

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 310/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 order: 8th of May, 2017

In the matter of:

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework for tariff-based competitive bidding for transmission service with respect to the 765 kV 1 x D/C transmission line from Dharamjaygarh-Jabalpur and 765 kV S/C transmission line from Jabalpur pool-Bina being implemented by Jabalpur Transmission Company Limited.

And

In the matter of

Jabalpur Transmission Company Limited
C-2, Mira Corporate Suites,
Ishwar Nagar,
New Delhi – 110025

... Petitioner

Vs.

1. Adhunik Power and Natural Resources Ltd.
3rd Floor, Crescent Towers,
229 AJC Bose Road,
Kolkata, 700 020, West Bengal
2. Corporate Power Ltd.
8th and 9th Floor, Mahabir Tower
Main Road, Ranchi – 834 001, Jharkhand
3. Essar Power (Jharkhand) Ltd.
Essar House, 11 KK Road
Mahalaxmi, Mumbai – 400 034
4. West Bengal State Electricity Distribution Co. Ltd.
7th Floor, Bidyut Bhavan

DJ Block, Sector II, Salt Lake City
Kolkata – 700 091, West Bengal

5. MB Power (Madhya Pradesh) Ltd.
213, Okhla Industrial Area, Phase III,
New Delhi – 110020

... Respondents

ORDER

The Petitioner, Jabalpur Transmission Company Ltd., had filed Petition No. 73/MP/2014 seeking certain relief with regard to Change in Law and force majeure events in terms of the Transmission Service Agreement. The Commission vide order dated 16.10.2015 in Petition No 73/MP/2014 decided the issues raised in the said petition and directed the Petitioner as under:

“45. At the time of filing the petition, the project was still under execution. Jabalpur Dharmajaygarh 765 kV D/C line and Jabalpur-Bina 765 kV S/C line have been commissioned on 14.9.2015 and 1.7.2015 respectively. Therefore, the petitioner is required to quantify the increase in expenditure on account of change in law as on the COD of the transmission lines after accounting for the expenditure assumed in the bid towards forest clearance and provide the documentary proof to the LTTCs and the Commission in terms of Article 12.2.3. The petitioner is granted liberty to approach the Commission with quantification of the increase in transmission charges on account of change in law and force majeure supported by documentary evidence which shall be considered in accordance with Law.”

2. Pursuant to, and in compliance with, the directions given by this Commission in order dated 16.10.2015 in Petition No. 73/MP/2014, the Petitioner filed the Petition No. 310/MP/2015 for quantification and award of compensation. The Commission after considering the submissions of the parties, vide order dated 2.3.2017 allowed the claims as under:

Sl. No	Reason for cost Increase	Decision
1.	Additional expenditure towards IDC on loans during extended construction period of 17 months 19 days.	Allowed subject to submission of the information required under Para 15 of this order.
2.	Additional expenditure towards increase in afforestation rates post bid dead line as	Allowed subject to the production of

Sl. No	Reason for cost Increase	Decision
	prescribed by MoEF.	documents in Para 17
3.	Additional expenditure towards taxes and duties, especially on account of change in excise duty and service tax post the bid dead line.	Allowed subject to the condition laid down in Para 23

3. The Commission in Para 15 of the order dated 2.3.2017 directed the Petitioner as under:

“15...The petitioner is directed to submit the auditor certificate clearly mentioning the application of Debut Equity in equal proportion with documentary proof, loan-wise outstanding particulars as on SCOD, further drawal and repayment till actual COD, applicable interest rates, gross IDC, Income generated from temporary parking of loan amount and net IDC capitalised, supported by the documentary proof for Loan drawal, Loan repayment and interest along with documentary evidence for deferment of drawal of loan consequent to the delay in execution of the project.”

4. In Para 17, the Petitioner was further directed as under as regards the additional expenditure incurred towards afforestation rates:

“17. The petitioner is directed to put on record the actual receipts of the payments made to the authority in connection with the forest clearance duly certified by the auditor.”

5. In Para 23, the Petitioner was directed as under with regard to additional expenditure towards taxes and duties:

“23....It is clarified that relief under change in law for service tax and excise duty shall be admissible on the capital expenditure covered within the original cost of the project subject to production of the receipts of the actual taxes paid.”

6. The Petitioner vide its affidavit dated 23.3.2017 has submitted the required information which has been examined and our observation are given in the succeeding paragraphs.

(A) Additional expenditure towards IDC on loans during extended construction period of 17 months 19 days:

7. The Petitioner has placed on record the Auditor Certificate dated 17.3.2017 certifying the (i) debt-equity ratio as on scheduled COD and the debt-equity ratio month on month till actual COD, (ii) loan-wise outstanding on scheduled COD, further drawal from SCOD till actual COD along with copies of bank confirmation for the loan balances, (iii) applicable interest rate, (iv) Month-wise interest flow consisting gross interest during construction, interest generated from temporary parking of loan and net IDC capitalized.

8. With regards to debt-equity ratio, the Petitioner has considered the funds provided by the promoter way of unsecured loan as equity. Accordingly, the debt equity ratio as on SCOD has been certified by the Auditor as 69:31 and the debt goes on in diminishing trend. The debt equity ratio as on actual COD has been certified by the Auditor as 52:48.

9. With regards to Interest During Construction (IDC), the Petitioner has placed on record the Auditor certificate certifying the interest capitalized as under:

(Rs. in crore)

Statement of interest capitalized (including finance cost)			
Nature	Gross interest	Income generated from temporary parking of loan funds	Net interest capitalized
Total interest cost during construction (including finance cost) till 14.9.2015	224.71	(2.42)	222.29#
Less: Interest cost during construction till 31.3.2014	90.03	(1.80)	88.23
Net interest cost during construction (From 1.4.2014 to 14.9.2015)	134.68	(0.61)	134.06
Interest capitalized and paid to banks/financial institutions from 1.4.2014 to 14.9.2015	126.47	(0.61)	125.85*

* Supported by bank-wise and month-wise summary statement duly certified by the auditor.

Not included the interest cost of Rs 64.27 crore incurred towards loan taken from the promoter, namely Sterlite Grid 1 Limited.

10. Perusal of the Auditor Certificate submitted by the Petitioner reveals that the net interest of Rs. 222.29 crore does not include the interest cost of Rs. 64.27 crore incurred towards loan taken by JCTL from its promoter. Out of the net interest of Rs. 222.20 crore, an amount of Rs. 88.23 crore was incurred upto SCOD (31.3.2014) and an amount of Rs. 134.06 crore was incurred between SCOD (1.4.2014) till actual COD. The original IDC considered by the Petitioner as part of original cost was Rs. 91 crore and therefore, the difference between Rs. 222.29 crore and Rs. 91 crore i.e Rs. 131.29 crore was the additional IDC incurred by the Petitioner over and above original IDC. However, as per the Auditor Certificate, the Petitioner has actually paid Rs. 125.85 crore to Banks and Financial institutions pertaining to time over-run period. Therefore, the lesser of the two i.e Rs. 125.85 crore is admissible as IDC on account of the postponement of COD from 31.3.2014 to 14.9.2015 on account of force majeure and Change in Law events.

(B) Additional expenditure towards increase in Afforestation rates

11. The Petitioner, vide its affidavit dated 23.3.2017, has submitted the auditor certificate dated 17.3.2017 for actual expenditure incurred on forest cost for the project as under:

Transmission line	State	Amount paid by the Petitioner (Rs. in crore)
765 kV D/C JD	Madhya Pradesh	55.44
765 kV D/C JD	Chhattisgarh	20.67
765 kV S/C JB	Madhya Pradesh	29.59
Total		105.7

12. The Petitioner has placed on record the actual receipts of the payment of Rs. 27.22 crore made to concerned forest department. Therefore, additional

expenditure of Rs. 27.22 crore towards afforestation works shall be payable by the beneficiaries.

(C) Additional expenditure towards taxes and duties on account of change in excise duty and service tax

13. The Petitioner has submitted the Auditor Certificate certifying the capital expenditure of Rs. 1021.53 crore incurred by the Petitioner as against the original cost of Rs.1168 crore on which excise duty, VAT and service tax is applicable. The Auditor has further certified that the Petitioner had incurred Rs. 16.92 crore on account of change in taxes and duties as under:

Capex impacted by Change in Taxes (Rs. in crore)				
Particulars	Supply	Civil	Erection	total
Cost incurred supported by invoices	763.14	138.89	119.50	1021.53
Claim on taxes and duties as under*				
Excise duty	12.91	0.00	0.00	12.91
VAT on Excise duty	0.20	0.00	0.00	0.20
Service tax	0.00	1.51	2.50	4.01
Impact on taxes and duties	13.11	1.51	2.50	17.12

* The tax amount of Rs.17.12 crore is on account of additional tax paid due to change in Excise duty.

14. As per the above table, the Auditor has certified the original project cost as Rs. 1168 crore and the Petitioner has incurred capital expenditure of Rs. 1021.53 crore on which excise duty, VAT and service tax is applicable. The Petitioner has incurred Rs. 16.92 crore on account of change in taxes and duties. The Auditor has also given a summary of the expenditure incurred towards supply, civil and erection of Rs. 17.12 crore. It is noted that there is a minor difference of Rs. 0.20 lakh which is equal to the VAT on Excise duty. Therefore, Rs.16.92 crore is allowed towards taxes and duties.

15. The summary of our decision with regards to the Petitioner's claim on additional expenditure towards IDC on loans, afforestation rates and taxes and duties is as under:

S. No.	claims	Allowed (Rs. in crore)
1.	Additional expenditure towards IDC on loans during extended construction period of 17 months 19 days.	125.85
2.	Additional expenditure towards increase in afforestation rates post bid dead line as prescribed by MoEF.	27.22
3.	Additional expenditure towards taxes and duties, especially on account of change in excise duty and service tax post the bid dead line.	16.92
	Total	169.99

16. The increase in the cost of the project on account of Change in Law works out to Rs.169.99 crore. As per Article 12.2.1 of the TSA, the Petitioner is entitled for relief as under:

$$\text{Percentage increase in non-escalable charge} = (169.99/5.5) \times 0.32 = 9.8903\%.$$

17. Accordingly, the Petitioner shall be entitled to the increase in non-escalable transmission charges of 9.8903% per annum on the quoted non-escalable charges of the respective years from the date of commercial operation of the respective transmission lines on account of Change in Law events allowed vide our order dated 2.3.2017 in Petition No. 310/MP/2015.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson