

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.217/MP/2016

- Subject : Petition seeking compensation on account of Change in Law 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 Agreement dated 1.4.2013 entered into between Thermal Powertech Corporation of India Limited and Distribution Companies in the States of Andhra Pradesh and Telangana.
- Petitioner : Sembcorp Energy India Limited (SEIL)
- Respondents : Southern Power Distribution Company of Telangana Limited and Ors.
- Date of Hearing : 30.6.2020
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
- Parties present : Shri Hemant Sahai, Advocate, SEIL
Shri Nitish Gupta, Advocate, SEIL
Ms. Anukriti Jain, Advocate, SEIL
Shri Milind Nigudkar, SEIL
Shri Sriharsha Peechara, Advocate, Telangana Discoms
Shri Rakesh Sharma, Advocate, AP Discoms

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the present petition has been filed invoking Article 10 of the PPA read with Section 79 (1) (b) of the Electricity Act, 2003 seeking relief due to occurrence of Change in Law events during the operating period of the generating station, namely (a) increase in royalty on coal and additional levies (DMF and NMET levy), (b) increase in Clean Energy Cess, (c) imposition of Excise Duty on coal, (d) increase in Service Tax, (e) decrease in Customs Duty on imported coal, (f) imposition of Countervailing Duty on imported coal, (g) increase in Busy Season Surcharge, (h) increase in Development Surcharge, (i) increase in the rate of Minimum Alternate Tax, (j) increase in the Central Sales Tax and (k) imposition of coal terminal surcharge on railway freight. Learned counsel submitted that the above Change in Law events are covered by the Commission's orders and judgments of the



Appellate Tribunal for Electricity. Learned counsel submitted that as per Article 10.1.1 of the PPA, cut-off date for reckoning of any event as Change in Law event shall be seven (7) days prior to Bid deadline. Since bid deadline in the instant case was 1.10.2010, the cut-off date for reckoning a Change in Law event is 24.9.2010. Learned counsel for the Petitioner advanced extensive arguments in support of his contentions and reiterated the submissions made in his note on argument.

3. Learned counsel for the Respondent, Telangana Discoms, submitted that the Respondents have already filed their reply which may be taken into consideration. Learned counsel further submitted that the tender inviting the bid was called for in the year 2010. However, it was awarded only in the year 2013 due to certain litigations. Therefore, the Petitioner along with other bidders were asked to submit a revised bid, which was submitted by the Petitioner on 30.1.2013. Accordingly, the cut-off date ought to be considered as 24.1.2013 instead of 24.9.2010 as the Petitioner ought to have taken into consideration all Change in Law events which would have occurred prior to that date while submitting the revised bid in terms of RfP. Learned counsel submitted that the annual escalation index notified by the Commission takes into account the escalation rates for domestic coal cost/ transportation cost and imported coal cost which subsumes levies such as taxes, duties and cess, etc. Accordingly, Change in Law relief on such account ought not to be allowed. As regards MAT, it is a tax on the profit of the company as a whole and it is not expenditure on supply of electricity. Accordingly, it may not be considered as Change in Law event. Learned counsel further sought permission to file written submissions.

4. Learned counsel for the Respondents, AP Discoms, sought an adjournment on the ground that Respondents have filed Review Petitions against the Hon'ble Supreme Court's order dated 4.2.2020 in CA No. 3788-3790 of 2019 and batch and also a Misc. Application in the said CAs on the aspect of Section 64(5) of the Act, which are due for listing. Request of adjournment of the matter was rejected by the Commission as there is no stay on the operation of Hon'ble Supreme Court's order dated 4.2.2020. Learned counsel adopted the submissions made by the learned counsel for Telangana Discoms and submitted that since increase on account of taxes, levies and duties, etc. is already taken care by the escalation index specified by the Commission, the Change in Law compensation on account thereof ought not to be allowed as it would amount to double benefit to the Petitioner.

5. In response, learned counsel for the Petitioner submitted that the revised offer was submitted pursuant to negotiation and not pursuant to fresh/revised bidding. The Petitioner had offered reduction of 1 paise/kWh in bid tariff pursuant to discussion with Bid Negotiation Committee without altering or amending the bid structure. He submitted that no fresh bidding or revised bidding was conducted. Since there was no amendment to bid documents including the RfP and PPA, the bid deadline and cut-off date as stipulated therein remain the same. Learned counsel sought liberty to file written submission in this regard. Learned counsel further submitted that as regards the contention regarding escalation index, the Commission in its various orders has already rejected such arguments.



6. Based on the request of learned counsels, the Commission directed the parties to file their respective written submissions by 15.7.2020 with copy to each other.
7. Subject to above, the Commission reserved order in the Petition.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

