

MONDAY | 08 JANUARY 2024

Deal Update



## CERC GRANTS RELIEF TO NTPC LIMITED BY HOLDING SAFEGUARD DUTY, 2020 NOTIFICATION TO BE A CHANGE IN LAW EVENT



Central Electricity Regulatory Commission (CERC), by way of its Order dated 07.01.2024 has held that the introduction of Notification No. 02/2020-Customs (SG) dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance (2020 SGD Notification) is a Change in Law event in terms of Article 12 of the Power Purchase Agreement dated 25.10.2019 (PPA) executed between NTPC Limited (NTPC) and Solar Energy Corporation of India Limited (SECI).

Pertinently, NTPC had filed a Petition under Section 79(1) (a) of the Electricity Act, 2003 seeking compensation on account of Change in Law due to the promulgation of the 2020 SGD Notification. CERC has held that the SGD Notification is indeed a Change in Law event coming under the purview of Article 12 of the PPA which affected the Petitioner's Project, and therefore, NTPC would be entitled to compensation for the additional expenditure incurred for its 160 MW Solar Project in the State of Rajasthan.

Accordingly, CERC has directed the contracting parties to carry out the reconciliation of additional expenditure along with the carrying cost. The discount rate for the calculation of annuity payment is set at 9% and the liability of SECI/Rajasthan DISCOMs for monthly annuity payment starts from the 60th day from the date of the Order or from the date of submission of claims by NTPC, whichever is later. Furthermore, CERC also held that the Late payment surcharge shall be payable for the delayed period corresponding to each such delayed Monthly Annuity Payment(s), as per respective PPA/PSA.

CERC has rightly held that the additional compensation for the period pre-COD claims are to be enforced, while the directions regarding additional compensation for the period post-COD are subject to further orders of the Supreme Court in Civil Appeal No. 8880/2022 in Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors. and connected matters.

NTPC was represented by Mr. Shri Venkatesh (Managing Partner), Mr. Ashutosh K. Srivastava (Counsel), and Mr. Punyam Bhutani (Associate).

Order [Link](#)