

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 92/MP/2018**

- Subject** : Petition under Section 79(1)(c) read with 79(1)(f) of the Electricity Act, 2003, inter-alia, seeking a direction to PGCIL to pay a sum of Rs. 112.39 crore, being the financial loss suffered by the Petitioner, on account of delay in commencement of the Long Term Access granted to the Petitioner, due to delay in implementation of the transmission system falling in the scope of PGCIL's obligations, along with interest on the same till the date of payment of the amount by PGCIL to the Petitioner.
- Date of Hearing** : 13.4.2022
- Coram** : Shri P. K. Pujari, Chairperson  
Shri A.K Goyal, Member  
Shri P.K. Singh, Member
- Petitioner** : Shiga Energy Pvt. Ltd. (SEPL)
- Respondents** : Power Grid Corporation of India Limited & Anr.
- Parties Present** : Shri Deepank Yadav, Advocate, SEPL  
Ms. Swapna Seshadri Advocate, PGCIL  
Shri Aditya Dubey , Advocate, PGCIL  
Ms. Suparna Srivastava, Advocate, CTUIL  
Shri Tushar Mathur, Advocate, CTUIL  
Ms. Soumya Singh, Advocate, CTUIL  
Shri Raghvendra Kumar, Advocate, State of Sikkim  
Shri Bimal Aggrawal, SEPL  
Shri Vijay Kumar, SEPL

**Record of Proceedings**

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the instant petition has been filed for compensation of Rs.112.39 crore from PGCIL or in the alternative from Government of Sikkim towards the financial loss suffered by the Petitioner, on account of delay in commencement of the Long Term Access (LTA) granted to the Petitioner due to delay in implementation of the transmission system falling under the scope of PGCIL. Referring to the petition, learned counsel for the Petitioner explained the chain of events which led to the filing of instant petition. The gist of the submissions made by the learned counsel for the Petitioner are as follows:



- a) The Petitioner entered into an Implementation Agreement dated 3.9.2008, with the State of Sikkim for setting up a Hydro Electric Project in Tashiding District (THEP Project”)
- b) The Petitioner approached PGCIL, Respondent No. 1 for grant of ‘Long Term Open Access’ (LTOA) for evacuation of power from the THEP. In pursuance to the said application, PGCIL, vide its letter dated 26.5.2009 forwarded its intimation for providing the LTOA.
- c) The Long-Term Access (‘LTA’) with reference to the THEP was entered on 19.10.2011 and PGCIL, being the other party to the LTAA, was to get the said transmission system implemented through Government of Sikkim, Respondent No. 2.
- d) The Petitioner and PGCIL entered into TSA on 30.1.20104 which govern the provisions of inter-State transmission services.
- e) The Petitioner vide letter dated 23.1.2015 informed Respondent No. 2 that commissioning of the generation project is affected by unforeseen circumstances (Writ Petitions filed by local residents) which are beyond the control of the Petitioner. The Petitioner informed PGCIL that COD is expected to be achieved by December, 2016. Accordingly, the Petitioner requested PGCIL to carry out the work related to the construction of the “Legship Sub-station” and the transmission line from “Legship” to “New Melli” on a priority basis to avoid any delay in power evacuation from THEP.
- f) The Petitioner completed its project in December, 2016. However, it could not evacuate power because the transmission assets under the scope of PGCIL were not completed. The transmission assets achieved COD on 10.10.2017. Thereafter, the Petitioner declared COD of both the Units of THEP on 6.11.2017. The delay in completion of the transmission system is solely attributable to Respondent No. 1 and it resulted in delay in evacuation of power from THEP. The Petitioner was not able to evacuate power from January 2017 up to 10.10.2017. Hence, Petitioner suffered financial loss to the tune of Rs.112.39 crore and sought refund of the same from Respondent No.1. The Petitioner has alternatively prayed for IDC amounting to Rs.101.59 crore incurred during January 2017 to 10.10.2017 and in support of which Auditor’s certificate has also been placed on record.
- g) On 27.11.2017, the Petitioner raised a demand notice on PGCIL to pay an amount of Rs.112.39 crore as compensation. He submitted that the issues raised by the Respondents have been dealt in detail by the Petitioner in its rejoinders.

3. Learned counsel appearing on behalf of PGCIL submitted that the Government of Sikkim entered into a Memorandum of Understanding (MoU) with PGCIL on 22.4.2014, for implementing its portion of the comprehensive Transmission Strengthening Scheme approved by the Government of India. Referring to Article 1, 2, 9 of MoU, she submitted that PGCIL is the “Project Management Consultant” and, therefore, it is acting as the “agent” of the Government of Sikkim and there is no direct contractual relationship with the Petitioner. The said implementation was to be done with funds being directly released to PGCIL by the Government of India to meet the actual cost of the project along with consultancy fee @12% of actual executed cost of the project. The Petitioner was always aware that the Legship-New Melli transmission assets were being implemented by PGCIL as per the MoU dated 22.4.2015 entered into between PGCIL and the Government of Sikkim. She submitted that as PGCIL is only acting as an agent of the Government of Sikkim, the Petitioner cannot raise a claim against PGCIL towards compensation for alleged losses suffered by it. She submitted that as per the MoU the work was to be executed within a period of 48 months



from the date of release of first instalment and same was released on 19.12.2014. The line was completed by PGCIL on 11.10.2017 and was charged on 12.10.2017 which was much before the period of 48 months from the receipt of first instalment. Hence, PGCIL has discharged its obligations and cannot be held liable to pay compensation. She submitted that if the Petitioner has to raise any dispute against PGCIL, the same has to be resolved as per Department of Public Enterprise (DPE) and this court does not have jurisdiction. She further placed reliance on Hon'ble Supreme Court judgments in Prem Nath Motors Vs. Anurag Mittal, AIR 2009 SC 569 and Sitram Motilal Vs. Santanuprasad Jaishankar Bhatt AIR 1966 SC 1697 and Commission's order dated 2.4.2016 in Petition No.110/MP/2016 wherein it was observed that the agent cannot be held liable for the defaults committed by principal.

4. Learned counsel for Respondent No. 2 submitted that the claim made by the Petitioner that it suffered a loss on account of delay in completion of transmission system on part of Respondent No.2 is without any basis. The Petitioner has failed to make out any case for payment of compensation as no loss has been suffered by the Petitioner. As the construction of 220/132 kV Legship Pooling Sub-station was delayed, CEA allowed inter connection of 220 kV line of the Petitioner with 220 kV line constructed by PGCIL for evacuation of power from THEP as an interim arrangement and it was effective till the commissioning date of 220/132 kV Legship Pooling Sub-station by PGCIL. He further submitted that from the physical inspections, technical clearances, it showed that the Petitioner was not ready with its transmission assets in January 2017 and all the connectivity agreements, technical clearances and documents for charging of the line under the Petitioner's scope were obtained only in September, 2017.

5. On the request of the Petitioner, the Commission permitted the Petitioner to file its written submissions/note by 4.5.2022. The Commission further observed that if the written submissions are not filed within the specified date, the petition shall be decided on the basis of the information on record and no extension of time will be granted.

6. Subject to above, the Commission reserved the matter in the petition.

**By order of the Commission**

sd/-  
(V. Sreenivas)  
Joint Chief (Law)

