



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 268/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: 14th of February, 2022

IN THE MATTER OF:

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.

AND IN THE MATTER OF:

M/s Powerica Limited

9th Floor, Bakhtawar,
Nariman Point,
Mumbai – 400 021

.... Petitioner

Versus

1. Solar Energy Corporation of India Limited

1st Floor, A-Wing,
D-3, District Centre,
Saket,
New Delhi-110 017

2. Uttar Pradesh Power Corporation Limited

Shakti Bhawan, 14 Ashok Marg,
Lucknow, Uttar Pradesh – 226 001

.... Respondent

Parties Present: Shri Divya Chaturvedi, Advocate, Powerica
Shri Ajay Bhargava, Advocate, Powerica
Shri Saransh Shaw, Advocate, Powerica
Shri Parveen Arora, Advocate, Powerica
Ms. Aishwarya Kaushiq, Advocate, Powerica
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Neha Singh, SECI

आदेश/ ORDER

The Petitioner, M/s Powerica Limited is a generating company and is setting up its 50.6 MW Wind Power Project (WPP/Project). The said Project is to be located at Villages: Kalavad Simani, Chudeshwar, Samor, Kota Visotri, Charbara, Vadatra, Goinj, Hansthal, Zakasiya, Tehsil: Jam-Khambhaliya, District: Devbhoomi Dwarka, in the State of Gujarat. The Petitioner has entered into a Power Purchase Agreement dated 17.10.2019 with Solar Energy Corporation of India Limited for supply of 50.6 MW from its Project. The Petitioner has filed the Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement (PPA) for approval of 'Change in Law' and consequential relief to compensate the Petitioner for the increase in its Project cost due to the revision of the Goods and Services Tax (GST) applicable on renewable energy devices and manufacturing parts for wind mills and wind operated electricity generators, notified by the Ministry of Finance, Department of Revenue vide its Notifications No.8/2021 dated 30.09.2021 (GST Amendment). The said GST Amendment has come into effect from 01.10.2021.

2. The Respondent No. 1, Solar Energy Corporation of India (SECI), is a Central Public Sector Undertaking, which has been incorporated *inter-alia* to facilitate the implementation of various schemes of Ministry of New and Renewable Energy (MNRE) and achievement of targets set therein. In terms of the PPA signed with the Petitioner, SECI is acting as an intermediary procurer in line with provisions of '*Guidelines for Competitive Bidding Process*

for Procurement of Power from Grid Connected WPPs', issued by Ministry of Power and holds a power trading license in terms of Section 12 of the Electricity Act, 2003.

3. The Respondent No. 2, Uttar Pradesh Power Corporation Limited (UPPCL) is a Distribution Licensee covered within the meaning of Section 2(17) of the Electricity Act, 2003. UPPCL has executed a Power Sale Agreement (PSA) with SECI on 18.06.2019 for purchase of power from SECI as an intermediary procurer, which includes power to be supplied by the Petitioner.

4. The Petitioner has made the following prayers:

(a) Admit the present Petition;

(b) Hold and declare that the change in rate of Goods and Service Tax applicable to Supply Contracts for setting up of Petitioner's wind power project notified by the Ministry of Finance, Department of Revenue vide its Notifications No.8/2021 dated 30.09.2021 amounts to a Change in Law event under Article 12 of the Power Purchase Agreement dated 17.10.2019;

(c) Hold and declare that the Petitioner is entitled to a sum of INR 11,86,38,449 (INR Eleven Crore Eighty Six Lakh Thirty Eight Thousand Four Hundred and Forty Nine) along with carrying cost on account of the impact of such Change in Law event on the Petitioner's Wind Power Project;

(d) Direct the Respondent No.1, Solar Energy Corporation of India Limited to make payment of the sum of INR 11,86,38,449 (INR Eleven Crore Eighty Six Lakh Thirty Eight Thousand Four Hundred and Forty Nine) (or such amount as may be payable pursuant to the commissioning of the Project of the Petitioner) along with carrying cost towards compensation for such Change in Law event to the Petitioner;

In the alternate:

direct the Respondent No.1, Solar Energy Corporation of India Limited to allow an increase of 9.31 paise/kWh (or such amount as may be payable pursuant to the commissioning of the Project of the Petitioner due to the aforesaid Change in Law event) in the quoted tariff payable by the Respondent to the Petitioner for a period of initial 180 months and suitably amend the Power Purchase Agreement dated 17.10.2019 to reflect the aforesaid revision in quoted tariff; and

(e) Pass such other order(s) which the Hon'ble Commission deems fit in the facts and circumstances of the instant case.

5. The case was called out for virtual hearing on 24.01.2022. During the course of hearing, Learned counsel for the Petitioner submitted that the present Petition has been filed seeking approval of Change in Law event and consequential relief of compensation to the Petitioner for increase in its Project cost due to revision of Goods and Services Tax applicable on renewable energy devices and manufacturing parts for wind mills and wind operated electricity generators, notified by the Ministry of Finance, Department of Revenue vide its Notifications No.8/2021 dated 30.09.2021. The Petitioner has already issued a Change in Law notice to SECI on 29.10.2021 providing the details regarding occurrence of Change in Law, its impact on tariff and computation, etc., in compliance of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”). However, no response has been received from SECI till date.
6. Learned senior counsel for the Respondent, SECI submitted that the Scheduled Commercial Operate Date (SCoD) of the Petitioner's Project is 05.09.2022 and, therefore, it is premature to invoke the Change in Law Rules at this stage. Placing reliance on Rules 3(2), 3(3) and 3(7) of the Change in Law Rules, SECI submitted that recovery of proposed impact in tariff or charges due to Change in Law is to start only from billing cycle and that the Petitioner is to approach the Commission within thirty days from coming into effect of recovery of impact of Change in Law event. Learned senior counsel for SECI submitted that meetings had been conducted with all the project developers including the Petitioner in this regard and he further added that certain supporting documents are yet to be submitted by the Petitioner.
7. Learned counsel for the Petitioner submitted that while SCoD of the Project has been extended to 05.09.2022, the 1st Phase of its Project is likely to achieve commercial operation by 30.01.2022 whereas the 2nd phase of the Project is likely to achieve commercial operation by 31.03.2022. SECI has submitted that in that case, SECI will examine the Petitioner's claims provided the Petitioner submits all requisite documents.
8. Learned counsel for the Petitioner requested that in case the Commission decides to direct the Petitioner to approach the Commission in terms of Rule 3(8) of the Change in Law Rules, the

filing fees paid by the Petitioner be adjusted against the Petition to be filed under the said Rules.

9. The Commission observes that the Ministry of Power, Government of India has notified on 22.10.2022 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.”

10. 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 Respondent, 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, 2021’.
11. It is evident that the Change in Law Rules has been framed to facilitate timely recovery of costs due to Change in Law events and provide a process and methodology to be followed. Accordingly, the Petitioner needs to first approach SECI/ procurers in terms of the Change in Law Rules for adjustment of tariff on account of such Change in Law.
12. We note that the compensation for Change in Law shall be computed in terms of Rule 3(5) of the Change in Law Rules, which provides that where the agreement lays down any formula, the same shall be in accordance with such formula; or where the agreement does not lay down any formula, it would be in accordance with the formula given in the Schedule to the Rules on Change in Law.
13. In view of the above, the Petitioner may approach SECI for settlement of Change in Law claims in terms of the Change in Law Rules.

14. The Commission also directs the Petitioner to approach the Commission in terms of Rule 3(8) of the Change in Law Rules and that the filing fees paid by the Petitioner be adjusted against the Petition to be filed under the said Rules.

15. Accordingly, the Petition No. 268/MP/2021 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य