

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.74/MP/2023

Subject : Petition under Sections 79 of the Electricity Act, 2003 for claiming compensation on account of events pertaining to change in law in terms of the definition of “Change in Law” as provided under Article 26, read with Article 21 of the Agreements for Procurement of Power (APPs) executed between the Petitioner and the Respondents, and the supplementary agreements executed between the Petitioner and the Respondents.

Date of Hearing : **25.5.2023**

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

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : Western Central Railways – Madhya Pradesh and 5 Ors.

Parties Present : Shri Hemant Singh, Advocate, JITPL
Shri Harshit Singh, Advocate, JITPL
Shri Lakshyajit Singh, Advocate, JITPL
Ms. Alchi Thapliyal, Advocate, JITPL
Shri Pulak Srivastava, JITPL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed in terms of Article 21 of the Agreements for Procurement of Power (APPs) read with the Supplementary Agreements executed by the Petitioner with Respondent Nos. 1 to 5 in order to claim the amounts to compensate the Petitioner on account of the occurrence of Change in Law events so that the Petitioner is restored to the same economic positions as if Change in Law events, did not occur. Learned counsel submitted that Change in Law claims of the Petitioner comprise (i) the levy of Krishi Kalyan Cess, (ii) the introduction of Evacuation Facility Charges, (iii) the imposition of Surface Transportation Charges, (iv) the imposition of Clean Energy Cess/ Environment Cess / GST Compensation Cess, and (v) the Carrying Cost.

2. In response to the specific observation of the Commission regarding the considerable delay in approaching this Commission for its Change in Law claims and whether or not the Petitioner had complied with all the procedures specified in Article 21.1 (Increase in Costs) of the APPs, learned counsel for the Petitioner submitted that the claims of the Petitioner are not barred by the limitation and the Petitioner had issued the Change in Law notice(s) to the Respondents. Learned counsel, however, sought liberty to place on record the necessary details / correspondence to substantiate the same.



3. The Commission, after hearing the learned counsel for the Petitioner and keeping in view that the claims raised in the Petition, *prima facie*, appeared to be stale, ordered as under:

(a) Issue notice on the 'admissibility' of the Petition.

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

(c) The Petitioner to furnish the following details/ information on affidavit within three weeks.

(i) As the APPs signed with Respondents No. 1 to 4 have expired, the legal sanctity and relevance of various clauses of the APPs mentioned in the Petition to substantiate the subject claims.

(ii) Detailed reasons for delay in filing the instant Petition i.e. after a lapse of more than 5 years from the date of subject Change in Law notifications and 3 years from the notices issued, along with the relevant clauses of APP, particularly, w.r.t. timelines for claiming compensation on account of Change in Law events.

(iii) With regard to various Change in Law claims made, the relevant / applicable sub-clause of Change in Law of the APP for each such claim.

(iv) In reference to each of Change in Law claim, the detailed claim w.r.t. each respondent and compliance of the same with Article 21.1 i.e. the financial effect is in excess of Rs. 1 crore and 0.1 % of capacity charges in any accounting year.

(v) Change in Law events fall under Article 21.2 of APP and the communication exchanged with each of the Respondents.

(vi) Actions and measures taken to settle the dispute in terms of Article 23 of APP along with communication exchanged with respondents and supporting documents thereof.

4. The Petition shall be listed for hearing on 'admission' on 25.8.2023.

**By order of the Commission
Sd/-**

**(T.D. Pant)
Joint Chief (Law)**