

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 75/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreements executed by the Petitioner and Solar Energy Corporation of India Limited dated 31.10.2018 seeking relief on account of 'Change in Law' viz. Notification Nos. 24 and 27 of 2018 - Central Tax (Rate) and 25 and 28 of 2018-Integrated Tax (Rate) dated 31.12.2018 issued by the Ministry of Finance, Government of India, inter-alia, effectively amending the Goods and Services Tax rates relating to setting up of solar power project resulting in additional non-recurring expenditure in the form of an additional tax burden to be borne by the Petitioner with effect from 1.1.2019.

Petitioner : Azure Power Forty Three Private Limited (APFTPL)

Respondent : Solar Energy Corporation of India Limited (SECI)

Date of Hearing : 4.6.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Binod Vishal, Advocate, APFTPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. At the outset, learned counsel for the Petitioner sought permission to withdraw the instant Petition.

3. Learned senior counsel for the Respondent, SECI objected the same and submitted that SECI, in its reply, has specifically pointed out that there is reduction in the applicable tax rate for 'composite EPC contracts' and accordingly decrease in the cost to the Petitioner on account of Change in Law event claimed by the Petitioner. Therefore, the Petitioner is, now, seeking to withdraw the Petition. However, the Petitioner is required to pass on such benefits accrued on account of said Change in Law event to the SECI/Buying Utilities. Accordingly, the Petitioner should not be permitted to withdraw the Petition. Learned senior counsel submitted that it is settled position of law that right to withdraw the Petition is not an absolute right and the Commission is required to inquire into whether there would be prejudice caused to



the Respondents. In this regard, learned senior counsel relied upon the judgment of Hon'ble High Court of Rajasthan in the case of Madhu Jajoo v. State of Rajasthan. Learned senior counsel further sought permission to file objection to the Petitioner's request for withdrawal of the Petition.

4. In rebuttal, learned counsel for the Petitioner submitted that there is no reduction in taxes/costs on account of Change in Law events cited in the instant Petition and if SECI is of the opinion that there is a reduction in taxes/costs on account thereof, it is at liberty to file a separate Petition. However, SECI cannot restrict the withdrawal of the instant Petition filed by the Petitioner. Learned counsel sought liberty to file its response to the objection to be filed by SECI.

5. After hearing the learned counsel for the Petitioner and learned senior counsel for the Respondent, SECI, the Commission directed the Respondent, SECI to file its objection to the Petitioner's request for withdrawal of the Petition by 12.6.2020 with advance copy to the Petitioner who may file its response thereof, on or before 19.6.2020

6. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

