

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 253MP/2012

Subject : Petition for adjudication of issues relating to PPA between PTC India Limited and Lanco Budhil HPPL.

Date of hearing : 27.8.2013

Coram : Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Petitioner : PTC India Limited

Respondents : Lanco Budhil Hydro Power Private Limited
Haryana Power Generation Corporation Limited

Parties present : Shri Ravi Prakash, Advocate, PTC
Shri Varun Pathak, Advocate, PTC
Shri Suyash, Advocate, PTC
Shri Deepak Khurana, Advocate, Lanco
Shri Vikas Mishra, Advocate, Lanco
Shri Prabhat Shrivastava, Lanco
Shri Apoorve Koral, Advocate, HPGCL
Shri Haridas Mait, BYPL
Shri Ankush Bajoria

Record of Proceedings

Learned counsel for Lanco Budhil Hydro Power Private Limited (LBHPPL) submitted as under:

(a) The appeal filed by the petitioner challenging the judgment of the Appellate Tribunal for Electricity has been admitted by the Hon'ble Supreme Court wherein it has been stated that HERC has jurisdiction to decide on the validity of termination of the PPA.

(b) One of the ground for appeal is that the Appellate Tribunal for Electricity has completely ignored the scheme of the Electricity Act, 2003 and has not clarified which Commission has jurisdiction to adjudicate the matter.

(c) The petitioner has to choose one forum for the same issue at particular point of time and cannot be allowed to indulge in forum shopping which is nothing but abuse of the process of law. The petitioner should withdraw its appeal before the Supreme Court as law does not permit any party to pursue two remedies at the same time.

(d) The present dispute is purely contractual. The plea of the petitioner that the present petition has been filed to overcome limitation as no action for recovery can be maintained after three years, is baseless. The Limitation Act, 1963 does not apply to the present proceedings. The concept of delay and laches do apply to the proceeding before the Commission.

(e) The reasons for the termination of contract are not due to force majeure event. The defaults and shortcoming were actually the obligations that the petitioner was to meet under the contract. Therefore, the remedy for termination on the ground of force majeure is not available.

(f) The plea of the petitioner that CERC has jurisdiction under Section 79 (1) (c) read with Section 79 (1) (f) of the Act to entertain the present petition is devoid of merit. CERC can adjudicate upon disputes involving generating companies or transmission licensees in regard to matters connected with clause (c).

2. In response, learned counsel for the petitioner submitted as under:

(a) The benefit of section 14 (2) of the Limitation Act, 1963 is not available to the petitioner because the petitioner did not pursue the remedy before HERC. However, it was originated by HPGCL.

(b) It would be incorrect to say that Limitation Act, 1963 is not applicable to the petitioner. There is no right in perpetuity to sue. There are specific provisions under the Act wherein limitation has been specified.

(c) The decision of the APTEL is still binding on the petitioner since there is no stay order on the judgment of the APTEL. Since there cannot be any regulatory vacuum, the petitioner has approached the Commission for appropriate relief.

3. After hearing the learned counsel for the petitioner and respondent, the Commission directed the petitioner and LBHPPL to file their written submissions, with copy to each other, on or before 20.9.2013.

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

**By order of the Commission
SD/-**

**(T. Rout)
Chief (Law)**