

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 211/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 27.6.2016 executed between Rattan India Solar 2 Private Ltd. and Solar Energy Corporation of India Limited for seeking approval of Change in Law events due to enactment of GST Laws.

Petitioner : Rattan India Solar 2 Private Limited (RS2PL)

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

Petition No. 213/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 22.6.2016 executed between Yarrow Infrastructure Private Ltd. and National Thermal Power Corporation Limited for seeking approval of Change in Law events due to enactment of GST Laws.

Petitioner : Yarrow Infrastructure Private Limited (YIPL)

Respondents : NTPC Limited (NTPC) and 5 Ors.

Date of Hearing : 14.3.2023

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

Parties Present : Shri Sujit Gosh, Advocate, RS2PL & YIPL
Ms. Anushree Bardhan, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Ms. Sakie Jakharia, Advocate, NTPC

Record of Proceedings

Learned counsel for the Petitioners submitted that the present Petitions have been re-listed pursuant to the order of Appellate Tribunal for Electricity ('APTEL') dated 29.11.2022 in Appeal Nos. 163 of 2021 and 157 of 2021 filed by the Petitioners challenging the Commission's orders dated 25.1.2021 passed in these matters wherein the APTEL has set aside the aforesaid orders remanding the matters back to the Commission for fresh hearing and decision in accordance with law, bearing in mind, among others, the decision of the APTEL dated 15.9.2022 in Appeal No. 256 of 2019 & batch ('Parampujya Judgment'). Learned counsel further referred to the APTEL's Parampujya Judgment and submitted that in the said judgment, the APTEL has already allowed the Change in Law compensation on account of GST Laws and Safeguard Duty on imports, as the case may be, for the



entire period of their impact including post Commercial Operation Date (COD) of the Project(s), towards O & M expenses and carrying cost and all the issues raised in these matters are squarely covered by the Parampujya Judgment.

2. Learned counsel for the Petitioners further submitted that in Petition No. 211/MP/2019, the Commission while disallowing the Petitioner's GST claim on O&M expenses in regard to Land Use-cum-Implementation and Support Agreement, in its order dated 25.1.2021, *inter-alia*, observed that the Petitioner had neither filed any such agreement nor placed on record any other documents with specific provisions fastening liability on the Petitioner to pay O&M charges to Solar Park Implementing Agency. Learned counsel added that although such agreement/details were placed before the APTEL in an appeal, the Petitioner may also be permitted to upload such details in the present Petition. Learned counsel further submitted that in Petition No. 213/MP/2019, the Commission vide order dated 25.1.2021, *inter-alia*, disallowed the Petitioner's Safeguard Duty claim post the COD of the Petitioner's Project and the Parampujya Judgment now permits the Change in Law compensation on account of GST Laws as well as the Safeguard Duty from the date of enforcement of such taxes for the entire period of its impact including the period post COD of the Projects.

3. Learned counsel for the Respondent, SECI in Petition No. 211/MP/2019 submitted that the remand of the matter in terms of the APTEL's order dated 29.11.2022 is limited to the denial of carrying cost, imposition of GST on O & M Expenses and the additional expenditure post COD and the Petitioner cannot be permitted to raise the issue relating to Land Use Agreement, etc. at this stage. Learned counsel added that as such there is no specific direction in the APTEL order permitting the Petitioner to raise such issue(s) at this stage.

4. Learned counsel for the Respondent, NTPC in Petition No. 213/MP/2019 sought permission to file her Vakalatnama and also written submissions in the matter.

5. In response, learned counsel for the Petitioner submitted that at paragraph 4 of the order dated 29.11.2022, the APTEL has remitted the matters back to the Commission for 'fresh hearing' while keeping all contentions open and therefore, the contention of SECI that the Petitioner cannot be allowed to rely/place Land Use cum Implementation and Support Agreement is entirely misplaced. Learned counsel sought liberty to file written submissions in these matters.

6. After hearing the learned counsel for the parties, the Commission permitted the both the sides to file their respective written submissions within two weeks with copy to the other side. The Commission also permitted the Petitioner to upload Land Use cum Implementation and Support Agreement(s) as requested for within a week.

7. Subject to the above, the Commission reserved the matters for order.

By order of the Commission

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