

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 626/MP/2020 along with IA No.20/2021

- Subject : Petition under Section 79(a) and (b) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 5.7.2018 between the Petitioner and NTPC Limited seeking relief on account of Change in Law event, viz. the imposition of Safeguard Duty by Notification No.01/2018 Customs (SG) dated 30.7.2018 issued by the Department of Revenue, Ministry of Finance, Government of India.
- Date of Hearing : 26.3.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : SB Energy Solar Private Limited (SBESPL)
- Respondent : NTPC Limited (NTPC)
- Parties Present : Shri Sajan Poovayya, Sr. Advocate, SBESPL
Shri Vishal Binod, Advocate, SBESPL
Ms. Samykya Mukku, Advocate, SBESPL
Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Sidhartha Mohapatra, SBESPL
Shri Ispaul Uppal, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the instant Petition has been filed, *inter alia*, seeking relief on account of occurrence of Change in Law, namely, the issuance of Notification No.1/2018-Customs (SG) dated 30.7.2018 issued by Department of Revenue, Ministry of Finance, Government of India imposing the Safeguard Duty. Learned senior counsel further submitted the following:

(a) Consequent to the imposition of Safeguard Duty by the Central Government w.e.f. 30.7.2018 and in terms of the directions of Ministry of New and New Renewable Energy ('MNRE') dated 12.3.2020 and 23.3.2020, the Petitioner provided all necessary documentary evidence to NTPC to substantiate its claims on account of Safeguard Duty by establishing one to one correlation between levy of duty on the goods imported and requested NTPC to reimburse the said amount.

(b) Subsequently, NTPC vide its letters dated 1.10.2020 and 12.1.2021 asked the Petitioner to submit Chartered Accountant Certificate and raised certain additional queries, which were duly complied with by the Petitioner.



(c) The Petitioner has continuously followed up with NTPC for completion of the reconciliation process of claims towards Safeguard Duty. However, till date, NTPC has neither confirmed nor reconciled the claims of the Petitioner.

(d) The Petitioner has also filed IA No.20/2021 seeking direction to NTPC to pay Rs. 68.65 crore i.e. an amount equivalent to 50% of the total claim as an interim payment within 15 days of such direction by the Commission.

3. Learned counsel for the Respondent, NTPC submitted that the Petitioner may be directed to implead the buying entities i.e. Andhra Pradesh Distribution Companies (in short, 'the AP Discoms') in the present case. It was submitted by the learned counsel that the AP Discoms have challenged the order of this Commission in a similar matter dated 5.2.2020 in Petition No. 176/MP/2019 (Solaiopro Urja Pvt. Ltd. v. NTPC and Ors.), before the Hon'ble High Court of Andhra Pradesh in Writ Petition No. 5212 of 2020, *inter alia*, on the grounds of jurisdiction of this Commission to pass an order and that they were not given sufficient opportunity to respond to the Petition. Hon'ble High Court has stayed the Commission's order dated 5.2.2020 during the pendency of the Writ Petition. Since the proceeding before the Hon'ble High Court has a bearing on the present case and the PPA and PSA being back-to-back in nature, it was requested that the Commission may not pass any interim order for payment to the generator in absence of the AP Discoms being impleaded as party to the present Petition.

4. In rebuttal, the learned senior counsel for the Petitioner submitted that in terms of Commission's order dated 5.2.2020 in Petition No. 176/MP/2019 as well as the MNRE directions, NTPC's obligation to make payment to the Petitioner is not conditional upon the payment to be made by the AP Discoms to NTPC. It was further submitted that the Hon'ble High Court's order granting interim stay is only applicable qua AP Discoms and not against NTPC. Accordingly, the learned senior counsel requested for direction to NTPC for release of an interim payment.

5. After hearing the learned senior counsel for the Petitioner and the Respondent, NTPC, the Commission admitted the Petition and directed to issue notice to the Respondent.

6. The Commission directed the Petitioner to serve copy of the Petition and IA to the Respondents immediately. The Respondents were directed to file their reply within two weeks with advance copy to the Petitioner, who may file its rejoinder, if any, within one week thereafter.

7. The Commission further directed the Respondent, NTPC to complete the reconciliation process in respect of the claims of the Petitioner within 15 days.

8. The Petition including IA 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)
Joint Chief (Legal)**