

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 38/MP/2019
alongwith
I.A. No. 20/2019**

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

Date of order: 15th of February, 2019

In the matter of

Petition under Section 79 (1) (f) of the Electricity Act, 2003 and invoking all other enabling power of the Hon'ble Central Electricity Regulatory Commission seeking directions against the Respondent Nos. 1 to 5 from illegally terminating the Power Purchase Agreement dated 8.8.2013 and quashing the illegal demand notice dated 16.1.2019 thereof.

**And
In the matter of**

M/s Lanco Babandh Power Limited
Plot No. 4, Software Units Layout HITEC City
Madhapur, Hyderabad- 500081...**Petitioner**

Vs.

- 1) Uttar Pradesh Power Corporation Limited
3rd Floor, Shakti Bhawan Extension
14-Ashok Marg, Lucknow-226002
- 2) Paschimanchal Vidyut Vitran Nigam Limited
Urja Bhawan, Victoria Park
MD Camp Office, Meerut-250001
- 3) Purvanchal Vidyut Vitran Nigam Limited
DLW, Bhikharipur
Varanasi-221004
- 4) Madhyanchal Vidyut Vitran Nigam Limited
4 A, Gokhale Marg
Lucknow-226001

- 5) Dakshinanchal Vidyut Vitran Nigam Limited
Urja Bhawan, NH-2
Sikadnra, Agra-282002
- 6) Andhra Bank
Special Corporate Finance Bank
6-3-648, 3rd Floor, Padmaja Landmark
Samajiguda, Hyderabad-500082
- 7) Indian Overseas Bank
Shop Nos. 1 & 2
Door No. 1-7-78/A&B
1-7-95 Po III, Legend Crystal
Mandalay Lane, P.G. Road
Secunderabad-500003
- 8) IDBI Bank
7th Floor, Trade Finance Department
WTC Complex, Cuffe Parade
Mumbai- 400005
- 9) Union Bank of India
Industrial Finance Branch
Union Bank Bhavan, First Floor
239 Vidhan Bhavan Marg
Nariman Point, Mumbai- 400021
- 10) Bank of Baroda
CFS Branch, Bank of Baroda Building
16 Parliament Street
New Delhi- 110001
- 11) Punjab National Bank
Large Corporate Branch, 83, U&I Building
Sector-29, Citi Centre, Gurgaon-122009
- 12) ICICI Bank Limited
ICICI Bank Tower, Bandra Kurla Complex
Mumbai- 400051

...Respondents

Parties Present:

- 1) Shri Gopal Jain, Senior Advocate for the Petitioner
- 2) Ms. Shikha Pandey, Advocate for the Petitioner
- 3) Shri Nishant Talwar, Advocate for the Petitioner

ORDER

The Petitioner, M/s Lanco Babandh Power Limited, has filed the present Petition under Section 79 (1) (f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for seeking directions against the Respondent Nos. 1 to 5 namely, the distribution companies of Uttar Pradesh to restrain them from terminating the PPA dated 8.8.2013 and for quashing the Termination Letter dated 16.1.2019 whereby the Respondent No. 2, Paschimanchal Vidyut Vitran Nigam Limited has raised demand of Rs. 823.42 crore from the Petitioner on account of delay in commissioning of the generating station of the Petitioner. The Petitioner further apprehends that the Respondent Nos. 1 to 5 may also invoke the Contract Performance Guarantee of Rs. 169.58 crore.

2. Accordingly, the Petitioner has made the following prayers in the petition:

“(a) Quashing and/ or setting aside the Termination Notice dated 16.1.2019 being arbitrary and illegal; and to restrain the Respondent Nos. 1 to 5, its servants and agents from taking any steps and/ or further steps pursuant thereto or as consequence thereof in any manner whatsoever;

(b) Quash and/ or set aside the demand of Rs. 823.42 raised by the Respondent No. 1 in the Termination Letter dated 6.1.2019 as being arbitrary and illegal;

(c) Mandatorily injuncting and restraining the Respondents from invoking and encashing the Bank Guarantee No. 100616IGPER0031, 200/361/2015, 200/304/2015, 200/305/2015, 160133IBGP00084, 100616IGPER0043, 49580IGL0009016, 4615ILG012713, 4615ILG012813, 4615ILG012913, 4615ILG013013 and 2158IGPER00413 amounting to total Rs. 169.58 crore submitted by the Petitioner.”

3. The Petitioner has also filed the I.A. No. 20 of 2019 in the present petition seeking the following reliefs:

“(a) Stay the operation of termination letter dated 16.1.2019 pending adjudication of the present petition;

(b) Interim order restraining the Respondents, their servants and agents from taking any steps/ further steps in furtherance of the Termination Letter dated 16.1.2019 in any manner whatsoever pending the adjudication of the present petition; and

(c) Interim order restraining the Respondent Nos. 1 to 5, their servants and agents from invoking or encashing the Bank Guarantee No. 100616IGPER0031, 200/361/2015, 200/304/2015, 200/305/2015, 160133IBGP00084, 100616IGPER0043, 49580IGL0009016, 4615ILG012713, 4615ILG012813, 4615ILG012913, 4615ILG013013 and 2158IGPER00413 amounting to total Rs. 169.58 crore pending adjudication of the present petition.”

4. In the I.A, the Petitioner has submitted that presently, the Petitioner has been subjected to the proceedings under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC'). The Resolution Process for the Petitioner has been initiated pursuant to the order of the National Company Law Tribunal (NCLT), Hyderabad Bench dated 29.8.2018 whereunder the Resolution Professional has been appointed. The Petitioner has further submitted that the order of the NCLT imposes moratorium under Section 14 of IBC, thereby restraining any proceedings inimical to or encumbering and/ or alienating any assets or interests of the Petitioner.

5. The Petitioner has submitted that its generating station is affected by force majeure events on account of delay in acquisition of balance land, lack of coal linkage, enactment of new environmental norms and delay in getting approval of project report under railway clearance. The Petitioner has submitted that despite the Petitioner being affected by various force majeure events, the Respondent No. 2 (on behalf of Respondent Nos. 2 to 5) has refused to extend scheduled delivery date of the project and has issued the notice dated 16.1.2019 for termination of the PPA.

6. Learned Senior Counsel appearing for the Petitioner submitted that issue of the Termination Letter and raising a demand of Rs. 823.42 crore as damages against the

Petitioner are in contravention of the moratorium under Section 14 of the IBC. Learned Senior Counsel further submitted that even though the matter is before the NCLT under the applicable provisions of IBC, this Commission is not denuded of its jurisdiction to entertain the Petition and grant interim protection to the Petitioner.

7. We have considered the submission of the Learned Senior Counsel for the Petitioner. Presently, the Petitioner is subject to the proceedings under the Insolvency and Bankruptcy Code, 2016. Pursuant to the order of the National Company Law Tribunal, Hyderabad Bench dated 29.8.2018, the Resolution Professional has been appointed. Further, the order of NCLT has imposed a moratorium on institution or combination of suits or proceedings under Section 14 of the IBC. Section 14 of the IBC is extracted as under:-

"14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

Hence, as per the Section 14 of the IBC, all proceedings before any Court or Tribunal, Arbitral Panel or any authority are prohibited during the period of moratorium under Section 14 of the IBC. Taking note of the submission of Learned Senior Counsel that moratorium has been imposed under Section 14 of the IBC on the basis of the order dated 29.8.2018 of NCLT, Hyderabad Bench, the Commission cannot entertain the present Petition under Section 79 (1) (f) of the Act.

8. Under Section 60 (5) of the IBC, a corporate person can approach NCLT for appropriate direction which is extracted as under:

“60 (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

- (a) any application or proceeding by or against the corporate debtor or corporate person;
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

In view of the above provisions, the Petitioner is at liberty to approach NCLT for appropriate interim direction in accordance with law.

9. The Petitioner has submitted that this Commission has jurisdiction to adjudicate the dispute under Section 79 (1) (f) of the Act as its generating station which is situated in Odisha and is supplying power to the distribution companies of Uttar Pradesh.

10. Since, we have decided that during the period of moratorium under Section 14 of the IBC, no proceeding can lie before this Commission, we are not expressing any view on the issue of the jurisdiction.

11. The Petitioner has not deposited the filing fee for the IA. The Petitioner is directed to deposit the filing fee of IA within one week of issuance of this order.

12. Petition No. 38/MP/2019 alongwith I.A. No. 20 of 2019 is disposed of in terms of the above.

sd/-
(I.S. Jha)
Member

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

sd/-
(P.K. Pujari)
Chairperson