

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.20/MP/2023**

- Subject : Petition under Section 79(1)(f) read with 79(1)(b) of the Electricity Act, 2003 and Agreements for Procurement of Power (APP) dated 3.3.2022 and 10.3.2022 challenging the Termination Notice dated 18.8.2022 issued by South Western Railways under Article 4.4 of the APP dated 3.3.2022 and consequential actions pursuant to the Termination Notice.
- Date of Hearing : **3.8.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Jindal India Thermal Power Limited (JITPL)
- Respondents : South Western Railways (SWR), Indian Railways and Anr.
- Parties Present : Shri Akshat Jain, Advocate, JITPL  
Ms. Shefali Tripathi, Advocate, JITPL  
Shri Shikhar Verma, Advocate, JITPL  
Shri Pulak Srivastava, JITPL  
Shri Adityavardhan Sharma, Advocate, TPTCL  
Shri Vedant Choudhary, Advocate, TPTCL  
Shri Sanjeev Kumar, TPTCL  
Shri Ketan Nagpal, TPTCL  
Ms. Sarika, TPTCL  
Ms. Poorva Saigal, Advocate, SWR  
Ms. Shubham Arya, Advocate, SWR  
Ms. Reeha Singh, Advocate, SWR  
Ms. Anumeha Smiti, Advocate, SWR

**Record of Proceedings**

During the course of the hearing, the learned counsel for the Petitioner and learned counsels for the Respondents, SWR and TPTCL, made their respective submissions in the matter.

2. The learned counsel for the Respondent, SWR pointed out that the Petitioner, in its affidavit dated 29.7.2023, has not furnished certain information as called for by the Commission vide Record of Proceedings for the hearing dated 2.5.2023, and

accordingly, an adverse inference may be drawn against the Petitioner in respect of the said queries / information. In response, the learned counsel for the Petitioner submitted that, insofar as the information under paragraph 4(iv) of the said Record of Proceeding is concerned, such information cannot be made privy to the Respondent and the Petitioner is willing to furnish such information to the Commission in sealed cover if the Commission so directs.

3. After hearing the learned counsels for the parties, the Commission directed the Petitioner to file the following information on an affidavit within two weeks:

(a) Details and relevant clauses of the APP regarding the responsibility of obtaining MTOA and the compliance of pre-requisites thereof, including the roles of JITPL, TPTCL and SWR, along with the scheduled time lines and actually achievements, in this regard.

(b) Source of coal utilized for energy sold in the short term market during the period from 1.4.2022 to 17.8.2022.

(c) Action and inaction taken in response to the request of the Railway for supply of power under Short Term Open Access (STOA) in terms of clause 3.1.1 of the APP.

(d) Out of the total installed capacity of 1200 MW, the capacity associated with FSA coal, and out of the total energy produced, energy produced through FSA coal.

(e) In case the envisaged coal is from an e-auction for the contracted capacity under the subject APP, the reasons for the assured coal claimed and the submission of a fuel assurance letter at the time of submission of the bidding.

(f) Reasons for contradictory statement that JITPL is not making any claim for CCEA's decision and Coal India Ltd.'s circular, i.e. ready to supply power at the rate as agreed in the APP, but the stand taken by JITPL earlier that until and unless letter dated 1.4.2022 is considered a Change In Law, the MTOA will not be applied.

(g) The communication made with the Respondents in terms of Article 12.4 of the APP i.e. shortage of coal on account of CCEA's decision and CIL's circular.

4. The Commission further directed the Respondents, TPTCL and SWR, to furnish on an affidavit within two weeks the details regarding the appointed date along with relevant clauses of the APP.

5. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Petitioner and the Respondents to file their respective written submissions, if any, within two weeks with a copy to the other side. The Commission

directed that the stay granted by the Hon'ble Delhi High Court on the encashment of bank guarantee will continue till the issuance of an order in the matter.

6. Subject to the above, the Commission reserved the matter for order.

**By order of the Commission**

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