

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.310/MP/2022

Subject : Petition under Section 79(1)(b), 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 seeking compensation against additional cost incurred on account of implementation of the Goods and Service Tax Law vide Notification No.12/2017 as "Change in Law Even" in terms of Article 12 of the Power Purchase Agreement dated 5.10.2016 executed between Indigrd Solar-I (AP) Private Limited and Solar Energy Corporation of India Limited.

Petitioner : Indigrd Solar-I (AP) Private Limited (ISAPPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and 4 Ors.

Petition No.362/MP/2022

Subject : Petition under Section 79(1)(b), 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 for seeking compensation against additional cost incurred on account of implementation of the Goods and Service Tax Law vide Notification No.12/2017 as a "Change in Law Event" in terms of Article 12 of the Power Purchase Agreements dated 5.10.2016 executed between Indigrd Solar-II (AP) Private Limited and Solar Energy Corporation of India Limited.

Petitioner : Indigrd Solar-II (AP) Private Limited (ISAPPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and 4 Ors.

Date of Hearing : 16.5.2023

Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Parties Present : Shri Sanjay Sen, Sr. Advocate, ISAPPL
Shri Aditya K. Singh, Advocate, ISAPPL
Ms. Pratiksha Chaturvedi, Advocate, ISAPPL
Ms. Aparajita Upadhyay, Advocate, ISAPPL
Shri Saurav Kr. Jha, ISAPPL
Shri Lokendra Ranawat, ISAPPL
Shri Vinit Kumar, Advocate, JREL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI



Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petitions have been filed, *inter-alia*, seeking approval of introduction of Central Goods and Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 ('GST Laws') as a 'Change in Law event' in terms of Article 12 of the Power Purchase Agreements (PPAs) dated 5.10.2016 executed between the Petitioner and SECI and for compensation for additional cost incurred on account of the same along with consequential reliefs thereto. Learned senior counsel submitted that vide Record of Proceedings for hearing dated 6.3.2023 and 21.3.2023, the Commission had issued the notice on the aspect of limitation as the preliminary issue. However, except for SECI's preliminary reply in Petition No. 362/MP/2022, none of the Respondents have filed any response on the aspect of limitation in these matters. Learned senior counsel further submitted as under:

(a) Solar Power Projects of the Petitioners achieved the commissioning on 22.6.2018 and 8.10.2018 respectively and in terms of the PPAs, the right to receive the reimbursement on account of any Change in Law event arises only post commissioning of the Power Projects.

(b) As per Article 113 of the Limitation Act, 1963, the period of limitation of three years begins to run when the right to sue accrues and the right to sue would accrue only when the claim gets crystallised.

(c) The statement of invoices raised by the EPC Contractors of the Petitioners indicates that the invoices has been raised upon the Petitioners as late as March, 2019 i.e. well past the commissioning of the Solar Power Projects.

(d) Further, the Hon'ble Supreme Court vide order dated 10.1.2022 in *Suo Motu Writ Petition (Civil) No. 3 of 2020* has excluded the period from 15.3.2020 till 28.2.2022 for the purposes of limitation on account of the outbreak of Covid-19. Considering aforesaid exclusion, the present Petitions have been filed well within the period of 3 years from the date of commissioning of the Solar Power Projects.

(e) Although the Petitioners have prayed for certain declaratory reliefs (at prayers a, b, c), the Petitioners, at the same time, have also prayed for grant of compensation due to additional expenditure incurred on account of promulgation of GST Laws.

(f) In view of the above, the Change in Law claim of the Petitioners are not barred by the limitation and notice may be issued directing the Respondents to file their reply on merits as well.

2. Learned senior counsel for the Respondent, SECI fairly submitted that the right of the developer/generator to receive the compensation due to any Change in Law event during the construction period would commence only upon the commissioning of the Project and keeping in view that the period from 15.3.2020 till 28.2.2022 has been excluded by the Hon'ble Supreme Court for the purposes of limitation, the present Petitions would fall within the period of 3 years from the commissioning of the Projects. Learned senior counsel also pointed out that the Petitioners have,

however, also prayed for certain declaratory reliefs and in respect of such declaratory reliefs, the period of limitation begins to run when the right to sue first accrues. Learned senior counsel expressed certain reservations on the invoices raised by the EPC Contractors being well past the commissioning of the Projects and submitted that the GST Laws and Rules specified thereunder provide for cut-off date for raising the invoices in respect of taxable supply of goods or services. In response to this averment, learned senior counsel for the Petitioners submitted that the said contention concerns with the merits of the case and will be dealt with while addressing the merits of the cases.

3. After hearing the learned senior counsels for the Petitioner and SECI, the Commission admitted the Petitions and directed to issue notice to the Respondents including distribution licensees on merits of these cases. Accordingly, the Respondents were directed to file their reply within four weeks with copy to the Petitioners, who may file their rejoinder(s), if any, within three weeks thereafter.

4. The Petitions be listed for hearing on 9.8.2023.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**