

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 240/MP/2019

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 for claiming compensation on account of occurrence of 'Change in Law' event as per Article 10.1.1 of the Case -1 long-term Power Purchase Agreement dated 21.3.2013 entered into between GMR Warora Energy Limited and DNH Power Distribution Corporation Limited, thereby resulting into additional recurring/non-recurring expenditure to GMR Warora Energy Limited for supply of 200 MW Contracted Capacity from its 2x300 MW Thermal Power Station at Warora, Distt. Chandrapur in the State of Maharashtra to DNH Power Distribution Corporation Limited

Petitioner : GMR Warora Energy Limited (GWEL)

Respondents : DNH Power Distribution Corp. Limited (DNHPDCL) and Anr.

Petition No. 700/MP/2020

Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for claiming compensation on account of the event pertaining to change in law as per Article 10 of the Power Purchase Agreement dated 29.6.2012 read with Addendum I to PPA, dated 27.9.2017 executed between Petitioner and TANGEDCO for 200 MW Medium term power supply (PPA-I) and as per the terms of Power Purchase Agreement dated 23.08.2013 executed between the Petitioner and TANGEDCO for 400 MW long term power supply (PPA-II).

Petitioner : Jindal Power Limited (JPL)

Respondent : Tamil Nadu Generation and Distribution Corp. Ltd. (TANGEDCO)

Petition No. 70/MP/2019

Subject : Petition seeking 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.

Petitioner : Solar Edge Power and Energy Private Ltd. (SEPEPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and Anr.

Petition No. 374/MP/2020

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Article 17 of the Power Purchase Agreement dated 17.4.2017 executed by ACME Jaipur Solar Power Private Limited with M. P. Power Management Company Limited and Delhi Metro Rail Corporation Limited and in terms of the directions issued by the Central Government vide this Notification bearing No. 23/43/2018-R&R dated 27.8.2018 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 9.10.2018.

Petitioner : ACME Jaipur Solar Power Private Limited (AJSPPL)

Respondents : M.P. Power Management Co. Ltd. (MPPMCL) and 2 Ors.

Petition No. 373/MP/2019

Subject : Petition under Section 79(1)(f) of the Electricity Act 2003 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 Agreement dated 27.4.2018 between SB Energy Four Private Limited and Solar Energy Corporation of India Limited.

Petitioner : SB Energy Four Private Limited (SBEFPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and Anr.

Petition No. 16/MP/2021

Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 10 of the Power Purchase Agreement dated 1.4.2013 and amended Power Purchase Agreement dated 10.4.2015 entered into between Sembcorp Energy India Limited (formerly Thermal Powertech Corporation of India Limited) and the distribution licensees of States of Andhra Pradesh and Telangana, seeking compensation on account of the Change in Law event due to levy of Evacuation Facility Charges and Rapid Loading Charges imposed by Coal India Limited.

Petitioner : Sembcorp Energy India Limited (SEIL)

Respondents : Southern Power Distribution Co. of Telangana Limited and 3 Ors.

Petition No. 513/MP/2020

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 13 of the Power Purchase Agreements dated 7.8.2008 entered with Haryana Utilities, Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees dated 19.1.2005, amended from time to time and revised Tariff Policy 2016, seeking compensation due to certain change in law events.

Petitioner : Adani Power (Mundra) Limited (APMuL)

Respondents : Uttar Haryana Bijli Vitran Nigam Limited and Anr.

Petition No. 179/MP/2020

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 19.7.2016, 21.10.2016, 21.10.2016 and 13.1.2017 executed between Tata Power Renewable Energy Limited and Solar Energy Corporation of India Limited for seeking compensation on account of Change in Law events due to enactment of GST Laws.

Petitioner : Tata Power Renewable Energy Limited (TPREL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and 4 Ors.

Petition No. 562/MP/2020

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Clause 4.7 of the Competitive Bidding Guidelines and Article 13 of the Power Purchase Agreements dated 7.8.2008 and 20.1.2009 entered into by Jhahhar Power Limited with Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Tata Power Trading Company Limited respectively in relation to seeking compensation for decrease in revenues and increase in the costs as a result of Change in Law events.

Petitioner : Jhajjar Power Limited (JhPL)

Respondents : Uttar Haryana Bijli Vitran Nigam Limited and 2 Ors.

Petition No. 722/MP/2020

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for the declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power

Purchase Agreement dated 17.9.2019 executed between the Petitioner and the Respondent No.1.

Petitioner : Azure Power Forty One Private Limited (APFOPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and 2 Ors.

Petition No. 723/MP/2020

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for the declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement dated 27.11.2019 executed between the Petitioner and the Respondent No.1.

Petitioner : Azure Power Maple Private Limited (APMPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and Anr.

Petition No. 188/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 seeking compensation on account of events pertaining to Change in Law events read with Article 10 of the Power Purchase Agreement dated 19.12.2013 executed between the Petitioner and the Respondent No.1.

Petitioner : Coastal Energen Private Limited (CEPL)

Respondents : Tamil Nadu Generation and Corp. Ltd. (TANGEDCO) and Anr.

Petition No. 228/MP/2021

Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement(s) dated 28.12.2018 seeking issuance of appropriate order(s) / direction(s) / declaration from this Commission that the imposition of safeguard duty on the import of solar cells, whether or not assembled in modules or panels, vide Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance (Government of India) is an event of Change in Law and for seeking approval of the quantum and mechanism of compensation (along with interest) as submitted along with the present Petition in line with the methodology provided by this Commission vide its order dated 20.8.2021 in Petition No. 536/MP/2020.

Petitioner : Mahindra Renewables Private Limited (MRPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI)

Petition No. 167/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 inter alia seeking compensation on account of occurrence of 'Change in Law events' relating to Power Purchase Agreements dated 18.12.2013 and 19.12.2013 entered into between the Petitioner and the Respondents.

Petitioner : Adhunik Power and Natural Resources Limited (APNRL)

Respondents : Tamil Nadu Generation and Corp. Ltd. (TANGEDCO) and Anr.

Petition No. 215/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2(b) of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the Procurers for compensation due to Change in Law impacting revenues and costs during the Operating Period.

Petitioner : Sasan Power Limited (SPL)

Respondents : MP Power Management Co. Ltd. (MPPMCL) and 13 Ors.

Petition No. 207/MP/2021

Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement(s) dated 25.06.2019 seeking issuance of appropriate order(s)/ direction(s)/declaration from this Commission that the imposition of safeguard duty on the import of solar cells, whether or not assembled in modules or panels, vide Notification No. 2/2020-Customs (SG) dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance (Government of India) is an event of Change in Law and for seeking approval to the quantum and mechanism of compensation (along with interest) as submitted along with the present Petition in line with the methodology as settled by this Commission vide its order dated 20.08.2021 in Petition No. 536/MP/2020.

Petitioner : Eden Renewable Cite Private Limited (ERCPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI)

Date of Hearing : 9.5.2022



Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Parties Present : Ms. Divya Chaturvedi, Advocate, GWEL
Shri Saransh Shaw, Advocate, GWEL
Shri Anand Ganesan, Advocate, DNHPDCL
Ms. Swapna Seshadri, Advocate, DNHPDCL
Ms. Ritu Apurva, Advocate, DNHPDCL
Ms. Devi Nair, Advocate, DNHPDCL
Ms. Suparna Srivastava, Advocate, PGCIL/CTUIL
Ms. Soumya Singh, Advocate, PGCIL/CTUIL
Shri Tushar Mathur, Advocate, PGCIL/CTUIL
Shri Matrugupta Mishra, Advocate, JPL
Shri Vignesh Srinivasan, Advocate, JPL
Ms. Ritika Singhal, Advocate, JPL
Shri Sanjeev Thakur, Advocate, JPL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO
Shri Sujit Gosh, Advocate, SEPEPL, SBEFPL
Ms. Mannat Waraich, Advocate, SEPEPL, SBEFPL
Shri Mohd. Munis, Advocate, SEPEPL, SBEFPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Hemant Sahai, Advocate, AJSPPL, SEIL, TPDDL, MRPL, ERCPL
Shri Shreshth Sharma, Advocate, AJSPPL
Shri Nishant Talwar, Advocate, AJSPPL, TPDDL, ERCPL
Shri G. Umapathy, Sr. Advocate, MPPMCL
Shri Tarun Johri, Advocate, DMRC
Shri Ankur Gupta, Advocate, DMRC
Shri Vishwajeet Tyagi, Advocate, DMRC
Shri Nitish Gupta, Advocate, SEIL, TPDDL, MRPL, ERCPL
Ms. Nehul Sharma, Advocate, SEIL
Shri Harsha Peechara, Advocate, TSSPDCL
Ms. Poonam Verma, Advocate, APMuL
Shri Saunak Rajguru, Advocate, APMuL
Shri Ankitesh Ojha, Advocate, APMuL
Shri Shubham Arya, Advocate, HPPC
Ms. Poorva Saigal, Advocate, HPPC
Shri Ravi Nair, Advocate, HPPC
Shri Nipun Dave, Advocate, HPPC
Ms. Reeha Singh, Advocate, HPPC
Shri Kunal Kaul, Advocate, TPREL
Shri Samikrith Rao, Advocate, TPREL
Shri Sajjan Poovayya, Sr. Advocate, JhPL
Shri Shashwat Kumar, Advocate, JhPL, APMPL, APFOPL
Shri Pratibhanu Kharola, Advocate, JhPL
Shri Rahul Chouhan, Advocate, JhPL, APMPL, APFOPL
Ms. Raksha Agarwal, Advocate, JhPL

Shri Deepto Roy, Advocate, JhPL
Shri Dnyanraj Desa, Advocate, JhPL
Ms. Disha Adhikary, Advocate, JhPL
Shri Venkatesh, Advocate, TPTCL
Shri Rishub Kapoor, Advocate, TPTCL
Shri Avdesh Mandloi, Advocate, TPDDL, MRPL, ERCPL
Shri Hemant Singh, Advocate, CEPL
Shri Lakshyajit Singh Bagdwal, Advocate, CEPL
Shri Harshit Singh, Advocate, CEPL
Shri Deepak Khurana, Advocate, APNRL
Ms. Nishtha Wadhwa, Advocate, APRNL
Shri Yashasvi Kant, Advocate, SPL
Shri Abani Mishra, GWEL
Shri Karan Yamben, GWEL
Ms. Neha Singh, SECI
Shri Sanjay V Kute, DMRC
Shri Surendra Kumar Gupta, DMRC
Ms. N Annapurna, TSPCC
Shri Abhay Kumar, TPTCL
Shri Prashant Kumar Das, GRIDCO
Shri Mahfooz Alam, GRIDCO

Record of Proceedings

Cases were called out for virtual hearing.

2. During the course of hearing, learned senior counsels and the learned counsels for the parties made detailed suggestions with regard to the methodology to be adopted for implementation of the directions of Appellate Tribunal for Electricity ('APTEL') in its judgment dated 5.4.2022 in OP No. 1 of 2022 and Ors. Since many of such suggestions were overlapping, only a gist of them is being reproduced hereunder:

(a) In the matters which were already heard and reserved for order prior to their disposal by applying the Change in Law Rules, the Commission may recall / vacate such disposal orders by exercising its review jurisdiction as per the directions of the APTEL, in particular at paragraph 75 of the judgment. Moreover, there is no need to re-hear such matters.

(b) A formal *suo-motu* order by invoking review jurisdiction may be passed for vacating/recalling the orders issued by the Commission disposing of such Petitions by applying Change in Law Rules.

(c) It would be more prudent if the parties are asked to file separate review applications for recall of the Commission's earlier orders.

(d) There is no need for filing of review application in each and every case in view of the specific directions of the APTEL as recorded in paragraph 74 of the said judgment.

(e) As a consequence of vacating the Commission's disposal orders, the cases shall be restored to stage as they were prior to the Commission's disposal orders.

(f) Since the matters which came to be disposed by applying the Change in Law Rules were at difference stage of proceedings (i.e. reserved for order, pleadings to be completed and admission stage, etc.), the Commission may consider passing separate orders in each case considering the stage at which they were prior to their disposal.

(g) In the cases where the dismissal orders had been passed by the Commission consisting of larger Coram (four Members Coram), *suo-motu* orders vacating such orders may be passed by the same Coram. In rebuttal, it was also pointed out that the Coram issue may not arise in view of the Section 93 of the Electricity Act, 2003 ('the Act').

(h) A general administrative order re-listing of such matters in view of the judgment of APTEL would also amount to recalling the Commission's dismissal orders. However, it was also contended that since the Commission is required to exercise the review jurisdiction under Section 94(1)(f) of the Act, it would not be appropriate to issue an administrative order.

(i) The disposal orders of the Commission which were the subject matter of original petitions/appeals before the APTEL and have already been set-aside by the APTEL in paragraph 72 of the said judgment and thus, such cases already stand restored to their files before the Commission for necessary action. There is no need to pass any orders in such matters like vacating the Commission's earlier disposal orders. Only for the cases in which the parties did not approach the APTEL against the Commission's dismissal orders, the Commission is required to exercise its review jurisdiction *suo-motu*, for vacating the orders and restoring them to their files for completion of the adjudication process as per the directions contained in paragraph 74 of the judgment.

(j) For sake of convenience, the Petitions may be divided into two categories, viz. (I) Petitions in respect of which the Petitioners had approached the APTEL by OPs/Appeals, wherein the judgment dated 5.4.2022 was passed and the findings of the commission have been set-aside and may be sub-categorised as (A) Petitions which were reserved for orders prior to the disposal orders and only a formal hearing is required; (B) Petitions wherein even the pleadings have not been completed prior to the disposal orders therein (II) the Petitioners who had not preferred any appeal before the APTEL

3. In addition to the above, in various matters, the learned counsel for the Petitioners and the Respondents sought liberty to file additional affidavits and impleadment of distribution licensees, etc. whereas, in Petition No.513/MP/2020, the learned counsel for the Petitioner sought an adjournment.

4. After hearing the suggestions put forth by the learned senior counsels and the learned counsels for the parties, the Commission noted 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, it would be apt to pass *suo-motu* order(s) in the Petitions which were disposed by the Commission by applying the Change in Law Rules. However, for the Petitions where the dismissal orders of the Commission have already been set aside by the APTEL in paragraph 72 of the judgment, there would be no need to pass any *suo-motu* order(s). Accordingly, the Commission indicated that it will proceed to take the appropriate course of action in this regard, as to the various

request of the learned counsel for the parties, *inter alia*, permission to file additional affidavit and impleadment of distribution licensees, etc., the Commission observed that similar matters are listed for hearing on 17.5.2022, the Commission will take a view in this regard thereafter after proper bunching of the Petitions or independently.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**

