

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA & UTS
GURUGRAM**

CORAM

Ms. Jyoti Prasad, Member (Law)

Petition No. 84/2022

Date of Hearing: 18.10.2022

Date of Order: 24.05.2023

In the matter of:

Petition for approval of Tariff and procurement of Power from 4MWp Floating Solar Power Plant with 2MW/1MWhr BESS.

And in the matter of:

Electricity Department,
Andaman and Nicobar Administration
Port Blair – 744101

.....**Petitioner Number 1**

And in the matter of:

Ijarays Energy Private Limited
An SPV of Sun Source Energy Private Limited
E- 134, SITE EPIP Greater Noida
Uttar Pradesh – 201310

.....**Petitioner Number 2**

And in the Matter of:

Solar Energy Corporation of India Limited (SECI)
(CPSU under Ministry of New and Renewable Energy)
6th Floor, Plat B, NBCC Office Block Tower-2
East Kidwai Nagar, New Delhi-110023

.....**Respondent**

Present for the Petitioner Number 1:

1. Deepa Nair, Executive Engineer, ED, Andaman & Nicobar Islands
2. Arvind Tiwari, Consultant, ED, Andaman & Nicobar Islands

For the Petitioner Number 2:

1. Saumya Upadhyay, Advocate, Ijyarays Energy Private Limited.
2. Abhishek Tripathi, Advocate, Ijyarays Energy Private Limited.
3. Randeep Bora, Vice President, Business Development, Sun-source Energy.

For the Respondent

1. Anita Mohan Goel, Senior Manager, SECI

ORDER

1. The Commission heard the petitioners and the respondent at length.
2. The Petitioner Number-1, Electricity Department of Andaman and Nicobar Administration, along with Petitioner Number-2, M/s Ijarays Energy Private Limited, has filed the present Petition under Section 86(1)(b) and (e) of the Electricity Act, 2003 for approval of Power Purchase Agreement for procurement of Power by Petitioner Number – 1, for the cumulative capacity of 4MWp Floating Solar Power Project with 2MW/1MWHrs BESS (Battery Enabled Storage Systems), at Kalpong Dam, Diglipur, North Andaman, being set up by Petitioner Number – 2, at the Tariff discovered in the Competitive Bidding process at the rate of ₹ 6.95/kWh.
3. The Submissions of the Electricity Department of Andaman and Nicobar Administration in brief are as under:
 - a) That Electricity Department of Andaman and Nicobar Administration has been desirous of implementing the non-conventional energy source projects for meeting the power requirements in the territory.
 - b) That Renewable energy being a clean source of energy and not dependent on fossil fuels, therefore, GoI has taken a decision to de-dieselize the A&N Islands by tapping Renewable sources of energy through Solar Photovoltaic (SPV) power plants in a phased manner.
 - c) That SECI on behalf of EDA&N had initiated a Tariff Based Competitive Bidding Process. The terms and conditions are contained in the Request for Selection issued by SECI on behalf of the Purchaser vide RFS No. SECI/C&P/SPD/RfS/04MW/012020 dated 13.01.2020.
 - d) That Ijyarays Energy Private Limited (Petitioner No.2) is the Solar Power Developer (SPD) in this project.
 - e) That the Ijyarays Energy Private Limited (SPD) has been selected in the Competitive Bidding Process conducted by SECI for development, generation and supply of electricity from the 4 MWp Floating Solar Power Project with 2MW/1MWHrs BESS to be established at Kalpong Dam, Diglipur, North Andaman Islands for supply of such electricity to Electricity Department, Andaman & Nicobar Administration.
 - f) That Article 9 of the Power Purchase Agreement (PPA) provides as under:

“9.1 The SPD shall be entitled to receive the Tariff of Rs. 6.95/kWh fixed for the entire term of this Agreement, with effect from the SCD, for the power sold by the SPD to the Buying Entity for the scheduled energy as reflected in the Energy Accounts. In case of early commissioning prior to SCD, EDA&N may purchase energy supplied till SCD at Rs. 6.95/kWh. In this case the Applicable Tariff for the commissioned Project shall be Rs. 6.95/kWh from and including the SCD.”

9.2 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by Electricity Department, A&NA at a fixed tariff of 75% (seventy five percent) of the tariff as per Article 9.1, provided Buying Entity consents to buy such excess generation. However, the SPD shall inform at least 30 days in advance of such excess generation to buying entity to make necessary actions for sale of this excess generated energy.

Buying Entity shall be required to intimate its approval/ refusal to the SPD, for buying such excess generation not later than 7 days of receiving the above offer from the SPD. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.

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- g) That procurement of power will enable the Electricity Department to effectively meet the Renewable purchase Obligation (RPO) targets, instead of relying on purchase of Renewable Energy Certificates (RECs), in the interest of the consumers. It is also relevant in the context of Andaman & Nicobar Islands that the development of Solar Power with BESS is competitive and more economical as the forms of conventional energy generation such as thermal, gas, diesel etc. involves substantially higher cost besides serious adverse impact on the environment. The cost of transportation of fuel from the mainland constitutes at present major input cost in the generation of electricity through use of diesel etc. The solar power with BESS is considered to be the most appropriate option both economically and ecologically.
- h) That the scheme for solar generation and use of solar energy with Battery Energy Storage System which would increase the electricity availability will be of significant benefit to the users of electricity in the Union Territory of Andaman & Nicobar Islands including supply of electricity on the regular basis
- i) That the Petitioners have sought the Commission's approval as under :
- “(a) Approve the procurement of power by Electricity Department Andaman and Nicobar Islands of the cumulative capacity of 4MWp Floating Solar, Power Project with 2MW/1MWhr BESS being set up by Ijarays Energy Private Limited at the discovered tariff of Rs. 6.95/KWh;*
- (b) Approve the upward revision in tariff by 4.9% of 34 paise per unit to Rs. 7.29/KWh on account of change in GST rate.*
- (c) Pass any such further Order or Orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.”*

4. The Petitioner No.2's submissions in brief are as under:

- a) That the Solar Power Developer has been selected by Competitive Bidding Process conducted by SECI on behalf of the Electricity Department, Andaman and Nicobar Administration. SECI thereafter issued the Letter of Award No. 39548 dated 21.10.2020 in favor of the Ijyarays Energy Private Limited (SPD) for the development and establishment of the 04 MW Grid Connected Floating Solar PV Power Project with 02 MW/1 MWh BESS system in Kalpong Dam, Diglipur, North Andaman
- b) That the Electricity Department, Andaman, and Nicobar Administration have agreed to purchase such Solar Power from the Solar Power Developer as per the provisions of the RFS.
- c) That in terms of the RFS and the Bidding Documents, the Solar Power Developer has furnished the Performance Bank Guarantee of Rs. 8,100,000 (Eighty One lakhs) in favour of Electricity Department, Andaman and Nicobar Administration.
- d) That the Solar Power Developer has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement for establishing the Floating Solar Power Project.
- e) That article 9 of the Power Purchase Agreement provides that

“9.1 The SPD shall be entitled to receive the Tariff of Rs. 6.95/ kWh fixed for the entire term of this Agreement, with effect from the SCD, for the power sold by the SPD to the Buying Entity for the scheduled energy as reflected in the Energy Accounts. In case of early commissioning prior to SCD, EDA&N may purchase energy supplied till SCD at Rs. 6.95/kWh. In this case the Applicable Tariff for the commissioned Project shall be Rs. 6.95/kWh from and including the SCD.

9.2 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by Electricity Department, A&NA at a fixed tariff of 75% (seventy-five percent) of the tariff as per Article 9.1. provided Buying Entity consents to buy such excess generation. However, the SPD shall inform at least 30 days in advance of such excess generation to buying Entity, to enable buying Entity to take necessary actions for sale of this excess generated energy. Buying Entity shall be required to intimate its approval refusal to the SPD, for buying such excess generation not later than 7 days of receiving the above offer from the SPD. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.”

- f) That article 12 of the Power Purchase Agreement provides that

“12.1 The Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission,

including (1) the enactment of any new law, or (ii) an amendment modification or repeal of an existing law, or (i) the requirement to obtain a new consent permit or license, or (iv) any modification to the prevailing condition for obtaining a consent, permit or license, not owing to any default of the Solar Power Developer, or (v) any change in the rates of any Taxes including any duties and cess of the introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.

However. Change in Law shall not include (1) any change in taxes on corporate income or (a) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD.

In the event a Change in Law results in any adverse financial loss gain to the Solar Power Generator then to order to ensure that the Solar Power Developer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Sale Power Developer Procurer shall be entitled to compensation by the other party, as the case may be, to the SEC SPIPPA condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission

In the event of any decrease in the recurring nonrecurring expenditure by the SPD or any income to the SPD account of any of the events as indicated above. SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD. LDA&N shall withhold the monthly tariff payments on an immediate basis, until compliance of the above requirement by the SPD

12.2 Relief for Change in Law

12.2.1 That 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

12.2.3 In case of a Change in Law on account of Article 12.1, subject to Approval granted vide Article 12.21, the SPD shall be entitled for an increase/decrease in the Applicable Tariff. This Increase decrease in Applicable Tariff shall be for an amount equivalent to INR 0.005/kWh (05 Paise/KWh for every Increase decrease of INR 01 (one) lakh MW in the Project cost corresponding to the Contracted Capacity, which shall be effected based on the documentary evidence submitted to the concerned authority”

- g) That according to Article 9 of the Power Purchase Agreement the Solar Power Developer is entitled to the tariff of Rs. 6.95/KWh. However, since the tariff rate is hit by the change in law of GST, the new applicable rate is liable to be revised as per Article 12 of the Power Purchase Agreement.
- h) That as per Circular No. 163/19/2021-GST issued on 06.10.2021 regarding GST rates and classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17.09.2021, it was decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively. The relevant provisions of the clarification Circular is reproduced below:

“...13. Applicability of GST rates on Solar PV Power Projects

13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January 2019. The issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31st December 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.

13.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy percent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.”

- i) That is submitted that before 1.10.2021, 5% GST was applicable on 70% of the Project cost (i.e., the goods component) and 18% of the GST was applicable on 30% of the Project Cost (i.e., the services component) under the Power Purchase Agreement. Thus, the combined value of the applicable GST stood at 8.9 % of the overall project cost.

- j) That with effect from 01.10.2021 the GST rate was changed to 12% GST on 70% of the Project Cost (i.e., the goods component) and 18% GST applicable on 30% of the project cost (i.e., the services component). The combined value of the GST applicable is 13.8% of the overall project cost.
- k) That the Electricity Rules, 2021 were notified by the Ministry of Power vide notification dated 22.10.2021. The relevant extracts of the said Rules are as under:

“2(c)—change in law, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes—

(i) a change in interpretation of any law by a competent court, or

(ii) a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory add leading to corresponding changes in the cost; or

(iii) a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost,

3. Adjustment in tariff on change in law. — (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred... ..

4. The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

5. The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

(a) where the agreement lays down any formula in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

6. The recovery of the impacted amount, in case of the fixed amount shall be -

*(c) in case of generation project, within a period of one-hundred eighty months,
or*

(d) in case of recurring impact, until the impact persists.

7. The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant

documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

8. The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

9. After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

- l) That in the instant case, Clause 12 of the Power Purchase Agreement provides the manner of adjustment of the tariff. Therefore, the formula set out in Electricity Rules, 2021 may not be applicable.
- m) That the formula provided in Clause 12 of the Power Purchase Agreement provides that for every increase in the project cost by Rs. 1,00,000/-per MW, the tariff shall be adjusted by Rs.0.5 paise per kWh. Therefore, in order to determine the price adjustment as per the Power Purchase Agreement, the impact on the project cost needs to be determined.
- n) That the project cost is not yet final. Given the industry standards on the project cost, the increase in tariff will be much higher by applying the formula set out in the Power Purchase Agreement. Nonetheless, in the interest of quick determination, the parties have agreed to seek pro-rata adjustment for the increase in tariff on account of change in the GST rate to the tune of 4.9% the difference in GST rate as explained in the paragraph 13 above, at this stage, while the project cost is finalised.
- o) That it is submitted that the Applicable Tariff should be Rs. 7.29/KWh after upward revision on account of the change in the law of GST. This change in GST was not foreseen at the time of bidding therefore, the Petitioner No. 2, has prayed for necessary upward revision in the tariff in-consideration of the Clause 12 for Change in Law in the Power Purchase Agreement.
- p) That the approval of procurement of power by the Electricity Department, Andaman and Nicobar Islands of the cumulative capacity of 4 MW Floating Solar Power Project with 2 MW/1 MWh BESS being set up by the Petitioner No. 2 at the discovered tariff rate of Rs. 6.95/KWh ought to be approved under Section 63 of the Electricity Act, 2003 and an upward revision in tariff for a sum of Rs. 0.34/ KWh should also be made. Accordingly, the cumulative tariff of Rs. 7.29/KWh should be approved.

5. The Respondent submissions in brief are as under:

- a) That the Respondent in compliance with the interim order dated 20/10/2022 has provided the additional information as under:
 - i. Conformity Certificate

- ii. Pre-Approval for taking up the project
 - iii. Bidding Documents
 - iv. RFS document along with its amendment and clarification.
- b) SECI had floated Open tender in online mode for the Tender Documents for request for selection (RFS) document for selection of SPD for setting up of 04 MW grid connected Floating Solar PV Power Project with 02 MW/1 MWh BESS at Kalpong Dam, Diglipur, North Andaman. Tender Search Code for ISN-ETS: SECI-2019-TN000004 RfS No. SECI/C&P/SPD/RfS/A&N/04MW/012020 Dated: 13/01/2020.
- c) Subject Tender was uploaded on SECI's website, ETS portal of Electronic Tender India & CPPP on 13.01.2020 with the last date of bid submission 13/02/2020 & opening was scheduled on 18.02.2020. However, with the approval of competent authority, the last Date of Bid submission was extended eight times due to COVID-19 and representation submitted by bidders for extension and the final date of Bid submission was 30.06.2020 at 1800 Hrs with subsequent Bid opening on 03.07.2020 at 1100 Hrs. However, the submitted bid is opened on 06/07/2020 as one of the committee members was on leave on 03/07/2020.
- d) Thereafter, Total 02 (Five) Offline Bids have been received in response to the NIT by the due date and time of the extended bid submission:
 - i. M/s Sunsource Energy Private Limited
 - ii. M/s Fourth Partner Energy Private Limited
- e) Accordingly, these two bids are eligible for Online Bid Opening and subsequent for the techno-commercial evaluation.
- f) The committee members have evaluated the bids based on the requirements of the NIT. As per online opening committee report, total 02 (Two) bids are being considered for Techno Commercial evaluation purpose. Based on the evaluation, clarifications were sought through ETS portal from the respective bidders and the same have been received on through ETS portal. As per Techno commercial evaluation committee report at NP-27-36, total 02 Techno commercial Qualified Bids were received in response to the tender by the due date and time of bid submission the financial bids submitted online by all the eligible bidders for the mentioned tender are opened by the committee on 10.08.2020. The financial bids (electronic form) of bid opening are placed on file. The detail of Bidders are mentioned below –
 - i. M/s Sunsource Energy Private Limited - ₹8.89/unit
 - ii. M/s Fourth Partner Energy Private Limited - ₹9.68/unit
- g) As per clause 2.b.5 of Section-V (Bid Evaluation and Selection of Projects) of NIT, "On completion of Techno-Commercial bid evaluation, if it is found that only one or two Bidder(s) is/are eligible per project for the next stage, opening of the financial bid of the bidder will be at the discretion of SECI.

- h) After completion of the Techno-Commercial bid evaluation, the financial bid of Techno-commercially qualified bidders were opened on 10.08.2020. as per clause 3.2 of Section-V (Bid Evaluation and Selection of Projects) of NIT.
- i) "After financial bid evaluation of both the project, the bidders shall be shortlisted project wise in the ascending order of financial bids quoted. Out of the total number of such bidders, top 50% of the bidders starting from the L1 Bid subject to minimum of 3 bids shall only be eligible for e-RA for each project.
- j) All the Techno-commercially qualified bidders were sent an email regarding the scheduled date of e- Reverse Auction (e-RA) vide email dated 12.08.2020 in anticipation of approval of techno-commercial evaluation report by the competent authority stating that e-Reverse Auction for the project was scheduled on 19.08.2020.
- k) Accordingly, e-RA was conducted for 19.08.2020 at 14:00 Hrs for the project, The final result of e-Reverse Auction setting up of 04 MW Floating Solar Power Plant with 02 MW/01 MWh Battery Energy Storage System (BESS) at Kalpong Dam, Diglipur, Andaman & Nicobar vide NIT No: SECI/C&P/SPD/RfS/A&N/04MW/012020 Dated: 13/01/2020 is as mentioned below:
- i. M/s Sunsource Energy Private Limited - ₹6.95/unit
 - ii. M/s Fourth Partner Energy Private Limited - ₹6.98/unit
- l) Since M/s SUNSOURCE ENERGY PRIVATE LIMITED is found to be the lowest at the end of e-Reverse auction for the projects thus following is proposed.
- m) To recommend M/s Sunsource Energy Private Limited as successful bidder for the 04 MW Floating Solar PV Power Plant Projects with BESS at Kalpong Dam, Diglipur, Andaman & Nicobar for placing LoA (Letter of Award).
6. The Commission has considered the submissions of the Petitioners & Respondent. It has also examined the Power Purchase Agreement (PPA) duly initialized by both the parties along with additional information placed on record by the Petitioners & the Respondent. The Commission has also examined the relevant provisions of the Electricity Act, 2003 and Rules & Regulations made there under.
7. The Commission is relying on Section 63 and Section 86 (1) (b) of the Electricity Act, 2003 for approval of the power purchase agreement placed before it by the Petitioner.
8. The Section 63 of Electricity Act, 2003 provides that-
- “Notwithstanding anything contained in Section 62, the appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”*
- Section 86 (1)(b) of Electricity Act, 20003 provides that-

“The State Commission shall discharge the following functions, namely: -

b) Regulate electricity purchase and procurement process of licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State”

9. The Commission has noted that SECI on behalf of Electricity Department, Andaman & Nicobar Administration has initiated a tariff based competitive bidding process for procurement of Solar power generated from the Grid Connected Solar Power Project vide guideline dated 03.08.2017 and SECI floated the Tender on 13.01.2020. M/s. Sunsource Energy Pvt. Limited emerged as lowest bidder (L1). The rate discovered is Rs. 6.95/Unit and letter of intent (LOI) was issued on 21.10.2020.
10. M/s. Sunsource Energy Pvt. Limited created a subsidiary M/s. Ijarays Energy Pvt. Limited as special purpose vehicle to execute this project. The said project is for generation and supply of electricity from 4MW Floating Solar Power Project with 2MW/1MWh BESS. At kalpong Dam, Digilipur North Andaman Islands.
11. The Power Purchase Agreement (PPA) between Electricity Department, Andaman Administration and M/s. Ijarays Energy Pvt. Limited was executed on dated 08.07.2021.
12. The Commission vide interim order dated 18.10.2022 sought the following additional information from SECI.
 - a) Conformity Certificate
 - b) Pre-Approval for taking up the project
 - c) Bidding Documents
 - d) RFS document along with its amendment and clarification.
 - e) Also directed petitioners to file their respective rejoinders if any within two weeks.
13. The Commission received additional information from SECI on dated 23/11/2022 and 24/01/2023.
14. The Commission has further noted that through the transparent competitive bidding process the tariff discovered is Rs. 6.95/KWh, letter of Intent was issued on dated 21.10.2020 and PPA was executed dated 08.07.2021. However, the petitioners have sought an upward revision in tariff by 4.9% or 34 paise per unit on account of change in GST Rate and revised tariff would be Rs. 7.29/KWh. The petitioners have pleaded that GST council has revised the applicable tax on 70% of the Solar Power Project Components from the previous value of 5% to 12% w.e.f. 1st October, 2021. Since procurement of material is still pending therefore the applicable G.S.T. will change as per the said amendment.

As the change in G.S.T rate was not foreseen at the time of bidding, upward change in tariff is consideration of Clause 12 in “change in law” of the PPA is necessary. The Clause 12 of the PPA provides that in the event a change in law results in any adverse financial loss / gain

of the SPD then, SPD/ Procurer shall be entitled to compensation by the other party, as the case may be.

15. The Commission has further noted that the Article 3.3.1 provide that the Performance Bank Guarantee (PBG) having validity from the date of submission of PBG until Twenty-Seven (27) months from the Effective Date of value of INR 8,100,000 (Eighty-One lakhs to be furnished under this Agreement shall be for guaranteeing the commencement of the supply up to the Contracted Capacity within the time specified in this Agreement.

- i. The Failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the SPD.
- ii. If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof by EDA&N, subject to conditions mentioned in Article 4.5, EDA&N shall encash the Performance Bank Guarantee equivalent to the penalty leviable as on the date of encashment without prejudice to the other rights of EDA&N under this Agreement.

16. The Commission has further noted that the Article 4.2.5 provide that the arrangement of connectivity shall be made by the SPD through a dedicated transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the SPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.10 shall be applicable.

17. The Commission has further noted that the Article 4.6.1 provides that the Project shall be fully commissioned within the Scheduled Commissioning date as defined in this Agreement. If the SPD is unable to commission the project by the Scheduled Commissioning Date for the reasons other than those specified in Article 4.5.1 and 4.5.2, the SPD shall pay to EDA&N, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the followings:

- i. Delay beyond the scheduled Commissioning date up to (& including) the date as on 6 months after the Scheduled Commissioning Date. The total PBG amount shall be enhanced on per day basis and proportionate to the balance capacity not commissioned. In case of calculation of liquidated damages, a 'month' shall comprise 30 days.
- ii. The maximum time period allowed for commissioning of the full project Capacity with encashment of Performance Bank Guarantee shall be limited to 6 months after the SCD of the Project. In case, the Commissioning of the Project is delayed beyond 6 months after the SCD, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 6 months after the SCD and

the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

- iii. The SPD further acknowledges that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by EDA&N as specified under this Agreement.

In case of site specified by the EDA&N, any delay in handing over Reservoir/land to the SPD in accordance with the given timelines, shall entail a corresponding extension in financial closure deadline and scheduled commissioning date, provided that the maximum extension shall be limited to a period of 1 year commencing from the expiry of date of handing over of balance 10% of reservoir/ land in terms of Article 4.2.7.

18. The Commission has further noted that the Article 4.9.1 provides that the parties herein agree that during the subsistence of this Agreement, subject to EDA&N being in compliance of its obligations & undertakings under this Agreement, the SPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contacted Capacity of power which is the subject matter of this Agreement. It is specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.
19. The Commission has further noted that the Article 17.11 provide that the Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the foresaid relevant provisions as amended from time to time.
20. The Commission has observed from the above that the tariff has been discovered through transparent process of bidding in accordance with the guidelines issued by the GoI. Therefore, the Commission is inclined to adopt the tariff of Rs 6.95/KWh discovered through a transparent process of bidding. At the same time, the Commission has considered the terms and conditions of PPA executed between M/s Ijarays Energy Private Limited and Electricity Department of Andaman and Nicobar Administration, and is of the view that the said terms and conditions are legally tenable and not tilted in favour of any of the parties involved in the PPA. In view of the above, the Commission hereby approves the said PPA.
21. The Commission has noted that the petitioners have sought revision in tariff to the tune of 4.90% equivalent to Rs 0.34/KWh on account of change in the GST rate as notified by the Ministry of Finance notification dated 06.10.2021 by invoking the 'Change in Law' clause of the said executed PPA. At the same time the Commission has observed that the parties to the PPA have not submitted any voucher/bills toward the procurements of the material/equipment for which the enhanced GST has been paid or to be calculated and they have also submitted that the project cost is not yet final. The Commission also observed that the parties have submitted a calculation of impact of increase of GST on pro-rata basis which is not appropriate. The Commission has further noted that in order to calculate or examine the actual impact of the GST on the procurement of the material for this project, the

voucher/bills are required wherein the impact of the increase in GST rate could be ascertained. The Commission has further noted that the increase in GST rate is attributable to the "Change in Law" provisions as per PPA executed. The actual impact in the project cost due to increase in GST rate cannot be substantiated before the COD of the project. The Commission therefore directs that full detail like documents/bills/vouchers, reconciliation statement duly certified by the practicing Chartered Accountant be filed along with a fresh petition after achieving the COD of the project as per the PPA, in order to ascertain the actual impact of increase in GST to this project and accordingly the same shall be considered.

22. Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member (Law)

Certified True Copy



(S.D. Sharma)

Secretary (I/c), JERC