

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

IA no. 127 of 2014 in
Appeal no. 69 of 2014

Dated: 30th May, 2014

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

**Lanco Kondapalli Power Ltd.
Lanco House, Plot No. 4
Software Units Layout
HITEC City, Madhapur
Hyderabad – 500 081**

... Appellant(s)

Versus

**Central Electricity Regulatory
Commission & Ors.
3rd & 4th Floor
Chanderlok Building
36, Janpath
New Delhi – 110 001**

... Respondent(s)

Counsel for the Appellant(s):

**Mr. S. Ganesh, Sr. Adv.
Mr. Vishal Anand
Ms. Divya Chaturvedi**

Counsel for the Respondent(s): Mr. Pradeep Misra
Mr. Suraj Singh for R.48 & 50
Mr. M.G. Ramachandran with
Ms. Swagatika Sahoo and
Ms. Anushree Bardhan for R.2
Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R.61
Mr. M.Y. Deshmukh for R.21
Ms. Abiha Zaidi (rep.) for R.34

ORDER

Lanco Kondapalli Power Limited, the generating company, is the Appellant herein. The Appellant has filed this Application in IA no. 127 of 2014 seeking for interim order during the pendency of this Appeal no. 69 of 2014, challenging the order dated 21.2.2014 of the Central Electricity Regulatory Commission (“Central Commission”). Through this impugned order, the Applicant/Appellant has been fastened with liability to share the transmission charges for Western and Northern Regions and charges for inter-

regional links. Hence, this Application seeking for the interim relief.

2. According to the Applicant/Appellant, Power Grid, the Respondent no. 2 herein, had raised the bills for December 2009 till June 2011 which were duly paid by the Applicant/Appellant. The Applicant is not a user of the long term open access in Northern and Western region and accordingly the Applicant has paid the transmission charges as per the Tariff Regulations, 2009 in respect of Southern Region. From 1.7.2011, Sharing of Inter-State Transmissions Charges and Losses Regulations have become applicable. The same was amended on 24.11.2011 to include *interalia* charges towards long term access to a target region without identified beneficiaries which was made applicable prospectively. According to the Applicant, the amendment of 2010 Sharing of Inter-State

Transmission Charges Regulations has been applied on them retrospectively by amending the energy accounts and raising bills for additional charges for Northern, Western Regions for past period whereas all along the Applicant was selling power on short term basis in Southern Region only.

3. It is strenuously contended by the Applicant/Appellant, that they have not been generating since 1.3.2013 as there is no supply of fuel for their generating plant. In such circumstances, the additional burden towards transmission charges will cripple their financial condition and as such the balance of convenience lies in their favour. The Applicant has made a prayer for stay of the encashment of LC towards recovery of any transmission charges and directing Power Grid not to take any coercive action against them for non-payment

- of bills for recovery of transmission charges for Northern and Western Regions and inter-regional links.
4. We have heard Shri S. Ganesh, Learned Senior Counsel for the Applicant/Appellant and Shri M G Ramacandran, Learned Counsel for Power Grid.

 5. Shri S. Ganesh Learned Senior Counsel for the Applicant has stated that the Power Grid has already adjusted about Rs. 45 crores against their claim towards the additional transmission charges and only Rs. 18 crores is the balance claim of Power Grid against them. The Applicant/Appellant also undertakes to keep the bank guarantee of Rs. 43 crores submitted to Power Grid alive and requests for directions to Power Grid not to encash the LC and not to take coercive action against them.

6. Shri M G Ramachandran strongly opposed against granting any interim relief to the Applicant/Appellant as their additional claim was based on the Tariff Regulation, 2009.

7. We have carefully considered the submissions of both the parties. On a careful consideration, we feel that there is a prima facie case for a grant of interim relief to the Applicant/Appellant as sought for by him, especially when the balance of convenience lies in their favour. The Applicant had paid the transmission charges for use of the Southern regional transmission system as per the bills raised by Power Grid from December 2009 to June 2011. Subsequent to the amendment of Sharing of Inter-State Transmission charges and Losses Regulation on 24.11.2011 the energy accounts were revised in the year 2012 and Power Grid raised bills for additional claim for transmission charges of

Western and Northern Regional Grids and Inter-Regional transmission links.

8. Power Grid has already adjusted Rs. 45 crores against their additional claim from the amount to be paid to the Applicant/Appellant in pursuance of another order dated 22.2.2014 passed by the Central Commission and, therefore, only Rs. 18 crores is the balance claim of Power Grid. The power plant of the Applicant is closed due to non-availability of gas. Learned Senior Counsel for the Applicant also undertakes to keep the bank guarantee alive till the disposal of the main Appeal.

9. In view of the above undertaking, we direct Power Grid not to encash the LC and not to take coercive action against the Applicant/Appellant till the final disposal of the Appeal. However, it is made clear that the Applicant/Appellant shall maintain the existing bank

guarantee of Rs. 43 crores alive in favour of Power Grid
till the final disposal of the Appeal.

10. Accordingly, IA no. 127 of 2014 is allowed to the extent
indicated above.

11. Post the main Appeal for further hearing on **21.07.2014.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

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