

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 598/MP/2020

Subject : Petition under Section 79 (1)(b) and 79(1)(f) of the Electricity Act, 2003 for claiming compensation on account of events pertaining to Change in Law as per Article 34 of the Power Supply Agreement dated 26.12.2014 read with Article 39.1 of the Power Supply Agreement.

Date of Hearing : 14.10.2021

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

Petitioner : Bharat Aluminium Company Limited (BALCO)

Respondents : Kerala State Electricity Board (KSEB) and 2 Ors

Parties Present : Shri Sujit Ghosh, Advocate, BALCO
Shri Nishant Kumar, Advocate, BALCO
Shri Animesh Kumar, Advocate, BALCO
Ms. Utkarsha Sharma, Advocate, BALCO
Ms. Shweta Singh, Advocate, BALCO
Shri Prabhas Bajaj, Advocate, KSEB
Ms. Pratiksha Chaturvedi, BALCO
Shri Md. Zeyauddin, BALCO
Shri Rajeev Goswami, BALCO
Shri Amber Siddiqui, BALCO

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking declaration that the events/ notifications, namely, (a) Notification dated 7.12.2015 issued by the Ministry of Environment, Forest and Climate ('MoEF&CC') leading to additional expenditure on account of installation of FGD equipment and Mercury analyser, (b) Notification No. S.O. 254(E) dated 25.1.2016 issued by MoEF&CC by which additional cost towards fly ash transportation is imposed upon the Petitioner, and (c) Notification No. F1-20/2016/32 dated 6.10.2016 issued by Government of Chhattisgarh leading to additional expenditure due to increase in Consent Fees constitute Change in Law events in terms of Power Supply Agreement (PSA) dated 26.12.2014 as executed between the Petitioner and the Respondent, KSEB along with the consequential compensation and carrying cost thereon. The learned counsel further submitted that the above-mentioned Change in Law events have already been considered by the Commission in the case of the Petitioner vide order dated 14.8.2021 in Petition No. 161/MP/2020 in respect of the Power Purchase Agreement ('PPA') dated 23.8.2013

entered into between the Petitioner and TANGEDCO for supply of power from the same generating station.

3. The learned counsel for the Respondent, KSEB submitted that unlike the PPA entered into between the Petitioner and TANGEDCO under Case 1 bidding process, the PSA between the Petitioner and KSEB has been entered into on the basis of Design, Build, Finance, own and Operate ('DBFOO') and, therefore, any relief for Change in Law event is required to be granted to the Petitioner in terms of the provisions of this PSA. The learned counsel further submitted that the various Change in Law events claimed by the Petitioner have already been declared/ considered by the Commission as Change in Law events in-principle and the Respondent as such has no objection towards the same. However, in the present case, for their declaration of Change in Law events under Article 34.1 of the PSA prayed for by the Petitioner, such events have to pass the threshold as specified therein i.e. the aggregate financial impact due to such Change in Law events in respect of Contracted Capacity ought to exceed the higher of Rs. 1 crore or 0.1% of capacity charges in any accounting year. It was also submitted that KSEB vide its letter dated 17.3.2020 had specifically asked to provide the details of expenditure incurred by the Petitioner. However, no such details have been provided by the Petitioner. Therefore, the present Petition is pre-mature as the Petitioner has either not incurred any expenditure so far or not provided the details of expenditure incurred so far in respect of its various Change in law claims.

4. In rebuttal, the learned counsel for the Petitioner submitted that the Commission, after considering the provisions of the similar PSA under the DBFOO guidelines, has accorded in-principle approval for Change in Law event. In this regard, the reliance was placed on the decision of the Commission dated 18.5.2020 in Petition No. 210/MP/2019 (Sembcorp Energy India Ltd. v. Southern Power Distribution Company of Telangana Ltd. and Anr.), wherein the Commission has allowed the indicative cost toward installation of FGD system as recommended by CEA on provisional basis. The learned counsel further submitted that the Petitioner will furnish the details of actual expenditure to be incurred/ already incurred by the Petitioner to the Respondent, KSEBL. However, it ought not to be the basis for not considering the prayers of the Petitioner seeking declaration of the aforesaid events as Change in Law events.

5. In response to the specific query of the Commission as to whether the Petitioner is also seeking only in-principle approval towards additional fly ash transportation expenditure pursuant to MoEF&CC Notification dated 25.1.2016, the learned counsel for the Petitioner submitted that the Petitioner has already incurred certain expenditure towards fly ash transportation. However, presently the Petitioner is only seeking in-principle approval of aforesaid event as Change in Law event with liberty to approach the Commission with the necessary documents in this regard.

6. Based on the request of the learned counsel for the parties, the Commission permitted the Respondent KSEBL to file its brief note of submission on or before 22.10.20 with copy to the Petitioner, who may file its note of submission, if any, by 25.10.2021..

7. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

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