

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

**APPEAL NO. 344 OF 2021 & IA NO. 2065 OF 2021
AND
APPEAL NO. 9 OF 2022 & IA NO. 69 OF 2022**

Dated: 28th January, 2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matters of:

APPEAL NO. 344 OF 2021 & IA NO. 2065 OF 2021

Green Infra Renewable Energy Limited

5th Floor, Tower-C, Building No. 8 DLF Cyber City,
Gurugram Haryana-122002.

....Appellant(s)

VERSUS

1. Rajasthan Electricity Regulatory Commission

[Through its Secretary]
Vidhyut Viniyamak Bhawan
Sahakar Marg,
Near State Motor Garage Jaipur,
Rajasthan 302001.

2. Rajasthan Urja Vikas Nigam Limited

[Through its Chief Engineer]
Vidyut Bhawan
Jan Path, Jyothi Nagar,
Lalkothi Jaipur, Rajasthan 302005.

3. Solar Energy Corporation Of India Limited

[Through its General Manager (C & P)]

6th Floor, Plate-B
NBCC Office Block Tower-2
East Kidwai Nagar, New Delhi 110023.

- 4. AEW India North One Private Limited**
[Through its Authorized Representative]
3393, 3rd Floor
Ranjet Nagar South Patel Nagar
Central Delhi 110008.

- 5. NTPC Renewable Energy Limited**
[Through its Authorized Representative]
NTPC Bhawan, Scope Complex,
7, Institutional Area,
Lodhi Road
New Delhi – 110003.

.... **Respondent(s)**

Counsel for the Appellant(s) : **Mr. Sajan Poovayya, Sr. Adv.**
Mr. Amit Kapur
Mr. Vishrov Mukherjee
Mr. Rohit Venkat V.
Mr. Janmali Gopal Rao Manikala
Mr. Yashaswi Kant
Mr. Girik Bhalla
Mr. Damodar Solanki
Ms. Juhi Senguttuvan

Counsel for the Respondent(s) : Mr. R.K. Mehta
Ms. Himanshi Andley **for R-1**

Mr. M.G. Ramachandran, Sr. Adv.
Ms. Poorva Saigal
Ms. Tanya Sareen **for R-3**

Mr. S. Venkatesh
Mr. Ashutosh Kumar Srivastava
Mr. Tushar Srivastava
Mr. Suhael Buttan
Mr. Anant Singh
Mr. Siddharth Joshi

Mr. Rishub Kapoor
Mr. Jatin Ghuliani
Mr. Abhishek Nangia
Mr. Jayant Bajaj
Mr. Mehak Verma
Mr. Simran Saluja
Mr. Nihal Bhardwaj

Mr. IsnainMuzamil
Ms. Neha Das
Mr. Vineet Kumar
Mr. V.M. Kannan
Mr. Rishav Sehgal **for R-5**

APPEAL NO. 9 OF 2022 & IA NO. 69 of 2022

NTPC Renewable Energy Limited

Through its Authorized Representative
Having Registered office at: NTPC Bhawan,
SCOPE Complex, 7, Institutional Area,
Lodhi Road, Delhi -110003.

...Appellant

VERSUS

1. Rajasthan Electricity Regulatory Commission

Through its Secretary,
Vidhyut Viniyamak Bhawan,
Sahakar Marg, Near State Motor Garage,
Jaipur, Rajasthan 302001

2. Rajasthan Urja Vikas Nigam Limited

Through its Chief Engineer,
Vidyut Bhawan, Jan Path, Jyothi Nagar,
Lalkothi, Jaipur, Rajasthan 302005.

3. Solar Energy Corporation of India Limited

Through its General Manager (C & P)
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi 110023.

4. Green Infra Renewable Projects Limited

Through its Authorized Representative
5th Floor, Tower C, Building No. 8, DLF Cyber city,
Gurugram Haryana 122002

5. AEW India North One Private Limited

Through its Authorized Representative
3393, 3rd Floor, Ranjet Nagar South Patel Nagar
Central Delhi 110008.

...Respondents

Counsel for the Appellant(s) : Mr. S. Venkatesh
Mr. Ashutosh Kumar Srivastava
Mr. Tushar Srivastava
Mr. Suhael Buttan
Mr. Anant Singh
Mr. Siddharth Joshi
Mr. Rishub Kapoor
Mr. Jatin Ghuliani
Mr. Abhishek Nangia
Mr. Jayant Bajaj
Mr. Mehak Verma
Mr. Simran Saluja
Mr. Nihal Bhardwaj
Mr. Isnain Muzamil
Ms. Neha Das
Mr. Vineet Kumar
Mr. Rishabh Sehgal

Counsel for the Respondent(s) : Mr. R. K. Mehta
Ms. Himanshi Andley **for R-1**

Ms. Srishti Khindaria **for R-2**

Mr. M. G. Ramachandran, Sr. Adv.
Ms. Poorva Saighal
Ms. Tanya Sareen **for R-3**

J U D G M E N T (O R A L)

PER HON'BLE MR. JUSTICE R. K. GAUBA, JUDICIAL MEMBER

These matters have been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

In the proceedings taken out before the Respondent - Rajasthan Electricity Regulatory Commission (in short "RERC" / "State Commission") in Petition No.1905 of 2021 in the matter of adoption of the bid-discovered tariff, the Commission by an order dated 23.07.2021 had declined to entertain the prayer for declaration as to the right to be compensated on account of *force majeure* and *change in law* events that had occurred after the bid deadline i.e. 28.10.2020. The Commission had observed at that stage that it was inappropriate for it to look into the merits of such issues in the adoption proceedings, giving opportunity at the same time to the parties to file fresh petitions in such regard at appropriate time. The said order was challenged before us by appeal No. 251 of 2021 which was allowed by Judgment dated 12.10.2021.

The events which were mentioned in context of change in law claims at that stage related to increase in the rates of basic customs duty on import of solar inverters, levy of basic customs duty on import of solar cells etc. and directions of Hon'ble Supreme Court by judgment dated 19.04.2021 in Writ Petition (Civil) No. 838 of 2019 "*M.K. Ranjitsinh & Others versus Union of*

India & Others” (“Great Indian Bustard habitat case”). This tribunal, in the course of the said earlier Judgment recorded following observations:

“16. During the hearing, we pointedly asked but no regulation or contractual clause or, for that matter, any other provision was shown as could reflect an inhibition or prohibition against consideration of claim of change in law compensation at the stage of adoption of the tariff discovered by the bid process under Section 63 of the Electricity Act, 2003. We agree with the appellant that deferring such claim for later date creates a whole lot of confusion and, what is of utmost concern to the project developers, regulatory uncertainty and consequent difficulties in attaining financial closure. It cannot be ignored that the impact on the cost of the development of the project of such change in law events that have occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price renders the bid price unrealistic and in terms of Section 86 (1) (b) of the Electricity Act, it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, may be first by declaration and followed up by detailed tariff orders. If the event referred to actually constitutes change in law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a change in law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage”.

On the basis of above views, the earlier appeal was disposed of with the directions reading as under:

“17. For the forgoing reasons, we allow the appeal finding the impugned order to be an adjudication that is incomplete and proceedings wherein the appellant had sought the above-mentioned declarations having remained inchoate. The State Commission is directed to hear the parties further in the light of the above observations and pass further orders specifically in relation to the three change in law event claims presented by the appellant, rendering its decision as expeditiously as possible, preferably within two months from today”.

It appears that in the proceedings taken out before the State Commission in the wake of the directions given by this Tribunal in above quoted Judgment, an additional issue with reference to the levy of GST vide

notification dated 30.09.2021 was also raised. The Commission did examine the three issues raised earlier granting relief to the extent pressed vis-à-vis two of them, declining relief as claimed respecting the third such claim (viz. impact of judgment in *Great Indian Bustard Habitat Case*) observing that the proceedings under remand were restricted to the three claims agitated earlier and on that basis refused to go into the claim based on GST notification referred to above.

Feeling aggrieved, a few of the affected parties i.e., the Appellants herein have come up with the fresh appeals at hand.

It may be mentioned here that the appeal in the earlier round (Appeal No. 251 of 2021) had been preferred by *Green Infra Renewable Energy Limited* (Appellant in the first captioned matter here) but also included in the fray *NTPC Renewable Energy Limited* as fifth Respondent, the said cause now being espoused by the Appellant in the second captioned matter. It also must be added that the fourth Respondent in the said earlier appeal was *Aljomaih Energy & Water India Private Limited*. Its counsel Mr. Sujit Ghosh appearing as intervener has submitted that the said entity is also similarly aggrieved by non-consideration of its claims for compensation in proceedings on account of change in law events which have been unfairly kept aside.

After some hearing, the learned counsel Mr. R. K. Mehta, Advocate appearing for the Respondent Commission sought a pass over so that he could take fresh instructions. We granted him time for the purpose and have taken up these appeals again at the end of the board.

Mr. R. K. Mehta, Advocate now submits, upon instructions of the Respondent Commission, that the Commission is willing to revisit all such claims for appropriate declaration vis-à-vis claims for compensation under *change in law* events as have earlier been glossed over including the claims of the Appellants herein on account of GST notification referred to earlier.

In this view, we only reiterate what we said in the previous Judgment. The adoption proceedings before the State Commission will be treated as incomplete and inchoate. It shall pass further order on the remaining claims for declaration of change in law events having a bearing on the tariff to be adopted, as expeditiously as possible, not later than one month hereof after hearing the parties and in accordance with law. We are conscious that the Appellants are also aggrieved upon denial of the relief vis-à-vis the judgment of Hon'ble Supreme Court in *Great Indian Bustard* case. The right of the Appellants and such other parties as may be thereby affected, to pursue the remedy of appeal, is hereby reserved to be brought after the further order is passed.

Both the Appeals (Appeal Nos. 344/2021 & 9/2022) with pending applications are disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member (Electricity)

(Justice R. K. Gauba)
Officiating Chairperson

tpd/pr