

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

ORDER IN DFR NO. 2882 OF 2018
ON THE FILE OF THE APPELLATE TRIBUNAL
FOR ELECTRICITY, NEW DELHI

Dated: 06th August, 2018

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

In the matter of:

Lanco Amarkantak Power Ltd.

Having its Corporate office at:

397, Udyog Vihar, Phase-III, Gurgaon,
Haryana-122016

...APPELLANT

VERSUS

1. Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001

2. Power Grid Corporation of India Limited

Having its Registered office at:

B – 9, Qutub Institutional Area,
Katwaria Sarai,
New Delhi - 110016

Also at:

Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk,
Gurugram, Haryana 122001

3. Allahabad Bank,

Through its Manager,

Having its office at:

Industrial Finance Branch,
6-3-850/3, 1st Floor,
Hyderabad

...RESPONDENTS

Counsel for the Appellant(s) : Mr. Deepak Khurana
Counsel for the Respondent (s) : Ms. Suparna Srivastava
Ms. Sanjana Dua for R-2

The Appellant has sought the following reliefs in DFR No.2882 of 2018:-

- (a) Set aside the impugned Order dated 03.08.2018 (*Annexure A-1*) passed by the Central Electricity Regulatory Commission (Respondent No. 1) in Petition No. 202/MP/2018;
- (b) Pass an Order staying the effect & operation of Respondent No. 2's Invocation Communication dated 27.06.2018 (*Annexure A-2*) till the final disposal of Petition No. 202/MP/2018 by Respondent No. 1 Commission;
- (c) Pass such other and further Order(s) as may be deemed appropriate in the facts and circumstances of the present case.

The Appellant has presented in this matter for consideration under the following Questions of Law:

- i. Whether the impugned order is contrary to law, is patently erroneous and untenable both in law and on facts?

- ii. Whether Respondent No. 1 Commission has, while passing the impugned order, committed a gross patent error and has contradicted itself?
- iii. Whether Respondent No. 1 Commission was justified in declining the interim relief to the Appellant qua the very invocation of Bank Guarantee in respect of which Respondent No. 1 itself held and observed that the same requires to be heard at length and requires a proper adjudication?
- iv. Whether the impugned order passed by Respondent No. 1 Commission (being passed on the interim prayer sought for by the Appellant), amounts to final adjudication of the matter?
- v. Whether Respondent No. 1/Commission failed to apply the law relating to invocation and encashment of bank guarantee to the facts of the present case, and more so the submissions raised by the Appellant?
- vi. Whether Respondent No. 1/Commission failed to appreciate that the impugned invocation of bank guarantee by Respondent No. 2 is against terms of the Bank Guarantee itself, being wholly arbitrary, fraudulent and illegal?

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. Though this matter is posted under Urgent Listing category, the same was taken for final disposal.
2. The learned counsel, Mr. Deepak Khurana, appearing for the Appellant submitted that, the prayer sought in the instant Appeal, being DFR No. 2882 of 2018, does not survive for consideration on the ground that the second Respondent has encashed the Bank Guarantee today morning. Hence, the Appeal filed by the Appellant may be disposed of as having become infructuous.
3. The submissions made by the learned counsel appearing for the Appellant, as stated supra, placed on record.
4. In the light of the submissions made by the learned counsel appearing for the Appellant as stated supra, the instant appeal, being DFR No. 2882 of 2018, filed by the Appellant is disposed of as having become infructuous on the ground that the Bank Guarantee has been encashed today morning by the Respondent No. 2. Therefore, the prayer sought by the Appellant in the instant Appeal does not survive for consideration.
5. With these observations, the instant Appeal, being DFR No. 2882 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi, stands disposed of, as having become infructuous.

ORDER ON IA NO.1047 OF 2018

6. In view of the instant Appeal being disposed of as having become infructuous, the relief sought in IA No. 1047 of 2018 filed by the Appellant does not survive for consideration and hence stands disposed of as the same has become infructuous.

(S.D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

bn/pr