

**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 : 19.5.2022

Coram : 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
Shri Harsha Manav, 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 Malav Deliwala, APMuL
Shri Tanmay Vyas, APMuL

Record of Proceedings

Case was called out for virtual hearing.

2. During the course of hearing, learned senior counsel for the Petitioner made detailed submissions in the matter. Learned senior counsel, *inter-alia*, submitted the following:

(a) At Annexure 2 of its reply, APMuL has deliberately selected 8 shipments where it could plead about FoB price of coal imported from Indonesia being at par with HPB price. However, on the same principles of calculation shown by APMuL for 8 shipments, if the balance 27 shipments are considered, it can be seen that there has been large number of shipments where the HPB price is higher than the

contract price establishing clearly that there has been sale with FoB price below HPB price.

(b) The Petitioner has placed on record the comparison of FoB price in the commercial invoice of CGPL vis-à-vis the term contract vis-à-vis the HPB price of the month of the bill of lading of the certain shipments from the data available with GUVNL submitted by CGPL in its supplementary invoices.

(c) Analysis of the data at Annexure A to the auditor's report indicates that out of 5,67,678 MT received for the period from 15.10.2018 to 31.10.2018, the weighted average FoB price of the entire quantum is 54.99 USD/MT. However, APMuL has used 2,66,200 MT for consumption at Unit 1 to Unit 4 of Mundra Plant and the blending of various grades of coal has been done in such a manner that the weighted average FoB price of coal actually used is 64.30 USD/MT. There was no reason for APMuL to claim computation on the basis of weighted average FoB price of 64.30 USD/MT when the coal has been procured and ought to have been consumed with weighted average FoB price of 54.99 USD/MT. Reliance was placed on the table at paragraph 9 of the additional affidavit dated 11.5.2022. A table was also exhibited to submit that the average GCV of coal allocated to Unit 1 to Unit 4 was higher than the average GCV of the coal allocated to Unit 5 & Unit 6 and Unit 7 to Unit 9.

(d) There is no specific mandate or express stipulation in the Indonesian Regulations in regard to non-export of coal at price less than the benchmark price/ reference price. The benchmark price/ reference price is to be considered as floor price only for the purpose of computing the payment of royalty to the Indonesian Government. Reliance was placed on the various articles of the Indonesian Regulations, report of the High Power Committee and an article published in Jakarta Post.

(e) Even the SPPAs dated 5.12.2018 entered into between the Petitioner and APMuL provided for declaration of FoB price and envisages FoB price to be lower of actual or HBA price.

3. Learned counsel for the Respondent made detailed submissions in the matter. Learned counsel, *inter alia*, submitted that since GUVNL has relied on CGPL data, it is for GUVNL to substantiate its claim by producing relevant data. The details as produced by GUVNL are its own derivation and not the invoices raised by CGPL. Learned counsel further submitted that even the HPC report noted that sale of coal below HBA was not allowed in terms of the Indonesian Regulations. Learned counsel referred to the various articles of the Indonesian Regulations and submitted that import of coal from Indonesia below HBA price is not allowed, violation of which attracts stringent penal action in terms of the Indonesian Regulations. Learned counsel submitted that the procurement of Indonesian coal by APMuL was on CIF basis, which is also envisaged and permitted under the Indonesian Regulations.

4. After hearing the learned senior counsel and the learned counsel for the parties, the Commission directed the parties to file on affidavit the following information by 25.5.2022.

GUVNL:

(a) Clarify on the statement made by the Respondent (APMuL) in its affidavit dated 9.5.2022 that GUVNL has admitted and paid energy charges considering FOB Price of coal as per HBA index (HPB) (without tolerance) for the period from 15.10.2018 to 31.10.2018 vis a vis their statement during the hearing that the same was on provisional basis.

APMuL:

(b) Respond to the contention of the Petitioner (GUVNL) that by virtue of disproportionate allocation of blending of GCV coal received during the months of August and September 2018 (4 shipments), the weighted average GCV of coal is arrived and claimed at 4619 Kcal/Kg with weighted average price shown as 64.30 USD/MT as against achievable weighted average GCV of coal at 4202 Kcal/Kg (which has been the range for functioning of units including Unit 5 & 6) with weighted average price workable as 54.99 USD/MT.

5. Subject to the above, the Commission reserved order in the Petition.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)