

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 216/MP/2022

- Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 13.06.2020 executed between ABC Renewable Energy (RJ- 01) Pvt. Ltd. And NTPC Ltd. seeking declaration that change in rate of Goods and Services Tax from 5% to 12% w.e.f. 1.10.2021 on account of amendment to Notification Nos. 1/2017-Central Tax (Rate), 01/2017-Intergrated Tax (Rate) dated 28.06.2017 and Finance Department (Govt. of Rajasthan) Notification No. F.12(56)FD/Tax/2017-Pt-I-40 dated 29.6.2017 by way of Notification No. 8/2021-Central Tax (Rate), Notification No. 8/2021- Integrated Tax (Rate) dated 30.9.2021 and Finance Department (Govt. of Rajasthan) Notification No. F.12(1)FD/Tax/2021-60 dated 30.9.2021 as a 'change in law' event under Article 12 of the PPA and to further direct NTPC Ltd. to pay the compensation along with applicable carrying cost towards additional expenditure incurred on account of increase in rate of Goods and Services Tax and paid by the Petitioner, in order to restitute the Petitioner to the same economic position as it would have been prior to the Notifications dated 30.9.2021.
- Date of Hearing : 13.12.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : ABC Renewable Energy (RJ-01) Pvt. Ltd. (AREPL)
- Respondents : NTPC Limited (NTPC) and 2 Ors.
- Parties Present : Shri Sujit Ghosh, Advocate, AREPL
Shri Nishant Kumar, Advocate, AREPL
Shri Animesh Kumar, Advocate, AREPL
Shri Mohm Munis Siddique, AREPL
Shri Mridul Gupta, AREPL
Shri Adarsh Tripathi, Advocate, NTPC
Shri Vikram Singh, Advocate, NTPC
Shri Ajitesh Garg, Advocate, NTPC
Shri Nitin Gaur, Advocate, MPPMCL

Record of Proceedings

The learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking a declaration that change/increase in rate of the Goods and Service Tax (GST) from 5% to 12% w.e.f. 1.10.2021 on account of amendment

to the Notification Nos. 1/2017-Central Tax (Rate), 1/2017-Integrated Tax (Rate) dated 28.6.2017 and Finance Department (Govt. of Rajasthan) Notification No. F.12(56)FD /Tax/2017-Pt-I-40 dated 29.6.2017 by way of Notification No.8/2021-Central Tax (Rate), Notification No. 8/2021- Integrated Tax (Rate) dated 30.9.2021 and Finance Department (Govt. of Rajasthan) Notification No.F.12(1)FD/Tax/2021-60 dated 30.9.2021 as Change in Law event under Article 12 of the Power purchase Agreement dated 13.6.2020 read with Supplementary Power Purchase Agreement dated 5.5.2021 entered into between the Petitioner and NTPC and further direction to NTPC to pay the compensation along with applicable carrying cost towards the additional expenditure incurred by the Petitioner on account of the aforesaid Change in Law event.

2. The learned counsel further submitted that increase in the rate of GST by way of the aforesaid Notifications dated 30.9.2021, after the cut-off date i.e.30.9.2019, has led to increase in the Project cost to tune of approximately Rs. 83.43 crore. The learned counsel further submitted that the Petitioner has also prayed for direction to the Respondent to pay the aforesaid amount as one time compensation and alternative on annuity method by considering the discounting factor at SBI MCRL one year interest rate + 200 bps. The learned counsel further added that the Petitioner has prayed for carrying cost and said issue is now covered by the judgment of Appellate Tribunal for Electricity dated 15.9.2022 in the case of Paramapuja Solar Energy Pvt. Ltd. and Anr. v. CERC & Ors. The learned counsel, however, fairly stated that the said judgment is under challenge before the Hon'ble Supreme Court and Hon'ble Supreme Court vide its interim order has directed to implement the direction of the APTEL subject to outcome of the decision of Hon'ble Supreme court in the matter. The learned counsel further requested that NTPC ought to be directed to at least start the reconciliation process with regard to the Petitioner's Change in Law claims.

3. Learned counsel for the Respondent, NTPC submitted that NTPC has already filed its reply in the matter. The learned counsel submitted that the Respondent is only an intermediary/facilitator between the Petitioner and the Respondent Nos. 2 & 3, distribution licensees for the purpose of sale of electricity. The learned counsel submitted that in terms of the contractual arrangement between the parties, any liability arising out of Change in Law has to be passed on to these ultimate beneficiaries and therefore, while passing the order, the Commission may also specify the timeline for Respondent Nos. 2 & 3 to make such payments to NTPC.

4. Learned counsel for the Respondent No.3, MPPMCL sought additional time to file reply to the Petition.

5. After hearing the learned counsels for the parties, the Commission directed as under:

(a) Parties to carry out the reconciliation process with regard to the Petitioner's Change in Law claims;

(b) Respondent No. 3 to file its reply, if any, within a week with copy to the Petitioner, who may file its rejoinder thereof, within a week thereafter.

(c) The parties to file written submissions within two weeks with copy to other side.

6. Subject to the above, the matter was reserved for order.

By order of the Commission

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