

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 95/MP/2016 alongwith I.A. No. 23 of 2016

Subject : Petition under Section 79 (1) (f) read with Section 79(1) (b) of the Electricity Act, 2003 for adjudication of disputes arising from the termination of the Power Purchase Agreement (PPA) dated 9.7.2010 by the Bihar State Power (Holding) Company Limited.

Date of Hearing : 28.6.2016

Coram : Shri Gireesh B. Pradhan, Chairman
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K.Iyer, Member

Petitioner : Essar Power (Jharkhand) Limited

Respondents : Bihar State Power (Holding) Company Limited

Parties present : Mr. J.J. Bhatt, Sr. Advocate
Mr. Gopal Jain, Sr. Advocate
Mr. Sitesh Mukherjee
Mr. Jafar Alam
Ms. Akansha Tyagi

Record of Proceedings

Learned Senior Counsel for the petitioner submitted that the petitioner is engaged in the development of an 1800 MW Thermal Power Plant at District Latehar in the State of Jharkhand and has contracted to supply power to two states, namely, Bihar and Jharkhand under separate Power Purchase Agreements. The petitioner has entered into a PPA dated 9.7.2010 with Bihar State Power (Holding) Company Limited for supply of 450 MW power for a period of 25 years with Scheduled Delivery Date of 9.7.2014. Learned Senior Counsel submitted that the project is affected by various events of Force Majeure such as cancellation of coal block in terms of the order of Hon'ble Supreme Court in W.P. (Crl.) No.120 of 2012, delay in processing of environment clearance etc. etc.



2. Learned Senior Counsel submitted that while taking note of these events and circumstances, the respondent has issued a termination notice to the petitioner vide letter dated 18.6.2016 in terms of which the respondent has sought to terminate the PPA under Article 11.5. read with Article 4.7.3 of the PPA. Learned Senior Counsel submitted that though termination under the said Articles is without any liability on the parties either for damages or for non-performance or otherwise, the respondent has threatened to encash the Contract Performance Guarantee of Rs. 135 Crores furnished by the petitioner and has made a further demand of Rs. 45 crores as liquidated damages within 15 days of issuance of the said notice. Learned Senior Counsel has submitted that the present petition has been filed to challenge the wrongful and mis-conceived bid of the respondent to encash the petitioner's Contract Performance Bank Guarantee and claim for liquidated damages. Learned Senior Counsel further submitted that this Commission has jurisdiction over the instant petition under Section 79(1) (f) read with Section 79 (1) (b) of the Act as the petitioner has entered into contracts for supply of power to two States.

3. After hearing the learned Senior Counsel for the petitioner, the Commission directed to issue notice to Bihar State Power (Holding) Company Limited-respondent herein and Jharkhand Bijli Vitran Nigam Limited (erstwhile Jharkhand State Electricity Board) on the issue of maintainability of the petition under Section 79 (1) (f) read with Section 79 (1) (b) of the Act. The petitioner is directed to serve copy of the notice on the respondents, if not already served.

4. The petition shall be listed for hearing on maintainability on 1.7.2016. The petitioner is directed to serve copy of the notice *dasti* on the respondents.

By order of the Commission

**-Sd/-
(T. Rout)
Chief (Law)**

