

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 92/MP/2020
along with IA Nos.5/2020 and IA No.66/2020**

Subject : Petition under Section 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 read with Regulation 14 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, seeking quashing of the letter and invoice dated 7.11.2019 and the letter dated 8.11.2019 issued by Power Grid Corporation of India Limited (PGCIL) for claiming transmission charges.

Date of Hearing : 24.8.2020

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

Petitioner : Raigarh Energy Generation Limited (REGL)
(formerly, Korba West Power Company Limited)

Respondent : Power Grid Corporation of India Limited (PGCIL)

Parties present : Shri Sanjay Sen, Sr. Advocate, REGL
Shri Hemant Singh, Advocate, REGL
Shri Lakshyajit Singh Bagdwal, Advocate, REGL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri V. Srinivas, PGCIL
Shri K. K. Jain, PGCIL

Record of Proceedings

The matter was heard through video conferencing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, challenging the arbitrary and illegal action of the Respondent, Power Grid Corporation of India Limited (PGCIL) in issuing the letter/ invoice dated 7.11.2019 and letter dated 8.11.2019 for payment of Rs. 1,42,97,52,646/- towards transmission charges retrospectively. Learned senior counsel further submitted as under:

(a) PGCIL's claim towards transmission charges is for past period i.e. 1.10.2017 to 9.7.2019 and is barred on account of operation of Insolvency and



Bankruptcy Code, 2016 (in short, 'IBC'). PGCIL had failed to register its claims before Interim Resolution Professional, appointed under the IBC for Korba West Power Company Limited (KWPCIL), which was originally granted the LTA. The Petitioner acquired KWPCIL under the IBC and National Company Law Tribunal (NCLT), by its order dated 24.6.2019, approved the Resolution Plan. NCLT in para 10.2 of the said order dated 24.6.2019, has specifically observed that post the payment of liquidation value by Resolution Applicant (i.e. Adani Power Limited), all dues of operational creditors shall stand written off in full and shall be deemed to be extinguished as on the date of the aforesaid order.

(b) Subsequently, PGCIL challenged the NCLT's order dated 24.6.2019 before the National Company Law Appellate Tribunal (NCLAT) regarding its claims towards transmission charges and relinquishment charges. However, NCLAT vide its order 5.3.2020 dismissed the PGCIL's appeal as being time barred. In the said order dated 5.3.2020, NCLAT, *inter-alia*, rejected the contentions of PGCIL that due to pendency of the proceedings before the Commission, PGCIL was not able to quantify the operational debt and file the appeal within the time.

(c) The order of NCLAT was thereafter challenged by PGCIL before the Hon'ble Supreme Court, wherein PGCIL agitated its claims towards transmission charges and relinquishment charges. The Hon'ble Supreme Court vide its judgment/ order dated 22.7.2020 upheld the decision of NCLAT and dismissed the appeal filed by PGCIL.

(d) Since PGCIL's claims towards transmission charges and relinquishment charges stand rejected by the NCLAT and the Hon'ble Supreme Court, no claims of PGCIL towards transmission charges or relinquishment charges survive as on date and consequently, there exists no ground for extension or furnishing the Bank Guarantee. Regardless, PGCIL vide its letters dated 13.7.2020 and 15.5.2020, has directed the Petitioner to extend the Bank Guarantee of Rs.12 crore, which is expiring on 31.8.2020.

(e) Since the LTA was never operationalized by PGCIL and when no effective date in this regard has been communicated, the transmission charges cannot be imposed.

(f) Bank Guarantee furnished by the Petitioner under Clause 6 of Bulk Power Transfer Agreement (BPTA) is construction phase Bank Guarantee. The Petitioner having completed the construction activities and achieved commissioning of its unit, the Bank Guarantee is required to be returned to the Petitioner. In this regard, reliance was placed on the order of the Commission dated 10.5.2019 in Petition No. 96/MP/2018 (MB Power (Madhya Pradesh) Ltd. v. PGCIL).

3. Learned counsel for the Respondent, PGCIL sought time to file reply on the IA and submitted as under:

(a) As per the NCLT order, operational debts of erstwhile company were written-off only upto the approval date i.e. 24.6.2019 whereas, the LTA was in



subsistence until the Petitioner sought its relinquishment on 8.7.2019. Thus, the relinquishment of LTA was done by the Petitioner and not the erstwhile company and was subsequent to the NCLT's order and conclusion of insolvency proceedings.

(b) Therefore, the liabilities of the Petitioner towards payment of transmission charges for the period from 25.6.2019 to 8.7.2019 and the relinquishment charges thereafter are not affected by the orders of NCLAT and Hon'ble Supreme Court. It is a well settled law that appeal is continuation of original proceedings and since the relinquishment was only subsequent to the NCLT order, it was not subject matter of the said order.

(c) Since the Petitioner is a going concern of the erstwhile company (Korba West Power Company Limited), BPTA and the Bank Guarantee furnished thereunder towards PGCIL's claims continue to subsist.

(d) The liability of relinquishment charges has been challenged by the Petitioner before the Appellate Tribunal for Electricity (APTEL), which is pending for adjudication. As per the Commission's order dated 3.12.2018 in Petition No. 242/MP/2017 (Aryan MP Power Generation Pvt. Ltd. v. PGCIL), the Bank Guarantee should remain valid till the issue of relinquishment charges is decided and thereafter such charges are to be adjusted against the Bank Guarantee.

(e) The Petitioner has contended that the said Bank Guarantee is construction phase Bank Guarantee and ought not to be withheld after the completion of Project was raised before APTEL in DFR No. 165/2020. However, APTEL vide its order dated 22.6.2020, by rejecting the said contention, has directed to keep Bank Guarantee valid. Accordingly, the Petitioner ought to be directed to keep the Bank Guarantee alive during the pendency of the present Petition.

(f) LTA was operationalised after the Commission's direction vide Record of Proceedings dated 4.7.2019 in Petition No. 269/MP/2017, in line with the Commission's orders in Petitions No.12/SM/2017 and 229/RC/2015 on retrospective basis.

4. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, PGCIL, the Commission directed to issue notice to the Respondent on the Petition and IAs.

5. The Commission directed the Respondent to file reply to Petition and IAs by 19.2.2021 with advance copy to the Petitioner, who may file its rejoinder, if any, by 5.3.2021.

6. The Commission further directed the Respondent, PGCIL to submit the following information/ clarification, on affidavit, by 16.2.2021:

(a) Whether PGCIL intimated the Petitioner regarding operationalisation of LTA? if yes, details of such communication; and



(b) Date of making request by the Petitioner for relinquishment of LTA and when the same was accepted by PGCIL.

7. The Commission directed the Petitioner to keep the Bank Guarantee valid till further orders.

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

By order of the Commission

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

