

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 149 OF 2017

Dated : 6th March, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

Sasan Power Limited

.... Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors.

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Janmali Manikala
Mr. Yashaswi Kant

Counsel for the Respondent(s) : Mr. G. Umapathy
Mr. Aditya Singh
Ms. Vaishnavi for R-2

Mr. Rajeev Srivastava
Ms. Gargi Srivastava
Ms. Garima Srivastava for R-3 to R-6

Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-7, 9 & 13

Mr. Alok Shankar for R-10

Mr. M.G. Ramachandran
Mr. Ranjitha Ramachandran
Mr. Shubham Arya for R-14

ORDER

This appeal is filed challenging impugned order dated 18-11-2015 passed by Respondent Commission in Petition No. 402/MP/2014 read with

Order dated 16-2-2017 passed by Commission in Review Petition No. 1/RP/2016 in Petition No. 402/MP/2014.

The main contention raised by the Appellant pertains to disallowance of Appellant's claim for carrying cost on compensation on account of change in law events during the operating period. The project in question pertains to Madhya Pradesh, i.e. Ultra Mega Power Plant for supply of power to the procurers for a period of 25 years. It was a bid process by which supply of power to the procurer was obtained. It is not in dispute that it is a tariff based bidding process.

The Appellant entered into Power Purchase Agreement with the procurers on 7-8-2007. On 10-10-2014 on account of change in law pertaining to different aspects, the Petition came to be filed claiming compensation. On 18-11-2015, Commission granted compensation for change in law events with effect from 16-8-2013. Since no carrying cost was awarded, a Review Petition came to be filed as stated above. The Commission passed Impugned Order disallowing carrying cost to the Appellant; therefore, the present appeal is filed.

The Appeal is pending since 2017 and is at the stage of hearing. At this point of time, Civil Appeal No. 5865 of 2018 between Uttar Haryana Bijli Vitran Nigam Ltd. [UHBVNL] & Anr. v. Adani Power Ltd. & Ors., the Hon'ble Supreme Court disposed of the matter along with Civil Appeal No. 6190 of 2018 expressing its opinion on merits with regard to carrying cost.

In terms of the law laid down, the Hon'ble Apex Court opined that the restitutionary principle contained in Clause 13.2 of the Power Purchase Agreement involved in the case before the Hon'ble Supreme Court, when

the compensation is determined by the Commission whether increase or decrease carrying costs also to be awarded. In that view of the matter, in the present case, the claim of the Appellant for carrying cost has to be worked out based on the law laid down by the Apex Court in the above Appeal. Accordingly, the Appeal is allowed and the matter is remanded to Central Electricity Regulatory Commission for fresh consideration pertaining to controversy of carrying cost in the light of the judgment of the Hon'ble Apex Court.

No order as to costs.

(S.D. Dubey)
Technical Member

tpd/pk

(Justice Manjula Chellur)
Chairperson