

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO. 263 OF 2018**

**Dated:** 18.10.2022

**Present:** Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

**In the matter of:**

**RATTANINDIA POWER LIMITED**

*Through its Authorised Signatory*

World Mark-1, Tower -B,

Having its Office at:

5<sup>th</sup> Floor, Aerocity,

Indira Gandhi International Airport

New Delhi – 110 037

.... Appellant(s)

**VERSUS**

**1. MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

*Through its Secretary*

World Trade Centre, Centre No.1

13<sup>th</sup> Floor, Cuffe Parade Colaba,

Mumbai 400005

**2. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION  
COMPANY LIMITED**

*Through its Chairman-cum-Managing Director*

4<sup>th</sup> Floor, Prakashgadh,

Plot No. G-9 Anand Kanekar Marg,

Bandra (East), Mumbai 400051

... Respondent(s)

Counsel for the Appellant (s) : Mr. Vishrov Mukerjee  
Mr. Rohit Venkat

Counsel for the Respondent (s) : Mr. G. Umapathi, Sr. Adv.  
Mr. Anup Jain  
Mr. Vyom Chaturvedi  
Ms. Prachi Gupta for R-2

## **J U D G M E N T (Oral)**

### **PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON**

1. The appellant *RattanIndia Power Limited* (for short "RPL") is a generator which owns and operates a 1350 MW (5X270 MW) coal-fired Power Plant at Nandgaonpeth, Amravati District, Maharashtra, each of which five units had been duly commissioned having commenced the generation and supply of contracted capacity to the second respondent *Maharashtra State Electricity Distribution Company Limited* ("MSEDCL") with effect from 03.06.2013, in terms of two Power Purchase Agreements ("PPAs"), one dated 22.04.2010 for supply of 450 MW and the other dated 05.06.2010 for supply of 750 MW, pursuant to the Case-1 competitive bidding process that had been initiated by MSEDCL, for a period of 25 years on levelized tariff of Rs.3.260/kWh. The PPAs were amended by two separate addendums dated 01.02.2012, the cutoff date relevant for purposes of Change in Law ("CIL") events being 31.07.2009 (seven days prior to bidding deadline of 07.08.2009).

2. The appellant had approached the first respondent *Maharashtra State Electricity Regulatory Commission* (for short "MERC" or "the State Commission") seeking declaration of certain events as Change in Law impacting revenues and costs during the period from which the supply of power had been commenced and consequential relief in the nature of restoration to the same economic position as prevailed prior to occurrence of such CIL events in terms of the contractual provisions. The impugned

order rendered on the said petition (case no.84/2016) on 05.04.2018 is challenged by the appeal at hand to the extent it declined to acknowledge the increase in the rate of *Environment Cess* and *Development Cess* levied by the Government of the State of Chhattisgarh; refusal to award carrying cost and holding that the supply of power prior to *Scheduled Delivery Date* (“SDD”) cannot be considered as part of the operating period under the PPAs, the compensation for CIL events approved by MERC being made applicable only from the SDD and not from the date of actual supply of power.

3. The following provisions of the PPAs, similarly worded, are relevant:

*“1.1 Definitions*

*...“Change in Law” shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement...*

*...“Indian Government Instrumentality” shall mean the Gol, Governments of State(s) of Maharashtra, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Gol or any of the above State Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission (s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer:...*

*...“Law” shall mean in relation to this Agreement, all laws including Electricity Law in Force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions of the Appropriate Commission;...”*

*...10 ARTICLE 10: CHANGE IN LAW*

*10.1 Definitions*

*In this Article 10, the following terms shall have the following meanings:*

10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any law by any Indian Governmental Instrumentality having the legal power to interpret or apply such law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

## 10.2 Application and Principles for computing Impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the Affected Party to the same economic position as if such Change in Law has not occurred.

## 10.3 Relief for Change in Law

...10.3.2 During Operating Period The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable on if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the seller shall provide to the Procurer and the Appropriate Commission documentary proof of such increase/ decrease in cost of

*the Power Station or revenue/ expense for establishing the impact of Change in Law.*

*10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable law...*

#### *10.4 Notification of Change in Law*

*10.4.1 If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law...*

*10.4.2 Notwithstanding 10.4.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.*

*10.4.3 Any notice served pursuant to this Article 10 shall provide, amongst other things, precise details of:*

- (a) the Change in Law; and*
- (b) the effects on the Seller.*

#### *10.5 Tariff Adjustment Payment on account of Change in Law*

*10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:*

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or*
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.*

*10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff."*

4. The background facts and the views of the State Commission on the claim for compensation on account of increase in *Environment Cess* and *Development Cess* by the Government of State of Chhattisgarh are set out in the impugned as under:

*“18.19. The Chhattisgarh Cess Act, 2005 promulgated by the Chhattisgarh State Government provides for levy of Cesses on land for raising funds for infrastructure development and environment improvement projects. Sections 3(1) and 4(1), respectively, provide for levy of Infrastructure Development Cess and Environment Cess on lands on which land revenue or rent is levied. As per Schedules I and II of the Act, the Development and Environment Cess rates were each fixed at Rs. 5 per tonne of annual dispatch on lands under coal and iron ore mining leases at the time of submission of bids by RPL.*

*18.20. Thereafter, the Chhattisgarh Government, vide Notification No.340 dated 16.6.2015, revised these Cess rates as follows by amending the Schedules to the Chhattisgarh Cess Act and, vide Notice dated 19.8.2015, SECL made this revision of the Cess rates applicable to all dispatches and lifting of coal from 16.6.2015:*

<b>Cess</b>	<b>Original Rates</b>	<b>Revised Rates (w.e.f. 16.06.2015)</b>
<i>Environment Cess</i>	<i>Rs. 5 / Tonne</i>	<i>Rs. 7.50 / Tonne</i>
<i>Infrastructure Development Cess</i>	<i>Rs. 5 / Tonne</i>	<i>Rs. 7.50 / Tonne</i>

*18.21. MSEDCL has contended that the Chhattisgarh State Govt. is not an Indian Governmental Instrumentality as defined in the PPAs since neither MSEDCL (the Procurer, which is in Maharashtra) nor the contracted Plant of RPL (the Seller, also in Maharashtra) are located in Chhattisgarh. Hence, considering the definition of “law”, the revision of Cess rates by the Chhattisgarh Govt. is not a Change in Law event. However, RPL has argued that the definition of “law” in the PPAs is not restricted to statutes enacted by an Indian Governmental Instrumentality.*

...

*18.24. The Commission is of the view that the definition of ‘law’ underlying the Change in Law provisions in the PPAs has to be read as a whole and not as consisting of distinct, separate and independent parts as contended by RPL. If RPL’s argument were to be accepted, there is no reason why the term ‘Indian Governmental Instrumentality’ was at all required and defined in the PPAs in the context of Change*

*in Law. In fact, on that argument, the reference to 'Indian Governmental Instrumentality' in the PPAs is entirely redundant (except for the reference to the Appropriate Commission), and the definition of 'law' could merely have referred only to all laws in force in India and stop at that. The Commission considers that argument to be untenable.*

*18.25. Moreover, not relating the term "all laws" to the subsequent part of the same sentence in the definition which refers to Indian Governmental Instrumentality and considering it to be entirely independent of it would mean that, while such an Instrumentality can interpret its laws or rules, another entity like the Chhattisgarh State Government may make statutes which are acceptable as Change in Law events but its interpretation of its own statutes has no such standing. That is also not tenable.*

*18.26. Hence, the Commission is of the view that Change in Law in the PPAs is with reference to statutes and associated dispensations and interpretations by Indian Governmental Instrumentalities. Considering the definition of that term, the Chhattisgarh State Government is not an Indian Governmental Instrumentality under these PPAs since neither MSEDCL nor RPL's Plant are located in Chhattisgarh. As such, the increase in the Cess rates under the Chhattisgarh Cess Act does not constitute a Change in Law event.*

*18.27. The Commission notes that, in its Order in Case No 38 of 2016 also, the Commission has held that the increase in the Chhattisgarh Cess rates does not constitute a Change in Law event in the similar circumstances and terms of PPAs between APML and MSEDCL. RPL disagrees with the findings in that Order but, in view of the foregoing, the Commission finds no merit in its claim."*

**5.** We are appalled by the approach taken by the State Commission on the above-mentioned subject. It was explained at the hearing, as we presume would have done before the forum of first instance, that the impact of the levy in the nature of *Environment Cess* and *Development Cess* by the State of Chhattisgarh adds to the burden of the appellant in as much as it is passed through against the procurement of fuel from sources in the State of Chhattisgarh. The Government of State of Chhattisgarh is also an Indian Governmental instrumentality. The issue, mercifully, is no longer *res integra*.

Similar issue had come up in the case of *Adani Power Rajasthan Limited v. Rajasthan Electricity Regulatory Commission and Ors.* (appeal no.284/2017 and batch) decided by judgment dated 29.01.2020 by this tribunal, the relevant part deserving to be quoted being as under:

*“46. ‘CG Paryavaran Upkar’ and ‘CG Vikas Upkar’ was introduced by Notification dated 16.06.2015 issued by Chhattisgarh Government under Section 8 of Chhattisgarh Adhoshanrachna Vikas Evam Paryavaran Upkar Adhiniyam, 2005. This was followed by order issued by Joint Secretary of MoEF dated 28.04.2016 wherein a direction was given to comply with the said amendments made by State Government or Union Territories. Though not exact levy but in principle such Change in Law event was allowed by this Tribunal in Appeal No. 119 of 2016 by its judgment dated 14.08.2018. In the order dated 15.03.2016, the Commission opined that the said claim for forest tax could not be allowed on the ground that forest tax is in the nature of a fee, which does not amount to Change in Law, but setting aside the said opinion, this Tribunal opined that levy of such fee/tax could not have been factored in by the bidder at the time of submitting bid. In other words, such tax or fee could not have been factored in at the time of submission of the bid, therefore this Tribunal in the above said judgment opined that levy of forest tax or fee cannot be considered as part of pricing mechanism for coal, therefore it cannot form part of CERC escalation rates for coal. Therefore, any such increase in expenses related to coal due to such levy must fall within Change in Law in terms of Article 10.1.1 of PPA, hence, allowed the said claim. Since this Judgment covers the field on this point as on today, we allow the said ‘CG Paryavaran Upkar’ and ‘CG Vikas Upkar’ as Change in Law event, in favour of Adani Power.”*

**6.** The learned counsel for respondent distribution licensee very fairly conceded that the issue is covered by the above-quoted decision and it shall be proper to call upon the State Commission to pass the appropriate and necessary orders thereupon.

**7.** On the subject of carrying cost, the Commission has ruled thus:

*“19.1. The Commission notes that RPL has mentioned in passing that the payments arising on account of the approved Change in Law*

*events be made with interest from the date on which they became effective, though it has not demonstrated the actual interest incurred.*

*19.2. The Commission notes that the PPAs nowhere provide for carrying cost on the amounts payable after assessing the impact of Change in Law. Moreover, the issue of entitlement to carrying cost in such circumstances has been decided by the Commission in its Order in Case No. 38 of 2016 as follows:*

*“21.3. Referring to the Commission’s earlier observation, APML has now furnished some material in support of its claim of the interest cost that it has actually incurred since the Change in Law events became applicable and pending their adjudication by the Commission. However, neither Article 13.4 of the PPA dated 8.9.2008 nor Article 10.5 of the other three PPAs, which govern the tariff adjustment payments on account of Change in Law, provide for such interest cost, nor do any other provisions. In the absence of any such provision in the PPAs, the Commission is of the view that APML is not entitled to interest. The Commission concurs in this regard with the similar ruling of the CERC in its Order dated 6.2.2017 in Petition No. 156/MP/2014, and with its elaboration of this decision and its discussion on the case law. 21.4. However, any delay by MSEDCL in the payment of the compensation on account of the events accepted as Change in Law by the Commission after Supplementary Bills are raised by APML would attract a Late Payment Surcharge, as expressly provided in the relevant provisions of the PPAs.”*

*19.3. Hence, the Commission has not allowed carrying cost on the amounts payable by MSEDCL, which shall be crystallized pursuant to this Order, for the past period. This is also consistent with the approach adopted by the Commission in earlier Orders on Change in Law matters, including most recently in its Order dated 3.4.2018 concerning RPL itself with regard to these PPAs in the remanded Case Nos. 154 of 2013 and 147 of 2014.”*

**8.** The law on the subject of carrying cost has been well settled, the view taken by the State Commission in the above-quoted paras of the impugned judgment being incorrect.

**9.** In *Uttar Haryana Bijli Vitran Nigam Limited & Anr. v. Adani Power Ltd. & Ors.* (2019) 5 SCC 325, Hon'ble Supreme Court while construing similar PPA provisions had upheld the claim that a party affected by Change in Law is entitled to carrying cost. We need to quote only the following two paragraphs from the said decision:

*“10. Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. This would mean that by this clause a fiction is created, and the party has to be put in the same economic position as if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law. Article 13.2, however, goes on to divide such restitution into two separate periods. The first period is the “construction period” in which increase/decrease of capital cost of the project in the tariff is to be governed by a certain formula. However, the seller has to provide to the procurer documentary proof of such increase/decrease in capital cost for establishing the impact of such change in law and in the case of dispute as to the same, a dispute resolution mechanism as per Article 17 of the PPA is to be resorted to. It is also made clear that compensation is only payable to either party only with effect from the date on which the total increase/decrease exceeds the amount stated therein.*

...

*16. Article 13 of the PPAs provides for payment of carrying costs, as held by us above. This judgment also turned on the interpretation of Regulation 79(2) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, and therefore, also has no manner of application to the facts of the present case.”*

**10.** In the case of this very appellant by appeal titled *RattanIndia Power Limited v. Maharashtra Electricity Regulatory Commission & Anr.* (appeal no.264/2018 decided by judgment dated 13.11.2020) this tribunal had ruled thus:

*“75. We agree with the appellant that the impugned decision of MERC holding that the appellant is not entitled to carrying cost for the*

*approved change in law events is unjust and wholly erroneous. The entitlement to carrying cost emanates from the principle of restitution closely connected to the Change of law clause in PPA. The ruling of Supreme Court in Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd. (supra) as quoted earlier and reiterated in Jaipur Vidyut Vitaran Nigam Limited (supra) nails the argument of the contesting respondent.*

*76. The impugned decision falls foul of settled legal position on carrying cost. The same is, thus, set aside and the matter in this regard remanded to the MERC with direction that the benefit of carrying cost on account of impact of change in law resulting in additional burden of procuring coal from alternative sources be also given pass through.”*

**11.** Again, in *RattanIndia Power Limited v. Maharashtra Electricity Regulatory Commission and Anr.* (appeal no.118/2021 decided by judgment dated 22.03.2022), while directing the State Commission to determine the amounts payable by the distribution licensee (MSEDCL) we had also directed a revisit to the prayer for carrying cost bearing in mind the well-settled principles on the subject in light of decisions in the cases of *Uttar Haryana* (supra), *Energy Watchdog & Ors vs. CERC & Ors.* (2017) 14 SCC 80 and *Jaipur Vidyut Vitran Nigam Ltd. & Ors. vs. Adani Power Rajasthan Ltd & Anr.* 2020 SCC Online SC 697.

**12.** Again, the learned counsel for the respondent distribution licensee fairly agreed with the request for remit for appropriate orders to be passed following the principles which are now settled on the subject of carrying cost and for the amount payable to be quantified and for regulating due compliance by the parties.

**13.** On the date of applicability, the Commission has observed and held as under:

*“20.1. In its Petition and during these proceedings, RPL has presented its computations of the impacts of some of the Change in Law events considering both the PPAs. For each of the PPAs, it needs be ensured that, in aggregate (i.e., for all the approved Change in Law events taken together), the financial impact of the events approved as Change in Law in this and earlier Orders exceeds 1% of the LC amount in the relevant Contract Year, as required under Article 10.3.2 of the PPAs.*

*20.2. Under the PPAs, the Change in Law payments are to be claimed through Supplementary Bills. RPL may raise Supplementary Bills under the respective PPAs for the financial impact of events which have been accepted by the Commission as Change in Law events, subject to the stipulations and findings in this Order and the caveats set out below.*

*20.3. As provided in Article 10.1.5, the impact of each such approved Change in Law event should be computed from the date of its coming into force as specified in the relevant notifications (in the present case, during the respective Operating Periods). With its Supplementary Bills, RPL shall submit evidence regarding the expenditure actually incurred by it on account of such events. MSEDCL shall make payments within the due date stipulated in the PPAs, and is liable to pay a Late Payment Surcharge to the extent of any delay.*

*20.4. The SDD stipulated in the PPAs was 22.04.2014 (for 450 MW) and 05.06.2014 (for 750 MW), i.e., 48 months from the Effective Date. However, as agreed subsequently between MSEDCL and RPL, supply of 245 MW under the 450 MW PPA and 45 MW under the 750 MW PPA commenced earlier, on 03.06.2013 and 22.04.2014, respectively. RPL has sought that, therefore, the impact of the Change in Law events be made applicable from the actual date of commencement of supply. MSEDCL has contested this claim on the ground that, as per the PPAs, the commencement of the Operating Period remains 22.04.2014 and 05.06.2014, respectively.*

*20.5. In its Order dated 20.08.2014 in Case No. 87 of 2013 concerning certain earlier Change in Law claims of Indiabulls Power Ltd. (now RPL), the Commission had ruled as follows:*

*“...29. The Commission notes that, in accordance with Article 3.3 and 4.1.1 of the PPA, the parties need to mutually agree to the Revised Scheduled Delivery Dates. However, MSEDCL has not agreed to such Revised Dates.*

*Moreover, as per Article 3.3.2, the Revised Scheduled Delivery Dates should be agreed to by the parties within 12 months, which is also not the case. Therefore, the Tariff applicable for supply of power before the Scheduled Delivery Date shall be in accordance with Schedule 4.6.1 of the PPA. The Scheduled Delivery Date of the PPA would, therefore, remain unchanged.*

*30. The Commission has arrived at the above conclusion based on the submission of the parties under the present case. However, IPL is at liberty to approach the Commission if it can provide any further facts to substantiate its claim in the present issue....”*

*20.6. It is not disputed that MSEDCL and RPL had agreed to the pre-ponement of supply. However, the record shows that the SDD itself had not been formally revised in terms of the PPAs. As such, these mutually agreed pre-ponements do not amount to Revised SDDs under the PPAs. With regard to the pre-ponement of supply of some quantum of power under the 450 MW PPA, for instance, MSEDCL’s letter dated 28.05.2013 states as follows:*

*“... MSEDCL hereby accept Firm Power prior to schedule delivery date...*

*2. The first year tariff with escalation as per PPA will be applicable from the commencement of aggregate contracted capacity of 450 MW i.e. from 22.04.2014 [which is the SDD] to 31.3.2015 ...”*

*20.7. Thus, the period of supply prior to the SDD cannot be considered as a part of the Operating Period as envisaged in the PPAs. Hence, the Change in Law events approved in this Order would not be applicable for the period prior to the SDD stipulated as per Article 4.1.1 of the PPAs.”*

**14.** The impugned decision was rendered on 05.04.2018 with the above view taken on the subject of the date from which the liability to pay the compensation on account of Change in Law events is to inure. It is pointed out that subsequently, on 02.11.2018, the State Commission itself has revised its view upholding the claim that such liability will take into account the date of actual supply rather than there being a fixation with the Scheduled

Delivery Date, particularly in a case where supply has commenced anterior thereto. The State Commission, it is pointed out, in the case of *Adani Power Maharashtra Limited v. MSEDCL* (case no.84/2018 decided by order dated 02.11.2018) has held as under:

*“16. All provisions of the PPA need to be read harmoniously. It is settled principle of law that quoted tariff under the PPA is subjected to Change in Law event and affected party needs to be restored to the same economic position as if such Change in Law has not occurred. MSEDCL has contended that quoted Tariff does not include payment towards Change in Law. The Commission notes that Schedule 4 of the PPA which deals with ‘Tariff’ does not mentioned about Change in Law. But, Article 10.2 of the PPA clearly stated about monthly ‘Tariff Payment’ which includes Tariff as per Schedule 4 and Supplementary Bills (which includes compensation towards Change in Law).*

*17. As Tariff in the PPA is quoted by the selected Bidder for supply of power after considering Laws applicable 7 days prior to bid due date, PPA provides for Change in Law to protect the parties under the PPA from any impact of subsequent changes in the Law. This is one of the basic premises of sharing risks amongst the contracting parties on which 25 years long PPA is based. It is admitted fact that APML is eligible for effect of Change in Law from first year of the 25 year PPA. In first year, APML is eligible for first year quoted tariff (with escalations if any) and compensation towards Change in Law affecting it. As supply prior to Scheduled Delivery Date was at First Year tariff, which is always subjected to Change in Law, within the provisions of the PPA, the Commission is of the opinion that APML needs to be compensated for impact of Change in Law during the supply of power prior to scheduled commencement date.*

*18. Hence, the Commission rules that Change in Law applicable under the 1200 MW PPA for Operation Period becomes applicable to Unit-1 from actual commencement of supply i.e. from 1 October, 2013. Accordingly, MSEDCL is directed to take corrective actions.”*

*(Emphasis Supplied)*

**15.** In the above facts and circumstances, we feel it would be more appropriate that the matter to above extent is also remitted to the State Commission for reconsideration in light of its modified view as reflected in its

order dated 02.11.2018 in the case of *Adani Power Maharashtra Limited* (supra).

**16.** For the above reasons, appeal succeeds. The impugned order to the extent it ruled against the appellant on the three above-mentioned subjects is set aside. The matter to that extent is remitted to the State Commission for fresh decision bearing in mind the observations recorded as above. We shall also expect the State Commission to pass all consequential orders including quantification of the amounts payable by the licensee unto the appellant. Of course, for such purposes the Commission will first ascertain the calculations from the appellant and then take the views of the licensee before determining the actual liability. We direct that the Commission shall pass all necessary orders in the wake of such determination including by taking appropriate measures such that the claims are duly satisfied in a time bound manner, expeditiously and at an early date, not later than three months from the date of this judgment.

**17.** The appeal is disposed of in above terms.

**Pronounced in open court on this 18<sup>th</sup> Day of October, 2022**

**(Sandesh Kumar Sharma)  
Technical Member**

**(Justice R.K. Gauba)  
Officiating Chairperson**

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