

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 8/RP/2023

- Subject : Review Petition under section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 along with the applicable provisions of law, seeking review of orders dated 23.8.2022 and 25.11.2022 passed by Commission in Petition No. 52/MP/2019 in view of (1) material subsequent events; and (2) judicial precedents governing the law leading to error apparent on the face of record while passing the orders dated 23.08.2022 & 25.11.2022.
- Date of Hearing : **31.5.2023**
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Solitaire Powertech Private Limited (SPPL).
- Respondent : Solar Energy Corporation of India Limited (SECI) & 5 Ors.
- Parties Present : Shri Nitish Gupta, Advocate, SPPL
Shri Nishant Talwar, Advocate, SPPL
Shri Vikas, SPPL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking review of the Commission's orders dated 23.8.2022 and 25.11.2022 passed in Petition No. 52/MP/2019 in terms of certain material subsequent developments and the judicial precedents governing the law leading to error apparent on the face of record in these orders. Learned counsel mainly submitted the following:

- (a) The Petitioner had filed Petition No. 52/MP/2019 seeking, *inter alia* (i) approval of 'Change in Law', (ii) consequential relief to compensate for the increase in capital cost and O&M cost due to introduction of the GST Law in terms of Article 12 of the Power Purchase Agreement (PPA) dated 2.8.2016 between the Petitioner and the Respondent No.1, SECI for sale of cumulative capacity of 30 MW power from its Solar Power Project at District Chitradurga, Karnataka, and (iii) for grant of carrying cost on the principle claim from the date of incidence till the Commercial Operation Date of the Project.
- (b) By order dated 23.8.2022, the Commission allowed the Petitioner's claim for increase in non-recurring/ capital costs of the Project in terms of the annuity methodology prescribed in Petition No. 536/MP/2020. Whereas, with regard to the Petitioner's claim for recurring/O&M expenditure, the Commission directed that the said issue will be dealt with along with Azure Solar Pvt. Ltd. v. SECI

and batch matters as remanded for fresh consideration by the Appellate Tribunal for Electricity (APTEL) by order dated 3.2.2022 in Appeal No. 61 of 2021.

(c) Pursuant to the above, on 9.9.2022, the Commission heard the issue of impact of GST on recurring/O&M cost as Change in Law as claimed by the Petitioner and other generators including the ones in the APTEL's order of Azure Solar Pvt. Ltd. v. SECI and batch matters.

(d) Subsequently, on 15.9.2022, APTEL vide its judgment in Appeal No. 256 of 2019 and batch, titled as 'Parampujya Solar Energy Pvt. Ltd. & Anr. v. Central Electricity Regulatory Commission & Ors. ('Parampujya Judgment') granted the carrying cost in case of Change in Law claims wherein the Change in Law clause in the PPA uses the words "*Provide Relief*".

(e) The Petitioner while filing its written submissions in the matter on 6.10.2022 had also referred to and relied upon the Parampujya Judgment for the grant of carrying cost. However, while passing the order dated 25.11.2022, the Commission did not consider such prayer. The said order is as such silent on that aspect.

(f) Thus, in terms of orders dated 23.8.2022 and dated 25.11.2022, while the Petitioner's claim for carrying cost has been allowed for the future period (i.e. for the period after passing of the respective orders where interest / discounting factor is in-built in monthly annuities), no carrying cost has been allowed to the Petitioner for the past period (i.e. from date of incidence / payment of GST till the date of 1st payment by SECI).

(g) Subsequent to the Parampujya Judgment, the Commission by its order dated 30.11.2022 in Petition No. 293/MP/2018 & batch has allowed the developers' claim of carrying cost from the date of incidence of additional cost towards capital expenditure and O & M due to introduction of GST Laws.

2. After hearing the submissions of the learned counsel for the Review Petitioner, the Commission observed that similar Review Petition has also been filed by other generator/developer and that it would be proper to hear it together. Accordingly, the Commission directed to list the present Review Petition along with the similar Review Petition as filed.

3. The Review Petition shall be listed for hearing on 28.7.2023.

By order of the Commission

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