

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 68/MP/2017

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S Jha, Member

Date of Order: 21st January, 2020

In the matter of:

Petition under sections 79(1)(c) read with 79(1)(f) of the Electricity Act, 2003, inter alia seeking setting aside/quashing of invocation & encashment by the Respondent of the Bank Guarantee furnished by the Petitioner in relation to the grant of LTA to the Petitioner qua its proposed Thermal Power Project in Singrauli District, Madhya Pradesh and consequent direction to the Respondent to reimburse the en-cashed amount along with interest to the Petitioner.

And

In the matter of

DB Power (Madhya Pradesh) Ltd.
3rd Floor, Naman Corporate Link,
Bandra-Kurla Complex,
Bandra East, Mumbai – 400 051.

.....Petitioner

Vs

Power Grid Corporation of India Limited
“Saudamini”, Plot No.2,
Sector 29, Gurgaon
Haryana – 122001.

.....Respondent

Parties Present:

For Petitioner : Shri Deepak Khurana, Advocate, DBPMPL
Shri Tejasv Anand, Advocate, DBPMPL

For Respondents : Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Divyanshu Bhatt, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL



ORDER

The instant Petition has been filed by the Petitioner, DB Power (Madhya Pradesh) Ltd. (hereinafter also referred to as 'DBPMPL') to set aside/ quash the invocation and encashment of the Bank Guarantee, furnished by the Petitioner to the respondent i.e. Power Grid Corporation of India Ltd. (hereinafter referred to as 'PGCIL'), and to reimburse the encashed amount along with interest to the Petitioner.

2. The Petitioner, DBPMPL proposed to set up a 2x660 MW Thermal Power Station in Singrauli District, Madhya Pradesh. In furtherance thereof, the Petitioner made an application to PGCIL dated 6.10.2010 for grant of connectivity to inter-State transmission system, and also an application dated 8.10.2010 for grant of Long-Term Access (LTA) for 1320 MW. Along with the said application, the Petitioner furnished a Bank Guarantee dated 18.10.2010 of ₹ 81,00,000/- (Rupees Eighty One Lacs) to PGCIL as stipulated under Regulation 12(4) 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 (hereinafter referred to as the Connectivity Regulations 2009) and provisions of the Detailed Procedure on grant of Connectivity, Long Term Access and Medium Term Open Access 2009 (hereinafter referred to as 'the Detailed Procedure').

3. The Petitioner has made following prayers in the instant petition:

a) *Pass an Order holding that the invocation and encashment of the Bank Guarantee of Rs 81,00,000/- furnished by the Petitioner in relation to the grant of LTA to the Petitioner qua its proposed Thermal Power Project in Singrauli District, Madhya Pradesh is illegal and wrongful; and*



b) Pass an order setting aside/ quashing the invocation & encashment by the Respondent of the Bank Guarantee of ` 81,00,000/- furnished by the Petitioner in relation to the grant of LTA to the Petitioner qua its proposed Thermal Power Project in Singrauli District, Madhya Pradesh and consequent direction to the Respondent to reimburse the encashed amount to the Petitioner along with interest @ 18% p.a. from the date of encashment till the date of payment;

Submissions by the Petitioner

4. The Petitioner has mainly submitted as under:

(a) With a view to set up the project, it started the process of acquiring requisite land for the Project; and applied for various approvals and clearances as required for the Project. Simultaneously, the Petitioner also placed order for Boiler Turbine Generator ('BTG') package on Bharat Heavy Electricals Ltd. and also achieved financial closure for its Unit-I of the Project.

(b) The Respondent, PGCIL granted Connectivity and Long-Term Access to the Petitioner vide its communication dated 5.8.2011. The grant was subject to, *inter alia*, signing of the requisite Connection Agreement/ BPTA (Bulk Power Transmission Agreement).

(c) The Petitioner received Environmental Clearance for 1st Unit of 660 MW on 9.9.2010. However, the Environmental Clearance for 2nd Unit of the Petitioner was kept on hold, for want of coal linkage from the Ministry of Coal, Government of India, which in turn was due to non-holding of the meeting of the Standing Linkage Committee. On account of the above, the Petitioner vide its communication dated



18.9.2012 requested PGCIL to extend the time period for signing of the LTA Agreement.

(d) In the meanwhile, the Petitioner had also addressed a communication dated 7.2.2012 to PGCIL requesting to have a new pooling station for evacuation of power by several upcoming IPPs at a location closer to the respective Power Project sites in Tehsil Deosar of District Singrauli (MP). It was pointed out that a new pooling station in/ around Deosar (Singrauli) would help to significantly reduce transmission losses and infrastructure costs.

(e) The Petitioner vide its letter dated 17.12.2013 informed PGCIL that in the Minutes of the 36th meeting of the Standing Committee on Power System Planning in Western Region (Item No. 17.2) held on 29.8.2013, establishment of new 765/400 kV Dhanwahi pooling station had been approved. Since Village Dhanwahi was nearer to the Petitioner's Power Plant, vide the said communication dated 17.12.2013, the Petitioner requested PGCIL to grant connectivity from the Dhanwahi pooling station. The Petitioner further requested for intimation from PGCIL of the expected commissioning date of Dhanwahi Pooling Station.

(f) Since the establishment of Dhanwahi pooling station was approved initially by Standing Committee on Power System Planning and later by Empowered Committee on Transmission, the Petitioner vide its communications dated 29.1.2014 and 4.3.2014 requested PGCIL to extend the time of signing the LTA Agreement till the time the change in pooling sub-station is approved by PGCIL.



(g) The Petitioner has submitted that vide its communication dated 27.5.2014, it informed PGCIL that on 23.5.2014, M/s MP Power Management Company Limited (MPPMCL) revised the Scheduled Commercial Operation Date (SCOD) of Unit 1 (660 MW) of the Petitioner to 1.10.2018, formal approval of which was still awaited.

(h) In addition to the revision of SCOD (formal approval of which was still awaited), the Petitioner vide its communication dated 30.10.2014 brought to the notice of PGCIL that 214 Coal Blocks, including the Coal Blocks allotted to MP State Mining Corporation (from which the Petitioner was also allocated certain quantity) had been cancelled by the Hon'ble Supreme Court of India vide judgment dated 24.9.2014 in Writ Petition (Crl.) No. 120 of 2012, due to which the Petitioner could not participate in the upcoming long term tenders for procurement of power by DISCOMs for tie-up of power to be generated from the Project and consequently could not undertake the construction of the Project as envisaged.

(i) The Petitioner vide its communication dated 30.10.2014 also brought to the notice of PGCIL that in the "19th Meeting of Western Region Constituents regarding connectivity and Long term Application of Western Region" held on 5.9.2014, it was informed that PGCIL was not coming up with Dhanwahi Pooling sub-station, and in view of which the Petitioner would have to rework and revise its plans for Connectivity.

(j) Since, the Dhanwahi Pooling sub-station was not being implemented by PGCIL, and connectivity to the Petitioner was being retained at the Vindhyachal Pooling Station, the Petitioner vide its communication dated 30.1.2015 informed PGCIL that as



per the Connectivity Regulations 2009, the Petitioner was not required to construct the dedicated transmission lines and that PGCIL & CEA shall take into account such generating stations for co-ordinated transmission lines. Accordingly, the Petitioner requested PGCIL to plan the evacuation scheme of the Petitioner, under co-ordinated transmission planning of WR.

(k) In the 20th meeting of WR Constituents on LTA held on 17.2.2015 and minutes thereof were circulated by the Respondent on 31.3.2015, it was decided by PGCIL to issue fresh LTA intimation to the Petitioner in view of revision in the Transmission System.

(l) PGCIL neither issued fresh LTA intimation to the Petitioner pursuant to the aforesaid meeting held on 17.2.2015 nor sent a copy of the draft LTA Agreement to the Petitioner. Therefore, the time period for signing the LTA Agreement by the Petitioner never commenced. Consequently, on this ground alone, the action of PGCIL of invoking and encashing the Bank Guarantee of the Petitioner is wrongful.

(m) The Petitioner had proceeded based on the proposition that it would be granted connectivity at the proposed Dhanwahi pooling sub-station. However, in view of the subsequent decision of PGCIL to not implement the said pooling sub-station, the LTA intimation issued to the Petitioner became inoperative, null and void. On this ground as well, the invocation and encashment of the Bank Guarantee by the Respondent is wrongful and illegal.



(n) After passing of order of de-allocation of coal blocks by the Hon'ble Supreme Court of India, Govt. of India had revisited the policy of coal distribution. There being no clarity on the availability of coal for the Project and lack of clarity from PGCIL on the location of pooling station, the Petitioner vide its communication dated 23.7.2015 requested PGCIL to keep its application for connectivity and LTA under abeyance. While so requesting, the Petitioner undertook to extend the Bank Guarantee from time to time.

(o) In the 21st LTA meeting held on 17.7.2015, minutes of which were circulated on 28.8.2015, PGCIL recorded that the Petitioner had not approached PGCIL for signing of LTA Agreement and therefore it was construed that the Petitioner was not interested in availing Connectivity and LTA. PGCIL closed the LTA application of the Petitioner on account of purported inability of the Petitioner to sign the Agreement. The Petitioner has submitted that this decision of PGCIL to close the Application of the Petitioner was totally fallacious and misconceived in as much as PGCIL itself had not issued the fresh LTA intimation as per the decision taken in the 19th meeting.

(p) PGCIL addressed a communication dated 16.9.2016 to the Petitioner's bankers for extension of Bank Guarantee. In line with the aforesaid request, the Petitioner extended the Bank Guarantee till 13.10.2017. PGCIL, thereafter, vide its communication dated 26.10.2016 requested for certain amendments in the Bank Guarantee. The Petitioner furnished the amended Bank Guarantee to PGCIL.



(q) PGCIL addressed a communication dated 9.12.2016 to the Petitioner's bank seeking to invoke and encash the Bank Guarantee furnished by the Petitioner. In pursuance of the aforesaid communication, PGCIL illegally and arbitrarily invoked and encashed the Bank Guarantee of the Petitioner in the last week of December 2016, behind the back of the Petitioner. PGCIL did not even inform the Petitioner that it was going to invoke the Bank Guarantee on account of non-signing of LTA agreement by the Petitioner and invoked the Bank Guarantee in a totally surreptitious manner.

(r) After invocation and encashment of the Bank Guarantee, the Respondent issued a revocation letter dated 23.2.2017 that was dispatched to the Petitioner only on 8.3.2017.

(s) Bank Guarantee is furnished under Regulation 12 of the Connectivity Regulations 2009; the relevant portion is reproduced hereunder:

“Regulation 12(4): The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.”

(t) In terms of the above regulation, Bank Guarantee can be encashed only if the LTA Application is withdrawn by the Applicant or the Long Term Access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required. None of the two events has happened in the present case. The regulation does not contemplate invocation of the Bank Guarantee



in case of delay in execution of the LTA agreement and, therefore, invocation and encashment of the Bank Guarantee by the Respondent is *ex-facie* contrary to the regulation and liable to be set aside by the Commission.

(u) As per the terms of the Bank Guarantee in question, the same can be invoked in case of failure/ delay in abiding various terms and conditions required by Connectivity Regulations 2009. Admittedly, there is no default in so far as the Regulations are concerned. Therefore, invocation and encashment of the Bank Guarantee by PGCIL is contrary to the Regulations and should be set aside.

(v) In terms of the 20th meeting of WR constituents on LTA, PGCIL was to issue a fresh grant letter for LTA to the Petitioner in view of re-working of transmission system planning. No such letter was issued to the Petitioner. In view thereof, the old LTA intimation letter itself became inoperative, null and void and PGCIL could not have insisted on execution of the LTA based on the old intimation letter and encash the Bank Guarantee on the pretext of non-execution of the Agreement. The action of PGCIL of invoking the Bank guarantee is liable to be set aside on this ground as well.

(w) PGCIL has placed its reliance upon the provisions of the Detailed Procedure that provides that the Bank Guarantee can be encashed in case the Applicant fails to sign the LTA Agreement with PGCIL within the time period stipulated in the intimation letter. Without prejudice to any of the contentions of the Petitioner, Detailed Procedure cannot add something more to what is contained in the Regulations. Therefore, PGCIL cannot refer to the Detailed Procedure, including its interpretation



thereof, if any, to invoke the Bank Guarantee on conditions, other than those stipulated in the Regulations. Therefore, the purported ground on which PGCIL has encashed the Bank Guarantee, namely, that the Petitioner has failed to sign the LTA agreement is not a ground specified in the Regulation and, therefore, the action of PGCIL is *ex-facie* contrary to the regulations and liable to be interfered with by the Commission.

(x) Neither the provisions of the Regulations nor of the Detailed Procedure for encashment of Bank Guarantee, can apply in the absence of any loss being suffered by PGCIL and established by it, as a consequence of non-signing of the LTA. The amount of Bank Guarantee furnished by the Petitioner is towards the liquidated damages to compensate the loss that PGCIL may suffer on account of non-signing of the LTA Agreement. In the absence of loss, it is impermissible in law for PGCIL to en-cash the Bank Guarantee of a huge amount of Rs. 81 lakh and unjustly enrich itself. The action of PGCIL is thus contrary to law and liable to be set aside by the Commission.

(y) In the invocation letter dated 9.12.2016, PGCIL has relied upon the order dated 7.9.2016 passed by the Commission in Petition No. 106/MP/2015 and has sought to give an impression that the Commission had directed PGCIL to encash the Bank Guarantee of the Petitioner. The interpretation placed by PGCIL on the Order dated 7.9.2016 of the Commission is wholly fallacious, illogical and absurd in as much as the Order dated 7.9.2016 does not and could not have given a liberty to PGCIL to encash Bank Guarantee of the Petitioner in view of the position that the



Petitioner was not a party to the proceedings wherein the said Order was passed. PGCIL's interpretation of the Order means that the Order was in violation of principles of natural justice and direction (if any) qua the Petitioner would be rendered a nullity in law.

(z) PGCIL has, although, referred to the Order dated 7.9.2016 of the Commission (supra) to contend that the Commission had granted liberty to PGCIL to cancel LTA of the Petitioner, the Petitioner has not been able to trace any cancellation letter issued by PGCIL in its records prior to invocation and encashment of the Bank Guarantee.

5. Reply to the Petition has been filed the Respondent, PGCIL vide affidavit dated 11.10.2017 and the Petitioner has filed rejoinder thereof.

Submissions by the Respondent (PGCIL)

6. The Respondent has mainly submitted as under:

(a) Encashment of the Petitioner's BG has been undertaken by CTU in terms of the Commission's directions in Petition No. 106/MP/2015 (NSL Nagapatnam Infrastructure Private Limited v. Power Grid Corporation of India Ltd.) dated 7.9.2016 and re-affirmed in the Commission's Order dated 8.3.2017 in Petition No. 96/MP/2015 (Chettinad Power Corporation Ltd. v. Power Grid Corporation of India Ltd.). Prior to the institution of the above proceedings before the Commission, CTU had issued final notices dated 5.3.2015 for signing of LTA Agreement/ BPTA within a period of 15 days to 11 LTA grantees including the Petitioner.



(b) The said notice was challenged by 2 LTA grantees, namely NSL Nagapatnam Infrastructure Private Limited and Chettinad Power Corporation Ltd in Petitions 106/MP/2015 and 96/MP/2015 respectively. During proceedings in Petition No. 96/MP/2015, the Commission sought details from CTU as to whether similar notices had also been served on other LTA grantees. These details were submitted by CTU vide affidavit dated 22.4.2015. The Commission had also proceeded to observe in ROP (Record of Proceedings) dated 24.3.2015 that the (respective) bank guarantees shall not be en-cashed subject to the LTA applicants suitably extending the validity of the bank guarantee. Pursuant to the above directions, PGCIL did not encash any of the Application BGs as is borne out by the CTU's Affidavit dated 25.4.2016 in the aforesaid Petition. In this way, the Application BGs of all the LTA grantees, whose details were submitted on affidavit by CTU were protected and governed by the proceedings before the Commission in the said petitions. CTU has also proceeded to deal with the respective Application BGs only as per the Commission's directions issued from time to time, culminating into the encashment of respective BGs as per the directions issued by the Commission in its Orders dated 7.9.2016 and 8.3.2017 in Petition Nos. 106/MP/2015 and 96/MP/2015 respectively.

(c) While issuing its final Orders in the said petitions, the Commission analyzed the provisions and rationale for encashment of Application BGs in detail. The Respondent has submitted that before proceeding to respond to the averments in the Petition, it is pertinent to note the following rationale provided by the



Commission for encashment of Application BG in case of non-signing of BPTA/ LTA Agreement by an LTA grantee in these two Orders of the Commission:

(d) The purpose of prescribing the opening of a bank guarantee is to bring seriousness to the (LTA) applications. Seriousness of the applications has been sought to be ensured by making the provisions in the Connectivity Regulations 2009 and Detailed Procedure that the bank guarantee would be en-cashed in certain circumstances. One of the enumerated conditions for encashment of application bank guarantee is non-signing of LTA Agreement within stipulated time.

(e) The Connectivity Regulations 2009 do not provide that if the applicant is affected by circumstances beyond its control or is prevented by force majeure event which prevents it from signing the LTA Agreement, its bank guarantee should not be encashed.

(f) As per the Detailed Procedure, failure of the LTA applicant to sign the LTA agreement with CTU is a ground for cancellation of LTA and encashment of bank guarantee. Since the Petitioner has failed to sign the LTA Agreement despite being allowed unusually long time by CTU, the LTA granted to it is liable to be cancelled and the bank guarantee is liable to be encashed.

(g) Not signing the LTA Agreement and not furnishing the bank guarantee for construction phase is a valid ground for cancellation of the grant of LTA and encashment of bank guarantee.



(h) The Connectivity Regulations 2009 prescribe a time period of 30 days for signing the LTA Agreement, failing which LTA should have been cancelled and bank guarantee should have been encashed without granting of any extensions in that regard.

i) There is no linkage between loss suffered by CTU and encashment of bank guarantee. The plain language of the Connectivity Regulations 2009 and Detailed Procedure clearly establish that failure of an LTA applicant to sign the LTA Agreement within stipulated period is sufficient basis for cancellation of the LTA and encashment of bank guarantee.

(j) Elucidating the above rationale, procedure and principles for encashment of application BG in terms of the provisions of the Connectivity Regulations 2009/ Detailed Procedure, the Commission observed that a list of other LTA grantees (including the Petitioner) was also placed on record to whom final notices had been issued for signing of the LTA Agreement and the Commission directed the Respondent/ CTU to deal with those cases in light of the directions in the above Orders dated 7.9.2016 and 8.3.2017 in Petitions No. 106/MP/2015 and 96/MP/2015 respectively.

(k) It was in compliance with these directions that the CTU proceeded to encash the application BGs of all the above LTA Grantees (including the Petitioner). Therefore, any contention of the Petitioner that the encashment of the Petitioner's



application BG was wrong, fallacious, erroneous or not supported by the Connectivity Regulations 2009/ Detailed Procedure/ CERC Orders or directions is denied.

(l) It is not the case of the Petitioner that the LTA was not granted at least 30 days prior to the encashment of the application BG. It is also not the case of the Petitioner that there was any fresh application by the Petitioner, resetting the clock for 30 days from the purported fresh LTA grant. Further, it is also not the case of the Petitioner that the terms of the LTA Agreement are mutually negotiable between the Petitioner and the Respondent.

(m) With regard to various contentions of the Petitioner, the Respondent has submitted as under:

a. Delay in coal linkage and environment clearance

i) The limited issue of signing of LTA Agreement is a regulatory requirement to be complied within 30 days of issue of grant letter by CTU. Therefore, there is a clear legislative and policy intent behind the relevant provisions of the Connectivity Regulations 2009/ Detailed Procedure that signing of the LTA Agreement ought not to be linked with any external event.

ii) Further, vide its judgment and order in Appeal No. 197 of 2014 (Jayaswal Neco Urja Limited v. Power Grid Corporation of India Ltd) dated 15.4.2015, the Appellate Tribunal for Electricity (APTEL) has held that-

"32. Since the Appellant did not sign the LTAA, the Bank Guarantee was encashed. The question is whether the alleged force majeure conditions furnishes a good ground for the Appellant to contend that the Bank Guarantee ought not to have



been encashed. The Connectivity Regulations do not anywhere state that if the applicant is able to prove the existence of any circumstances beyond its control or existence of any force majeure conditions, which prevented it from performing the contract, its Bank Guarantee should not be encashed. The Connectivity Regulations do not prohibit the LTA applicant from withdrawing its LTA application. The Connectivity Regulations provide that in the event the LTA applicant withdraws LTA application, it will not be required to sign the LTAA but it will have to forgo the Bank Guarantee furnished by it along with the LTA application. The Bank Guarantee can then be encashed by the nodal agency. The purpose behind this provision is correctly stated in the impugned order and we concur with the said reasoning. The purpose behind the requirement of furnishing Bank Guarantee and the provisions for its encashment if the LTAA is not signed is to ensure commitment of the project developer to use the transmission line for which LTA has been sought. It gives assurance to Respondent No.1 that the transmission line would not be stranded after it is built. If the LTA applicants are allowed to withdraw the LTA applications without any deterrent like encashment of Bank Guarantee, then the purpose behind the scheme of grant of LTOA will be frustrated. We, therefore, find encashment of the Appellants Bank Guarantee to be perfectly legal. "

iii) The Petitioner's case is squarely covered by the above judgment of APTEL.

b. Request for change in the connectivity point from Vindhyanchal pooling station to new pooling station to be established near its generating station.

i) The Petitioner has contended that subsequent to the LTA grant to the Petitioner on 5.8.2011, it had sought to change the point of Connectivity from the intimated Vindhyanchal pooling station to a proposed new pooling station near its generation project at Deosar/ Dhanwahi.

ii) Grant of LTA is a regulatory process which is notified after a consultative process in terms of the Connectivity Regulations 2009. The agreement required to be executed under FORMAT LTA 6B is also a statutory agreement, the terms of which are pre-determined and the same are not mutually negotiable between the signing parties. Accordingly, no valid justification on the above grounds for delay in execution of the LTA Agreement ought to be permitted.



iii) Admittedly, Connectivity and LTA was granted to the Petitioner vide intimation letter dated 5.8.2011. The grant was subject to the signing of BPTA. The Petitioner ought to have signed BPTA that the petitioner kept on postponing on one premise or the other and this was not germane to the grant of LTA.

iv) LTA and Connectivity grants are two separate products under the Connectivity Regulations 2009 with different applications, different onus or liability for implementation, different roles, rights & responsibilities for the parties involved and thus with different manifestations. The LTA grant is made in order to meet the requirement of evacuation of power through the ISTS and thus incorporates the system identification/ strengthening requirements in ISTS. The Connectivity grant is made in order to identify in what manner and at what ISTS node, the applicant is going to get connected to the ISTS. As such, the LTA grant is independent of any discussion or deliberations on the connectivity system.

v) In the present case, the Petitioner seeks to justify that non-signing of LTA Agreement was on account of time taken for discussions on the alternative connectivity sought by the Petitioner in different meetings. However, while not complying with regulatory provisions, the Petitioner has conveniently evaded making any substantial case for non-signing of the LTA Agreement, despite the fact that it had been reminded about it on several occasions. Moreover, the



Petitioner has no right to demand a change in point of connectivity as a ruse not to execute the LTA Agreement.

vi) The Petitioner has admitted that the alternate connectivity location suggested by it, and on account of which the Petitioner has been postponing the signing of agreement, was ultimately not found suitable. However, in case the Petitioner had signed the LTA Agreement on time, then also, its request for change in the connectivity point or changes in the LTA system could have been considered by CTU based on the other developments in ISTS, and if found necessary amendment to the Annexures of the BPTA could have been carried out. Therefore, the contentions that the Agreement was not signed on these bases is against the spirit of the Connectivity Regulations 2009 and hence cannot be accepted.

vii) A bare perusal of the Minutes of LTA Meeting held on 17.07.2015 reveals that CTU had only recorded the conduct of the Petitioner with regard to non-signing of LTA Agreement and had recorded that if such lackluster attitude is continued, its application shall have to be closed. However, in light of the Commission's directions vide ROP dated 24.03.2015 in Petition No. 96/MP/2015, no coercive action in this regard was formally taken by the Respondent.

c. Change in scheduled COD date by MPPMCL: The Petitioner has contended that there was change of SCOD by MPPMCL owing to which the Petitioner was postponing the signing of LTA Agreement till there could have a formal clarity



regarding the modified SCOD. In this regard, the Respondent has submitted that change in SCOD was a much later development that took place in the year 2014 while grant of LTA had been made in 2011. Moreover, there is no provision in the Connectivity Regulations 2009/ Detailed Procedure, under which the Petitioner could claim extension on this ground.

d. Inability in participating for long term tenders on account of coal block deallocation

i) The Petitioner has contended that vide its letter dated 30.10.2014, it had brought to the notice of CTU that on account of coal block de-allocation, it was not in a position to continue with commissioning of its generating station and the Petitioner has argued that coal block de-allocation was another valid justification for non-signing of LTA Agreement. In this regard, the Respondent has submitted that the Hon'ble Supreme Court's Order regarding coal block de-allocation was a development in the year 2014, whereas the LTA had been granted in the year 2011, and as such this development cannot be a ground to justify non-signing of LTA Agreement.

ii) Further, through various Orders, the Commission has declined to treat coal-block de-allocation as a 'force majeure' condition since the fundamental basis of the coal block allocations were deemed to be void ab initio. In the present case, in absence of an agreement, the Petitioner's constructive plea of 'force majeure' is not even admissible.

e. Non-issuance of revised LTA intimation as decided in 20th LTA WR Meeting



i) The Petitioner has erroneously contended that no issuance of 'fresh LTA intimation' was made in its favour reflecting modifications against the previous LTA intimation.

ii) The Petitioner had never filed any fresh LTA application. Accordingly, there was no question of issuance of fresh LTA intimation. To the contrary, what was agreed in the 20th LTA Meeting of WR was only to issue a 'revised LTA intimation' as is clearly brought out by the Minutes of Meeting dated 17.02.2015.

iii) It is standard as well as commonplace practice that certain technical details are modified subsequent to grant of LTA and even the terms of LTA Agreement are modified based on the mid-course corrections carried out by the Respondent in consultation with the respective stakeholders. In such circumstances, the necessary changes are reflected by signing revised annexures to the LTA Agreement.

iv) In the 20th LTA Meeting of WR, the Petitioner came up with a fresh request for change in the implementation agency of the connectivity transmission system. Even at such a belated stage (i.e. February 2015) the above request was considered by the Respondent with the rider that the Petitioner would sign the requisite 'Transmission Agreement' so that the transmission works could be taken up for implementation under a coordinated transmission plan.



v) However, the 21st LTA Meeting of WR held on 17.07.2015 noted that the Petitioner had not approached the Respondent for signing of the said Transmission Agreement. In this meeting, the representative of the Petitioner again sought time to convey their willingness to execute the Transmission Agreement. However, the Petitioner only returned with letter dated 23.07.2015 seeking another ad infinitum extension.

7. The Respondent, PGCIL has vide its additional submission dated 11.11.2019 has reiterated the submissions which are not repeated for sake of brevity. PGCIL in its additional submission/information has submitted as under:

a) Invocation of Application BG was prior to any contract being entered into between the parties. The existence of a contract between parties is a pre-requisite for the application of Section 74 of the Indian Contract Act, 1872 ("Contract Act"). Since there is no contract between the parties in this case, Section 74 of the Contract Act is inapplicable. Therefore, suffering any loss by PGCIL is not required to be proved for encashment of Application BG. Moreover, invocation of Application BG was in accordance with provisions of the Connectivity Regulations 2009. In this regard, reference is apposite to Hon'ble Supreme Court's Judgment in Kailash Nath Associates v. Delhi Development Authority and Anr. [2015 4 SCC 136].

b) Further, in such cases where there is no contract, validity of invocation of a bank guarantee is to be judged in terms of the bank guarantee itself. In this regard, reference is apposite to National Highway Authority of India v. Ganga Enterprises and Anr.



c) Further, forfeiture of earnest money deposit is in any case not in nature of penalty. In this regard, reference is apposite to R.K. Construction Company v. State of Gujarat and Ors. [(2013) 3 BC 658].

d) Further, the conditions such as deposit of earnest money or a bank guarantee in a public auction are in place to ensure that only genuine parties bid. In absence of such conditions, persons who do not have the capacity or have no intention of entering into the contract will make bids. Pertinently, the very purpose of such a condition in the offer/ bid will be defeated if forfeiture is not permitted when the offer is withdrawn in violation of the agreement. In this regard, reference is apposite to State of Haryana and Ors. v. Malik Traders [(2011) 13 SCC 200].

Further submissions by the Petitioner

8. The Petitioner has reiterated its submissions vide affidavit dated 11.11.2019 which are not repeated for sake of brevity. The Petitioner in its additional information has mainly submitted as under:

a. Re: No Loss to PGCIL & therefore encashment of BG is illegal

i) The provision for encashment of the Bank Guarantee provided in the Regulation 12(5) of the Connectivity Regulations 2009 and Para 23.5 of the Detailed Procedure is a provision for Liquidated Damages, which PGCIL can claim if the LTA Applicant does not come forward to sign the BPTA or in other words, the LTA Applicant is in breach of the Contract. Under the provisions of the Contract Act, 1872, Liquidated Damages can be claimed and recovered only if there is loss to one party



on account of breach of contract by the other party & not otherwise. Thus, loss is a *sine qua non* for a claim of Liquidated Damages & law in this regard is well settled. In this regard, the Petitioner has placed reliance on the following judgments:

- (i). Vishal Engineers & Builders v. Indian Oil Corporation- Delhi High Court (DB)- 2012(1) ARBLR 253 (Delhi)
- (ii) Kailash Nath Associates v. Delhi Development Authority- (2015) 4 SCC 136

ii) Perusal of the judgment and order dated 15.4.2015 in Appeal No. 197 of 2014 (Jayaswal Neco Urja Limited v. Power Grid Corporation of India Ltd.) of APTEL, reveals that the issue raised by the Petitioner i.e. Bank Guarantee cannot be encashed in the absence of any loss to PGCIL, has not been dealt with at all by APTEL and reliance placed by PGCIL on the aforesaid judgment is clearly misconceived. Therefore, the issue raised by the Petitioner in the present Petition requires to be considered by the Commission.

iii) In the Order dated 7.9.2016 in Petition No. 106/MP/2015, the Commission held as under:

“23. The petitioner has submitted that CTU has neither claimed any loss nor has been able to quantify or prove or establish any loss for which compensation is payable. According to the petitioner, unless and until CTU is in a position to prove any loss suffered, CTU is not entitled to encash the bank guarantee. On perusal of the provisions of the Regulation 12(5) and Para 23.5 of the Detailed Procedure, we note that there is no linkage between loss suffered by CTU and encashment of bank guarantee. The plain language of the Connectivity Regulations and Detailed Procedure clearly establish that failure of an LTA applicant to sign the LTA Agreement within stipulated period is the sufficient basis for cancellation of the LTA and encashment of bank guarantee. Therefore, we reject the contention of the petitioner that only when the compensation for the loss suffered by CTU is payable, then only bank guarantee can be encashed.”



iv) In the aforesaid Order as well, the Commission has not decided the issue of tenability of claim of damages by encashment of BG in the absence of any loss. The Commission's finding that 'On perusal of the provisions of the Regulations 12(5) and Para 23.5 of the Detailed Procedure, we note that there is no linkage between loss suffered by CTU and encashment of bank guarantee' does not mean that requirement of at least some loss as stipulated in law laid down in the judgments (supra) is dispensed with or cease to become applicable merely because the Connectivity Regulations 2009 or Detailed Procedure do not specifically state so. The Provisions of the Connectivity Regulations 2009 are to be interpreted in accordance with the extant law, which in the present case, is Section 74 of the Contract Act, 1872, as interpreted in the aforesaid judgments of the Hon'ble Delhi High Court and Hon'ble Supreme Court (supra). PGCIL's argument (in the hearing) that nothing beyond the regulations would apply or can be considered and even provisions of Section 74 of the Indian Contract Act, 1872 are excluded is totally fallacious and misconceived in law. The Regulations do not have a non-obstante clause stating that it would apply notwithstanding the provisions of Section 74 of the Indian Contract Act or judgments of the Hon'ble Courts (supra). There is, therefore, no need to challenge the Regulations, as canvassed by PGCIL.

b. Re: Encashment of BG on facts is also illegal and invalid

i) It was decided in 20th meeting of WR held on 17.2.2015 that the PGCIL shall issue a fresh LTA intimation to the Petitioner in view of revision in the Transmission System. The relevant extract of the said Minutes is reproduced as under:



“Further, Transmission system strengthening for LTA indicated in LTA intimation for DBMPL is as below:

*.....
Accordingly, it was decided to issue the revised LTA intimation. DBMPL may sign the LTA agreement as per the modified intimation in-line with regulation/detailed procedure.”*

It is an admitted position that no such revised intimation was ever sent to the Petitioner.

9. The instant Petition was scheduled for hearing on 6.3.2019, 16.5.2019, 20.8.2019 and got adjourned multiple times on the request of the parties. It was finally heard on 29.10.2019.

Analysis and Decisions

10. The Petitioner made applications to PGCIL dated 6.10.2010 and 8.10.2010 for grant of Connectivity and Long Term Access for its 1320 MW generation project. The Petitioner also furnished a Bank Guarantee dated 18.10.2010 of ₹ 81,00,000/- to PGCIL as stipulated under Clause 12(4) of the Connectivity Regulations 2009. Accordingly, PGCIL granted Connectivity and Long Term Access to the Petitioner vide its communication dated 5.8.2011, subject to signing of the requisite Connection Agreement/ BPTA.

11. As per the LTA granted to the Petitioner dated 5.8.2011, the Petitioner was to construct a dedicated line from its power project till Vindhyachal P.S. of PGCIL. However, the Petitioner vide letters dated 7.2.2012, 1.10.2013 and 27.11.2013 requested for change



in the connectivity point from Vindhyachal P.S. to some other Pooling Station nearer to the generating station of the Petitioner.

12. The Petitioner vide letters dated 18.9.2012, 29.1.2014, 4.3.2014, 27.5.2014 and 3.11.2014, addressed to PGCIL/ CTU, requested for time extension for signing of LTA Agreement claiming occurrence of various force majeure events.

13. Vide 36th meeting of the Standing Committee on Power System Planning in Western Region held on 29.08.2013, establishment of a new 765/400 kV Dhanwahi pooling station had been proposed and accordingly, the Petitioner requested for allowing its project's connectivity at Dhanwahi pooling station. Along with the aforementioned request, the Petitioner prayed for time extension in signing of the LTA Agreement with the CTU.

14. Vide minutes of 19th meeting of WR constituents regarding Connectivity/ Open Access held on 5.9.2014, the Petitioner was informed that the proposed Dhanwahi Pooling Station is not being implemented and the connectivity of the Petitioner is retained at Vindhyachal pooling Station itself. However, the Petitioner requested for time extensions in signing of the required agreements with the CTU claiming occurrence of various uncontrollable events during the execution of the Petitioner's project.

15. Meanwhile, the Petitioner vide letter dated 30.01.2015 requested CTU to plan the evacuation scheme for the Petitioner's project under coordinated transmission planning of WR. This is due to the fact that Petitioner is not required to construct the dedicated transmission line to the point of connection as per Regulation 8(8) of the Connectivity



Regulation 2009. Vide minutes of 20th meeting of WR constituents regarding Connectivity/ Open Access dated 17.2.2015, it was decided to issue revised LTA intimation to the Petitioner.

16. Vide Notice dated 05.03.2015, final opportunity was given to the Petitioner to sign the LTA Agreement with the CTU within 15 days. Vide minutes of 21st meeting of the WR constituents dated 28.8.2015 regarding Connectivity/ Open Access held on 17.7.2015, it was agreed to cancel/ withdraw the granted LTA of the Petitioner as it was observed that the Petitioner was not interested in signing the LTA Agreement.

17. The Petitioner in reference to the aforementioned 21st meeting of the WR constituents forwarded a letter dated 23.7.2015 to the CTU describing the difficulty faced by Petitioner in signing the required LTA Agreement with CTU. The Petitioner also requested for keeping its LTA application in abeyance till further intimation.

18. CTU has submitted that keeping in view Commission's directions in order dated 7.9.2016 in Petition No. 106/MP/2015 and Order dated 8.3.2017 in Petition No. 96/MP/2015, CTU vide invocation letter dated 9.12.2016 addressed to Petitioner's RBL Bank encashed the Bank Guarantee and vide revocation letter dated 23.2.2017 to the Petitioner cancelled the LTA granted to the Petitioner.

19. The Petitioner has submitted that as per Regulation 12(5) of the Connectivity Regulations 2009, the Bank Guarantee can be encashed only if the LTA application is withdrawn by the Applicant or the long term access rights are relinquished prior to the operationalization of such rights, when augmentation of transmission system is not



required. None of the two events has happened in the present case. Therefore, as per the Petitioner, the Connectivity Regulations 2009 does not contemplate invocation of the bank guarantee in case of delay in execution of the LTA agreement. However, Detailed Procedure provides that the BG can be encashed in case the Applicant fails to sign the LTA Agreement with PGCIL within the time period stipulated in the intimation letter.

20. The Petitioner has also submitted that Detailed Procedure, in any case, cannot add a substantial ground for invoking BG, which is conspicuous by its absence in the Connectivity Regulations 2009.

21. We have considered the submissions of the Petitioner and the Respondent. The Petitioner has claimed that BG cannot be encashed in the instant case and that the Connectivity Regulations 2009 does not permit such encashment. Regulation 12 of the Connectivity Regulations 2009 deals with application for long term access. The said regulation is extracted as under:

“12. Application for long-term access

.....

(3) The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.

(4) The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.

(6) The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure. “



Thus, as per the Connectivity Regulations 2009, application for long term access needs to be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted in favour of the nodal agency and that the bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.

22. Clause 23(5) of the Detailed Procedure provides the following:

“(i) if the application is withdrawn by the applicant; or (ii) if the long-term access rights are relinquished prior to the operationalization of such long-term access when augmentation of transmission system is not required; or (iii) If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter;(iv) if the applicant fails to revalidate the earlier furnished BG at least 30 days prior to its expiry; and (v) If the applicant fails to firm up beneficiaries in terms of clause 22.7, 3 years prior to intended date of Long Term Access.)”

23. The Commission, vide order dated 7.9.2016 in Petition No. 106/MP/2015, has observed the following regarding encashment of Bank Guarantee:

“20. According to learned counsel for the petitioner, reliance placed by CTU on the decision of the Hon`ble Appellate Tribunal for Electricity in Appeal No. 197 of 2014 (Jayaswal Neco Urja Limited Vs. Power Grid Corporation of India Limited) is misplaced as the question involved in the present petition is whether CTU is entitled to appropriate the amount of bank guarantee in the absence of any proof of loss or damages suffered and this question was never an issue before Appellate Tribunal. We are unable to agree with the above contention. In Jayaswal Neco case, the alleged force majeure events were uncertainties in allocation of coal block and non-grant of forest clearance whereas in the present case, the alleged force majeure events relate to denial of CRZ and CFE clearance. Further, in both cases the issue of encashment of bank guarantee on account of non-signing of LTA Agreement is involved. In our view, the case of the petitioner is squarely covered under the judgement of the Appellate Tribunal in Appeal No.197 of 2014.

xxxxx
xxxxx



23. The petitioner has submitted that CTU has neither claimed any loss nor has been able to quantify or prove or establish any loss for which compensation is payable. According to the petitioner, unless and until CTU is in a position to prove any loss suffered, CTU is not entitled to encash the bank guarantee. On perusal of the provisions of the Regulation 12(5) and Para 23.5 of the Detailed Procedure, we note that there is no linkage between loss suffered by CTU and encashment of bank guarantee. The plain language of the Connectivity Regulations and Detailed Procedure clearly establish that failure of an LTA applicant to sign the LTA Agreement within stipulated period is the sufficient basis for cancellation of the LTA and encashment of bank guarantee. Therefore, we reject the contention of the petitioner that only when the compensation for the loss suffered by CTU is payable, then only bank guarantee can be encashed.”

24. The above observations of the Commission clearly establishes that there is no linkage between the loss suffered by CTU and the encashment of the BG. Accordingly, we reject the contention of the Petitioner that CTU is not entitled to encash the bank guarantee in the absence of any proof of loss or damages suffered by the CTU. As regards contention of the Petitioner that Detailed Procedure is at variance with Connectivity Regulations 2009, we are of the view that this cannot be done through a Petition.

25. We now proceed to deal with the instant case. Chronology of events of the instant case is as under:

Sr. No.	Brief of Matter	Date of Petitioner's Letter/ meeting date	Remarks
1	Grant of LTA	5.8.2011	LTA Agreement need to be signed
2	Request for change in P.S	7.2.2012	-
3	Request for change in P.S	27.11.2013	-
4	Request for time extension	29.1.2014	-
5	19th meeting of WR constituents regarding Connectivity/ Open Access	5.9.2014	Dhanwahi Substation is not being implemented by CTU
6	20 th meeting of WR constituents regarding Connectivity/ Open Access	17.2.2015	Revised LTA intimation to be issued by CTU.



7	Final Notice was forwarded to the Petitioner	5.3.2015	Revised LTA intimation to be issued by CTU.
8	21 st meeting of the WR constituents regarding Connectivity/ Open Access	17.7.2015	CTU has recorded that the Petitioner is not interested to sign the Agreement
9	Abeyance letter	23.7.2015	
10	Commission's order in Petition No. 106/MP/2015	7.9.2016	
11	Encashed the BG	9.12.2016	
12	Revocation Letter forwarded by CTU to Petitioner	23.2.2017	
13	Petition filed with Commission	March' 2017	

26. The minutes of 20th meeting of WR constituents regarding Connectivity/ Open Access dated 17.2.2015, are as follows:

“17.0 Request of DB Power M.P. Ltd. for change in implementation agency for Connectivity transmission system.

CTU informed that M/s DB Power M.P. Ltd. (DBMPL) is implementing a 2x660MW thermal generation project near Vindhyachal in Madhya Pradesh. DBMPL had applied for Connectivity and LTA to CTU in October, 2010. In the 14th Open Access meeting held on 13.05.2011, Connectivity and LTA was granted to M/s DB Power (MP) Ltd. for 810MW vide letter dated 05.08.2011. The transmission system for Connectivity is given as below:

- *DBPMPL TPS - Vindhyachal Pooling station 400kV D/c (Quad) line*

The Connectivity transmission line was agreed to be implemented by the generation developer.

Subsequently, M/s DBMPL, requested for change in point of connectivity from Vindhyachal Pooling station to Dhanwahi Pooling station. The proposal was discussed in the 19th Open access meeting held on 5.09.2014 in Mumbai. In the meeting, it was informed to M/s DB Power Ltd. that proposal of Dhanwahi Pooling station has been dropped.

Now, DBMPL vide letter dated 30.01.2015, has requested that the connectivity line which was to be implemented by the generation developer (DBPMPL) may be taken up for implementation under the coordinated transmission planning.

In this regard, it may be mentioned that LTA has been granted long back and DBMPL is yet to sign the LTA Agreement. If the immediate evacuation system is to be implemented through TBCB, the applicant has to sign necessary agreements in line with CERC regulations. Therefore, DBMPL shall have to sign “Transmission Agreement” for the connectivity line strictly following time line as per regulation I detailed procedure, failing which connectivity application shall be closed. The representative from M/S DBMPL stated



that they will revert back to CTU shortly.

Further, Transmission system strengthening for LTA indicated in LTA intimation for DBMPL is as below:

1. Transmission System strengthening in WR (to be shared with other IPPs)
 - Vindhyachal Pooling station - Jabalpur Pooling station 765kV D/c line (to be implemented through TBCB)
 - Jabalpur Pooling station - Bina 765kV S/c line (3rd) (under implementation through pvt. Sector)
2. Transmission System strengthening in WR-NR tr. corridor (to be shared with other IPPs)
 - Jabalpur Pooling station - Orai 765kV D/c line (one ckt)
 - Orai - Bulandshahar - Sonipat 765kV D/c line (one ckt)
 - Sonipat - Kaithal 400kV D/c (Quad) line.

In this regard, it is to mention that the transmission system mentioned at Sl. 2 above has been revised in 31st I 34th SCM in Northern Region dated 02.01.2013 I 08.08.2014 and noted in 37th SCM in Western Region dated 05.09.2014. The revised system is as below:

- Jabalpur Pooling station - Orai (GIS) 765kV D/c line
- Orai (GIS) - Aligarh (GIS) 765kV D/c line
- Orai (GIS) - Orai (UPPTCL) 400kV D/c (Quad) line
- LILO of one ckt of Satna - Gwalior 765kV 2xS/c at Orai (GIS) S/s
- LILO of Agra-Meerut 765kV S/c at Aligarh (GIS)
- LILO of Kanpur - Jhatikara 765kV S/c at Aligarh (GIS)
- Establishment of 2x1000MVA, 765/400kV GIS Substation at Orai
- Establishment of 765kV GIS Substation at Aligarh

Accordingly, it was decided to issue the revised LTA intimation. DBMPL may sign the LTA agreement as per the modified intimation in-line with regulation / detailed procedure.”

27. Thus, PGCIL/CTU was required to issue revised LTA intimation to the Petitioner and accordingly, the Petitioner was to sign the LTA Agreement as per modified intimation. We observe that CTU did not issue any such revised intimation. Once the CTU agreed to issue revised LTA intimation, in our view the status of the Petitioner changed from ‘LTA granted’ to ‘LTA application under process’.



28. The issue of LTA of the Petitioner was again discussed in 21st meeting of the WR constituents regarding Connectivity/ Open Access held on 17.7.2015, whereby following is recorded:

“8.0. Request of DB Power M.P. Ltd. for change in implementation agency for Connectivity transmission system

CTU stated that M/s DB Power M.P. Ltd. (DBPMPL) is implementing a 2x660 MW thermal generation project near Vindhyachal in Madhya Pradesh. DBPMPL had applied for Connectivity and LTA to CTU in October, 2010. In the 14th Open Access meeting held on 13.05.2011, Connectivity and LTA was granted to M/s DBPMPL for 810MW vide letter dated 05.08.2011.

The transmission system for Connectivity is given as below:

- *DBPMPL TPS - Vindhyachal Pooling station 400kV D/c (Quad) line*

CTU informed that the Connectivity transmission line was agreed to be implemented by the generation developer. Subsequently, M/s DBPMPL, requested for change in point of connectivity from Vindhyachal Pooling station to Dhanwahi Pooling station. The proposal was discussed in the 19th Open access meeting held on 5.09.2014 in Mumbai. In the meeting, it was informed to DBMPL that proposal of Dhanwahi Pooling station has been dropped. Further, DBMPL vide letter dated 30.01.2015 requested that the connectivity line which was to be implemented by the generation developer (DBPMPL) may be taken up for implementation under the coordinated transmission planning.

In the 20th meeting of WR constituents regarding LTA and connectivity, it was pointed out by CTU that LTA had been granted long back and DBPMPL is yet to sign the LTA Agreement. If immediate evacuation system is to be implemented through TBCB, the applicant will have to sign necessary agreements in line with CERC regulations. Therefore, DBPMPL shall have to sign “Transmission Agreement” for the connectivity line strictly following time line as per regulation / detailed procedure, failing which connectivity application shall be closed.

CTU informed that M/s DBPMPL has not yet approached CTU for signing of Transmission Agreement, and it is understood that DBPMPL is not interested in availing Connectivity & LTA. In view of the same, CTU proposed that the Connectivity & LTA granted earlier may be withdrawn / cancelled.

The applicant informed that they require 24 hrs. time to convey their final decision. CTU stated that in case of no response from M/s DBPMPL the subject LTA and Connectivity application shall be closed. Subsequently, the applicant vide letter dated 23-07-2015 informed about the problems being faced at their end and requested CTU to appreciate the genuine difficulty in signing of the agreements and consider keeping the application in abeyance till further intimation from them. A copy of the letter is attached as Annexure-5. In view of deliberations held in the meeting and inability of the applicant to sign the agreement, the application is closed.”



29. We observe that the Petitioner forwarded a letter dated 23.7.2015 to the CTU requesting to keep its LTA application in abeyance till further intimation. The relevant portion of the said letter is as follows:

*“To
Chief Operating Officer (Central Transmission Utility),
Power Grid Corporation of India Limited,
Saudamini Plot No. 2, Sector-29,
Gurgaon, Haryana -122001*

Sub: Regarding signing of Connectivity and LT A Agreement

Dear Sir,

This is with reference to the 21st meeting of Western Region constituents regarding Connectivity & Long term Access Applications wherein it was proposed that Connectivity & LIA as granted earlier to D B Power (Madhya Pradesh) shall be withdrawn/ cancelled.

In this regard, we would like to invite your attention to some of the reasons responsible for this unfortunate delay in signing of the relevant agreements.

*Xxxxxx
Xxxxxx*

Given the overall scenario and various circumstances which are completely beyond our control, at this stage, we are not able to commit any Scheduled Start Date for signing of Connectivity and / or the target region of beneficiary for signing of Long term Access Applications. In view of the same, we kindly request you to keep our application in abeyance for the time being and defer signing of connectivity and LTA agreement till further intimation from us. Needless to say, we undertake to extend the bank guarantee from time to time.

We hope you will appreciate the genuine difficulty in signing of the agreements and consider our sincere request to keep our application in abeyance till further intimation from us

Thanking You.

*For D B Power (Madhya Pradesh) Limited,
Sd/-
Authorized Signatory”*



30. As the status of the Petitioner was 'LTA application under process', pursuant to discussion of the 21st meeting of WR constitutes held on 17.7.2015, the Petitioner vide letter dated 23.7.2015 requested CTU to keep the application in abeyance.

31. However, in the instant case, we note that though CTU was to issue revised LTA intimation and the Petitioner had requested CTU to put its LTA application under abeyance, PGCIL/ CTU encashed the Bank Guarantee.

32. The PGCIL has placed its reliance on Commission's Order dated 7.9.2016 in Petition No. 106/MP/2015. The relevant extract of the order is as follows:

"25. In the light of the above discussion, the prayers of the petitioner are disposed of as under: (a) In the first prayer, the petitioner has sought a declaration that the delay in the execution of the project is on account of force majeure conditions and has sought directions to CTU to keep the Long Term Access granted by it in abeyance and grant extension of time for execution of the LTA till the grant of CFE and consequent financial closure and establishment of the project by the petitioner. Under the provisions of the Connectivity Regulations, there is connection between the force majeure conditions suffered by the petitioner and cancellation of LTA and encashment of bank guarantee on account of failure to sign the LTA Agreement. Therefore, there is no requirement to go into the question whether the delay in execution of the petitioner's project is on account of force majeure or not. As regards the prayer for keeping the long term access granted to the petitioner in abeyance and grant extension of time till the grant of CFE, financial closure and execution of the project, we are of the view that the petitioner has been granted sufficient time by CTU for signing the LTA Agreement. It is neither permissible under the Connectivity Regulations and the Detailed Procedure nor in the interest of planning and development of the inter-State transmission by CTU to grant extension of time ad infinitum to the petitioner to sign the LTA Agreement. Accordingly the prayer is rejected. (b) In the second prayer, the petitioner has sought a direction to restrain CTU from encashing the bank guarantee. In the light of the discussion in this order, we decline to restrain CTU to encash the bank guarantee. CTU shall be at liberty to take necessary action to cancel the LTA granted to the petitioner and encash the bank guarantee in terms of the Connectivity Regulations and Detailed Procedure.

.....

26. During the course of the proceedings of the present petition, CTU had placed on record a list of eleven generation project developers who have not signed the LTA Agreement. CTU has issued notices to all the project developers for entering into LTA Agreement failing which their LTA will be cancelled and bank guarantee will be forfeited. CTU has sought guidance of the Commission for dealing with those cases. We direct CTU to deal with those cases in the light of directions in this order."



33. In our view, the treatment of Petitioner's case will be covered under Clause 23.16 of the Detailed Procedure made under of the Connectivity Regulations, 2009.

34. The Detailed Procedure was amended on 17.2.2016; the Para 23.16 of the amended Detailed Procedure provides as follows:

"23.16 CTU shall not hold any LTA application in abeyance and process the applications within the timeline prescribed in Regulation 7 of the Connectivity Regulations. If any LTA applicant requests CTU in writing for deferment of consideration of its applications or does not participate in the LTA meetings despite being invited by CTU, the application shall not be further processed. CTU shall in such cases close the applications and return the bank guarantee.

In respect of applications which are already pending with CTU on request of the applicants or for their non-participation in the LTA meetings, CTU may give a notice of 15 days in writing to the concerned LTA applicants about the closure of the application. If any applicant is willing to pursue his application the same shall be processed in the next LTA meeting. If the applicant seeks further deferment of extension of application or does not respond to the notice, CTU may proceed to close the applications and return the bank guarantee"

35. Further, vide order dated 14.2.2019 in Petition No. 166/MP/2018 the following has been observed:

"23. The Commission thereafter issued amendment to the Detailed Procedure dated 17.2.2016 and added Para 23.16 to deal with the situation wherein, the LTA application has been kept in abeyance. The relevant portions of the Para 23.16 is extracted as under:

"23.16 CTU shall not hold any LTA application in abeyance and process the applications within the timeline prescribed in Regulation 7 of the Connectivity Regulations. If any LTA applicant requests CTU in writing for deferment of consideration of its applications or does not participate in the LTA meetings despite being invited by CTU, the application shall not be further processed. CTU shall in such cases close the applications and return the bank guarantee. In respect of applications which are already pending with CTU on request of the applicants or for their non-participation in the LTA meetings, CTU may give a notice of 15 days in writing to the concerned LTA applicants about the closure of the application. If any applicant is willing to pursue his application the same shall be processed in the next LTA meeting. If the applicant seeks further deferment of extension of application or does not respond to the notice, CTU may proceed to close the applications and return the bank guarantee"



As per the above provisions, if any LTA applicant seeks for deferment or abeyance of its applications or does not participate in the LTA meetings then the nodal agency shall close the applications and return the bank guarantee to the applicant.”

36. Keeping in view the provisions specified in Clause 23.16 of the Detailed Procedure made under Connectivity Regulations, 2009 and in line with the Commission’s order dated 14.2.2019 in Petition No. 166/MP/2018, we are of the view that the Application BG of the Petitioner should be returned. Accordingly, PGCIL/ CTU is directed to return the encashed BG of the Petitioner along with the interest earned thereon, if any, within 15 days of issue of this Order.

37. The Petition No. 68/MP/2017 is disposed of in terms of the above.

sd/-
(I.S Jha)
Member

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

sd/-
(P.K.Pujari)
Chairperson

