

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.17/MP/2023

Subject : Petition under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003 read with Article 13 and Article 17 of the Power Purchase Agreement dated 7.8.2008 (as amended vide amendment agreements dated 17.9.2008 and 27.5.2022) executed between the Petitioner and Uttar Haryana Bijli Vitran Nigam Limited & Dakshin Haryana Bijli Vitran Nigam Limited; as well as Article 13 and Article 17 of the Power Purchase Agreement dated 20.1.2009 (as amended vide amendment agreement dated 21.10.2010) between the Petitioner and Tata Power Trading Company Limited *inter alia* seeking approval of Change in Law event, i.e., enactment of the Integrated Goods and Services Tax Act, 2017, the Central Goods and Services Tax Act, 2017, the State Goods And Services Tax Act, 2017, and the Union Territory Goods and Services Tax Act 2017; and compensation for additional expenses incurred by the Petitioner with respect to operation and maintenance of the Project on account of the same along with carrying cost.

Date of Hearing : **16.5.2023**

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

Petitioner : Jhajjar Power Limited (JPL)

Respondents : Uttar Haryana Bijli Vitran Nigam Limited and 3 Ors.

Parties Present : Shri Aniket Prasoon, Advocate, JPL
Ms. Priya Dhankhar, Advocate, JPL
Shri Md. Aman Sheikh, Advocate, JPL
Ms. Sriya Rao, Advocate, JPL
Shri Nishant Talwar, Advocate, TPDDL
Shri Nitish Gupta, Advocate, TPDDL
Shri Suvin Kumaran, Advocate, Haryana Discoms
Shri Aditya Singh, Advocate, Haryana Discoms

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed *inter alia* seeking declaration that enactment and promulgation of the Integrated Goods and Services Tax Act, 2017, the Central Goods and Services Tax Act, 2017 and the State Goods and Services Act, 2017 ('GST Laws') is a Change in Law event and consequent direction to the Respondents to compensate the Petitioner towards the additional costs incurred by the Petitioner on account of GST Law insofar as it relate to operation and maintenance expenses of its 2x660 MW Mahatma Gandhi Thermal Power Project along with the carrying cost. Learned



counsel submitted that the Appellate Tribunal for Electricity in its various decisions including by the judgment dated 27.4.2021 in Appeal No. 172 of 2017 (*Coastal Gujarat Power Ltd. v. CERC and Ors.*) has allowed the compensation for the additional costs incurred due to enactment/promulgation of GST Laws towards operation and maintenance expenses of the project.

2. In response to the specific query of the Commission regarding the limitation, learned counsel for the Petitioner submitted that the claims of the Petitioner are not barred by limitation. Learned counsel submitted that continuous correspondence was being exchanged between the parties with regard to the Petitioner's Change in Law claim and last reply of Haryana Discoms came only in the year 2022. Learned counsel also relied upon the order of the Hon'ble Supreme Court dated 10.1.2022 in *Suo Motu Writ Petition (Civil) No. 3 of 2020* whereby the Hon'ble Supreme Court, due to the outbreak of Covid-19, has excluded the period from 15.3.2020 till 28.2.2020 for the purpose of limitation. Learned counsel alternatively also submitted that Change in Law event having a recurring impact, each contract year gives a separate/fresh cause of action to the Petitioner to claim the relief and the Petitioner cannot be denied the Change in Law relief for entire balance period under the agreements.

3. Learned counsel for the Respondents Nos. 1 & 2, Haryana Discoms and Respondent No.4, TPDDL accepted the notice and sought time to file reply to the petition.

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

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition on the Respondents and the Respondents to file their reply, if any, within four weeks with copy to the Petitioner who may file its rejoinder, within four weeks thereafter.

(c) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

5. The Petition be listed for hearing on 20.9.2023.

By order of the Commission

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