

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.239/MP/2021 along with IA (Diary) No.268/2023

- Subject : Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework and Article 11 and Article 12 of the Transmission Service Agreement dated 28.6.2017 executed between Goa Tamnar Transmission Project Limited and its Long-Term Transmission Customers inter alia claiming compensation due to change in law events and force majeure events, extension of the scheduled commissioning date of the transmission project on account of force majeure events adversely impacting its implementation and seeking appropriate directions.
- Date of Hearing : **5.7.2023**
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Goa Tamnar Transmission Project Limited (GTTPL)
- Respondents : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and 10 Ors.
- Parties Present : Shri Sanjay Sen, Sr. Advocate, GTTPL
Shri Deep Rao, Advocate, GTTPL
Ms. Harneet Kaur, Advocate, GTTPL
Shri Neha Dabral, Advocate, GTTPL
Ms. Anisha Chopra, GTTPL
Shri Anup Jain, Advocate, MSEDCL
Shri Vyom Chaturvedi, Advocate, MSEDCL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition had been filed *inter alia* seeking declaratory reliefs in view of the force majeure and Change in Law events impacting the implementation of its Transmission Project ('the Project') in terms of applicable statutory framework and in terms of Articles 11 and 12 of the Transmission Service Agreement dated 28.6.2017. Learned senior counsel further submitted as under:

(a) By order dated 8.2.2022, the Commission had disposed of this matter at the stage of admission itself. With respect to the Petitioner's force majeure claims, the Commission observed that since the Project has not been commissioned by the Petitioner and there was uncertainty about the likely Commercial Operation Date (COD), it would not be appropriate to take any view of the extension of SCOD. Accordingly, the Petitioner was granted a liberty to approach the Commission for force majeure events after commissioning of the Project.

(b) Whereas, with respect to the Change in Law reliefs, the Commission had directed the Petitioner to approach the LTTTCs for settlement of its Change in Law claims among themselves in terms of the Electricity (Timely Recovery of Costs

due to Change in Law) Rules, 2021 ('Change in Law Rules') and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

(c) The above order was challenged by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 134 of 2022, *inter alia*, on the limited ground that the Commission ought to have considered granting the declaratory reliefs on the merits of force majeure and Change in Law events faced by the Petitioner. The APTEL by its order dated 1.5.2023 has set aside the Commission's order dated 8.2.2022 and has remanded the matter for this Commission to consider the rival contentions on merits and in terms of the judgment dated 5.4.2022 in OP No. 1 of 2022 and Ors.

(d) Pursuant to the above, the Petitioner has received the letters dated 26.6.2023 and 28.6.2023 from the Respondents/LTTCs, MSEDCL and MPPMCL respectively seeking payment of liquidated damages in terms of Article 6.4 of the TSA within 10 days.

(e) In view of the above, the Petitioner has moved IA (Diary) No. 268 of 2023, *inter alia*, seeking stay on the operation of the above letters dated 26.6.2023 and 28.6.2023 as issued by MSEDCL and MPPMCL respectively seeking payment of liquidated damages from the Petitioner.

(f) Pertinently, in the order dated 8.2.2022, the Commission has also held that since the Petitioner was directed to approach the Commission only after completion/implementation of the Project, it is imperative that no precipitative actions be taken against the Petitioner as the subsistence of the TSA in the interregnum is vital to the completion/ implementation of the Project.

(g) In terms of the said order, the Petitioner has also kept LTTCs and CEA apprised about the status of the pending litigations before the Hon'ble Supreme Court at regular interval with respect to NN Line and Xeldem sub-station. The progress report with regard to the Project as on 31.5.2023 has also been filed along with IA. The anticipated date of completion of entire Project is May, 2025.

(h) The Petitioner may also be permitted to file IA for incorporating necessary amendments to the Petition.

2. After hearing the learned senior counsel for the Petitioner, the Commission observed that in order dated 8.2.2022, the Commission had already expressed that the subsistence of TSA in the interregnum was vital for completion/implementation of the Project and therefore, it was imperative that no precipitative action be taken against the Petitioner. In response, learned senior counsel for the Petitioner submitted that the letters dated 26.6.2023 & 28.6.2023 issued by MSEDCL and MPPMCL seeking liquidated damages from the Petitioner are not in accordance with the observations of the Commission in the said order. Whereas, the learned counsel for the Respondent, MSEDCL submitted that the Respondent will not proceed to take any coercive action in terms of its letter dated 26.6.2023. In view of the above, the Commission deemed it appropriate to stay the operation of the letters dated 26.6.2023 & 28.6.2023 issued by MSEDCL and MPPMCL respectively. The Commission directed the Respondents not to take any coercive actions against the Petitioner till further orders.

3. The Commission further ordered as under:

(a) Issue notice to the Respondents.

(b) The Petitioner may file proper application for amendment to the Petition, if any, within three weeks, which shall be dealt with in accordance with law.

(c) The Respondents to file their reply to the Petition and IA, if any, filed by the Petitioner in term of (b) above, within four weeks with copy to the Petitioner, who may file its rejoinder, if any within four weeks thereafter.

4. The Petition shall be listed for hearing on **11.10.2023**.

By order of the Commission

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