

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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 Limited (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 27.4.2018 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 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 admeasuring 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 Limited (SECI)

Date of Hearing : 11.1.2022

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

Parties Present : Shri Amit Kapur, Advocate, SBETPL & SBEFPL
Shri Akshat Jain, Advocate, SBETPL & SBEFPL
Shri Pratyush Singh, Advocate, SBETPL & SBEFPL
Ms. Alviva Ahmed, Advocate, SBETPL & SBEFPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Ravi Nair, Advocate, SECI
Shri Krishna Rao, SBETPL & SBEFPL
Shri Rajeev Lochan, SBETPL & SBEFPL



Shri Dipak Panchal, SBETPL & SBEFPL
Shri Ravi Sinha, SBETPL & SBEFPL
Ms. Neha Singh, SECI

Record of Proceedings

Cases were called out for virtual hearing.

2. The learned counsel for the Petitioners submitted that the present Petitions have been filed seeking in-principle approval for Change in Law event i.e. Notifications dated 19.11.2019 and 30.3.2020 issued by Finance Department (Tax Division), Government of Rajasthan (in short 'GoR') in terms of which land tax is required to be imposed upon the land of the projects of the Petitioner with effect from 19.11.2019. The learned counsel circulated the note of arguments and mainly submitted the following:

(a) Pursuant to being selected as successful bidders in the competitive bidding process conducted by SECI, the Petitioners have entered into Power Purchase Agreements ('PPAs') dated 6.10.2017 for 100 MW (in Petition No. 274/MP/2021) and dated 27.4.2018 for 200 MW (in Petition No. 275/MP/2021). The last date of submission of bids under the above PPAs were 19.4.2017 and 16.9.2017 respectively, whereas the effective date of the PPAs were 16.9.2017 and 27.4.2018 respectively.

(b) At the time of submission of bids, no land tax was applicable on land for the Petitioners' projects in terms of GoR's Notification dated 6.3.2013, which exempted payment of land tax on all classes of land with effect from 1.4.2013. However, thereafter, GoR by Notification dated 19.11.2019 has reinstated payment of land tax on specified categories of land including land measuring 500 hectare or above. The rate of land tax was further increased by way of Notification dated 30.3.2020. Thus, said Notifications have resulted in change in the rate of tax applicable to industrial land such as land for the Petitioner's Project and have direct effect on the Petitioners' projects.

(c) The GoR's Notifications dated 19.11.2019 and 30.3.2020, issued in exercise of powers conferred by the Rajasthan Finance Act, 2006 and Rajasthan Finance Act, 2020, clearly qualify as events of Change in Law under Article 12 (Change in Law) of the PPAs.

(d) The Petitioners have not made any payment for the aforesaid land tax as on the date of filing of the present Petitions. In the present Petitions, the Petitioners have not sought any compensation on account of the above Notifications. Therefore, the Petitioners are only seeking in-principle approval with respect to Notifications dated 19.11.2019 and 30.3.2020 issued by Finance Department (Tax Division), GoR as events of Change in Law for the Petitioners under Article 12 of the PPAs.

(e) In-principle approval of the aforesaid Change in Law events is necessary to secure funds for payment of land tax and to ensure regulatory certainty. Moreover, these Notifications have not been recognized as Change in Law by this Commission in any of its previous orders.

(f) The Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules'), as notified by the Ministry of Power on 22.10.2021, do not deal with the grant of in-principle approval qua the Change in Law.

(g) Rule 3 of the Change in Law Rules only deals with adjustment in tariff on Change in Law and provides the mechanism for recovery of compensation towards Change in Law events. Accordingly, the present Petitions are not hit/restricted by the framework of Change in Law Rules.

(h) The Petitioners have already issued Change in Law Notices in terms of Change in Law Rules to SECI. However, the Commission may consider the prayers of the Petitioners for granting in-principle approval for Change in Law events.

3. The learned senior counsel for the Respondent, SECI submitted that the buying utilities/ distribution licensees are not made party to the Petitions and, accordingly, the Petitioners may be directed to implead them as party to the Petitions. The learned senior counsel further submitted that it is beyond dispute that Notifications of GoR imposing the land tax would constitute law under the PPA. However, the Commission may consider as to whether these Notifications require in-principle approval as Change in Law at this stage especially when the land tax in terms thereof is yet to be levied upon the Petitioners in respect of their projects' land. The learned senior counsel added that in-principle recognition of Change in Law has been allowed by the Commission only in the matters relating to installation of Emission Control System. The learned senior counsel submitted that Rule 3(8) of the Change in Law Rules empowers the Commission to adjust the amount of impact of Change in Law which includes therein as to whether the event itself constitutes a Change in Law or not and accordingly, to modify the amount of compensation.

4. In rebuttal, the learned counsel for the Petitioners submitted that Rule 3(8) of the Change in Law Rules does not provide for determination of Change in Law. The issues of implication and computation of relief owing to Change in Law as specified under the Change in Law Rules would arise only at subsequent stage. The learned counsel further submitted that the regulatory power of the Commission under Section 79 of the Act, as settled in terms of catena of judgments, is plenary and does not restrict the Commission from considering the in-principle approval of Change in Law events, in order to enable the Petitioners to implement the projects and tie up the necessary finances.

5. Based on the request of the learned counsel for the Petitioners, the Commission permitted the Petitioners to upload the note of arguments as referred within two days.

6. Subject to the above, the Commission reserved the matters for order on 'admissibility'.

By order of the Commission

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