

COURT-I

In the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

**IA NO.443 OF 2014 IN DFR NO.2635 OF 2014 &
IA NO. 470 OF 2014**

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 Maharashtra Ltd. **-Appellant(s)**

Vs.

Maharashtra Electricity Regulatory Commission & Anr. **-Respondent(s)**

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

Counsel for the Respondent(s) : Mr. Kiran Gandhi
Ms. Ramni Taneja
Mr. Udit Gupta for MSEDCL

Mr. Buddy A. Ranganadhan
Mr. Raghu Vamsy for R.1

ORDER

The present appeal is filed against Order dated 21/8/2013 passed by the Maharashtra Commission in Case No.68 of 2012 to the limited extent it rejects the plea of Adani Power Maharashtra that the withdrawal of the Terms of Reference, which led to the inaccessibility of the coal block by the Adani Power Maharashtra and the subsequent de-allocation of the said block, was a *Force Majeure* event as per the terms of the PPA. However, by the impugned order,

the Maharashtra Commission has constituted a Committee, inter alia, to look into the impact of non-availability of coal from Lohara coal blocks and submit a Report outlining principles and on the precise mechanism for calculation of compensatory charge to mitigate the hardship caused to Adani Power Maharashtra. By the impugned order, the Maharashtra Commission has, as an interim measure, granted compensatory tariff to Adani Power Maharashtra from the date of CoD.

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.296 of 2013 and set aside impugned order dated 21/8/2013 passed by the Maharashtra Commission in Case No.68 of 2012 except to the extent it holds that the plea of Adani Power Maharashtra that the withdrawal of the Terms of Reference, which led to the inaccessibility of the coal block by Adani Power Maharashtra and the subsequent de-allocation of the said block, was not a *Force Majeure* event as per the terms of the PPA. We have made it clear in that order that we have not expressed any opinion on the aspect of Force Majeure.

Since the issue involved in this appeal, namely, whether the withdrawal of the Terms of Reference, which led to the inaccessibility of the coal block by Adani Power Maharashtra and the subsequent de-allocation of the said block was a *Force Majeure* event under the PPA is kept open by us, we direct the

Registry to separate these matters and place them before the regular bench for appropriate orders.

I.J. Kapoor
[Technical Member]

T. Munikrishnaiah
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]