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

Date: 15 November, 2017

Coram: **Shri Anand B. Kulkarni, Chairperson**
Shri Azeez M. Khan, Member
Shri Deepak Lad, Member

In the matter of Petition of Adani Power Maharashtra Ltd. for compensation in tariff on account of "Change in Law" under its PPAs with Maharashtra State Electricity Distribution Co. Ltd.

Adani Power Maharashtra Ltd. (APML) …Petitioner

Vs

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) …Respondent

Appearance

Representative for the Petitioner:	Shri. Sanjay Sen (Adv.) Shri. Kandarp Patel (Rep.)
Representative for Respondent:	Smt. Deepa Chawan (Adv.) Shri. Paresh Bhagwat (Rep.)
Authorised Consumer Representative:	Smt. Ashwini Chitnis, Prayas (Energy Group)

DAILY ORDER

1. The Commission directed the Parties to make their submissions only on the new information submitted by the Petitioner, as the background and other issues have already been set out and argued in the earlier hearing.

2. MSEDCL stated as follows:

    i. The assurance of 100% linkage coal pursuant to the New Coal Distribution Policy (NCDP), 2007 does not apply to Units # 4 & 5 as those Units were not

included in the generation capacity of 78,000 MW with valid Letters of Assurance (LoAs) from Coal India Ltd. (CIL).

ii. As Units 4 & 5 did not have any LoA/Fuel Supply Agreement (FSA), they are not eligible for any relief under Change in Law.

iii. The impact of Change in Law should be approved only for generation capacity of 1180 MW (Unit # 1 - 660 MW and Unit # 2 – 520 MW) based on the difference in coal price due to the shortfall in linkage coal from 100% to 65% in the first year and so on, due to the amendment to the NCDP in 2013.

iv. The methodology for determining the impact of Change in Law needs to be approved in line with the Judgment of the Supreme Court.

v. The Supreme Court Judgment dated 11 April, 2017 in Civil Appeal Nos. 5399-5400 of 2016 is not absolute in awarding the impact of Change in Law. The State Electricity Regulatory Commission needs to approve the impact of Change in Law in accordance with the directions of the Supreme Court. Pursuant to the Supreme Court's Judgment, the Distribution Licensees of Haryana have approached the Haryana Electricity Regulatory Commission for approval of the impact of the Change in Law, and that matter is pending.

3. Prayas (Energy Group) submitted as follows:

i. As Units 4 & 5 do not have any LoA/FSA, they are not eligible for any relief under Change in Law.

ii. The assurance of 100% requirement of coal from domestic coal linkage as stipulated in the NCDP, 2007 did not apply unconditionally to all the thermal power plants at that point of time. As per the NCDP, 2007, the enforceable LoA for coal supply was assured on achievement of the specified milestones. The allocation of coal linkage to Units # 4 & 5 was never discussed in the meetings of Standing Linkage Committee (Long-Term) (SLC (LT)).

iii. MSEDCL, in its clarifications to bidders during the bidding process, stated that even the tapering coal linkage does not meet the qualification requirement. The FSA for 5 years for imported coal submitted by APML for Units # 4 & 5 was considered by MSEDCL for qualification. In light of the above, APML's application for coal linkage for Units # 4 & 5 does not qualify for claiming the impact of Change in Law.

iv. The Environmental Clearance for Units # 4 & 5 was accorded considering imported coal as fuel, and hence the Units # 4 & 5 were imported coal Units and not domestic coal Units.

v. The similarity drawn by the Petitioner between the instant Case and the case of the Haryana Distribution Utilities regarding Change in Law is not appropriate as, in the case of Power Purchase Agreements (PPAs) of Haryana Distribution Utilities, the source of coal for the generation station was never disputed at any level. The source of coal in the Environmental Clearance for the Generation Station in that matter was domestic coal and the PPAs also specified the fuel as domestic coal.

vi. APML has not furnished all the information sought for Unit 1 and 2 to specifically demonstrate that there was shortfall of coal with respect to the contracted quantity in the FSA.

4. The Commission asked APML to explain how the Supreme Court Judgment is applicable to Units 4 & 5, in the absence of any valid LoA/FSA.

5. APML stated as follows:

i. APML Units # 4 & 5 did not have a LoA/FSA for domestic coal.

ii. Coal is a nationalized commodity, and only the Government of India has the powers to allocate coal to the Generation Stations. At the time of competitive bidding for power procurement conducted by MSEDCL, the NCDP, 2007 was the law in force and under the same APML was eligible for coal linkage. A LoA only stipulates the milestones to be achieved for execution of enforceable FSA. At the time of bid submission, APML had applied for coal linkage for Units # 4 & 5. Hence, the Coal Supply Agreement for imported coal was submitted along with APML's bid for meeting the qualification requirement, and it was specifically mentioned that that the Primary Fuel is Domestic Coal. The Bid Evaluation Committee of MSEDCL had compared the quoted tariff of APML with the tariff computed in accordance with Section 62 of the Act. APML's bid was accepted by MSEDCL and subsequently the PPA was executed.

iii. While submitting the bid, the tariff for power supply from Units # 4 & 5 was quoted in INR/kWh.

iv. The PPAs executed between APML and MSEDCL were approved by the Commission after due regulatory process, in which Prayas also filed its submissions. Fault finding at this stage in the provisions of the PPAs that were approved after due regulatory process is not warranted.

v. The total generation capacity that was awarded valid LoAs was 1,08,000 MW. Out of this, 78,000 MW was selected for execution of FSAs as these Generation Stations were at advanced stages of completion. In addition to 1,08,000 MW with valid LoAs, the Presidential Directive in the year 2013 mandated coal supply to generation capacity of another 4660 MW. This generation capacity of

4660 MW covered APML Units # 4 & 5. Accordingly, Units # 4 & 5 were assured coal supply under MoUs.

vi. The application for coal linkage for Units # 4 & 5 of AMPL was kept in abeyance and not rejected.

vii. There have been no quality related issues in the domestic coal procured for APML Units # 1, 2 & 3.

6. The Commission asked APML whether Units 4 & 5 were part of the 78,000 MW generation capacity that were awarded valid LoAs. APML clarified that Units 4 & 5 were not part of the 78,000 MW generation capacity, but were part of 4660 MW.

7. The Commission directed AMPL to file its submission on how the "assurance" for domestic coal as claimed by APML qualifies as an assurance as envisaged under the NCDP, 2007.

8. APML is directed to file its submissions by 22 November, 2017.

The Case is reserved for Order.

Sd/-	**Sd/-**	**Sd/-**
(Deepak Lad)	**(Azeez M. Khan)**	**(Anand B. Kulkarni)**
Member	**Member**	**Chairperson**