

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
RANCHI**

Case No. 14 of 2008

IN THE MATTER OF

An application for order declaring the Power Purchase Agreement dated 02-09-2008 invalid, inoperative and not enforceable and for direction restraining the respondent from acting upon the letter dated 21-10-2008 and from invoking or encashing the corporate guarantee provided by M/s Corporate Ispat Alloys Ltd. dated 09-08-2008 and also the personal guarantee issued by Mr. Manoj Jayaswal dated 09-08-2008.

And

IN THE MATTER OF

M/s Corporate Power Limited **Petitioner**

Through: Mr. Sanjay Dey (Authorised Signatory)

Mr. Joy Saha (Advocate)

Mr. M.S. Mittal (Advocate)

Versus

PTC India Limited **Respondent**

Quorum:

Shri Mukhtiar Singh, Chairperson.

Shri P.C. Verma, Member (Tech).

ORDER

05/12/2008

The petitioner M/s Corporate Power Limited has filed the instant petition under section 86 (1) (f) of the Electricity Act, 2003 relating to the dispute which is stated to have arisen between the petitioner and the respondent PTC regarding the existence, validity and enforceability of the Power Purchase Agreement dated 02/09/2008 and for restraining the respondent from acting pursuant to the letter dated 21/10/2008 and further for restraining the respondent from invoking or encashing the Corporate Guarantee provided by the M/s Corporate Ispat Alloys Limited dated 09/08/2008 and also the personal guarantee dated 09/08/2008 issued by Mr. Manoj Jayaswal. The petitioner has argued that they have gone to the Hon'ble High Court of Delhi on this issue and there the respondent PTC took the plea that in view of the provisions of

Section 86 (1)(f) read with section 94 (2) of the Electricity Act 2003 and judgment of the Hon'ble Supreme Court in Gujrat Urja Vikas Nigam Limited Vs. Essar Power Limited, (2008) 4 SCC 755; there is no jurisdiction of the Hon'ble High Court to entertain the said petition for interim relief. It was also pointed out by the petitioner that the learned counsel for the respondent has also contended before the Hon'ble High Court of Delhi that the petitioner is free to approach the appropriate forum under the provisions of Section 86 of the Act as well as to seek the interim relief. It was further argued that in view of the submissions made by the respondent before the Hon'ble High Court of Delhi, the petitioner has filed the present petition before this Commission. The petitioner further argued that, in view of the fact that the respondent company is wanting to invoke the aforesaid corporate guarantee as well as the personal guarantee against the said Power Purchase Agreement which is not in existent, the petitioner is moving this petition before the Commission and that grave and irreparable loss and injury would be caused to the petitioner incase the said corporate and personal guarantee is invoked during the pendency of this application.

In view of the above, it is necessary to hear the respondent before proceeding further. Issue notice to the respondent. However, accepting the plea of the petitioner that there would be caused irreparable loss to the petitioner in case the aforesaid corporate and personal guarantees are invoked by the respondent company during the pendency of this application, it is directed that in the mean while the two sides will maintain the status quo. Put up on 05-01-2009.

Member (Tech.)

Chairperson