

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 167/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 *inter alia* seeking compensation on account of occurrence of 'Change in Law events' relating to Power Purchase Agreements dated 18.12.2013 and 19.12.2013 entered into between the Petitioner and the Respondents.

Date of Hearing : 2.12.2021

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Adhunik Power and Natural Resources Limited (APNRL)

Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Anr.

Parties Present : Shri Deepak Khurana, Advocate, APNRL
Ms. Nishtha Wadhwa, Advocate, APNRL

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that present Petition has been filed, *inter alia*, seeking compensation on account of occurrence of Change in Law events, namely, (i) levy of Jharkhand Covid-19 pandemic cess, (ii) levy of forest transit fee, (iii) coal terminal surcharge/terminal charge, and (iv) introduction of fly ash transportation cost in terms of Power Purchase Agreements dated 18.12.2013 and 19.12.2013 entered into between the Petitioner and the Respondents. The learned counsel further submitted that except for the levy of Jharkhand Covid-19 Pandemic Cess, all Change in Law events have already been recognized and allowed by the Commission in its earlier orders.

3. In response to the Commission's observation regarding the Ministry of Power, Government of India having now notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as 'the Change in Law Rules') and the Petitioner, therefore, being required to follow the process specified thereunder, the learned counsel submitted that the present Petition has been filed prior to the issuance of notification of the Change in Law Rules i.e. on 22.10.2021 and, therefore, the rights have accrued in favour of the Petitioner when the present proceedings were initiated. The learned counsel further submitted that Change in Law Rules being a delegated legislation, their applicability has to be on prospective basis except for (i) where the parent Act, i.e. the Electricity Act, 2003 permits the retrospective application of the delegated legislation, and (ii) where the language of

the Rules itself indicate that they are meant to be applied retrospectively. The learned counsel, referring to Rules 1(2), 3(1), 3(2) and 3(3) of the Change in Law Rules, argued that the language used therein indicates that the Change in Law Rules are to be applied prospectively with regard to the Change in Law events that occur after the notification of the said Rules.

4. After hearing the learned counsel for the Petitioner, the Commission reserved the order on the 'admissibility' of the Petition.

By order of the Commission

**SD/-
(T.D. Pant)
Joint Chief (Law)**