

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 229/RC/2015**

Sub: Application 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.

Petitioner : Power Grid Corporation of India Limited

Respondents : Lanco Babandh Power Private Limited and others

Date of hearing : 6/7.1.2016

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

Parties present : Ms Swapna Seshadari, Advocate, PGCIL  
Ms Jyoti Prasad, PGCIL  
Shri A.M. Pavgi, PGCIL  
Shri Aryaman Saxena, PGCIL  
Shri Swapnil Verma, PGCIL  
Shri Sanjey Sen, Senior Advocate, Monnet, JIPTL, LANCO and GMR  
Shri Deepak Khurana, Advocate, Lanco  
Shri Vikas Mishra, Advocate, Lanco  
Shri Mahewir Singh Jhala, LANCO  
Shri Sakya Singh Choudheri, Advocate, Essar  
Ms Molshree Bhatnagar, Advocate, Essar  
Shri Alok Shankar, Advocate, GMR  
Shri Matru Gupta, Advocate, Vedanta, Monnet, JIPTL  
Shri Tushar Nagar, Advocate, Vedanta, Monnet, JIPTL  
Shri Mihir Kumar, Advocate, JPVL  
Shri Sanjiv Goel, JPVL

Shri S.Vallinayagam, Advocate, Jhabua Power Ltd  
Shri Janmejaya Mahapatra, Jhabua Power Ltd.  
Ms. Ropmal Bansal , Jhabua Power Ltd.

### **Record of Proceedings**

Learned counsel for Vedanta Aluminium Ltd submitted that it is filing separate petition seeking relinquishment of LTA.

2. Learned counsel for Essar Power (M.P.) Ltd. (EPMPL) submitted that the petitioner has preferred the present application under Regulation 111 (Inherent Powers) and Regulations 115 (Power to Remove Difficulties) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. Learned counsel relied upon the Judgments of Hon`ble Supreme Court in Medeva Upendra Sinai and others V Union of India and other [(1975)3 SCC765] and Transcore V Union of India [(2008) 1SCC 125] and submitted that it is settled position of law that power of removal of difficulties is invoked for the limited purpose of removing inconsistencies in law which may arise while giving effect to any law. It is part of a quasi legislative process and such provisions cannot be invoked to address inter-parte disputes/disagreements which may arise under the law. Learned counsel submitted that inherent power of the Commission can be invoked only in cases where the same is derived from any substantive power under the law. The Commission cannot invoke its adjudicatory power under Section 79 (1) (f) of the Act to substitute/supplant. In this regard, learned counsel relied upon the judgments of the Hon`ble Supreme Court in Padma Sen and Another V State of Uttar Pradesh [(1961) 1 SCC 884] and K.K. Velusamy v Palanisamy [(2011) 11 SCC 275]. Learned counsel submitted that the Regulatory Compliance Application suffers from-misjoinder of causes of action in as much as the application has sought adjudication against several unrelated parties with whom the petitioner may have issues arising out of separate contracts and transactions.

3. Learned counsel for EPMPL submitted that the petitioner has filed the present Regulatory Compliance Application for non-compliance of (i) Order of the Commission dated 31.5.2010 in Petition No. 233/2009; (ii) Payment Security Mechanism as laid down in respective BPTA/TSA; (iii) Provisions of Sharing Regulations for the payment of transmission charges, and (iv) Provisions pertaining to establishing payment security mechanism under BCD Procedures by the respondents. Learned counsel made its argument on the above issues as under:

(i) EPMPL was not party in the Petition No. 233/2009. The proceedings in the said petition was for grant of regulatory approval for High Power Capacity Corridor for which the IPPs were identified by PGCIL and accordingly, the Commission vide order dated 31.5.2010 issued the directions against these identified IPPs. It is settled position of law that a person cannot be held liable in a proceedings wherein he has not been made party. Therefore, the said order is applicable only qua the parties in that petition. The consent given by the project developers of IPPs to bear

the transmission charges till the time beneficiaries are firm up did not include EPMPPL.

(ii) As per clause 1(b) of the BPTA, the obligation to establish payment security mechanism by way of opening of LC is to be performed three months prior to the schedule date of open access. The petitioner has not communicated to EPMPPL the schedule date of open access even though EPMPPL categorically requested the petitioner to communicate the status of the transmission system. However, the petitioner has not replied to any of such communication. Therefore, the question of opening of LC does not arise and violation of any regulation cannot be alleged in this regard.

(iii) In the 10th JCC meeting, the petitioner informed that the transmission system of EPMPPL is expected by March 2016. Sharing Regulations can only be made applicable once, the identified transmission system is commissioned and the LTA is operationalized. Since neither the identified transmission system for EPMPPL is commissioned nor the LTA has been operationalized by the petitioner, the Sharing Regulations are not applicable to EPMPPL. Therefore, the petitioner cannot seek compliance of the provisions of Sharing Regulations against EPMPPL.

(iv) Billing, Collection and Disbursement Procedures made pursuant to Sharing Regulations will have effect only once the billing and collection as per the Sharing Regulations is initiated. Since the provisions of the BCD procedures do not constitute regulations, the alleged violation of BCD Procedures would not constitute violation of the provisions of Sharing Regulations to attract the regulatory compliance jurisdiction of the Commission.

4. Learned counsel for the petitioner referred the order dated 31.5.2010 in Petition No. 233/2009, provisions of Sharing Regulations, Connectivity Regulations and BCD Procedure and submitted that in terms of said provisions, LTTCs are liable to pay transmission charges for the transmission system identified with the long term access granted to them and to establish payment security mechanism. Learned counsel for the petitioner further submitted as under:

(a) As per Article 3.4 of the TSA, all signatories are bound by the obligations for payment of transmission charges and related obligations. The respondents are default signatories of the TSA. The effect of model TSA was analyzed by the Commission vide order dated 1.5.2013 in Petition No. 196/2011 and observed that once the TSA is notified by the Commission after due consultative process, there should not be any objection from the DICs to sign TSA.

(b) The Commission, under Sections 129 and 142 of the Act, has powers to pass order seeking compliance of the Act, regulations and orders. The Commission, within the meaning of Regulation 2 (1) (j) of the Central Electricity

Regulations (Payment of Fees) Regulations, 2012 (Payment of Fees Regulations), is empowered to consider the present application and issue appropriate directions for compliance of the regulatory requirement to establish payment security under the Sharing Regulations, Model TSA, BCD Procedure and Detailed Procedure approved under Connectivity Regulations. The present petition has been filed seeking directions to the respondents to comply with the provisions of regulations and orders of the Commission.

(c) Learned counsel referred to the orders dated 3.2.2014 and 14.9.2015 in Petitions No. 78/MP/2013 and 78/MP/2014 respectively in which common direction has been issued to the DICs to pay the transmission charges. The petition has been preferred in a similar manner as the issues of non-compliance with the Regulations and orders of the Commission affect the beneficiaries as a whole and a common approach is required in regard to the reliefs sought by the petitioner.

(d) Since, the respondents are evading from their liabilities to establish payment security mechanism, the petition is not pre-mature by any stretch of imagination.

(e) There is no mis-joinder of parties in the petition. The respondents have violated the provisions of the Sharing Regulations, BCD Procedure read with Model TSA pertaining to payment security and have also defeated the mandate of Regulations, which were specifically enforced for smooth recovery of transmission charges.

(f) The respondents have contended that the relationship of the parties is governed solely by contract and the petitioner cannot file a petition for implementation of the Regulations. The Commission in various orders held that the TSA is a statutory contract. As per the provisions of the Sharing Regulations, BCD Procedure and Detailed Procedure, the respondents are required to establish payment security mechanism. Even if the TSA is not signed, the Regulations would be binding on the parties applying for and obtaining long term access to the system.

(g) If the respondents have issues qua the LTA or relinquishment, the same have to be raised in other appropriate proceedings and cannot be used as a defence in the present proceedings which seeks compliance of the orders and regulations and the provisions of the TSA. The respondents are clearly at this stage seeking to alter their position with the full knowledge that on and from 31.5.2010, the transmission corridor is being developed by the petitioner for them

and the liability to pay the transmission charges and to establish payment security mechanism would be on the respondents.

(h) Learned counsel explained the status of the respondents regarding opening of LC.

(i) The transmission system has been developed at a substantial costs for the benefit of the respondents to evacuate their power through open access. Considering the implications of the transmission system, the Commission has made the provisions for payment of security in the relevant regulations.

(j) Once the transmission system has developed, and the clear non-compliance of the Regulations on the part of the respondents is being brought out by the petitioner, allowing the respondents to raise hyper-technical objections will defeat the purpose of providing for Payment Security Mechanism in the Regulations and would amount to permitting the respondents to flout the regulations.

(k) Learned counsel requested the Commission to direct the respondents to maintain revolving LC in terms of Regulations 12 and 13 of the Sharing Regulations, clause 3.6 of the BCD Procedure and Articles 2.1 and 12 of the TSA during the tenure of the open access granted.

5. Learned senior counsel for GKEL submitted that GKEL vide its letter dated 30.9.2015 requested PGCIL to change for region and surrender of LTA for part capacity. PGCIL vide its letter dated 9.10.2015 duly acknowledged receipt of GKEL's request for revision of LTA. However, no response has been received from PGCIL on the said request. Therefore, there is no basis for the petitioner to assume the entire LTA capacity of 800 MW for the purpose of opening of LC.

6. After hearing the leaned senior counsel and learned counsels for the parties, the Commission directed the petitioner and the respondents to file their written submissions, by 29.1.2016. The Commission directed that due date of filing the written submissions should be strictly complied with failing which the petition will be disposed on the basis of the documents already on record.

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

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Law)**

