

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 229/MP/2016

Subject : Petition under Section 79(1)(b) read with Section 79 (1)(f) of the Electricity Act, 2003 seeking compensation on account of occurrence of 'Change in Law' and 'Force Majeure' events relating to Power Purchase Agreement dated 19.8.2013 entered into between the petitioner and the respondent.

Petitioner : D.B. Power Limited.

Respondent : Tamil Nadu Generation and Distribution Corporation Limited

Petition No. 101/MP/2017

Subject : Petition under Section 79(1)(b) read with Section 79 (1)(f) of the Electricity Act, 2003 seeking compensation on account of occurrence of 'Change in Law' and 'Force Majeure' events relating to Power Purchase Agreement dated 1.11.2013 entered into between the petitioner and the respondents.

Petitioner : D.B. Power Limited.

Respondents : PTC India Limited and Others.

Date of hearing : 27.9.2017

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

Parties present : Shri Deepak Khurana, Advocate, D.B. Power
Shri Tejasu Anand, Advocate, D.B. Power
Shri Aashish Anand Bernad, Advocate, PTC India
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri G. Umapathy, Advocate, TANGEDCO
Ms. Swapna Seshadri, Advocate, Rajasthan Discoms
Shri M.G. Ramachandran, Advocate, Prayas
Ms. Ranjitha Ramachandran, Advocate, Prayas
Ms. Anushree Bardhan, Advocate, Prayas

Record of Proceedings

Learned counsel for Prayas submitted that with respect to certain claims, the petitioner has not annexed the appropriate Notifications and in respect of additional cost incurred due to reduction in supply of coal, the petitioner has annexed the Notifications by Coal India Subsidiary and not the actual law. Therefore, the petitioner may be directed to file the said information.

2. Learned counsel for Rajasthan Discoms submitted that the PPA originally entered into between the petitioner and the Rajasthan Discoms was of 410 MW, which the Rajasthan Electricity Regulatory Commission vide order dated 22.7.2015 reduced to 250 MW and no claim can be made by the petitioner beyond the same to be passed on to Rajasthan Discoms. Learned counsel further submitted that the petitioner has filed an Appeal against the said order which is pending before the APTEL. Learned counsel submitted that the petitioner has not provided any actual data of shortage in supply of linkage coal and the petitioner should produce the details of the coal actually supplied by SECL to the petitioner on month to month basis.

3. Learned counsel for TANGEDCO submitted as under:

a). The petitioner had opted to evacuate power from the same plant and intend to supply to both TANGEDCO and Rajasthan using the linkage coal supplied from the same location, the quoted tariff for TANGEDCO towards inland transportation charge is more than the tariff quoted for Rajasthan by Rs. 0.23 per unit. The petitioner had quoted different tariff towards inland transportation cost though there is no change in the transportation cost from September 2012 to March 2013 as reflected by the Commission escalation index which indicates that the petitioner had kept high margin in the bid. Comparing the total energy charge, it is higher than Rajasthan by Rs. 0.35 per unit.

b). TANGEDCO had issued Letter of Acceptance to the petitioner for supply of 80 MW RTC power through short term tender for the period from 29.10.2015 to 31.5.2016 at the rate of Rs. 3.89 per unit.

c). Under the provisions of RfP and PPA, the petitioner had factored in the capital and operating cost including all taxes, levies and duties in the quoted tariff for supply of power. With regard to Capacity and Energy charges, the petitioner has quoted non-escalable components for capacity and energy apart from escalable components. Therefore, the petitioner has assumed all risks with regard to the operating cost of the project.

d). As per Article 15.18.1 of the PPA, the seller shall bear and pay all statutory taxes, duties, levies and cess assist levied on the seller, contractors or their employees, that are required to be paid by the seller as per the law in relation to the execution of the agreement and for supplying power as per the terms of this Agreement. As per Article 15.18.2, the procurer shall be indemnified and held harmless by the seller against any claims that may be made against procurer in relation to the matters set out in Article

15.18.1. Therefore, the PPA absolves the procurer from all future tax, duties, cess which the seller will be liable to pay while supplying power to the procurer.

4. Learned counsel for the petitioner sought permission to file the appropriate Notifications in respect of Change in Law events, written submissions on escalation index and information sought by Prayas in its reply dated 25.9.2017. Request was allowed by the Commission.

5. After hearing the learned counsels for the parties, the Commission directed the petitioner to file on affidavit, by 20.10.2017, with an advance copy to the respondents and Prayas, the following information:

- a. Certificate from SECL regarding availability of quantum of coal for dispatch to the petitioner and actual supply of coal during the affected period i.e. from 30.11.2016 to 31.3.2017 in Petition no. 101/MP/2017 and from 1.8.2015 to 31.3.2017 in Petition No. 229/MP/2016 respectively.
- b. Detail note on order booking and delivery of coal clearly bringing out making requisition/requirement of coal to the fuel supplier, consent of the fuel supplier for quantum of coal/allotment of rakes and specific indent and offer made to railway for supply of coal and actual supply of coal on daily basis. The petitioner should also furnish the details of one year data for 2016-17 on monthly basis in terms of the Annexure annexed with the RoP.
- c. Copy of the Notice inviting tender along with the detailed Terms and Conditions invited by the petitioner for lifting of Fly Ash and Transportation/Disposal of Fly Ash.
- d. Copy of the documents and the detailed quotation quoted by the agencies showing their interest for participation in the respective EoI for lifting of Fly Ash & Transportation /Disposal of Fly Ash.

6. The Commission directed the petitioner to file on affidavit, by 20.10.2017, the relevant Notifications in respect of Change in Law events claimed by the petitioner and the information sought by Prayas in para 76 of its reply dated 25.9.2017 with an advance copy to the respondents and Prayas, who may file their response, if any, by 10.11.2017. The Commission directed that due date of filing the information and responses should be strictly complied with. No extension shall be granted on that account.

7. Subject to the above, the Commission reserved the order in the petitions.

By order of the Commission
Sd/-
(T. Rout)
Chief (Legal)

Month Wise details for the year 2016-17

Month	Declared Capacity/ Energy Scheduled certified as per RPC/SLDC	Corresponding Coal Requirement	Requirement given to the Fuel Supplier	Quantity agreed to be supplied by Fuel Supplier/ No. of Rakes allocated	Requisition placed with Railway during the month	Actual Quantity of coal supplied	Opening Stock of Coal
April							
May							
June							
July							
August							
September							
October							
November							
December							
January							
February							
March							