



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.206/MP/2021

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 15th of February, 2022

IN THE MATTER OF:

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

AND IN THE MATTER OF:

NTPC Ltd.

NTPC Bhawan Core-7, Scope Complex
7, Institutional Area, Lodhi Road
New Delhi – 110003

.... Petitioner

Versus

- Solar Energy Corporation of India Ltd.**
Office Block Tower-2, East Kidwai Nagar,
New Delhi-110023
- Jaipur Vidyut Vitran Nigam Ltd.**
Janpath, Vidhayak Nagar,
Lalkothi, Jaipur, Rajasthan
302005
- Ajmer Vidyut Vitran Nigam Ltd.**
Makarwali Rd, Panchsheel Nagar,

Ajmer, Rajasthan 305004

4. Jodhpur Vidyut Vitran Nigam Ltd.

Gali Number 4, Opp. E.S.I. Hospital,
Kamla Nehru Nagar, 1st Pulia,
Jodhpur, Rajasthan 342001

5. Rajasthan Urja Vikas Nigam Ltd.

Vidyut Bhawan, Janpath,
Jyoti Nagar, Jaipur,
Rajasthan- 302005

... Respondents

Parties Present:

Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K. Srivastava, Advocate, 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

आदेश/ ORDER

The Petitioner, NTPC Ltd. (NTPC) is a Central Government 'Generating Company' and is developing a 160 MW Solar PV Project in the State of Rajasthan. The Petitioner has filed the Petition under Section 79 (1) (a) of the Electricity Act, 2003 read with Article 12.1.1 of the PPA dated 25.10.2019, for a declaration that the imposition of safeguard duty by the Ministry of Finance vide its Safeguard Notification dated 29.07.2020 (SGD Notification) is a 'change in law' event under Article 12 of the PPA with effect from 30.07.2020 and that it shall be entitled to recover the additional cost incurred along with carrying cost. The Petitioner is also seeking '*Regulatory Certainty*' over the Change in Law expenditure since the expenditure is substantial in nature.

2. The Respondent No. 1, Solar Energy Corporation of India (SECI) is a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for implementation of

MNRE schemes for developing grid connected solar power capacity through Viability Gap Funding mode in India. SECI under the Guidelines has also been designated as an Intermediary Procurer.

3. The Respondent Nos. 2 to 4, are Distribution Licensees within the meaning of Section 2 (17) of the Electricity Act, 2003 and are operating in the State of Rajasthan and also the intended beneficiaries of the instant Project.
4. The Respondent No. 5, Rajasthan Urja Vikas Nigam Limited (RUVNL) has been constituted to carry out power trading business for the three distribution licensees within the State of Rajasthan.
5. The Petitioner has made the following prayers:

- a) Admit and allow the present Petition;*
- b) Hold and declare that the imposition of safeguard duty by the Ministry of Finance vide its SGD Notification dated 29.07.2020 as a 'change in law' event under Article 12 of the PPA with effect from 30.07.2020;*
- c) Hold and declare that the Petitioner shall be entitled to recover the additional cost incurred, if any, in terms of the Article 12 of the PPA along with carrying cost;*
- d) Grant liberty to the Petitioner to file a separate Petition subsequently and approach this Hon'ble Commission for seeking reimbursement of the cost incurred along with carrying cost due to the imposition of safeguard duty on account of SGD Notification 2020 and restore the Petitioner to the same economic position as if such 'change in law' event had not occurred; and*
- e) Pass any such further order(s) or direction(s) as deemed fit and proper in the facts and circumstances of the present case.*

6. The case was called out for virtual hearing on 24.01.2022. During the course of hearing, the Learned counsel for the Petitioner submitted that 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. At the time of submission of bid i.e. on 04.06.2019, although there was imposition of SGD in terms of SGD Notification 2018, its scope was confined to a period of two years and provided a sunset date of 29.07.2020 for imposition of SGD. Accordingly, the Petitioner while placing its bid on 04.06.2019, did not

factor the impact of SGD and planned the procurement of solar panels and cells after sunset date of 29.07.2020. However, the Department of Revenue, Ministry of Finance vide SGD Notification imposed SGD for a further period of 12 months with effect from 30.07.2020, which has led to an increase in the contract price of its EPC contract for development of the solar project. As regards compliance of the process prescribed in the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “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. 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.

7. The Commission observes that Article 12 of the Power Purchase Agreement dated 25.10.2019 stipulates as under:

“12.1 Definitions

In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including

- (i) the enactment of any new law; or*
- (ii) an amendment, modification or repeal of an existing law; or*
- (iii) the requirement to obtain a new consent, permit or license; or*
- (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Solar Power Generator; or*
- (v) any change in the rates of any Taxes including any duties and cess or Introduction of any new tax made applicable for setting up the Solar power project and supply of power from the Solar Power project by the SPD Which have a direct effect on the Project.*

However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (iii) any change on account of regulatory measures by the Appropriate Commission

In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission. In the

event of any decrease in the recurring/ nonrecurring expenditure by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the SPD.

12.2 Relief for Change in Law

12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”

8. The Commission further observes that the Ministry of Power, Government of India has notified on 22.10.2021 the Change in Law Rules, the relevant provisions of which are extracted as under:

*“2(c) “change in law”, in relation to tariff, **unless otherwise defined in the agreement**, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —*

(i) -----

(ii) -----

(iii) -----

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

9. The Commission observes that the Petitioner has submitted that *‘it is imperative that the Commission may first recognize the SGD Notification as Change in Law event under the PPA’*. We observe that the definition of change in law in Article 12.1 of the PPA as stated above is very explicit and Article 12.2.1 of the PPAs stipulates that the aggrieved Party shall approach the Commission for seeking approval of Change in Law. Further, as per Change in Law Rules, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioners, and other parties, in the present case the Respondents/procurers, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. The Commission observes that the Petitioner has neither approached the respondents to settle Change in Law claims in accordance with Change in Law Rules nor is before us for adjudication of any dispute within the meaning of

Section 79(f) of the Electricity Act, 2003.

10. Therefore, the Commission holds that the Petitioner may approach the Respondents/ procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the said Rules.
11. The filing fees deposited by the Petitioner in respect of the present Petitions shall be adjusted against the Petitions to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.
12. Accordingly, the Petition No. 206/MP/2021 is disposed of in terms of the above discussions and findings.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य