



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.374/MP/2020

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:

Petition under 79(1)(f) of the Electricity Act, 2003 read with Article 17 of the Power Purchase Agreement dated 17.04.2017 executed by ACME Jaipur Solar Power Private Limited with M. P. Power Management Company Limited and Delhi Metro Rail Corporation Ltd and in terms of the directions issued by the Central Government vide its Notification bearing No. 23/43/2018-R&R dated 27.08.2018 for allowing pass through of additional expenditure incurred by the generator on account of events pertaining to 'Change in Law' along with this Hon'ble Commission order dated 09.10.2018.

ACME Jaipur Solar Power Private Limited,
B-4, Plot No. 12, Basement-2,
Gopi Nath Marg, Purohit ji ka Bagh, MI Road,
Jaipur- 302001, Rajasthan, India.

...Petitioner

Versus

1. M. P. Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh - 482008.
2. Delhi Metro Rail Corporation Limited,
Metro Bhavan, Fire Brigade Lane,
Barakhamba Road,
New Delhi
3. Rewa Ultra Mega Solar Limited,
Urja Bhawan, Link Road No, 2. Shivaji Nagar,
Bhopal - 462003, Madhya Pradesh.

...Respondents

Parties Present: Shri Sanjay Sen, Sr. Advocate, AJSPPPL
Ms. Mandakini Ghosh, Advocate, AJSPPPL
Shri Shreshth Sharma, Advocate, AJSPPPL
Shri Saurobroto Dutta, Advocate, AJSPPPL
Shri G. Umapathy, Sr. Advocate, MPPMCL
Shri Tarun Johri, Advocate, DMRC
Shri Ankur Gupta, Advocate, DMRC
Shri Sanjay V Kute, DMRC
Shri Surendra Kumar Gupta, DMRC

आदेश/ ORDER

The Petitioner, ACME Jaipur Solar Power Private Limited, is a generating company engaged in the business of development, building, owning, operating and maintaining utility scale grid connected solar power projects, for generation of solar power. The Petitioner has filed Petition under 79(1)(f) of the Electricity Act, 2003 read with Article 17 of the Power Purchase Agreement dated 17.04.2017 for allowing pass through of additional expenditure incurred by the generator on account of events pertaining to 'Change in Law' along with this Commission Order dated 09.10.2018.

2. The Respondent No. 1, M. P. Power Management Company Limited (MPPMCL), is a company incorporated with the principal object of engaging in the business of distribution and supply of electricity and is the holding company of the three DISCOMs in the State of Madhya Pradesh.
3. The Respondent No. 2, Delhi Metro Rail Corporation Ltd (DMRC), is a company incorporated for implementation of the construction and operation of a world class metro rapid transport system in Delhi.
4. The Respondent No. 3, Rewa Ultra Mega Solar Limited (RUMSL), has been incorporated as a joint venture company between Solar Energy Corporation of India Limited and Madhya Pradesh Urja Vikas Nigam Limited with the stated objective to develop and facilitate the development of large scale solar projects.
5. The Petitioner has made the following prayers:
 - a) *Hold and declare that Respondents are liable to pay GST claims against the invoices submitted by Petitioner for the period during which Petitioner was not registered under GST but has paid GST to its vendors who are registered with GST;*
 - b) *Hold and declare that Respondents should compensate the Petitioner by considering pre-GST tax rate of 11% on 40% value of services and 15% tax rate on balance 60% value of services which increase to 18% post GST;*
 - c) *Direct Respondents to compensate Petitioner the balance GST claims along with LPS as applicable under PPA;*
 - d) *Grant exemption from filing duly affirmed affidavit in view of the extension of the countrywide lockdown due to the outbreak of COVID-19 with an undertaking that the duly affirmed affidavit will be submitted once the regular functioning of the Courts resume;*
 - e) *pass such other orders that the Commission deems fit in the interest of justice.*
6. Order was reserved in the matter on 06.10.2021. 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.

7. During the hearing on 11.01.2022, the learned counsel for the Petitioner submitted that the Change in Law Rules have no application where the other party to the agreement has already disputed/ contested the Change in Law events and where such matters have been reserved for Order. Further, the Respondents have disputed the Change in Law claims of the Petitioner in their replies filed on an affidavit and thus, parties having already disclosed their position regarding Change in Law event. Therefore, the Change in Law Rules ought not to be applied. The delegated legislation cannot control, add or alter the jurisdiction vested under the statute. In this regard, the reliance was placed on the judgment of Hon'ble Supreme Court in *Dr. Jagmittar Sain Bhagat & Ors. v. Dir. Health Services, Haryana & Ors. [(2013) 10 SCC 136]*. Learned senior counsel for the Respondent, MPPMCL submitted since the matter had been reserved for order, the Commission may proceed to pass an appropriate Order.
8. We have considered the submissions of the parties. The Change in Law Rules provides 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.”

9. As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and 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(7) of the Change in Law Rules.

10. 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.
11. 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.
12. In view of 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.
13. Accordingly, Petition No. 374/MP/2020 is disposed of in terms of the above discussions and findings.

Sd/-
(पी. के. सिंह)
सदस्य

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(अरुण गोयल)
सदस्य

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(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
अध्यक्ष