

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 16/RP/2019
along with IAs No. 76/2019 and 77/2019
in
Petition No. 242/MP/2017

Coram:

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

Date of order: 18th of September, 2019

In the matter of:

Review Petition under Section 94 of the Electricity Act, 2003 read with Regulations 103, 111 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of order dated 3.12.2018 passed by the Commission in Petition No. 242/MP/2017.

And

In the matter of:

Central Transmission Utility
Power Grid Corporation of India Limited
Katwaria Sarai, New Delhi – 110 006

..... Review Petitioner

Vs

Aryan MP Power Generation Private Limited
129, Transport Centre,
Rohtak Road, Punjabi Bagh,
New Delhi – 110 035

.....Respondent

Parties Present:

For Petitioner : Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Swati Verma, PGCIL
Shri Siddharth Sharma, PGCIL
Ms. Jyoti Prasad, PGCIL

INTERIM ORDER

The Review Petitioner, Central Transmission Utility, has filed the present Review Petition under Section 94 of the Electricity Act, 2003 (hereinafter referred to



as the “Act”) read with Regulations 103, 111 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as “Conduct of Business Regulations”) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of order dated 3.12.2018 in Petition No. 242/MP/2017 wherein the Review Petitioner was directed to refund the Bank Guarantee after adjustment of the relinquishment charges to the Respondent, Aryan MP Power Generation Private Limited with 9% interest from the date of encashment till the date of payment.

2. The Review Petitioner has submitted that in the impugned order dated 3.12.2018, while adjudicating on the issue as to whether the Respondent is entitled to refund of Bank Guarantee in the facts of the case and in light of the order dated 31.10.2017 in Petition No. 69/MP/2014, the Commission found no infirmity in the invocation of Bank Guarantee by the Review Petitioner. Further, the Commission also observed that since the Respondent has relinquished the Long Term Access granted to it and its liability for payment of relinquishment charges is to be calculated in the light of decision in Petition No. 92/MP/2015, there was no requirement to direct the Review Petitioner to refund the encashed Bank Guarantee at that stage. Accordingly, the Review Petitioner was directed that if any amount becomes due and payable after adjustment of the relinquishment charges, the same is to be refunded to the Respondent with 9% interest from the date of encashment till the date of payment. However, in observing so, the Commission inadvertently omitted to consider that there was no finding in the order as regards any wrongful detention of monies by the Review Petitioner. On the contrary, there is a clear finding that the invocation and encashment of the Bank Guarantee is in accordance with the



contractual arrangement and therefore, the erroneously fastened interest liability has to be rectified.

3. The Review Petitioner has filed IA No. 76/2019 seeking condonation of delay of 249 days in filing the Review Petition. The Review Petitioner has submitted that when the impugned order was passed with a direction for adjusting the encashed Bank Guarantee amount against the relinquishment charges to be payable by the Respondent, the Petition No. 92/MP/2015 deciding the relinquishment charges was pending before the Commission. Subsequent to order dated 8.3.2019 in Petition No. 92/MP/2015, the Review Petitioner undertook the exercise of computation of relinquishment charges for various generators and other DICs. The Review Petitioner has submitted that computed relinquishment charges were uploaded on the website of the Review Petitioner on 20.5.2019 including the relinquishment charges computed for the Respondent to the tune of Rs. 24.58 crore. The Review Petitioner has submitted that only on receiving the letter dated 24.5.2019 of the Respondent seeking refund of Rs. 31.52 along with interest @ 9% from the date of the encashment of Bank Guarantee, the issue of award of interest came to its notice. Only thereafter, after taking required approval from the Review Petitioner Company, the Review Petition was filed on 10.8.2019. The Review Petitioner has submitted that it is a revenue neutral entity while exercising the functions under Section 38 of the Electricity Act, 2003 and the amount of interest awarded by the Commission would cause unjust financial injury to it. In support of its contention, the Review Petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of Manoharan vs Shiv Rajan [(2014) 4 SCC 163 and has submitted that at the time of



condoning the delay in filing applications, the merits of the case are of paramount consideration.

4. During the course of hearing on 16.9.2019, learned counsel for the Review Petitioner reiterated the submissions made in the Review Petition and requested to allow the IAs and admit the Review Petition.

5. We have considered the submissions of Review Petitioner. Under clause (f) of sub-section (1) of Section 94 of the Act, the Commission has been vested with powers of a Civil Court under the Code of Civil Procedure, 1908 as regards review of its decisions, directions and orders. Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time (hereinafter referred to as "Conduct of Business Regulations") provides as under:

"103. Review of Decisions, Directions and orders: (1) The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit."

6. Further, Regulation 116 of the Conduct of Business Regulations provides as under:-

"116. Extension or abridgement of time prescribed: Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission."

7. It is evident from the above provisions that a Review Petition can be filed by a party within a period of 45 days from the date of issue of the order. This period can be enlarged or curtailed, if the party is able to show sufficient reasons.



8. The Review Petitioner has referred to the Commission's various orders and has submitted that the Commission in these orders had condoned the delay in filing review petition. Accordingly, the Review Petitioner has submitted that Regulation 116 of the Conduct of Business Regulations empowers the Commission to extend the time for "sufficient reasons" and therefore, the delay in filing the Review Petition may be condoned.

9. According to the Review Petitioner, the Commission in its order dated 8.3.2019 in Petition No. 92/MP/2015 specified the methodology for computation of the stranded capacity and relinquishment charges payable by the long-term customers and directed the Review Petitioner to compute the same and to publish it on its website. Accordingly, the Review Petitioner undertook the computation of relinquishment charges for various generators including the Respondent and posted the same on its website on 20.5.2019. We find a merit in the submission of the Review Petitioner that only after the liability of the Respondent towards the relinquishment charges was crystallised in terms of order dated 8.3.2019 in Petition No. 92/MP/2015, the issue of interest on the refund of excess Bank Guarantee came up for consideration and consequently, Review Petitioner has filed the instant Review Petition, albeit with delay of 249 days. In this backdrop, we are of the considered view that the Review Petitioner has shown sufficient cause/reason for condoning of delay of 249 days in filing of Review Petition. Accordingly, we condone the delay of 249 days in filing of the present Review Petition.

10. The Review Petitioner has filed IA No. 77/2019 for exemption from filing the certified copy of the impugned order dated 3.12.2018. The Review Petitioner has submitted certified copy of the impugned order dated 3.12.2018 has been misplaced



in the office of the Review Petitioner during the course of deliberations and obtaining approvals for filing the Review Petition. Despite all efforts, the Petitioner has been unable to locate the same. Considering the difficulty projected by the Review Petitioner, we exempt the Review Petitioner from filing the certified copy of the impugned order.

11. The Review Petition is admitted. Issue notice to the Respondent. The Review Petitioner is directed to serve the copy of the Review Petition to the Respondent by 30.9.2019 and the Respondent is directed to file its reply to the Review Petition by 9.10.2019 with an advance copy to the Review Petitioner, who may file its rejoinder, if any, by 18.10.2019. The parties shall ensure the completion of the pleadings prior to the next date of hearing.

12. Accordingly, IAs No. 76/2019 and 77/2019 are disposed of.

13. The Review Petition shall be listed for hearing in due course for which separate notice will be issued.

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

sd/-
(P. K. Pujari)
Chairperson

