

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 64/MP/2019**

**Coram:**

**Shri P.K.Pujari, Chairperson**

**Shri I.S.Jha, Member**

**Shri Arun Goyal, Member**

**Date of Order: 25<sup>th</sup> January 2021**

**In the matter of**

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 along with Section 79(1)(k) of the Electricity Act, 2003 for (i) declaration of events as 'change in law' under the Power Purchase Agreement dated 5.7.2018, and (ii) grant of consequential relief to compensate for the increase in capital cost due to introduction and imposition of safe guard duty by way of Notification No. 01/2018-Customs SG dated 30.7.2018 issued by the Department of Revenue, Ministry of Finance, in terms of Article 12 of the PPA dated 5.7.2018 executed between Sprng Agnitra Private Limited and NTPC Limited.

**And**

**In the matter of**

SPRNG Agnitra Private Limited  
Unit No. FF-48A, First Floor,  
OMAXE Square, Plot No. 14,  
Jasola district centre, New Delhi

**... Petitioner**

**Vs.**

NTPC Limited  
7, Institutional Area  
Core-7, Scope Complex,  
Lodhi Road, New Delhi-110 003

**...Respondent**

**Parties Present:**

Shri Hemant Sahai, Advocate for the Petitioner

Ms. Molshree Bhatnagar, Advocate for the Petitioner

Ms. Anukriti Jain for the Petitioner

Shri Avinash Mirajkar for the Petitioner

Ms. Poorva Saigal, Advocate, NTPC

Ms. Tanya Sareen, Advocate, NTPC

Shri Ishpaul, NTPC

## ORDER

The Petitioner, has filed the present Petition with the following prayers:

*“(a) Declare and hold that the introduction of Safeguard Duty qualifies as ‘Change in Law’ in terms of Article 12 of the Power Purchase Agreement dated 5.7.2018 executed between the Petitioner and the Respondents and that the Petitioner is entitled to relief thereunder;*

*(b) Direct the Respondent to compensate and pay the Petitioner in terms of Article 12 of the Power Purchase Agreement dated 5.7.2018 for the additional cost and the carrying cost incurred by the Petitioner until the date of filing of this Petition on account of the ‘Change in Law’ and is to be incurred by the Petitioner, post the filing of the Petition as result of the imposition of the Safeguard Duty on the import of solar modules for the Project;*

*(c) Direct the Respondents to pay any other consequential cost pursuant to declaration of prayers (a) and (b); and*

*(d) Pursuant to grant of prayers (a) and (b) above, approve the necessary consequential amendments to the PPAs and LOI.”*

2. Learned counsel for the Petitioner submitted that Ministry of Finance, Government of India vide its Notification No. 1/2018-Customs (SG) dated 30.7.2018 (in short ‘the 2018 Notification’) imposed the safeguard duty on the import of solar cells and the said Notification was in force till 29.7.2020. Learned counsel submitted that the present Petition was filed in 2019. However, there was considerable delay in adoption of tariff by the Andhra Pradesh Electricity Regulatory Commission (in short, ‘APERC’) in respect of the distribution companies of Andhra Pradesh and APERC did not adopt the tariff for the Petitioner’s Project. Aggrieved by the decision of APERC, the parties approached the Appellate Tribunal for Electricity (APTEL). APTEL vide its judgment dated 27.2.2020 observed that the tariff discovered through competitive bidding process, as per the guidelines issued by the Government of India stand adopted by the Commission under Section 63 of the Electricity Act, 2003 and extended effective date of PPA and consequent timeline for achieving the financial

closures and Scheduled Commercial Operation Date (SCOD). Learned counsel submitted that due to pendency of the above proceedings, the procurement of solar modules for achieving the commercial operation date of the Project by November, 2019 could not take place. Learned counsel submitted that Government of India, Ministry of Finance vide its notification No. 22/1/2020-DGTR dated 18.7.2020 (in short 'the 2020 Notification') has continued imposition of safeguard duty on imports of solar modules or panels. The Petitioner has procured certain modules and panels during the period of the 2018 Notification and will be procuring the remaining modules and panel subsequent to the 2020 Notification. Accordingly, the Petitioner will be paying safeguard duty on the import of solar modules and in terms of Article 12 of the PPA will be seeking the same to be allowed as a change in law event. In light of the above development, the learned counsel sought permission to withdraw the present Petition with liberty to file fresh consolidated Petition raising all claims in respect of impact of safeguard duty on project cost, in accordance with law.

3. Learned counsel for NTPC Limited did not object the same.

4. The prayer of the Petitioner is allowed. Accordingly, Petition No. 64/MP/2019 is disposed of as withdrawn.

Sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I.S Jha)**  
Member

sd/-  
**(P.K.Pujari)**  
Chairperson