

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 155/MP/2012**

**Sub:** Application under Section 79 of the Electricity Act, 2003 evolving a mechanism for Regulating including changing and/or revising tariff on account of frustration and/or of occurrence of force majeure (Article 12) and/or change in law (Article 13) events under the PPAs due to change in circumstances for the allotment of domestic coal by GOI-CIL and enactment of new coal pricing Regulation by Indonesian Government.

Petitioner : Adani Power Limited

Respondents : Uttar Haryana Bijli Vitran Nigam Limited and others.

**Petition No. 159/MP/2012**

**Sub:** Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 for establishing an appropriate mechanism to offset in tariff the adverse impact of the unforeseen, uncontrollable and unprecedented escalation in the imported coal price due to enactment of new coal pricing Regulation by Indonesian Government and other factors

Petitioner : Coastal Gujarat Power Limited.

Respondents : Gujarat UrjaVikas Nigam Limited and others.

Date of hearing : 27.6.2016

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member

**Parties Present:**

Ms. Pinky Anand, Additional Solicitor General, MSEDCL  
Ms. Ramni Taneja, Advocate, MSEDCL  
Ms. Kiran Gandhi, Advocate, MSEDCL  
Shri A.S. Chavan, MSEDCL  
Shri Satish Chavan, MSEDCL  
Shri S.K. Nair, Advocate, GUVNL  
Shri Nitish Gupta, Advocate, GUVNL  
Shri G. Umamathy, Advocate, HPPC & Rajasthan Discoms  
Ms. R. Mekhala, Advocate, HPPC & Rajasthan Discoms  
Shri Saurav Suman, HPPC  
Shri Vikrant Saini, HPPC  
Shri Ravi Juneja, HPPC

Shri Amit Kapur, Advocate, APL  
Ms. Poonam Verma, Advocate, APL  
Shri Malav Deliwala, APL  
Shri Jatin Jalundhwala, APL  
Shri Gaurav Dudeja, Advocate, APL  
Shri Bijay Kumar Mohanty, CGPL  
Shri Abhay Kumar, CGPL  
Shri Anand K. Ganesan, Advocate, PSPCL  
Ms. Ranjitha Ramachandran, Advocate, Prayas Energy  
Ms. Anushree Bardhan, Advocate, Prayas Energy  
Ms. Poorva Saigal, Advocate, Prayas Energy  
Shri Shubham Arya, Advocate, Prayas Energy

### **Record of Proceedings**

Learned counsel for Prayas Energy Group submitted a copy of the Consolidated Submissions on the impact of Indonesian Regulation based on the details available on record including KPMG Report in the case of Coastal Gujarat Power Ltd. (“**CGPL**”). Learned counsel submitted that the written submissions also includes certain working based on KPMG report.

2. Learned counsel for Haryana Utilities in Adani’s case referred to paras 163, 276, 283, 292, 303 and 307 of APTEL’s Judgment dated 7.4.2016 and submitted that APTEL remanded the matter to the Commission first to assess the impact of Indonesian Regulation and then evaluate the relief to be given to Adani Power in terms of the PPA. Learned counsel referred to Record of Proceeding dated 26.4.2016 and paras 8 and 9 of the Submissions dated 11.5.2016 filed by Adani Power. Learned counsel for Haryana Utilities submitted as under:

(a) Figures of domestic coal used and energy scheduled by Adani Power should be verified by the Commission. Adani Power has only given hypothetical figures and is required to submit factual information. Haryana Utilities would make detailed submissions once information is filed by Adani Power.

(b) Adani Power is bound by its affidavit dated 8.5.2015 filed before ATE and is required to file actual figures regarding domestic coal.

(c) Impact of FERV should be borne by the generator and no compensation on account of FERV is admissible. The Commission should work out methodology for deciding the pricing of coal. Actual profit from Indonesian mines on account of promulgation of Indonesian Regulation needs to be shared.

(d) SHR should be considered after ascertaining actual design rate and margin as per the Commission`s regulations. GCV of imported coal should be certified by Third Party Sampling Agency.

(e) The Commission may consider all possible options to reduce fuel cost including usage of low grade coal to the extent possible considering technical limits. The Commission may approve the amount of impact for past period along with formula for future period.

(f) Operational parameters should not in any event be inferior to those decided for Gujarat.

(g) Prayas` submission that profit of one PPA can be adjusted in other PPA is not acceptable. Benefit of Gujarat should not be adjusted against Haryana PPA. Gujarat and Haryana have separate PPAs and impact on both PPAs are different.

3. Learned counsel for GUVNL in Adani`s case submitted as under:

(a) PPA is binding on the parties and relief is required should be given strictly in terms of Article 12.7 of the PPA.

(b) The Commission should carry out prudence check. Since, GUVNL is not aware of the parameters considered by Adani Power at the time of the bid, Adani Power should be directed to file the same before the Commission.

(c) SHR should be considered as 2299.75 (2150.27 kcal/kwh with Auxiliary 6.5%) as approved by GERC. Adani Power has been claiming impact of Clean Energy Cess on the basis of said SHR.

(d) Since it is an extraordinary situation, Adani Power should not get benefit on account of Indonesian Regulation. Therefore, the benefits by Adani group from all the mines owned by it in Indonesia due to promulgation of Indonesian Regulation should be adjusted in the relief being claimed by Adani Power.

4. Learned counsel for Haryana Utilities in CGPL`s case submitted as under:

(a) Learned counsel referred to paras 10 and 11 of affidavit dated 11.5.2016 and submitted by CGPL and submitted that CGPL has not furnished any information with regard to actual impact.

(b) Learned counsel Referred to Paras 10 and 11 of the Reply filed by Haryana and submitted that assignment was done by Tata in favour of CGPL in 2011 whereas Indonesian Regulation was promulgated in 2010.

(c) The APTEL held that promulgation of Indonesian Regulation is a Force Majeure and did not decide the impact of the same.

(d) Additional benefit that CGPL's group company is getting due to promulgation of Indonesian Regulation should be adjusted from the relief to be granted to CGPL.

(e) Relief should be given strictly as per Article 12.7 of the PPA.

5. Learned counsel for Punjab in CGPL's case submitted as under:

(a) As per para 307 of Full Bench Judgment, the Commission is required to consider two things, namely (i) assessment of the impact of Indonesian Regulation; and (ii) Relief as available under the PPA.

(b) CSA was executed subsequent to submission of the bid. As per CSA, 5.85 MT of coal was earmarked for Mundra UMPP. Out of the above, 55% was at a discounted price of USD 32 for five years with an escalation of 2.5% per annum. The remaining 45% of coal was escalable at the rate notified by the Commission. Therefore, only 3.21 MT which was at discounted price for first 5 years is eligible for relief. No relief can be given with regard to remaining quantum of coal.

(c) As per Para 29 of CGPL's affidavit dated 11.5.2016, CGPL has stated that it will provide the details once methodology is finalised by the Commission. CGPL ought to have filed complete information and only then CGPL's claim can be considered.

(d) CGPL has invoked Article 12.3, 12.4, 12.7, 13.2 and 17.3 of the PPA read with Clause 5.17 of Competitive Bidding Guideline and Section 73 of Contract Act to seek the relief. As per Articles 12.3 to 12.6, CGPL is not entitled for any relief. CGPL is also not entitled for relief under 12.7 (b) since it has voluntarily stated that it will not claim relief regarding non-performance of the PPA.

(e) The claim of CGPL is virtually under Article 13.2 which cannot be granted since its claim regarding Change in Law has been rejected by Full Bench Judgment. Since, the PPA provides different relief for Force Majeure

and Change in Law, CGPL cannot seek relief provided for Change in Law in case of Force Majeure.

(f) Article 17.3 of the PPA provides for Forum for adjudication of disputes and is not a substantive clause for granting any relief.

(g) Section 73 of the Contract Act is not applicable since the said provision relates to a situation when a party is in breach which is not the case here.

(h) Just because the matter has been remanded by APTEL, the relief is necessarily to be granted to CGPL. Relief should be granted as per the provisions of the PPA.

6. Learned senior counsel for MSEDCL handed over copy of the reply on behalf of MSEDCL in CGPL's case. Learned counsel for CGPL requested for time to file rejoinder which was allowed. Learned counsel for GUVNL in CGPL's case submitted that like Adani Power, CGPL should also be directed to file all the information since GUVNL is not aware of the parameters considered by CGPL at the time of the bid. The relief is required to be given strictly in terms of Article 12.7 of the PPA.

7. Learned counsel for Rajasthan Discoms submitted that reply has already been filed. The Commission directed the petitioner to file their rejoinder before next date of hearing. The Commission directed the Rajasthan Discoms to make their submissions on 1.7.2016 along with MSEDCL's submissions.

8. The Commission directed that the matter shall listed for hearing on 1.7.2016 as already fixed for rejoinder submissions and submissions of MSEDCL and Rajasthan Utilities.

**By order of the Commission**

**SD/-  
(T. Rout)  
Chief (Law)**