

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition (Diary) No.62/2024

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 for adjudication of disputes in relation to the Change in Law claims of Adani Power Limited in terms of the Power Purchase Agreement dated 2.2.2007 read with Supplemental Power Purchase Agreement dated 5.12.2018 and consequential reliefs.

Date of Hearing : **2.2.2024**

Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents : Adani Power Limited (APL) and 3 Ors.

Parties Present : Ms. Ranjitha Ramachandran, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL
Shri Hitesh Modi, APL
Shri Tanmay Vyas, APL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking a declaration that the Supplementary Invoice dated 13.1.2023 raised by Respondent, Adani Power Limited (APL) is not in terms of the Power Purchase Agreement dated 2.2.2007 read with the Supplementary Power Purchase Agreement dated 5.12.2018 and therefore not payable. Learned counsel mainly submitted as under:

(a) On 13.10.2023, APL raised a Supplementary Invoice on the Petitioner towards Change in Law claim for the Customs Duty on spares and consumables of Rs. 78,26,557/-. While the Petitioner is not disputing the validity of the Customs Duty being a Change in Law event in terms of the Commission's order dated 17.9.2018 read with order dated 4.5.2017 of this Commission in Petition No. 235/MP/2015, there is an exclusion of liability to make the payment in pursuance to the Change in Law event in view of the specific provisions of the PPA and the conditions recognised in the aforesaid orders.

(b) There is a minimum threshold for claiming compensation for the Change in Law event as per the provisions of the PPA and as recognized by the Commission in the aforesaid orders i.e. Change in Law claim will be admissible if due to the said event, the increase/decrease in revenues or costs to APL is in excess of amount equivalent to 1% of Letter of Credit (LC) in aggregate for a contract year.

(c) Supplementary Invoice dated 13.10.2023 for an amount of Rs. 78,26,557/- is less than Rs. 2.97 crore (1% of the value of LC), and since the minimum threshold of the impact is more than 1% of LC is not satisfied, the said Invoice is not in accordance with the provisions of the PPAs and accordingly, not payable.

(d) Upon being pointed out the above, APL has erroneously sought to include claims towards IGST and GST of Rs. 255 crore in its Change in Law claims for a contract year. However, the said amounts are not claimed as a Change in Law but as part of the energy charges. In terms of the Supplementary PPA dated 5.12.2018, there is no Change in Law on energy charges and admittedly, IGST and GST and compensation cess relating to fuel are part of the energy charges covered under the monthly invoices/bills.

(e) The impact of IGST/GST having already been factored into the energy charges in terms of the SPPA, the same cannot be claimed under Article 13.1 of the PPA. If the claim is not admissible under Article 13.1, it cannot be considered for the purpose of determining the impact due to a Change in Law to reach the threshold limit of 1% of the LC value. In any event, the Change in Law claims can only be considered if raised through the Supplementary Invoices in terms of Article 13.4 of the PPA.

(f) Despite the Supplementary Invoice dated 13.10.2023 being clearly not admissible under the provisions of the PPA read with SPPA, APL has uploaded the said Invoice on the PRAAPTI Portal, and the threshold date in respect thereof is 4.2.2023. Hence, the Petitioner is also pressing for the interim order directing the Respondent, APL, not to take any coercive action against the Petitioner in respect of the said invoice including regulation of power supply and consequences thereof.

2. The representative of Respondent, APL, submitted that besides the Change in Law claim of Rs. 78.27 lakh towards Customs Duty on Spares & Consumables, there are also Change in Law claims towards the IGST and GST compensation cess for an amount of Rs. 255.03 crore and the aggregate impact of all three Change in Law events clearly exceeds the 1% of LC value. The representative of Respondent submitted that all of these claims have been approved as Change in Law events by the Commission in its order dated 17.9.2018 read with order dated 4.5.2017 in Petition No. 235/MP/2015. The representative of Respondent added that by the Supplementary PPA dated 5.12.2018, only the Billing and Payment mechanism has been changed as a result of which, these claims are made by way of monthly invoices/bills. However, this does not dispense with the fact that they are approved as Change in Law events by the Commission, and APL is therefore entitled to consider them while arriving at the aggregate impact of Change in Law claims during a contract year. The representative of Respondent submitted that in past, GUVNL had itself made the payment of the Supplementary Invoice of Rs. 7 lakh towards Customs Duty on Spares & Consumables for 2018-19.

3. Considering the submissions made by the learned counsel for the Petitioner the representative of Respondent, the Commission directed as under:

(a) Admit. Issue notice to the Respondents.

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

(c) No coercive action, including the regulation of supply will be taken against the Petitioner in respect of the Supplementary Invoice dated 13.10.2023 till the next date of the hearing.

(d) In the meantime, the Petitioner and the Respondent, APL, may make sincere efforts to amicably resolve the dispute involved and file the outcome of discussions before the next date of the hearing.

4. The Petition will be listed for the hearing on **20.3.2024**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)