

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.26/MP/2024

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 seeking declaration of Change in Law and entitlement of compensation for the Change in Law under the Power Purchase Agreement and for appropriate directions.
- Date of Hearing : **27.2.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
- Petitioner : Scatec India Renewables One Private Limited (SIROPL).
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Parties Present : Shri Dinesh Pardasani, Advocate, SIROPL
Shri Bibin Kurian, Advocate, SIROPL
Shri Kaustubh Shrinarain, Advocate, SIROPL
Ms. Shikha Ohri, Advocate, SECI
Shri Kartik Sharma, Advocate, SECI

Record of Proceedings

During the course of the hearing, the learned counsel for the Petitioner advanced his submissions on the interlocutory prayer, i.e. tagging of the instant Petition with Petition No. 337/AT/2023. Learned counsel mainly submitted as under:

- (a) The Ministry of Power's order dated 9.6.2023, which modified the condition for the benefit of waiver of the ISTS charges is not only a Change in Law event but also amounts to a fundamental change in circumstance, which was not envisaged at the time of bid process.
- (b) Waiver of the ISTS charges to the renewable energy based Projects also worked as incentive to the distribution licensee to procure such power. Pertinently, in the present case, Orissa Electricity Regulatory Commission approved the procurement of power by GRIDCO Limited vide its order dated 3.6.2023 in Case No. 38/2023, keeping in view that the ISTS charges shall not be applicable for procurement of wind power from the Project(s).
- (c) In the event that the Project of the Petitioner becomes subject to ISTS charges, which would be approximately in the range of one-third of the quoted tariff, it would not only make the implementation of the Project by the Petitioner unviable but would also make the procurement of power by the distribution licensee completely uneconomical.
- (d) As per Article 4.2.6 of the Power Purchase Agreement, in case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reason whatsoever, SECI shall bear no liability with respect to the transmission charges and losses levied, if any. Consequently, the PPA and the PSA being back-to-back in nature, the distribution licensee would

not bear such liabilities and thus, ultimately, it is the Petitioner who will be subjected to such liabilities thereby rendering the Project completely unfeasible.

(e) Scheduled Commissioning Date of the Project, as per the PPA, is 26.6.2025. However, keeping in view the delay in the adoption of tariff, it already stands extended for period of approximately four months. Moreover, there is uncertainty revolving the readiness of the concerned transmission system i.e. Koppal-II substation.

(f) It has also been held by the Appellate Tribunal for Electricity (APTEL) that there is no inhibition or prohibition against consideration of claim of Change in Law compensation at the stage of the adoption of tariff process under Section 63 of the Act and that deferring such claim for later date creates a whole lot of confusion and regulatory uncertainty, and consequent difficulties in attaining financial closure. Also, the said findings/conclusion of the APTEL was not predicated upon a particular clause of the PPA requiring recognition of Change in Law event(s) at the adoption stage as contended by SECI. Reliance was placed on the order of APTEL dated 12.10.2021 in Appeal No. 251 of 2021 (Green Infra Renewable Energy Ltd. v. RERC) and order dated 28.1.2022 in Appeal No. 344 of 2021 (Green Infra Renewable Energy Ltd. v. RERC).

2. After hearing the primary submissions of the learned counsel for the Petitioner and having observed that the matter would invoke an adjudicatory function of the Commission, the Commission deemed it appropriate to post the matter for further hearing before coram consisting of the Hon'ble Member (Law) and accordingly, adjourned the matter.

3. The matter will be listed for further hearing on **5.3.2024**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)