

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition filed under Section 86(1)(f) , 86(1) (b) of the Electricity Act'2003 and Article 11 of PPA seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of the introduction of GST.

Petition No.54/2018

ORDER

(Date of Order: 23rd November'2019)

M/s. Renew Clean Energy Private Limited

138, Ansal Chamber – II, Bikaji Cama Place,
New Delhi – 110 066

- **Petitioner**

Vs.

The Managing Director

M.P. Power Management Company Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur – 482 008

- **Respondent**

Shri S. Venkatesh, Advocate, Shri Vikas Maini, Advocate and Shri Rishabh Prasad, Advocate appeared on behalf of petitioner.

Shri Aashish Bernard, Advocate and Shri V. Bharadwaj, DGM appeared on behalf of Respondent.

The subject petition is filed under Section 86(1)(f), 86(1)(b) of the Electricity Act' 2003 and Article 11 of the Power Purchase Agreement dated 10.11.2015 entered into between the Petitioner and Respondent for setting up the solar PV ground mount project and consequent supply of solar power to the Respondent. This petition is filed for seeking an appropriate mechanism for grant of adjustment/compensation to offset financial/commercial impact of change in law event on account of introduction of GST with effect from 01.07.2017.

2. The petitioner, Renew Clean Energy Private Ltd is a wholly owned subsidiary of Renew Power Ltd. which is an independent power producer (IPP) of Clean Energy. The petitioner is a generating company as defined under Section 2(28) of the Electricity Act, 2003. Pursuant to introduction of Solar Policy by New and Renewable Energy Department, GoMP vide notification dated 20.07.2012, MPPMCL issued RFP on 06.05.2015 for procurement of 300 MW of solar power. MPPMCL accepted the bid of petitioner for development of 51 MW capacity of solar PV ground mount project at Village Jaitpura, District Rajgarh and issued the letter of intent (LOI) on 26.10.2015. Thereafter, MPPMCL and petitioner entered into a PPA and supplemental PPA on 10.11.2015 and 16.08.2018, respectively.

3. The subject petition has been filed seeking revision of tariff on account of implementation of the Goods and Service Tax Regime (GST) w.e.f. 01.07.2017 as Change in Law in terms of Article 11 of the power purchase agreement dated 10.11.2015 entered into between the petitioner and Respondent for supply of solar power generated from the petitioner's power plant to MPPMCL from COD of the solar power project in accordance with the provisions under aforesaid PPA. As per the contents in subject petition, the implementation of GST has resulted in an increase of recurring and non-recurring expenditure for the petitioner after effective date of the PPA.

4. In the subject petition, the petitioner while referring various provisions under Article 11 of PPA with regard to "Change in Law" has mentioned about the changes in relevant taxes and duties occurred pursuant to implementation of GST regime. With the aforesaid details of applicable taxes and duties before and after GST regime, the petitioner has mentioned that the same is an event of "Change in Law" in terms of Article 11.6.3 of the PPA. The petitioner has also detailed the increase in recurring and non-recurring expenditure on account of implementation of GST.

5. With the aforesaid submissions, the petitioner has prayed the following in the subject petition:

- (a) Declare the introduction of GST 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 recurring and non-recurring expenditure incurred by the petitioner on account of Change in Law;
- (c) Grant interest/ carrying cost for any delay in reimbursement by the Respondent; and
- (d) Pass any such other and further reliefs in this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.

6. The petition was admitted on 9th January' 2019 with a direction to the petitioner to serve a copy of the petition on all the Respondents. On the next date of hearing held on 30th January' 2019, the Respondent sought additional time to file its reply since the Respondent had not received the copy of petition by that time. By affidavit dated 21st February' 2019, the Respondent has strongly opposed the subject petition stating that the subject petition is not

maintainable as the petitioner has not disclosed the basic particulars required for considering the impact of Change in Law as alleged by the petitioner. The Respondent further stated that in the absence of various particulars mentioned in its said reply, the subject petition is not maintainable at all and the Respondent shall submit its reply on merits after adjudication on the issue of maintainability of the subject petition.

7. By affidavit dated 8th May' 2019, the petitioner filed its rejoinder to the above-mentioned reply filed by Respondent on 21st February' 2019. By affidavit dated 24th June' 2019, the Respondent MPPMCL also filed its reply to the above rejoinder filed by the petitioner.

8. Ld. Counsel of the petitioner and Respondent placed their arguments on maintainability of the subject petition in terms of Article 11 and Article 13 of PPA without exhausting the remedial measures for resolution of dispute as provided under PPA itself. As requested by both parties, they were asked to file their written note on arguments by 28th October' 2019 on the issue of maintainability of subject petition.

9. The petitioner and Respondent filed their respective written submissions on the issue of maintainability of the subject petition on 25th October' 2019 and 2nd November' 2019, respectively. Having heard the parties and on perusal of the written submissions filed by both the parties in the subject matter, the Commission has observed the following:

- (i) The petitioner has relied on the Article 11 of the PPA which lays down specific events of Change in Law. The petitioner has also relied on Article 11.6.4 of the PPA which provides that the aggrieved party shall require to approach the State Commission for seeking approval of Change in Law and the consequent impact on tariff.
- (ii) The Respondent has laid emphasis on the fact that the procedure and mechanism under Article 13 of the PPA with regard to amicable settlement of any dispute, in connection with the PPA dated 10.11.2015, has not been complied with before approaching the Commission under Section 86(1)(f) of the Electricity Act, 2003 by the petitioner. The Respondent has submitted that the petitioner has to first raise a claim, dispute or difference by giving a written notice to the Respondent in terms of Article 13.2 of the PPA wherein the entire description of the dispute/ claim has to be given duly supported by all written materials. The Respondent has also submitted that the parties shall meet

to settle the issues amicably in terms of Articles 13.2.2 and 13.2.3 before approaching the Commission under Article 13.3 of the PPA.

- (iii) The petitioner has contended that Article 13 of the PPA is a general clause providing for dispute resolution which may arise under the contract and the general clause pertaining to dispute resolution in Article 13 ought to be necessary construed as excluding the specific clause pertaining to change in law and the procedure stipulated thereunder has to be mandatorily followed. With the aforesaid contention, the petitioner submitted that it was required to approach the Commission for claims pertaining to change in law.
- (iv) The petitioner has further contended that it is well settled principle of law that a specific provision overrules a general provision and a specific provision should be given effect to the extent of its scope and cannot be curtailed by a general provision. The petitioner submitted that it has appropriately disclosed a cause of action for approaching the Commission with all tabulated details and duly certified auditor's certificate regarding increased tax cost on enactment of GST regime.
- (v) It has been categorially stated by Respondent that the petitioner has not issued any notice till date in accordance with the provisions under Article 13 of the PPA for resolution of the issues claimed by the petitioner in the subject petition and the petitioner has directly approached the Commission under Section 86(1)(f) of the Act with respect to its claim on account of Change in Law. The Respondent has contended that the reliance of the petitioner on the judgment of Hon'ble Supreme Court in case of PTC India Ltd (CA No. 7524 of 2012 dated 18.10.2012) is not relevant for the reason that the Respondent is not challenging the jurisdiction of Commission under section 86(1)(f) of the Electricity Act'2003 for adjudication of dispute in the subject matter. As per to the contention of Respondent, at first instance, the parties have agreed to amicably meet to settle the claims/dispute and such occasion or event for filing the petition under Section 86(1)(f) with the Commission should come in case the parties are failed to settle the dispute amicably.
- (vi) With regard to Article 11.6 of the PPA on which the petitioner has relied, the Respondent has submitted that Article 11.6.1 itself provides that the parties shall discuss and find an appropriate solution to settle such matters amicably and act on best endeavor basis keeping in view the interest of both the parties. It is specifically provided for in the same Article 11.6.1 that the matter shall be referred to MPERC for settlement only if the parties are unable to arrive at a settlement in that matter.

- (vii) The Respondent has further contended that there are two specific clauses in the PPA (Article 13 and 11.6.1) wherein the parties agreed to first meet and settle the claims/dispute and thereafter the parties shall approach the Commission for resolution of disputes if they are failed to settle the same.
- (viii) The Respondent has submitted that the matter is not maintainable at this stage and the petitioner may be directed to submit its claims to the Respondent in accordance with the relevant provisions under PPA.

10. On examination of the contents in the subject petition and the submissions by both parties, it is clear that the petitioner has not issued any notice till date in accordance with the provisions under the PPA for resolution of the issues claimed in the subject petition for adjudication by this Commission under Section 86(1)(f) of the Electricity Act'2003. It is evident from the reply and rejoinders placed by both parties in the subject matter that the issues /claims raised before this Commission have not been discussed between the parties and these issues are for the first time taken into cognizance by Respondent through the subject petition. Further, Article 13 of the PPA provides for jurisdiction, a mechanism for Amicable Settlement of any claim, dispute or difference of whatsoever nature arising under, out of or in connection with the PPA. By the aforesaid mechanism, the description and grounds of claim by the petitioner and the counter-claims along with written material as envisaged under aforesaid Article 13.2 of PPA are discussed and deliberated by both the parties for settlement of claims/dispute before approaching the Commission under Section 86(1)(f) of the Electricity Act'2003. The Respondent has not objected to follow the mechanism provided under the PPA for amicable settlement of the issues/claims raised in the subject petition. In view of all aforesaid, the subject petition is not maintainable at this stage hence disposed of. However, the petitioner shall be at liberty to approach the Commission after exhausting the mechanism available in Article 13 of the PPA dated 10.11.2015.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman