

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 45/MP/2019 along with IA No.24/2021

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 2.8.2016, executed between the Petitioner and Solar Energy Corporation of India Limited for seeking approval of Change in Law events due to enactment of GST Laws.
- Date of Hearing : 15.4.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Talettutayi Solar Projects One Private Limited (TSPOPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and 6 Ors.
- Parties Present : Shri Sakya Singha Chaudhuri, Advocate, TSPOPL
Ms. Nithya Balaji, Advocate, TSPOPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Neha Singh, SECI
Shri Ajay Kumar Sinha, SECI
Shri Uday Pavan Kumar Kruthiventi, SECI
Shri Abhinav Kumar, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that in terms of the direction of the Commission vide Record of Proceedings for the hearing dated 4.6.2020, the Petitioner and the Respondent, SECI have reconciled the change in law claims towards enactment of the GST laws and the Petitioner has agreed to payment of its GST claims on annuity basis subject to the outcome of the Petition No. 536/MP/2020 filed by SECI.

3. Learned counsel further, on the aspect of carrying cost, mainly submitted as following:

(a) As per Article 12 of the Power Purchase Agreement (PPA), the Commission is required to pass an order not only to acknowledge the change in law event but also to decide the date from which the change in law event will become effective and to provide the consequential relief for the same.

(b) The very fact that PPA requires the date of change in law to be determined by the Commission implies the grant of carrying cost by the Commission as part of relief. Thus, despite the absence of 'restitution clause' in the PPA, the

Petitioner is entitled to carrying cost on the additional cost incurred on account of change in law.

(c) The principle of restitution in case of PPAs has been enunciated through the decisions of Appellate Tribunal for Electricity (APTEL) dated 13.4.2018 in Appeal No. 210 of 2017 and the Hon'ble Supreme Court dated 25.2.2019 in Civil Appeal Nos. 5865 of 2018 (UHBVNL v. Adani Power Ltd. and Ors.), which upheld the decision of the APTEL. The PPA in those cases specifically provided the mechanism for determining the relief for change in law and hence, non-mention of carrying cost was inferred as the PPA did not allow the same. However, present case is distinguishable inasmuch as there are no guidelines/ mechanism in the PPA on how to compute the remedy for change in law.

(d) In the present case, the change in law event i.e. enactment of the GST laws became effective from 1.7.2017. However, the project of the Petitioner achieved the commercial operation on 5.1.2018 and the Petitioner approached the Commission claiming the change in law relief in respect of enactment of the GST laws on 1.2.2019. Therefore, change in law ought to be given effect to from 5.1.2018 or at least from 1.2.2019 and not from the date when the reconciliation of its claims took place.

3. Learned senior counsel for the Respondent, SECI submitted that SECI has already reconciled the claims on account of the GST laws with the Petitioner and the reconciled amount had been forwarded to the Karnataka Discoms. However, no response has been received from the Karnataka Discoms till date. Accordingly, while passing an order, the Commission may issue direction to the Karnataka Discoms for payment to SECI as being issued in the similar cases. It was also submitted that the Commission has already rejected the similar prayer of carrying cost in various cases where the PPAs do not contain the 'restitution clause'. In this regard, the reliance was placed on the order of the Commission dated 26.3.2020 in Petition No. 127/MP/2019 and Ors.

4. Based on the request of learned senior counsel for SECI, the Commission permitted SECI to file its note of submission in the matter after concluding the hearing, if already not submitted.

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

By order of the Commission

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