



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 256/MP/2021

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member

श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member

श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 18<sup>th</sup> of February , 2022

**IN THE MATTER OF**

Petition under Section 79 of the Electricity Act 2003 read with Article 12 of the Power Purchase Agreement dated 30.11.2018 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 Adani Solar Energy Four Private Limited (ASEFPL) 50 MW Solar Power Plant's land measuring 10,11,715 Sq. meter with effect from 19.11.2019.

**AND IN THE MATTER OF:**

**Adani Solar Energy Four Private Limited**

[Formerly Known as Kilaj Solar (Maharashtra) Private Limited]

Adani House, Nr Mithakhali Six Roads,

Navrangpura, Ahmedabad- 380009,

Gujarat

...Petitioner

## Versus

### **Solar Energy Corporation of India Limited**

1st Floor, A-Wing, D-3,  
District Centre, Saket,  
New Delhi-110017

**...Respondent**

**Parties Present:** Shri Amit Kapur, Advocate, ASEFPL  
Shri Akshat Jain, Advocate, ASEFPL  
Shri Pratyush Singh, Advocate, ASEFPL  
Ms. Alvia Ahmed, Advocate, ASEFPL  
Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI  
Shri Krishna Rao, ASEFPL  
Shri Rajeev Lochan, ASEFPL  
Shri Dipak Panchal, ASEFPL  
Shri Ravi Sinha, ASEFPL  
Ms. Neha Singh, SECI

### **आदेश/ ORDER**

The Petitioner, Adani Solar Energy Four Private Limited (formerly known as Kilaj Solar (Maharashtra) Private Limited) (ASEFPL) is a generating company and has established an ISTS connected Solar Photovoltaic (PV) Power Plant with installed capacity of 50 MW at Village Rawra, District Jodhpur in the State of Rajasthan (Project). The Petitioner has filed petition under Section 79 of the Electricity Act 2003 read with Article 12 of the Power Purchase Agreement dated 30.11.2018 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 Adani Solar Energy Four Private Limited (ASEFPL) 50 MW Solar Power Plant's land measuring 10,11,715 Sq. meter with effect from 19.11.2019. The project was commissioned on 17.04.2020.

2. The Respondent, Solar Energy Corporation of India Limited (SECI), is a Central Public Sector Undertaking under the administrative control of the Ministry of New and Renewable Energy, Government of India (MNRE) established to facilitate the implementation of the National Solar

Mission and other schemes of MNRE. SECI has entered into a Power Purchase Agreement (PPA) with ASEFPL on 30.11.2018 for purchasing 50 MW Solar Power from the Project as an Intermediary Procurer and for onward sale of such solar power to BYPL under Power Sale Agreement (PSA) dated 02.08.2018 on back-to-back basis.

3. The Petitioner has made the following prayers:

- (a) *Grant in-principle approval with respect to Finance Department (Tax Division), Government of Rajasthan's Land Tax Notifications dated 19.11.2019 and 30.03.2020 qualifying as an event of Change in Law for the Petitioner, i.e. ASEFPL under Article 12 of the PPA;*
- (b) *Allow the Petitioner to recover the land tax to be imposed on Rawra Project land from SECI through monthly compensation along with Carrying Cost in terms of the PPA and CIL Rules; and*
- (c) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

4. The Petitioner has submitted as under:

- (a) Government of Rajasthan (GoR) by way of Notification dated 06.03.2013 had exempted payment of land tax on all classes of lands with effect from 01.04.2013.
- (b) As on the last date of Bid Submission date i.e.15.06.2018, no land tax was applicable on the project land in terms of GoR's Notification dated 06.03.2013. Hence, the same was not factored in the quoted price/bid submitted by the Petitioner.
- (c) On 03.08.2017, Ministry of Power, Government of India issued Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects (Solar Bidding Guidelines).

- (d) On 30.01.2018, SECI issued a Request for Selection (RfS) for selection of Solar Power Developers (SPDs) for setting up 2000 MW of ISTS connected Solar Photovoltaic (PV) Power Projects (anywhere in India) on Build-Own-Operate (BOO) basis through competitive bidding process. Last date of Bid Submission was 15.06.2018.
- (e) On 15.06.2018, Adani Renewable Energy Holding One Private Limited (AREHPL), formerly known as Mahoba Solar (UP) Pvt Ltd (Parent Company of the Petitioner) participated in the competitive bidding initiated by SECI pursuant to RfS dated 30.01.2018 and submitted its bid for establishment of 50 MW Solar Power Project in the State of Rajasthan.
- (f) On 27.07.2018, SECI issued a Letter of Award to AREHPL for development of 50 MW ISTS-connected Solar Power Project in the State of Rajasthan. AREHPL has formed a Project Company i.e., Kilaj Solar (Maharashtra) Pvt Ltd [Presently known as Adani Solar Energy Four Private Limited (the Petitioner)] within the provisions of the RFS dated 30.01.2018 for development of the 50 MW Solar Power Project in the State of Rajasthan (Project) and for generation and sale of solar power therefrom.
- (g) On 30.11.2018, Kilaj Solar (Maharashtra) Pvt Ltd [Presently known as Adani Solar Energy Four Private Limited (the Petitioner herein)] entered into a Power Purchase Agreement (PPA) with SECI for a period of 25 years (Commercial Operation Date of the Project) for sale of 50 MW solar power generated from the Project as per the terms and conditions of the PPA. SECI has agreed to purchase such solar power from the Project as an Intermediary Procurer and for onward sale to the Buying Utilities on back-to-back basis as per the provisions of the Power Sale Agreement (PSA) entered into with the Buying Entity(ies).
- (h) On 02.08.2018, SECI entered into a PSA with BYPL for supplying 50 MW power from ASEFPL's 50 MW Solar Project on back-to-back basis.

- (i) On 19.11.2019, GoR by Notification reinstated payment of land tax @ Rs. 1 per sq. meter or 5% of the market value of land, whichever is less, on the specified categories of land including land measuring 500 hectares or above.
- (j) On 30.03.2020 , GoR by Notification increased the applicable land tax @ Rs.2 per sq. meter, for Industrial lands above 10,000 sq. meter.
- (k) On 17.04.2020, Petitioner's 50 MW project was successfully commissioned.
- (l) On 15.12.2020, Ministry of Corporate Affairs (MCA), Government of India issued a 'Certificate of Incorporation pursuant to change of name' certifying that the name of the Company i.e., Kilaj Solar (Maharashtra) Private Limited has been changed to Adani Solar Energy Four Private Limited with effect from the date of the Certificate i.e., 15.12.2020.
- (m) GoR's Notifications dated 19.11.2019 and 30.03.2020 qualify as an event of Change in Law for the Petitioner under 1st and 5th Bullet of Article 12 of the PPA dated 30.11.2018 and Change in Law Rules since Finance Department (Tax Division), GoR's Notifications dated 19.11.2019 and 30.03.2020 have been issued after the last date of Bid Submission of 15.06.2018 and the same was not factored in the quoted price/bid submitted by the Petitioner.

5. The case was called out for virtual hearing on 24.01.2022. During the course of hearing, the learned counsel for Petitioner submitted that the Petition has 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 terms of which land tax is imposed upon the Petitioner's land for 50 MW Project measuring 10,11,715 sq. meter with effect from 19.11.2019. The facts and issues involved in the present matter are identical to those of Petition No. 274/MP/2021 and Petition No. 275/MP/2021 and accordingly, the present matter may also be reserved for Order on admissibility along with the above Petitions.

6. Learned senior counsel for the Respondent, SECI submitted that the present matter is similar to Petition No. 274/MP/2021 and Petition No. 275/MP/2021 and in this case also, the land tax is yet to be levied upon the Project land of the Petitioner.
7. The Commission observes that Article 12 of the PPA stipulate as under:

***“ARTICLE 12: CHANGE IN LAW***

***12.1 Definitions***

*In this Article 12, the following terms shall have the following meanings:*

*12.1.1 “Change in Law” means the occurrence of any of the following events after the last date of bid submission, resulting into any additional recurring/ nonrecurring expenditure by the SPD or any income to the SPD:*

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;*
- any statutory change in tax structure, i.e. change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.*

*but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.*

***12.2 Relief for Change in Law***

*12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.*

*12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both Parties.”*

8. The Commission further observes that the Ministry of Power, Government of India has notified *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 —

.....  
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.”*

9. The Commission observes that there is no provision for grant of ‘in-principle approval’ either in the PPA or in the Change in Law Rules. Article 12.2.1 of the PPAs stipulates that the aggrieved Party, in the present case the Petitioners, shall approach the Commission for seeking approval of Change in Law. As per Change in Law Rules, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioner, and other party, in the present case the Respondent, is to settle the Change in Law claims between themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. Therefore, in absence of any express provision in the PPAs or in the Change in Law Rules about in-principle approval, we find no reason to accord such approval as prayed for by the Petitioners.
10. The Commission further observes that during the course of hearing, SECI has submitted that land tax in terms of the Notifications dated 19.11.2019 and 30.03.2020 is yet to be levied upon the Petitioner in respect of its project land. The Commission is of the view that the cause of action arises only when the land tax is levied and the Petitioner has to pay for the tax. It is a settled law that no Order can be made in anticipation for any future claims to be raised.
11. In view of the above, the Commission holds that the Petitioner may approach the Respondent/ procurer for settlement of Change in Law claims amongst themselves as and when the cause of action arises, in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the said Rules.



12. The Petition No.256/MP/2021 is disposed of in terms of the above.

Sd/-  
(पी. के. सिंह)  
सदस्य

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(अरुण गोयल)  
सदस्य

Sd/-  
(आई. एस. झा)  
सदस्य