

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 69 of 2018
in
Petition No. 131/MP/2018**

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

Date of Order: 11th of September, 2018

In the matter of

Sasan Power Limited

..... **Petitioner**

Vs.

MP Power Management Company and others

.....**Respondents**

**And
In the matter of**

Interlocutory Application by the Petitioner seeking appointment of Independent Consultant/Institution

The following were present:

Shri Sajan Porvayya, Senior Advocate, SPL
Shri Vishrov Mukherjee, Advocate, SPL
Shri Janmali M., Advocate, SPL
Shri Virender Shkula, SPL
Shri Abhimayu Das, SPL
Shri M.G.Ramachandran, Advocate, Rajasthan Discoms, PSPCL and HPPC
Ms. Anushree Bardhan, Advocate, Rajasthan Discoms, PSPCL and HPPC
Shri Rajiv Srivastava, Advocate, UPPCL
Ms. Garima Srivastava, Advocate, UPPCL
Ms. Gargi Srivastava, Advocate, UPPCL

ORDER

The Petitioner, Sasan Power Limited, has filed the Petition under section 79 of the Act read with Competitive Bidding Guidelines and provisions of the PPA dated 7.8.2007 with the following prayers:

“(a) Approve the Optimized Mitigation Plan;

(b) Direct the Respondents to compensate the Petitioner for additional expenditure and to be incurred as a consequence of unavailability of the sufficient OB Dump land and implementation of the Optimized Mitigation Plan;

(c) Award interest and carrying cost on the expenditure incurred and to be incurred by the Petitioner;

In the interim:

(d) If found fit and proper in circumstances of the present case, direct Respondents and the Petitioner to appoint an independent expert/ institution to validate the Optimized Mitigation Plan, estimate of financial impact and tariff recovery and submit its findings to the Commission within a defined time-frame.”

2. The Petitioner has filed the present Interlocutory Application (IA) for seeking appointment of an Independent Consultant for validation of Optimized Mitigation Plan of Sasan Power Limited (SPL) for dumping of the over-burden from the mines. The Petitioner has submitted that as per the bidding documents, it is the responsibility of the Procurers to make the land available for dumping of the overburden from the mines. Since the identified land in question could not be made available by the Procurers, the Petitioner has devised an Optimized Mitigation Plan and during the Procurer`s meetings held on 18.1.2017, 18.9.2017, 27.2.2018 and 14.4.2018, the Petitioner placed a formal proposal before the Procurers for approval of the Optimized Mitigation Plan. However, the issue could not be resolved amicably and the Petitioner has approached the Commission by way of the present petition. The Petitioner has submitted that during the process of the present proceedings, the Petitioner is seeking approval to appoint an independent consultant to examine and validate the Optimized Mitigation Plan which will assist the Commission to take an informed decision on the proposal of the Petitioner.

3. IA was heard after notice to the Petitioner. Learned senior counsel for the Petitioner submitted that the Petitioner has put in relentless efforts to resolve the issue of non-availability of adequate land for dumping of overburden externally for last ten

years. The Petitioner interacted with the Procurers for a period for over 16 months since January, 2017 in this regard. However, the Procurers have not been able to resolve the issue so far. After the admission of the present petition, the Petitioner vide its letter dated 13.7.2018 requested lead procurer, namely MPPMCL, to appoint an independent consultant to expedite the process of validation of the Petitioner`s Optimized Mitigation Plan without prejudice to the rights and contentions of the procurers. In response, MPPMCL vide its letter dated 25.7.2018 stated that since the present petition is *sub-judice* before the Commission, it is not possible to proceed with the appointment of the Independent consultant/institution. Learned senior counsel further submitted that as per Regulation 76 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, the Commission is empowered to take assistance of any institution, consultant, experts and other such technical and professional persons as it may consider necessary to investigate, study, inquire into any matter or issue.

4. Learned senior counsel submitted that validation and analysis by an independent consultant will expedite the process. Learned senior counsel submitted that the Petitioner proposed the names of reputed academics/research institutions (Central Mine Planning and Design Institute, Ranchi, Indian School of Mines, Dhandbad, Indian Institute of Technology, Khargpur and Indian Institute of Technology, Varanasi) for consultancy job and the Petitioner is also willing to bear the professional fees as well as other related expenses of the consultant. Learned senior counsel submitted that since the validation of the Optimized Mitigation Plan is without prejudice to the rights of the parties, no prejudice will be caused to the Procures for agreeing to the proposal to appoint an independent consultant for analysis and validation of the Optimized Mitigation Plan.

5. Learned counsel for Rajasthan Discoms, PSPCL and HPPC submitted that the issue whether non-availability of land for over-burden is an event of change in law needs to be first decided before proceeding in the matter. The Procurers cannot agree to either the Optimized Mitigation Plan or the need for appointment of a consultant for analysis and validation of such plan unless it is decided that the liability to bear the expenditure management of overburden from the mines is that of the Procurers in terms of the PPA.

6. We have considered the submission of the parties. The Petitioner has filed the petition under section 79 of the Act read with the Competitive Bidding Guidelines and the provisions of the PPA dated 7.8.2007 seeking revision of tariff and compensation on account of increased cost incurred by the Petitioner for management of overburden on account of Procurers' Event of Default in terms of the PPA. This is an adjudication matter which has to be decided after completion of pleadings and after hearing the parties. Learned senior counsel submits that pending adjudication of the main petition, appointment of a consultant to validate its Optimized Mitigation Plan may be approved by the Commission so that the consultant's report is available to assist the Commission to take an informed decision with regard to the management of overburden. Learned counsel for Rajasthan Discoms, PSPCL and HPPC opposes the request as pre-mature since Change in Law has not been adjudicated and decided in favour of the Petitioner. In our view, the Commission cannot at this stage direct the Petitioner and the Respondents to refer the matter to an independent expert/institution for validation of the Petitioner's proposed Optimized Mitigation Plan without first deciding the issue raised in the main petition i.e. the Petitioner needs to be compensated for managing the

overburden on account of Procurer's event of default. Therefore, the prayers in the IA are rejected. It is, however, clarified that the Petitioner, as the lessee of the captive mines, is at liberty to appoint an independent consultant at its own cost for validation of the proposed Optimized Mitigation Plan and keep the Procurers informed of the same.

7. The IA. No.69/2018 in Petition No.131/MP/2018 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson