



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 52/MP/2019 along with
IA 78 of 2022

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: 23rd of August, 2022

IN THE MATTER OF:

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for (i) approval of 'Change in Law'; and (ii) consequential relief to compensate for the increase in capital cost due to introduction of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Tax Acts enacted by respective states, in terms of Article 12 of the power purchase agreement dated 02.08.2016 between Solitaire Powertech Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

Solitaire Powertech Private Limited
616 A, 16A, 6TH Floor, Devika Tower,
Nehru Place- New Delhi-110019

.....Petitioner

Versus

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

2. Bangalore Electricity Supply Company Limited
BESCOM K.R. Circle
Bangalore-560001
3. Mangalore Electricity Supply Company Limited
MESCOM Bhavan, Kavoor Cross Road, BEJAI,
Mangaluru-575004, Karnataka
4. Chamundeshwari Electricity Supply Corporation Limited
No. 29, Vijaynagar 2nd Stage,
Hnkal, Mysore- 570017
5. Gulbarga Electricity Supply Company Limited
Corporate Office, Station Road,
Kalaburagi- 585102, Karnataka
6. Hubli Electricity Supply Company Limited,
Tabib Land, Mantur Road, Near CBT, APMC,
Hubali-Dharwad, Karnataka- 580020

...Respondents

Parties Present: Shri Hemant Sahai, Advocate, SPPL
Shri Nitish Gupta, Advocate, SPPL
Shri Nishant Talwar, Advocate, SPPL
Shri Utkarsh Singh, Advocate, SPPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Vikas Bamrara, SPPL
Ms. Neha Singh, SECI

आदेश/ ORDER

1. The Petitioner, Solitaire Powertech Private Limited, is a generating company and is setting up a Solar Power Project based on Photo Voltaic technology of 30 MW capacity at District Chitradurga, Karnataka. The Petitioner has filed the instant petition seeking approval of 'Change in Law'; and consequential relief to compensate for the increase in capital cost due to introduction of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Tax Acts enacted by respective States, in terms of Article 12 of the Power Purchase Agreement (PPA) dated 02.08.2016.

2. The Respondent No. 1, Solar Energy Corporation of India Limited (SECI) is a Central Public Sector Undertaking under the administrative control of Ministry of New and Renewable Energy (MNRE), set up on 20.09.2011 to facilitate the implementation of Jawaharlal Nehru National Solar Mission (NSM) for development, promotion and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM.
3. The Respondent No. 2 to No. 6, are the distribution licensees engaged in the business of distribution and supply of electricity across the State of Karnataka.
4. The Petitioner has made the following prayers:

In Petition No. 52/MP/2019

- a. *Declare that enactment of GST Law qualifies as 'Change in Law' in terms of Article 12 of the PPA executed between the Petitioner and the Respondent and that the Petitioner is entitled to relief thereunder;*
- b. *Direct the Respondent to compensate the Petitioner in terms of Article 12 of the PPA for the additional non-recurring/ recurring capital cost incurred/ to be incurred by it to the tune of INR 7,96,66,680/- due to introduction of GST Law by way of upfront lumpsum payment/ adjustment in the quoted tariff along with the carrying cost;*
- c. *Pursuant to grant of prayer (a) and (b) above, approve the necessary consequential amendments to the PPA and LOI;*
- d. *Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner.*

In I.A. No. 78 of 2021

- a. *Allow the present Application to be listed before this Hon'ble Commission on urgent basis at the earliest possible date as per the convenience of this Hon'ble Commission;*
- b. *Hold and direct the Respondent No. 1 to pay upfront lump-sum payment of Rs. 2,11,27,380/- (or any other amount payable on the date of final order passed by this Hon'ble Commission) within the period of 10 days from the date of order and to release*

the remaining annuity monthly payment of Rs. 7,20,673/- per month (as proposed by Respondent No. 1 vide its letter dated 22.03.2021) within period of 60 days from the date of order, as minimum obligated payments which the Petitioner is entitled to receive.

Brief factual background:

5. SECI was designated as the nodal agency for implementing MNRE schemes for development of grid connected solar power capacity through Viability Gap Funding mode (VGF). MNRE issued the 'Guidelines for Implementation of Scheme for Setting up of 2000 MW Grid-connected Solar PV Power Projects under Batch-III' on 04.08.2015 (Guidelines). SECI by way of Request for Selection (RfS) dated 15.02.2016, invited proposals for 1000 MW grid connected solar photo voltaic power projects under NSM Phase II, Batch III Tranche-V in State of Karnataka. In furtherance of the RFS, the Petitioner submitted its bid on 23.05.2016. The reverse auction process was carried out on 09.06.2016 and the Petitioner was declared as successful bidder after quoting Viability Gap Fund (VGF) support of Rs 73.49 Lakhs/MW for the 30 MW Project at applicable tariff of Rs. 4.43/ kWh. SECI issued Letter of Intent (LoI) dated 02.07.2016 to the Petitioner for development of the Project for generation and onward sale of solar power to SECI. The Petitioner, on 02.08.2016, entered into a PPA for sale of 30 MW from the Project at a tariff of Rs. 4.43/ kWh. As per the PPA, the scheduled date of commissioning of the Project is 02.09.2017 (SCoD).
6. On 01.07.2017, the Central Goods and Services Tax Act, 2017; the Integrated Goods and Services Tax Act, 2017; and the Karnataka Goods and Services Tax Act, 2017 (GST Laws) were introduced.
7. As per the Petitioner, the implementation of GST has resulted in an increase in the recurring and non-recurring expenditure for the Petitioner after the Effective Date of the PPAs, and consequently, has adversely impacted the business of the Petitioner.
8. The present Petition was filed on 01.03.2019 and admitted by this Commission on 16.05.2019, whereby the Respondents were directed to file their replies by 06.06.2019 with an advance copy to the Petitioner who could file its rejoinders, if any, by 20.06.2019.

9. Accordingly, SECI filed its reply on 06.06.2019, followed by the Petitioner filing its rejoinder to the same on 03.07.2019.

Hearing dated 04.06.2020:

10. The case was called out for virtual hearing. The Commission observed that the Petitioner and SECI have sought liberty to engage in discussion for reconciliation of the Petitioner's claims arising out of Change in Law event, namely, enactment of GST Law as per MNRE's letters dated 12.3.2020 and 23.3.2020. Accordingly, the Commission adjourned the matter with the advice that the Petitioner may get the Petition revived based on the outcome of the discussions or settlement reached, if any, amongst the parties.

Hearing dated 09.11. 2021:

11. The case was called out for virtual hearing. The learned counsel for the Petitioner submitted that subsequent to hearing of the matter on 04.06.2020, the Petitioner and SECI have reconciled the Petitioner's Change in Law claims relating to enactment of GST Laws. The learned counsel, referring to the letter of SECI dated 22.03.2021, submitted that the admitted GST claims till Commercial Operation Date ('COD') is Rs.6,96,91,565/- and under the annuity mode of payment, the upfront lump sum amount (i.e. monthly annuity payment from COD of the project till the date of payment) to be paid works out to Rs. 1,60,82,669/-. The aforesaid lump sum amount has been calculated by assuming the date of payment to be 31.03.2021. However, since approximately 7 months have already passed from the said date, SECI may be directed to pay the upfront lump sum amount for such elapsed period. The learned counsel further submitted that the Petitioner is facing severe financial difficulties and accordingly, IA No. 78/2021 has been filed by the Petitioner seeking directions to be issued to SECI to release the payment as proposed vide letter dated 22.03.2021. The learned counsel further added that the Petitioner has also prayed for carrying cost, which may be considered in light of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021.
12. The learned senior counsel for the Respondent, SECI submitted that the reconciliation of claims between the Petitioner and SECI has been completed and SECI had sent the reconciled claims to the buying entity, namely, BESCO, which has, however, neither commented upon nor objected to the said amount. The learned senior counsel for SECI requested for grant of 60 days' time to SECI from the date of Order for making the annuity payment in terms of Order

dated 20.8.2021 in Petition No. 536/MP/2020 and Ors. The learned senior counsel submitted that the arrears of upfront lump sum amount, if any, will be paid by SECI and that the Petitioner's reliance on the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 for grant of carrying cost is misplaced as the said Rules cannot have a retrospective effect. The learned senior counsel sought liberty to file a short note of submissions in the matter.

13. Considering the request of the learned senior counsel for the Respondent, SECI, the Commission directed the Respondent, SECI to upload its note of submissions during the course of the day with copy to the Petitioner. Subject to the above, the Commission reserved the matter for Orders.

14. **Subsequent proceedings:**

a) After having the matter reserved for Orders on 09.11.2021, the Petition was re-listed for hearing before this Commission on 11.01.2022, in view of the issuance of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (*Change in Law Rules*) by the Ministry of Power, Government of India which provided for a procedure dealing with the Change in Law cases. During the course of hearing, learned counsel for the Petitioner submitted that the parties to the PPA i.e. the Petitioner and SECI, have already reconciled the Petitioner's Change in Law claims relating to enactment of GST Laws and that SECI has also agreed to release the payments to the Petitioner, as recorded vide Record of Proceedings for the hearing dated 09.11.2021. The learned counsel further submitted that the Petitioner is facing severe financial stress. Accordingly, the Petitioner had filed IA No. 78/2021, inter alia, seeking direction to SECI to release the payments as proposed vide its letter dated 22.03.2021. The learned counsel further submitted that the Change in Law Rules may not apply in the present case as the parties, namely, the Petitioner and SECI have already reconciled the claims. As regards the distribution licensee, despite being party to the Petition, it chose not to appear before the Commission. The learned counsel submitted that the Commission, in its various Orders, has already held that the obligation of SECI for making payment to the Petitioner is not subject to payment being made by the distribution licensee to SECI. Based on the above, the learned counsel requested that the Commission may consider passing a consent order in the matter or else the parties may be permitted to reconcile the claims with distribution licensee and thereafter, the matter be considered under the Change in Law Rules.

- b) 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 licensee, BESCO. However, so far, BESCO has not confirmed the said claims. The learned senior counsel further submitted that the Respondent along with the Petitioner will once again take up the issue of reconciliation with distribution licensee and will approach the Commission thereafter, for issuance of an appropriate Order under Change in Law Rules. The learned counsel for the Petitioner also agreed to the submissions made by the learned senior counsel for SECI and prayed for short adjournment while the parties may reconcile the claims with distribution licensee and approach the Commission thereafter.
- c) Considering the submissions made by the learned counsel for the Petitioner and the learned senior counsel for the Respondent, SECI, the Commission adjourned the matter and permitted the Petitioner and SECI to reconcile the claims with distribution licensee, BESCO within two weeks and approach the Commission for appropriate direction under Rule 3(8) of the Change in Law Rules and/or Section 79(1)(f) of the Electricity Act, 2003. The Commission held that the Petition shall be listed for hearing in due course for which separate notice will be issued.
- d) The present Petition was re-listed for hearing before this Commission on 05.07.2022, where it made the following observations:

Case was called out for virtual hearing.

*2. At the outset, learned senior counsel for the Respondent No.1, SECI submitted that the reconciliation process of the Petitioner's Change in Law claims relating to GST Laws has **already completed and agreed upon between the parties and accordingly,** the Commission may pass an appropriate order in terms thereof. Learned senior counsel sought liberty to place on record the details relating to the reconciliation process.*

*3. Learned counsel for the Petitioner confirmed that the amount for the Change in Law claims of the Petitioner has been **reconciled with SECI**. Learned counsel further submitted that under the annuity mode of payment, upfront lump sum amount has been calculated by assuming the date of payment to be 28th February, 2022. However, since **four months** have already elapsed from the said date, SECI may be directed to pay the monthly annuity amount for elapsed period as upfront lumpsum amount. Learned counsel added that while the Commission in its order dated 20.8.2021 in Petition No. 536/MP/2020 and Ors. has permitted SECI to make the payment of upfront lumpsum*

amount within the period of 60 days from the order, keeping in view that the considerable period has already elapsed and the Petitioner is facing severe financial stress, SECI may be directed to make such payment in the reduced timeline.

4. After hearing the learned senior counsel for SECI and the learned counsel for the Petitioner, the Commission directed the parties to file their respective note of submissions within a week with copy to the other side.

5. Subject to the above, the Commission reserved the matter for order.

Submissions by SECI:

15. SECI had filed a short submission on 04.07.2022 vide which it has submitted as under:
- a) SECI filed the submissions on 09.11.2021 in the above-mentioned Petition. In the said submissions, SECI had placed on record its letter dated 22.03.2021 to the Petitioner and its letter dated 26.03.2021 to BESCOM, whereby SECI had communicated the provisional reconciliation of the GST claims of the Petitioner in respect of Petitioner's 30 MW project established in Karnataka.
 - b) In pursuance to the Order dated 20.08.2021 of the Commission passed in Petition No.536/MP/2020 in the matter of *Solar Energy Corporation of India Limited -v- M/s Azure Power Venus Private Limited & Others*, wherein the Commission has also decided the aspect of cut-off date for GST claims in Paragraphs 81 and 92 to 96, SECI vide its letter dated 07.02.2022 to the Petitioner and by letter dated 08.02.2022 to BESCOM has communicated the revised reconciliation of the GST claims in respect of 30 MW project of Petitioner as Rs. 6,96,91,565/-. The Petitioner and BESCOM were also parties to the said Petition No.536/MP/2020 and therefore the Order dated 20.08.2021 is binding on all the parties.
 - c) The Petitioner vide its communication dated 23.02.2022 has accepted the revised reconciliation done by SECI in terms of SECI's letter dated 07.02.2022.
 - d) BESCOM is yet to respond to the revised reconciliation given by SECI vide its letter dated 08.03.2022 in respect of the GST claims of the Petitioner. In the circumstances, the Commission may be pleased to issue directions to BESCOM (i.e. the power procurer under the PSA), to make payment towards the reconciled claims of the GST payable by SECI to Petitioner, on a back to back basis under the PSA in a time bound manner. In this regard, the Order dated 13.05.2021 passed by the Commission in Petition No.73/MP/2020 along

with I.A. No.21 of 2021 in the matter of *SB Energy One Private Limited –v- Solar Energy Corporation of India Limited and Another* is relevant.

Submissions by the Petitioner:

16. The Petitioner has also filed note for argument on 07.07.2022, vide which it had made the following submissions:
- a) SECI vide its letter 07.02.2022 approached the Petitioner and proposed to pay lumpsum of Rs. 2,09,96,818 and remaining annuity of Rs. 6,92,552, while assuming date of actual payment as 28.02.2022. The said proposal was also sent by SECI to the distribution licensees of the State of Karnataka vide letter dated 08.02.2022. The Petitioner vide letter dated 23.02.2022 has accepted the revised proposal made by SECI. However, considering that approx. five months have elapsed from the proposed date made by SECI, it is submitted that appropriate directions should be passed on SECI to release lumpsum of Rs. 2,44,59,578/- (i.e., upfront of Rs. 2,09,96,818/- as agreed during reconciliation + annuity of 5 months), and the remaining payments to be released through annuity of Rs. 6,92,552/- spread throughout the remaining period of 13 years from COD. Further, SECI may be directed to release the lumpsum payments at the earliest on urgent basis within the period of one week from the date of Order passed by this Commission.
 - b) Therefore, this Commission may graciously:
 - i. Declare that the introduction of GST Law is a Change in Law event under the PPA;
 - ii. As per the reconciliation between the parties, hold and direct SECI to release lumpsum of Rs. 2,44,59,578 and pay the remaining claim through equal monthly annuity of Rs. 6,92,552 spread throughout the remaining period of 13 years from COD;
 - iii. Direct SECI to release the lumpsum payment within one week from the date of order; and
 - iv. Pass any other order(s) as this Hon'ble Commission may deem fit in the interest of justice.

Analysis and Decision

17. We observe that the Petitioner submitted its bid on 23.05.2016. The reverse auction process was carried out on 09.06.2016 and Letter of Intent was issued on 02.07.2016. Subsequently, on 02.08.2016, the Petitioner entered into a PPA for sale of 30 MW from the Project at a tariff of Rs. 4.43/ kWh. As per the PPA, the SCoD of the Project was 02.09.2017. On 01.07.2017, the GST Laws were introduced. The enactment of GST Laws is squarely covered as ‘Change in Law’.
18. We observe that SECI vide its letter dated 07.02.2022 proposed to pay lumpsum of Rs. 2,09,96,818 and remaining amount in monthly annuity of Rs. 6,92,552 spread throughout the remaining period of 13 years from COD, which was accepted by the Petitioner vide letter dated 23.02.2022. The Petitioner and SECI have also admitted on record that the GST claims stand reconciled between themselves. The said proposal was also sent by SECI to the distribution utilities of the State of Karnataka vide letter dated 08.02.2022. The Petitioner has submitted that now SECI may be directed to release the lumpsum payment within one week from the date of Order.
19. We observe that vide Order dated 20.08.2021 in Petition No. 536/MP/2020, the Commission has already held as under:

“105. The summary of our findings are as follows:

Issue No. 1:

- *The discount rate of annuity payments shall be 10.41% towards the expenditure incurred by SPDs on account of Change in Law (GST Laws or Safeguard Duty, as the case may be).*
- *The liability of SECI/ Discoms for ‘Monthly Annuity Payments’ starts from 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later, late payment surcharge for the delayed period corresponding to each such delayed Monthly Annuity Payment(s) shall be payable as per respective PPAs/PSAs.*
- *The “Tenure of Annuity Payments” shall be for 13 years.*
- *The annuity payment liability shall be a part of the existing payment security mechanism as stipulated in the PPAs and already established under the PPAs by making suitable provision for the annuity payments.*

Issue No. 2:

• *The prayer of SPDs that the interest on Customs Bond should be covered under Change in Law and should be paid in lumpsum as separate element is disallowed. Actual cash outflow (due to levy of safeguard duty) for which bonds have been executed will be payable and claims for Change in Law towards Safeguard Duty will be governed by orders in the petitions where the matter has been adjudicated.*

Issue No. 3:

• ***Cut-off date for Safeguard Duty Claims:*** *The invoices related to supply of the goods can be raised only up to the COD for all the equipment as per rated project capacity that has been installed and through which energy has flown into the grid.*

• ***Cut-off date for GST Claims:*** *The invoices related to supply of the goods can be raised only up to COD for all the equipment as per the rated project capacity that has been installed and through which energy has flown into the grid. in case of supply of services related to goods procured up to COD, the invoices are to be raised within 30 days of supply of such services, which cannot be later than 30 day of COD.*

Issue No. 4:

• *The SPDs shall have to pay all statutory taxes, duties, levies and cess etc. on Monthly Annuity Payments that may be required to be paid as per the terms of PPAs.*

Issue No. 5:

• *Since the pending petitions were not tagged along with the current Petitions, no general Order can be passed.”*

20. In view of the above discussions, the Commission holds that regarding GST claims, the reconciled claims may be released by the Respondent SECI at the earliest. The Contracting parties are directed to follow the directions given in Order dated 20.08.2021 in Petition No. 536/MP/2020 meticulously. The Commission further directs that the Karnataka DISCOMS are liable to pay to the SECI all the above reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by the Karnataka DISCOMS to SECI.
21. In view of the above I.A. 78 of 2021 is disposed of.
22. In view of the above the Petition No. 52/MP/2019 is also partially disposed of except for prayers (b) (qua recurring cost).
23. The Commission observes that the issue regarding O&M cost has been remanded by the Appellate Tribunal of Electricity in Appeal Numbers 61, 62, 63, 64 and 65 of 2021. Therefore, the Commission holds that the issues as contained in prayer (b) (qua recurring cost) of the

instant petition shall be dealt along with the remanded matters and to that extent the petition is tagged with Petition Nos. 184/MP/2018 & batch.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)