

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 491/MP/2020 and IA No.61/2020

Subject : Petition seeking release of Bank Guarantee issued in favour of Respondent No.1 owing to frustration of the Long-Term Access Agreement dated 1.11.2012 between the Petitioner No.1 and Respondent No.1 in exercise of powers under Regulation 33A 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 read with Section 79(1)(c) of the Electricity Act, 2003.

Date of Hearing : 20.8.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Petitioners : SEW Nafra Power Corporation Limited (SNPCL) and Anr.

Respondents : Power Grid Corporation of India Limited (PGCIL) and Anr.

Parties present : Shri Gopal Jain, Sr. Advocate, SNPCL
Shri Sayan Ray, Advocate, SNPCL
Shri Samrat Sengupta, Advocate, SNPCL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Ashok Pal, PGCIL

Record of Proceedings

The matter was heard through video conferencing.

2. Learned senior counsel for the Petitioners submitted that the present Petition has been filed, *inter-alia*, seeking release of Bank Guarantee issued in favour of Respondent No.1, Power Grid Corporation of India Limited (PGCIL) owing to frustration of the Long-Term Access Agreement (LTAA) dated 1.11.2012 executed with PGCIL in exercise of power conferred under Regulation 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission System and related matters) Regulations, 2009 (in short, 'Connectivity Regulations'). Learned senior counsel further submitted as under:

(a) The present Petition is similar to the Petition No. 261/MP/2020 in the case of Dirang Energy Limited and Anr. v. PGCIL and Anr.



(b) In the present case, in terms of Memorandum of Agreement (MoA) dated 14.9.2007 entered into with Government of Arunachal Pradesh, the Petitioners were allotted Nafra Hydro Electric Project (in short 'the Project') for development on BOOT basis. In order to evacuate power from the Project, the Petitioners applied to PGCIL for grant of Long-Term Access and consequently entered into LTAA with PGCIL.

(c) However, on account of the various reasons beyond the control of the Petitioners, execution work of the Project could not be achieved. Regardless, Government of Arunachal Pradesh vide its Termination Notice dated 23.12.2019, had terminated MoA.

(d) The said Termination Notice was challenged by the Petitioners before the Hon'ble Guwahati High Court in W.P (C) 58/2018. Hon'ble Guwahati High Court vide its order dated 13.2.2020 had directed status-quo to be maintained in respect of the Termination Notice. Subsequently, Hon'ble Guwahati High Court vide its order dated 27.2.2020 has vacated the above status-quo order dated 13.2.2020.

(e) The Commission in its order dated 7.1.2020 in Petition No. 159/MP/2019 in the case of Toramba Renewable Energy India Private Limited v. PGCIL and Ors. has already granted similar relief to the aggrieved party therein on similar ground in exercise of its power conferred under Regulation 33A of the Connectivity Regulations.

3. Learned counsel for the Respondent, PGCIL accepted the notice and sought time to file reply to the Petition. She further submitted that the entire transmission system envisaged for evacuating the power from Hydro Electric Projects located in the Arunachal Pradesh has been de-notified.

4 After hearing the learned senior counsel for the Petitioners and the learned counsel for the Respondent, PGCIL, the Commission admitted the Petition and directed to issue notice to the Respondents.

5. Learned senior counsel for the Petitioners submitted that the Petitioners have also filed IA No.61/2020 seeking amendment to the Petition to bring on record the events subsequent to the filing of the Petition and to modify the prayer. Learned senior counsel for the Petitioners prayed to allow the said IA amending the Petition. Considering the submission of the learned senior counsel, the Commission directed to take on record the IA amending the Petition. Accordingly, the Commission disposed of IA No.61/2020.

6. The Commission directed the Petitioners to serve copy of the Petition on the Respondents immediately, if not already served. The Respondents were directed to file their reply, by 14.9.2020 with advance copy to the Petitioners who may file their rejoinder, if any, by 30.9.2020.

7. The Commission further directed PGCIL to submit the following information on affidavit on or before 14.9.2020:



- (a) Current status of Associated Transmission System identified in LTAA required for transmission of power from the Petitioner`s project; and
- (b) Whether Associated Transmission System has been awarded and if so, whether any investment has been made thereon?

8. Learned senior counsel for the Petitioners submitted that during the pendency of the present Petition, PGCIL may be restrained from invoking/ encashing the Bank Guarantee furnished by the Petitioners. Considering the request of the learned senior counsel, the Commission directed the Respondent, PGCIL not to encash the Bank Guarantee furnished by the Petitioners till the next date of hearing and the Petitioners were directed to keep the Bank Guarantee valid.

9. The Commission directed that the due date of filing of reply, rejoinder and additional details/ information should be strictly complied with.

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

By order of the Commission

**SD/-
(T.D. Pant)
Deputy Chief (Law)**

