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

+ W.P.(C) 6786/2018

LANCO AMARKANTAK POWER LTD. Petitioner

Through: Mr Akhil Sibal, Sr. Advocate with Mr
Deepak Khurana, Mr Vineet Tayal
and Ms Nitya, Advocates.

versus

CENTRAL ELECTRICITY REGULATORY
COMMISSION AND ORS. Respondents

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

% **ORDER**
02.07.2018

CM No.25740/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 6786/2018 & CM No.25739/2018

2. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 27.06.2018 issued by respondent no.2 invoking the bank guarantee furnished by respondent no.3 bank at the instance of the petitioner. The aforesaid bank guarantee (bank guarantee dated 29.01.2010 bearing no. 01956101PG000001) in the sum of ₹42.90 crores was issued to secure respondent no.2 against the petitioner's commitment to avail Long Term Access for 858 MW proposed to be generated by it. The petitioner claims that it has received no information relating to the commissioning of the Long Term Access. Mr Sibal, the learned Senior Counsel appearing for

the petitioner also emphasised that respondent no.2 has not raised any bill or demand in this regard. The petitioner further claims that the commissioning of its generating facilities has been delayed due to reasons beyond its control and, *inter alia*, for reasons that qualify as *force majeure*.

3. The petitioner further states that it has already approached the CERC with regard to the relief as sought in the present petition. However, since the CERC is not holding any hearing, the petitioner has been unable to press for any urgent orders.

4. Mr Sibal, learned Senior Counsel appearing for the petitioner relies on the order dated 18.12.2017 passed in W.P.(C) 11258/2017 captioned '**S. K. Power Generation (Chhattisgarh) v. Central Electricity Regulatory Commission and Anr.**' whereby this Court had in similar circumstances granted limited relief to the petitioner therein.

5. This Court is not inclined to examine the merits of the contentions at this stage, as it would be apposite that the same be considered by the CERC. In this view, the Court does not consider it necessary to issue notice considering that only limited relief is proposed to be granted to the petitioner.

6. In the aforesaid circumstances, the impugned communication dated 27.06.2018 issued by respondent no.2 to respondent no.3 invoking the bank guarantee (Bank Guarantee No.01956101PG000001 dated 29.01.2010) is stayed for a further period of two weeks from today.

7. In the meanwhile, the petitioner is at liberty to approach the CERC for seeking urgent orders. Needless to state that if the petitioner's mention the petition before the CERC for urgent hearing, the Chairman, CERC shall list

the same on an urgent basis and consider the same in accordance with law.

8. It is clarified that this Court has not expressed any opinion as to the merits of the contentions (*prima facie* or otherwise) advanced by the petitioner. The above order interdicting the injunction of the bank guarantee in question has been passed solely for the reasons that this Court is of the view that the petitioner ought to have an opportunity to avail its remedies for an ad interim/interim relief before the CERC.

9. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

10. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JULY 02, 2018
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