

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 22/RP/2020
in Petition No. 69/MP/2019 along with IA No.48/2020**

Subject : Review Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 4.10.2019 passed by this Commission in Petition No. 69/MP/2019.

Date of Hearing : 18.6.2021

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

Review Petitioner : Phelan Energy India RJ Private Limited (PEIRJL)

Respondents : Solar Corporation of India Limited (SECI) and 4 Ors.

Parties Present : Shri Sujit Ghosh, Advocate, PEIRJL
Ms. Mannat Waraich, Advocate, PEIRJL
Shri Toshin Bishnoi, Advocate, PEIRJL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Ms. Neha Singh, SECI
Shri Ajay Kumar Sinha, SECI
Shri Abhinav Kumar, SECI
Shri Uday Pavan Kumar Kruthiventi, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Review Petitioner, PEIRJL submitted that the present review petition has been filed seeking review of order dated 4.10.2019 in Petition No. 69/MP/2019 (for short, 'impugned order') wherein the Commission has restricted the compensation due and payable to the Review Petitioner on account of imposition of safeguard duty to the amount relating to invoices issued upto the Scheduled Commissioning Date of the Project. Learned counsel mainly submitted the following:

(a) Vide impugned order, the Commission restricted the claim of safeguard duty only to invoices issued upto the Scheduled Commissioning Date thereby recording its finding on issue which was neither argued nor was a part of the pleadings. The Review Petitioner did not get any opportunity to rebut the aforesaid premise that compensation for safeguard duty is available only for invoices raised upto SCD.

(b) The impugned order is also inconsistent with the other orders issued by the Commission on very same issue of compensation for Change in Law on account of imposition of safeguard duty on solar cells and modules in as much as neither of the decisions have restricted the claims of safeguard duty for invoices raised upto Scheduled Commissioning Date. In fact, in the subsequent orders, the Commission has allowed the claims of safeguard duty upto Commercial Operation Date ('COD') of the Project.

(c) Further, the restriction of claims of safeguard duty upto COD as held in line with claims under GST Laws may also not be correct as the entire concept of 'time of supply of goods' as applicable in respect of GST Laws is not relevant to safeguard duty. As per the provisions of Customs Tariff Act, 1975 and Customs Act, 1962, the obligation of payment of safeguard duty and determination of its rate would be on the basis of date on which a bill of entry in respect of such goods is presented. In this regard, reliance was placed on Section 8B (4A) of the Customs Tariff Act, 1975 and Sections 12, 15 and 17 of the Customs Act, 1962.

(d) In the Review Petitioner's case, as per the contractual arrangement with EPC contractor, the modules were imported by the contractor and the safeguard duty in relation to the same was paid by them. As evident from Bill of Entry, all the modules were imported and liability to pay safeguard duty in relation to the same accrued prior to COD. However, solely due to operational reasons, the invoicing by contractor to Review Petitioner was delayed and actual payment of safeguard duty by the Review Petitioner to its contractor took place after COD. As a result, SECI has disallowed the total claims of approximately Rs. 5.44 crore citing them to be beyond the COD even though Bill of Entry (7.12.2018 and 18.12.2018) for such claims was prior to its COD (i.e. 22.12.2018).

(e) Review Petitioner has also filed IA No. 48/2020 seeking condonation of delay of 161 days in filing the instant Review Petition. The delay has occurred mainly on account of the Review Petitioner being occupied in truing up its account and collecting documents/ details for submission of incremental impact of Change in Law expenditure, significant management changes and outbreak of Covid-19 and consequent lockdown. Further, liberty may be granted to file additional submissions on the aspect of condonation of delay.

3. Learned senior counsel for the Respondent, SECI mainly submitted as under:

(a) The present Review Petition has been filed after an inordinate delay of 196 days for which the Review Petitioner has not given any justifiable reasons. In its various orders, the Commission has disallowed the Review Petitions filed with such delay for no valid reasons. SECI may be permitted to place on record the relevant orders/ decisions of the Commission in this regard.

(b) SECI has already allowed and considered the claims of safeguard duty with respect to COD instead of Scheduled Commissioning Date in line with subsequent decisions of the Commission.

(c) The Commission has considered the COD as cut-off date for consideration of the claims of safeguard duty. Accordingly, for claiming the safeguard duty, evidence has to be produced regarding the solar cells/ modules having been installed prior to COD. Despite the contractor having imported the solar cells/ modules prior to COD, there has been considerable delay in invoicing of such cells/ modules onto the Project company/ generator, which clearly indicates certain elements of mismatch therein.

(a) There are no cogent reasons as to why the safeguard duty has not been paid by the Petitioner to the contractor within COD if such solar modules/ cells have been imported prior to COD and have been installed at the site. Also, there is no evidence available regarding installation of such modules/ cells at the Project site by COD and the one to one correlation between the modules/ cells imported and those that are installed upto COD has not been established. It is precisely for this reason that the cut-off date for claims of safeguard duty has been prescribed as upto COD of the Project.

4. Based on the request of learned counsel for the Petitioner and learned senior counsel for the Respondent, SECI, the Commission directed the Petitioner to file its submissions on the aspect of condonation of delay in filing of the review petition within a week and SECI to file its submissions within a week thereafter.

5. Subject to the above, the Commission reserved the order on 'admissibility' of the Review Petition.

By order of the Commission

**SD/-
(T.D. Pant)
Joint Chief (Law)**