Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 350 of 2019

Case filed by RattanIndia Power Limited for compensation due to Change in Law on account of amendment in notification dated 2 January, 2014 by Ministry of Environment, Forest and Climate Change, Government of India

Coram
I.M.Bohari, Member
Mukesh Khullar, Member

RattanIndia Power Limited (RIPL) .... Petitioner

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) …..Respondent

Appearance
For RIPL: Shri. Vishrov Mukherjee (Adv)
For MSEDCL: Shri. Ashish Singh (Adv)

ORDER

Date:-07 September, 2020

1. RattanIndia Power Limited (RIPL) has filed this Case on 31 December 2019 under Section 86 of the Electricity Act, 2003 (EA, 2003) read with the statutory framework governing procurement of power through competitive bidding and Article 10 of the PPAs dated 22 April 2010 and 5 June 2010 executed between RIPL and Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) for compensation due to Change in Law on account of amendment in notification dated 2 January 2014 by Ministry of Environment, Forest and climate change (MoEF), Government of India, impacting the revenues and costs of RIPL for the period from the date of commencement of supply of power.

2. RIPL's main prayers are as under:

(a) Allow RattanIndia to recover costs incurred on account of washing of coal by approving the mechanism for recovery of washing charges as per formula in Paragraph 32 above;

(b) Allow RattanIndia to recover cost incurred on account of procurement of additional coal by approving the mechanism for recovery of washing charges as per formula in Paragraph 33 above;

(c) Direct MSEDCL to reconcile amount as per approved mechanism and pay to RattanIndia on account of the aforesaid Change in Law till 31 March 2019 within a stipulated timeline;

(d) In the interim, direct MSEDCL to pay 75% of the total amount i.e. Rs. 286.56 crores as per Paragraph 42 & 43 above;

(e) Direct MSEDCL to pay costs and expenses in future on account of the Change in Law event on a monthly basis as per approved mechanism in Prayer (a) above;

(f) Allow carrying cost on the additional expenses incurred by RattanIndia in terms of the methodology proposed in Paragraph 40 above;

3. RIPL in its Petition has stated as follows:

3.1 RIPL owns and operates a 1350 MW (5x270 MW) coal fired power plant located at Amravati and supplying power of 1200 MW to MSEDCL since 3 March 2013 under Power Purchase Agreements (PPA) dated 22 April 2010 (450 MW) and dated 5 June 2010 (750 MW).

3.2 The date for consideration of Change in Law events, in terms of the PPAs, is 31 July 2009, being seven (7) days prior to the Bid Deadline date (i.e., 7August 2009) (Cut-off Date).

3.3 RIPL had filed Case No. 84 of 2016 before the Commission claiming compensation on account of Change in Law events, including imposition of a mandatory condition of use of washed or beneficiated coal with effect from 5 June 2016 in terms of Rule 3(8) of the Environmental (Protection) Amendment Rules, 2014, issued by MoEF dated 2 January 2014.

3.4 The Commission vide its Order in Case No 84 of 2016 dated 5 April 2018 held that imposition of the condition of washing of coal on account of amendment of the Environmental (Protection) Rules, 1986, in principle, had the characteristics of a Change in Law event. However, the Commission noted that there are also benefits in using washed coal, such as saving in transportation and handling costs, lower generation costs because of improved thermal efficiency, reduced ash disposal requirements and indirect reduction in O&M costs and that the additional cost of coal washing may or may not exceed the advantages accruing from the use of washed coal. In view of the above, the Commission observed that it was not inclined to grant relief at this stage without the requisite facts and figures in support of the said contention.

3.5 Present Petition is filed pursuant to the Order dated 5 April 2018, placing on record all requisite information pertaining to washing of coal.

3.6 On the Cut-Off Date i.e. 31 July 2009 for the PPAs, Rule 3(8) of the Environment (Protection) Rules, 1986 provided that any thermal power plant located beyond 1,000 kms from the pit-head and/ or any thermal power plant located in urban area or sensitive area or critically polluted area, irrespective of their distance from pit-head except any pit-head power plant, shall use raw or blended or beneficiated coal with an ash content not exceeding 34% on an annual average basis.

3.7 Therefore, on the Cut-Off Date, RIPL (being within 1,000 Kms) was not required to use raw or blended or beneficiated coal with an ash content not exceeding 34%.

3.8 Subsequently, on 2 January 2014, the MoEF amended the Environment (Protection) Rules, 1986 by way of the Environment (Protection) Amendment Rules, 2014. Rule 3(8) of the Environment Protection Amendment Rules was amended and substituted as under:

"(8) With effect from the date specified hereunder, the following coal based thermal power plants shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly average basis, namely :-

(a) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located beyond 1000 kilometres from the pit-head or, in an urban area or an ecologically sensitive area or a critically polluted industrial area, irrespective of its distance from the pit-head, except a pit-head power plant, with immediate effect;

(b) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located between 750 - 1000 kilometres from the pit-head, with effect from the 1st day of January, 2015;

(c) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located between 500-749 kilometres from the pit-head, with effect from the 5th day of June, 2016:.."

3.9 The Commission in its Order dated 5 April 2018, also directed RIPL to take up the matter with SECL. In this regard, it is submitted that the stipulation in Rule 3(8) with regard to supply and use of washed coal is not material for the following reasons:

(a) The LoA issued by SECL was prior to the Cut-Off Date under the PPA. The LoA did not prescribe any ash content for the grade of coal to be supplied to RIPL.

(b) The FSA entered into with SECL was prior to enactment of the Environment Protection Amendment Rules.

(c) Any change in quantity or additional expenditure, on account of a statutory imposition such as in the present case would be passed on to RIPL.

(d) Post enactment of the Environment Protection Amendment Rules, either SECL or RIPL will have to undertake the washing of coal to comply with the Environment Protection Amendment Rules. Therefore, any loss of coal quantity and increase in cost due to washing charges would be borne by RIPL, since SECL will be including the cost of coal washing in its bill and will supply coal quantity adjusted towards the yield loss.

3.10 Requirement to use raw/blended/beneficiated coal with an ash content not exceeding 34% and gross calorific value not less than 4,000 kCal/kg by thermal power plants has been held to be a Change in Law event by the Appellate Tribunal for Electricity (APTEL) in its Judgment dated 14 August, 2018, passed in Appeal Nos. 111 of 2017 and 290 of 2017 *titled GMR Warora Energy Ltd. v. Central Electricity Regulatory Commission &Ors.* APTEL observed that in terms of the PPA, the Change in Law event is to be treated/ examined with respect to the Cut-Off Date.

3.11 Once an event qualifies as a Change in Law event, the affected party ought to be compensated for the same. In terms of Article 10.2.1 of the PPAs, the compensation awarded to the affected party for a Change in Law event must restore the affected party to the same economic position, had such Change in Law event not occurred. The said principle has been affirmed by the Hon. Supreme Court in the *Energy Watchdog vs. CERC, reported as (2017) 14 SCC 80.*

3.12 The principle for restoration would require that the compensation is calculated and awarded on actual. The said position has been confirmed by the APTEL in the judgment dated 12 September 2014 in Appeal No. 288 of 2013, *titled Wardha Power Company Limited v. Reliance Infrastructure Limited & Another*. The said principle was further confirmed by the APTEL in the judgment dated 20 November 2018 in Appeal No. 121 of 2018 *titled Sasan Power Limited vs. CERC &Ors*.

3.13 In view of the above, increase in the cost on account of enactment of the Environment Protection Amendment Rules ought to be allowed as Change in Law event. RIPL had approached SECL and made all possible efforts for procuring washed coal from SECL pursuant to the Environment Protection Amendment Rules. However, SECL has not been in position to supply the same till date.

3.14 As regards the issue of benefit of using washed coal, it is submitted that the adverse impact of washing of coal on the economic position of RIPL is mainly two-fold:

(a) Loss in quantity of coal on account of washing: Approximately 20% of the coal quantity is lost as rejects; and

(b) Cost of coal washing and handling, which is paid to the coal washing agency.

3.15 The benefit of using washed coal is difficult to determine. However, RIPL has tried to analyse all tangible and intangible benefits accrued to it due to washing of coal which are, summarized below in line with the opinion sought from an industry expert, Mr. H.L. Bajaj (former Technical Member, Appellate Tribunal).

3.16 Use of washed coal in the coal fired power plants generally results in savings in power consumption of various auxiliaries, mainly due to reduced ash content in coal. Thus, auxiliary power consumption comes down mainly on the following auxiliaries:

(i) Coal crushers;
(ii) Coal and ash handling plants;
(iii) Pulverisers;
(iv) Electrostatic precipitators;
(v) ID, FD, PA fans.

However, it is not possible to accurately assess the actual savings on account of the above with reference to the particular unit, since there are many variable parameters which fluctuate due to the loading pattern of the unit as well as environmental conditions.

These would show hardly any effect on power savings as the combustion air requirements as well as the quantity of flue gases depends on combustibles of coal which remain the same.

(a) **Effect on Secondary Oil Consumption:**
Use of washed coal would generally have no effect on the secondary oil consumption as the power station design provides for enough redundancies and standby equipment to cater to any outages of any auxiliary equipment.

(b) **Benefits in Maintenance:**
Use of washed coal would generally result in reduced maintenance due to lesser erosion of the boiler pressure parts and other auxiliary equipment like reduction in wearing down of mill grinding parts, coal burners and nozzles, ESP internals, ducts, PC pipes, CHP & AHP equipment, etc.

(c) **Benefits in issues related to Environment;**
Due to the reduction in ash generated from the power plant, there would be a reduction in dust emission at ESP outlet, given the existing design of the ESP. This has no effect on savings as such.

(d) **Reduction in Coal Transportation costs due to lower coal requirement:**
There would be a reduction in quantity of coal transportation in proportion to the ash reduction, provided the washed coal is supplied by Coal India Limited.

However, if the coal is washed in washeries close to the plant site, this advantage will not be available. On the other hand, the disposal of washery rejects would pose environmental issues and additional costs might need to be incurred for proper disposal of such rejects.

(e) **Improvement in Efficiency:**

Station Heat Rate and Boiler Efficiency are plant specific parameters and depend on design of boiler, turbine and auxiliaries.

Theoretically, there may be a gain in the boiler efficiency due to reduced flue gas losses as a result of reduced ash content. However, such marginal gains are not practically realisable due to many other variants in the power station during the course of operation. Exact quantification may be difficult and will be different for different units.

(f) **Effect of increased moisture contents in the washed coal as compared to the raw coal:**

Washed coal has much higher moisture content than unwashed coal. This has a negative effect on the boiler efficiency. This, again, is largely a theoretical aspect, as there are huge variations in moisture content of the fired coal due to dust suppression in the power station end and on the loading end. Due to this reason, all coal suppliers quote the gross calorific value on an equilibrated basis which masks the actual moisture content of coal. Accordingly, no purpose would be served by working out the loss due to the increased moisture content in the washed coal for the purpose of estimation of any savings hereof.

3.17 Based on the foregoing, the financial impact on account of washing is as under:

Particulars	Value	Unit	Document Reference
Quantity of coal available under Fuel Supply Agreement (FSA)	5.49	MTPA	FSA Copy
Coal Linkage available for the year (75% of FSA quantity) (a)	4.12	MTPA	SHAKTI Policy
Part-A: Coal Washing Cost			
Post Washing yield	80%		
Yield loss due to coal washing	20%		
Coal Washing charges (incl. coal handling charges and rebate for rejects) (b)	369.25	Rs/MT	Sample invoices for coal washing & sale of coal rejects.
Total Coal Washing Cost for FSA Coal (A= (a x b)	152.14	Rs Crore	
Part-B: Cost and Savings due to coal washing & Transportation			
Yield Loss due coal washing			
Yield Loss	20%		
Coal cost paid to SECL (RoM cost + taxes and duties) (c)	1,777	Rs/MT	SECL Coal Bills

Value of yield loss (20% of c) (d)	355.40	Rs/MT	
Coal Transportation cost (SECL mines to Plant incl. taxes)	1,558.20	Rs/MT	Railway Receipts
Savings in transportation charges (20% of 1,558.20) (e)	311.64	Rs/MT	
Net Cost/Savings due to coal washing and transportation (f = d-e)	43.76	Rs/MT	
Total amounts for FSA Coal (43.76 Rs/MT x 4.12 MTPA) – B	**18.03**	**Rs Crore**	
Part-C: Savings in Auxiliary Consumption			
FSA Coal Quantity (75% ACQ)	4.12	MTPA	
Total savings on O&M Costs – C	(4.30)	Rs Crore	As per Opinion
Savings in auxiliary consumption (pro-rata for 1 ton coal) – g	(10.43)	Rs/MT	
Total expenses due to coal washing (b + f + g)	402.59	Rs/MT	
Total washing expenses (A + B + C)	**165.87**	**Rs Crore**	

3.18 As a part of the washing process, 20% of the coal is lost. Due to this loss in the quantity of coal, RIPL compensation on account of this additional coal procurement by RIPL is as follows:

Parameter	Value	Unit	Reference Documents
Cost of alternate coal for meeting the shortfall coal Quantity			
GCV of Coal (equilibrated basis as per FSA)	4,150	kCal/kg	As per SECL invoices and FSA
GCV of washed coal (equilibrated basis)	4,450	kCal/kg	Coal analysis reports
Alternate coal GCV *	4,200	kCal/kg	
Quantity of additional coal [(4150 x 4.12 - 4450 x 4.12 x 80%) / 4200]	**0.58**	**MTPA**	

*Note: Considering alternate coal GCV of 4,200 kCal/kg, RIPL will be required to procure 0.58 million tonnes of additional coal per annum for meeting the shortfall in coal quantity. Compensation for this additional coal will depend upon the actual delivered cost and actual quantity of coal procured by RIPL. Under the present market conditions, this will create an additional liability on RIPL of approx. Rs. 350 Crores.

3.19 Compensation on account of washing be computed based on coal washed and supplied on a monthly basis. Further, since the cost of washing is independent of actual generation, the same be allowed as per actual expenditure incurred.

3.20 Total payment of Rs. 319.37crores has already been made for the period starting from June 2016 to September 2019 by RIPL to the coal washeries for washing of coal.

3.21 In accordance with the Order dated 5 April 2018 passed by the Commission in Case No. 84 of 2016, RIPL has computed the impact of washing coal, taking into account the

settled principle of economic restitution as well as savings arising on account of washing charges, in line with the expert opinion. RIPL has also submitted all necessary information, along with required facts, figures and invoices to demonstrate the impact on account of washing.

3.22 The Commission may consider the foregoing and devise a compensation mechanism which takes into account the adverse impact on RIPL's economic position and the benefits of using washed coal. The actual compensation payable to RIPL shall be computed using the methodology prescribed by the Commission and actual monthly expenses incurred by RIPL, keeping in view the principle of restitution.

3.23 RIPL has been incurring additional expenditure on account of coal washing with effect from year 2016. It had served notice for Change in Law on 17 March 2016. RIPL had claimed carrying cost in relation to the expenditure incurred by it. In terms of the Order dated 5 April 2018, the Commission had disallowed carrying cost on account of no provision of the same in PPA. Subsequently, the Hon. Supreme Court has allowed carrying cost on Change in Law in its judgment dated 25 February 2019 in Civil Appeal No. 5865 of 2018 titled *Uttar Haryana Bijli Vitran Nigam Ltd. vs.* Adani *Power Ltd.*

3.24 Therefore, in terms of the Hon. Supreme Court's judgment, RIPL is entitled to carrying cost on the expenditure incurred on account of the Change in Law event. The carrying cost may be computed at the rate as certified by statutory auditor of the company equal to the weighted average cost of working capital for the applicable period. The amount payable to RIPL on account of carrying cost for washing charges till September 2019 is Rs. 62.72Crores.

3.25 Due to prevailing stress in the power sector, cash flow issues, non-payment of washing charges and cost of procurement of coal towards yield loss, the cash flow of RIPL has further been adversely impacted and RIPL is in extreme financial distress. Such non-payment of dues severely constrains the ability of RIPL to procure coal and continue to generate and supply power. Consequently, it is prayed that pending final adjudication, the Commission may be pleased to direct MSEDCL to release of 75% of the due amount as interim relief, otherwise grave prejudice and irreparable loss will be caused to RIPL. Upon final adjudication if any interim amount paid in excess to RIPL, the same can be adjustment at time of reconciliations and in future payments.

4. MSEDCL in its submission dated 11 March 2020 has stated as follows:

4.1 MoEF, GoI notified the Environmental (Protection) Rules and Regulations in the year 1986 i.e. well before the bid cut-off date 31 July 2009. According to the provisions in these rules and regulations every Thermal Generator needs to obtain the Environmental Clearance for commencement of the Project. As per the RFP documents environment Clearance was one of the criteria for qualifying the bid.

4.2 As per the RFP requirement, RIPL submitted the environment certificate issued by GoI, MoEF dated. 27 February 2009 in its bid document. The Environment clearance say,

> *'…the Ministry of Environment and Forests hereby accords environmental clearance to the above project under the provisions of EIA notification dated September 14, 2006, subject to the implementation of the following terms and conditions:*
>
> *….*
>
> *(XXVII) Separate funds shall be allocated for implementation of environment protection measures along with item wise break up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted to other purpose and year wise expenditure should be reported to the Ministry.*

4.3 It is clear from the above that RIPL has to make separate funds arrangement for any future Environment measures and also to show such Funds in its account. As per the provision of RFP, RIPL has quoted the bid. It is obvious that while quoting the capacity tariff stream for 25 years, RIPL has taken care to recover the 100% capital expenditure (which includes the funds of environmental protection) within 25 years through 1200 MW capacity. Therefore, it is requested that while considering the cost of washery of the coal, the ratio of futuristic amount of separate funds for the remaining years out of total 25 years and the existing separate funds to be deducted. Therefore, no such Change in Law be allowed as it is already known to RIPL and was mandatory for making the fund provision for the same.

4.4 Further, MoEF issued a notification *dated 25 May 2010*, and notified at para….

> *1.1.a.1. As per the provision 4B (XVII), petitioner has to keep Separate funds shall be allocated for implementation of environmental protection measures along with item-wise break-up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted for other purposes and year-wise expenditure should be reported to the Ministry.*

4.5 MoEF has repeatedly directed and mandated the Generating companies such as RIPL to provide separate funds for Environmental protection. However, RIPL has neither made such provision nor purposefully declared the separate funds allocated for this purpose. Hence, no Change in Law needs to be allowed.

4.6 On 02 January 2014, MoEF amended Rule 3 (8) of the Environmental protection Rules, 2014. This amendment of rule principally mandates coal supplier i.e. Coal India Ltd (CIL) or its subsidiaries to supply the coal with ash content not more than 34% to the procurer i.e. RIPL. Hence, it is the responsibility of the supplier to supply the coal of specified quality mandated by amendment of environment protection rule 2014.

4.7 RIPL is having FSA with SECL. It is the responsibility of SECL to supply the specific grade of coal to RIPL as per the contractual obligation under FSA and equally it is the

responsibility of RIPL to confirm the grade of coal received. Further, in case of any quality issue of coal received, RIPL has to pursue the matter with SECL under the provisions of FSA for the compensation or otherwise. RIPL should deal the matter in appropriate forum/court as per the provision under FSA.

4.8 Further, as per the terms and condition of FSA, any deviation in economic position i.e., financial (Loss/ Gain) are been resituated by SECL. However, PPA and FSA are altogether different contracts. Therefore, MSEDCL cannot be intended to restitute the RIPL for a contractual breach under FSA, of which it is not a party.

4.9 The Commission vide its Order in Case no. 84 of 2016 dated 05 April 2018 has disposed of the petition with the remark that RIPL has to bring /submit all the benefits and its cost towards the coal beneficiation process for deciding the matter. However, RIPL in its petition has not produced any calculation on actual basis and has also shown its inability to do so. In that Order, the Commission has also appreciated that the tangible and intangible benefits of washed coal is much more than the expenditure incurred.

4.10 Though there are exhaustive list of benefits, few of major benefits are reproduced as below :

a) Lower Ash content and Lower ash disposal
b) Better consistency in quality of coal
c) Reduction in freight costs for transporting the same energy content.
d) Increase in heating value of coal and hence less raw coal requirement for the same quantity of electricity generation.
e) Reduction in the scheduled and unscheduled maintenance required to remove ash collection.
f) Lower ash coal can also reduce corrosion of plant ductwork that reduces plant life.
g) Reduction of damage to coal handling equipment such as conveyors, pulverisers, crushers and storage units.
h) Improvement in overall power plant operations and the profitability over the long term.
i) Avoidance in environmental penalties and disputes.
j) Improvement in the life of emission control devices
k) Lower generation costs (Operational and maintenance cost) from improved thermal efficiency and availability
l) Social benefits like reduced settlement costs and reduced effects on cultivation in the impact zone and improved health and living conditions.

4.11 As per this statutory imposition, the primary responsibility is of the supplier. And the contention of RIPL that it will be imposed/ passed on to him by an additional charges or loss in coal quantity is purely the presumption of RIPL as there is no such notification in this regard. It is the basic responsibility of Coal supplier (SECL) to supply the coal having ash content less than 34%. Further if in case, assuming but not accepting that

RIPL has to maintain the ash content 34% on quarterly basis; even then RIPL has an option to use raw, blended or beneficiated coal instead of washery coal.

4.12 RIPL in its petition at Para 29 has mentioned that the supplier *M/s SECL is not following the MoEF amendments*. MSEDCL submits that RIPL has already accepted vide petition's Para no. 29 that it is aware and has accepted that the coal supplier is responsible for providing specified quality of coal as per the MoEF Notification. Therefore, this needs to be dealt as per the provisions of FSA.

4.13 RIPL has wrongly contended that there is 20% of coal quantity lost; there is no proof or evidence submitted by RIPL. Hence the contention needs to be rejected.

4.14 Due to the higher variable cost, RIPL plant comes on higher position in the MOD stack. Due to this, RIPL's plant hardly gets scheduled. However, RIPL in its submission has shown the exaggerated estimation of 12 months. As per the provision of Change in Law payment/ expenses are reimbursed/ paid on actual incurred basis and not on estimated basis. It is submitted that the Change in Law amount cannot be paid on estimation but on actual and hence be disallowed.

4.15 Further the benefit accrued in the beneficiation process be considered and same to be adjusted if allowed.

4.16 On scrutiny of invoices annexed by RIPL for consideration of expenditure incurred under the Change in Law, transportation of coal is also considered in the calculations. In this regard, it is pertinent to note that the cost of coal and transportation under Case 1 bidding is the responsibility of the generator i.e. RIPL and as per the RFP, Bidder has to factor all such inputs while quoting the tariff which RIPL had obviously factored in the quoted tariff. However, RIPL has shown the transportation expenditure in the calculations thus misguiding the Commission.

4.17 RIPL is deliberately misguiding the Commission regarding assessment of cost of washed coal of Rs.165.87 Crs. No proof or evidences for yield loss (20%) has been submitted by RIPL while submitting the financial impact due to coal washing. As yield loss is an important parameter in the calculation, RIPL may be directed to submit the proof for 20% yield Loss.

4.18 About carrying cost, the Parties have specifically not agreed to compensate towards carrying cost on account of the impact of the Change in Law, more particularly not contemplating the inclusion of the same in Clause 10.3 of the PPA. MSEDCL has placed reliance on APTEL judgment in Appeal No. 150 of 2011 titled *SLS Power Ltd. Vs. APERC &Ors.* Which in fact has specifically rejected the similar relief, as sought by RIPL herein qua claim of carrying cost de hors the terms of the PPA.

4.19 All payable dues of petitioner have already been paid by MSEDCL. Therefore, issue of release of 75% payment against cost of washing coal is unreasonable. The financial

impact has to be assessed by RIPL which shall be subject to prudence check and subsequent approval by the Commission.

4.20 Since the above specified cost includes cost on coal consumption, it is necessary to ensure that inefficiency of the generator is not passed on to the distribution utility and to its end consumers. Therefore, operational parameters of the generating plants such as SHR, auxiliary consumption, etc, need to be revalidated as per the bid parameters by the Commission before allowing such additional cost as pass through under Change in Law.

4.21 The financial impact on incurring such costs have not been assessed and submitted by RIPL. The PPA provides that compensation under the Change in Law provision will be applicable only if it is in excess of 1% of the Letter of Credit in aggregate for a Contract Year. As to the components for which RIPL has asked for compensation, the Commission may carry out prudence check on each component considering this provision.

4.22 Therefore, it is requested the present case filed by RIPL be dismissed as being devoid of merits as well as being devoid of necessary facts and figures.

5. RIPL in its rejoinder dated 7 July 2020 has stated as follows:

5.1 RIPL denies the contention of MSEDCL that the Environment Clearance granted to RIPL mandated it to allocate separate funds for implementation of environment protection measures and that consequently cost of using washed or beneficiated coal under the Environment Protection Amendment Rules was to be met through such funds. RIPL's obligation under the Environment Clearance was to maintain funds for implementation of environment protection measures in accordance with the law existing on the Cut-Off Date and mandated under the Environment Management Plan submitted to the MoEF. This is evident from the fact that the Environment Clearance refers to such costs being part of the Project Cost. This will not include operating expenses arising out of subsequent Change in Law event.

5.2 MSEDCL's contention that it was the sole responsibility of RIPL to take into account future cost of mandatory washing of coal and that increase in expenditure on account of the same cannot be included under Article 10 of the PPAs, is erroneous. The aforesaid position has been confirmed by the APTEL in *Sasan Power Limited vs. CERC & Ors.* Reported as 2011 ELR (APTEL) 508.

5.3 The Commission has held the condition to use washed/beneficiated coal in terms of the Environment Protection Amendment Rules to be a Change in Law event in Order dated 05 April 2018. The said issue stands settled in terms thereof and MSEDCL not having challenged the aforesaid finding is precluded from reopening the same. The only issue in the present proceedings is the quantum of compensation which is payable to RIPL on account of use of washed coal.

5.4 MSEDCL's contention that the coal supplier (SECL) is responsible for supplying the mandated quality of coal under the Environment Protection Amendment Rules and as per FSA and thus MSEDCL is not liable to compensate RIPL for use of washed coal, is erroneous.

5.5 APTEL in its judgment dated 14 August, 2018, passed in Appeal Nos. 111 of 2017 and 290 of 2017 *titled GMR Warora Energy Ltd. v. Central Electricity Regulatory Commission & Ors.* rejected MSEDCL's contention that the condition for using washed/ beneficiated coal was not a Change in Law since GMR Warora Energy Ltd. could have made efforts to secure the requisite quality of coal while signing the FSAs.

5.6 MSEDCL has not challenged the GMR Warora Judgment. The present case is similar. The Change in Law provisions in both cases is identical. Thus, the APTEL's decision in the GMR Warora Judgment is squarely applicable to the present case. Moreover, the issue of the condition of using washed coal under the Environment Protection Amendment Rules qualifying as a Change in Law event stands settled in the Order dated 05 April 2018.

5.7 In the present case, the stipulation in Rule 3(8) with regard to supply of washed coal by the coal supplier is not material and the additional expenditure for use of washed coal is being borne by RIPL for the following reasons:

(a) The LoA issued by SECL was prior to the Cut-Off Date under the PPA. The LoA did not prescribe any ash content for the grade of coal to be supplied to RIPL;

(b) The FSA entered into with SECL was prior to enactment of the Environment Protection Amendment Rules;

(c) Post enactment of the Environment Protection Amendment Rules, either SECL or RIPL has to undertake the washing of coal to comply with the Environment Protection Amendment Rules. Therefore, any loss of coal quantity and increase in cost due to washing charges would be borne by RIPL, since SECL will be including the cost of coal washing in its bill and will supply coal quantity adjusted towards the yield loss.

5.8 MSEDCL's contention that RIPL has not provided any calculations regarding washing of coal, is wrong and denied. RIPL has submitted requisite calculations and details regarding expenditure on washing of coal. RIPL has submitted the financial impact on account of washing of coal with supporting data and information. RIPL has placed on record sample invoices for coal washing & sale of coal rejects, SECL Coal Bills and Railway Receipts in support of its claims.

5.9 The actual compensation payable to RIPL shall be computed using the methodology prescribed by the Commission and actual monthly expenses incurred by RIPL, keeping

in view the principle of restitution. It is reiterated that, since the cost of washing is independent of actual generation, the same ought to be allowed as per actual expenditure incurred. Further, all tangible and intangible benefits on account of use of washed coal have been considered by RIPL. MSEDCL has wrongly interpreted the mechanism proposed by RIPL. It is submitted that in terms of the proposed methodology, 20% of the coal quantity has been considered as being lost as rejects on account of washing of coal. Due to this loss in coal quantity, lower coal quantity has to be transported to site. Thus, there is reduction in transportation cost corresponding to the 20 % yield loss on account of washing of coal. RIPL has passed on the aforesaid benefit (lower coal transportation) to MSEDCL by setting off this amount with the additional expenditure incurred on account of washing of coal. RIPL is not proposing to bill MSEDCL for transportation of coal.

5.10 The issue of carrying cost has been settled by the Hon. Supreme Court in *Uttar Haryana Bijli Vitran Nigam Ltd. vs. Adani Power Ltd*, reported as (2019) 5 SCC 325,wherein the Hon. Supreme Court allowed carrying cost in case of an identically worded Change in Law clause.

5.11 Balance of convenience lies in favour of RIPL and irreparable harm will be caused to RIPL if interim payment is not released. It is submitted that the compensation has to be calculated on actual parameters and not bid parameters as contended by MSEDCL. The APTEL has, in judgment dated 13 November, 2019 in Appeal No. 77 of 2016 and batch titled *Sasan Power Ltd. v. CERC & Ors*., held that compensation for Change in Law events cannot be restricted to bid parameters and ought to be considered on actuals.

6. At the time of E-hearing dated 11 August 2020, Advocates of both parties have reiterated their submission in Petition / Reply.

Commission's Analysis and Ruling:

7. RIPL in the present Petition is seeking compensation for increased expenses on account of washing of coal which it has to undertake to comply with MoEF notification dated 2 January 2014. RIPL has stated that as on Cut-Off date i.e. 31 July 2009, as per then applicable Rule 3(8) of the Environment (Protection) Rules, 1986, thermal power plant located beyond 1000 kms from pit head were required to use coal with an ash content not exceeding 34% on an annual average basis. RIPL being located at a distance of 740 kms from coal mines, the said condition was not applicable to it. However, on 2 January 2014, the MoEF amended the Environment (Protection) Rules, 1986 by way of the Environment (Protection) Amendment Rules, 2014 and as per such amended rules power plants located between 500-749 kilometres from the pit-head, are also mandated to use raw or blended or beneficiated coal with an ash content not exceeding 34% on an annual average basis with effect from the 5 June 2016. Accordingly, RIPL contended that MoEF notification dated 2 January 2014 is Change in Law event and it needs to be compensated for increased expenses along with carrying cost.

8. The Commission notes that RIPL has previously approached the Commission for various Change in Law events including the amendment in MoEF notification dated 2 January 2014 in Case No 84 of 2016. In its Order dated 5 April 2018 issued in that matter, while dealing with the issue of amendment in MoEF notification, the Commission has observed that the said MoEF notification has a characteristic of Change in Law, but not allowed any compensation on accounts of reasons reproduced below:

18.44. The Commission notes that the amendment to the Environment (Protection) Rules, 1986 was effected after the Cut-Off date by an Indian Governmental Instrumentality under the provisions of the Environment (Protection) Act. The Commission also notes that the FSA was entered into with SECL prior to the amendment. The new condition of using washed or beneficiated coal with an ash content not exceeding 34% entails an additional expenditure during the Operating Period. Thus, in principle, the amendment has the characteristics of a Change in Law event.

18.45. However, there are also inherent benefits in using washed coal, such as saving in transportation and handling costs, lower generation cost because of improved thermal efficiency, reduced ash disposal requirements and indirect reduction in O&M costs. Moreover, the Environment (Protection) Amendment Rules, 2014 also cast an obligation with regard to the supply of coal on the coal supplier:

"(8) With effect from the date specified hereunder, the following coal based thermal power plants shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly average basis…"

18.46. Thus, the additional cost to RIPL on account of the amended Rules may or may not exceed or be offset by the advantages accruing from the mandatory use of washed or beneficiated coal. The obligation of the Generator under the amended Rules is also qualified by the obligation on the coal supplier. Therefore, while the amendment may, in principle, have the characteristics of a Change in Law event, the Commission is not inclined to recognise it as such in effect at this stage without the required facts and figures, and to allow the entire additional cost to be compensated in terms of Article 10 of the PPAs. RIPL may also take up SECL the requirement to supply coal in accordance with the Environment (Protection) Amendment Rules, 2014."

9. Thus, in the above Order, the Commission declined to allow passthrough of additional cost on account of amendment to MoEF notification as supporting document establishing increase expenses after deducting possible benefits of coal washing was not submitted at that time. The Commission had also advised RIPL to take up this issue with SECL, as under the MoEF notification Coal supplier is also equally responsible for suppling coal with ash content not exceeding 34%.

10. Through present Petition, RIPL has submitted sample bills and Report from Industrial Expert stating possible benefits of coal washing and its quantification. RIPL has also

stated that it has approached SECL but as SECL has not supplied coal with lower ash content, it opted for washing of coal on its own for complying with MoEF notification. MSEDCL has opposed claims of RIPL. Based on documents placed on records, the Commission frames following issues for its consideration in the present matter:

a. Whether MoEF notification dated 2 January 2014 constituted a Change in Law Event?

b. Whether only RIPL is responsible for complying with MoEF notification or SECL is also responsible?

c. What is impact of MoEF notification dated 2 January 2014 on expenses of RIPL?

d. In case impact of Change in Law is allowed, then whether to allow it with carrying cost?

11. Before dealing with the above issues, the Commission notes that provisions relating to Change in Law in the PPAs reads as follows:

"10 ARTICLE 10: CHANGE IN LAW
………..
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;*

………..
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 sue 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 same economic position as if such Change in Law has not occurred.

10.3 Relief for Change in Law
…………
10.3.2 During Operation Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only 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."

Thus, as per above provisions of PPA, in case amendment of Rules results into increase in expenses for Seller, it constitutes Change in Law and Seller needs to be compensated such that it is restored to same economic position as if such Change in Law had not occurred. Further, compensation for increased expenses during operation period shall be payable only if such increased expenses is more than 1% of value of the Letter of Credit. With this background the Commission is now dealing with issues framed in above para.

12. Issue A: Whether MoEF notification dated 2 January 2014 constituted Change in Law Event?

12.1. RIPL has contended that the Commission in its Order dated 5 April 2018 has already held that MoEF notification dated 2 January 2014 is Change in Law event. RIPL has also referred to APTEL's Judgment dated 14 August 2018 in *GMR Warora Energy Ltd. v. CERC &Ors* wherein APTEL has held that this MoEF notification constitutes Change in Law event under the PPA. MSEDCL has opposed this contention of RIPL and stated that the Commission in its earlier Order dated 5 April 2018 has only stated that MoEF notification has characteristic of Change in Law but did not allow compensation for the same.

12.2. In this regard, the Commission notes that in its earlier Order dated 5 April 2018 (reproduced at para 8 above), it has made observation that MoEF notification dated 2 January 2014 has characteristic of Change in Law event. However, while analysing possible impacts of such Change in Law event, the Commission has not allowed impact at that point of time as supporting facts and data establishing increased expenses were not on record.

12.3. RIPL has also relied on APTEL judgment *GMR Warora Energy Ltd. v. CERC & Ors,* relevant part of said judgment is reproduced below:

"xxxi. We observe that that on face of it the notification issued by MOEF being IGI is a Change in Law event falling under second bullet of the Article 10.1.1 of the PPA. The Central Commission has also not denied as a Change in Law event. The Central Commission has erred in linking it with signing of the FSA after issuance of the MOEF notification instead of cut-off date. The issue is to be seen in light of the premise on which the bid was based and the changes made after the cut-off date by MOEF. This issue is required to be analysed in detail by the Central Commission based on the contentions of the parties to arrive at a justified compensation, if any to GWEL considering the MOEF notification as a Change in Law event.

In view of the above, this issue is remanded to the Central Commission to pass appropriate order in light of our observations as above."

The Commission notes that in the above Judgment, APTEL has remanded matter to CERC for arriving at justified compensation, if any to GMR Warora considering the MoEF notification as a Change in Law event. The Commission further notes that in subsequent Order dated 16 May 2019, CERC has observed that claims relating to increased expenditure on account of MoEF notification were not supported with relevant details and hence allowed liberty to GMR Warora to approach Commission with relevant details.

12.4. The Commission notes that its earlier Order dated 5 April 2018 is consistent with the above quoted APTEL Judgment which holds that MoEF notification as Change in Law and directed CERC to arrive at justified compensation, if any. In its earlier Order, the Commission has not worked out compensation due to non-availability of supporting details.

13. Issue B: Whether only RIPL is responsible for complying with MoEF notification or SECL is also responsible?

13.1. RIPL has contended that it had approached SECL for supplying coal with lower ash content, but as SECL was not in position to supply the washed coal till date, it opted for washing of coal on its own for complying with mandatory condition of MoEF notification. RIPL has also contended that even if SECL would have accepted such request, it would have passed on increased expenses to RIPL only. Whereas, MSEDCL has contended that issue of quality of coal is governed by FSA between RIPL and SECL, therefore, RIPL should take up this issue of ash content with SECL without asking MSEDCL to pay for increased expenses.

13.2. In this regard, the Commission notes that provision of The Environment (Protection) Rules 1986 which was applicable on Cut-Off Date reads as follows:

*"(8) On and from the 1st day of June, 2002, the following coal based thermal power plants **shall use** raw or blended or beneficiated coal with an ash content not exceeding thirty four per cent on an annual average basis………"*

Above said provision has been amended by MoEF Notification dated 2 January 2014 as follows:

*"(8) With effect from the date specified hereunder, the following coal based thermal power plants **shall be supplied with, and shall use,** raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly average basis, namely"*

Thus, MoEF Notification dated 2 January 2014 has specifically added the word 'shall be supplied with' in Environment Protection Rules. Therefore, in terms of above quoted provision of MoEF notification dated 2 January 2014, it is obligatory for Coal companies to 'Supply' and Generator to 'use' coal with ash content not exceeding 34%. And therefore, in its earlier Order dated 4 April 2018, after making observation that MoEF

notification also casts obligation on Coal Supplier to supply coal, the Commission advised RIPL that "*RPL may also take up with SECL the requirement to supply coal in accordance with the Environment (Protection) Amendment Rules, 2014*".

13.3. The Commission furthers notes that National Green Tribunal (Western Zone) in its Judgment dated 15 October 2015 in the matter of *Ratnadeep Rangari Vs State of Maharashtra & Ors* has clearly stated that MoEF notification dated 2 January 2014, puts responsibility on coal companies and power plants both. Relevant part of said Judgment is reproduced below:

> *"31.* ***Now, coming to the Notification dated 2nd January 2014, it is observed that the Notification covers both the 'supply' as well as 'demand' side of the coal i.e. supply of coal by coal mines and/or companies on one side and user of coal i.e. power generation companies, on the other. Both these sectors are required to ensure that the coal, being supplied or used, shall not have ash content more than 34 %.*** *Another important aspect of the notification is that the norms are stipulated which are to be complied on 'quarterly basis'. This particular provision would entail development of statistical protocol by all stake holders including MoEF, CPCB, coal companies and power plants."*

National Green Tribunal in the above said judgment finally directed Coal Companies and Power Plants to comply with mandate under MoEF notification dated 2 January 2014 and MoEF to setup infrastructure for monitoring such compliance: Relevant part is reproduced below:

> *"3) Till the automatic real-time online monitoring system is installed and operated by the Coal companies and the thermal power plants, SPCBs shall take monthly samples for the coal ash content and ensure the compliance of notification. The MoEF Officers while conducting inspection visits to thermal power plants and coal mines shall also conduct such sampling and verify compliance of the notification."*

Thus, it is noticeably clear that coal companies were equally obligated to supply coal with ash content not more than 34%.

13.4. Therefore, when this Commission asked RIPL to take up the issue of supply of washed coal with SECL, it was expected that RIPL would seriously pursue it with all available legal avenues. However, in the present Petition, RIPL has stated that it had approached SECL, but SECL had not been in a position to supply it till date. RIPL has not attached any documentary evidence to establish efforts taken by it to pursue SECL for supply of coal with low ash content to comply with amended Environment Protection Rules. There is nothing on record to show that RIPL served any legal notice as per the FSA and notification regarding limit of 34 % ash content for supply of coal of the quality desired.

13.5. As regard RIPL contention that even if SECL would have agreed for supply of washed coal, it would have passed impact of the same to RIPL, the Commission notes that this

contention of RIPL is just a presumption which cannot be used in the matter wherein increased expenses on account of Change in Law event is to be ascertained.

13.6. RIPL has also contended that as APTEL in GMR Warora matter (wherein MSEDCL was one of the Respondent) has held that notification of MoEF is Change in Law and GMR Warora is to be compensated for increased expenses; MSEDCL cannot deny the compensation for same Change in Law event in the present matter contending that it is responsibility of SECL. In this regard, the Commission notes that as quoted in para 11.3 above, APTEL remanded matter to CERC for determination of justified compensation, if applicable. Nowhere in its Judgment APTEL has ruled on issue of obligation of Coal Supplier under MoEF notification dated 2 January 2014. Hence, the Commission does not find any merit in this contention of RIPL.

13.7. In view of the above analysis, the Commission is of the opinion that as per MoEF notification dated 2 January 2014, Coal Supplier is equally responsible for supply of coal with ash content not more than 34%. The said responsibility needs to be fully discharged. In case, due to any difficulty, the coal supplier is not able to comply with the mandate cast upon it to meet the environmental norms, buyer could explore legal options in furtherance of the difficulties or inabilities to comply with the provisions of law and put up its legal defence before the appropriate forum accordingly. Therefore, the Commission cannot allow expenses incurred by RIPL towards washing of coal for meeting the mandate under MoEF notification for passing them on to MSEDCL under the PPAs. RIPL should take up this issue with SECL to ensure compliance of the notification cast the responsibility on the Coal supplier.

14. Issue C: What is impact of MoEF notification dated 2 January 2014 on expenses of RIPL?

14.1. RIPL has contended that it has incurred Rs. 319.37 towards washing of coal during the period of June 2016 to September 2019. It has submitted sample invoices for the same. Further as summarised in para 3.17 above, RIPL has suggested method of calculating annual compensation for increased expenses on account of washing of coal. In this calculation, it considered 20% yield loss during washing of coal. It has also deducted benefit of washed coal while arriving at increased expenses. Based on such methodology, it has requested the Commission to allow compensation for Change in Law. It has further stated that as expenses on washing of coal has already been incurred on account of Change in Law, it should be compensated for it.

14.2. While opposing such claim, MSEDCL has contended that as per RFP requirements RIPL has submitted environmental clearance which clearly mandates RIPL to maintain separate fund for environment protection. Therefore, RIPL is not eligible for any compensation for meeting environmental norms. Additionally, MSEDCL has contended that RIPL has not submitted needed supporting documents. It opposed assumption of 20% yield loss and stated that it should be based on actuals. It also contended that all the benefits including increased heat value need to be considered. MSEDCL has also

opposed claim of RIPL that it should be compensated irrespective whether the plant was running or not.

14.3. On the issue of separate fund to be maintained for environmental protection as per condition of environmental clearance, the Commission notes that MoEF notification dated 2 January 2014 is post cut-off date under the PPA and hence is eligible to be treated as Change in Law event. Once, an event is treated as Change in Law, it becomes eligible for compensation, if applicable. The APTEL in its judgment dated 19 April 2017 in *Sasan Power Ltd Vs CERC & Ors.* has laid down this principle as follows:

> *"44. It is true that according to the provisions of the RFP, the quoted tariff shall be inclusive one including statutory taxes, duties and levies. But the PPA gives express right to an affected party to claim Change in Law if the event qualifies thus in terms of Article 13.* ***The RFP cannot override this right if an event qualifies as a Change in Law****. The Competitive Bidding Guidelines (Article 4.7 thereof has already been reproduced hereinabove) and the PPA have to be read together.* ***If an event qualifies as a Change in Law event then the compensation must follow because otherwise Article 13 of the PPA will become redundant.*** *But, this will of course depend on facts and circumstances of each case. Facts of each case will have to be carefully studied before granting such a relief. ....."*

Therefore, MSEDCL's contention in this regard cannot be accepted. However, extent to which expenses can be allowed under Change in Law is adjudicated in subsequent paragraphs.

14.4. The Commission notes that RIPL in its Petition has submitted sample invoices but has not submitted Coal Beneficiation / Coal Washing Agreement which is prime document based on which expenses are to be arrived. Further, RIPL has not mentioned about process (competitive bidding or otherwise) it has adopted while entering into such agreement and whether rate and other conditions of the contract are as per Industrial Practice or otherwise. In absence of all these details, it is difficult to comment on prudency of the cost claimed by RIPL.

14.5. The Commission also notes that the Industrial Expert in its Report has mentioned that Station Heat Rate and Boiler Efficiency are plant specific parameters and depend on design of boiler, turbine and auxiliaries. It further stated that theoretically, use of washed coal will improve efficiency but it is difficult to quantify it due to various parameters involved in plant operation and it would be different for different units. Based on such Report, RIPL has not included any benefit on account of improved SHR while computing increased expenses. In this regard, the Commission notes that improvement in efficiency is an important factor which needs to be factored in while determining increased expenses. In the opinion of the Commission, quantification of such increased efficiency in respect of generating Units under the PPAs for which all historical data i.e. prior and post utilisation of washed coal is readily available with RIPL, is possible with some efforts. Therefore, the Commission can not assess the costs incurred by RIPL in absence

of quantification of the efficiency improvement in SHR gained by RIPL due to use of washed coal and so factored while computing net impact on expenses.

14.6. The Commission further notes that RIPL has claimed all expenses incurred on washed coal irrespective whether such coal was used for generation of electricity or just stored in the bunkers. MSEDCL has opposed such claim on the ground that RIPL's plant being costly is placed at higher level in Merit Order Stack and most of the time is under shut down / backed down. In this regard, the Commission notes that expenses on coal washing is linked to fuel cost and as per industrial practice it is payable only if such coal is used for generation of electricity. The Commission cannot accept RIPL's contention that it should be compensated for washed coal even if its plant is under shutdown / backdown. As per well settled principle, any compensation on account of Change in Law during operation period is linked to energy generated. Same needs to be followed in the present case also. Accordingly, per unit increased expenses on account of Change in Law for providing heat equivalent (kCal) of energy generated needs to be computed after deducting all possible benefits which can accrue. Further, such Change in Law compensation is payable only if it is more than 1% of Letter of Credit. Therefore, methodology proposed by RIPL for computing increased expenses on account of washed coal is not correct and cannot be accepted.

14.7. In view of the above analysis, the Commission is of the considered opinion that RIPL has not correctly computed impact of Change in Law. Further, prudency of such claimed expenses cannot be ascertained as RIPL has not submitted coal beneficiation / washing agreement and details, process adopted for entering into such agreement. In fact, if RIPL correctly computes the impact based on heat vale for electricity generated and pursues with SECL for bearing/sharing the cost towards coal beneficiation /washing as per mandatory condition under MoEF notification dated 2 January 2014, compensation under Change in Law provisions of the PPAs may not be required.

14.8. It is also extremely important that to comply with the provision of the "restoration to the same economic condition" the benefits need to be factored in and fully quantified which has not been done by RIPL in this petition. In case the benefits are not factored in, it would amount to over compensation which goes against the basic principle of Restitution to the same economic position. Also, MoEF Notification dated 2 January 2014, does not mandate only beneficiation/ washing of coal, it also provides option of blending of coal for maintaining quarterly average of ash not more than 34%. RIPL in its Petition does not seem to have considered this option.

14.9. Thus, the commission cannot arrive at any conclusion without the consideration and factoring in the liability of the Coal supplier fulfilling its responsibility as mandated and also the necessary quantification and factoring in of the derived benefits of washed coal. Hence, the Commission cannot consider the claim for increased expenses on account washing of coal.

15. Issue D: In case impact of Change in Law is allowed, then whether to allow it with carrying cost?

15.1. As the Commission has not considered the compensation claimed by RIPL, issue of carrying cost does not arises. Issue 'd' framed above is decided accordingly.

16. In view of above ruling, issue of allowing interim relief of 75% of the claim amount does not arise.

17. Hence following Order.

<u>ORDER</u>

Case No 350 of 2019 is rejected.

Sd/-	Sd/-
(Mukesh Khullar)	**(I.M. Bohari)**
Member	**Member**