

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 111/MP/2022

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Clause 5(b) of the Settlement Deed dated 3.1.2022 and Supplemental PPA dated 30.3.2022 entered into between the Petitioner and the Respondent in regard to the base rate as on 15.10.2018.

Date of Hearing : 5.5.2022

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

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondent : Adani Power (Mundra) Limited (APMuL)

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, GUVNL
Shri Anand K. Ganesan, Advocate, GUVNL
Ms. Swapna Seshadri, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL
Shri Amit Kapur, Advocate, APMuL
Ms. Poonam Verma, Advocate, APMuL
Shri Saunak Rajguru, Advocate, APMuL
Shri S. K. Nair, GUVNL
Shri Vipul Lathiya, GUVNL
Shri Kripal Chudasama, GUVNL
Shri M. R. Krishan Rao, APMuL
Shri Mehul Rupera, APMuL
Shri Sameer Ganju, APMuL
Shri Kumar Gaurav, APMuL
Shri Tanmay Vyas, APMuL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, for determination of base rate of energy charge as on 15.10.2018 in terms of Clause 5(b) of the Settlement Deed dated 3.1.2022 and Supplemental Power Purchase Agreements ('SPPAs') dated 30.3.2022 entered into between the Petitioner and Adani Power (Mundra) Limited (APMuL). Learned senior counsel submitted that in terms of above, the Commission is required to determine the base rate for the sub-parameters viz. (i) FOB coal cost (in USD/kWh) for quality of coal consumed including Other charges, (ii) Ocean Freight (In USD/kWh), and (iii) Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on the normative operating parameters as per the provisions of the SPPA dated 5.12.2018.

3. Learned senior counsel further referred to the pleadings and made detailed submissions in the matter. Learned senior counsel, *inter alia*, submitted that the Respondent, APMuL has not submitted the basic documents including the documents which would indicate the actual price at which Indonesian coal was exported to it such as bill of lading furnished to the Indonesian Port Authorities. Learned senior counsel also stressed that the derived HPB price from HBA is not the absolute mandatory FOB price of export of coal from Indonesia i.e. there is no prohibition from selling the coal at a price less than such HPB derived price. Learned senior counsel referred to the comparison of the coal price as per the claims of APMuL and CGPL vis-à-vis the HBA derived price (HPB Price), Indonesian Coal Index (Argus) & Platts (S&P Global) furnished in Annexure 'F' to the Petition.

4. Learned counsel for the Respondent, APMuL circulated a note of arguments and made detailed submissions in the matter. Learned counsel, *inter alia*, submitted that the Indonesian Regulations all along the period of supply of power by APMuL till date continue to mandate coal suppliers not to export the coal at the prices below HBA index price (except for the 'certain type' and 'certain purpose' of coal, which are not suitable for power generation at APMuL's plant). Learned counsel added that the CGPL's coal procurement data as relied upon by the Petitioner is misleading as coal procurement by CGPL for 8 vessels was based on fixed HBA price as on the date of signing of contract as per which the HBA price agreed in contract remains constant irrespective of HBA as on the date of Bill of Lading. The learned counsel added that for the said 8 vessels, CGPL had entered into contract in May, 2018 at fixed HBA price of 93.56 USD/MT while HBA Index applicable for May, 2018 was lower at 89.53 USD/MT and thus, a premium of 4.50% was already built-up in the contract itself. The HBA Index was higher during the period of actual shipment which happened during August to November 2018 than the HBA Index relatable to the date of contract (May 2018). Therefore, it appears as if CGPL had procured coal at discounted price when fixed HBA price of 93.56 USD/MT is compared with Bill of Lading HBA index of August-November 2018 which varied between 97.90 to 107.83 USD/MT. In this regard, the learned counsel placed reliance on the Annexure-2 of the reply. Learned counsel submitted that no response to this effect has been made by the Petitioner in its Rejoinder. He submitted that from a reading of paragraph 8 of GUVNL's Note capturing its averments regarding Indonesian Regulations, it is clear that GUVNL is running a case on conjectures and surmises. GUVNL is itself not sure with respect to its contentions which is evident from the use of the phrases "*The Indonesian Regulations also indicate that in many cases the Indonesian authorities can and has probably have permitted the export of coal at the contractual price entered into between the parties without insisting on the benchmark price*". Learned counsel submitted that the Petitioner cannot take a different stand after signing of the Settlement Deed and SPPA in respect of components like other charges, operating parameters etc. In support, the Respondents counsel relied on the Hon'ble Supreme Court's order dated 8.2.2022 which mandates that the *inter se* relationship between the parties shall now be governed by the settlement deed dated 3.1.2022

5. In response to the specific query of the Commission to the averment of the Respondent that CGPL's procurement is not at discounted price for 8 vessels shown in Annexure-2 of the reply, learned senior counsel for the Petitioner submitted that this aspect has not been responded to and therefore, sought liberty to file an Affidavit clarifying the factual position in this regard.

6. In response to the query of the Commission to the Respondent as to whether there is any specific provision under Indonesian Regulations that prohibit sale of imported coal below HBA Index price, learned counsel for the respondent submitted that Article 2(1) of the Minister's 2010 Regulations is one of the provisions which mandate sale of imported coal not below HBA Index price and that there are if any IUP licence holders violates the mandate *qua* non-adherence to benchmark prices for export of coal, there shall be imposition of administrative sanctions on such licence holders. The only exception is 'certain type' and 'certain purpose' of coal that can be exported from Indonesia at rates below benchmark prices. 'Certain type coal' means fine coal, reject coal and coal with certain impurities. 'Certain purpose' of coal is defined to mean (i) coal used by company for its own purpose in the process of coal mining, (ii) coal used by company in order to increase the value added of coal at mine mouth location, or (iii) coal used for the development of under-developed areas around the mine. Such 'certain type' and 'certain purpose' coal is neither suitable nor used at APMuL's plant.

7. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, the Commission directed the Petitioner to file the response as per paragraph 5 above and any other relevant information in this regard on affidavit by 9.5.2022.

8. The Respondent was directed to file information in respect of the four shipments which have been submitted in response to ROP dated 21.4.2022 on affidavit on or before 9.5.2022 relating to the actual amount incurred on account of the following heads:

- (a) FOB price of coal in USD per MT;
- (b) Ocean Freight and Insurance in USD per MT;
- (c) Port/Fuel Handling Charges in Rs per MT; and
- (d) Other Charges in USD per MT.

9. The Petitioner and the Respondent may file their responses to the information to be submitted under paragraph 7 and paragraph 8, by 11.5.2022.

10. The parties shall comply with the above directions within the specified timeline and no extension of time shall be granted.

11. The matter shall be listed for hearing in due course for which notice will be issued separately.

By order of the Commission

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