

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No.167/MP/2016
alongwith I.A. No. 42/2016
I.A. No. 44/2017 and 81/2017**

Coram:

**Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order: 27th of February, 2018

In the matter of

Petition for the relinquishment of Long Term Open Access under the Bulk Power Transmission Agreement dated 24.2.2010 under Regulation 18 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State transmission and related matters) Regulations, 2009.

And

In the matter of

Adhunik Power and Natural Resources Limited
9B, 9th Floor, Hansalaya Building,
15, Barakhamba Road, Connaught Place,
New Delhi- 110001

.....Petitioner

Vs.

1. Power Grid Corporation of India Limited
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi- 110016

2. Central Electricity Authority
Sewa Bhawan,
Sector- 1, R.K. Puram,
New Delhi- 110066

.....Respondents

Parties Present:

Shri Sanjay Sen, Senior Advocate for the Petitioner
Shri Parinay D. Shah, Advocate for the Petitioner
Shri Saransh Shaw, Advocate for the Petitioner
Shri Vineet Sarawagi, APNRL



Shri Sitiesh Mukherjee, Advocate, PGCIL
Shri Gautam Chawla, Advocate, PGCIL
Ms. Akansha Tyagi, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL

ORDER

The Petitioner, Adhunik Power and Natural Resources Limited, has filed the present petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulations 18 and 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as “Connectivity Regulations”).

2. Briefly, the facts of the case are as under:

(a) The Petitioner has set up a 540 MW (2x270 MW) thermal power project located at District Saraikela-Kharsawan in the State of Jharkhand (hereinafter referred to as the “Project”). The Petitioner applied for Long Term Open Access (LTA) for 450 MW to PGCIL. PGCIL vide its letter dated 3.9.2009 communicated about the grant of LTA to the Petitioner along with three LTA customers subject to signing of Bulk Power Transfer Agreement (BPTA). The Petitioner entered into a BPTA for LTA of 450 MW on 24.2.2010 along with two other LTA customers with PGCIL.

(a) The generating units of the Petitioner are operational. The Petitioner is using 200 MW LTA for supply of 100 MW power to West Bengal State Electricity Distribution Company Limited (hereinafter referred to as “WBSEDCL”) and 100 MW power to Tamil Nadu Generation and Distribution Company (hereinafter referred as “TANGEDCO”) and in this regard, respective LCs have already been



opened for both the LTAs i.e. WBSEDCL and TANGEDCO. The Petitioner has also entered into a Transmission Service Agreement (hereinafter referred as "TSA") dated 14.3.2012 with PGCIL in terms of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2012 (hereinafter referred to as "Sharing Regulations").

(b) As per the BPTA, PGCIL was required to commission the transmission system in the Eastern, Northern and Western Region by 31.11.2013 i.e. 42 months from the date of regulatory approval granted by the Commission vide order dated 31.5.2010 in Petition No. 233 of 2009. In the said order, it was held that the commissioning of the HCPTC-II was to be completed along with the commissioning of the Petitioner's generating units and if the generating units got commissioned before the proposed transmission system then, PGCIL were to identify interim transmission arrangements for the intervening period.

(c) The two units of the Petitioner's generating station were ready to commence supply of power from 21.1.2013 and 19.5.2013. However, the HCPTC-II was not commissioned in time. In the meanwhile, PGCIL also failed to comply with directions of the Commission and did not identify any interim transmission arrangements for the intervening periods. Subsequently, BPTA dated 24.2.2010 was revised and the date for commissioning of the transmission system to be developed by PGCIL was extended to November, 2014.

(d) The Petitioner vide its letters dated 7.5.2012 and 7.10.2013 requested PGCIL to provide status of the augmentation process. However, no response was received from PGCIL in this regard. Since, PGCIL has failed to make alternative transmission arrangements without levy of relinquishment charges, it is liable to

pay the transmission charges for untied 250 MW of LTA amounting to Rs.137 crore in terms of Clause 6(d) of the BPTA.

(e) Subsequently, the Hon'ble Supreme Court vide its judgment dated 25.8.2014 in W.P. (Crl) No. 120/2012 in *Manohar Lal Sharma v. The Principal Secretary & Ors.*, read with its order dated 24.9.2014 cancelled all the coal allocations made since 1993 which included Ganeshpur coal block allotted to the Petitioner.

(f) On 8.3.2015, the Petitioner submitted bid for the allocation of the Ganeshpur Coal Block. However, the Petitioner failed to secure the bid and the auction was closed and the same was allotted to GMR Chhattisgarh Energy Limited on the basis of an e-auction. On 26.12.2014, the Government of India issued the Coal Mines (Special Provisions) Second Ordinance, 2014 (Second Cancellation Ordinance) in pursuance of the introduction of the Coal Mines (Special Provisions) Bill, 2014 purported to replace the Cancellation Ordinance and passing of the bill by the house of people. However, on 30.3.2015, the Coal Mines (Special Provisions) Act, 2015 was enacted by the Government of India in pursuance of the Block Cancellation Order and the two Cancellation Ordinances, thereby repealing the Second Cancellation Ordinance. Therefore, the coal block cancellation Orders, cancellation of Ordinances and the Coal Mines Act were all cumulatively a change in law event and thus a *Force Majeure* event as defined under clause 9 of the BPTA.

(g) Despite the *Force Majeure* event, the Petitioner made efforts to sell its power in various tendering processes. However, the Petitioner could not succeed as all the tenders required a pre- determined source of fuel.

(h) PGCIL vide letters dated 20.6.2016 and 22.6.2016 directed the Petitioner to open an LC amounting to Rs. 16,77 crore as payment security mechanism for the remaining 250 MW LTA, which is not operational till date. Subsequently, the Petitioner vide letter dated 18.7.2016 reiterated the occurrence of *Force Majeure* event and its inability to utilize the remaining 250 MW LTA out of the total 450 MW transmission capacity allotted. However, PGCIL completely ignored the Petitioner's letter dated 18.7.2016 and vide its letter dated 9.8.2016 asked the Petitioner to extend the BG of Rs. 22.50 crore before the expiry of the previous BG, i.e. 30.9.2016 and if the Petitioner fails to furnish the same, the said letter would be treated as a claim against the BG.

(h) Due to *Force Majeure* event and the delay by PGCIL in commissioning of HCPTC-II, the Petitioner vide its letter dated 23.8.2016 relinquished the 250 MW LTA (NR-100 MW, ER-100 MW and WR- 50 MW) and informed PGCIL that due to the relinquishment of LTA, it was not required to open an LC and requested to return BG of Rs. 22.50 crore furnished by the Petitioner in terms of Clause 6(a) of the BPTA and Clause 24 of the Detailed Procedure.

(i) Since, LTA of 200 MW has been operationalized, the Petitioner vide letters dated 12.10.2015 and 2.3.2016 requested PGCIL to return BG of Rs. 10 crore accordingly. However, no response was received from PGCIL in this regard. Subsequently, PGCIL directed the Bank to encash the whole BG amount of Rs. 22.50 crore if the said BG is not extended further by the Petitioner. Such conduct of PGCIL was grossly illegal and wrong in as much as the BG was a payment security mechanism during the augmentation process of the transmission system and was kept alive during the process of system strengthening only and returned once the System Strengthening was over.

3. Against the above background, the Petitioner has filed the present petition with the following prayers:

- “(a) Declare that cancellation of the Ganeshpur Coal Block is a force-majeure event in terms of Clause 9 of the Bulk Power Transmission Agreement dated 24.2.2010;
- (b) Declare that the remaining Long Term Access Quantum of 250 MW in terms of the Bulk Power Transmission Agreement dated 24.2.2010 stands relinquished;
- (c) Direct PGCIL/CTU to allocate the relinquished Long Term Access quantum of 250 MW to other applicants in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009;
- (d) Direct that the Bank Guarantee amount of Rs. 22,50,00,000 (Rupees Twenty Two Crores Fifty Lakhs Only) shall be returned to the Petitioner;
- (e) Direct that the Petitioner is not required to pay any relinquishment charges for relinquishment of 250 MW Long Term Access granted to it by PGCIL;
- (f) Condone any shortcomings/deficiencies in the Petition and allow PGCIL to pay as per the prayers of the Petitioner;
- (g) Grant an expeditious hearing of this Petition; and
- (h) Pass such and further orders, as the Hon'ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case.”

4. The Petitioner has filed an I.A. No.42/2016 seeking declaration that remaining LTA quantum of 250 MW in terms of BPTA dated 24.2.2010 stands cancelled and may be reallocated and pass ad-interim ex-party stay for restraining PGCIL from invoking BG submitted by the Petitioner. The Petitioner has also filed the IAs No. 44/2017 and 81/2017 seeking direction to PGCIL to refund the Bank Guarantees of Rs 22.5 crore.

5. Notice was issued to PGCIL to file the reply. PGCIL has filed its reply to the petition.

6. PGCIL, vide its reply dated 24.11.2016, has submitted as under:

- (a) The Petitioner vide its letter dated 18.7.2016 merely informed PGCIL about the occurrence of the *Force Majeure* event and nowhere requested to relinquish its



LTA. However, PGCIL vide its letter dated 9.8.2016 informed the Petitioner to extend the BG under the Connectivity Regulations. Moreover, the Connectivity Regulations nowhere provides that upon occurrence of *Force Majeure* event, the Petitioner will be waived from its liabilities under the BPTA. HCPTC-II was phased and implemented matching with the requirement and progress of generation projects, and accordingly, the scheduled date for the completion of the transmission system was aligned with the completion date of the generation projects. Therefore, the Petitioner's allegation that it did not have a choice but to agree to extension of timeline by one year from November, 2013 to November, 2014 is wrong and denied.

(b) The Hon'ble Supreme Court vide its order dated 24.9.2014 had cancelled the coal blocks, including the one allocated for the project, due to the illegal and arbitrary allotment of the same. Since, the said order dated 24.9.2014 was on account of illegal and arbitrary allocation of coal blocks, issuance of two cancellation Ordinances and the Coal Mines Act does not amount to change in law under Article 9 of the BPTA. Therefore, the Petitioner cannot plead force majeure on account of change in law.

(c) The Petitioner's claim for *Force Majeure* is not maintainable under the BPTA as BPTA for evacuation of power is not a contingent contract on coal supply. Therefore, the BPTA cannot be said to be frustrated on account of the cancellation of the coal block allocated for the project consequent to the order dated 24.9.2014 leading to *Force Majeure* event.

(d) As per Regulation 18 of the Connectivity Regulations, the Petitioner may relinquish its LTA fully or partly, before the expiry of full term of LTA, by making

payment for relinquishment charges. Further, Regulation 18 imposes strict liability to pay relinquishment charges without any reference to *Force Majeure* conditions faced by the party so relinquishing the LTA. The Connectivity Regulation does not provide for any provision which permits the Petitioner to relinquish its LTA without paying compensation for the relinquishment of LTA. The Petitioner is trying to evade its regulatory obligations.

(e) The Petitioner was granted 450 MW LTA and the same capacity was therefore reserved for its use. If the Petitioner seeks to relinquish 250 MW LTA (part of the contracted capacity of 450 MW), it is required to pay the compensatory charges in terms of Regulation 18 of the Connectivity Regulations. The compensation against the relinquishment of LTA does not amount to unjust enrichment of PGCIL as the compensatory transmission charges payable by the Petitioner are to be utilized for reducing transmission charges payable by other DICs under Regulation 18 of the Connectivity Regulations.

(f) With regard to return of construction phase BG, at the time of completion of the required transmission system, PGCIL requested the Petitioner to furnish LC for the operationalization of 250 MW LTA. However, the Petitioner, upon the receipt of the said request, sought relinquishment of 250 MW LTA. Therefore, in such situation, the Petitioner's request for return of BG is not tenable.

7. The Petitioner, vide its rejoinder dated 13.12.2016, has reiterated the submissions made in the Petition and has further submitted as under:

(a) In terms of clause 1.22 of Annexure 4 of the BPTA, it was the responsibility of PGCIL to commission the HCPTC-II within 42 months from the date of

regulatory approval i.e. 31.5.2010. However, the Petitioner signed the revised Annexure 4 of the BPTA, which extended the commissioning date for Transmission System for Part A-1 and Part A-2 to November, 2013 and September, 2014, respectively. The first and the second unit of the Petitioner were commissioned on 21.1.2013 and 19.5.2013, respectively.

(b) PGCIL was well aware about the commissioning of the Petitioner's project which is ready to supply power. Therefore, in terms of Clause 6 (d) of the BPTA, PGCIL must pay proportionate transmission charges to the Petitioner. While the implementation of the corridor was to be done in phases, the relevant parts of the network were to be completed before the commissioning of the Petitioner's generating units. However, PGCIL not only failed to meet the timelines under the BPTA but also failed to meet the revised timelines as well.

(c) The Minutes of the 7th and 10th JCC meeting of Eastern Region held on 6.10.2015 and 30.9.2016 respectively recorded that out of the 450 MW of LTA, 200 MW LTA already has firm beneficiaries (100 Tamil Nadu; 100 West Bengal) and PGCIL has been consistently defaulting on its obligations under the BPTA.

(d) Before any liability is imposed upon the Petitioner towards the relinquishment of LTA, Regulation 18 (1) of the Connectivity Regulations requires proof as to the stranded capacity proportionate to the relinquishment. The relinquishment charges are a measure of penalty, which cannot be claimed unless there is stranded capacity and the same is quantified. PGCIL is deliberately deferring the reallocation of the relinquished capacity and any liability on account of any stranded capacity would be to the account of PGCIL.

(e) In terms of clause D of the TSA, the BPTA would continue to govern the development of ISTS scheme including any scheme which is under construction to the extent relevant to the development, construction and commissioning of the elements referred in the BPTA. However, TSA becomes applicable only after the elements have been brought into operation.

(f) In terms of Clause 6(d) of the BPTA, PGCIL failed to complete the augmentation process of HPCTC-II on time i.e. by November, 2014 and later completed some elements of HCPTC-II after a delay of 2 years. PGCIL even refused to respond to the queries of the Petitioner regarding the augmentation process. Therefore, PGCIL is liable to pay Rs.137 crore to the Petitioner under Clause 6(d) of the BPTA.

8. During the course of hearing on 19.1.2017, the Commission observed that in the present case, since the Petitioner has relinquished 250 MW LTA, the capacity should be utilized for granting the LTA to pending applications so that capacity does not remain unutilized and accordingly, CTU was directed to take necessary action in this regard. The Commission further observed that the liability for the relinquishment charges would be decided in the light of the decision taken on the basis of the recommendations of the Committee constituted in Petition No. 92/MP/2015 for assessment/determination of stranded transmission capacity with regard to relinquishment of LTA rights by a long term customer and relinquishment charges in terms of the provisions of the Connectivity Regulations.

9. PGCIL, vide its reply affidavit dated 11.10.2017 to the I.A. No.44/2017, has submitted as under:

(a) The Petitioner has prayed for return of BG as a final relief in the main



petition and subsequently it is asking for the same in the present IA. It is a settled law that a party cannot be granted interim relief, what, it has claimed as final relief, and on this ground alone, the instant I.A. ought to be dismissed in *limine* with costs. The Hon'ble Supreme Court in its judgment in Union of India v. Modiluft Ltd. (2003) 6 SCC 65 has held that the interim relief could not be granted by way of an interim order without the main petition being finally decided. Therefore, I.A. is barred by the principle of *Res judicata*, in as much as the same issue of stay on encashment of BG and return of BG which the Petitioner has raised through the present I.A. directly and substantially arose in I.A. No.42/2016 which was rejected by the Commission vide Record of Proceedings dated 29.9.2016 wherein no relief was granted by the Commission.

(b) With regard to the Petitioner's contention that it was not able to commission the units for 250 MW on account of the cancellation of Ganeshpur coal block by the Hon'ble Supreme Court amounts to a *Force Majeure* event and has sought the relinquishment of 250 MW, PGCIL has submitted that the Commission in its order dated 18.7.2017 in Petition No. 293/MP/2015 had observed that the Hon'ble Supreme Court's judgment dated 24.9.2014 took away the very basis for the allocation of coal blocks on the ground that the process of allocation was arbitrary and illegal, and, therefore, so it cannot be termed as a *Force Majeure* event. Accordingly, the Petitioner must be liable to pay the relinquishment charges for relinquishing 250 MW of the contracted capacity. There must have been an alternative source to procure coal for generating 200 MW and, the Petitioner could have procured coal from the same 'alternate source' for utilization of the remaining 250 MW of LTA which the Petitioner has relinquished out of the contracted capacity of 450 MW.

(c) Clause 6(a) of the BPTA provides that the Petitioner was required to furnish the BG in order to enable PGCIL to recover damages if they are found to be due. The damages are payable in three circumstances namely, (a) Developer's failure to construct the generating station/dedicated transmission system, (b) Makes an exit and (c) Abandoning the project. Therefore, PGCIL would be entitled to recover damages for relinquishment of LTA which amounts to making an 'exit' under the BPTA.

10. The Petitioner has filed the I.A No. 81/2017 seeking direction to PGCIL to refund of BG of Rs 22.5 crore submitted by the Petitioner under the BPTA dated 24.2.2010. The Petitioner has submitted as under:

a) The BG of Rs. 22.5 crore has been encashed by PGCIL despite the fact that order is reserved in the I.A No 44/2017.

b) The Petitioner vide email dated 26.9.2017 requested PGCIL for 15 days time to extend BG due to delay in extension from the Petitioner's Bank and the oncoming Durga Puja Holidays in Kolkata. However, PGCIL vide email dated 27.9.2017 rejected the Petitioner's request and encashed the BG.

c) The BG was opened by the Petitioner pursuant to the signing of BPTA and since then, the Petitioner has never faltered in extending the duration of the BG. The delay in extending the duration of BG was not due to any negligence or fault of the Petitioner as the BG could not be extended due to the continuous holiday in the end of September.

11. PGCIL vide its reply affidavit dated 12.1.2018 to the I.A. No.81/2017 has submitted as under:

(a) The Petitioner has earlier filed I.A Nos. 42/2016 and 44/2017 seeking relief against the encashment of the BG and the Commission refrained from passing of any order in this regard.

(b) The Petitioner on 14.9.2017, when I. A No 44/2017 was listed for hearing, made a statement before the Commission that BG would be extended. Despite the Petitioner's own undertaking, the Petitioner failed to extend the BG in terms of BPTA dated 24.2.2010.

Analysis and Decision:

12. We have heard the learned senior counsel for the Petitioner and the learned counsel for PGCIL and perused the documents on record. The Petitioner has sought a declaration that cancellation of the Ganeshpur Coal Block by the Hon'ble Supreme Court, is a *Force Majeure* event in terms of Clause 9 of the BPTA dated 24.2.2010 and relinquishment of the remaining Long Term Access quantum of 250 MW in terms of the Connectivity Regulations and BPTA dated 24.2.2010. The Petitioner has further sought a direction to PGCIL to allocate the relinquished Long Term Access quantum of 250 MW LTA to other applicants in accordance with the Connectivity Regulations and to return the BG of Rs. 22.50 crore to the Petitioner. PGCIL has strongly denied the petitioner's averments and submitted that in terms of Connectivity Regulations and the BPTA, the prayers of the Petitioner are not maintainable. After hearing the parties, the following issues arise for our consideration:

(a) Whether the cancellation of coal blocks is a *Force Majeure* event as per the provisions of BPTA dated 24.2.2010?



(b) Whether the Petitioner is liable to pay the relinquishment charges for relinquishment of 250 MW LTA granted to it by PGCIL?

(c) Whether any direction is required to be issued for refund of Bank Guarantee in this case?

Issue No.1: Whether the cancellation of coal block is a *Force Majeure* event as per the provisions of BPTA dated 24.2.2010?

13. The Petitioner has entered into BPTA with CTU on 24.2.2010 for 450 MW. As per the BPTA, PGCIL has agreed to construct certain transmission lines in the Eastern, Northern and Western Regions within 42 months from the grant of regulatory approval for a group of generators including the Petitioner and these Project Developers are required to pay transmission charges for these transmission systems. Clause 7 of the LTA Agreement provides as under:

“7. In order to monitor/review the progress of generating units along with its direct evacuation lines and also the common transmission system, Joint co-ordination meeting with the representative of each developers and POWERGRID shall be held at regular interval (Preferably quarterly) after signing of this Agreement.”

In accordance with the said provision, the progress of the generating units and direct evacuation lines which are within the scope of the project developers and the common transmission system developed by PGCIL would be monitored or reviewed. The purpose is to ensure coordinated development of the generating units as well as the transmissions systems and to obviate the possibility of the generation capacity or the transmission capacity getting stranded on account of non-availability of transmission system or generating units, as the case may be. In the 5th Joint co-ordination Meeting of IPPs granted LTA in ER held on 21.1.2015, the status of the Petitioner`s generating station and status of transmission lines in the Corridors-I, II and III and other associated transmission lines under the scope of PGCIL were recorded. In the said meeting, the



Petitioner informed that the generating station is already commissioned and dedicated line is operational. In the said meeting, it was further informed by the Petitioner that though it wanted to transfer power through MTOA/STOA till the start of LTA, the Petitioner is unable to finalize applications for the same. PGCIL informed the status of transmission lines in the Corridors-I, II and III and the associated other transmission lines which are under the scope of PGCIL. PGCIL further informed that High Capacity Transmission Corridor-II (Phase-I IPPs in Jharkhand and associated transmission system) has been commissioned.

14. According to the Petitioner, the Petitioner's two units of generating station were ready to commence supply of power from 21st January, 2013 and 19th May 2013. However, the HCPTC-II was not commissioned as is evident from PGCIL's letters dated 20.6.2016 and 22.6.2016. Accordingly, the Petitioner has stated that PGCIL has failed to comply with the directions of the Commission and did not identify any interim transmission arrangement for the intervening periods. In fact, Annexure 4 to the BPTA was revised, and the date of commissioning of the transmission system to be developed by PGCIL was extended to November, 2014. Therefore, the Petitioner has requested that in terms of clause 6 (d) of the BPTA, PGCIL is liable to pay proportionate transmission charges for untied 250 MW of LTA of Rs. 137 crore.

15. The Petitioner and PGCIL entered into a BPTA on 24.2.2010 for grant of 450 MW LTA subject to the commissioning of HCPTC-II. Details of LTA granted to the Petitioner are as under:

S.No.	Region	LTA granted (MW)
1.	ER	200
	NR	200
	WR	50



	SR	0
	Total	450

16. As per the BPTA dated 24.2.2010, PGCIL was required to commission the transmission system in the Eastern, Northern and Western Regions within 42 months from the date of regulatory approval granted by the Commission i.e by 30.11.2013. The Commission vide order dated 31.5.2010 in Petition No. 233/2009 granted regulatory approval for execution of HCPTC-II to PGCIL and while granting approval, the Commission had observed that if certain generation units including the Petitioner's unit gets commissioned before the commissioning of the proposed transmission system, CTU should identify interim transmission arrangements for the intervening period. Subsequently, the BPTA dated 24.2.2010 was revised. As per revised BPTA, PGCIL was required to commission the transmission system by November, 2014.

17. The Petitioner vide its letter dated 11.1.2012 requested PGCIL for reallocation of region-wise LTA granted by PGCIL to it. Relevant Portion of the said letter is extracted as under:

"2. Subsequent to the above, a Power Purchase Agreement dated 25.3.2011 has been signed between APNRL and PTC whereby APNRL shall sell 100 MW power to West Bengal Electricity Distribution Company Limited (WBSEDCL) through PTC in Eastern Region (ER). As per the clause 1 (Page No. 6) of the PPA, WBSEDCL will obtain open access from both CTU and STU. Thus, you are requested to kindly reallocate the region-wise LTA of APNRL as below:

S.No.	Region	LTA granted (MW)	LTA requested (MW)
1.	ER	200	200
2.	NR	200	100
3.	WR	50	50
4.	SR	0	0
	Total	450	350

18. In the meeting held on 8.2.2012 regarding Connectivity/Open Access with constituents of Eastern Region held on 8.2.2012, the Petitioner's request was discussed and it revised the allocation of 450 MW LTA granted to the Petitioner. PGCIL, in the said

meeting requested the developers to formalize the above by signing requisite annexure of the BPTA. Subsequently, WBSEDCL vide its letter dated 16.1.2013 requested CTU for scheduling of 100 power from 1.4.2013 from the Petitioner`s generating station. CTU vide letter dated 13.3.2013 intimated WBSEDCL that scheduling shall be subject to signing of the LTA Agreements. WBSEDCL vide its letter dated 1.7.2013 informed CTU that it wants the LTA Agreement to incorporate that in case of termination of its PPA with PTC, the LTA shall also extinguish and WBSEDCL shall be absolved of all liabilities.

19. Subsequently, on 19.12.2013, the Petitioner informed that it has won case-1 bid for 100 MW with TANGEDCO and is required to deliver power from June 2014. The Petitioner requested CTU for reallocation of 450 MW inter se regions. The relevant portion of said letter is extracted as under:

“With reference to the subject cited above, we bring to your kind notice that APNRL had participated in the Case-I Bid invited by TANGEDCO vide Ref. No. 1, through PTC India Ltd. (Trader) for supply of 100 MW on Long-Term basis. Accordingly, a PPA was signed between PTC and TANGEDCO on 18th December 2013, and as per Article No. 4.1.1 of the said PPA and article No. 5.1 (b) of the PPA signed between PTC India Ltd. and APNRL on 19th December 2013, the Scheduled Delivery Date is 1st June 2014. In this regard, we are herewith attaching the copies of the signed PPAs and the bid document for your kind perusal and with a request to accord LTA of 100 MW for commencing power supply to TANGEDCO from Scheduled Delivery Date.”

Further, we have already signed a BPTA on 24th February 2010 with PGCIL; and the subsequent documentation/agreements thereafter, the probable beneficiaries were earmarked region-wise, viz., ER-300 MW, 200 MW target & 100 MW firm to WB, NR-100 MW, WR 50 MW, totaling to 450 MW. Now that we have identified the beneficiary in Southern Region (TANGEDCO), we request you to kindly reallocate LTA of 100 MW from ER to SR= WB-100, TN-100, ER-100, NR-100, WR-50.

We therefore, request you to kindly intimate us about the acceptance of said re-allocation at the earliest for enabling us to sign the Transmission Service Agreement (TSA) for the same.”

20. Subsequently, PGCIL and WBSEDCL entered into Agreement dated 21.2.2014 for transfer of 100 MW power from the Petitioner`s generating station. PGCIL vide its letter



dated 27.2.2014, requested Eastern Regional Load Despatch Centre to take necessary action for scheduling of 100 MW power from the Petitioner`s generating station to WBSEDCL from 1.3.2014. Relevant portion of the said letter is extracted as under:

“Sub: Scheduling of 100 MW power from the power project at Adhunik Power & Natural Resources (APNRL), Jharkhand in favour of WBSEDCL through PTC.

Dear Sir,

This is with reference to Long Term Access of 100 MW granted to WBSEDCL from M/s Adhunik Power and Natural Resources (APNRL), Jharkhand vide CTU letter dated 13.03.2013.

In above regard it is submitted that as per the terms of grant of above mentioned LTA, WBSEDCL has signed LTA Agreement on 21st Feb, 2014, a copy of the same is enclosed herewith.

Further, WBSEDCL, vide their email dated 27.02.2014, has requested for scheduling of the above mentioned power from M/s APNRL w.e.f. 00.00 hrs of 01.03.2014.

You are therefore requested to take necessary action for scheduling of 100 MW Power from M/s APNRL to WBSEDCL w.e.f. 00.00 hrs of 01.03.2014.”

21. The Petitioner made an application to PGCIL on 7.1.2014 for grant of 100 MW LTA for transfer of power from its generating station to Tamil Nadu from the Scheduled Delivery Date of 1.6.2014. PGCIL has submitted that the Commission vide orders dated 8.8.2014 and 1.10.2014 in Petition No. 92/MP/2014 stayed the applications granting LTA with change in region. The Commission further vide order dated 16.2.2015 directed PGCIL to grant LTA to applications received between November, 2014 to December, 2014 in the manner of priority specified in the order. Subsequently, PGCIL sought directions for priority of MOP allocation with respect to LTA/MTOA applications already submitted/under process with CTU. The Commission vide order dated 9.3.2017 directed PGCIL to process applications received between November 2013 to December, 2014.

22. During the 5th JCC meeting held on 21.1.2015, PGCIL informed the Petitioner that its LTA application for the transfer of 100 MW to Southern Region has been received in



January, 2014 and same would be prioritized accordingly. Relevant portion of said minutes of meeting dated 21.1.2015 is extracted as under:

“Adhunik Power and Natural Resources Limited (2X270 MW)

Representative from M/s Adhunik Power & Natural Resources Ltd. (APNRL) submitted the status of their project as follows:

The generation plant is already commissioned and dedicated line is operational. It has been clarified to M/s APNRL that their LTA application for transfer of 100 MW to Southern Region was received in January, 2014 and hence prioritized accordingly.

Further, it was informed by the representative from M/s APNRL that though they wanted to transfer power through MTOA/STOA till the start of LTA, they are unable to finalize applications for the same.

23. In the meeting of 10th Connectivity and LTA meeting of Eastern Region held on 25.5.2015, the Petitioner`s application for revision of LTA was discussed. The relevant portion of minutes of 10th Connectivity and LTA Meeting of Eastern Region held on 21.5.2015 is extracted as under;

“4C. Revision in LTA granted to Adhunik Power & Natural Resources Ltd.:

CTU informed that, BPTA corresponding to LTOA granted for 450 MW (NR-200 MW, WR-50MW & ER -200MW) to Adhunik Power & Natural Resources Ltd., (installed capacity of 2x270 MW) has been signed between POWERGRID and the generation developer. Subsequently, LTA for transfer of 100 MW from Adhunik TPS to West Bengal was regularized after signing of PPA. Thereafter, Adhunik Power & Natural Resources Ltd. has submitted a new application for LTA of 100MW to Tamil Nadu.”

24. In the meeting of Eastern, Southern and Western Regions constituents held on 6.8.2015 regarding allocation of LTA/MTOA against the applications received from January, 2014 to December, 2014 and in June, 2015 (MTOA) processing of pending LTA and MTOA applications received during the said period was discussed. In the said meeting, notional 100 MW was agreed for grant from 1.4.2015. The relevant portion of minutes of meeting dated 6.8.2015 is extracted as under;



“2.0 COO (CTU-Plg & CE) welcomed the participants and informed that in compliance with the directions issued by Hon`ble CERC vide its Orders dated 16.2.2015 & 03.07.2015, CTU is processing all the LTA & MTOA applications received during the period Nov`13 to Dec`14 which are seeking power transfer from NEW Grid to SR Grid sequentially on a monthly basis. The grant of LTA/MTOA applications received in Nov`13 to Dec`13 were discussed in the LTA/MTOA Meeting of SR & WR Constituents held on 15.7.2015 and the same has been processed in line with CERC Regulations.

* * * * *

8.0 Applications received in Jan`14: As the LTA application (M/s Audhnik Power & Natural Resources Ltd.) submitted in January`14 is seeking power transfer of 100 MW from NEW Grid to SR grid against ATC of 505.3 MW, it was informed that the LTA can be accommodated and hence notional LTA for the applied quantum was agreed for grant from 1.4.2015.

25. Subsequently, PGCIL vide its letter dated 10.9.2015 communicated to the Petitioner about grant of LTA for transfer of 100 MW from the Petitioner’s generating station in Jharkhand to Tamil Nadu from 1.4.2015 to 30.9.2028. Relevant portion of the said letter is extracted as under:

“Subject: Grant of Long Term Access (LTA) for transfer of 100 MW from generation project of Adhunik Power & Natural Resources Limited (APNRL) in Jharkhand to Tamil Nadu.

Dear Sir,

We write this with reference to your application for Long Term Access Ref No. APNRL/PGCIL/TANGEDCO/2013-14/274 dated 07.01.2014 received on 8.1.2014 for transfer of 100 MW power through Long Term Access from generation project of Adhunik Power & Natural Resources Limited (APNRL) in Jharkhand to Tamil Nadu and minutes of Meeting held on 6.8.2015 for processing of LTA & MTOA applications received during the period Jan 14-Dec 14 as per the CERC Directions vide orders dated 16.02.2015 & 03.07.2015

26. On 24.9.2015, the Petitioner and PGCIL executed Agreement for Long Term without System Strengthening for 100 MW LTA. Since, the PGCIL’s transmission system was not ready to flow the Petitioner’s above power, the same was accommodated by providing interim transmission arrangement.



27. In the 7th JCC meeting held on 6.10.2015, PGCIL informed the Petitioner and other generators that the LTA to most of the applicants was granted on the basis of their applications with identified target regions. PGCIL suggested that the firm beneficiaries should be finalized at the earliest as the common transmission system required is completed/very close to completion. However, unless the firm beneficiaries are finalized, the end links cannot be planned leading to constraints in transmission of power. In the 9th JCC meeting held on 10.6.2016, it was recorded in the Table T 1 (ii) that LTA for 100 MW to Tamil Nadu and LTA for 100 MW to West Bengal are operational.

28. In the 10th JCC meeting for High Capacity Corridor for IPPs in ER held on 30.9.2016, PGCIL informed that it has commissioned all transmission lines of HCPTC-II. In our view, PGCIL has taken action in terms of our order dated 31.5.2010 in Petition No. 233/2009 to execute the transmission system of HCPTC-II and whenever LTA was required to the Petitioner, PGCIL granted LTA to the Petitioner subject to compliance of the Connectivity Regulations.

29. The Petitioner's first and second units of the generating station were commissioned on 21.1.2013 and 19.5.2013 and subsequently, the Petitioner made an application for grant of LTA for transfer of power to Tamil Nadu and West Bengal after execution of the PPAs with West Bengal and TANGEDCO. Accordingly, PGCIL made interim arrangements for supply of power after compliance of all requirements by the Petitioner. Therefore, the contention of the Petitioner that due to non-commissioning of the transmission system by PGCIL, it could not transfer its power, is not tenable. Further, PGCIL has submitted that since, the Petitioner has not tied up firm PPAs for the remaining 250 MW, no request was made by the Petitioner seeking arrangement for the

same. Accordingly, the transmission work undertaken by PGCIL was sufficient to meet the requirement of the Petitioner under the PPA with WBSEDCL and TANGEDCO, at the requisite time. It appears from the above that PGCIL made interim arrangements for the Petitioner as per its requirements.

30. The Petitioner has submitted that due to *Force Majeure*, it is impossible to utilize the remaining 250 MW LTA out of the total 450 MW transmission capacity allotted to it despite best efforts and therefore, it is seeking relinquishment of 250 MW LTA without any liability. The main contention of the Petitioner is that the cancellation of the allocation of all coal blocks allotted by the Government of India from 1993 onwards including the Ganeshpur coal block by the Hon`ble Supreme Court vide order dated 24.9.2014 from which the entire coal requirement of the Petitioner`s generating station was to be sourced and promulgation of the new policy by Government of India by way of an ordinance are *Force Majeure* events under Clause 9 of the BPTA. Secondly, the Petitioner has contended that subsequently, on 8.3.2015, it had submitted its bid for the allocation of the Ganeshpur coal block and had failed to secure the bid. The auction was closed, thereafter when GMR Chhattisgarh Energy Limited was allotted the Ganeshpur Coal Block on the basis of an e-Auction. The Petitioner has submitted that on 26.12.2014, the Government of India issued the Coal Mines (Special Provisions) Second Ordinance, 2014 in pursuance of the introduction of the Coal Mines (Special Provisions) Bill, 2014 purported to replace the Cancellation Ordinance and passing of the bill by the house of people. However, on 30.3.2015, the Coal Mines (Special Provisions) Act, 2015 was enacted by the Government of India in pursuance of the coal block cancellation Order and the two Cancellation Ordinances, thereby repealing the Second Cancellation Ordinance. Therefore, the coal Block Cancellation Orders, the Coal Mines (Special Provisions) Ordinance, 2014 dated 21.10.2014 and the Coal Mines (Special Provisions) Second

Ordinance, 2014 dated 26.12.2014 and the Coal Mines (Special Provisions) Act, 2015 were all cumulatively a change in law event and thus, a *Force Majeure* event as defined under clause 9 of the BPTA. However, PGCIL vide letters dated 20.6.2016 dated 22.6.2016 directed the Petitioner to open an LC amounting to Rs. 16,77,76,875 as payment security mechanism for the remaining 250 MW LTA, which is not operational till date. Subsequently, the Petitioner vide letter dated 18.7.2016 invoking the provisions of Clause 9 of the BPTA informed PGCIL that due to existence of the *Force Majeure* events, the Petitioner is not able to utilize the remaining 250 MW LTA out of the total 450 MW transmission capacity allotted to it despite its best efforts. The Relevant portion of the said letter dated 18.7.2016 is extracted as under:

“1) This is with reference to the Bulk Power Transmission Agreement dated 24.2.2010 signed by us with the Central Transmission Utility-POWERGRID (the Agreement) regarding Long Term Access of 450 MW power from Adhunik TPS-NR 9200MW0, ER (200 MW) and WR (50 MW). We also refer to our previous discussions and exchange of letters.

(2) Out of the aforesaid 450 MW, 200 MW LTA is already operational [TANGEDCO (100 MW) and WBSSEDCL (100 MW)]

As you are already aware, Hon`ble Supreme Court of India has cancelled our Ganeshpur coal block, by its order dated 25.08.2014 and 24.09.2014 in W.P.(CL) No. 120/2012 in the matter titled Mahonhar Lal Sharma Vs. The Principle Secretary & others. The Government of India has also issued an Ordinance on 20.10.2014. The Captive Coal Block allotted to us was listed as item 96 in Schedule I of the said ordinance as a cancelled coal block. We submitted a bid for the reallocation of the Ganeshpur Coal Block, but failed to secure the bid and GMR Chhattisgarh Energy Limited was allotted the Ganeshpur Coal Block on the basis of an e-Auction. While these facts are already within your knowledge, we are reiterating for your convenience. The Government of India later issued the Coal Mines (Special Provisions) second Ordinance, 2014 on 31.3.2015. As a consequence of the above we do not have a predetermined source of fuel (neither Captive Coal Block nor Linkage). Kindly appreciate that while we continue to make our best efforts, given lack of predetermined fuel source, because of the judgment of the Supreme Court (refer to Clause 9 of the Agreement), we have failed to succeed in various long term power purchase tenders by State Discoms like, Bihar, Andhra Pradesh, Telangana, Uttar Pradesh, Bangladesh, etc. as the tenders required the bidders to have a pre-determined source of fuel (APNRL even purchased tender documents of Andhra Pradesh & Telangana).”



31. PGCIL has submitted that the BPTA for evacuation of power is not a contingent contract on coal supply and therefore, BPTA cannot be said to be frustrated on account of the cancellation of coal block allocated for the project consequent to the Hon`ble Supreme Court's order dated 24.9.2014 leading to *Force Majeure* event. Therefore, there is no *Force Majeure event* affecting the performance of the Petitioner`s obligations under the BPTA. PGCIL has further submitted that the performance may become onerous or difficult to perform for the Petitioner due to change in Policy, but is not an impossibility to perform, particularly, in the context of Section 56 of the Indian Contract Act, 1872 or within the meaning of *Force Majeure* under Clause 9 of the BPTA. PGCIL has submitted that the courts have no power to absolve the Petitioner from liability to perform under the BPTA, merely because the performance may have become onerous. Therefore, the Petitioner's plea of force majeure is not maintainable. PGCIL has further submitted that the Petitioner merely informed PGCIL about the occurrence of the *Force Majeure* vide its letter dated 18.7.2016 and nowhere requested to relinquish its LTA.

32. Let us first consider the provisions of Clause 9 of the BPTA with regard to *Force Majeure* event which provides as under:

"9.0 The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable to any claim for any loss or damage whatsoever arising out of failure to carry out the terms of this Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock out, fire, flood, forces of nature, major accident, act of God, change of law and any other causes beyond the control of the defaulting party. But the party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 30 days to the other party to this effect. Transmission/drawal of power shall be started as soon as practicable by the parties conferred after such eventuality has come to an end or ceased to exist."

33. As per the above provision of the *Force Majeure*, no party is required to claim any loss or damages on account of its failure to carry out the terms of the agreement which is attributable to any of the enumerated force majeure events or any other event beyond the

control of the defaulting party. The use of the words “no party shall be liable to claim any loss or damage” relieves both the parties from claiming any loss or damage arising out of the failure to carry out the terms of the agreement by defaulting party. The words “defaulting party” refers to a party who is unable to carry out its obligations under the BPTA on account of being affected by *Force Majeure* or any other reason beyond its control. In other words, if either the Petitioner or PGCIL is affected by *Force Majeure* or reason beyond its control which results in its failure to carry out the terms of the agreement, then neither party is liable to claim or pay any loss or damages to the other party.

34. We have considered the submissions of the Petitioner and the Respondent in the light of the provisions of Clause 9 of the BPTA above. In the present case, the Petitioner does not fulfil the conditions of Clause 9 of the BPTA due to following reasons:-

(a) Notice for *Force Majeure* as required under the BPTA has not been given by the Petitioner. Though the Petitioner is claiming *Force Majeure* on the basis of the Hon'ble Supreme Court's judgement dated 24.9.2014 and Ordinance dated 21.10.2014 issued by the Govt. of India regarding allocation of coal mines, the Petitioner has not given any such notice as per the timeline laid down in the BPTA.

(b) Both units of the generating station of the Petitioner have been fully operational and the Petitioner has been using 200 MW LTA to supply 100 MW power to WBSEDCL and 100 MW power to TANGEDCO. Cancellation of coal block by the Hon'ble Supreme Court cannot be treated as *Force Majeure* event, since subsequent to the Supreme Court's judgment, the Central Government carried out auction of coal block and even though the Petitioner participated in the auction process but failed to secure the bid while on the basis of an e-Auction,

GMR Chhattisgarh Energy Limited was allotted Ganeshpur Coal Block. As regards the balance requirement of coal, the Petitioner has other avenues such as import of coal, e-auction coal and participation in bidding process for allocation of new coal block. It is noted that the Petitioner is supplying 200 MW power to the States of Tamil Nadu and West Bengal for which the Petitioner is procuring coal. Therefore, cancellation of coal block has not resulted in non-availability of coal, as the Petitioner could have arranged coal from alternative source to produce power and supply the same.

(c) The Petitioner has vehemently argued that due to force majeure event, it was not able to utilize the remaining 250 MW LTA under the BPTA. This argument cannot be accepted as PGCIL has in no way contributed to the impossibility of performance of contract by the petitioner. Since, the transmission system has been executed by PGCIL, the Petitioner cannot be relieved of its obligation for payment of transmission charges. This Hon'ble Appellate Tribunal for Electricity in Appeal No. 197 of 2014 (JayaswalNeco Urja Limited vs. PGCIL) has dealt with a similar issue and held as under:

“33. Assuming that the Appellant's contention about the existence of force majeure conditions is correct, so long as Respondent No.1 by its acts of omission or commission has not contributed to the Appellant's being unable to commence operation of its power plant, Respondent No.1 cannot be held responsible for it and encashment of Bank Guarantee cannot be faulted on that count.”

In view of the above finding of the APTEL, it cannot be said that PGCIL by its acts of omission or commission has contributed to the Petitioner's inability to operationalize the LTA.

35. In view of the above, we are unable to hold that the Petitioner is affected by *Force Majeure* in terms of the BPTA on account of cancellation of coal block. In terms of the

BPTA, the Petitioner is liable to pay the transmission charges after the COD of the transmission system which were executed by PGCIL.

Issue No.2: Whether the Petitioner is liable to pay the relinquishment charges for relinquishment of 250 MW LTA granted to it by PGCIL?

36. The Petitioner has submitted that it has relinquished 250 MW LTA out of the total 450 MW due to *Force Majeure* event. In response, PGCIL has submitted that as per Regulation 18 of the Connectivity Regulations, the Petitioner may relinquish LTA fully or partly, before the expiry of full term of its LTA, by making payment for relinquishment charges and it imposes strict liability to pay relinquishment charges without any reference to *Force Majeure* conditions faced by the party so relinquishing the LTA. However, the Petitioner is relinquishing its LTA without paying compensation on account of occurrence of *Force Majeure* event, whereas under the Connectivity Regulations, there is no provision which permits the Petitioner to relinquish its LTA without paying compensation for the relinquishment of LTA. The Petitioner was granted 450 MW LTA and accordingly, the capacity of 450 MW was reserved for its use. Therefore, if the Petitioner seeks to relinquish 250 MW LTA, it is required to pay the compensatory charges in terms of Regulation 18 of the Connectivity Regulations. However, the compensatory transmission charges payable by the Petitioner would not amount to unjust enrichment of PGCIL as under Regulation 18 of the Connectivity Regulations, the compensatory transmission charges payable by the Petitioner are to be utilized for reducing transmission charges payable by other DICs.

37. PGCIL has submitted that the purpose of relinquishment charges is, *inter alia*, to act as deterrence against relinquishment of LTA when the transmission elements required

for catering to the LTA requirement have been or are being commissioned by the transmission licensees. PGCIL has further submitted that the relinquishment charges are also provided for in order to offset to a certain extent, the additional charges levied on DICs. However, in the instant petition, the system to which LTA was sought by the petitioner was a part of the common transmission system. Therefore, if the project developers are allowed to relinquish their LTA without any liability, then the transmission planning cannot be done effectively and the transmission capacity will remain underutilized while saddling the other DICs with additional burden towards payment of transmission charges. Hence, the Petitioner is liable to pay the relinquishment charges in accordance with the Connectivity Regulations.

38. We have considered the submissions of the Petitioner and PGCIL. Regulation 18 of the Connectivity Regulations provides for the relinquishment of long term access rights as under:

“18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows:-

(a) Long-term customer who has availed access rights for at least 12 years

(i) Notice of one (1) year – If such a customer submits an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) Notice of less than one (1) year – If such a customer submits an application to the Central Transmission Utility at any time lesser than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of a notice period of one (1) year.

(b) Long-term customer who has not availed access rights for at least 12 (twelve) years – such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights:

Provided that such a customer shall submit an application to the Central Transmission Utility at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights;



Provided further that in case a customer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access rights.

(2) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by the Ministry of Power.

(3) The compensation paid by the long-term customer for the stranded transmission capacity shall be used for reducing transmission charges payable by other long-term customers and medium-term customers in the year in which such compensation payment is due in the ratio of transmission charges payable for that year by such long term customers and medium-term customers.”

Under the above provisions, long term customer may relinquish long term access rights fully or partly, before the expiry of full term of long term access, by making payment of compensation for stranded capacity as provided therein. It is pertinent to mention that the Connectivity Regulations do not envisage any exemption from payment of compensation in case of relinquishment of LTA on any ground. As per Regulations, a long term customer is liable to pay compensation of an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 years of access right in case he relinquished access right before expiry of 12 years upon giving a notice of one year for seeking relinquishment. It is pertinent to mention that assessment of stranded capacity on account of relinquishment of LTA and determination of relinquishment charges shall be as per the directions to be given by the Commission in Petition No. 92/MP/2015. There is no embargo in the Connectivity Regulations for relinquishment of LTA but such relinquishment is subject to payment of charges for the stranded capacity. In our view, the Petitioner should relinquish the 250 MW LTA subject to payment of relinquishment charges which will be decided in Petition No. 92/MP/2015.



Issue No.3: Whether any direction is required to be issued for refund of Bank Guarantee in this case?

39. The Petitioner through its IA No. 81/2017 has sought a direction for the refund of bank guarantee of Rs 22.50 crore corresponding to 450 MW on the two accounts i.e. (i) return of BG of Rs 10 crore due to operationalization of LTA of 200 MW, and (ii) return of balance BG of Rs 12.5 crore due to relinquishment of balance LTA of 250 MW.

40. The Petitioner has submitted that PGCIL has encashed the BG arbitrarily. The Petitioner has submitted that the Petitioner vide its email dated 26.9.2017 requested PGCIL for grant of 15 days time for extension of the BG due to delay from the Petitioner's bank towards Durga Puja holidays in Kolkata. However, PGCIL did not entertain the request made by PGCIL and encashed the bank guarantee on 6.10.2017.

41. PGCIL has submitted that under the regulatory scheme regarding the commercial security instruments, the entire cycle from the stage of concept to commissioning and extending to entire operational period has been covered through (a) Application Bank Guarantee (Application/ Pre Grant Stage), (b) Construction Phase Bank Guarantee (Implementation / Post Grant Stage), and (c) Letter of Credit (Operational Stage) . PGCIL has further submitted that upon completion of each stage of the cycle, the earlier security instrument is required to be substituted by establishment of security instrument for the next cycle. Therefore, at the time of completion of the transmission system, PGCIL requested the Petitioner to furnish LC for operationalization of the LTA of 250 MW and the Petitioner upon the receipt of the said request for relinquishment of 250 MW LTA. PGCIL has also submitted that the during the hearing of IA No. 44/2017, leaned counsel for the Petitioner submitted that the BG would be renewed by the Petitioner. However, despite

the undertaking, the Petitioner failed to extend the BG beyond 30.9.2017.

42. We have heard the submissions of the Petitioner and PGCIL. The question before us is whether the PGCIL should be directed to refund the BG. We have observed during the hearing dated 14.9.2017 that the Petitioner made a statement that BG dated 24.2.2010 is expiring on 30.9.2017 and the Petitioner would be renewing the same. However, despite the express undertaking given during the hearing, the Petitioner failed to renew the BG. At the same time, PGCIL is under no obligation to consider the requests made by the Petitioner for the extension of time to renew the BG. Since, the Petitioner has relinquished 250 MW of LTA and there may be liability for payment of subsequent changes which shall be decided in the light of the decision in Petition No. 92/MP/2015, we are of the view that there is no requirement to direct PGCIL to refund the encashed bank guarantee at this stage. However, if any amount remains due to the Petitioner after adjusting the subsequent charges, PGCIL shall refund the same to the Petitioner within one month from the issue of order in Petition No. 92/MP/2015.

43. Petition No. 167/MP/2016 alongwith I.A. Nos. 42/2016, 44/2017 and 81/2017 are disposed of in terms of the above.

Sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

