

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 164/MP/2018

With IA No. 5/2019

Subject : Petition under Section 79 the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 27.07.2016, executed between Parampujya Solar Energy Pvt. Ltd. and NTPC Ltd., for seeking approval of Change in Law events due to enactment of the GST Laws

Petitioner : Parampujya Solar Energy Private Limited

Respondents : National Thermal Power Corporation Limited and Others

Petition No. 165/MP/2018

With IA No. 6/2019

Subject : Petition under Section 79 the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreements dated 02.08.2016, executed between the Parampujya Solar Energy Pvt. Ltd. (PSEPL) and Solar Energy Corporation of India Ltd., for seeking approval of Change in Law events due to enactment of the GST Laws

Petitioner : Parampujya Solar Energy Private Limited

Respondents : Solar Energy Corporation of India Limited and Others

Date of Hearing : 9.1.2019

Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member

Parties present : Ms. Poonam Verma, PSEPL
Ms. Abiha Zaidi, PSEPL
Shri Tarul Sharma, PSEPL
Shri M.G. Ramachandran, Advocate, NTPC and SECI
Ms. Poorva Saigal, Advocate, NTPC and SECI

Record of Proceeding

At the outset, learned counsel for the Petitioner submitted as under:

(a) The issue of EPC (goods), being Change in Law, is covered by the earlier orders of the Commission. O&M, being the services part, would rationally entail Change in law given the scope of GST laws which are equally applicable on goods and services. In this regard, the PPA has specified prudent utility practices

which specifically include operation and maintenance services as prudent utility practices. The only objection taken against O&M services in the previous matters is that it was a commercial agreement. However, EPC also, in the form a commercial agreement, is not a standard bidding document. Therefore, O&M expenses should be seen in a holistic manner.

(b) The Hon'ble Supreme Court in its judgment in the case of Energy Watchdog has clearly held that if the guidelines or the contract is specifically silent on any aspect, then the Commission has the regulatory power to devise a mechanism to serve the interests of the affected party. Learned counsel relied on Section 70 of the Indian Contract Act, 1872 and submitted that the principle of restitution is explicitly clear.

(c) Once Change in Law is allowed, the affected party has to be restored to the same economic position as if it had not occurred. Even in the absence of a specific provision in the PPA for carrying cost, Principle of Quantum Meruit (Section 70 of the Indian Contract Act), Clause 4 of Article 6.2 of the revised Tariff Policy, 2016 and equity (governing law) provide for the principle of restoration of the affected party to the same economic position as it were if the Change in law event had not occurred.

2. Learned counsel for NTPC relied on the Commission's order dated 9.10.2018 in Petition No 188/MP/2017 and APTEL order dated 13.4.2017 in Appeal No 210 of 2017 and submitted that in the absence of specific provision in the PPA, carrying cost is not allowable.

3. After hearing the parties, the Commission directed the Petitioner and the Respondents to file their written submissions within ten days with copy to each other.

4. Subject to the above, the Commission reserved order in the Petitions.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)