

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Diary No.102/2023**

Subject : In terms of Order dated 5.3.2023 passed by the Hon'ble High Court of Delhi in W. P No. 17782 of 2022 titled as Jindal India Thermal Power Limited v. Northern Railways for Uttar Pradesh and Anr.

Date of Hearing : 10.1.2023

Coram : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Northern Railways for Uttar Pradesh and Anr.

Parties Present : Shri Sajjan Poovayya, Sr. Advocate, JITPL  
Shri Akshat Jain, JIPTL  
Ms. Shefali Tripathi, JIPTL  
Shri Krishan Rana, JIPTL  
Shri M. G. Ramachandran, Sr. Advocate, NR

**Record of Proceedings**

The matter was taken up in terms of the direction of the Hon'ble High Court of Delhi vide order dated 5.1.2023 in WP(C) No. 17782 of 2020 transmitting the electronic record of the said Writ Petition along with the orders passed therein to the Commission for them to be treated as an application on behalf of the Petitioner in regard to invocation and encashment of performance security in the form of Bank Guarantee dated 23.5.2016 for Rs. 8.3 crore under the Agreement for Procurement of Power dated 13.4.2016.

2. Learned senior counsel for the Petitioner submitted that in view of the Respondent, Northern Railways for Uttar Pradesh (NR) having initiated the invocation of BG on 29.12.2022 and since the Appellate Tribunal for Electricity (APTEL) as well as this Commission were not convening hearing due to the winter vacation, the Petitioner had filed the aforementioned Writ Petition before the Hon'ble High Court of Delhi, *inter-alia*, seeking urgent directions restraining the Respondent No.1, Northern Railways for Uttar Pradesh and Respondent No.2 – State Bank of India in respect of invocation and encashment of BG dated 23.5.2016 of Rs. 8.3 crore. Hon'ble High Court of Delhi vide order dated 29.12.2022 restrained the Respondent, NR from invoking the BG. Learned senior counsel further submitted as under:

(a) However, keeping in view that the Commission and the APTEL are now functioning after the winter vacation, the Hon'ble High Court vide order dated 5.1.2023 directed the parties to appear before this Commission. Further, in terms of the said order, the stay granted by the Hon'ble High Court

continues to operate till 10.1.2023 i.e. today and thereafter, it is subject to the further orders to be passed by this Commission.

(b) The Petitioner has already filed Petition No. 194/MP/2022, *inter alia*, seeking appropriate reliefs for Force Majeure and Change in Law events on account of major changes in modalities in the existing coal e-auction system by way of Coal India Limited circular dated 1.3.2022 issued pursuant to Cabinet Committee of Economic Affairs decision dated 26.2.2022. In the said case, the Petitioner has indicated the non-availability of non-linkage coal as required to generate & supply the contracted capacity to NR under the APP.

(c) NR, on the other hand, has also filed Petition No. 155/MP/2022 before the Commission seeking specific performance of the APP by the Petitioner. There is also an interim direction in the said case vide Record of Proceedings for the hearing dated 5.7.2022 operating against the Petitioner. The said direction was challenged by the Petitioner herein before the APTEL in DFR No. 280 of 2022 & IA No. 1089 of 2022. While there is no stay granted by the APTEL therein, APTEL has given a liberty to the Petitioner to approach it in case any precipitative action was sought to be taken by the Respondents.

(d) Keeping in view that both the above Petitions are pending before the Commission and presently listed on 14.3.2023, the Commission may pre-pone the hearing in these matters to next week and in the meantime, the interim protection granted by the Hon'ble High Court of Delhi be continued and the Respondents may be restrained from taking any coercive actions with regard to BG as furnished under the APP.

3. Learned senior counsel for the Respondent, NR submitted that the law relating to the grant of injunction restraining the invocation of the BG is settled in terms of catena of judgments of Hon'ble Supreme Court. Learned senior counsel submitted that the BG is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and validity of the primary contract between the person at whose instance the BG was given and the beneficiary. Learned senior counsel submitted that subject to the limited exceptions, namely fraud and special equities, beneficiary cannot be restrained from encashing the BG even if the dispute between the beneficiary and the person whose instance the BG was given by the bank had arisen in the performance of the contract. Learned counsel referred the recent judgment of the APTEL dated 22.12.2022 in IA No. 1467 of 2022 (Arian Solar Pvt. Ltd. v. CERC & Ors.) in detail and submitted that the said decision squarely applies to the present case. He further relied upon the order dated 29.6.2022 of the Commission in IA No. 23 of 2022 in Petition No. 95/MP/2022 (Inox Green Energy Services Pvt. Ltd. and Ors. v. SECI and Ors.). Learned senior counsel, accordingly, urged that no interim protection should be granted in favour of the Petitioner with regard to the invocation of BG furnished under the APP.

4. In response, the learned senior counsel for the Petitioner added that in the event the Commission is not inclined to extend the interim protection in the favour of the Petitioner, a reasonable time may be allowed to the Petitioner to deposit the amount equivalent to BG in favour of the Petitioner with prejudice to its rights and subject to the outcome of the above mentioned Petition filed by the Petitioner.

5. Considering the submissions made by the learned senior counsel for the parties, the Commission found it appropriate to consider the issue of invocation & encashment of BG along with the abovementioned cross-Petitions filed by both the parties and accordingly, directed to prepone the hearing in the Petition Nos. 155/MP/2022 and 194/MP/2022 listed for hearing on 14.3.2023 and list these Petitions for hearing on 17.1.2023. The parties were directed to ensure that the pleadings in these matters are completed on or before 16.1.2023. In the meantime, the interim protection granted by the Hon'ble High Court of Delhi shall be continued till the next date of hearing i.e. 17.1.2023.

**By order of the Commission**

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