

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.126/MP/2016**

Subject : Petition under Section 79(1)(b) and 79 (1)(f) of the Electricity Act, 2003 for claiming compensation on account of event pertaining to Change In Law as per Article 10 of the Power Purchase Agreement dated 23.8.2013 (PPA) executed between the Petitioner and the Respondent.

Petitioner : Bharat Aluminium Company Limited

Respondent : Tamil Nadu Generation and Distribution Corporation Limited

**Petition No.18/MP/2017**

Subject : Petition under Section 79(1 )(b) and 79 (1 )(f) of the Electricity Act, 2003 for claiming compensation on account of event pertaining to Change In Law as per the terms of Power Purchase Agreements dated 13.6.2013 (PPA) executed between the Petitioner and the Respondents.

Petitioner : Bharat Aluminium Company Limited (BALCO)

Respondents : Kerala State Electricity Board Limited (KSEBL) and Others

Date of hearing : 15.2.2018

Coram : Shri P. K. Pujari, Chairperson  
Shri A. K. Singhal, Member  
Shri A. S. Bakshi, Member  
Dr. M. K. Iyer, Member

Parties Present : Shri Sanjay Sen, Senior Advocate, BALCO  
Shri Matrugupta Mishra, Advocate, BALCO  
Shri Hemant Singh, Advocate, BALCO  
Shri Nishant Kumar, Advocate, BALCO  
Shri Md. Zeyauddin, BALCO  
Shri G. Umamathy, Advocate, TANGEDCO  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Ms. R. M. Mekhala, Advocate ,TANGEDCO  
Ms. Arushi Singh, Advocate, KSEB  
Shri M. G. Ramachandran, Advocate, UHBVNL  
Ms. Anushree Bardhan, Advocate, UHBVNL  
Shri V. K. Aggarwal, UHBVNL  
Ms. Ranjitha Ramachandran, Advocate, Prayas  
Ms. Poorva Saigal, Advocate, Prayas

## Record of Proceedings

Learned senior counsel for the Petitioner submitted as under:

a) The Commission has already allowed various change in law event in its previous orders, which are also the subject matter of the present petition. Learned senior counsel requested to take similar view in the present petition also.

b) There has been no change in Niryat Kar Tax. However, with the increase of base price as well as sizing and crushing charges on account of Change in Law, there has been increase in Niryat Kar imposed upon the Petitioner.

c) There has been no increase in the Entry Tax. However, the base component or incidences on which such Entry Tax is computed have undergone changes, which have resulted in increase in total expenditure of the Petitioner towards Entry Tax.

2. Learned counsel for TANGEDCO submitted as under :

a) The Petitioner in its bid has quoted energy charge which is inclusive of statutory taxes, levies, duties, cess, etc. Therefore, the components other than the base price of the coal are also being escalated from the bid date by virtue of escalation index. The question of loss to the Petitioner due to change in taxes, levies, duties, etc, does not arise.

b) The escalation index of the Commission has sufficiently taken care of the financial impact of the change in law events. The Petitioner has not placed on record any documentary proof to the effect that it had incurred loss even after applying the escalation index of the Commission.

c) Article 15.18 of PPA provides that the seller shall pay all taxes, duties and cess for supplying power and shall indemnify the procurer against any claim that may be levied against the procurer in relation to the matters set out in Article 15.18.1. Therefore, the PPA absolves the procurer from all future tax, duties, cess which the seller will be liable to pay while supplying power to the procurers.

3. Learned counsel for Prayas submitted as under :

a) The Petitioner has included various items in its claim which are not in pursuance to any statutory levy or tax applicable for the supply of power. Such claims cannot be considered as change in law.

b) Only the impact of change in tax rate is considered as change in law and any increase due to increase in price cannot be included in change in law event.

c) The claim for price and consideration payable for inputs for generation of power, pursuant to contractual and commercial agreement cannot be considered as change in law merely because the consideration is being paid to Government or Government Authority.

d) The change in price of coal is not a change in law event. The quantum to be considered is only the imposition of tax and not due to any increase in the commercial price of coal, which may increase the assessable value of the coal.

e) The rate of excise duty has decreased from 6.18% to 6% which is a change in law in favour of the procurer. The reduction in excise duty on coal also results in reduction of Entry Tax, VAT, and Niryat Kar which also has to be taken into account. Further, the Petitioner has relied on the letter of SECL with regard to change in Excise Duty. However, SECL is not legally empowered to interpret Excise Act and therefore, interpretation by SECL is not an interpretation of law under Article 10 of the PPA.

4. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed the Petitioner to file the following information on an affidavit by 9.3.2018, with an advance copy to the respondents :

- a) Copy of long term PPA with CPSDCL.
- b) Documentary evidence showing that Service Tax is levied on Royalty.
- c) Documentary evidence for increase in impact of Niryatkar and VAT.
- d) Copy of Gazette Notification /Statutory documents pursuant to change in law with respect to Environmental Cess, Paryavaran Upkar Infrastructure Development Cess, Clean Energy Cess and Entry Tax.
- e) Letter from competent authority of Central Excise Department regarding inclusion/ addition of components in the assessable value of coal for the calculation of the Excise Duty.
- f) Documentary evidence pertaining to the benefits taken by the Petitioner of the Escalation Index.

5. The Commission further directed the parties to file their written submissions by 28.2.2018, with copy to each other. The Commission directed that due date of filing the information and written submissions should be strictly complied with, failing which order shall be passed on the information available on record.

6. Subject to the above, the Commission reserved the order in the petitions.

By order of the Commission

Sd/-

T. Rout  
Chief (Law)