



**Petition No. 1865 of 2022**  
**BEFORE**  
**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**  
**LUCKNOW**

**Date of Order: 15.03.2023**

**PRESENT:**

Hon'ble Shri Raj Pratap Singh, Chairman  
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF:** Petition under Sections 86(1)(e), 86(1)(f) and 86(1)(k) of the Electricity Act, 2003 for seeking appropriate relief on account of the change in law as provided under the PPA dated 27.02.2020 due to the increase in rates of the Goods and Services Tax on Solar Panels/Modules and to further seek relief against the levying of Liquidated Damages by the UPPCL.

**M/s SAEL Limited,**

Faridkot Road, Guruharsahai, District Ferozepur, Punjab- 152 022

.....Petitioner

**Versus**

**1. U.P. Power Corporation Ltd. (UPPCL),**

(Through Superintending Engineer- PPA (R)),  
14<sup>th</sup> Floor, Shakti Bhawan Extn,  
14-Ashok Marg, Lucknow-226001.

**2. U.P. New and Renewable Energy Development Agency (UPNEDA),**

(Through its Director),  
Vibhuti Khand, Gomti Nagar, Lucknow-226010.

**3. U.P. Power Transmission Corporation Ltd. (UPPTCL),**

(Through Chairman),  
7<sup>th</sup> Floor, Shakti Bhawan, 14-Ashok Marg, Lucknow-226001

.....Respondent (s)

The following were present:

1. Shri Aditya K. Singh, Counsel, UPPCL
2. Shri Deepak Raizada, C.E (PPA), UPPCL
3. Shri Mahendra Singh, S.E, UPPCL
4. Shri Paavan Awasthi, Advocate, SAEL Ltd.
5. Shri Apoorva Tewari, Advocate, SAEL Ltd.
6. Shri Puneet Chandra, Advocate, UPPTCL

**ORDER**

**(Date of Hearing: 17.01.2023)**



1. The Petitioner, SAEL Ltd. has filed instant Petition seeking appropriate relief on account of Change in Law as provided under the PPA dated 27.02.2020 due to increase in the rates of Goods and Service Tax (GST) on Solar Panels/Modules and further seek direction against UPPCL restraining it from levying Liquidated Damages (LD) for the delay in commissioning of Petitioner's 32 MW Solar Power Plant situated at Shahpura, Khutaila and Mawasa, District Jalaun, Uttar Pradesh.
2. The Prayers of the Petitioner are as below:
  - a) Restrain the Respondents from levying of liquidated damage, by encashing/invoking the performance bank guarantees submitted by the Petitioner or otherwise, on account of unforeseeable and uncontrollable delay caused in the commissioning of the project of the Petitioner.
  - b) Direct UPPCL to not initiate any coercive steps against the Petitioner until the final disposal of this Petition.
  - c) Direct Respondents to grant notional extension of date of commissioning of the project of the Petitioner without imposing any penalty and to declare 01.07.2022 as the scheduled date of commissioning of the project of the Petitioner.
  - d) Hold and declare that the change in rates of GST applicable on solar panel/solar modules and other solar operated devices pursuant to the notification dated 30.09.2021 issued by the Ministry of Finance, Government of India, amounts to Change in Law as per Article 12 of the PPA.
  - e) Direct UPPCL to reimburse the Petitioner for the corresponding increase in the project cost of the Petitioner on account of the increase in GST rates amounting to Rs. 5,73,90,627/- (Rupees Five Crore Seventy-Three Lacs Ninety Thousand Six Hundred and Twenty-Seven) approximately through lumpsum reimbursement.  
OR  
Increase/enhance the Tariff payable by the UPPCL to the Petitioner under the PPA to restore the Petitioner in same economic position pursuant to the corresponding increase in the project cost of the Petitioner on account of the increase in GST rates amounting to Rs. 5,73,90,627/- (Rupees Five Crore Seventy-Three Lacs Ninety Thousand Six Hundred and Twenty-Six) approximately plus the carrying cost.
  - f) Direct Respondents to not to encash the performance bank guarantees as submitted by the Petitioner and to immediately release the same as per the terms of the PPA.
  - g) To grant ad-interim reliefs sought in terms of prayer (c) above and confirm the same after notice to the Respondents.
  - h) To award cost in favor of the Petitioner.

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**Brief of the Case:**

3. The Petitioner has mainly submitted in the Petition as under:
- a) As per the Solar Policy 2017, UPNEDA initiated a competitive bidding process through issuance of Request for Proposal (RFP) document for selecting Solar Power Producer for setting up of Solar Power Project (SPP) for supply of solar energy for 25 years to the procurers.
  - b) The Petitioner was selected as a successful bidder by the UPNEDA for the construction, operation, maintenance, and supply of power from the solar power project of 32 MW capacity to the UPPCL. The Petitioner also deposited the contract performance guarantees as per the prescribed format with the UPNEDA. Thereafter, PPA was executed between the Petitioner and UPPCL on 27.02.2020.
  - c) As per Clause 5.1.5 of the PPA, the Petitioner was required to commission the project within 18 months from the date of execution of the PPA. Further, under clause 4.7 of the PPA, if the Petitioner was prevented from commissioning the project within the scheduled commissioning date (SCOD) due to UPPCL's event of default or Force Majeure Event affecting UPPCL or Petitioner, the Petitioner would be entitled for deferment/extension of the SCOD and expiry date. Further, as per Clause 4.8 of the PPA, if the Petitioner is unable to commence the power supply to UPPCL by the SCOD other than for the reasons specified under Clause 4.7.1 of the PPA, the Petitioner shall pay to the UPNEDA, LD for the delay in such commencement of power supply.
  - d) The Petitioner vide letter dated 18.03.2020 applied to UPPTCL for grid connectivity approval at 132kV Sub-station, Konch, District-Jalaun, for 32MW SPP.
  - e) In March 2020, the World Health Organization (WHO) declared COVID-19 as pandemic. The Government of India (GoI) and Government of Uttar Pradesh (GoUP), with the sole objective of curbing the spread of coronavirus directed all public and private sector establishments to halt all operations vide notification dated 24.03.2020 and nationwide lockdown was imposed.
  - f) Ministry of New and Renewable Energy (MNRE) vide Office Memorandum (O.M) dated 13.08.2020 granted time extension in SCOD and therein provided that all renewable energy implementing agencies shall treat the lockdown due to COVID-19 as Force Majeure with the blanket time extension of 5 (Five) months. Accordingly, on 13.08.2020, the Petitioner requested UPPCL for extension in SCOD till 31.03.2022 without any penalty.
  - g) On 09.10.2020, Connection Agreement was executed between the Petitioner and UPPTCL. UPPCL, on 21.11.2020 granted five months extension of SCOD as per the provisions of MNRE O.M dated 13.08.2020.
  - h) Thereafter, MNRE vide O.M. dated 12.05.2021 provided that renewable energy projects having their SCOD on or after 01.04.2021 can apply to the concerned implementing agency for claiming time extension on account of the resurgence of the Covid-19 and regarding quantum of time extension to be granted would be notified separately. Further, vide O.M. dated 29.06.2021, MNRE decided that the
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period of disruption (two and half months) on account of second wave of Covid-19 Pandemic can be allowed in accordance to the earlier stated in O.M. dated 12.05.2021.

- i) On 29.10.2021, an amended PPA was executed between the Petitioner and UPPCL on account of the change of name of the Sukhbir Agro Energy Limited to 'SAEL Limited' with effect from 07.07.2021. MNRE vide O.M. dated 03.11.2021, clarified that the 'change in law' shall be continued to be governed by the provisions of the PPA and shall be decided by the Appropriate Commission. The Petitioner vide its letter dated 04.12.2021 requested UPPCL for grant of extension in SCOD till 10.04.2022 as per the MNRE O.M dated 12.05.2021 & 29.06.2021 which was accepted by UPPCL on 24.12.2021.
- j) On 03.03.2022, the Petitioner informed UPPCL that the project development was delayed on account of the third wave of Covid-19 Pandemic in the month of December, 2021 and January, 2022. Further, civil work and other land development work was already finished at the site and purchase orders for all major equipment were already placed and installation work was going on in full swing. The Petitioner in view of aforesaid, requested for further grant of extension in the SCOD till 31.05.2022 without any penalty which was rejected by UPPCL on 31.03.2022 and thereby UPPCL stated that delay would attract LD as per the PPA.
- k) On 28.04.2022, the Petitioner requested UPPCL for early completion of Bay Construction Work at the 132kV substation, Konch for the synchronization of the solar power plant. By means of the aforesaid letter, it was also informed that till date, no contractor has been finalized by the UPPTCL for 132kV Bay Construction Work at Konch Sub-station and the same would result in further delay in the commissioning of the solar power project of the Petitioner.
- l) On 30.05.2022, No Objection Certificate was issued by the Electrical Safety Directorate, Lucknow. The Petitioner vide letter dated 02.06.2022 informed UPPCL that 32MW solar plant was ready for commissioning and requested for early completion of the Bay construction work at 132 kV sub-station, Konch. The Solar Power Project was finally commissioned on 01.07.2022 after the completion of the Bay Construction Work at 132kV sub-station at Konch. There was a total delay of 2 months and 20 days from the SCOD of the project, i.e., 10.04.2022. However, the said delay was beyond the control of the Petitioner and did not result in loss to the UPPCL. Moreover, the Solar Power Plant was ready for commission on 01.06.2022 and further delay was caused only due to non-completion of bays work at Konch substation.
- m) Pursuant to onset of COVID-19 and imposition of lockdown, the project timelines of the Petitioner got seriously affected. Due to such Force Majeure scenario, entire world was affected, and the Petitioner made its best efforts to proceed with the project to ensure that it meets the timelines. UPPCL was updated of each step and measure taken by the Petitioner towards achieving commissioning of the Project. In addition to the pandemic, there are various other reasons of force majeure that has



affected the Petitioner which includes delay in land acquisition, delay due to supply chain disruption, delay in the construction of the bays, delay in the approval of the connectivity and delay in the intimation of bay supervision charges. None of these have been considered by UPPCL.

- n) The construction of bays itself was not completed by Respondent on the date given for SCOD. Therefore, there is no question of the Respondent being prejudiced at this stage by the delay when the Respondents have themselves not fulfilled their obligations. It is not the case that the Respondents have fulfilled all their obligations and the Petitioner has delayed it for reasons within its control.
- o) UPPCL has in fact did not dispute the force majeure events claimed by the Petitioner. Therefore, it is erroneous for UPPCL to seek imposition of liquidated damages while providing the extension of time provided in the PPA.
- p) MNRE had granted blanket extension of seven and half months vide its office memorandums as a general time extension to all renewable energy projects. The said general time extension was granted without considering the specific case and peculiarity of each project. The grounds for extension of time vary from project to project and the extension of time is an incidence of the particular project. Therefore, in addition to the blanket extension of time granted by the Government of India, the Petitioner is also entitled for grant of extension of time as per the terms of the PPA in view of the facts and circumstances of the instant project of the Petitioner.
- q) The instant project has not been delayed inordinately. In a pandemic situation, which has affected the supply chains, arrangement of labour and contractors, cost of material, a delay of merely two and half month cannot be attributed to any negligence of the Petitioner, particularly in a situation when the bays required for connectivity were not ready on the SCOD. Therefore, the instant case is a fit case for grant of additional extension of time of two and half months.
- r) Furthermore, although assuming but not admitting that there is no force majeure event, liquidated damages can also be recovered only if there is a loss that is caused to UPPCL as liquidated damages are not an automatic levy but are subject to proof of loss.
- s) During the execution of the project, Ministry of Finance vide notification number 8/2021-integrated tax (rate) dated 30.09.2021 increased the rate of GST from 5% to 12% on solar power-based devices, solar power generators and photovoltaic cells whether or not assembled in modules or made up into panels. The aforesaid sudden increase in the rate of GST, the cost of the solar power project of the Petitioner was directly affected and incurred an additional expense of approximately Rs. 5.73 Cr. and the same was informed to UPPCL on 02.02.2022. The Petitioner is also entitled to claim carrying costs incurred due to the change in rates of tax.

**Records of Proceedings:**

4. The matter was heard on 16.08.2022, 27.09.2022, 29.11.2022 and 17.01.2023. During the hearing dated 16.08.2022, the Commission admitted the Petition and



directed parties to file their respective reply & rejoinder. During the hearing dated 27.09.2022, the Commission allowed impleadment of UPPTCL as Respondent in the matter since one of the main reasons of delay in achieving SCOD was on account of delay in bay construction by UPPTCL and therefore, directed UPPTCL to file its reply in the matter.

5. During the hearing dated 29.11.2022, the Commission allowed the request of the Petitioner seeking time to file its rejoinder to the Respondent's reply. On 17.01.2023, the parties reiterated their arguments as furnished in their submission/documents placed on record. UPNEDA has not filed its reply in the matter. The Commission reserved the order in the matter.

#### **Reply of the Respondents:**

6. **UPPCL has filed its reply on 23.09.2022 and has mainly submitted as below:**
  - a) The Petitioner was required to commission the project within 18 months from the date of execution of the PPA as per Article 5.1.5 of the PPA. UPPCL, on the request of the Petitioner extended SCOD by 5 months in terms of the MNRE O.M dated 13.08.2020.
  - b) Vide Letter dated 13.08.2020, the Petitioner requested UPPCL for extension in SCOD till 24.08.2020 on account of the COVID-19 without penalty. In consideration of the situation as well as Article 4.7 of the PPA, the Petitioner was granted said extension by the UPPCL. Thereafter, vide letter dated 04.12.2021, the Petitioner again requested UPPCL for a further extension till 10.04.2022 on account of the O.M. issued by MNRE on 12.05.2021 & 29.06.2021, respectively, providing that an extension of two and half months can be granted to various renewable energy projects on account of second wave of the COVID-19. Accordingly, letter dated 24.12.2021 SCOD was further extended to 10.04.2022 by the UPPCL.
  - c) Despite grant of such extensions of 7.5 months, the Petitioner was not ready to commission the project by 10.04.2022 and requested for further grant of extension up till 31.05.2022 without levying of any penalty. In consideration of MNRE permitting a maximum extension of 7.5 months due to COVID-19 and the bar on Force Majeure extensions being set at 6 months as per Article 4.7.2 of the PPA, UPPCL refused to grant such extension and informed the Petitioner that the completion date would remain 10.04.2022 post which liquidated damages in accordance with the provisions of the PPA would be attracted.
  - d) The Plant was commissioned only on 01.07.2022. There is unjustifiable delay of around 80 days in commissioning of the Project. The Petitioner is relying on following events for seeking extension:
    - i. Impact of Covid-19 in the months of December 2021 and January 2022.
    - ii. Delay in bay construction.
  - e) In terms of Article 4.7.1, SCOD of the Project can be extended on occurrence of Force Majeure Events affecting STU/Procurers. Further, Article 4.7.6 of the PPA suggests that SCOD cannot be extended beyond six months for any reason