

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.262/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 Agreement dated 30.3.2021 executed by the Petitioner and NTPC Limited, seeking relief on account of Changes in Law increasing the rate of Goods and Services Tax and imposing Basic Customs Duty.
- Date of Hearing : **10.10.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Rising Sun Energy (K) Private Limited (RSEKPL)
- Respondents : NTPC Limited (NTPC) and Anr.
- Parties Present : Shri Jafar Alam, Advocate, RSEKPL  
Shri Ashwin Ramanathan, Advocate, RSEKPL  
Shri Saahil Kaul, Advocate, RSEKPL  
Shri B. S. Dandona, RSEKPL  
Shri Arun Midha, RSEKPL  
Shri Basava Prabhu Patil, Sr. Advocate, CSPDCL  
Shri Akshat Shrivastava, Advocate, CSPDCL  
Shri Geet Ranjan Ahuja, Advocate, CSPDCL  
Shri Samarth Kashyap, Advocate, CSPDCL  
Shri Adarsh Tripathi, Advocate, NTPC  
Shri Ajitesh Garg, Advocate, NTPC

**Record of Proceedings**

At the outset, learned counsel for the Petitioner submitted that, pursuant to the direction of the Commission, the parties have already reconciled the Petitioner's Change in Law claims towards Basic Customs Duty (BCD) and incremental GST and have also filed a reconciliation statement in this regard. Learned counsel, however, pointed out that the incremental GST claim amount indicated in the said statement is provisional, and the final incremental GST claim amount will be intimated after the Commercial Operation of the Project.

2. Learned counsel of the Respondent, NTPC also confirmed that the reconciliation exercise in relation to the Petitioner's Change in Law claims is already complete. Learned counsel, however, pointed out that the Petitioner's Project has yet to achieve commercial operation.

3. Learned senior counsel for the Respondent, CSPDCL, mainly submitted as under:

- (a) Office Memorandum (OM) imposing the BCD on solar PV cells and modules/panels w.e.f. 1.4.2022 was issued on 9.3.2021 i.e. prior to the signing



of the PPA between the Petitioner and NTPC on 30.3.2021. Moreover, originally, the Scheduled Commissioning Date (SCD) of the Project, as per the PPA, was 31.3.2022 and thus, the Petitioner could have ensured that the Solar PV cells and modules/panels were procured before the levy of BCD w.e.f. 1.4.2022.

(b) The SCD of the Project was later revised by NTPC to 21.10.2022 on the grounds of a delay in the adoption of the tariff. However, no detail on this aspect, including the reason for the delay has been furnished. Moreover, it has been indicated that such an extension was on a provisional basis, and the final status thereof is also not clear. CSPDCL cannot be held liable for any delay on the part of NTPC in getting the tariff adopted, which led to the additional expenditure for the Project due to the imposition of BCD.

(c) The Petitioner in its rejoinder, has questioned the privity of the contract between CSPDCL and the Petitioner and stated that the Petitioner's rights and obligations under the PPA are in relation to NTPC alone. If that is the case, the Commission may not pass any direction against CSPDCL in the present case and let NTPC approach the Commission separately to claim any relief/compensation against CSPDCL.

(d) In any case, the Petitioner's Project is yet to achieve commercial operation, and no Change in Law relief can flow to it at this juncture.

4. In response, learned counsel for the Petitioner submitted that the Petitioner's Project has been ready since October 2022. However, it could not achieve commercial operation as the necessary transmission infrastructure for evacuation of power within the Nokh Solar Power Park required to be developed by the Solar Power Park Developer, Rajasthan Solar Park Development Co. Ltd. was not ready. Learned counsel pointed out that such infrastructure is now ready and is likely to be energized by 15.10.2023 and consequently, its Project is likely to be commissioned on 18.10.2023. Learned counsel added that the only relevant date for determining the Petitioner's entitlement to Change in Law claims is the bid cut-off date, which in the present case was 9.2.2021 i.e. prior to BCD OM dated 9.3.2021. Learned counsel stated that the aspects relating to the extension of the Commissioning Date of the Project may not be of much relevance in the present case, as this Commission as well as APTEL have already held that the generator is entitled to Change in Law relief in relation to the expenditure incurred on account thereof even after the SCD.

5. Learned counsel for the Respondent, NTPC, submitted that certain submissions/objections relating to the delay in the adoption of tariffs and consequent extension of the SCD of the Project have been raised by the Respondent, CSPDCL, only vide its reply filed in September 2023, and NTPC may be permitted to file its brief affidavit on the above aspect.

6. Considering the above, the Commission permitted the Respondent, NTPC, to file its affidavit, as above, within two weeks. Also, keeping in view the concerns of the Respondents regarding the Project of the Petitioner being yet to achieve commissioning and, at the same time, the Petitioner having indicated that the Project is likely to achieve the commissioning within this month itself, the Commission deemed it proper to list the matter after such development and accordingly permitted the Petitioner to mention the matter after commissioning of its Project.

7. The Petition will be listed for hearing, after mentioning the commissioning of its Project and the Petitioner having brought on record the details relating to the commissioning.

**By order of the Commission**

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