



Petition No. 1340 of 2018

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

(Date of Order: 20.07.2022)

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Kaushal Kishore Sharma, Member
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF

Petition under Section 81(1) and (b) of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the PPA executed between the Petitioner and UPPCL dated 27.12.2013 seeking relief on account of a "Change in Law" viz. the introduction of GST laws at the central level and change in rate of Service Tax, resulting in additional recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the Effective Date of PPA.

Azure Surya Private Limited
Southern Park, 5th Floor,
D-II, Saket Place, Saket, New Delhi - 110017

.....Petitioner

Versus

Uttar Pradesh Power Corporation Limited (UPPCL)
7th Floor, Shakti Bhawan Extn,
14 Ashok Marg, Lucknow - 226001

.....Respondent

The following were present:

1. Shri. Vishal Binod, Advocate, Azure Power
2. Shri. Deepak Raizada, CE-PPA, UPPCL
3. Shri Mahendra Singh, SE-PPA, UPPCL
4. Shri. Divyanshu Bhatt, Advocate, UPPCL

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ORDER
(Date of Hearing - 07.07.2022)

1. Pursuant to last hearing dated 09.06.2022, the Commission vide Order dated 24.06.2022 adjourned the hearing and granted four-weeks' time to the Petitioner to file rejoinder to UPPCL's reply.

The matter came up for hearing today.

2. Shri. Vishal Binod, Counsel for Azure Surya submitted that they have filed the rejoinder to the reply of UPPCL. Further, the Counsel for Azure Power submitted the following:
- a. Azure Power has submitted the unregistered O&M Agreement as there was no legal requirement of registered agreement.
 - b. the introduction of GST, Swachh Bharat Cess and Krishi Kalyan Cess has led to an increase in the O&M expenditure wherein the O&M activities for the project has been outsourced to a third-party vendor.
 - c. Tax Rate applicable as on Effective Date of Project was 12.36% which was increased to 14% by virtue of Finance Act 2015 which was further increased to 14.5% due to imposition of Swachh Baharat Cess and later increased to 15% owing to the imposition of Krishi Kalyan Cess. Further due to the introduction of GST, the applicable tax rate has increased to 18%.
 - d. Clause 12.1.1 and 12.1.5 of the PPA provides for the provision for inclusion of such additional expenditure arising on account of Change in Law events and Petitioner is entitled to relief for such Change in Law events under Clause 12.2.1 and 12.2.2 of the PPA.
 - e. Hon'ble APTEL's judgement dated 27.04.2021 in the matter of Coastal Gujrat Ltd. Vs. CERC submitted that Hon'ble APTEL has ruled in favour of Coastal Gujrat Ltd. and has allowed relief in allowing additional tax liability on the outsourced O&M activities. The counsel further submitted that Hon'ble APTEL referring to Coastal Gujrat Ltd. Vs. CERC matter has also ruled in favour of various subsidiary firms of Azure Power Private Ltd. wherein in the firms approached the Commission with similar issue.