

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 43/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the PPAs dated 16.9.2016 claiming Carrying Cost on Change in Law compensation granted by the order of the Commission dated 19.9.2018 in Petition No. 50/MP/2018.

Petitioner : Prayatna Developers Private Limited (PDPL)

Respondents : National Thermal Power Corporation Limited & Ors.

Date of Hearing : 25.11.2019

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

Parties present : Shri Amit Kapur, Advocate, PDPL
Ms. Aparajita Upadhyay, Advocate, PDPL
Ms. Sakshi Kapoor, Advocate, PDPL
Shri Rakesh Shah, PDPL
Ms. Poorva Saigal, Advocate, NTPC
Ms. Tanya Sareen, Advocate, NTPC

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking grant of carrying cost and restoration of the Petitioner to the same economic position as it was prior to the occurrence of Change in Law event. Learned counsel handed over copy of written note on arguments and reiterated the submissions made therein. In support of its contention, learned counsel relied upon the judgments of Hon'ble Supreme Court in (i) Energy Watchdog v. CERC and Ors. [(2017) 14 SCC 80], (ii) South Eastern Coalfield Limited v. State of Madhya Pradesh [(2003) 8 SCC 648], (iii) Secy. Irrigation Dept., Govt. of Orissa v. G. C. Roy [(1992) 1 SCC 508], (iv) Piloos Dhunjishaw Sidhwa v. Municipal Corporation of the City of Poona [(1970) 1 SCC 213] and judgment of APTEL in SLS Power Limited v. APERC and Ors. [2012 SCC Online APTEL 209].

2. In rebuttal, learned counsel for the Respondent, NTPC Limited, handed over the copy of written note on arguments and submitted that in the present case, there is no provision in the PPA for restitution/restoration to the same economic position to the Petitioner. Learned counsel submitted that present Petition is barred by the principle of constructive res-judicata as well as Order 2 Rule 2 of the Code of Civil Procedure, 1908. Learned counsel, in this regard, relied upon the judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. T. P. Kumaran [(1996) 10 SCC 561] and judgment of APTEL dated 18.5.2011 in Appeal No. 172 of 2010 in the case of Bihar Steel Manufacturers Association vs. Bihar Electricity Regulatory Commission.



3. After hearing the learned counsels for the Parties, the Commission reserved order in the matter.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Legal)**

