

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 75/MP/2019

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 28th November, 2021

In the matter of

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 a 'Change in Law' viz. the 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 of solar power projects, 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.

And

In the matter of

Azure Power India Private Limited,
Asset No. 301-4, World Mark 3, Aerocity,
New Delhi-110 017

..... **Petitioner**

Vs.

Solar Energy Corporation of India Limited,
1st Floor, A-Wing, D-3, District Centre, SAKET,
New Delhi-110 017

.....**Respondent**

Parties present:

Shri Binod, Advocate for the Petitioner

Shri M.G. Ramachandran, Senior Advocate for SECI

Ms. Tanya Sareen, Advocate for SECI

Ms. Poorva Saigal, Advocate for SECI

Shri Shubham Arya, Advocate, SECI

ORDER

This Petition has been filed by the Petitioner, Azure Power India Private Limited, inter-alia, for seeking relief on account of 'Change in Law' pursuant to issuance of Notifications by the Ministry of Finance, Government of India which resulted in additional non-recurring expenditure in the form of additional tax burden w.e.f. 1.1.2019.

2. The matter was admitted on 30.5.2019 and notice was issued to the Respondent.

3. During the course of hearing on 4.6.2020 through video conferencing, the learned counsel for the Petitioner sought permission to withdraw the Petition.

4. The 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 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 as it could lead to multiplicity of proceedings. Learned senior counsel submitted that the right to withdraw the Petition is not an absolute right.

5. In response, the learned counsel for the Petitioner submitted that the Petitioner has an absolute right to withdraw its Petition under Order 23 Rule 1 of the Code of Civil Procedure, 1908 when the Petitioner is not seeking the leave of the court to file a fresh Petition on the same cause of action. The learned counsel further submitted that there is no reduction in taxes/ costs on account of Change in Law events cited in the instant

Petition and that the Petitioner reserved its rights and contentions to make appropriate submissions if and when SECI files a Petition claiming aforesaid Change in Law relief.

6. After hearing the learned counsel for the Petitioner and learned senior counsel for the Respondent, SECI, the Commission permitted the Petitioner to withdraw the Petition.

7. However, in view of the submissions made by SCI, the Commission granted liberty to SECI to file a separate Petition seeking Change in Law relief, if any, in accordance with law.

8. Accordingly, the Petition No. 75/MP/2019 is disposed of as withdrawn.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson