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

+ W.P.(C) 11258/2017

M/S SKS POWER GENERATION (CHHATTISGARH)
LIMITED

..... Petitioner

Through: Mr Ramji Srinivasan, Sr. Advocate
with Mr Matrugupta Mishra, Mr
Nishant Kumar and Mr Tushar
Bhardwaj, Advocates.

versus

CENTRAL ELECTRICITY REGULATORY
COMMISSION AND ANR.

..... Respondents

Through: Mr S. B. Upadhyay, Sr. Advocate
with Mr Pawan Upadhyay, Mr
Nishant Kumar and Mr Akash Tyagi,
Advocates for PGCIL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **18.12.2017**

1. Issue notice. Learned counsel for the respondents accepts notice.
2. The petitioner has filed the present petition, *inter alia*, impugning letters dated 29.09.2017 and 16.10.2017 issued by respondent no.2 (Power Grid Corporation India Ltd.- hereafter 'PGCIL'). By the said letters, PGCIL has informed the petitioner that Long Term Access (LTA) of 683 MW has been operationalized w.e.f. 01.10.2017. By the letter dated 16.10.2017, PGCIL has called upon the petitioner to establish a Letter of Credit (LC) for an amount of ₹37.65 crores towards the payment of security for transmission charges for LTA as per the Transmission Charges and Loss

Sharing Regulations, 2010.

3. It is the petitioner's case that it is not in a position to utilize the LTA facility and had communicated the same to PGCIL. The petitioner further claims that the agreements entered into by the petitioner for LTA have been rendered void on account of *force majeure*. It is further submitted that even if the petitioner's contention that the agreements in question are void is not accepted, the petitioner would still not be required to pay LTA charges but would have to pay relinquishment charges 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.

4. The petitioner has already approached the CERC in this regard, however, the petitioner's grievance is that the CERC is not holding any hearing. Mr Ramji Srinivasan, learned senior counsel for the petitioner states that the petitioner's application has been listed on more than one occasion but the entire cause lists had been deleted as the CERC was not sitting on those dates. It is in the aforesaid context that the petitioner has been constrained to approach this Court.

5. In the aforesaid circumstances, this Court is of the view that it would be apposite to stay the impugned orders till the petitioner has had an opportunity of being heard before the CERC in support of its application for interim relief.

6. In view of the above, the impugned orders are stayed for a further period of two weeks. In the meanwhile, the petitioner would be at liberty to mention the matter before the Chairman, CERC. Needless to mention that if such mention is made, the Chairman of the CERC shall ensure that the

petitioner's petition is taken up for consideration for ad interim orders on an urgent basis. In the meanwhile, the petitioner shall keep the bank guarantee alive. Since, it is the petitioner's unequivocal stand that it is not in a position to avail of the LTA, PGCIL would be at liberty to utilize the facility for LTA as it deems expedient.

7. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

DECEMBER 18, 2017
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