

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 182/MP/2020

- Subject : Petition under Sections 79(1)(c), 79(1)(d), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 read with Articles 11 and 12 of the Transmission Service Agreement dated 20.11.2015, seeking monetary compensation on account of occurrence of force majeure and change in law events.
- Date of Hearing : 24.1.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Odisha Generation Phase II Transmission Limited (OGPIITL)
- Respondents : West Bengal State Electricity Distribution Company Limited and 9 Ors.
- Parties Present : Shri Hemant Singh, OGPIITL
Shri Lakshyjit Singh Bagdwal, OPGIITL
Ms. Lavanya Panwar, Advocate, OPGIITL
Shri Gaurav Kumar, OPGIITL

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 condonation of delay in achieving commercial operation date of 'OPGC-Jharsuguda 400 kV D/C transmission line' due to force majeure events and reimbursement of additional expenditure incurred in construction of 'Jharsuguda- Raipur 75 kV D/C transmission line' owing to Change in Law events including change in scope of work. The learned counsel mainly submitted the following:

- (a) Transmission project implemented by the Petitioner comprises of (i) OPGC-Jharsuguda 400 kV D/C transmission line ('OJ Line') and Jharsuguda-Raipur 765 kV D/C transmission line ('JR Line').
- (b) OJ line was commissioned on 30.8.2017 i.e. 1 month after Scheduled Commercial Operation Date ('SCOD') of 31.7.2017. Accordingly, the Petitioner is only seeking condonation of delay of 30 days in achieving the commercial operation of OJ Line on account of occurrence of various force majeure events. As regards JR Line, it was commissioned on 6.4.2019 i.e. almost 4 month prior to SCOD.
- (c) As per clause 2.4 of RfP, the successful bidder was required to acquire 100% shareholding of the Petitioner company from Bid Process Coordinator, PFC Consulting Limited ('PFCCL') within 10 days of issuance of Letter of Intent dated 6.1.2016. However, 100% equity of the Petitioner company was

offered to STPPL (the successful bidder) on 8.4.2016 and, accordingly, Share Purchase Agreement was executed with PFCCL on 8.4.2016. On account of delay in acquisition of the Petitioner Company, there was a delay of 3 months in initiation of execution of the project which squarely falls within the definition of force majeure.

(d) There was a delay of approximately 7 months in obtaining forest clearance for implementation of OJ Line. The Petitioner required 112.86 ha of forest land in Sundergarh Forest Division for laying down OJ Line and the Petitioner was required to identify around 226 ha of suitable degraded forest land for compensatory afforestation.

(e) Divisional Forest Officer ('DFO'), Sundergarh Forest Division vide its letter dated 8.12.2016 requested DFO, Boudh Forest Division to identify required degraded forest land for compensatory afforestation by the Petitioner, which was responded by DFO, Boudh Forest Division on 28.1.2017, albeit identifying only 40 ha of degraded forest land, whereas the remaining 190 ha of land was identified much later vide letter dated 19.7.2017. Such delay in identification of land for compensatory afforestation is a force majeure event.

(f) There was a delay of 14 days due to stay order granted by the Hon'ble High Court of Odisha dated 25.7.2017 in W.P (C) No. 14866/2017 regarding installation of electric transmission towers of 400 kV triple snow bird conductors, which amounts to a force majeure event.

(g) The implementation of OJ Line was delayed for 20 days due to unseasonal heavy rainfall and flood in Odisha in the month of July 2017, which amounts to a force majeure event.

(h) The Petitioner has also prayed for compensation for additional recurring/ non-recurring expenditure incurred by the Petitioner on account of Change in Law events qua JR Line. As to the requirement of complying with the process prescribed in the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') in respect of its Change in Law claims, the Commission may issue an appropriate direction in line with the similarly placed matters.

(i) None of the Respondents have filed reply to the Petition despite notice.

3. After hearing the learned counsel for the Petitioner, the Commission observed that the Petitioner has contended that delay of approximately 3 months has occurred due to delay in acquisition of the Petitioner company by the successful bidder and, therefore, it was appropriate that the views/ submissions of BPC, PFCCL are taken into consideration on this aspect. In response to the aforesaid observation, the learned counsel for the Petitioner submitted the since PFCCL is not a signatory to the Transmission Service Agreement, it has not been impleaded as party to the Petition and, accordingly, the Petitioner may be permitted to implead PFCCL as party to the Petition.

4. After hearing the learned counsel for the Petitioner, the Commission observed that on occurrence of an event of Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondents/LTTCs, are required to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. Accordingly,

the Petitioner may approach the Respondents/LTTCs for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the said Rules.

5. The Commission further observed that the Petitioner is at liberty to file amended Petition within two weeks of this order restricting its prayers to force majeure events.

6. 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)