

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 252/MP/2017**

**Coram:**

**Shri P. K. Pujari, Chairperson**

**Shri A. K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Order: 28<sup>th</sup> of March, 2018**

**In the matter of:**

Petition under Section 79 (1) (f) of the Electricity Act, 2003 for adjudication of dispute between the Generator and the Transmission Licensee.

**And**

**In the matter of:**

Greenko Budhil Hydro Power Private Limited  
Plot No.- 1367, Road No. 45, Jubilee Hills,  
Madhapur, Hyderabad - 500033

**...Petitioner**

**Versus**

Power Grid Corporation of India Limited  
Saudamini, Plot No 2,  
Sector-29, Gurgaon- 122001

**...Respondent**

**Parties Present:**

Shri Venkatesh, Advocate, GBHPPL

Shri Sandeep Rajpurohit, Advocate, GBHPPL

Ms. Swapna Seshadri, Advocate, PGCIL

Shri Ashwin Ramanathan, Advocate, PGCIL

Shri R. P. Padhi, PGCIL

Shri V. Srinivas, PGCIL

**ORDER**

The Petitioner, Greenko Budhil Hydro Power Private Limited has filed the present petition with the following prayers:

“(a) Set aside Impugned letter dated 14.11.2017 issued by the Respondent/ PGCIL.

(b) Hold and declare that the Petitioner and its Group Companies are not liable for payment of Transmission Charges concerning HSPPL.

(c) In the interim, direct PGCIL to not take any coercive action against the Petitioner.”

2. The Petitioner has submitted that the following facts have led to the filing of this petition:

(a) The Petitioner has set up a 70 MW (2x35 MW) Hydro Power Plant at Village Budhil in the State of Himachal Pradesh. Both units of Budhil HEP have been commissioned on 30.5.2012. The Petitioner has entered into a PPA with Uttarakhand Power Corporation Limited on 18.12.2015 for sale 70 MW power and is supplying power to UPCL through short term open access. The Petitioner made a application on 27.3.2017 to Power Grid Corporation of India Limited (PGCIL) for grant of LTA which is still pending with PGCIL till date.

(b) Power Grid Corporation of India Limited had filed the Petition for seeking direction to Himachal Sorang Power Limited (HSPL) to pay the past and current dues along with surcharge and to open the LC for appropriate amount. During the course of hearing, learned counsel for PGCIL submitted that as per the information available, Greenko has taken over HSPL. The Commission vide order dated 26.9.2017 in Petition No. 32/MP/2017 directed that HSPL or its successor or assignee shall be liable for the payment of all outstanding dues towards transmission charges along with surcharge and to open the LC.

(c) Pursuant to the said order dated 26.9.2017, PGCIL vide its letter dated 14.11.2017 intimated the Petitioner that HSPL was granted LTA for 100 MW on

17.7.2009 for a period of 25 years and it paid LTA charges till 31.3.2016 and requested the Petitioner to pay Rs 53.26 crore and surcharge thereon as per the Commission`s direction dated 26.9.2017. PGCIL further informed the Petitioner that HSPL has also relinquished 100 MW LTA granted by PGCIL w.e.f. 1.10.2017 for which relinquishment charges as decided by the Commission in Petition No. 92/MP/2015 shall be payable by the Petitioner.

(d) The Petitioner is neither a successor of HSPL nor in any manner related or associated to HSPL. Therefore, the Petitioner in no manner can be made responsible for the dues of HSPL.

(e) The Petitioner and HSPL are two separate legal entities and in terms of Section 9 of the Companies Act, 2013, such entities cannot be held responsible for each other as there is no commonality of shareholders.

(f) Directions of the Commission being relied upon by PGCIL pertain to recovery of transmission charges from HSPL or the successors of HSPL itself and in no manner can be extended to any other company that is available LTA, MTOA and STOA from PGCIL.

(g) The Petitioner has not taken over HSPL by acquisition of shares or otherwise as claimed by PGCIL. Even if in a case wherein two corporations have commonality of shareholders, even in such cases the liability of one corporation would be distinct from the liability of the Shareholder. Since, the Petitioner was not even party to proceeding in Petition No. 32/MP/2017; it cannot be made liable in any manner.

3. Notice was issued to PGCIL to file reply to the Petition. However, no reply has been filed by PGCIL.

**Analysis and Decision:**

4. We have considered the submissions of the Petitioner. The Commission vide order dated 26.9.2017 in Petition No. 32/MP/2017 had observed that if HSPL has been taken over by another company as informed during the hearing, the said company shall be liable to pay the transmission charges as per the terms of the BPTA dated 24.10.2009 which provides that HSPL includes its successors and assignees. Relevant portion of the said order is extracted as under :

“8. The matter was heard on 6.7.2017 and 29.8.2017. None was present on behalf of the Respondent despite notice. No reply has been filed by the Respondent. During the course of hearing, learned counsel for the Petitioner requested the Commission to direct the Respondent to comply with the provisions of the regulations. Learned counsel further submitted that as per the information available, Greenko has taken over HSPL but the Petitioner could not serve the copy of the Petition to Greenko with regard to the transmission charges....

10. None was present on behalf of HSPL despite repeated notices. We express our displeasure at the conduct of the HSPL to ignore our notices. The Petitioner, vide Record of Proceedings for hearing dated 25.4.2017, was directed to confirm whether HSPL is generating and supplying power under any form of access. The Petitioner has submitted that as per the information received from NRLDC, HSPL has injected infirm power into the regional grid upto 18.11.2015 and there is no injection by HSPL thereafter. As per Regulation 12 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, CTU is empowered to enforce regulation of power supply against defaulting DICs for non payment of transmission charges and non-compliance of LC. Therefore, a statutory mechanism is available to the Petitioner to invoke the regulation of power supply in case of non-payment of transmission charges and non-opening of LC. Since, the generating station of HSPL is not generating the power, the Petitioner cannot invoke provisions of regulations of power supply against HSPL. As HSPL has been granted LTA and the said LTA has been operationalised from April 2012 onwards, the liability of transmission charges shall accrue to HSPL. The Petitioner shall continue to raise the bills for the LTA on HSPL. If HSPL has been taken over by another company as informed during the hearing, the said company shall be liable to pay the transmission charges as per the terms of the BPTA dated 24.10.2009 which provides that HSPL includes its successors and assignees. Accordingly, it is directed that HSPL or its successor or assignee shall be liable for the payment of all outstanding dues towards transmission charges along with surcharge and to open the LC. Since, the payments are overdue, it is

directed that HSPL or its successor or assignee shall be permitted to inject power under LTA/MTOA/STOA only after they make the payment of outstanding transmission charges.”

5. The Petitioner has submitted that pursuant to the said order dated 26.9.2017, PGCIL vide its letter dated 14.11.2017 raised the demand of Rs. 53.26 crore on the Petitioner towards transmission charges. The Petitioner has submitted that since the Petitioner is not the successor of HSPL, the Petitioner in no manner can be made liable for the transmission charges due.

6. Learned counsel for PGCIL submitted that pursuant to demand raised by PGCIL vide letter dated 14.11.2017, the Petitioner could have approached PGCIL to clarify the position or written a letter to PGCIL if it had not taken over the plant of HSPL. However, the Petitioner approached the Commission by way of the present petition seeking to set aside the impugned letter dated 14.11.2017.

7. In our view, if the Petitioner has not taken over the plant of HSPL and is not the successor of HSPL, it should have apprised PGCIL about the factual position and requested PGCIL to withdraw the bills. Instead of sorting out the matter with PGCIL, the Petitioner has approached the Commission for a direction to set aside the bills. We direct the Petitioner to approach PGCIL with all documentary evidence to establish that it has neither taken over nor is the successor of HSPL. PGCIL shall satisfy itself about the claims of the Petitioner by verify all relevant details including the Business Transfer Agreement. If it is found that the Petitioner is not the successor of HSPL, then the demand raised by PGCIL shall be withdrawn. If it is found that the Petitioner is the

successor of HSPL, then PGCIL is at liberty to recover the transmission charges from the Petitioner.

8. Petition No. 252/MP/2017 is disposed of in terms of the above.

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**(Dr. M.K.Iyer)**  
**Member**

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**(A. S. Bakshi)**  
**Member**

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**(A. K. Singhal)**  
**Member**

-sd-  
**(P. K. Pujari)**  
**Chairperson**