

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 221/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 2nd May, 2024

In the matter of:

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.

And in the matter of:

Kanchanjunga Power Company Pvt. Ltd.,
B-37, 3rd Floor, Sector-1, Noida,
Gautam Budh Nagar, Uttar Pradesh – 291301

.....Petitioner

Versus

1. AD Hydro Power Limited (ADHPL),
Bhilwara Towers, A-12,
Sector 1, Noida, Uttar Pradesh – 201301
2. Himachal Pradesh Power Transmission Corporation Limited (HPPTCL),
Khalini, Shimla,
Himachal Pradesh – 171002
3. Central Transmission Utility of India Limited (CTUIL),
SAUDAMINI, Plot No. 2,
Sector – 29, Gurgaon,
Haryana – 122001

.....Respondent(s)

Parties Present: Shri Hemant Singh, Advocate, KPCPL
Shri Lakshyajit Singh, Advocate, KPCPL
Dr. Seema Jain, Advocate, ADHPL
Shri Vimlesh, Advocate, ADHPL
Shri Sumit Garg, ADHPL



ORDER

The present petition has been filed by the Kanchanjunga Power Company Pvt. Ltd. (KPCPL) (hereinafter to be referred to as 'Petitioner') 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 a 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. The Petitioner has made the following prayers:

- (a) Quash/ Set aside the invoices dated 21.03.2023 and 30.03.2023 issued by the Respondent No. 1/ ADHPL to Respondent No. 2/ HPPTCL vide letter dated 31.03.2023, in terms as stated in the present petition;*
- (b) Consequently, direct the Respondent No. 1/ AD Hydro Power Limited to refund the amount of Rs. 50,51,095/-, which were illegally seized by the said Respondent by encashing the Bank Guarantee, bearing BG No. 16090100004482 along with interest/ carrying cost calculated on a compounding basis and appropriate penalty to be awarded to the Petitioner, in terms as stated in the present petition;*
- (c) Direct the Respondent No. 1/ AD Hydro Power Limited to reimburse the litigation cost incurred by the Petitioner towards the present petition; and*
- (d) Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.*

Submissions of the Petitioner:

2. The petitioner has mainly submitted as follows:

- (a) The Petitioner is a generating company having a 24 MW Small Hydro Electricity Plant (SHEP), at Village Hallan-II, district Kullu, in the State of Himachal Pradesh. The Petitioner presently evacuates power through the transmission lines/ assets built by AD Hydro Power Limited and HPPTCL.
- (b) The Respondent, AD Hydro Power Limited, is a generating company that has established a 176.50 km long 220 kV D/C Transmission Line from its generating station to the sub-station of the CTU at Nalagarh. Further, ADHPL is a deemed ISTS licensee in terms of the judgment dated 31.10.2022 passed in Appeal No. 450 of 2019 by APTEL.
- (c) The Petitioner is connected through the HPPTCL system to the 220 kV D/c transmission line built by ADHPL.
- (d) This Commission, vide an Order dated 01.06.2011 in Petition No. 250 of 2010, held that the transmission line constructed by ADHPL is incidental to ISTS, in accordance

with Section 2 (36) (ii) of the Act. The Order dated 01.06.2011 was challenged by ADHPL before the APTEL under Appeal No. 81 of 2011. In the said appeal, the APTEL passed judgment dated 02.01.2013, wherein APTEL affirmed the decision of this Commission. The APTEL Order was challenged by ADHPL before the Supreme Court by way of Civil Appeal No. 1795 of 2013.

- (e) On 18.07.2014, a tripartite meeting was held between the Petitioner, ADHPL, and HPPTCL, wherein ADHPL refused to provide connectivity to the Phosal substation of HPPTCL, citing the pendency of the aforementioned Civil Appeal No. 1795 of 2013.
- (f) During the pendency of Civil Appeal No. 1795 of 2013, HPPTCL approached the Hon'ble Supreme Court by filing an interim application seeking evacuation of electricity generated by the State-owned generating plants or other generating plants, including the generating plant of the Petitioner with which HPPTCL had an arrangement for transmission of electricity, through the transmission line of ADHPL. However, the Hon'ble Supreme Court passed an Order dated 24.08.2015, wherein it declined to pass any Order on the aforesaid application, thereby directing HPPTCL to approach ADHPL.
- (g) On 03.10.2015, HPPTCL issued a letter to the Petitioner, intimating that ADHPL agreed to grant connectivity to the Phosal sub-station, but with the condition that the Petitioner would have to pay transmission charges and losses as per an Interim Power Transmission Agreement (IPTA), i.e., unregulated charges.
- (h) Subsequently, ADHPL and HPPTCL entered into an Interim Power Transmission Agreement on 28.04.2016, thereby allowing HPPTCL to evacuate power of different utilities through the said Respondent's transmission line.
- (i) In terms of the above, HPPTCL entered into a back-to-back IPTA with the Petitioner, wherein HPPTCL was to evacuate the Petitioner's power outside the State of Himachal Pradesh by using ADHPL's transmission line. Additionally, as per Clause 4.19 of the HPPTCL-KPCPL IPTA, the Petitioner was required to furnish a Bank Guarantee in favour of ADHPL for an amount of Rs. 50,51,095/-. The same was duly furnished by the Petitioner.
- (j) The Hon'ble Supreme Court, vide its final Order dated 26.04.2017 in Civil Appeal No. 1795 of 2013, dismissed ADHPL's civil appeal, thereby affirming the decision of this Commission and the APTEL. Thereafter, ADHPL filed a review petition before the

Supreme Court against the above order [Review Petition (RP) No. 1365 of 2017], which was also dismissed vide Order dated 12.07.2017.

- (k) Pursuant to the directions of the Supreme Court, ADHPL filed Petition No. 209/MP/2017 before this Commission for the purpose of determination of transmission tariff of its transmission line, wherein this Commission passed its final Order dated 17.10.2019. The Commission, vide the said Order, held that the tariff payable by the Petitioner to HPPTCL will not be under the PoC mechanism. The above Order dated 17.10.2019 was challenged by the Petitioner before the APTEL by way of Appeal No. 450 of 2019 on the ground that it is only the POC/Mechanism which is applicable for the recovery of charges/ tariff of an ISTS line. A cross-appeal Appeal No. 410 of 2019 has also been filed by ADHPL, challenging the tariff, as determined by this Commission.
- (l) In Appeal No. 450 of 2019, the APTEL passed the final judgment dated 31.10.2022, wherein it was inter-alia held that the subject Line is a part of ISTS, which cannot be simultaneously termed as a dedicated transmission line.
- (m) After the passage of the above judgment dated 31.10.2022 from October 2022 to February 2023, ADHPL did not raise the invoice of transmission charges upon the Petitioner.
- (n) However, on 07.03.2023, suddenly, ADHPL issued a letter to the Petitioner's Banker, i.e., Axis Bank, for invocation and encashment of the Bank Guarantee No. 16090100004482 of Rs. 50,51,095/-, which had been furnished by the Petitioner as per Clause 4.19 of the HPPTCL-KPCPL IPTA.
- (o) In response to the above letter, the Petitioner issued an e-mail communication dated 14.03.2023 to ADHPL, wherein it informed ADHPL that the Petitioner had duly paid all the invoices raised by ADHPL in terms of the aforesaid IPTA and since there were no pending invoices/ claims post the passage of the above judgment of the APTEL, there was no outstanding remaining on the part of the Petitioner. Further, since the Bank Guarantee was furnished by the Petitioner as a payment security under the HPPTCL-KPCPL IPTA when there are no subsisting claims/ invoices remaining, there remained no justification/ reason for extension or encashment of the same.
- (p) Thereafter, ADHPL issued an email and letter dated 20.03.2023, wherein it requested the Petitioner for an extension of the Bank Guarantee for the period up to 30.03.2023

and claim period up to 30.03.2023. In terms thereof, ADHPL further informed the Petitioner that if the said BG was not extended, then the said letter would be considered a claim of ADHPL for encashment of the same.

- (q) In view of the above letter, the Petitioner issued an e-mail communication to ADHPL on 20.03.2023 wherein it reiterated its stand in the following manner:
- (i) The HPPTCL-KPCPL IPTA, which was the basis for furnishing the Bank Guarantee, became ineffective by the passage of the judgment dated 31.10.2022 passed by the APTEL in Appeal No. 450 of 2019;
 - (ii) The last invoice dated 06.10.2022 amounting to Rs. 29,19,800/- raised before the passage of the aforesaid judgment was duly paid by the Petitioner on 23.11.2022 (which was before its due date); and
 - (iii) Therefore, in terms of the above, it was further requested that APDHL furnish a No Objection Certificate for the closure of the Bank Guarantee.
- (r) ADHPL, on 30.03.2023, issued an e-mail communication wherein it informed the Petitioner about invoices dated 21.03.2023 and 30.03.2023. Surprisingly, ADHPL, on the very same day, issued a letter to HPPTCL, thereby raising invoices dated 21.03.2023 and 30.03.2023 upon it for the alleged transmission charges payable by the Petitioner for the period October 2022 to February 2023, amounting to a cumulative total of Rs. 1,46,96,340/-.
- (s) In view of the above communications, the Petitioner issued an e-mail communication to ADHPL on 30.03.2023, wherein it submitted that ADHPL's claims for extension/encashment of the Bank Guarantee under the current circumstances were not tenable.
- (t) ADHPL proceeded to issue a subsequent email communication on 31.03.2023 to the Petitioner for an extension or encashment of the above Bank Guarantee for the period up to 30.03.2024 and claim period up to 30.03.2025.
- (u) However, without paying any heed to the above letters/communications, ADHPL proceeded to encash the BG furnished by the Petitioner of Rs. 50,51,095/-, on 03.04.2023.
- (v) Pursuant to the above, HPPTCL proceeded to issue an email communication dated 13.04.2023 to the Petitioner, wherein it intimated to the Petitioner about the invoices

raised by ADHPL vide letter dated 30.03.2023 for the period from October 2022 to February 2023.

- (w) Thereafter, HPPTCL issued another email communication on 13.04.2023, wherein it intimated the Petitioner of the invoices raised by ADHPL vide a letter dated 06.04.2023 for the month of March 2023.
- (x) The communications of HPPTCL were responded to the Petitioner vide its email communication and letter dated 23.05.2023, thereby strongly objecting to the conduct of ADHPL. In this regard, the Petitioner informed HPPTCL that it was the CTUIL alone who could raise the bills for transmission charges upon HPPTCL after the APTEL's judgment. Therefore, the subsequent invoices raised by ADHPL for the periods October 2022 to February 2023 and March 2023 were ex-facie illegal, non-est, and void ab initio. Accordingly, all invoices raised for the period of October 2022 to March 2023 were returned, and it was requested that the amount of Rs. 50,51,095/- illegally taken by ADHPL by encashment/ invocation of the Bank Guarantee by ADHPL be refunded.
- (y) Further from a reading of the procedures contemplated under the CERC Sharing Regulations, 2010, as well as under the CERC Sharing Regulations, 2020, it is evidently clear that it is CTU's responsibility for collection and disbursement of transmission charges on behalf of ISTS Licensees, and not the said licensee itself. As such, the action of encashment of BG by ADHPL, as well as the action of duplicitously raising invoices dated 21.03.2023 and 30.03.2023 by ADHPL, vide its letter dated 31.03.2023 to HPPTCL, is ex-facie illegal, non-est and void ab initio, and is the nature of an egregious fraud.
- (z) Further, the above conduct of ADHPL clearly showcases that the act of the said Respondent, which was in the teeth of the judgement dated 31.10.2022 of the APTEL in Appeal No. 450 of 2019, amounts to 'fraud' on its part.

Hearing dated 20.10.2023:

3. During the hearing dated 20.10.2023, the Commission admitted the petition. The Commission also directed the ADHPL to file the following information:

- (a) 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?
- (b) Subsequent to the APTEL Order dated 31.10.2022, whether ADHPL could have raised bilateral bills to the HPPTCL/Petitioner?

Submissions of the Respondent, AD Hydro Power Limited:

4. The respondent, ADHPL, vide affidavit dated 07.02.2024, has mainly submitted as follows:
- (a) In terms of the Interim Power Transmission Agreement dated 28.04.2016 signed between AD Hydro Power Limited and HPPTCL, followed by a back-to-back Interim Power Transmission Agreement dated 28.04.2016 between HPPTCL and Petitioner, a Bank Guarantee from a scheduled bank with ADHPL as beneficiary, equal to one-month transmission charge payment, i.e., for Rs. 50,51,095/- was to be furnished by the Petitioner. The Bank Guarantee continued to be renewed by the Petitioner and its Bank from time to time.
- (b) As the said Bank Guarantee was nearing expiry, Respondent vide letter dated 7th March 2023 requested the Petitioner's Bank under intimation to Petitioner for the extension of the Bank Guarantee. In response, the Petitioner, vide its e-mail dated 14.03.2023 addressed to the Bank with a copy to Respondent, stated that the claim for encashment of BG by Respondent is without any reason.
- (c) The Respondent, vide letter dated 20.03.2023, again requested the petitioner's bank for the extension of the Bank Guarantee. Petitioner, vide its e-mail dated 20.03.2023 to the Respondent, requested the Respondent to review his request for further extension of the Bank Guarantee.
- (d) The Bank issuing the Bank Guarantee, on 29th March 2023, with copy to Petitioner stated that it will share the Bank Guarantee extension copy or invoke the guarantee on expiry date.
- (e) During the hearing of the remand proceedings in Petition No. 209/MP/2017 held on 13.04.2023, this Commission directed NLDC to include the subject transmission line in the POC Pool for the payment of charges w.e.f April 2023 and also directed Respondent to file on affidavit within two weeks year-wise actual receipt of charges by it from Everest Power, KPCPL and HPSEBL. The statement submitted by the

ADHPL also included the amount received by the Respondent from the Bank against the Bank Guarantee during the year 2023-24. The Statement of the same is as under:

Sl.No.	Year	EPPL			KPCPL			HPSEBL		
		TDS	Rebate	Amount Received	TDS	Rebate	Amount Received	TDS	Rebate	Amount Received
1	2011-12	3,617,772	-	177,270,804	-	-	-	-	-	-
2	2012-13	4,019,683	-	114,411,391	-	-	-	-	-	-
3	2013-14	718,836	-	117,776,058	-	-	-	-	-	-
4	2014-15	-	-	-	-	-	-	-	-	-
5	2015-16	-	1,783,706	653,679,136	-	-	-	-	-	-
6	2016-17	-	-	140,902,297	-	-	34,867,534	-	-	2,436,273
7	2017-18	-	-	279,025,298	-	-	29,530,426	-	-	27,788,736
8	2018-19	-	-	128,320,903	-	-	28,465,928	-	181,939	29,738,538
9	2019-20	-	-	21,952,667	-	-	22,222,881	-	-	16,161,813
10	2020-21	-	-	-	-	-	33,562,000	-	-	15,202,619
11	2021-22	-	-	-	-	-	38,101,880	-	467,470	41,159,317
12	2022-23	-	-	-	-	-	20,580,810	-	815,158	49,250,411
13	2023-24	-	-	-	-	-	5,051,095	-	-	-
	Total	8,356,291	1,783,706	1,633,338,554	-	-	212,382,554	-	1,464,567	181,737,707

- (f) **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?**

ADHPL requested the issuing Bank, under intimation to the Petitioner, to extend the Bank Guarantee. Further, as per para 4.6(e) of the Interim Power Transmission Agreement dated 28.04.2016, to draw upon the bank Guarantee, the Respondent had to present the bank a copy of the invoice and a declaration that the amount due under such invoice had not been paid by the petitioner.

Since the extension/encashment of the Bank Guarantee was sought by the Respondent before the bills were raised, no invoice was presented to the bank. However, the bank encashed the Bank Guarantee in favour of the Respondent. The Respondent sought the extension of the Bank Guarantee as there was no order of this Commission in respect of payments to the Respondent.

- (g) **Subsequent to the APTEL Order dated 31.10.2022, whether ADHPL could have raised bilateral bills to the HPPTCL/ Petitioner?**

In the absence of a Commission's order for payment of charges from the POC pool, Respondent was constrained to raise the bills on Petitioner at the end of the financial year. The Commission, vide Order dated 13.04.2023, directed NLDC to

include the transmission line in the POC Pool for the payment of charges w.e.f April 2023.

(h) Further, the Commission, in its Order dated 19th January 2024, gave the mechanism for the settlement of the amounts received/paid by the parties since 2011-12, which includes the amount received on encashment of the Bank guarantee. Therefore, the Petitioner is already entitled to the refund of the entire amount paid to the Respondent; the reliefs sought in the instant Petition filed on 03.07.2023 have already been granted to the Petitioner vide Final Order of the Commission dated 19.01.2024 in Petition No. 209/MP/2017. Therefore, the instant petition is liable to be dismissed as infructuous.

Hearing dated 05.03.2024:

5. After hearing the Petitioner and Respondent, the Commission reserved the matter for order.

Analysis and decision:

6. We have considered the submissions of Petitioner and Respondent.

7. The Petitioner has filed the present Petition 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/- seized by encashing the Bank Guarantee which was furnished by the Petitioner under the Interim Power Transmission Agreement dated 28.4.2016. The Petitioner has submitted that the action taken by the ADHPL is contrary to the judgment dated 31.10.2022 passed by the 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.

8. The Petitioner has further submitted that up to October 2022, the Petitioner has already paid the transmission charges for the subject transmission line as per the invoices raised, and for the period subsequent thereto, the matter was pending for consideration of this Commission in Petition No. 209/MP/2017. However, ADHPL 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.

9. In response, the Respondent ADHPL has submitted that as the Bank Guarantee

amounting to Rs. 50,51,095/- was nearing expiry, Respondent vide letter dated 7th March 2023 requested the Petitioner's Bank under intimation to the Petitioner for the extension of the Bank Guarantee. Further, in the absence of an order from the Commission for payment of charges from the POC pool, the Respondent was constrained to raise the bills on Petitioner at the end of the financial year. The Commission, vide Order dated 13.04.2023, directed NLDC to include the transmission line in the POC Pool for the payment of charges w.e.f April 2023. The Commission, in its Order dated 19th January 2024, gave the mechanism for the settlement of the amounts received/paid by the parties since 2011-12, which includes the amount received on encashment of Bank guarantee, whereby Petitioner shall receive a refund of the entire amount paid to the Respondent. Therefore, the instant petition is liable to be dismissed as infructuous.

10. Considering the submissions of Petitioner and Respondent, the issues that arise for our consideration are as under:

Issue No.1: Whether the Respondent ADHPL has rightly raised the invoices dated 21.03.2023 and 30.03.2023?

Issue No.2: Whether the Respondent ADHPL has rightly encashed the Bank Guarantee amounting to Rs. 50,51,095/- furnished by the Petitioner? Whether the Petitioner is entitled to a refund against the encashed Bank Guarantee along with the carrying cost?

11. Now, we proceed to discuss the above issues.

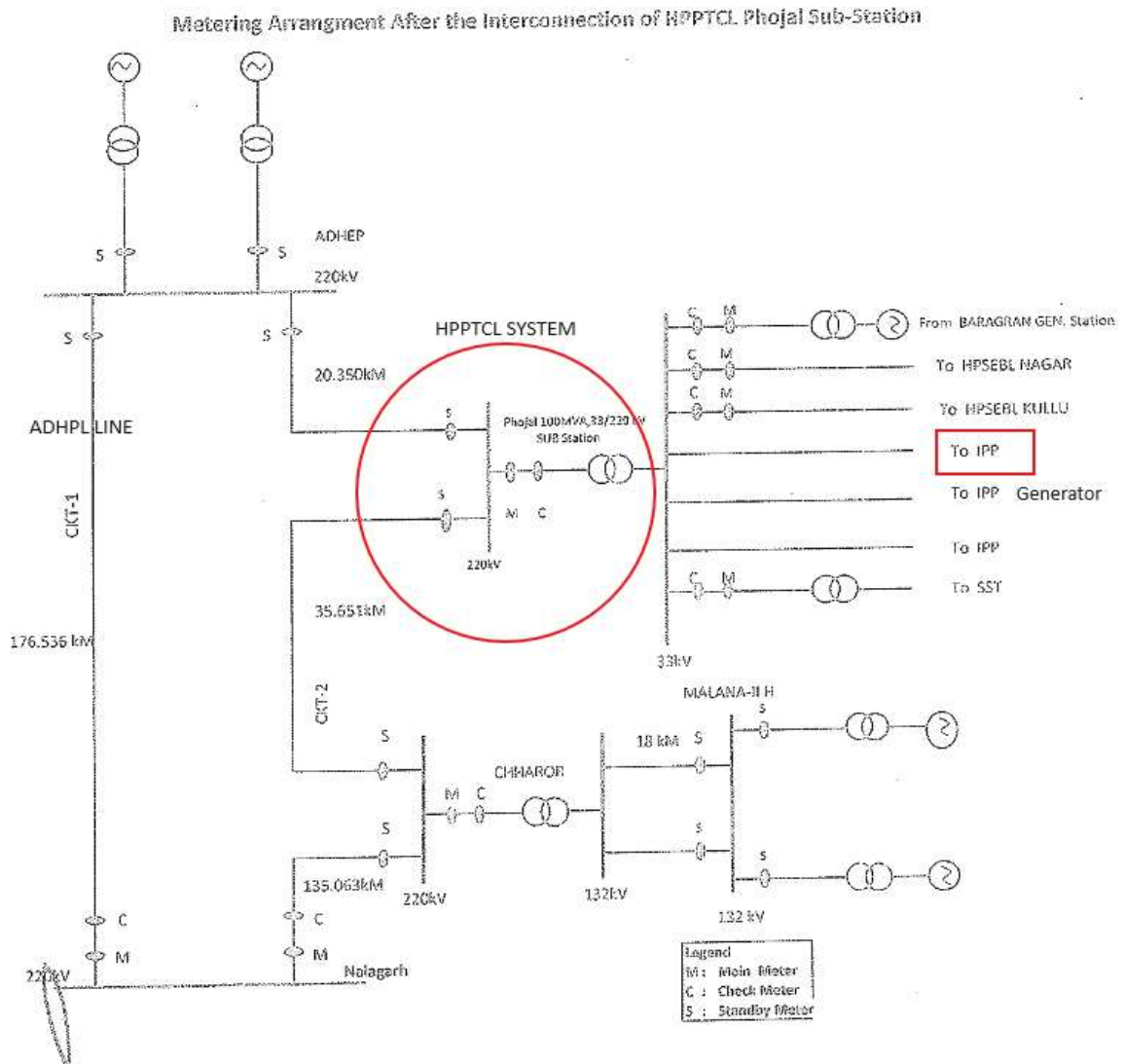
Issue No.1: Whether the Respondent ADHPL has rightly raised the invoices dated 21.03.2023 and 30.03.2023?

12. Petitioner has submitted that ADHPL, on 30.03.2023, issued a letter to HPPTCL, thereby raising invoices dated 21.03.2023 and 30.03.2023 upon it for the alleged transmission charges payable by the Petitioner for the period of October 2022 to February 2023, amounting to a cumulative total of Rs. 1,46,96,340/- and issued an e-mail communication, informing the Petitioner about invoices dated 21.03.2023 and 30.03.2023. HPPTCL issued an email communication dated 13.04.2023 to the Petitioner, intimating the Petitioner about the invoices raised by ADHPL vide letter dated 30.03.2023 for the period from October, 2022 to February, 2023. HPPTCL also issued another email communication on 13.04.2023, intimating the Petitioner of the invoices raised by ADHPL vide a letter dated 06.04.2023 for the month of March, 2023.

The Petitioner has submitted that the Petitioner, vide its email and letter dated 23.05.2023 to HPPTCL, stated that it was the CTUIL alone who could raise the bills for transmission charges upon HPPTCL post the passage of the APTEL judgment. Therefore, the subsequent invoices raised by ADHPL for the period of October 2022 to February 2023 and March 2023 were ex-facie illegal, non-est, and void ab initio. Accordingly, all invoices raised for the period of October 2022 to March 2023 were returned, and it was requested that the amount of Rs. 50,51,095/- illegally taken by ADHPL by encashment/ invocation of the Bank Guarantee by ADHPL be refunded. From a reading of the procedures contemplated under the CERC Sharing Regulations, 2010, as well as under the CERC Sharing Regulations, 2020, it is clear that it is CTU's responsibility for the collection and disbursement of transmission charges on behalf of ISTS Licensees, and not the said licensee itself. As such, the action of encashment of BG by ADHPL, as well as the action of duplicitously raising invoices dated 21.03.2023 and 30.03.2023 by ADHPL, vide its letter dated 30.03.2023 to HPPTCL, is ex-facie illegal, non-est and ab initio void.. Further, the above conduct of ADHPL clearly showcases that the act of the said Respondent, which was in the teeth of the judgement dated 31.10.2022 of the APTEL in Appeal No. 450 of 2019, amounts to illegality on its part.

13. Respondent ADHPL has submitted that in the absence of an order of the Commission for payment of charges from the POC pool, Respondent was constrained to raise the bills on Petitioner at the end of the financial year. Commission, vide Order dated 13.04.2023, directed NLDC to include the transmission line in the POC Pool for the payment of charges w.e.f April 2023. Further, the Commission, in its Order dated 19th January 2024, gave the mechanism for the settlement of the amounts received/paid by the parties since 2011-12, which includes the amount received on encashment of the Bank guarantee. Therefore, the Petitioner is already entitled to the refund of the entire amount paid to the Respondent; the reliefs sought in the instant Petition filed on 03.07.2023 have already been granted to the Petitioner, vide the Final Order of the Commission dated 19.01.2024. Therefore, the instant petition is liable to be dismissed as infructuous.
14. We have considered the submissions of the Petitioner and the Respondent. We note that the Respondent ADHPL owns a 220kV transmission line from ADHPL generating station to Nalagarh. Petitioner is connected via the HPPTCL system to the

transmission line of the Respondent ADHPL and uses the said line for evacuation of power from the generating station of the Petitioner. A Single line diagram showing the connection of the Petitioner through the HPPTCL system to the ADHPL line is as follows:



15. We note that the Petitioner had entered into an arrangement for using the line of the Respondent ADHPL via HPPTCL and an agreement, namely, "IPTA". An IPTA has been signed between ADHPL and HPPTCL dated 28.4.2016 and another IPTA has been signed between HPPTCL and the Petitioner. As per Clause 4.19 of the HPPTCL-KPCPL IPTA, the Petitioner was required to furnish a Bank Guarantee in favour of ADHPL for an amount of Rs. 50,51,095/- and make payments of transmission charges. As per the IPTA entered into between HPPTCL and the Petitioner dated 28.4.2016, the Respondent ADHPL was required to raise the invoice of transmission charges for the

use of the ADHPL line to HPPTCL, and HPPTCL was, in turn, required to raise the invoice on Petitioner.

16. We note that the ADHPL, vide its email and letter dated 30.03.2023, raised five no. of invoices to the HPPTCL with a copy to the Petitioner, for the month of October 2022 to February 2023 towards transmission charges detailed as under:

Sl. No.	Invoice No.	Date	Monthly Transmission Charges for the month of
1	TL/22-23/023	21.03.2023	October 2022
2	TL/22-23/025	21.03.2023	November 2022
3	TL/22-23/027	21.03.2023	December 2022
4	TL/22-23/029	21.03.2023	January 2022
5	TL/22-23/031	30.03.2023	February 2022

The snapshot of the ADHPL's letter dated 30.03.2023, the snapshot of a bill dated 21.03.2023, and another dated 30.03.2023 are as under:

30th March 2023

Without Prejudice PROUD TO BE IN PRIVILEGED TO BE

M/s HP Power Transmission Corporation Limited
Himfed Bhawan
Panjari
SHIMLA 171 005

Notify Party:
M/s Kanchanjunga Power Company Pvt Ltd
3rd Floor, B-37, Sector 1, Noida 201 301
Kind Attn: **DGM (C&M)**

Sub: **Invoices for the month of October 2022 to February 2023 towards Transmission Charges.**

Ref: 1. **Interim Power Transmission Agreement dated 28th April 2016.**
2. **CERC Petition No. 209/MP/2017.**
3. **APTEL Order dated 17.01.2020.**

Dear Sir

Enclosed please find herewith following invoices towards transmission charges pending issue of availability certificate from NRPC. Kindly note that the transmission charges are subject to the adjustment after issue of availability certificate by NRPC.

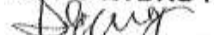
Sl.No.	Invoice No.	Date	Monthly Transmission Charges for the month of	Amount
1	TL/22-23/023	21.03.2023	October 2022	30,17,130/-
2	TL/22-23/025	21.03.2023	November 2022	29,19,800/-
3	TL/22-23/027	21.03.2023	December 2022	30,17,130/-
4	TL/22-23/029	21.03.2023	January 2023	30,17,130/-
5	TL/22-23/031	30.03.2023	February 2023	27,25,150/-

The invoices are subject to adjustment pursuant to the Remand Order in Petition No. 209/MP/2017.

Kindly acknowledge the receipt and make the payment at the earliest.

Thanking you


Yours faithfully
For AD HYDRO POWER LIMITED



As per the above letter, it is observed that letter is dated 30.3.2023 whereas invoices attached to the said letter carries a date of 21.3.2023.

AD HYDRO POWER LIMITED Prini, Tehsil Manali, Distt. Kullu - 175143 Phone No. : Fax : CIN NO. : PAN NO. : STATE CODE : GST NO. : Category : Place Of Supply : Due Date for Payment :		Ph No: 9815109620 Fax No: 01902255383 U40101HP2003PLC026108 AAECA6200D 02 02AAECA6200D12M B2B SHIMLA 20-05-2023		Invoice No : TL/22-23/023 Invoice Date : 25-03-2023 Acknowledgement No. : Acknowledgement Date :				
IRN No. :		Customer: HPPTC Limited Himfed Bhavan Panjeri SHIMLA, Himachal Pradesh, India - 171005 PAN NO. AACCH1548M State Code : 02 GST : 02AACCH1548MIZP		Consignee Kanchanjunga Power Company Pvt Ltd 3rd Floor, B-37, Sector-1 Noida NOIDA 201301 India PAN NO. AACCH1548M State Code : 02 GST : 02AACCH1548MIZP				
SNO	HSN/SAC No.	Item Description	QTY.	UOM	Unit Rate	Discount	Basic Value	
1	9909	Monthly Transmission Charges for the month of October 2022	24.00	UNIT	1,25,713.75	0.00	30,17,130.00	
Bank Details :							Total	30,17,129.90
Acc. Name :		AD Hydro Power Ltd.- O&M A/c-072502					Total Before Tax	30,17,129.90
Bank Acc. No. :		0004103000072502					IGST Amount	0.00
Bank Branch No.:		ICBI Bank Ltd,Mumbai					CGST Amount	0.00
IFSC Code :		IBKL0000004					SGST Amount	0.00
Invoice value in Words:							Total After Tax	30,17,129.90
*** THIRTY LAKH SEVENTEEN THOUSAND ONE HUNDRED THIRTY RUPEES AND ZERO PAISA ONLY							TCS Amount	0.00
							Grand Total	30,17,130.00
							AD HYDRO POWER LIMITED	

As per the above, it is observed that the Due date mentioned in the abovementioned invoice is 20.5.2023. Similar bills have been raised for November 2022, December 2022 and January 2022 with the same date of invoice, transmission charges as well as the due date. An invoice for February 2023 has also been raised with a due date of 29.5.2023, as quoted below:

AD HYDRO POWER LIMITED Prini, Tehsil Manali, Distt. Kullu -175143 Phone No. : Ph No:9816109820 Fax : Fax No:01902255383 CIN NO. : U40101HP2003PLC026108 PAN NO. AAECA6200D STATE CODE 02 GST NO. 02AAECA6200D1ZM Category 82B Place Of Supply. SHIMLA Due Date for Payment : 29-05-2023		Invoice No : TL/22-23/031 Invoice Date : 30-03-2023 Acknowledgement No. : Acknowledgement Date:						
IRN No. :								
Customer: HPPTC Limited Himfed Bhavan Panjari SHIMLA, Himachal Pradesh, India - 171005 PAN NO. AACCH1548M State Code : 02 GST : 02AACCH1548MIZP		Consignee Karancharjunga Power Company Pvt Ltd 3rd Floor, B-37, Sector-1 Noida NOIDA 201301 India PAN NO. AACCH1548M State Code : 02 GST : 02AACCH1548MIZP						
SNO	HSN/SAC No.	Item Description	QTY.	UOM	Unit Rate	Discount	Basic Value	
1	9999	Monthly Transmission Charges for the month of February 2023	24.00		1,13,547.92	0.00	27,25,190.00	
Bank Details :							Total	27,25,149.90
Acc. Name :		AD Hydro Power Ltd.- O&M A/c-072502		Total Before Tax			27,25,149.90	
Bank Acc. No. :		0004103000072502		IGST Amount			0.00	
Bank Branch No.:		IDBI Bank Ltd,Mumbai		CGST Amount			0.00	
IFSC Code :		IBKL0000004		SGST Amount			0.00	
Invoice value in Words:							Total After Tax	27,25,149.90
*** TWENTY SEVEN LAKH TWENTY FIVE THOUSAND ONE HUNDRED FIFTY RUPEES AND ZERO PAISA ONLY							TCS Amount	0.00
							Grand Total	27,25,150.00
							AD HYDRO POWER LIMITED	

On perusal of the above invoice dated 30.3.2023, we observe that the due date is indicated as 29.05.2023.

17. We note that the entire case revolves around APTEL's Order dated 31.10.2022 in Appeal No. 450 of 2019, whereby the treatment of the ADHPL line has been concluded by APTEL. The APTEL vide Order dated 31.10.2022 in Appeal No. 450 of 2019 decided as follows:

"111. From the above quoted provisions, it is clear that the subject Line fulfills the criteria to be included in the basic network of an ISTS, for the purpose of including the same under the PoC mechanism, also as per Regulation 3(b), the Yearly Transmission Charges under the CERC Sharing Regulations, 2010 are applicable upon the Designated ISTS Customers such as the —State Electricity Boards/State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/ intra-State transmission licensee), as such in the present case, the Appellant being connected with the ISTS line i.e. the subject Line, through the HPPTCL, which is an STU, the Appellant is a Designated ISTS Customer.

112. Regarding the submission made by the ADHPL that it is a Generator having a —dedicated transmission line, as such, cannot be forced to take a transmission license, it is under section 15 read with section 14, the Appropriate Commission can grant a Licence to any person to transmit electricity as a transmission licensee only, and as per Regulation 6(C) of CERC's (Terms and Conditions for Grant of Transmission License) Regulations 2009, in respect of the —dedicated transmission lines established by the Generators, no person shall be eligible for grant of license unless it is a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system. Therefore, the option to take a license and become a transmission licensee vest with ADHPL and ADHPL cannot be ordered by a court to take a license or forced to convert its private transmission assets to commercially pooled assets in POC mechanism to become a transmission licensee merely because of temporary use of spare capacity of its transmission line for evacuation of power of other generators.

113. We decline to agree to the above as from definition of Deemed Inter State Transmission System (Deemed ISTS) in terms of Regulation 2(k) of the CERC Sharing Regulations, 2010 referred above, such transmission system which has regulatory approval of the Commission as being used for inter-state transmission of power becomes as Deemed ISTS and once read the regulatory order dated 01.06.2011 of the Central Commission, wherein it was held that the subject Line is being used as a part of ISTS, therefore, ADHPL being the owner of Deemed ISTS, becomes a Deemed ISTS Licensee within the meaning of Yearly Transmission Charge or YTC' as referred above and accordingly this Tribunal vide its judgment dated 02.01.2013 held that ADHPL is not required to take a license.

114. In view of above, it is held that the transmission tariff for usage of the subject Line has to be determined and levied in accordance with Point of Connection (PoC) mechanism provided under Regulation 3(b) of the CERC Sharing Regulations, 2010, and the PoC mechanism will be applicable for recovery of transmission charges, from the date from which EPPL or any other generator or STU (or State Electricity Board) on behalf of generators gets connected to the transmission line of ADHPL, in terms of the CERC Sharing Regulations, 2010.

ORDER

For foregoing reasons as stated supra, we are of the considered view that the Appeal No. 450 of 2019 filed by M/s Kanchenjunga Power Company Private Limited has merit and is allowed, the order dated 17.10.2019 passed by the Central Electricity Regulatory Commission Central Commission) in Petition No. 209/MP/2017 is set aside to the extent as challenged in the aforesaid Appeal and directed above.

The Central Commission is directed to pass necessary consequential orders in light of the observations and conclusions recorded by us."

As per the above, it was held that ADHPL is a Deemed ISTS Licensee and that the transmission tariff for usage of the ADHPL Line has to be determined and levied in accordance with Point of Connection (PoC) mechanism provided under Regulation 3(b) of the CERC Sharing Regulations, 2010, and the PoC mechanism will be applicable for recovery of transmission charges, from the date from which EPPL or any other generator or STU (or State Electricity Board) on behalf of generators gets connected to the transmission line of ADHPL, in terms of the CERC Sharing Regulations, 2010.

Accordingly, the APTEL directed this Commission to pass necessary consequential orders in light of the observations and conclusions.

18. We observe that pursuant to the APTEL Order dated 31.10.2022 in Appeal No. 450 of 2019, the transmission charges for the ADHPL line are to be governed in terms of the CERC Sharing Regulations, 2010. The CERC Sharing Regulations, 2010 provides a methodology for recovery of transmission charges for an ISTS line, as per which all bills are raised by CTU on behalf of the transmission licensee. There is nothing in the above quoted Order of APTEL which allowed ADHPL to raise bilateral bills on Petitioner or any other entity.

19. We observe that while the adjudication of Petition No. 209/MP/2017, subsequent to the APTEL judgement dated 31.10.2023, the ADHPL, during the hearing dated 21.03.2023 raised the issue of non-receipt of any money for its transmission line since November 2023 due to the APTEL judgment and requested this Commission to issue necessary directions in this regard. The relevant extract of RoP for the hearing dated 21.03.2023 is as under:

“3. The representative of the Petitioner further pointed out that since November, 2022, the Petitioner has not received any money in respect of its transmission line from any of the entities and keeping in view that the closure of financial year is approaching, necessary direction(s) may be issued in this regard.”

Further, the said issue was again highlighted by the ADHPL during the hearing dated 13.04.2023. The relevant extract is as under:

“4. The representative of the Petitioner requested to issue interim direction for recovery of money from POC pool in terms of judgment of APTEL and submitted that the Petitioner is not able to raise the bills in respect of its transmission line. Considering the submissions of the representative of the Petitioner, the Commission directed NLDC to include the transmission charges of the Petitioner’s transmission line in POC pool from the month of April, 2023 subject to final outcome of the Petition.”

As per the above, during the hearing dated 21.03.2023 and 13.04.2023 in Petition No. 209/MP/2017, ADHPL stated before this Commission that it has not been able to raise any bills and get any money in respect of the subject transmission system since November 2022, i.e., subsequent to the judgment of APTEL dated 31.10.2022.

We observe that the above submissions of ADHPL also make it clear that ADHPL was also aware of the legal position that he could not have raised invoices on Petitioner and still ADHPL chose to do so on 30.3.2023. Further, we also note that ADHPL while making submissions in the above mentioned hearing dated 13.4.2023 in Petition No.

209/MP/2017, did not inform the Commission that it has already raised the invoices on the Petitioner, KPCPL, which is not correct.

20. In view of the directions given by APTEL vide Order dated 31.10.2022 as quoted above and the Sharing Regulations, 2010 and the Sharing regulations 2020, we are of the view that the subsequent to the APTEL's judgment, ADHPL was not entitled to raise any bill on the Petitioner. Accordingly, we set aside the transmission charges bills dated 21.03.2023 and 30.03.2023 raised on the Petitioner by ADHPL.

21. Issue No. 1 is addressed accordingly.

Issue No.2: Whether the Respondent ADHPL has rightly encashed the Bank Guarantee amounting to Rs. 50,51,095/- furnished by the Petitioner? Whether the Petitioner is entitled to a refund against the encashed Bank Guarantee along with the carrying cost?

22. We note that as per Clause 4.19 of the HPPTCL-KPCPL IPTA, the Petitioner was required to furnish a Bank Guarantee in favour of ADHPL for an amount of Rs. 50,51,095/- and make payments of transmission charges. The relevant extract of the said IPTA is as under:

“4.19 Payment Security to ADHPL

Within 7 days from the date of this agreement, M/S Kanchanjunga shall provide HPPTCL, at its own cost, the following:

(a) A fully automatic, irrevocable and revolving back to back Letter of Credit.....

.....

(b) In addition to (a) above, M/S Kanchanjunga will also provide a Bank Guarantee from a scheduled Bank with ADHPL as beneficiary in an acceptable form to ADHPL, equal to 1 month Transmission Charges payment i.e. 50,51,095/- valid all the times).”

In terms of the above, the Petitioner has furnished a bank Guarantee with an expiry date up to 30.03.2023 and a claim date up to 30.03.2024. The snapshot of Amendment No. 23, dated 02.01.2023 is as under:

Amendment No. 23 dated 02-01-2023
Bank Guarantee No: 16090100004482 dated 13-05-2016

With reference to our Guarantee No. 16090100004482 dated 13-05-2016 for Rs.5051095/- (Rupees Fifty Lakh Fifty One Thousand Ninety Five Only) issued in your favour by us on behalf of KANCHANJUNGA POWER COMPANY PRIVATE LIMITED has been amended as below:

Particulars	Existing	To be read as
Expiry date	30-12-2022	30-03-2023
Claim date	30-12-2023	30-03-2024

23. The relevant extract of the Schedule IV of the IPTA dated 28.4.2016 provides as follows:

“SCHEDULE IV- PAYMENT AND BILLING

4.9 Payment of Invoices raised by ADHPL for the usage of ADHPL Systems

M/s Kanchanjunga shall deposit the amount payable to ADHPL under Invoices into the account nominated by HPPTCL or directly to ADHPL through the letter of credit under intimation to HPPTCL, as under:

.....

c) IF M/S Kanchanjunga does not pay an invoice on or before the Due Date, any amount remaining unpaid after the Due Date, shall bear surcharge @ 1.25% (one point two five percent) per month. Such surcharge shall be calculated on simple rate basis and shall accrue from the Due Date until the amount due is actually received by HPPTCL, calculated on daily basis.

....

e) If M/S Kachanhunga fails to pay any Invoices raised by ADHPL on or before the Due Date ADHPL may, except in the case of an Invoice Dispute, draw upon the Bank Guarantee for payment of the Invoice by presenting to the relevant issuing bank a copy of the Invoice that has been delivered to HPPTCL and accompanied with a declaration by ADHPL that the amount due under such Invoice has not been paid by M/S Kanchanjunga. In the case of an Invoice Dispute, ADHPL shall only be entitled to draw that amount of the Invoice that is not subject to a dispute;

4.10 If any amount under the Monthly Transmission charges Invoice is the subject of dispute, M/s Kanchanjunga shall make the payment to ADHPL/ HPPTCL to the extent the charges are not the subject of an Invoice Dispute, and the same shall be deemed payable in full by M/s Kanchanjunga to HPPTCL/ADHPL.

4.11 Disputed Invoices

If M/S Kanchanjunga does not question or dispute an Invoice within 4(four) days of receiving it, the Invoice shall be considered correct and complete and conclusive between the Parties. If M/S Kanchanjunga disputes any item or part of an item set out in any invoice then M/S Kanchanjunga shall serve a notice (“Invoice Dispute Notice”) on HPPTCL within 4 days of receiving the invoice, setting out the item or part of an item set out in such Invoice which is in dispute together with its estimate of what such item or part of an item should be.

....”

As per the above, ADHPL was entitled to encash the Bank Guarantee amounting to Rs. 50,51,095/- , if the Petitioner failed to pay any Invoices raised by ADHPL on or

before the due date. Further, ADHPL could draw upon the Bank Guarantee only if there was no invoice dispute. In this regard, the HPPTCL-KPCPL IPTA dated 28.04.2016 defined the 'Due Date' of the Invoices as under:

"4.7 The 'Due Date' of the invoices shall be reckoned as 50 days for the invoices of ADHPL & 60 days for the invoices of HPPTCL from the Date of presentation of invoices by HPPTCL. The invoice shall be either emailed/ faxed/ Hand delivered/ couriered by HPPTCL and delivery of any/ either of these shall be construed as delivery to M/s Kanchanjunga."

As per the above, the "Due date" is 50 days from the date of issuance of the invoice. We note that the "due date" as noted in Issue No. 1 herein has been indicated as "20.5.2023" and 29.05.2023" by the ADHPL itself in its invoices.

24. Now, we proceed to analyse the sequence of events while encashing the Bank Guarantee of the petitioner by ADHPL.

(a) Respondent ADHPL, vide its letter dated 07.03.2023, sent a request to Axis Bank Ltd. for Extension/ Encashment of Bank Guarantee under intimation to the Petitioner. The relevant extract of the letter dated 07.03.2023 is as under:

"The Bank Guarantee No. 1690100004482 dated 13.05.2016 for Rs. 50,51,095/- is valid up to 30th March 2023 as per your Amendment No. 23 dated 02.01.2023 in our favour on behalf of M/s Kanchanjunga Power Company Private Ltd. The same is expiring on 30.03.2023.

As the purpose of the Bank Guarantee has not been fulfilled, you are requested to kindly extend the Bank Guarantee till 30.03.2024 and claim period till 30.03.2025.

In case the Bank Guarantee is not extended as desired by us, please consider this letter as our claim for encashment of the said Bank Guarantee."

As per the above, ADHPL gave a clear direction to the Bank that in case the Bank Guarantee is not extended as desired by ADHPL, the letter be treated as its claim for encashment of the said Bank Guarantee.

(b) In response to the ADHPL letter dated 07.03.2023, the Petitioner, vide e-mail dated 14.03.2023 addressed to the Bank, responded as follows:

".....

(iii) Please further note that the transmission charges of ADHPL transmission line were being paid in line with the stipulations of Interim Power Transmission Agreement (IPTA) and after the award of APTEL's judgement dated 31.10.2022, the IPTA becomes ineffective.

(iv) Also, note that KPCPL has duly paid all the invoices raised under the IPTA, and that there is no pending claim/ invoice, whatsoever, post the Hon'ble APTEL's judgement dated

31.10.2022. Hence, there is no outstanding amount against ADHPL line transmission charges.

In view of the above, please note that BG NO. 16090100004482 dated 13.05.2016 was furnished as a payment security under the IPTA, and when there is no subsisting claim of either ADHPL or under the said IPTA, there remains no justification or a reason, whatsoever, for encashment of the above BG. We, therefore, request to please confirm from ADHPL about the outstanding claims against KPCPL for which they seek to invoke the BG."

As per the above, the Petitioner clarified that after APTEL's judgement dated 31.10.2022, the IPTA became ineffective. Further, as there was no subsisting claim of either ADHPL or under the said IPTA, there was no justification or reason for the encashment of the BG.

(c) ADHPL also issued two reminders to the bank vide letter dated 20.3.2023 and 30.03.2023 and issued instructions to the Bank that if the Bank is not able to renew the Bank Guarantee for the period up to 30.03.2024, the same may be encashed. The relevant extract of the letter dated 30.03.2023 is as under:

"Kindly refer your e-mail dated 29th March 2023, you are required to renew the above Bank Guarantee by today's for the period upto 30.03.2024 and claim period upto 30.03.2025.

In case if you are not able to do so, kindly encash the same and send the proceeds to our Bank account as per following details:-"

(e) Bills for the transmission charges for the ADHPL line for the period October 2022 to February 2023 were raised by ADHPL to the HPPTCL with a copy to the Petitioner vide ADHPL email and letter dated 30.03.2023. In response, the Petitioner vide email dated 30.03.2023, which was addressed to HPPTCL with a copy to the ADHPL, rejected the invoices raised by the ADHPL. The relevant extract of the Petitioner's e-mail dated 30.03.2023 is as under:

"We are in receipt of trailing mail enclosing therein a letter dated 30 Mar 2023 addressed to your office along with ADHPL copy of invoices for the months of Oct'22 to Feb'23 towards transmission charges.

Without Prejudice to our rights in this regard, please be informed as under:

i) Hon'ble APTEL Order dated 31.10.2022 in the Appeal No. 450 of 2019 has superseded the terms of IPTA and hence any invoice raised including post the date of APTEL Order as per IPTA is void;

ii) ADHPL being a deemed transmission licensee has not obtained any regulatory order for raising any invoice. As such, any invoice raised is illegal and void;

iii) Further, Regulator has not issued any Order for submission of BG to the deemed licensee viz. ADHPL. The claims of ADHPL for extension of BG/ its Invocation under the current circumstances is not tenable, unjustified and illegal. ADHPL's letter dated 30 Mar 2023 to our bank for invocation of BG in exercise of their dominant position is not in spirit of Regulation and needs immediate withdrawal. A copy of letter is enclosed herewith.

iv) In fact, a huge amount has already been paid for last seven years in the form of transmission charges & losses as per IPTA which is due for refund as per APTEL Order dated 31.10.2023.

In view of the above, we hereby reject their invoices raised on us (5 nos. submitted on 30 Mar 2023) for the period Oct 2022 to Feb 2023 and request your good office to take necessary action on rejecting their said invoices."

As per the above, the Petitioner disputed and rejected the invoices raised by the ADHPL vide their letter dated 30.03.2023.

(f) ADHPL vide their e-mail dated 31.03.2023, requested the Bank to invoke the BG and remit fund. The relevant extract is as under:

"We have not received fund till now,

BG has already been expired, therefore request you to please invoke BG and remit fund on top priority to our given/ shared bank details."

(g) Bank vide email dated 3.4.2023 remitted the funds of BG to ADHPL quoted as follows:

Pramod Kr. Arora (H-Project/Noida)

From: Santosh71 Kumar <Santosh71.Kumar@axisbank.com>
Sent: 03 April 2023 12:02
To: Deepak Gupta; Neetu Vishwakarma; Gurjan Khanna
Cc: Abhijeet Srivastava (H-BD/Noida); Abhishek151 Kumar; Mahadevan K; Amit Kr. Agarwal (H-F&A/Noida); Aman2 Mishra; Anil Kumar (H-F&A/Noida); Ashok Kumar; Brij Mohan; Cbbnewdelhi Forex; Gautam Kapoor (H-F&M/Noida); Girish Chand (H-F&A/Noida); Kapil1 Mehta; Mayank S; Parvesh Sharma (H-F&A/KPCPL); Ravi Gupta; Sameer Garg; Shikha Singhal; Yashwant Singh Negi (H-F&A/Noida); O P Ajmera
Subject: Re: Most Urgent --- ADHPL- KPPCL - BG Extension - expiring on 30.3.2023

Dear Sir,

Please find

Rs.50,51,095.00 VIA UTR No. UTIBR52023040300192720

Thanks and Regards,

Santosh Kumar

Customer Service Officer - Trade,

Wholesale Banking Service

Axis Bank Ltd

Address - Plot no 25, 3Rd Floor Pusa Road, Karol Bagh New Delhi - 110005

Mobile - 7042941561

25. We have perused the Bank Guarantee dated 13.5.2016 submitted by the Petitioner which provides as follows:

... this Bank Guarantee on the terms as set forth hereunder.

NOW THEREFORE WE **Axis Bank Limited**, a company incorporated under the Companies Act, 1956 and carrying on the business of Banking under the banking regulation act, 1949 and having its registered office at Axis Bank Limited, Trishul, Opposite Samarsheshwar Temple, Law Garden, Ellis Bridge Ahmedabad - 380006, Gujarat and branch office at Axis Bank Limited Corporate Banking branch, 2nd floor, Red fort Parsvnath towers, Behind Furniture Market, Bhai Veer Singh Marg, Gole Market, New Delhi - 110001 (hereinafter called "the Bank") hereby affirm that the Bank is the Guarantor and responsible to "KPCPL" having registered office at Unit No. 307, Third Floor, Corporate One, Non Hierarchy Centre, Jasola, New Delhi 110076 for performance of its obligations under the Agreement dated 28-04-2016 entered in to between "HPPTCL" and "KPCPL" up to a total of **INR 50,51,095/- (Indian Rupees Fifty Lakhs Fifty One Thousand Ninety Five Only)** on following terms and conditions:

1. Bank undertake to pay "ADHPL" upon first written demand and without cavil or argument or demur any sum or sums within the limit of **INR 50,51,095/- (Indian Rupees Fifty Lakhs Fifty One Thousand Ninety Five Only)** as aforesaid without ADHPL needing to prove ground or reasons for ADHPL demand for the sums specified therein.
2. The Bank hereby waives the necessity of ADHPL demanding the said money from "KPCPL" before presenting the Bank with the demand.
3. The Bank further agrees that no change or addition or modification of the terms of the Agreement dated 28-04-2016 between "HPITCL" and "KPCPL" shall in any way release the Bank from the liability under this Bank Guarantee and the Bank hereby waives notice of any such change, addition or modification.
4. This Guarantee will not be discharged due to change in the constitution of the bank or the Contractor or ADHPL or in the event of liquidation of any one them and the Bank hereby waives notice of any such change addition or modification.
5. We, the Bank, undertake not to revoke this guarantee during its currency except with the previous consent of ADHPL in writing.
6. We have power to issue this Guarantee in ADHPL favour under Memorandum of articles of Association and the undersigned has full power to do under the Power of Attorney granted to him by the Bank.
7. Payment against this Bank Guarantee shall be made against surrender of the original Bank Guarantee by "ADHPL" to the Bank.
8. The Bank further agrees to renew this Bank Guarantee before the expiry date and shall intimate ADHPL immediately upon its renewal.
9. This Bank Guarantee shall remain in force till **1st May 2017 (expiry date)** any claim to be made under the Bank Guarantee must be made on us within the aforesaid expiry date of Bank Guarantee i.e. **1st May 2017 (claim date)**. Unless such a demand is made upon us within the said stipulated time of 90 days or such extended period for which this guarantee has been

OR **AXIS BANK LTD.**

Page 2 of 2

As per the above, the Bank undertook to pay ADHPL on written demand without any argument and without ADHPL needing to prove grounds for ADHPL demand.

26. We observe that the Commission specifically asked ADHPL vide ROP dated 20.10.2023 as follows:

"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"

In response to the above query of the Commission, ADHPL has submitted as follows:

“ADHPL requested to the issuing Bank under intimation to the Petitioner to extend the Bank Guarantee on the same format which was used in the past also.

As per para 4.6(e) the Interim Power Transmission Agreement dt 28.04.2016 to draw upon the bank Guarantee, Respondent had to present the bank a copy of the invoice and declaration that the amount due under such invoice has not been paid by petitioner.

Since the extension/ encashment of Bank Guarantee was sought by Respondent before the bills were raised. Therefore no invoice was presented to the bank, however bank encashed the Bank Guarantee in favour of Respondent.

The Respondent had sought the extension of Bank Guarantee as there was no order of this Hon'ble Commission in respect of payments to Respondent.”

27. We have carefully analysed the reply of ADHPL in this regard and observe as follows on this count:

- (a) The Bank Guarantee nowhere provides that ADHPL will give invoices to the bank. IPTA has been entered into between ADHPL and HPPTCL and the bank is not part of IPTA. Any conditions of encashment of Bank Guarantee were to be adhered to by the parties entering into the Agreement. As on 29.03.2023, no invoices were raised on to the Petitioner, and to substantiate its claim for encashment of the Bank Guarantee as per the provisions of the IPTA, ADHPL issued the back-dated invoices (i.e., 21.03.2023) for the month of October 2022 to January 2023 and invoices dated 30.03.2023 for the month of February 2023.
- (b) ADHPL, vide its various letters/emails, as quoted above, gave clear instructions to the bank to encash the bank guarantee in favour of ADHPL. Hence, the statement of ADHPL that it just asked the bank to extend the bank guarantee is incorrect.

In light of provisions of IPTA and the sequence of events as capitulated herein above, now we analyse whether the encashment of the Bank Guarantee by ADHPL could have been done by ADHPL. In this regard, we note as follows:

28. We therefore observe that, despite the fact that the ADHPL was not obligated to raise any invoice to the Petitioner subsequent to APTEL's judgment, the transmission charges bills for the month of October 2022 to February 2022 were raised to the

Petitioner vide ADHPL letter dated 30.03.2023 (invoice dated 21.03.2023 and 30.03.2023). However, the instructions for the encashment of the Bank Guarantee were sent to the Bank vide ADHPL's letter dated 07.03.2023 and 20.03.2023, 30.03.2023, and 31.03.2023, i.e., before the raising of invoices on to the Petitioner and even before the expiry of the due date, i.e., 20.05.2023 and 29.05.2023, which is in violation of the provisions of the IPTA.

- 29.** Further, in terms of the IPTA, ADHPL could draw upon Bank Guarantee only if there was no invoice dispute. However, in the present case invoices raised by the ADHPL were rejected by the Petitioner vide their e-mail dated 30.03.2023 itself. Despite the above fact, ADHPL, vide e-mail dated 31.03.2023, instructed the Bank to invoke the BG submitted by the Petitioner and the same was finally encashed on 03.04.2023.
- 30.** In view of the above discussions, we are of the considered view that the action taken by the ADHPL regarding the encashment of the Petitioner's Bank Guarantee is in violation of the provisions of the IPTA and is unlawful.
- 31.** ADHPL has contended that the Commission, in its Order dated 19th January 2024 in Petition No. 209/MP/2017, gave the mechanism for the settlement of the amounts received/paid by the parties since 2011-12, which includes the amount received on encashment of Bank guarantee, whereby Petitioner shall receive a refund of the entire amounts paid to the Respondent. We observe that ADHPL did not submit in Petition No. 209/MP/2017 that it had encashed the Bank Guarantee in violation of IPTA, and the issue of encashment of BG by ADHPL raised in the instant Petition has not been adjudicated in aforementioned Petition No. 209/MP/2017. Hence, we reject the contention of ADHPL that the instant Petition is infructuous. Any unlawful enrichment at the cost of another entity calls for a penal interest rate to be levied on ADHPL.
- 32.** As we have already concluded in the above paragraphs that the Respondent ADHPL has unlawfully encashed the Bank Guarantee amounting to Rs. 50,51,095/-, accordingly, we direct Respondent ADHPL to refund the amount electronically within 15 days of the issue of this Order with interest at the rate of SBI MCLR as on 1st April 2024 plus 350 basis points, from the date it received the encashed BG amount till the actual payment is made. In case ADHPL fails to refund the said amount along with interest in the next 15 days, it shall be liable to pay further interest on the amount plus accrued interest @ SBI MCLR as on 1st April 2024 plus 350 basis points on a monthly compounding basis

33. No order as to costs of litigation. The issue no. 2 is addressed accordingly.

34. Petition No. 221/MP/2023 is disposed of in terms of the above.

**Sd/
(P. K. Singh)
Member**

**Sd/
(Arun Goyal)
Member**

**Sd/
(Jishnu Barua)
Chairperson**