



1. Increase in Service Tax,
2. Levy of Swacch Bharat Cess.
3. Levy of Krishi Kalyan Cess,
4. Removal of “the Service by the way of transportation of Goods by a Vessel from a place outside India to the first customs station of landing in India” from negative list
5. Change in Maharashtra VAT.

He stated that MSEDCL, vide its reply dated 23 June, 2016, informed that acceptance of events under Change in Law is subject to approval of the Commission. He referred to Art. 13.2 (b) of the PPA under which the Commission’s approval is required for determining the compensation.

Advocate of JSWEL stated further that MSEDCL, vide its reply to the Petition, has for the first time relied on Art. 19 of the PPA, and has contended that JSWEL is providing power from an alternate source of fuel and is therefore not entitled to claim increase in Tariff due to Change in Law.

He submitted that the fuel was contracted to be imported coal, which is what is relevant under the PPA and hence there was no change in source. The Commission had already ruled on the matter in Order in Case No. 67 of 2011, stating that it qualifies as Change in Law under Art. 19 of the PPA, and hence the principle of res judicata applies in the matter. He also stated that the Supreme Court Judgment in Omprakash Verma and Others v/s State of Andhra Pradesh and Others in Civil Appeal No. 998 of 2007 dated 8 October, 2010, particularly paras 75/77. Moreover under Art. 19 of the PPA, even if alternate fuel is used but the supply of power is from the identified unit under RFP, the provisions of Change in Law or Force Majeure are applicable. Moreover, JSWEL is not changing the fuel source, which is imported coal.

To query of the Commission, Representative of MSEDCL submitted that as reference to transmission charges in Art. 19 of the PPA relates to POC charges for Inter-State Transmission. He further submitted that the Petitioner’s bid for supply of 300 MW to MSEDCL at the quoted tariff was based on procurement of Indonesian Coal as per the coal sales purchase contract dated 26.12.2007 entered into with M/s. PT Sungai Beltai Coal (SBC). MSEDCL came to know about the change in the source of fuel from Case No. 160 of 2014. Consequently, as per Art. 19 of the Change in Law provision will not be applicable for the power from such alternate source of fuel. In the bids, the coal FSA, etc were given by JSWEL as required. Representative of MSEDCL also referred to para 17 of the Commission’s Order in APML’s Case No. 163 of 2014, which held that change in fuel is not allowed. Source would not entitle the Generator to the Change in Law provisions. That ruling is of general applicability and not restricted to that Case. JSWEL has changed its imported coal source

from SBC to other suppliers in Indonesia or South Africa. Art. 19 of the PPA between APML and MSEDCL is the same as in the PPA between JSWEL and MSEDCL.

Representative of MSEDCL stated that Maharashtra VAT would have been subsumed in the Tariff. Hence increase in Maharashtra VAT to 5.5. % at this juncture and affecting O&M expenses could not be considered. As per the GoI notification dated. 29.02.2016, the Service Tax paid will be available as credit with the Indian manufacturer.

Advocate of JSWEL stated that, on 3 June, 2010, JSWEL had informed MSEDCL regarding revocation of mining license of SBC. The matter relating to cancellation of mining licence has been heard by the Commission in two different matters. MSEDCL did not raised the issue of change in fuel source in Case No. 67 of 2011. As regards the Commission's Order in Case No. 163 of 2014, APML has not claimed adjustment for the fuel originally sourced from Lohara Coal block. Hence the ruling cited by MSEDCL has no relevance to the JSW matter. As regards to the source of fuel, the identified source in the bid was imported coal, and further details were given in schedule. 'Fuel' as defined in the PPA also refers only to imported coal'. As regards input credit being available to the manufacturer, that is not the case as power is not CENVATable.

Representative of MSEDCL submitted that in the RFP, JSWEL was required to submit the Coal Supply Agreement within 1 year of signing the PPA, JSWEL submitted the CSA with SBC to MSEDCL.

Advocate of JSWEL submitted that the bid have following elements, Non-Escalable Capacity Charge, Escalable Capacity Charge, Escalable Fuel Energy Charge, Non-Escalable Transportation Charge, Non-Escalable Fuel Handling Charge. Change in Service Tax is applicable to Non-Escalable Transportation Charge and Non-Escalable Fuel Handling Charge. Since O&M is part of related to Quoted Escalable Capacity Charge, there will be an identifiable Service Tax and VAT liability. O&M expenses are bound to be affected due to Change in Law events, and JSWEL has calculated the impact of VAT increase based on normative cost considering CERC norms for 300 MW set. JSWEL is ready to sit with MSEDCL on this issue. Representative of MSEDCL responded that there is no question of reviewing the computation regarding O&M impacts, as the underlying basis of JSWEL's bid is not known to MSEDCL.

**The Case is reserved for Order.**

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**