

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 315/MP/2023

- Subject : Petition under Sections 79 (1) (b) and (f) of the Electricity Act, 2003 read with Article 13.2(b) of the Power Purchase Agreement dated 07.08.2007 executed between Sasan Power Limited and its Long-Term Customers (Procurers) for compensation due to Change in Law events.
- Petitioner : Sasan Power Limited (SPL)
- Respondents : Madhya Pradesh Power Management Co. Ltd. (MPPMCL) and Ors.
- Date of Hearing : **11.3.2025**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member
- Parties Present : Shri Amit Kapur, Advocate, SPL
Shri Venkatesh, Advocate, SPL
Ms. Priya Dhankar, Advocate, SPL
Shri Anant Ubeja, Advocate, SPL
Ms. Surbhi Kapoor, Advocate, SPL
Ms. Komal, Advocate, SPL
Shri Nitin Kala, Advocate, TPDDL
Shri Kunal Singh, Advocate, TPDDL
Shri Tanmay Jain, Advocate, TPDDL
Ms. K Rawat, Advocate, TPDDL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Aryan Chandra, Advocate, MPPMCL
Ms. Pallavi Saigal, Advocate, HPPC & PSPCL
Ms. Reeha Singh, Advocate, HPPC & PSPCL
Shri Rishabh Saxena, Advocate, HPPC & PSPCL
Shri Harshvardhan, Advocate, PSPCL & HPPC
Ms. Shivani Verma, Advocate, Rajasthan Discoms
Shri Hasan Murtaza, Advocate, BRPL & BYPL
Shri Sameer Sharma, Advocate, BRPL & BYPL
Shri Ankit Sinha, Advocate, BRPL & BYPL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed *inter alia* seeking compensation on account of Change in Law events arising due to an increase in the price of diesel due to the introduction of new taxes, duties, levies/cess as well as due to modification/amendment in their existing tax/levy rates by the Central/State Government that has impacted the costs in the Operating Period of the Project. Learned counsel further submitted as under:

(a) The Petitioner has set-up a coal-fired, ultra-mega power project based on a linked captive coal mine using super-critical technology with an installed capacity of 3960 MW at Sasan, Madhya Pradesh. In terms of the Power Purchase Agreement dated 7.8.2007, the Project is an integrated Project where the Power Station and the Captive Coal Mines are treated as an integrated unit.

(b) The Petitioner *inter alia* uses High Speed Diesel (HSD) for carrying out the sustainable operation of coal mining activities at the captive coal mine and for the start-up post forced/scheduled outages of the Power Plant units. The Petitioner procures huge quantities of HSD from the oil companies, including majorly from the Indian Oil Corporation Limited, and the Central & State Governments levy multiple taxes, duties, levies, and cess on the basic price of HSD.

(c) During the Operating Period of the power project, the cost payable by the Petitioner for procurement of HSD was impacted due to the introduction of new taxes, duties, levies/cess as well as due to modification/amendment in their existing tax/levy rates by the Central/State Governments, which constitute a "Change in Law" event in terms of Article 13 of the PPA entitling the Petitioner to appropriate compensation.

(d) The Respondents have, amongst others, also raised the objections that the instant Petition is barred by the constructive res judicata and Order 2 Rule 2 of the Code of Civil Procedure, 1908, in view of Petition No.75/MP/2013 filed by the Petitioner before the Commission. However, the said objections are misconceived.

(e) A reference was made to Petition No. 75/MP/2013 pertaining to the regulation of the actual cost of diesel, which was regulated by the Govt. of India by subsidising through the Administered Pricing Mechanism (APM). In the year 2002, the APM was discontinued on paper but remained applicable in spirit, and it was only on 17.1.2013 that the Ministry of Petroleum & Natural Gas issued orders to the Oil Marketing Companies (OMCs) relating to the diesel price change and two separate categories of diesel consumers were created. Further, for bulk diesel consumers, the subsidy available on diesel was withdrawn and they were required to purchase the diesel at actual market prices. It was in the above context that the Petitioner raised its claim of procuring diesel from OMC at the non-subsidised market-determined price as a Change in Law event in the said Petition, which was disallowed by the Commission on the ground that the price of petroleum produced was already deregulated vide Notification dated 28.3.2022 and the Petitioner ought to have been aware of such possibility of phased dismantling of the APM and migration towards market-determined pricing at the time of bid submissions.

(f) The said Petition did not deal with the issue as raised in the instant Petition pertaining to the levy of the taxes, cess, duties, etc., by way of the notifications by the Government Instrumentalities on HSD. Thus, the instant Petition is neither barred by constructive res judicata nor the Order 2 Rule 2 as averred by the Respondents. In this regard, the reliance was placed on the order dated 22.2.2014 as passed by the Commission in Petition No. 75/MP/2013.

(g) The Petitioner may be permitted to file its note of submissions addressing the objections on maintainability and also the merits of the case. The Petitioner may also be permitted to bring on record the Pleadings of Petition No.75/MP/2013 for ease of reference.

2. Learned counsel for the Respondents, HPPC, and PSPCL, however, prayed for an adjournment on the ground of non-availability of the arguing counsel. Whereas, learned counsel for the Respondent, MPPMCL submitted that apart from the res judicata

/constructive res judicata, the Petition is also not maintainable as per Order 7 Rule 11 of the CPC, and the claims made therein are time-barred.

3. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Petitioner to file its note of submissions, as noted above, along with Pleadings of Petition No.75/MP/2013 within two weeks with a copy to the Respondents, who may file their note of submissions, within two weeks thereafter.

4. The Petition will be listed for hearing on **13.5.2025 at 2.30 P.M.**

By order of the Commission

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