

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Diary (Petition) No. 430/2023

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of order: 30th September, 2023

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Regulations 4.1, 18, 22, 41 and 42 of the CERC (Connectivity and General Network Access to the Inter-State Transmission System), 2022 imploring this Commission to direct the Respondent, Central Transmission Utility of India Limited, to grant connectivity to the Petitioner for a quantum of 545 MW, in terms as elaborated in the present petition.

And

In the matter of

SKS Power Generation (Chhattisgarh) Limited,
Through Insolvency Resolution Professional
B- 501, Elegant Business Park,
Andheri East, Mumbai – 400 059

...Petitioner

Versus

Central Transmission Utility of India Limited,
Saudamini, Plot No.2,
Sector 29, Gurgaon, Haryana – 122 001

...Respondent

Parties Present:

Shri Buddy Ranganadhan, Advocate, SPGCL
Shri Hemant Singh, Advocate, SPGCL
Ms. Supriya Agarwal, Advocate, SPGCL
Ms. Alchi Thapliyal, Advocate, SPGCL
Ms. Lavanya Panwar, Advocate, SPGCL
Shri Swapnil Verma, CTUIL
Shri Ranjeet Rajput, CTUIL

ORDER

The Petitioner, SKS Power Generation (Chhattisgarh) Limited (SPGCL) has filed the present Petition under Section 79 of the Electricity Act, 2003 read with



Regulations 4.1, 18, 22, 41 and 42 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (hereinafter referred to as “ the GNA Regulations, 2022”) seeking directions to the Respondent, Central Transmission Utility of India Limited (CTUIL) to grant time extension of one month to the Petitioner for furnishing the Bank Guarantee(s) (BGs) in terms of Regulation 37.6(1) of the GNA Regulations, 2022 for the purpose of grant of additional GNA to the Petitioner for a quantum of 545 MW. The Petitioner has made the following prayers:

“(a) Direct the Respondent/ Central Transmission Utility of India Limited to grant time extension of 1 month for furnishing the Bank Guarantee(s) in terms of Regulation 37.6(1) of the CERC GNA Regulations, 2022, for the purpose of grant of additional GNA to the Petitioner for a quantum of 545 MW, in terms as stated in the present petition;

(b) In the interim, direct the Respondent/ Central Transmission Utility of India to not take any coercive measure, including any revocation or curtailment of the right of the Petitioner to use the connectivity granted under Connectivity Regulations, 2009, subject to the outcome of the present petition; and

(c) Pass any such further other orders or order as this Commission may deem just and proper in the circumstances of the case.”

2. Citing the urgency involved, the matter was mentioned by the learned counsel for the Petitioner during the course of the hearing on 29.9.2023. A brief background of the case as narrated in the Petition and the submissions made by the learned counsel for the Petitioner is as under:

(a) On 7.1.2008, the Petitioner entered into a Memorandum of Understanding (MoU) with the Government of Chhattisgarh, and the Chhattisgarh State Electricity Board, for the setting up of a Coal based thermal power plant of about 1200 MW (4x300 MW) in the State of Chhattisgarh. However, only a 600 MW Plant is implemented and operational.

(b) The Petitioner executed a Bulk Power Transfer Agreement (BTPA) dated 24.2.2010 for a quantum of 683 MW for 4 units, i.e., 4x300 MW.

However, due to a force majeure event, the Petitioner relinquished/ surrendered its LTA, i.e., Long Term Access of 170 MW on 31.5.2017 and the remaining LTA of 513 MW on 25.10.2017. However, Connectivity for the entire 1200 MW was retained by the Petitioner.

(c) The Petitioner has entered into a long-term Power Purchase Agreement dated 5.1.2011 with Chhattisgarh State Power Distribution Company Limited (CSPDCL). However, for the balance of 545 MW, the Petitioner has existing Connectivity without any LTA.

(d) As per Regulation 18.1 of the GNA Regulations, 2022, 55 MW of the LTA/deemed LTA effective with firm beneficiaries (CSPDCL) has been considered as deemed GNA under the aforesaid GNA Regulations. However, with respect to the balance of 545 MW Connectivity without LTA, CTUIL, vide its letter dated 13.9.2023, referring to the deliberations in the 21st CMETS-WR meeting held on 28.8.2023 and 29.8.2023, issued a list of generators that require additional GNA in terms of Regulation 37.6(1) of the GNA Regulations, 2022, which included the Petitioner. Vide the aforesaid letter, the Petitioner was directed to furnish Conn-BG3 @ 2 lakh/MW in terms of Regulation 37.6(1) of the GNA Regulations within a month of the date of the above letter. Therefore, in order to obtain the additional GNA, the Petitioner is required to submit a BG @ Rs. 2 lakh/ MW.

(e) Since the Petitioner is under the Corporate Insolvency Resolution Process (CIRP), the Petitioner's lead lender/ bank, i.e., Bank of Baroda, is taking time to approve the issuance of the requisite BG in terms of Regulation 37.6 of the GNA Regulations, 2022. The Petitioner has also approached other lenders/ banks for furnishing the aforesaid BG and is hopeful of obtaining the same within a period of 1 month, i.e., till 31.10.2023.

(f) Accordingly, the Petitioner is seeking an extension of 1 month for the furnishing of BG as required under Regulation 37.6 of the GNA Regulations, 2022 for the grant of the additional GNA of 545 MW.

3. The representative of the Respondent, CTUIL, pointed out that the Petitioner was well aware of the requirements for furnishing BG under the GNA Regulations, 2022, which were issued way back in June 2022 and accordingly, the Petitioner could have made necessary arrangements for furnishing the BG for an amount of approximately Rs. 11 crore. He added that it would not be appropriate to further extend the timeline allowed to the Petitioner for furnishing the BG.

4. We have considered the submissions made by the parties. Keeping in view the issue involved in the matter being brief and the parties having already made their respective submissions thereon, we decide to dispose of the present case at this stage. We notice that the Petitioner has sought to invoke the Commission's powers under Regulation 41 (Power to Relax) and Regulation 42 (Power to Remove Difficulty) under the GNA Regulations, 2022, for seeking an extension of time by a month to submit the BG as required under Regulation 37.6(1) of the GNA Regulations, 2022, for the purpose of granting an additional GNA of 545 MW in view of the pendency of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016. It is no longer res-integra that the power to relax is a judicial discretion which has to be exercised only in exceptional cases and where non-exercise of such discretion would cause hardship and injustice to a party or would lead to unjust reason. In the present matter, we do not find that the Petitioner has made any case for exercising the Power to Relax or Power to Remove Difficulty in providing a month-long extension to the Petitioner in providing the BG to CTUIL. The mere pendency of CIRP proceedings cannot be grounds for the further extension of the timeline allowed by the CTUIL for furnishing the BG. We further notice that on request of CTUIL vide letter dated 29.9.2023, the Commission, vide

Suo Motu Order dated 29.9.2023 in Petition No. 13/SM/2023 has allowed time till 16.10.2023 for the generating stations to furnish the bank guarantees with the submission of an undertaking. Hence, as on date, the Petitioner has almost two weeks (time till 16.10.2023) to make the necessary arrangements to furnish such BG, which, in our view, is sufficient and no further extension is warranted.

5. In view of the above observations, the present Petition stands disposed of.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson