Jaipur Vidyut Vitran Nigam Ltd. vs Adani Power Rajasthan Ltd. on 31 August, 2020

Author: Arun Mishra

Bench: M.R. Shah, Vineet Saran, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8625-8626 OF 2019

JAIPUR VIDYUT VITARAN NIGAM LTD. & ORS. … APPELLANTS

VS.

ADANI POWER RAJASTHAN LIMITED & ANR. … RESPONDENTS

WITH

CIVIL APPEAL NO(S). 3021 OF 2020
(DIARY NO.27976 OF 2019)

AND
CIVIL APPEAL NO(S). 3022-3023 OF 2020
(DIARY NO.39030 OF 2019)

JUDGMENT

1. The appellant herein Jaipur Vidyut Vitran Nigam Limited is the electricity Distribution Licensee in the State of Rajasthan. It entered into a Power Purchase Agreement (for short, 'PPA') on 28.1.2010 with Adani Power Rajasthan Limited (for short, 'APRL'), a generating company in pursuance to a tariff□based competitive bid process in terms of Section 63 of the Electricity Act, 2003 (for short, 'the Electricity Act'). The terms of PPA contained a tariff, and that could be varied only as per the specific provisions contained in the PPA, not otherwise.

2. APRL made a claim for an increased tariff under the change in law provisions in the PPA (Article 10). On 23.10.2006, Rajasthan Rajya Vidyut Utpadan Nigam Limited (for short, 'RVUN') conveyed to Adani Exports Limited its selection as a joint venture partner for the formation of a Joint Venture Company. It was stated that business activities of the proposed Joint Venture Company shall be limited to mining and supply of coal from allotted captive coal block for the requirement of

existing/new thermal power stations of RVUN and/or for new projects of the State.

3. On 2.8.2007, a Letter of Intent (for short, 'LoI') was issued by RVUN in favour of Adani Enterprise Limited (for short, 'AEL') for developing the coal block under a joint venture at Parsa East and Kente Basan, wherein it was provided that the coal can be utilised at the discretion of the Government of Rajasthan for new upcoming projects in the State under the joint venture or IPP.

4. On 18.10.2007, New Coal Distribution Policy (NCDP) was introduced by the Ministry of Coal, assuring 100 per cent of domestic coal to power plants that is 85 per cent of normative capacity.

5. On 20.3.2008, an MoU was entered into between the Government of Rajasthan and AEL to set up a coal□based Thermal Power Generation Project of 1200 MW ± 10 percent capacity near Kawai, District Baran, Rajasthan. The estimated cost of the project was approximately Rs.5,000 crores. It was provided that the State of Rajasthan was to make the best efforts to facilitate getting the coal linkage from the Central Government or coal from any other source for the Project.

6. On 16.5.2008, APRL requested the Government of Rajasthan to allocate coal from Parsa East and Kente Basan coal block.

7. On 21.5.2008, it was conveyed to APRL that the State will make the best efforts to facilitate for getting coal linkage from the Government of India. It was informed that it would not be possible to supply coal from Parsa East and Kente Basan coal blocks as they barely meet RVUN projects' requirements. APRL repeated the request on 28.5.2008, 9.6.2008, 11.6.2008, and 16.6.2008. On 29.8.2008, a request was made to the Government of Rajasthan to advise RVUN to enter into an MoU and to apply to the Ministry of Coal for allocation of coal blocks to the Kawai Project under the Government Dispensation Scheme.

8. On 25.2.2009, a Request for Proposal (for short, 'RFP') was issued by Rajasthan Rajya Vidyut Prasaran Nigam Limited (for short, 'RVPN') for procurement of power for long□term through tariff□ based competitive bidding process under Case□1 bidding procedure for meeting the baseload requirement of the procurers.

9. On 19.3.2009, a request was made by AEL to the Government of Rajasthan to extend the validity of the MoU for one year. On 2.4.2009, a Standard Bidding Document for Case□1 was notified by the Ministry of Power. On 22.6.2009, APRL made a request in terms of the MoU to the Government of Rajasthan to allocate the surplus coal mine from the existing coal blocks and for extension of MoU, which was to expire on 20.3.2009. As an alternative, AEL was able to negotiate Indonesian coal at a discounted price of USD 36 per MT. The Coal Supply Agreement (for short, 'CSA') was signed for supplying standard coal for the project from Indonesia. The said agreement was terminated on 10.6.2010.

10. On 2.7.2009, APRL prayed to the Ministry of Coal for granting long□term coal linkage of 'F' grade coal from South Eastern Coalfields Limited for the Kawai Project for 7.082 MT per annum of coal. The Government of Rajasthan extended the validity of the MoU up to 20.3.2010. RVUN was

advised to apply for the allocation of coal blocks for meeting coal requirements for its projects and the Kawai Project under the Government Dispensation Scheme. It may invite tenders for mining and delivery of coal, as was done in Parsa East and Kente Basan coal blocks.

11. According to the RFP, APRL submitted its bid on 6.8.2009. It offered a total contracted capacity of 1200 MW from the Kawai Project. The levelized tariff after negotiation was settled at Rs.3.238/KWh for 25 years. The tariff in the bid was quoted based on domestic coal. The imported coal was limited, being a temporary measure, as fallback support option till the Government instrumentality resumed domestic coal supply.

12. On 12.8.2009, AEL requested to allot Kente (Extn.) coal block for meeting the coal requirement of the Kawai Project inter alia the installed capacities of the projects. As against the earlier commitment of sale of 50 per cent of the power generated from the Kawai Project to the State of Rajasthan, AEL committed the entire power generated to the State provided it succeeds in the bidding process.

13. A clarification was sought concerning the bid submitted by APRL to evaluate its bid as to the fuel arrangement in the bid, both domestic coal and imported coal were indicated. APRL was asked to clarify on which basis of fuel, the bid should be evaluated. APRL clarified on 12.9.2009, that its bid should be evaluated based on domestic coal tie□up. APRL undertook that the payment considering domestic coal escalations would be acceptable during the term of the PPA.

14. On 3.12.2009, APRL issued a communication to RVPN. Because of the support offered by the Government of Rajasthan regarding the development of the Kawai Project, the levelized tariff was being reduced by 1 paisa to Rs.3.238 Kwh. On 17.12.2009, pursuant to the bid submitted, an LoI was issued by RVPN to APRL. On 18.12.2009, an unconditional acceptance was communicated to RVPN.

15. On 28.1.2010, APRL executed the PPA with three procurers, namely, Jaipur Vidyut Vitran Nigam Limited, Jodhpur Vidyut Vitran Nigam Limited, and Ajmer Vidyut Vitran Nigam Limited, for the supply of aggregate contracted capacity of 1200 MW. The PPA postulates domestic coal usage as the primary fuel, while imported coal may be used as a backup arrangement.

16. On 15.2.2010, APRL conveyed to the CMD□RRVUNL for getting the allocation of captive coal block for the supply of coal to the Kawai Power Project and conveyed confirmation to accept washed coal.

17. On 20.2.2010, AEL conveyed to the Government of Rajasthan that it would supply 91 per cent power from the Kawai Project to the Jaipur Vidyut Vitran Nigam Limited, Jodhpur Vidyut Vitran Nigam Limited, and Ajmer Vidyut Vitran Nigam Limited – Rajasthan Discoms, with whom the PPA was entered into on 28.1.2010. A prayer was made to extend the validity of MoU for a further period of one year w.e.f. 20.3.2010.

18. On 25.2.2010, RVPN filed a petition before the State Commission on behalf of Rajasthan Discoms for approval of the Commission for the adoption of tariff quoted by APRL through

competitive bidding. The State Commission passed an order on 31.5.2010 with respect to the adoption of a tariff for 1000 MW procurement and had made specific observations.

19. On 24.3.2011, the Director General of Mineral and Coal issued a regulation specifying the formula for calculation of benchmark price with reference to the international market price of coal.

20. APRL wrote a letter to the Ministry of Power, Government of India on 11.10.2011 for grant of coal linkage to it along with other 12 th Five Year Plan Projects; however, it was delayed for more than a one year for various reasons, due to which conditions subsequent under the PPA could not be fulfilled, and lenders of money to the Kawai Project had started levying penal interest due to delay in coal linkage allocation. A request was made for grant of coal linkage for the Kawai Project. It was stated that CIL was directed to execute an FSA for the 11th Five Year Plan Projects, did not address the problems that continue to affect the 12th Five Year Plan Projects. In the light of the non□ availability of domestic coal and the prohibitive cost of the alternate fuel, the Kawai Project became unviable for the tariff committed. Therefore, a request was made to grant coal linkage. The Ministry of Power, on 26.4.2012 in response to letter dated 17.2.2012 of the Government of Rajasthan, informed that the Kawai Project had been recommended for linkage as a 12 th Five Year Plan Project. In the meantime, the Government of Rajasthan may consider revising the mining plan capacity of the captive coal blocks allocated to them, namely Parsa East and Kante Basan upward to mitigate the demand of coal for power projects in Rajasthan.

21. On 21.6.2012, APRL informed the Rajasthan Discoms about the uncertainties in the availability of coal supplies and the same being beyond their control. Despite various efforts by the Government of Rajasthan, neither the coal block nor the coal linkage was allocated. It was also informed that following the regulatory change in Indonesia, which mandates the export of coal only at the notified price, w.e.f. 11.9.2011, the cost of imported coal has risen too high to make the use of imported coal prohibitive. In case an early arrangement of coal linkage or allotment of captive coal was not made, the operation of the Government's projects would be hampered. On 5.11.2012, the Government of Rajasthan informed that there was no surplus coal in Parsa East and Kente Basan coal blocks, which could be allocated to the Kawai Project. However, the Government of Rajasthan on 22.11.2012, wrote a letter to the Ministry of Power and Ministry of Coal informing that Rajasthan Discoms have executed long□term PPA with APRL. It was stated that in case long□term coal linkage was not provided, then the State would be deprived of 1200 MW power at competitive rates, and Rajasthan was already facing an acute shortage. On 26.11.2012, another letter was written by the Government of Rajasthan for allocating coal linkage to 12 th Five Year Plan Projects.

22. As no coal linkage was granted, on 24.4.2013 AEL filed a Petition No.392 of 2013 before the State Commission claimed compensatory tariffs for the higher cost of coal. Ultimately, the Standing Linkage Committee (Long□Term) of the Government of India held a meeting on 31.5.2013. On 21.6.2013, the Cabinet Committee of Economic Affairs approved a mechanism for signing the Fuel Supply Agreement (for short, 'FSA') for 78000 MW. AEL was not part of the same. On 17.7.2013, a Presidential Directive was issued by the Ministry of Coal to the Coal India Limited (for short, 'CIL') to sign the FSAs for the capacity mentioned above. The New Coal Distribution Policy, 2013 (NCDP of 2013), was notified on 26.7.2013 by the Central Government for the revised arrangement for the

supply of coal to identified thermal power stations of 78000 MW. AEL was not one of the thermal power stations included in the same.

23. The Ministry of Power issued a letter on 31.7.2013, in which the change in law was considered regarding a shortfall in domestic coal in the quantity indicated in the Letter of Assurance (for short, 'LoA') or FSA. The Revised Tariff Policy under the Electricity Act was issued on 28.1.2016. AEL was given the coal supply to the fullest extent in 2018 under the SHAKTI Policy. It entered into an FSA with NCL/SECL for procurement of coal under the SHAKTI Policy.

24. The State Commission ultimately decided the Petition No.392 of 2013, filed by AEL on 17.5.2018. AEL was held entitled to relief under the change in law on account of NCDP of 2013. The amount of compensation payable to AEL was not computed. Dissatisfied with the order passed by the State Commission, Rajasthan Discoms filed an appeal before the Appellate Tribunal for Electricity (for short, 'the APTEL'). The APTEL vide judgment dated 14.9.2019, held that the bid of APRL was based on domestic coal and accordingly covered under the Change in Law event in terms of the PPA and of the decision of this Court in Energy Watchdog v. Central Electricity Regulatory Commission and Ors., (2017) 14 SCC 80. APRL was also held entitled for change in law under the Shakti Scheme as well as payment towards carrying cost. A further direction was issued to pay the amount of change in law compensation and Carrying Cost by duly verifying the relevant supporting documents for fuel cost and as per applicable Tariff Regulations for operating parameters. Aggrieved thereby, appeals have been preferred by Rajasthan Discoms. Another appeal has been filed by All India Power Engineers Federation (for short, 'the Federation').

25. Shri C. Aryama Sundaram, learned senior counsel urged the following arguments:

> (a) APRL cannot claim any compensation for the use of imported coal for the supply of power either before January 2018 or after that as the use of such imported coal was as per the bid submitted by APRL and was covered as a part of its quoted tariff.
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> (b) According to the bid documents submitted and the PPA entered into pursuant to it, demonstrate that APRL had duly stipulated and agreed for the imported coal also as a fuel source and quoted the tariff based thereon.
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> (c) Without prejudice to the aforesaid, there was no change in law as APRL could have claimed no compensation. Even as per its best case, APRL could not be entitled to relief in relation to 100 percent coal requirement, but could only claim concerning the balance percentage, after considering the quantum under the FSA dated 25.6.2009 for imported coal.

(d) There is no computation, no determination of methodology or formula for the computation of the compensation; the same is required to be undertaken with verification of quantification of coal, parameters, computation of coal costs, etc. APRL cannot be permitted to unilaterally raise the invoices and claim compensation.

(e) The finding recorded by the APTEL that the State Commission had computed the amount, is factually incorrect.

(f) Any compensation paid to APRL would have to be recovered from the consumers; therefore, it affects the public interest. The computation and determination of the compensatory tariff, in any event, would have to be done by the State Commission.

(g) The Generator cannot raise the invoice, and the liability to make payment by the appellants does not crystallise. Therefore, there is no question of liability of late payment surcharge for such a period. At best, depending on the conduct of the Generator and in terms of restitution principle, simple interest may be considered for the period prior to determination by the State Commission. However, the application of late payment surcharge cannot be applied when there is no delay or default in payment of bills.

(h) APRL had admitted that two periods are separate until the determination of change in law, which is carrying cost, and thereafter raising of invoices, there may be a default by the procurer, which is late payment surcharge. As the two periods are separate, there is no logic to apply the late payment surcharge, which is for the second period to the first one.

26. Shri Prashant Bhushan, learned counsel appearing on behalf of Federation argued as under:

> (a) the main question is whether the bid submitted by APRL was premised on domestic coal or imported coal. He attracted our attention to the PPA, RFP, LoI, and other bid documents. The bid and PPA were based on imported coal. APRL quantified as per RFP only on the basis of imported coal. It did not have any firm coal linkage or LoA or FSA for the domestic coal.
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> (b) The MoU dated 20.3.2008, entered into between APRL and the Government of Rajasthan, was of no avail. Only the Central Government was the sole deciding authority as is clear from Article 2.2 of the MoU. He attracted the attention of this Court to the RPF dated 26.2.2009. MoU dated 20.3.2008, would not count as firm coal arrangement. APRL had entered into a CSA with its own company AEL to qualify for the bid. Once it has qualified based on imported coal, it cannot take a contrary stand.

(c) A clarification was sought from APRL on 7.9.2009 on which basis of fuel, its bid was to be evaluated. In response to clarification, it was submitted by APRL that bid should be evaluated on the basis of domestic coal tie-up, and an undertaking was given that the payment considering 'domestic coal escalation' would be acceptable to it during the term of the PPA.

(d) On 17.12.2009, Rajasthan Discoms informed APRL that rates mentioned at Annexure 1 (to provide 1200 MW power) and escalations thereof on domestic coal is based on APRL's commitment that the above rates would be applicable even if coal requirement is met by way of a backup arrangement with imported coal. APRL gave an unconditional acceptance on 18.12.2009.

(e) Reliance was placed on the order dated 31.5.2010, passed by the Rajasthan Electricity Regulatory Commission (for short, 'the RERC'). The APTEL failed to comprehensively consider the PPA and other documents. The bid documents also formed part of the PPA entered into between the parties.

(f) The NCDP of 2007 did not create a vested right to get domestic coal even for those who did not have the LoA/FSA or recommendation of the Standing Linkage Committee (Long-Term). Our attention has been invited to Clauses 2.1 and 2.2 of the NCDP of 2007 and approval of the Standing Linkage Committee (Long-Term). As APRL did not have any coal linkage approval, it was not entitled to claim compensation on the basis of change in law. The CIL couldn't make the supply. The grant of linkage or LoA is not a ministerial act.

(g) The Statutory Guidelines of 2005 issued under Section 63 of the Electricity Act lay down that to participate in the competitive bidding for a PPA, an entity has to show ready availability of fuel source for the power plant. In the case of domestic coal, the bidder shall have made firm arrangements for fuel tie-up either by way of coal block allocation or fuel linkage. These Guidelines have been issued by the Government of India, which issued the NCDP of 2007. If the grant of LoA/FSA/linkage was to be considered automatic on entering into a PPA, then there was no need for having this criterion for eligibility. The decision in Energy Watchdog and the Policy have not been appreciated correctly.

(h) The SHAKTI Policy was notified on 22.5.2017. Those IPPs, which were having PPAs based on domestic coal, but were having no LoA or FSA for coal supply either under NCDP of 2007 or NCDP of 2013, could now participate in the auction and get 100 per cent of their normative requirement of coal supply. Under the SHAKTI Policy, APRL was given coal supply to the full extent of the normative requirements for generating and supply of electricity to the Rajasthan Discoms within five years. The SHAKTI Allocation in the year 2018 does not change the fact that APRL had considered imported coal as other coal for 5 years. The change in law, thus, could have been considered only after 5 years. Therefore, the question of change in law did not arise as APRL was given coal supply under the SHAKTI Policy within 5 years of Commercial Operation Date (for short, 'COD').

(i) It was also submitted that APRL had done over-invoicing, and concerning that, the investigation is pending. A letter of rogatory has been issued and, in that regard, S.L.P. (Crl.) No.10683 of 2019 is pending in this Court, in which interim stay has been granted. Thus, the claim of APRL is not tenable. It was also urged that the Federation has locus to file the appeal for quashing the order passed by the APTEL.

27. On behalf of APRL, Dr. A.M. Singhvi and Shri Arvind Datar, learned senior counsel, raised the following arguments:

(a)(i) the bid by APRL was premised only on domestic coal.

(ii) The submission of the imported coal agreement submitted with the bid was only to indicate that the bidder is eligible for the bid.

(iii) Non-availability of domestic coal is a change in law event.

(iv) The decision in Energy Watchdog squarely applies to the case, in which it was held that changes in imported coal regime is not a change in law, changes in domestic coal regime is a change in law event.

(b) APRL is entitled to carrying cost from the date the change in law event came into force as held by this Court in Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) & Anr. v. Adani Power Limited & Ors., (2019) 5 SCC 325.

(c) The bid was premised only on domestic coal. The RFP provides six scenarios for quoting tariffs, and the bidder can submit the bid under any one of the scenarios viz. (i) Captive Coal Block (ii) Linkage Coal (iii) Imported Coal (iv) Imported Gas (v) Domestic Gas and (vi) Hydro.

(d) APRL submitted its financial bid as per linkage coal format, i.e., domestic coal. The tariff was allowed to be quoted in linkage coal format applicable to domestic coal. The Government of Rajasthan made consistent efforts by writing letters to various authorities of the Government of India to grant domestic coal linkage to the Kawai Project of APRL. The Imported Coal Supply Agreement was submitted as a part of bid only to demonstrate the raw material's readiness as APRL was required to submit proof of linkage/fuel arrangement to qualify as a bidder.

(e) Rajasthan Discoms admitted in their affidavit dated 31.7.2013 before the RERC that non-availability of coal from the Central Government put the case of APRL within the scope of change in law.

Once they have admitted that bid was based on domestic coal, non-availability of which entitles APRL to claim compensation under the change in law as per Article 10 of the PPA. They cannot wriggle out of their obligation. The eligibility to get coal linkage under the SHAKTI Policy to APRL confirms that the PPA was based on domestic coal. The PPA was based on domestic coal, and the concurrent findings do not suffer from any infirmity or perversity.

(f) The non-allocation of domestic coal linkage to APRL is a change in law event as is apparent from various documents, affidavit dated 31.7.2013 and entitlement under the SHAKTI Policy.

(g) In Energy Watchdog, this Court recognised the change in NCDP of 2007 as change in law event for a project which did not have any LoA or FSA at the time of bid submission. It was not necessary to have linkage/allocation at the time of submission of the bid. A notification was issued on 26.7.2013 to change the NCDP of 2007. Following change in law events occurred:

(i) the decision of Standing Linkage Committee on 14.2.2012; and

(ii) the resolution dated 21.6.2013 of the Cabinet Committee of Economic Affairs and the advice of the Ministry of Power dated 31.7.2013, based on which the Tariff Policy has been revised by the Government of India on 28.1.2016 to cover the cases which do not have coal linkage. The NCDP of 2007 was the only policy prevailing when the bid was submitted and was changed.

The decision in Energy Watchdog is squarely applicable to the present appeals, in which it was laid down that modification of the NCDP of 2007 is a change in law. It was further observed that the fact that the fuel supply agreement has to be appended to the PPA is only to indicate that the raw material for the working of the plant was in order. The copy of the FSA was to be furnished after 10 months of the signing of the PPA.

(h) APRL has been continuously supplying power to the Rajasthan Discoms since May 2013 without any interruption. Thus, with effect from the change in law, APRL is entitled to compensation as concurrently held.

In Re. Whether the bid submitted was premised on domestic coal?

28. Considering the rival submissions, it is necessary to take note of Statutory Guidelines framed by the Central Government under Section 63 of the Electricity Act. The relevant portion of Para 3.2(II) of the Guidelines of 2005 is extracted hereunder:

> "3.2 (II) In Case-1 procurement, to ensure serious participation in the bid process and timely completion of commencement of supply of power, the bidder, in case the supply is proposed from a station to be set-up, should be required to submit along with its bid, documents in support of having undertaken specific actions for project preparatory activities in respect of matters mentioned in (i) to (v) below.
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> i)****
>
> ii)****
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> iii)****
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> iv) Fuel Arrangements: (a) In the following cases fuel arrangements shall have to be made for the quantity of fuel required to generate power from the phase of the power station from which power is proposed to be supplied at Normative Availability for the term of the PPA.

In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of coal block allocation or fuel linkage In case of domestic gas, ...

b) Fuel arrangements in the following cases shall have to be made for the quantity of fuel required to generate power from the power station for the total installed capacity.

In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least 50% of the quantity of coal required OR shall have a fuel supply agreement for at least 50% of the quantity of coal required for a term of at least five (5) years or the term of the PPA, which ever is less. ....” (emphasis supplied)

29. In the MoU dated 20.3.2008, which was entered into between APRL and the Government of Rajasthan, the Government of Rajasthan had only agreed to provide assistance in securing coal linkage/coal block. Article 2.2 of the MoU is extracted hereunder:

> “2.2 The State will facilitate smooth implementation of the Project as may be required including making it’s best effort to facilitate getting coal linkage/coal block from the Central Government or coal from any other source for the Project. ...” (emphasis supplied)

30. The RFP formed part of the bid documents regarding fuel, provided as under:

> “5. Fuel: The choice of fuel, including but not limited to coal or gas, it’s sourcing and transportation is left entirely to the discretion of the Bidder. The Successful Bidder(s) shall bear complete responsibility to tie up the fuel linkage and the infrastructural requirements for fuel transportation, handling and storage.
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> 2. INFORMATION AND INSTRUCTIONS FOR BIDDERS 2.1.2.2 Consents, Clearances and Permits: **** b. Fuel:
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> i. In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage. Such arrangement shall be for the quantity of fuel required to generate power from the power station at Normative Availability for the total installed capacity for the term of the PPA. ii. In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least fifty percent (50%) of the quantity of coal required to generate power from the power station at Normative Availability for the total installed capacity OR shall have fuel supply agreement for at least fifty percent (50%) of the quantity of fuel required for a term of at least five (5) years or the term of the PPA (which ever is less) to generate power from the generation source for the total installed capacity for the term of the PPA.
>
> iii. In case of domestic gas, ...
>
> iv. In case of RLNG, …..”
>
> (emphasis supplied)

31. APRL concerning fuel in the bid documents dated 6.8.2009, indicated as under:

> “Domestic Coal:

Name of the allocated mine (in case of mine allocation)	Not applicable
Proven reserves of the mine (in case of mine allocation)	Not applicable
Quantity of coal required for the power station at Normative Availability on an annual basis and supporting computation for the same:	5.544 MMTPA of domestic coal. Supporting computation attached.
Particulars of documents enclosed in support of the above.	Adani Group has entered into a MoU with Govt. of Rajasthan (GoR) for development of Kawai Power Project (Copy enclosed). Under this MoU, GoR has assured its support for allocation of captive coal block or coal linkage. The necessary actions in this regard are being taken by APRL and GoR.

Imported Coal:

Captive coal block/coal linkage will be made available for the Kawai Project with the support of Govt. of Rajasthan. However, we have also made an arrangement for supply of imported coal for at least 50% of the total requirement of the power project for 5 years, as fall back support arrangement.

Name of the mine acquired or Not applicable owned and country Proven reserves of the mine Not applicable (in case of mine allocation) At least fifty percent (50%) of 2.54 Million MT with coal the quantity of coal required having GCV (ARB) of 4250 for the power station at Kcal/Kg. Supporting Normative Availability on an computation attached. annual basis and supporting computation for the same.

Copy of the fuel supply Copy of the Fuel Supply agreement(s) for at least fifty Agreement dated 25th percent (50%) of the total the June 2009 with Adani quantity of coal required for a Enterprises Ltd. for term of at least five (5) years supply of 3 Million MT of or the term of the PPA (which Imported coal up to Sept even is less) for the power 2018 is attached. Our station at Normative Availability on an annual Fuel supplier AEL, who is basis. the largest coal trading company of the country, has long term arrangements with coal mines in Indonesia, Australia and South Africa for trading of coal.

Particular of documents FSA dated 25th June 2009 enclosed in support of the above.

The computation of coal consumption of normative availability was given as under:

Computation of coal consumption at Normative Availability Name of the Kawai Thermal Power Project Power Project 1320 MW Total Capacity Particular Domestic Imported Coal Capacity MW 1320 1320 Normative % 85% 85% Availability Annual Mus 9829 9829 Generation SHR Kcal/Kwh 2200 2200 GCV Kcal/Kg 3900 4250 SCC Kg/Kwh 0.564 0.518 100% Coal MMTPA 5.544 5.088 Requirement at Normative Availability 50% Coal MMTPA 2.544 Requirement at Normative Availability

32. A letter was written on 7.9.2009 by the Rajasthan Discoms seeking clarification from APRL as to on which basis of fuel, its bid to be evaluated. Following clarification was sought:

"With respect to the aforesaid Bid submitted by you in response to RIP dated 25.02.09, the following clarifications/documents are required for your bids to be evaluated:

1. For fuel arrangement, in the Bid both Domestic Coal as well as Imported Coal has indicated. You should clarify through a letter from MD/CEO, being full time Director/Manager on which basis of fuel, the Bid should be avaluated." (emphasis supplied)

33. In response to letter dated 7.9.2009, APRL clarified its position vide letter dated 12.9.2009 inter alia as under:

"1. As per the provision of the RFP under clause No.2.4.1.1(B)(ii), a bidder can submit only one price bid from a generation source, even if different types of fuels are used.

We contemplate to use Domestic as well as Imported coal for the Kawai Project. A duly executed Fuel Supply Agreement (FSA) for more than 50% if the coal requirement for a period of 5 years (as specified in RfP for meeting the fuel requirement on the basis of imported coal) has been submitted with the bid. Further, we have also submitted with the bid a MoU, executed between the Government of Rajasthan and Adani Enterprises Ltd., wherein at clause 2.2, the State has assured in making its best efforts to facilitate in getting Coal Linkage/Block or Coal from any other sources for the Power Project.

We meet the fuel requirement on the basis of imported coal tie□up. However, we are sure to get domestic fuel tie□up with support of the Government of Rajasthan. In view of this, we submit that our bid should be evaluated on the basis of Domestic Coal tie□up. We undertake that payment considering domestic coal escalations will be acceptable to us during the terms of the PPA." (emphasis supplied)

34. The Rajasthan Discoms issued an LoI dated 17.12.2009 to APRL inter alia containing the following condition:

> "Your offer to provide 1200 MW power at the rates mentioned at Annexure□1 and escalations thereof on domestic coal is based on your commitment that the above rates would be applicable even in case of coal requirement being met by you by way of back up arrangement with imported coal." (emphasis supplied)

35. APRL on 18.12.2009, communicated its unconditional acceptance to the LoI thus:

> "We acknowledge with thank receipt of RRVPNL LoI No.RVPN/CE(NPP&R)/D 81 dated 17th December 2009 in favour of Adani Power Rajasthan Limited (APRL). We have noted content of the LoI and we hereby communicate our "unconditional acceptance" of the same. Please find enclosed herewith duplicate copy of LoI duly signed by authorized signatory, confirming "Accepted Unconditionally".
>
> We are making necessary arrangements for submission of Performance Guarantee as per Article 2.2.9 of the final RfP FOR 1200 MW. We shall be grateful if approval of RERC for procurement of additional 200 MW is conveyed at the earliest and the draft PPA, prepared based on our offer/bid, for execution is submitted to us for scrutiny at our end." (emphasis supplied)

36. The PPA entered into between the parties provided inter alia as under:

> ""Fuel" shall mean the primary fuel used to generate electricity namely domestic coal/imported coal as back up arrangement.
>
> "Fuel Supply Agreement(s)" shall mean the agreement(s) entered into between the Seller and the fuel supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station.
>
> In case the transportation of the Fuel is not the responsibility of the fuel supplied, the Fuel Supply Agreement shall also include the separate agreement between the Seller and the fuel transporter for the transportation of Fuel in addition to the agreement between the Seller and the fuel supplier for the supply of the Fuel;
>
> ..... 5 SCHEDULE 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER (A) Details of generation source Sl.No. Particulars Details (as per Format 4.13 of the Selected Bid of Seller)
>
> 1. Location of power Village Kawai, District Baran, station (Specify Rajasthan place, district and state)

2. No. of Existing existing/proposed Sl No. of Installed COD units and installed No. Units Capacity capacity of each 1. Not Applicable unit (in MW) Proposed Sl No. of Installed Expected No. Units Capacity COD

1. 1 660 MW July 2012

2. 2 660 MW November

3. Primary Fuel Coal

4. Dates of last major Not applicable R&M (unit wise)

5. Duration of Fuel Imported Coal supply FSA for five Supply Agreement years and Captive Coal Block/Long (FSA) Term Coal Linkage

6. Quantum of power NIL contracted with other purchasers, if any (in MW)

7. Details of surplus Total Capacity : 1320 MW capacity (in MW) Net Capacity : 1215 MW (after Aux Consumption @ 8% PPA executed so far : NIL Surplus Capacity : 1215 MW (B) Details of primary fuel Sl.No. Particulars Details (to be furnished by the Bidder)

1. Primary fuel Domestic Coal from Captive (Insert as applicable: Coal/Coal Linkage and “Domestic coal/Imported Imported coal as fallback Coal/Domestic (pipeline) support arrangement gas/Imported gas (RLNG)”

2. Fuel Source Captive Coal Block/Long (Insert as applicable: “Coal Term Coal Linkage and India Limited (CIL) coal Imported Coal Supply FSA linkage/domestic captive for five year of PPA term coal mine/imported coal/domestic (pipeline) gas/imported gas (R□LNG)

3. Fuel grade □□(Applicable only in case of coal)

4. Name of the CIL subsidiary □□from which coal is proposed to be sourced or name and location of the captive mine (as applicable).

5. Bidder to insert the Not applicable applicable price mechanism, based on whether the primary fuel is covered under:

1. Administered Price Mechanism (“APM”); or

2. Controlled and notified by an independent Regulator; or

> 3. Controlled and notified by the Government of India or Government of India Instrumentality.

(Applicable only for gas) (emphasis supplied)

37. The RERC's order dated 31.5.2010, adopting APRL's tariff under Section 63 of the Electricity Act, has been relied upon. The same is extracted hereunder:

> "39. The other important point raised by the party relates to relaxing the qualifying requirements for the fuel in case of M/s. Adani Power Rajasthan Limited. This matter has been elaborately dealt with in the first report of the Bid Evaluation Committee, who found the party to be qualified as far as requirement for fuel is concerned based on tie-up for imported coal and at the same time found the option of use of domestic coal worth consideration on account of likely advantage of lower escalation in tariff for domestic fuel than that of imported coal. The procurer has subsequently taken undertaking from the bidder that lower escalation in two situations i.e. domestic coal or imported coal would be applied in tariff and by this they have tried to derive advantage of incurring lower fuel escalation cost. It may be mentioned that neither the guidelines of GoI nor the bid documents anticipate such a situation wherein imported coal and domestic coal both could be used by a developer and obviously in such a situation the Bid Evaluation Committee and procurer are required to take a decision, which is in their best interest." (emphasis supplied)

38. In this regard, Shri C. Aryama Sundaram, learned senior counsel, argued that:

> (a) concerning fuel in the column pertaining to the domestic coal that APRL, it was mentioned, had entered into an MoU with the Government of Rajasthan for development of the Kawai Power Project.

The Government of Rajasthan initially supported the allocation of captive coal block or coal linkage, and APRL and the Government of Rajasthan took the necessary action in this regard. At the same time, it was also made clear that as fallback support, APRL had arranged imported coal for at least 50 per cent of the total requirement.

(b) The arrangement of fuel, as per bid, was the responsibility of the bidder/generator. The Generator cannot claim compensation for its inability to arrange domestic coal or any other fuel source. For qualification under the bid, the bidder had to secure documentary evidence for various requirements, including fuel source. For domestic coal, the requirement was of firm arrangement for fuel tie-up and imported coal, acquired mines with proven coal reserves or FSA to meet at least 50 percent of the normative requirement for at least 5 years. APRL did not have any arrangement for the domestic coal at the time of the bid. The FSA dated 25.6.2009 for imported coal was the only firm arrangement with APRL. Besides that, it had MoU dated 20.3.2008, with the Government of Rajasthan concerning domestic coal. The allocation of coal was by the Government of India. Under the SHAKTI Policy in January 2018, the coal was allocated to APRL. APRL had sought for domestic

coal escalation, which was allowed as a concession; however, this did not change the fact that the qualification was based on imported coal. In the Board Meeting of Rajasthan Rajya Vidyut Prasaran Nigam Limited held on 3.12.2009, the following resolution was passed:

> "3. The L□1 bidder, M/s. Adani Power Rajasthan Ltd., has committed to provide 1200 MW power at the rates mentioned at (1) above irrespective of the availability of domestic coal, by meeting the coal requirements from imported or whatever sources as their backup arrangement. This condition shall be specifically mentioned in the LOI to be issued to L□1 bidder, M/s Adani Power Rajasthan Ltd., and the Power Purchase Agreement (PPA) to be entered into with them by Rajasthan Discoms." (emphasis supplied)

> (c) APRL unconditionally accepted the LoI. The PPA is a document governing the rights and obligations of the parties. It recognises the possible use of domestic coal. There was no allotment of coal linkage or coal block to APRL until January 2018. As APRL did not receive the domestic coal allocation and thereafter, if there was a change in law affecting such domestic coal, APRL could have possibly claimed change in law. APRL was obliged to supply power even without such domestic coal.

> (d) Alternatively, it was argued that the PPA was primarily based on domestic coal. The imported coal was a backup arrangement. Even otherwise assuming that compensation can be permitted for change in law, it has to be restricted only to the extent of domestic coal contemplated to be used for fuel as the PPA provided for both domestic and imported coal and the imported coal accounted for more than 50 per cent of the requirement, the compensation has to be limited to the said extent. The aforesaid was 61 per cent of the fuel requirement.

39. Dr. A.M. Singhvi, learned senior counsel in this regard on behalf of APRL, argued that the bid and the PPA were based on domestic coal. The tariff was also quoted on the domestic coal linkage format. As the bid was premised on domestic coal, the bid's evaluation was made on the domestic coal. The PPA also provided for the same, which is binding. The FSA was for imported coal with the bid was only to assess bid eligibility. In the order dated 31.5.2010 of the RERC, the domestic coal was considered the basis and to be used as the primary fuel. He also relied upon the admissions made in the affidavit and the communications dated 31.7.2013 and 4.8.2017 and the fact that participation in the SHAKTI Policy was permissible only when the PPA was based on domestic coal. The Rajasthan Discoms cannot reprobate from their stand. The entire bid was premised and accepted only on domestic coal. Hence, the claim of APRL cannot be restrained to 40 per cent.

When we consider the documents on record, it is apparent that APRL's bid was premised only on domestic coal. It was evaluated as such, and the PPA also records the same. In para 2 of the bid with respect to coal, the bid of APRL was premised on the domestic coal. It is apparent that APRL relied upon MoU entered into with the Government of Rajasthan for development of the Kawai Power Project and other projects, and the Government assured its support for allocation of the captive coal block or coal linkage. An arrangement of FSA relating to imported coal for at least 50 percent of the

total requirement was relied upon; however, the bid was premised and accepted on domestic coal, which did not change the bid's nature. A query was made by the Rajasthan Discoms on 7.9.2009 from APRL to indicate whether the bid should be evaluated on domestic coal or imported coal. It was made clear by APRL in its letter dated 12.9.2009 quoted above, that bid should be evaluated on the basis of domestic coal tie-up, and an undertaking was given that domestic coal escalations would be acceptable to it during the term of the PPA. In the LoI dated 17.12.2009, the offer was accepted, and escalations thereof on domestic coal was based on the commitment that the quoted rates would be applicable even in case of coal requirement being met by APRL by way of a backup arrangement with imported coal. APRL sent an unconditional acceptance on 18.12.2009. Thus, the parties agreed ad idem that bid was evaluated based on domestic coal, and escalations were also based on domestic coal. Accordingly, the PPA was entered into, and primary fuel in the PPA was mentioned to be domestic coal from captive coal block/coal linkage and imported coal as a fallback support arrangement. It was binding on both the parties.

40. APRL applied for long term coal linkage with the Government of Rajasthan on 2.7.2009, i.e., prior to the submission of bid on 6.8.2009. It submitted the bid by adopting linkage coal format, and the tariff was quoted in Rs./Kwh. It submitted the bid as per RFP of April 2009 Para IX under Format 4.10, clause 2.4.1, which related to linkage coal format bid, i.e., domestic coal. Under Article 1.1 of the PPA, the primary fuel was mentioned as domestic coal. The FSA was submitted for imported coal to assess bid eligibility for meeting the technical criteria. The domestic coal was primary fuel as such the submission cannot be accepted that the bid and the PPA were based on imported coal.

41. The PPA is final and binding on parties, and approval of tariff by the RERC was based on domestic coal as apparent from para 39 of the order dated 31.5.2010. Rajasthan Discoms agreed to use domestic coal on account of likely advantage of lower escalation in tariff on a bid based on domestic coal than that of imported coal. The decision of the Bid Evaluation Committee was found to be in their best interest. Thus, APRL bid was not based on imported coal, that would not have been in favour of Rajasthan Discoms and would have resulted in more escalations in the tariff. Thus, APRL could not be denied the benefit of the very foundational basis on which the RERC approved its bid. APRL could not be made to suffer from both the ends. Various documents and the PPA make it clear that its bid was premised on domestic coal and approved tariff was based on domestic coal, the order of RERC is final, conclusive, and binding on the parties; it has not been questioned and attained finality. No stand contrary to the same was permissible to be taken by the Rajasthan Discoms.

42. It is further apparent that reply dated 31.7.2013 filed by the Rajasthan Discoms before the RERC in which it was clearly admitted that non-availability of domestic coal from the Central Government would put the case of APRL within the scope of change in law. Rajasthan Discoms before the RERC admitted that the bid was based on domestic coal, non-availability of which entitles APRL to claim compensation under the change in law as provided in Article 10 of the PPA.

43. It was argued that incorrect admissions made could not have been relied upon. It could not be said to be incorrect and stated factually correct position in view of the aforesaid material and order

of the RERC.

44. Apart from that, an eligibility to get coal linkage under the SHAKTI Policy was based upon the fact that the Generators, who were not within the coal linkage and their PPAs were based on domestic linkage coal, were eligible for grant of coal linkage. In case, the PPA was not based on domestic coal, the case of APRL would not have been recommended to include the Kawai Project under 4660 MW capacity to receive domestic coal under special dispensation.

45. It is apparent that the concurrent findings recorded by the RERC, as well as the APTEL, in this regard, do not suffer from any infirmity or perversity, and they are binding. As the scope of appeal under Section 125 of the Electricity Act is akin to Section 100 of the CPC and the concurrent findings based upon the facts cannot be disturbed in the appeal as held in DSR Steel (Private) Ltd. v. State of Rajasthan and Ors., (2012) 6 SCC 782, Tamil Nadu Generation and Distribution Corporation Limited v. PPN Power Generating Company Private Limited, (2014) 11 SCC 53 and Wardha Power Company Limited v. Maharashtra State Electricity Distribution Company Limited and Anr., (2016) 16 SCC 541.

46. We also note that once having admitted before the RERC at the time of approval of tariff and evaluated the tariff of domestic coal and making admissions again on 31.7.2013 and 4.8.2017, it is not open to reprobate as parties are not permitted to approbate and reprobate at different stages as laid down in Suzuki Parasrampuria Suitings Private Limited v. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation) and Ors., (2018) 10 SCC 707 and R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683.

47. It was argued that FSA was appended to demonstrate the raw material's readiness for the supply of contracted electricity by the Generator. It did not change the basis of the bid, whether it was based upon the domestic coal or imported coal. In case the bid was based upon the imported coal, the tariff would have been differently fixed as observed by the RERC, and it was not advantageous to Rajasthan Discoms to fix tariff on imported coal. The RERC observed that the FSA was only to demonstrate the raw material's readiness and was not determinative of terms and conditions of the contract. The FSA for imported coal was a standby arrangement, but the entire bid, tariff, and the agreement were based on domestic coal. Thus, the consequences of non□availability due to change in law could not be escaped. In Energy Watchdog, it was observed that the FSA is only for demonstrating the raw material's readiness and is not determinative of the terms and conditions of the contract.

48. Shri C. Aryama Sundaram argued that the FSA related approximately 61 per cent of the fuel requirement. Thus, the change in law claim may be confined to 35 to 40 per cent. The argument cannot be accepted as bidding was not based on dual fuel, but was evaluated on domestic coal. There was no such stipulation that evaluation of bidding was done on domestic basis; the tariff was to be worked out in the aforesaid ratio of 60:40 per cent of imported coal and domestic coal respectively. Apart from that, we find from the order of the APTEL, that change in law provision would be limited to a shortfall in the supply of domestic linkage coal. The finding recorded by the APTEL is extracted hereunder:

"12.5 In the instant case, we have found in the previous paragraphs that Adani Rajasthan's bid was premised on domestic coal on the basis of the 100% domestic coal supply assurance contained in NCDP 2007. Since SHAKTI Policy and the FSA executed thereunder still do not meet the assurance of 100% supply of domestic coal to Adani Rajasthan, it would follow that Adani Rajasthan would need to be compensated for any shortfall in supply of domestic linkage coal even post grant of coal linkage under the SHAKTI Policy. Rajasthan Discoms have not disputed that the introduction of SHAKTI Policy constitutes a Change in Law under the PPA. Their contention is that any shortfall of coal under the SHAKTI FSA by the coal companies is a contractual matter to be sorted out between Adani Rajasthan and the coal companies. We are not persuaded by this argument for the reason that we have already held in GMR Kamalanga case that the contractual conditions or limitations were not present in NCDP 2007 at the time of bid submission by Adani Rajasthan. This contention of Rajasthan Discoms is also against the principle laid down in Energy Watchdog judgment. The SHAKTI Policy continues the earlier coal supply restriction to 75% of ACQ. If actual supply of domestic linkage coal under the SHAKTI FSA is higher, it goes without saying that the generator's relief or compensation under the Change in Law provisions would be limited to the actual shortfall in supply of domestic linkage coal. We also note that there is no rational basis to assume that the supply under the SHAKTI FSAs would be higher or better than that under the pre-SHAKTI FSAs.

12.6 The Supreme Court in Energy Watchdog judgment has already concluded as follows:

"57. ..... This being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India and other Indian sourcesis cut down, the PPA read with these documents provides in Clause 13.2 that while determining the consequences of change in law, 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 payments, the affected party to the economic position as if such change in law has not occurred....." (emphasis supplied)

49. It was clarified that APRL would be entitled to relief under the change in law provision to the extent of shortage in supply in domestic linkage coal. Thus, we find no merit in the submission raised. We find the findings of the APTEL to be reasonable, proper, and unexceptional.

50. Our attention was also invited to para 3.2 of the Statutory Guidelines of 2005. It provided with respect to fuel arrangements. The same provided that in case of domestic coal, the bidder shall have made firm arrangements for fuel tie-up either by way of coal block allocation or fuel linkage. There is no doubt about it that the Government of Rajasthan entered into an MoU with APRL in 2008 to ensure supply of domestic coal and it had undertaken to facilitate the implementation of the Kawai Project for getting the coal block from the Central Government or coal from any other source for the project. Once the Government of Rajasthan entered into MoU dated 20.3.2008, containing Article

2.2 quoted above, it was incumbent upon the State of Rajasthan to provide coal from any other source for the project, in case the Central Government could not allot coal linkage/coal block. The Central Government had even written to the Government of Rajasthan to provide coal to APRL from the coal mine, but due to paucity, it could not be supplied to APRL. Thus, there was a failure on the part of the Government of Rajasthan to provide coal from any other source. The NCDP of 2007 prevailed as law 7 days prior to the bid with respect to the supply of coal, the cut-off date of the bid was 30.7.2009. It was provided in Clauses 2.1 and 2.2 of NCDP of 2007 dated 18.10.2007 that 100 per cent of the quantity as per the normative requirement of the consumers would be considered for supply of coal through FSA by CIL. Para 5.2 of the NCDP of 2007 provided that for power utilities, including Independent Power Producers (IPPs) and Captive Power Plants, cement sector and sponge iron sector, the present system of linkage committee at the level of the Government would continue. CIL will issue LoA after approval of applications by the Standing Linkage Committee (Long-Term). Clause 6.1 provides that new consumers from the State/Central power utilities, CPPs, Independent Power Producers (IPPs), Fertilizers, Cement, and Sponge Iron units may be issued LoA based on prevailing norms and recommendations of the Administrative Ministry. Para 6.1 of the policy is extracted hereunder:

> "6.1 New consumers from State/Central power utilities, CPPs, Independent Power Producers (IPPs), Fertilizer, Cement and Sponge Iron units may be issued LOA, based on prevailing norms and recommendation of Administrative Ministry, which may inter alia have regard to LoA/Linkage already granted to the consumer of specific sector, existing capacity, requirement for capacity addition during a plan period etc."

51. Para 7 deals with FSAs with new consumers. Paras 7.1 and 7.2 are extracted hereunder:

> "7.1 On successfully achieving the milestones stipulated in LOA coal companies would execute FSA with the applicant consumer covering commercial arrangement for supply of coal. FSAs would be, inter-alia, based on 'Take or Pay' principle.

7.2 The FSAs would cover 100% of normative coal requirements of the Power Utilities, including Independent Power Producers (IPPs) and Captive Power Plants (CPPs), Fertilizer units and 75% of normative coal requirement of other consumers." It is apparent that 100 percent of the quantity as per the consumers' normative requirement was to be made by CIL, obviously on the approval of the application by the Standing Linkage Committee. It was kept pending due to a shortage of coal supplies and was ultimately processed under the SHAKTI Policy, and linkage for 100 percent was given from January 2018. Thus, earlier as the quantity of coal was not available, sufficient supply could not be made. It is not a case where APRL was adjudged ineligible, but prior commitments and the non-availability of coal came in the way of failure to obtain domestic coal linkage under the NCDP of 2007, which itself was changed with effect from 26.7.2013.

In Re. Change in Law

52. APRL's claim is based on the date of change of law in 2013. Admittedly, earlier NCDP of 2007 prevailed on the appointed date, i.e., 7 days before submission of the bid. In Energy Watchdog also, similar was the position. Though the application was submitted, coal linkage was not provided, and then there was a change in law in terms of the NCDP of 2013. This Court held that the benefit of change in law w.e.f. 2013 was available. The PPA was based upon the domestic coal, and its availability was based upon NCDP of 2007. The application was filed before submitting the bid. The application for linkage was filed in terms of the agreement when the bid was premised and accepted, and the agreement was entered into on the basis of domestic coal, the change in law of 2007 in 2013 has to be applied. Thus, the submission raised that even in the absence of any LoA or FSA granted to APRL by CIL, there was an impact of change of law on the PPA on account of NCDP of 2013.

53. It was argued that there was no domestic coal linkage under which supply was cut down due to any law, and APRL was not allocated coal block, and its bid was premised on the imported coal. In Energy Watchdog, it was opined that only changes in Indian law could be considered under the PPA and not in foreign law. In NCDP dated 26.7.2013, the NCDP of 2007 was modified to the effect that power projects would only get a certain percentage of what was earlier allowable.

54. It is apparent from the decision dated 31.5.2013 of the Standing Linkage Committee (Long□ Term) that the application of APRL was kept in abeyance. It applied for coal linkage on 2.7.2009 on the basis of NCDP of 2007. The bid cut□off date was 30.7.2009, 7 days prior to the bid deadline, the NCDP of 2007 was applicable. A decision was taken by the Standing Linkage Committee on 14.2.2012 read with the decision dated 31.5.2013 indicating a shortage in domestic coal and dependence on imported coal. For the shortage of coal, APRL could not have been made to suffer, on that it had no control. It was decided not to issue fresh LoAs, and all pending applications were kept in abeyance. The Cabinet Committee on Economic Affairs decided on 21.6.2013 to reduce coal supply to 65 percent and 75 percent of ACQ for the remaining four years of the 12 th Five Year Plan. It allowed passing through of higher cost of imported coal. The Ministry of Coal was directed to suitably amend the NCDP. The Ministry of Coal on 26.7.2013 amended the NCDP of 2007, and the Ministry of Power issued a letter on 31.7.2013, which provided for pass□through of additional cost incurred to meet the coal requirements. The Cabinet Committee on Economic Affairs in its decision dated 21.6.2013, recognised coal supply, subject to availability, to 4660 MW having no fuel linkage. The Kawai Project was included in the same. The Policy was revised, thus assurance given by the Government of India under the NCDP of 2007 was taken away. The provision of 100 per cent supply was taken away. With respect to the applicability of Energy Watchdog, a dispute has been raised. In Energy Watchdog, it was laid down that change in law is applicable to change in domestic law, not change in foreign law. It is not applicable to imported coal/change in foreign law. It was urged that application for grant of coal linkage was submitted to the Ministry of Coal for the supply of coal in the light of assurance given under the NCDP of 2007 in both the cases and those assurances, which were given in the Policy, were diluted or taken away by the subsequent scheme of the Government instrumentality. Consequently, no coal linkage or LoA or FSA was available in the hands of the Generator in Energy Watchdog. The cut□off date for applicability of law was 7 days prior to the bid deadline and change in law provision of Article 10 of the PPA in question is similar to Article 13 of the PPA in Energy Watchdog. Article 10 is extracted hereunder:

"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 10.3.1 During Construction Period As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:

For every cumulative increase/ decrease of each Rupees Sixteen crore Fifty Lakh (Rs.16.50 crore) in the Capital Cost during the Construction Period, the increase/

decrease in Non Escalable Capacity Charges shall be an amount equal to zero point two six seven (0.267%) of the Non Escalable Capacity Charges. In case of Dispute, Article 14 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/ decrease exceeds amount of Rupees Sixteen crore Fifty Lakh (Rs.16.50 crore).

10.3.2 During Operating 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.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurers and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such 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 Procurers 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 Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurers 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 Procurers contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurers shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 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." (emphasis supplied)

55. The said factual position is not disputed and was noticed by the APTEL in para 11.5, which is extracted hereunder:

"11.5 It may be seen from the above that in both the PPAs, Change in Law is defined as the occurrence of any event after the date, which is seven (7) days prior to the Bid Deadline. Therefore, for reckoning the change in law the position prevailing as on cut□off date is relevant. In both cases, the basis for the bid in respect of the fuel was assurance under NCDP, 2007 and there was no Letter of Assurance or FSA for the project at the time of the bidding. The Rajasthan Discoms have not denied the factual position/comparison of the PPAs. That being the case, there is no merit in the argument of Rajasthan Discoms that Energy Watchdog case is not applicable to the present case. We note that as on cut□off date the law prevailing is NCDP 2007 in both the cases. The supply assurance contained in NCDP 2007 was changed or altered for the Kawai Project by the decision of SLC(LT) on 31.05.2013. The main thrust of Adani Rajasthan's arguments is that even before the amendment of 2013 in NCDP 2007, the decision taken by SLC(LT) in May 2013 amounts to a Change in Law event under the PPA. The 2013 amendment to NCDP 2007 may be seen as a continuum of the SLC(LT)'s decision in May 2013 since it was Coal India's inability to meet the committed/assured coal supply that prompted the Ministry of Coal to issue the amendment to NCDP in July 2013, based on the CCEA decision in June 2013. The CCEA decision of June 2013 directed as follows:

"The Cabinet Committee on Economic Affairs (CCEA) today approved the following mechanism for supply of coal to power producers:

(i) Coal India Ltd. (CIL) to sign Fuel Supply Agreements (FSA) for a total capacity of 78000 MW including cases of tapering linkage, which are likely to be commissioned by 31.03.2015. Actual coal supplies would however commence when long term Power Purchase agreements (PPAs) are tied up.

(ii) Taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal quantity of 65 percent, 65 percent, 67 percent and 75 percent of Annual

Contracted Quantity (ACQ) for the remaining four years of the 12th Five Year Plan.

(iii) To meet its balance FSA obligations, CIL may import coal and supply the same to the willing Thermal Power Plants (TPPs) on cost plus basis. TPPs may also import coal themselves. MoC to issue suitable instructions

(iv) Higher cost of imported coal to be considered for pass through as per modalities suggested by CERC. MoC to issue suitable orders supplementing the New Coal Distribution Policy (NCDP). MoP to issue appropriate advisory to CERC/SERCs including modifications if any in the bidding guidelines to enable the appropriate Commissions to decide the pass through of higher cost of imported coal on case to case basis.

(v) Mechanism will be explored to supply coal subject to its availability to the TPPs with 4660 MW capacity and other similar cases which are not having any coal linkage but are likely to be commissioned by 31.03.2015, having long term PPAs and a high Bank exposure and without affecting the above decisions." (emphasis supplied)

56. The change in policy and 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 are also included. The submission raised on behalf of appellant that there is no question seeking benefit due to change in foreign law is based on wrong factual premise. The relief was not claimed on the basis of change in foreign law. Apart from that, admission has been relied upon change in law. The PPA was based on the domestic law and there was a change in domestic law. Thus, consequences must follow. The Government of Rajasthan entered into a MoU with APRL with respect to coal linkage in 2008 to provide coal linkage or coal from other sources.

57. We find similarity in the present case as well as the Energy Watchdog. The factual matrix was similar with the present case. We find that the RERC and the APTEL have recorded the concurrent finding on facts. We find no ground to interfere. No substantial question of law is involved. It was held in Energy Watchdog, that change in law was brought about in the NCDP of 2007 by the decision of 26.7.2013. It is provided in Article 10.2.1 how the change in law is to be applied to compensate for the impact.

58. The purpose of change in law is to restore through monthly tariff payment to the extent contemplated that the affected party is placed in the same economic position as if such a change in law has not occurred. As monthly tariff was worked out on domestic law, the requirement is to compensate on that basis due to change in law. The same is based on the principle of restitution. In Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), it was laid down by this Court thus:

> "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." (emphasis supplied) It was also held that carrying cost is payable from the date the change in law has taken place, and carrying cost is passed on the restitution principle. Article 10.2.1 of the PPA in question is similar to Article 13.2 considered in Energy Watchdog. The carrying cost is nothing but a compensation towards the time value of month/deferred payment. Article 8.3.5 provides for methodology in case of delayed payment.

59. When there was a change in policy with respect to obtaining coal itself, which was agreed to in the PPA, the change in law would be applicable. In Energy Watchdog it was observed thus:

"56. However, insofar as the applicability of Clause 13 to a change in Indian law is concerned, the respondents are on firm ground. It will be seen that under Clause 13.1.1 if there is a change in any consent, approval or licence available or obtained for the project, otherwise than for the default of the seller, which results in any change in any cost of the business of selling electricity, then the said seller will be governed under Clause 13.1.1. It is clear from a reading of the Resolution dated 21□6□2013, which resulted in the letter of 31□7□2013, issued by the Ministry of Power, that the earlier coal distribution policy contained in the letter dated 18□3□2007 stands modified as the Government has now approved a revised arrangement for supply of coal. It has been decided that, seeing the overall domestic availability and the likely requirement of power projects, the power projects will only be entitled to a certain percentage of what was earlier allowable. This being the case, on 31□7□2013, the following letter, which is set out in extenso states as follows:

FU□12/2011□IPC (Vol□III) Government of India Ministry of Power Shram Shakti Bhawan, New Delhi Dated: 31□7□2013 To, The Secretary, Central Electricity Regulatory Commission, Chanderlok Building, Janpath, New Delhi Subject: Impact on tariff in the concluded PPAs due to shortage in domestic coal availability and consequent changes in NCDP.

Ref. CERC's D.O. No. 10/5/2013□Statutory Advice/CERC dated 20□5□2013.

Sir, In view of the demand for coal of power plants that were provided coal linkage by Govt. of India and CIL not signing any fuel supply agreement (FSA) after March

2009, several meetings at different levels in the Government were held to review the situation. In February 2012, it was decided that FSAs will be signed for full quantity of coal mentioned in the letter of assurance (LoAs) for a period of 20 years with a trigger level of 80% for levy of disincentive and 90% for levy of incentive. Subsequently, MoC indicated that CIL will not be able to supply domestic coal at 80% level of ACQ and coal will have to be imported by CIL to bridge the gap. The issue of increased cost of power due to import of coal/e□auction and its impact on the tariff of concluded PPAs were also discussed and CERC's advice sought.

2. After considering all aspects and the advice of CERC in this regard, Government has decided the following in June 2013:

(i) taking into account the overall domestic availability and actual requirements, FSAs to be signed for domestic coal component for the levy of disincentive at the quantity of 65%, 65%, 67% and 75% of annual contracted quantity (ACQ) for the remaining four years of the 12th Plan.

(ii) to meet its balance FSA obligations, CIL may import coal and supply the same to the willing TPPs on cost plus basis. TPPs may also import coal themselves if they so opt.

(iii) higher cost of imported coal to be considered for pass through as per modalities suggested by CERC.

3. Ministry of Coal vide letter dated 26□7□2013 has notified the changes in the New Coal Distribution Policy (NCDP) as approved by the CCEA in relation to the coal supply for the next four years of the 12th Plan (copy enclosed).

4. As per decision of the Government, the higher cost of import/market based e□auction coal be considered for being made a pass through on a case□to□case basis by CERC/SERC to the extent of shortfall in the quantity indicated in the LoA/FSA and the CIL supply of domestic coal which would be minimum of 65%, 65%, 67% and 75% of LoA for the remaining four years of the 12th Plan for the already concluded PPAs based on tariff based competitive bidding.

5. The ERCs are advised to consider the request of individual power producers in this regard as per due process on a case□to□case basis in public interest. The appropriate Commissions are requested to take immediate steps for the implementation of the above decision of the Government.

This issues with the approval of MOS(P)I/C. Encl: As above.

Yours faithfully, sd/□(V. Apparao) Director This is further reflected in the revised Tariff Policy dated 28□1□2016, which in Para 1.1 states as under:

> 1.1. In compliance with Section 3 of the Electricity Act, 2003, the Central Government notified the Tariff Policy on 6□1□2006. Further amendments to the Tariff Policy were notified on 31□3□2008, 20□1□2011 and 8□7□2011. In exercise of powers conferred under Section 3(3) of the Electricity Act, 2003, the Central Government hereby notifies the revised Tariff Policy to be effective from the date of publication of the resolution in the Gazette of India.

Notwithstanding anything done or any action taken or purported to have been done or taken under the provisions of the Tariff Policy notified on 6□1□2006 and amendments made thereunder, shall, insofar as it is not inconsistent with this Policy, be deemed to have been done or taken under provisions of this revised policy.

Clause 6.1 states:

6.1. Procurement of power As stipulated in Para 5.1, power procurement for future requirements should be through a transparent competitive bidding mechanism using the guidelines issued by the Central Government from time to time. These guidelines provide for procurement of electricity separately for base load requirements and for peak load requirements. This would facilitate setting up of generation capacities specifically for meeting such requirements.

However, some of the competitively bid projects as per the guidelines dated 19□1□2005 have experienced difficulties in getting the required quantity of coal from Coal India Limited (CIL). In case of reduced quantity of domestic coal supplied by CIL, vis□a□vis the assured quantity or quantity indicated in letter of assurance/FSA the cost of imported/market based e□auction coal procured for making up the shortfall, shall be considered for being made a pass through by appropriate Commission on a case□to□case basis, as per advisory issued by Ministry of Power vide OM No. FU□12/2011□IPC (Vol□III) dated 31□7□2013." In the aforesaid para, a discussion was made with respect to change in terms and conditions prescribed for obtaining any consents, clearances, and permits. The change in law does not provide that letter of approval should be issued by CIL, as provided in Article 10.1 relating to change in law. Even if the procedure is changed, that is to be given effect to.

In Re. SHAKTI Policy 2017

60. Under the SHAKTI Policy notified on 22.5.2017, those Independent Power Producers (IPPs), who were having PPAs based on domestic coal, but were not having LoA or FSA for coal supply either under NCDP of 2007 or NCDP of 2013, could participate in the auction to get 100 per cent of the normative requirement of coal supply. The eligibility was based upon the fact that the PPA was based upon the domestic supply. Under the SHAKTI Policy, APRL was given coal supply to the full extent of the normative requirements for generating and supplying electricity to the Rajasthan Discoms due to aforesaid significant terms in the PPA.

61. It was argued that the imported coal as alternate coal was available for 5 years, as such no relief could have been granted to APRL on the basis of change in law. As we have already discussed that

there was a change in law as per Article 10.1; thus, the submission to the contrary is untenable.

62. It was argued that APRL unconditionally accepted stipulations in the LoI dated 17.12.2009 on 18.12.2009. The submission is equally futile as the PPA under Article 1.1 and Schedule V provide for domestic coal as primary fuel and imported coal as a fallback arrangement. Whereas change in law was provided in Article 10. Article 15.6.2 of the PPA supersedes all prior written or oral understanding. The same is extracted hereunder:

> "15.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurers by the Seller shall stand superseded and abrogated."

63. Article 10 of the PPA is clearly attracted that the change in law was in contemplation. Article 10 cannot be made redundant; the agreement is binding and must prevail.

64. The argument raised by Shri C. Aryama Sundaram that carrying cost is a penal provision, cannot be accepted in view of the decision of this Court in Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), in which with respect to carrying cost, it was held that carrying cost was payable in terms of restitution principle. The carrying cost is to be paid on the same basis as provided for other dues in the PPA.

65. It was argued that the RERC and the APTEL had not determined the amount. It is apparent that the principle has been worked out by the RERC as well as the APTEL. The quantification directions have been issued to Rajasthan Discoms to verify the documents submitted by APRL and make payment in terms of the judgment and order. Nothing further was required to be done by the RERC as well as the APTEL.

66. Considering the facts of this case and keeping in view that the RERC and APTEL have given concurrent findings in favour of the respondent with regard to change in law, with which we also concur, we may now deal with the question of liability of appellants□Rajasthan Discoms with regard to late payment surcharge. In this regard, the following Articles 8.3.5 and 8.8 of PPA, which are relevant for the present purpose, are extracted hereunder:

> "8.3.5. In the event of delay in payment of a Monthly Bill by the Procurers beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurers to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill. 8.8 Payment of Supplementary Bill 8.8.1 Either Party may raise a bill on the other Party (supplementary bill) for payment on account of:
>
> i) Adjustments required by the Regional Energy Account (if applicable);

ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or

iii)Change in Law as provided in Article 10, and such Supplementary Bill shall be paid by the others party.

8.8.2 The Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer(s) by the Due Date to concerned Procurer's designated bank account and notify such Procurer(s) of such payment on the same day. For such payments by the Procurer(s), Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5. 8.9 The copies of all; notices/offers which are required to be sent as per the provisions of this Article 8, shall be sent by a party, simultaneously to all parties." Liability of the Late Payment Surcharge which has been saddled upon the appellants is at the rate of 2% in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each day of the delay. Therefore, there shall be huge liability of payment of Late Payment Surcharge upon the appellants–Rajasthan Discoms.

67. With regard to the question of interest/late payment surcharge, we notice that the plea of change in law was initially raised by APRL in the year 2013. A case was also filed by APRL in the year 2013 itself raising its claim on such basis. However, the appellants–Rajasthan Discoms did not allow the claim regarding change in law, because of which APRL was deprived of raising the bills with effect from the date of change in law in the year 2013. We are, thus, of the opinion that considering the totality of the facts of this case and in order to do complete justice and to reduce the liability of the appellants–Rajasthan Discoms, payment of 2 per cent in excess of the applicable SBAR per annum with monthly rest would be on higher side. In our opinion, it would be appropriate to direct the appellants–Rajasthan Discoms to pay interest/late payment surcharge as per applicable SBAR for the relevant years, which should not exceed 9 per cent per annum. It is also provided that instead of monthly rest, the interest would be compounded per annum.

68. We accordingly direct that the rate of interest/late payment surcharge would be at SBAR, not exceeding 9 per cent per annum, to be compounded annually, and the 2 per cent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case.

69. Before we part with the case, we may notice that Shri Prashant Bhushan, raised the submission with respect to over–invoicing. He attracted our attention to the investigation pending before the DRI. He has submitted that 40 importers of coal are under investigation by the DRI concerning alleged over–invoicing. The letter of rogatory was issued. However, learned counsel conceded that there is no ultimate conclusion in the investigation reached so far. Thus, we are of the opinion that until and unless there is a finding recorded by the competent court as to invoicing, the submission

cannot be accepted. At this stage, it cannot be said that there is over-invoicing. We have examined the case on merits with abundant caution, and we find that there are concurrent findings of facts recorded by the RERC and the APTEL. With respect to the aspect that bid was premised on domestic coal, we find that findings recorded do not call for any interference.

70. A question was raised concerning the maintainability of the appeal of the Federation. It is important to mention that the Federation was not the party before the RERC, and the APTEL rejected its intervention application. The order was not interfered with by this Court. Be that as it may. Given the appeal preferred by Rajasthan Discoms, we have not examined the maintainability of the Federation's appeal and locus to file an appeal. We leave the question open.

71. In view of the preceding discussion, the appeals are partly allowed to the extent as indicated above.

No order as to costs.

.....J. (Arun Mishra) .....J. (Vineet Saran) .....J. (M.R. Shah)
New Delhi;

August 31, 2020.