



नईदिल्ली
NEW DELHI

याचिकासंख्या/ Petition No. 274/MP/2021

And

275/MP/2021

कोरम/ Coram:

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

आदेश दिनांक/ Date of Order: 09th 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 06.10.2017 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 50 MW (100 MW) Solar PV Power Plants established by SB Energy Three Private Limited in the State of Rajasthan.

And in the matter of Petition No. 274/MP/2021:

SB Energy Three Private Limited,
5th Floor, Worldmark-2, Asset Area-8,
Hospitality District, Aerocity, NH-8,
South Delhi, Delhi-110037

...Petitioner

VERSUS

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

...Respondent

IN THE MATTER OF:

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 admeasuring 20,23,430 Sq. meter each with effect from 19.11.2019.

And in the matter of Petition No. 275/MP/2021:

SB Energy Four Private Limited,
5th Floor, Worldmark-2, Asset Area-8,
Hospitality District, Aerocity, NH-8,
Delhi-110037

... 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, SBETPL & SBEFPL
Shri Akshat Jain, Advocate, SBETPL & SBEFPL
Shri Pratyush Singh, Advocate, SBETPL & SBEFPL
Ms. Alviva Ahmed, Advocate, SBETPL & SBEFPL
Shri Krishna Rao, SBETPL & SBEFPL
Shri Rajeev Lochan, SBETPL & SBEFPL
Shri Dipak Panchal, SBETPL & SBEFPL

Shri Ravi Sinha, SBETPL & SBEFPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Ravi Nair, Advocate, SECI
Ms. Neha Singh, SECI

आदेश/ ORDER

M/s SB Energy Three Private Limited (the Petitioner in Petition No. 274/MP/2021) is a Project company of SBG Cleantech Three Limited whereas M/s SB Energy Four Private Limited (the Petitioner in Petition No. 275/MP/2021) is a Project company of SBE Four Limited (collectively referred to as Petitioners)

2. In Petition No. 274/MP/2021, competitive bidding was carried out by Solar Energy Corporation of India Limited (SECI) in terms of Request for Selection (RfS) dated 08.11.2016 issued under National Solar Mission (NSM) Batch-IV of Phase-II State Specific Viability Gap Funding (VGF) Scheme dated 14.03.2016 (NSM Guidelines). SBG Cleantech Three Limited (Parent Company of SB Energy Three Private Limited) submitted two separate Bids for establishment of two Projects with individual installed solar capacity of 50 MW each. SBG Cleantech Three Limited was declared as one of the successful bidders. SECI issued Letters of Intent (LoI) to SBG Cleantech Three Limited for development of two 50 MW Grid connected Solar PV Power Project in the State of Rajasthan. SBG Cleantech Three Limited formed Project Company SB Energy Three Private Limited (Petitioner in Petition No. 274/MP/2021) under the provisions of RfS. SB Energy Three Private Limited has established two separate Grid connected Solar Photovoltaic (PV) Power Plants in the State of Rajasthan with individual installed capacity of 50 MW located at Plot No. 2 (land admeasuring 12,14,058 Sq. meter approximately) and Plot No. 3 (land admeasuring 12,14,058 Sq. meter approximately) of Rajasthan Solar Park at Village Bhadla, Tehsil Bap, District Jodhpur in the State of Rajasthan. SB Energy Three Private Limited has entered into two separate Power Purchase Agreements (PPAs) with SECI on 06.10.2017. The Projects were commissioned on 18.09.2018 and 04.10.2018 respectively.

3. In Petition No. 275/MP/2021, competitive bidding was carried out by SECI in terms of RfS dated 21.06.2017 issued under NSM Guidelines. SBE Four Limited (Parent Company of SB Energy Four Private Limited) submitted two separate Bids for establishment of two Projects with individual installed solar capacity of 100 MW each. SBE Four Limited was declared as one of the successful bidders. SECI issued Letters of Intent (LoI) to SBE Four Limited for development of two 100 MW Grid connected Solar PV Power Project in the State of Rajasthan. SBE Four Limited formed Project Company SB Energy Four Private Limited (Petitioner in Petition No. 275/MP/2021) under the provisions of RfS. SB Energy Four Private Limited has established two separate Grid connected Solar Photovoltaic (PV) Power Plants in the State of Rajasthan with individual installed capacity of 100 MW located at Plot No. R4 (land admeasuring 20,23,430 Sq. meter approximately) and Plot No. R5 (land admeasuring 20,23,430 Sq. meter approximately) of Rajasthan Solar Park at Village Bhadla, Tehsil Phalodi, District Jodhpur in the State of Rajasthan. SB Energy Four Private Limited has entered into two separate Power Purchase Agreements (PPAs) with SECI on 27.04.2018. The Projects were commissioned on 09.07.2019 and 03.05.2019 respectively.
4. The Petitioners are 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 land of the Projects.
5. The Respondent, SECI has entered into Power Sale Agreements:
 - a) In Petition No. 274/MP/2021: with Rajasthan Urja Vikas Nigam Limited(RUVNL) on 12.05.2017 for onward sale of the 100 MW solar power being procured by SECI from the two 50 MW Solar Projects of the Petitioner on back-to-back basis.
 - b) In Petition No. 275/MP/2021: with Uttar Pradesh Power Corporation Limited(UPPCL) on 28.03.2018 for onward sale of 200 MW solar power being procured by SECI from the two solar Projects of the Petitioner on back-to-back basis
6. The Petitioners have made the following prayers:

- a) *Grant in-principal 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 under Article 12 of the PPAs;*
- b) *Allow the Petitioner to recover the land tax to be imposed on the Projects land from SECI through monthly compensation along with Carrying Cost in terms of the PPAs and CIL Rules; and*
- c) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

Submissions of the Petitioners

7. The Petitioners have submitted in the petitions and vide circulated note during the hearing on 11.01.2022 through video conferencing as under.

Re: Government of Rajasthan (GoR) Notifications dated 19.11.2019 and 30.03.2020 qualify as Change in Law

- a) In terms of Article 12 of the PPAs dated 06.10.2017, a change in law event is:
 - i. an enactment, coming into effect, adoption, promulgation, amendment, modification or repeal in India of any Law; or
 - ii. any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project, after the Effective Date resulting in any additional recurring/non-recurring expenditure or income to the Petitioners.
- b) GoR by Notification dated 06.03.2013, exempted payment of land tax on all classes of lands with effect from 01.04.2013.
- c) GoR by Notification dated 19.11.2019, 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.
- d) GoR by Notification dated 30.03.2020, increased applicable land tax @ Rs.2 per sq. meter, for Industrial lands above 10,000 sq. meter.
- e) Thus, land tax is applicable upon the land of the Petitioners with effect from 19.11.2019.

- f) GoR's Notifications dated 19.11.2019 and 30.03.2020 qualify as an event of Change in Law for the Petitioners under the 1st and 5th Bullet of Article 12 of the PPAs since as on the Effective Date under the PPAs as well as on the last date of Bid Submission no land tax was applicable on the Projects 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 Petitioners for their Projects.
- g) The said Notifications have resulted in change in the rate of tax applicable to industrial land such as the Project's land and has direct effect on the Projects.
- h) The reinstatement of land tax by Notification dated 19.11.2019 and further increase in the applicable rate of land tax by way of Notification dated 30.03.2020 will result in additional recurring expenditure to the Petitioners for the purpose of generating and supplying power to SECI from both the Projects.

Re.: Change in Law Rules 2021 do not deal with grant of in-principle approval

- i) On 22.10.2021, Ministry of Power (MoP) has notified Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as "Change in Law Rules") allowing the affected party to claim adjustment of monthly tariff in accordance with the Change in Law Rules upon the occurrence of a change in law event. Rule 2(c) of Change in Law Rules defines change in law as any enactment or amendment or repeal of any law, made after the determination of tariff under Section 62 or Section 63 of the Electricity Act, which leads to a corresponding change in the tariff.
- j) The Change in Law Rules do not deal with grant of in-principle approval qua the Change in Law event, whereas the present Petition is limited to grant of in-principle approval for the Change in Law event. In-principle approval of the Change in Law event is necessary to secure funds for payment of the land tax (when imposed) and to ensure regulatory certainty. The Petitioners in the present Petition have not sought any Change in Law compensation on account of GoR, Finance Department (Tax Division) Notifications dated 19.11.2019 and 30.03.2020.
- k) Rule 3 of Change in Law Rules 2021 only deal with adjustment in tariff consequent on Change in Law and provide the mechanism for recovery of compensation towards Change in law events. Even this Commission in its Order dated 06.12.2021 passed in Petition No.

228/MP/2021 titled *Mahindra Renewables Private Ltd. vs. SECI* has noted and affirmed the aforesaid position:

“16. 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 provides a process and methodology to be followed. Admittedly, as the Petitioner has no objection in approaching the Procurers with computations and details in terms of the said Rules to claim relief under Change in Law, the Petitioner needs first to approach SECI/procurers in terms of the Change in Law Rules for adjustment of tariff on account of such Change in Law.”

- l) The Petitioners by their letter dated 16.12.2021 have already issued a Change in Law Notice in terms of Change in Law Rules to SECI.

Re.: Change in Law Rules cannot override this Commission’s powers and functions under Section 79 of the Electricity Act, 2003

- m) In terms of the Electricity Act,2003 (hereinafter referred to as “the Act”) this Commission is, *inter-alia*, vested with the following statutory functions:
 - i) To regulate the tariff of generating companies having composite scheme for generation and sale of electricity in more than one State (like the Petitioners);
 - ii) Adjudicate upon disputes involving generating companies.
- n) Under the Act, this Commission has plenary powers to decide all issues and disputes relating to a generating company having composite scheme. The Change in Law Rules have been issued by MoP under Section 176 of the Act. It is a settled position that a subordinate legislation/rule cannot override the mandate and scope of the parent statute under which it has been issued.
- o) Hence, this Commission’s power under Section 79 of the Act to grant in-principle approval to the Petitioners for the Change in Law event cannot be overridden or taken away by the Change in Law Rules.
- p) The functions prescribed under Section 79 of the Act are mandatory functions as is evident from use of the word ‘*shall*’ in Section 79(1). Therefore, in the present case, since the Petitioners have invoked the jurisdiction under Section 79(1) of the Electricity Act, this Commission is statutorily mandated to exercise its powers and decide the present Petition.
- q) The Hon’ble Supreme Court in Judgment dated 08.10.2021 passed in *Maharashtra State Electricity Distribution Company Limited vs. Maharashtra Electricity Regulatory*

Commission & Ors., 2021 SCC On Line SC 913, has held that Electricity Regulatory Commissions exercise continuous regulatory supervision and steps ought to be taken to finally put an end to litigation.

r) Change in Law Rules cannot be said to negate the role and statutory functions of this Commission in adjudicating upon claims for grant of in-principle approval for Change in Law events. The statutory and regulatory powers granted to this Commission in terms of Section 79 of the Act, continue to hold. Hence, the plenary powers vested in this Commission in terms of Section 79 of the Act ought to be exercised for grant of in-principle approval for Change in Law event as sought by the Petitioners.

8. The case was called out for virtual hearing on 11.01.2022. After hearing the learned counsels of the contracting parties, the Commission reserved the matters for Order on ‘admissibility’.

Analysis and Decision

9. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.

10. Before dealing with specific claims of the Petitioners, it is imperative that we first deal with some preliminary objections raised by the Petitioners in their submissions during the hearing and subsequent note filed by them. The Petitioners have submitted that Change in Law Rules cannot override this Commission’s powers and functions under Section 79 of the Electricity Act, 2003.

11. The Commission observes that the Ministry of Power, Government of India has notified the Change in Law Rules, the relevant provisions of which are extracted as under:

“

MINISTRY OF POWER NOTIFICATION
New Delhi,
the 22nd October, 2021

*G.S.R. 751(E).—In exercise of the power conferred by **sub-section (1), read with clause (z) of sub-section (2), of section 176 of the Electricity Act, 2003 (36 of 2003)**, the Central Government hereby makes the following rules, namely:—*

1. Short title, commencement and application.—(1) These rules may be called the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021.

- (2) *They shall come into force on the date of their publication in the Official Gazette.*
(3) *These rules shall apply to a generating company and transmission licensee.*

....

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.”

12. The Petitioners have, in a nutshell, argued as follows. The prayers in petitions relate to change in law and need to be considered in the light of provisions of Section 79 of the Act and while doing so, the Commission need not look at the provisions of the Change in Law Rules notified by the Ministry of Power. The Change in Law Rules cannot operate as a bar on this Commission's powers under Section 79 of the Act to grant declaratory relief to the Petitioners and that the Change in Law Rules can only supplement the powers vested upon the Commission under Section 79 of the Act and not supplant it. The right to approach the Commission as the appropriate forum for declaratory relief instead of waiting to follow the process under the Change in Law Rules is a substantive right, which cannot be divested retrospectively that too by the Change in Law Rules, which are creature of the parent statute i.e., the Act. The Change in Law Rules, being creature of Act, cannot take away or dilute the powers vested in the Commission under Section 79 of the Act. A delegate cannot override the Act either by exceeding its authority or by promulgating provisions inconsistent with the Act. The Commission's power to adjudicate disputes involving transmission licensee ought not to be allowed to be whittled down through the Change in Law Rules as any such attempt will be ultra vires of the Act.
13. We have considered the submissions made by the Petitioners. At the outset, we would like to mention that the Commission is not the appropriate forum to decide upon vires of the Change in Law Rules as regards it being consistent or not being consistent with the Act.
14. In our view, the contentions of the Petitioners that dismissal of the Petitions on account of the promulgation of the Change in Law Rules would amount to avoidable abdication of the

responsibility by the Commission are misplaced in as much as they appear to be on the basis of incorrect reading of the provisions of Change in Law Rules. In our view, there is no question of abdication of the responsibility by the Commission entrusted under the Act. The Commission is simply giving effect to the provisions of the Change in Law Rules that aim to address the issues of delay in the recovering the additional costs incurred by the affected party due to Change in Law events and in order to do so, it provides a time bound mechanism for settlement of the claims of the affected party. On the contrary, if the contentions of the Petitioners that the Change in Law Rules only give an option to the affected party and that the Commission is required to adjudicate the disputes under Section 79(1)(f) of the Act irrespective of the whether the affected party has followed the said Rules, are to be accepted, it would defeat the entire purpose of promulgation of the Change in Law Rules. The affected parties seeking a declaration of each and every Change in Law prior to following the process or mechanism as per the Change in Law Rules will only lead to further delays, which the Change in Law Rules seek to remedy.

15. Further, the contentions of the Petitioners that giving effect to the provisions of the Change in Law Rules means whittling down the regulatory and adjudicatory powers of this Commission under the Act are also misplaced. In our view, the reliance placed by the Petitioners on the various earlier orders of this Commission are of no use as these orders were of prior to the promulgation of the Change in Law Rules, which now prescribe the process and mechanism for claiming Change in Law reliefs. It is no longer res-integra that discharge of Commission's functions under Section 79(1) of the Act, have got to be in conformity with the sub-delegated legislation, wherever such sub-delegated legislation is applicable. The Hon'ble Supreme Court in its judgment in the case of *PTC India Limited v. Central Electricity Regulatory Commission*, (2010) 4 SCC 603, has held as under:

“40.....Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the Interstate transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under

Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178....

16. While the aforesaid decision of the Hon'ble Supreme Court was in context of the Regulations framed by the Commission under Section 178 of the Act, the ratio laid down therein equally applies to the sub-delegated legislation notified by the Central Government under Section 176 of the Act. When such delegated legislation notified by the Central Government under Section 176 of the Act i.e. Change in Law Rules prescribe a process and mechanism for claiming a Change in Law reliefs and provide for intervention by the Commission in this process only at a particular stage, such Rules are required to be implemented and given effect to. We are absolutely clear in our view that the said Rules do not take away the power of adjudication of the Commission under Section 79(1) of the Act in any way but merely lay down a stage in the process when such power may be exercised by the Commission.
17. In cases, where the tariff has been adopted by the Commission under Section 63 of the Act as in case of the present Petitioners, the Commission adjudicates under Section 79(1) of the Act within the contours of relevant PPA and the Bidding Guidelines. The Change in Law Rules promulgated interplay with the PPAs and hence, any adjudication under Section 79(1) of the Act by the Commission necessarily requires the Change in Law Rules to be brought within the contours. Therefore, we do not agree with the contentions of the Petitioner that the prayers in petitions related to Change in Law (such as those of the Petitioners) need to be considered by the Commission in the light of provisions of Section 79 of the Act, without looking at the provisions of the Change in Law Rules notified by the Ministry of Power.
18. Now, we deal with the issues raised by the Petitioners through the prayers. The Petitioners have sought 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 under Article 12 of the PPAs and also to allow the petitioners to recover the land tax to be imposed on the Projects' land along with Carrying Cost in terms of the PPAs and

Change in Law Rules. The Petitioners have further submitted that the Commission has plenary powers under Section 79 of the Electricity Act, 2003 to decide the issues related to the Petitioner.

19. The Petitioners have submitted that pursuant to being selected as successful bidders in the competitive bidding process conducted by SECI, the Petitioners have entered into PPAs dated 06.10.2017 for 100 MW (in Petition No. 274/MP/2021) and dated 27.4.2018 for 200 MW (in Petition No. 275/MP/2021). At the time of submission of bids, no land tax was applicable on land for the Petitioners' projects in terms of Government of Rajasthan's Notification dated 06.03.2013. However, thereafter, Government of Rajasthan by Notification dated 19.11.2019, 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. Further, Government of Rajasthan by Notification dated 30.03.2020, increased applicable land tax @ Rs.2 per sq. meter, for Industrial lands above 10,000 sq. meter. Thus, the 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.
20. During the course of hearing held on 11.01.2022, the learned counsel for the Petitioners submitted that the Government of Rajasthan's Notifications dated 19.11.2019 and 30.03.2020, 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. The Petitioners have not made any payment for the aforesaid land tax as on the date of filing of the present Petitions. They have not sought any compensation on account of the above Notifications. Therefore, they are only seeking in-principle approval with respect to Notifications dated 19.11.2019 and 30.03.2020 issued by Finance Department (Tax Division), Government of Rajasthan as events of Change in Law for the Petitioners under Article 12 of the PPAs. 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. These Notifications have not been recognized as Change in Law by this Commission in any of its previous Orders. The Change in Law Rules do not deal with the grant of in-principle approval qua the Change in Law. 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. However, the Petitioners have already issued Change in Law Notices in terms of Change in Law Rules to SECI. Hence, the petitioners have requested the Commission to consider the prayers of the Petitioners for granting in-principle approval for Change in Law events.

21. The learned senior counsel for the Respondent, SECI submitted that it is beyond dispute that Notifications of Government of Rajasthan imposing the land tax would constitute law in terms of 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. In-principle recognition of Change in Law has been allowed by the Commission only in the matters relating to installation of Emission Control System. 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.
22. 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 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.
23. The Commission observes that the PPAs of the Petitions 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 Effective Date resulting into any additional recurring/non-recurring 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 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, shall be treated as per the terms of this Agreement. For the purpose of considering the effect of this change in Tax structure due to change in law after the date of submission of Bid, the date such law comes into existence shall be considered as effective date for the same. 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 Central Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central 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.”

24. The Commission observes that there is no provision for grant of ‘in-principle approval’ either in the PPAs 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 Petitioners, 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. In view of the above and in the 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.
25. The Commission further observes that during the course of hearing SECI submitted that Notifications of Government of Rajasthan imposing the land tax would constitute law under the PPA. Also, the Petitioners have admitted that land tax in terms of the Notifications dated 19.11.2019 and 30.03.2020 is yet to be levied upon the Petitioners in respect of their projects’

land and the Petitioners have not made any payment for the aforesaid land tax as on the date of filing of the present Petitions. The Commission is of the view that the cause of action arises only when the land tax is levied and the Petitioners have to pay for the tax. It is the settled law that no Order can be made in anticipation for any future claims to be raised. Hence, the Commission finds no necessity to invoke Regulatory powers provided under Section 79 of the Act.

26. In view of the above, the Commission holds that the Petitioners may approach the Respondents/ procurers 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.
27. The Petition No.274/MP/2021 and Petition No. 275/MP/2021 are disposed of in terms of the above.

Sd/-
(पी. के. सिंह)
सदस्य

Sd/-
(अरुण गोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
अध्यक्ष