



नईदिल्ली
NEW DELHI

याचिकासंख्या./ Petition No.: 293/MP/2018
294/MP/2018 and
150/MP/2019

कोरम/ Coram:

श्रीपी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson

श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member

श्रीअरुणगोयल, सदस्य/ Shri Arun Goyal, Member

श्रीपी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेशदिनांक/ Date of Order: 03rd of January, 2022

IN THE MATTER OF PETITION No. 293/MP/2018:

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 Petitioner and NTPC Limited dated 19.04.2016 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreements.

AND IN THE MATTER OF

Azure Power India Private Limited,
Asset No.301-4, World Mark 3, Aerocity,
New Delhi -110037

...Petitioner

Versus

1. NTPC Limited,
Thorough its General Manager (Commercial),
Core-7, SCOPE Complex, 7 Institutional Area, Lodi Road,
New Delhi – 110003.

2. NTPC Vidyut Vyapar Nigam Limited,
Through its Chief Executive Officer,
NTPC Bhawan,
Core 7, SCOPE Complex, 7 Institutional Area, Lodhi Road,
New Delhi - 110 003

3. Andhra Pradesh Eastern Power Distribution Company,
Waltair Station, Approach Road,
Dolphin Area, Allipuram,
Vishakhapatnam, Andhra Pradesh- 530050

...Respondents

IN THE MATTER OF PETITION No. 294/MP/2018:

Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreement executed by the Petitioner and Solar Energy Corporation of India Limited dated 14.10.2015 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreement.

AND IN THE MATTER OF:

Azure Power India Private Limited,
Asset No.301-4, World Mark 3, Aerocity,
New Delhi -110037

...Petitioner

Versus

1. Solar Energy Corporation of India Limited,
Through its Managing Director,
1st Floor, A-Wing, D-3, District Centre,
Saket, New Delhi - 110 017

2. Public Works Department,
Office of Executive Engineer (E),
Players Building & East (M-253),
2nd Level, C-Wing, Delhi Secretariat,
New Delhi – 110002

...Respondent

IN THE MATTER OF PETITION No. 150/MP/2019:

Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreements dated 03.05.2016 and 08.05.2016 executed by the Petitioner with the Respondents, seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreements.

AND IN THE MATTER OF:

Azure Power India Private Limited,
Asset No.301-4, World Mark 3, Aerocity,
New Delhi -110037

...Petitioner

Versus

1. Ordnance Factory Bhandara,
Jawaharnagar, Bhandara,
Maharashtra – 441 906
2. Ordnance Factory Ambajhari,
Ambajhari Defence Project,
Amravati Road, Nagpur,
Maharashtra – 440021

...Respondents

Parties Present : Mr. Vishal Binod, Advocate, APIPL
Mr. Rajiv Yadav, Advocate, NTPC
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Neha Singh, SECI
Mr. Sidhant Kumar, Advocate, AP Discoms & APSLDC
Ms. Manyaa Chandok, Advocate, AP Discoms & APSLDC
Ms. Mugdha Rohan Chandurkar, Advocate, O.F. Bhandara
Mr. Shabbir Sheikh, O.F. Bhandara

आदेश/ ORDER

The Petitioner, Azure Power India Private Limited (APIPL) is a generating company and has the following projects:

- a) Two Solar Power Generating Systems (SPGS) of capacity of 50 MW each located in the Kurnool Ultra Mega Solar Park, at Gani Sakunala, Andhra Pradesh pursuant to which two identical Power Purchase Agreements (PPAs) dated 19.04.2016, for a capacity of 50 MW each were executed with NTPC Limited (NTPC), in Petition No. 293/MP/2018.
 - b) 2 MW SPGS based on Photo Voltaic technology located at Indraprastha Thermal Power Station, New Delhi pursuant to a PPA dated 14.10.2015 executed with the Solar Energy Corporation of India Limited (SECI), in Petition No. 294/MP/2018.
 - c) Two projects comprising 2 MW and 5 MW SPGS based on Photo Voltaic technology in the Ordnance factories of Bhandara and Ambajhari in the State of Maharashtra. The SPGS have been developed pursuant to two power purchase agreements dated 03.05.2016 executed with the Ordnance Factory Bhandara and dated 08.05.2016 executed with the Ordnance Factory Ambajhari in Petition No. 150/MP/2019.
2. The Petitioner is seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner in all the three petitions. The Petitioner has made the following prayers:

In Petition No. 293/MP/2018

- a) *Declare that the promulgation of the Finance Act, 2016 (with effect from 01.06.2016) and Central Goods and Services Tax, 2017 (with effect from 01.07.2017) are each a Change in Law under Article 12 of the Power Purchase Agreements dated 19.04.2016 executed between the Petitioner and Respondent No. 1;*
- b) *Direct the Respondents to accordingly pay the Petitioner an additional tariff of Rs. 0.016/kWh and Rs. 0.018/kWh with effect from the Commercial Operation Date of the Petitioner's Solar Power Generating Systems located at location P-12 and P-13, respectively, in the Kurnool Solar Park, as compensation for the additional tax burden incurred by the Petitioner on operating and maintaining the said Solar Power*

Generating Systems, as elaborated in the instant Petition, due to the promulgation of the Finance Act, 2016 (with effect from 01.06.2016) and Central Goods and Services Tax, 2017 (with effect from 01.07.2017), along with carrying costs, subject to any adjustments based on the final additional expenditure incurred by the Petitioner as on the Commercial Operations Date of the Petitioner's Solar Power Generating Systems as duly audited and certified by the Petitioner's statutory auditor at the end of the relevant financial year;

- c) Direct the Respondents to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- d) Pass such other orders that this Hon'ble Commission deems fit in the interest of justice.*

In Petition No. 294/MP/2018

- a) Declare that the promulgation of the Notifications No.21 and 22/2015-ST dated 06.11.2015 by the Ministry of Finance, Government of India (with effect from 15.11.2015), Finance Act, 2016 (with effect from 01.06.2016) and the Central Goods and Services Tax, 2017 are each a Change in Law under Article 12 of the Power Purchase Agreement dated 14.10.2015 executed between the Petitioner and the Respondent;*
- b) Direct the Respondent to accordingly pay the Petitioner an additional tariff of Rs. 0.243/kWh with effect from the Commercial Operation Date of the Petitioner's Solar Power Generating Systems as compensation for the additional tax burden incurred by the Petitioner on operating and maintaining the said Solar Power Generating Systems, as elaborated in the instant Petition, due to the issuance of the Notifications No.21 and 22/2015-ST dated 06.11.2015 by the Ministry of Finance, Government of India (with effect from 15.11.2015), and promulgation of the Finance Act, 2016 (with effect from 01.06.2016) and the Central Goods and Services Tax, 2017, along with carrying costs, subject to any adjustments based on the final additional expenditure incurred by the Petitioner as on the Commercial Operation Date of the Petitioner's Solar Power Generating Systems as duly audited and certified by the Petitioner's statutory auditor at the end of the relevant financial year;*
- c) Direct the Respondent to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- d) Pass such other orders that this Hon'ble Commission deems fit in the interest of justice.*

In Petition No. 150/MP/2019

- a) *Declare that the promulgation of the Finance Act, 2016 (with effect from 01.06.2016) and the Central Goods and Services Tax, 2017 are each a Change in Law under Article 12 of the Power Purchase Agreements dated 03.05.2016 and 08.05.2016 executed between the Petitioner and the Respondents;*
- b) *Declare that that the Petitioner is entitled to be paid against monthly supplementary invoices in the amount of the economic impact of the change in law events (namely, the enhancement in the tax liability of the Petitioner) supported by such documentary evidence as may be deemed appropriate by this Hon'ble Commission, as compensation for the additional tax burden incurred by the Petitioner on operating and maintaining the said Solar Power Generating Systems, as elaborated in the instant Petition, due to the promulgation of the Finance Act, 2016 (with effect from 01.06.2016) and the Central Goods and Services Tax, 2017;*
- c) *Declare and direct that the Petitioner is entitled to raise a consolidated supplementary bill towards change in law impact (namely, the enhancement in the tax liability of the Petitioner), as elaborated in the instant Petition, for such prior period supported by such documentary evidence as may be deemed appropriate by this Hon'ble Commission, along with appropriate carrying costs;*
- d) *Direct the Respondents to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- e) *Pass such other orders that this Hon'ble Commission deems fit in the interest of justice.*

3. The cases were called out for virtual hearing on 21.12.2021. During the course of hearing, the learned counsel for the Petitioner submitted that the Ministry of Power, Government of India has notified *the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* (hereinafter referred to as 'Change in Law Rules') and the Petitioner will approach Respondents/procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and will approach the Commission in terms of Rule 3(8) of the said Rules. The learned counsel for the Petitioner further submitted that the filing fees deposited by the Petitioner in respect of the present Petition may be adjusted against the Petition to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.

4. The Commission observes that the Ministry of Power, Government of India has notified 'Change in law Rules, 2021', 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.”

5. 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.
6. 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.
7. The filing fees deposited by the Petitioner in respect of the present Petitions shall be adjusted against the Petitions to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.
8. Accordingly, the Petition No. 293/MP/2018, Petition No. 294/MP/2018 & Petition No. 150/MP/2019 are disposed of in terms of the above.

Sd/-
(पी. के. सिंह)
सदस्य

Sd/-
(अरुण गोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य

Sd-
(पी. के. पुजारी)
अध्यक्ष