

COURT-I

**In the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 78 of 2015

Dated : 11th May, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. T. Munikrishnaiah, Technical Member
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:-

Adani Power Rajasthan Ltd.

Vs.

Rajasthan Electricity Regulatory Commission & Ors.

-Appellant(s)

-Respondent(s)

Counsel for the Appellant(s) : Mr. Amit Kapur
Ms. Poonam Verma
Mr. Gaurav Dudeja
Mr. Akshat Jain and
Mr. Malav Deliwala (Rep.)

Counsel for the Respondent(s) : Mr. Raj Kumar Mehta
Mr. Abhishek Upadhyay and
Ms. Himanshi Andley for R-1

Mr. Sanjay Jain, ASG
Mr. Nitish Gupta
Mr. Soyaib Qurishi for R.2 to 4

ORDER

The present appeal is filed against Order dated 30/5/2014 passed by the Rajasthan Commission in Case No.RERC-392/2013 to the limited extent it rejects the Appellant's claim of *Force Majeure* and Change in Law. However, by the impugned order, the Rajasthan Commission has held that the Adani Power

Rajasthan nevertheless is entitled to be compensated for the increase in cost of coal. The Rajasthan Commission, in exercise of its power under Section 94(2) of the Electricity Act (“**the said Act**”) has, as an interim measure, granted compensatory tariff of 25p per unit.

In our Judgment dated 7/4/2016 in Appeal No.100 of 2013 and batch matters, we have held that the Appropriate Commission has no regulatory power to grant compensatory tariff to the generating companies where the tariff is discovered by a competitive bidding process under Section 63 of the said Act. We have also held that if a case of *Force Majeure* or Change in Law is made out, relief available under the PPA can be granted under the adjudicatory power of the Appropriate Commission.

In view of the above, today, we have partly allowed the connected Appeal No.42 of 2015 and set aside impugned order dated 30/5/2014 passed by the Rajasthan Commission in Case No.RERC-392/2013 except to the extent it holds that Adani Power Rajasthan has not made out a case of *Force Majeure* and Change in Law under the PPA dated 28/1/2010.

Since the issue involved in this appeal, that is, whether **(i)** ‘the failure on the part of the Indian Government Instrumentality in granting coal block/linkage to the Kawal Project and change in allotment policy of domestic coal by Model FSA are events qualifying as Force Majeure in terms of Article 9 of the PPA entered into between Adani Power and Respondent No.2 to 4 – Rajasthan Discoms or not and **(ii)** the promulgation of the Regulation of Ministry of Energy and Mineral Resources No.17 of 2010 regarding the procedure for setting Mineral and Coal Benchmark Selling Price’ dated 23/9/2010 (“Indonesian Regulation”) and change in allotment policy of domestic coal by Model FSA are events qualifying as

Change in Law in terms of Article 10 of the PPA or not, we direct the Registry to separate this appeal and place it before the regular bench for appropriate orders.

I.J. Kapoor
[Technical Member]

T. Munikrishnaiah
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]