



नईदिल्ली  
NEW DELHI

याचिकासंख्या/ Petition No. 24/RP/2021  
in  
Petition No. 373/MP/2020

कोरम/ Coram:

श्रीपी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson  
श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्रीअरुणगोयल, सदस्य/ Shri Arun Goyal, Member  
श्रीपी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेशदिनांक/ Date of Order: 7<sup>th</sup> of February, 2022

**IN THE MATTER OF:**

A Petition for review of Order dated 20.08.2021 passed in Petition no. 373/MP/2020 under CERC (Conduct of Business) (Amendment) Regulations, 2013.

**AND**

**IN THE MATTER OF:**

M.P. Power Management Company Limited,  
(Represented through Chairman)  
Shakti Bhawan, Rampur,  
Jabalpur, Madhya Pradesh – 482 008

**...Review Petitioner**

**VERSUS**

- 1) ACME Jaipur Solar Power Private Limited,  
B4 Plot No. 12, Basement – 2,  
Gopi Nath Marg, Purohit ji Ka Bagh, MI Road,  
Jaipur-302 001, Rajasthan

- 2) Delhi Metro Rail Corporation,  
Metro Bhawan, Fire Brigade Lane,  
Barakhamba Road,  
New Delhi-110 001
- 3) Rewa Ultra Mega Solar Limited,  
Urja Bhawan, Link Road No.2, Shivaji Nagar,  
Bhopal, Madhya Pradesh – 462003

...Respondents

**Parties present:** Shri G. Umapathy, Sr. Advocate, MPPMCL  
Ms. Pavitra Balakrishnan, Advocate, MPPMCL  
Shri Rajnish Kumar Reja, MPPMCL  
Shri Hemant Sahai, Advocate, AJSPPL  
Shri Shreshth Sharma, Advocate, AJSPPL  
Shri Nishant Talwar, Advocate, AJSPPL  
Shri AvdeshMandloi, Advocate, AJSPPL

### आदेश/ ORDER

The Review Petitioner, M.P. Power Management Company Limited, has filed the present Review Petition with the following prayers:

- a) *Allow the present Review Petition against the order dated 20.08.2021 passed by this Hon'ble Commission in Petition No. 373/MP/2020; and*
- b) *Pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case.*

2. The matter was heard on 20.01.2022 through video conferencing.
3. During the course of hearing, the learned counsel for the Review Petitioner (MPPMCL) submitted that the present Review Petition has been filed seeking review of the Commission's Order dated 20.08.2021 in Petition No. 373/MP/2020 (Impugned Order).
4. The learned senior counsel submitted that:

- a) Impugned order, which has been passed as a common Order in Petition No. 536/MP/2020 and other connected matters including Petition No. 373/MP/2020, decided the matters primarily on the basis of the facts in Petition No. 536/MP/2020 filed by SECI, in particular for arriving at rate of interest on loan component @ 10.41%, and did not consider the reply and written submissions of MPPMCL.
- b) In the Impugned Order, issue involved in Petition No. 373/MP/2020, which was based on settlement of claims in 13 years with annuity payment split on monthly basis with floating annuity rate average of last 6 months SBI MCLR (1-year tenure) plus 250 basis points, has not been considered.
- c) There was no justification for AJSPPL to seek 560 basis point as the loans taken are in range of 9.25% to 9.75% which is evident from the Lenders Agreement which provides that interest upto COD is 9.75% and thereafter is 9.25%.
- d) Non-consideration of MPPMCL's reply and written submissions on the above aspects amounts to error apparent on the face of record.

5. *Per contra*, the learned counsel for the Respondent (AJSPPL) submitted that:

- a) the points raised by the learned senior counsel for MPPMCL had already been considered by the Commission in the Impugned order.
- b) the Impugned Order did not require to deal with each and every contention made by the parties and that the overall findings of the Commission therein already deals with issues raised by MPPMCL.
- c) it is a settled principle of law that a review petition cannot be allowed as an appeal in disguise.

6. After hearing the learned senior counsel for MPPMCL and learned counsel for AJSPPL, the Commission reserved the Order on 'admissibility' of the Review Petition.

### **DECISION**

7. We have considered the submissions of the parties and perused the documents on record. As per provisions of Order 47 Rule 1 of Code of Civil Procedure, 1908, an application of review would be maintainable on account of (i) discovery of a new and important piece of evidence, which

after the exercise of due diligence was not within knowledge or could not be produced at the time when the Order was passed, or (ii) there exists an error apparent on the face of record, or (iii) any other sufficient reason.

8. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 stipulates as under:

*“Amendment of Orders*

*103A. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either of its own motion or on the application of any of the parties.”*

9. The Review Petitioner has submitted that the issue involved in Petition No. 373/MP/2020, which was based on settlement of claims in 13 years with annuity payment split on monthly basis with floating annuity rate average of last 6 months SBI MCLR (1-year tenure) plus 250 basis points, has not been considered in the Order dated 20.08.2021. They also submitted that there was no justification for AJSPPL to seek 560 basis points as the loans taken are in range of 9.25% to 9.75% which is evident from the Lenders Agreement which provides that interest upto COD is 9.75% and thereafter is 9.25%. Non-consideration of MPPMCL's reply and written submissions on the above aspects amounts to error apparent on the face of record.
10. The Commission observes that vide the impugned Order dated 20.08.201 which has been passed as a common Order in Petition No. 536/MP/2020 and the other connected matters including the Petition No. 373/MP/2020, it was held as under:

**“Reply of MPPMCL in Petition No. 373/MP/2020 [ACME Jaipur Solar Power Private Limited]”**

30. MPPMCL has submitted the following:

- .....
- b) *The petition is not maintainable and is also liable to be rejected on merits for the simple fact that the Petitioner approached the Respondent with its letter dated 17.2.2020, wherein it requested that the annuity payment be made over a period of 25 years and the interest rate shall be SBI MCLR+300 basis points. As per MoM dated 16.03.2020, it was agreed by the Petitioner that the rate of interest shall be SBI MCLR+300 basis points. This was further deliberated by the Respondent who informed the Petitioner that while settlement of claim in 13 years is acceptable, the*

*interest rate shall be floating at the rate of SBI MCLR+250 basis points. The Petitioner vide letter dated 19.3.2020 refused its own offers and admitted positions when it wrote that it has not offered interest rate of SBI MCLR+300 basis points.*

- c) The Petitioner has not filed the letter dated 17.2.2020 (as also agreed by it in the MoM dated 16.3.2020) before the Commission wherein the Petitioner agreed to an interest rate of SBI MCLR+300 basis points. The Petitioner vide its letter dated 17.2.2020 proposed payment through annuity mode over a period of 25 years and a rate of interest of SBI MCLR+300 basis points. In mutual discussions, the period of payment was reduced from 25 to 13 years and, therefore, it is only logical that if the period of payment by annuity mode is being reduced from 25 years to 13 years, the rate of interest which is offered by the Petitioner i.e. SBI MCLR+300 basis points be also reduced to SBI MCLR+250 basis points.*
- d) There is no justification for the Petitioner to seek SBI MCLR+560 basis points as the interest rate on loans taken by the Petitioner are in the range of 9.25-9.75% as per the information with the Respondent. Therefore, the entire claim of the Petitioner seeking SBI MCLR+560 basis points in the petition and in the instant application is without any basis. As per domestic loan agreement dated 09.10.2018 signed between the Petitioner and lender, the interest rate was 9.75% per annum until Commercial Operation Date (COD) and, thereafter, interest rate is reduced to 9.25% per annum.*
- e) The Petitioner had proposed the interest rate of SBI MCLR + 300 basis points for 25 years. However, the floating interest rate of SBI MCLR + 250 basis points for 13 years was proposed by DMRC and MPPMCL during negotiation with the Petitioner, which was 10.408% and higher than the Petitioner's domestic loan interest rate of 9.25%.*

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*65. We find that in Petition No. 536/MP/2020, SECI and the Respondents (SPDs as well as the Discoms) are on the same page in so far as the rate of interest on loan is considered. This is evident from the computation of the weighted average cost of capital advanced by the contending parties. Majority of the parties have used 10.41% (as mentioned in the CERC RE Tariff Order dated 19.03.2019) as the reference rate of interest for building their arguments for the rate of annuity payment. In other words, the parties have accepted this rate as the appropriate normative rate of interest for any debt that they might have taken. Given the fact that it is not possible in case of competitive bidding projects to ascertain either the capital structuring (extent of debt and equity) of the projects, or the actual rate of interest of the debt component or the expected rate of return on equity, we consider it appropriate to use the normative rate of 10.41% as reference for the purpose of annuity payment. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate 10.41% can be taken as the uniform rate of compensation for the entire expenditure incurred on account of GST Laws or Safeguard Duty. The Commission is of the view that the compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt. Accordingly, we hold that 10.41% shall be the discount rate of annuity payments towards the expenditure incurred on GST or Safeguard Duty (as the case may be) by the Respondent SPDs on account of 'Change in Law'.*

***Issue No. 5: Whether the principles decided in this Petition can be made applicable to all the current Petitions pertaining to GST and Safeguard Duty pending before this Commission?***

*103. SECI has submitted that the principles decided in this Petition should be made applicable to all the current Petitions pertaining to GST and Safeguard Duty pending before this Commission. Also, SPDs have submitted that since SPDs and Discoms are in 'back to back' arrangements with NTPC and SECI in the similar matters, the Commission may pass a similar order in the batch of petitions filed by NTPC also.*

*104. We are of the view that since the pending petitions were not tagged along with the current Petitions, no such general order can be passed. Also, since NTPC was not an impleaded party in any of the current Petitions, such general order cannot be passed. Needless to say that this commission is not empowered to pass any order in –rem.*

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*107. Accordingly, the Petition No. 536/MP/2020 along with I.A. No. 71/2020, IA No. 73/2020 and IA No. 2/2021; Petition No. 158/MP/2020 along with I.A. No. 35/2020; **Petition No.373/MP/2020**; Petition No. 454/MP/2019 along with I.A. No. 19/2020; Petition No. 457/MP/2019 along with I.A. No. 18/2020; Petition No. 500/MP/2019 along with I.A. No. 20/2020 are disposed of in terms of the above discussions and findings.”*

11. From the above, the Commission is of the view that the reply filed by the Review Petitioner was considered by the Commission in the impugned Order dated 20.08.2021. The points raised by the Review Petitioner had already been considered. The Commission has taken a conscious decision (in Para 65 of the impugned Order dated 20.08.2021) that 10.41% shall be the discount rate of annuity payments towards the expenditure incurred on account of 'Change in Law'.
12. Furthermore, the Commission has also taken a conscious decision that principles decided in the impugned Order dated 20.08.2021 were applicable to the tagged Petitions pertaining to GST and Safeguard Duty pending before this Commission and no general Order can be passed for the pending petitions which were not tagged along since the Commission is not empowered to pass any Order in rem. Ostensibly, Petition No. 373/MP/2020 was tagged along with Petition No. 536/MP/2020 and hence the principles decided in the impugned Order dated 20.08.2021 are squarely applicable to the tagged Petitions including Petition No. 373/MP/2020.
13. The Review Petitioner has failed to point out any clerical or arithmetical mistakes in the Orders or errors arising therein from any accidental slip or omission which may at any time be corrected

by the Commission either of its own motion or on the application of any of the parties. The Review Petitioner has also failed to point out any reasons for invocation of Regulation 103A of the CERC (Conduct of Business) Regulations, 1999. The prayer of the Review Petitioner is not covered under any of the grounds of review as provided in Order 47 Rule 1 of Code of Civil Procedure, 1908. It is a settled principle of law that a Review petition cannot be allowed as an appeal in disguise. Hence, there is no ground for review of the impugned Order and as such the Review Petition is not allowed.

14. The Review Petition No.24/RP/2021 in Petition No. 373/MP/2020 is disposed of in terms of the above.

Sd/-  
(पी. के. सिंह)  
सदस्य

Sd/-  
(अरुणगोयल)  
सदस्य

Sd/-  
(आई. एस. झा)  
सदस्य

Sd/-  
(पी. के. पुजारी)  
अध्यक्ष