

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Diary (Petition) No.380/2023 along with Diary (IA) No. 381/2023**

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with the relevant provisions of the Transmission Agreement for Connectivity dated 20.07.2020 read with Supplementary Agreement to Transmission Agreement dated 10.06.2021 and Agreement for Long Term Access dated 21.06.2022, as well as applicable laws *inter alia* seeking frustration of the connectivity and long-term access granted to the Petitioner by the Respondent Nos. 1 and 2; and consequential relief therefor.
- Date of Hearing : **29.9.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioners : Azure Power India Private Limited & Anr.
- Respondents : Central Transmission Utility of India Limited (CTUIL) and Anr.
- Parties Present : Shri Buddy Ranganadhan, Advocate, Azure Power  
Shri Aniket Prasoon, Advocate, Azure Power  
Shri Aman Sheikh, Advocate, Azure Power  
Ms. Priya Dhankar, Advocate, Azure Power  
Shri Sanjeev S. Thakur, Advocate, Azure Power  
Shri Rishabh Bhardwaj, Advocate, Azure Power  
Shri Wikalp Wange, Advocate, Azure Power  
Shri Swapnil Verma, CTUIL  
Shri R. S. Rajput, CTUIL

**Record of Proceedings**

Citing the urgency involved, the matter was mentioned by the learned counsel for the Petitioners. Learned counsel submitted that the present Petition has been filed seeking declaration that the connectivity granted to the Petitioner by way of the Transmission Agreements dated 20.7.2020 & 10.08.2021 and the Long Term Access (LTA) granted by way of the LTA Agreement dated 21.6.2022 stand frustrated; and consequential declaration that the Petitioner is discharged from the performance of its obligations, as well as direction to the Respondent No. 1, Central Transmission Utility of India Limited (CTUIL) to return the Petitioner's Bank Guarantee (BG) of Rs. 6.50 crore. Learned counsel for the Petitioners mainly submitted as under:

- (a) Having participated in the bid process conducted by SECI, the Petitioner was selected as the successful bidder for the development of the Solar Power Projects of a cumulative capacity of 4000 MW anywhere in India. Pursuant to this, the Petitioner No.2 and SECI entered into four separate Power Purchase Agreements (PPAs) dated 16.12.2021 for the development of the Solar Power Projects of a cumulative capacity of 500 MW ('Projects').

(b) The Petitioners also obtained Stage-I and Stage-II connectivity for its Projects which was granted by the CTUIL/PGCIL by its letters dated 18.3.2020 and 22.6.2020. Stage-II connectivity granted to the Petitioner was subsequently revised by way of letters dated 8.12.2020 and 7.1.2021. The Petitioners also furnished Bank Guarantee (BG) for an amount of Rs. 6.5 crore (Rs. 50 lakh towards Conn-BG1 and Rs. 6 crore towards Conn-BG2). The Petitioner applied for the grant of the LTA for transfer of power from its Projects to Southern Region on 31.1.2022 and the LTA was granted by the CTUIL by its letter dated 13.5.2022 pursuant to which the Petitioners entered into LTA Agreements with CTUIL on 21.6.2022.

(c) However, on 19.04.2021, the Hon'ble Supreme Court passed an order in Writ Petition (Civil) No. 838 of 2019 titled *M.K. Ranjitsinh & Ors. v. Union of India & Ors.* issuing directions / measures to be adopted *inter-alia* towards existing and future laying of over-head transmission lines in the Priority and Potential habitats of the Great Indian Bustard (GIB).

(d) Pertinently, in terms of the connectivity and LTA granted to the Petitioners, the Petitioners were required to lay 400 kV single circuit transmission line of 5.25 kms from its Solar Power Project to Fatehgarh II Pooling Substation ('Fatehgarh II').

(e) At the time of applying for the connectivity, the Petitioners had envisaged setting up overhead transmission line from the Projects to Fatehgarh-II. However, in view of the directions issued by the Hon'ble Supreme Court vide its order dated 19.4.2021, the Petitioners were required to obtain approval from the Committee constituted by the Hon'ble Supreme Court ('GIB Committee') since the area in which the Petitioners were required to lay the lines was classified as "Additional Important GIB Area".

(f) Accordingly, the Petitioners vide its letter dated 28.4.2023 applied to the GIB Committee seeking permission to lay the overhead transmission lines by highlighting the technical difficulties, which make laying the 400 kV transmission lines underground impossible. However, the GIB Committee vide its letter dated 8.6.2023 rejected the Petitioner's application for laying of 400 kV single circuit transmission lines from the Projects to the Fatehgarh II as overhead line.

(g) Thus, it has become technically impossible for the Petitioners to lay 400 kV single circuit transmission line from the Projects to the Fatehgarh II as an underground line and as such the performance of the connectivity and LTA granted to the Petitioners have become impossible. As a result, the Transmission Agreement and LTA Agreement stand frustrated as per the principles enshrined in Section 56 of the Indian Contract Act, 1872 and the Respondents are liable to the return the BG of Rs. 6.5 crore to the Petitioners, which was furnished by the Petitioner under the Transmission Agreement.

(h) The fact that laying of the extra high voltage level transmission lines of 400 kV underground is impossible, is also substantiated by the Ministry of Power's letter dated 1.8.2022 to the CEA wherein the Ministry of Power has categorically stipulated that undergrounding of transmission lines of 66 kV and above voltage level is not technically feasible for evacuation of bulk power on account of the different constraints as mentioned in the report issued by the Technical Expert Committee under the Member (Power System) on the issue of feasibility of undergrounding of transmission lines.

(i) As per the agenda for 22<sup>nd</sup> Consultation Meeting for Evolving Transmission Schemes in Northern Region to be held on 21.8.2023, CTUIL is treating the Petitioner's connectivity as surrendered under the GNA Regulations, 2022 and will proceed with encashment of the Petitioner's BG corresponding to Conn-BG 2 to the tune of Rs. 6 crore and accordingly, the Petitioner has also moved IA seeking to restrain Respondents from taking any coercive action against the Petitioners including restraining the Respondents from invoking/encashing the BG issued by the Petitioner.

(j) The Commission vide Record of Proceedings for the hearing dated 23.3.2023 in Petition No. 66/MP/2023 (AMP Energy Green Private Ltd. v. CTUIL & Ors.) has granted similar interim protection to the generator therein who had also raised the issues of Hon'ble Supreme Court's Order dated 19.4.2021 (GIB Order), delay in technical evaluation & clearance by GIB Committee being the events akin to the force majeure events. The case of the Petitioner being the frustration of LTA and Transmission Agreements, stands on higher footing and thus, similar interim protection may also be allowed to the Petitioner.

2. The representative of the CTUIL submitted that keeping in view the settled position of law with regard to the invocation of BG, the Petitioners have not made out any case for restraining the CTUIL from invoking/encashing the BG furnished by the Petitioner. The representative of the CTUIL submitted that BG invoked/encashed by CTUIL will be kept in a separate interest-bearing account and its treatment may be made subject to the outcome of the present Petition.

3. Considering the submissions made by the parties and keeping in view the settled position of law with regard to the invocation of BGs, the Commission declined to issue any interim direction to the Respondents at this stage. However, considering the request of the learned counsel for the Petitioners, the Commission permitted the Petitioners time till 6<sup>th</sup> October, 2023 to deposit the amount equivalent to BG in lieu of encashment/invocation of the BG and till such time, CTUIL was directed not to proceed with invocation/encashment of BG furnished by the Petitioners. However, in case the amount equivalent to BG is not deposited within the stipulated time, CTUIL shall be free to encash the BG. The amount equivalent to BG deposited or BG invoked/encashed by CTUIL will be kept in a separate interest-bearing account by CTUIL and its treatment shall be subject to the outcome of the present Petition.

4. The Commission directed the parties to submit their respective written submissions within two weeks with a copy to the other side.

5. Subject to the above, the Commission reserved order in the matter.

**By order of the Commission**

**Sd/-**

**(T.D. Pant)**

**Joint Chief (Law)**