

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 373/MP/2020 and IA No.27/2020

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking approval of Annuity model in terms of Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017 for recovering Safeguard Duty Claim on account of Change in law from M.P Power Management Company Limited and Delhi Metro Rail Corporation as per the Order dated 15.10.2019 passed by this Commission in Petition No. 19/MP/2019.

Petitioner : ACME Jaipur Solar Power Private Limited (AJSPPL)

Respondents : M.P. Power Management Company Limited (MPPMCL) and Ors.

Date of Hearing : 8.5.2020

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

Parties present : Shri Hemant Sahai, Advocate, AJSPPL
Shri Aashish Anand Bernand, Advocate, MPPMCL
Shri Tarun Johri, Advocate, DMRC
Shri Vijay Kumar, DMRC

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioner submitted that the instant Petition has been filed, *inter-alia*, seeking approval of annuity model in terms of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017 ('RE Tariff Regulations') for recovery of Safeguard Duty on account of Change in Law from the Respondents, M. P Power Management Company Limited (MPPMCL) and Delhi Metro Rail Corporation (DMRC) as per the Commission's order dated 15.10.2019 in Petition No. 19/MP/2019. Learned counsel for the Petitioner mainly submitted as under:

(a) The Petitioner had filed Petition No. 19/MP/2019 before the Commission, *inter-alia*, seeking declaration that introduction and imposition of Safeguard Duty by the Government of India is Change in Law event and had requested for consequential reliefs. The Commission in its order dated 15.10.2019 directed the Respondents to pay the claims of the Petitioner within



sixty days from the date of issue of order or from date of submission of claims by the Petitioner as one time lump sum amount. Alternatively, the Commission also allowed the parties to mutually agree to a mechanism for payment of such compensation of annuity basis.

(b) Pursuant to the said order dated 15.10.2019, the parties have 'in-principle' mutually agreed for payment of compensation on annuity basis. However, the grievance has arisen in respect of annuity rate. According to the Petitioner, it is entitled to the floating annuity rate of SBI MCLR (1 year tenure) avg. of last 6 months plus 560 basis points. However, in order to facilitate an agreement, the Petitioner is willing to accept the annuity rate of 450 basis points based on normative principles of debt-equity ratio of 70:30 percent as prescribed under RE Tariff Regulations whereas, the Respondents, MPPMCL and DMRC have proposed floating annuity rate of SBI MCLR (1 year tenure) avg. of last 6 months plus 250 basis points.

(c) While the Respondent, DMRC has in interim released the payment to the Petitioner on floating annuity rate of SBI MCLR (1 year tenure) avg. of last 6 months plus 250 basis points,, the Respondent, MPPMCL has failed to make any payment to the Petitioner despite admitted claim of approximately Rs. 36.80 crore. MPPMCL vide its letter dated 7.4.2020 has sought the unconditional acceptance of the Petitioner to interest rate at 250 basis point above avg. SBI MCLR (one year tenure) for processing its claims and thus, coercing the Petitioner to accept its proposal. This is contrary to the order dated 15.10.2019 wherein the parties are required to mutually agree upon the mechanism for compensation on annuity basis.

(d) The Petitioner had also informed the Respondents that the Ministry of New and Renewable Energy vide its letter dated 12.3.2020 has directed SECI to reimburse/ compensate the Change in Law payments to Renewable Energy Developer towards Safeguard Duty and GST Claims on annuity basis and the rate of such annuity should be in accordance with RE Tariff Regulations. Accordingly, SECI is already processing the change in law claims at the annuity rate as per RE Tariff Regulations.

3. Learned counsel for the Petitioner submitted that the Petitioner has filed IA No. 27/2020 seeking direction to the Respondents, MPPMCL and DMRC to begin making the payment of admitted amounts to the Petitioner at the annuity rate proposed by the Respondents as communicated vide letters dated 7.4.2020 and 14.4.2020 respectively till final disposal of the matter.

4. Learned counsel for the Respondent, DMRC accepted the notice and requested for four weeks' time to file its reply. Learned counsel submitted that while the annuity rate is subject matter of outcome of the main Petition, the Respondent has already started paying the compensation to the Petitioner for admitted amount at the annuity rate of 250 basis points above average SBI MCRL (one year tenure) prevalent during last 6 months.

5. Learned counsel for the Respondent, MPPMCL accepted the notice and submitted that the Respondent in its letter dated 7.4.2020 has already informed the Petitioner that MPPMCL is ready to pay the compensation for admitted amount at



250 basis point above avg. SBI MCLR (one-year tenure) prevalent during the last available 6 months from the month of July, 2020 on account of unforeseen lockdown situation prevailing on account of Covid-19. Learned counsel further submitted that the Petitioner itself vide its letter dated 17.2.2020 and in terms of minutes of meeting held on 16.3.2020 had agreed to 300 basis point above avg. SBI MCLR (one-year) and thereafter changed its position. However, the Petitioner is now claiming higher annuity rate. Learned counsel submitted that annuity rate is nothing but the interest rate, governed by Interest Act, 1987 and the Court cannot grant any interest more than the prevailing/ current rate. Learned counsel requested for one weeks' time to file reply to the IA.

6. In response, learned counsel for the Petitioner submitted that the proposal recorded in the Minutes of Meeting held on 16.3.2020 itself records that it shall revert back after taking further directions from the Board on the proposed offer. Further, MPPMCL's request for payment from July, 2020 cannot be accepted on account of clear directive of MNRE dated 1.4.2020 that 'payments of RE generators be done on regular basis as was being done prior to lockdown'. Accordingly, MPPMCL be directed to release the payment immediately.

7. After hearing the learned counsels for the Parties, the Commission admitted the Petition. The Commission directed MPPMCL to file reply to the IA on or before 15.5.2020. The Petitioner may file rejoinder thereof by 21.5.2020. The Commission reserved the order on IA No.27/2020.

8. The Commission directed the Petitioner to serve copy of the Petition on the Respondents immediately, if not already served. The Respondents were directed to file their replies by 5.6.2020 with an advance copy to the Petitioner who may file its rejoinder, if any, by 28.6.2020. The Commission directed that due date of filing of reply and/or rejoinder should be strictly complied with.

9. The Commission directed the Petitioner to file the relevant documents pertaining to settlement agreed/ reached with SECI on annuity model for payment of compensation, by 21.5.2020.

10. 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)**

