in the instant case. CTUIL/PGCIL has revoked the Stage-II Connectivity granted to the Petitioner on 2.2.2021 i.e., prior to the issuance of the Revised Procedure. However, CTUIL/PGCIL has not taken any action towards encashment of the BG till date. Since no action regarding encashment of the BG has been initiated by the CTUIL/PGCIL, the Revised Procedure shall be applicable in the present case.
- (e) As relinquishment charges are not the subject matter in the instant case, no submissions regarding relinquishment charges are made.

2. Learned counsel for CTUIL also made a detailed oral argument during the course of hearing. The gist of the submissions made by her are as follows:

- (a) The plea of Section 56 of the Contract Act and the plea to return of BG was raised by the Petitioner in Petition No. 605/MP/2020 and the same was rejected by the Commission vide order dated 6.9.2022. As the ground of impossibility in performance of contract has already been rejected by the Commission, fresh claim in this regard does not survive.
- (b) The Hon'ble Supreme Court in Indian Thermal Power Ltd. vs State of M.P held that if entering into a contract containing prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. A commercial contract stands on different footing from statutory contracts like CA and LTAA, which are governed by Regulations of the Commission. Further, placing reliance on Maria Vs. State of Kerala (2014) 4 SCC 272, she submitted that the plea of Section 56 of the Contract Act is not available in case of statutory contracts. Thus, CTUIL being a statutory body under Section 38 of Electricity Act, 2003 is bound by the Regulations and statutory contracts and the consequence of encashment of BG must be followed.



(c) As regards the applicability of the Revised Procedure, referring to Clause 5 of the Revised Procedure, it was submitted that Stage-II connectivity was granted under the Pre-revised Procedure and the same has already been revoked. Therefore, the connectivity BG of Rs. 5 crore is encashable. However, no action was taken towards encashment because of the interim protection granted to the Petitioner by the APTEL, which was further extended by the Commission vide RoP dated 4.6.2021.

3. The Commission directed the parties to file their written submissions, if any, by 5.6.2023 and observed that no extension of time will be granted.

4. Subject to the above, the Commission reserved the order in the matter.

**By order of the Commission**

sd/-  
(V. Sreenivas)  
Joint Chief (Law)

