

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 96/MP/2015
(On Remand)**

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 24.03.2026

In the matter of:

Petition under Section 79 (1)(c) and (f) and other applicable provisions of the Electricity Act, 2003, read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in the inter-State transmission and related matters) Regulations, 2009 against the cancellation of LTA granted by the respondent and encashment of bank guarantee.

And in the matter of:

Chettinad Power Corporation Limited,
Rani Seethai Building 603,
Anna Salai,
Chennai.

...Petitioner

Versus

1. Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Gurgaon-122001.
2. Central Transmission Utility of India Limited,
"Saudamini", 1st Floor,
Plot No. 2, Sector-29,
Gurugram-122001.

...Respondent(s)

Parties Present : Ms. Swapna Seshadri, Advocate, CPCL
Ms. Aishwarya Subramani, Advocate, CPCL
Shri Sitesh Mukherjee, Senior Advocate, CTUIL
Ms. Deepriya Snehi, Advocate, CTUIL
Ms. Abiha Zaidi, Advocate, CTUIL
Shri Pritam Raman G, Advocate, CTUIL
Ms. Suriti Chowdhary, Advocate, CTUIL
Ms. Pragya Samal, Advocate, CTUIL
Ms. Tanya Sharma, Advocate, CTUIL
Ms. Arushi, Advocate, CTUIL
Shri Swapnil Verma, CTUIL



ORDER

Chettinad Power Corporation Limited had filed the instant Petition No.96/MP/2015 under Section 79(1)(c) and (f) and other applicable provisions of the Electricity Act, 2003 (hereinafter referred to as the “Act”) read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in the inter-State transmission and related matters) Regulations, 2009 (hereinafter referred to as the “2009 Connectivity Regulations”) against the cancellation of LTA issued under the 2009 Connectivity Regulations and encashment of bank guarantee (hereinafter referred to as “BG”) by CTUIL.

2. The Petitioner had made the following prayers in Petition No.96/MP/2015.

- “A. Call for the records of the respondent comprised in the proceedings for the 18th Southern Regional meeting dated 5.3.2015, in so far as it relates to the Petitioner and the letter dated 5.3.2015 bearing No. C/CTU/Plg/LTA/NLTAA/Chettinad and quash the same as arbitrary and illegal and direct the provision of extension to the Petitioner to execute the LTA until disposal of Appeal No. 87 of 2014 pending before the Hon`ble NGT, Principal Bench, New Delhi upon such terms and conditions as this Hon`ble Commission may deem fit and pass such further or other orders as this Hon`ble Commission may deem fit in light of the facts and circumstances of this case and thus render justice.*
- B. Issue an interim injunction restraining the Respondent, its men and agents from in any manner seeking to enforce the decision arrived at in the 18th Southern Regional meeting dated 05.03.2015 with respect to the Petitioner’s project pending disposal of the petition*
- C. Issue an interim stay of the Respondent’s communication dated 05.03.2015 bearing No. C/CTU/Plg/LTA/N-LTAA/Chettinad and all proceedings pursuant and consequent thereto pending disposal of this petition upon such terms, including extension of the Bank Guarantee of a value of Rs. 1,11,00,000.*
- D. Pass such other further order(s) as the Hon`ble Commission may deem just in the facts of the present case.”*

3. The Commission, vide order dated 8.3.2017 in Petition No. 96/MP/2015, had disallowed the Petitioner’s plea against cancellation of LTA issued under the 2009 Connectivity Regulations and encashment of BG by CTUIL. The relevant portion of the order is as follows:

“24. The Petitioner has submitted that the CTU has granted extensions from time to time to the Petitioner to sign the LTA Agreement after appreciating the circumstances of the Petitioner and therefore, CTU is estopped from denying extension of time and encashing bank guarantee. CTU has submitted that it granted time to the Petitioner considering the hardship faced by the Petitioner but the extension cannot be ad infinitum which defeats the purpose of the Act and Connectivity Regulations. CTU has further submitted that there cannot be any estoppel against the statute. We are of the view that the Connectivity Regulations prescribes a time period of 30 days for signing the LTA Agreement failing which LTA should have been cancelled and bank guarantee should have been encashed. However, CTU, by taking into account the difficulties faced by the Petitioner has granted extension after discussion of the proposal in the Standing Committee of the Southern Region constituents on Connectivity and LTA. If extension of time for signing of the LTA Agreement for indefinite period is granted, it will defeat the purpose LTA which is the primary basis for transmission planning as per the Connectivity Regulations. CTU is under a statutory obligation to cancel the LTA and encash the bank guarantee if the LTA applicant fails to sign the LTA Agreement. CTU has granted extensions of time to the Petitioner to sign the LTA Agreement even though there is no provision for grant of extension. We agree with the submissions of the learned counsel for CTU that there cannot be any estoppel against the statute. Merely because CTU has granted extensions from time to time cannot be pleaded as estoppel against cancellation of LTA and encashment of bank guarantee since the Connectivity Regulations and Detailed Procedure do not allow any extension of time for signing of LTA Agreement and necessary consequence with follow for non-compliance of the provisions of the regulations and procedure.

25. The Petitioner has sought a direction to restrain the CTU from encashing the bank guarantee. In this connection, the observations of the Appellate Tribunal in judgement dated 15.4.2015 in Appeal No.197 of 2014 with regard to restrain on encashment of bank guarantee are relevant which are extracted as under:

“34. It is well settled that restrain on encashment of Bank Guarantee can be granted only in exceptional circumstances. There is a long line of judgments of the Supreme Court stating so. The Supreme Court in Himadri Chemicals & Industries Ltd. held that such restrain can be put only if it is proved that there is a fraud in connection with the Bank Guarantee which vitiates the very foundation of the Bank Guarantee and where encashment of Bank Guarantee results in irretrievable harm or injustice to one of the parties concerned. We need not refer to the other judgments which reiterate the same principles.

35. We have not examined whether the force majeure conditions, in fact, existed or whether irretrievable harm or injustice is caused to the Appellant. As already stated by us, the Connectivity Regulations are so clear that the encashment of the Bank Guarantee cannot be faulted. The rationale behind the encashment of the Bank Guarantee has also been examined by us and it has impressed us. If as contended by the Appellant, the Appellant has suffered any loss or damages, in our opinion, Respondent No.1 cannot be held responsible for it.”

The above observations of the Appellate Tribunal are applicable in all fours in the present case also. The provisions of Connectivity Regulations and Detailed Procedure clearly provide that failure to sign the LTA Agreement within the stipulated period will result in encashment of bank guarantee. Since the Petitioner has failed to sign the LTA Agreement within the stipulated period, even within the extended period, we reject the prayer of the Petitioner for issuing restrain on invocation of bank guarantee.

26. During the course of proceedings of the present petition, CTU had placed on record a list of generation project developers who have not signed the LTA Agreements. CTU has issued notices to all the project developers for entering into LTA Agreements failing

which their LTAs would be cancelled and bank guarantee would be forfeited. CTU has sought guidance of the Commission for dealing with those cases. We direct CTU to deal with those cases in the light of the directions in this order.”

4. Aggrieved by the Commission’s order dated 8.3.2017, the Petitioner preferred Appeal No. 99 of 2017 before APTEL. APTEL, in its judgement dated 11.9.2025 in the said appeal, held as follows:

“34. We find ourselves in total agreement with the decision of the High Court in the said Writ Petition. It is amply clear that the only purpose requiring the Bank Guarantee to be submitted along with the LTA application is to have an overview of the applicants and to screen the applicants to ensure that only serious applicants apply. At best, the requirement for furnishing Bank Guarantee along with application may be considered as a regulatory measure. The fact that the Bank Guarantee submitted along with LTA application gets automatically discharged upon submission of fresh Bank Guarantee by the LTA applicant for construction period as per the Detailed Procedure, also indicates that the object of the initial Bank Guarantee submitted along with the LTA application is merely to demonstrate the seriousness of the LTA applicant and nothing more and hence its encashment by the CTUIL is not necessary or mandatory merely for the reason that the LTA applicant fails to sign the LTA agreement within the stipulated period.

35. Hence, we are of the firm opinion that the word “May” used in Regulation 12(5) of Connectivity Regulations does not convey any mandatory force and the said Regulation cannot be read to mean that CTUIL must necessarily encash the Bank Guarantee in all cases where the applicant withdraws the LTA application or relinquishes its LTA rights prior to operationalization or fails to sign LTA agreement within the stipulated period. Whether the Bank Guarantee submitted along with LTA application is required to be encashed or not would depend upon the facts and circumstances of each case and shall have to be determined by the CTUIL having regard to all those facts and circumstances. There may be cases where the applicant, who has been granted LTA, is prevented from executing the LTA agreement within the stipulated period by some genuine hardship or by the reasons beyond its control. Serious mis-carriage of justice would entail if Regulation 12(5) is termed as mandatory in nature requiring encashment of Bank Guarantee in those cases also.

36. Accordingly, the impugned order of the Commission cannot be sustained. Same is hereby set aside. Appeal stands allowed.

37. We hold and declare that Regulation 12(5) of the Connectivity Regulations, 2009 is only directory or discretionary and it is not mandatory for the nodal agency i.e. CTUIL to encash the Bank Guarantee furnished along with LTA application in every case of default. Decision in this regard shall have to be taken by the CTUIL upon considering all the relevant facts and circumstances which may have prevented the LTA applicant from complying with the conditions upon which LTA has been granted.

38. Hence, we remand the matter back to the Commission with the directions to determine whether the CTUIL was justified in encashing the Bank Guarantee of the Appellant in this case and to pass a fresh order in this regard within one month from receipt of this judgement.”

5. APTEL has set aside the Commission’s order dated 8.3.2017 and remanded the matter to the Commission with directions to determine whether CTUIL was justified,

in the facts and circumstances of the present case, in encashing the BG furnished by the Petitioner, and to pass a fresh order accordingly. On remand, the matter was heard on 30.9.2025, 16.11.2025, 23.12.2025, 23.12.2025 and 8.1.2026. On 30.9.2025, the Petitioner was not represented, and only CTUIL was present. Petitioner sought time to properly map the Respondents on the e-filing portal of the Commission and to file an additional affidavit on 16.11.2025. On 23.12.2025, CTUIL sought time to file its response to the Petitioner's affidavit and to map CTUIL as a Respondent on the e-filing portal pursuant to the demerger of CTUIL and PGCIL by the Ministry of Power on 9.3.2021. The arguments of the Petitioner and the CTUIL were heard on 8.1.2026, and on the request of the parties, the Commission permitted them to file their written submissions within ten days and reserved the order in the matter.

6. The Petitioner, vide affidavit dated 18.12.2025, has submitted as follows:

(a) On 23.12.2011, CTUIL had granted connectivity/ long-term open access to the Petitioner in relation to its proposed 2x600 MW thermal project along with a captive jetty in Nagapattinam ("Project"). Prior to obtaining connectivity, the Petitioner had received environmental clearance (EC) from the Ministry of Environment and Forest (MoEF) on 20.01.2011, valid until 19.01.2016.

(b) However, subsequent to the grant of LTA, the grant of EC to the Project was challenged before the National Green Tribunal ("NGT"), Delhi, in Appeal 12 of 2011 by Coastal Action Group, and the NGT, vide order dated 30.5.2012, had suspended the EC for six months with certain directions. Upon compliance with the directions issued by the Petitioner, the EC was restored by the MoEF on 23.8.2013. The EC restoration order was once again challenged by the Coastal Action Group in Appeal No.114 of 2013 before the NGT Southern Bench at Chennai, and the case was transferred to the NGT principal Bench at New Delhi, vide Appeal 87 of 2014. Since the Petitioner herein could not have pursued the project without a valid EC, it apprised the CTUIL of the status of the Project from time to time, based on which the CTUIL had granted extensions to execute the LTA Agreement.

(c) Despite the genuine difficulty being faced by the Petitioner, CTUIL issued the notice dated 5.3.2015 for cancellation of the connectivity and invocation of the BG of ₹1,11,00,000 furnished by the Petitioner with its LTOA application.

(d) Aggrieved by the above, the Petitioner had filed the present petition praying for a time extension for execution of the LTA Agreement and to restrain CTUIL from enforcing the decision taken in the 18th Meeting of the Southern Region Constituents held on 5. 3.2015, wherein CTUIL had taken the decision to withdraw/ cancel the LTA granted to the Petitioner.

(e) The Commission dismissed the petition vide order dated 8.3.2017. Subsequently, CTUIL encashed the application bank guarantee of ₹1,11,00,000 provided by the Petitioner with its LTOA application on 24.4.2017. Aggrieved by the same, the Petitioner approached the ATPEL to challenge the above order in Appeal 99 of 2017.

(f) The APTEL allowed the appeal in its judgment dated 11.09.2025 in Appeal No. 99 of 2017 and restored the present petition to the file of the Commission.

(g) The APTEL has referred to the judgment of the Hon'ble Delhi High Court dated 24.11.2022 in NSL Nagapatnam Infrastructure Pvt. Ltd. v CERC & Ors. (W.P.(C) 6791/2017 & CM No.33742/2018), with similar facts, wherein the Hon'ble Delhi High Court, interpreting Regulation 12(5) of the Connectivity Regulations, held as follows:

“9. The short issue that boils down for consideration is whether the encashment of the bank guarantee is mandatory as held in the impugned order or is at the discretion of the CTU. The language of Regulation 12(5) of the Connectivity Regulations does not indicate that it is necessary in all cases for the CTU to encash the bank guarantee. The use of the word “may” also supports the view that in certain cases, where the CTU has committed its resources pursuant to the application for LTA and the applicant does not seriously pursue the same, the bank guarantee may require to be encashed as a measure of compensation. Concededly, the CTU is not required to quantify the compensation but merely to indicate that the bank guarantee is a measure of such compensation and is due and liable to be invoked in that case.

...

17. The word “may” can never be read as “must” (see Nicholas v. Baker: 59 LJ Ch 661). In certain circumstances, the use of the word “may”, in a statutory provision, indicates an enabling power that is coupled with a duty to exercise

the same. In such cases, use of the word “may” would not change the mandatory character of the said provision. However, in this case, requirement of furnishing a bank guarantee is to screen the applicants to ensure that only serious applicants apply. To that extent, it is meant to regulate the applicants.”

(h) At the time of the grant of connectivity on 23.9.2010, the Petitioner had obtained a valid environmental clearance, and subsequently, the clearance was subject to a challenge before the NGT, Delhi.

(i) Following the remand judgment of the APTEL, the following factors must be examined by the Commission to verify the validity of encashment of the BG:

(i) The Petitioner was unable to commit resources and continue with the establishment of the Project in view of the EC being under challenge and suspended by the NGT. Further, on cancellation of the connectivity, the Petitioner could not have proceeded with the Project. Any activity undertaken by the Petitioner would have been subject to the outcome in the appeals before the NGT and the present proceedings, which could have resulted in substantial wastage of resources. Further, the Petitioner could not have proceeded with the Project without a valid environmental clearance.

(ii) CTUIL has not put forward any submissions as to any loss or damage suffered by it or any amounts expended by it towards the connectivity of the Petitioner. It has also not provided any evidence of undertaking any preparatory or implementation activities to provide connectivity to the Petitioner.

(iii) In terms of the Judgment of the Hon’ble High Court of Delhi in NSL Nagapatnam Infrastructure Pvt. Ltd. v CERC & Ors., it is necessary for CTUIL to demonstrate that resources were committed by it towards the LTA application to be legible for compensation. While CTUIL is not required to quantify the compensation, it is incumbent upon CTUIL to demonstrate that the BG is a measure of such compensation and is due and liable to be invoked.

(iv) CTUIL has also not disputed the submissions of the Petitioner that no prejudice would be caused to CTUIL upon the cancellation of the connectivity since it has not made any financial outlay to implement the Petitioner’s connectivity.

- (v) The Petitioner had, from time to time, duly apprised CTUIL of the status and progress of the Project. Acknowledging the genuine difficulties, CTUIL had granted extensions to execute the Long-Term Access Agreement. The conduct of CTUIL clearly demonstrates that no steps were taken towards system planning, augmentation, construction, or allocation of transmission assets in relation to the Petitioner's Project.
- (j) There was a genuine difficulty for the Petitioner to set up the Project when CTUIL issued the notice invoking the BG. Following the various disputes, the Petitioner could not continue with the Project, and the same had to be shelved.
- (k) CTUIL neither committed any technical, financial, or infrastructural resources nor incurred any expenditure towards the provision of connectivity to the Petitioner. Consequently, CTUIL has suffered no prejudice, loss, or adverse financial impact on account of the cancellation of the Petitioner's application. Therefore, the Petitioner is entitled to be reimbursed for the BG amounts encashed by CTUIL, including the carrying cost.
- (l) Following the Commission's order dated 8.3.2017, CTUIL has cancelled the LTA and encashed the application BG on 27.4.2017. Further, in light of the multiple proceedings regarding the cancellation of the environmental clearance and the connectivity, it was not feasible for the Petitioner to continue with the Project.
- (m) Hence, the original prayer in the Petition may be considered to be modified to the above extent, and CTUIL may be directed to return the encashed amounts to the Petitioner along with carrying cost.

7. CTUIL, Respondent No. 2 vide affidavit dated 6.1.2025 has made the following submissions:

- (a) APTEL, vide judgment dated 11.9.2025 in Appeal No. 99 of 2017, has set aside the Commission's order and held that Regulation 12(5) of the 2009 Connectivity Regulations is only directory or discretionary in nature, and it is not mandatory for CTUIL to encash the application BG in every case of default and that decision in this regard shall have to be taken by the CTUIL upon considering all the relevant facts and circumstances which may have prevented the LTA applicant from complying with the conditions upon which LTA has been granted. Consequently, the matter has been remanded to this Commission to determine

whether CTUIL was justified in encashing the BG of the Petitioner in the specific facts and circumstances of this case.

(b) CTUIL has acted as per the mandate of the applicable regulations by encashing the subject BG.

(c) CTUIL did not treat all defaulting applicants uniformly in a mandatory fashion but assessed the "preparedness" and "milestones" of the Petitioner during various meetings of the Southern Region Constituents (13th to 18th meetings). This evaluation of project progress is the very essence of the judicious discretion mandated by the APTEL remand.

(d) The decision to eventually proceed with encashment was specifically justified by the Petitioner's own commitments. On two occasions, the Petitioner explicitly agreed to the invocation of the BG if milestones were not met, and they are:

(i) Letter dated 14.8.2014 giving its acceptance for the invocation of the BG if the Petitioner failed to enter the LTA Agreement by the end of February 2015.

(ii) Letter dated 30.1.2015 agreeing that CTUIL shall be at liberty to invoke the BG on the expiry of the final deadline.

(e) Once an applicant provides an undertaking to allow encashment in exchange for a discretionary extension of time, the subsequent exercise of that power by the nodal agency cannot be termed arbitrary or unjustified.

(f) The exercise of discretion to encash the BG was further justified by the intended regulatory purpose of the security:

(i) Ensuring Regulatory Seriousness: As noted in the Statement of Objects and Reasons (SoR) for the Connectivity Regulations, the BG is required to "bring seriousness" to LTA applications. If CTUIL allowed an applicant to keep transmission capacity blocked indefinitely without signing an agreement, the entire scheme of regulated open access would be frustrated.

(ii) Prevention of Stranded Assets: The BG provides assurance that project developers will not leave transmission systems "stranded". CTUIL is a revenue-neutral body; the encashed amounts are disbursed to other LTA users, ensuring no "unjust enrichment" but rather maintaining the financial discipline of the grid.

(iii) Absence of *force majeure* Protections: It is a settled legal position (reaffirmed in Jayaswal Neco) that in the absence of a signed contract, *force majeure* cannot be a ground for failing to sign the LTA Agreement. Therefore, the Petitioner's reliance on NGT litigation as a shield against encashment is legally unsustainable.

(g) Background of persistent non-compliance by LTA applicants, including the Petitioner, assumes significance. In the 15th Meeting of SR Constituents held on 4.1.2013, the issue of non-satisfactory progress by several Connectivity and LTA applicants was expressly highlighted. After deliberation on the status of several Connectivity and LTA applicants, some of the Connectivity and LTA applications were closed.

(h) The issue of long-pending Connectivity and LTA applications was again taken up in the 17th Meeting of SR Constituents, wherein the Petitioner's case was specifically reviewed. It was recorded that despite the grant of LTA as early as 27.12.2011, the Petitioner had neither executed the LTA Agreement nor furnished the requisite BG. While citing the pendency of environmental clearance proceedings before the NGT, the Petitioner sought further time, acknowledging the regulatory consequences of continued delay. It was decided in the meeting that the Petitioner may submit a letter within one week mentioning that CTU may encash their BG on/after 1.2.2015 if the Petitioner still does not get environment clearance from NGT. Accordingly, the Petitioner submitted a letter to CTUIL on 14.8.2014.

(i) During the deliberations of the 17th Meeting, the Petitioner agreed that CTUIL may encash the BG on or after 1.2.2015 in the event environmental clearance was not obtained. However, the Petitioner sought further extensions, including by communication dated 30.1.2015, wherein the Petitioner unequivocally accepted that the BG could be invoked upon expiry of the final deadline fixed by CTUIL. In response, CTUIL informed the Petitioner that the request would be placed before the next LTA meeting and would be decided based on deliberations thereon. Further, the Petitioner again unequivocally accepted the encashment of BG at the end of such extension by stating that:

"We hereby agree and accept that PGCIL shall be at liberty to invoke the Bank Guarantee on the expiry of the final deadline fixed by PGCIL."

(j) The Petition filed more than thirty-eight months after the original grant of LTA deserves to be viewed with caution and suspicion, specifically with respect

to the genuineness of the extensions being sought by the Petitioner in signing the LTA Agreement.

(k) Further, the Petitioner has consistently led the CTUIL to believe that it was very close to obtaining all the necessary approvals and has been successful in obtaining the same repetitively in the 15th, 16th and 17th meetings of the SR constituents, respectively held on 4.1.2013, 4.9.2013 and 16.9.2014.

(l) The exercise of discretion was fair because:

(i) The Petitioner is entitled to make a fresh LTA application once they have obtained the necessary clearances and are ready to execute the agreement.

(ii) There is no legal requirement to assess actual loss or damages prior to encashing an application BG, as it is a screening tool and a regulatory deterrent, not a measure of liquidated damages.

(m) CTUIL did not act under a mistaken belief of mandatory obligation. On the contrary, the record proves that CTUIL exhausted its discretion to accommodate the Petitioner through several years of extensions. The final decision to encash was a justified regulatory step taken only after the Petitioner provided written undertakings and failed to demonstrate any viable timeline for project execution.

(n) Therefore, the Commission may uphold the actions of CTUIL in encashing the BG as a justified exercise of discretion under Regulation 12(5) of the 2009 Connectivity Regulations.

8. The Petitioner has filed Written Submissions dated 21.1.2026, wherein it has reiterated its earlier submissions and has made the following additional submissions:

(a) CTU has not made any submissions on the actions undertaken by it towards the Project of the Petitioner.

(b) CTUIL has taken inconsistent positions in its pleadings. In its reply to the Petition dated 30.4.2015, CTUIL stated that it had treated all applicants uniformly and had not discriminated between them. However, in its Written Submissions dated 7.10.2025, CTUIL submitted that it did not treat all defaulting applicants uniformly in a mandatory manner, but instead assessed the Petitioner's preparedness and milestones during the meetings of the Southern Region Constituents.

(c) The submissions of CTUIL that the encashment was warranted in view of the undertaking provided by the Petitioner (that the BG can be encashed if the LTA is not signed within a given period) are wholly arbitrary, and it does not impinge upon the requirements to be fulfilled by CTUIL to be entitled to encash such BG.

(d) CTUIL submitted, during the hearing held on 8.1.2026, that the Petitioner has to demonstrate the impossibility of performance to justify why the BG already encashed by the CTUIL should be returned to it. Such a submission is contrary to the remand made by APTEL.

(e) The reliance placed by CTUIL on the judgment of the Hon'ble Supreme Court dated 2.2.2024 in Civil Appeal Nos. 235-236 of 2024 The Authorised Officer, Central Bank of India v. Shanmugavelu, during the course of arguments, is wholly misplaced, as the above judgment examined the legality of the forfeiture of earnest-money deposit furnished towards auction sale of secured asset under the SARFAESI Act.

9. CTUIL, in its Written Submissions dated 22.1.2026, has reiterated its earlier submissions and has additionally submitted as follows:

(a) Mere pendency of a challenge to an EC or litigation against a project cannot be permitted as a valid excuse to abort LTA signing obligations. The Petitioner ought to have provided more details than just the existence of a dispute.

(b) The Petitioner stated that it could not continue with the Project due to various disputes, and the same had to be shelved. However, the Petitioner has failed to provide any specific details regarding these disputes or their alleged impact, making it impossible to verify the claim of "hardship" or "impossibility".

(c) The Hon'ble Supreme Court in the case of The Authorised Officer, Central Bank of India vs. Shanmugavelu (2024) has reaffirmed that the forfeiture of a deposit or BG provided as earnest money is a valid "statutory penalty" designed to ensure the sanctity of a regulatory process. The Court clarified that such forfeiture is not a matter of "unjust enrichment," nor a measure of liquidated damages under Section 74 of the Contract Act; rather, it is a regulatory measure intended to screen for "serious applicants" and prevent the gaming of the process.

(d) BG also serves as necessary compensation for the costs incurred in planning and building the transmission systems that are triggered on the filing

of the LTA application. Further, the Petitioner's failure to sign the LTA results in planned transmission elements becoming "stranded assets," causing significant financial prejudice to the integrated national grid and the regulatory process.

(f) The capacity reserved for an LTA grantee deprives any other interested applicant from applying for the same capacity till the pendency of the grant.

Analysis and Decision

10. The Petitioner had proposed to set up a 2x600 MW sub-critical thermal power plant at Erukkatanchery, Kazhippanallur and Manickapangu villages in Tharangambadi Taluk of Nagapattinam District, Tamil Nadu. The Project was scheduled for commissioning in 2015. The Petitioner made an application dated 23.9.2010 to CTUIL for the grant of connectivity and an application dated 15.2.2011 for LTA for 1110 MW, along with the application fee and a BG of ₹1.11 crore. CTUIL, vide letter dated 23.12.2011, intimated the grant of connectivity and LTA to the Petitioner and requested the Petitioner to sign the LTA Agreement (LTAA) within a period of 30 days from the date of the letter and to furnish the requisite BG, failing which the LTA granted would be treated as cancelled. At the Petitioner's request, CTUIL granted time to sign the LTAA. As the Petitioner did not sign the LTAA even after the grant of extensions, CTUIL granted the final opportunity to the Petitioner, vide letter dated 5.3.2015, to sign the LTAA within 15 days. It was decided in the 18th meeting of the SR constituents held on 7.3.2015 to cancel the connectivity and the LTA granted to the Petitioner. Therefore, the Petitioner filed the instant petition challenging the CTUIL's letter dated 5.3.2015 and seeking an extension of time to sign the LTAA until the disposal of the appeal by the NGT.

11. The Commission disposed of the petition, vide order dated 8.3.2017, rejecting the Petitioner's prayers, while holding that the provisions of the 2009 Connectivity Regulations and Detailed Procedure clearly provide for encashment of BG in case of failure to sign the LTAA within the stipulated period. Consequently, CTUIL cancelled



the LTA granted to the Petitioner and encashed the BG on 27.4.2017. Aggrieved with the Commission's order dated 8.3.2017, the Petitioner preferred Appeal No. 99 of 2017 before APTEL. APTEL, vide order dated 11.9.2025, *inter alia* held that Regulation 12(5) of the 2009 Connectivity Regulations is only directory and discretionary, and it is not mandatory for CTUIL to encash BG furnished along with the application for LTA in every case of default. Further, APTEL remanded the matter to the Commission with directions to determine whether CTUIL was justified in encashing the Petitioner's BG in the facts and circumstances.

12. In view of the remand by APTEL, the limited issue that arises for consideration is whether CTUIL was justified, in the facts and circumstances of the present case, in encashing the BG furnished by the Petitioner, and consequently, whether the Petitioner is entitled to a refund of the encashed amount along with carrying cost.

13. The Petitioner has submitted that it had obtained a valid EC from MoEF&CC as early as 20.1.2011 for the Project. However, it was only later that the EC was challenged before the NGT, Delhi, in Appeal No. 12/2011, and thereafter, again, in Appeal No. 87/2014. The Petitioner has submitted that APTEL allowed the appeal in its judgment dated 11.9.2025 in Appeal No. 99 of 2017 and has restored the instant petition on the Commission's file. APTEL referring to the judgment of the Hon'ble Delhi High Court dated 24.11.2022 in NSL Nagapatnam Infrastructure Pvt. Ltd. v. CERC & Ors. (W.P.(C) 6791/2017 & CM No.33742/2018), with similar facts, wherein the High Court, interpreting Regulation 12(5) of the 2009 Connectivity Regulations, has held that the use of the word "may" in Regulation 12(5) indicates that encashment of BG is not automatic in every case but depends upon the facts and circumstances of each case, which may have prevented the LTA applicant from complying with the conditions upon which the LTA was granted.

14. The Petitioner has submitted that because of the challenge to the EC granted to it and the subsequent cancellation of the connectivity by CTUIL, it was unable to proceed with the Project. It has been further submitted by the Petitioner that CTUIL has neither made any submissions regarding any loss or damage suffered by CTUIL nor has it provided any details regarding any expenses incurred by it or any preparatory or implementation activities undertaken by it for providing connectivity to the Petitioner. As per the order of the Hon'ble High Court of Delhi in NSL Nagapatnam Infrastructure Pvt. Ltd. v CERC & Ors., it is necessary for CTUIL to demonstrate that resources were committed by it towards the LTA application in order to claim compensation by encashment of BG. The Petitioner has contended that it had kept CTUIL informed of the status and progress of the Project, and CTUIL, acknowledging the genuine difficulties faced by the Petitioner, had granted extensions for the execution of the LTAA. This also indicates that no steps were taken by CTUIL towards system planning, augmentation, construction, or allocation of transmission assets in relation to the Petitioner's Project.

15. CTUIL has submitted that, as per Regulation 15 and Paragraph 24 of the Detailed Procedure, an LTA applicant is obliged to sign the LTAA within 30 days of the grant of the LTA. CTUIL did not treat all defaulting applicants uniformly in a mandatory fashion but assessed the Petitioner's "preparedness" and "milestones" during various meetings of the Southern Region Constituents (13th to 18th meetings). The decision to encash the BG was justified by the Petitioner's letters dated 14.8.2014 and 30.1.2015, whereby the Petitioner itself agreed to the invocation of the BG by CTUIL if milestones were not met by it.

16. CTUIL has further submitted that, as per the Statement of Objects and Reasons of the 2009 Connectivity Regulations, the BG is required to bring seriousness to LTA applications. If CTUIL allowed an applicant to keep transmission capacity blocked

indefinitely without signing an LTAA, the entire scheme of regulated open access would be frustrated. CTUIL has submitted that it is a revenue-neutral body and the encashed amounts are disbursed to other LTA users, ensuring no "unjust enrichment" and maintaining the financial discipline of the grid. Further, it has been contended by CTUIL that, as per APTEL's judgement dated 15.4.2015 in Appeal No. 197 of 2014, *Jayaswal Neco Urja Limited v. PGCIL and Anr.*, in the absence of a signed contract, *force majeure* cannot be a ground for failing to sign the LTAA. Therefore, the Petitioner's reliance on NGT litigation as a shield against encashment is legally unsustainable.

17. CTUIL has further submitted that the Petitioner consistently led CTUIL to believe that it was very close to obtaining all the necessary approvals on the basis of which, it successfully obtained the extensions in signing the LTAA from CTUIL repetitively in the 15th, 16th and 17th Meetings of the SR Constituents held on 4.1.2013, 4.9.2013 and 16.9.2014, respectively. CTUIL has contended that the encashment of BG does not cause irretrievable injustice as claimed by the Petitioner because the Petitioner is entitled to make a fresh LTA application once it has obtained the necessary clearances and is ready to execute the LTAA. Further, there is no legal requirement to assess the actual loss or damages prior to encashing an application BG, as it is a screening tool and a regulatory deterrent, not a measure of liquidated damages.

18. The Petitioner has submitted in the Written Submissions that CTUIL has made contradictory statements in its reply filed on 30.4.2015 and in the Written Submissions dated 7.1.2026. In its reply filed on 30.4.2015 CTUIL has stated that it has treated the LTA applications of all the applicants uniformly and has not discriminated against anyone and on the other hand, in its Written Submissions dated 7.1.2026, CTUIL has stated that it did not treat all defaulting applicants uniformly but assessed the

preparedness and milestones of the Petitioner during various meetings of the Southern Region Constituents (13th to 18th meetings). This shows that the encashment of the BG was not tested against any parameter, such as that provided by the Delhi High Court in NSL Nagapatnam Infrastructure Pvt. Ltd. v CERC & Ors. Further, the Petitioner has contended that the undertaking given by it regarding encashment of its BG does not impinge upon the requirements to be fulfilled by CTUIL to be entitled to encash such BG.

19. CTUIL, in its Written Submissions, has contended that mere pendency of a challenge to an EC or litigation against a project cannot be permitted as a valid excuse to avoid LTA signing obligations. The Petitioner ought to have provided more details than just the existence of a dispute. CTUIL has further submitted that the Petitioner has stated that due to various disputes, it could not continue with the Project, and that the same had to be shelved. However, the Petitioner has not provided any details regarding these disputes or their alleged impact, making it impossible to verify the claim of "hardship" or "impossibility". CTUIL has relied on the Hon'ble Supreme Court's judgment in the case of The Authorised Officer, Central Bank of India vs. Shanmugavelu (2024) wherein the court has reaffirmed that the forfeiture of a deposit or BG provided as earnest money is a valid "statutory penalty" designed to ensure the sanctity of a regulatory process. The Court also held that such forfeiture is not a matter of "unjust enrichment," nor a measure of liquidated damages under Section 74 of the Contract Act; rather, it is a regulatory measure intended to screen for "serious applicants" and prevent the gaming of the process. CTUIL has further contended that the Petitioner's failure to sign the LTA results in planned transmission elements becoming "stranded assets," causing significant financial prejudice to the integrated national grid and the regulatory process. Moreover, the capacity reserved for an LTA

grantee deprives other interested applicants from applying for the same capacity till the pendency of the grant.

20. We have considered the submissions of the Petitioner and CTUIL. The relevant provisions regarding signing of the LTAA and encashment of the BG are as follows:

Regulation 12 of the 2009 Connectivity Regulations:

“12. Application for long-term access

(1) The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:

Provided that in the case where augmentation of transmission system is required for granting open access, if the quantum of power has not been firmed up in respect of the person to whom electricity is to be supplied or the source from which electricity is to be procured, the applicant shall indicate the quantum of power along with name of the region(s) in which this electricity is proposed to be interchanged using the inter-State transmission system;

Provided further that in case augmentation of transmission system is required, the applicant shall have to bear the transmission charges for the same as per these regulations, even if the source of supply or off-take is not identified;

Provided also that the exact source of supply or destination of off-take, as the case may be, shall have to be firmed up and accordingly notified to the nodal agency at least 3 years prior to the intended date of availing long-term access, or such time period estimated by Central Transmission Utility for augmentation of the transmission system, whichever is lesser, to facilitate such augmentation;

Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State transmission system or change in the region from which electricity is to be procured or to which supplied, a fresh application shall be made, which shall be considered in accordance with these regulations.

(2) The applicant shall submit any other information sought by the nodal agency including the basis for assessment of power to be interchanged using the inter-State transmission system and power to be transmitted to or from various entities or regions to enable the nodal agency to plan the inter-State transmission system in a holistic manner.

(3) The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.

(4) The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalisation of such rights when augmentation of transmission system is not required.

(6) The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure.”

Regulation 15 of the 2009 Connectivity Regulations:

“15. Execution of Long-term Access Agreement

The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure. While seeking long-term access to an inter-State transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long-term access agreement with the Central Transmission Utility and the inter-State transmission licensee. The long-term access agreement shall contain the date of commencement of long-term access, the point of injection of power into the grid and point of drawal from the grid and the details of dedicated transmission lines, if any, required. In case augmentation of transmission system is required, the long-term access agreement shall contain the time line for construction of the facilities of the applicant and the transmission licensee, the bank guarantee required to be given by the applicant and other details in accordance with the detailed procedure.”

Clause 23.5 of the Detailed Procedure provides as follows:

“The bank guarantee may be encashed by the nodal agency,

(i) if the application is withdrawn by the applicant; or

(ii) if the long-term access rights are relinquished prior to the operationalization of such long-term access when augmentation of transmission system is not required; or

(iii) If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter;

(iv) if the applicant fails to revalidate the earlier furnished BG at least 30 days prior to its expiry; and

(v) If the applicant fails to firm up beneficiaries in terms of clause 22.7, 3 years prior to intended date of Long Term Access.

21. Regulation 15 of the 2009 Connectivity Regulations mandates that an applicant who has been granted an LTA shall execute a LTAA with the CTUIL (or a tripartite agreement, where applicable) in accordance with the Detailed Procedure. Clause 23(5) of the Detailed Procedure enumerates the circumstances in which the BG

furnished along with the LTA application may be encashed by the nodal agency, including, inter alia, failure of the applicant to sign the LTAA within the stipulated period or failure to furnish the requisite construction-phase BG.

22. Regulation 12(5) provides that BG “may” be encashed by the nodal agency, i.e., CTUIL, if the application is withdrawn by the applicant or if the LTA rights are relinquished. APTEL, in its order dated 11.9.2025 in Appeal No. 99 of 2017, has categorically held that Regulation 12(5) is directory and discretionary in nature and does not mandate automatic encashment of the BG in every case of default. APTEL has clarified that the use of the word “may” indicates that the power to encash the BG is to be exercised by CTUIL, having regard to the facts and circumstances of each case. It has further been observed that the requirement to furnish a BG along with the LTA application is intended to ensure the seriousness of applicants and is in the nature of a regulatory measure, and not a penal provision.

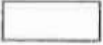
23. A combined reading of Regulation 12(5) of the 2009 Connectivity Regulations, Regulation 15 of the 2009 Connectivity Regulations, Clause 23.5 of the Detailed Procedure, and the judgment of APTEL dated 11.9.2025 makes it clear that an LTA grantee is obligated to execute LTAA within 30 days of the grant of the LTA. However, in case of non-signing of the LTAA within 30 days of grant of LTA, the power of the CTUIL to encash the BG furnished by the LTA applicant is discretionary in nature. Even in cases where the applicant fails to execute the LTAA within the stipulated period, encashment does not follow as an automatic or mechanical consequence. The discretion vested in CTUIL is required to be exercised reasonably, having regard to the facts and circumstances of each case, and upon consideration of whether the invocation of the BG is warranted in the given factual matrix.

24. Accordingly, we now proceed to examine the facts and circumstances of the instant case to determine whether CTUIL exercised due discretion in invoking the BG. CTUIL considered the Petitioner's application for grant of connectivity and LTA along with the other applicants in the 11th Meeting of the Southern Region Constituents regarding LTA and Connectivity applications in the Southern Region, held on 16.11.2010 and deliberated upon the status of preparedness of various generation projects, including that of the Petitioner. CTUIL noted that although the Petitioner had acquired land for the Project and had obtained EC, it had not secured fuel linkage. As the Petitioner had not achieved the milestones for the establishment of the Project, CTUIL decided to defer the Petitioner's application for the grant of LTA and to take it up in the subsequent meeting. The relevant snapshot of the Minutes of the 11th Meeting of SR constituents regarding LTA and Connectivity applications is as follows:

"The status of preparedness of generation projects was assessed wherein the applicants updated the status of their respective generation projects.

The status of preparedness of generation projects was assessed wherein the applicants updated status of their respective generation projects.

Applicant	Land	Fuel	MoE	EPC
NSL Power Pvt. Ltd.	650/1300			
PEL Power Ltd.	546/200			
IL&FS Tamil Nadu Power Co. Ltd.	670/750			
Sindya Power Generation Co. Pvt. Ltd.	357/600			
Chettinad Power Corporation Pvt. Ltd.	175/205			
Empee Power & Infrastructure Pvt. Ltd.	121/330			

 Available
  Not Available

It emerged that though land of varying extent is available with all the applicants but fuel tie-up is available with NSL, PEL and IL&FS only. Further, these applicants have also

progressed in acquiring Environment clearance. For the balance three applicants viz. Chettinad, Sindya Power and Empee Power the fuel linkages are not available. Therefore it was decided that Long Term Access may granted to NSL, PEL and IL&FS and the balance applications viz. Chettinad, Sindya Power and Empee Power shall be taken up in the next meeting for consideration of grant of LTA.

25. Thereafter, in the 13th Meeting of the SR constituents regarding LTA and Connectivity applications held on 20.10.2011, CTUIL reviewed the updated status of the Petitioner's generation Project and observed that the Petitioner had made progress by achieving different milestones and accordingly, decided to grant Connectivity and LTA to the Petitioner, subject to signing of the LTAA and furnishing the BG. The relevant snapshot of the Minutes of the 13th Meeting of the SR constituents regarding LTA and Connectivity applications is as follows:

POWERGRID further informed that following applications in Nagapattinam area with details as given below are pending which were discussed in earlier meeting however the LTA could not be granted due to non-fulfilment of milestones.

Sl. No.	Applicant	Installed Capacity (MW)	LTA applied for (MW)	Time Frame	Quantum allocated in the region		
					SR	WR	NR
1.	Chettinad Power Corporation Pvt. Ltd.	1320	1110	Dec. 2013	500	500	110
2.	Sindya Power Generation Co. Pvt.	1320	1060	Apr. 2015	720	270	70
3.	Empee Power & Infrastructure Pvt. Ltd.	1320	1241	Apr. 2014	496	496	248

The generation developers were requested to update the status of generation project and the same is given below:

Sl. No.	Applicant	Land	Fuel	MoE	Forest	EPC
1.	Chettinad Power Corporation Pvt. Ltd.	524/608				
2.	Sindya Power Generation Co. Pvt. Ltd.	451/611				
3.	Empee Power & Infrastructure Pvt. Ltd.	421/602				

 Available
  Not Available

From the above status, it is observed that only Chettinad Power Corporation Pvt. Ltd. have made progress in the generation development and the other IPPs are yet to achieve different milestones.

26. Accordingly, CTUIL intimated the grant of LTA to the Petitioner vide letter dated 23.12.2011, whereby it had requested the Petitioner to sign the LTAA and to furnish the BG as per the provision of 2009 Connectivity Regulations. It was also mentioned in the LTA intimation letter dated 23.12.2011 that if the LTAA is not signed within 30

days of receipt of the draft from CTUIL, the LTA would be treated as cancelled and a fresh application would be required.

27. In the 15th meeting of the SR constituents regarding LTA and Connectivity held on 4.1.2013, CTUIL noted that Connectivity/LTA had earlier been granted to projects that had not achieved key milestones, but such applicants subsequently delayed signing the BPTA and furnishing the required BG. In view of this, CTUIL proposed closure of such non-progressing applications, with liberty to apply afresh once the projects demonstrated adequate progress. However, CTUIL granted the Petitioner a six-month extension to sign the LTAA. The relevant extract of the Minutes of the 15th Meeting of the SR constituents regarding LTA and Connectivity held on 4.1.2013 is as follows:

“9.1 POWERGRID stated that the grant of Connectivity and LTA as per the CERC regulation, 2009 is a time bound activity (connectivity to be granted in 60 days and LTA in 120/180 days). Further, it is directed by Hon'ble CERC that the transmission system development should be phased to avoid creation of any redundant transmission capacity. In the past, to facilitate project development activities POWERGRID had granted connectivity/LTA even to projects who had not achieved important milestones but in such cases it is seen that such IPPs are repeatedly delaying the signing of BPTA and furnishing Bank Guarantee. Such delay in the BPTA/BG complicates the matter, especially in the scenario of implementation of transmission system through competitive bidding, where the selected bidder is not liable to delay/advance the commissioning schedule to match with the generation progress.

9.2 In this regard, at present there are number of Connectivity & LTA applications pending for about 1 to 2 1/2 years. These applications had been taken up since last 3-4 meeting with not much progress observed in respect of project development. In view of the forgoing and to avoid unrealistic planning, POWERGRID proposed to close these applications and they may apply afresh whenever the projects have progressed in getting requisite clearances.

.....

LTA applications (LTA granted but yet to sign LTA agreement)

6.	PPN Power Generating Company Ltd.	Dec,2012	LTA-360 MW	Matter under CERC review.
7.	NSL Nagapatnam Power & Infratech Pvt. Ltd.	Oct, 2014	LTA-1240 MW	Extension of 6 months
8.	Chettinad Power Corporation Pvt. Ltd.	Dec, 2013	LTA-1110 MW	Extension of 6 months

9.	Hinduja National Power Corporation Ltd.	Jan, 2013	LTA-725 MW	Close the applications as no representative was available to update the status.
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28. Further, in the 16th Meeting of the Southern Region Constituents regarding LTA and Connectivity held on 4.9.2013, the Petitioner represented that the Project had obtained the requisite clearances and assured that it would execute the LTAA within one month. In view of this assurance, CTUIL did not grant a further six-month extension, as granted to certain other applicants, but instead expected an execution of the LTAA within the stipulated one-month period. The relevant extract of the 16th Meeting of the Southern Region Constituents regarding LTA and Connectivity held on 4.9.2013 is as follows:

“5.0 Long pending Connectivity applications due to non-satisfactory progress - discussed in earlier meetings.

5.5 DGM (CTU) informed that LTA was granted to Chettinad Power Corporation Ltd. (2x660 MW) on 27-12-2011 but the generation developer failed to sign LTAA agreement and furnish Bank Guarantee till date. The representative from Chettinad Power Corporation informed that their project has received necessary clearances and they will sign requisite LTAA agreement within 1(one) month with POWERGRID.”

29. Subsequently, in the 17th Meeting of the Southern Region Constituents regarding LTA and Connectivity held on 31.7.2014, CTUIL noted that although LTA had been granted to the Petitioner on 27.12.2011, the LTAA had not been executed, and the construction-stage BG had not been furnished. Upon the Petitioner's request for further extension on account of pending NGT proceedings, Director (CEA) suggested that the Petitioner submit a written undertaking permitting CTUIL to encash the Bank Guarantee on or after 1.2.2015 if the Environmental Clearance was not obtained. This proposal was agreed to by both CTUIL and the Petitioner, and accordingly, a conditional extension was granted up to 31.1.2015.

“DGM (CTU) informed that LTA was granted to Chettinad Power Corporation Ltd. (2x660 MW) on 27-12-2011 but the generation developer failed to sign LTA agreement and furnish Bank Guarantee till date. The representative from Chettinad Power Corporation informed that they have received all necessary clearances but the final hearing of NGT order on environment clearance for their project has not yet received and so, they requested for time extension of six months for execution of the LTA agreement and furnishing of construction stage BG. In this regard, Director, CEA suggested that Chettinad Power may submit a letter within say one week mentioning that CTU may encash their BG on/after 01.02.2015 if they still do not get environment clearance from NGT, which as agreed by CTU and M/s Chettinad Power.

6.6 *Accordingly, it was agreed to give time extension up to 31.01.2015.”*

30. CTUIL, vide letter dated 5.3.2015, gave a final opportunity to the Petitioner to sign the LTAA within 15 days from the date of receipt of the notice, and informed that in case of failure to do so, the BG will be encashed and the LTA granted to it shall be cancelled. The snapshot of CTUIL's letter dated 5.3.2015 is as follows: -

पावर ग्रिड कॉर्पोरेशन ऑफ इंडिया लिमिटेड
(सरकारी उद्योग का उद्योग)
POWER GRID CORPORATION OF INDIA LIMITED
(A Government of India Enterprise)



केन्द्रीय कार्यालय : "सीएनटी" ब्लॉक, प्लॉट नं. 2, सेक्टर-29, गुडगाँव-122 001, हरियाणा
फोन : 2571700 - 719, फैक्स : 2571702, 2571701, 2571703
Corporate Office : "Seethan" Plot No. 2, Sector-29, Gurgaon-122 001, Haryana
Tel. 2571700 - 719, Fax : 2571702, 2571701, 2571703
NATGRID

संदर्भ संख्या/Ref. Number

C/CTU-Pig/LTA/N-LTAA/Chettinad

Date: 05th March'15

To

Shri V Chandramoleeswaran
Director,
Chettinad Power Corporation Pvt. Ltd.,
Rani Seethai Hall, 5th Floor,
603, Anna Salai,
Chennai- 600006

Subject: Final Notice- Signing of LTA Agreement for LTA of 1110 MW granted to M/s Chettinad Power Corporation Pvt. Ltd on 27.12.2011

Sir,

The CTU is the nodal agency for grant of Long Term Access under the CERC (Grant of Connectivity, Medium-term Open Access and Long-term Open Access to Inter-State Transmission) Regulations, 2009. The applicant to whom LTA is granted is obligated to sign the LTA Agreement as per Regulation 15 of the CERC LTA Regulations, 2009.

Regulation 15 provides that—

"The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure."

Sub-clauses (b)(i) and (b)(ii) of Clause 24 of the Procedure for making application for Grant of Long-term Access to ISTS (hereinafter referred to as "the Detailed Procedure") provide as under—

"The nodal agency shall intimate grant of long-term access on format [FORMAT-LTA-5] indicating identified system strengthening with direction to the applicant to enter into Long-term access agreement Bulk Power Transmission Agreement (BPTA) [or Long Term Transmission Agreement] with CTU within thirty days."

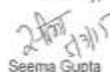
Further Clause 23.5 (ii) of the Detailed Procedure provides that if the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for

construction phase, within stipulated time as indicated in the intimation letter, it shall be a sufficient condition for encashment of bank guarantee.

Thus, your obligation to sign the Long Term Transmission Agreement is patently clear in the Regulations and the Detailed Procedure. However, despite the fact that Long Term Access was granted to you on 27.12.2011, you have not signed the LTA Agreement. It may be noted that you have had several opportunities for doing the same. However, you have failed to sign the LTA Agreement.

A final opportunity is given to you to sign the LTA Agreement within **15 days** of receipt of this notice, failing which the Bank Guarantee shall be liable to be invoked and the Long Term Access granted to you shall be liable to be cancelled.

Sincerely,


Seema Gupta

COO, Central Transmission Utility

Copy: ED (Commercial)- for kind information please

31. Finally, in the 18th Meeting of the Southern Region Constituents regarding LTA and Connectivity held on 7.3.2015, CTUIL noted that the Petitioner had failed to execute the LTAA despite the extension granted up to February 2015 in the 17th



Meeting of the Southern Region Constituents. Despite the Petitioner's request for a further extension of two months, CTUIL, in view of the applicable Regulations, decided to close the Connectivity and LTA application of the Petitioner. The relevant extract of the 18th Meeting of the Southern Region Constituents regarding LTA and Connectivity held on 7.3.2015 is as follows:

“

AGM (CTU-Planning) explained that LTA application of Chettinad Power Corporation Private Limited as discussed during 17th Meeting of Southern Region constituents regarding Long Term Access and Connectivity applications wherein time extension up to February'15 was granted for signing of LTA Agreement. The applicant till date has not signed the LTA agreement even after repeated reminders. Representative from Chettinad Power Corporation Private Ltd. requested for further time extension of two months for signing of LTA agreement.

CTU explained that as per the CERC regulations, 2009, the LTA Agreement has to be signed within 30 days from grant of Long Term Access. As POWERGRID is to abide with CERC Procedures/Regulations, therefore, the granted LTA may be cancelled. It was discussed and agreed that the Connectivity and LTA applications shall be closed in accordance with provisions in regulations and Detailed procedures.

However, after obtaining all the required clearances, the applicant may apply again with a fresh application.”

32. From the above sequence of meetings and communications, it is evident that CTUIL did not act in a mechanical or precipitous manner. The issue of the Petitioner's non-execution of the LTAA was deliberated upon by CTUIL in multiple meetings of the Southern Region Constituents over an extended period, beginning with the 13th Meeting held in 2011 and culminating in the 18th Meeting held in 2015. The Petitioner was granted repeated extensions and was afforded a final opportunity, vide the letter dated 5.3.2015, to execute the LTAA. Despite these opportunities and express reminders, the Petitioner failed to comply with the LTAA signing requirement. Moreover, in a regulatory framework where the grant of an LTA entails the reservation of transmission capacity and has implications for system planning, such rights cannot be extended indefinitely.

33. CTUIL has relied upon APTEL's order dated 15.4.2015 in Appeal No. 197 of 2014, Jayaswal Neco Urja Limited v. PGCIL and Anr., stating that APTEL held in this case that in the absence of a signed contract, *force majeure* cannot be a ground for failing to sign the LTAA. We will address the issue of *force majeure* subsequently when we deal with the Petitioner's submissions on the matter. CTUIL has also relied on the Hon'ble Supreme Court's judgment in the case of The Authorised Officer, Central Bank of India v. Shanmugavelu (2024), wherein the court has held that the forfeiture of a deposit or BG provided as earnest money is a valid "statutory penalty" designed to ensure the sanctity of a regulatory process. The Court also held that such forfeiture is not a matter of "unjust enrichment," nor is it a measure of liquidated damages under Section 74 of the Contract Act; rather, it is a regulatory measure intended to screen for "serious applicants" and prevent the gaming of the process. The Petitioner, in its Written Submissions dated 21.1.2026, has contended that the reliance of CTUIL on the said Supreme Court judgment is misplaced as this judgment relates to the legality of forfeiture of earnest-money deposit furnished towards auction sale of secured asset under the SARFAESI Act. We have perused the above-mentioned Supreme Court judgment and find merit in the reliance placed by CTUIL on the same. The relevant extract of the judgment is as follows: -

"61. The legislature through Rule 9(5) of the SARFAESI Rules, has made a conscious departure from the general law by statutorily providing for the forfeiture of earnest-money deposit of the successful auction purchaser for its failure in depositing the balance consideration within the statutory period. No doubt, the forfeiture is a result of a breach of obligation, but the consequence of forfeiture in such case is taking place not because of the breach but because of operation of the statutory provision providing for forfeiture that is attracted as a result of the breach.

62. If the consequence of forfeiture was purely a matter of breach of contract, then there would have been no occasion for the legislature to specifically provide for forfeiture through the statutory provisions, and it would have simpliciter relegated the consequences of such breach to already existing general law under Section(s) 73 and 74 of the 1872 Act. [See C. Natarajan (supra) at Para 20]"

34. Although the judgment of the Hon'ble Supreme Court was in the context of forfeiture of earnest-money deposit under the SARFAESI Act, the principle laid down

by the court is that when a statute specifically provides for forfeiture of a deposit or earnest money upon non-compliance with prescribed conditions, the forfeiture operates by virtue of the statutory provision itself, and not merely as a consequence of contractual breach. This principle also applies to the instant case.

35. The facts and circumstances discussed above reflect that CTUIL did not proceed in a mechanical or automatic manner but took its decision after repeated deliberations and review of the Petitioner's progress over a considerable period. The invocation of the BG was preceded by multiple opportunities granted to the Petitioner, and the BG was encashed only after the continued non-execution of the LTAA. It thus appears that the action taken by CTUIL was the result of a considered and reasoned exercise of discretion in accordance with the applicable Regulations, and cannot be characterised as arbitrary.

36. We would now consider the Petitioner's submissions regarding the circumstances preventing it from executing the LTAA. The Petitioner has submitted that, due to various disputes, it was unable to proceed with the Project and was ultimately constrained to shelve it. However, the only dispute specifically placed on record and elaborated upon by the Petitioner pertains to the challenge to the EC dated 20.1.2011 before the NGT. The Petitioner had obtained EC from MoEF&CC on 20.1.2011, prior to the grant of LTA. MoEF&CC's letter dated 20.1.2011 granting EC to the Petitioner sets out the specific and general conditions to be complied with by the Petitioner and also provides that the EC shall be valid for a period of five years, i.e. till 19.1.2016. As per the Environmental Impact Assessment Amendment Notifications Nos. S.O.114(E) dated 29.4.2015 & S.O.2944(E) dated 14.9.2016, and MoEF&CC's OM dated 12.4.2016, the validity of the EC was presumed to be seven years for the project. Accordingly, the said EC was valid till 19.1.2018. This EC dated 20.1.2011 was challenged by the Coastal Action Group vide Appeal No. 12/2011



before the NGT, New Delhi, in December 2011. NGT, vide order dated 30.5.2012 in Appeal No. 12/2011, suspended the said EC for six months, with directions to rectify certain procedural errors and to update the EIA Report. NGT also directed the MoEF&CC to place the suggestions in the order dated 30.5.2012 before the Expert Appraisal Committee (EAC). The MoEF&CC, on the EAC's recommendations, issued a corrigendum dated 13.6.2013 to the original EC, adding several conditions to be followed by the Petitioner in the establishment and operation of the thermal power plant. After ensuring compliance with the directions of NGT in the order dated 30.5.2012, the EC was restored by MoEF&CC vide letter dated 23.8.2013. This corrigendum, dated 13.6.2013, was also challenged vide Appeal No. 114/2013 before the NGT, Southern Zone Bench. The said appeal was transferred to the NGT, Principal Bench, New Delhi, and was re-numbered as Appeal No. 87/2014. Since the parties did not place the final outcome on record in Appeal No. 87/2014, we examined the orders available on the official website of the NGT to ascertain the status of the matter. NGT, in an order dated 31.7.2018 in Appeal No. 87/2014, has held as follows:

*"In view of the order passed in **Appeal No. 08 of 2018** no further orders are necessary in these matters, which questioned the grant of proposed Environmental Clearance.*

Accordingly, Original Application No. 495/2014, Appeal No. 87/2014 (M.A. No. 862/2014 to M. A. No. 864/2014, M. A. No. 1446/2016 & M. A. No. 1449/2016) are dismissed as infructuous."

37. Upon a perusal of the information available on the official website of NGT, it appears that the Appeal No. 8/2018 referred to in the NGT's order dated 31.7.2018 was filed on 29.1.2018 before NGT, New Delhi by the Petitioner against the decision of the EAC dated 26.10.2017, whereby the EAC had rejected Petitioner's request for extension of the validity of the EC dated 20.1.2011. NGT, vide order dated 31.7.2018 in Appeal No. 8/2018, had upheld the EAC's decision dated 26.10.2017 and directed the Petitioner to apply afresh for the EC for the Project. The relevant extract of the NGT order dated 31.7.2018 in Appeal No. 8/2018 is as follows: -

“1. The challenge in this Appeal is to the decision dated 26.10.2017 of the Expert Appraisal Committee (EAC) on Environmental Impact Assessment of the Thermal Power Project.

2. The Appellant was granted Environmental Clearance earlier for setting up of a Thermal Power Plant in 2011. However, the said plant could not be setup and afresh assessment was sought to be undertaken. The Environmental Impact Assessment Committee found that more than six years has passed and the project has not been commissioned. Original validity of seven years expired on 19.01.2018. The validity could not be extended in absence of any progress. It would not be possible to grant fresh Environmental Clearance even if three years validity is extended. Accordingly, it was decided that Project Proponent may apply afresh to obtain Environmental Clearance.

3. In view of the above, we are of the view that Appellant is at liberty to apply afresh as we do not find any error in the view taken by the Expert Appraisal Committee (EAC) on Environmental Impact Assessment.

Accordingly, Appeal No. 08 of 2018 stands disposed of.”

38. The details of the said EAC Meeting dated 26.10.2017 are available in the Minutes of the 11th Meeting of the Re-Constituted Expert Appraisal Committee (EAC) on Environmental Impact Assessment (EIA) of Thermal Power Projects, which is available on the NGT's website. The said Minutes of the 11th Meeting of the EAC record that the Petitioner made an application to MoEF&CC for the extension of the validity of the EC on 22.9.2017. The Petitioner had submitted before MoEF&CC that 6 years had elapsed in the long-pending dispute before the NGT, wherein the EC was challenged. This prevented it from proceeding with the Project activities. The Petitioner had submitted that as the Project was a mega project, a total period of eight years after the clearance by NGT was required for commissioning of the Project. Hence, it requested time extension of eight years for commissioning of the project, i.e. beyond 19.1.2018. However, the EAC found the explanation that subsequent litigation prevented progress of the Project to be unconvincing and noted that the EC, originally valid for seven years up to 19.1.2018, could be extended only up to a maximum of ten years under the EIA Notification, whereas the Petitioner had sought extension for a further eight years, which was not permissible. It was further observed by the EAC that although the EC had been reinstated on 23.8.2013 after suspension by the NGT, no

construction activity had been initiated by the Petitioner thereafter. Accordingly, the EAC suggested that the Petitioner may apply afresh for EC, denied the requested eight-year extension, and deferred the proposal pending the outcome of proceedings before the NGT. The relevant extract of the Minutes of the 11th Meeting of the EAC held on 26.10.2017 is as follows:

“11.3 2×660 MW Imported Coal Based TPP at Village Erukkattanchery, Kazhizppanallur and Manichkapangu, Tarangambadi Taluk, Nagapattinam District, Tamil Nadu by M/s Chettinad Power Corporation Private Limited - reg. extension of validity of EC. (File No.: J-13012/89/2009-IA II (T) & Online No.: IA/TN/THE/10619/2011)

(11.3.1) Project Proponent (PP) submitted application for extension of validity of EC on 22.9.2017. PP made the presentation inter-alia, submitted the following information:

i. The Environmental Clearance for 2x600 MW imported coal based Sub-critical Thermal Power Plant has been issued vide Ministry's letter dated 20.1.2011 which was valid for five years, i.e. till 19.1.2016. As per EIA amendment Notifications Nos. S.O.114(E) dated 29.4.2015 & S.O.2944(E) dated 14.9.2016 and Ministry's OM dated 12.4.2016, the validity of EC is presumed as seven years for the above mentioned project. Accordingly, the said EC is valid till 19.1.2018.

ii. Later on the EC has been revised for change in configuration from 2x600 MW Sub-critical technology to 2x660 MW Super critical technology vide Ministry's letter dated 13.6.2013.

iii. After EC was granted, Coastal Action Group vide Appeal No.12/2011 filed in December, 2011 before the Hon'ble NGT, Delhi. Due to the initiation of dispute over grant of EC, the action initiated to finalize technical specification was stopped immediately.

iv. NGT Delhi vide order dated 30.5.2012 suspended EC for six months with some directions to MoEF.

v. After ensuring the compliance to the directions of Hon'ble NGT, the EC has been restored vide Ministry's letter dated 23.8.2013.

vi. Immediately, Coastal Action Network vide Appeal No.169/2013 challenged the reinstatement of the EC before Hon'ble NGT, Chennai. The re-agitation of the entire issued stopped the PP for setting up of the project. Hence, no action could be taken by the PP to proceed with project activities.

vii. Subsequently, the case was transferred to Hon'ble NGT, Delhi bench in December, 2014. Case is still pending before Hon'ble Tribunal.

viii. From December, 2011 till date, 6 years has been passed in the long pending dispute. The very challenge of the grant of EC prevented the PP from proceeding with project activities.

ix. PP submitted that as the proposed project is a mega project, a minimum time frame of 5 to 6 years, after the clearance by NGT is required for establishment activities alone. Apart from that, a time of 2 years is required to complete the technical specification and finalize purchase orders and contracts. The commissioning of the project will be possible only after 8 years. Hence, a time extension of 8 years was requested by the PP for commissioning of the project i.e. beyond 19.01.2018.

(11.3.1) Committee noted that the validity of 7 years of EC will expire on 19.1.2018. As per the provisions of the EIA Notification, maximum of three years can be extended. The validity cannot be extended beyond 10 years whereas PP requested for extension of validity for further 8 years which is not possible. Further, committee noted that the EC which was suspended by Hon'ble NGT has been reinstated by Ministry on 23.8.2013. Since then, PP has not initiated a single project activity. PP submitted that the EC was again challenged in the Hon'ble NGT which prevented the PP from initiating any physical activities at the site which is not logical. Till date, there has been no progress on construction activities. Even after extending three years validity which is available under EIA Notification, it is clear that PP cannot commission the project within the extended validity. In case, validity is extended and progress of construction activities are under half way at the expiry of the validity, it will become fait accompli to grant a fresh EC for the project as it will be at midway for completion.

(11.3.2) Committee after detailed deliberations, suggested that PP may have to apply afresh to obtain Environmental Clearance. Accordingly, extension of the validity of EC for 8 years is denied and further suggested that the PP should wait for the order of the Hon'ble NGT which will be heard on 12.12.2017. The proposal has accordingly been deferred."

39. From the above chronology, it emerges that the EC granted to the Petitioner was suspended by the NGT, vide order dated 30.5.2012, for a limited period of six months, with directions to rectify certain procedural deficiencies and update the EIA Report. After compliance with the directions issued by the NGT, the EC was restored by the MoEF&CC vide letter dated 23.8.2013. Yet, after the restoration of the EC, the Petitioner took no steps to advance the Project. Notably, from 23.8.2013 until the 11th EAC Meeting on 26.10.2017, the Petitioner made no progress in implementing the Project. The Petitioner has not placed on record any material to demonstrate that, subsequent to the restoration of the EC, there was any order preventing it from undertaking preparatory or developmental activities for the Project. The EAC, in its meeting dated 26.10.2017, also concluded that the Petitioner's explanation attributing its inaction to the pendency of proceedings before the NGT was "not logical," and noted that there had been no physical progress in the Project. The said view was subsequently upheld by the NGT, vide order dated 31.7.2018 in Appeal No. 8/2018, which found no error in the EAC's decision requiring the Petitioner to seek a fresh EC for the Project.

40. It is well settled that mere pendency of proceedings before a judicial or quasi-judicial forum, in the absence of a specific prohibitory or stay order, cannot be construed as an absolute bar on undertaking project activities. While the pendency of the appeals before NGT may have introduced a degree of uncertainty, such pending litigation alone cannot be a justification for the prolonged inaction on the part of the Petitioner. Moreover, the EAC in its meeting dated 26.10.2017 also noted that, under the EIA Notification, the validity of the EC cannot be extended beyond 10 years in total. As per EIA amendment Notifications Nos. S.O.114(E) dated 29.4.2015 & S.O.2944(E) dated 14.9.2016 and Ministry's OM dated 12.4.2016, the validity of EC was presumed to be seven years for the project, and thus, a further extension of a maximum of three years could be granted to the Petitioner's EC. However, the EAC observed that as there was no progress on construction activities by the Petitioner as on 26.10.2017, granting an extension to the EC would be futile as the Petitioner would not be able to commission the Project even within the extended validity of three years and it will become *fait accompli* to grant a fresh EC for the project as it will be at midway for completion. This observation of the EAC indicates that the absence of demonstrable progress was a material factor in the decline in the extension of the EC.

41. CTUIL has relied upon APTEL's order dated 15.4.2015 in Appeal No. 197 of 2014, Jayaswal Neco Urja Limited v. PGCIL and Anr. In this case, the appellant, a generating company, had applied to PGCIL for an LTA and had submitted an application BG by way of a tripartite agreement between itself, PGCIL and State Bank of India. The appellant was granted LTA by PGCIL, but it failed to execute the LTAA despite repeated extensions. It contended that due to *force majeure* circumstances such as non-availability of coal linkage, pending environmental clearance, and regulatory uncertainties, it could not proceed with the project. PGCIL encashed the BG upon non-signing of the LTAA. APTEL upheld the encashment, holding that the

Connectivity Regulations permit such invocation and do not carve out any exception on account of *force majeure*. The relevant extract of the said APTEL order dated 15.4.2015 is as follows:

“32. Since the Appellant did not sign the LTAA, the Bank Guarantee was encashed. The question is whether the alleged force majeure conditions furnishes a good ground for the Appellant to contend that the Bank Guarantee ought not to have been encashed. The Connectivity Regulations do not anywhere state that if the applicant is able to prove the existence of any circumstances beyond its control or existence of any force majeure conditions, which prevented it from performing the contract, its Bank Guarantee should not be encashed. The Connectivity Regulations do not prohibit the LTA applicant from withdrawing its LTA application. The Connectivity Regulations provide that in the event the LTA applicant withdraws LTA application, it will not be required to sign the LTAA but it will have to forgo the Bank Guarantee furnished by it along with the LTA application. The Bank Guarantee can then be encashed by the nodal agency. The purpose behind this provision is correctly stated in the impugned order and we concur with the said reasoning. The purpose behind the requirement of furnishing Bank Guarantee and the provisions for its encashment if the LTAA is not signed is to ensure commitment of the project developer to use the transmission line for which LTA has been sought. It gives assurance to Respondent No.1 that the transmission line would not be stranded after it is built. If the LTA applicants are allowed to withdraw the LTA applications without any deterrent like encashment of Bank Guarantee, then the purpose behind the scheme of grant of LTOA will be frustrated. We, therefore, find encashment of the Appellant’s Bank Guarantee to be perfectly legal.

33. Assuming that the Appellant’s contention about the existence of force majeure conditions is correct, so long as Respondent No.1 by its acts of omission or commission has not contributed to the Appellant’s being unable to commence operation of its power plant, Respondent No.1 cannot be held responsible for it and encashment of Bank Guarantee cannot be faulted on that count.

4. It is well settled that restrain on encashment of Bank Guarantee can be granted only in exceptional circumstances. There is a long line of judgments of the Supreme Court stating so. The Supreme Court in Himadri Chemicals & Industries Ltd. 35. We have not examined whether the force majeure conditions, in fact, existed or whether irretrievable harm or injustice is caused to the Appellant. As already stated by us, the Connectivity Regulations are so clear that the encashment of the Bank Guarantee cannot be faulted. The rationale behind the encashment of the Bank Guarantee has also been examined by us and it has impressed us. If as contended by the Appellant, held that such restrain can be put only if it is proved that there is a fraud in connection with the Bank Guarantee which vitiates the very foundation of the Bank Guarantee and where encashment of Bank Guarantee results in irretrievable harm or injustice to one of the parties concerned. We need not refer to the other judgments which reiterate the same principles.”

42. In the instant case, there is no agreement such as a tripartite agreement or LTAA between the parties. Further, the suspension of the EC by NGT was only for a limited period of six months, after which the EC was restored. Thereafter, there was no subsisting prohibitory/ stay order restraining the Petitioner from undertaking

preparatory or developmental activities. Yet the petitioner did not take any steps towards implementing the Project. The subsequent decision of the EAC declining extension of the EC, as affirmed by the NGT vide order dated 31.7.2018 in Appeal No. 8/2018, was on account of the lack of the Petitioner's progress in the Project and not on account of any continuing judicial restraint. Thus, the Petitioner's claim regarding *force majeure* is not tenable. Moreover, while rejecting the Petitioner's application for extension of the EC, the EAC in the 11th Meeting had expressly granted the Petitioner liberty to file a fresh application for EC. This was also upheld by NGT vide order dated 31.7.2018 in Appeal No. 8/2018. However, the Petitioner did not attempt to obtain a fresh EC from MoEF&CC for the Project. Thus, the principles laid down in the Jayaswal Neco case would apply with greater force in the instant case.

43. The Petitioner has relied upon the case of NSL Nagapatnam Infrastructure Pvt. Ltd. v CERC & Ors. (W.P.(C) 6791/2017 & CM No.33742/2018) wherein the Hon'ble Delhi High Court, in a judgment dated 24.11.2022, examined Regulation 12(5) of the 2009 Connectivity Regulations and held that the provision cannot be construed as mandating automatic encashment of the BG in every case of default. The High Court observed that the requirement to furnish a BG along with the LTA application is intended to ensure the seriousness of applicants and is in the nature of a regulatory measure. It was further held that the question of whether a BG is required to be encashed must be determined by the CTU, having regard to the facts of each case. The High Court has further held that encashment of the BG may be justified in cases where the CTU has committed its resources pursuant to the LTA application and the applicant does not seriously pursue the same. We have perused the said judgment of the High Court. The observation of the High Court that the requirement of furnishing a BG along with the LTA application is intended to ensure the seriousness of the applicants is a well-established principle under the Connectivity Regulations. This

rationale squarely applies to the present case. Further, as discussed above, CTUIL did not invoke the BG mechanically. The record demonstrates that CTUIL repeatedly reviewed the status of the Petitioner's Project in various meetings, granted multiple extensions for execution of the LTAA, and considered the explanations offered by the Petitioner before ultimately proceeding to close the LTA and invoke the BG. Moreover, the Petitioner was not prevented from going ahead with the implementation of the Project due to any *force majeure* circumstances beyond its control. As discussed above, the suspension of the EC was limited in duration, and no continuing restraint operated thereafter. The subsequent lack of progress was attributable to the Petitioner's own inaction. In such circumstances, the Petitioner cannot seek to avoid the consequences of non-execution of the LTAA by contending that CTUIL had not committed specific transmission resources. Where the default is attributable to the Petitioner itself, absence of capital expenditure by CTUIL cannot, by itself, be a ground to hold that invocation of the BG was unjustified. Further, in the said Delhi High Court judgment, the court has specifically clarified that its decision is based on the facts of that particular case and should not be treated as a general rule applicable to all similar matters. Therefore, the judgment cannot be read as laying down a general principle. The relevant extract of the judgement dated 24.11.2012 is as follows:

"22. Mr. T.V.S. Raghvendra Sreyas also requests that it be clarified that the present order is passed in the peculiar circumstances of the case. It is so clarified. It is further clarified that all other contentions of the parties are reserved."

Thus, even on the test laid down by the Hon'ble Delhi High Court, the action of CTUIL reflects a reasoned exercise of discretion based on the facts and circumstances of the case.

44. In view of the above, we are of the considered opinion that the Petitioner's failure to execute the LTAA cannot be attributed wholly to circumstances beyond its control. While the environmental litigation may have introduced a degree of

uncertainty, there was a prolonged inaction on the part of the Petitioner even during the periods when the EC was restored and valid. In these circumstances, CTUIL's action in invoking the BG stands justified within the framework of Regulation 12(5). Accordingly, the Petitioner's prayer for a refund of the encashed BG is rejected.

45. In view of the above discussions and findings, Petition No. 96/MP/2015 stands disposed of.

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson

