

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 124/MP/2019

- Subject : Petition pursuant to judgment of the Appellate Tribunal for Electricity dated 6.3.2019 in Appeal No. 149 of 2017 and under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2(b) of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the Procurers for awarding of Carrying Cost on the compensation payable for allowed Change in Law events.
- Petitioner : Sasan Power Limited (SPL)
- Respondents : MP Power Management Company Limited & Ors.
- Date of Hearing : 18.12.2019
- Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I.S. Jha, Member
- Parties present : Shri Vishrov Mukherjee, Advocate, SPL
Shri Janmali. M, Advocate, SPL
Shri Rohit Venkat, Advocate, SPL
Shri Abhimanyu Das, SPL
Shri M. G. Ramachandran, Sr. Advocate, Haryana Discoms & PSPCL
Ms. Poorva Saigal, Advocate, Haryana Discoms & PSPCL
Ms. Anushree Bardhan, Advocate, Haryana Discoms & PSPCL
Shri Shubham Arya, Advocate, Haryana Discoms & PSPCL
Ms. Tanya Sareen, Advocate, Haryana Discoms & PSPCL
Shri G. Umamathy, Advocate, MPPMCL
Ms. Vaishnavi, Advocate, MPPMCL
Ms. Pavitra B., Advocate, MPPMCL
Shri Anand Ganesan, Advocate, RUVNL
Ms. Swapna Seshadri, Advocate, RUVNL
Ms. Ritu Apurva, Advocate, RUVNL
Shri Ashwin Ramanathan, Advocate, RUVNL
Shri Rajiv Srivastava, Advocate, UPPCL
Shri Praveen Kejriwal, Advocate, TPDDL
Shri Alok Shankar, Advocate, TPDDL
Ms. Shefali Sobti, Advocate, TPDDL

Record of Proceedings

Learned counsel for the Petitioner, Sasan Power Limited handed over a copy of note on arguments and mainly submitted as under:

(a) The issue of Carrying Cost has been settled in terms of the judgment of Hon'ble Supreme Court in case of Uttar Haryana Bijli Vitran Nigam Limited and Anr. v. Adani Power Limited and Ors. [(2019) 5 SCC 325], wherein the Hon'ble Supreme Court has held that the Carrying Cost is part of the compensation payable under Change in Law and is to be computed from the effective date of Change in Law event.

(b) The contentions of the Respondents that the Petitioner had delayed in filing the Petition No. 402/MP/2014 and had also delayed in providing complete information and therefore should not be allowed Carrying Cost, are misplaced. The sequence of events/dates as furnished by the Petitioner clearly establishes that there was neither delay in filing of Petition No. 402/MP/2014 nor in providing information as sought by the Commission therein.

(c) The contention of the Respondents that awarding Carrying Cost to the Petitioner will result in profiteering/amount to the Petitioner taking advantage of its own delay is also misplaced. The Petitioner is not profiteering from the claim of Carrying Cost. As per the PPA and the judgment of Hon'ble Supreme Court, the Petitioner is entitled for relief qua the expenditure incurred till the order of the Commission.

(d) As regards the rate of Carrying Cost, the Petitioner has not availed any Working Capital loan during the period in which it made payments for Change in Law events before the issuance of the Commission's order allowing recovery of such claims. Therefore, the applicable rate may be considered as per the Rate of Interest on Working Capital as per the applicable CERC Tariff Regulations for the relevant period.

2. Learned senior counsel for the Respondents, Haryana Discom and PSPCL, mainly, submitted as under:

(a) While the Hon'ble Supreme Court has recognized the principle that the Carrying Cost is to be allowed in respect of Change in Law claims, there cannot be any Carrying Cost in respect of delay in making the claim/filing the Petition for Change in Law or otherwise in submission of any document/information.

(b) The aforesaid principle is recognized by the Appellate Tribunal for Electricity in its judgments (i) dated 19.9.2007 in Appeal No. 70 of 2007 in the case of Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission, (ii) dated 30.5.2014 in Appeal Nos. 147, 148 and 150 of 2013 in the case of Torrent Power Limited v. Gujarat Electricity Regulatory Commission, (iii) dated 4.12.2014 in Appeal No. 45 of 2014, in the case of Paschim Gujarat Vij Company Limited and Ors. v. Gujarat Electricity Regulatory Commission, and (iv) dated 22.4.2015 in Appeal No. 174 of 2013 in the case of Punjab State Power Corporation Limited v. Punjab State Electricity Regulatory Commission.

(c) The Commission in order dated 18.11.2015 had allowed Rs. 1.589 crore for 2013-14 and Rs. 3.902 crore for 2014-15 towards Change in Law claims. However, the Petitioner has not provided details regarding date of actual payment and also the date on which the amount crossed 1% of Letter of Credit, which is when the amount becomes due.

(d) As regards the rate, the Commission in other cases has allowed the Carrying Cost on actual interest rate or as per the Tariff Regulations or Late Payment Surcharge as per PPA, whichever is lower. In case, there is no

Working Capital Loan, the Petitioner may be asked to provide the interest rate of other loans.

3. Learned counsel for the Respondent, Madhya Pradesh Power Management Company Limited (MPPMCL) adopted the submissions of the learned senior counsel for the Respondents, Haryana Discoms and PSPCL.

4. With regards to details regarding date of actual payment and the date on which the amount crossed 1% of Letter of Credit, learned counsel for the Petitioner submitted that claims of the Petitioner regarding Change in Law events crossing the threshold limit as provided in the PPA has already been dealt with by the Commission in order dated 18.11.2015 in Petition No. 402/MP/2014. As regards the details of payment made by the Petitioner, the Petitioner sought permission to file an additional affidavit in this regard.

5. Based on the request of the learned counsel for the Petitioner, the Commission directed the Petitioner to file additional affidavit, by 30.12.2019 with copy to the Respondents who may file their responses, if any, 8.1.2020.

6. Subject to the above, the Commission reserved order in the Petition.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Legal)**