

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 88/MP/2018

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding (Competitive Bidding Guidelines) and (a) PPA dated 17.3.2010 between Maharashtra State Electricity Distribution Company Ltd. and EMCO Energy Limited.

Date of Hearing : 17.9.2018

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

Petitioner : GMR Warora Energy Limited (GMRWEL)

Respondents : Maharashtra State Electricity Distribution Company Limited and Others

Parties present : Shri Vishrov Mukherjee, Advocate, GMRWEL
Ms. Raveena Dhamija, Advocate, GMRWEL,
Ms. Rimali Batra, Advocate, GMRWEL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present petition has been filed for seeking clarification of the operational parameters, namely Auxiliary Power Consumption, Station Heat Rate and Gross Calorific Value, and components of Service Tax on transportation of coal for calculation of compensation on account of Change in Law events either on actual basis or on bid assumed parameters in terms of order dated 1.2.2017 in Petition No.8/MP/2014 and Article 10 of the PPA dated 17.3.2010. Learned counsel further submitted as under:

- a) Pursuant to order dated 1.2.2017, the Petitioner has been computing the change in law compensation based on actual parameters and raising invoices accordingly. However, MSEDCL has unilaterally deducted Rs 27.46 crore from the invoices raised by the Petitioner. .
- b) The contention of MSEDCL that the appropriate Commission in the present Petition is Maharashtra Electricity Regulatory Commission is not sustainable as the Commission in its order dated 1.2.2017 has held that the Petitioner has a composite scheme and MSEDCL has not filed appeal against the said order.

c) The Petitioner is calculating the compensation considering actual GCV on as received basis. However, MSEDCL is calculating GCV on as billed basis. The mechanism adopted by MSEDCL by referring GCV as to the average GCV as given in LOA/FSA has no basis and is contrary to the principle behind compensation for a change in law event and thus, is contrary to the provisions of the PPA.

d) The Petitioner for the purpose of calculation of compensation has taken actual SHR on monthly basis whereas MSEDCL is considering SHR as per the bid document submitted to MSEDCL. SHR submitted by the Petitioner does not form part of the quoted tariff of the PPA. The PPA has primacy and SHR submitted for the limited purpose of bid preparation cannot override the petitioner's express right to be restored to the same economic position.

e) The Appellate Tribunal for Electricity in the case of Wardha Power Company Limited versus Reliance Infrastructure Limited has held that in order to restore the affected party to the same economic position, compensation for change in law claims has to be such, so as to reimburse the affected party for the expenses actually incurred.

f) The Appellate Tribunal for Electricity in the case of GMR Warora Energy Limited versus Central Electricity Regulatory Commission has held that increase in Busy Season Surcharge and Development surcharge are change in law event. Therefore, MSEDCL is also required to pay for the service tax on railway freight which takes into account all these components.

g) MSEDCL has not disputed the bills but unilaterally deducted amounts from bills which is not permitted under the PPA. Therefore, MSEDCL is liable to pay late payment surcharge in terms of Articles 8.3.5 and 8.8.3 of the PPA.

2. Learned counsel for MSEDCL submitted as under :

a) The GCV cannot be considered on 'as fired basis' but it has to be considered on 'as received basis'. MSEDCL has cleared all the bills raised by the Petitioner.

b) MSEDCL has paid Service Tax and Swachh Bharat Cess in accordance the order dated 1.2.2017 in Petition No. 8/MP/2014 considering the following points :

(i) The change in law invoices are considered for the actual energy supplied as per injection data by REA.

(ii) Linkage coal GCV and other domestic coal GCV is taken as 4150/kcal/kg throughout whereas imported coal GCV is considered as weighted average GCV.

(iii) SHR is considered at 2211/kCal/ kwh.

(iv) The Commission has approved various components under change in law as per the provisions of the PPA provisions during the operating period and construction period i.e. seller commences supply of the aggregate contracted capacity.

c) MSEDCL PPA does not permit late payment surcharge. Therefore, the Petitioner's claim of late payment surcharge is outside the scope of the PPA.

3. After hearing the learned counsels for the petitioner and respondent, the Commission reserved the order in the petition.

By order of the Commission

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