

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 356/MP/2018

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreement executed by the Petitioner and Solar Energy Corporation of India Limited dated 27.4.2018 seeking relief on account of a 'Change in Law' viz. the introduction of Safeguard Duty, resulting in additional recurring and non-recurring expenditure in the form of an additional tax burden to be borne by the Petitioner after the effective date of the PPA.

Petitioner : Azure Power India Private Limited (APIPL)

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

Petition No. 51/MP/2019

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 for declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No.1/2018 – Customs (SG) dated 30.7.2018 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreements dated 31.10.2018 executed between the Petitioner and the Respondent.

Petitioner : Azure Power Forty Three Private Limited (AP(43)PL)

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

Date of Hearing : 12.12.2019

Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I. S. Jha, Member

Parties Present : Shri Buddy A Ranganadhan, Advocate, APIPL and AP(43)PL
Shri Rahul Chouhan, Advocate, AP(43)PL
Shri Raunak Jain, Advocate, APIPL
Shri Sachin Dubey, Advocate, APIPL
Shri Dinesh Pardasani, Advocate, AP(43)PL
Shri Shantanu Singh, Advocate, AP(43)PL
Ms. Poorva Saigal, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI

Record of Proceedings

Learned counsel for the Petitioners submitted that the present Petitions have been filed by the Petitioners, *inter-alia*, seeking declaration that the imposition of the



Safeguard Duty on the import of solar panels/modules through Notification No. 1/2018-Customs (SG) dated 30.7.2018 issued by the Department of Revenue, Ministry of Finance, Government of India as 'Change in Law' event under the Article 12 of the PPAs and the consequent reliefs thereto. Learned counsel submitted that the issues involved in the Petitions, apart from the carrying cost, are covered by the earlier orders of the Commission. As regards carrying cost, learned counsel relied upon the clauses 5, 5.7 and 18 of the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' ('Guidelines') and mainly submitted as under:

(a) Clause 5 of the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' ('Guidelines') as Notified by Ministry of Power on 3.8.2017, which is also the relevant Guidelines for the PPAs, provide that the standard provisions as provided in the Guidelines shall be incorporated in the PPAs and also in the PSAs on back-to-back basis.

(b) In terms of Clause 18 of the Guidelines, in case there is any deviation from these Guidelines, the same is to be approved by the Appropriate Commission. In the present case, apparently, there is no such approval of the Commission for the deviation.

(c) Based on the doctrine of Contra-Proferentem, when there is a lacuna/possibility of two different interpretation of the provision of the contract, such an interpretation should be preferred by the Court, which is against the party who drafted the contract. Admittedly, in the present case, PPAs have been drafted by SECI.

2. Learned counsel for the Respondent, Solar Energy Corporation of India Limited (SECI) submitted that all the issues involved in the Petitions including the submissions of learned counsel for the Petitioners on the carrying cost have been considered and dealt with by the Commission in order dated 4.10.2019 in Petition No. 14/MP/2019 and the batch matter. Learned counsel further submitted that the PPAs have been willingly executed by the Petitioners and the doctrine of Contra-Proferentem does not apply in the present case.

3. Based on the request of the learned counsel for the parties, time to file written submissions was granted to the parties, till 20.12.2019, with copy to each other. The Commission directed that due date of filing the written submissions should be strictly complied with.

4. Subject to above, order in the Petitions was reserved.

By order of the Commission

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

