

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 514/MP/2020

Subject : Petition under Sections 63 and 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 seeking reliefs due to the occurrence of certain Force Majeure and Change in Law events under the Transmission Service Agreement dated 6.8.2009.

Petitioner : East-North Interconnection Company Limited (ENICL)

Respondents : Jodhpur Vidyut Vitran Nigam Limited and 18 Ors.

Petition No. 49/MP/2021

Subject : Petition under Sections 61, 63 and 79(1)(f) of the Electricity Act, 2003 read with the statutory framework and the Transmission Service Agreement dated 2.1.2014 executed between NRSS-XXIX Transmission Limited and its Long-Term Transmission Customers *inter alia* for seeking relief for certain Change in Law events that have impacted the Project and reimbursement of additional expenditure incurred towards necessary use of helicrane for implementation of the Project.

Petitioner : NRSS-XXIX Transmission Limited (NRSS XXIX)

Respondents : Uttar Pradesh Power Corporation Limited (UPPCL) and 25 Ors.

Date of Hearing : 11.1.2022

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

Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, ENICL & NRSS XXIX
Shri Deep Rao Palepu, Advocate, ENICL & NRSS XXIX
Ms. Harneet Kaur, Advocate, ENICL & NRSS XXIX
Ms. Parichita Chowdhury, Advocate, ENICL & NRSS XXIX
Shri Balaji Sivan, ENICL & NRSS XXIX
Shri TAN Reddy, ENICL & NRSS XXIX
Shri Gaurav Kumar, ENICL & NRSS XXIX
Shri Harshit Gupta, ENICL & NRSS XXIX

Record of Proceedings

Orders were reserved in the matters. However, consequent upon issuance of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') by the Ministry of Power, Government of India requiring a change in procedure dealing with the Change in Law cases, the matters are re-listed.

2. During the course of hearing, the learned senior counsel for the Petitioners mainly submitted the following:

(a) In view of the recent orders passed by this Commission on the basis of the Change in Law Rules, the Petitioners have filed Original Petitions bearing DFR Nos. 6 and 7 of 2022 along with IA Nos. 19 of 2020 and 21 of 2022 before the Appellate Tribunal for Electricity ('APTEL') under Section 121 of the Electricity Act, 2003 ('the Act'), whereby the Petitioners have, *inter alia*, prayed for directions to the Commission to decide the Change in Law Petitions filed prior to 22.10.2021 and to pass the final orders on merits in Petition No. 514/MP/2020 and Petition No. 49/MP/2021.

(b) APTEL vide order dated 7.1.2022 has issued directions to this Commission to keep in mind the submissions made in the aforesaid Original Petitions while dealing with the present Petitions and that the orders, if any, passed during the interregnum will be subject to the further direction of the APTEL. The IAs are listed for hearing before APTEL on 21.1.2020.

(c) The Change in Law Rules could not operate as a bar on this Commission's powers under Section 79 of the Act to grant declaratory relief to the Petitioners. The Change in Law Rules can only supplement the powers vested to the Commission under Section 79 of the Act and not supplant it. They cannot be a precursor to exercise the powers under the Section 79 of the Act.

(d) The right to approach the Commission as the appropriate forum for declaratory relief instead of waiting to follow the process under the Change in Law Rules is a substantive right, which cannot be divested retrospectively that too by the Change in Law Rules, which are creature of the parent statute i.e., the Act. By postponing the Petitioners' ability to claim declaratory relief, the Petitioners are being deprived of a substantive right, which can never be done retrospectively. Reliance was placed on the decisions of Hon'ble Supreme Court in the cases of SEBI v. Classic Credit Ltd. [(2018) 13 SCC 1], Rajender Bansal and Ors. v. Bhuru & Ors. [(2017) 4 SCC 202] Videocon Int. Ltd. v. SEBI, [(2015) 4 SCC 33], and CIT v. Dhadi Sahu, [Supp (1) SCC 257].

(e) The Petitions were reserved for orders prior to the Notification of the Change in Law Rules and ought not to be reopened on grounds of notification of the Change in Law Rules.

(f) In both the Petitions, it is necessary for the Commission to decide the Change in Law claims on merits as there is no precedent on whether the events claimed would qualify for Change in Law relief. Further, in Petition No. 49/MP/2021, UPPCL being the lead LTTC had already filed detailed reply refuting the Change in Law claims of the Petitioner and had rejected any liability to pay Change in Law compensation.

(g) Alternatively, the Commission may defer the decision in the Petitions while the Petitioners make representation to LTTCs under the Change in Law Rules. In case, they confirm the Change in Law claims of the Petitioners, the Commission may pass an appropriate order under Rule 3(8) of the Change in Law Rules. However, in case the claims are disputed, the Commission may proceed to pass an order on the merits as the matters have already been argued on merits.

3. The learned counsel for the Petitioner, NRSS XXIX also sought liberty to file to place on record the arguments made in the matter by way of an additional affidavit, which was allowed by the Commission. The Commission directed the Petitioner, NRSS XXIX to file its additional affidavit within two days.

4. Subject to the above, the Commission reserved the matters for order.

By order of the Commission

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