

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 71/MP/2023

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003, seeking relief on account of Force Majeure and Change in Law events under the Power Purchase Agreements dated 22.12.2021 and 24.12.2021 executed between the Petitioner and Respondent No. 1 and Respondent No. 2, respectively.

Petitioner : MB Power (Madhya Pradesh) Ltd. (MB Power)

Respondents : PTC India Limited (PTCIL) & Anr.

Petition No. 764/MP/2025

Subject : Petition under Sections 79(1)(f) of the Electricity Act, 2003, for return of arbitrary and illegal deduction amounting to Rs.33,82,46,302/- plus applicable interest by Respondent No.1/ Torrent Power Ltd. towards alleged replacement cost and liquidated damages for non-supply of power by Respondent No.2/ MB Power Ltd. during the period an interim stay granted by the Hon'ble High Court of Judicature at Madras was in force restraining PGCIL from giving effect to MTOA.

Petitioner : PTC India Ltd.

Respondents : Torrent Power Ltd. (TPL) & Anr.

Date of Hearing : **22.9.2026**

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, MB Power
Shri Akshat Jain, Advocate, MB Power
Shri Shikhar Verma, Advocate, MB Power
Shri Anant Singh Ubeja, Advocate, MB Power
Shri Avdesh Mandloi, Advocate, MB Power
Shri Abhishek Gupta, MB Power
Shri Ravi Kishore, Advocate, PTCIL
Ms. Deepti Dash, Advocate, PTCIL
Ms. Deepa Chawan, Advocate, TPL
Ms. Reshmarani Nathani, Advocate, TPL
Ms. Swapna Seshadri, Advocate, TPL
Ms. Harsha Rao, Advocate, TPL
Shri Robin Singh, Advocate, TPL



Record of Proceedings

At the outset, learned counsel for the Parties made brief submissions on the background of both cases and pointed out that the issues arise out of back-to-back PPAs for supply of 50 MW by MB Power to TPL through PTCIL during the period from 1.4.2022 to 30.9.2022. The learned counsels pointed out that in Petition No. 71/MP/2023, MB Power has, among others, sought a declaration that the PPAs are not in conformity with the MoP Guidelines and GERC Guidelines, that they stand frustrated due to Force Majeure events, that Coal India's Circular dated 1.3.2022 read with CCEA's decision dated 26.2.2022 constitute Force Majeure and Change in Law events, that PTCIL is not entitled to seek any liquidated damages and/or replacement power cost from MB Power or levy any penalty on it on account of non-supply, a direction to PTCIL for the payment of Rs. 24.91 crore against the power supplied by MB Power (for approximately 37 MUs) for the period between 1.5.2022 to 31.5.2022 and 8.9.2022 to 9.9.2022, and the refund of Rs. 24.62 crore deducted from MB Power's payment to be made by PTCIL for supply to UPPCL under another agreement. On the other hand, PTCIL, in Petition No. 764/MP/2025, has sought a direction against TPL for refund of amount of Rs. 33.82 crore deducted towards non-supply of power by MB Power during the period from 1.6.2022 to 29.8.2022 ("*stay period*"), as the non-supply occasioned on account of an interim stay by the Hon'ble Court of Madras in WP No. 13767 of 2022, whereby CTUIL was restrained from giving effect to MTOA.

2. The learned counsel for PTCIL, *inter alia*, submitted that TPL had illegally and arbitrarily deducted approximately Rs. 33.82 crore from PTCIL's invoices towards liquidated damages and replacement power cost for the period during which the interim stay granted by the Hon'ble Madras High Court was in operation, when scheduling and supply through the MTOA corridor were legally restrained. He submitted that PTCIL had not made any deductions from MB Power for the stay period and that the deductions made during the non-stay period from MB Power's payment under the UPPCL contract were in terms of the Indemnity/Consent Letter furnished by MB Power, pursuant to its failure to provide the required Bank Guarantee. He submitted that the change in source or price of coal did not constitute a Change in Law under the PPA and that an increase in coal prices could neither constitute Force Majeure nor frustrate the PPA. He submitted that MB Power's objections regarding the Payment Security Mechanism and the absence of GERC approval were belated and raised merely as an afterthought, as MB Power had itself acted upon the PPA and supplied power thereunder. In any event, GERC had approved the PPA and tariff. Accordingly, he submitted that its claim for deductions made by TPL for the stay period was distinct from MB Power's claims relating to Force Majeure and Change in Law for the non-stay period.

3. The learned counsel for TPL submitted that its contractual relationship was with PTCIL and that PTCIL's claim formed only one part of a larger contractual arrangement involving supply of power through the trading licensee. It was further submitted that the claims and reliefs of the parties were distinct, and MB Power could not rely on the outcome of PTCIL's claim without independently proving the basis of its own claims. MB Power was required to establish the reasons for non-supply during periods when there was no judicial stay, including its pleas of Force Majeure, Change in Law, and absence of the requisite payment security mechanism. She further contended that the deductions were made strictly in accordance with the contractual terms since the failure to supply power triggered the contractual liability for liquidated

damages and replacement power cost. She submitted that the PPA between TPL and PTCIL also contemplated supply from an alternate source, subject to the necessary concurrence, but PTCIL made no such request.

4. The learned counsel for MB Power, *inter alia*, submitted that both matters arise from the same back-to-back contractual arrangement and are closely interlinked, since the liability for non-supply directly affects the consequential deductions and claims between the parties. He submitted that during the *stay period*, power supply could not be affected because the MTOA could not be operationalised, and the consequences of that judicial restraint could not be attributed to MB Power. For the remaining period, he contended that MB Power's inability to supply power arose from Change in Law and Force Majeure events caused by the revised coal auction mechanism along with non-availability of the required Payment Security Mechanism. He submitted that the CCEA decision dated 26.02.2022 and Coal India's Circular dated 01.03.2022 materially altered coal availability and pricing for the power sector, and constitute Change in Law and Force Majeure events. MB Power also issued Change in Law and Force Majeure notices seeking the consent of PTCIL and TPL; however, PTCIL/TPL refused these claims, forcing MB Power to suspend supply. He further submitted that the approval of the PPA and tariff by GERC under Section 86(1)(b) of the Act was necessary for its enforceability.

5. The matters remained part-heard and will be listed for hearing on **25.11.2026**.

By order of the Commission

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