

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.102/MP/2023

- Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Rule 3 of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 and Article 13 of the Power Purchase Agreement dated 07.08.2008 (as subsequently amended from time to time) with Haryana Discoms and Power Purchase Agreement dated 20.01.2009 (as subsequently amended from time to time) with Tata Power Trading Company Limited seeking declaration of change in law event and consequent relief on account of increase in compensation for acquisition of land for Jhajjar Power Limited's 1,320 MW Power Project located in Haryana.
- Date of Hearing : **20.10.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Jhajjar Power Limited (JPL).
- Respondents : Uttar Haryana Bijli Vitran Nigam Limited and 3 Ors.
- Parties Present : Shri Vishrov Mukerjee, Advocate, JPL
Shri Basava Prabhu Patil, Sr. Advocate, TPDDL
Shri Nitish Gupta, Advocate, TPDDL
Shri Nishant Talwar, Advocate, TPDDL
Shri Rishabh Sehgal, Advocate, TPDDL
Ms. Sonia Madan, Advocate, HPPC
Shri Venkatesh, Advocate, TPTCL
Shri Aditya Sharma, Advocate, TPTCL
Shri Vedant Choudhary, Advocate, TPTCL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking a declaration that the increase in compensation to be paid to the landowners for the acquisition of the land for the Petitioner's 1320 MW coal-fired Project located in Jhajjar, Haryana ('the Project') in terms of the final order dated 20.10.2022 in Special Leave Petition (c) Nos. 18536-18541 of 2022 & batch titled '*Jaspal Singh & Ors. v. State of Haryana & Ors.*' and consequential orders passed by the Hon'ble Court qualify as a Change in Law event under the Power Purchase Agreements (PPAs) dated 7.8.2008 and 20.1.2009 executed with Haryana Discoms (Haryana PPA) and Tata Power Trading Co. Ltd. (TPTCL PPA) respectively and the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules'). Learned counsel further submitted as under:

(a) At the time of the bidding, the tentative land cost for the Project was clarified at Rs. 320 crore which included the cost of land and costs towards R&R and accordingly, all the bidders considered the total land cost at Rs. 320 crore at the time of bidding. From 22.9.2008 to 5.12.2011, the Collector/ District Revenue Officer-cum-Land Acquisition Collector (DRO/LAC) passed various awards granting compensation at the rate of Rs.16 lakh per acre for acquisition of the land and the RoW for laying of underground water pipeline along with Compulsory Acquisition charges, etc. Accordingly, the Petitioner paid the total compensation of Rs. 330.10 crore for the total land acquired for setting up the Project.

(b) However, by the aforesaid final order dated 20.10.2022 and similar consequential orders, the Hon'ble Supreme Court has increased the compensation payable towards the land acquired for the Project from Rs. 16 lakh per acre to Rs. 22 lakh per acre along with all statutory benefits, including interest, which may be available under the Land Acquisition Act, 1894. Accordingly, on 28.3.2023, DRO / LAC raised a demand of Rs. 145.40 crore on the Petitioner towards the enhanced compensation qua some of the landowners who approached the Hon'ble Supreme Court (536 acres out of 1248 acres) and the Petitioner paid the said amount on 29.3.2023.

(c) As such, Haryana Discoms have not contested the Petitioner's Change in Law claim and have limited their submissions regarding the modalities of compensation for the additional expenditure due to the aforesaid Change in Law event. Haryana Discoms have submitted that the payments for relief sought by the Petitioner be made on an annuity basis spread over the period, not exceeding the duration of PPAs as a percentage of tariff agreed in the PPAs. However, such a mode for recovery of the additional compensation is neither borne out of the terms of the PPA nor the Change in Law Rules. Moreover, the Petitioner is required to pay such an amount on an upfront basis, it ought to be compensated on an upfront basis.

(d) The Petitioner is also seeking in-principle approval to recover the additional expenditure from the procurers by way of the supplementary invoice(s) as and when the orders with computation of enhanced compensation are passed by DRO / LAC (for remaining land areas) and payments towards the same are released by the Petitioner.

(e) The Petitioner is also entitled to a carrying cost on the additional expenditure incurred by the Petitioner on account of the Change in Law event.

(f) By orders dated 20.9.2022 and 22.9.2022 in Petition Nos. 157/GT/2020 and 489/GT/2020 respectively, the Commission has already allowed Aravalli Power Company Pvt. Ltd. to recover such enhanced land compensation from its procurers including the Haryana Discoms and TPDDL.

2. In response to the specific query of the Commission with regard to the source of finance for the already paid amount of Rs. 145.40 crore, learned counsel submitted that such amount was paid from the internal accruals.

3. Learned counsel for Respondent Haryana Discoms submitted that Article 13.2 read with Article 13.4 of the Haryana PPA envisages the restoration of the affected party by Change in Law through monthly tariff payments and hence, any

compensation payable to the Petitioner ought to be allowed on annuity basis for the remaining period of the Haryana PPA (13 years), which is also in consonance with the compensation mechanism envisaged in the Change in Law Rules. Learned counsel also submitted that keeping in view the amount of Rs. 145.40 core has been paid by the Petitioner from internal accruals, the applicable rate of carrying cost ought to be ascertained on the basis of the actual cost of capital / return as such data would be available with the Petitioner.

4. In response, the learned counsel for the Petitioner submitted that as per the judgment of the Hon'ble Supreme Court in the GMR Warora Energy Ltd. v. CERC and Ors. [(2023) SCC Online 464], the carrying cost has to be only at the LPS rate.

5. Learned counsel for Respondent, TPDDL prayed for an adjournment on the ground of the non-availability of the arguing counsel. Learned counsel also submitted that the Respondent is as such objecting to the Petitioner's Change in Law claims. Learned counsel added that the Petitioner's claims are not substantiated by the requisite documents and the documents placed on record by the Petitioner are incomplete & inchoate.

6. Considering the submissions made by the parties and the request of the learned counsel for the Respondent, TPDDL, the Commission adjourned the matter.

7. The matter remained part-heard and will be listed for the hearing on **15.11.2023**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)