

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
**Tel. 022 22163964/65/69 Fax 22163976**  
**Email: mercindia@merc.gov.in**  
**Website: www.mercindia.org.in / www. merc.gov.in**

**Case No. 84 of 2016**

**Dated: 25 July, 2017**

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

In the matter of Petition filed by RattanIndia Power Limited (formerly Indiabulls Power Ltd.) (RIPL) under Section 86 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 10 of the Power Purchase Agreements dated 22.04.2010 and 05.06.2010 executed between RIPL and Maharashtra State Electricity Distribution Company Limited (MSEDCL) for compensation due to Change in Law impacting revenues and costs during the period from the date of commencement of supply of power by RIPL.

RattanIndia Power Limited (RIPL) .....Petitioner

Maharashtra State Electricity Distribution Company Limited.(MSEDCL) .....Respondent

**Appearance:**

For RIPL:

Adv. Malcom Desai

Adv. Kunal Kaul

For MSEDCL:

Shri. Paresch Bhagwat (Rep.)

**Daily Order**

1. Heard the Advocate of the Petitioner and the Representative of Respondent.
2. Advocate of RIPL stated that
  - a. RIPL and MSEDCL have executed two Power Purchase Agreements (PPAs) pursuant to Case-1 Competitive Bidding process initiated by MSEDCL for supply of 1200 MW power to MSEDCL at levelised tariff of Rs.3.260/kWh, for a period of 25 years. The Bid Deadline Date was 07.08.2009. As such, all events of Change in Law post the Cut-Off Date i.e., 31.07.2009 (being 7 days prior to the Bid Deadline Date) qualify for the purpose of computing/ adjudicating the Change in Law claims.
  - b. RIPL has filed the present Petition seeking compensation on account of eleven Change in Law events affecting the Project from the date of commencement of supply of power by RIPL. To restore RIPL to the same economic position at which it

was at the time of bidding, the Commission has to recognize the events under Change in Law and the financial impact due to the events

- c. In its Reply dated 27 April, 2017, MSEDCL has contested only 5 out of 11 Change in Law events which have impacted the cost/ revenue of the Project:
  1. Contribution to the District Mineral Foundation
  2. Contribution to the National Mineral Exploration Trust
  3. Imposition of Congestion Surcharge on Goods Traffic originating from Ports
  4. Use of washed or beneficiated coal
  5. Change in Environmental Norms
- d. MSEDCL has not contested the following events in its Reply.
  1. Imposition and increase in rates of Additional Duty on Imported Coal
  2. Increase in Education Cess and SEC & HSE Education Cess on account of increase in rate of Additional Duty on Imported Coal
  3. Levy of Swachh Bharat Cess
  4. Imposition of Krishi Kalyan Cess
  5. Increase in rates of Chhattisgarh Paryavaran and Vikas Upkar
  6. Increase in amount of Central Sales Tax on account of other Changes in Law
- e. MSEDCL has also sought to revisit the issues which have already been decided by this Commission vide its Order dated 25 March, 2015 in Case No.173 of 2013 and the issues which were not decided on account of pendency before the CERC.
- f. APTEL in its recent Judgment dated 19 April, 2017 in Appeal No.161 of 2015 in the matter of Sasan Power Limited vs. CERC & Ors has held that, once the occurrence of a Change in Law event has been ascertained, it needs to be evaluated whether such Change in Law results in an increase/ decrease in the cost or revenue of the Project. If it does, then the affected party will have to be compensated/ restituted to the extent as if such Change in Law event had not occurred.
- g. The issue of change in tax and/ or change in rate of taxes etc. is treated as a Change in Law as clarified by the Ministry of Power in the Revised Tariff Policy dated 28 January, 2016, which has been given binding effect by the Supreme Court in Energy Watchdog v. CERC & Ors. Thus, any change in tax and/or change in rate of tax, duties and cesses is to be allowed as a pass through. Even otherwise, as per the Article regarding Change in Law of the PPAs, any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of the PPAs constitutes a Change in Law event.
- h. For a reference to the use of washed or beneficiated coal, RIPL stated that on 02.01.2014, the MoEF amended the Environment (Protection) Rules, 1986 and provided that, with effect from 5 June, 2016, a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located between 500-749 K.M. from the pit-head, shall be supplied with and

shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly average basis. In RIPL's case, the distance is approximately 740 Kms. To a query of the Commission, RIPL stated that the distance of 740 Kms. is the distance from the Railway siding of the mines to the Railway siding of the Plant, based on Railways receipts for the coal transportation.

- i. To a query of the Commission regarding whether RIPL had used imported coal for the generation to the extent of the shortfall of supply of coal due to CCEA decision or to meet a shortfall against the allotted coal quantity, RIPL stated that it will submit details of the imported coal which has been used accordingly.
  - j. To a suggestion of the Commission, RIPL stated that it will determine the actual impact due to use of washed coal and submit it to the Commission.
  - k. On the contribution to the District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET), MSEDCL had agreed to these being Change in Law events in Case No. 38 of 2016 of APML, as recorded in the Daily Order dated 3 January, 2017, whereas in RIPL's Case, MSEDCL is taking a contrary view.
  - l. To a query, RIPL stated that it will file details of whether SECL provides the source of the coal and the location of mines from which it is providing Coal since the Mineral Foundation and Trust contributions may differ depending on the mine allocated. As regards the FSA, it states that the price of coal shall be the notified price along with taxes and duties.
  - m. MSEDCL has not challenged the Commission's Order dated 25.03.2015 in Case No. 173 of 2013. It has attained finality and MSEDCL is precluded from re-agitating these issues. RIPL requested the Commission not to reopen these old Change in Law events during the present proceedings.
3. MSEDCL stated that
- a. MSEDCL has agreed on the following three Change in Law events only, without any dispute.
    - i. Levy of Swachh Bharat Cess
    - ii. Imposition of Krishi Kalyan Cess
    - iii. Increase in amount of Central Sales Tax on account of other Changes in Law
  - b. It referred to the notifications in terms of DMF and NMET and stated that the State Government collects DMF and NMET in addition to the Royalty. If RIPL is suffering from its impact, it should approach the appropriate forum i.e., National Coal Tribunal.
  - c. As per Rule 7(3) of the National Mineral Exploration Trust Rules, 2015, the holders of a mining lease and prospecting license-cum-mining lease are required make payments for contribution to the NMET Fund, under Section 9C (4) of the MMDR Act to the State Government simultaneously with payments of Royalty.

It is the liability of the holder of mining lease and not the coal procurer. MSEDCL is relying on APTEL Judgment dated 1 February, 2017 in Petition No. 8/MP/2014 with regard to imposition of Congestion Surcharge on Goods Traffic originating from Ports.

- d. In respect of use of washed coal, MSEDCL stated that the Environmental (Protection) Rules are in existence since 1986, i.e. before the cutoff date. As the FSA has stipulated specific ash contents in the coal, for shortfall in the quality of coal, RIPL should approach appropriate forum for this dispute between the generator and coal supplier.
  - e. APTEL's Judgment in Petition No. 79/MP/2013 and 8/MP/2014 has been appealed against in Supreme Court (Appeal Nos. 145/2016 and 111/2017, respectively), and is sub judice.
4. Shri. Ashok Pendse of TBIA (Consumer Representative) stated that
- a. RIPL's Generating Plant is under zero schedule most of the time. As such, it should be clarified why RIPL has imported coal to the extent of the non-allocated 35 % coal from SECL due to CCEA decision.
  - b. To arrive at the decision regarding the Change in Law events with regard to the imported coal, the Commission may first hear the Petitions before it with respect to the CCEA decision consequent to the Supreme Court Judgment of April, 2017.
  - c. The stands taken by MSEDCL in the various cases of APML and RIPL in respect of Change in Law must also be made applicable to the MSEDCL PPAs under Section 62 of the Electricity Act, 2003.
  - d. To a query of the Commission regarding the different stands taken on Change in Law events by MSEDCL section 62 and section 63 cases, MSEDCL stated that it will conduct due diligence on the every event of Change in Law in section 62 PPA also.

The Commission directed RIPL to submit its Rejoinder in 4 weeks, to which MSEDCL may respond within 2 weeks.

The Secretariat of the Commission will communicate the next date of hearing.

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

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