

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.242/MP/2023

- Subject : Petition under Section 79(1)(b), (f) & (k) of the Electricity Act, 2003 read with Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 seeking declaration of Change in Law event in terms of Article 26.1 of the Agreement for Procurement of Power dated 18.05.2022 and compensation on account of increase in cost of power generation by MB Power (Madhya Pradesh) Limited due to non-allocation of linkage coal under the FSA corresponding to 150 MW.
- Date of Hearing : **21.8.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : MB Power (Madhya Pradesh) Limited (MBPMPL)
- Respondents : Haryana Power Purchase Centre (HPPC) and 2 Ors.
- Parties Present : Shri Amit Kapur, Advocate, MBPMPL
Shri Akshat Jain, Advocate, MBPMPL
Ms. Akanksha Tanvi, Advocate, MBPMPL
Shri Abhishek, MBPMPL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present petition has been filed, *inter alia*, seeking compensation on account of the additional cost incurred/ to be incurred by the Petitioner for procurement of (i) non-linkage coal from various sources and (ii) coal pursuant to the Fuel Supply Agreements executed pursuant to Shakti B (iii) auction due to non-allocation of the linkage coal under the concluded Fuel Supply Agreement dated 26.3.2013 ('SECL FSA') executed between the Petitioner and Southern Eastern Coalfields Limited corresponding to 150 MW power for supply to the Haryana Discoms. Learned counsel mainly submitted as under:

(a) As per Clause 4.1.1 of SECL FSA, the Annual Contracted Capacity (ACQ) shall be in proportion to the percentage of generation covered under long-term PPAs executed by the Petitioner with the Discoms either directly or through PTC on a back-to-back basis. In addition, whenever there is any change in the percentage of PPAs, a corresponding change in ACQ shall be effected through a side agreement, and such changes shall be allowed to be made only once in a year, effective from the beginning of the next quarter.

(b) In terms of the above, the Petitioner has executed the various side agreements/addendum to the SECL FSA to increase the ACQ in proportion to the change in percentage of the PPAs.

(c) Under the old LoA-FSA regime, since the FSAs with various other LoA holders had not been executed, SHAKTI Policy provided such LoA holders with an extension till 31.3.2022 to fulfil their respective conditions precedents. However, since the Petitioner had already executed the FSA with SECL and fulfilled the relevant condition precedents prescribed under the SECL FSA, Para A(i) of the SHAKTI Policy was not applicable to the Petitioner and only Para A(v) of the SHAKTI Policy was applicable, which entitled the various FSA holders to take supply of coal even for medium term PPAs to be concluded in the future. Accordingly, Addendum No. 8 was executed between the Petitioner and SECL to incorporate the applicable provisions of the SHAKTI Policy with respect to the inclusion of the supply of coal for medium-term PPAs in the SECL FSA.

(d) Pursuant to the above, the Petitioner entered into an Agreement for Power Procurement (APP) with the Haryana Discoms for the supply of 150 MW power from its Project for a period of 3 years. However, despite the repeated requests by the Petitioner, the CEA, the Ministry of Power, and HPPC, the SECL did not execute a side agreement/addendum to the SECL FSA in terms of Clause 4.1.1 of the SECL FSA to enhance the ACQ in order to enable the Petitioner to supply power to the Haryana Discoms under the APP on the pretext that in terms of the SHAKTI Policy and SLC (TL) minutes of meeting dated 21.3.2022, the Petitioner ought to have submitted such PPA before 31.3.2022.

(e) However, Clause 2.8.2.3 of the SLC (TL) minutes of meeting dated 21.3.2022 applies only to those purchasers who have signed a FSA without entering into a long-term PPA. However, the Petitioner had already entered into a long-term PPA with MPPMCL before signing the FSA with SECL, and thus, it does not apply to the Petitioner. In any case, such a clause does not exist in the Petitioner's FSA with SECL or any of its subsequent addenda.

(f) The Petitioner also made a detailed presentation before the SLC (LT), on the above aspect. However, SLC (LT) by way of its minutes of meeting dated 22.11.2022 denied the supply of linkage coal to the Petitioner under the SECL FSA and thereby effectively amended/modified Para A (v) of the SHAKTI Policy, which permitted the coal supplies to the power plants, under the old regime of LoA-FSA to the extent of the long-term and medium term PPAs to be concluded in the future. The said SLC (LT) decision, as recorded in the minutes of the meeting dated 22.11.2022, constitutes a Change in Law event under Article 21 of the APP, and the Petitioner is entitled to be compensated to the same financial position as if such a Change in Law event had not occurred.

(g) More than 13 months have passed since the supply of power commenced and the matter requires urgent consideration since the Petitioner is suffering huge financial losses on a daily basis and the outstanding amounts are increasing substantially. Learned counsel requested to list the matter in the first week of September, 2023

2. After hearing the learned counsel for the Petitioner, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Respondents to file their respective replies to the Petition within two weeks, with a copy to the Petitioner, who may file its rejoinder within a week thereafter.

3. The Petition shall be listed for hearing on **15.9.2023**.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**