

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

DATE OF HEARING: 13.9.2018

Petition No.305/MP/2015

Petitioner : Adhunik Power and Natural Resources Limited (APNRL)

Respondents : West Bengal State Electricity Distribution Company Limited and Others

Subject : Petition under Section 79 of the Electricity Act, 2003 read with the provisions of the Power Supply Agreement dated 5.1.2011 and Power Purchase Agreement dated 25.3.2011 for directions to make Energy Charges as pass through based on the actual fuel cost incurred by the Petitioner

Petition No.255/MP/2017

Petitioner : Adhunik Power and Natural Resources Limited

Respondents : West Bengal State Electricity Distribution Co. Ltd. and Others

Subject : Petition under Section 79 (1)(b) and 79 (1)(f) of the Electricity Act, 2003 read with Article 10 of the PPA seeking compensation on account of events pertaining to "Change in Law" as per the Power Purchase Agreement (PPA) dated 25.3.2011 executed between the Petitioner and the Respondent No. 2 and as per the terms of the Power Supply Agreement (PSA) dated 5.1.2011 executed between Respondent No.1 and Respondent No. 2.

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Parties present : Shri Amit Sibal, Senior Advocate, APNRL
Shri Tejas V. Anand, Advocate, APNRL
Shri Deepak Khurana, Advocate, APNRL
Shri Aditya Swaroop, APNRL
Shri K. Manoraj, APNRL
Shri Ramandeep, APNRL
Shri Smarajit Sahoo, APNRL
Shri Vishrov Mukherjee, Advocate, WBSEDCL
Ms. Raveena Dhamija, Advocate, WBSEDCL
Shri Janmali M., Advocate, WBSEDCL
Shri Aashish Anand Bernad, Advocate, PTC India
Shri Paramhans, Advocate, PTC India
Shri S. Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

Learned senior counsel for the Petitioner argued at length and submitted that the Petitioner has set up a 540 MW thermal power plant (generation project) in District



Saraikela, Kharsawan in Jharkhand consisting of two units of 270 MW each. The units of the generation project of the Petitioner were put under commercial operation on 21.1.2013 and 19.5.2013, respectively. On 5.1.2011, WBSEDCL entered into PSA with PTC on 5.1.2011 and PTC in turn entered into PPA with the Petitioner on 25.3.2011. The Petitioner was allocated Ganeshpur coal block in the State of Jharkhand jointly with Tata Steel. Subsequently, the Hon`ble Supreme Court vide its judgments dated 25.8.2014 and 29.4.2014 cancelled the Ganeshpur coal block. Government of India, Ministry of Power vide its letter dated 31.7.2013 directed Electricity Regulatory Commissions to take necessary actions to implement the decision with regard to impact on tariff in the concluded PPA due to shortage of domestic coal availability. Accordingly, the Petitioner has been raising supplementary bills for the power supplied to WBSEDCL based on actual energy charge vis-a-vis the PPA energy charge of Rs. 0.951/kWh with request to take up the cost escalation with WBSEDCL/WBSERC and make fuel as pass through based on the directions of the Government of India. The Petitioner gave notice to the respondents about change in law events in terms of Article 10.3 of the PPA. However, WBSEDCL rejected the Petitioner's claim on the ground that the claim of additional fuel cost is not in terms of the PPA dated 5.1.2011. Accordingly, the present petition has been filed for seeking direction to the respondents to pay the energy charges on the basis of actual landed cost of coal from alternate sources. Learned senior counsel referred the Hon'ble Supreme Court judgements dated 25.8.2014 and 24.9.2014 in ManoharLal Sharma Vs. Private Secretary and Others, Coal Mines (Special Provisions) Act, 2015 and Ordinances issued by the Government of India and submitted that as per Article 10.1 (b), (c) and (d) of the PPA, the Petitioner's case is covered under change in law events.

2. Learned counsel for West Bengal State Electricity Distribution Company Limited (WBSEDCL) submitted that the PSA does not specify the source of fuel. As per Article 2.2 of the PSA, WBSEDCL is liable to pay only the capacity charges, non-escalable energy charges and escalable energy charges. Learned counsel further submitted that since the Petitioner has consciously opted for entering into the present arrangement on negotiated basis, the Petitioner is bound by the terms of the agreement between the parties. Learned counsel requested the Commission to direct the Petitioner to submit the details of average price of coal/cost of production of coal from captive coal block vis-a-vis price quoted in the re-auction on the same coal block. Learned counsel requested the Commission to adjourn the matter due to paucity of time.

3. Learned counsel for WESEDCL submitted that the Petition No. 255/MP/2017 is directly connected with the Petition No. 305/MP/2015, both the Petitions may be listed for hearing together.

4. The Petitions shall be listed for hearing in due course for which separate notice will be issued to the parties.

By order of the Commission

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