

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 153 of 2021

Case of RattanIndia Power Limited seeking issuance of appropriate directions to MSEDCL to forthwith pay 75% of the total amount due in terms of the Remand Judgment in Appeal No. 264 of 2018 as an interim relief.

Coram

**Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member**

RattanIndia Power Limited: - Petitioner

Maharashtra State Electricity Distribution Company Ltd.: -Respondent

Appearance

For RPL: Shri. Vishrov Mukherjee (Adv)
For MSEDCL: Shri. Ravi Prakash (Adv)

ORDER

Date:- 17 May, 2022

1. RattanIndia Power Limited (**RPL**) has filed this Petition on 27 October 2021 under Section 86 (1) (f) of the Electricity Act, 2003 (**EA, 2003**) seeking issuance of appropriate directions to Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) to forthwith pay 75% of the total amount due and payable to RPL in terms of the Remand Judgment in Appeal No. 264 of 2018 as an interim relief.

2. **RPL's main prayers are as under:**

a. Direct MSEDCL to forthwith release the amount of Rs. 712 Crores as an interim measure;

3. **RPL in its Petition has stated as follows:**

- 3.1 By the way of Remand Judgment in Appeal No. 264 of 2018 dated 13 November, 2020 Appellate Tribunal for Electricity (APTEL) has set aside Order of the Commission dated 3 April 2018 in Case No. 154 of 2013 and 147 of 2014 on Station Heat Rate (SHR), Gross-Calorific Value (GCV) relief for shortfall in supply of coal post 31 March, 2017, monthly vs annual reconciliation for computation of coal quantum and Carrying cost for change in law events and directed for full cost to be given a pass through.
- 3.2 On 16 January 2021, RPL wrote to MSEDCL claiming compensation on account of Change in Law, including on the taxes and duties, calculated based on parameters such as GCV and SHR as allowed by the APTEL in the Remand Judgment. RPL claimed amount towards change in law as Rs. 310.62 Crores (principal amount and carrying cost till 31 December 2020).
- 3.3 Vide Order dated 6 June 2021, the Commission had *inter alia* directed that the issue of computation be mutually resolved by the Parties. Further to the directions of the Commission, on 20 January 2021, MSEDCL filed the final computation for amounts payable to RPL on account of shortfall in coal. As per MSEDCL's submissions, RPL is entitled to a total amount of Rs. 149.61 Crores as against RPL's claims of Rs. 491.85 Crores (principal amount and carrying cost) towards alternate coal. MSEDCL has not submitted any computation till date on the claims submitted vide letter dated 16 January 2021.
- 3.4 On 29 September 2021, RPL responded to MSEDCL's letter dated 20 September, 2021 stating that MSEDCL's reliance on the methodologies for computation of Change in Law claims that have been specifically rejected by APTEL in the Remand Judgment and should not be considered in the present proceedings on the ground of judicial discipline and propriety in as much as the Appellate court's order is final and binding and reiterated to direct MSEDCL to pay Rs. 773.25 Crores as claimed in the present Petition.
- 3.5 On 1 November, 2021, RPL submitted the updated Claims towards the Change in Law compensation computed till 30 September, 2021 in addition to the pending claims towards the Taxes and Duties as claimed by RPL vide letter dated 16 January, 2021. RPL *inter alia* stated that the total amount due from MSEDCL is Rs. 949.82 as on 30 September, 2021. The breakup of the amounts due to RPL from MSEDCL is as under:

(Rs.In Crores)

S No	Particulars	Principal amount as on 30.09.2021	Carrying Cost as on 30.09.2021	Total Claim
A.	Cost of Alternate Coal	292	200	492
B	CIL on Taxes and Duties based on the Remand Judgment	345	113	458
C	TOTAL	637	313	950

- 3.6 Computation of claims cannot be left to mutual resolution of parties and the Electricity Regulatory Commissions are required to compute and decide the amounts due the generating company in light of the APTEL judgments in Appeal No. 56 of 2020 dated 4 February, 2021 in *D.B. Power Ltd. V. Central Electricity Regulatory Commission and Anr and in* Appeal No. 386 of 2019 dated 20 September, 2021 in *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors*
- 3.7 The need for filing the present application has arisen on account of continued non-payment of dues by MSEDCL and the ongoing coal shortage in the country which has also impacted operations of RPL. Central Electricity Authority (CEA), in a recent report, has mentioned that out of the 135 power plants in India, 115 are facing an acute shortage of coal amid the surge in demands of the fuel. The CEA further notices that power plants across the country might not have enough coal to sustain in the long term.
- 3.8 In order to mitigate the present situation of coal shortage and since MSEDCL had not compensated RPL for alternate coal procured in the past, RPL requested MSEDCL's concurrence for procurement of imported coal along with a commitment to pay for such coal in a timely manner vide letter dated 24 September, 2021
- 3.9 On 12 October, 2021, CEA issued a Circular directing all State/Central Generating Companies and IPPs (including RPL) to procure imported coal for blending purposes.
- 3.10 On 13 October, 2021, RPL informed MSEDCL, that Non-availability of coal had resulted in three units of the Project being shutdown despite technically being available to supply power. RPL requested MSEDCL's concurrence for importing coal in line with the CEA Circular dated 12 October, 2021 and also requested MSEDCL to make payment of such power generated from imported coal in line with the Remand Judgment. RPL reiterated the same vide letter dated 19 October, 2021
- 3.11 On 21 October, 2021, MSEDCL, responded to RPL's letter dated 24 September, 2021, and stated that in terms of the Competitive Bidding Guidelines, the RfP and the PPAs, it was the sole responsibility of RPL to procure coal
- 3.12 Shortfall of linkage coal has already been held to be a change in law event in the Remand Judgment. Despite the Remand Judgment, and RPL's right to procure alternate coal to meet the shortfall of linkage coal, MSEDCL has been preventing RPL from procuring coal. MSEDCL has also refused payment of dues to RPL on one pretext or the other.
- 3.13 Without prejudice to RPL's submissions in Case No. 144 of 2021, it is submitted that RPL is constrained to file the present application during pendency of Case No. 144 of 2021 before the Commission owing to the immediate need for importing coal which would require availability of adequate funds for RPL to procure imported coal. Since the

price difference between the linkage coal and imported coal is significant, RPL is in urgent need for funds to procure fuel.

3.14 MSEDCL's conduct is causing double loss to RPL, in as much as on one hand, MSEDCL is not making payment for admitted change in law claims that have been upheld by APTEL in the Remand Judgment and has not been stayed by the Hon'ble Supreme Court (in CA No. 1805 of 2021 – MSEDCL's Civil Appeal challenging the Remand Judgment). On the other hand, by refusing permission to RPL to procure imported coal, MSEDCL is preventing RPL from declaring availability despite being technically available to supply power. Since such action of MSEDCL entails claims for losses and RPL reserves all rights in this regard.

3.15 At present, due to coal shortage, MSEDCL has been compelled to procure expensive power from the Exchange in September and October 2021. It bears mention that in October 2021, MSEDCL has procured power from the Exchange for as high as Rs. 20.00 per unit. Procuring such costly power is contrary to public interest

3.16 Being a generating company, the only source of revenue for RPL is payment of monthly tariff and supplementary bills by MSEDCL. Since upfront payment would have to be made for importing coal, RPL would be able to make such payments only if MSEDCL pays the outstanding amounts.

3.17 MSEDCL has not cleared the Change in Law bills since 2015 and the total aggregate outstanding, as on 30 September, 2021, is Rs. 950 Crores. MSEDCL is deliberately obstructing performance of RPL's obligations by withholding the said amounts. The Hon'ble Supreme Court has directed part payment of Change in Law claims due to generating companies in matters involving similar change in law claims (change in law due to shortfall in supply of coal). Reliance is placed on the *Civil Appeal No. 4143 of 2020 titled Uttar Haryana Bijli Vitran Nigam Ltd. vs. Adani Power (Mundra) Ltd dated 16 February, 2021* and *Civil Appeal No 10188 of 2018 titled Jaipur Vidyut Vitran Nigam Limited & Ors. vs. Adani Power Rajasthan Limited & Anr dated 29 October, 2018*.

3.18 Further, MSEDCL has itself admitted its liability to pay 50% of the amount claimed by RPL in its submissions before the Hon'ble Supreme Court.

3.19 MSEDCL has also agreed to pay Rs. 12,917.24 Crores to Adani Power Maharashtra Ltd. (APML) and Rs. 162.68 Crores to GMR Warora Energy Ltd. (GMR) towards claims similar to those involved in the present case, even though Appeals pertaining to these generating companies is pending before the Hon'ble Supreme Court. In its Aggregate Revenue Requirement (ARR) for FY 2020-21, MSEDCL has received approval of the Commission for costs incurred by MSEDCL in paying similarly IPPs (such as APML and GMR) towards 50% of their change in law claims on account of coal shortfall.

3.20 In view of above, it is requested to direct MSEDCL to pay 75% of the amount due to RPL i.e. Rs. 712 Crores