

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 154 of 2013 and Case No. 189 of 2013**

**Dated: 29 June, 2017**

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

**Case No. 154 of 2013:**

**In the matter of Petition filed by Indiabulls Power Limited for compensation in tariff on account of increase in fuel and other incidental costs and dispute between a Generating Company and the Distribution Licensee, relating to the provisions of the Power Purchase Agreements (PPAs) dated 22nd April 2010 and 5th June 2010.**

Indiabulls Power Ltd. (now RattanIndia Power Limited) (RIPL) .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Limited .....Respondent

Advocates / Representative for the Petitioner: Shri. Vishrov Mukerjee (Adv.)

Advocate / Representative for the Respondent: Smt. Deepa Chawan (Adv.)

Authorised Consumer Representatives: Smt. Ashwini Chitnis (Prayas)  
Shri. Ashok Pendse (TBIA)

**And**

**Case No. 189 of 2013:**

**In the matter of: Petition of Adani Power Maharashtra Limited for compensation in tariff on account of "Change in Law" under the PPAs dated 31.03.2010, 19.08.2010 and 16.02.2013.**

Adani Power Maharashtra Ltd. ....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Limited

.....Respondent

Advocates / Representative for the Petitioner:

Shri. J. J. Bhatt (Adv.)

Advocate / Representative for the Respondent:

Smt. Deepa Chawan (Adv.)

Authorised Consumer Representatives:

Smt. Ashwini Chitnis (Prayas)

Shri. Ashok Pendse (TBIA)

### **Daily Order**

1. Heard the Advocates of the Petitioners and Respondents, and the Consumer Representatives.
2. APML stated that:
  - a) APTEL, in its Order dated 4 May, 2017 in Appeal Nos. 98 of 2016 & others, has set aside MERC's Order in Case No. 154 of 2013 and 189 of 2013 and remanded the matters to MERC for fresh adjudication in the light of the direction of the Supreme Court dated 11 April, 2017 in Civil Appeal Nos. 5399-5400 of 2016.
  - b) Supreme Court in its Judgement dated 11 April, 2017 clarified that the MoP's letter of advice dated 31 July, 2013 and the revised Tariff Policy, 2016 are statutory documents, considering Section 3 of the Act, and have the force of law. That being so, it is clear that, so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India Ltd. (CIL) is reduced, as per Article 13.2 of the PPA read with MoP's advisory dated 31 July, 2013, it should be taken as an event of Change in Law. The Parties shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law is to restore, through monthly tariff payments, the affected party to the economic position as if such Change in Law has not occurred.
  - c) The Supreme Court directed CERC to determine what relief should be granted to those Generators who fall within clause 13 of the PPAs.
  - d) This Commission in its Order dated 15 July, 2014, did not consider the submissions made by RIPL on the ground of Change in Law.
  - e) As per Office Memorandum of Ministry of Coal dated 18 October, 2007, 100% quantity was to be considered for supply of coal to those having FSA, which covered

by Power Plants which were yet to be commissioned. IPPs would be entitled to enter into FSA within the stipulated time, and CIL was responsible for fulfilling the coal requirements under FSA even by resorting to imports, if necessary.

- f) On 24 July, 2008, MoP stipulated the principles/procedures to be adopted for grant of LOA to the Power Projects to enable them to achieve financial closure.
  - g) At its meeting held on 14 February, 2012, the Standing Linkage Committee (Long Term) for Power noted the gap between the commitment through LoAs/FSAs with the power sector and the other consumers, but desired to enhance production so as to overcome the shortage to the maximum extent possible.
  - h) At its meeting held on 31 May, 2013, the Committee, in view of the large gap in demand and supply of coal, recommended to keep in abeyance the new applications for LoAs as well as the applications which were already received but were under process.
  - i) Further, through the press release of the decision of the CCEA dated 21 June, 2013 and the MoP's Office Memorandum dated 23 July, 2013, a revised arrangement was approved for supply of coal to the identified Thermal Power Stations commissioned and likely to be commissioned between the period of 1 April, 2009 and 31 March, 2015. According to the new arrangement, it had been decided to sign the FSAs for the domestic coal quantity of 65%, 65%, 67% and 75% of ACQ, respectively for the remaining four years of the 12<sup>th</sup> Plan for the Plants having coal linkage.
  - j) Also the revised National Tariff Policy, 2016 stipulates that the additional cost of coal procured from other sources due to the reduction in domestic coal from CIL as compared to the quantity assured in the LoA/FSA may be allowed as pass through subject to the approval of the Commission as per the MoP advisory dated 31 July, 2013.
3. RIPL stated that:
- a) RIPL had been granted coal linkage from SECL and WCL (CIL subsidiaries) in terms of the LoA, and on that premise, RIPL had shown its linkage in the bid as reflected in Schedule 5 of the PPAs. The LOA quantity was subsequently transferred to SECL on account of shortage of coal in WCL.
  - b) In its submission dated 15 June, 2017, RIPL has submitted the illustrative calculations of the compensation to which is entitled, which works out to around Rs.0.62/kWh.
  - c) After the APTEL Judgment, only calculation of the amount against compensation is required.

- d) On 22 May, 2017, GoI has introduced a new coal allocation policy (SHAKTI), under which the Units included in the 68000 MW capacity as per the CCEA decision would continue to get coal at 75% of ACQ even beyond 31 March, 2017, and supply may be increased based on coal availability.
- e) The Commission may allow some interim per unit compensation prospectively, and may thereafter deal with the actual compensation to be paid for the prior and further period.
- f) RIPL will submit the calculations of per unit compensation to apply on adhoc basis.

4. APML stated further that:

- a) The Commission, as an interim arrangement, may allow some compensation against the Change in Law, and may set up a committee to deal with the calculations, and including the carrying cost.
- b) In the Original Petition, APML has given different scenario for calculations and now MSEDCL may consider actual cost.
- c) To a query of the Commission, Advocate of APML stated that the approximate compensation against the Change in Law will be 40 Paise/kWh, and that it will file the actual calculation.

5. MSEDCL stated that:

- a) APML has not submitted any calculations for the compensation on adhoc basis.
- b) Advocate of MSEDCL requested the Commission to allow MSEDCL 4 weeks to analyse the issues and make its final submission, and till such time no compensation may be allowed on adhoc basis.

6. Smt. Ashwini Chitnis of Prayas stated that:

- a) The Commission has to verify the alternate sources of the coal, and whether it is domestic or international coal. AMPL should submit the valid contractual documents, FSAs, LoAs, actual power generated and actual coal realization.
- b) As the Commission is determining such compensation for the first time, it may publish a draft Order and call for public suggestions/objections and then arrive at the final Order.

7. Dr. Ashok Pendse of TBIA stated that, for considerable period, RIPL has been generating power at 15 to 20% PLF, and therefore the issue of compensation will not

arise in RIPL's Case. In APML's case, 1320 MW PPA may only be debated for the compensation.

The Commission allowed MSEDCL four weeks for its detailed submissions, and one week thereafter for Rejoinders by APML and RIPL. The Commission also directed APML and RIPL to submit the calculations for the ad-interim relief claimed within a week.

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

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