

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 42/MP/2023

Coram:

**Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 17.04.2023

In the matter of:

Petition under section 79(1)(c) of the Electricity Act, 2003 seeking appropriate directions for the mode and manner for compliance of direction issued by the Appellate Tribunal for Electricity in its judgment dated 6.10.2022 in Appeal No.196/2019 and Appeal No.73/2018.

And in the matter of:

Central Transmission Utility of India Limited (CTUIL),
B-9, Qutab Industrial Area,
Katwaria Sarai, New Delhi-110016.

.....Petitioner

Versus

1. MB Power (Madhya Pradesh) Limited,
239, Okhla Industrial Estate Phase III,
New Delhi-110020.
2. Power Grid Corporation of India Limited,
"Saudamini", Plot No-2,
Sector-29, Gurgaon-122001, (Haryana).

...Respondent(s)

For Petitioner : Ms. Suparana Srivastava, Advocate, CTUIL
Shri Tushar Mehta, Advocate, CTUIL
Ms. Divya Sharma, Advocate, CTUIL
Shri Ranjeet S. Rajput, CTUIL
Shri Swapnil Verma, CTUIL
Shri Kamal K. Jain, CTUIL



Order in Petition No. 42/MP/2023

For Respondent: Shri Deepak, Advocate, M.B Power
Ms. Shubhi Sharma, Advocate, M.B Power
Shri Anand K. Ganesan, Advocate, PGCIL
Shri Swapna Sheshdari, Advocate, PGCIL
Ms. Surbhi Gupta, Advocate, PGCIL
Shri Abhishek, M.B Power

ORDER

The instant petition has been filed by Central Transmission Utility of India Limited seeking appropriate directions for the mode and manner for compliance of direction issued by the Appellate Tribunal for Electricity in its judgment dated 6.10.2022 in Appeal No.196/2019 and Appeal No.73/2018.

2. The Petitioner has made the following prayers in the instant petition:

“(a) issue appropriate directions for the mode and manner in which the Petitioner, as a revenue neutral entity, may discharge its liability towards payment of the bank charges incurred by Respondent No.1 for extension of validity of its bank guarantee [bearing number 0480310BG0014405 in the sum of Rs.30 Cr. (reduced from 60 Cr.) dated 25.9.2018], in compliance of the directions issued under the common Judgment and Order dated 6.10.2022 passed by the Hon'ble Tribunal in Appeal No. 196/2019 and Appeal No. 73/2018 and Order dated 13.1.2023 passed by the Hon'ble Tribunal in EP No.17/2022;

and pass such other and/or further order(s) as the Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.”

Background

3. The brief facts in the matter are as follows:

- a) The Commission vide order dated 10.5.2019 in Petition No.96/MP/2018 directed to return the BG of ₹60 crore and reimburse the bank charges (towards extension of validity period of the BG) to MB Power (Madhya Pradesh) Company Limited (hereinafter referred to as “M.B Power”).



- b) The Commission vide order dated 15.12.2017 in Petition No.141/TT/2015 directed MB Power to pay the IDC and IEDC from 8.8.2014 to 25.2.2015 and also the transmission charges from 25.2.2015 to 19.5.2015.
- c) MB Power filed Appeal No. 73 of 2018 against the Commission's order dated 15.12.2017 in Petition No. 141/TT/2015 and PGCIL filed Appeal No. 196 of 2019 against the Commission's order dated 10.5.2019 in Petition No. 96/MP/2018.
- d) APTEL vide its judgement dated 6.10.2022 dismissed the Appeal No. 196/2019 filed by PGCIL and partially allowed Appeal No. 73/2018 upholding Commission's order dated 10.5.2019 in Petition No. 96/MP/2018 directing CTUIL to pay the bank charges to M.B Power towards extension of the bank guarantee and PGCIL to pay the reverse transmission charges to M.B Power for the period of delayed operationalisation of LTA.
- e) Pursuant to APTEL's judgement dated 6.10.2022, M.B Power filed an execution proceeding i.e. E.P No. 17 of 2022 before the APTEL for execution of the judgment dated 6.1.2022 and APTEL vide its judgment dated 13.1.2023 directed CTUIL to pay the bank charges and PGCIL to pay the reverse transmission charges to M.B Power on or before 12.2.2023. The relevant portion of the APTEL's judgement dated 13.1.2023 is as follows:

"The question whether it is PGCIL or CTU which is liable to pay transmission charges to the Petitioner, in the light of the demerger scheme whereby CTU was constituted, is again a matter which is beyond the scope of enquiry in these execution proceedings. Likewise the submission, urged on behalf of CTU, that, since they are a revenue neutral entity and the trustee of the corpus, they should not be mulcted with the liability to pay the bank charges which the Petitioner had incurred in furnishing the bank guarantee earlier.

.....



Suffice it, in these circumstances, to allow the Execution Petition directing PGCIL to pay the Petitioner proportionate transmission charges and CTU to pay the bank charges, as directed by this Tribunal in the order in Appeal No. 196 of 2019 dated 06.10.2022, within one month from today. In this Execution Petition, the Petitioner has claimed Rs. 25,10,43,783 towards transmission charges. Mrs. Swapna Seshadri, Learned Counsel for PGCIL, submits that the amount so claimed needs to be reconciled with their records. PGCIL shall make payment, as directed hereinabove, within one month from today subject to reconciliation in the interregnum. Likewise the Petitioner has, in the execution petition filed by them, computed the bank charges payable by CTU to them as Rs. 4,48,35,054. The said amount, subject to reconciliation in the interregnum, shall also be paid, by CTU to the Petitioner herein, within one month from today.

.....

The Execution Petition is disposed of in terms of the above directions. Consequently, all the pending IAs stand closed.”

- f) Aggrieved with the judgment dated 13.1.2023, both CTUIL and PGCIL have filed Civil Appeals before Hon'ble Supreme Court and the same were admitted observing that the parties are bound to comply with the directions of APTEL in its judgement dated 13.1.2023 subject to the outcome of appeals filed before Hon'ble Supreme Court. Thus, no stay has been granted in the appeals by Hon'ble Supreme Court.
- g) There is neither any provision for the Petitioner to make any bilateral payments to an entity nor is there any financial corpus to make such payment. The said fact was also brought into notice in the execution proceedings. Accordingly, the learned counsel prayed to the Commission to issue appropriate directions regarding the mode and manner in which Petitioner is required to discharge its liability towards M.B Power so that there is no non-compliance of the APTEL's judgment dated 13.1.2023 in E.P No. 17 of 2022. The last date for payment of bank charges is 12.2.2023.



4. The Commission vide RoP dated 7.2.2023 directed CTUIL to pay the bank charges as per directions of APTEL from the fee/payment received from various entities viz. application fees for Connectivity, Long Term Access and Medium-Term Open Access and encashed Conn-BG1s under Central Electricity Regulatory Commission (Connectivity, Long Term Access and Medium-Term Open Access) Regulations, 2009.

5. PGCIL in its reply has stated that no relief is claimed against the PGCIL in the petition hence, PGCIL does not want to respond to the averments of the Petitioner in the instant matter.

6. During the hearing on 27.3.2023, the learned counsel for CTUIL submitted that the bank charges alongwith the carrying cost has been paid to MB Power. The learned counsel for MB Power sought time to confirm the receipt of the same. Therefore, MB Power was given time up to 7.4.2023 to confirm the receipt of the bank charges and the carrying cost.

7. MB Power, vide affidavit dated 11.4.2023, has submitted that the Commission vide RoP dated 7.2.2023 directed CTUIL to pay the bank charges as per the directions of APTEL. Accordingly, on 13.202023 CTUIL made partial payment of ₹4,20,98,604/- and remitted ₹18,30,382/- on 27.3.2023. Thus, MB Power has confirmed receipt of mutually reconciled total amount of ₹4,39,28,986/- towards bank charges as per RoP dated 7.2.2023 and the APTEL's execution order. As CTUIL has paid MB Power as per the directions of APTEL, nothing survives in the matter.



8. Accordingly, Petition No. 42/MP/2023 is disposed of subject to the Civil Appeals filed by PGCIL and CTUIL before the Hon'ble Supreme Court.

**sd/-
(P. K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I. S. Jha)
Member**

**sd/-
(Jishnu Barua)
Chairperson**

