

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.96/MP/2018

Subject :Petition under Section 79 (1)(c), Section 79 (1)(f) and Section 79 (1)(k) of the Electricity Act, 2003 read with the Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium term Open Access in inter-state transmission and related matters) Regulations, 2009 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking directions against Power Grid Corporation of India Limited for (i) payment of amounts due to the Petitioner in compliance of the Order dated 15.12.2017 of this Hon'ble Commission in Petition No. 141/TT/2015; and (ii) return of Bank Guarantee of ₹60 crore furnished as per the extant regulations read with the Transmission Agreement dated 14.6.2010 and Long Term Access Agreement dated 17.6.2011.

Date of Hearing : 16.10.2018

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioner : MB Power Limited (MBPL)

Respondent : Power Grid Corporation of India Limited (PGCIL)

Parties present : Shri Gopal Jain, Senior Advocate, MBPL
Shri Sakya Chaudhri, Advocate, MBPL
Ms. Gayatri Aryan, Advocate, MBPL
Shri Anand Kumar Srivastava, Advocate, MBPL
Ms. Samykya Mukku, Advocate, MBPL
Shri Abhishek Gupta, MBPL
Shri Rohit Kumar Gururani, MBPL
Shri Naveen Kumar, MBPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Ms. Anita A. Srivastava, PGCIL

Record of Proceedings

At the outset, learned senior counsel for the Petitioner submitted that the present petition has been filed *inter-alia* for seeking direction against the Power Grid Corporation of India Limited (PGCIL) for payment of amounts due to the Petitioner in compliance of the Commission's order dated 15.12.2017 in Petition No. 141/TT/2015 and for the return of Bank Guarantee (BG). Learned senior counsel for the Petitioner further submitted as under:

- (a) PGCIL in its reply has explained the delay in operationalization of LTA. However, it has not disputed the computation or quantum of the bilateral bills dated

16.3.2018 raised by the Petitioner on PGCIL in pursuance of the Commission's order dated 15.12.2017 in Petition 141/TT/2015.

(b) The payment of IDC and IEDC from the period 8.8.2014 till 24.2.2015 and the transmission charges from the period 25.2.2015 till 19.5.2015 has been challenged by the Petitioner before the APTEL vide Appeal No.73/2018 which is still pending. However, APTEL vide its interim order dated 17.8.2018 directed the parties not to take any coercive steps.

(c) Subsequent to the commissioning of the Petitioner's plant on 20.5.2015, PGCIL was bound to return the BG within a period of 6 months i.e. by 20.11.2015. However, PGCIL refused to return the BG and forced the Petitioner to renew the BG under the threat of encashment which is arbitrary and illegal in nature.

(d) PGCIL has raised issue of operationalization of LTA which is barred under the doctrine of *Res Judicata*, since the said issue has already been adjudicated upon by the Commission vide order dated 15.12.2017 in Petition No. 141/TT/2015, and has achieved finality. Therefore, it cannot be raised again by PGCIL. In support of its contention, learned senior counsel relied upon the Hon'ble Supreme Court judgment in *State of U.P. v. Nawab Hussain* [(1977) 2 SCC 806].

(e) As per the LTA Agreement dated 17.6.2011, PGCIL was under a contractual obligation to operationalize the LTA of 392 MW from August, 2013. However, PGCIL delayed the operationalization of LTA and operationalized the LTA in August, 2015. PGCIL contended that the commissioning schedule of Gwalior-Jaipur 765 kV S/c transmission line was December, 2015 which is wrong. In support of its contention, learned senior counsel relied upon the Commission's order dated 25.4.2016 in Petition No. 422/TT/2014 wherein PGCIL submitted the scheduled commissioning date of the Gwalior-Jaipur transmission line as April, 2014 against which it was actually commissioned on 13.8.2015 i.e. with the delay/time over-run of 16 months and 12 days. Therefore, PGCIL cannot now claim that the commissioning schedule of this line was December, 2015.

(f) The BPTA dated 24.8.2011 with IPPs of Odisha did not form a part of the LTA Agreement between PGCIL and the Petitioner as it was signed after signing of the LTA Agreement with the Petitioner on 17.6.2011. The date of LTA is agreed on August, 2013 under the contract and such contractual term cannot be changed unilaterally by relying on JCC meetings.

(g) PGCIL's contention that as per Regulation 12 of the Connectivity Regulations, the Petitioner was required to firm-up PPAs for at least 50% of the LTA quantum for 3 years prior to date of LTA operationalization is baseless as this requirement has been duly amended by the Commission vide 2nd Amendment to the Connectivity Regulations dated 21.3.2012. Therefore, there is no requirement for the Petitioner to furnish the PPA, 3 years prior to the LTA operationalization.

(h) As per Clause 7.3 of the Detailed Procedure dated 31.12.2009, Clause 5(c) of the Transmission Agreement dated 14.6.2010 and Clause 6(b) of the LTA Agreement dated 17.6.2011, there is no legal basis for PGCIL to withhold the BG after November, 2015 (i.e. six months after COD of the Petitioner's generation project). Therefore, PGCIL is required to return the BG and reimburse the cost of Rs 3.5 crore to the Petitioner which have been incurred by the Petitioner from November, 2015 till date towards BG extension charges. In support of its

contention, learned senior counsel relied upon the Commission's order dated 8.12.2017 in Petition No. 203/MP/2015.

2. In her rebuttal, learned counsel for PGCIL submitted that Para 33 of the Commission's order dated 15.12.2017 does not prohibit PGCIL from making any submissions on operationalization of LTA, since it is not in the nature of an adjudication of the said issue. Learned counsel further submitted as under:

(a) The transmission corridor described in the LTA included the common transmission system for IPPs in Odisha and LTA clearly provided for operationalization of LTA on commissioning of such lines. As per the BPTA signed with Odisha IPPs, the commissioning schedule of the said Gwalior-Jaipur transmission line was December, 2015 and the Petitioner was aware that the SCoD for this line was December, 2015 which was pre-poned to August, 2015 as the representatives of the Petitioner were present in the JCC meetings wherein it was discussed. Therefore, there was no delay in operationalization of LTA for the Petitioner to claim any reverse transmission charges.

(b) With regard to connectivity grant, since the claim of IDC and IEDC is still pending before the APTEL, PGCIL is entitled to hold the BG. However, it is under the purview of the Commission to consider whether PGCIL is entitled to retain the BG after the operationalization of LTA or not.

3. After hearing the learned senior counsel for the Petitioner and learned counsel for PGCIL, the Commission directed both the parties to file their written submissions/ additional submissions if any, by 23.10.2018 with copy to each other. The Commission directed that due date of filing the written submissions should be strictly complied with failing which the order shall be passed on the basis of the documents available on record.

4. The Commission directed that the interim protection granted vide RoP dated 18.9.2018 shall be continued till the issue of the order.

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

By order of the Commission

**Sd/-
(T.D.Pant)
Deputy Chief (Law)**