

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 214/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 before the Central Electricity Regulatory Commission (i) approval of “Change in Law” and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of Change in Law event on account of rescission of Notification No. 1/2011 – Customs dated 6.1.2011 vide Notification No.7/2021- Customs dated 1.2.2021, which has resulted in increase in rate of basic customs duty on import of solar inverters, increase in quantum of social welfare surcharge and IGST in terms of Article 12 of the Power Purchase Agreement dated 10.8.2020 between M/s ReNew Solar Urja Private Limited and Solar Energy Corporation of India Limited.

Petitioner : ReNew Solar Urja Private Limited (RSUPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and 3 Ors.

Petition No. 226/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 for approval of Change in Law and seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to off-set financial/ commercial impact of Change in Law event on account of rescission of Notification No. 1/2011–Customs dated 6.1.2011 vide Notification No. 7/2021-Customs dated 1.2.2021 which has resulted in increase in rate of Basic Customs Duty on Solar Inverters imported into India, in terms of Article 12 of the Power Purchase Agreement dated 17.9.2019 executed between Azure Power Corporation of India Limited.

Petitioners : Azure Power Forty One Private Limited (APFOPL) and Anr.

Respondents : Solar Energy Corporation of India Limited (SECI) and 3 Ors.

Petition No. 227/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 for approval of Change in Law and seeking an appropriate mechanism for grant of an appropriate adjustment/compensation to offset financial/ commercial impact of Change in Law event on account of rescission of Notification No. 1/2011 – Customs dated 6.1.2011 vide Notification No. 7/2021- Customs dated 1.2.2021, which has resulted in increase in rate of Basic Custom Duty on Solar Inverters imported to India, in terms of Article 12 of the Power Purchase Agreement dated 27.11.2019 executed between Azure Power Maple Private Limited and Solar Energy Corporation of India Limited.

Petitioners : Azure Power Maple Private Limited (APMPL) and Anr.
Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.

Petition No. 538/MP/2020

Subject : Petition invoking Section 79(1)(d) and (f) of the Electricity Act,2003 read with Regulation 5(3) of the Central Electricity Regulatory Commission (Sharing of Inter- State Transmission Charges and Losses) Regulations, 2010 seeking compensation/relief for increased construction cost due to certain Change in Law as per the applicable provisions of Transmission Service Agreement dated 24.6.2015.

Petitioner : Chhattisgarh WR Transmission Limited (CWRTL)
Respondents : Maharashtra State Electricity Distribution Co. Ltd. and 9 Ors.

Petition No. 168/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 for (i) approval of 'Change in Law' and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules and rescission of Notification No. 1/2011-Customs dated 6.1.2011 vide Notification No. 7/2021- Customs dated 1.2.2021, which has resulted in increase in rate of basic customs duty on import of solar inverters, in terms of Article 12 of the Power Purchase Agreement dated 18.11.2019 between ReNew Solar Energy (Jharkhand Three) Private Limited and Solar Energy Corporation of India Limited.

Petitioner : ReNew Solar Energy (Jharkhand Three) Private Limited (RSEJPL)
Respondents : Solar Energy Corporation of India Limited (SECI) and Anr.

Petition No. 171/MP/2021

Subject : Petition under Section 79 of the Electricity Act 2003 for (i) approval of "Change in Law" and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules and rescission of Notification No.1/2011 - Customs dated 06.01.2011 vide Notification No. 7/2021-Customs dated 01.02.2021, which has resulted in increase in rate of basic customs duty on import of solar inverters, in terms of Article 12 of the Power Purchase Agreements dated 13.08.2019 between M/s ReNew Sun Waves Private Limited and Solar Energy Corporation of India Limited

Petitioner : ReNew Sun Waves Private Limited (RSWPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and Anr.

Petition No. 471/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 28.6.2016 and 4.1.2017 executed between Tata Power Renewable Energy Limited and NTPC Limited for seeking compensation on account of Change in Law events viz. introduction/enactment of Central and State Specific Laws for implementing Goods and Service Tax.

Petitioner : Tata Power Renewable Energy Limited (TPREL)

Respondents : NTPC Limited and 5 Ors.

Petition No. 293/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 Agreements executed by the Petitioner and NTPC Limited dated 19.4.2016 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Service Tax Laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreements.

Petitioner : Azure Power India Private Limited (APIPL)

Respondents : NTPC Limited (NTPC) and Ors.

Petition No. 294/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 Agreements executed by the Petitioner and Solar Energy Corporation of India Limited dated 14.10.2015 seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Service Tax Laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreements.

Petitioner : Azure Power India Private Limited (APIPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and Anr.

Petition No. 150/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 dated 3.5.2016 and 8.5.2016 executed by the Petitioner with the Respondents, seeking relief on account of a 'Change in Law' viz. the introduction of Goods and Service Tax Laws at the Central level and change in the rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of the Power Purchase Agreements.

Petitioner : Azure Power India Private Limited (APIPL)

Respondents : Ordnance Factory Bhandara and Anr.

Petition No. 274/MP/2021

Subject : Petition under Section 79 of the Electricity Act 2003 read with Article 12 of the Power Purchase Agreements dated 6.10.2017 seeking in-principal approval for Change in Law event i.e., Finance Department (Tax Division), Government of Rajasthan Notifications dated 19.11.2019 and 30.3.2020 in terms of which Land Tax is to be imposed upon the Project land of 2 x 50 MW (100 MW) Solar PV Power Plants established by SB Energy Three Private Limited in the State of Rajasthan.

Petitioner : SB Energy Three Private Limited (SBETPL)

Respondent : Solar Energy Corporation of India Ltd. (SECI)

Petition No. 275/MP/2021

Subject : Petition under Section 79 of the Electricity Act 2003 read with Article 12 of the Power Purchase Agreements dated 27.04.2018 seeking in-principle approval for Change in Law event i.e., Finance Department (Tax Division), Government of Rajasthan Notifications dated 19.11.2019 and 30.03.2020 in terms of which Land Tax is to be imposed upon the Project land of 2 x 100 MW (200 MW) Solar PV Power Plants established by SB Energy Four Private Limited in the State of Rajasthan having land measuring 20,23,430 Sq. meter each with effect from 19.11.2019.

Petitioner : SB Energy Four Private Limited (SBEFPL)

Respondent : Solar Energy Corporation of India Ltd. (SECI)

Petition No. 268/MP/2021

Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 12 of the long-term Power Purchase Agreement dated 17.10.2019 entered into between M/s Powerica

Limited and Solar Energy Corporation of India Limited for approval of Change in Law events and consequential compensation.

Petitioner : Powerica Limited

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

Petition No. 206/MP/2021

Subject : Petition under Section 79(1)(a) of the Electricity Act, 2003 read with Article 12.1.1 of the PPA dated 25.10.2019.

Petitioner : NTPC Limited (NTPC)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and 4 Ors.

Petition No. 273/MP/2021

Subject : Petition under Section 79(1)(a) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 21.12.2018 executed between NTPC Limited and Uttar Pradesh Power Corporation Limited, seeking compensation due to increase in costs on account of change in rates of Goods and Service Tax amounting to a Change in Law event with respect to the Solar Power PV Project having Project capacity of 140 MW at Bihaur, Uttar Pradesh.

Petitioner : NTPC Limited (NTPC)

Respondent : Uttar Pradesh Power Corporation Limited (UPPCL)

Petition No. 256/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 30.11.2018 seeking in-principal approval for Change in Law event i.e. Finance Department (Tax Division), Government of Rajasthan Notifications dated 19.11.2019 and 30.3.2020 in terms of which Land Tax is imposed upon Adani Solar Energy Four Private Limited 50 MW Power Plant's land measuring 10,11,715 sq. meter with effect from 19.11.2019.

Petitioner : Adani Solar Energy Four Private Limited (ASEFPL)

Respondent : Solar Energy Corporation of India Limited (SECI)

Date of Hearing : 17.5.2022

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

Parties Present : Ms. Mannat Waraich, Advocate, RSUPL, RSEJPL, RSWPL
Shri Mohd. Munis Siddique, Advocate, RSUPL, RSEJPL, RSWPL
Shri Mridul Gupta, Advocate, RSUPL, RSEJPL, RSWPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Shikha Sood, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Shashwat Kumar, Advocate, APFOPL, APMPL
Shri Rahul Chouhan, Advocate, APFOPL, APMPL
Shri Buddy Ranganadhan, Advocate, APMPL
Shri Kunal Kaul, Advocate, TPREL
Shri Samikrith Rao, Advocate, TPREL
Shri Venkatesh, Advocate, NTPC
Shri Abhishek Nangia, Advocate, NTPC
Shri Anant Singh, Advocate NTPC
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Jayant Bajaj, Advocate, NTPC
Shri Nihal Bhardwaj, Advocate, NTPC
Shri Vishal Binod, Advocate, APIPL
Shri Adarsh Tripathi, Advocate, NTPC
Shri Ajitesh Garg, Advocate, NTPC
Shri Vikram Singh Baid, Advocate, NTPC
Ms. Mugdha Rohan Chandurkar, Advocate, Ordnance Factory
Shri Amit Kapur, Advocate, SBETPL, SBEFPL, CWRTL & ASEFPL
Shri Akshat Jain, Advocate, SBETPL, SBEFPL & ASEFPL
Shri Pratyush Singh, Advocate, SBETPL, SBEFPL & ASEFPL
Ms. Alvia Ahmed, Advocate, SBETPL, SBEFPL & ASEFPL
Ms. Aparajita Upadhyay, Advocate, CWRTL
Ms. Sakshi Kapoor, Advocate, CWRTL
Ms. Gayatri Aryan, Advocate, CWRTL
Ms. Divya Chaturvedi, Advocate, Powerica
Shri Ajay Bhargava, Advocate, Powerica
Shri Saransh Shaw, Advocate, Powerica
Shri Praveen Arora, Advocate, Powerica
Shri Aishwarya Kaushiq, Advocate, Powerica
Shri Anand K Ganesan, Advocate, Rajasthan Discoms
Ms. Swapna Seshadri, Advocate, Rajasthan Discoms
Shri Amal Nair, Advocate, Rajasthan Discoms
Ms. Devi Nair, Advocate, Rajasthan Discoms
Shri Ravi Sharma, Advocate, MPPMCL
Shri Sahil Sood, Advocate, MSEDCL
Shri Rahul Sinha, Advocate, MSEDCL
Shri Pallav Mongia, Advocate, PGCIL
Shri Tushar Srivastava, Advocate, PGCIL
Ms. Neha Singh, SECI
Ms. Aditee Nitnavare, SECI
Shri Shubham Mishra, SECI
Shri V. V. Siva Kumar, NTPC
Shri Shabbir Sheikh, Ordnance Factory
Shri Krishna Rao, SBETPL, SBEFPL & ASEFPL
Shri Rajeev Lochan, SBETPL, SBEFPL & ASEFPL
Shri Dipak Panchal, SBETPL, SBEFPL & ASEFPL
Shri Ravi Sinha, SBETPL, SBEFPL & ASEFPL

Shri Bhavesh Kundalia, CWRTL
Shri Anindya Khare, MPPMCL
Shri Prashant, PGCIL
Shri Chandrashekhar, PGCIL
Shri Arjun Malhotra, PGCIL

Record of Proceedings

Cases were called out for virtual hearing.

2. During the course of hearing, learned senior counsel and the learned counsels for the parties expressed their consensus on the observations of the Commission vide Record of the Proceedings for the hearing dated 9.5.2022 that as per the directions of the Appellate Tribunal for Electricity ('APTEL') in judgment dated 5.4.2022 in OP No. 1 of 2022 and Ors., in particular paragraph 74, it would be apt to pass *suo-motu* order(s) in the Petitions which were disposed of by the Commission by applying the the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') and accordingly, requested the Commission to take the appropriate course of action in this regard.

3. Learned counsel for the Petitioners in Petition No. 214/MP/2021, Petition No. 226/MP/2021 and Petition No. 227/MP/2021 submitted that the said matters were disposed of by the Commission at the admission stage and accordingly, are to be restored at the same stage. Learned counsel in Petition No. 214/MP/2021 sought liberty to file an additional affidavit in the matter. Learned counsel for the Petitioner in Petition No. 538/MP/2020 submitted that in Petition No. 533/MP/2020, the Commission vide order dated 7.11.2021 has rejected the objection towards the maintainability of the Petition raised by the Respondent, MPPMCL and that similar objection also raised in Petition No. 538/MP/2020 is squarely covered by the Commission's order dated 7.11.2021. Learned counsel requested to take-up both the matters together.

4. Learned counsel for the Petitioners in Petition No. 168/MP/2021 and Petition No. 171/MP/2021 submitted that while notice in the matters had already been issued prior to their disposal, but the pleadings were yet to be completed. He added that in Petition No. 471/MP/2019, the Respondent, NTPC had already filed its reply. However, the distribution licensee did not file its reply and thus, the distribution licensee may be given last opportunity to file the reply in the matter, if any. Learned counsel for the Petitioner therein requested for a direction to NTPC to expedite the reconciliation of its Change in Law claims.

5. In Petition No. 293/MP/2018 and Petition No. 294/MP/2018, learned counsel for the Petitioners submitted that the pleadings in the matters have already been completed. However, learned counsel for the Respondent, NTPC in Petition No. 293/MP/2018 sought liberty to file an additional affidavit to place on record the series of communication exchanged with the distribution licensee in the said matter. In Petition No. 150/MP/2019, learned counsel for the Petitioner sought liberty to file rejoinder in the matter.

6. In Petition No. 274/MP/2021, Petition No. 275/MP/2021 and Petition No. 256/MP/2021, learned counsel for the Petitioners submitted that the said matters were disposed of by the Commission by applying the Change in Law Rules on the admission

stage itself and that such orders may now be recalled in the terms of the directions of the APTEL vide judgment dated 5.4.2022 and the parties may be permitted to complete the pleadings in the matters. Learned senior counsel for the Respondent, SECI submitted that besides applying the Change in Law Rules, the Commission, in the orders disposing of these matters, had also observed that the Petitioners' Change in Law claim was pre-mature as any land tax in terms of the notifications of Government of Rajasthan was yet to be levied upon the Petitioners in respect of their Projects' land.

7. In Petition No. 268/MP/2021, Petition No. 206/MP/2021 and Petition No. 273/MP/2021, learned counsels for the parties submitted that the said Petitions were disposed of by the Commission by applying the Change in Law Rules at the admission stage itself and accordingly, the matters may be restored and the parties may be permitted to complete the pleadings in the matter. Learned counsel for the Petitioner in Petition No. 273/MP/2021 sought liberty to file an additional affidavit in the matter.

8. Keeping in view the submissions made by the learned senior counsel and the learned counsels for the parties and their agreement to the observations of the Commission expressed in the Record of Proceedings dated 9.5.2022 in the similarly placed matters with regard to the methodology for implementation of APTEL's directions in judgment dated 5.4.2022 as contained in paragraph 74, the Commission indicated that it will proceed for passing appropriate orders in these matters as per directions and further observed that with regard to the various requests of the learned counsels for the parties, *inter alia*, permission to file additional affidavit, reply and/or rejoinder etc., the necessary direction or liberty in this regard will be granted in the *suo-motu* order(s) to be issued by the Commission in these matters.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)