

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 163/MP/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreements executed by the Petitioners and NTPC Limited dated 12.5.2016, *inter alia*, seeking relief on account of Change in Law viz. the introduction of Goods and Service Tax laws and seeking refund of amounts wrongfully sought to be deducted from the monthly tariff payable to the Petitioners putatively in lieu of Change in Law compensation paid earlier.
- Date of Hearing : 14.3.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : Rising Sun Energy Private Limited (RSEPL) and 2 Ors.
- Respondents : NTPC Limited (NTPC) and 2 Ors.
- Parties Present : Shri Jafar Alam, Advocate, RSEPL
Shri Saahil Kaul, Advocate, RSEPL
Shri B. S. Danona, RSEPL
Ms. Shraddha Deshmukh, Advocate, RUVNL
Shri Adarsh Tripathi, Advocate, NTPC
Shri Vikram S Baid, Advocate, NTPC

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking relief on account of Change in Law viz. introduction of the Goods and Service Tax Laws and seeking refund of the amounts wrongfully sought to be deducted from the monthly tariff payable to the Petitioners putatively in lieu of Change in Law compensation paid earlier. Learned counsel further submitted as under:

- (a) Keeping in view that this Commission in several orders had already held the promulgation of GST Laws as Change in Law event under the PPA and the directives of Ministry of New & Renewable Energy dated 12.3.2020 and 23.2.2020 which provided that it was not necessary for each developer to individually approach the Commission to obtain similar order and the developer may settle their Change in Law claims with counted parties, the Petitioners herein had submitted its Change in Law claims to NTPC.
- (b) It was only after carrying out the detailed reconciliation and examining the documents submitted by the Petitioner, NTPC had released the Change in Law compensation to the tune of Rs.16.63 crore (Rs.5.43 crore for Project 1 and Rs. 11.20 core for Project 2).

(c) Despite the Petitioner having furnished all the requisite and available details/ information in support of its claims, NTPC at RUVNL's behest continued to demanding the specific order of the Commission recognizing GST Law a Change in Law under the PPAs and consequently, proceeded to deduct the amount of Rs. 11.47 crore from the monthly generation bills of the Petitioners' Projects on the ground that the Petitioners failed to carry out reconciliation of claims with RUVNL. Presently, as per the directions of the Commission vide Record of Proceedings for the hearing dated 24.6.2022, NTPC is restrained from making the further deductions from the monthly tariff payable to the Petitioners.

(d) NTPC's reliance on the undertaking dated 11.6.2021 given by the Petitioner in making the deductions from the monthly bills of the Petitioners is misplaced. NTPC cannot ignore the express provisions of the PPAs by relying on such undertaking.

(e) Based on the various correspondence/e-mails exchanged between the Petitioner and NTPC, it is apparent that only documents the Petitioners failed to provide in relation to their GST claims are GSTR 1 & 3B forms. However, these forms do not pertain to the Petitioners (Purchasers) but pertain to the supplier of modules. The Petitioners can only submit GSTR 2A form which is an automatic return generated for a taxpayer once the supplier of goods uploads its GSTR 1 on the GST portal submitting the details of the tax paid against the supply made by it. It is sufficient proof that the purchaser of the relevant goods has indeed made payment of GST for such supplies.

2. Learned counsel for the Respondent, NTPC submitted that despite the entire arrangement of generation and supply of power under the PPAs and PSA being on back-to-back basis, NTPC proceeded to make the payment of the Petitioners' Change in Law claims on bona fide manner basis the undertaking furnished by the Petitioners that if the Discoms (RUVNL) – being the ultimately beneficiary – raises any dispute/discrepancy/observation in the GST claim amount reconciliation, the Petitioner and NTPC shall reconcile the claim with Discoms and in case, there is any subsequent final non-reconciliation, NTPC may deduct the relevant un-reconciled claim amount from the monthly generation bill until final settlement by an appropriate authority. Learned counsel submitted that NTPC had made several efforts towards reconciliation of the Petitioners' Change in Law claims including by conducting the joint meeting with the Petitioners and RUVNL. However, despite the repeated requests, the Petitioners herein failed to provide the several documents as required by the Respondent No.3. Learned counsel clarified that the aforesaid request from Respondent No.3 was not limited to seeking specific order of this Commission recognizing GST Laws as Change in Law but also included several requisite documents as indicated in its various letters/emails including the letter dated 31.3.2022.

3. Learned counsel for the Respondent No. 3 sought liberty to file her Vakalatnama and prayed for short adjournment to file its reply in the matter indicating the non-submission of the requisite documents by the Petitioners in support of its Change in Law compensation claims. Learned counsel pointed out the Respondent's letter dated 31.3.2022 and submitted that the Respondent had asked the Petitioners/NTPC to provide the details as to lorry receipts of all material showing the receipt date, material supply agreement & service agreement, relevant GSTR 1

and 3B of its supplier, details of capacity-wise number of modules in respect of invoices raised by its supplier, etc., which are yet to be furnished.

4. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Respondent No.3 to file its reply & Vakalatnama within two weeks with copy to the Petitioners, who may file i their rejoinder within two weeks thereafter. The Petitioners were directed to clearly indicate in their rejoinder as to what details/information as sought for by the Respondents, are available and furnished by them. Based on the request of the learned counsel, the Commission permitted the Respondent, NTPC to file its additional affidavit within two weeks. The Commission also clarified that the interim directions issued vide Record of Proceedings for the hearing dated 24.6.2022 shall continue till the next date of hearing.

5. The Petition shall be listed for hearing on 20.4.2023.

By order of the Commission

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