

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.372/MP/2023

- Subject : Petition under Sections 63 and 79 of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relief under Force Majeure, (Article 11) and Change in Law, (Article 12) of Transmission Service Agreement dated 17.11.2016, related to 765 kV Strengthening in Eastern Region (ERSS-XVIII).
- Date of Hearing : **13.3.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri P. K. Singh, Member
- Petitioner : POWERGRID Medinipur-Jeerat Transmission Limited.
- Respondents : West Bengal State Electricity Distribution Company Limited & Ors.
- Parties Present : Shri Shubham Arya, Advocate, PMJTL
Ms. Pallavi Saigal, Advocate, PMJTL
Shri Abhijit Daimari, PMJTL
Shri Manish Kr Choudhary, Advocate, NBPDCCL
Shri Himanshu Thakur, Advocate, NBPDCCL

Record of Proceedings

At the outset, the learned counsel for the Petitioner submitted that the present Petition had been filed *inter-alia*, seeking a declaration that the Transmission Project of the Petitioner i.e. "765 kV Strengthening in Eastern Region (ERSSXVIII)" was affected by Force Majeure and Change in Law events, an extension of the SCOD, which was 28.7.2020 for all elements except element eight (which was subsequently deleted by CEA from the scope of work) by 760 days i.e. up to 26.8.2022 and further declaration that the Petitioner shall be entitled to increase in the cost of the Project during execution and completion of the transmission project. Learned counsel mainly submitted as under:

- (a) The transmission project was awarded to the Petitioner on a tariff based competitive bid process under Section 63 of the Electricity Act, 2003 and due to various Force Majeure and Change in Law events, the said project of the Petitioner was delayed. Pursuant to the communications exchanged between the Petitioner and the LTTCs, including the Lead LTTC, the Contract Performance Guarantee issued by the Petitioner in favour of the LTTCs has been returned by all Respondents except Respondents 2 & 3, with the endorsement that no claim is pending towards the Bank Guarantee and the terms and all obligations in terms of the TSA have been fulfilled by the Petitioner.

(b) The matter is being pursued with Respondents. 2 & 3. i.e. Bihar Discoms for the return of the Contract Performance Guarantee issued by the Petitioner and the Petitioner has specifically prayed to pass an order restraining the Respondents 2 and 3 from taking any coercive and/or precipitative action against the Petitioner, including but not limited to invocation of the said Bank Guarantee, pending the hearing of the present Petition.

(c) The Lead LTTC, i.e. Respondent No.1 vide letter dated 8.9.2023, has accorded approval for an extension of five months from the SCOD as per Article 6.1.1 & 4.4.2 of TSA. However, no response has been received from the Bihar Discoms in this regard. In terms of Article 18.1.1 read with Schedule 8 of the TSA, the decision of the Lead LTTC i.e. Respondent No. 1 is binding upon other LTTCs and therefore, Respondents 2 and 3 ought to return the Contract Performance Guarantee issued by the Petitioner in their favour.

2. Learned counsel for Respondent No.3, North Bihar Power Distribution Company Limited (NBPDC) accepted the notice and sought the liberty to file its reply. Learned counsel submitted that no coercive/precipitative action will be taken regarding the invocation of the Bank Guarantee till the next date of the hearing.

3. After hearing the learned counsel for the Petitioner, the Commission directed as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to implead all the beneficiaries of Eastern Region as parties to the Petition to file a revised memo of parties within a week.

(c) The Petitioner to serve a copy of the Petition to the Respondents, including the beneficiaries of Eastern Region and the Respondents shall file their respective replies to the Petition, if any, within six weeks after serving a copy of the same to the Petitioner, who may file its rejoinder within four weeks thereafter.

(d) The Petitioner to implead all the beneficiaries of Eastern Region as parties to the Petition to file a revised memo of parties within a week

(e) The Petitioner to file the following information on an affidavit within four weeks:

(a) Single Line Diagram (SLD) of the transmission scheme with upstream and downstream interconnecting transmission system;

(ii) Present status of the upstream and downstream interconnecting transmission system

(iii) Status of payment of the transmission charges in respect of the transmission scheme.

(iv) Copy of the advance notice issued to LTTC for the readiness of the transmission element in terms of Article 6.1.1 of the TSA.

(v) Clarify under which clause of the TSA and due to which Change in Law

events, the Petitioner is claiming IDC from SCOD to Project COD for Rs. 164.05 crore and Rs. 38.09 crore.

(vi) In the prayer, the Petitioner is seeking an extension in SCOD up to the 26.8.2022 for the project. However, the actual commissioning date for the elements 1, 3 & 5 is 9.2.2021, for the elements 2, 4, 7 & 9 is 29.9.2021, and for the element 6 is 26.8.2022, clarify that the extension in SCOD up to 26.8.2022 sought for each element or the extension sought up to the actual COD of the respective elements?

(vii) Summary of Force Majeure Events in the following table:

Particulars of the Force Majeure event	Original timeline as per plan of Petitioner for the activity		Actual Timeline for the activity		Effective delay (Excluding the time period planned to execute the event) due to FM event	Date of Occurrence of Force Majeure event	Date by which notice was required to be served to LTTCs as per TSA	Date of serving the notice to LTTC
	From	To	From	To				

(viii) Summary of Change in Law events in the following table:

S. No.	Particulars of the Change in Law event	Date of Occurrence of Change in Law event	Date by which notice was required to be served to LTTCs as per TSA	Date of serving the notice to LTTC

(e) Parties to maintain the *status-quo* in respect of the invocation and/or encashment of the Bank Guarantees furnished under the Transmission Services Agreement till the decision in the Petition.

(f) Parties to comply with the above directions within specified timeline and no extension of time shall be granted.

4. The Petition will be listed for hearing on **22.8.2024**.

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