

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub: In the matter of filing of petition under Section 86(1)(b) of the Electricity Act, 2003 read with Regulation 32 of MPERC (Power Purchase and Procurement Process) Regulations, 2004, Revision 1, 2006 (RG-19(I) of 2006) for approval of draft Supplementary Agreement to Power Purchase Agreement dated 05.01.2011.**

**ORDER**

**Date of hearing: 12<sup>th</sup> July' 2022  
(Date of Order: 8<sup>th</sup> August' 2022)**

**Petition No. 23 of 2022**

**M P Power Management Company Limited,**  
CoF Block, Shakti Bhawan, Rampur,  
Jabalpur (M. P.) 482 008

- **Petitioner**

**Versus**

**M/s. Jaiprakash Power Venture Limited,**  
(For JP Bina Thermal Power Plant),  
'JA House', 63, Basant Lok, Vasant Vihar,  
New Delhi 110 057

- **Respondent**

Shri Manoj Dubey Advocate and Shri Chandra Prakash Sahu appeared on behalf of the petitioner.

Shri Surael Buttan Advocate and Shri Ajeya Kumar Tripathi appeared on behalf of the Respondent.

MP Power Management Company Limited has filed the subject petition under Section 86(1) (b) of the Electricity Act, 2003 read with Regulation 32 of MPERC (Power Purchase and Procurement Process) Regulations, (Revision-I), 2006 for approval of draft Supplementary Agreement to the PPA dated 05.01.2011 in respect of coal linkage rationalization in JP Bina Thermal Power Station.

2. M/s Jaiprakash Power Ventures Limited (JPVL) has set up a 2X250 MW (Phase-I) Coal Based Thermal Power Station at Bina, District Sagar, Madhya Pradesh. Date of commercial operation of both the units are 31.08.2012 and 07.04.2013, respectively. The Petitioner (MPPMCL) has executed a Power Purchase Agreement (PPA) on

dated 5<sup>th</sup> January, 2011 with M/s. Bina Power Supply Company Ltd. (Respondent) for procurement energy equivalent to 65% of the installed capacity of Phase-1 (2X250 MW) on the tariff determined by the Commission.

3. Earlier, the petitioner had filed petition No. 31/2020, seeking approval of an addendum for similar coal Linkage Rationalization besides amendment on other issues. However, for want of consensus on the part of the parties at that time, vide order dated 7<sup>th</sup> September, 2020, the aforesaid petition was not allowed, giving liberty to the parties to approach the Commission after fulfilling provisions under Article 16.2.1 of PPA.
4. In the subject petition, petitioner broadly submitted the following-
  - i. *Vide Notification dated 15<sup>th</sup> May 2018, Ministry of Coal, Government of India issued Methodology for Linkage Rationalization for IPPs and requested CIL and SECL to take immediate necessary action to implement the same. The Methodology, inter-alia, provides Coal linkage rationalization as an exercise in which the coal linkage of a Thermal Power Plant of an IPP, having linkages through allotment route only, may be transferred from one Coal Company to another based on coal availability and future coal production plan of the coal company. The objective of the aforesaid shall be to reduce the landed cost of coal due to reduction in transportation cost and cost of coal. The Methodology also provides that any IPP drawing coal from WCL under Cost plus Agreements from cost plus mines shall be excluded from the purview of rationalization under the scheme. It may happen so that after rationalization, the power plants which were earlier moving coal through rail may move coal through road, then in such a situation, coal transportation charges by rail from the new source shall be considered for the purpose of calculation of savings.*
  - ii. *In terms of aforesaid methodology, it is gathered that the Respondent has requested for rationalization of 4, 20,500 tonnes out of its ACQ of 7, 13,020 tonnes with CCL and 8,29,260 tonnes with SECL. That, the Respondent succeeded in obtaining Linkage Rationalization against its Expression of Interest (EOI) submitted to Coal India Limited on 11.09.2018. It is learnt that Coal India Limited, vide its letter dated 18<sup>th</sup> June, 2019, acceded to the request of Respondent by allotting the rationalized quantity of 0.395 MTPA Coal from NCL and the balance quantity of 0.292520 MT (0.713020MT less 0.420500MT) would remain with CCL. For supply of coal from NCL under the rationalization, **the cost savings of Rs.***

**0.40 Rs. /kWh** (calculated as per the Methodology) will have to be passed on by the Respondent to the DISCOMs/buyers, i.e., the Petitioner, through a supplementary agreement which shall be approved by the appropriate Electricity Regulatory Commission towards fulfillment of point 7 of MoC letter dated 15<sup>th</sup> May 2018.

- iii. In the above-mentioned factual matrix, the parties have mutually discussed the issues and have agreed to execute the required supplementary agreements to the respective PPAs. The Respondent would concede that vide its letter dated 12<sup>th</sup> July, 2021 it requested the Petitioner to execute the supplementary agreement and vide its letter dated 6<sup>th</sup> October, 2021 MPPMCL shared the draft of Supplementary Agreements. Vide its email dated 8<sup>th</sup> October, 2021 the Respondent suggested some minor changes and vide its email the Petitioner acceded to the same. On 9<sup>th</sup> October, 2021, the Respondent, vide its email, requested for further minor changes in the Draft Supplementary Agreement and vide its email dated 9<sup>th</sup> October, 2021 MPPMCL again acceded to the Respondent's request and vide its email dated 21<sup>st</sup> October, 2021 shared the Draft Supplementary Agreement with the Respondent after incorporating in it all the changes requested by it. On 22<sup>nd</sup> October 2021, the Respondent conveyed its concurrence to the final Draft Supplementary Agreement. On 29<sup>th</sup> October 2021, the Board of Directors of the Petitioner was pleased to accord approval to the said draft agreement.
- iv. Earlier, the petitioner by Petition No. 31/2020 had approached the Commission, seeking approval of an addendum, by touching similar Linkage Rationalization. However, for want of consensus on the part of the parties hereto, at that time, the Commission was pleased to dismiss the said petition by vide order dated 7<sup>th</sup> September 2020, by giving liberty to the parties to approach the Hon'ble Commission after fulfilling all the provisions of Article 16.2.1 the PPA.
- v. The draft supplementary agreement is in the true spirit and objectives of the Methodology of Linkage Rationalization for IPPs. The reduction of transportation cost, on account of rationalization of linkage, to the extent of rationalization permitted by Coal India Limited, will reduce the landed cost of coal, which in turn would automatically reduce the ECR as per extant formula for calculating the ECR. The mechanism to transfer any benefit through linkage rationalization is already built-in in the respective Regulation / PPA and would automatically get

*passed on to the Petitioner (procurer) so far as the passing of benefit due to linkage is concerned.*

- vi. That, perusal of Coal India Limited's letter dated 18<sup>th</sup> June, 2019 clarifies that resorting to Linkage Rationalization ensures passing of cost savings of 0.40 Rs./kWh in favour of the Petitioner and to ultimate financial advantage of the end consumers at large in the State.*
- vii. In view of the Methodology for Linkage Rationalization, vide its para no. 8, providing for the required FSA to be signed / implemented only after due approval of the supplementary agreements by the Commission, it has become necessary for the Petitioner to approach this Commission by way of instant petition.*
- viii. It has become necessary for the parties to execute the proposed draft supplementary agreement in view of the necessity as set out hereinbefore and for achieving reasonableness of cost of power purchase and promotion of working in an efficient, economical and equitable manner. In the true spirit of the Methodology for Linkage Rationalization, the proposed Draft Supplementary Agreements, if approved and executed, tend reduction in the distance of transportation of coal for the same amount of electricity generated; reduction in turn-around time of the coal rakes thus optimizing the usage of the rakes as well as the railway network; reduction in the transportation cost and thus the landed cost of coal and reduction in the generation cost of electricity, thus benefitting the users of electricity.*
- ix. Furthermore, Regulation 32 of the MPERC (Power Purchase and Procurement Process) Regulations, 2004, Revision 1, 2006 (RG-19(I) of 2006) strictly provide those amendments to existing Power Purchase Agreements shall be subject to the prior approval of the Commission in view of necessity, reasonableness of cost of power purchase and promotion of working in an efficient, economical and equitable manner.*

5. In the subject petition, Petitioner has prayed the following-

*In the facts and circumstances of the case, it is humbly prayed that the Commission may be pleased to accord prior approval in respect of Draft Supplementary Agreement as to meet the ends of justice.*

6. The subject Petition was admitted on 24.05.2022. Vide Order dated 26.05.2022 the petitioner was directed to serve copy of the petition to Respondent within seven days. The Respondent was directed to file response on the subject petition within two weeks, thereafter. The petitioner was asked to file a rejoinder within a week, thereafter.
7. At the next hearing in this matter held on 12.07.2022, the Commission noted the following:
- i. By affidavit dated 25<sup>th</sup> June' 2022, Respondent (JPVL) filed reply to the petition. In the aforesaid reply, the Respondent submitted that the Supplementary Agreement enclosed by MPPMCL with the present Petition, has been arrived at mutually/consensus between MPPMCL and JPVL.
  - ii. Vide letter dated 7<sup>th</sup> July' 2022, petitioner (MPPMCL) submitted that he does not wish to file rejoinder on the reply filed by the Respondent.
  - iii. After hearing both the parties, case was reserved for order.
8. M/s Jaiprakash Power Ventures Limited (Respondent) vide affidavit dated 25.06.2022 broadly submitted the following-
- i. *By way of the present Petition, MPPMCL is seeking an amendment of the PPA dated 05.01.2011 by inserting **Article 16.23 of the PPA** which pertains to Coal Linkage Rationalization to factor in the Methodology of Linkage Rationalization of Independent Power Producers("IPPs") issued by Ministry of Coal, Govt. of India vide notification dated 15.05.2018.*
  - ii. *Pursuant to the disposal of the aforesaid Petition and as has been highlighted by MPPMCL in the present Petition, numerous discussions took place inter se parties qua the insertion of Article 16.23 and finally MPPMCL and JPVL have arrived at a consensus whereby the following insertion is being sought to be added:*

**"16.23 Coal Linkage rationalization**

    - i. *In terms of Methodology of Linkage Rationalization of Independent Power Producers (IPPs) issued vide MoC letter dated 15.05.2018, Coal*

*India Lid. (CIL), vide their letter no. CIL/M&S/Linkage Rationalization/300 dated 18.06.2019 has transferred part of FSA quantity (0.42 MMTPA) from CCL and in its place allocated 0.395 MMTPA coal from NCL (hereinafter referred to as Rationalization) for Bina IPP.*

- ii. As per the methodology prescribed under rationalization scheme, a cost saving of Rs. 0.40/kWh was envisaged by CIL in its order for Rail mode supply on the basis of applicable quantity/parameters in June 2019.*
- iii. As the tariff for power supplied under PPA dated 05.01.2011 is under Section 62 of Electricity Act 2003, actual cost savings on account of the rationalization by CIL will vary from time to time due to change in quantity/parameters. Such cost savings on actual basis will automatically be passed on to MPPMCL through built-in mechanism in terms of MPERC Tariff Regulations.*
- iv. The parties hereby acknowledge, accept and confirm this Linkage Rationalization.”*
- iii. The above insertion is also in conformity with Regulation 43.2 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 which stipulates that the Energy Charge for JPVL’s project would be based on landed cost of fuel. Therefore, if there is any saving in the overall cost of landed primary fuel for JPVL, the same would consequently be passed on to the beneficiaries.*
- iv. Therefore, with great respect, it is submitted that since parties are consensus ad idem qua the insertion of Article 16.23, this Hon’ble Commission may accord approval to the same in terms of Article 16.2.1 of PPA which envisages that the PPA shall only be amended after obtaining approval from the Appropriate Commission, i.e., this Commission in the instant case.*

**Commission’s Observations and Findings:**

- 9. Ongoing through the subject petition and the draft supplementary agreement filed with this petition, the Commission has observed the following:

- i. Vide Notification dated 15<sup>th</sup> May, 2018, Ministry of Coal, Government of India issued Methodology for Linkage Rationalization for IPPs and asked CIL and SECL to take necessary action to implement the same. The Methodology for Coal linkage rationalization in which the coal linkage of a Thermal Power Plant of an IPP, having linkages through allotment route only, may be transferred from one Coal Company to another based on coal availability and future coal production plan.
- ii. The main objective of coal rationalization is reduction in distance of transportation of coal to reduce the overall landed cost of coal. The cost saving due to aforesaid reduced landed price of coal shall be passed on to the beneficiaries. The methodology further provides that the Fuel Supply Agreement of the rationalized source from any coal company would be signed / implemented only after the approval of appropriate Electricity Regulatory Commission to the supplementary agreement.
- iii. The subject petition has been filed by MP Power Management Company Limited under Section 86(1) (b) of the Electricity Act, 2003 read with Regulation 32 of MPERC (Power Purchase and Procurement Process) Regulations, (Revision-I), 2006 for approval of draft supplementary power purchase agreement to the PPA executed between the petitioner and Respondent in respect of passing the saving towards coal linkage rationalization in JP Bina Thermal Power Station.
- iv. Regarding the approval of amendment to existing Power Purchase Agreement, Regulation 32 of the MPERC (Power Purchase and Procurement Process) Regulations, 2004, Revision 1, 2006 provides as under:

*“Any new power purchase arrangements and agreements or amendments to existing Power Purchase Agreements (PPA’s) entered into by the Distribution Licensee shall be subject to the **prior approval of the Commission** in view of necessity, reasonableness of cost of power purchase and promotion of working in an efficient, economical and equitable manner.”*
- v. M/s JPVL requested CIL for rationalization of 4.205 LMT of coal out of 7.1302 LMT with CCL and 8.2926 LMT with SECL. Coal India Limited, vide its letter dated 18<sup>th</sup> June, 2019, acceded the request of Respondent by allotting the rationalized quantity of 3.95 LMT Coal from NCL and the balance quantity of 2.92520 MT shall

remain with CCL. For supply of coal from NCL under the rationalization, **the cost savings (of Rs. 0.40 Rs./kWh** was envisaged in June' 2019) will have to be passed on by the Respondent to DISCOMs/buyers, through a supplementary agreement which shall be approved by the Commission.

- vi. The parties have mutually discussed the issues and have agreed to execute the required supplementary agreement to the PPA. On 21<sup>st</sup> October, 2021, petitioner shared the Draft Supplementary Agreement with the Respondent and obtained the concurrence of Respondent to the Draft Supplementary Agreement.
- vii. As stated by Respondent by affidavit dated 25.06.2022, both the parties have mutually agreed with the draft supplementary agreement and after that it is filed for approval of the Commission. In draft supplementary agreement, Article 16.23 is added with regard to passing on the cost savings on account of reduction in coal transportation cost due to coal rationalization on actual basis to the procurer.
- viii. On perusal of draft supplementary agreement, the Commission has observed that rationalization of some part of the coal linkage from CCL to NCL has resulted reduction in the distance of transportation of coal and reduction in turn around time of coal rack which shall reduce the landed cost of coal and ultimately resulted in reduction in cost of generation. Further, this reduction in cost shall have to be passed on to the end consumers through the procurer.
- ix. In view of the above, the Commission has considered the aforesaid draft supplementary agreement filed by the petitioner which has been concurred by the Respondent by its affidavit dated 25.06.2022. The Article 16.2.1 of the Power Purchase Agreement dated 5<sup>th</sup> January' 2011 executed between both the parties provides as under:

*“This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.”*

10. Considering the above facts and compliance with Article 16.2.1 of PPA dated 05.01.2011 by both the parties, the Commission hereby accords approval to the draft Supplementary Agreement (to PPA dated 05.01.2011) filed by the petitioner with the subject petition. A copy of the aforesaid approved draft Supplementary Agreement is annexed as Annexure I with this order. The aforesaid Supplementary Agreement shall



come into effect from the date it is executed by all the parties who signed PPA on 05.01.2011. The parties are directed to file a copy of duly approved Supplementary Agreement with the Commission on execution of the same by all parties in PPA.

11. With the aforesaid observations and directions, the subject petition is disposed of.

**(Gopal Srivastava)**  
**Member (Law)**

**(Mukul Dhariwal)**  
**Member**

**(S. P. S. Parihar)**  
**Chairman**