

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 16/MP/2016

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2 (b) of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the procurers for compensation due to change in law impacting revenues and costs during the operating period.
- Date of hearing : 8.6.2016
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioner : Sasan Power Limited
- Respondents : MP Power Management Company Limited and others
- Parties present : Shri Sanjey Sen, Senior Advocate, SPL
Shri Vishrav Mukerjee, Advocate, SPL
Shri Janmali Manikava, Advocate, SPL
Shri G. Umapathy, Advocate, MPPMCL
Shri Navin Kohli, MPPMCL
Ms. R. Nekhala, MPPMCL
Shri M.G. Ramachandran, Advocate, HPPCL
Ms. Poorva Saigal, Advocate, HPPCL
Shri Shubham Arya, Advocate, HPPCL
Shri Alok Shankar, Advocate, TPDDL
Ms. Swapna Seshadri, Advocate, Rajasthan Discom
Ms. Neha Garg, Advocate, Rajasthan Discom
Shri Rajiv Srivastava, Advocate, UPPCL
Ms. Garima Srivastava, Advocate, UPPCL

Record of Proceedings

Learned senior counsel for the petitioner submitted that the following change in law events had occurred after the subsequent cut-off date i.e. 28.7.2007 which has resulted in the increase in cost of the electricity:

- (i) Levy of forest transit fee by Government of Madhya Pradesh under the Madhya Pradesh Transit (Forest Produce) Rules, 2000;
- (ii) Modifications in the conditions of Environmental Clearance issued for expansion of Moher and Moher-Almohri Extension Coal Block ; and
- (iii) Establishment of District Mineral Foundation and National Mineral Exploration Trust in terms of Section 9B and 9 C of the Mines and Mineral (Development and Regulation) (Amendment) Act, 2015.

2. Learned senior counsel for the petitioner further submitted that pursuant to the Madhya Pradesh Transit (Forest Produce) Rules, 2000, Government of Madhya Pradesh issued a notification on 28.5.2001 levying transit fee which was challenged before the Hon`ble High Court of Madhya Pradesh. The High Court vide its judgment dated 14.5.2007, declared the notification dated 28.5.2001 *ultra vires* and directed refund of the collected amount. Aggrieved by the judgment of the High Court of MP, the Govt. of MP filed appeal before the Hon`ble Supreme Court. The Hon`ble Supreme vide its interim order dated 7.3.2008 stayed the judgment of High Court of MP. Accordingly, payment is being made subject to the final outcome of the appeal.

3. Learned senior counsel for the petitioner submitted that as per new environmental clearances, the petitioner has to pay Rs. 5 per tonne of coal produced towards CSR cost. He further submitted that the petitioner is not incurring any cost on account of the re-handling of the over burden (OB) and is only incurring costs on account of the CSR costs. At present, the petitioner is claiming compensation on account of the CSR costs, which would be Rs.10 crore per annum on the production schedule as per approved mining plan. With regard to establishment of the District Mineral Foundation and National Mineral Exploration Trust in terms of Section 9B and 9C of the MMDR Act, learned senior counsel for the petitioner submitted that on 20.10.2015, the Ministry of Coal, issued the revised Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015. On 23.2.2016 and 15.2.2016, the Collector of Singrauli District issued the letters directing the petitioner to deposit an amount equivalent to 30% of the royalty (towards the DMF) and 2% of the royalty (towards the NMET) being paid by the petitioner. The impact on account of payment towards the DMF and NMET is Rs. 72.2 crore and Rs. 4.8 crore respectively for the coal dispatched from Moher Coal Block since there is no DMF and NMET applicable as on the cut-off date i.e. 7 days prior to the bid deadline.

4. In response to the Commission's query as to whether the petitioner has made any payment with regard to the environment clearance and district mineral foundation trust and whether any supplemental bills have been raised in this regard, learned senior counsel for the petitioner submitted that though no payment has been made by the petitioner but these are the payments which the petitioner has to pay ultimately, as the liability has already accrued upon the petitioner.

5. Learned counsel for MPPMCL submitted that the claim of forest transit fee cannot fall within the definition of change in law. Learned counsel submitted that since presently, no cost is being incurred on the re-handling of the OB, it should not be considered as change in law events. Learned counsel for MPPMCL submitted that the imposition of cost as Corporate Social Responsibility (CSR) does not fall under Article 13.1.1 of the PPA. The liabilities of CSR which is a social obligation statutorily provided cannot be considered for compensation for change in law. The purpose of CSR is to make commercial entities contribute to the development of the society and to take some responsibility in nation building by contributing to social causes. The liability of the CSR is out of the profit of the company. Learned counsel submitted that the levy towards district mineral foundation fund is a levy to safeguard the interest of the affected persons on account of mining related activities. It is in the nature of CSR and imposition of such levy cannot amount to change in law as it has no bearing on the generation of electricity. Learned counsel submitted that the petitioner has not submitted any details with regard to the claim of 30% of the royalty (towards the DMF) and 2% of the royalty (towards the NMET) being paid by the petitioner.

6. Learned counsel for HPPCL submitted as under:

(a) The notification dated 28.5.2001 issued by the Government of Madhya Pradesh levying the transit fee for coal produced from forest land is sub judice before the Hon`ble Supreme Court. The petitioner cannot assume that the State cannot go in second appeal. The petitioner should have factored the said notification in its bidding.

(b) The Corporate Social Responsibility (CSR) has nothing to do with the Companies Act. The CSR is not pursuant to MMDR Act and Environment Act, is not provided as a tax/ levy or cess. CSR is a condition for grant of the environmental approval. The environment authority was entitled to impose such condition as they may consider appropriate for the grant of the environment clearance. The additional conditions imposed in the Environment Clearance was in the context of the petitioner seeking an increase in the capacity from 16 MTPA to 20 MTPA subsequent to the cut-off date. Since, CSR is the obligation of the specific corporation and is not related to the cost or revenue of business of selling electricity, the petitioner is not entitled for adjustment for the expenditure on CSR.

(c) Amendment to MMDR Act has to be considered as against the existing obligation of the leaseholder to contribute for interest and benefit of persons and for areas affected by mining related operation, the leaseholder have an obligation for rehabilitation and resettlement of the disputed persons as well as for protective measures for affected area.

(d) There is no provision in the PPA for carrying cost.

7. Learned counsel for Rajasthan Discoms submitted that Rajasthan Discoms has submitted their joint reply and he is relying on the same.

8. Learned counsel for UPPCL submitted that the extension of the mining plan of Mohar coal block was unilateral without any evidence to show that the clearance given by MoEF on 30.6.2015 for increase of existing 16 MTPA to 20 MTPA was actually required or not for the specific purpose of the project. He further submitted that cost incurred towards CSR liability is to be charged on the profits of the company under the companies Act for discharging its Corporate Social Responsibility. The compensation sought under Section 9 (b) and 9 (c) of the MMDR Act, does not disclose the amount of royalty paid by the petitioner.

9. Learned counsel in its rebuttal submitted that mining capacity got increased owing to project requirements and the coal mines are solely being used by Sasan UMPP for supplying power to the procurers. He further submitted that the change in law event on account of DMF and NMET has already occurred and the Commission may allow in principle approval of the same and amount would get reimbursed upon actual payments made. With regard to CSR cost due to change in Environment Clearance conditions, learned senior counsel clarified that the cost imposed is an additional liability to be incurred and is separate from Corporate Social Responsibility.

10. After hearing the learned senior counsel for the petitioner and learned counsels for the respondents, the Commission reserved the order in the petition.

By order of the Commission

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