

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.114/MP/2023 along with IA Nos.28/2023 & 29/2023

- Subject : Petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long term Access and Medium term Open Access in inter-State Transmission and related matters) Regulations, 2009 for setting aside the letter dated 23.03.2023 issued by the Central Transmission Utility of India Ltd.
- Date of Hearing : 2.5.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : Soltown Infra Private Limited (SIPL) and 2 Ors.
- Respondent : Central Transmission Utility of India Limited (CTUIL)
- Parties Present : Shri Sanjay Sen, Sr. Advocate, SIPL
Shri Parinay Deep Shah, Advocate, SIPL
Ms. Madhvi Diwan, Sr. Advocate – ASG, CTUIL
Shri Alok Shankar, Advocate, CTUIL
Shri Kumarjeet Ray, Advocate, CTUIL
Shri Chetan Saxena, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Ms. Muskan, Agarwal, CTUIL

Record of Proceedings

Learned senior counsel for the Petitioners submitted that the present Petition has been filed, *inter alia*, for setting aside CTUIL's letter dated 23.3.2023 sent to the Petitioners herein whereby the Petitioners, SIPL and its Directors/Promoters have been blacklisted from applying for and obtaining connectivity or open access with CTUIL for a period of 3 years from the date of issuance of the said letter. Learned senior counsel further circulated a list of relevant dates and made the following submissions:

- (a) On 12.10.2021 & 30.11.2021, SIPL applied for Stage I connectivity for 600 MW and 1200 MW, which was granted by CTUIL on 21.12.2021 and 22.1.2022 respectively. Thereafter, on 2.12.2021, SIPL applied for Stage II connectivity for the aforesaid 1800 MW (tranches of 500 MW, 600 MW and 700 MW), which was granted by CTUIL on 7.3.2022 pursuant to which Transmission Agreement for Connectivity was entered into with CTUIL on 12.4.2022.

(b) On 25.4.2022, SIPL applied for grant of Stage II connectivity for another 200 MW (not part of its 1800 MW applications).

(c) Thereafter, on 8.7.2022, a meeting was held between the representatives of SIPL and CTUIL. Further, in terms of the applications for grant of Stage II connectivity for 1800 MW one opportunity for rectification of deficiencies in the applications was allowed.. Accordingly, CTUIL provided an opportunity to the Petitioners to rectify deficiencies in the said applications pursuant to which the Petitioners rectified all the errors including removal of erroneous land documents from list of supporting documents as evident from its e-mails dated 8.7.2022 & 11.7.2022.

(d) On 12.7.2022, CTUIL proceed to issue the Bay Allocation letter to SIPL. The said letter was issued by CTUIL only after it was satisfied with queries raised by it during the meeting dated 8.7.2022 and the subsequent correspondences between the parties dated 8.7.222, 11.7.2022 & 12.7.2022. CTUIL also granted Stage II connectivity to SIPL for 200 MW on 15.7.2022.

(e) However, on 4.8.2022, CTUIL issued first show cause notice to SIPL and its directors/promoters, *inter alia*, alleging that in a post-grant scrutiny carried out by CTUIL. It was found that SIPL had submitted that same land right related documents in more than one application and the same computer generated endorsement had been submitted with different land right related documents purporting it to be registered. Accordingly, the Petitioners were asked to explain why 1800 MW connectivity granted to SIPL should not be revoked with all possible consequences.

(f) The Petitioners responded to said show cause on 18.8.2022. Further, vide separate addendums dated 21.8.2022, the Petitioners, *inter alia*, also highlighted that the applications, to above extent, were rectified by SIPL in accordance with the provision allowing for rectification of the applications. However, in order to maintain a harmonious relationship with CTUIL and avert a protracted dispute, SIPL, vide its letter dated 30.8.2022, sought to surrender/withdraw the entire 1800 MW Stage II connectivity.

(g) Thereafter, CTUIL vide its letter dated 31.8.2022 closed the proceedings under the aforesaid show cause by revoking the Stage II connectivity for 1800 MW and the Transmission Agreements thereof. CTUIL also encashed the connectivity bank guarantee furnished by SIPL amounting to Rs. 50 lakh. In the said letter, CTUIL had reserved its rights, contentions and indemnities available with CTUIL, but only in terms of the provisions of the applicable regulations, procedures and agreements.

(h) On 31.8.2022, SIPL applied afresh for grant of Stage II connectivity for 350 MW and 125 MW, which was granted by CTUIL on 26.10.2022. This fresh grant of connectivity by CTUIL also makes it apparent that even CTUIL considered the proceedings initiated by first show cause notice concluded with its revocation letter dated 31.8.2022.

(i) However, on 22.2.2023, CTUIL issued second show cause notice to SIPL and its directors/promoters which expanded the scope of first show cause notice and asked the Petitioner to show cause as to why the Petitioners should not be blacklisted from getting the open access and connectivity from CTUIL.

(j) The Petitioners responded to the second show cause notice vide letter dated 3.3.2023. However, on 23.3.2023, CTUIL issued the blacklisting letter to SIPL and its promoters/directors from applying for and obtaining any connectivity or open access with CTUIL for a period of three years. Also, on 5.4.2023, CTUIL revoked SIPL's subsisting 675 MW Stage II connectivity, which was not subject matter of any of the show cause notice.

(k) Under the guise of its statutory roles & responsibility and the rights reserved under the first show cause dated 31.8.2022, CTUIL could not have imposed a restriction on SIPL and its promoters/directors from applying for and obtaining any connectivity or open access for a period of three years.

2. In response to the specific observation of the Commission with regard to the jurisdiction to entertain the present Petition, learned senior counsel submitted that this Commission has the necessary jurisdiction to deal with the present Petition under Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act, 2003 ('the Act'). Learned senior counsel submitted that the issue involving the right of the Petitioners to obtain connectivity and open access to inter-State network would squarely covered under Section 79(1)(c) of the Act and since the dispute 'involves' transmission licensee/CTUIL, Section 79(1)(f) of the Act is attracted in the present case. Learned senior counsel submitted that in terms of the Transmission Agreement and Connectivity Regulations, only this Commission can deal with the any dispute arising thereof. Learned senior counsel further added that in any case, the issue of both the maintainability & merits, as held by the Hon'ble Supreme Court, may be taken-up together.

3. Learned senior counsel for the Respondent, CTUIL submitted that the Respondent has certain objection towards the maintainability of the present Petition. Learned senior counsel submitted that for the grant of connectivity, SIPL had deliberately submitted the duplicate/fabricated documents relating to land rights which amounts to a fraud. Learned senior counsel further submitted that the withdrawal/surrender of the entire 1800 MW connectivity by SIPL was merely an attempt to scuttle the entire issue and not out of the good faith as alleged by the Petitioners and this clearly demonstrates the conduct of the Petitioners. Learned counsel submitted that, as held by the Hon'ble Supreme Court in various judgments, power to blacklist is an inherent power and the Petitioners can challenge the same on the ground of arbitrariness or disproportionate before the Writ Court only and not before this Commission. Learned senior counsel, however, added that the Respondent as such has no issue if the matter is taken-up on maintainability and merits together.

4. Considering the submissions made by the parties, the Commission directed the Respondent to file its response to the Petition and IA, both on maintainability & merits, within three weeks with copy to the Petitioner who may file its rejoinder within three weeks thereafter.

5. The Petition along with IAs shall be listed for hearing on maintainability and merits on 7.7.2023.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)