

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 50/MP/2018

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 16.09.2016 executed between the Petitioner and NTPC Ltd., for seeking approval of Change in Law events due to enactment of the GST Laws.

Date of Hearing : **25.7.2018**

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Dr. M.K. Iyer, Member

Petitioner : Prayatna Developers Private Limited (PDPL)

Respondents : NTPC Limited and Others

Parties present : Ms. Poonam Verma, Advocate, PDPL
Ms. Abiha Zaidi, Advocate, PDPL
Shri M.G. Ramachandran, Advocate, NTPC
Shri Shubham Arya, Advocate, NTPC
Shri Nishant Gupta, NTPC
Shri S.K. Agarwal, Advocate, Rajasthan Discoms

Record of Proceedings

Learned counsel for the Petitioner argued at length and submitted as under:

- (i) Petitioner, PDPL entered into two Power Purchase Agreement (PPA) dated 16.9.2016 with respondent, NTPC. The PPAs were executed for development of two grid connected Solar PV ground mount projects of 10 MW each at a tariff of ₹4.36/ kWh;
- (ii) The effective date under the PPA is 29.8.2016 and as per Article 12 of the PPAs, the petitioner is entitled to claim relief/ compensation for any change in law event occurring after the effective date;
- (iii) Govt. of India on 12.4.2017 introduced the Goods and Services Tax (GST) while replacing the multiple taxes levied by the Central and State Governments. Due to the introduction of GST, the approved cost of the project vis-à-vis the actual cost has been escalated. Therefore, making the tariff quoted at the time of bid for allocation of project unviable;
- (iv) The impact of GST in O&M has been worked out on the basis of relevant normative parameters as specified by the Commission in the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (REC Regulations). The REC

Regulations prescribe O&M expenses for the year of 2017-18 at ₹7.41 lakh/MW, which includes Service Tax of 15%, with an annual escalation of 5.85%. In the present case, the Petitioner has considered the same parameter with an additional 3% GST impact, i.e. 18% GST on the normative O&M expenses. Accordingly, net present value of Pre-GST O&M Expenses and post GST impact works out to ₹62.43 lakh. In support of her contention, learned counsel relied upon the Commission's order dated 1.2.2017 in Petition No. 8/MP/2014 and order dated 7.4.2017 in Petition No. 112/MP/2015 with regard to interpretation of Change in law provisions to include introduction of new tax or change in rate of tax.

2. Learned counsel for NTPC submitted as under:

(i) The Change in Law provision under Article 12 of the PPAs is applicable only to any change in taxes or introduction of any new tax made applicable for supply of power by the Petitioner, as per the terms of the PPAs. The implications of GST Laws referred by the Petitioner relates to the setting up of the Solar Power Projects and not to the supply of power. The term 'supply' cannot be read to include construction cost;

(ii) Article 12.1.1 of the PPA provides for 'any change in tax or introduction of any tax' which indicates that every change in tax or introduction of tax is not intended to be covered by the Change in Law provisions of the PPA. There is a specific and additional condition that the impact of Change in law should be on the supply of power by the Seller. Merely because the statutory levies or taxes may affect the financials of the project developer, it does not get covered under the Change in Law within the meaning of the PPA or entitle the Petitioner to a revision in tariff.

(iii) Harmonious construction of the provisions would require meaning and purpose to be given to sixth bullet of Article 12.1.1 of the PPA and the claims are to be considered on account of statutory taxes and should fall within the scope of sixth bullet of Article 12.1.1;

(iv) The petitioner has not submitted the invoices in support of the claim of actual GST paid except in relation to the Solar PV modules. Further, the petitioner is claiming certain amount towards the 'expected GST impact' without substantiating the same;

(v) The claim towards O&M Expenses is the responsibility of the Petitioner and in the event the Petitioner chooses to employ the services of other agencies, it cannot increase the liability of the respondent in terms of tariff. The outsourcing of the O&M to a third party is not a requirement of the PPA and will be a commercial decision of the Petitioner for its own advantage and any increase in cost including on account of taxes, etc. is entirely attributable to the Petitioner.

3. In its rebuttal, Learned counsel for the Petitioner submitted as under:

(i) Change in law provision in the PPA is not limited to the tax on supply of power as contended by NTPC. Under Article 12.1.1. of the PPA supply of power

includes all the taxes that are payable for the raw material or the inputs required for the generation of power;

(ii) The expression 'supply of power' includes everything that needs to be done for sale of power i.e. from the stage of setting up the projects and other inputs, running the plant, producing electricity and then selling the same;

(iii) Outsourcing of O&M Expenses of solar projects is not prohibited under the PPA and is considered as part of the expenditure incurred by the generator. The outsource partner provides O&M services which includes periodic and preventive maintenance checks. The physical O&M tasks, such as module cleaning, housekeeping and security are carried through third parties under the supervision of the generator;

(iv) The claim of the Petitioner towards increase in cost of O&M Expenses is on account of GST laws which has led to an additional expenditure and is therefore covered under the provisions of PPA under Change in law.

4. After hearing the parties at length, the Commission directed the Petitioner and respondents to file their written submissions with copy to each other, on or before 20.8.2018.

5. Subject to above, the Commission reserved order in the petition.

By order of the Commission

**-Sd/-
(T. Rout)
Chief (Law)**