

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**DATE OF HEARING: 30.8.2018**

**Petition No. 188/MP/2017 alongwith I.A. No.30/2018**

Petitioner : ACME Bhiwadi Solar Power Private Limited  
Respondents : Solar Energy Corporation of India Limited and Others  
Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 14.10.2016.

**Petition No. 189/MP/2017 alongwith I.A. No.31/2018**

Petitioner : ACME Karnal Solar Power Private Limited  
Respondents : Solar Energy Corporation of India Limited and others  
Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 14.10.2016.

**Petition No. 190/MP/2017 alongwith I.A. No.32/2018**

Petitioner : ACME Hisar Solar Power Private Limited  
Respondents : Solar Energy Corporation of India Limited and Others  
Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 14.10.2016.

**Petition No. 201/MP/2017 alongwith I.A. No.33/2018**

Petitioner : ACME Hisar Solar Power Private Limited  
Respondents : Solar Energy Corporation of India Limited and Others  
Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 22.8.2016.

**Petition No. 202/MP/2017 alongwith I.A. No.35/2018**

Petitioner : ACME Koppal Solar Power Private Limited  
Respondents : Solar Energy Corporation of India Limited and Others

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 22.8.2016.

**Petition No. 203/MP/2017 alongwith I.A. No.36/2018**

Petitioner : ACME Vijaypura Solar Power Private Limited

Respondents : Solar Energy Corporation of India Limited and Others

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 22.8.2016.

**Petition No. 204/MP/2017 alongwith I.A. No.37/2018**

Petitioner : ACME Babadham Solar Power Private Limited

Respondents : Solar Energy Corporation of India Limited and Others

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 22.8.2016.

**Petition No. 230/MP/2017 alongwith I.A. No.34/2018**

Petitioner : ACME Kurukshetra Solar Power Private Limited

Respondents : NTPC Limited and Another

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 24.6.2016.

**Petition No. 231/MP/2017 alongwith I.A. No.38/2018**

Petitioner : ACME Rewari Solar Power Private Limited

Respondents : NTPC Limited and Another

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 24.6.2016.

**Petition No. 232/MP/2017 alongwith I.A. No.39/2018**

Petitioner : ACME Mahbubnagar Solar Power Private Limited

Respondents : NTPC Limited and Another

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 8.8.2016.

**Petition No. 233/MP/2017 alongwith I.A. No.40/2018**

Petitioner : ACME Yamunanagar Solar Power Private Limited

Respondents : NTPC Limited and Another

Subject : Petition under section 79 of the Electricity Act, 2003 for revision of tariff on account of increase in capital cost relating to the provisions of the Power Purchase Agreement (PPA) dated 9.8.2016.

**Petition No. 13/MP/2018**

Petitioner : Azure Power Thirty Seven Private Limited (APT SPL)

Respondents : NTPC Limited and Another

Subject : Petition seeking relief on account of Change in Law viz. the introduction of Goods and Services Tax laws at the Central and State levels, resulting in additional recurring and non-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

**Petition No. 33/MP/2018**

Petitioner : ACME Jaipur Solar Power Private Limited

Respondents : M.P. Power Management Company Limited and Others

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 seeking relief on account of 'Change in Law' and consequent revision in capital cost due to introduction of the Central Goods and Services Tax Act, 2017 promulgated by the Department of Revenue, Ministry of Finance notified by way of notification dated 28.6.2017.

**Petition No. 34/MP/2018**

Petitioner : Azure Power Jupiter Private Limited (APJPL)

Respondents : NTPC Limited and Another

Subject : Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the PPA executed by the Petitioner and NTPC Limited dated 29.4.2016 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax Laws at the Central and State levels, resulting in additional recurring and non-recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the effective date of the PPAs.

**Petition No. 47/MP/2018**

Petitioner : Azure Power Thirty Six Private Limited (APTSPL)

Respondents : Solar Energy Corporation of India Limited and Others

Subject : Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the PPA executed by the Petitioner and Solar Energy Corporation of India Limited dated 29.4.2016 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Services Tax Laws at the Central and State levels, resulting in additional recurring and non-recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the effective date of the PPA.

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

Parties present : Shri Hemant Sahai, Advocate, ACME  
Shri Abhishek Kumar, Advocate, ACME  
Ms. Meghana Aggarwal, Advocate, ACME  
Shri Sitesh Mukherjee, Advocate, Azure Power  
Shri Vishal Binod, Advocate, Azure Power  
Ms. Ranjitha Ramachandran, Advocate, NTPC, SECI and MPPMCL  
Ms. Poorva Saigal, Advocate, NTPC, SECI and MPPMCL  
Shri Shubham Arya, Advocate, NTPC, SECI and MPPMCL  
Shri Nishant Gupta, NTPC  
Shri Basav Prabhu S.Patil, Senior Advocate, Telangana Discoms  
Shri Ashish Tiwari, Advocate, Telangana Discoms  
Shri Sriharsha Peechara, Advocate, Telangana Discoms  
Shri Geet Ahuja, Advocate, Telangana Discoms  
Shri S. Vallinayagam, Advocate, AP Discoms  
Shri Tarun Johri, Advocate, DMRC  
Shri Ankur Gupta, Advocate, DMRC

**Record of Proceedings**

At the outset, learned counsels for the Petitioners argued at length and submitted as under:

(a) The term used in Bullet 5 under Article 12 of the SECI PPA, is "supply of power" which includes the capital cost and operating cost of the project and the interpretation of 5<sup>th</sup> bullet has been settled by APTEL in its judgement dated 14.8.2018 in Appeal No 119/2016 [Adani Power Rajasthan Limited Vs. RERC and others].

(b) As per the Ministry of Power (MoP) directions issued under Section 107 of the Electricity Act, 2003, PPA must specifically exclude the taxes which are not payable otherwise the taxes need to be paid and the true construction of contract

must depend upon the import of the words used and not upon what the parties choose to say afterwards. In support of its contention, learned counsel relied upon the Hon'ble Supreme Court's judgement in Bank of India and Another Vs. K. Mohandas and Other and Union of India Vs. Raman Iron Foundry.

(c) If a PPA is silent on the payment of carrying cost during the construction period, the document must be read under the principle of "business efficacy" wherein the explicit terms of the contract are final with regard to the intention of the parties to the contract. As per the terms of Section 70 of the Indian Contract Act, 1872, when a person does or delivers something to another without intending to do so gratuitously, he is entitled to receive compensation for the thing or restoration of the thing delivered if the other party has enjoyed the benefit of the thing done or delivered. Therefore, the party shall be restored to the same economic position as if the Change in Law event had not occurred. In support of its contention, learned counsel relied upon the Hon'ble Supreme Court's judgement in Sumitomo Heavy Industries Ltd. Vs. ONGC Ltd. and Nabha Power Ltd. Vs. PSPCL and Another.

2. In Petition No.13/MP/2018, learned senior counsel for Telangana Discoms submitted that the present petition is not maintainable. Learned senior counsel further submitted that the Petitioner has claimed the jurisdiction of the Commission under Section 79(1)(f) of the Act on the basis of the scheme notified under State Specific Bundling Scheme, bundling solar power with thermal power from NTPC Thermal plants across various States. However, there is no composite scheme as both generation and sale from the Petitioner's solar project are exclusively within the State of Telangana. In support of its contention, learned senior counsel relied upon Hon'ble APTEL judgement dated 23.2.2011 in Appeal No. 200/2009 [Pune Power development Pvt. Ltd. Vs. Karnataka Discoms].

3. Learned counsel for NTPC, SECI and MPPMCL referred to directions issued by MoP under Section 107 of the Electricity Act, 2003 and submitted that as per the MoP directions, any change in domestic duties, levies, cess and taxes imposed by Central Government, State Government/ UTs or by any Government instrumentality leading to corresponding changes in the cost, may be treated as "Change in Law" and unless provided otherwise in the PPA, may be allowed as pass through. Therefore, if the PPA provides that only taxes and duties of specific nature are to be included then by implication, all other taxes shall be excluded. Learned counsel further submitted as under:

(a) With regard to the principle of "Business efficacy", if one event was specifically provided in the PPA and other event is excluded, it clearly indicates that the events which are not included are not to be considered.

(b) With regard to the 5<sup>th</sup> bullet of Article 12 of the PPA, the Hon'ble APTEL in Appeal No.119/2016 observed that once the taxes are dealt in a particular clause of a contract then there is no scope for considering taxes under other clauses of the contract.

(c) Petition No. 34/MP/2018 is not maintainable as the SCoD for the 50 MW Solar PV project is 28.5.2017 i.e. before the notification of the GST Laws w.e.f.1.7.2017. The actual commercial operation took place on 1.6.2017 for 20 MW, 19.9.2017 for 20 MW and 22.9.2017 for 10 MW. Moreover, the Petitioner

accepted its liability for delay of the project and paid the liquidated damages as well.

(d) In Petition No.33/MP/2018, Article 17.1(c) of the PPA provides that “for avoidance of doubt, it is clarified that the threshold limit shall apply to each event constituting a change in Law and shall not be applied on a cumulative basis.” Therefore, the threshold limit of Rs.2 crore shall be applied for the impact of each GST law separately. Further, CoD of the project falls immediately after the GST laws were notified, and therefore delay in procuring equipment should not be considered as change in law event.

4. Learned counsel for Delhi Metro Rail Corporation (DMRC) in Petition No.33/MP/2018 submitted that the present petition is not maintainable as there is no cause of action against the DMRC. The Petitioner has failed to comply with the provisions of Article 17.1(a) and 17.1(b) of the PPA as the Petitioner has failed to demonstrate that the Change in law event would increase the capital costs of the project. Under the provision of Article 17.1(c) of the PPA, since, the burden of any change in law event upto the extent of Rs. 2 crore has to be contractually borne by the Petitioner, liability cannot be fastened upon the DMRC upto the threshold limit of Rs.2 crore. There is no Change in Law under the PPA executed between the Petitioner and DMRC. Learned counsel for the Petitioner requested for time to file rejoinder to the reply filed by DMRC.

5. In Petition No.34/MP/2018, learned counsel for the Petitioner submitted that Articles 4.5 and 4.6 of PPA provides that if the SPD is unable to complete the project within the SCoD for reasons other than the reasons specified in Article 4.5.1, the SPD shall be liable to pay the liquidated damages. Therefore, Change in Law and liquidated damages provisions should be read harmoniously while considering the relief under Change in Law.

6. In Petition No.188/MP/2017, 189/MP/2017, 190/MP/2017 and 47/MP/2018, learned counsel for AP Discoms submitted that all solar power plants are located in the State of Andhra Pradesh and the entire generated solar power is being evacuated at the 400 kV PGCIL grid sub-station at NP kunta in the State of Andhra Pradesh for 100% utilization within the State. Since, the generation and supply of electricity is within the State of Andhra Pradesh, there is no composite scheme under Section 79(1)(f) of the Electricity Act. In support of its contention, learned counsel relied upon the Hon'ble Supreme Court judgement in Energy Watchdog Vs. Central Electricity Regulatory Commission and Others. Learned counsel further referred Article 17.9 of the PPA with regard to the payment of taxes and duties.

7. Learned counsels for the Petitioners submitted that Article 17.9.1 provides for obligation to pay and Article 12 provides entitlement of recovery on account of change in law events. Therefore, both the Articles should be read harmoniously. Learned counsels further submitted that it is a composite scheme under Section 79(1)(f) and is within the jurisdiction of this Commission. In support of its contention, learned counsel relied upon the Commission's orders dated 11.10.2017 in Petition No.95/MP/2017 and Petition No.304/MP/2013 respectively with regard to jurisdiction.

8. After hearing the submissions of the learned senior counsel for Telangana Discoms, learned counsels for the Petitioner, NTPC, SECI, MPPMCL, DMRC and AP Discoms, the Commission directed the Petitioner to file its rejoinder by 10.9.2018 to the

reply of DMRC. The Commission further directed the Petitioners and respondents to file their written submissions by 17.9.2018. The Commission directed that due date of filing the rejoinder and written submissions should be strictly complied with failing which the order shall be passed on the basis of the documents available on record.

9. Subject to the above, the Commission reserved order in the petitions.

**By order of the Commission**

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