

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 162/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Hearing: 15.10.2015**

**Date of Order: 02.06.2016**

**In the matter of**

Application for computation of compensation for Change in Law events during Construction Period

**And**

**In the matter of**

Sasan Power Limited  
Reliance Power Ltd. 3rd Floor,  
Reliance Energy Centre,  
Santa Cruz East, Mumbai

..... **Petitioner**

**Vs**

1. MP Power Management Company Ltd.  
Shakti Bhawan, Jabalpur-482 008
2. Paschimanchal Vidyut Vitran Nigam Ltd.  
Victoria Park, Meerut-250 001
3. Purvanchal Vidyut Vitran Nigam Ltd.  
Hydel Colony, Bhikaripur, Post-DLW, Varanasi-221 004
4. Madhyanchal Vidyut Vitran Nigam Ltd.  
4A-Gokhale Marg, Lucknow-226 001
5. Dakshinanchal Vidyut Vitran Nigam Ltd.  
220kV, Vidyut Sub-Station,  
Mathura Agra By Pass Road,  
Sikandra, Agra-282 007

6. Ajmer Vidyut Vitran Nigam Ltd.  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
7. Jaipur Vidyut Vitran Nigam Ltd.  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
8. Jodhpur Vidyut Vitran Nigam Ltd.,  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
9. Tata Power Delhi Distribution Ltd.,  
Grid Sub-Station Building, Hudson Lines, Kingsway camp,  
New Delhi-110 009
10. BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi-110 019
11. BSES Yamuna Power Ltd.,  
Shakti Kiran Building, Karkardooma,  
Delhi-110 092
12. Punjab State Power Corporation Ltd.,  
The Mall, Patiala-147 001
13. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula (Haryana)-134 109
14. Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun-248 001

.....**Respondents**

**Parties Present:**

**For the Petitioner** : Shri J.J. Bhatt, Senior Advocate, SPL  
Shri Vishrov Mukherjee, Advocate, SPL  
Ms. Janmali Manikala, Advocate, SPL  
Shri N.K. Deo, SPL  
Shri Mayank Gupta, SPL

**For the Respondents** Shri G. Umapathy, Advocate, MPPMCL  
Ms. R. Mekhala, Advocate, Advocate MPPMCL  
Ms. Ranjitha Ramachandran, Advocate, Advocate, Rajasthan

Discoms and HPPC  
Shri Shubham Arya, Advocate, HPPC  
Shri Rajiv Srivastava, Advocate, UP Discoms  
Shri Rahul Dhawan, Advocate, BRPL and BYPL  
Ms. Ridhi Diwan, Advocate, BRPL and BYPL

## **ORDER**

The petitioner, Sasan Power Limited, has set up a 4000 MW coal fired super critical, Ultra Mega power project based on linked captive coal mine at Sasan, District: Singrauli, in the State of Madhya Pradesh (hereinafter referred to as "Sasan UMPP") and is supplying power to the distribution companies in 13 States. The petitioner filed the Petition No. 21/MP/2013 under Articles 13 and 17 of the PPA read with Section 79 of the Electricity Act, 2003 and Para 5.17 of the Competitive Guidelines for compensation for capital cost due to change in law events during the construction period. The Commission vide order dated 4.2.2015 allowed the following claims of the petitioner subject to submission of relevant documents or explanation:-

- (a) Increase in declared price of land for the Power station.
- (b) Increase in declared price of land for the Moher and Moher-Amlohri Extension Coal Mines.
- (c) Increase in cost of implementation of compensatory afforestation for the Moher and Moher-Amlohri Extension Coal Mines.
- (d) Increase in cost of implementation of R& R plan for Moher and Moher-Amlohri Extension Coal Mines along with further details.

(e) Increase in declared price of land for the Chhatrasal Coal Block.

(f) Increase in cost of implementation of compensatory afforestation for Chhatrasal Coal Block.

(g) Increase in cost of implementation of R&R plan for Chhatrasal Coal Block.

2. The petitioner filed the present petition for computation of compensation for increase in capital cost due to change in law during construction period. After hearing the petitioner and respondents, the Commission directed the petitioner to file a revised petition with the following additional information:

(a) Actual capital expenditures as on actual commercial operation date of units duly certified by statutory auditors, starting with information with respect to units having achieved CoD in first financial year of CoD of unit (i.e. 16.8.2013) and later on submission of information with regard to other units as well.

(b) Capital cost of the project considered by the lenders at the time of financial closure of the project along with the supporting documents.

(c) Actual capital expenditure under each head of Change in Law event on the respective dates of CoD of each unit duly audited by statutory auditors.

3. The petitioner filed the revised petition on 14.8.2015. In the revised petition, the petitioner has submitted that issue of date of operation of first Unit (Unit #3) of the Project is pending adjudication before the Hon'ble Appellate Tribunal for Electricity since

the petitioner has challenged the Commission's Order dated 8.8.2014 in Petition No. 85/MP/2013 by way of Appeal No. 233 of 2014 and the petitioner reserved its rights in this regard. Without prejudice to its right regarding the date of commercial operation of the 1<sup>st</sup> unit which was the subject matter of appeal, the petition submitted the capital cost of the Sasan UMPP as on actual CoD of the respective units and the last unit of the Project as under:

Units	Date of COD	Description	Rupees (in crore)
I		Capital cost incurred for project upto 16.8.2013 (1 <sup>st</sup> Unit)*	21,495.20
II		Capital cost incurred for project upto 28.1.2014 (2 <sup>nd</sup> Unit)	23,263.73
III		Capital cost incurred for project upto 12.4.2014 (3 <sup>rd</sup> Unit)	23,079.58
IV		Capital cost incurred for project upto 27.5.2014 (4 <sup>th</sup> Unit)	23,125.44
V		Capital cost incurred for project upto 26.12.2014 (5 <sup>th</sup> Unit)	24,960.86
VI		Capital cost incurred for project upto 27.3.2015 (6 <sup>th</sup> Unit)	25,186.24

\* COD for the first unit is *sub-judice* before the Hon'ble Appellate Tribunal for Electricity in Appeal No. 233 of 2014.

5. The petitioner has placed on record the copies of the certificates issued by the Auditor certifying the capital cost as on COD of various units of Sasan UMPP as stated above.

6. The petitioner has submitted the information in compliance with the directions of the Commission which has been discussed in the succeeding paragraphs in brief.

### **Increase in Declared Price of Land of the Power Station**

7. Though the Commission in order dated 4.2.2015 had decided that the increase in price of land for the Power Station from the declared price of land was admissible under “Change in Law”, no relief was allowed since the actual expenditure incurred at the time of adjudication was less than the declared price of land. The Commission directed the petitioner to furnish the audited accounts as on date of the commercial operation of the first unit/subsequent units to the procurers and if the actual expenditure was more than the price declared at the time of the bid, then the claim of the petitioner would be considered subject to the other provisions of the PPA.

8. The petitioner has submitted the actual expenditure incurred along with auditor’s certificate on account of acquisition of land as on COD of the various units of the Sasan UMPP as under:

	(Rs. in crore)					
	<b>As on 16.08.2013</b>	<b>As on 28.01.2014</b>	<b>As on 12.04.2014</b>	<b>As on 27.05.2014</b>	<b>As on 26.12.2014</b>	<b>As on 27.03.2015</b>
Power plant cost of Land	<b>159.98</b>	<b>160.61</b>	<b>161.45</b>	<b>161.45</b>	<b>172.27</b>	<b>172.27</b>

### **Increase in Declared Price of Land of Captive Coal Blocks**

#### **I. Moher & Moher-Amlohri Extension**

9. The Commission in order dated 4.2.2015 has observed that as per the Auditors Certificate dated 30.6.2013 submitted by the petitioner, an expenditure of Rs 229.19 crore had been incurred and paid by the petitioner which exceeded the declared price of land of Rs 85.30 crore for the Moher and Moher-Amlohri Extension Captive Coal Blocks

and hence the said expenditure was admissible under change in law. However, the Commission noticed that the Power Plant of the petitioner is not the sole beneficiary of the captive coal blocks and only the relevant increase in the cost of land be allowed to the petitioner after due consideration of the relevant factors such as quantum of price of coal supplied to different projects. Accordingly, the Commission directed the petitioner to file all relevant documents regarding permission to use the coal from the captive coal block in other projects of the petitioner including any other commercial use, actual extraction of coal, the quality of coal used in other projects and the quantum of coal to be extracted during the term of the PPA.

10. The petitioner has submitted that no coal has been sold/supplied to any project other than the Sasan UMPP. The petitioner is stated to have incurred Rs. 264.06 crore as on 27.3.2015 on account of land acquisition for the Moher and Moher-Amlohri Extension Coal Mines which exceeded the declared price of land by Rs 178.76 crore. The petitioner has placed on record the Auditor's Certificate in support of its claims.

## **II. Chhatrasal Coal Block**

11. The declared price of land of Chhatrasal Coal Block was Rs. 57 crore. The petitioner had submitted in Petition No. 21/MP/2013 that as per the Stage-I Forest Clearance accorded by Ministry of Environment and Forest, the price of land of Chhatrasal Coal Block was estimated to be Rs. 84 crore. The Commission while admitting the said expenditure under Change in Law observed that the petitioner had only incurred an expenditure of Rs 3.81 crore towards price of land for the Chhatrasal Coal Block which was less than the declared price of Rs. 57 crore and therefore, no

relief could be granted to the petitioner. The Commission directed the petitioner to submit certain information.

12. The petitioner has reiterated that it has incurred Rs 3.81 crore on account of land acquisition as against the declared price of land of Rs. 57 crore for the Chhatrasal Coal Block. The petitioner has placed on record the Auditor's Certificate for actual expenditure as on COD (Annexure P-3 of the petition) in support of the expenditure incurred. The petitioner has also clarified the other queries made in the order dated 4.2.2015. The petitioner has submitted that on 7.5.2015, Ministry of Coal, Government of India issued notification de-allowing the Chhatrasal Coal Block and withdraw its allocation letter dated 26.10.2006 allocating the said coal block in favour of the petitioner. The petitioner has submitted that since the estimate with respect to Chhatrasal have not been exceeded, no claim had been submitted.

### **Increase in Cost of Implementation of Compensatory Afforestation for the Captive Coal Blocks**

#### **I. Moher and MoherAmlohri Extension**

13. The Commission in order dated 4.2.2015 had held that increase in price of compensatory afforestation from the declared price of the Moher and Moher-Amlohri extension coal mines are admissible under "Change in Law". The indicative cost of the implementation of compensatory afforestation for the Moher and Moher-Amlohri Extension Coal Blocks was Rs. 14.90 crore and Rs. 6.60 crore respectively. The actual cost of implementation of the compensatory afforestation as submitted by the petitioner in Petition No. 21/MP/2014 was Rs. 84.80 crore, which exceeded in indicative cost by

Rs. 63.30 crore. Though the Commission in its order dated 4.2.2015 had held that increase in price of compensatory afforestation for Moher and Moher-Amlohri Extension Coal Blocks were admissible under Change in Law, the Commission noted that the documents submitted by petitioner evidencing the actual expenditure claimed by the petitioner did not contain any details of the actual payments made towards compensatory afforestation. Accordingly, the Commission directed the petitioner to submit the Auditor's Certificate certifying the actual expenditure as on COD of the Unit No. 3 and COD of other units as and when declared. The Commission further noted that there is no information regarding the amount of coal mined from the captive mines and its use exclusively for the Project and utilized for supplying power from the other power stations of the petitioner. Taking note of the submission of PSPCL, the Commission directed the petitioner to clarify whether the actual expenditure on compensatory afforestation excluded the expenditure for acquiring 1384.96 hectares of land which was exempted from being acquired on the basis of the certificate issued by Chief Secretary, Government of Madhya Pradesh.

14. The petitioner has submitted that the reply of PSPCL, relied upon by the Commission in order dated 4.2.2015 was not served on the petitioner. The petitioner has submitted that as per Standard Bidding Documents, arrangement of land and forest clearance was responsibility of the Procurers. At the time of bid submission, the petitioner was provided with the indicative cost of land acquisition by the Power Finance Corporation (the representative of the procurers) and accordingly, the petitioner assumed to said cost estimates in the bid. The petitioner has submitted that in terms of Condition No. 2 of Stage-1 forest clearance for Moher, Moher-Amlohri Extension Coal

blocks, compensatory afforestation would be raised and maintained by State Forest Department on double degraded forest land as proposed at the project cost. Accordingly, the petitioner has paid till 27.3.2015, Rs. 92.93 crore towards compensatory afforestation to State Forest Department for Moher and Moher-Amlohri Extension Coal blocks. Therefore, the actual expenditure exceeded the indicative cost by Rs. 71.43 crore. The petitioner has submitted the Auditor's Certificate in support of its claim.

## **II. Chhatrasal Coal Block**

16. The Commission in order dated 4.2.2015 held that the increase in cost of implementing compensatory afforestation would amount to Change in Law in terms of Article 13.1.1 (iv) (d) of the PPA. Though the indicative cost of implementation of compensatory afforestation was Rs. 13.30 crore, the estimated cost in accordance with the conditions set out in Stage I forest clearance granted by Ministry of Environment and Forest was approximately Rs. 260.70 crore. Since no expenditure was incurred by the petitioner, the Commission did not grant any relief in its order dated 4.2.2015. The petitioner has submitted that as on the date of filing of the petition, no expenditure has been incurred on account of compensatory afforestation for the Chhatrasal Coal Block. The petitioner has however submitted that on 7.5.2015, Ministry of Coal, Government of India issued notification de-allocating the Chhatrasal Coal Blocks and withdraw its allocation letter dated 26.10.2006 allocating Chhatrasal Coal Blocks in favour of the petitioner. The petitioner has submitted that since the estimates with respect to Chhatrasal have not been exceeded, the petitioner has not submitted any claim.

## **Increase in Cost of Implementation of R&R Plan for Captive Coal Blocks**

### **I. Moher and Moher-Amlohri Extension Coal Mines**

17. The petitioner has submitted that the Commission in order dated 4.2.2015 has held that the increase in cost of R&R Plan for Captive Coal Blocks would be admissible under "Change in law". Though the estimated cost of implementation of the R&R Plan for the Moher and Moher-Amlohri Extension Coal Blocks was Rs. 59 crore as against the indicative cost of Rs. 45 crore, the petitioner had incurred expenditure of Rs. 30.74 crore as on 30.6.2013. The Commission in the order dated 4.2.2015 held that the petitioner was not entitled to any relief at this stage. The petitioner has submitted that it has incurred Rs. 35.38 crore till 27.3.2015 on account of Implementation of R&R Plan as against the indicative cost of Rs. 45 crore for the Moher and Moher-Amlohri Extension Coal Blocks and intends to claim compensation as and when the indicative cost is exceeded.

### **II. Chhatrasal Coal Block**

18. The Commission in order dated 4.2.2015 had held that as the land for the Chhatrasal Coal Block was yet to be handed over by the Procurers to the petitioner, the cost of implementation of R&R Plan for Chhatrasal Coal Block was estimated to be the same as the indicative cost of Rs. 30 crore. The Commission further held that since no expenditure had been incurred, the petitioner was not entitled for any relief at that stage. The petitioner has further submitted that on 7.5.2015, Ministry of Coal, Government of India issued notification de-allocating the Chhatrasal Coal Block and withdraw its allocation letter dated 26.10.2006 allocating the Chhatrasal Coal Block in favour of the

petitioner. The petitioner has submitted that since the estimates with respect to Chhatrasal have not been exceeded, no claim was being submitted.

### Impact of Change in Law Events

19. The petitioner has submitted that the impact of additional expenditure on account of the above change in law events is as under:

(Rs. in crore)

Change in law event	Declared Price	Actual expenditure as on date of filing of the petition	Additional expenditure incurred
Increase in declared price of Land for Power station	190.70	172.84	NIL
Increase in declared price of land for Moher & Moher-Amlohri Extension Coal Mines	85.3	264.06	178.76
Increase in cost implementation of R&R Plant for Moher and Moher–Amlohri Extension Coal Mines	45.0	35.38	NIL
Increase in cost of Compensatory Afforestation for Moher and Moher–Amlohri Extension Coal Mines	21.50	92.93	71.43
Increase in declared price of land for Chhatrasal Coal Block	57.0	3.81	NIL
Increase in the cost of Compensatory Afforestation for Chhatrasal Coal Block	13.30	0	NIL
Increase in the cost of Implementation of R&R Plan for Chhatrasal Coal Block	30	0	NIL

20. The petitioner has submitted that the present petition has been filed without prejudice to its rights in Appeal No. 121 of 2015 filed before Hon'ble Appellate Tribunal for Electricity challenging certain findings of the Commission in order dated 4.2.2015 in Petition No. 21/MP/2013.

## **Replies of the Respondents:**

21. Rajasthan Distribution Utilities in their reply dated 8.9.2015 have submitted as under:

(a) As directed by the Commission in order dated 4.2.2015, the petitioner has filed the audited account regarding the actual expenditure as on the date of commercial operation. The Auditor in its report has submitted that “because the above procedures do not constitute either an audit or a review made in accordance with generally accepted auditing standards in India, we do not express any assurance on the Statement”. It is clear from the statement of the Auditor that there has been no appropriate audit or any review to audit conducted by the Auditor on the specific expenditure incurred by the petitioner with regard to the various heads and the certificate is based merely on mandated balance sheet. Such certificate cannot be relied upon as audited accounts. It does not satisfy the directions of the Commission.

(b) In terms of Article 13 of the PPA, both increase as well as decrease in capital cost due to Changes in Law is to be taken into account to determine the total impact of Change in Law. Once an event is held admissible as Change in Law, the same is Change in Law both for increase in expenditure and reduction in expenditure. In cases where the expenditure in cost of land, R&R plan and compensatory afforestation is less than the estimates at the time of the bid, this is a Change in Law reducing the capital cost of the project and such benefits should be passed on to the procurers. Therefore the calculation of the impact of Change in Law should be done incorporating the reduction due to above events.

(c) As per the statement given in Page 72 of the petition, the expenditure incurred by the petitioner for R&R for the generating station is Rs. 105.03 crore which is about Rs. 65 crore less than the indicative cost of Rs. 170 crore and should be considered in the overall impact of change in law events.

(d) The petitioner has not provided clarification in reply to the direction of the Commission in para 23 of the order dated 6.5.2016 as to whether on the exemption granted to the petitioner for the acquisition of 1384.96 hectare of land by the Government of Madhya Pradesh was considered in the costs.

(e) The cost incurred by the petitioner for implementation of R&R plan for Moher and Moher-Amlohri coal block as per the statement is Rs. 35.38 crore against the indicative cost of Rs. 45 crore and the difference ought to be considered for reduction in the impact of change in law.

(f) Since, the Chhatrasal Coal Block has been de-allocated, the total estimated cost of Rs. 100.30 crore has to be considered as reduction in the capital cost. As per the Statement, the petitioner has only incurred an expenditure of Rs. 3.81 crore and therefore, the balance amount should be considered as reduction in the capital cost and reduce the impact of change in law.

(g) The petitioner has furnished a Statement signed by the Auditor to the effect that coal produced from the Moher and Moher-Amlohri coal block has not been sold to any other project other than supply of coal to Sasan UMPP. The Auditor has not clarified that the statement is based on books of accounts of the year

2014-15 or of all years of Sasan UMPP. It should be clarified by the petitioner that the coal produced from the Moher and Moher-Amlohri coal block has never been sold to any other project except Sasan UMPP.

(h) There is no provision in the PPA to provide for carrying cost. Article 11.8 of the PPA provides for a payment of surcharge for any delay in payment beyond one month from the date of billing. As per Article 13.2 (b) of the PPA, the compensation is payable with effect from the date on which the net effect of the increases and decreases is finally admitted by the Commission in excess of the amount of Rs. 50 crore. Therefore, as per the Statement, the increase in cost would not exceed Rs 50 crore until the commissioning of final unit as on 27.3.2015. The petitioner should first demonstrate the date on which the impact exceeded Rs. 50 crore.

22. The Lead Procurer, MPPMCL, vide its reply dated 27.1.2016, has submitted that Ministry of Coal vide its notification dated 7.5.2015 reassessed the coal allotment to the petitioner and decided to re-allocate Chhatrasal Coal Block and cancelled the coal allocation of Chhatrasal Coal Block in favour of the petitioner. MPPMCL has submitted that the compensation allowed by the Commission in respect of Chhatrasal coal block such as increase in price of land, increase in cost of implementation of compulsory afforestation and increase in cost of implementation of R&R plan should not be considered. MPPMCL has further submitted that the petitioner is entitled to relief under change in law strictly in accordance with Article 13.2 (a) of the PPA which deals with both

the increase and decrease. Any decrease in the cost or revenue need to be accounted for in favour of the petitioner.

23. The petitioner in its rejoinders has submitted that in terms Article 13.2 of the PPA, due regard must be given to the principle that the purpose of compensating the party affected by such change in law events is to restore through monthly tariff payment to the same economic position as if change in law has not occurred. The petitioner has raised the claims for compensation under change in law events during the construction period for Sasan UMPP on 15.12.2012 followed by a notice dated 8.2.2013. Since the procurers disputed the claims, the petitioner approached the Commission by way of Petition No. 21/MP/2013 which was disposed of by the Commission on 4.2.2015 partly allowing the claims of the petitioner. The petitioner is entitled to carrying cost from the date on which it has incurred expenditure on account of change in law.

### **Analysis and Decision**

24. The petitioner approached the Commission for compensation for the cost incurred by it due to change in law events during the construction period. The Commission, after considering the submissions of the parties, vide order dated 4.2.2015 in Petition No. 21/MP/2013 directed the petitioner to submit the information with regard to increase in declared price of land for the power station; increase in declared price of land, cost of implementation of compensatory afforestation and cost of implementation of R&R plan for the Moher and Moher-Amlohri Extension Coal Mines; increase in declared price of land, cost of implementation of compensatory afforestation and cost of implementation of R&R plan for the Chhatrasal coal block with certain details to decide the exact quantum

of compensation admissible under change in law events. The petitioner has submitted the information supported by Auditor's Certificates. The Respondent beneficiaries have raised certain objection with regard to the Auditor's Certificate, the petitioner's claim with regard to Chhatrasal Coal Block and the petitioner's claim for carrying cost etc. The following issues arise for our consideration:

- (a) Preliminary submissions of respondents with regard to Auditor's certificate based on unaudited balance sheet and adjustment of decrease in cost.
- (b) Claim of the petitioner with regard to various heads under change in law.
- (c) Mechanism for processing and reimbursement of admitted claims under change in law.

The above issues have been dealt with as under:

**Issue No. 1: Preliminary Submissions of respondents with regard to Auditor's certificate based on unaudited balance sheet and adjustment of decrease in cost.**

25. The petitioner was directed vide ROP dated 22.9.2015 to submit the following information:

- (a) Detailed break up of Project cost of Rs.19400 crore based on original appraisal for financing agreements along with copy of financing agreements.
- (b) Actual expenditure under different heads on cash basis excluding un-discharged liabilities and capital advances duly certified by the statutory auditors.

(c) The details of undischarged liabilities and capital advances should be provided against each head separately.

(d) Details of items where the cost have been reduced w.r.t. declared price.

The petitioner vide affidavit dated 10.11.2015 has furnished the information called for supported by the Certificates of the Auditor M/s Chaturvedi & Shah, Chartered Accountant. The Auditor's Certificate states as under in para 4 of the certificate:

"We have performed the following procedure:

I) Obtained the attached Statement.

II) Traced the amounts against all items enumerated in serial no I to IV from the books of accounts and documents and records maintained by the management and agreed the same. Figures as disclosed in statement as at 16<sup>th</sup> August 2013, 28<sup>th</sup> January 2014, 12<sup>th</sup> April 2014, 27<sup>th</sup> May 2014, 26<sup>th</sup> December, 2014 and 27<sup>th</sup> March 2015 are from the management certified unaudited balance sheet.

5. During the course of applying the above mentioned procedures, we, one of the joint statutory auditors of the company did not find any matters which need to be reported.

6. Because the above procedures do not constitute either an audit or a review made in accordance with generally accepted auditing standards in India, we do not express any assurance of the Statement. Had we performed additional procedures or had we performed an audit or review of the Statement in accordance with the Standards of Auditing and other applicable authoritative pronouncements issued by the Institute of Chartered Accountants of India, other matters might have come to our attention that we would have reported to you and which might have been of interest to you."

On account of the above observations of the Auditor, the respondents have raised objections about the authenticity of the expenditures. We find strength in the arguments of the respondents as the expenditures to be allowed under change in law should be the actual expenditure on different items which can be certified by the auditor after examination of the books of accounts and other verifications in accordance with the

Standard of Auditing and other authoritative pronouncement of ICAI. However, the Auditors in this case have given a certificate based on the Books of Accounts maintained by the Management. In para 8 of the Certificate, the auditors have stated as under:

“8. This report is addressed to and provided to the Board of Directors of the company solely to assist you in meeting your responsibilities in relation to your submitting the statement to the Central Electricity Regulatory Commission (CERC) and should not be used by any other person or for any other purpose...”

Considering the limited purpose for which the Certificate is issued, we are considering the claims of the petitioner on the basis of this certificate. It is made clear that the petitioner shall furnish to the beneficiaries the duly audited statement of expenditure on the items allowed under change in law while raising the bills in respect of such expenditure.

26. The petitioner has submitted that there are certain items where the actual expenditure as on COD of the generating station (i.e.27.3.2015) are not final and further expenditure is expected to be incurred under certain heads. Accordingly, the petitioner has requested to consider those heads only where expenditure has already exceeded the indicative cost. HPPCL and Rajasthan Discom have submitted that Change in Law is not intended solely to the benefit of the Sasan UMPP but also to the benefits of the procurers when the Change in law leads to reduction in costs of the power project. In other words, in terms of Article 13 of the PPA, both the increase and decrease in capital cost due to changes in law are to be taken into account to determine the total impact of change in law. The respondents have further submitted that once an event is held admissible as change in law, the same is a change in law both for increase in

expenditure and reduction in expenditure. Therefore, in case where the expenditure on cost of land, R&R Plan and compensatory afforestation is less than the estimated cost at the time of submission of the bid, this is a change in law reducing the capital cost of the project and such benefit should be passed on to the procurers.

27. We have considered the submissions of the petitioner and the respondents. As per Article 13.2 (a) of the PPA, the impact of decrease of capital cost of the project in the tariff shall be governed by the formula given in the PPA. We are of the view that the increase or decrease in the actual expenditure on different items as on the COD of the generating station should be considered and the net increase or decrease should be allowed under change in law. Thereafter, the petitioner should approach the Commission only when the additional expenditure allowable under change in law exceeds Rs.50 crore. The petitioner's prayer not to touch the expenditure where it falls short of the indicative cost and to consider the expenditure where it exceeds the indicative cost will not be in accordance with the provisions of Article 13 (1) (a) of the PPA.

28. The lead procurer, MPPMCL has submitted that since Chhatrasal coal block has been de-allocated, the declared prices of land, compensatory afforestation and cost of R&R plans should be reduced from the gross block and the relief for the same should be given to the beneficiaries. We are in agreement with MPPMCL. The detailed reasons for our decision have been given in the para concerning Chhatrasal Coal Block.

29. The petitioner vide affidavit dated 10.11.2015 has submitted the capital cost as per original appraisal for financing agreement duly audited as under:

Particulars	Total cost (Rs. in crore)
Land Cost	632
EPC Cost	13201
Coal Block Development cost	2384
Total Hard Cost (A)	16217
Preoperative Expenditure including financing cost(B)	315
Interest During Construction (C)	2415
Margin money for working capital(D)	120
Contingencies(E)	332
Total (A+B+C+D+E)	19400

30. The petitioner, vide affidavit dated 12.6.2015, has submitted duly auditor's certified capital cost of the Sasan UMPP as on COD of the respective units and the last unit of the Project as under:

<b>S. No</b>	<b>Description</b>	<b>Rupees (In in crore)</b>
I	Capital cost incurred for project upto 16.8.2013 (1 <sup>st</sup> Unit)*	21,495.20
II	Capital cost incurred for project upto 28.1.2014 (2 <sup>nd</sup> Unit)	23,263.73
III	Capital cost incurred for project upto 12.4.2014 (3 <sup>rd</sup> Unit)	23,079.58
IV	Capital cost incurred for project upto 27.5.2014 (4 <sup>th</sup> Unit)	23,125.44
V	Capital cost incurred for project upto 26.12.2014 (5 <sup>th</sup> Unit)	24,960.86
VI	Capital cost incurred for project upto 27.3.2015 (6 <sup>th</sup> Unit)	25,186.24

31. The petitioner has submitted that the actual capital cost as on COD of Unit-I and also subsequent units up to COD of last unit (Unit-6) has increased to Rs. 21495.20 crore as on COD of Unit-I and to Rs. 25186.24 crore as on COD of Sasan UMPP compared to original Project cost of Rs. 19400.00 crore, based on original appraisal for

financing agreements. Therefore, there is an increase in the actual capital cost as on COD after submission of bid.

32. The details of expenditure (net of Undischarged Liability and Capital Advance) incurred towards the various components of the project as on 27.3.2015 for compensation on account of the following changes in law is given below:

(Rs. in crore)

S. No	Change in law event	Declared Price	Actual Expenditure on cash basis	Difference
		<b>1</b>	<b>2</b>	<b>3=2-1</b>
1.	Increase in declared price of Land for Power station	190.70	172.27	-18.43
2.	Increase in cost implementation of R&R scheme for Power station.	170.0	92.13	-77.87
3.	Increase in declared price of land for Moher & Moher–Amlohri Extension Coal Mines	85.30	264.06	178.76
4.	Increase in cost implementation of R&R Plant for Moher & Moher–Amlohri Extension Coal Mines	45.0	31.04	-13.96
5	Increase in cost of Compensatory Afforestation for Moher & Moher–Amlohri Extension Coal Mines	21.50	35.10	13.60
6.	Increase in declared price of land for Chhatrasal Coal Block	57.0	0.00	-57.00
7	Increase in the cost of Compensatory Afforestation for Chhatrasal Coal Block	13.30	0.0	-13.30
8.	Increase in the cost of Implementation of R&R Plan for Chhatrasal Coal Block	30.0	0.0	-30.0
<b>Total</b>		<b>612.8</b>	<b>594.60</b>	<b>-18.20</b>

33. The petitioner has made payments and shown in books under the head Capital Advances as on 27.3.2015 amounting to Rs. 62.21 as detailed below:

(Rs. in crore)

S. No.	Particulars (Advance given in relation to)	Amount
1.	Payment made to District collector and various land owners for power plant land for which acquisition proceedings are in progress	0.57
2a.	Payment made to District collector and various land owners for	4.59

	Moher, Moher-Amlori Coal Block for which acquisition proceedings are in progress	
2b.	Payment made for forest land to Divisional Forest Officer based on diversion of forest land	53.24
3.	Capital advances towards land/payment made for Chhatrasal Land to District Administration	3.81

34. The petitioner has also furnished statement of undischarged liability amounting to Rs. 17.24 crore towards cost of R&R in relation to acquisition of land as under:-

(Rs. in crore)

S. No.	Particulars	Amount
1.	Cost of R&R Power Plant	12.90
2.	Cost of R&R Moher, Moher-Amlori Coal Block	4.34

35. The Commission in order dated 4.2.2015 in Petition No. 21/MP/2013 has observed that change in the declared price of above items is covered under "Change in Law". The procurers have also agreed that these items of expenditure are admissible under "Change in Law". Relevant portion of the order is extracted as under:

"15. During the construction period, all such expenditures which contribute towards the capital cost of the project and which fulfill the conditions of Article 13.1.1 shall be admissible under "Change in Law" subject to the conditions laid down in the PPA."

36. The petitioner has claimed the benefits of Change in Law during the construction period in respect of increase in declared price of land for Moher & Moher–Amlohri Extension Coal Mines of Rs. 178.76 crore and increase in cost of Compensatory Afforestation for Moher & Moher–Amlohri Extension Coal Mines of Rs. 71.43 crore whereas the cost incurred as on COD of the Sasan UMPP is more than declared price. However, the petitioner has not considered items where the actual expenditure is less than the declared price for computation of compensation. As discussed above, the decrease in actual expenditure than the declared price shall also to be considered for

allowing any compensation due to Change in Law events.

**Issue No. 2: Claim of the petitioner with regard to various heads under change in law.**

37. The increase and decrease in the expenditure in various items of Change in Law have been discussed as under:

**Declared Price of Land for Power Station:**

38. The petitioner has submitted that the declared price of land for the Power Station was Rs. 190.70 crore which was verified from the communication dated 23.10.2006 from the representation of the procurers to the bidders. This included the power plant area, the fuel transport system land, the water pipeline corridor and the ash pipeline corridor. The petitioner vide affidavit 10.11.2015 has submitted that till 27.3.2015 the expenditure incurred towards cost of land acquisition for Power Station was Rs. 172.27 crore and same has been verified from auditor's certified cost and found to be in order. However, it is noticed that the actual expenditure of Rs. 172.27 crore as on COD of the Sasan UMPP station is less by an amount of Rs. 18.43 crore than the declared price of land of Rs. 190.70 crore and therefore, the same needs to be adjusted against the increase in declared price of land. It is also noted that the petitioner has considered Rs. 0.57 crore as capital advance towards price of land for power station.

**Increase in declared price of land for Moher & Moher–Amlohri Extension Coal Mines:**

39. As per the auditor certificate submitted by the petitioner vide affidavit dated 26.8.2013, the declared price of land for the Moher Coal Block and the Moher-Amlohri Extension Coal Block are Rs. 57.29 crore and Rs. 28 crore respectively. The petitioner

has submitted that as on 27.3.2015 an expenditure of Rs. 264.06 crore has been incurred on account of land acquisition for the Moher and Moher-Amlohri Extension Coal Blocks, which exceeds the declared price of land of Rs.85.30 crore by Rs. 178.76 crore and therefore, qualifies under "Change in Law". We have verified the actual expenditure on cash basis incurred of Rs. 264.06 crore from auditor's certificate (Annexure P-3 of the petition) certifying actual expenditure incurred on cash basis under different heads and found to be in order. Accordingly, increase of Rs. 178.76 crore in declared price of land for Moher & Moher–Amlohri Extension Coal is allowed.

**Cost of implementation of the R&R Plan for Moher and Moher-Amlohri Extension Coal Blocks:**

40. The petitioner has submitted that the Commission vide order dated 4.2.2015 observed that as against the indicated cost of Rs. 45 crore, the actual cost of implementation of R&R plan for the Moher and Moher-Amlohri Extension coal blocks is estimated to be Rs. 59 crore. However, as the actual expenditure as on 30.6.2013 is only Rs. 30.74 crore, the petitioner is not entitled to any relief at this stage. The petitioner has submitted that as per the indicative costs provided to the bidders, the cost of implementation of the R&R Plan for the Moher Coal Block and the Moher-Amlohri Extension Coal Block is Rs.30 crore and Rs.15 crore respectively, aggregating to Rs. 45 crore which was verified from the communication dated 23.10.2006 from the representation of the procures to the bidders. The petitioner vide affidavit 10.11.2015 has submitted that till 27.3.2015 expenditure on cash basis of Rs. 31.04 crore has been incurred with liabilities amounting to Rs. 4.34 crore against this head thus totaling Rs. 35.38 crore which is found to be in order as per auditor's certified cost for the Moher

and Moher-Amlohri Extension Coal Blocks. Liabilities cannot be considered for computation of claim which has to be on actual paid basis only. As such, Rs. 31.04 crore actually incurred as on COD is less by Rs. 13.96 crore than the declared price of Rs. 45.0 crore. However, the reduction in actual expenditure of Rs. 13.96 crore than the declared price has to be adjusted in the computation of compensation. Therefore, the same needs to be adjusted against the increase.

**Cost of implementation of Compensatory afforestation Moher & Moher –Amlohri Extension Coal blocks:**

41. The petitioner has submitted that the estimated cost of implementation of compensatory afforestation for the Moher Coal Block and the Moher-Amlohri Extension Coal Block was Rs.14.90 crore and Rs.6.60 crore respectively to taking Rs. 21.50 crore which was verified by the procurers of the bidders vide their letter dated 23.10.2006.

Relevant portion of the said letter is extracted as under:

“22. In terms of clause 13.1.1 (iv) (d) of the PPA, "Change in Law" *inter-alia* includes the cost of implementing compensatory afforestation for the Coal Mines indicated under the RFP and the PPA. Accordingly, the increase in price of compensatory afforestation from the declared price for the Moher and Moher-Amlohri coal mines are admissible under "Change in Law".

42. The petitioner has submitted that it has incurred Rs. 92.93 crore till 27.3.2015 on account of compensatory afforestation for the Moher and Moher-Amlohri Extension Coal Blocks exceeding the declared price by Rs.71.43 crore. We have verified that this claimed amount is as per following break-up:

- i) actual expenditure on cash basis incurred of Rs. 35.10 crore from the auditor's certificate (Annexure P-3 of the petition).
- ii) Capital advance against this head Rs. 57.83 crore (includes Rs. 53.24 made

towards forest land).

Since, advance has been paid and capitalization is pending in books because of not getting physical possession of land on account of yearly tree felling exercise for the purpose of claim computation we allow consideration of advances paid in this regard. Since the petitioner has actually paid the advances, the said expenditure has been considered while working out the claims of the petitioner. It is clarified that if there is any change in the amount of advance on account of refund, the same shall be adjusted by the petitioner under intimation to the beneficiaries and this Commission.

43. The Commission had directed the petitioner to clarify whether the actual expenditure on compensatory afforestation in case of Moher & Moher-Amlohri Extension Coal blocks excludes the expenditure for acquiring 1384.96 hacters of land for which was exempted from being acquired on the basis of the certificate issued by Chief Secretary, Government of Madhya Pradesh. The petitioner has submitted that under the Standard Bidding documents, providing land and forest clearance was the responsibility of the procurers and the petitioner was only provided the estimated cost to be incurred under each head. The petitioner has assumed the cost estimates provided by the Bid Process Coordinator who was acting as the representative of the procurers. HPCC has submitted that the petitioner has not provided specific clarification to the query of the Commission. We have considered the submissions. The indicative expenditure on compensatory afforestation was given by the BPC which was to be considered by the bidder while submitting the bid. Any expenditure incurred on the compensatory afforestation will be considered against the indicative cost included in the

bid of successful bidder. If the petitioner is not required to incur the expenditure for acquiring 1384.96 hectares of land on account of exemption granted to it on the basis of the certificate of Chief Secretary, Govt. of MP, than the said expenditure will not be booked against the indicative cost for compensatory afforestation. The petitioner will be entitled for the actual expenditure for the compensatory afforestation undertaken for Moher & Moher-Amlohri Extension Coal blocks.

**Chhatrasal Captive Coal Block: Declared Price of Land, implementation of the R&R Plan and Compensatory Afforestation:**

44. The declared price of land for the Chhatrasal coal block, implementation of the R&R Plan and declared price of implementation of compensatory afforestation was Rs. 57 crore, Rs. 30 crore and Rs. 13.30 crore respectively. The petitioner vide affidavit dated 10.11.2015 has submitted that till 27.3.2015, an expenditure of Rs. 3.81 crore has been incurred on land acquisition which is less than the declared price of Rs. 57 crore for the Chhatrasal coal block. It is noted that the petitioner has not incurred any expenditure on R&R Plan and on compensatory afforestation. The petitioner has incurred only Rs. 3.81 crore on account of land acquisition and has shown the same under the head of the Capital Advance.

45. MPPMCL has submitted that the Commission should not allowed the compensation on account of increase in price of land, increase in cost of implementation of compensatory afforestation and increase in cost of implementation of R&R plan in respect of Chhatrasal due to re-allocation of Chhatrasal coal block and cancellation of coal allocation of Chhatrasal coal block by Ministry of Coal in favour of the petitioner. The Ministry of Coal vide its Notification No.13016/16/2008-CA-I (Part-III)

dated 7.5.2015, after reassessing the coal requirement to the petitioner had decided to re-allocate Chhatrasal Coal Block and cancelled the coal allocation of Chhatrasal Coal Block to the petitioner. Relevant portion of said notification is extracted as under:

Ministry of Coal  
Notification  
New Delhi, the 7<sup>th</sup> May, 2015

S.O. 1230(E)...

2. The Government has reconsidered the issue keeping in view the Judgment dated 24.8.2014 and order dated 25.9.2014 of Hon`ble Supreme Court passed in W.P.(CrI.) No. 120 of 2012 and other connected matters and has decided to de-allocate Chhatrasal coal block and thus hereby withdraws/cancels the allocation letter No. 13016/04/2006-CA-I dated 26<sup>th</sup> October, 2006 allocating Chhatrasal Coal Block in favour of M/s Sasan Power Ltd. and the Gazette Notification No. 335[SO 397(E)] dated 17.2.2010 mentioned at para 1 above."

46. In view of cancellation of allotment of Chhatrasal Captive Coal Block, the coal from the said mine will not be available for use for generation of power by Sasan UMPP. Accordingly, it is considered appropriate that the beneficiaries of Sasan UMPP are not saddled with the expenditure already incurred by the petitioner for this mine. Petitioner may claim the amount from the new allottee of the Chhatrasal coal block. Therefore, the entire declared price of Rs.101.31 crore in respect of land acquisition, compulsory afforestation and R&R for Chhatrasal Coal Block shall be considered as decrease and adjusted against the increase in due to change in law in other heads.

**Increase in cost of implementation of the R&R Plan for the Power Station.**

47. As per the information provided to the bidders, the cost of implementation of the R&R Plan for the power plant area, the fuel transport system land, the water pipeline corridor and the ash pipeline corridor was estimated to be Rs. 170 crore which was

verified from the communication dated 23.10.2006 from the representative of the procurers to the bidders. The petitioner vide affidavit 10.11.2015 has submitted that till 27.3.2015, an expenditure of Rs. 105.03 crore (this includes liability amount of Rs. 12.90 crore) has been incurred towards implementation of the R&R Plan for the Power Station land which is less than the declared price by Rs. 64.97 crore (inclusive of liability) than the estimated price of Rs. 170.0 crore. However, it is noticed that the actual expenditure as on COD of generating station is less than the declared price and the difference of Rs. 77.87 crore needs to be adjusted against the increase due to change in law.

48. As per the audited statement of cost of land and other expenses paid (on cash basis), the increase/decrease in the declared price as on COD of Unit-6/generating station has been verified and found to be in order.

49. Summary of our decision with regard to the petitioner`s claims on increase and decrease in various items due to Change in Law and net increased allowed computed after adjustment is as under:

<b>(Rs. in crore)</b>				
<b>S. No.</b>	<b>Change in law event</b>	<b>Declared Price</b>	<b>Total Expenditure (including allowable advances but not including liabilities)</b>	<b>Increase/ Decrease (including allowable advances but not including liabilities)</b>
1	Increase in declared price of Land for Power station	190.70	172.84	-17.86
2	Increase in cost implementation of R&R scheme for Power station.	170.0	92.13	-77.87

<b>S. No.</b>	<b>Change in law event</b>	<b>Declared Price</b>	<b>Total Expenditure (including allowable advances but not including liabilities)</b>	<b>Increase/ Decrease (including allowable advances but not including liabilities)</b>
3	Increase in declared price of land for Moher & Moher–Amlohri Extension Coal Mines	85.30	264.06	178.76
4	Increase in cost implementation of R&R Plant for Moher & Moher–Amlohri Extension Coal Mines	45.0	31.04	-13.96
5	Increase in cost of Compensatory Afforestation for Moher & Moher–Amlohri Extension Coal Mines	21.50	92.93	71.43
6	Increase in declared price of land for Chhatrasal Coal Block	57.0	0.0	-57.00
7	Increase in the cost of Compensatory Afforestation for Chhatrasal Coal Block	13.30	0.0	-13.30
8.	Increase in the cost of Implementation of R&R Plan for Chhatrasal Coal Block	30.0	0.0	-30.0
	<b>Total net increase allowed</b>	<b>612.8</b>	<b>653.00</b>	<b>40.20</b>

**(d) Mechanism for compensation on account of Change in Law during the operating period:**

50. The Commission in para 46 of the order dated 4.2.2015 had decided about the mechanism for computation of the impact of change in law during construction period as under:

“46. We have considered the submission of the petitioner and respondents including the affidavit dated 10.12.2014 placed on record by the petitioner. Article 13.2(a) of the PPA provides as under:

“13.2 Application and principles for computing the impact of “Change in Law”: While determining the consequence of “Change in Law” under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such “Change in Law”, is to restore through Monthly Tariff Payments, to the

extent contemplated in this Article 13, the affected Party to the same economic position as if such "Change in Law" has not occurred.

(a) Construction Period

As a result of any "Change in Law", the impact of increase/decrease of Capital Cost of the Project in the Tariff shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees Fifty crore (Rs. 50 crore) in the Capital Cost over the term of this Agreement, the increase/decrease in Non Escalable Capacity Charges shall amount to zero point two six seven (0.267%) of the Non Escalable Capacity Charges. Provided that the Seller provides to the procurers documentary proof of such increase/decrease in Capital Cost for establishing the impact of such "Change in Law". In case of Dispute, Article 17 shall apply. It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/decrease exceeds amount of Rs. Fifty (50) Crore."

Thus as per the above provisions, the petitioner is entitled for compensation at the rate of 0.267% of the non-escalable capacity charges for every cumulative increase/decrease in capital cost for an amount of Rs. 50 crore over the terms of the agreement. Capital Cost has been defined in the PPA as under:

"Capital Cost shall have the meaning ascribed thereto under ABT or the Grid Code means the lower of the following: (a) Actual capital cost of the Project on a relevant date which shall not be later than the Commercial Operation Date of the Power Station, as certified by the auditors appointed jointly by the Seller and Procurers (jointly); or (b) Total project cost of the Project as set forth in the Financing Agreements.

Thus the capital cost of the project has to be reckoned in either of the two ways i.e. on the basis of the actual capital cost as on the date of the commercial operation of the power station or the total Project cost of the project as set forth in the Financing Agreement whichever is lower. Commercial Operation Date and Financing Agreement have been defined in the PPA as under:

"Commercial Operation Date" means, in relation to a Unit, the date one day after the date when each of the Procurers receives a Final Test Certificate of the Independent Engineer as per the provisions of Article 6.3.1 and in relation to the Power Station shall mean the date by which such Final Test Certificates as per Article 6.3.1 are received by the Procurers for all the Units."

"Financing Agreements" means all the loan agreements, letters of credit and other documents relating to the financing of the Project on or before the COD of the Power Station, as may be amended, modified, refinanced or replaced from time to time, but without in anyway increasing the liabilities of the Procurers therein.

From the reading of the above provisions, it emerges that the relief under Article 13 (2) (a) can be granted only if the additional cost on account of "Change in Law" exceeds the capital cost by Rs. 50 crore or more. Capital Cost of the project has to be ascertained from the lower of the capital cost determined after the commercial operation date of all the units

of the generating station or the Financing Agreement of the project. In the absence of these documents, the capital cost of the project and the increase in the capital cost on account of Change in Law cannot be determined. Accordingly, we direct the petitioner to place on record the actual capital cost of the project as on the commercial operation date of the last unit of Sasan UMPP duly certified by the Statutory Auditor and capital cost as set forth in the Financing Agreement duly supported by all relevant documents after the commissioning of the generating station.”

As per the above provision, the petitioner is entitled for compensation at the rate of 0.267% of the non-escalable capacity charges for every cumulative increase/decrease in capital cost for an amount of Rs. 50 crore over the terms of the agreement.

51. In the present case, there is decrease in expenditure on account of cancellation of Chhatrasal Coal Block to the extent of declared price of land, R&R plan and Compulsory Afforestation amounting to Rs. 100.31 crore. The said amount has been adjusted against the increase in actual expenditure admissible under change in law. After adjusting the declared price relating to Chhatrasal Coal Block, the actual expenditure on the items covered under Change in Law in this petition is Rs. 653.00 crore (inclusive of Capital Advances of Rs. 58.40 crore) as against the declared price of Rs. 612.80 crore. Thus, the actual expenditure of Rs. 653.00 crore includes Capital Advance of Rs. 58.40 crore and the Capital Advance of Rs. 58.40 crore as payment made to District Administration and Divisional Officer and excludes undischarged liability of Rs. 17.24 crore and the capital advance of Rs. 3.81 crore for Chhatrasal Mine. As regards, the undischarged liability of Rs. 17.24 crore, the same is not allowed since actual expenditure has not been incurred. As and when the same is discharged by way of payments they will become part of claim. Thus, for the present after excluding the undischarged liability of Rs. 17.24 crore and the excluded advance of Rs. 3.81 crore, the admissible amount comes to Rs. 40.20 crore which is less than the

threshold amount of Rs. 50 crore. Therefore, the petitioner shall not be entitled for reimbursement of the expenditure in tariff at this stage. As and when the actual expenditure exceeds Rs.50 crore, the petitioner shall be entitled to raise the claim against the beneficiaries along with an audited account of the expenditure allowed under change in law in the order.

52. The petitioner has prayed that the petitioner be allowed interest/carrying cost for the expenditure incurred on account of change in law events detailed in the affidavit so that the economic position of the petitioner is restored. Rajasthan Distribution Utilities have submitted that there is no provision in the PPA for such carrying cost. It has been further submitted that the compensation payable to the petitioner should be strictly in accordance with Article 13.2(b) which provides for compensation from the date as decided by the Commission. We are not inclined to allow interest/carrying cost as there is no specific provision in the PPA. However, against the decision of the Commission not to allow carrying cost pertaining to Sasan UMPP in Petition No. 402/MP/2014, the petitioner has filed a Review Petition 1/RP/2016. Therefore, the decision taken in the said Review Petition will be applicable in this case also.

53. This order disposes of Petition No.162/MP/2015.

Sd/  
**(Dr. M.K. Iyer)**  
**Member**

sd/-  
**(A. S. Bakshi)**  
**Member**

sd/-  
**(A. K. Singhal)**  
**Member**

sd/-  
**(Gireesh B. Pradhan)**  
**Chairperson**