

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 253/MP/2012

Sub: Petition under Section 79 of the Electricity Act, 2003 pertaining to adjudication of issues relating to Power Purchase Agreement between PTC India Limited and Lanco Budhil Hydro Power private Limited.

Date of hearing : 2.4.2013

Coram : Dr. Pramod Deo, Chairperson
Shri V.S. Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : PTC India Limited, New Delhi

Respondents : Lanco Budhil Hydro Power Pvt. Ltd., Gurgaon
Haryana Power Purchase Centre, Panchkula

Parties present : Shri Ravi Prakash, Advocate, PTC
Shri Aditya Dewan, Advocate, PTC
Shri Varun, Advocate, PTC
Shri Deepak Khurana, Advocate Lanco
Shri Saleem Inamdar, Advocate, Lanco
Shri Prabhat , Lanco
Shri S.L.Batta, Lanco
Shri Apoorve Karol, Advocate, HPGCL
Shri Chirag Kher, Advocate, HPGCL

Record of Proceedings

Learned counsel for the respondent, Lanco Budhil Hydro Power Pvt. Ltd. (LBHPPL) submitted as under:

- (i) Since the petitioner has filed an appeal before the Hon`ble Supreme Court challenging the judgment of the Appellate Tribunal, wherein it has been stated that HERC has jurisdiction to decide on the validity of termination of the PPA, it cannot approach the Central Commission for the same disputes. The filing of appeal has been not been disclosed by the petitioner in the petition and amounts to concealment of material fact.

(ii) 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. If the petitioner wants to pursue present petition, it should withdraw its appeal before the Supreme Court as law does not permit any party to pursue two remedies at the same time.

(iii) The petitioner in its written submission has stated that its stand that either of the regulatory forums shall have the jurisdiction. Such a conduct of petitioner amounts to approbation and reprobation and is hit by doctrine of election. In this regard, he placed reliance on the judgment of Hon`ble Supreme Court reported in Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport (2010) 10 SCC 422.

(iv) None of the judgments, which have been filed by the petitioner with its rejoinder to the written submission, applies to the facts of the present case. The petitioner has not cited a single judgment where the court allowed a party to pursue two remedies at the same time.

(v) 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 does not apply to the present proceedings. In any event, if the Supreme Court holds that HERC does not have jurisdiction, the petitioner can always approach CERC and can explain that it was pursuing its appeal before the Supreme Court, for the purpose of delay and laches.

(vi) The contention 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). It follows that for invoking section 79(1)(c), one of the parties to the dispute must be a transmission licensee. Since in the present case admittedly, the dispute does not involve a transmission licensee, section 79(1) (c) cannot be invoked.

(vii) Even Section 79(1)(b) of the Act cannot be invoked as the said provisions pertain to regulation of tariff. The present case has nothing to do with the regulation of tariff as the petitioner in the petition is seeking specific performance of the PPA. Further, in the present case, the sale of power is not to more than one State. For this reason also, Section 79(1) (b) is not attracted.

2. In response to Commission`s query as to how the petitioner can justify filing of civil appeal and the present petition at the same time, before justifying the jurisdiction of CERC, learned counsel for the petitioner submitted that although it has filed civil appeal before the Supreme Court, the judgment of APTEL has not been stayed by the Supreme Court, which continues to hold field. The fact that the petitioner has filed

appeal before the Supreme Court, was brought to the notice of Commission during the first hearing of the present petition.

3. Due to paucity of time, the Commission directed to list the petition for further hearing on 23.4.2013.

By Order of the Commission

**SD/-
(T. Rout)
Joint Chief (Law)**