

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 215/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2(b) of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the Procurers for compensation due to Change in Law impacting revenues and costs during the Operating Period.

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 : Sasan Power Limited (SPL)

Respondents : MP Power Management Company Limited and 13 Ors.

Parties Present : Shri Amit Kapur, Advocate, SPL
Shri Vishrov Mukerjee, Advocate, SPL
Ms. Aparajita Upadhyay, Advocate, SPL

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the Ministry of Environment, Forest and Climate Change ('MoEF&CC') amendment dated 3.11.2009 ('2009 Fly Ash Amendment') to the Fly Ash Notification dated 14.9.1999 ('1999 Fly Ash Notification') read with Revised Environmental Clearance dated 30.6.2015 and MoEF&CC Office Memorandum dated 20.8.2019, pursuant to which an obligation has been imposed on the Petitioner to use 25% or more fly ash in external dump of overburden and backfilling of open case mine on volume-to-volume basis of total material used, constitute Change in Law events impacting the revenues and costs during the Operation Period for which the Petitioner may be compensated in terms of Article 13 of the Power Purchase Agreement and sought approval of the Commission for the same. The learned counsel further submitted that as on the cut-off date for Change in Law events i.e. 21.7.2007, there was no such requirement under the 1999 Fly Ash Notification.

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 before the Commission prior to the notification of the Change in Law Rules. The

learned counsel submitted that even the notice regarding Change in Law event has been issued by the Petitioner to the Procurers much earlier on 7.9.2021 i.e. prior to issuance of the Change in Law Rules. The learned counsel further submitted that these rules are not exhaustive and that they do not deal with the in-principle approval of Change in Law events as sought by the Petitioner under the present Petition. The learned counsel requested the Commission to issue notice in the matter to examine the issue as to whether the present case falls under the Change in Law Rules or not.

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)