

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 102 of 2016

Date: 8 September, 2016

CORAM: **Shri. Azeez M. Khan, Member**
 Shri. Deepak Lad, Member

Petition filed by Adani Power Maharashtra Limited (APML) under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 13 “Change in Law” under the Power Purchase Agreement (“PPA”) dated 08.09.2008 for supply of 1320 MW of power executed between MSEDCL and APML for appropriate adjustment in tariff due to “Change in Law” for the 800 MW portion of contracted capacity linked to Lohara Coal Block which substantially affected cost and revenues of the project.

Adani Power Maharashtra Limited (APML)Petitioner

Maharashtra State Electricity Distribution Company Limited (MSEDCL)Respondent

Representative for the Petitioner: Adv. Vikram Nankani (Sr. Counsel)

Representative for the Respondent: Smt. Deepa Chawan (Counsel)

Daily Order

Advocate for the Petitioner briefed the Commission on the background of the Case, the Order passed by the Commission on Compensatory Tariff, Change in Law events and the Judgment passed by APTEL on Compensatory Tariff.

With reference to the DFR No. 2635 of 2014 pending before APTEL on the issue of Force Majeure, APML submitted that APTEL has delinked the Appeal relating to Force Majeure from the Appeals on the Compensatory Tariff. APML further submitted that the present Petition is independent of its Appeal pending before the APTEL. The Advocate of the Petitioner further submitted that the Commission has already passed an Order in Case No. 163 of 2014 in its favour for relief on account of Change in Law events for 520 MW. The same events of Change in Law are in toto applicable to the remaining 800 MW of contracted power being supplied to MSEDCL, notwithstanding de-allocation of Lohara Coal block. He further submitted that his prayer for Interim relief is with respect to domestic coal only.

Advocate of the Respondent submitted that, as per Article 19 of the PPA, no Tariff adjustments are allowed if supply from alternate sources of fuel and from sources other than the Unit identified by the Seller in the RFP and hence the interim relief sought by the Petitioner should not be allowed. It was further submitted that the Petition is bereft of all details of the Change in Law events and its applicability to the event of de-allocation of Lohara Coal block. Moreover there is no urgency for the interim relief as such.

On being asked by the Commission, MSEDCL replied that Compensatory Tariff was not being paid to APML.

The Commission asked the Petitioner whether a notice as required under the PPA for relief under Change in Law event was served to MSEDCL. The Petitioner replied that APML had served such notices for each event as and when it occurred. However, these notices were for new Change in Law events. The Commission enquired as to whether it had served notices of Change in Law events prayed for in the interim relief. On this, Advocate replied that such notices were initially served for 1320 MW as a whole. Post the Compensatory Tariff Judgment of APTEL, it had not issued fresh notices on the Change in Law events prayed for in the interim Application.

The Commission stated that the issues of new Change in Law events would be dealt with the other similar cases scheduled on 20 October, 2016, i.e. Case No. 38 of 2016 filed by APML and Case No. 84 of 2016 filed by Rattan India Power Limited.

The Commission directed APML to file its Rejoinder in the matter within a week's time and MSEDCL to file its additional submission, if any on the issue of Interim Relief within a week.

Based on the Rejoinder/submissions of the Parties, the Commission will decide on the interim relief sought by the Petitioner.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member