IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

COURT-II

IA NO.1186 OF 2022 IN
APPEAL NO. 292 OF 2022 &
IA NO.1034 OF 2022 & IA NO.1010 OF 2022

Dated: **26.07.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson**
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

Inox Green Energy Services Ltd. & Ors. …. Appellant(s)
Vs.
Central Electricity Regulatory Commission (CERC) & Ors. …. Respondent(s)

Counsel for the Appellant (s) : Mr. Gopal Jain, Sr. Adv.
Mr. Mayank Bughani
Ms. Monika Madan

Counsel for the Respondent (s) : Mr. M. G. Ramachandran, Sr. Adv.
Ms. Srishti Khindaria for R-2

ORDER

IA NO.1186 OF 2022

[For Urgent Listing]

This matter has been placed before us through supplementary list, under our directions, upon the captioned application being mentioned. The learned counsel for the second respondent / Solar Energy Corporation of India (SECI) is present, on advance notice, she being led by Mr. M G Ramachandran, senior advocate. Having heard, we allow the request in the captioned application and take up IA no.1034/2022 for hearing. The captioned application is disposed of with these observations.

IA NO.1034 OF 2022

[For Directions]

This application was moved on 06.07.2022 and notice was issued thereupon by order dated 08.07.2022. Reply to the application has already been submitted on 21.07.2022 by SECI, the contesting party herein, present through Counsel ready to argue.

The appeal, in context of which the captioned application has been moved, was filed assailing the order dated 29.06.2022 passed by the

Central Electricity Regulatory Authority (CERC) on IA no.23/2022 in petition no.95/MP/2022. The said petition is still pending before the CERC. By the impugned order on the interim application, the CERC had permitted SECI to encash the Performance Bank Guarantee that had been furnished by the appellant, it being subject to invocation in the event of delay in commissioning of the project by six months from the SCOD. The appellant had moved along with the appeal an application for interim protection, it being IA no.1010/2022. While issuing notice on the appeal and applications filed therewith on 05.07.2022, we had granted an *ad-interim ex-parte* injunction staying encashment of the Bank Guarantee pursuant to the invocation letter that statedly had been issued by SECI on 01.07.2022, the *ex-parte* order being valid till 22.07.2022, it being subject to compliance with the requirement of Order XXXIX Rule 3 of CPC. From the reply filed to the application at hand, it is clear that the gist of the order was duly communicated by the learned counsel for the appellant to SECI by an e-mail communication sent at 12:19 hrs. on 05.07.2022. The application at hand was moved on 06.07.2022 with the grievance that SECI had received, pursuant to the letter of invocation, the amount of Rs.37,18,80,000/- unlawfully against the said Bank Guarantees furnished by the appellant. The applicant has prayed for return / refund of the said amount.

From the reply of SECI, we find that the receipt of information about the *ad interim ex-parte* stay at 12:19 hrs. on 05.07.2022 is admitted. Even a copy of the order dated 05.07.2022 was received by SECI later at 14:47 hrs. In between, the bank remitted the money through digital transfer. SECI asserts by the reply that it has exercised its right to encash the Performance Bank Guarantee on 01.07.2022 and there is no willful or deliberate act on its part because of transfer of the money by the bank into its account. We do not agree. Once a stay had been granted against the encashment of the Bank Guarantees pursuant to the letter of invocation dated 01.07.2022, it was the duty of SECI to at least attempt to instruct the concerned bank suitably. The SECI, therefore, is clearly guilty of willful and deliberate act of omission in not instructing the bank properly and silently allowing the encashment to take place.

In these circumstances, subject of course to the final decision being taken on application for stay, we cannot allow SECI to hold on to the money which has been received by it against the Performance Bank

Guarantee in the teeth of the stay order granted by us. We direct SECI to presently return the money, without prejudice to its contentions qua invocation, instructing the bank to restore the Bank Guarantee to the position at which it stood as on the date on which the *ex-parte* order was passed on 05.07.2022.

It shall be the duty and obligation of SECI to ensure due compliance with these directions. The application is disposed of accordingly.

APPEAL NO. 292 OF 2022 &
IA NO.1010 OF 2022

Be listed before the Registrar on ***18.08.2022*** as already fixed.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

pr/tp