

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 06/MP/2013

SUB : Petition 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 compensation due to Change in Law impacting revenues and costs during the Operating period

Date of hearing: 30.1.2013

Coram : Dr Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : Sasan Power Limited, Mumbai.

Respondents : MP. Power Management Company Limited, Jabalpur and others

Parties present: Shri Amit Kapur, Advocate for the petitioner
Ms. Poonam Verma, Advocate for the petitioner
Shri Vishrov Mukerjee, SPL
Ms. Sadapurna Mukherjee, SPL
Shri Padamjit Singh, PSPCL

Record of Proceedings

The petitioner, Sasan Power Limited has filed this petition invoking Article 13.2 of the PPA read with Section 79 (1) (b) of the Electricity Act, 2003 seeking certain reliefs on account of "**Change in Law**" as under:

- (a) Increase in water charges, pursuant to the notification dated 21.4.2010 issued by the Water Resources Department, Government of Madhya Pradesh;
- (b) Increase in rate of royalty on account of Coal, pursuant to notification dated 10.5.2012 of the Ministry of Coal, Government of India;
- (c) Levy on clean energy cess by Government of India as per Finance Act, 2010 w.e.f. 1.4.2010;
- (d) Imposition of Excise Duty on coal by Government of India as per Finance Act, 2012 w.e.f. 1.4.2012;
- (e) Increase in expenditure on account of Mine Closure Plan, pursuant to notification dated 11.1.2012;
- (f) Change in income tax rates as per Finance Act, 2010 w.e.f 1.4.2012;
- (g) Increase in minimum alternate tax rates introduced in the Finance Act, 2012 w.e.f 1.4.2012;

- (h) Change in merit rate of excise duty, pursuant to notification dated 17.3.2012 issued by Ministry of Finance, Government of India;
- (i) Change in rate of Central Sales Taxes (CST), pursuant to notification dated 30.5.2008 issued by Ministry of Finance, Government of India; and
- (j) Change in Value Added Tax (VAT) rates, pursuant to notification dated 1.8.2009 issued by the Commercial Tax Department, Government of Madhya Pradesh at the Madhya Pradesh VAT Amendment dated 1.4.2010.

2. The representative of the Punjab State Power Corporation Limited (PSPCL), one of the procurers referred the issues raised in notices issued by Sasan Power Limited on 15.12.2012 and 31.12.2012 as well as the Procurers' meeting held on 29.12.2012. He submitted that Sasan Power Limited was required to follow the procedure set out in Article 17 of the PPA with respect to resolution of disputes and only once the conditions therein were satisfied, Sasan Power Limited could approach the CERC. The petitioner had not followed the procedure set out in Article 17 of the PPA before approaching the CERC and the present petition is premature. In response, learned counsel for the petitioner submitted that the current petition invokes Section 79(1)(b) of the Electricity Act read with Article 13 of the PPA and only deals with certain changes in law in the operating period. He clarified that the claims made in the petition fall under Article 13.2 (b) of the PPA. Learned counsel further submitted that under Article 13.2(b) of the PPA, only the CERC has the right to determine the compensation to be awarded for change in law. He drew a distinction between Article 13.2 (b) of the PPA and Article 13.2(a) of the PPA which specifically provides for recourse to Article 17 of the PPA in case of a dispute as to change in law during the construction period.

3. The representative of the PSPCL submitted that change in law had been raised in the notices dated 15.12.2012 and 31.12.2012 and therefore, the subject matter of the petition and the aforesaid notices was the same. In response, learned counsel submitted that the present petition deals only with changes in law during the operating period and does not deal with any of the issues which have been raised in the notices relied upon by representative of the PSPCL.

4. The representative of the PSPCL further submitted that as the project has not achieved commercial operation, the petition is premature. In response, learned counsel submitted that the reason for filing the petition at this stage is to get clarity on the changes in law which would affect the project in the operating period and the petition is not premature.

5. After hearing the learned counsel of the petitioner and representative of PSPCL, the Commission admitted the petition and directed to issue notice to the respondents.

6. Accordingly, the Commission directed the petitioner to serve copy of the petition on the respondents by 15.2.2013. The respondents were directed to file their replies by 28.2.2013, with an advance copy to the petitioner, who may file its rejoinder, if any, on or before 8.3.2013.

7. The petition shall be listed for hearing on 14.3.2013.

By order of the Commission,

**Sd/-
(T. Rout)
Joint Chief (Law)**