

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 245/AT/2022

Subject : Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for Solar Power Projects (Tranche IX) connected to inter-State Transmission System and selected through Competitive Bidding Process as per the Guidelines of Government of India.

Date of Hearing : 15.12.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Solar Energy Corporation of India Limited (SECI)

Respondents : AMP Energy Green Private Limited and 11 Ors.

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Ms. Mannat Waraich, Advocate, IB Vogt & ReNew
Shri Mohmd. Siddique, Advocate, IB Vogt & ReNew
Shri Gopal Jain, Sr. Advocate, Ayana Renewable
Ms. Priya Dhankher, Advocate, Ayana Renewable
Shri Nikhil Bhatia, Advocate, Ayana Renewable
Shri Aniket Prasoon, Advocate, Ayana Renewable
Shri Amit Kapur, Advocate, AMP Energy
Ms. Jyotsna Khatri, AMP Energy
Shri Ankur Sharma, AMP Energy
Shri Abhilash Yadav, AMP Energy

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking adoption of tariff for the Solar Power Projects (Tranche - IX) connected to Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Guidelines for Tariff Based Competitive Bid Process for Procurement of Power from Grid Connected Solar Power Projects dated 3.8.2017 and subsequent amendments thereto ('the Guidelines') issued by the Government of India. Learned counsel mainly submitted as under:

- (a) The Commission vide order dated 8.3.2022 in Petition No. 211/AT/2021 filed by SECI has already held that the selection of bidders and the tariff has been through a transparent competitive bidding process in ISTS Solar Tranche – IX scheme in accordance with the Guidelines.
- (b) In the said order, the Commission, only adopted the tariff for 300 MW for which the Power Purchase Agreement (PPA) and Power Supply Agreement (PSA) had been executed. However, the Petitioner was granted liberty to approach the Commission for adoption of tariff in respect of balance capacity

after such capacity is tied up and PPAs and PSAs for the said capacities are executed.

(c) Since then SECI has executed the PPAs and PSAs for 1400 MW of solar power (out of balance 1700 MW) under Tranche IX Scheme, which have been filed along with the Petition. With respect to balance 300 MW capacity awarded to Solarpack Corporacion Tecnologica SA, so far, SECI has been able to identify and sign the PSA with J&K Power Corporation Ltd. for 100 MW, but 200 MW has not yet been tied up with any Buying Utility. However, Solarpack has not signed the PPA for part-capacity of 100 MW corresponding to PSA signed with J&K Power Corp. Ltd.

(d) Respondent Nos. 10 and 11 i.e. ReNew Surya Aayan Pvt. Ltd. and ReNew Surya Vihaan Pvt. Ltd. vide its undertaking dated 15.9.2021 have suo-motu reduced the tariff from Rs. 2.38/kWh (as discovered in e-RA) to Rs. 2.37/kWh for 300 MW and 100 MW capacities. Similar aspect of suo-motu reduction of tariff has been considered by the Commission in its order dated 2.4.2022 in Petition No. 286/AT/2021 (SECI v. Azure Power India Pvt. Ltd. and Ors.)

(e) Article 12.1.3 of the PPAs provides for recognition of changes in Basic Custom Duty, GST and Safeguard Duty as Change in Law events at the time of passing of adoption tariff. Similar aspect has already been considered by the Commission vide order dated 11.4.2022 in Petition No. 260/AT/2021 (SECI v. Adani Renewable Energy Holding Fifteen Ltd. and Ors.)

(f) However, in this case, Article 12.2.6 of the PPAs specifically stipulate the commitment by the Solar Power Developers of not claiming any increase in BCD to 40%/25% on Solar Modules/cell and hence, for giving effect to the specific provision of Article 12.2.6 in the PPAs, while observing the changes in the rates in BCD as Change in Law may also record that it will be subject, however to the limitation specifically provided in Article 12.2.6 of the PPAs.

(g) In this case, by the terms of Change in Law provision itself the impact is restricted to cost incurred till SCD/extended SCD (for reasons other than those wherein such extension is on account of LD, penalty, charges as the case may be). The standard PPA also contained a similar provision. This aspect has also been taken note of by the Commission in order dated 8.3.2022 in Petition No. 211/AT/2021.

2. Learned counsel for the Respondent No.1 APM Energy Green Pvt. Ltd. & Respondent No.7, AMP Energy Green Five Pvt. Ltd. mainly submitted as under:

(a) The Respondents have sought recognition and declaration of four events as narrated in the reply and as also captured in the earlier order dated 8.3.2022 in Petition No. 211/AT/2021 [Para 9 (b)] as Change in Law events in terms of the Article 12 of the PPA. For two of these events viz. (i) increase of Basic Custom Duty on import of Solar inverter from 5% to 12 % in terms of Ministry of Finance (MoF) Notification Nos.3/2021 & 7/2021 dated 1.2.2021 and (ii) notification of GST @ 12% on Solar PV modules and other renewable equipment w.e.f. from 1.10.2021 in terms of MoF's Notification dated 30.9.2021, SECI has not opposed to the request of the Respondents.

(b) Further, subsequent to 22.6.2020, the Hon'ble Supreme Court also passed an order dated 19.4.2021 in Writ Petition (Civil) No. 838 of 2019 titled M. K.

Ranjitsinh & Ors. v. Uol & Ors., issuing directions/ measures to be adopted, *inter-alia*, towards existing and future laying of overhead transmission lines and future laying of over-head transmission lines in the priority and potential habitats of Great Indian Bustard. This order of the Hon'ble Supreme Court needs to be recognized as Change in Law event under the PPA.

(c) Further, as on date of submission of bid, the Respondents were entitled to avail the benefit of concessional rate of 5% custom duty as permitted under the Project Imports Regulations, 1986 whereby the goods imported for the purpose of setting up of power projects was subjected to single rate of duty instead of merit assessment of imported goods. However, on 19.10.2022, the Ministry of Finance, Department of Revenue issued the Project Import (Amendment) Regulations, 2022 whereby the solar power plants/solar power projects were excluded from availing the concessional custom duty rate.

(d) As result of the above, the Respondents are no longer eligible for availing the concessional custom duty rate.

(e) As per Article 12.1.3 of the PPA, the Commission is required to recognize the changes in the rates of Safeguard Duty, GST and BCD after 22.10.2020 as Change in Law at the stage of adoption of tariff. Thus, at this stage, the Respondents are only seeking recognition of increase in the rates of BCD in terms of Project Import (Amendment) Regulations, 2022 and the entitlement of compensation, as per the provisions of PPA, to be considered only at the relevant point of time and upon production of necessary audited accounts.

3. Learned senior counsel for the Respondent No. 4, Ayana Renewable Power Private Limited and Respondent No. 9, Ayana Renewable Power Three Pvt. Ltd. mainly submitted as under:

(a) Waivers granted by the Respondents vide its letters dated 23.8.2021, 1.9.2021 and 9.2.2022 as recorded in Article 12.1.6 of the PPA is only limited to the claim for Change in Law on account of issuance of MNRE's OM dated 9.3.2021 and do not restrict the Respondents from claiming the compensation on account of Change in Law event, specifically issuance of Project Imports (Amendment) Regulations, 2022.

(b) The aforesaid undertakings were issued by the Respondents in light of then existing laws which allowed the option to avail concessional rate of BCD at 5% for import of goods required for setting up the solar power projects under the Project Import Regulations, 1986 which has now been removed by way of amendment dated 19.10.2022.

(c) As per Article 12.1.3 of the PPA, any change in the rates of Safeguard Duty, GST and BCD after 22.6.2020 which results in change in project cost will be treated as Change in Law and the quantum of compensation payment on account of such change in rates of duties shall be provided to the affected party as per Article 12.2.3 subject to the Commission recognizes such provision at the time of adoption of tariff.

(d) Thus, the Commission may recognize that the issuance of the Project Imports (Amendment) Regulations, 2022 dated 19.10.2022 resulting in increase in the rates of BCD on import of solar modules and cells is a Change in Law event in terms of Article 12 of the PPA.

4. In response, learned senior counsel for the Petitioner mainly submitted as under:

(a) Insofar as the order of Hon'ble Supreme Court dated 19.4.2021 dealing with GIB is concerned, the same is a law laid down by the Hon'ble Supreme Court but the developer is required to establish the actual impact of Change in Law on account of the above and the Change in Law aspect of the said order on the project is to be considered as per the terms of MNRE's OM dated 3.2.2022.

(b) As per Article 12.2.6 of the PPAs, the Solar Power Developers have waived their Change in Law claim of BCD on Solar Modules upto 40% and on Solar Cells upto 25% and are entitled to Change in Law relief only if there is any further increase of BCD.

(c) The Project Import (Amendment) Regulations, 2022 dated 19.10.2022 as notified by Ministry of Finance has not affected in any manner the rates of BCD as per MNRE OM dated 9.3.2021. There is no change in the rates of BCD vis-à-vis Solar Modules (40%) and Solar Cells (25%) on account of the above notification dated 19.10.2022 in comparison to what the developers already considered and given a waiver for in the PPA.

(d) SECI may be permitted to file its rejoinder to the reply filed by Respondent Nos. 4 & 9 and also upload its note of arguments.

5. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission permitted the Petitioner and Respondent to upload their note of arguments, if any, within two weeks with copy to the other side. The Commission also permitted the Petitioner, SECI to file its rejoinder to reply filed by Respondent Nos. 4 & 9 within two weeks.

6. Subject to the above, the Commission reserved order in the matter.

By order of the Commission

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