$~45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9482/2017

GMR CHHATTISGARH ENERGY LIMITED ..... Petitioner

Through: Mr Ramji Srinivasan, Sr. Advocate with Mr Manugupta Mishra, Mr Nishant Kumar, Mr Biju Mattam and Mr Sohil Yadav, Advocates

versus

CENTRAL ELECTRICITY REGULATORY COMMISSION AND ANR ..... Respondents

Through: Ms Suparna Srivastava with Ms Alinda Bhowal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **30.10.2017**

CM Nos. 38566/2017 & 38567/2017

1. Allowed, subject to all just exceptions.

W.P.(C) 9482/2017 & CM No. 38565/2017

2. Issue notice. The learned counsel for the respondents accepts notice.

3. The petitioner has filed the present petition, *inter alia,* impugning letters dated 29.09.2017 and 16.10.2017, whereby the Power Grid Corporation of India Limited (hereafter 'PGCIL') had called upon the petitioner to schedule the transfer of power against Long Term Access (hereafter 'the LTA') w.e.f. 01.10.2017 and to establish a letter of credit (LC) for an amount of ₹4496 lakh towards the payment of security failing

which Central Transmission Utility (hereafter ‘CTU’) would be constrained to initiate regulatory action including curtailment of Short Term Access (hereafter ‘STA’).

4. The petitioner states that the petitioner is not in a position to utilise the LTA facility and had already communicated the same to PGCIL. It is the case of the petitioner that the agreements entered into are void on account of *force majeure* and this issue is pending consideration before the CERC. The petitioner further states that even if the petitioner does not prevail in its aforesaid contention, it would still not be required to pay the LTA charges. This is so because in terms of Regulation 18 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, the petitioner is entitled to relinquish the stranded capacity on payment of relinquishment charges as computed by the concerned authority.

5. The learned senior counsel for the petitioner has referred to paragraph 4 of the said petition, which reads as under:-

> “4. The Petitioner states that the entire LTA quantum was surrendered on account of occurrence of certain force majeure events, as detailed in the aforementioned petition (ll/MP/2017) already filed before the Ld. CERC. Further, without prejudice to the force majeure claim of the Petitioner, as per Regulation 18 of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access In Inter- State Transmission and related matters) Regulations, 2009(hereinafter referred to as "CERC Connectivity Regulations"), the said Petitioner has an Independent right of relinquishing the LTA granted to it by PGCIL, subject to payment of relinquishment charges which

are calculated based upon the stranded capacity in the transmission system attributable to the Petitioner. In any case, whether the exit from the LTA Agreement (BPTA) is on account of force majeure events, or an option exercised under the above Regulations, there remains no liability to pay LTA charges, and that upon such exit, in the event the force majeure argument is rejected, the only charges which become payable are the relinquishment charges to be calculated as per Regulation 18.

It is submitted that as regards the computation of relinquishment charges to be paid by generators of electricity upon exercising the option of relinquishment of LTA under Regulation 18, the same is under consideration of the Ld. CERC in a separate proceeding, being Petition No.92/MP/2015, and that till a decision is taken in the said proceedings, PGCIL cannot impose any relinquishment charges."

6. In view of the above, it, *prima facie*, appears that the petitioner may not be liable to pay the LTA charges. This is stoutly disputed by the learned counsel for the respondents who states that although the petitioner is entitled to relinquish LTA facility, the petitioner has not, unequivocally, exercised that right and has not discharged the liability in terms of Regulation 18 of the aforementioned regulations.

7. This Court is not inclined to examine this controversy in any further detail as the said issue is pending consideration before the CERC. The petitioner has approached this Court for the sole reason that the CERC is not currently holding any hearings.

8. In view of the above, the operations of the impugned letters are stayed till the petitioner has an opportunity to approach CERC for such relief. In

the meantime, the petitioner is directed to keep the bank guarantees alive.

9. It is also clarified that the PGCIL is free to utilize the LTA capacity for the entities other than the petitioner.

10. It is further clarified that the aforesaid order is only an ad interim order and CERC shall examine the issue uninfluenced by any observations made herein. Further, this order is subject to such further order as may be passed by the CERC.

11. The petition and the pending application are disposed of.

12. Order *dasti.*

VIBHU BAKHRU, J

OCTOBER 30, 2017
MK