

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 174/MP/2022

- Subject** : Petition under Section 79 of the Electricity Act, 2003 and Article 12 of the Power Purchase Agreement dated 15.11.2018 filed on behalf of Clean Solar Power (Jodhpur) Private Limited seeking declaration that change in rate of Goods and Services Tax from 5% to 12% on solar cells and modules w.e.f. 1.10.2021 on account of amendment to Notification No. 01/2017- Central Tax (Rate) and Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 vide Notification No. 6/2021-Central Tax (Rate) and Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 as a 'Change in Law' event under Article 12.1 of the PPA and to further direct the Respondent (Solar Energy Corporation of India Limited) to pay compensation alongwith carrying cost towards additional amount incurred on account of increment in Goods and Services Tax paid by the Petitioner pursuant to notifications dated 30.9.2021 and to restitute the Petitioner to the same financial position as it would have been before the notifications dated 30.09.2021.
- Date of Hearing** : 17.1.2023
- Coram** : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member
- Petitioner** : Clean Solar Power (Jodhpur) Private Limited (CSPJPL)
- Respondents** : Solar Energy Corporation of India Limited (SECI)
- Parties present** : Shri Sanjay Sen, Senior Advocate, CSPJIL
Shri. MG Ramachandran, Senior Advocate for SECI
Ms. Mandakini Ghosh, Advocate, CSPJPL
Shri Avijeet Lala, Advocate, CSPJPL
Ms. Shreya Dubey, Advocate, CSPJPL
Shri Ravish Kumar, Advocate, CSPJPL
Ms. Tanha Sareen, Advocate, SECI
Ms. Surbhi Kapoor Advocate, SECI
Ms.Srishti Khindaria, Advocate, SECI



Shri Kumar Anurag Singh Advocate, JBVNL
Shri Servesh Singh, CSPJPL
Ms. Anachal , CSPJPL
Ms. Neha Singh, SECI
Shri Mr Abhinav Kumar, SECI
Shri. Uday Pavan Kumar Kruthiventi
Shri Swapnil Verma,CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Ms. Kavya Bhardwaj, CTUIL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that rejoinder to the reply of SECI is ready. However, the same could not be placed on record due to closure of window on e-filing portal. He further submitted that copy of the rejoinder has already been served on SECI and the same will be filed subject to leave of the Commission.

3. Learned senior counsel for the Petitioner submitted that there is no dispute/objection by SECI with regard to revision of rate of GST from 5% to 12% in terms of Notification No. 8/2021 dated 30.9.2021 being considered as change in law.

4. Learned senior counsel on the issue of cut-off date submitted that the Project achieved commissioning and commercial operation on 21.4.2022 i.e. within the revised SCOD of 6.8.2022 and SECI is only considering/limiting the impact of change in rate of GST on procurement of solar cells, modules that are duly commissioned by the date of commercial operation of the power plant and not thereafter. He further submitted that the submissions of SECI that payment of compensation on account of change in law should be on annuity payment methodology with rate of recovery at 9% as against 10.41% and tenure of payment should be 15 years as against the 13 years are misplaced. The Commission has consistently and uniformly followed the payment methodology as laid down by its vide order dated 20.8.2021 in Petition No. 536/MP/2020. The said methodology has recently been upheld and followed by the Commission in its order dated 9.1.2023 in Petition No. 179/MP/2020, wherein the Commission approved the discounting factor at 10.41% for annuity payments for a tenure of 13 years.

5. As regards the carrying cost, SECI's stand that there is no provision in the PPA and as such the Petitioner is not entitled for the same is also misplaced. Placing reliance on the judgment of APTEL dated 15.9.2022 in Appeal No. 256 of 2019 in the matter of Parampujya Solar Energy Pvt. Ltd. and Anr. v. CERC and Ors. ('Parampujya Judgment'), and Commission's order dated 30.11.2022 in Petition No. 293/MP/2018



in case of Azure Power India Pvt. Ltd. Vs. NTPC & Ors., the Petitioner is entitled to carrying cost being equitable relief in nature.

6. Learned counsel appearing on behalf of JBVNL submitted that reply of JBVNL is ready. However, the same could not be filed as reply window was closed on e-filing portal and requested the Commission to allow him to upload the reply.

7. Learned senior counsel for SECI referring to its reply submitted that revision in the rate of GST from 5% to 12% is in terms of Ministry of Finance, Department of Revenue, Notification No. 8/2021 dated 30.9.2021 qualifies to be a 'Change in Law' event. However, SECI has objected to the methodology of computation of compensation on account of change in law and has submitted that the discounting factor has been considered as 9 % (which is rate of interest for the loan component of the capital cost) and tenure of payment as 15 years as provided for determination of tariff under Regulation 14 (2) (b) of the Renewable Tariff Regulations, 2020. Learned senior counsel submitted that as regards the claim of carrying cost on the basis of the Parampujya Judgment, it will be subject to the order(s) passed by the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 and Ors. challenging the Parampujya judgment. Thus, the Commission may determine the claim of carrying cost. However, its enforcement may be kept pending till adjudication of the said matter before the Hon'ble Supreme Court. SECI has no issue on the cut-off date.

8. In response, learned senior counsel for the Petitioner submitted that as per the Hon'ble Supreme Court judgment, stay of the said judgment is qua the parties and the principle is not stayed and operation of the judgment is stayed. He requested the Commission to allow him to place on record the judgment on this point.

9. The Commission permitted the Petitioner and JBVNL to upload their rejoinder and reply respectively on the e-filing portal by 3.2.2022. The Commission also permitted the Petitioner and SECI to submit their Written submissions by 10.2.2023 including the judgments relied upon by them.

10. The Commission directed the parties to strictly comply with the above timelines and made it clear that no extension of time shall be granted.

11. Subject to the above, the Commission reserved order in the matter.

By the order of the Commission

sd/-

(Rajendra Kumar Tiwari)
Bench Officer

