नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 52/MP/2019 along with
IA 78 of 2022

कोरम/ Coram:

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: 23rd of August, 2022

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, in terms of Article 12 of the power purchase agreement dated 02.08.2016 between Solitaire Powertech Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

Solitaire Powertech Private Limited
616 A, 16A, 6TH Floor, Devika Tower,
Nehru Place- New Delhi-110019

……**Petitioner**

Versus

1. Solar Energy Corporation of India Limited
   1ST Floor, D-3, A Wing,
   Religaire Building District Centre,
   Saket New Delhi- 110017

2. Bangalore Electricity Supply Company Limited
   BESCOM K.R. Circle
   Bangalore-560001

3. Mangalore Electricity Supply Company Limited
   MESCOM Bhavan, Kavoor Cross Road, BEJAI,
   Mangaluru-575004, Karnataka

4. Chamundeshwari Electricity Supply Corporation Limited
   No. 29, Vijaynagar 2nd Stage,
   Hnkal, Mysore- 570017

5. Gulbarga Electricity Supply Company Limited
   Corporate Office, Station Road,
   Kalaburagi- 585102, Karnataka

6. Hubli Electricity Supply Company Limited,
   Tabib Land, Mantur Road, Near CBT, APMC,
   Hubali-Dharwad, Karnataka- 580020

…Respondents

Parties Present: Shri Hemant Sahai, Advocate, SPPL
Shri Nitish Gupta, Advocate, SPPL
Shri Nishant Talwar, Advocate, SPPL
Shri Utkarsh Singh, Advocate, SPPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Vikas Bamrara, SPPL
Ms. Neha Singh, SECI

आदेश/ ORDER

1. The Petitioner, Solitaire Powertech Private Limited, is a generating company and is setting up a Solar Power Project based on Photo Voltaic technology of 30 MW capacity at District Chitradurga, Karnataka. The Petitioner has filed the instant petition seeking approval of 'Change in Law'; and 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, in terms of Article 12 of the Power Purchase Agreement (PPA) dated 02.08.2016.

2. The Respondent No. 1, Solar Energy Corporation of India Limited (SECI) is a Central Public Sector Undertaking under the administrative control of Ministry of New and Renewable Energy (MNRE), set up on 20.09.2011 to facilitate the implementation of Jawaharlal Nehru National Solar Mission (NSM) for development, promotion and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM.

3. The Respondent No. 2 to No. 6, are the distribution licensees engaged in the business of distribution and supply of electricity across the State of Karnataka.

4. The Petitioner has made the following prayers:

In Petition No. 52/MP/2019

a. *Declare that enactment of GST Law qualifies as 'Change in Law' in terms of Article 12 of the PPA executed between the Petitioner and the Respondent and that the Petitioner is entitled to relief thereunder;*

b. *Direct the Respondent to compensate the Petitioner in terms of Article 12 of the PPA for the additional non-recurring/ recurring capital cost incurred/ to be incurred by it to the tune of INR 7,96,66,680/- due to introduction of GST Law by way of upfront lumpsum payment/ adjustment in the quoted tariff along with the carrying cost;*

c. *Pursuant to grant of prayer (a) and (b) above, approve the necessary consequential amendments to the PPA and LOI;*

d. *Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner.*

In I.A. No. 78 of 2021

a. *Allow the present Application to be listed before this Hon'ble Commission on urgent basis at the earliest possible date as per the convenience of this Hon'ble Commission;*

b. *Hold and direct the Respondent No. 1 to pay upfront lump-sum payment of Rs. 2,11,27,380/- (or any other amount payable on the date of final order passed by this Hon'ble Commission) within the period of 10 days from the date of order and to release*

the remaining annuity monthly payment of Rs. 7,20,673/- per month (as proposed by Respondent No. 1 vide its letter dated 22.03.2021) within period of 60 days from the date of order, as minimum obligated payments which the Petitioner is entitled to receive.

Brief factual background:

5. SECI was designated as the nodal agency for implementing MNRE schemes for development of grid connected solar power capacity through Viability Gap Funding mode (VGF). MNRE issued the '*Guidelines for Implementation of Scheme for Setting up of 2000 MW Grid-connected Solar PV Power Projects under Batch-III'* on 04.08.2015 (Guidelines). SECI by way of Request for Selection (RfS) dated 15.02.2016, invited proposals for 1000 MW grid connected solar photo voltaic power projects under NSM Phase II, Batch III Tranche-V in State of Karnataka. In furtherance of the RFS, the Petitioner submitted its bid on 23.05.2016. The reverse auction process was carried out on 09.06.2016 and the Petitioner was declared as successful bidder after quoting Viability Gap Fund (VGF) support of Rs 73.49 Lakhs/MW for the 30 MW Project at applicable tariff of Rs. 4.43/ kWh. SECI issued Letter of Intent (LoI) dated 02.07.2016 to the Petitioner for development of the Project for generation and onward sale of solar power to SECI. The Petitioner, on 02.08.2016, entered into a PPA for sale of 30 MW from the Project at a tariff of Rs. 4.43/ kWh. As per the PPA, the scheduled date of commissioning of the Project is 02.09.2017 (SCoD).

6. On 01.07.2017, the Central Goods and Services Tax Act, 2017; the Integrated Goods and Services Tax Act, 2017; and the Karnataka Goods and Services Tax Act, 2017 (GST Laws) were introduced.

7. As per the Petitioner, the implementation of GST has resulted in an increase in the recurring and non-recurring expenditure for the Petitioner after the Effective Date of the PPAs, and consequently, has adversely impacted the business of the Petitioner.

8. The present Petition was filed on 01.03.2019 and admitted by this Commission on 16.05.2019, whereby the Respondents were directed to file their replies by 06.06.2019 with an advance copy to the Petitioner who could file its rejoinders, if any, by 20.06.2019.

9. Accordingly, SECI filed its reply on 06.06.2019, followed by the Petitioner filing its rejoinder to the same on 03.07.2019.

Hearing dated 04.06.2020:

10. The case was called out for virtual hearing. The Commission observed that the Petitioner and SECI have sought liberty to engage in discussion for reconciliation of the Petitioner's claims arising out of Change in Law event, namely, enactment of GST Law as per MNRE's letters dated 12.3.2020 and 23.3.2020. Accordingly, the Commission adjourned the matter with the advice that the Petitioner may get the Petition revived based on the outcome of the discussions or settlement reached, if any, amongst the parties.

Hearing dated 09.11. 2021:

11. The case was called out for virtual hearing. The learned counsel for the Petitioner submitted that subsequent to hearing of the matter on 04.06.2020, the Petitioner and SECI have reconciled the Petitioner's Change in Law claims relating to enactment of GST Laws. The learned counsel, referring to the letter of SECI dated 22.03.2021, submitted that the admitted GST claims till Commercial Operation Date ('COD') is Rs.6,96,91,565/- and under the annuity mode of payment, the upfront lump sum amount (i.e. monthly annuity payment from COD of the project till the date of payment) to be paid works out to Rs. 1,60,82,669/-. The aforesaid lump sum amount has been calculated by assuming the date of payment to be 31.03.2021. However, since approximately 7 months have already passed from the said date, SECI may be directed to pay the upfront lump sum amount for such elapsed period. The learned counsel further submitted that the Petitioner is facing severe financial difficulties and accordingly, IA No. 78/2021 has been filed by the Petitioner seeking directions to be issued to SECI to release the payment as proposed vide letter dated 22.03.2021. The learned counsel further added that the Petitioner has also prayed for carrying cost, which may be considered in light of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021.

12. The learned senior counsel for the Respondent, SECI submitted that the reconciliation of claims between the Petitioner and SECI has been completed and SECI had sent the reconciled claims to the buying entity, namely, BESCOM, which has, however, neither commented upon nor objected to the said amount. The learned senior counsel for SECI requested for grant of 60 days' time to SECI from the date of Order for making the annuity payment in terms of Order

dated 20.8.2021 in Petition No. 536/MP/2020 and Ors. The learned senior counsel submitted that the arrears of upfront lump sum amount, if any, will be paid by SECI and that the Petitioner's reliance on the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 for grant of carrying cost is misplaced as the said Rules cannot have a retrospective effect. The learned senior counsel sought liberty to file a short note of submissions in the matter.

13. Considering the request of the learned senior counsel for the Respondent, SECI, the Commission directed the Respondent, SECI to upload its note of submissions during the course of the day with copy to the Petitioner. Subject to the above, the Commission reserved the matter for Orders.

14. **Subsequent proceedings:**

a) After having the matter reserved for Orders on 09.11.2021, the Petition was re-listed for hearing before this Commission on 11.01.2022, in view of the issuance of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (*Change in Law Rules*) by the Ministry of Power, Government of India which provided for a procedure dealing with the Change in Law cases. During the course of hearing, learned counsel for the Petitioner submitted that the parties to the PPA i.e. the Petitioner and SECI, have already reconciled the Petitioner's Change in Law claims relating to enactment of GST Laws and that SECI has also agreed to release the payments to the Petitioner, as recorded vide Record of Proceedings for the hearing dated 09.11.2021. The learned counsel further submitted that the Petitioner is facing severe financial stress. Accordingly, the Petitioner had filed IA No. 78/2021, inter alia, seeking direction to SECI to release the payments as proposed vide its letter dated 22.03.2021. The learned counsel further submitted that the Change in Law Rules may not apply in the present case as the parties, namely, the Petitioner and SECI have already reconciled the claims. As regards the distribution licensee, despite being party to the Petition, it chose not to appear before the Commission. The learned counsel submitted that the Commission, in its various Orders, has already held that the obligation of SECI for making payment to the Petitioner is not subject to payment being made by the distribution licensee to SECI. Based on the above, the learned counsel requested that the Commission may consider passing a consent order in the matter or else the parties may be permitted to reconcile the claims with distribution licensee and thereafter, the matter be considered under the Change in Law Rules.