

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 181/MP/2020 along with IA No.14/2021

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the PPAs dated 27.4.2018 and Clause 5.7 of the Bidding Guidelines seeking relief under the 'Change in Law' provision viz. the introduction of Safeguard Duty on the import of solar modules after the Bid Deadline (i.e. 5.12.2017) resulting in substantial increase in the cost of project to be borne by the Petitioner and seeking an appropriate mechanism for grant of a suitable adjustment/compensation to offset commercial impact of such Change in Law event.
- Date of Hearing : 26.3.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Clean Solar Power (Bhadla) Private Limited (CSPBPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and Anr.
- Parties Present : Shri Sajan Poovayya, Sr. Advocate, CSPBPL
Shri Aniket Prasoon, Advocate, CSPBPL
Shri Pratibhanu Singh Kharola, Advocate, SBPBPL
Shri Samarth Kashyap, Advocate, SBEOPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Servesh Kumar Singh, CSPBPL
Shri Sumit Roy, CSPBPL
Ms. Neha Singh, SECI
Shri Ajay Kumar, SECI
Shri Abhinav Kumar, SECI
Shri Uday Pavan Kumar Kruthiventi, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the instant Petition has been filed, *inter alia*, seeking declaration that levy of Safeguard Duty vide Notification No.1/2018-Customs (SG) dated 30.7.2018 issued by Department of Revenue, Ministry of Finance, is a Change in Law event and seeking consequential compensation for additional expenditure incurred by the Petitioner thereon along with carrying cost. Learned senior counsel further submitted as under:

(a) Vide Record for Proceedings for the hearing dated 4.6.2020, the Commission observed that the Petitioner and SECI were already in discussion for reconciliation of the Petitioner's claims of Safeguard Duty in terms of the directions of Ministry of New and Renewable Energy dated 12.3.2020 and 23.3.2020 and accordingly, the matter was adjourned *sine die* with liberty to the Petitioner to revive the Petition based on the outcome of the discussion or settlement reached, if any, amongst the parties.

(b) Pursuant thereto, the Petitioner in support of its claims furnished the requisite and necessary documents to SECI. Vide letter dated 22.10.2020, SECI confirmed the reconciliation of the claims of the Petitioner as per the Commission's order in similar Petitions and further, sent the reconciled claims to the buying entity i.e., UP Power Corporation Limited (UPPCL). It was also intimated that the methodology for payment of the claims shall be on annuity basis with discount rate @10.41% (i.e., rate of interest for loan component as per the Commission's order 19.3.2019) and that the finalization of claim and release of payment will be subject to the outcome in Petition No. 536/MP/2020, filed by SECI for approval of annuity methodology. The Petitioner was also asked to furnish an undertaking to this effect.

(c) The Petitioner *vide* its letters dated 24.12.2020 and 11.1.2021 furnished the undertakings as sought for. Since there was no dispute on the admitted dues, the Petitioner conveyed its acceptance to the annuity rate of 10.41% as suggested by SECI, as an interim measure, subject to the outcome of Petition No. 536/MP/2020.

(d) Despite the claims of the Petitioner having been reconciled and the Petitioner having furnished the undertaking to SECI as sought for, SECI is yet to release payment towards claims of the Safeguard Duty to the Petitioner. Accordingly, the Petitioner has filed IA No.14/2021 seeking revival of the Petition and direction to SECI to forthwith release the appropriate upfront lump sum amount and monthly annuity payments to the Petitioner, subject to the outcome of Petition No. 536/MP/2020.

3. Learned senior counsel for the Respondent, SECI submitted that SECI *vide* its letters dated 22.12.2020 informed the Petitioner and UPPCL regarding provisional reconciliation of the claims of the Petitioner towards Safeguard Duty, which have been confirmed by the Petitioner. Therefore, there is no dispute over the claimed amount. However, UPPCL has not yet confirmed the reconciliation of the Petitioner's claims. Learned senior counsel for SECI further submitted that while SECI is not contending that the payment to be made by SECI to the Petitioner is subject to receipt of the payment from UPPCL, the Commission may pass an order adjudicating the amount payable by SECI to the Petitioner with corresponding direction to UPPCL to pay the same to SECI and providing timeframe of 60 days for payment of arrears in line with the similar orders being issued by the Commission.

4. In rebuttal, learned senior counsel for the Petitioner submitted that 60 days' time period granted by the Commission in its earlier orders is applicable when the entire payments are to be made on lump sum basis and not for the payments to be made on annuity basis. For payments to be made on annuity basis, the period granted by the Commission in its earlier orders is 15 days.

5. None was present on behalf of UPPCL despite the notice.

6. Based on the request of learned senior counsel for SECI, the Commission permitted SECI to file its submission in the matter within two weeks, if already not submitted.
7. Subject to the above, the Commission reserved the order in the matter.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Legal)