

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 217/MP/2016**

Subject : Petition seeking compensation on account of Change in Law under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 10 of the Power Purchase Agreement dated 1.4.2013 entered into between Thermal Powertech Corporation India Ltd. and the Distribution Companies in the States of Andhra Pradesh and Telangana.

Petitioner : Sembcorp Energy India Ltd (SEIL)

Respondents : Southern Power Distribution Co. of Telangana Ltd. & Others

Date of hearing :14.5.2020

Coram : Shri P.K. Pujari, Chairperson  
Shri I.S. Jha, Member  
Shri Arun Goyal, Member

Parties present : Shri Hemant Sahai, Advocate, SEIL  
Shri Nitish Gupta, Advocate, SEIL  
Shri Milind Nigudkar, Advocate, SEIL  
Shri Rakesh K. Sharma, Advocate, Andhra  
Discoms

**Record of Proceedings**

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioner submitted that the present petition has been filed invoking Article 10 of the PPA read with Section 79 (1) (b) of the Electricity Act, 2003 seeking relief due to Change in Law events during operating period of the generating station, namely (a) increase in royalty on coal and additional levies (DMF and NMET levy), (b) increase in Clean Energy Cess, (c) imposition of Excise Duty on coal, (d) increase in Service Tax, (e) decrease in Customs Duty on imported coal, (f) imposition of Countervailing Duty on imported coal, (g) increase in Busy Season Surcharge, (h) increase in Development Surcharge, (i) increase in the rate of Minimum Alternate Tax, (j) increase in the Central Sales Tax and (k) imposition of coal terminal surcharge on railway freight. Learned counsel submitted that the above Change in Law events are covered by the Commission's orders and judgments of the Appellate Tribunal for Electricity. He further submitted as under:

(a) While the Petitioner was required to factor in the risks involved in the bidding, the provisions of the PPA clearly set out that any event leading to the recurring/non-recurring additional expenses due to any events covered under Article 10.1.1 shall be Change in Law event. The Respondents have wrongly contended that the Petitioner was required to factor in all possible increases for events covered under the ambit of Change in Law.

(b) Contention of the Respondents that since various taxes, duties and levies being part of quoted energy charges get escalated as per the escalation indices,

the Petitioner is not entitled for compensation on account of changes therein, the same has been rejected by the Commission in its earlier orders.

(c) As regards MAT, it is a statutory expenditure and covered under Article 13 of the PPA read with Article 10 of the PPA. Revised Tariff Policy dated 28.1.2016 issued by Ministry of Power, Govt. of India acknowledges increase in taxes and levies as a Change in Law event and provides pass through of the cost involved. As per extant Accounting Standards, Income Tax and MAT are to be treated as expenses. Therefore, compensation in this regard has to be allowed.

3. Learned counsel for AP Discoms submitted that he is unable to access his office, as it is at the premises of Hon'ble Supreme Court, which is locked and sealed until July 2020 or further orders. Learned counsel, therefore, requested to adjourn the matter for the month of July, 2020. In response, learned counsel for the Petitioner submitted that since the present Petition was filed in the year 2016, it should be adjudicated at the earliest.

4. After hearing the learned counsels for the Petitioner and Respondent, the Commission adjourned the matter. However, since the learned counsel for the Respondent expressed his inability to access his office and the relevant records till July 2020, the Commission directed the learned counsel to appropriately brief the Respondent to take suitable corrective action, so that the Petition can be listed for further hearing.

5. The Petition shall be listed for hearing in due course for which separate notice will be issued.

**By order of the Commission**

**Sd/-  
(T. D Pant)  
Dy. Chief (Law)**