

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 187/MP/2017

Subject : Petition for relinquishment of 750 MW of Long term Access out of the 1200 MW granted under the Bulk Power transmission Agreement dated 7.1.2009 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.

Date of Hearing : 6.3.2019

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

Petitioner : Essar Power M.P. Limited (EPMPL)

Respondents : Power Grid Corporation of India Limited and Others

Parties present : Shri. Prashanto Sen, Senior Advocate, EPMPL
Shri Sumanta Nayak, Advocate, EPMPL
Shri Venkat Poonia, Advocate, EPMPL
Ms. Kritika Anqirish, Advocate, EPMPL
Shri Aslam Ahmed, Advocate, EPMPL
Ms. Kritika Angrish, Advocate, EPMPL
Ms. Shruti Verma, EPMPL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned senior counsel for the Petitioner argued at length and submitted that since, LTA granted to the Petitioner has got frustrated on account of force majeure events, namely, non-availability of the long term assured source of coal for the project, the Petitioner is not liable to pay charges towards relinquishment of 750 MW LTA. Learned senior counsel, in support of his contention, relied upon the Hon'ble Supreme Court judgment in the case of Energy Watchdog Vs. Central Electricity Regulatory Commission and others, the Commission's order dated 16.10.2015 in Petition No.73/MP/2014 in the case of Jabalpur Transmission Company Ltd Vs. Adhunik Power and Natural Resources Company limited and the Court of Appeal judgment in Hollams, Son & Coward Vs. T. Cooper & Co.

2. Learned counsel for PGCIL argued at length and submitted that the contention of the Petitioner in respect of cancellation of coal block by the Hon'ble Supreme court has resulted in impossibility of execution of contract under Section 56 of the Contract Act, 1872, is not correct. Learned counsel submitted that Commission in its order dated

18.7.2017 in Petition No.293/MP/2015 in the case of Jaiprakash Power Ventures Limited Vs. Power Grid Corporation of India Ltd. has observed that cancellation of coal block by the Hon'ble Supreme Court cannot be treated as a force majeure event as the very basis of allocation of coal block to the allottees has been found to be illegal and hence terminated .The cancellation of coal block does not result in non -availability of coal as the Petitioner has to arrange coal from alternative sources to generate and supply power. Learned counsel submitted that since the Petitioner is supplying power under short term open access, the plea of contract becoming frustrated is not tenable.

3. After hearing the learned senior counsel for the Petitioner and learned counsel for the Respondents, the Commission directed the parties to file their written submissions by 20.3.2019, with copy to each other. Subject to the above, the Commission reserved the order in the Petition.

By order of the Commission

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