



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.6961 of 2023

and

WMP.Nos.7063 and 7067 of 2023

Coastal Energen Pvt Ltd.
Ground Floor,
Buharj Buildings,
No. 5 Moores Road,
Chennai 600 006.
Represented by the Resolution professional

... petitioner

-Vs-

1. Central Transmission Utility of India Ltd. (CTUIL)
Saudamini, Plot No. 2,
Sector 29, Gurugram 122 001,
Haryana, India.

2. State bank of India
Corproate Account Group,
3rd Floor, Sigappi Achi Building,
Egmore, chennai 600 008.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance of Writs of Certiorarified Mandamus Calling for the reocrds relating to the impugned letter of the 1st respondent made in Ref CTUIL / Comml. CBG Encash



/ SBI / CEPL / dated 24.02.2023 to quash the same and consequently direct the respondents to adhere to the orders dated 08.10.2020 and 28.03.2022 of the Appellate Tribunal for Electricity.

For petitioner : Mr. P.V.Balasubramanian, Senior Counsel
for M/s.Shoban M.Padmanabhan

For Respondent : Mr.Alok Shankar for R1

ORDER

This petition has been filed seeking to quash the impugned letter of the 1st respondent dated 24.02.2023 to quash the same and consequently direct the respondents to adhere the orders dated 08.10.2020 and 28.03.2022 of the Appellate Tribunal for Electricity.

2. It is the case of the petitioner that the petitioner entered into a bulk power transmission agreement dated 24.02.2010 with the first respondent for long term access of 1100 MW from its 2X600 power plant whereby the first respondent agreed to provide the said access to the petitioner. In terms of Clause 6 of the aforesaid BPTA, a bank guarantee of Rs.55 Crores was furnished in favour of the first respondent. Due to various reasons beyond the control of the petitioner, it was forced to relinquish/surrender its long-term access to the extent of 542 MW vide its letter dated 28.11.2016. The CERC passed an order dated



08.03.2019 in petition No.92/MP/2015 whereby it devised methodology for computation of the stranded transmission capacity and consequent relinquishment compensation payable by the relinquishing LTA customers including the petitioner herein. After the relinquishment of LTA by the petitioner, it has approached the Ld.CERC., by way of filing a petition, being petition No.246/MP/2016 thereby seeking a declaration that the said relinquishment on the part of the petitioner was on account of force majeure events. The first respondent has not followed the mandate of the orders dated 08.10.2020 and 28.03.2022 passed by the Appellate Tribunal for Electricity, wherein the first respondent was restrained from invoking the Bank guarantee of companies undergoing corporate insolvency resolution process. On 07.04.2022, the first respondent issued letter to the State Bank of India whereby it has arbitrarily proceeded to seek invocation of the Bank Guarantee of Rs.55 Crores which the petitioners had furnished in favour of the said respondent. In such circumstances, the petitioner approached the Appellate Tribunal by way of a contempt petition, wherein vide order dated 22.04.2022, the first respondent made a categorical statement that the letter invoking the Bank Guarantee of the petitioner is not being pressed at the moment. On 24.02.2023, the first respondent issued the impugned letter dated 24.02.2023 to the second respondent in order to invoke the



bank guarantee of Rs.55 Crores dated 23.02.2010 on 31.03.2022, valid till 31.03.2023 furnished by the petitioner herein. Challenging the said order, the present writ petition has been filed.

3. The learned Senior Counsel for the petitioner submitted that the impugned letter issued by the first respondent dated 24.02.2023 has been issued in violation of the law laid down by the Hon'ble Supreme Court. The first respondent have no power to encash the bank guarantee when the issue is pending before the Appellate Tribunal for Electricity at New Delhi in Appeal No.292 of 2019 etc., batch. Further the said Tribunal has passed the interim order against the respondents. Therefore, the impugned letter of the first respondent is arbitrary. Hence, the petitioner has filed the present writ petition for stay of encashment of bank guarantee and the learned counsel prays that this Court may quash the impugned order.

4. The learned Counsel appearing on behalf of the first respondent submitted that the claim for encashment of the bank guarantee is in terms of the bulk power transmission agreement dated 24.02.2010 entered into between Coastal Energen Pvt. Ltd., and CTUIL for long term access of 1100 MW from its



2x600 MV power plant. The dispute arose between the parties for encash the bank guarantee is entirely contractual in nature and the present writ petition is not maintainable and the same is liable to be dismissed.

5. The learned counsel further submitted that as on date, there is no interim order passed against the first respondent. The first respondent is entitled to encash the bank guarantee to recover outstanding dues from the petitioner as per the contractual terms. The petitioner has made bald allegations, which is contrary to law.

6. Heard the learned counsel on either side and perused the materials available on record.

7. On perusal of the records, it is seen that the petitioner has filed a contempt petition before the APTEL against the impugned letter and the same is pending. When the case is pending before the appropriate forum, this Court could not interfere with the impugned letter issued by the first respondent. Hence, the prayer sought for by the petitioner cannot be granted as there is dispute pending between the parties. Hence, this Court is not inclined to interfere with the



impugned letter. However, the encashment of the bank guarantee is subject to the result of the contempt petition which is pending before the APTEL.

8. With the above direction, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

29.03.2023

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To

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M.DHANDAPANI, J.

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