

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**I.A. No. 26/2017 in  
Petition No.157/MP/2015**

**Coram:**  
**Shri A.K. Singhal, Member**  
**Shri A.S. Bakshi, Member**  
**Dr. M.K. Iyer, Member**

**Date of Order: 29<sup>th</sup> of January, 2018**

**In the matter of**

Interlocutory Application seeking clarification/ modification of Order dated 17.3.2017 in  
Petition No. 157/MP/2015.

**And**

**In the matter of**

Coastal Gujarat Power Limited  
C/o The Tata Power Company Limited,  
34, Sant Tuka Ram Road, Carnac Bunder,  
Mumbai-400 021

**...Applicant**

**Vs.**

1. Gujarat Urja Vikas Nigam Ltd.  
Sardar Patel Vidyut Bhavan, Race Course,  
Vadodara – 390 007, Gujarat
2. Maharashtra State Electricity Distribution Company Ltd.  
4<sup>th</sup> Floor, Prakashgad, Plot No. G-9,  
Bandra (East), Mumbai-400 051, Maharashtra
3. Ajmer Vidyut Vitaran Nigam Ltd.  
Hathi Bhata, Old Power House,  
Ajmer, Rajasthan
4. Jaipur Vidyut Vitaran Nigam Ltd.  
Vidyut Bhawan, Janpath,  
Jaipur, Rajasthan
5. Jodhpur Vidyut Vitaran Nigam Ltd.  
New Power House, Industrial Area,  
Jodhpur, Rajasthan

6. Punjab State Power Corporation Limited,  
PP&R, Shed T-1, Thermal Design,  
Patiala – 147 001

7. Uttar Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Plot No.C-16, Sector 6,  
Panchkula – 134 112, Haryana

8. Dakshin Haryana Bijli Vitran Nigam Limited,  
Vidyut Nagar, Vidyut Sadan,  
Hissar, Haryana- 125005

.....Respondents

**Parties Present:**

Shri Apoorva Mishra, Advocate for the Applicant  
Shri Tushar Nagar, Advocate for the Applicant  
Shri G. Umamathy, Advocate, MSEDCL  
Ms. Swapna Seshadri, Advocate, PSPCL  
Ms. Ranjitha Ramachandran, Advocate, GUVNL

**ORDER**

The Applicant, Coastal Gujarat Private Limited, has filed the present Interlocutory Application under Section 94(1)(g) of the Electricity Act, 2003 read with Regulations 17, 111 to 113 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 for seeking clarification/ modification of order dated 17.3.2017 in Petition No. 157/MP/2015 and for a declaration that the increase in Gujarat VAT constitutes Change in Law events in terms of Article 13 of the PPA read with Clause 4.7 of the Competitive Bidding Guidelines.

2. The Applicant has filed Petition No. 157/MP/2015 seeking compensation under Change in Law for various claims including the claim on account of increase in Gujarat Value Added Tax (Gujarat VAT) during the operating period. The Commission vide order dated 17.3.2017 in Petition No. 157/MP/2015 disallowed the said claim in the light of earlier the decision dated 30.3.2015 in Petition No. 6/MP/2013 (Sasan Power Limited Vs.



Madhya Pradesh Power Management Company Ltd. and others). The Commission further took note of the fact that the appeal against the order dated 30.3.2015 in Petition No. 6/MP/2013 was pending before the Appellate Tribunal for Electricity (Appellate Tribunal) in Appeal No. 161 of 2015 and made the decision with regard to Gujarat VAT in the order dated 17.3.2017 in Petition No. 157/MP/2015 subject to the final outcome of the appeal.

3. Subsequently, the Appellate Tribunal vide its judgement dated 19.4.2017 in Appeal No. 161 of 2015 held that VAT is covered under Change in Law in terms of the provisions of the PPA. In the light of the Judgment of the Appellate Tribunal, the Applicant has sought relief in respect of Gujarat VAT as an event under Change in Law. The Applicant has made the following prayers:

“(a) Allow the present Applications and clarify/ modify its Order dated 17.03.2017 by allowing CGPL’s claim that increase in Gujarat VAT constitutes Change in Law event in terms of the Article 13 of the PPA read with Clause 4.7 of the Competitive Bidding Guidelines.

(b) Modify Para 55 of its Order dated 17.03.2017 to incorporate increase/ Change in Gujarat VAT in the mechanism devised for computing the payment of compensation on account of all such Change in Law events, including Gujarat VAT.

(c) Pass any other or further order(s) as this Hon'ble Commission deems fit in the facts and circumstances of the case.”

4. Notice issued to the respondents to file the reply. Maharashtra State Electricity Distribution Company Limited (MSEDCL) has filed reply to the IA.

5. In response to the IA, MSEDCL in its reply dated 17.7.2017 has submitted that the Applicant has quoted its price as per the Competitive Bidding Guidelines for the contract period of 25 years and it is a known fact that all the factors are not static and are bound to change during the contract period. Therefore, as per Article 13 of the PPA, only those

costs which have a nature of 'Change in Law' shall be allowed for appropriate adjustment in tariff. MSEDCL has further submitted that as per the APTEL's judgment the facts are different and qualification of event as change in law depends on facts of each case and actualities and need to be studied before granting the relief. MSEDCL has submitted that the RfP, PPA, Competitive Bidding Guidelines and National Tariff Policy have to be read together to qualify the event as Change in Law and the claim of the Applicant for reimbursement of the impact on account of Gujarat VAT would not fall under the Change in Law and should be disallowed accordingly.

6. We have considered the submissions of the Applicant and MSEDCL. The Applicant had approached the Commission under Article 13 of the PPA dated 22.4.2007 for compensation on account of the additional expenditure incurred due to Change in Law events during the operating period which included increase in Gujarat VAT. The Commission, after considering the submissions of the parties, vide order dated 17.3.2017 in Petition No. 157/MP/2015 rejected the Applicant's claim as under:

"38. We have considered the submissions of the petitioner and MSEDCL. The Commission vide order dated 30.3.2015 in Petition No. 6/MP/2013 did not allow the increase in VAT. Relevant portion of the said order is extracted as under:

"49. We have considered the submissions made by the petitioner and the respondents. Government of India, Ministry of Finance Notification dated 17.3.2012 notifying the change in excise duty, Notification dated 30.5.2008 notifying the change in rate of Central Sales Tax and Madhya Pradesh VAT (Amendment) Act, 2010 notifying the changes in VAT rates are not covered under "Change in Law". The quoted tariff according to provisions of Para 2.7.1.4.3 of the RFP shall be an inclusive one including statutory taxes, duties and levies. Therefore, the petitioner was expected to take into account all cost including capital cost and operating cost, statutory taxes, duties levies while quoting tariff in the bid. Therefore, the "Change in Law" in this respect is not admissible."

39. In the light of the decision as quoted above, the claim of the petitioner for reimbursement of the impact on account of revision in Gujarat VAT rate under change in law is not admissible and is accordingly disallowed. The decision of the Commission disallowing claim of the Petitioner for reimbursement of VAT has been challenged by Sasan Power Ltd. in the Appellate Tribunal for Electricity in Appeal No. 161 of 2015. Our

decision in Para 38 above shall be subject to the final outcome of the appeal on this point.”

7. Subsequently, the Appellate Tribunal vide its judgment dated 19.4.2017 in Appeal No. 161 of 2015 (Sasan Power Limited Vs. CERC & others) has held that change in rate of VAT is allowed as Change in Law in terms of the provisions of the PPA. Relevant portion of the said judgment is extracted as under:

“43..... So far as VAT is concerned, it is levied on procurement of materials by the seller. Therefore, it affects the cost of business of generation and sale of electricity. Hence, the CERC has erred in disallowing increase in VAT by the Madhya Pradesh Government.

44. It is true that according to the provisions of the RFP, the quoted tariff shall be inclusive one including statutory taxes, duties and levies. But the PPA gives express right to an affected party to claim Change in Law if the event qualifies thus in terms of Article 13. The RFP cannot override this right if an event qualifies as a Change in Law. The Competitive Bidding Guidelines (Article 4.7 thereof has already been reproduced hereinabove) and the PPA have to be read together. If an event qualifies as a Change in Law event then the compensation must follow because otherwise Article 13 of the PPA will become redundant. But, this will of course depend on facts and circumstances of each case. Facts of each case will have to be carefully studied before granting such a relief. It is rightly pointed out that in Wardha Power Company Limited, this Tribunal has rejected the obligation of any escalable index or indexing of cost of fuel in order to determine the compensation due on account of Change in Law. Sasan will have to be compensated keeping the law in mind.

46. Having regard to the nature of Excise Duty and Central Sales Tax and VAT which have an impact on the cost of or revenue from the business of generation and sale of electricity, in our opinion, the same should be allowed as Change in Law event....”

8. The PPAs in case of Sasan Power Ltd. and CGPL are based on the Standard Bidding Documents for UMPP notified by the Ministry of Power, Govt. of India under Section 63 of the Act. Once the VAT is allowed under Change in Law in case of Sasan Power Ltd., the same cannot be denied in case of the Applicant. It is further pertinent to mention that the Commission had also in its order dated 7.4.2017 in Petition No.112/MP/2015 [GMR Kamalanga Energy Limited Vs. Bihar State (Holding) Company Limited and others] and order dated 1.2.2017 in Petition No. 8/MP/2014 [Emco Energy

Limited/GMR Warora Energy Limited Vs. Maharashtra State Electricity Distribution Limited and others] allowed change in the rate of VAT under Change in Law. Therefore, change in rate of Gujarat VAT is allowable under Change in Law in terms of the PPA.

9. The Petitioner has submitted that at the time of bidding, Gujarat VAT payable on fuel oil, plant, machinery and spares was 4% or 12.50% depending on the category in which the consumables fall into under the Gujarat Value Added Tax. However, Government of Gujarat in the year 2008 amended the Gujarat Value Added Tax Act, 2003 and increased the rate of value added tax on fuel oil, plant and machinery and spares to 5% or 15% respectively. Since, increase in the rate of VAT is pursuant to the amendments of Gujarat Value Added Tax (Amendment) Act, 2008 by the Government of Gujarat, the same (difference between the new and old rates) qualifies as Change in Law event. The Applicant is directed to furnish the proof of actual payment of Gujarat VAT duly certified by the Statutory Auditor to the Procurers while claiming the compensation under Change in Law. It is clarified that the Applicant shall be entitled to recover actual Gujarat VAT (differential) paid in case of consumables and spares of plant and machineries which are used for generation and supply of power to the Procurers during operation period. In case of fuel oil, the relief shall be admissible proportionate to the scheduled generation or actual generation, whichever is lower at bid parameter or actual, whichever is lower, for supply of electricity to the Procurers.

10. The above compensation shall be admissible for the period up to 30.6.2017.

11. I.A. No. 26/2017 stands disposed of in terms of the above.

Sd/-  
**(Dr. M.K. Iyer)**  
**Member**

sd/-  
**(A.S. Bakshi)**  
**Member**

sd/-  
**(A.K. Singhal)**  
**Member**