

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 14/MP/2013**

**Coram:**

**Shri Gireesh B Pradhan, Chairperson**

**Shri A K Singhal, Member**

**Shri A S Bakshi, Member**

**Date of order: 26.04.2016**

**In the matter of:**

Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Articles 12 and 17 of the Power Purchase Agreement dated 07.08.2007 executed between Sasan Power Limited and the procurers for compensation due to unprecedented, unforeseen and uncontrollable depreciation of the Indian Rupees.

**And In the matter of:**

Sasan Power Limited  
3rd Floor, Reliance Energy Centre,  
Santa Cruise East,  
Mumbai

....**Petitioner**

**Vs**

1. MP Power Management Company Ltd.  
Shakti Bhawan,  
Jabalpur-462 008,  
Madhya Pradesh

2. Paschimanchal Vidyut Vitran Nigam Limited  
Victoria Park,  
Merrut-250 001,  
Uttar Pradesh

3. Purvanchal Vidyut Vitran Nigam Limited  
Hydel Colony,  
Bhikaripur, Post-DLW,  
Varanasi-221 004  
Uttar Pradesh

4. Madhyanchal Vidyut Vitran Nigam Limited  
4-A-Gokhale Marg,  
Lucknow-226 00,  
Uttar Pradesh

5. Dakshinancial Vidyut Vitran Nigam Limited  
220 kV Vidyut sub-station,  
Mathura Agra By-Pass Road, Sikandra,  
Agra-282 007,  
Uttar Pradesh

6. Ajmer Vidyut Vitran Nigam Limited  
Hathi Bhata, City Power House  
Ajmer-305001, Rajasthan

7. Jaipur Vidyut Vitran Nigam Limited  
Vidyut Bhawan  
Jaipur-302005, Rajasthan

8. Jodhpur Vidyut Vitran Nigam Limited  
New Power House, Industrial Area  
Jodhpur-342003, Rajasthan

9. Tata Power Delhi Distribution Limited  
Grid Sub-Station Building  
Hudson Lines, Kingsway Camp  
New Delhi-110019

10. BSES Rajdhani Power Limited  
BSES Bhawan, Nehru Place  
New Delhi-110096

11. BSES Yamuna Power Limited  
Shakti Kiran Building  
Karkardooma, Delhi-110096

12. Punjab State Power Corporation Limited  
The Mall, Patiala-147001, Punjab

13. Haryana Power Purchase Centre  
Room No. 239, Shakti Bawan  
Sector-6, Panchkula-134109, Haryana

14. Uttarakhand Power Corporation Limited  
Urja Bhawan, Kanwali Road  
Dehradun-248001, Uttrakhand

.....**Respondents**

**Parties present:**

Shri J.J. Bhatt, Senior Advocate, SPL  
Shri Vishrov Mukherjee, Advocate SPL  
Shri Janmali Manikala, Advocate, SPL  
Shri N.K. Deo, SPL

Shri M.G. Ramachandran, Advocate, Haryana & Rajasthan Discoms  
Ms. Poorva Saigal, Advocate, Haryana and Rajasthan Discoms  
Shri G. Umapathy, Advocate, MPPMCL  
Ms. R. Mekhala, Advocate, MPPMCL  
Shri Rahul Dhawan, BRPL and BYPL  
Ms. Megha Bajpai, BRPL and BYPL

### **ORDER**

The petitioner, Sasan Power Limited, has filed the present petition with the following prayers:-

- (a) Declare that unprecedented, unforeseeable and uncontrollable depreciation of Indian Rupee vis-a-vis the US Dollar as a Force Majeure event under the PPA.
- (b) Restitute the petitioner to the same economic condition as if the Force Majeure Event never occurred, including regarding the additional equity outlay and debt service obligations.
- (c) Pass any such other and further reliefs as this Commission deems just and proper in the nature and circumstances of the present case.

2. The Commission after consideration of the materials on record and the submissions of the parties during the hearing of the petition decided that depreciation of INR vis-a-vis US Dollar is not a force majeure event in terms of the provisions of the PPA between Sasan Power Limited and the procurers of Sasan Ultra Mega Power Project (Sasan UMPP) and accordingly, rejected the prayers of the petitioner. However, after discussing different aspects of the problem faced by the petitioner on account of depreciation of INR, the Commission in para 70 of the order observed as under:

“.....Therefore, despite all points remaining against the petitioner, we are of the view that the unprecedented and unforeseen foreign exchange rate variations beyond the control of the petitioner and beyond the normal expectations may need to be considered for quantification and compensation by the procurers appropriately.”

Further, the Commission decided to examine whether any relief can be granted to the petitioner by the Commission in exercise of its power under section 79(1)(b) of the Electricity Act, 2003 (the Act) and accordingly, the Commission directed the petitioner to submit certain information. Paras 72 and 73 of the order dated 21.2.2014 are extracted as under:

“72. Considering the extremely competitive rate at which the procurers are getting power from the petitioner’s generating station, there may be a case for the procurers to share a part of the burden as compensation on account of depreciation of INR in order to make the project viable. The Commission considers it necessary to examine all the issues with reference to the base records of the petitioner in contracting debts for the project before taking a final view on intervening and giving any directions in this regard in exercise of its power under Section 79(1) (b) of the Act in the interest of the project developer as well as the consumers of the procurer States.

73. Therefore, we direct the petitioner to submit the following information on affidavit with copy to the procurers: (a) Date of bid/Date of rebid; (b) Bid assumptions (original and revised) for the levelised tariff of Rs.1.19617/kWh containing the different elements including the escalations factored for each of the elements; (c) Estimated project cost at the time of bid and rebid and actual project cost indicating specifically cost of equipment; (d) Purchase of equipments envisaged at the time of bid/rebid and actual sourcing and reasons for change, if any; (e) Was there any saving in cost of purchase of equipments from China and cost envisaged at the time of bid/rebid? (f) ROE envisaged at the time of bid/rebid; (g) Documents relating to the first and second financial closures of the project and details of components of debt and equity; (h) All loan agreements pertaining to both the domestic and foreign debt with full details of debt contracted along with interest rates and period of repayment/moratorium; (i) All documents relating to the procurement of equipments; (j) Documents relating to customs duty exemption for import of equipments; (k) Bids invited for the BTG package including the bid of BHEL and for the mining equipments; (l) Agreements with the OEM and Mining Equipment Manufacturer clearly showing the cost of equipments; (m) The milestones/PERT charts for completion of projects including financial closure with details of dates of imports of equipments and actual dates of imports;(n) Year-wise position of debts contracted and effect of FERV on interest as well as repayment as compared to the position without considering FERV; (o) If the debts were originally contracted in rupee terms, the reasons for swapping to foreign currency loans and interest gained from the same; (p) Since the tariff was discovered through bid and FERV is to be given on account of increasing debt liabilities whether PPA permits such a situation? (q) When the petitioner swapped the debt from domestic to foreign currency, was there any consultation from the procurers;(r) Utilization of debt, i.e. purchase of equipments for payment in US \$/other currencies need to be co-related with

reference to documents; (s) The agreement with the procurers on coal mining and its cost and terms and conditions for pass through items; (t) The milestones/PERT chart for completion of the project including financial closure with details of dates of imports of equipments and the actual dates; (u) Whether there was any delay on the part of developer due to which the cost has gone up on account of inflation/FERV.”

3. The petitioner vide its affidavit dated 14.3.2014 filed the required information and documents. The petition was heard at length with the participation of the petitioner and the respondents and order was reserved. In the meanwhile, being aggrieved by the decision of the Commission to examine the claims of the petitioner in exercise of the regulatory power under section 79(1)(b) of the Act, Haryana Utilities filed Appeal No.99 of 2014 and Rajasthan Utilities filed Appeal No.104 of 2014 before the Appellate Tribunal for Electricity contending that the Commission cannot grant any relief to the petitioner in exercise of its regulatory power since it is a case of tariff determined through competitive bidding under section 63 of the Act. The said appeals were heard alongwith the Appeal Nos. 100 of 2013 and 98 of 2014 and other related appeals. The Appellate Tribunal in a common judgment dated 7.4.2016 disposed of all appeals. With regard to the power of the Commission to grant relief by exercising regulatory power under section 79(1)(b) of the Act in case of tariff discovered and adopted under section 63 of the Act, the Appellate Tribunal observed as under:

“163. In the ultimate analysis, we hold that the Central Commission has no regulatory powers under Section 79(1) (b) of the said Act to vary or modify the tariff or otherwise grant compensatory tariff to the generating companies in case of a tariff determined under a tariff based competitive bid process as per Section 63 of the said Act. If a case of *Force Majeure* or Change in Law is made out, relief provided under the PPA can be granted under the adjudicatory power.”

4. In the light of the said decision, the Appellate Tribunal disposed of the Appeal Nos. 99 of 2014 and 104 of 2014 as under:

“[N] Decision on Sasan Group Appeals

310. Appeal No.99 of 2014 and Appeal No.104 of 2014 have been filed against Order dated 21/02/2014 passed by the Central Commission in Petition No.14/MP/2013. Petition No.14/MP/2013 had been filed by SASAN Power inter alia for a declaration that the unprecedented, unforeseen and uncontrollable depreciation in the Indian Rupee vis-a-vis US Dollar as a Force Majeure Event under the PPA and to reconstitute SASAN to the same economic condition as if the Force Majeure Event had never occurred. By Order dated 21/2/2014, the Central Commission held that the depreciation in Indian Rupees is not a Force Majeure Event within the meaning of Article 12 of the PPA. However, after referring to its Interim Order dated 15/4/2013 in Petition No.159/MP/2012 (CGPL v. GUVNL &Ors.), the Central Commission proceeded to exercise its regulatory power under Section 79(1)(b) of the said Act and sought for certain documents from SASAN Power. Being aggrieved by the said order, Haryana Utilities have filed Appeal No.99 of 2014 and Rajasthan Utilities have filed Appeal No.104 of 2014. Admittedly, this matter relates to the generation and sale of electricity from the power plant of SASAN Power where the tariff was determined under the tariff based competitive bid process under Section 63 of the said Act. We have already answered Issue No.5 of the Agreed Issues that the Central Commission has no regulatory powers under Section 79(1)(b) of the said Act to vary or modify the tariff or otherwise grant compensatory tariff to the generating companies in case of a tariff determined under a tariff based competitive bid process as per Section 63 of the said Act. In view of this, Appeal Nos.99 of 2014 and Appeal No.104 of 2014 are allowed. The impugned Order dated 21/2/2014 is hereby set aside.”

5. In Appeal Nos. 99 of 2014 and 104 of 2014, challenge was limited to the decision of the Commission to examine the claims of the petitioner under section 79(1) (b) of the Act. The said appeals have been allowed and the order dated 21.2.2014 in Petition No.14/MP/2013 has been set aside. Therefore, the Commission cannot consider the case of the petitioner under section 79(1)(b) of the Act. Accordingly, the details submitted by the petitioner vide affidavit dated 14.3.2014 and subsequent submissions are not required to be examined.

6. The Commission had already held in order dated 21.2.2014 that depreciation of INR vis-a-vis US Dollar is not a force majeure event in terms of the provisions of the PPA between Sasan Power Limited and the procurers of Sasan UMPP and accordingly, rejected the prayers of the petitioner. This finding has neither been challenged by the petitioner nor by any of the respondents. The only issue on which the petition was under consideration of the Commission was the possibility of granting relief to the petitioner in exercise of regulatory power under section 79(1)(b) of the Act. The Appellate Tribunal has held that the Commission has no regulatory powers under section 79(1) (b) of the Act to vary or modify the tariff or otherwise grant compensatory tariff to the generating companies in case of a tariff determined under a tariff based competitive bid process as per Section 63 of the said Act. In view of the said findings of the Appellate Tribunal, nothing survives in Petition No.14/MP/2013.

7. Petition No.14/MP/2013 is disposed of in terms of the above.

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

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

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