

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 84 of 2016

Dated: 20 December, 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.) (RPL) 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 RPL 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 RPL.

RattanIndia Power Limited (RPL)Petitioner

Maharashtra State Electricity Distribution Company Limited.(MSEDCL)Respondent

Appearance:

For RPL: Adv. Vishrov Mukerjee
Shri. Sameer Darji
For MSEDCL: Shri. Paresh Bhagwat (Rep.)
Consumer representative: Dr. Ashok Pendse, TBIA

Daily Order

1. Heard the Advocate of the Petitioner, Representative of Respondent and the Consumer Representative.
2. Advocate of RPL stated that:
 - a. As regards the imposition and increase of additional Duty on imported steam coal and the corresponding Cess, the Commission has heard RPL's Petition in the ATE remand matter on compensatory tariff for the amendment to the New Coal Distribution Policy (NCDP). The Order is expected and that issue would be dealt with accordingly. If the additional Duty on imported steam coal is recognized as Change in Law event, then the Education Cess, Secondary Education Cess (SEC) & Higher Secondary Education (HSE) Cess will also be events of Change in Law.

- b. In additional submission dated 21 November, 2017, RPL has made its submission on the three issues which were raised by the Commission in its Daily Order dated 25 July, 2017.
- c. As regards the issue of use of coal from alternative source, the quantity of coal procured from alternative sources is 1.6 MT but MSEDCL is not paying RPL in line with the Commission's Orders dated 15.07.2017 in Case No.154 of 2013 and Order dated 20.08.2014 in Case No.147 of 2014. The said Cases have been heard by the Commission after its Orders were remanded by the ATE. RPL will deal with the issue according to the Orders of the Commission in the remanded matters.
- d. As regards the issue of impact of the use of washed coal, in terms of the Environment Protection Amendment Rules, the ash content of the coal being supplied to and used by RPL cannot exceed 34% on quarterly average basis. In order to comply with this legal obligation, the coal supplied to RPL is required to be washed before transportation. Consequently, RPL is incurring additional costs towards washing of coal and procurement of additional coal in lieu of the quantity of coal lost during the washing process, which is an additional recurring expenditure.
- e. Cost incurred on account of washing charges towards the actual coal supplied under the Fuel Supply Agreement (FSA) as per audited financial statements for FY 2016-17 is Rs. 17.45 crore, and 20% loss in the quantity of actual coal supplied on account of 'Yield Loss' pursuant to the washing process as per audited financial statements for FY 2016-17 is Rs. 12.58 crore.
- f. To a query of the Commission, RPL stated that ATE in its Judgement dated 14 December, 2016 in Appeal No. 64 of 2016 and IA No 163 of 2016, in the matter of Nabha Power Limited vs Punjab State Power Corporation Limited, has noted that the loss of quantity of coal is approximately 20% on account of the process of washing, which is mandated to reduce the ash content to within the statutorily prescribed limit (34%). Accordingly, RPL has considered the loss of 20% to calculate the quantity of coal required.
- g. As regards the query of the Commission regarding the quality of coal, RPL is getting the same standard of coal which has been contracted from Coal India Limited (CIL). Hence, the possibility of increase in the quantity of coal required, because of lower quality of coal received, in addition to the mandated process of washing, is not applicable in the case of RPL. In case of slippage in agreed quality of coal in the FSA, RPL would have to approach CIL.
- h. As regards the location of mines from which it is provided coal in the context of District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET), RPL stated that the DMF and NMET rates are linked to the royalty on coal and each invoice raised by South Eastern Coalfields Limited (SECL) sets out the royalty and DMF and NMET amounts.

- i. On the issue the period from which the events of Change in Law are to apply, the impact should be computed from the date that it affects the Seller, and RPL had commenced supply before the Scheduled Delivery Date (SDD). However, the Commission has ruled on the issue of applicable period (i.e after the SDD) to calculate the impact in its Order dated 18 October, 2017 in another Case No. 38 of 2016. RPL will file its additional submission on this limited issue within a week.
3. MSEDCL stated that
- a. MSEDCL will verify whether RPL has imported the coal on account of reduction in allocated coal quantity from CIL as per the amendment to the NCDP. The related ATE remand matter is pending before the Commission for Order, and MSEDCL will deal with these issues accordingly.
 - b. As per the Amendment dated 2 January, 2014 in Rule 3 (8) of the Environment Protection Rules, 2014, RPL has the option to use raw, blended or beneficiated coal. Thus, in order to maintain the ash content of 34% on quarterly basis, RPL has an option to use blended coal. By blending low ash content coal, RPL can attain the 34% ash content requirement.
 - c. ATE's Judgement in Nabha Power Limited is irrelevant in this matter as the power procurement in that matter was under Case-2 Bidding. RPL should approach CIL for any Coal quality or ash content issues. It is the generator's duty to check the quality at receiving end and if there is degradation in quality of coal, then the matter is between the generator and the coal supplier. Percentage loss in washing is not standardized. For the power procurement under Section 63 of the Electricity Act, 2003, it is not for the Procurer to keep inspecting coal quality, etc. The coal supply standards in the FSA set out the ash content range, but including moisture (GCV at 5% of moisture). Had RPL objected at that time, the issue would not have arisen. However, the FSA also sets out the compensation provisions for Grade/quality slippage in coal supply, and RPL has not revealed the credits it has received on this count.
 - d. Washing of coal also has several other benefits for Generators, since it reduces the freight charges (washing being done near the coal mines), increase in Gross Calorific Value (GCV), thermal efficiency, lowering the Operation and Maintenance expenses for disposal, etc which offsets the washing costs. RPL should compute and present such benefits, which may reduce the resultant impact.
4. In response, RPL stated that
- a. The ATE's Nabha Power Judgment has been cited only for the percentage loss of 20% in washing which reflects the industry practice. The computation of GCV is also as received at the project site.

- b. MoEF has amended the Environment (Protection) Rules, 1986 to require use of raw or blended or beneficiated coal with ash content not exceeding 34%, on quarterly average basis, and not for blending good quality of coal in the raw coal.
 - c. In its additional submission dated 13 December, 2017, RPL has stated that the Project is situated 740 kms from the pit-head. Therefore, the Project is covered by Rule 3(8) (c) of the Environment Protection Amendment Rules.
 - d. RPL is supplied coal under the FSA dated 22 December, 2012 which specifies the quantity and quality of coal to be supplied by SECL. RPL was allocated Grade E Coal by SECL. By way of Addendum No. 3 dated 31 July, 2013 to the FSA, the quality of coal stipulated under schedule III of the FSA was modified to F grade. Corresponding ash and moisture content in the modified grade is stated as between 40.1% to 47%.
 - e. SECL is supplying the coal in terms of the FSA and it is incorrect to say that RPL has been procuring low grade coal. MSEDCL's contention is misconceived, as the original allocation of coal also stipulates ash content at between 34% to 40%.
 - f. MSEDCL's contention that removing moisture content from the received coal under FSA would also reduce the ash content below 34% is baseless.
 - g. As regards verification of ash content, RPL has executed an Agreement dated 9 January, 2017 with the Central Institute of Mining and Fuel Research (CIMFR) for examining the coal quality at loading and unloading points. RPL has also provided the information to MSEDCL about procurement of coal such as annual contacted capacity, actual coal lifted, washing losses, cost incurred in washing coal, coal yield and GCV after washing and the third party report showing the break-up of ash content, moisture, etc.
 - h. MSEDCL is relying on Para 66 of the Supreme court Judgement dated 5 October, 2017 in Civil Appeal No. 179 of 2017 (Nabha Power Limited vs Punjab State Power Corporation Limited), which is regarding the billing issue where SECL has supplying lower grade coal and billing for higher grade, on which the Supreme Court has ruled that the matter would be between SECL and the Respondent in that case.
 - i. With regard to the cost incurred in washing coal, RPL has submitted the Chartered Account's Certificate for Rs. 17.45 crore towards washing of coal during its claim period.
 - j. RPL has also provided the certificate of inspection dated 14 February, 2015 and the test report dated 2 December, 2016 to justify the quantity and quality analysis with all details.
5. Shri. Ashok Pendse of Thane Belapur Industries Association (TBIA) (Consumer Representative) stated that

- a. In respect of imposition and increase in rates of Additional Duty on Imported Coal, Education Cess, SEC & HSE Cess on Additional Duty, the Commission has heard the remanded ATE matter, and these issues relating to import of coal would be decided after the Commission's Order in Case No. 154 of 2013.
- b. On some other issues, such as increase in rates of Chhattisgarh Paryavaran and Vikas Upkar, levy of Swachh Bharat Cess, imposition of Krishi Kalyan Cess, DMF and NMET levy on Royalty, etc, the Commission has already given its rulings in its Orders dated 18 October, 2017 in Case No. 38 of 2016 and dated 23 August, 2017 in Case No. 117 of 2016.
- c. TBIA would file its written submission with regard to the issue of washing of coal within 2 days.

The Commission allowed RPL to file within a week its submission with regard to the implication of the Commission's recent Order in Case No. 38 of 2016 in another Change in Law matter with regard to applicability when supply under the PPA has been pre-poned.

The Case is reserved for Order.

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

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