



नईदिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 70/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 अरुणगोयल, सदस्य/ Shri Arun Goyal, Member

श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 28th of February, 2022

IN THE MATTER OF:

A petition before the Central Electricity Regulatory Commission 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 Goods and Service Tax

AND IN THE MATTER OF:

Solar Edge Power and Energy Private Limited,
SP Center, 41/44, Minoo Desai Marg,
COLOBA,
Mumbai – 400 005

...Petitioner

Versus

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

2. Maharashtra State Electricity Distribution Co. Limited,
Prakashgad Plot No. G9, Proj. AnadKanehar Marg,
Bandra (East),
Mumbai-400051

Parties Present: Shri Sujit Ghosh, Advocate, SEPEPL
Ms. MannatWaraich, Advocate, SEPEPL
Ms. Pratiksha Chaturvedi, Advocate, SEPEPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. PoorvaSaigal, Advocate, SECI
Shri Ravi Nair, Advocate, SECI
Ms. Neha Singh, SECI

आदेश/ ORDER

The Petitioner, Solar Edge Power and Energy Private Limited is developing a project for generation of electricity of cumulative capacity of 450 MW in the State of Maharashtra. The Petitioner is 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 Goods and Service Tax.

2. The Respondent No. 1, 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). The Respondent has been designated as the nodal agency for implementation of MNRE schemes for developing grid connected solar power capacity through VGF mode in India.
3. The Respondent No. 2, Maharashtra State Electricity Distribution Company Limited (MSEDCL) is engaged in the business of distribution and supply of electricity across all districts of the State of Maharashtra.
4. The Petitioner has made the following prayers:
 - (a) *Declare the introduction of GST as Change in Law in terms of the PPA(s) which have led to an increase in the recurring and non-recurring expenditure for the Project;*

- (b) *Evolve a suitable mechanism to compensate the Petitioner for the increase in recurring and non-recurring expenditure incurred by the Petitioner on account of Change in Law;*
- (c) *Grant interest/carrying cost for any delay in reimbursement by the Respondent; and*
- (d) *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.*

5. The Petition was filed on 14.03.2019 and was admitted on 04.06.2019.
6. The case was called out for virtual hearing on 04.06.2020. During the course of hearing, the learned counsel for the Petitioner submitted that through the present Petition, it is seeking declaration that the introduction/enactment of GST is a Change in Law event and seeking consequential compensation for additional recurring/non-recurring expenditure incurred by the Petitioner. Further, as far as the issue of back-to-back nature of the agreement and liability of payment on account of impact of GST on procurement of Solar PV panels and associated equipment till the commercial operation date is concerned, the Petitioner relies upon the Commission's Order dated 28.01.2020 in Petition No. 67/MP/2019 and batch matters and sought permission to file written submission on these aspects. Learned senior counsel for SECI, submitted that the issue involved in the Petition stands covered by the Commission's earlier Orders relating to Change in Law arising out of enactment of GST Law. Further, the Petitioner may approach SECI along with computation of its claims. Accordingly, the parties will carry out the reconciliation of such claims including the mode of payment on annuity basis in terms of MNRE's letters dated 12.03.2020 and 23.03.2020 and the Commission's earlier Orders on the subject matter. Subsequently, the Petitioner and SECI sought liberty to engage in discussion for reconciliation of the Petitioner's claims arising out of Change in Law event, namely, introduction of GST as per MNRE's letters dated 12.03.2020 and 23.03.2020 and the Commission adjourned the matter.
7. The case was again called out for virtual hearing on 09.11.2021 and after hearing the parties, the Order was reserved in the matter. 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.

8. During the hearing on 11.01.2022, the learned counsel for the Petitioner submitted that after the matter was reserved for Orders on 09.11.2021, the Petitioner has received a letter from the buying utility, namely, Maharashtra State Electricity Distribution Company Limited (MSEDCL) on 19.11.2021 in the matter of reconciliation of its Change in Law claims, which was replied by the Petitioner in its letter dated 22.11.2021. In respect of its Change in Law claims relating to three Projects, the concerns were raised by MSEDCL only for two Projects and that too for amounts of Rs.13,821.88 and Rs.8,353.13 against the claims of approximately Rs.8.33 crore and Rs.5.00 crore, respectively. Thus, except for the above miniscule amounts, the claims have already been finalized with SECI as well as with buying utility, MSEDCL. Hence, in the present case, at this stage, the parties ought not to be directed to follow the procedure prescribed in the Change in Law Rules, as the case can be covered under Rule 3(8) of Change in Law Rules.
9. After hearing the learned counsel for the Petitioner, the Commission directed SECI to confirm that except for the above amounts of Rs.13,821.88 and Rs.8,353.13 as stated by the Petitioner, all the balance claims have been reconciled with MSEDCL, so that the case can be dealt with under Rule 3(8) of Change in Law Rules. In response, the learned senior counsel for the Respondent, SECI requested a week's time and liberty to file an affidavit in this regard.
10. SECI has filed its affidavit on 25.01.2022 vide which it has inter-alia submitted as under:
 - a) In terms of the Order dated 20.08.2020 of the Commission in Petition No.536/MP/2020 with regard to the aspect of cut-off date for goods and services (as quoted above), SECI vide its letters (3 in number for 3 PPAs) dated 24.01.2022 to the Petitioner and by letter dated 24.01.2022 to MSEDCL has communicated the revised provisional reconciliation of the GST claims of the Petitioner in respect of Petitioner's 130 MW projects [2 x 50 MW and 1 x 30 MW] as under:

Project ID	Capacity	Amount (in Rs.)
P2B4T3-SEPEPL-B-5MH-1V	50 MW	8,04,84,959
P2B4T3-SEPEPL-B-5MH-2V	50 MW	8,24,90,777
P2B4T3-SEPEPL-B-5MH-3V	30 MW	4,87,82,531

- b) MSEDCL vide its email dated 01.11.2021 has considered aggregate value under the two categories namely ‘up to commissioning’ and ‘After Commissioning and up to COD’ together. Accordingly, the difference in the claims verified and evaluated by SECI (as per SECI Letter dated 24.01.2022) and MSEDCL (as per email dated 01.11.2021) works out as under:

Particulars	50 MW Parli Project		50 MW Muktainagar Project		30 MW Parli Project	
	As per SECI	As per MSEDCL	As per SECI	As per MSEDCL	As per SECI	As per MSEDCL
Verified Claim	Eligible claim: Rs.8,04,84,959	Up to Commissioning: Rs.4,63,38,353.33	Eligible claim: Rs.8,24,90,777	Up to Commissioning: Rs.8,05,03,132.10	Eligible claim: Rs.4,87,82,531	Up to Commissioning: Rs.4,73,91,313.66
		After Commissioning and up to COD: Rs.3,43,27,614.24		After Commissioning and up to COD: Rs.18,30,412.50		After Commissioning and up to COD: Rs.11,29,487.89
Total	Rs.8,04,84,959	Rs.8,06,65,967.57	Rs.8,24,90,777	Rs.8,23,33,544.60	Rs.4,87,82,531	Rs.4,85,20,801.55

- c) Accordingly, the statement made by the counsel for the Petitioner during the hearing dated 11.01.2022 as recorded in ROP that ‘*learned counsel submitted that in respect of its Change in Law claims relating to three Projects, the concerns were raised by MSEDCL only for the two Projects and that too for amount of Rs.13,821.88 and Rs.8,353.13 is factually incorrect.*
- d) MSEDCL in its communication dated 01.11.2021 has indicated the said amounts of Rs.13,921.88 (for 50 MW Parli Project) and Rs.8,353.13 (for 30 MW Parli Project) under the category “Not identifiable (as invoice date Not mentioned)”.
- e) The difference in SECI’s evaluation and MSEDCL’s evaluation of Petitioner’s GST claims is working out to Rs.1,81,008.50 in respect of 50 MW Parli Project, Rs.1,57,232.40 in respect of 50 MW Muktainagar Project and Rs.2,61,729.50 in respect of 30 MW Parli Project.

- f) The difference in the claim submitted by the Petitioner, claim evaluated by SECI after implementing the Order dated 20.08.2021 in Petition No.536/MP/2020 and claim evaluated by MSEDCL vide communication dated 01.11.2021 [considering two categories namely ‘up to commissioning’ and ‘After Commissioning and up to COD’ mentioned in communication dated 01.11.2021] are as under:

Project ID	Capacity	Claim submitted by Petitioner	Claim evaluated by SECI	Claim evaluated by MSEDCL
P2B4T3-SEPEPL-B-5MH-1V	50 MW	Rs.8,27,44,271.00	Rs.8,04,84,959.00	Rs.8,06,65,967.50
P2B4T3-SEPEPL-B-5MH-2V	50 MW	Rs.8,53,42,814.00	Rs.8,24,90,777.00	Rs.8,23,33,544.70
P2B4T3-SEPEPL-B-5MH-3V	30 MW	Rs.5,06,74,955.00	Rs.4,87,82,531.00	Rs.4,85,20,801.50

- g) While MSEDCL has given the statement in response to the claim forwarded to it, there is no explanation as to the reasons for the difference they have pointed out with respect to evaluation by SECI.
- h) MSEDCL in pursuance of Orders dated 28.01.2020 & 12.04.2019 of the Commission in Petition No. 68/MP/2019 & Petition No. 212/MP/2018 respectively, in respect of other projects has been making payment considering Annuity at 9.53% discounting rate and term of payment as 25 years (as against discounting rate of 10.41% and Term of Annuity Period of 13 years as decided by Commission in Order dated 20.08.2020 in Petition No.536/MP/2020) on the ground that monthly discounting rate is to be based on the average of last six months.
- i) As per the Change in Law Rules, the period, the rate of interest to be considered etc. are different from the period, discounting rate etc. considered in Order dated 20.08.2021 in Petition No.536/MP/2020 and accordingly in terms of Rule 3 (7) and (8), the computation of the amount will vary.

11. We have considered the submissions of the parties. The Commission vide Order dated 20.08.2021 in Petition No. 536/MP/2020 has already held that “*Cut-off date for GST Claims: the invoices related to supply of the goods can be raised only up to COD for all the equipment as per the rated project capacity that has been installed and through which energy has flown into the grid. In case of supply of services related to goods procured up to COD, the invoices are to be raised within 30 days of supply of such services, which cannot be later than 30 day of COD.*” However, we observe that the contracting parties are yet to settle the claims as on date.

12. We further observe that 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.”

13. 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(8) of the Change in Law Rules.

14. 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 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.

15. 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. 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.
16. In view of the foregoing discussion, 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(8) of the Change in Law Rules.
17. Accordingly, the Petition No. 70/MP/2019 is disposed of.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)

Sd/-
पी. के. पुजारी
(अध्यक्ष)