

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**ORDER IN APPEAL NO. 266 OF 2015 &
IA NO. 428 OF 2015 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI**

Dated: 17th January 2018

**Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member
Hon'ble Mr. S. D. Dubey, Technical Member**

In the matter of:

GMR Kamalanga Energy Ltd.

Building No.302, New Shakti Bhavan,

Near Terminal 2

Indira Gandhi International Airport,

Delhi -110 037

..... Appellant(s)

Versus

1. Power Grid Corporation of India Ltd.

"Saudamini", Plot No.02

Sector-29,

Gurgaon-122 001

2. Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building,

36, Janpath,

New Delhi-110 001

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Alok Shankar
Mr. Nayantara Pande

Counsel for the Respondent(s) : Ms. Sanjana Dua for R.1

Mr. K.S. Dhingra for R.2

The Appellant has sought the following reliefs in Appeal No. 266 of 2015:

- (a) Set aside the impugned order passed pursuant to hearing on 03.09.2015 passed by the Respondent Commission to the extent of linking the return of BG with furnishing of LC,
- (b) Direct the Respondent No.1 PGCIL to return the BG of Rs.22.5 Crore being retained by it.
- (c) Pass such other order as this Hon'ble Tribunal may deem necessary in the interest of justice and equity”.

The Appellant has presented in this Appeal for consideration under the following Question of Law:

- a) Whether the Hon'ble CERC was right in granting relief to a Respondent in a petition filed by another party and in the absence of a prayer thereof?
- b) Whether as per the BPTA and the Connectivity Regulations, LC is required to be furnished as a pre-condition for release of bank guarantee furnished during the Construction Period?
- c) Whether PGCIL can retain the bank guarantee after all the construction related obligation of GKEL in terms of BPTA has been complied with?
- d) Whether the CERC could go beyond the scope of the prayer in the Petition by linking the release of BG with obligations in the Operation Period of LTA?

- e) Whether oral submissions of PGCIL that the line is ready and LTA can be operationalised could have been considered without the same being affirmed on an Affidavit?
- f) Whether PGCIL has fulfilled its obligations under the BPTA by claiming without any basis to have constructed the transmission systems required for operationalization of the LTA?
- g) Whether PGCIL mislead the CERC on the actual status of the construction of the transmission system required for operationalization of the LTA and induced CERC to pass the Impugned Order”.

ORDER

We have heard the learned counsel, Mr. Alok Shankar, appearing for the Appellant and Ms. Sanjana Dua, representing the learned counsel, Ms. Suparna Srivastava, for the first Respondent and the learned counsel, Mr. K.S. Dhingra, appearing for the second Respondent.

2. The learned counsel appearing for the Appellant submitted that, the Appellant herein has filed the instant Appeal, being Appeal No. 266 of 2015, on the file of the Appellate Tribunal for Electricity, New Delhi questioning the legality and validity of the Interim Order dated 03.09.2015 passed in Petition No. 203/MP/2015 by the Central

Electricity Regulatory Commission, New Delhi. During pendency of the instant appeal, the Central Electricity Regulatory Commission, New Delhi has passed the final order on merits. In view of that, the order impugned dated 03.09.2015 merges with the final order passed on merits by the Central Electricity Regulatory Commission, New Delhi. Therefore, it is submitted that, the instant Appeal filed by the Appellant may kindly be dismissed as has become infructuous.

3. ***Per contra***, the learned counsel appearing for first Respondent and learned counsel appearing for the second Respondent, *inter-alia*, contended and submitted that, the submissions made by the learned counsel appearing for the Appellant, as stated above, may kindly be placed on record and the instant Appeal may be disposed of as has become infructuous.

4. In view of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondents, as stated above, the instant Appeal, being Appeal No. 266 of 2015, filed by the Appellant wherein the Appellant has questioned the legality and validity of the Interim Order dated 03.09.2015 passed in Petition No. 203/MP/2015 by the Central Electricity Regulatory

Commission, New Delhi which merges with the final order passed on merits by the Central Electricity Regulatory Commission, New Delhi, is disposed of as having become infructuous.

IA NO. 428 OF 2015

5. In view of the Appeal No. 266 of 2015 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of as the same has become infructuous, on account of which, the relief sought in IA No. 428 of 2015 does not survive for consideration and, hence, stands disposed of.

6. Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

tpd/pr