

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 514/MP/2020

Subject : Petition under Sections 63, 79(1) (c) and Section 79(1)(f) of the Electricity Act, 2003 seeking reliefs due to the occurrence of certain Force Majeure and Change in Law events under the Transmission Service Agreement dated 6.8.2009.

Date of Hearing : 21.5.2021

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

Petitioner : East-North Interconnection Company Limited (ENICL)

Respondents : Jodhpur Vidyut Vitran Nigam Limited and 18 Ors.

Parties Present : Shri Jafar Alam, Advocate, ENICL
Shri Deep Rao Palepu, Advocate, ENICL
Shri Saahil Kaul, Advocate, ENICL
Shri TAN Reddy, ENICL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking reliefs on account of occurrence of certain Force Majeure and Change in Law events in terms of Articles 11 and 12 of the Transmission Service Agreement ('TSA') dated 6.8.2009, which were beyond the reasonable control of the Petitioner and prevented the Petitioner from performing its obligations under the TSA. Learned counsel mainly submitted the following:

(a) Subsequent to the commissioning of Purnea-Biharsharif 400 kV D/C transmission line ('PB Line') on 13.9.2013, three of its towers collapsed in quick succession on 10.8.2018, 21.8.2018 and 3.10.2018 due to sudden and unprecedented change in the course of river Ganga, leading to tripping of the PB Line. The aforesaid event constitutes a Natural Force Majeure event in terms of Article 11.3 of the TSA.

(b) The Petitioner apprised the Eastern Regional Power Committee ('ERPC') about the occurrence of the aforesaid Force Majeure event in the subsequent meetings along with the possible alternatives. Pursuant thereof, vide minutes of meeting dated 13.2.2019 of a special Committee constituted by ERPC, the Petitioner was directed to restore the PB Line by reconstructing the damaged transmission towers and relocating the other towers of PB Line which were susceptible to damage in future, on an alternate route from the original scope of work.

(c) In the said minutes, ERPC also observed that the collapse of the towers of the PB Line constituted a Force Majeure event and that the same was beyond the reasonable control of the Petitioner. It was also observed that the Petitioner was required to be granted a reasonable period of time to overcome the impact of the said event and to restore the operation of PB Line. In the same minutes, the ERPC found that PGCIL's Patna-Kishanganj transmission line, situated at distance of approximately 200 meters, from the PB Line was also similarly affected as the Petitioner due to the change in the course of the river Ganga.

(d) In order to restore the PB Line, the Petitioner has been required to install 8 new transmission towers, 1.1 km of special high performance conduction and approximately 4.4 km of additional overhead lines. The restoration work of PB Line was completed in December, 2019 and it was successfully charged on 19.12.2019. In this regard, the Petitioner has incurred an additional expenditure to the tune of Rs.94.58 crore. After considering approximately Rs. 12 crore as insurance proceeds received, the Petitioner is claiming the balance expenditure to tune of Rs. 82.58 crore in the present Petition as Change in Law compensation.

(e) The restoration of PB Line by construction of additional towers along the revised route on the direction of ERPC amounts to additional scope of work not attributable to the Petitioner. The ERPC is an Indian Government Instrumentality and its orders constitute 'Law' in the meaning contemplated under the TSA. Therefore, the rerouting of the PB Line at the instance of the ERPC constitutes a Change in Law event under Article 12 of the TSA. Consequently, the Petitioner is also entitled to relief in terms of Article 12.2.1 of the TSA.

(f) The Petitioner has duly issued the notices for the occurrence of Force Majeure and Change in Law events in terms of TSA. However, no reply has been received from the LTTCs in this regard.

3. In response to the specific query of the Commission as to whether the issues relating to availability of PB Line, levy of penalty/ damages due to claimed Force Majeure event, etc. have been discussed/ deliberated in the ERPC meetings, the learned counsel for the Petitioner sought liberty to take necessary instructions in this regard and to file the subsequent minutes of EPRC meetings within a period of four weeks.

4. After hearing the learned counsel for the Petitioner, the Commission ordered as:

a. Admit. Issue notice to the Respondents.

b. Serve copy of the Petition on the Respondents immediately, if not already served. The Respondents are directed to file their reply, if any, by 25.6.2021 with advance copy to the Petitioner, who may file its rejoinder, if any, by 16.7.2021.

c. The Petitioner to place on record on affidavit by 18.6.2021 the minutes of all the ERPC meetings wherein the issues involving PB Line have been deliberated.

5. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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