



नईदिल्ली
NEW DELHI

याचिकासंख्या./ Petition No.: 179/MP/2020

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्रीअरुणगोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 11th of February,2022

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 19.07.2016, 21.10.2016, 21.10.2016 and 13.01.2017 executed between Tata Power Renewable Energy Limited and Solar Energy Corporation of India Ltd., for seeking compensation on account of Change in Law events due to enactment of GST Laws.

AND

IN THE MATTER OF:

Tata Power Renewable Energy Limited,
Corporate Centre A,
34 Sant Tukaram Road, Carnac Bunder,
Mumbai 400 009, Maharashtra, India

...Petitioner

VERSUS

- Solar Energy Corporation of India Limited,**
1st Floor, A-Wing, 0-3,
District Centre, Saket,
New Delhi- 110017

2. **Maharashtra State Electricity Distribution Company Limited,**
[Through its Chief Engineer (Power Purchase)]
Prakashgad, Plot No. G-9,
Anant Kanekar Marg, Bandra East,
Mumbai – 400 051
3. **Southern Power Distribution Company of Andhra Pradesh Limited,**
#19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati – 517503, Chittoor District, Andhra Pradesh
4. **Eastern Power Distribution Company of Andhra Pradesh Limited,**
Corporate Office,
P&T Colony, Seethammadhara,
Visakhapatnam.
5. **Gujarat Urja Vikas Nigam Limited,**
[Through its General Manager (Commerce)]
Sardar Patel Vidyut Bhavan, Race Course,
Vadodara – 390 007, Gujarat

...Respondents

Parties Present: Shri Abhishek Munot, Advocate, TPREL
Shri Kunal Kaul, Advocate, TPREL
Shri Samikrith Rao, Advocate, TPREL
Shri M. G. Ramachandran, Senior Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Ravi Nair, Advocate, SECI
Ms. Neha Singh, SECI

आदेश/ ORDER

The Petitioner, Tata Power Renewable Energy Limited (TPREL) is a generating company which is primarily engaged in the business of setting up power projects based on renewable energy sources. The Petitioner has filed the present petition under Section 79 of the Electricity Act read with Article 12 of the Power Purchase Agreements (PPAs) dated 19.07.2016, 21.10.2016, 21.10.2016 and 13.01.2017 executed between TPREL and Solar Energy Corporation of India. The Petitioner is seeking a declaration that introduction/enactment of Goods and Services Tax (GST) amounts to Change in Law, which has resulted

in additional expenditure to be incurred by TPREL and seeking compensation/restitution on account of such Change in Law along with carrying cost.

2. The Respondent No.1, Solar Energy Corporation of India (SECI) is a nodal agency for implementing various schemes of MNRE, including Phase-II, Batch-IV of National Solar Mission of Government of India through VGF mode.
3. The Respondent No.2 to Respondent No.5 are the Distribution Companies in the State of Maharashtra, Andhra Pradesh and Gujarat.
4. The Petitioner has made the following prayers:
 - a) Hold and declare that introduction/ enactment of GST Laws, as specified in Paras 13 to 18 above, amounts to Change in Law, which has resulted in/ increased additional recurring/ non-recurring expenditure of TPREL;
 - b) Hold and declare that the Petitioner is entitled to a sum of Rs. 48,88,44,968 along with the carrying cost towards compensation for Change in Law during the construction period;
 - c) Direct/ Permit the Procurers to make payment the sum of Rs. 3.06 Crores along with the carrying cost towards compensation for Change in Law during the Operating Period; and
 - d) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.
5. A brief detail of the petition is as under:

Location	Palaswadi, Maharashtra	Plot No. 4 & 5, Ananthapuramu Solar Park, Andhra Pradesh	Gujarat Solar Park at Charanka
Nodal agency	SECI	SECI	SECI
RfS issued on	24.02.2016	02.01.2016	22.04.2016
Bid submitted on	18.03.2016	05.04.2016	28.06.2016 and 14.09.2016
E-reverse auction conducted on	12.04.2016	04.05.2016	25.10.2016
LOI issued on	16.06.2016	16.08.2016	18.11.2016
Capacity (MW)	30 MW	2 x50 MW	25MW
Power	Solar	Solar	Solar
PPA executed on	19.07.2016	Both units on 21.10.2016	13.01.2017
Tariff	4.43/kWh	4.43/kWh	4.43/kWh
Date of implementation of GST Laws	01.07.2017	01.07.2017	01.07.2017
Date of Commissioning	28.10.2017	Both units 22.06.2018	16.08.2017

6. The Petitioner has submitted that:
- a) PPA, being a long-term contract (i.e. for a period of 25 years), it was contemplated that adjustment will be made to offset the impact of certain events beyond the control of the parties, such as change in applicable legal framework, which ***results in additional recurring/ non-recurring expenditure by the project developer and/ or revenue to the project developer***. Accordingly, the Change in Law provision was incorporated in the PPAs.
 - b) The purpose of a Change in Law provision is to insulate the parties from the financial impact arising out of events which were not within the control of the project developer, that take place after the Effective Date of the PPAs.
 - c) The underlying principle of having the Change in Law provision in the PPAs is to restore/ retribute the affected party to the same economic position as if the Change in Law had not occurred. The Petitioner has placed its reliance on Appellate Tribunal's Judgment dated 20.11.2018 in *Sasan Power Limited v. CERC &Ors*. Thus, if any additional recurring/ non-recurring expenditure is incurred by the project developer, the same ought to be refunded to the project developer and in case any additional income is earned by the project developer, the same sought to be refunded by the project developer.
7. The matter was listed for hearing through video conferencing on 04.06.2020. Learned counsel for the Petitioner submitted that the instant petition has been filed, inter-alia, seeking declaration that the introduction/enactment of GST Laws as a Change in Law event and seeking consequential compensation for additional recurring/non-recurring expenditure incurred by the Petitioner. Learned counsel further submitted that Ministry of New and Renewable Energy (MNRE) vide its letter dated 12.03.2020 read with letter dated 23.03.2020, has clarified that since the Commission has already laid down the principles to be followed with regard to 'Change in Law' compensation on account of imposition/enhancement of effective rate of GST and levy of Safeguard Duty on import of Solar PV cells and modules in earlier cases, there is no need to ask every developer to approach the Commission for seeking individual Orders in similar cases. In terms of the said letters, the Petitioner has already commenced discussions with the Respondent, SECI in respect of its claims and the Petitioner has also submitted computation of its claims to SECI on 26.05.2020. Learned senior counsel for the Respondent, SECI, submitted that the distribution licensees should be impleaded as party to the Petition. Learned senior counsel

also submitted that the issue involved in the Petition stands covered by the Commission's earlier Orders relating to Change in Law arising out of imposition of GST/ Safeguard Duty and submitted that in terms of MNRE letters, the Respondent will carry out reconciliation of the Petitioner's claims in accordance with the Commission's earlier Orders on the subject matter.

8. After hearing the learned counsels for the parties, the Commission admitted the Petition and observed that the Petitioner and SECI have already initiated discussions for reconciliation of the Petitioner's claims arising out of Change in Law event, namely, introduction of GST as per the MNRE's letters dated 12.03.2020 and 23.03.2020. Accordingly, the Commission directed the Petitioner to place on record the settlement reached between the parties.
9. The matter was again listed for virtual hearing on 11.01.2022. During the course of hearing, the learned counsel for the Petitioner submitted that pursuant to the reconciliation of its Change in Law claims arising out of enactment of GST Law with SECI, the Petitioner has received a letter from SECI whereby a certain quantum of its claims has not been approved by SECI. However, it has to file submissions on the disputed quantum. The learned senior counsel for the Respondent, SECI confirmed that the reconciliation of the amount has been carried out between the Petitioner and SECI, which was also forwarded to the distribution licensees. However, so far, the distribution licensees have not confirmed the said claims.
10. In rebuttal, the learned counsel for the Petitioner submitted that distribution licensees are not party to the PPAs between the Petitioner and SECI and that in the present case, PPAs entered into between the Petitioner and SECI and the Power Sale Agreements (PSAs) entered into between SECI and the distribution licensees are not on back-to-back basis. However, SECI refuted the above contention and submitted that the provisions of PPAs clearly specify that SECI has agreed to purchase the solar power from the developer as an intermediary and sell it to the distribution licensees on back-to-back basis under PSAs. After hearing the contracting parties, the Commission reserved the matter for Orders.
11. The Commission observes that as per Recitals in the PPAs executed between the Petitioner and SECI:

“E. The SPD has agreed to sign this Power Purchase Agreement with SECI to sell Solar Power to SECI as per the terms and conditions of this Agreement.

F. SECI has agreed to purchase such Solar Power from SPD as an intermediary Seller and sell it to Buying Utilities back to back basis as per the provisions of the JNNSM.

G. SECI has agreed to sign a Power Sale Agreement with the Buying Utilities to sell such power as per the provisions of the JNNSM”

12. Thus, the Commission is of the view that the provisions of the PPAs specifically deal with back to back PSA between SECI and the Discoms. SECI is not functioning as merchant trader but as an intermediary trader and hence, there is as a clear link between the ultimate distribution company and the generator with trader acting as only an intermediary linking company. The Commission further observes that the reconciliation is not finalised as on date.
13. The Commission observes that the Ministry of Power, Government of India has notified on 22.10.2022 the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”), the relevant provisions of which are extracted as under:

*“2(c) “change in law”, in relation to tariff, **unless otherwise defined in the agreement**, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —*

(i) -----

(ii) -----

(iii) -----

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

*(a) where the agreement lays down any formula, in accordance with such formula;
or*

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

14. The Commission further observes that as per the above quoted provisions, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondents/procurers, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

15. In view of the above, the Commission holds that the Petitioner may approach the Respondents/ procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the said Rules.

16. The filing fees deposited by the Petitioner in respect of the present Petitions shall be adjusted against the Petitions to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.
17. Accordingly, the Petition No. 179/MP/2020 is disposed of in terms of the above discussions and findings.

Sd/-
(पी. के. सिंह)
सदस्य

Sd/-
(अरुण गोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
अध्यक्ष