



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 14/MP/2019

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson  
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 30<sup>th</sup> of April, 2024

**IN THE MATTER OF:**

A petition before the Central Electricity Regulatory Commission seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on the import of solar cells and modules.

**AND IN THE MATTER OF:**

**Renew Solar Power Pvt. Limited,  
138, Ansal Chambers II, Bhikaji Cama Place,  
Delhi – 110066, (India)**

**...Petitioner**

**Versus**

- Solar Energy Corporation of India Limited,**  
1st Floor, D-3, A Wing,  
Religare Building District Centre,  
Saket, New Delhi – 110017, Delhi
- Jaipur Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur – 302005, Rajasthan
- Ajmer Vidyut Vitran Nigam Limited,**  
Vidyut Bhawan, Panchsheel Nagar

Makarwali Road, Ajmer – 305004, Rajasthan

4. **Jodhpur Vidyut Vitran Nigam Limited,**  
New Power House, Industrial Area  
Jodhpur – 342003, Rajasthan

...Respondents

**Parties Present:** Shri Mridul Gupta, Advocate, RSPPL  
Ms. Mannat Waraich, Advocate, RSPPL  
Ms. Anushree Bardhan, Advocate, SECI  
Ms. Surbhi Kapoor, Advocate, SECI  
Ms. Shirsa Saraswati, Advocate, SECI

### आदेश/ ORDER

The Petitioner, Renew Solar Power Pvt. Limited (RSPPL), is a generating company engaged in the business of development, building, owning, operating, and maintaining utility scale grid connected solar power projects, for the generation of solar power.

2. Respondent No.1, Solar Energy Corporation of India Limited (SECI), is a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for implementation of MNRE schemes for developing grid connected solar power capacity through Viability Gap Funding (VGF) mode in India.
3. Respondent Nos. 2 to 4 are the distribution companies engaged in the business of distribution and supply of electricity across all districts of the State of Rajasthan.
4. RSPPL has made the following prayers:
  - a) *Declare the imposition of safeguard duty on the import of solar modules as Change in Law in terms of the PPA which have led to an increase in the recurring and non-recurring expenditure for the Project;*
  - b) *Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law;*
  - c) *Grant interest/carrying cost from the date of impact till reimbursement by the Respondent No. 1;*

d) *Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.*

**Brief Background:**

5. The brief details of the Petition are set out as under:

Location of the project	Bhadla Phase IV Solar Park, Rajasthan
Capacity	50 MW (Solar)
Tariff	Rs. 2.49/kWh
Request for Selection (RfS) was floated on	21.06.2017
Bid submitted on	05.12.2017
Letter of Intent (LoI) was issued on	28.03.2018
Power Sale Agreement (PSA) was executed on	28.03.2018
Safeguard Duty was notified vide <i>Notification No. 01/2018-Customs (SG) (2018 SGD Notification)</i>	30.07.2018
Power Purchase Agreement (PPA) was executed on	27.04.2018
Scheduled Commercial Operation Date (SCoD) of the project	27.04.2019
Order in Petition No. 14/MP/2019 ( <i>Impugned Order</i> ) was published on	04.10.2019
APTEL judgement in A.No. 256 of 2019, A. No. 256 of 2019 & Batch in the matter of Parampujya Solar Energy Pvt. Ltd. v. CERC and Ors. ( <i>Parampujya judgement</i> )	15.09.2022
APTEL order in IA No. 2080 of 2023 in A.No. 259 of 2022 in the matter of Renew Solar Power Private Limited v. CERC & Ors ( <i>Remand Order</i> )	22.09.2023

6. The Commission qua the *impugned order* dated 04.10.2019 allowed the claims of RSPPL for compensation on account of imposition of safeguard duty vide *2018 SGD Notification*, and it disallowed the claims for carrying cost/interest on working capital. Relevant excerpts of the order dated 04.10.2019 are as follows:

*“85. The decisions in this Order are summed up as under:*

*a. Issue No. 1: The imposition of the “Safeguard Duty” vide Notification No. 1/2018 (SG) dated 30.07.2018 is squarely covered as the event classified as “Change in Law” under first, second and last bullet of Article 12 of the PPAs. The Commission directs the Petitioners to make available to the Respondent No.1 all relevant documents exhibiting clear and one to one correlation between the projects and the supply of imported goods till Scheduled Commissioning date duly supported by relevant invoices and Auditor’s Certificate. The Claim based on discussions in paragraph 76 above of this Order shall be paid within sixty days of the date of this Order or from the date of submission of claims by the Petitioners whichever is later failing which it will attract late payment surcharge as provided under PPAs. To*

*ensure time bound compliance within sixty days of the Order, it is directed that the Respondent No.1 shall reconcile the claim related documents within 15 days of submission of claim by Petitioners. Alternatively, the Petitioners and the Respondent No. 1 may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over the period not exceeding the duration of the PPAs as a percentage of the tariff agreed in the PPAs.*

***b. Issue No. 2: The claim regarding separate Interest on Working Capital/Carrying Cost is not admissible.”***

7. Aggrieved by the orders passed by the Commission, RSPPL filed an IA No. 2080 of 2023 in A.No. 259 of 2022 before the Appellate Tribunal for Electricity (APTEL). APTEL vide the remand order dated 22.09.2023, held as under:

*Following the order passed in Appeal No. 432 of 2022 dated 19.01.2023, and in terms thereof, the order under Appeal is set aside and **the matter is remanded to the 1<sup>st</sup> Respondent Commission directing them to pass an order afresh and in accordance with law***

*Needless to state that, in terms of the Order of the Supreme Court, **the order to be passed by the CERC shall not be enforced till the aforesaid Order** is either varied or the appeal itself is disposed of by the Supreme Court.*

*The instant Appeal and the I.A therein stand disposed of.*

8. APTEL vide judgement dated 19.01.2023 in A.No. 432 of 2022 in the matter of *Adani Solar Energy Jodhpur Three Private Limited v. Central Electricity Regulatory Commission & Ors.* held as under:

*Ms. Gayatri Aryan, learned Counsel for the Appellant, submits that the subject matter of this Appeal is covered by the order passed by this Tribunal earlier in Appeal No. 256 of 2019 & Batch dated 15.09.2022; on an appeal being preferred against the said Order in Civil Appeal No. 8880 of 2022, the Supreme Court, by order dated 12.12.2022 while directing the CERC to comply with the directions issued in paragraph 109 of the order of this Tribunal, further directed that the final order of the CERC shall not be enforced until further orders. The directions issued by this Tribunal as noted in Para 109 of the above said Judgment, reads as under:*

*“109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. V. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. V. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. V. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. We order accordingly directing the Central*

*Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.”*

*Ms. Srishti Khindaria, learned Counsel for the 2nd Respondent, would submit that, in case the order under appeal is remanded to the CERC, all contentions, which the 2nd Respondent is entitled to raise in law, be left open for examination by the CERC. Ms. Gayatri Aryan, learned Counsel for the Appellant, readily agrees for such order to be passed.*

*Suffice it, therefore, to dispose of this appeal in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated 15.09.2022, making it clear that, consequent on remand, it shall be open to the parties to the dispute to raise all such contentions as are available to them in law, and the same shall be considered by the CERC while passing an order afresh.*

*Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court. The instant Appeal is, accordingly, disposed of.*

#### **Hearing dated 20.03.2024**

9. The case was called for a hearing on 20.03.2024. The Record of Proceedings (RoP) is as under:

*Learned counsel for the Petitioner submitted that **the present Petition has been remanded back to the Commission in terms of the order of the Appellate Tribunal for Electricity dated 22.9.2023 in IA No. 2080 of 2023 in Appeal No. 259 of 2022 filed by the Petitioner being aggrieved by the Commission’s order dated 4.10.2019 in the matter.***

*2. Learned counsel for Respondent SECI submitted that SECI has already filed its submissions. Learned counsel for the Petitioner and Respondent, SECI reiterated the submissions made in the pleadings and concluded their arguments in the matter.*

*3. **Based on the request, the Petitioner was permitted to file its written submission within a week.***

*4. **Subject to the above, the Commission reserved the order in the matter.***

#### **Written Submissions filed by SECI**

10. SECI filed its written submissions on 09.02.2024. Briefly, SECI has submitted as under:
- a) The Safeguard Duty claims of Renew Solar before the Commission were in regard to

the Capital Cost that Renew Solar had to incur for commissioning and commercial operation of the power project for generation and supply of electricity. It is, therefore, related to the construction of the power plant. The Safeguard Duty claims for the construction period are restricted to modules and panels rendered till the Commercial Operation Date and not thereafter. There is no provision in the PPA for servicing of any additional capital cost for capital investments done by Renew Solar at any time after the COD of the power project, i.e., after the construction period is over. Any up-gradation or improvement or repair or changes that are undertaken by Renew Solar at any time after the COD and during the Operation period are entirely to the account of Renew Solar to be undertaken at the cost and expense of Renew Solar with no liability on SECI or UPPCL.

- b) PPA does not have any provision dealing with restitutionary principles of restoration to the same economic position. Therefore, Renew Solar is not entitled to claim relief of carrying costs.
- c) PPA being a contract executed between Renew Solar and SECI by mutual consent, it is not permissible for Renew Solar to claim relief contrary to express terms settled in the PPA or claim relief, which is not covered within the scope and ambit of the PPA. Renew Solar entered into the PPA with SECI having complete knowledge of the terms and provisions contained in the said contractual document. In so far as change in law is concerned, Renew Solar did not raise any objection with regard to the scope of the provisions contained in the PPA or the RfS Document being not consistent with the Guidelines prior to or at the time of bid submission or execution of the PPA. Had such an issue been raised, the matter could have been referred to the Ministry of New and Renewable Energy (MNRE) for clarification as provided in Clause 1.5.1 of the RfS document, and a decision would have been taken by MNRE as to the scope of the provision.
- d) In terms of the Orders dated 12.12.2022 and 23.01.2023 of the Hon'ble Supreme Court, the enforceability of the Commission's order to be passed in pursuance of APTEL's decision dated 15.09.2022 in Parampujya Case has been stayed with regard to the issues of carrying cost, compensation on account of impact of Change in Law for the period post Commercial Operation Date of the projects and towards O&M expenses. This Commission may direct that enforcement of any order of the

Commission passed on the aspects covered in the Parampujya Case will take place after the decision of the Hon'ble Supreme Court to maintain such parity.

**Written Submissions filed by RSPPL**

11. RSPPL filed its written submissions on 29.03.2024. Briefly, RSPPL submitted that PPA does not restrict compensation on account of change in law events up to the commercial operation date. The PPA and the commercial operation date have no relation whatsoever to the claim of change in law. Thus, restricting the benefit to commercial operation date is effectively leading to the addition of extraneous conditions that are not borne out from a perusal of Article 12 of the PPA. Additionally, such restriction would defeat the very objective of restitution as envisaged in the change in law clause (Reliance placed on Parampujya judgement dated 15.09.2022). Compensation on account of a change in law cannot be restricted till the commercial operation date. Therefore, the submission of SECI for restricting the compensation till the commercial operation date ought to be rejected on this ground alone. The plea for compensation for claims post commercial operation date cannot be rejected, as the additional expenditure incurred on the imported equipment was not meant to be gratuitous. SECI has enjoyed the benefits, i.e., procurement of power at a competitive tariff. Hence, it is bound to compensate the Petitioner for the delivery of goods and services. In light of the above, the Petitioner is entitled to its post-COD claims. The very purpose of a Change in Law clause is to restore the affected party to the same economic position as if the Change in Law had not occurred. The economic position that is sought to be restored in terms of the Change in Law clause would be meaningless if the same is not awarded along with interest, as the time value of the money must be considered. Hence, the Petitioner is entitled to claim the carrying cost along with interest.

**Analysis and decision**

12. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records and considered the submissions of the parties.
13. In this regard, it is pertinent to mention that the Commission has already passed well-reasoned orders in similar matters in petitions, viz. Order dated 20.11.2023 in Petition No. 13/MP/2019; Order dated 14.07.2023 in Petition No. 211/MP/2019 & Petition No. 213/MP/2019; Order dated 30.05.2023 in Petition No. 164/MP/2018 & Batch; Order dated

09.01.2023 in Petition No. 179/MP/2020; Order dated 20.11.2023 in Petition No. 13/MP/2019 etc.

14. In the instant petition, Article 12 of the PPA stipulates as under;

*“12. ARTICLE 12: CHANGE IN LAW*

*In this Article 12, the following terms shall have the following meanings:*

*12.1.1 “Change in Law” means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:*

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;*
- any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project, shall be treated as per the terms of this Agreement. For the purpose of considering the effect of this change in Tax structure due to change in law after the date of submission of Bid, the date such law comes in to existence shall be considered as effective date for the same; but shall not include (i) any change in any tax on corporate income or any withholding tax on income or dividends distributed to the shareholders of the SPD,, or (ii) any change on account of regulatory measures by the Appropriate Commission*

*12.2 Relief for Change in Law*

*12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.*

*12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.”*

15. Further, the bid in the present case was submitted by RSPPL on 05.12.2017, the PPA was executed between the parties on 27.04.2018, and the SCoD of the project was 27.04.2019. The SGD Laws were applicable from 01.08.2018. As such, the Petitioner’s projects were impacted by the 2018 SGD Notification dated 30.07.2018. Therefore, RSPPL is entitled to

relief as per the terms of Article 12 of the PPA.

16. APTEL vide *the Remand order* dated 22.09.2023 held as under:

*Following the order passed in Appeal No. 432 of 2022 dated 19.01.2023, and in terms thereof, the order under Appeal is set aside and **the matter is remanded to the 1st Respondent Commission directing them to pass an order afresh and in accordance with law***

*Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court.*

*The instant Appeal and the I.A therein stand disposed of.*

17. APTEL, vide *Parampujya judgement* dated 15.09.2022 held as under:

“.....  
109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Limited & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Limited v. CERC & Ors.), **Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.)**, Appeal no. 23 of 2022 (Prayatna Developers Pvt. Limited v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Limited & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Limited & Anr. v. CERC & Ors.) - deserve to be allowed. **We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.**”

18. In view of the above, this Commission holds that RSPPL, in the instant petition, shall be eligible for carrying costs starting from the date when the actual payments were made to the Authorities until the date of issuance of this Order, at the actual rate of interest paid by RSPPL for arranging funds (supported by the Auditor’s Certificate) or the rate of interest on working capital as per the applicable RE Tariff Regulations prevailing at that time or the late payment surcharge rate as per the PPA, whichever is the lowest. Once a supplementary bill is raised by RSPPL in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date. However, it is pertinent to mention that RSPPL, in its submissions, stated that it is entitled to carrying cost along with interest on carrying cost. We hold that carrying cost in the instant case

already factors in the interest on RSPPL's liability towards payment of CIL claims, and as such, the prayer for 'interest on carrying cost' as a separate component does not sustain.

19. Accordingly, the Commission hereby directs the contracting parties to carry out reconciliation of additional expenditure along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate. The Commission further directs that the responding Rajasthan Discoms are liable to pay SECI all the above-reconciled claims that SECI has to pay to RSPPL. However, payment to RSPPL by SECI is not conditional upon the payment to be made by the Rajasthan Discoms to SECI.

20. The Hon'ble Supreme Court, in its Order dated 12.12.2022, in Civil Appeal no. 8880/2022 in the case of "*Telangana Northern Power Distribution Co. Limited & Anr. Vs. Parampujya Solar Energy Pvt. Limited & Ors.*" (and in similar Orders dated 03.01.2023 and 23.01.2023) has held as under:

*"Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders."*

21. Therefore, the directions issued in this Order so far as they relate to compensation for the period post Commercial Operation Date of the project in question as also towards carrying cost (pre-COD & post-COD) shall not be enforced and shall be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880/2022 in *Telangana Northern Power Distribution Company Limited & Anr. V. Parampujya Solar Energy Pvt. Limited & Ors*, and connected matters. It is pertinent to mention that the view taken is consistent with the views taken in *Order dated 21.12.2023 in Petition No. 267/MP/2022 & batch* and *Order dated 09.01.2024 in Petition No. 255/MP/2022*.

22. The Petition No. 14/MP/2019 is disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
अरुण गोयल  
सदस्य

Sd/-  
जिष्णु बरुआ  
अध्यक्ष