

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.20/MP/2023

- Subject : Petition under Section 79(1)(f) read with 79(1)(b) of the Electricity Act, 2003 and Agreements for Procurement of Power (APP) dated 3.3.2022 and 10.3.2022 challenging the Termination Notice dated 18.8.2022 issued by South Western Railways under Article 4.4 of the APP dated 3.3.2022 and consequential actions pursuant to the Termination Notice.
- Date of Hearing : 2.5.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Jindal India Thermal Power Limited (JITPL)
- Respondents : South Western Railways, Indian Railways (SWR) and Anr.
- Parties Present : Shri Akshat Jain, Advocate, JITPL
Ms. Shefali Tripathi, Advocate, JITPL
Shri Shikhar Verma, Advocate, JITPL
Shri Pulak Srivastava, JITPL
Shri Venkatesh, Advocate, TPTCL
Shri Jatin Ghuliani, Advocate, TPTCL
Shri Anant Singh, Advocate, TPTCL
Ms. Poorva Saigal, Advocate, SWR
Shri Shubham Arya, Advocate, SWR
Ms. Shikha Sood, Advocate, SWR
Ms. Reeha Singh, Advocate, SWR
Ms. Kanupriya, REMCL

Record of Proceedings

At the outset, learned counsel for the Respondent No. 2, TPTCL sought additional time to file the reply.

2. Learned counsel for the Respondent No.1, however, pointed out that vide Record of Proceedings for the hearing dated 27.3.2023, the Commission had extended the stay granted by the Hon'ble Delhi High Court on encashment of bank guarantee till today. Learned counsel submitted that the Hon'ble Delhi High Court vide its orders dated 2.9.2022 and 30.11.2022 in W.P (C) 12550 of 2022 had allowed the aforesaid interim protection only till the first date of listing before this Commission. Learned counsel further submitted that in terms of catena of the recent judgments of the Appellate Tribunal for Electricity, it is clear that Courts ought not to interfere with the invocation of the bank guarantee unless there exists egregious fraud or special equities and neither of these exists in the present case. Accordingly, learned counsel

urged that the matter relating to the interim protection/invocation of bank guarantee be taken up at the earliest.

3. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Respondent No.2 to file its reply within four days with copy to the Petitioner who may file its rejoinder within a week thereafter.

4. The Commission further directed the Petitioner to provide the following details/information on affidavit within two weeks:

(i) Details regarding actions / steps taken to commence the supply as per APPs, particularly, for MTOA and application to be filed with CTUIL from the date of Letter of Award and reasons for delay, if any. Further, to furnish relevant provisions of APP / Regulations, wherein, the Petitioner has relied and taken a stand that MTOA will be applied only after acceptance of letter dated 1.4.2022, by the Respondent.

(ii) In regard to the claim of the Petitioner that the supply was to be made through e-auction, the Petitioner to furnish the following:

(a) Reasons for claiming CCEA's decision dated 26.2.2022 and CIL circular dated 1.3.2022 are Change in Law and the letter dated 1.4.2022, whereas, cost of e-auction coal is a pass through;

(b) Information regarding communication made to the Respondents to consider the effect of CCEA's decision dated 26.2.2022 and CIL's circular dated 1.3.2022 under APPs signed on 3.3.2022 and 10.3.2022;

(c) Reasons for submission of FSAs dated 24.1.2013 and 12.9.2020 to REMCL;

(d) Reasons for proposing to supply power from FSA coal availed under Shakti scheme.

(iii) Reasons for relying on CIL's letter dated 19.4.2022, wherein, the Petitioner is not a party to that and commencement of supply under APP is prior to such letter. The Petitioner to provide the reasons for not commencing supply of power, after Ministry of Coal's letter dated 9.5.2022, particularly, REMCL was ready to avail power under STOA.

(iv) The Petitioner to furnish the declared capacity, energy generated, supplied, energy sold in market, etc. in the following format during the period from 1.4.2022 to 17.8.2022:

Date	Installed Capacity	Total DC	DC declared for Respondent	DC declared for other beneficiaries	Total Energy Scheduled by RLDC / SLDC	Actual Energy Generated	Energy supplied to Respondent	Energy Supplied to other beneficiaries	Energy sold through exchange		Money received for energy sold in exchange
									DAM + TAM	Bilateral	

5. The Commission directed that the interim order granted by Hon`ble Delhi High Court on the encashment of bank guarantee be extended till the next date of hearing.

6. The Petition shall be listed for hearing on 13.6.2023.

By order of the Commission

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