

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.156/MP/2021 along with IA No. 59/2021

- Subject : Petition under Section 79(1)(a) and (b) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 17.7.2018 between the Petitioner and NTPC Limited seeking relief on account of Change in Law event, viz. the imposition of Safeguard Duty by Notification No.1/2018 Customs (SG) dated 30.7.2018 issued by the Department of Revenue, Ministry of Finance, Government of India.
- Date of Hearing : 17.9.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Ayana Anathapuramu Solar Private Limited (AASPL)
- Respondent : NTPC Limited (NTPC)
- Parties Present : Shri Sanjay Sen, Sr. Advocate, AASPL
Shri Aniket Prasoon, Advocate, AASPL
Ms. Mandakini Ghosh, Advocate, AASPL
Ms. Priya Dhankhar, Advocate, AASPL
Shri Venkatesh, Advocate, NTPC
Shri Siddharth Joshi, Advocate, NTPC
Shri Abhiprav Singh, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri Kumar Sambasivan, AASPL
Shri Ishpaul Uppal, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. The learned senior counsel for the Petitioner submitted that the present petition has been filed seeking relief on account of occurrence of Change in Law event, namely, the issuance of Notification No. 01/2018-Customs (SG) dated 30.7.2018 by the Department of Revenue, Ministry of Finance, Government of India imposing Safeguard Duty on the import of solar cells whether or not assembled in modules or panels. The learned senior counsel further submitted that despite having approached the Respondent, NTPC along with all requisite records and documents to substantiate its claims in terms of letters of the Ministry of New and Renewable Energy dated 12.3.2020 and 23.3.2020, NTPC is yet to start the reconciliation process in respect of its claims. Accordingly, the Petitioner has also filed IA No. 59/2021, *inter alia*, seeking direction to the Respondent to complete the reconciliation process in respect of claims of the Petitioner forthwith.

3. Learned counsel for the Respondent, NTPC mainly submitted the following:



(a) On the basis of the Power Purchase Agreement entered into with the Petitioner, NTPC has entered into back-to-back Power Supply Agreement with the distribution companies of Andhra Pradesh ('AP Discoms'). Thus, the Petitioner may be directed to implead AP Discoms as party to the Petition.

(b) Since in the present case, the generator (located in Ananthapuramu Ultra Mega Solar Park, Andhra Pradesh) and the end procurers, namely, AP Discoms are located in the State of Andhra Pradesh, the generation and supply of power is within the same State only. Also, as per the bid documents (RfS), the entire power was to be sold to AP Discoms only and the bid process was not conducted under Jawaharlal Nehru National Solar Mission Guidelines ('JNNSM Guidelines'). Thus, the Petition is not maintainable before this Commission as per the decision of this Commission dated 24.5.2021 in Petition No. 611/MP/2020 (Rihand Floating Solar Private Ltd. v. SECI).

(c) Similar issue of maintainability is also under consideration before the Commission in Petition No. 626/MP/2020 (SB Energy Solar Pvt. Ltd. v. NTPC Ltd.), where the Petitioner/ generator therein is also located in the same Solar Park as the Petitioner in the present case and the end procurers being AP Discoms.

(d) NTPC may be permitted to file short reply on the maintainability of the Petition.

4. In response, the learned senior counsel while accepting that the bid documents (RfS) make no reference to any of the JNNSM Guidelines, prayed that the Petitioner may be permitted to examine the decision of the Commission dated 24.5.2021 in Petition No. 611/MP/2020.

5. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission directed the Respondent to file its reply on the maintainability of the Petition within two weeks after serving copy to the Petitioner, who may file its rejoinder, if any within one week thereafter.

6. The Petition shall be listed for hearing on 'admission' along with Petition No. 626/MP/2020 in due course, for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**