

Court-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO.324 OF 2018 & IA NO.1710 OF 2025

Dated: 26.10.2026

Present: Hon'ble Ms. Seema Gupta, Officiating Chairperson
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

GMR Kamalanga Energy Limited

Through its Authorized Signatory Ajaya Kumar Nathani

Building No. 302, New Shakti Bhavan,
Near Terminal 3 Indira Gandhi International Airport
Delhi – 110037

... Appellant

Versus

1. The Secretary

Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi - 110001

2. The Chairman

Power Grid Corporation of India Limited
"Saudamini", Plot No. 2
Sector – 29, Gurgaon - 122001

3. The Chairman & Managing Director

Central Transmission of Utility of India Limited
Floors No. 5th – 10th, IRCON International Tower
Tower 1, Plot No. 16, Institutional Area
Sector – 32, Gurugram,
Haryana – 122003

... Respondent (s)

Counsel for the Appellant(s) : Nishtha Kumar
Yashaswi Kant,
Girik Bhalla
Pratyush Singh
Vishrov Mukherjee
Damodar Solanki
Priyanka Vyas
Juhi Senguttuvan
Sai Snigdha Nittala
Garima Adlakha
Snehal Upadhyay
Anumeha Smiti
Deepak Thakur
for App. 1

Counsel for the Respondent(s) : Suparna Srivastava
For Res. 2

Nikhil Nayyar, Sr. Adv.
Poorva Saigal
Shubham Arya
Pallavi Saigal
Reeha Singh
Rishabh Saxena
Kaavya
For Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal is directed against the common order dated 08.12.2017 passed by the 1st respondent Central Electricity Regulatory Commission (hereinafter referred to as "the Commission") whereby the petition

nos.203/MP/2015 and 41/MP/2016 were disposed of with the following directions: -

“(a) As per the BPTA, PGCIL is under a contractual obligation to release the bank guarantee given under Clause 6.0 of the PPA if the generating units and dedicated transmission lines are completed by the Project Developer. Linking the construction BG under Clause 6 of the BPTA with the opening of LC under Clause 2 of the BPTA read with Clause 3.6.3 of the BCD procedure is not in accordance with the provisions of BPTA. Therefore, BG cannot be withheld on the ground that LC has not been opened by the Project Developer.

(b) The project developer is under statutory and contractual obligations to open the unconditional LC before operationalization of LTA. In the present case, the Petitioner has opened the LC for 647 MW in terms of the directions of the Commission. Subject to satisfaction of PGCIL with regard to the LC, BG shall be returned to the Petitioner.

(c) The Petitioner was granted LTA of 800 MW in accordance with its application and the applicable regulations for which the Petitioner entered into BPTA dated 24.2.2010 with PGCIL. For change of region and revision of LTA capacity, the Petitioner is required to submit fresh application to CTU in terms of Regulation 12 of the Connectivity Regulations and directions contained in Para 116 of the order dated 16.2.2015 in Petition No. 92/MP/2014.

(d) The Petitioner vide its letter dated 21.6.2016 requested for grant of LTA of 387 MW for Northern Region and 260 MW for Eastern Region and for relinquishment of the capacity of 153 MW. Accordingly, PGCIL has granted LTA of 647 MW to the Petitioner.

(e) Revision of LTA quantum from 800 MW to 647 MW (387 MW to Northern Region and 200 MW to Southern Region) involves relinquishment of 200 MW capacity in Southern Region and 213 MW in Northern region. The Petitioner is liable to pay the relinquishment charges for

the relinquished capacities in terms of the decision and order to be issued in Petition No.92/MP/2015.”

(Emphasis supplied)

2. A bird's eye view of the facts of the case, which are germane for the disposal of this appeal, are that the appellant has set up a thermal power plant at Village Kamalanga in District Dhenkanal, Odisha with an installed capacity of 1050 MW. As per the Memorandum of Understanding (MoU) dated 09.06.2006 entered into between the appellant with the Government of Odisha as well as Power Purchase Agreement (PPA) dated 28.09.2006 entered into between the appellant and GRIDCO, 25% of power generated in the project was agreed to be supplied to GRIDCO. With the addition of another unit of 350 MW, the PPA executed with GRIDCO was subsequently amended on 04.01.2011 to revise the installed capacity of the project to 1400 MW.

3. The appellant also entered into another PPA dated 12.03.2009 with PTC India Limited for supply of 300 MW net power to Haryana Discoms on long term basis for a period of 25 years commencing from the date of commercial operation of the generating station. For the purpose of evacuation of power from the project, the appellant entered into a Bulk Power

Transmission Agreement (BPTA) dated 24.02.2010 with CTU for availing Long Term Access (LTA) for inter-State transmission of 800 MW of power from its generating station on long term basis, out of which the appellant was to evacuate 200 MW to utilities in Southern Region and remaining 600 MW to utilities in Northern Region, which was subsequently modified to 647 MW (387 MW in NR and 260 MW in ER). As per the relevant provisions of the BPTA, the development of the generating station and the dedicated transmission line for evacuation of power from appellant's generating station upto Angul pooling station was the responsibility of the appellant. The BPTA also provides adequate security mechanism for ensuring performance of these two obligations by the appellant/generator. The appellant was required to furnish Bank Guarantees for an amount computed @ Rs.5 lakh (Rupees five lakh) per MW as security towards commitment of the appellant to construct the generating station and/or the dedicated transmission line. Accordingly, the appellant duly furnished Bank Guarantees dated 18.02.2010 and 10.03.2010 for an amount of Rs.22.5crores and 17.5crores respectively to the 2nd respondent Power Grid Corporation of India Ltd. (now CTUIL i.e. the 3rd respondent).

4. The appellant commissioned the three units of the generating station in the months of April, 2013, November, 2013 and March, 2014 as per the

stipulation in this regard in the BPTA. Further, the dedicated transmission line, from the generating station to Angul pooling station was also commissioned on 21.12.2014.

5. According to the appellant, upon successful completion of all its obligations under the BPTA, the purpose of furnished Bank Guarantees as a security to 2nd respondent (now CTUIL i.e. 3rd respondent) stood fulfilled, and therefore, the Bank Guarantees ought to have been returned to the appellant by the 2nd respondent on its own. However, instead of returning the Bank Guarantees to the appellant, the 2nd respondent started asking the appellant to extend the validity of the Bank Guarantees. This demand was raised by 2nd respondent vide letters dated 17.02.2015, 19.05.2015 and 05.08.2015.

6. In these circumstances, the appellant filed petition no.203/MP/2015 before the Commission seeking declaration that the demand letters dated 17.02.2015, 19.05.2015 and 05.08.2015 issued by the 2nd respondent Power Grid Corporation of India Ltd. (PGCIL) are illegal as well as *dehors* the agreed terms of the BPTA. A further direction was sought to 2nd respondent for return of original Bank Guarantees in the amount of Rs.40 crores to the appellant and for payment of Rs.22.67 lakhs towards bank charges for extension of these Bank Guarantees. At the same time, the appellant filed

another petition no.41/MP/2016 seeking declaration that the LTA for 800MW granted to it by 2nd respondent under BPTA dated 24.02.2010 stands modified to 647 MW (387 MW in NR and 260 MW in ER) with further direction to the appellant for reduction in the amount of Letter of Credit (LC) to be opened by the appellant as payment security mechanism towards LTA.

7. Both these petitions were disposed of by the Commission vide impugned order dated 08.12.2017. The directions issued by the Commission have already been extracted in Paragraph no.2 hereinabove.

8. The appellant is aggrieved by the direction (b) issued by the Commission vide the impugned order which is extracted hereinbelow again at the cost of repetition: -

“(b) The project developer is under statutory and contractual obligations to open the unconditional LC before operationalization of LTA. In the present case, the Petitioner has opened the LC for 647 MW in terms of the directions of the Commission. Subject to satisfaction of PGCIL with regard to the LC, BG shall be returned to the Petitioner.”

(Emphasis supplied)

9. We have heard Mr. Vishrov Mukherjee, learned counsel for the appellant and Mr. Nikhil Nayyar, learned senior counsel appearing on behalf of the 3rd respondent CTUIL.

10. Learned counsel for the appellant has drawn our attention to Paragraph no.27 of the impugned order wherein the Commission has held that the Bank Guarantees submitted by the appellant could be encashed only for recovering the damages or transmission charges in case of failure on the part of the appellant to construct the generating station/dedicated transmission system or in case the appellant exits or abandons the project, and cannot be used for any other purpose including for ensuring opening of Letter of Credit (LC)/Bank Guarantees(BG) as specified under clause 2.0 of BPTA. For the sake of convenience, the said Paragraph of the impugned order is reproduced hereinbelow: -

“27. A close examination of the above provisions reveals that the BG under clause 6 and BG/LC under clause 2 of the BPTA are independent provisions. The BG under clause 6.0 is for the construction period which needs to be kept alive for a period of 6 months after the expected date of commissioning schedule of the generating units or such

period as per the requirement indicated in the Joint Co-ordination Committee Meeting. This BG shall be encashed only for recovering the damages or transmission charges in case of failure to construct the generating station/dedicated transmission system or in case of exit or abandonment of the project by the project developer. The BG cannot be used for any other purpose including for ensuring opening of LC/BG under clause 2.0 of BPTA and clause 3.6.3 of the BCD Procedure. Had it been the case, the BPTA would have clearly allowed in clause 6 that the BG shall be kept alive till the LC/BG is opened under clause 2 of the BPTA. Occurrence of words “recovery of transmission charges” in clause 6.0 of the BPTA is in the context where the transmission systems have been commissioned but the generating units have not been commissioned on account of failure to construct the generating station/exit from the project or abandonment of the projects by the generation project developer. In that event, there is no scope for opening of LC/BG by the generation project developer as it would not use the transmission systems built on the basis of BPTA

executed by it. Therefore, the BPTA provides that either lumpsum damages or the transmission charges shall be recovered from the construction BG furnished by the Project Developer. Once the project developer achieves the COD of the units of the generating stations, the purpose for which BG was furnished under clause 6 of the BPTA stands fulfilled and BG should be returned after the expiry of the stipulated period. The project developer is liable to open LC and BG in accordance with clause 2 of the BPTA.”

11. The learned counsel would argue that upon making these observations in Paragraph no.27 of the impugned order, the Commission has fallen into an error in stating in direction (b) of the Paragraph no.43 of the impugned order, which is the operating Paragraph, that subject to the satisfaction of PGCIL with regards to LC, BG shall be returned to the petitioner (appellant herein). It is his submission that there was no correlation between the Bank Guarantees submitted by the appellant as a security for due and timely completion of the power project as well as the transmission system and the LC/BG to be submitted as a security for recovery of transmission charges as per the clause 2.0 of the BPTA.

12. On behalf of the 3rd respondent, it was argued by Mr. Nayyar, learned senior counsel that since the appellant has relinquished certain capacity which indicates abandoning/exiting the part of the project qua the relinquished capacity, therefore, the Bank Guarantee could have been encashed at the relevant time to recover the part of relinquishment and/or transmission charges but the same could not be done for the reason that the issue relating to relinquishment charges is pending adjudication in petition no.92/MP/2015 before the Central Electricity Regulatory Commission. It is his submission that the construction Bank Guarantees furnished by the appellant secure not only the relinquishment of 153MW but also the appellant's obligation from abandoning the LTA for the balance capacity including the transmission charges for the intervening period. He would argue that the 3rd respondent CTUIL is entitled to initiate necessary steps to recover the transmission charges to the tune of Rs.194.65 crores by encashing the Bank Guarantee submitted by the appellant. It is also his submission that the linking of the construction Bank Guarantees with the relinquishment charges is also based upon the principle of equitable set off as dealt by this Tribunal in judgment dated 15.07.2026 passed in appeal no.45/2018 Tata Power Trading Company Limited v. KERC and Ors. According to the learned senior counsel, it would be inequitable to let the

appellant secure release of the Bank Guarantees without discharging its admitted liability and also for the reason that the appellant has been voluntarily renewing the Bank Guarantees without any protest thereby confirming the continued nexus with the outstanding relinquishment charges.

13. We have considered the rival submissions of the learned counsels and have perused the impugned order.

14. Clauses 2.0 and 6.0 of the BPTA are germane for our reconsideration on the issue which has arisen in this appeal and the same are quoted hereinbelow: -

Clause 2 of BPTA:

“2.0 (a) Long Term transmission customer shall share and pay the transmission charges in accordance with the regulation/tariff order issued by Central Electricity Regulatory Commission from time to time of POWERGRID transmission system of concerned applicable Region i.e. Northern Region/Western Region/Eastern Region and Southern Region including charges for inter-regional links/ULDC/NLDC charges and

any additions thereof. These charges would be applicable corresponding to the capacity of power contracted from the said generation project through open access from the scheduled date of commissioning of generating projects as indicated at Annexure-I irrespective of their actual date of commissioning.

(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in Annexure-3 in accordance with the sharing mechanism detailed in Annexure-4. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at Annexure-3 (subject to technical feasibility), he/they would also share the applicable transmission charges.

(c) Each Long Term transmission customer (including its successor/assignee) shall pay the applicable transmission charges from the date of commissioning of the respective transmission system which would not be prior to the scheduled commissioning date of generating units as indicated by the respective developer as per

Annexure-1. The commissioning of transmission system would be pre-poned only if the same is agreed mutually by concerned parties.

(d) In addition to opening of LC for 105% of estimated average monthly billing for charges mentioned at 2 (a) and 2 (b) above, Long-Term Transmission customer would provide security in the form of irrevocable Bank Guarantee (BG), in favor of POWERGRID, equivalent to two months estimated average monthly billing, three months prior to the scheduled date of commissioning of generating units as indicated at Annexure-1. Initially the security mechanism shall be valid for a minimum period of three (3) years and shall be renewed from time to time till the expiry of the open access.

(e) The estimated average transmission charges would be reviewed every six months and accordingly the amount of security would be enhanced/reduced by long term transmission customers.

(f) In case the long term transmission customer defaults in payment of the monthly charges of POWERGRID bills then, POWERGRID shall be entitled to encash/adjust the BG immediately.

(g) In case of encashment/adjustment of BG by POWERGRID against nonpayment of monthly charges by long-term transmission customer, the same should be immediately replenished/recouped by long-term transmission customers before the next billing cycle.

(h) The format for bank guarantee is enclosed as Annexure-X. The Bank Guarantee shall be issued by

i) A Public Sector Bank or

ii) Scheduled Indian Bank having paid up capital (net of accumulated losses) of. Rs.100 crore or above (duly supported by latest annual report) and also satisfying the minimum capital adequacy requirement

iii) Any foreign Bank with overall International corporate rating or rating of long term debt not less than A- (A minus) or equivalent by reputed rating agency.”

Clause 6 of BPTA:

“6.0 (a) In case any of the developers fail to construct the generating station/dedicated transmission system or makes an exit or abandon its project. POWERGRID shall have the light to collect the transmission charges and/or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a Bank guarantee from a nationalized bank for an amount which shall be equivalent to Rs. 5 (five) lakhs/MW to compensate such damages. The bank guarantee format is enclosed as Annexure-Y. The details and categories of bank would be in accordance with clause 2 (h) above. The Bank guarantee would be furnished in favour of POWERGRID in accordance with the time frame agreed during the meeting held at CEA on 1.2.2010. (b) This Bank guarantee would be initially valid for a period upto six months after the expected date of commissioning schedule of generating unit(s) mentioned at Annexure-1 (however, for existing commissioned units, the validity shall be the same as applicable to the earliest validity applicable to the

generator in the group mentioned at Annexure1). The bank guarantee would be encashed by POWERGRID in case of adverse progress of individual generating unit(s) assessed during coordination meeting as per para 7 below. However, the validity should be extended by concerned Long Term transmission customer (s) as per the requirement to be indicated during coordination meeting.

(c) The POWERGRID shall build transmission system including at Annexure-3 keeping view of various commissioning schedules, however, till the completion of identified transmission elements the transfer of power will be based on the availability of system on short term basis.

(d) In the event of delay in commissioning of concerned transmission system from its schedule, as indicated at Annexure-4 POWERGRID shall pay proportionate transmission charges to concerned Long Term Access Customer(s) proportionate to its commissioned capacity (which otherwise would have been paid by the concerned Long Term Access Customer(s) of POWERGRID)

provided generation is ready and POWERGRID fails to make alternate arrangement for dispatch of power.”

(Emphasis supplied)

15. Bare reading of these two clauses of the BPTA reveal that the security mechanism provided in clauses 2.0 and clause 6.0 relate to the different time periods and are meant to achieve distinct objectives. As rightly observed by the Commission in Paragraph no.27 of the impugned order, the Bank Guarantee envisaged under clause 6.0 is for the construction period only which was required to be kept alive for a period of six months after the expected date of commissioning of the generating unit/transmission system. Such Bank Guarantee was encashable for recovery of damages or transmission charges only in case of failure on the part of the developer (the appellant herein) to construct the generating station/dedicated transmission system or in case of exit or abandonment of the project by the developer. Once the generating station/dedicated transmission system was duly commissioned within the stipulated period, the Bank Guarantees were liable to be returned to the project developer upon expiry of period of six month from the date of commissioning of the project. Such Bank Guarantee could not be used for any other purpose. On the other hand, the LC/BG envisaged under clause 2.0 of the BPTA was to secure the payment of transmission

charges subsequent to the commissioning of the project. There is nothing in the entire BPTA to show or suggest that the Bank Guarantees envisaged under clauses 2.0 and 6.0 were to be interchangeable or that the Bank Guarantee submitted under clause 6.0 could be utilized as the Bank Guarantee envisaged under clause 2.0. Had the intention of the parties been so, it would have clearly been stated in the BPTA that the Bank Guarantee submitted under clause 6.0 shall be kept alive even after the period of six months of commissioning of the project till the LC/BG as contemplated under clause 2.0 is opened by the developer.

16. The argument on behalf of the 3rd respondent CTUIL that the relinquishment of certain capacity of LTA by the appellant tantamounts to abandoning/exiting the part of the project qua the relinquished capacity, and therefore, the Bank Guarantee submitted under clause 6.0 by the appellant is liable to be encashed, appears to be preposterous on the face of it. The expression “*in case any of the developers fails to construct or makes an exit or abandons its project*” used in clause 6.0 indicate that the Bank Guarantee shall be encashable by the PGCIL (now CTUIL) in case the project developer does not complete the project and exits or abandons the project midway. By no stretch of imagination can the same be related to relinquishment of the LTA or any part of it by a project developer which issue

concededly was under consideration before the Central Commission in petition no.92/MP/2015. It is also pertinent to note that the order passed by the Commission in the said petition is under challenge before this Tribunal in a batch of appeals filed by the power generators. The Bank Guarantee contemplated under clause 6.0 of the BPTA can, in no circumstance, be linked to the relinquishment of any capacity of LTA by the appellant.

17. The Commission has also correctly held in Paragraph no.27 of the impugned order that the words “recovery of transmission charges” occurring in clause 6.0 of the BPTA are in the context where the transmission system has been commissioned but the generating units have not been commissioned on account of failure to construct the generating station or on account of exit/abandonment of the project by the developer. In that event, there would be no occasion for the project developer to open LC/BG as envisaged under clause 2.0 of the BPTA as the generating station would not be using the transmission system built on the basis of BPTA. It is in such situation that the BPTA provides that either the lumpsum damages or the transmission charges shall be recovered from the construction Bank Guarantee furnished by the project developer. That is not the case herein.

18. Having correctly interpreted and explained the ambit of clauses 2.0 and 6.0 of the BPTA, the Commission has patently erred in linking the return of

the construction Bank Guarantee to the appellant by PGCIL (now CTUIL) to the opening of LC/BG by the appellant as envisaged under clause 2.0 of the BPTA.

19. A Bank Guarantee is a separate and independent contract. It can only be used or invoked in strict compliance to its terms and conditions. Any invocation beyond the terms upon which the Bank Guarantee is furnished would be contrary to the settled principles of law and thus, cannot be permitted. As per Section 126 of the Indian Contract Act, contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The Bank Guarantees in question herein were issued by the banker of the appellant as security for timely completion of the power project/transmission project by the appellant. Once the projects were completed and commissioned within the stipulated time, their purpose got accomplished and lost their contractual value. Those can not be utilized for any purpose other than the purpose for which those were submitted. The respondents were under an obligation to return the Bank Guarantees to appellant immediately upon expiry of six months of the commissioning of the projects, as envisaged under clause 6.0 of the BPTA.

20. Therefore, considering the above discussion, the direction (b) in concluding Paragraph no.43 of the impugned order linking the return of the

construction Bank Guarantee submitted by the appellant under clause 6.0 of BPTA to the satisfaction of PGCIL (now CTUIL) with regard to the LC/BG envisaged under clause 2.0 of the BPTA cannot be sustained. The same is hereby set aside. We direct the 3rd respondent CTUIL to return the construction Bank Guarantee furnished by the appellant under clause 6.0 of the BPTA, to the appellant forthwith and not later than two weeks from today.

21. Another prayer of the appellant for a direction to the 1st respondent CTUIL to reimburse to the appellant a sum of Rs.5,74,25,547.50 (Rupees five crore seventy-four lakh twenty-five thousand five hundred forty-seven and fifty paise only) incurred by the appellant for keeping alive the above noted Bank Guarantees (BGs), is not sustainable in the facts and circumstances of this case. It is true that in terms of the impugned order of the Commission, the appellant was required to keep alive the Bank Guarantees in question till the opening of LC/BG as envisaged under clause 2.0 of the BPTA. However, it is material to point out here that along with the instant appeal, the appellant has not filed any application seeking stay of the operation of the impugned order of the Commission. The appellant kept on extending the Bank Guarantees without praying for any interim relief on this aspect before this Tribunal in this appeal. It was in the year 2025 that the appellant woke up from slumber and preferred an application bearing IA

No.1710/2025 with the prayer that the respondent PGCIL (now CTUIL) may be restrained from seeking further extension of the Bank Guarantees submitted by the appellant. It is upon hearing the learned counsels on this application that order dated 22.12.2025 was passed restraining the respondent CTUIL from seeking further extensions of the BGs till further orders. Considering the said conduct of the appellant, the prayer for reimbursement of the cost incurred for keeping the BGs alive during this period, cannot be said to be justified. Therefore, the said prayer of the appellant is hereby rejected.

22. The appeal, thus, stands partly allowed to the extent indicated hereinabove. All the pending IAs, if any, also stand disposed of.

Pronounced in the open court on this the 26th day of October, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE
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