

**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 : **12.1.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

Petitioner : Rising Sun Energy (K) Private Limited (RSEKPL).

Respondent : NTPC Limited and Anr.

Parties Present : Shri Jafar Alam, Advocate, RSEKPL  
Shri Ashwin Ramanathan, Advocate, RSEKPL  
Shri B. S. Dandona, RSEKPL  
Shri A. S. Midha, RSEKPL  
Shri Basava Prabhu Patil, Sr. Advocate, CSPDCL  
Shri Akshat Shrivastava, Advocate, CSPDCL  
Shri Geet Ranjan Ahuja, Advocate, CSPDCL  
Shri Gopal Jain, Sr. Advocate, NTPC  
Shri Adarsh Tripathi, Advocate, NTPC  
Shri Ajitesh Garg, Advocate, NTPC

**Record of Proceedings**

The matter was reserved for order by the Record of Proceedings for the hearing dated 13.12.2023. However, keeping in view of the specific request of learned senior counsel for Respondent No.1, NTPC, for an opportunity for a brief oral hearing as inadvertently no one could remain present on behalf of Respondent No.1, NTPC on that day, the matter was re-listed for the hearing.

2. During the course of the hearing, the learned senior counsel for Respondent No.1, NTPC, referred to the clauses of the Power Supply Agreement (PSA) dated 1.9.2021 and submitted that NTPC was appointed as an agency/facilitator/intermediary between the Petitioner and Respondent No.2, Chhattisgarh State Power Distribution Company Limited (CSPDCL) and it was only bridging the gap within the said transaction. Learned Senior counsel further submitted that the principle transaction

being back-to-back, if the Petitioner is compensated for any amount due to the Change in Law on account of the promulgation of Goods & Services Tax Laws (GST Laws) as well as Basic Custom Duty (BCD), then the same it to be borne by or passed on to the ultimate beneficiary i.e. CSPDCL. Learned senior counsel further submitted that the provisions of the PSA clearly stipulate that the CSPDCL shall pay all the dues of the NTPC on a back-to-back basis, and CSPDCL is bound by the terms of the PSA independent of the terms agreed between the Petitioner and NTPC under the PPA. Learned senior counsel further submitted that not only this Commission has recognised the above principle in a catena of its decisions, but the APTEL has also recognised the said principle in its judgment in the Appeal No. 256 of 2019 and batch [Parampujya Case], and therefore, the ultimate liability must reach the doors of end beneficiary i.e. CSPDCL. Learned senior counsel further submitted that although payment directed to be paid to the Petitioner cannot be contingent upon the payment made by CSPDCL to NTPC, CSPDCL has to be bound on a back to back basis with a strict time frame.

3. In response, the learned counsel for the Petitioner submitted that the Petitioner has no privity of contract with Respondent No.2, CSPDCL and in terms of Article 14.5.1 of the PPA dated 30.3.2021, signed between the Petitioner and NTPC, the NTPC is to discharge its tariff payment obligation irrespective of whether the power is sold to Discom(s) under back-to-back PSA or any other entity or used under Flexibility Scheme or sold in the market.

4. Learned senior counsel for Respondent CSPDCL pointed out that in terms of the Record of Proceeding for the hearing dated 10.10.2023, NTPC was given the liberty to file an additional affidavit in respect of the CSPDCL's submissions/objections relating to the delay in the adoption of tariffs and consequent extension of the SCD of the Project. However, NTPC has not filed any such additional affidavit. Learned senior counsel further submitted that the Commission vide Record of Proceeding for the hearing dated 13.12.2023 had reserved the matter for order by permitting the Respondents to file their written submissions. However, NTPC has also not filed any written submission in the matter and, thereafter, made a request for re-listing of the matter. Learned senior counsel added that as on date, no written submission/additional affidavit has been filed by NTPC as per the above, which clearly shows that it is NTPC which is delaying the proceedings in the present matter.

5. In rebuttal, learned senior counsel for the Respondent, NTPC, submitted that it is, in fact, CSPDCL who is delaying the matter and pointed out that CSPDCL had not made any contentions/objections regarding a delay in the adoption of tariff at any prior point in time until the Petitioner raised its Change in Law claims in the present Petition. Learned senior counsel added that there had been a substantial delay on the part of CSPDCL in the execution and approval of the PSA dated 1.9.2021.

6. Considering the above request and submissions made by the learned senior counsel & counsels for the parties, the Commission permitted the Respondents to file their written submissions, if any, within two weeks with a copy to the Petitioner, who may file its written submissions, within two weeks thereafter.

7. Subject to the above, the Commission reserved the matter for order.

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Joint Chief (Law)**