

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Interlocutory Application No. 57/2017  
In Petition No. 97/MP/2017**

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

**Date of order: 28<sup>th</sup> of September, 2017**

**In the matter of**

Application seeking interim relief.

**And**

**In the matter of**

Adani Power Limited  
Shikhar, Near Mithakhali Circle,  
Navrangpura, Ahmedabad-390 009

**..... Applicant**

**Versus**

Uttar Haryana Bijli Vitran Nigam Limited  
Shakti Bhawan, Sector-6,  
Panchkula, Haryana

Dakshin Haryana Bijli Vitran Nigam Limited  
Shakti Bhawan, Sector-6,  
Panchkula, Haryana

**..... Respondents**

**Parties Present:**

Ms. Poonam Verma, Advocate, APL  
Ms. Apoorva Saxena, Advocate, APL  
Shri Jignesh Langalia, APL  
Shri G. Umopathy, Advocate, Haryana Discoms  
Ms. Ranjitha Ramachandran, Advocate, Prayas

**ORDER**

The Applicant, Adani Power Limited, has filed this Interlocutory Application seeking direction to the Respondents to provisionally pay 95% of the compensation

amount indicated in the petition for the past period within one month and also commence monthly payments in accordance with PPA, subject to adjustment on final determination of relief by the Commission.

2. The brief background of the case is that the Hon`ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeal No. 5399-5400 of 2016 has held that 'the Central Electricity Regulatory Commission will, as a result of this judgment, go into the matter afresh and determine what relief should be granted to those power generators who fall within clause 13 of the PPA as has been held by us in this judgment'. The Applicant has filed Petition No. 97/MP/2017 pursuant to the direction of the Hon`ble Supreme Court in judgment dated 11.4.2017 in Civil Appeal Nos. 5399-5400 of 2016 seeking relief with effect from 7.8.2012 under para 4.7 of the Competitive Bidding Guidelines and Article 13 of the PPA to restore Adani Power Limited to the same economic position as if the Change in Law event had not occurred. In the Petition, the Petitioner has *inter alia* prayed to direct the Haryana Utilities to pay provisionally compensation amount for the past period within one month subject to adjustment on final determination of relief by the Commission. The matter was heard on 10.8.2017 and after hearing the learned counsel for the parties, order in the petition was reserved.

3. Learned counsel for Applicant submitted that the issue regarding shortfall/non-availability of domestic coal has taken more than 5 years and during the pendency, the loss on account of the additional fuel cost was financed through extra borrowing to keep the operations running. Learned counsel submitted that the situation is further aggravated due to increase in working capital requirement and consequent interest

burden over such borrowing and now it has reached to a position where EBDITA is not even sufficient to service interest cost. Learned counsel for the Applicant submitted that during the hearing on 10.8.2017, learned counsel for Haryana Utilities had expressed no objection for grant of interim relief to the Petitioner.

4. Learned counsel submitted that under the circumstances, the financial institutions are no more willing to support and further cash losses of the Applicant forcing closure of its generating station, unless immediate cash flow support is provided in terms of increased tariff revenue.

5. Learned counsel for Haryana Utilities submitted that Haryana Discoms have no objection to grant of interim relief as considered by the Commission.

6. Learned counsel for Prayas submitted that Prayas has reservation with regard to the applicability of the formula given by the Commission in the order dated 3.2.2016 in Petition No. 79/MP/2013. Learned counsel for Prayas further submitted that the Applicant has not filed the certificate from MCL in regard to coal availability as directed by the Commission in order dated 6.12.2016 in Petition No. 155/MP/2012. Learned counsel submitted that if MCL was in a position to offer coal but the Applicant had not taken the coal for any reason, the same cannot be considered as a shortage and covered under Change in Law. Learned counsel submitted that in the present case, there is no shortage of availability of coal from MCL to Adani Power as even the reduced percentage of assured quantum of coal as per NCDP, 2013, namely 65% in the year 2013-14, 65% in the year 2014-15, 67% in the year 2015-16 and 75% in the year 2016-17 onwards is sufficient quantum to generate power against the contracted capacity of Haryana Utilities from units 7, 8 and 9. Therefore, there cannot be any

interim order of payment to the Applicant for any supposed shortfall in coal. Learned counsel for the Petitioner submitted that the Petitioner vide its affidavit dated 4.8.2017 has already submitted the information with regard to the above.

7. We have considered the submissions of the learned counsels for the parties. The matter has been remanded to the Commission by the Hon`ble Supreme Court to consider the case of the Applicant for relief under Change in Law to the extent of shortfall in supply of coal by MCL. The Applicant has filed the necessary details supported by Auditor`s Certificate. Haryana Utilities who is the only respondent has not objected to the calculation made by the Applicant. Prayas has raised certain objections with regard to the formula and actual availability of coal which shall be considered at the time of issue of final order.

8. Considering the fact that the Applicant has been supplying power to the Haryana Utilities by arranging coal from alternative sources to the extent of shortfall in supply of domestic coal by MCL and keeping in view the financial difficulties faced by the Applicant to arrange for working capital, we are of the view that the balance of convenience is in favour of grant of interim relief to the Applicant. If on final determination, it is found that the Applicant has received the payment in excess of the amount due, it shall be required to refund the same with interest. This will balance the interest of both the Applicant and the Haryana Utilities. Accordingly, we direct that pending issue of final order in Petition No. 97/MP/2017, Haryana Utilities shall pay 75% of the compensation claimed by the Applicant, subject to the adjustment after issue of final order in the main petition. If the payment received in terms of the interim order exceeds the amount due after issue of final order, the Applicant shall refund the excess amount to Haryana Utilities with 9%.

9. It was recorded in Para 87 of the order dated 6.12.2016 in Petition No. 155/MP/2012 that DRI had advised its field offices to investigate into any instance of over-invoicing against a list of companies which included the name of Adani Power and Adani Enterprises Ltd. In the said order, the Commission had observed that if it is established that there has been any case of over-invoicing in the import of coal for use in Mundra Power Project of the Petitioner, DRI is requested to bring the same to the notice of the Commission. Though the order dated 6.12.2016 has been set aside by the Hon`ble Supreme Court, we are of the view that any finding by DRI against Adani Power would have impact on the coal imported by Adani in lieu of the shortfall in the domestic coal for which interim relief is granted in this order. Accordingly, if any such case is brought to the notice of the Commission by DRI, it will open to the Commission to revisit the relief granted through this order.

9. I.A. is disposed of in terms of the above.

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

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

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

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