

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 310/MP/2022

Subject : Petition under Section 79(1)(b), 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 seeking compensation against additional cost incurred on account of implementation of the Goods and Service Tax Law vide Notification No.12/2017 as "Change in Law Even" in terms of Article 12 of the Power Purchase Agreement dated 5.10.2016 executed between Indigrd Solar-I (AP) Private Limited and Solar Energy Corporation of India Limited.

Date of Hearing : 6.3.2023

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

Petitioner : Indigrd Solar-I (AP) Private Limited (ISAPPL)

Respondent : Solar Energy Corporation of India Limited (SECI)

Parties Present : Ms. Pratiksha Chaturvedi, Advocate, ISAPPL
Shri Aditya K. Singh, Advocate, ISAPPL
Shri Saurav Kr. Jha, Advocate, ISAPPL
Ms. Aparajita Upadhyay, Advocate, ISAPPL
Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking approval of introduction of Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 (collectively, 'GST Laws') as Change in Law event in terms of Article 12 of the Power Purchase Agreement (PPA) dated 5.10.2016 executed between the Petitioner and SECI and for compensation & other consequential reliefs for the additional cost incurred on account of the aforesaid Change in Law event. Learned counsel mainly submitted as under:

(a) On 2.1.2016, SECI issued a tender document for procurement of 500 MW of power generated from the grid connected Solar Power Projects to be set-up by Solar Power Developers on Build, Own and Operate basis under the viability gap funding scheme in Phase II, Batch III of Jawaharlal Nehru National Solar Mission.

(b) Pursuant to submission of its bid, the Petitioner was selected as successful bidder and awarded 50 MW vide Letter of Intent dated 16.8.2016. Consequently, the Petitioner and SECI entered into PPA for the above capacity on 5.10.2016.

(c) Upon implementation of GST Laws w.e.f. 1.4.2017, there has been increase in the capital and operational cost incurred by the Petitioner for the aforesaid Project – making the quoted tariff at the time of bidding unviable and accordingly, the Petitioner has filed the present Petition.

(d) The Project of the Petitioner achieved its commissioning on 22.6.2018. However, since the Petitioner company was going through various financial issues and restructuring, there had been certain delay in communicating its Change in Law claims to SECI.

2. In response to the specific observation of the Commission with regard to the Petition being time-barred, learned counsel for the Petitioner submitted that the present Petition is not barred by limitation. Learned counsel submitted that the Petitioner's Project commissioned on 22.6.2018 and keeping in view that the Hon'ble Supreme Court vide order dated 10.1.2022 in Suo-Motu Writ Petition (c) No. 3 of 2020 has excluded the period from 15.3.2020 till 28.2.2022 for the purposes of limitation due to outbreak of Covid-19, the present Petition is not time barred.

3. In response to the further query of the Commission with regard to the issuance of first notice to the Respondent regarding Change in Law event, the learned counsel for the Petitioner submitted that Petitioner issued the Change in Law notice to SECI on 20.6.2020. Learned counsel pointed out that unlike the other PPAs, the provisions of the PPA in the present case do not provide for issuance of Change in Law notice.

4. Learned counsel for the Respondent, SECI submitted that as per the provisions of the PPA, the Petitioner was fully aware that a party aggrieved by Change in Law event was required to approach this Commission for approval of the Change in Law event. Learned counsel submitted that the Petitioner was also aware of the impact of the GST Law upon commissioning of the Project in 2018 and despite this, the Petitioner has approached the Commission only vide present Petition filed in 2022. Learned counsel added that prior to admission of matter, AP Discoms, being the ultimate beneficiaries/procurers of the power, ought to be impleaded and heard on the aspect of limitation.

5. In response, the learned counsel for the Petitioner submitted that the Commission may proceed to admit the matter while giving direction for impleadment of end beneficiaries as has been done in similar cases in the past.

6. After hearing the learned counsel for the Petitioner and the Respondent, SECI, the Commission deemed it appropriate to hear the parties on the aspect of limitation prior to admission. Accordingly, the Commission directed the Petitioner to implead the end beneficiaries and further directed to issue notice on the aspect of

limitation in the matter and the Respondent and end beneficiaries were directed to file its response on the aspect of limitation within three weeks with a copy to the Petitioner who may file its rejoinder thereof within two weeks thereafter.

7. The Petition shall be listed for hearing on aspect of 'limitation' on 16.5.2023.

By order of the Commission

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