

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 32/RP/2023**

Subject : Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of this Commission's order dated 1.8.2023 in Petition No. 258/MP/2019.

Petitioner : Jhajjar Power Limited (JPL).

Respondent : Tata Power Trading Company Limited and Anr.

Date of Hearing : **8.10.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V., Member  
Shri Harish Dudani, Member

Parties Present : Shri Aniket Prasoon, Advocate, JPL  
Shri Aman Sheikh, Advocate, JPL  
Ms. Archita Kashyap, Advocate, JPL  
Shri Venkatesh, Advocate, TPTCL  
Shri Vedant Choudhary, Advocate, TPTCL  
Shri Nitish Gupta, Advocate, TPDDL  
Ms. Kanya Sharma, Advocate, TPDDL  
Ms. Aparna Tiwari, Advocate, TPDDL

**Record of Proceedings**

Learned counsel for the Review Petitioner submitted the present Petition has been filed seeking review of the Commission's order dated 1.8.2023 in Petition No. 258/MP/2019 ('Impugned Order') since the Impugned Order suffers from errors apparent on the face of the record. Learned counsel mainly submitted as under:

(a) The review of the Impugned Order has sought on the issues, namely, (i) reduction of quantum of penalty payable by the Haryana Discoms and the Respondent No.1, both towards the low level of lifting under Article 1.2.8 of Schedule 7 of the respective PPAs by taking into consideration 65,599 tonnes of imported coal received by the Petitioner during the contract year 2016-17, (ii) computation of low level of lifting penalty under Article 1.2.8 of Schedule 7 of the respective PPAs by taking into consideration the quantum of energy requisitioned by Respondents as opposed to the quantum of energy scheduled to them, and (iii) award of interest at a rate other than the rate of late payment surcharge stipulated in Article 11 of the Tata PPA.

(b) In paragraph 40 of the Impugned Order, the Commission has reduced the quantum of penalty payable by Haryana Discoms and TPTCL towards a low level of lifting under Article 1.2.8 of Schedule 7 of the respective PPAs by considering the fact that the Petitioner had procured 65,599 tonnes of imported coal during the contract year 2016-17 and had the Petitioner not procured such imported coal during the contract year 2016-17, the Petitioner would have utilized corresponding quantum of domestic linkage

coal and thus, low level of lifting penalty levied upon the Petitioner under FSAs would have been lower.

(c) However, the said findings of the Commission are in direct contravention of the Commission's own findings in paragraph 36 of the order, wherein the Commission has upheld the Petitioner's contention that the penalty leviable in the present case is under Section 74 of the Indian Contract Act, 1872 and the principle of mitigation of losses which is applicable in cases where damages are claimed under Section 73 of the Contract Act is not applicable under Section 74 of the Contract Act.

(d) In any case, the presumption in paragraph 40 of the order dated 1.8.2023 that the Petitioner procured 65,599 tonnes of imported coal during the contract year 2016-17 is itself erroneous.

(e) The quantum of imported coal received by the Petitioner during the contract year 2016-17, i.e., 65,599 tonnes, was actually procured by the Petitioner during the contract year 2015-16 with due approval from the procurers as per the PPAs. The same was meant to be consumed in the same contract year. However, in terms of the delivery, a certain quantum out of the total allowed alternative imported coal was spilled over to the contract year 2016-17 due to lower scheduling of power between January and March, 2016, which was not attributable to the Petitioner.

(f) HPPC vide its letter dated 4.9.2015 had granted approval to the Petitioner for procurement of alternate imported coal of 3.00 lakh MT by way of the revised NIT shared by the Petitioner along with its letter dated 28.08.2015. Accordingly, on 14.10.2015, MBG Commodities was selected as the successful bidder under the NIT for the supply of 3.00 MT of imported coal (+/- 15%) to the Petitioner at the Project site.

(g) Pertinently, the Petitioner was asked to submit various details, viz. annual contracted quantity of coal, actual coal procured, GCV, day-wise coal procured, and coal consumers, etc., by the Commission vide its letter dated 26.8.2022, issued after the last date of the hearing on 5.8.2022. As such, the Petitioner had no occasion to provide the necessary clarification on the aspect of procurement of the above imported coal. Also, in the past, the Commission has allowed the review of the order(s) on the ground of wrong consideration of coal consumption by the thermal plant with respect to schedule generation.

2. Learned counsel for the Respondent No.2, Tata Power Delhi Distribution Limited ('TPDDL'), strongly opposed the maintainability of the present Review Petition and submitted that the Review Petitioner is only rearguing the case and placing on record the pleadings, arguments, etc. made in the original Petition, which were duly considered by this Commission in detail while adjudicating and passing the Impugned Order. Learned counsel submitted that the averment that findings in the Impugned Order in paragraphs 36 and 40 are contradictory is misplaced as there cannot be any correlation drawn between the findings in the said paragraphs. The resultant findings of the Commission in paragraph 40 cannot be considered as a direction for mitigation of damages; rather the said findings have been rendered by the Commission in light of the negligent approach of the Petitioner and in the exercise of its regulatory powers & functions. Learned counsel further submitted that insofar as the details/clarification on procurement of imported coal is concerned, the issue before the Commission was never about when the coal was imported by the Petitioner. Rather, it was about how much imported coal was utilised by the Petitioner. Learned counsel submitted that as regards the computation of low lifting penalty basis, the energy requisitioned by TPDDL and not based on the quantum scheduled by the Petitioner, it may be noted that the lower offtake of power by TPDDL was on account of the fact that Petitioner's Plant was under Reserve Shut Down for more than 67% of a contract year and

thus, even when on various instances TPDDL requisitioned the power from the Petitioner, it was either not scheduled or scheduled less by the Petitioner itself. In any case, the findings on this aspect have been rendered by the Commission consciously only after taking into the express provision of the agreement and cannot be grounds for review.

3. In response to the specific query of the Commission as to whether the details/clarification *qua* imported coal as now being indicated were part of pleadings in the original case, learned counsel for the Petitioner sought liberty to file a brief note/submission on this aspect.

4. Considering the request of learned counsel for the Petitioner, the Commission permitted the Petitioner to file its brief note/submissions as above within two weeks.

5. The matter remained part-heard and will be listed for hearing on **28.11.2024**.

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