

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 206/MP/2021

Subject : Petition under Section 79(1)(a) of the Electricity Act, 2003 read with Article 12.1.1 of the PPA dated 25.10.2019.

Date of Hearing : 24.1.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : NTPC Limited (NTPL)

Respondents : Solar Energy Corporation of India Limited and 4 Ors.

Parties Present : Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K. Srivastava, Advcaote, NTPC
Ms. Mehak Verma, Advocate, NTPC
Shri R R Surana, Advocate, NTPC
Shri Anand K Ganesan, Advocate, Rajasthan Discoms
Ms. Swapna Seshadri, Advocate, Rajasthan Discoms
Shri Ashwin Ramanathan, Advocate, Rajasthan Discoms
Shri Ispaul Uppal, 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 seeking declaration that the imposition of safeguard duty by the Ministry of Finance vide its Notification dated 29.7.2020 ('SGD Notification') is a Change in Law event under Article 12 of the Power Purchase Agreement ('PPA') with effect from 30.7.2020 and that the Petitioner shall be entitled to recover additional cost incurred, if any, in terms of Article 12 of the PPA along with carrying cost. The learned counsel mainly submitted the following:

- (a) The issue involved in the Petition which requires consideration of this Commission is as to whether SGD Notification constitutes a Change in Law event under Article 12 of the PPA or not.
- (b) At the time of submission of bid i.e. on 4.6.2019, although there was imposition of SGD in terms of SGD Notification 2018, its scope was confined for a period of two years and provided the sunset date of 29.7.2020 for imposition of SGD. Accordingly, the Petitioner while placing its bid on 4.6.2019, did not factor the impact of SGD and planned the procurement of solar panels and cells after sunset date of 29.7.2020.
- (c) However, the Department of Revenue, Ministry of Finance vide SGD Notification imposed SGD for the further period of 12 months with effect from 30.7.2020, which has led to an increase in the contract price of its EPC contract for development of the solar project.

- (d) As regards compliance of the process prescribed in the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('the Change in Law Rules'), it is imperative that the Commission may first recognize the SGD Notification as Change in Law event under the PPA. Otherwise, SECI/ distribution licensees may refuse to make payment of Change in Law compensation.
- (e) In the event, the Commission decides to direct the Petitioner to follow the Change in Law Rules, the filing fees paid by the Petitioner be adjusted against the Petition to be filed by the Petitioner under the Change in Law Rules.
3. After hearing the learned counsel for the Petitioner, the Commission reserved the order on 'admissibility' of the matter.

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