

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

Appeal No. 202 OF 2022

Dated: 14th May, 2025

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member**

In the matter of:

NTPC Ltd.

Through its Authorized Representative,
Having its Registered office at Core-7
Scope Complex, 7 Institutional Area,
Lodhi Road, New Delhi-110 003.

...Appellant

Versus

- 1. Central Electricity Regulatory Commission,**
Through its Secretary,
Having its Registered office at 3rd & 4th Floor,
Chanderlok Building, 36,
Janpath, New Delhi-110 001.
- 2. Prayatna Developers Private Limited,**
Through its Authorized Representative,
7B, Sambhav House,
Judges Bungalow Road, Bokadev,
Ahmedabad – 380015,
Gujarat
- 3. Uttar Pradesh Power Transmission Company Limited,**
Through its Chairman,
7th Floor, Shakti Bhawan, 14-Ashok Marg,
Lucknow, Uttar Pradesh

4. **Uttar Pradesh Power Corporation Limited,**
Through its Chief Engineer,
Sector 16, Near Metro Station, Noida,
Uttar Pradesh-201301.

5. **Dakshinanchal Vidyut Vitran Nigam Limited,**
Through its Managing Director,
Urja Bhavan, Sikandra, Agra,
Uttar Pradesh - 282007

... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Shri Ventakesh
Ms. Nishtha Kumar
Mr. Somesh Srivastava
Mr. Vikas Maini
Mr. Suhael Buttan
Mr. Ashutosh Kumar Srivastava
Ms. Lasya Pamidi

Counsel for the Respondent(s) : Mr. Gaurav Dudeja for Res.2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The Appeal no. 202 of 2022 has been filed by the Appellant, i.e., M/s. NTPC Ltd. The Appellant is hereby challenging the legality, validity, and propriety of the specific observation and findings in the order in Petition No.229/MP/2018 ("Impugned Order") dated 09.01.2020, passed by the Central Electricity Regulatory Commission (in short "Central Commission" or "CERC").

Description of parties: -

2. The Government of India has identified the Appellant, NTPC Ltd., as the Implementation Agency for setting up Grid-Connected Solar PV Power Projects under the State Specific Bundling Scheme and for facilitating the purchase and sale of 33 kV or above Grid-Connected Solar PV Power under the National Solar Mission of the Government of India.

3. The Respondent No. 1, i.e., the Central Electricity Regulatory Commission, constituted under the provisions of the Electricity Act, performs functions including tariff determination as per the provisions of the Electricity Act and has passed the Impugned Order.

4. The Respondent No. 2, i.e., Prayatna Developers Private Limited (PDPL), is a company incorporated under the Companies Act, 1956, and is engaged in the business of developing Solar Power Projects.

5. The Respondent No. 3, i.e., Uttar Pradesh Power Transmission Corporation Ltd. ("UPPTCL"), is a State Transmission Utility within the meaning of Section 29 of the Electricity Act operating in the State of Uttar Pradesh.

6. The Respondent No. 4, i.e., Uttar Pradesh Power Corporation Limited ("UPPCL"), is operating as a Bulk Supply Licensee for electricity in the State of Uttar Pradesh. UPPCL has been further authorized by Respondent No. 5 to execute/sign the Power Purchase Agreements ("PPA"), and also to carry out the necessary relevant works on its behalf.

7. The Respondent No. 5, i.e., Dakshinanchal Vidyut Vitran Nigam Limited ("DVVNL"), is the distribution licensee operating in the southern part of the State of Uttar Pradesh. herein, Sneha Kinetic Power Projects Private Limited ("SKPPPL") is a Generating Company within the meaning of Section 2 (28) of the Act and a Special Purpose Vehicle ("SPV") implemented to take up the 96 MW (2x48 MW) Dikchu Hydro Electric Power Project in Sikkim.

Factual Matrix of the Case:

8. The Appellant is aggrieved by the specific finding in the Impugned Order dated 09.01.2020 whereby CERC has erroneously held that the Appellant is a 'buyer' in terms of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 ("CEA Regulations 2006"). It was the contractual obligation of the Appellant to ensure the sealing of the meter as per Article 7 of the PPAs dated 18.05.2016.

9. The Appellant submitted that CERC, while passing the Impugned Order, has completely lost sight of the far-reaching ramifications of the Impugned Order whereby the Appellant who acts as an intermediary trader under the PPA/ PSA signed with the generator and Licensee has been obligated with substantive obligations under the PPA which is contrary to: -

(a) The Guidelines issued by the Ministry of New and Renewable Energy, Government of India ("MNRE"),

(b) The Request for Selection ("RfS") document dated 02.09.2015 issued

by the Appellant in terms of the Guidelines issued by MNRE and the subsequent amendments to the RfS;

(c) Electricity Act;

(d) Power Purchase Agreement dated 18.05.2016 ("PPA") signed between the Appellant and Respondent No.2.

(e) Power Sale Agreement dated 15.03.2016 ("PSA") signed between the Appellant and Respondent No.4;

10. Also submitted that the Appellant in the present Appeal is not contesting the refund of Liquidated damages to Respondent No.2 directed by the CERC. However, the Appellant is assailing the erroneous conclusion/ finding, in terms of the PSA, arrived at by the CERC that it was the obligation of the Appellant as a buyer to ensure due compliance of Article 7 of the PPA, i.e., installation of the Meter. The Impugned Order will, in effect, now compel the Appellant to ensure that compliance with metering and other obligations, which are vested upon the end beneficiary, is now discharged, under the PPA, by the Appellant, who is merely acting as an Intermediary Trader.

11. It is the observation and the finding at para106 of the Impugned Order that the Appellant is aggrieved by, wherein the Commission has observed as under:-

"The Commission observes that the 5 x 10 MW Solar PV projects of the developer were ready for synchronization even before 28.05.2017 i.e. SCoD. The 33 kV ABT meters installed at the plant end were sealed by DVVNL only on 05.06.2017 and the projects were then commissioned

on 07.06.2017. The Commission thereafter observed that the delay in commissioning the project was due to delay in sealing of the 33 kV ABT meters installed at the plant-end by the Respondents. As per Article 7 of the PPAs, the Petitioner and the NTPC were to follow and were bound by CEA Regulations, 2006 (Metering Regulations). It needs to be mentioned that CEA Regulations, 2006 mandates the sealing of 33 kV ABT meters installed at the plant-end to be done by the supplier i.e. the developer herein and it is the joint responsibility of the buyer i.e. NTPC along with the developer.

Further, it is noted that as per communication dated 03.02.2017 and 10.05.2017, the developer requested NTPC for execution of sealing process of the 33 kV ABT meters installed at the plant-end. However, NTPC has failed to get the same sealed through UPPTCL or UPPCL or DVVNL and has also failed to give NOC to enable the developer to sell the meters. It is also recorded therein in the impugned order that as per Article 4.5.1 (a) of the PPAs, the scheduled commissioning date and the expiry date can be deferred in case of NTPC in the event of default”.

12. The role and functions of the generator and the licensees (transmission, distribution, and trading licensees) are well defined under the provisions of the Act. Considering such role and functions of each participating entity, we find the above observation to be totally unjust and unwarranted as NTPC as a trader has no role to play as far as sealing of the meters is concerned which is under the control domain of either the generating company or the transmission licensee or the

distribution licensee or the person which owns the said location at which the meters have to be installed and sealed.

13. It is important to note that **“trading”** is defined under the Electricity Act, 2003 as under:

2(71) "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;

14. From the definition, it is clear that the word trading means the purchase of electricity for the purpose of sale to a buyer thereof. Accordingly, the role of a **trading licensee** is limited to coordinating between the seller and the buyer of the electricity; additionally, responsible for the payments made thereon, taking the commercial contractual obligation.

15. No networking assets or equipment are maintained by the trading licensee for the trading of electricity.

16. Thus, it is clear that the trading licensee functions as an intermediary and operates without having any system to receive or transfer electricity, the CEA (Installation and Operation of Meters) Regulations, 2006, define **“Buyer” as any generating company or licensee or consumer whose system receives electricity from the system of generating company or licensee.**

17. As such, **“Buyer”** is a generating company or a licensee or consumer who

owns and maintains a system to receive electricity; undoubtedly, a trading licensee does not maintain such a system.

18. Further, the sealing of meters shall be done as under:

- i) Sealing of interface meters by both the supplier and the buyer,
- ii) Sealing of consumer meters shall be done by the licensee who supplies electricity to the consumer, and
- iii) Sealing of energy accounting and audit meters shall be done by the licensee or the generating company, as the case may be.

19. From the above, it is seen that the sealing of meters is the responsibility of the person who maintains and operates a system.

20. A trading licensee, thus, cannot be held responsible for the sealing of meters if it is maintaining any system for receiving and supplying electricity.

21. Accordingly, the Commission has erred in declaring NTPC as the buyer of electricity, as already been observed that NTPC is a trader of electricity in terms of the Electricity Act, 2003, any observation contrary to the principle law has to be set aside.

22. Further, the conclusion that the delay in the scheduled commissioning date is NTPC's event of default has to be set aside to the extent that the responsibility has been fixed on NTPC for the sealing of meters. We also find it appropriate to

direct the deletion of such an observation where sealing of the meters has been fixed as the responsibility of NTPC, and in the event of such delay is because of default on the part of NTPC.

23. Therefore, said impugned order is modified to the extent as observed above.

ORDER

The Captioned Appeal is allowed and disposed of in the above terms, the Impugned Order stands modified to the limited extent as above.

PRONOUNCED IN THE OPEN COURT ON THIS 14th DAY OF MAY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks