

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 211/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 Agreements executed by the Petitioner and NTPC Vidyut Vyapar Nigam Limited dated 10.1.2011 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.
- Date of Hearing : 28.5.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri P. K. Singh, Member
- Petitioner : Azure Power (Rajasthan) Private Limited (Azure Power)
- Respondents : NTPC Vidyut Vyapar Nigam Limited (NVTN) and 16 Ors.
- Parties Present : Shri Sahil Kaul, Advocate, Azure Power
Shri M. G. Ramachandran, Sr. Advocate, NVTN
Ms. Tanya Sareen, Advocate, NVTN
Ms. Anushree Bardhan, Advocate, NVTN
Shri Anurag Gupta, NVTN
Shri Sukesh Mohan, NVTN

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking reliefs on account of Change in Law events viz. enactment of Service Tax Laws and GST Laws, requiring the Petitioner to bear an additional recurring expenditure in the form of an additional tax on the Operation and Maintenance ('O&M') expenses of its solar power generating station. Learned counsel acknowledged that the Commission in its various orders had disallowed the GST claims on the O&M expenses and requested the Commission to consider the following in this regard:

- (a) Article 12 (Change in Law) of the PPA does not restrict the Petitioner from claiming relief for any additional expenditure which has incurred on O & M activities as a result of Change in Law event. The said clause does not have any segregation between the construction cost and operating cost and it permits the Petitioner to claim the relief for any additional recurring/ non-recurring expenditure incurred due to Change in Law event.

(b) The PPA does not prohibit the Petitioner from engaging a third-party vendor/ contractor to efficiently operate and maintain the Project. On the contrary, the PPA itself envisages the engagement of contractors/ sub-contractors for performance of various activities. In this regard, the reliance was placed on the Article 11.4.1(b) and 17.4.1 of the PPA.

(c) O&M activities include many specialized activities, for instance, supplying consumables and spares, site security and module cleaning, which can be carried out far more economically and effectively by companies that specialize in such activities rather than by the Petitioner itself having a generating station of a modest 5 MW capacity. If the Petitioner was required to carry out all O& M activities itself, it would have resulted in a higher project cost and consequently a higher tariff.

3. Learned senior counsel for the Respondent, NVVN submitted that the issue of GST Law implication on the O&M expenses is squarely covered by the various orders of the Commission. Learned senior counsel sought liberty to file a short note of submissions in the matter.

4. Considering the request of the learned senior counsel for the Respondent, NVVN, the Commission directed to file its note of submissions within two days from the issuance of the ROP.

5. Subject to the above, the Commission reserved the matter for order.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)