



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.373/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson

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 February, 2022

IN THE MATTER OF:

A petition under section 79 (1)(f) of the Electricity Act 2003 before the Central Electricity Regulatory Commission for (i) approval of “Change in Law” and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules in terms of Article 12 read with Article 16.3.1 of the Power Purchase Agreements dated 27.04.2018 between SB Energy Four Private Limited and Solar Energy Corporation of India Limited

AND IN THE MATTER OF:

SB Energy Four Pvt. Limited,
435 Regus Centre, 4th Floor,
Rectangle 1 Building, Saket District Centre,
New Delhi – 110017

...Petitioner

Versus

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

2. Uttar Pradesh Power Corporation Limited,
Shakti Bhavan, 14, Ashok Marg,
Lucknow, UP, India.

...Respondents

Parties present: Shri Sujit Ghosh, Advocate, SBEFPL
Ms. Mannat Waraich, Advocate, SBEFPL
Ms. Pratiksha Chaturvedi, Advocate, 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

The Petitioner, SB Energy Four Private Limited is a generating company engaged in the development of 200 MW (100 MW x 2) solar power project in Bhadla Phase-III Solar Park, Rajasthan on “Build Own Operate” basis. Solar Energy Corporation of India Limited (SECI) is a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for implementation of MNRE schemes for developing grid connected solar power capacity through VGF mode in India. Uttar Pradesh Power Corporation Limited (UPPCL) is a distribution company which is engaged in the business of distribution and supply of electricity across the State of Uttar Pradesh. The Petitioner has made the following prayers:

- (a) Declare the imposition of safeguard duty via Safeguard Duty Notification as Change in Law in terms of the PPA(s) which have led to an increase in the non-recurring expenditure for the Project;*
- (b) Evolve a suitable mechanism to compensate the Petitioner for the increase in non-recurring expenditure incurred by the Petitioner on account of Change in Law;*
- (c) Grant interest/carrying cost from the date of incurring of the cost by the Petitioner till the date of disbursement of the compensation; and*
- (d) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition*

(e) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.

2. The Order was reserved in the matter on 21.12.2021. However, consequent upon notification of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as "the Change in Law Rules") by the Ministry of Power, Government of India, it was considered expedient for the ends of justice to rehear the matter. Hence, the matter was re-listed for hearing on 11.01.2022 through video conferencing.
3. During the hearing on 11.01.2022, the learned counsel for the Petitioner submitted that the Change in Law claims of the Petitioner arising out of the imposition of safeguard duty on solar cells/ modules have already been reconciled between the Petitioner and SECI and that SECI has already started making payment of such reconciled amounts. Accordingly, the Commission may pass an appropriate Order in the matter as the present case is covered by the decision of the Commission dated 20.08.2021 in Petition No. 536/MP/2020. Since the Order in the present Petition was reserved, the new mechanism for settlement in terms of Change in Law Rules should not be applied to the case. Directing the Petitioner to follow the procedure described in the Change in Law Rules at this stage will only delay the matter.
4. The learned senior counsel for the Respondent, SECI also confirmed that SECI has reconciled the claims of the Petitioner and started making payments to the Petitioner in terms of the direction of the Appellate Tribunal for Electricity vide Order dated 23.11.2020 in OP No. 12/2020. However, the distribution licensee, Uttar Pradesh Power Corporation Limited (UPPCL) is yet to reconcile the said amounts as the reconciled amount between the Petitioner and SECI is subject to the reconciliation with the distribution licensee, UPPCL.
5. In rebuttal, the learned counsel for the Petitioner submitted that despite being party to the Petition, UPPCL has failed to appear or even to file its reply and such conduct of UPPCL ought not to be the basis for delaying the matter. In terms of the Change in Law Rules, the affected party i.e. the Petitioner is required to raise the claims only on the other party to the agreement i.e. SECI under the PPA and not the buying utility, UPPCL.
6. In response, the learned senior counsel for SECI submitted that SECI cannot be left in the lurch with no consequent direction to UPPCL for making payment to SECI as the entire

arrangement is on back-to-back basis and for supply of power to the distribution licensee. The agreement defined in the Change in Law Rules includes the entire gamut of purchase and resale therein.

7. We have considered the submissions of the parties. The Change in Law Rules provide as under:

*“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.”

8. As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and the other party, in the present case the Respondent/ Procurer, 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.
9. We have considered the submissions of the Petitioner. It is apparent from a plain reading of the Change in Law Rules that it provides for quantification of claims and a process and methodology for early recovery of mutually agreed claims relating to impact of change in law. The Change in Law Rules also provide that if there is a formula in the agreement for adjusting and recovering the amount of the impact of change in law, it shall be applied, otherwise the formula as prescribed in the Change in Law Rules is to be applied. We also find that the Change in Law Rules provide a time bound mechanism for settlement of such claims.
10. We consider the process and methodology as prescribed in the Change in Law Rules as a mechanism for time bound settlement of claims in a deterministic manner and the Petitioner

is not going to be prejudiced by adopting the said mechanism. We have already held in our earlier Orders (e.g. Order dated 06.12.2021 in Petition No. 228/MP/2021) that since the Change in Law Rules is in the nature of procedural law and under the Change in Law Rules any substantive rights are not being taken away, it is to be applied retrospectively in all pending proceedings.

11. In view of the foregoing discussions, the Petitioner may approach the procurer for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(7) of the Change in Law Rules.
12. Accordingly, the Petition No. 373/MP/2019 is disposed of in terms of the above discussions and findings.

Sd/-
(पी. के. सिंह)
सदस्य

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(अरुण गोयल)
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(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
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