



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. : 274/MP/2021
275/MP/2021 &
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: 14th of March, 2023

IN PETITION No. 274/MP/2021

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:

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 PETITION No. 275/MP/2021

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:

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

IN PETITION NO. 256/MP/2021:

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, SBETPL & SBEFPL
Shri Akshat Jain, Advocate, ASEFPL, SBETPL & SBEFPL
Shri Avdesh Mandloi, Advocate, ASEFPL, SBETPL & SBEFPL
Shri Shikhar Verma, Advocate, ASEFPL, SBETPL & SBEFPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, 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. Adani Solar Energy Four Private Limited (ASEFPL) [Formerly Known as Kilaj Solar (Maharashtra) Private Limited] is the Petitioner in Petition No. 256/MP/2021. The Petitioners have filed the petitions under Section 79 of the Electricity Act 2003 read with Article 12 of the Power Purchase Agreements and are seeking in-principle approval for Change in Law event by virtue of 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.

2. The Respondent No. 1, 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.
3. The Petitioners have made the following prayers:

In Petition No.274/MP/2021 and in Petition No. 275/MP/2021

- 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 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 Commission may deem necessary in the interest of justice.*

In Petition No. 256/MP/2021

- 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 Commission may deem necessary in the interest of justice.*

4. A summary of the Petitions is as follows:

Petition No.	Petition No. 274/MP/2021	Petition No. 275/MP/2021	Petition No. 256/MP/2021		
Last date of Bid Submission	15.06.2018	19.04.2017	05.12.2017		
Date of PPA	30.11.2018	06.10.2017	27.04.2018		
Effective Date of PPA	25.10.2018	16.09.2017	27.04.2018		
Date of PSA	02.08.2018	12.05.2017	28.03.2018		
Buying Entities	BSES Yamuna Power Ltd. (BYPL)	Rajasthan Urja Vikas Nigam Ltd. (RUVNL)	Uttar Pradesh Power Corporation Ltd. (UPPCL)		
Capacity (in MW)	50	50	50	100	100
Commercial Operation Date	17.04.2020	03.11.2018		09.07.2019	03.05.2019

Submissions of the Petitioners:

5. The Petitioners have submitted 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, 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) Government of Rajasthan (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 on 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 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 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 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) notified Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (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 deals with adjustment in tariff consequent on Change in Law and provides 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 (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 exercises 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.

Hearing dated 11.01.2022 (in Petition No. 274/MP/2021 and in Petition No. 275/MP/2021):

6. 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'.

Hearing dated 24.01.2022 in Petition No. 256/MP/2022:

7. The case was called out for virtual hearing on 24.01.2022. The learned counsel of the Petitioner submitted that as the issues involved in the present matter are identical to those of Petition No. 274/MP/2021 and Petition No. 275/MP/2021, so it may be reserved for order on admissibility along with the above Petitions. Learned Counsel of SECI had no objection. The Commission accordingly reserved the matter for Order on admissibility.

8. **Subsequent proceedings:**

- a) After hearing the parties in Petition No. 274/MP/2021 and 275/MP/2021, the Petitions were disposed of on 09.02.2022 holding that:

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.

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.

- b) In similar manner, this Commission after hearing the parties in Petition No. 256/MP/2021, disposed of the Petition on 18.02.2022 holding that:

“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.

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”.

- c) **Order of Appellate Tribunal dated 05.04.2022:** The Appellate Tribunal passed its judgment, setting aside the Orders of this Commission challenged in O.P No. 1 of 2022 and Appeal Nos. 116, 74, 75 & 76 of 2022, which originally sought compensation on account of Change in Law events, and were disposed by this Commission. Appellate Tribunal passed the following decision in the aforementioned appeals:

“72. For the foregoing reasons, we find the impugned orders of the Central Commission applying the CIL Rules to matters pending before it for adjudication under Section 79(1)(f) of Electricity Act on the date of coming into force of said rules wholly erroneous, improper and bad in law. The said orders are thus set aside. In the result, the proceedings in claim cases (in which impugned orders were passed – and that includes the orders dated 04.02.2022 in the Original Petitions) remain inchoate. The Central Commission is duty-bound to consider each of them on the merits of the claims and adjudicate in accordance with law on the dispute(s) in proper exercise of its jurisdiction under Section 79 of the Electricity Act. It is directed to proceed to do so expeditiously.

73. We would be failing in our duty if we do not also note here (as also indicated earlier in this judgment) that prior to the decisions which were challenged by the captioned petitions/appeals, as indeed subsequently, the Central Commission has been taking the impugned approach on pending claims which has and would have resulted in a large number of such claims being

unduly scuttled, non-suiting the parties similarly placed as the petitioners/appellants herein. If the factual back-ground is same as in the cases at hand, such decisions would also constitute want of performance of statutory function by the Central Commission meriting an appropriate direction by this tribunal. This would be constrained to seek remedy against such order, if it thereby feels aggrieved. The remedies available in law include approaching the Central Commission for review or this tribunal ordinarily by an appeal.

74. Such that the affected parties do not suffer on account of faulty approach of adjudicatory authority, and this tribunal is not flooded by appeals raising identical issues against such other decisions as above, rendered in similar fact-situation by the Central Commission, it would be appropriate that it be asked to properly and fully perform its statutory function by exercise of its review jurisdiction, suomotu, in all similarly-placed claims for compensation founded on change in law events where similar decisions have been taken by the Central Commission after coming into force of CIL Rules on 22.10.2021 and, if such decisions are found running afoul of the view taken by this tribunal by this judgment, to vacate the same and restore the concerned Claim cases to its file and complete the process of adjudication thereupon in accordance with law. Needful action in above nature shall be initiated by the Central Commission within four weeks of this judgment. Of course, review can be undertaken even at the instance of the parties in question should they approach the Commission on their own. We may add that these directions are without prejudice to the remedy, if any, already pursued or intended to be pursued by the concerned parties vis-à-vis other such cases.”

- d) **Hearing dated 17.05.2022:** The matter was listed for hearing on 17.05.2022 where the Commission made the following observations:

8. Keeping in view the submissions made by the learned senior counsel and the learned counsels for the parties and their agreement to the observations of the Commission expressed in the Record of Proceedings dated 9.5.2022 in the similarly placed matters with regard to the methodology for implementation of APTEL’s directions in judgment dated 5.4.2022 as contained in paragraph 74, the Commission indicated that it will proceed for passing appropriate orders in these matters as per directions and further observed that with regard to the various requests of the learned counsels for the parties, inter alia, permission to file additional affidavit, reply and/or rejoinder etc., the necessary direction or liberty in this regard will be granted in the suo-motu order(s) to be issued by the Commission in these matters.

- e) **Order on 14.06.2022 in 8/SM/2022:** Pursuant to the decision of the Appellate Tribunal, the present Petition, along with several others were re-listed before this Commission where it passed the following Order:

“3. After hearing the suggestions put forth by the learned senior counsels and the learned counsels for the parties, the Commission is of the view that as per the directions of the APTEL in judgment dated 5.4.2022 in OP No. 1 of 2022 and Ors., in particular at paragraph 74, suo-motu order(s) are required to be

issued to restore the petitions which were disposed by the Commission by applying the Change in Law Rules but which were not challenged before the APTEL. However, for the Petitions where the orders of the Commission have been set aside by the APTEL in terms of para 72 of the judgment, the petitions shall be restored on the records of the Commission for further necessary action.

4. Accordingly, as per the direction of the APTEL, in exercise of our suo-motu power of review, we hereby restore the Petitions mentioned in paragraph 1 above, on the record of the Commission at same stages, as were existing prior to the disposal of petitions.”

Hearing on 29.09.2022:

9. The Petitions were listed for hearing on 29.09.2022. However, due to paucity of time the matters were adjourned and were listed for hearing on 13.12.2022.

Hearing on 13.12.2022:

10. The matter was listed for hearing on 13.12.2022 where the Commission made the following observations:

“Learned counsel for the Petitioners submitted that present Petitions have been filed seeking in-principle approval for Change in Law events i.e. Finance Department (Tax Division), Government of Rajasthan (GoR) Notifications dated 19.11.2019 and 30.3.2020 in terms of which Land Tax has been imposed for their Solar PV Projects located in the State of Rajasthan with effect from 19.11.2019.

2. In response to the specific query of the Commission regarding provisions permitting the in-principle approval, the learned counsel for the Petitioner mainly submitted the following:

(a) **Regulation 11 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 permits the generating company undertaking any additional capitalization on account of Change in Law or Force Majeure condition to file a petition for in-principle approval for incurring such expenditure after prior notice to the beneficiaries.** The purpose for introducing such provisions, as captured in its Explanatory Memorandum, is to provide regulatory certainty to the generating company.

(b) Although the aforesaid regulations apply to the generating company governed under Section 62 of the Electricity Act, 2003 (‘the Act’), the rationale for introducing such provision i.e. to provide regulatory certainty squarely applies to the generating company governed under Section 63 of the Act such as the Petitioners herein.

(c) For the generating companies governed under Section 63 also, **the Commission has given in-principle approval to Change in Law event and the additional expenditure to be incurred in the matters concerning the installation of the emission control systems.** There is no reason as to why similar dispensation ought not to be adopted in these cases wherein the Petitioners are only seeking in-principle approval of Change in Law events.

(d) **The in-principle approval of Change in Law event is necessary to securing funds for the payment of land tax and to ensure the regulatory certainty.**

(e) As on the effective date/ last date of bid submission under the PPAs, no land tax was applicable on the project lands in terms of GoR's Notification dated 6.3.2013. Thereafter, GoR by Notification dated 19.11.2019 reinstated payment of land tax on the specified categories of land including land measuring 500 hectares or above. The rate of land tax was further increased by way of Notification dated 30.3.2020 i.e. for industrial land above 10,000 sq. meter the applicable land tax is Rs. 2 per sq. meter. Thus, with effect from 19.11.2019, land tax is applicable upon the land of the Petitioners' projects.

3. Learned senior counsel for the Respondent, SECI submitted that **the land tax is yet to be levied upon the project land of the Petitioners.** The learned senior counsel submitted that the reliance on the **Regulation 11 of the Tariff Regulations, 2019 is misplaced** as it pertains to the additional capital expenditure to be incurred by the generating company whereas the projects of the Petitioners have already achieved the commercial operation under the PPAs and the nature of levy of the land tax is on year-to-year basis. The learned senior counsel further added that there is certain exemption to the industrial land from levy of land tax and the Petitioners ought to examine as to whether they are covered by the said exemption.

4. **In response to the specific query of the Commission regarding status of land, the learned counsel for the Petitioner stated that the land allocation process is underway which will have an incidence of land tax. The learned counsel further sought liberty to file necessary clarification on this aspect.**

5. Considering the submissions made by the learned counsel for the Petitioners, the Commission permitted the Petitioners to file an additional affidavit clarifying the status of land, likely impact due the above GoR Notifications etc. within a week with copy to the Respondents/SECI, who may file its response thereon, if any, within a week thereafter.

6. Subject to the above, the Commission reserved the matters for order on 'admissibility'."

Additional Affidavit dated 25.12.2022 by the Petitioners:

11. The Petitioners in compliance with directions dated 13.12.2022 have submitted as follows:

a) The status of land and the estimated financial impact of GoR Notifications dated 19.11.2019 and 30.03.2020 on the Petitioners' Projects are set forth below:

Petitioner	Petition No. 274/MP/2021	Petition No. 275/MP/2021	Petition No. 256/MP/2021
Land Details	10,11,715 sq. meter [approx. 250.14 acres]	12,14,058 sq. meter for each project [approx. 504.08 acres]	20,23,430 sq. meter for each project [approx. 994.53 acres]
Land Status	Leased	Leased	Leased
Estimated Impact	Rs. 5.95 Crores	Rs. 9.69 Crores	Rs. 20.37 Crores

- b) Once a Change in Law event has occurred, the affected party has to be restituted by way of compensation to the same economic position as if such Change in Law had not occurred. Hence, on account of Finance Department (Tax Division), GoR's Notifications dated 19.11.2019 and 30.03.2020, the Petitioners are entitled to Change in Law compensation.
- c) In terms of the *Rajasthan Solar Policy 2014* and *Rajasthan Investment Promotion Scheme, 2014* (RIPS 2014), the Petitioners were granted exemptions (including land tax) and incentives on Projects land and the said exemptions and incentives are continued in Solar Policy 2019 and RIPS 2019. In terms of Clause 4.1(iv) of RIPS 2019, the said exemptions and incentives are applicable for a period of seven years.
- d) As on the date there is no levy of land tax on the land for Petitioners Projects. However, land tax will be levied on the land for Petitioner's Projects subsequently for the balance period.
- e) Although the CERC Tariff Regulations 2019 apply to the generating companies governed under Section 62 of the Electricity Act, the rationale for introducing such provision i.e. to provide regulatory certainty squarely applies to the generating companies governed under Section 63 of the Electricity Act such as the Petitioner.
- f) For the generating companies governed under Section 63 of the Electricity Act also, this Commission has given *in-principle* approval to Change in Law event and the additional expenditure to be incurred in the matters concerning the installation of the emission control systems. Petitioners seeks a similar dispensation in the present petitions i.e., grant of *in-principle* approval of Change in Law events.
- g) *In-principle* approval of Change in Law event is necessary for securing funds for the payment of Land Tax and to ensure the regulatory certainty. *In-principle* approval for Change in Law events has been granted in the past as well. SECI has itself submitted before this Commission that *Notifications of Government of Rajasthan imposing the land tax would constitute law under the PPA*. The Petitioner has placed its reliance on catena of Orders which has granted '*in-principle approval*' of Change in Law Events such as : Order dated 21.02.2018 in Petition No. 131/MP/2016 titled *GMR-Kamalanga Energy Ltd. v. Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors.*; Order dated 19.12.2017 in Petition No. 101/MP/2017 titled *DB Power Ltd. v. PTC India Ltd. & Ors.*; Order dated 03.06.2019 in Petition No. 156/MP/2018 titled *MB Power (Madhya Pradesh) Ltd. v. Uttar Pradesh Power Corporation Ltd. & Ors.*; Order dated 19.12.2017 in Petition No. 229/MP/2016

titled *DB Power Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd. & Ors.*; Order dated 20.09.2021 in Petition No. 94/MP/2019 & Batch; Order dated 07.05.2022 in Petition No. 393/MP/2019 titled *Aravali Power Company Private Limited v. Haryana Power Purchase Centre & Ors.*

- h) This Commission vide Order dated 11.04.2022 in Petition 260/AT/2021 case titled *Solar Energy Corporation of India Ltd. v. Adani Renewable Energy Holding Fifteen Ltd.* had approved the imposition of GST, safeguard duty and basic custom duty as Change in Law events at the stage of tariff adoption.
- i) The Appellate Tribunal in Judgment (APTEL) vide judgment dated 12.10.2021 in *Green Infra Renewable Energy Limited v. Rajasthan Electricity Regulatory Commission* in Appeal No. 251 of 2021 held that if the event constitutes change in law within the four corners of its definition under the PPA, then there is no reason why it cannot be duly recognized as a change in law and the actual impact and extent of the relief admissible to be determined at the appropriate stage.

Reply by SECI (Respondent No.1):

12. SECI vide its reply dated 30.12.2022 in the captioned Petitions has submitted as under:
- a) Reliance placed by the Petitioners on Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (Tariff Regulations 2019) is misplaced.
 - b) The Tariff Regulations 2019 are not applicable to the present case since in respect of Projects involved in the present Petitions, tariff has been discovered through competitive bidding process.
 - c) Regulation 11 of Tariff Regulations 2019 is not applicable to the facts of the present case since there is no occurrence of additional capitalization on account of events alleged by the Petitioners as change in Law.
 - d) With regard to reliance placed by the Petitioners on the decision dated 11.04.2022 in Petition No.260/AT/2021, the same is distinguishable on facts and circumstances of the case. In that case there was an express provision in change in law clause of the PPA.
 - e) With regard to reliance placed by the Petitioners on decision dated 12.10.2021 of the Tribunal in Appeal No.251 of 2021, the same is distinguishable on facts and circumstances of the case. In that case there was an express provision in change in law clause of the PPA. The provision of the aforesaid PPA is not present in the

PPAs signed by the Petitioners. Moreover, the above decision deals with recognition of events as change in law under Article 12 of the PPA at the stage of adoption of tariff which is not the case for the present Petitions.

- f) The decision referred to by the Petitioners in the Additional Affidavit filed on 23.12.2022 is misplaced and distinguishable on facts and circumstances. Most of the above decisions relates to Petitions filed by Generating Companies for in-principle approval of additional capital expenditure towards installation of emission control system on account of Environment (Protection) Amendment Rules 2015 notified by Ministry of Environment, Forest and Climate Change (MoEFCC).
- g) The Orders passed in the above matters cannot also be extended to the present Petitions since the Petitioners have been granted exemption from payment of Land Tax in terms of RIPS 2014, Solar Policy 2014, RIPS 2019, Solar Policy 2019.

Analysis and Decision:

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

14. The issues that arise for our consideration are as follows:

Issue No.1: Whether the Petitioners can be granted in-principle approval qua Government of Rajasthan (GoR) Notifications dated 19.11.2019 and 30.03.2020 as an event of Change in Law under Article 12 of the PPA?

Issue No.2: Whether the Petitioners are entitled to recover the land tax from SECI through monthly compensation along with Carrying Cost in terms of PPA and CIL Rules?

15. We now proceed to discuss the issues.

Issue No.1: Whether the Petitioners can be granted in-principle approval qua Government of Rajasthan (GoR) Notifications dated 19.11.2019 and 30.03.2020 as an event of Change in Law under Article 12 of the PPA?

AND

Issue No.2: Whether the Petitioners are entitled to recover the land tax from SECI through monthly compensation along with Carrying Cost in terms of PPA and CIL Rules?

16. Since Issue No.1 and Issue No.2 are interlinked, they are being taken up together for discussion. The Petitioner has 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 has been imposed for their Solar PV Projects located in the State of Rajasthan with effect from 19.11.2019. Regulation 11 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2019 permits the generating company undertaking any additional capitalization on account of Change in Law or Force Majeure condition to file a petition for in-principle approval for incurring such expenditure after prior notice to the beneficiaries. Similar dispensation ought to be adopted in these cases wherein the Petitioners are only seeking in-principle approval of Change in Law events which is necessary to securing funds for the payment of land tax and to ensure the regulatory certainty. *Per contra*, SECI submitted that the land tax is yet to be levied on the project land of the Petitioner. Further, reliance placed by the Petitioner on Regulation 11 of CERC (Terms and Conditions of Tariff) Regulations 2019 is misplaced as it pertains to additional capital expenditure to be incurred by the generating company.
17. We observe that the PPAs in the impugned Petitions are similarly worded. Relevant Articles stipulates 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.”*

3 ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the SPD

The SPD agrees and undertakes to duly perform and complete all of the following activities at SPD’s own risk and cost within six (6) months from the Effective Date, i.e. by 27.10.2018, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by SECI:

...

...

d) The SPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;

11. ARTICLE 11: FORCE MAJEURE

11.4 Force Majeure Exclusions

11.4.1 *Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:*

....

....

e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and

18. We observe that the Ministry of Power, Government of India has notified *the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* (Change in Law Rules, 2021), 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.”

19. From the above the Commission observes that there is no provision for grant of ‘*in-principle approval*’ in the PPAs or in the Change in Law Rules, 2021. 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.
20. We note that the Petitioner has relied upon the catena of judgments where the Commission has allowed the *in-principle approval*. The reliance placed by the Petitioners is distinguishable on facts and circumstances of the case. In a few cases there was an express provision in ‘change in law’ clause of the PPA. Most of the decisions relate to Petitions filed by the generating companies for *in-principle approval* of additional capital expenditure towards installation of machineries etc. However, in the instant petitions, the Petitioners have submitted that they are seeking *in-principle approval* of Change in Law events since the same is necessary to secure funds for the payment of land tax and to ensure regulatory certainty. We note that the philosophy contained in the PPAs is that the Petitioners are duty bound to make Project financing arrangements on their own.
21. In the instant petitions, during the course of hearing, SECI submitted that Notifications of Government of Rajasthan imposing 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 paid the tax. Since the land tax is yet to be imposed/paid on the Projects land, no recovery from SECI through monthly compensation along with Carrying Cost in terms of the PPAs and CIL Rules can be allowed at this point of time. Further, it is a settled law that no Order can be made in anticipation for any future claims to be raised.

22. In view of the above findings, no relief is made out to the Petitioners at this point of time as the prayer is pre-mature. However, the Petitioners are given liberty to approach the Commission at appropriate time.
23. Petition No. 274/MP/2021, Petition No. 275/MP/2021 and Petition No. 256/MP/2021 are disposed of in terms of above.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)