

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 235/MP/2015

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 13 of the Power Purchase Agreements dated 2.2.2007 and 6.2.2007 executed by Adani Power Limited with Gujarat Urja Vikas Nigam Limited and the Power Purchase Agreements dated 7.8.2008 executed by Adani Power Limited with Uttar Haryana Bijli Vitran Nigam Limited/ Dakshin Haryana Bijli Vitran Nigam Limited.

Date of hearing : 10.12.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Petitioner : Adani Power Limited

Respondents : Uttar Haryana Bijli Vitran Nigam Limited and others

Parties present : Shri Akhil Sibbal, Advocate, APL
Ms. Poonam Verma, Advocate, APL
Shri Anand K. Ganesh, Advocate, GUVNL
Shri G. Umopathy, Advocate, UHBVNL/DHBVNL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed under Section 79 of the Electricity Act, 2003 and Article 13 of the Power Purchase Agreement for compensation on account of Changes in Law which have financial implication on the cost and revenue of the petitioner due to (i) Levy of Basic Customs Duty on imported Coal; (ii) Levy of Clean Energy Cess on imported Coal; (iii) Levy of Countervailing Duty on imported Coal; (iv) Levy of duties under Customs Act, 1962, Customs Tariff Act, Central Excise Act, 1944 and/or Central Excise Tariff Act, 1985 on import/ procurement of any other goods. The petitioner has further submitted as under:

- (a) The petitioner has set up the 4620 MW thermal power project in Special Economic Zone at Mundra, dist. Kutch, Gujarat. The petitioner had entered into PPAs with Gujarat Urja Vikas Nigam Limited and the Distribution companies of Haryana on 2.2.2007, 6.2.2007 and 7.8.2008 respectively.
- (b) The Special Economic Zone Act, 2005, provides that every developer shall be entitled to exemption from any duty leviable under Customs Act, 1962,

Customs Tariff Act, 1975, Central Excise Act, 1944 and/or Central Excise Tariff Act, 1985 on goods imported/ procured for authorized operation. The said exemption was withdrawn w.e.f. 1.4.2015, by Ministry of Commerce and Industry vide its notification dated 6.4.2015.

(c) The petitioner vide its letters dated 1.9.2015 and 7.10.2015 informed Haryana Utilities and Gujarat Urja Vikas Nigam Limited regarding the aforesaid change in law events and raised the supplementary invoice on 2.9.2015 for the month of April 2015. However, no response was received from the Haryana Utilities and Gujarat Urja Vikas Nigam Limited in this regard.

(d) Learned counsel for the petitioner requested admit the petition and issue notice to the respondent.

2. Learned counsel for the petitioner requested to grant ad interim relief till disposal of the petition. The Commission declined to grant interim relief without hearing the parties. The Commission directed the petitioner.

3. After hearing the learned counsel for the petitioner, the Commission admitted the petition and directed to issue notice to the respondents.

4. The Commission directed the petitioner to serve copy of the petition on the respondents immediately. The respondents were directed to file their replies by 30.12.2015 with an advance copy to the petitioner who may file its rejoinder, if any, on or before 12.1.2016. The Commission directed the petitioner to file an affidavit by 31.12.2015 to the effect that at the time of bidding, the petitioner was aware that the project was going to be located in the Special Economic Zone and the petitioner had factored the concessions/benefits of the Special Economic Zone in its bid. The Commission directed that due date of filing the reply, rejoinder and information should be strictly complied with. No extension shall be granted on that account.

5. The petition shall be listed for hearing including the prayer for interim relief on 19.1.2016.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**