

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 77/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 20th July, 2021

In the matter of

Petition under Section 79 of the Electricity Act, 2003 before the Central Electricity Regulatory Commission for (i) approval of 'Change in law' and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules in terms of Article 12 of the Power Purchase Agreements dated 4.6.2019 between ReNew Solar Energy (Jharkhand Five) Pvt. Ltd. and Solar Energy Corporation of India Limited.

And

In the matter of

ReNew Solar Energy (Jharkhand) Private Limited

1st Floor, D-3, A Wing,

Prius Platinum Building,

District Centre, Saket,

New Delhi-110 017

...Petitioner

Vs.

Solar Energy Corporation of India Limited,

1st Floor, D-3 A-Wing,

Paris Platinum Building District Centre,

Saket, New Delhi-110 017.

ORDER

The Petitioner, ReNew Solar Energy (Jharkhand) Private Limited, has filed the present Petition seeking declaration that the imposition of safeguard duty on solar cells/ modules in terms of safeguard duty Notification dated 29.7.2020 is a Change in Law event in terms of the Article 12 of the Power Purchase Agreement ('PPA') dated 4.6.2019 and for evolving a suitable mechanism to compensate the Petitioner for

increase in the expenditure incurred by it on account of the said Change in Law event. The Petitioner has made the following prayers:

“(a) Declare the imposition of safeguard duty via Safeguard Duty Notification dated 29.07.2020 as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;

(b) Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law;

(c) Direct Respondent to compensate the Petitioner towards Safeguard duty as one time lump sum amount or mechanism devised by this commission in prayer (b)

(d) Grant interest/carrying cost at 14% per annum from the date of incurring of the cost by the Petitioner till the date of order by this commission; and

(e) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition.”

2. The matter was heard on 25.6.2021 through video conferencing. During the course of hearing, learned senior counsel for the Respondent, Solar Energy Corporation of India Limited (SECI) raised the issue of jurisdiction. Relevant extract from Record of Proceedings for the hearing dated 25.6.2021 is as under:

“3. Learned senior counsel for the Respondent, SECI, referred to his note of submissions and submitted that according to SECI, as per the decision of the Commission in order dated 15.4.2021 in Petition No.52/AT/2021 (SECI v. Shappoorji Pallonji Infra. Capital Pvt. Ltd. and Ors.), the present Petition might not lie before this Commission and that the Appropriate Commission may be the State Commission. Learned counsel submitted that similar to the Petition No.52/AT/2021, in the present case also the bid process was conducted as per Standard Bidding Guidelines dated 3.8.2017 for selection of 750 MW solar PV power projects to be set-up in the State of Rajasthan and as per the RfS including the amendment dated 12.2.2019, entire power procured by SECI from the above projects has been provisioned to be sold to Rajasthan Urja Vikas Nigam Limited (‘RUVNL’). It was submitted that the bid process was conducted for RUVNL and that vide amendment to RfS dated 12.2.2019, a provision permitting SECI to substitute RUVNL with any other entity in a different State for selling the power procured from the projects was deleted. Hence, as held in the order dated 15.4.2021, in the present case also, the ‘Appropriate Commission’ might be the State Commission. In this regard, reference was made to the paragraphs 17, 20, 21 and 23 of the order dated 15.4.2021 and definition of the ‘Appropriate Commission’ in the Guidelines dated 3.8.2017 and the PPA. Learned senior counsel also added that if the Commission arrives at the view that it has necessary jurisdiction to proceed with the case, then the Petitioner may be directed to implead the Rajasthan Utilities as party to the Petition.

4. In response, learned counsel for the Petitioner submitted that, as per his instructions, the last amendment to RfS was dated 4.1.2019, whereby it was specified that this Commission shall be the appropriate Commission to exercise the regulatory and adjudicatory jurisdiction in regard to matters between the solar power developer and SECI. However, if there had been a subsequent amendment to the RfS as cited by SECI, the Petitioner may be permitted to examine the issue of jurisdiction.

5. Considering the submissions made by the learned counsel for the Petitioner and learned senior counsel for the Respondent, SECI, the Commission directed SECI to share its note of submissions along with the amendments to RfS as relied upon with the Petitioner, who may file its response on the issue of the jurisdiction of the Commission within two weeks.”

3. The Petitioner vide its affidavit dated 9.7.2021 has submitted that the Commission in its order dated 15.4.2021 in Petition No. 52/AT/2021 has held that where there is no composite scheme for generation and sale of electricity in more than one State and that the seller (generator) and the sole procurer are located in the same State, this Commission will not have jurisdiction under Section 79(1)(b) of the Electricity Act, 2003. It has been submitted by the Petitioner that admittedly, in the present case, the generator i.e. the Petitioner and sole procurer, Rajasthan Urja Vikas Nigam Limited are located in the same State. Accordingly, the Petitioner has sought permission of the Commission to withdraw the present Petition with liberty to approach the Appropriate State Commission on the issue.

5. In view of the submissions of the Petitioner, the Petitioner is permitted to withdraw this Petition.

6. Accordingly, the Petition No. 77/MP/2021 is disposed of as withdrawn in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson