

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 163/MP/2022 along with IA No. 37/IA/2022

- 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 Petitioners and NTPC Limited dated 12.5.2016, *inter alia*, seeking relief on account of Change in Law viz. the introduction of Goods and Service Tax laws and seeking refund of amounts wrongfully sought to be deducted from the monthly tariff payable to the Petitioners putatively in lieu of Change in Law compensation paid earlier.
- Date of Hearing : 24.6.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : Rising Sun Energy Pvt. Ltd. (RSEPL) and 2 Ors.
- Respondents : NTPC Limited and 2 Ors.
- Parties Present : Shri Syed Jafar Alam, Advocate, RSEPL
Shri Saahil Kaul, Advocate, RSEPL
Shri Gokul Holani, Advocate, RSEPL
Shri Ajitesh Garg, Advocate, NTPC
Shri Vikram S Baid, Advocate, NTPC
Shri Adarsh Tripathi, Advocate, NTPC

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 relief on account of Change in Law viz. introduction of Goods and Services Tax Laws and seeking refund of amounts wrongfully sought to be deducted from the monthly tariff payable to the Petitioners putatively in lieu of Change in Law compensation paid earlier. Learned counsel mainly submitted the following:

(a) The Petitioner has developed two solar power generating stations of 70 MW each in Bhadla Solar Park Phase-II in Jodhpur, Rajasthan through two SPVs, being Petitioner Nos. 2 & 3, which have entered into Power Purchase Agreements ('PPAs') dated 12.5.2016 with Respondent No.1, NTPC. On that basis, NTPC has entered into back-to-back Power Sale Agreement ('PSA') with Respondent No.3, Rajasthan Urja Vikas Nigam Limited ('RUVNL').

(b) The Commission in its several orders has held that the promulgation of GST Laws is Change in Law event under the PPAs and has directed the counterparties in such PPAs to make payment of Change in Law compensation for additional expenditure incurred due to enactment of GST Laws. Further, Ministry of New and Renewable Energy, vide its directives dated 12.3.2020 and dated 23.3.2022, has



also stated that as the Commission has already settled the principles for claiming Change in Law compensation for GST Laws, it is not necessary for each developer to individually approach the Commission to obtain similar order and the developers may settle their Change in Law claims with the counterparties to the PPAs.

(c) In terms of the above, the Petitioners had submitted its Change in Law claims to NTPC. On NTPC's demand, the Petitioners also furnished an undertaking that NTPC may deduct monies from the monthly generation bills in future in case any claims amounts remained un-reconciled till final settlement by the appropriate authority.

(d) Thereafter, NTPC carried out detailed reconciliation process and examined all claim documents submitted by the Petitioners and after satisfying itself of completeness and veracity of claim documents, released the Change in Law compensation of Rs. 5.43 crore for Project 1 and Rs. 11.20 crore for Project 2.

(e) However, subsequently, NTPC at RUVNL's behest, *inter alia*, demanded that the Petitioners is required to obtain a specific order from this Commission recognising GST Law as Change in Law event under the PPAs, failing which NTPC would deduct the GST compensation amount paid from the subsequent monthly tariff payments.

(f) The Petitioner through a series of letters and e-mails addressed and clarified all the queries and observations raised by NTPC and RUVNL in relation to Change in Law claim amounts. The Petitioners, relying upon the past orders of the Commission and MNRE directives, also clarified that NTPC and RUVNL's demand for a separate order from the Commission was unjustified.

(g) However, NTPC has proceeded to deduct an amount of Rs. 5.43 crore for Project 1 and Rs.6.04 crore for Project 2 from the monthly generation bills for April, 2022 on the ground that the Petitioners have failed to carry out reconciliation of claims with RUVNL. NTPC vide its email dated 2.6.2022 has also intimated the Petitioners of its intention to make further deductions of remaining GST compensation for Project 2 (approximately Rs.5.16 crore) from the monthly tariff payable for May, 2022.

(h) In the above circumstances, the Petitioners have also filed IA No. 37/IA/2022, *inter alia*, seeking direction to NTPC not to take any coercive steps against the Petitioners including to stop making any deductions from monthly tariff payable to the Petitioners under PPAs on account of Change in Law or otherwise during the pendency of the Petition.

3. Learned counsel for the Respondent, NTPC accepted the notice and sought time to file reply to the Petition. As regards the Petitioners' prayer for interim direction, learned counsel mainly submitted as under:

(a) The Petitioners have specifically given an undertaking to the effect that if the Discoms/RUVNL raises any dispute/discrepancy/observation in the GST reconciliation claim amount, NTPC and Solar Power Developer shall reconcile the claim with Discoms and in case of any subsequent final non-reconciliation, NTPC may deduct the relevant un-reconciled amount from the monthly generation bill until final settlement by an appropriate authority.

(b) NTPC, despite being an intermediary, had in a bonafide manner proceeded to make payment for Change in Law claims of the Petitioners even prior to the

receipt of payments from RUVNL. However, since the reconciliation with RUVNL could not be carried out in view of its demand for specific order of this Commission, NTPC had no other alternative but to proceed with deduction of amount from the monthly generation bills of the Petitioners.

(c) The Petitioners, NTPC and RUVNL were communicating since long in respect of the Petitioners Change in Law claims. As evident from the letter of RUVNL's dated 31.3.2022, initially the representatives of the Petitioners during visit to RUVNL's office on 23.2.2022 had agreed to approach this Commission for specific order in support of their claims as per provisions of the PPA/PSA but subsequently, they intimated that they do not require a separate approval from this Commission.

(d) NTPC, on basis of the e-mails received from RUVNL requiring specific order from the Commission, had repeatedly requested the Petitioners to take the necessary action. In this regard, various letters/e-mails issued by NTPC to the Petitioners were referred to.

(e) In having proceeded to make payment of Change in Law compensation to the Petitioner, NTPC ought not to be made liable to suffer on account of stand taken by the Discom/RUVNL.

4. After hearing the learned counsel for the Petitioners and the Respondent, NTPC, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition on the Respondents and the Respondents to file their reply within three weeks after serving copy of the same to the Petitioner, who may file its rejoinder within three weeks thereafter.

(c) The Respondent, NTPC is directed not to make any further deductions from the monthly tariff payable to the Petitioner under the PPAs towards Change in Law compensation already paid till the next date of hearing. Accordingly, IA No. 37/2022 is disposed of.

(d) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

5. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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