

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 52/MP/2018**

Subject : 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 21.10.2016 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 nonrecurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreement.

Date of Hearing : **25.7.2018**

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

Petitioner : Azure Power Venus Private Limited (APVPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and Others

Parties present : Shri Sitiesh Mukherjee, Advocate, APVPL  
Shri Vishal Binod, Advocate, APVPL  
Shri M.G. Ramachandran, Advocate, SECI  
Shri Shubham Arya, Advocate, SECI  
Ms. Anushree Bardhan, Advocate, SECI  
Shri Rajiv Srivastava, Advocate, UPPCL

**Record of Proceedings**

Learned counsel for the Petitioner argued at length and submitted as under:

- (i) Introduction of GST laws entitles the Petitioner to appropriate compensatory relief in accordance with Article 12 of the Power Purchase Agreement (PPA) i.e., Change in law. Therefore, the first bullet under Article 12.1.1 of the PPA includes GST Laws under Change in law;
- (ii) As per the terms of the PPA, any change in tax or introduction of any tax made applicable for supply of power by the SPD includes construction and maintenance of the project and supply of power;
- (iii) The contention of the respondent that all taxes are covered in the last bullet of the Article 12.1 of the PPA is not correct. The last proviso of Article 12.1 is part of the main clause and do not form part of the last bullet of Article 12.1;
- (iv) Under the terms of the PPA, the Petitioner was required to develop a cumulative capacity of 315 MW in UP Solar Park being developed by Lucknow Solar Power Development Corporation Limited (LSPDCL) in the State of Uttar

Pradesh. Accordingly, SECI issued Letter of Intent dated 8.9.2016 to the Petitioner for development of Solar Power Project;

(v) As per the PPA, the Petitioner is liable to pay the liquidated damages for delay in commencement of supply of power to the respondent, SECI.

2. Learned counsel for SECI submitted as under:

(i) The relief for Change in law under the PPA with regard to any tax is available only if it is for supply of power by the SPDs and as per the terms of the PPA. Article 12.1.1 provides 'for any change in tax or introduction of tax' which indicates that every change in tax or introduction of tax is not intended to be covered under the provisions of PPA. There is a specific and additional condition that the impact of Change in law should be on supply of power;

(ii) The claim of the petitioner as regards taxes which do not fall under the sixth bullet under Article 12.1.1 to be considered as admissible by virtue of first bullet under Article 12.1.1 is wrong and liable to be rejected. There is no need of specific provision for tax on supply of power since, the taxes are covered in the first bullet;

(iii) If the tax is not in respect of supply of power but in respect of purchase of inputs goods, plant, machinery, etc. for setting up of the project as distinguished from the sale of power generated, the same is not covered under Article 12.1 of the PPA.

3. Learned counsel for UPPCL adopted the submissions made by the learned counsel of SECI and submitted that the rights and obligations between UPPCL and SECI are to be determined in terms of the Power Supply Agreement dated 4.1.2017. He further submitted that if COD in respect of the project was prior to 1.7.2017, the impact of GST in respect of the cost of the project during construction period could not be factored and hence, claim of the petitioner may be rejected.

4. After hearing the parties at length, the Commission directed the Petitioner and respondents to file their written submissions with copy to each other, on or before 20.8.2018.

5. Subject to above, the Commission reserved order in the petition.

**By order of the Commission**

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