

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 229/RC/2015

Subject : Application preferred under Section 79(1)(c) and 79(1)(k) read along with 79(1)(f) of the Electricity Act, 2003 read with Regulation 21 of the Central Electricity Regulatory Commission (Sharing of Transmission Charges & Losses in Inter State Transmission) Regulations, 2010 along with Regulation 111 (Inherent Powers) and Regulation 115 (Power To Remove Difficulties) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulation 2(1) (j) and Regulation 6(1) (d) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

Date of hearing : 18.12.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Power Grid Corporation of India Limited

Respondents : Lanco Babandh Power Private Limited and others

Parties present : Shri Gopal Jain, Senior Advocate for petitioner
Ms. Swapna Seshadari, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri A.M. Pavgi, PGCIL
Shri Aryaman Saxena, PGCIL
Shri Swapnil Verma, PGCIL

Shri Dilp Rozekar, PGCIL

Shri Manju Gupta, PGCIL

Shri Sanjey Sen, Senior Advocate, Monnet, JIPTL, LANCO

Ms. Shikha Ohri, Advocate, Monnet, JIPTL, Vedanta

Shri Tushar Nagar, Advocate, Monnet, JIPTL, Vedanta

Shri Manish Tyagi, JIPTL

Shri Deepak Khurana, Advocate, Lanco

Shri Mahawir Singh Jhala, LANCO

Shri Saraswata Mohapatra, Advocate, Essar

Shri Alok Shankar, Advocate, GKEL

Shri Janmejaya Mahapatra, Jhabua Power Limited

Shri Roopam Bansal, Jhabua Power Limited

Shri Mihir Kumar, JPVL

Shri Sanjiv K. Goel, JPVL

Record of Proceedings

Learned senior counsel appearing for Jindal India Thermal Power Limited (JITPL) submitted that in para 8 of the interim order dated 16.12.2015 in IA 31/2015 in Petition No. 55/MP/2015, the Commission has observed that in view of relinquishment of the LTA by JITPL, there is no requirement of JITPL to open the Letter of Credit (LC). Learned senior counsel requested the Commission to take a view with regard to the participation of JITPL in the present proceedings which have been filed mainly for opening of LC.

2. Learned senior counsel also appearing for Monnet, LANCO and GMR (hereinafter 'respondents') submitted that though the dispute between the CTU and the respondents are of contractual nature, CTU has filed Regulatory Compliance Application, and not an application for adjudication of disputes and therefore, CTU cannot raise any issue relating to any contractual dispute between the parties in the present proceedings. Learned senior counsel further submitted that in prayer (a) of the amended petition, CTU has sought a direction to the respondents to open and maintain revolving LC in terms of Regulation 13 of the Sharing Regulations, clause 3.6 of the BCD Procedure and Article 2.1(a) of the Transmission Service Agreement during the

tenure of the open access granted. Learned senior counsel submitted that the prayer (a) in the present form is not maintainable due to following reasons:

(a) Regulation 13 of the Sharing Regulations deals with the commercial terms to be included in the Transmission Service Agreement (TSA) and other procedural provisions relating to TSA and therefore, Regulation 13 cannot be a subject matter of Regulatory Compliance Application.

(b) Clause 3.6 of the BCD Procedure has been adopted in the TSA and therefore has the trapping of a contract. Unless the petition contains pleading with regard to TSA, the dispute relating to TSA cannot be taken up.

(c) As regards Article 2.1 (a) of the TSA, learned senior counsel submitted that the said Article cannot be located in the TSA.

3. Learned senior counsel further submitted that the petitioner in prayer (b) has sought directions to the respondents to act in strict compliance of the orders dated 29.4.2011 and 30.5.2010 passed by the Commission. Learned senior counsel submitted that under order dated 29.4.2011, the Commission has approved Transmission Service Agreement, Revenue Sharing Agreement, and BCD Procedure. The said order has exhausted itself with the approval of the TSA etc. and therefore, CTU cannot seek a direction on the basis of the order Learned senior counsel submitted that order dated 30.5.2010 did not exist. Learned senior counsel for the petitioner submitted that it was a typographical error and the correct date of the order is 31.5.2010 in Petition No. 233/2009. Learned senior counsel for the respondents referred to para 43 of the order dated 31.5.2010 in Petition No. 233/2009 and submitted that the Commission in the said para on the basis of submission of CTU has observed "that in certain cases the project developer of IPPs have given consent to bear the transmission charges till the time the beneficiaries are firmed up". Learned senior counsel submitted that by seeking completion of the order dated 31.5.2010, CTU is seeking execution of the alleged contents which have not been placed on record.

4. Referring to the affidavit dated 15.12.2015 filed by the petitioner in compliance of the Commission's direction, learned senior counsel for the respondents submitted that the petitioner has not provided the latest status regarding dates of the commissioning of the lines. Since the opening of Letter of Credit is linked with the readiness of the lines, the affidavit has no bearing in the present case and is liable to be rejected.

5. Learned senior counsel for the respondents submitted that as per Clause 13.1 of the Sharing Regulations, the Designated ISTS Customers and the CTU shall enter into new Transmission Services Agreement or modify the existing Bulk Power Transmission Agreements to incorporate the new tariff and related conditions. Learned senior counsel further submitted that certain clauses of BPTA are not there in the TSA and therefore, those clauses continue to apply. For example, Bank guarantee clause and schedules to the BPTA regarding the transmission assets to be executed are not there in the TSA

and therefore, BPTA continues to apply. Hence CTU has not placed the BPTA on record.

6. Learned senior counsel closed his arguments by submitting that the whole process has been short circuited by CTU by filing the Regulatory Compliance Application and therefore, the said application is liable to be dismissed.

7. Learned senior counsel for the petitioner submitted that in the minutes of the 6th Joint Co-ordination Committee Meeting for High Capacity Corridor for IPPs in Eastern Region, and the updated status of the lines are given in the table. Learned senior counsel further submitted that the petitioner is only relying upon the orders and the Regulations, which is the regulatory route and accordingly, a Regulatory Compliance Application has been filed.

8. The representative of Jai Prakash Ventures Limited requested for some time to file reply to the petition. The Commission allowed time to file reply.

9. Learned proxy counsel for the Vedanta also requested for the adjournment of the matter as the counsel appearing in the matter is not available due to personal difficulty and requested to adjourn the matter.

10. Learned counsel for the Essar Power MP Limited requested for some time to file its reply.

11. The Commission directed the petitioner to submit the latest status of the progress of the lines vide affidavit, latest by 4.1.2016 with copy to the respondents. The Commission directed the respondents to complete their pleadings by 4.1.2016.

12. The petition is listed for hearing on 6.1.2016.

By the Order of the Commission

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(T.Rout)
Chief (Law)**