

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.221/MP/2023

- Subject : Petition under Section 79 of the Electricity Act 2003, seeking a direction upon the Respondent/ AD Hydro Power Limited for quashing/ setting aside the invoices dated 21.03.2023 and 30.03.2023, and for refund of an amount of Rs. 50,51,095/- illegally seized by encashing the Bank Guarantee which was furnished under the Interim Power Transmission Agreement dated 28.04.2016.
- Date of Hearing : **20.10.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Kanchanjunga Power Company Private Limited (KPCPL)
- Respondents : AD Hydro Power Limited (ADHPL) and 2 Ors.
- Parties Present : Shri Hemant Singh, Advocate, KPCPL
Shri Lakshyajit Singh, Advocate, KPCPL
Ms. Alchi Thapiyal, Advocate, KPCPL
Dr. Seema Jain, Advocate, ADHPL
Shri Vimlesh, Advocate, ADHPL
Shri Sumit Garg, ADHPL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed for quashing/setting aside the invoices dated 21.3.2023 and 30.3.2023 as raised by Respondent No.1 upon the Petitioner and for a refund of an amount of Rs. 50,51,095/- illegally seized by encashing the Bank Guarantee (BG) which was furnished under the Interim Power Transmission Agreement dated 28.4.2016. Learned counsel submitted that the action of encashment of BG by Respondent No.1 is in teeth of the judgment dated 31.10.2022 passed by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 450 of 2019 as well as the procedure contemplated under the Sharing Regulations of this Commission qua billing and collection of the transmission charges. Learned counsel also pointed out that up to October 2022, the Petitioner has already paid the transmission charges for the 220 kV transmission line of the Petitioner as per the invoices raised and for the period subsequent thereto, the matter is already pending consideration of this Commission in Petition No. 209/MP/2017. However, Respondent No.1 proceeded to issue back dated invoices of the transmission charges for the months of October 2022 to February 2023 and proceeded to invoke the BG as furnished by the Petitioner to recover such amount.

2. The representative of Respondent No.1 sought liberty to file a reply to the Petition. He further submitted that the aspect of Respondent No.1 having not received any transmission charges in respect of its 220 kV transmission line since

October 2022 has been noted by the Commission in the proceedings of Petition No.209/MP/2017. The representative of Respondent No. 1 further submitted that in the said proceedings, the Commission directed NLDC to include the transmission charges of the Petitioner's transmission line in the PoC Pool from the month of April 2023 and accordingly, for the period between October 2022 to March 2023, the Respondent No. 1 had to raise the invoices on the Petitioner, and since BG furnished by it was expiring, the Respondent proceeded to recover such amount by way of the BG.

3. After hearing the learned counsel for the Petitioner and the representative of Respondent No.1, the Commission ordered as under:

- (a) Admit. Issue notice to the Respondents; and
- (b) The Respondents to file their replies to the Petition, if any, within six weeks with a copy to the Petitioner, who may file its rejoinder, if any, within four weeks thereafter; and
- (c) The Commission directed the Respondent No. 1, ADHL to file the following information on an affidavit within three weeks:
 - (i) While the bills were raised on to the Petitioner vide letter dated 30.3.2023, can ADHPL invoke BG without completion of due date of payment? What are the terms of the Agreement entered into with the Petitioner?
 - (ii) Subsequent to the APTEL order dated 31.10.2022, whether ADHPL could have raised bilateral bills to the HPPTCL/ Petitioner?

4. The Petition will be listed for the hearing on **28.2.2024**.

By order of the Commission

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

