

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 293/MP/2018**

Subject : Petition under Section 79 of the Electricity Act, 2003 and the Article 12 read with Article 16.3.1 of the Power Purchase Agreements executed by the Petitioner and NTPC Limited dated 19.4.2016 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreements.

Petitioner : Azure Power India Private Limited

Respondents : NTPC Limited and Ors.

**Petition No. 294/MP/2018**

Subject : Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreement executed by the Petitioner and Solar Energy Corporation of India Limited dated 14.10.2015 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax laws at the Central level and change in the rate of Service tax, resulting additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreement.

Petitioner : Azure Power India Private Limited

Respondents : Solar Energy Corporation of India Limited and Ors.

Date of Hearing : 22.8.2019

Coram : Shri P. K. Pujari, Chairperson  
Dr. M. K. Iyer, Member  
Shri I. S. Jha, Member

Parties Present : Shri Jafar Alam, Advocate, Azure Power  
Shri Saahil Kaul, Advocate, Azure Power  
Shri Shrawan Kumar, Azure Power  
Shri Ranjeet Singh, Azure Power  
Shri Shubham Arya, Advocate, NTPC and SECI  
Ms. Tanya Sareen, Advocate, NTPC and SECI

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the Petitions have been filed by the Petitioner seeking, *inter alia*, declaration that the promulgation of the Finance Act, 2016 and Central Goods and Services Act, 2017 are Change in Law events



under the Article 12 of the PPAs and an additional tariff as compensation for additional tax burden incurred by the Petitioner on Operation and Maintenance (O&M) of the Solar Generating Plants. Learned counsel further submitted that the Commission has already taken a view that since the outsourcing of O&M activities is not the requirement under the PPA/bidding documents and is a commercial decision of the generator, additional tax burden on O&M expenses on account of implementation of GST is not permissible. However, the Petitioner's case is distinguishable as the Petitioner has not outsourced the O&M activities and carries out on its own. Moreover, in Petition No. 293/MP/2018, the Solar Plant of the Petitioner being located in the Solar Park, the Petitioner is also subjected to O&M charges as per the Implementation Support Agreement (ISA) which was required to be entered into with Solar Park Implementation Agency for land and associated infrastructure, in terms of the RfS and the PPA. Learned counsel further submitted that the reply of the Respondents to the Petitions does not deal with the aforesaid aspects of the Petitioner's case and merely refutes the claims on the ground that impact of the Finance Act and the GST Laws cannot be allowed since the outsourcing of O & M activities is a commercial decision of the generator.

2. Learned counsel for the Respondents SECI and NTPC, submitted that the Petitioner nowhere in the Petitions has pleaded that the Petitioner is carrying out its O & M activities of its Solar Plants on its own and paying O & M expenses to the Solar Park Implementation Agency under ISA. Learned counsel submitted that the Petitioner may be directed to file its submission in this regard along with details and expenditure incurred till date.

3. After hearing the learned counsel of the Petitioner and the Respondents, the Commission directed the Petitioner to file its rejoinder clarifying its claims for O&M expenses under two separate heads, namely, claims on account of O & M activities carried out by the Petitioner on its own and claims on account of O & M expenses payable under ISA by 7.9.2019. The Respondents were directed to file their response thereon on or before 21.9.2019. The Commission directed that the due date of filing of replies and rejoinder should be strictly complied with.

4. The Petitions shall be listed for hearing in due course for which separate notice shall be issued to the parties.

**By order of the Commission**

**sd/-  
(T.D.Pant)  
Deputy Chief (Law)**

