



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 157/MP/2018
alongwith I.A. No. 2 of 2019

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member

आदेश दिनांक /Date of Order: 09th of May, 2019

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 18.05.2016 executed between Prayatna Developers Pvt. Ltd. and NTPC Ltd., for seeking approval of Change in Law events due to enactment of the GST Laws.

AND IN THE MATTER OF:

Prayatna Developers Private Ltd.
7B, Sambhav House, Judges
Bungalow Road, Bodakdev,
Ahmedabad - 380015,
Gujarat

...Petitioner

VERSUS

1. National Thermal Power Corporation Ltd.
Represented by its Chairperson
Core-7, SCOPE Complex, 7,
Institutional Area, Lodi Road,
New Delhi – 110003
2. The Ministry of New and Renewable Energy
Represented by its Secretary
Block-14, CGO Complex,
Lodhi Road,
New Delhi-110 003

...Respondents

Parties Present: Ms. Poonam Verma, PSEPL
Ms. Abiha Zaidi, PSEPL
Shri Tarul Sharma, PSEPL
Shri M.G. Ramachandran, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC

आदेश/ ORDER

The Petitioner, M/s Prayatna Developers Private Ltd. (PDPL) is a generating company primarily engaged in the business of setting up of solar power plants and generation of electricity in the State of Uttar Pradesh. The Petitioner has filed the present Petition under Section 79 of the Electricity Act 2003 read with Article 12 of the Power Purchase Agreement (hereinafter referred to as “PPA”) dated 18.05.2016 executed between PDPL and M/s NTPC Ltd., seeking appropriate relief from the Commission on account of certain ‘Change in Law’ events i.e. enactment of laws pertaining to Goods and Services Tax.

2. The Respondent No. 1, M/s NTPC Ltd. (hereinafter referred to as “NTPC”) is a Central Public Sector Undertaking and is engaged in the business of generation of electricity and allied activities. Under the State Specific Bundling Scheme of the National Solar Mission, NTPC is responsible for implementation of the scheme of Ministry of New and Renewable Energy for setting up Solar Power Plants, with whom PDPL has executed a Power Purchase Agreement.

3. The Respondent No. 2, Ministry of New and Renewable Energy (hereinafter referred to as “MNRE”), is the nodal Ministry of the Government of India for all matters relating to new and renewable energy.

4. The Petitioners have made following prayer:

(a) Admit the Petition;

(b) Hold and declare that the imposition of the Integrated Goods and Services Tax, 2017, Central Goods and Services Tax, 2017 and Uttar Pradesh Goods and Services Tax, 2017 is an event under Change in Law under Article 12 of the PPA;

(c) Restore the PDPL to the same economic condition prior to occurrence of the Changes in Law by way of adjustment in tariff in terms of Article 12 of the PPA as prayed for in the present Petition.

(d) Pending proceedings, direct the Respondent No. 1 to pay to PDPL the amount claimed under Change in Law which shall be subject to adjustment based on the final order passed by the Commission;

(e) To pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.

5. The Brief facts of the case are that on 10.03.2015, MNRE issued guidelines for implementation of Scheme for selection of 3000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-II, Tranche-I for ‘State Specific Bundling Scheme’. NTPC invited proposals by RfS for setting up Grid Connected Solar-PV Power Projects (10 MW x 5 Projects) in the State of Uttar Pradesh. The Petitioner participated in the bids and submitted its proposal for development of Solar Photo Voltaic projects of 10 MW each, totalling 50 MW. After following the process of Reverse Auction conducted by NTPC, the Petitioner was selected for setting up Solar Photo Voltaic projects. NTPC issued a Letter of Intent on 15.03.2016 and entered into five PPAs with NTPC for setting up of 50 MW on 18.05.2016 (29.04.2016 being ‘effective date’) for supply of power at a tariff of Rs. 4.78/kWh. As per the executed PPAs, the Schedule date of Commissioning of the projects was 28.05.2017. However, the Petitioner successfully commissioned its 5 projects i.e. 5 x 10 Mw Solar Photo Voltaic Power Generation Projects on 07.06.2017. On 01.07.2017, the ‘GST laws’ were

enacted. The Petitioner has submitted that it successfully commissioned all the five projects on 07.06.2017 i.e. prior to implementation of Goods & Service Tax Act 2017. However, various project supply/works contracts were pending for finalization, and its invoices/payment were made subsequent to GST implementation date. It had not contemplated such additional taxes/GST at the time of the bid submission. The Petitioner has submitted that new slabs under 'GST Laws' have led to an increase in the overall project cost. The change of tax regime has escalated the capital cost of the Petitioner's project, hence making the tariff quoted at the time of bid for allocation of project unviable. The total escalation in cost due to implementation of 'GST Laws' is about Rs. 1,94,43,403/- (Rs. One Crore Ninety Four Lakhs Forty Three Thousand Four Hundred and Three Only).

6. The Commission observes that during the hearing held on 09.01.2019, NTPC submitted that in the Order dated 19.09.2018 in Petition No 50/MP/2018 and 52/MP/2018 (*Prayatna Developers Private Limited v. NTPC Limited and Ors.*), the Commission had held that change in law shall be applicable in all cases except in case of the generating company where "Scheduled date of Commissioning" or "the actual date of Commissioning" as per the respective PPAs is prior to 01.07.2017. NTPC further submitted that since the Petitioner's project was commissioned on 07.06.2017 i.e. before 01.07.2017, the relief for Change in Law in terms of introduction of GST is not applicable to the Petitioner. Therefore, the present petition is not maintainable. Whereas, the Petitioner has submitted that the issue regarding extension of date of commissioning is pending before the Commission in Petition No. 229/MP/2018. There are other expenses incurred in a period upto one month after the date of commissioning for which 'Change in Law' is required to be approved. The Commission reserved the Order on maintainability.
7. The Commission observes that in the Order dated 19.09.2018 in Petition No 50/MP/2018 and 52/MP/2018 (*Prayatna Developers Private Limited v. NTPC Limited and Ors.*), the decision was based on the pleadings filed and the arguments held in those petitions. In light of the above, the Commission is of the view that the petition is maintainable and in the interest of justice, an opportunity should be given to the Petitioner to plead its case. The Commission directs the Respondent to implead the distribution companies to which power would be supplied by the Petitioner and to amend the memo of parties to implead such entities and

serve copies on such entities. The Respondents are directed to file their replies by 30.05.2019 with an advance copy to the Petitioner who may file its rejoinder, if any on or before 10.06.2019.

8. The Petition No. 157/MP/2018 alongwith I.A. No. 2 of 2019 shall be listed for hearing in due course for which separate notice shall be issued.

Sd/-

डॉ. एम. के. अय्यर
सदस्य

Sd/-

पी. के. पुजारी
अध्यक्ष