

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 77 of 2018
in
Petition No. 284/MP/2018**

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

Date of Order: 26th of November, 2018

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 10 of the Power Purchase Agreements dated 17.3.2010 and 21.3.2013 executed between GMR Warora Energy Limited the Distribution Companies in the States of Maharashtra and Dadra and Nagar Haveli respectively for compensation due to change in law.

**And
In the matter of**

GMR Warora Energy Limited
701/704, 7th Floor, Naman Centre
A-Wing, Bandra Kurla Complex,
Bandra, Mumbai-400 051

..... **Petitioner**

Vs.

Maharashtra State Electricity Distribution Company Limited
Fifth Floor, Prakashgadh, Plot No. G-9,
Anant Kanekar marg, Bandra (East)
Mumbai-400 051

Electricity Department,
Union Territory of Dadra and Nagar Haveli
Vidyut Bhavan, Opposite Secretariat,
Silvassa, Dadra and Nagar Haveli-396 230

.....**Respondents**

**And
In the matter of**

Interlocutory Application for seeking interim relief

The following were present:

Shri Vishrov Mukherjee, Advocate, GMRWEL

Ms. Raveena Dhamija, Advocate, GMRWEL
Shri Yashawi Kant, Advocate, GMRWEL
Ms. Shruti Awashti, Advocate, MSEDCL
Shri M. G. Ramachandran, Advocate, Prayas
Shri Shubam Arya, Advocate, Prayas
Ms. Poorva Saigal, Advocate, Prayas
Shri Pulkit Agarwal, Advocate, Prayas

ORDER

The Applicant, GMR Warora Energy Limited, has filed this Interlocutory Application seeking direction to the Respondents to pay the entire amount payable in respect of Busy Season Surcharge and Development Surcharge and 75% of the compensation amount claimed with respect to the other claims, namely shortfall in linkage coal, change in coal quality and carrying cost, indicated in the petition for the past period within one month and also commence monthly payment in accordance with the PPA, subject to adjustment on final determination of relief by the Commission.

2. The brief background of the case is that the Applicant had filed the Petition No. 8/MP/2014. The Commission in its order dated 1.2.2017 disallowed compensation on certain change in law events claimed by the Petitioner. Aggrieved by the decision of the Commission, the Petitioner filed appeal before the Appellate Tribunal for Electricity (hereinafter referred to as 'the Appellate Tribunal'). The Appellate Tribunal vide its order dated 14.8.2018 in Appeal No. 111 of 2017, remanded back the matter to the Commission to pass consequential orders regarding Busy Season Surcharge, Development Surcharge, MOEF Notification on coal quality, change in NCDP and Carrying Cost. The Applicant has filed the Petition No. 284/MP/2018 pursuant to the direction of the Appellate Tribunal for seeking compensation on account of changes in coal quantity due to deviation in NCDP and subsequent notifications by Government of

India, seeking directions to the Respondents for payment of amounts due towards Busy Season Surcharge and Development Surcharge, and restore the Petitioner to the same economic position in terms of the Article 10 of the PPAs.

3. The Petitioner has submitted that Hon`ble Supreme Court in the case of Energy Watchdog has held that the shortfall in linkage coal on account of deviation in NCDP is change in law event and said position of law has also been acknowledged and confirmed by the Appellate Tribunal in its judgment dated 14.8.2018. Moreover, the Commission in its order dated 16.3.2018 in Petition No. 1 of 2017 has allowed compensation for shortfall in linkage coal. The Petitioner has submitted that since the issue of carrying cost, change in coal quality and increase in railway freight has also been settled, claim qualifying under change in law provisions of the PPAs is no longer an issue res integra and the only issue remaining to be determined is the quantum of compensation.

4. The Petitioner has submitted that the Commission in its order dated 28.9.2017 in IA. No. 57/2017 in Petition No. 97/MP/2017 in the case of Adani Power Ltd. Vs. Uttar Haryana Bijli Nigam Limited and others directed the procures to pay 75% of the amounts claimed by Adani Power Limited subject to adjustment after the final order. The Petitioner has requested to allow similar dispensation in the present case. The Petitioner has submitted that its financial position has worsened with the issuance of revised guidelines for resolution of stressed assets dated 12.2.2018 issued by the Reserve Bank of India and the said guidelines have imposed stringent conditions such as the reporting of loan default even for a day and also for initiation of steps for a resolution plan which include the same of the stressed asset.

5. IA was heard on 18.10.2018. During the course of hearing, learned counsel for the Petitioner requested the Commission to direct the respondents to pay 75% of the compensation as claimed by the Petitioner, subject to the adjustment after issue of final order in the Petition. If the payment received exceeds the amount due after issue of final order, the Petitioner shall refund the excess amount to the Respondents with 9% interest in terms of Commission's direction dated 28.9.2017 in I.A No. 57 of 2017 in Petition No. 97/MP/2017 (Adani Power Limited vs Uttar Haryana Bijli Vitran Nigam Limited and Others).

6. Learned counsel for the Respondent, MSEDCL requested for time to file reply to the IA. MSEDCL and Prayas were directed to file their replies on the I.A by 26.10.2018. However, no reply has been filed on the IA.

7. We have considered the submission of the Petitioner. The matter has been remanded to the Commission by Appellate Tribunal to consider the case of the Applicant for relief under Change in Law to the extent of computation of compensation to be paid to the Petitioner on account of changes in coal quantity due to deviation in NCDP and subsequent notifications by Government of India which have reduced the assured quantity of coal allocated to the Petitioner, change in coal quality to be used pursuant to MOEF&CC Notification dated 11.5.2017, and carrying cost, (ii) continuing shortfall of coal on account of deviation in NCDP in terms of which linkage coal has been limited to 75% of ACQ, and (iii) direction for payment of amounts due towards Busy Season Surcharge and Development surcharge.

8. Considering the fact that the Applicant has been supplying power to the respondents by arranging coal from alternative sources to the extent of shortfall in linkage coal and keeping in view the financial difficulties faced by the Applicant to arrange for working capital, we are of the view that the balance of convenience is in favour of grant of interim relief to the Applicant. If on final determination, it is found that the Applicant has received the payment in excess of the amount due, it shall be required to refund the same with interest. This will balance the interest of both the Applicant and the Respondents. Accordingly, we direct that pending issue of final order in Petition No. 284/MP2018, MSEDCL and Electricity Department, Union Territory of Dadra and Nagar Haveli shall pay the 75% of the compensation claimed by the Applicant, subject to the adjustment after issue of final order in the main petition. If the payment received in terms of the interim order exceeds the amount due after issue of final order, the Applicant shall refund the excess amount to MSEDCL and Electricity Department, Union Territory of Dadra and Nagar Haveli with 9%.

9. IA. No.77/2018 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson