

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**I.A No. 45 of 2017**  
in  
**Petition No. 312/MP/2015**

**Coram:**  
**Shri P.K. Pujari, Chairperson**  
**Shri A.K. Singhal, Member**  
**Shri A.S. Bakshi, Member**  
**Dr. M.K. Iyer, Member**

**Date of Order: 29<sup>th</sup> of June, 2018**

**In the matter of**

Interlocutory Application seeking amendment of pleadings/prayers and bringing on record subsequent facts

**And  
In the matter of**

Petition under Section 79(1) (f) of the Electricity Act, 2003 qua adjudication over payment of transmission charges and other liabilities under the Bulk Power Transmission Agreement between Meenakshi Energy Private Limited, a generating company, and Power Grid Corporation of India Limited, the Central Transmission Utility

**And  
In the matter of**

Meenakshi Energy Private Limited  
NSL ICON Building,  
Plot No.1 - 4, 2nd Floor,  
Road No. 12, Banjara Hills,  
Hyderabad - 500 034,  
Telangana

**...Petitioner**

Vs.

Power Grid Corporation of India Limited  
Saudamini, Plot No.2  
Sector-29, Gurgaon - 122 001  
Haryana

**...Respondent**

**Parties present:**

Shri Sanjay Sen, Senior Advocate, MEPL  
Shri Buddy A. Ranganathan, Advocate, MEPL  
Ms. Molshree Bhatnagar, Advocate, MEPL  
Shri Himanshu Mishra, MEPL



Ms. Suparna Srivastava, Advocate, PGCIL  
Shri V.P. Rastogi, PGCIL  
Shri V. Srinivas, PGCIL  
Shri Rakesh Prasad, PGCIL  
Shri S.S. Raju, PGCIL

### ORDER

In this order, the Commission is considering the IA filed by the Petitioner, Meenakshi Energy Private Limited, for amendment of the pleadings and prayers in Petition No. 312/MP/2015.

2. The Petitioner filed Petition No. 312/MP/2015 seeking exemption from payment of transmission charges and other liabilities under the Bulk Power Transmission Agreement on account of certain alleged force majeure events. The Commission, after hearing the parties at length vide Record for Proceedings for the hearing dated 13.7.2017 reserved order in the petition.

3. Subsequently, the Petitioner filed the present IA on 25.7.2017 seeking amendments to the petition with the following prayers:

“(a) Reopen the hearing of the captioned petition;

(b) Permit the additional evidence to be taken on record.

(c) Amend the prayer clause in the captioned petition to add the following prayers after prayer (e):

(f) to permit the Petitioner to relinquish the entire quantum of the LTA upon disposal of the captioned petition;

(g) to restrain PGCIL from encashing the construction Bank Guarantee furnished by the Petitioner in terms of Clause 6.0 of the BPTA.”

4. The IA was initially listed for hearing on 28.9.2017. On account of the request of the learned counsel for the Petitioner, the hearing of the IA was adjourned. The IA was again listed on 9.3.2018. During the hearing on 9.3.2018, the Petitioner made a



request for adjournment of hearing in the IA which was recorded in the Record of Proceeding of that date as under:

“Learned counsel for the Petitioner submitted that arguing counsel in the matter is not available due to personal difficulty and request for adjournment.

Learned counsel for PGCIL submitted that she has no objection for the adjournment sought by learned counsel for the Petitioner. She further submitted that since order is already reserved order in the Petition, IA is not maintainable at this stage.

The IA shall be adjourned to 5.4.2018.”

5. The Petitioner filed Writ Petition No. 8028 of 2018 before the Hon`ble High Court of judicature at Hyderabad on 9.3.2018, a copy of which has been served on the Commission.

6. The IA was taken up for hearing on 18.5.2018. During the hearing, learned senior counsel for the Petitioner submitted that due to force majeure events, the Petitioner could not commission Phase II of its generating station. Learned senior counsel submitted that through the present IA, the Petitioner has placed on record certain documents in furtherance of the facts leading to the revocation of the LOA by AP Discom as well as certain photographs which demonstrate the effect of the cyclone and heavy rainfalls that severely impaired the construction of the Petitioner`s Phase-II of the project and therefore, LTA to the extent of 910 MW stands relinquished. Learned senior counsel submitted that the Petitioner has placed on record a Load Flow Study according to which the transmission system especially the Nellore Pooling Station has not been designed to accommodate power being evacuated from the Petitioner`s generating station alongwith other generating stations in that area and therefore, the grant of LTA to the Petitioner at the Nellore Pooling Station is in violation of the N-1 criteria of the Grid Code as well as Central Electricity Authority`s Manual on Transmission Planning Criteria. Learned senior



counsel requested to consider the report placed on record under additional affidavit dated 15.5.2018.

7. In response to the submissions of the learned counsel for the Petitioner, learned counsel for PGCIL submitted as under:-

(a) The present IA is not maintainable as the same has been filed after the order was reserved in the Petition.

(b) The Petitioner has not sent proper notice about relinquishment of LTA.

(c) Pursuant to operationalization of LTA, PGCIL has been raising invoices on the Petitioner. However, the Petitioner has refused to make any payments citing pendency of the proceedings before the Commission. Since, no response was received from the Petitioner with regard to invoices raised, PGCIL requested RLDC to regulate the power supply of the Petitioner.

(d) On 9.3.2018, the Petitioner requested for adjournment of the IA and on the same day, the Petitioner filed Writ Petition before the Hon`ble High Court of Andhra Pradesh for seeking stay on the notice of regulation of power supply on the pretext that the IA is yet to be heard by the Commission.

8. Learned senior counsel for the Petitioner submitted that the issue before the High court and the issue before this Commission are distinct from each other. The Petitioner approached the High Court for seeking stay on the notice of regulation of Short Term Open Access imposed by PGCIL for non-payment of LTA charges despite the Petitioner relinquishing its LTA.



## **Analysis and Decision**

9. We have considered the submissions of the learned senior counsel for the Petitioner and learned counsel for PGCIL with regard to the admissibility of the IA. The issue for consideration is whether the IA for amendment of the petition is maintainable.

10. There is no specific provision regarding amendment of pleadings in the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time (hereinafter "CBR"). Therefore, the Commission has to rely on the provisions of the Code of Civil Procedure, 1908 (CPC). Order 6 Rule 17 of CPC deals with amendment of pleadings. Rule 17 is extracted as under:-

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial."

11. As per the above provision, pleadings can be amended at any stage of the proceedings if in view of the Court the amendments are necessary for the purpose of determining the real questions in controversy between the parties. The proviso to the said rule says that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.



12. In the case of Revajitu Builders and Developers Vs. Narayanswamy {(2009) 10 SCC 84}, the Hon'ble Supreme Court enunciated the following principles for allowing the amendment:

**“Whether amendment necessary to decide the real controversy**

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the court's decision discretion in grant or refusal of the amendment.

**No prejudice or injury to other party**

59. The other important condition which should govern the discretion of the court is potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily if the other side is compensated with costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The Courts have very wide discretion in the matter of amendment of pleadings but the Court's powers must be exercised judiciously and with great care.

**Factors to be taken into consideration while dealing with the application for amendment**

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) Whether the amendment sought is imperative for the proper adjudication of the case;
- (2) Whether the application for amendment is bonafide or malafide;
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature or character of the case; and
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with the application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a causal



manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

13. The grounds for amendment of the Petition are that the subsequent to the filing of the petition, the Petitioner encountered certain further events which have severely impaired the financial viability of the project. The Petitioner has submitted that even though the Petitioner was selected as the successful bidder in the first round of bids carried out by AP Discoms and was kept waiting for signing of the PSA, the AP Discom signed the PSA with L-II Bidder. Subsequently, AP Discom issued a show cause notice and revoked the LOA issued to the Petitioner on 23.2.2017. The Writ Petition filed by the Petitioner against the order of the AP Discom was dismissed by the Single Judge of the High Court on 13.6.2017. The Petitioner has preferred an Appeal before the Division Bench of the High Court against the said order which is presently pending. The Petitioner has submitted that the cancellation of the LOA by AP Discom is an event of force majeure. However, due to certain confusion with regard to the date of hearing, this aspect could not be brought by the Petitioner to the notice of the Commission on the date of hearing of the main petition on 13.7.2017. The Petitioner has filed the IA to place on record certain documents in furtherance of the facts leading to the revocation of the LOA as well as certain photographs which demonstrate the effect of the cyclone and heavy rainfalls that severely impaired the construction of the Phase-II of the project of the Petitioner. The Petitioner has also filed an affidavit dated 15.5.2018 in which the Petitioner has sought to place on record the minutes of certain OCC meetings and a copy of the report on Load Flow Study dated 2.5.2018 regarding the transmission constraints in evacuation of power from the generating station in Krishnapatnam area.



14. From the above judicial decisions on the issue of amendment under Order 6 Rule 17 of CPC, it is clear that the dominant test that needs to be carried out is whether the amendment is required in the interest of justice and for the purpose of determination of real controversy between the parties and to reduce multiple litigations.

15. In the main petition, the Petitioner had sought a declaration that the Petitioner was not required to pay the transmission charges to PGCIL until the commissioning of its Phase II project which have been delayed on account of force majeure events covered under clause 9.0 of the BPTAs. Among the force majeure events, the Petitioner had listed the following:

- (a) The decision of SRLDC and POSOSCO to do the joint metering of Petitioner's plant and Simhapuri's plant, though they are separate entities and the decision of this Commission to open the interconnecting lines between both projects;
- (b) The restrictions imposed by Hon'ble Supreme Court, Hon'ble High Court of Andhra Pradesh and Government of Andhra Pradesh on mining of river sand which affected the pace of construction;
- (c) The delays in obtaining right of way over land to construct marine outfall pipeline to Bay of Bengal in order to comply with the conditions of costal regulations zones clearance dated 21.6.2012 granted by MOEF.
- (d) Torrential monsoons in 2013 and 2014 which led to complete shut down of construction activity.





16. The new facts that the Petitioner seeks to bring on record through the IA are as under:

- (a) Bringing on record certain photographs of the torrential rains and cyclones;
- (b) Cancellation of the LOA issued to the Petitioner by AP Discom on 23.2.2017 and subsequent dismissal of the writ petition against cancellation by AP High Court vide order dated 13.6.2017.
- (c) Through an affidavit dated 15.5.2018, the Petitioner has sought to place on record a copy of the Load Flow Study dated 2.5.2018 in support of its contention that Nellore Pooling station was not designed to evacuate power from its generating station.

17. Further, in the main petition, the Applicant had made the following prayers:

- “(a) Declare that MEPL is not required to pay PGCIL any transmission charges until the commissioning of Phase II as the delay in the commissioning of Phase II has occurred on account of force majeure events covered by Clause 9.0 of the BPTAs;
- (b) Direct PGCIL to produce the relevant records that show the extent to which the contracted transmission elements under the BPTAs have been or can be put to alternate use by STA and MTA customers and direct PGCIL to put the contracted transmission elements under the BPTAs to such alternate use;
- (c) Without prejudice to the prayers above, declare that until the commissioning of Phase II, PGCIL is entitled to recover only the bare maintenance expenses for the transmission elements under the BPTAs built and commissioned exclusively for MEPL, and to the extent that PGCIL is unable to recover the amount necessary to meet the bare maintenance expenses from third party STA, MTA and other LTA customers;
- (d) Direct PGCIL to reduce the value of the construction Bank Guarantees held by it in proportion to the capacity of MEPL’s project which has already been commissioned; and
- (e) Quash and set aside PGCIL’s demand for the establishment of a letter of credit (LC) made vide letter dated 1.10.2014 and subsequent communications.”



18. In the IA, the applicant has sought to bring certain additional documents on record and add two prayers as under:-

“(f) to permit the Petitioner to relinquish the entire quantum of the LTA upon disposal of the captioned petition;

(g) to restrain PGCIL from encashing the construction Bank Guarantee furnished by the Petitioner in terms of Clause 6.0 of the BPTA.”

19. On perusal of the petition as well as the IA, we notice that the Petitioner has already placed on record the documents through Annexure P-30(colly), P-31 (colly) and P-32 (colly) in the main petition regarding the evidences of torrential rains and cyclone. The photographs and other documents with regard to cyclone and rainfall in 2013 and 2014 could have been placed on record alongwith the main petition. Further, the Petitioner has submitted that due to certain confusion about the date of hearing of the main petition, the Petitioner could not bring the fact of cancellation of the LOA and the dismissal of the writ petition on record. In our view, the documents such as, the cancellation of LOA by AP Discom and dismissal of the writ petition by the Hon'ble High Court of Hyderabad, are not essential to decide the controversy between the parties as the Petitioner in the main petition had raised about the force majeure in respect of delay in commissioning of the Unit-2 of its generating station and not for any commercial reason. Moreover, the load flow study has been carried out after the IA for amendment of the petition was filed. Further, the Petitioner claims that as per the load flow study, PGCIL had not built up the system for evacuation of power from its generating station. In our view, cancellation of LOA and the finding in the load flow study enlarge the scope of the controversy and cannot be considered as imperative for proper adjudication of the controversy raised in the main Petition. Further, the amendment if allowed will prolong the proceedings and



PGCIL shall be deprived from its right to collect the transmission charges from the Petitioner. Learned Counsel for PGCIL submitted during the hearing that the Petitioner is not paying the transmission charges since July, 2017. If the amendment is allowed, this will prejudice the interest of PGCIL as PGCIL is not able to recovery the transmission charges from the Petitioner.

20. In the main petition, the Petitioner has sought the prayer to be exempted from payment of transmission charges till Phase II is commissioned on account of force majeure in terms of clause 9 of the BPTA. However, in the IA the Petitioner has sought relinquishment of the LTA capacity on account of the force majeure events already mentioned and an additional reason of cancellation of LOA. Relinquishment of LTA is a voluntary act on the part of the LTA holder and is regulated in terms of Regulation 18 of the Connectivity Regulations. Therefore, the causes of action are distinct in both the main petition and the IA. While in the main petition, the controversy is whether the Petitioner is liable to be exempted from payment of transmission charges for the period it is affected by alleged force majeure, the scope of the amendment is relinquishment of LTA and consequently, non-payment of transmission charges for all times to come. Further, the Petitioner has sought to demonstrate through the load flow study placed on record that Nellore station did not have the capacity to accommodate evacuation of power from the generating station of the Petitioner and LTA was wrongly granted to the Petitioner. Moreover, learned counsel for PGCIL submitted during the hearing that the Petitioner has not given proper notice for relinquishment of the LTA in terms of the Connectivity Regulations and therefore, the prayer of the Petitioner in the IA seeking permission to relinquish the LTA is not maintainable. In our view, the amendment sought to be brought



through the IA raises separate cause of action for which the Petitioner needs to approach the Commission through a separate petition. The prayer in the IA if allowed would completely change the edifice of the controversy between the parties raised in the main petition. In our view, the amendment sought through the IA does not satisfy the condition of Order 6 Rule 17 of the CPC i.e. the amendments are necessary for the purpose of determining the real question in controversy between the parties.

21. Accordingly, the IA is rejected.

22. After the order was reserved, the coram has changed on account of the demitting of office by ex-Chairperson. Therefore, we direct that the main petition shall be listed for hearing on 5.7.2018.

**sd/-**  
**(Dr. M.K. Iyer)**  
**Member**

**sd/-**  
**(A. S. Bakshi)**  
**Member**

**sd/-**  
**(A. K. Singhal)**  
**Member**

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

