

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 543/MP/2020

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 9.8.2016 executed between the Petitioner and NTPC for seeking approval of Change in Law event due to enactment of Telangana Tax on Entry of Goods into Local Areas Act, 2001 read with judgment dated 11.11.2016 titled 'Jindal Stainless Limited and Anr. v. State of Haryana & Ors. and Batch (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 2.1.2020 issued by Commercial Taxes Department, Government of Telangana and Assessment Order dated 11.2.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court order dated 4.3.2020.

Date of Hearing : 24.1.2022

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

Petitioner : ACME Yamunanagar Solar Power Private Limited (AYSPPL)

Respondents : NTPC Limited (NTPC) and 2 Ors.

Parties Present : Shri Sanjay Sen, Sr. Advocate, AYSPPPL
Shri Shreshth Sharma, Advocate, AYSPPPL
Shri Utkarsh Singh, Advocate, AYSPPPL
Shri Venkatesh, Advocate, NTPC
Shri Siddharth Joshi, Advocate, NTPC
Ms. Simran Saluja, Advocate, NTPC
Shri Ispaul Uppal, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking declaration that imposition of entry tax for entry of goods in the State of Telangana through Telangana Tax on Energy of Goods into Local Area Act, 2001 read with judgment dated 11.11.2016 titled '*Jindal Stainless Limited & anr. v. State of Haryana & Ors. and batch*' (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 2.1.2020 issued by Commercial Taxes Department, Government of Telangana and Assessment order dated 11.2.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court order dated 4.3.2020 constitutes Change in Law event in terms of Article 12 of the Power Purchase Agreement and requested for consequent reimbursement for corresponding increase in the project cost. Learned senior counsel for the Petitioner further submitted that the Electricity

(Timely Recovery of Costs due to Change in Law) Rules, 2021 ('the Change in Law Rules') have no application where the other party to the agreement has already disputed/ contested the Change in Law event. In the present case, the Respondent having already disputed the Change in Law claim of the Petitioner in the reply filed on the affidavit, the Change in Law Rules ought not be applied as they would not serve any purpose. Learned senior counsel submitted that in any case, the Respondent would not be in position to take any view other than the one taken in its reply filed on an affidavit.

3. Learned counsel for the Respondent, NTPC submitted that in the present case, the Petitioner itself has contested the levy of entry tax by way of Writ Petition No. 4894 of 2020 before the Hon'ble High Court of Telangana, wherein the Hon'ble High Court has granted stay of the operation of the final assessment order dated 11.2.2020 passed by the Commercial Tax Officer, subject to making part deposit (i.e. 25%). Learned counsel submitted that as on date, the imposition of the entry tax by the Commercial Tax Officer on the Petitioner is pending adjudication before the Hon'ble High Court of Telangana and if the Hon'ble High Court takes a view that the entry tax imposed upon the Petitioner is bad and inoperative, then the Petitioner's claim for Change in Law compensation would be rendered meaningless. Therefore, the present Petition is pre-mature and may be disposed of with liberty to the Petitioner to approach the Commission after the Writ Petition is decided.

4. In rebuttal, learned senior counsel for the Petitioner submitted that as on the date of submission of bid (i.e. 8.2.2016), there was no valid law levying entry tax as levy of entry tax under the AP Entry Tax Act was declared unconstitutional by the Hon'ble High Court of Andhra Pradesh by its order dated 31.12.2007 in WP No. 61 of 2002 in the matter of Sre Rayalseem Alkalies and Allied Chemicals Ltd. v. State of AP and Ors. It was only on 11.1.2016 that the Hon'ble Supreme Court in *Jindal Stainless Ltd. & Anr. v. State of Haryana & Ors. and batch matters* upheld the validity of entry tax. Learned senior counsel submitted that even the Telangana Adaptation of Law Orders, 2016, whereby the laws of erstwhile State of Andhra Pradesh prevailing as on the appointed date were adopted by the State of Telangana, came to be notified only on 1.6.2020 i.e. after the date of submission of bid and that as on appointed date (2.6.2014), the AP entry tax was already declared unconstitutional. Learned senior counsel submitted that as on date, it cannot be disputed that the Assessing Authority, Commercial Tax Department, Government of Telangana has issued Notice of Assessment dated 2.1.2020 and Assessment order dated 11.2.2020 to the Petitioner claiming payment of entry tax and that the Petitioner has paid 25% of such amount as per the direction of the Hon'ble High Court. In the event, the Petitioner succeeds in the proceedings before the Hon'ble High Court, the benefits of the same will also occur to the Respondents. Learned senior counsel further submitted that apart from the pendency of Writ Petition, NTPC has also disputed claim of the Petitioner on the ground that the Petitioner ought to have factored the entry tax at the time of submission of bid as the vires of Telangana entry tax was not pending for consideration before the Hon'ble Supreme Court and the Telangana Entry Tax Act was not quashed by the Hon'ble High Court of Telangana. However, the said contention, according to the Petitioner, is misplaced.

5. Based on the request of the learned senior counsel for the Petitioner and the learned counsel for the Respondent, NTPC, the Commission permitted the parties to file their brief note of submissions within a week with copy to other side.

6. Subject to the above, the Commission reserved the order in the matter.

By order of the Commission

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