

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.96/MP/2018

Subject : Petition under Section 79 (1)(c), Section 79 (1)(f) and Section 79 (1)(k) of the Electricity Act, 2003 read with the Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium term Open Access in inter-state transmission and related matters) Regulations, 2009 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking directions against Power Grid Corporation of India Limited for (i) payment of amounts due to the Petitioner in compliance of the Order dated 15.12.2017 of this Hon'ble Commission in Petition No. 141/TT/2015; and (ii) return of Bank Guarantee of ₹60 crore furnished as per the extant regulations read with the Transmission Agreement dated 14.6.2010 and Long Term Access Agreement dated 17.6.2011.

Date of Hearing : 18.9.2018

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioner : MB Power Limited (MBPL)

Respondent : Power Grid Corporation of India Limited (PGCIL)

Parties present : Shri Gopal Jain, Senior Advocate, MBPL
Ms. Molshree Bhatnagar, Advocate, MBPL
Shri Anand Kumar Srivastava, Advocate, MBPL
Ms. Gayatri Aryan, Advocate, MBPL
Shri Abhishek Gupta, MBPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri J. Mazumder, PGCIL
Shri K.K. Jain, PGCIL
Ms. Anita A. Srivastava, PGCIL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present petition has been filed *inter-alia* for seeking direction against the Power Grid Corporation of India Limited (PGCIL) for payment of amounts due to the Petitioner in compliance of the Commission's order dated 15.12.2017 in Petition No. 141/TT/2015 and for return of Bank Guarantee (BG) of ₹60 crore furnished as per the extant regulations read with the Transmission Agreement dated 14.6.2010 and Long Term Access Agreement dated 17.6.2011. Learned senior counsel for the Petitioner further submitted as under:

(a) The Commission vide order dated 15.12.2017 in Petition No. 141/TT/2015 had observed that there was a delay in operationalization of LTA by PGCIL and directed PGCIL and the Petitioner to settle the issue of delay in operationalization of the LTA mutually. Subsequently, the Petitioner approached PGCIL to settle the

issue. However, PGCIL refused to work out the amounts payable to the Petitioner in compliance of the Commission's direction dated 15.12.2017.

(b) Pursuant to the order dated 15.12.2017 in Petition No. 141/TT/2015, on 16.3.2018, the Petitioner raised a bilateral bill of ₹25.10 crore against PGCIL towards the reverse transmission charges made by the Petitioner. However, PGCIL refused to make payment of such proportionate transmission charges.

(c) PGCIL has neither contested nor opposed the computation of such claim but has merely stated that the claim of the Petitioner is not maintainable since there has been "no delay in operationalization of LTA". PGCIL relied upon the proviso to Regulation 12 of the Connectivity Regulations, 2009 which provided that a period of 3 years and 9 months is required to be maintained between the date of intimation of PPA being framed by the generating company and the date of availing the LTA and as per PGCIL the date of intimation is 21.1.2014, therefore, PGCIL has caused no delay in operationalization of LTA. However, such contention is wrong since the proviso to Regulation 12 of the Connectivity Regulations, 2009 was amended in 2012 and need of 3 years and 9 months was taken away by the Commission.

(d) As per the LTA Agreement, PGCIL was obligated to operationalize LTA by August, 2013. However, subsequent to the signing of the LTA, there was no intimation to the Petitioner for any change in scheduled date of operationalization by PGCIL. Further, the Investment Approval accorded to PGCIL indicates that the LTA has to be operationalized by August, 2013.

(e) In terms of the Clause 5(b) of the Transmission Agreement dated 14.6.2010, the Petitioner furnished a Bank Guarantee (BG) of ₹60 crore in favour of PGCIL which is required to be kept alive only to the extent of 6 months from the expected date of commissioning of the generation project and upon expiry of 6 months, the BG ought to have been returned. As the generation project has already been commissioned, therefore, PGCIL cannot retain the construction BG under the Connectivity Regulations.

(f) The Commission, vide RoP dated 3.9.2015 in Petition No. 203/MP/2015 has observed that the excess amount of BG is required to be returned to the Petitioner after opening of LC for operationalization of LTA. However, in the present case, since LC has already been opened and outstanding amount has been paid, PGCIL should return the BG of ₹60 crore.

2. Learned counsel for PGCIL submitted that two issues are involved in the present petition i.e. one is of connectivity and second is of LTA. Learned counsel submitted as under:

(a) With regard to the Connectivity line, the Commission, vide order dated 15.12.2017 in Petition No. 141/TT/2015, has held that the asset was put to regular service on 25.2.2015 i.e. date of drawl of start-up power by the Petitioner and the COD of the instant transmission line is approved as 25.2.2015. Therefore, the IDC and IEDC for the period from 8.8.2014 to 24.2.2015 shall be borne by the Petitioner since the line despite being ready from 8.8.2014 could not be put to commercial operation due to non-availability of bays at MBPL end.

(b) Subsequently, PGCIL raised an invoice towards the transmission charges for the period from 25.2.2015 to 19.5.2015 as directed by the Commission vide order dated 15.12.2017 in Petition No.141/TT/2015. The Petitioner was granted LTA on margin of HTPTC for IPPs in Odisha and operationalization of LTA was subject to the availability of system strengthening.

(c) On 20.1.2014, the Petitioner submitted PPA signed with Uttar Pradesh Power Corporation Ltd. (UPPCL) and sought operationalization of LTA from 30.10.2016. Subsequently, on 19.12.2014, the Petitioner requested for pre-poning the supply to 1.3.2015. However, the Gwalior-Jaipur transmission line was commissioned in August, 2015, much before its scheduled commissioning in December, 2015. LTA was operationalized on 19.8.2015.

(d) BG in this petition is not a construction BG but it was given for both connectivity and LTA. BG has been retained by PGCIL due to the non-payment of IDC and IEDC charges by the Petitioner of around Rs 30 crore. However, if the Petitioner provides the payment security, PGCIL would release the BG of ₹ 60 crore after following the due process.

3. In response to (d) above, the learned senior counsel for the Petitioner sought permission to amend the BG of ₹ 60 crore to ₹ 30 crore.

4. After hearing the learned senior counsel for the Petitioner and learned counsel for PGCIL, the Commission directed the Petitioner to amend the BG amount (No. 048031BG0014405 dated 10.7.2010) from ₹ 60 crore to ₹ 30 crore subject to the final outcome of the decision in the present petition. The Commission directed both the parties not to take any coercive measure against each other till the next date of hearing.

5. The petition shall be listed for hearing on 16.10.2018.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**