



नई दिल्ली
NEW DELHI

याचिकासंख्या./ Petition No. 273/MP/2021

कोरम/ Coram:

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

आदेश दिनांक/ Date of Order: 18th of February, 2022

IN THE MATTER OF:

Petition under section 79 (1) (a) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 21.12.2018 executed between NTPC Ltd. and Uttar Pradesh Power Corporation Limited, seeking compensation due to increase in costs on account of change in rate of Goods & Services Tax amounting to a Change in Law event with respect to the Solar PV Power Project having project capacity of 140 MW at Bilhaur, Uttar Pradesh.

AND IN THE MATTER OF:

NTPC Ltd.

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

.....Petitioner

Versus

Uttar Pradesh Power Corporation Limited

Shakti Bhawan,
14 – Ashok Marg
Lucknow – 226001

...Respondent

Parties present: Shri Adarsh Tripathi, Advocate, NTPC
Shri Ajitesh Garg, Advocate, NTPC
Shri Vikram Singh Baid, Advocate, NTPC

आदेश/ ORDER

The Petitioner, NTPC Ltd. (NTPC) is a Central Government generating company and is developing a 140 MW Solar PV Power Project at Bilhaur, Uttar Pradesh. The Petitioner has filed the Petition under section 79 (1) (a) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 21.12.2018 executed between NTPC Ltd. and Uttar Pradesh Power Corporation Limited, seeking compensation due to increase in costs on account of change in rate of Goods & Services Tax amounting to a Change in Law event.

2. The Respondent, Uttar Pradesh Power Corporation Limited is responsible for electricity transmission and distribution within the State of Uttar Pradesh.
3. The Petitioner has made the following Prayers:
 - a. *Hold and declare that the change in rate of GST applicable to Supply and Service Contracts pursuant to the Notifications mentioned hereinabove, for setting up of Petitioner's solar power plants, amounts to Change in Law events under the PPA;*
 - b. *Hold and declare that the Petitioner is entitled to a sum of Rs. 14,32,93,612/- (Fourteen Crore Thirty Two Lakhs Ninety Three 27 Thousand Six Hundred and Twelve) upwards on total cost of project along with the carrying cost (interest@ 12%) from the date the aforesaid amount becomes payable till the actual date of payment, towards compensation for such Change in Law events to the Petitioner.*
 - c. *Direct RESPONDENT to make payment of the sum of Rs. 14,32,93,612/ (Fourteen Crore Thirty Two Lakhs Ninety Three Thousand Six Hundred and Twelve) upwards on total cost of project along with the carrying cost (interest @ 12%) from the date the aforesaid amount becomes payable till the actual date of payment, towards compensation for such Change in Law events to the Petitioner; and*
 - d. *Pass any such other and further reliefs as this Hon 'ble Commission deems just and*

proper in the nature and circumstances of the present case.

4. On 27.07.2018, Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA) floated Request for Proposal (RfP) from interested bidders for procurement of power from grid connected Solar PV Projects through Tariff based competitive bidding process for a total of 500 MW on the basis of international competitive bidding process. The Petitioner submitted its response to the RfP and uploaded on TCIL portal for procurement of 500 MW Power from Grid connected solar PV Power Project. UPNEDA accepted the bid submitted by the Petitioner and issued a Letter of Intent (LOI) dated 22.11.2018, thereby allotting the project, having capacity of 140 MW with an applicable tariff of Rs. 3.17/kWh. The PPA was executed on 21.12.2018 between the Petitioner and the Respondent for sale of Solar Photovoltaic Power by the Petitioner to the Respondent for a period of 25 years from the Solar PV Power Project having project capacity of 140 MW at Bilhaur, Uttar Pradesh. The Scheduled Commissioning date was 21 months from the effective date of the PPA i.e. 21.12.2018.
5. 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 it has already issued Change in Law notice to the distribution licensee, namely UPPCL on 04.05.2020 with all the relevant details relating to Change in Law event, its implications and computation of compensation, etc. The said notice also fulfills all the requirements of notice as envisaged in *the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* (hereinafter referred to as “the Change in Law Rules”). However, no reply has been received from UPPCL till date. Accordingly, notice may be issued to the Respondent, UPPCL to clarify its position regarding the aforesaid Change in Law event. The present Petition is squarely covered by the judgment of Appellate Tribunal for Electricity dated 20.9.2021 in Appeal No. 215 of 2021 in the matter of *Tata Power Renewable Energy Ltd. v. MERC and Ors.* However, if the Commission decides to direct the Petitioner to comply with the Change in Law Rules, the filing fees paid by the Petitioner may be adjusted against the Petition to be filed by the Petitioner in future in terms of the Change in Law Rules.
6. The Commission observes that the Ministry of Power, Government of India has notified on 20.10.2021 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.”

7. The Commission further observes that as per the above quoted provisions, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioner, 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.
8. In view of the above, 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.
9. The filing fees deposited by the Petitioner in respect of the present Petition shall be adjusted against the Petition to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.
10. Accordingly, Petition No. 273/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