

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 158/MP/2020 and IA No. 35/2020**

Subject : Clarification Petition under Section 79 (1)(f) and Section 94 of the Electricity Act, 2003 and Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Section 151 of Code of Civil Procedure seeking clarification of order dated 5.2.2019 passed by the Commission in Petition No. 178/MP/2019 and Petition No. 189/MP/2018.

Petitioners: ACME Jodhpur Solar Power Private Limited (AJSPPL) and Anr.

Respondents: State Energy Corporation of India Limited (SECI) and Anr.

Date of Hearing: 23.6.2020

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

Parties present: Shri Sujit Ghosh, Advocate, ACME  
Ms. Mannat Waraich, Advocate, ACME  
Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Poorva Saigal, Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI

**Record of Proceedings**

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioners submitted that the instant Petition has been filed, *inter-alia*, seeking clarification of the order dated 5.2.2019 in Petition Nos. 178/MP/2019 and 189/MP/2018 that (i) the Petitioners are entitled to compensation on the basis of actual costs incurred and not on the basis of the chart of weightage of the components of capital cost, and (ii) the Petitioners are eligible for compensation on account of introduction of GST Laws for costs incurred beyond the date of commissioning. Learned counsel for the Petitioners further submitted as under:

(a) Pursuant to filing of the instant Petition, the Commission in its subsequent orders have already clarified the issues raised by the Petitioners in the instant Petition.

(b) The Commission, in its order dated 30.12.2019 in Petition No. 4/MP/2019 and Ors. (Parampujya Solar Energy Private Limited v. NTPC and Ors.), has held that the liability of payment by NTPC/SECI/Discoms on account of impact of GST on procurement of Solar PV Panels and associated



equipment by the Petitioners will lie with them till Commercial Operation Date (COD).

(c) Similarly, the Commission in its order dated 28.1.2020 in Petition No. 67/MP/2019 and Ors. (Clean Sustainable Energy Private Limited v. SECI and Ors.) has clarified that chart of weightage of components given in the order is only illustrative in nature and computation on account of GST, being Change in Law, shall be paid on exhibiting clear and one to one correlation between projects and supply of goods & services.

(d) The Petitioners have filed IA No. 35/2020, *inter-alia*, seeking early hearing and disposal of the main petition and to bring on record certain additional evidence arising on account of communications exchanged between the Petitioners and SECI.

(e) SECI in its letter dated 19.3.2020 has proposed the payments towards GST claims by way of annuity. SECI in the said letter has further stated that the Petitioners' GST claims till the COD of the Projects are being reconciled for provisional payment and the same shall be subject to furnishing of an undertaking by the Petitioners, according to which Petitioners are required to obtain specific order of the Commission in this regard by 15.9.2020.

(f) SECI in the said letter along with its letter dated 3.4.2020 has re-evaluated and calculated the 'Monthly Annuity Payment' with proposed annuity rate of 10.41%.

(g) The Petitioners have agreed to annuity payment method as proposed by SECI, under protest. However, the annuity rate proposed by SECI therein is unfair, incorrect and not as per Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 (in short 'the RE Tariff Regulations').

(h) SECI has proposed the annuity rate of 10.41% for entire 100% of additional Capex incurred by the Petitioners on account of Change in Law event. However, the rate of 10.41% is applicable only for debt part (70%) of additional Capex, whereas for equity part (30%), the Commission's RE Tariff Regulations provide for post-tax return @ 14% (pre-tax return @ 18.71%, if grossed up with current effective tax @ 25.17%).

(i) The incidence of tax/duty/cess liability presently applicable or resulting from any imposition, modification, alteration, adoption, amendment, variation, introduction, enactment or repeal of any taxes/levies/duties/ cesses laws on 'Monthly Annuity Payments' ought to be borne and paid by SECI.

(j) 'Monthly Annuity Payment' towards the Petitioners' GST claims ought to have been paid/commenced from the COD of the Project. Therefore, the first instalment of 'Monthly Annuity Payment' to be paid by SECI as lump sum ought to be paid along with 'Late Payment Surcharge'.

(k) Despite the Commission's direction vide Record of Proceedings (RoP) dated 12.3.2020, SECI is yet to file its reply. Therefore, SECI may be directed to file its reply to the Petition including IA.



(l) The Commission in the said RoP dated 12.3.2020 had also directed the Petitioner to implead Rajasthan Discoms as party to the Petition. However, the Petitioners have already made Rajasthan Urja Vikas Nigam Limited (RUVNL), who represents the Rajasthan Discoms as Respondent to the Petition. Since in Petition Nos. 178/MP/2019 and 189/MP/2018 also, only RUVNL was party to the Petitions, impleadment of Rajasthan Discoms may not be necessary in the instant Petition.

3. Learned senior counsel for the Respondent, SECI, sought two week's time to file reply to the Petition and submitted as under:

(a) The Commission in its order dated 28.1.2020 in Petition Nos. 67/MP/2019 and 68/MP/2019 has already clarified that the table indicating weighted average of GST implication is only illustrative in nature and that the liability of the procurers in respect of GST claims is only till COD. Accordingly, SECI is bound by the said decision of the Commission and shall act upon accordingly.

(b) In terms of the Commission's order dated 5.2.2019 in Petition Nos. 178/MP/2018 and 189/MP/2018 and the letter of Ministry of New and Renewable Energy dated 12.3.2020, SECI vide its letters dated 19.3.2020 and 4.3.2020 has proposed the methodology for payment of compensation on account of GST on monthly basis (annuity).

(c) In the said methodology, SECI has considered the discounting factor as 10.41%, which is the rate of interest for the loan component of the capital cost as provided in the Commission's Order dated 11.1.2019 ( which provided for determination of levelised generic tariff for financial year 2019-20 read with Regulation 10 of the RE Tariff Regulations.)

(d) SECI has released the provisional annuity payment alongwith the lump-sum amount towards the Petitioners' GST claims upto COD as per the Commission's order dated 28.1.2020 in Petitions No.67/MP/2018 and 68/MP/2019.

(e) The Petitioners cannot claim any taxes on the revenue accruing to the Petitioners on such GST claims which are accruing by way of interest, etc. from SECI. Such claim is barred by way of express provision specified in Article 17.9 of the PPAs.

(f) SECI has already passed on benefits to the Petitioners by making payment in one lumpsum amount from the date of COD till now. The Commission has already held that until the Change in Law claim is decided and the requisite documents are submitted by the Petitioners, there is no late payment surcharge payable in terms of the PPA.

(g) The direction to the Petitioners to obtain a specific order of the Commission in its letter dated 19.3.2020 stands withdrawn in view of SECI's subsequent letter dated 3.4.2020.



4. After hearing the learned counsel for the Petitioners and the learned senior counsel for the Respondent, SECI, the Commission observed that in Order dated 28.1.2020 in Petition Nos. 67/MP/2019 and 68/MP/2019, the Commission has already clarified that (i) the table indicating the 'Weightage of components of Capital Cost' and the percentage impact of taxation due to enactment of GST Laws is purely illustrative in nature and (ii) the liability of payment on account of impact of GST on procuring of Solar PV panels and associated equipment by the Solar Project Developer shall lie with SECI/Discoms till COD only. In response, learned senior counsel for SECI conceded that SECI shall comply with the Commission's aforesaid decision in respect of the Petitioners' GST claims. Accordingly, the Commission directed SECI to evaluate the Petitioner's GST claims as per the Commission's aforesaid decision.

5. The Commission further observed that as per the Commission's order dated 3.6.2020 in Petition No. 373/MP/2020 along with IA 27 of 2020 (ACME Jaipur Solar Power Private Limited Vs. M.P. Power Management Company Limited, DMRC & Ors.), the contracting parties were required to mutually agree to a mechanism for the payment of such compensation on annuity basis. In the instant case as discussed in Para 2(g) above, the Petitioners have agreed to annuity payment method as proposed by SECI as an interim measure, *inter-alia* contesting that the annuity rate proposed by SECI is not as per the RE Tariff Regulations. The Commission observed that since similar issue is pending for adjudication in Petition No. 373/MP/2020, the instant Petition shall be tagged with the Petition No. 373/MP/2020.

6. The Commission further directed SECI to file its reply to the Petition and IA by 7.7.2020 with an advance copy to the Petitioners who may file their rejoinder, if any by 16.7.2020.

7. The Petition and IA shall be listed for hearing along with Petition No. 373/MP/2020 in due course for which separate notice will be issued.

**By order of the Commission**

Sd/-

**(T.D. Pant)**

**Deputy Chief (Law)**

