

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 81/MP/2021

- Subject : Petition under Section 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 along with Regulations 68 and 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking payment of Change in law compensation from Solar Energy Corporation of India Limited as consequence of imposition of Safeguard Duty by the Central Government and same being treated as an event of Change in Law under the terms of the Power Purchase Agreement dated 4.1.2019 read with Ministry of New and Renewable Energy Directions dated 12.3.2020 and 23.3.2020.
- Date of Hearing : 19.3.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
Shri Prakash S. Mhaske, Member (ex-officio)
- Petitioner : SBG Cleantech Projectco Five Private Limited (SCPFPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and Anr.
- Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, SCPFPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Molshree Bhatnagar, Advocate, SCPFPL
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Sidhartha Mohapatra, SCPFPL
Ms. Neha Singh, SECI
Shri Ajay Kumar Sinha, SECI
Shri Abhinav Kumar, SECI
Shri Udaypavan Kumar Kruthiventi, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed seeking payment of Change in Law compensation from the Respondent No.1, SECI as a consequence of imposition of Safeguard Duty by the Central Government and the same being treated as an event of Change in Law in terms of Power Purchase Agreement ('PPA') dated 4.1.2019 read with Ministry of New and Renewable Energy ('the MNRE') directions dated 12.3.2020 and 23.3.2020. Learned senior counsel submitted as under:

(a) The Petitioner has executed the PPAs with SECI for supply of cumulative capacity of 200 MW (4x50 MW).

(b) Consequent to the imposition of Safeguard Duty by the Central Government w.e.f. 30.7.2018, the Petitioner and SECI proceeded to reconcile the Safeguard Duty claims of the Petitioner in terms of the MNRE's directions dated 12.3.2020 and 23.3.2020. In support of its claims, the Petitioner also furnished requisite and necessary documents.

(c) By its letter dated 7.10.2020, SECI confirmed the reconciliation of the Petitioner's claims as per the Commission's orders 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 Commission's order dated 19.3.2019) and that the finalization of claim and release of payment will be subject to the decision 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.

(d) The Petitioner vide its letter dated 14.10.2020 furnished the undertaking as sought for and 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. It was also submitted that to facilitate the process, the Petitioner will file an appropriate application/petition before the Commission.

(e) However, since the Commission was not conducting hearings in terms of order dated 28.8.2020 of the Hon'ble Supreme Court in Contempt Petition (c) No. 429/2020 in C.A No. 14967/2015, the Petitioner approached the Appellate Tribunal for Electricity (APTEL) under Section 121 of the Electricity Act, 2003 in OP No. 18 of 2020. In the proceedings before the APTEL, UPPCL also admitted and agreed to the amounts as communicated by SECI. However, the said Petition before the APTEL was withdrawn by the Petitioner to pursue the present Petition before the Commission.

(f) Accordingly, the Petitioner is seeking direction to the Respondent, SECI to immediately release the payment towards the Petitioner's Safeguard Duty claims as reconciled and agreed to by SECI as well as UPPCL, subject to the outcome of Petition No. 536/MP/2020.

3. Learned senior counsel for the Respondent No.1, SECI submitted that SECI vide its letter dated 9.10.2020 to the Petitioner and by letter dated 8.10.2020 to UPPCL had communicated the provisional reconciliation of the Petitioner's claims toward Safeguard Duty, which have been confirmed by the Petitioner and UPPCL and as such, there is no dispute over the claimed amount. Accordingly, the Commission may pass an appropriate order in the matter subject to the outcome of Petition No. 536/MP/2020 filed by SECI whereby SECI has sought approval of annuity methodology including annuity rate. It was further requested that the Commission may also specify the timeline for the distribution licensee to make payment to SECI on account of Safeguard Duty in line with the Commission's earlier decisions on the subject matter. Learned senior counsel requested to clarify the cut-off date with regard to liability of payment on account of impact of Safeguard Duty on procurement of modules and panels in respect of 'Scheduled Commercial Operation Date' instead of 'Scheduled Commissioning Date'.

4. After hearing the learned senior counsel for the Petitioner and the Respondent SECI, the Commission admitted the Petition and directed to issue notice to the Respondents. The Respondents were directed to file their reply, if any, by 26.3.2021 with advance copy to the Petitioner, who may file its rejoinder, if any, by 2.4.2021. The due date of filing of reply and rejoinder should be strictly complied with.

5. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Legal)**