

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.268/MP/2021

- Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 12 of the long-term Power Purchase Agreement dated 17.10.2019 entered into between M/s Powerica Limited and Solar Energy Corporation of India Limited for approval of Change in Law events and consequential compensation.
- Date of Hearing : 10.1.2023
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Powerica Limited
- Respondents : Solar Energy Corporation of India Limited (SECI) and ANr..
- Parties Present : Ms. Divya Chaturvedi, Advocate, Powerica
Shri Saransh Shaw, Advocate, Powerica
Ms. Anju Thomas, Advocate, Powerica
Shri Parveen Arora, Advocate, Powerica
Ms. Suruchi Kotoky, Advocate, Powerica
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Shubham Mishra, SECI
Ms. Neha Singh, SECI
Ms. Aditee Nitnavare, SECI

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, for approval of Change in Law and consequential relief to compensate the Petitioner for increase in Project cost due to revision of GST applicable on renewable energy devices and manufacturing parts for wind mills and wind operated electricity generators, notified by the Ministry of Finance, Department of Revenue, vide its Notification No. 8/2021 dated 30.9.2021. Learned counsel submitted that in terms of the said notification, the applicable rate of GST has been revised from 5% to 12% and it squarely amounts to a Change in Law event under Article 12 of the Power Purchase Agreement (PPA) dated 17.10.2019. Learned counsel submitted as the per the Petitioner's computation, the total impact of the aforesaid Change in Law event has been Rs. 11.78 crore and the said impact is already restricted to the Commercial Operation Date of its Project. Learned counsel further added that as to the modalities of the payment i.e. one time lumpsum payment or annuity mode of payment, the Commission may decide as deemed fit. Learned counsel submitted that in terms of the judgment of Appellate Tribunal for Electricity dated 15.9.2022 in Appeal No. 256

of 2019 and Ors. in the matter of Parampujya Solar Energy Pvt. Ltd. and Anr. v. CERC and Ors. ('Parampujya Judgment'), the Petitioner is also claiming for carrying cost as the Change in Law clause in its PPA is similar to one in the Parampujya Case.

2. Learned counsel for the Petitioner submitted that the Discom, UPPCL has not filed reply despite notice.

3. Learned senior counsel for the Respondent, SECI stated that the revision in the rate of GST from 5% to 12% in terms of Ministry of Finance, Department of Revenue, Notification No. 8/2021 dated 30.9.2021 squarely qualifies to be a Change in Law event. Learned senior counsel further submitted that SECI may be permitted to make the payment of compensation as per the annuity methodology as approved by the Commission vide order dated 20.8.2021 in Petition No. 536/MP/2020 and as per the said methodology, the discount factor, as present, works out to 9%. Learned senior counsel submitted that as regard the claim of carrying cost on the basis of the Parampujya Judgment, it will be subject to the order(s) passed by the Hon'ble Supreme Court in Civil Appeal No.8880/2022 and Ors. filed challenging the Parampujya judgment. He added that SECI has inadvertently filed incorrect PSA along with its reply and it may be permitted to file the correct PSA and that in the meantime, SECI will proceed with reconciliation of the Petitioner's Change in Law claims.

4. Based on the request of the learned senior counsel and learned counsel for the parties, the Commission permitted the Petitioner to file its brief submission on the carrying cost based on the Parampujya Judgment and SECI to file a correct PSA within a week.

5. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

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