

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 276 of 2013 & IA No. 441 & 83 of 2014

Dated: 11th April, 2014

Present: **Hon'ble Mr. Rakesh Nath, Technical Member**
Hon'ble Mr. Justice Surendra Kumar, Judicial Member

IN THE MATTER OF

Corporate Power Limited Appellant

VERSUS

Power Grid Corporation of India Limited & Ors. Respondents

Counsel for the Appellant(s) ... Mr. Sitesh Mukherjee
Mr. Hemant Singh

Counsel for the Respondent(s) ... Ms. Suparna Srivastava

ORDER

PER HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

We have perused our earlier Orders dated 25.11.2013, 18.12.2013 and 3.4.2014. On the date of arguments namely, on 3.4.2014, the learned counsel for the Appellant-Corporate Power Limited admitted that the instant appeal has already become infructuous as the Respondent No.1 has terminated/cancelled the Medium Term Open Access granted to the Appellant which fact has not been disputed by the learned counsel for the Respondents. Thus, the admitted position is that the instant appeal has become infructuous.

The Appellant had earlier filed IA No.372 of 2013 seeking interim order to maintain status-quo as on date, with respect to the termination/cancellation of Medium Term Open Access. The Appellant gave an undertaking to furnish a Bank Guarantee for Rs.5 crores and further open the Letter of Credit for an amount of Rs.5 crores in favour of the Respondent No.1 and the Bank Guarantee and Letter of Credit shall be liable to be encashed/invoked subject to further

orders of this Tribunal in the Appeal. The Tribunal passed an order on 25.11.2013 directing the Appellant to comply with the undertaking within three weeks from the date of the order.

The Appellant sought extension of time of one month in complying with the undertaking dated 25.11.2013. This Tribunal by order dated 18.12.2013 after hearing both the parties extended the time limit for furnishing Bank Guarantee up to 15.1.2014 and held that in case the Bank Guarantee and Letter of Credit are not furnished by the Appellant in terms of their undertaking, the Respondent No.1 will be at liberty to take necessary action as per the contract.

The matter was posted for hearing on 20.1.2014, in the meantime, directed the rival parties to file their written submissions after exchanging copies of the same.

After giving undertaking in the form of affidavit before this Tribunal by the Appellant and again taking extension of time, the Appellant has not acted upon or complied with the contents of the affidavit for the reasons best known to it. The Appellant also tried to mislead this Tribunal by first seeking leave to file undertaking in the form of affidavit, filed the same and knowingly did not comply with the same. In the process the Appellant has managed to avert possible termination/cancellation of the contract at an earlier date. Since the appeal has become infructuous, we restrain from making more comments on the attitude and conduct of the Appellant.

Since the appeal has become infructuous, the appeal is dismissed without any order as to costs. Any party feeling aggrieved by non-implementation or non-compliance of the aforesaid undertaking filed by the Appellant may take any such recourse, as permitted in law. All the interim orders passed in this Appeal are hereby discharged/vacated.

Pronounced in open Court on this 11th day of April, 2014.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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