

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 207/MP/2021 along with IA No. 47/2022

- Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement(s) dated 25.06.2019 seeking issuance of appropriate order(s) / direction(s) / declaration from this Commission that the imposition of safeguard duty on the import of solar cells, whether or not assembled in modules or panels, vide Notification No. 2/2020-Customs (SG) dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance (Government of India) is an event of Change in Law and for seeking approval to the quantum and mechanism of compensation (along with interest) as submitted along with the present Petition in line with the methodology as settled by this Commission vide its order dated 20.08.2021 in Petition No. 536/MP/2020.
- Date of Hearing : 7.3.2023
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Eden Renewable Cite Private Limited (ERCPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Parties Present : Shri Hemant Sahai, Advocate, ERCPL
Shri Nitish Gupta, Advocate, ERCPL
Shri Nishant Talwar, Advocate, ERCPL
Shri Siddharth Jain, Advocate, ERCPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Shri Arijit Maitra, Advocate, BYPL

Record of Proceedings

During the course of hearing, learned counsel for the Petitioner and the Respondent, SECI made their respective submissions in the matter. Learned counsel for the Petitioner, *inter-alia*, submitted that the instant case is squarely covered by the order of this Commission dated 20.1.2023 in Petition Nos. 722/MP/2020 and Anr.(Azure Power Forty One Pvt. Ltd. v. SECI and Ors.) ('Azure Order'). Learned counsel, however, pointed out that in the said case, the Commission while allowing the carrying cost has relied upon the judgment of Appellate Tribunal for Electricity dated 15.9.2022 in Appeal No.256 of 2019 and Ors. ('Parampujya Judgment'), the Power Purchase Agreement in the Petitioner's case contains a restitution clause and therefore, the Petitioner's entitlement for the

carrying cost flows from the judgment of Hon'ble Supreme Court in the case of Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr. Learned counsel further submitted that while SECI has proposed the discount rate @ 9%, the Petitioner, in view of its cost of capital being higher, has proposed the discount rate @ 10.41% which ought to be allowed by the Commission. Learned counsel for SECI, on the other hand, submitted that SECI has already filed its detailed reply in the matter which may be considered. Learned counsel added that in the Azure Order, the Commission, after taking into the account the submissions of SECI, has allowed the discount rate @ 9%. Learned counsel further pointed out that in terms of the order of Hon'ble Supreme Court dated 12.12.2022 in Civil Appeal No. 8880 of 2022, the order of Commission implementing the directions of APTEL in paragraph 109 of the Parampujya Judgment is not to be enforced and that directions in paragraph 109 of the Parampujya Judgment are not limited to carrying cost but extend to Change in Law claims post COD of the Projects & O & M expenses, etc.

3. Learned proxy counsel appearing on behalf of arguing counsel for the Respondent, BYPL informed about non-availability of the arguing counsel due to personal difficulty and sought liberty to file reply on behalf of the Respondent, BYPL.

4. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Respondent, BYPL to file its reply within two weeks with copy to the Petitioner, who may file its rejoinder within two weeks thereafter. The Commission also permitted the parties to file their respective written submissions within two weeks with copy to other side.

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

By order of the Commission

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