

# CENTRAL ELECTRICITY REGULATORY COMMISSION

## NEW DELHI

### Petition No. 700/MP/2020

- Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for claiming compensation on account of the event pertaining to Change in Law as per Article 10 of the Power Purchase Agreement dated 29.6.2012 read with Addendum I to PPA dated 27.9.2017 executed between the Petitioner and TANGEDCO for 200 MW Medium term power supply (PPA-I) and as per the terms of the Power Purchase Agreement dated 23.8.2013 executed between the Petitioner and TANGEDCO for 400 MW long term power supply (PPA-II).
- Date of Hearing : 11.11.2021
- Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Jindal Power Limited (JPL)
- Respondent : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
- Parties Present : Shri Matrugupta Mishra, Advocate, JPL  
Shri Vignesh Srinivasan, Advocate, JPL  
Shri Sanjeev Thakur, Advocate, JPL  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Ms. M. Hemalatha, TANGEDCO  
Shri S. Poonkodi, TANGEDCO

### Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the present Petition has been filed seeking compensation on account of occurrence of Change in Law event, namely, introduction of Evacuation Facility Charges @ Rs. 50/MT of coal by Coal India Limited vide its Price Notification dated 19.12.2017, in terms of Article 10 of (i) the Power Purchase Agreement ('PPA') dated 29.6.2012 read with Addendum I dated 27.9.2017 for supply of 200 MW on medium-term basis, and (ii) the PPA dated 23.8.2013 for supply of 400 MW on long-term basis. The learned counsel further submitted that Evacuation Facility Charges levied by Coal India Limited has already been allowed as Change in Law event by the Commission in its various orders. In this regard, the reliance was placed on the order dated 2.4.2019 in Petition No. 72/MP/2018 and order dated 6.1.2020 in Petition No. 208/MP/2018. The learned counsel submitted that pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 4.6.2021, the Petitioner has placed on record the

sample invoices of South Eastern Coalfields Limited ('SECL') reflecting the levy of Evacuation Facility Charges on the coal despatches.

3. The learned counsel for the Respondent, TANGEDCO submitted that in the present case, the Petitioner cannot be said to have complied with the requirement under Article 10.4 (Notification of Change in Law) of the PPAs, which is *sin qua non* for any claim under Change in Law, as soon as reasonably practicable after becoming aware of the same or should have reasonably known of the Change in Law. It is pointed out that despite the Price Notification of Coal India Limited being dated 19.12.2017 and the Petitioner, undeniably, being aware of introduction of Evacuation Facility Charges through the coal invoices, the Petitioner issued the Change in Law notice only on 17.8.2020, which cannot be considered as 'as soon as reasonably practicable'. In support of the above submissions, the reliance was also placed on the decision of Hon'ble Delhi High Court dated 12.4.2001 in CWP No. 4614/96 in the case of All India Lawyers Union v. UoI and Ors. and the judgments of Hon'ble Supreme Court in Civil Appeal No. 1843/2021 in the case of MSEDCL v. MERC and Ors. and in the case of Datar Switchgears Ltd. v. Tata Finance Ltd. and Anr., [(2000) 8 SCC 151]. The learned counsel submitted that the introduction of the Evacuation Facility Charge by Coal India Limited cannot be treated as Change in Law as such charges fall under the Fuel Supply Agreement, which is a contractual arrangement between the Petitioner and SECL.

4. In rebuttal, the learned counsel for the Petitioner submitted that the submissions made by the learned counsel for TANGEDCO on the delay in issuing the Change in Law notice are beyond the reply filed by TANGEDCO and, thus, cannot be considered at this stage. In support of his submission, the reliance was placed on the judgment of Hon'ble Supreme Court in the case of Bachhaj Nahar v. Nilima Mandal & Ors. [(2008) 17 SCC 491]. The learned counsel further submitted that TANGEDCO had also not raised any such objection in response to the Petitioner's Change in Law notice at the relevant point of time.

5. Based on the request of the learned counsel for the parties, the Commission permitted the Petitioner and the Respondent to file their respective written submissions, if any, within two weeks with copy to the other side.

6. Subject to the above, the Commission reserved the matter for order.

**By order of the Commission**

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