



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 73/MP/2020 along with
I.A. No. 36 of 2023

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 28th of June, 2023

IN THE MATTER OF:

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for (i) approval of 'Change in Law'; and (ii) consequential relief to compensate for the increase in capital cost due to introduction of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the State Goods and Services Tax Acts enacted by respective states, and (b) imposition and introduction of Safe Guard Duty on the import of solar cells (whether or not assembled in modules or panels) by way of Notification No.01/2018-Customs SG dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance, in terms of Article 12 read with Article 16.3.1 of the Power Purchase Agreements dated 06.10.2017 between SB Energy One Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

M/s. SB Energy One Private Limited
(Now known as *Adani Solar Energy Jodhpur Three Private Limited*)
1st Floor, Worldmark – 2, Asset Area – 8,

Hospitality District, Aerocity, NH – 8,
Delhi – 110037

...Petitioner

Versus

- 1. M/s Solar Energy Corporation of India Limited,**
1st Floor, D-3, A-Wing,
Prius Platinum Building District Centre, Saket, New Delhi- 110017
- 2. M/s Rajasthan Urja Vikas Nigam Limited,**
Vidyut Bhavan, Janpath,
Jyoti Nagar, Jaipur – 302005

...Respondents

Parties Present: Ms. Gayatri Aryan, Advocate, SBEOPL
Ms. Anushree Bardhan, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Shri Amal Nair, Advocate, RUVNL
Ms. Kritika Khanna, Advocate, RUVNL

आदेश/ ORDER

The Petitioner, M/s Adani Solar Energy Jodhpur Three Private Limited (previously known as M/s SB Energy One Private Limited) is a generating company and a Special Purpose Vehicle formed by SBG Cleantech One Limited for setting up three Projects (100 MW each).

2. The Respondent No. 1, M/s Solar Energy Corporation of India Limited (SECI), is a Central Public Sector Undertaking under the administrative control of the Ministry of New and Renewable Energy, to facilitate the implementation of the Jawaharlal Nehru National Solar Mission for the development, promotion, and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM. SECI is off-taking the entire 300 MW generated by the Petitioner's Projects for sale to Buying Utilities on a back to back basis.
3. The Respondent No. 2, M/s Rajasthan Urja Vikas Nigam Limited (RUVNL) is the buying utility, purchasing power from SECI for the State of Rajasthan.
4. Before deciding on the issues at hand, it is pertinent to mention here that during the course of the hearing on 14.03.2023, the Petitioner submitted that the name of the Petitioner's Company has changed from *M/s SB Energy One Private Limited* to *M/s Adani Solar Energy Jodhpur*

Three Private Limited, and hence, they may be permitted to file an appropriate application to bring on record the change in name of the Company. The relevant extracts of the Record of Proceedings (RoP) dated 14.03.2023 are as under:

“

Learned counsel also pointed out that the name of the Petitioner company has now changed to Adani Solar Energy Jodhpur Three Private Limited (from earlier, SB Energy One Private Limited) and the Petitioner may be permitted to file an appropriate application to the above effect.

.....

The Commission also permitted the Petitioner to file an appropriate application to bring on record the change in the name of the Petitioner Company within a week.”

5. Pursuant to the direction of the Commission, the Petitioner filed I.A. No. 36 of 2023 to bring on record the change in name of the Petitioner’s Company from *M/s SB Energy One Private Limited* to *M/s Adani Solar Energy Jodhpur Three Private Limited*. Relevant extracts of the Certificate of Incorporation dated 28.03.2022 are as under:

Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U74999DL2017PTC319550

I hereby certify that the name of the company has been changed from SB ENERGY ONE PRIVATE LIMITED to ADANI SOLAR ENERGY JODHPUR THREE PRIVATE LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name SB ENERGY ONE PRIVATE LIMITED.

Given under my hand at New Delhi this Twenty eighth day of March two thousand twenty-two.....”

6. After going through the submission of the Petitioner in I.A. 36 of 2023 and the Certificate of Incorporation issued by the Registrar of Company (ROC) Delhi, we note the change of name of the Petitioner’s Company from *M/s SB Energy One Private Limited* to *M/s Adani Solar Energy Jodhpur Three Private Limited* and accordingly take it into our records.

Factual Matrix:

7. The Petitioner in the main Petition has made the following prayers:
- a) *Declare and hold that the introduction of the GST Laws qualifies as ‘Change in Law’ in terms of Article 12 of the PPAs executed between the Petitioner and the SECI and that the Petitioner is entitled to relief thereunder;*

- b) *Declare and hold that the imposition of Safeguard Duty is a 'Change in Law' event in terms of Article 12 of the PPAs executed between the Petitioner and the SECI and that the Petitioner is entitled to relief thereunder;*
- c) *Direct the Respondent No. 1 – SECI to restitute the Petitioner by paying the additional non-recurring/ recurring capital cost incurred by it, to the tune of INR 68,18,25,850 on account of introduction of GST Law and INR 98,39,78,082 due to imposition of Safeguard Duty in terms of Article 12 of the PPAs by way of upfront lumpsum payment; In the alternate,*
- d) *Direct the Respondent No. 1 – SECI to restitute the Petitioner by paying the additional non-recurring/ recurring capital cost incurred by it, to the tune of INR 68,18,25,850 on account of introduction of GST Law and INR 98,39,78,082 due to imposition of Safeguard Duty in terms of Article 12 of the PPAs by way of adjustment in quoted tariff;*
- e) *Direct SECI to restitute the Petitioner for the Operation & Maintenance costs as claimed by the Petitioner on account of the 'Change in Law' events.*
- f) *Direct SECI to pay to the Petitioner, the associated carrying cost for the payments made in terms of Prayers (c) and (d) hereinabove from the date the Petitioner incurred the additional cost on account of introduction of GST Law and SGD Notification till the approval of Change in Law by this (the date on which the order of the is published/pronounced); and from the date of the Order of the Commission approving Change in Law till the actual payments are received in entirety by the Petitioner;*

8. The Commission after carefully perusing the submissions of the parties, disposed of the Petition vide order dated 13.05.2021 and held as under:

“147. Our findings in this Order are summed up as under:

Issue No.1:

- (i) *The enactment of the 'GST laws' is squarely covered as "Change in Law" under the first and last bullet in seriatim of Article 12 of the PPA and entitles the Petitioner to relief under Article 12 of the PPAs.*
- (ii) *The imposition of Safeguard Duty qualifies as 'Change in Law' under the PPAs and entitles the Petitioner to relief under Article 12 of the PPAs.*
- (iii) *The liability of payment on account of GST Laws and imposition of Safeguard duty on procurement of Solar PV panels and associated equipment by the Petitioners shall lie with the Respondents till the Commercial Operation Date (COD) for the contracted capacity and energy as per Article 4.4 of the PPAs.*
- (iv) *SECI is directed to pay to the Petitioner as per mutually agreed mechanism for payment of such compensation on annuity basis spread over the period not exceeding the duration of the PPAs, subject to the outcome of Petition No. 536/MP/2020 filed by SECI for approval of annuity methodology including annuity rate.*
- (v) *The compensation to be paid to the Petitioners is not conditional upon the payment to be made by the Respondent RUVNL to Respondent SECI. However, the Respondent SECI is eligible to claim the same from the Respondent RUVNL on 'back to back' basis. The Commission also directs the Respondent RUVNL to expeditiously settle such claims in term of the PSA.*
- (vi) *The first instalment of the claim shall be paid within sixty days of the date of this Order or from the date of submission of claims by the Petitioner*

whichever is later failing which it will attract late payment surcharge as provided under PPA/PSA.

- a) **Issue No.2:** The claim on account of additional tax burden on O&M is not maintainable.
- b) **Issue No.3:** The claims on account of 'Carrying cost', 'Interest on Working Capital' and 'Return of Equity' are not admissible.

9. Aggrieved by the order dated 13.05.2021 passed by the Commission, the Petitioner preferred an appeal before the Appellate Tribunal for Electricity (APTEL).

10. The APTEL vide its order dated 19.01.2023 in A.No. 432 of 2022 titled as *Adani Solar Energy Jodhpur Three Private Limited vs. Central Electricity Regulatory Commission & Ors.*, has held as under:

“
Suffice it, therefore, to dispose of this appeal in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated 15.09.2022, making it clear that, consequent on remand, it shall be open to the parties to the dispute to raise all such contentions as are available to them in law, and the same shall be considered by the CERC while passing an order afresh. Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court. The instant Appeal is, accordingly, disposed of.”

Hearing dated 14.03.2023:

11. The case was called out for hearing on 14.03.2023. As per the Record of Proceedings it was held as under:

“Learned counsel for the Petitioner submitted that the present Petition has been re-listed pursuant to the order of Appellate Tribunal for Electricity ('APTEL') dated 19.1.2023 in Appeal No. 432 of 2022 filed by the Petitioner against the order dated 13.5.2021 passed by the Commission in the present case wherein the APTEL has remanded the matter back to the Commission for passing an order afresh in view of its judgment dated 15.9.2022 in Appeal No. 256 of 2019 & batch matters ('Parampujya Judgment'). Learned counsel submitted that issues/grievances raised by the Petitioner in the said appeal against the Commission's order dated 13.5.2021 are squarely covered by the judgment of APTEL in Parampujya Judgment. Learned counsel also submitted that similar remand petitions, in terms of Parampujya Judgment, were listed for hearing on 14.2.2023 and similar directions as issued therein may also be issued in the present case. Learned counsel also pointed out that the name of the Petitioner company has now changed to Adani Solar Energy Jodhpur Three Private Limited (from earlier, SB Energy One Private Limited) and the Petitioner may be permitted to file an appropriate application to the above effect.

2. Learned counsel for the Respondent, SECI submitted that the issues involved in the matter are squarely covered by the APTEL's Parampujya Judgment. Learned counsel, however, pointed out that in terms of the order of the Hon'ble Supreme Court dated 12.12.2022 in Civil Appeal No. 8880 of 2022, the order of the Commission

implementing the directions of APTEL in paragraph 109 of the Parampujya Judgment is not to be enforced until the further order(s) of the Hon'ble Supreme Court and that the directions in paragraph 109 of the Parampujya Judgment are not limited to generator's entitlement to carrying cost but also extend to its Change in Law claims post COD of the Project(s) and on O & M expenses.

3. After hearing the learned counsel for the parties, the Commission permitted both the side to file their respective written submissions, if any, within two weeks with copy to the other side. The Commission also permitted the Petitioner to file an appropriate application to bring on record the change in the name of the Petitioner Company within a week.

4. Subject to the above, the Commission reserved the matter for order”

Submissions of SECI:

12. SECI, vide its written submission dated 11.04.2023 has submitted that the Hon'ble Supreme Court, vide order dated 12.12.2022 in Civil Appeal No. 8880 of 2022 and 23.01.2023 in Civil Appeal being Diary No. 135 of 2023, has held that CERC shall comply with the directions issued in para 109 of the *Parampujya judgement* dated 15.09.2022 and the final order of CERC shall not be enforced pending further orders. SECI has submitted that the Commission may consider the aforesaid decisions in order to maintain parity before passing any decision on the aspects covered in the above judgments.

Submissions of the Petitioner:

13. The Petitioner has submitted that the decision of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 establishes that this Commission can take up claims of solar power developers for further proceedings in terms of the *Parampujya Judgment*. Therefore, there is no stay on the *Parampujya Judgment*. The Petitioner further submitted that as the aforesaid Petition is listed for further hearing before the Hon'ble Supreme Court on 18.07.2023, the Commission may take this into consideration and accordingly carry out the final computation.

Analysis and decision:

14. We have heard the learned counsels for the Petitioner and Respondents and have carefully perused the records and considered the submissions of the parties.
15. In this regard, it is pertinent to mention here that the Commission has already passed well-reasoned Orders in similar matters in Petitions (as mentioned below), wherein similar reliefs were sought by the parties with respect to compensation qua O&M/additional expenses, Carrying Costs etc. The Commission has allowed the claims for O&M/additional expenses,

Safeguard Duty claims, and Carrying Cost etc. in similar petitions viz. *188/MP/2018 & Batch vide Order dated 25.11.2022; 293/MP/2018 & Batch vide Order dated 30.11.2022; 179/MP/2020 & Addendum Order 09.01.2023 & 24.01.2023; 722/MP/2020 & 723/MP/2020 vide Order dated 20.01.2023; 268/MP/2021 vide Order dated 05.04.2023; 216/MP/2022 vide Order dated 05.04.2023; 219/MP/2022 vide Order dated 21.04.2023; 174/MP/2022 vide Order dated 17.05.2023*. In the above Orders, the Commission has, *inter-alia*, held that the Petitioners shall be entitled to compensation towards additional expenditure on account of Change in Law event in terms of Article 12.2 of the PPA along with carrying costs on account of Change in Law event. However, the directions related to compensation for the period post COD shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors*, and connected matters.

16. We note that in the instant petition, the Petitioner submitted its bid on 19.04.2017 and the PPA was executed on 06.10.2017. Further, as per the PPAs, the SCoDs were on 16.09.2018. We observe that the GST Laws were applicable from 01.07.2017 i.e. after submission of the bid by the Petitioner, and Safe Guard Duty was imposed by way of Notification No.01/2018-Customs SG dated 30.07.2018 i.e. before the SCoD viz. 16.09.2018. As per records, details of the extended SCoD and Actual COD are as follows:

Project Details	Capacity	Extended SCoD	Commissioning	Actual COD
Project 1D	100 MW	21.09.2018	21.09.2018	21.10.2018
Project 2D	100 MW	24.09.2018	24.09.2018	24.10.2018
Project 3D	100 MW	24.09.2018	24.09.2018	24.10.2018

17. As such , the Petitioner's projects were impacted by the GST Notification dated 01.07.2017 and Notification No.01/2018- Customs SG dated 30.07.2018. The Petitioner is entitled to relief under the GST Laws and Notification No.01/2018- Customs SG as per the terms of Article 12 of the PPA.

18. The APTEL, vide judgement dated 15.09.2022 in A.No. 256 of 2019 & Batch titled as *Parampujya Solar Energy Pvt. Ltd. & Ors vs. CERC & Ors* held as under:

“.....
109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy

Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.”

19. In view of the above, this Commission holds that the Petitioner shall be entitled to compensation (pre COD & post COD) towards additional expenditure on account of Change in Law event in terms of Article 12 of the PPAs. The Petitioner, in the instant petitions, shall be eligible for carrying costs starting from the date when the actual payments were made to the Authorities till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.
20. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised, supported with auditor certificate. The Commission further directs that RUVNL is liable to pay to SECI all the above reconciled claims that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by RUVNL to SECI.
21. The Hon’ble Supreme Court in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of “*Telengana Northern Power Distribution Co. Limited & Anr. Vs. Parampujya Solar Energy Pvt. Limited & Ors.*” (and in similar Orders dated 03.01.2023 and 23.01.2023) has held as under:

“Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15

September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”

22. Therefore, the directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors*, and connected matters.

23. The Petition No. 73/MP/2020 along with I.A. 36 of 2023, is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य

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जिष्णु बरुआ
अध्यक्ष