

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.345/MP/2022**

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12.2 and Article 16.3.1 of the Power Purchase Agreements dated 28.11.2019 for the development of 390 MW (2x195 MW) ISTS connected Wind-Solar Hybrid power project(s), entered between Adani Hybrid Energy Jaisalmer One Limited (earlier known as Adani Green Energy Eighteen Limited, an SPV of Mahoba Solar (UP) Private Limited) and Solar Energy Corporation of India Ltd. seeking reliefs for the additional expenditure incurred due to occurrence of Change in Law events.

Petitioner : Adani Hybrid Energy Jaisalmer One Limited (AHEJOL)

Respondents : Solar Energy Corporation of India Limited (SECI) and Anr.

**Petition (Diary) No.541/2023**

Subject : Petition under Section 79(1 )(b) and 79(1 )(f) of the Electricity Act, 2003 for declaration of Notification No. 02/2020-Customs (SG) dated 29.07.2020 as a 'Change in Law' event resulting in reduction of the Safeguard Duty on Solar Cells and seeking recovery of the impact amounting to Rs. 47,59,05,435/- alongwith carrying cost on account of the benefit directly accrued upon Respondent No. 1 due to such reduction in Safeguard Duty.

Petitioner : Haryana Power Purchase Centre (HPPC).

Respondents : Adani Hybrid Energy Jaisalmer One Limited & Anr.

Date of Hearing : **3.1.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

Parties Present : Shri Amit Kapur, Advocate, AHEJOL  
Ms. Sakshi Kapoor, Advocate, AHEJOL  
Ms. Priyakshi Bhatnagar, Advocate, AHEJOL  
Shri Subham Bhut, Advocate, AHEJOL  
Shri Ravi Sinha, AHEJOL  
Ms. Sonia Madan, Advocate, HPPC  
Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Anushree Bardhan, Advocate, SECI  
Ms. Surbhi Kapoor, Advocate, SECI

## Record of Proceedings

At the outset, the learned counsel for Respondent, Haryana Power Purchase Centre (HPPC), submitted that the Commission, vide Record of Proceedings for the hearing dated 18.12.2023 in Petition No. 345/MP/2022 and Anr., permitted the Respondent to demonstrate the need of tagging the Petition (Diary No. 541/2023) as filed by the Respondent with the Petition No. 345/MP/2022. The learned counsel for the Respondent submitted that in Petition No. 345/MP/2022, the Petitioner, AHEJOL has, *inter-alia*, sought the Change in Law compensation on account of the imposition of the Safeguard Duty @ 14.5% as per the Ministry of Finance's Notification No.2/2020-Customs (SG) dated 29.7.2020. However, in its Petition (Diary) No. 541 of 2023, the Respondent has pointed out that by virtue of Notification No. 2/2020-Customs (SG) dated 29.7.2020, there has been, in fact, a reduction in the applicable rate of the Safeguard Duty in the case of the Petitioner, Adani Hybrid Energy Jaisalmer One Limited (AHEJOL) herein and accordingly, HPPC is seeking recovery of Rs. 47,59,05,435/- along with carrying cost on account of the benefit having directly accrued to the Petitioner, AHEJOL due to such reduction in the Safeguard Duty. Learned counsel further submitted that any decision taken in Petition No. 345/MP/2022 would have a direct impact on the Petition (being Diary No. 541/2023) filed by HPPC, and therefore, both are required to be taken up together. Learned counsel further circulated its note of arguments and mainly submitted as under:

(a) On 30.7.2018, the Ministry of Finance (MoF), Government of India issued a notification for imposing the Safeguard Duty, and the date of issuance of RFS was 22.6.2018. The last date of the bid submission was 20.9.2018. The first amendment of the RFS mentioned that the Schedule Commissioning date should be 18 months from the date of issue of the LOA. The bid cut off date was 20.9.2018, and the bidder, while submitting the bid, only took into account the first amendment, which mentioned that SCOD is 18 months from the issuance of the LOA. The said amendment mentioned that the Scheduled Commissioning date shall be 18 months from the effective date of the PPA.

(b) LOA was to be issued on the award, which ought to have been done as per the timeline, but it was actually issued on 25.1.2019. Even considering the best case for the Petitioner and the expected date of LOA as 25.1.2019, the Project was obviously envisaged to be completed by 25.7.2019 i.e. prior to the Notification dated 29.7.2020 (Notification issued by MoF in light of the recommendation made for continued imposition of the safeguard duty for the period from 30.7.2020 till 29.7.2021).

(c) In any case, the supply of solar cells had to be envisaged at least 2 months prior to the completion date. Hence, the Petitioner ought to have factored in the prevailing Safeguard Duty imposed vide Notification dated 30.7.2018 in the bid price.

(d) Further, as per the amendment to RFS dated 12.10.2018 also, the PPA had to be executed within 2 months of the LOA. While submitting the Financial Bid against the RFP, the Petitioner could not have envisaged that the PPA would be executed as late over 14 months after the bid submission. Considering that as well, it stands established that imports were certainly planned before 29.7.2020, i.e. the date of Safeguard notification.

(e) The Petitioner ought to have duly factored in the prevailing Safeguard Duty in the bid as the same was submitted with SCOD envisaged as 18 months from the LOA, which in any case is prior to Notification dated 29.7.2020.

(f) The orders passed by this Commission (referred order dated 20.1.2023 in Petition Nos. 722/MP/2020 & 723/MP/2020) with respect to allowing a claim for the Change in Law pertaining to the Safeguard Duty are distinguishable and do not impact the adjudication of the Petition filed by the HPPC.

(g) Safeguard Duty at the rate of 20% was factored in the bid by the Petitioner. However, the solar modules were purchased by the Petitioner at a rate of 14.5% as per the Notification dated 29.7.2020. Thus, the Petitioner has benefited on account of the Change in Law with the promulgation of the Notification dated 29.7.2020, thereby entitling HPPC to claim the same.

(h) Since in Petition No. 345/MP/2022, the Petitioner has specifically raised the issue of imposition of the Safeguard Duty as Change in Law event, Diary No. 541 of 2023 filed by HPPC may also be taken up along with the Petition No. 345/MP/2022 as any decision taken in Petition No. 345/MP/2022 would impact on the claims of the HPPC.

2. In rebuttal, the learned counsel for the Petitioner, AHEJOL, pointed out that the cut-off date, in the present case, was 20.11.2018 instead of 20.9.2018. Learned counsel further strongly opposed the request of the learned counsel for the Respondent, HPPC, for tagging Petition (Diary) No. 541 of 2023 along with Petition No. 345/MP/2022. Learned counsel submitted that since pleadings in Petition No. 345/MP/2022 had been completed long back, and the matter had also been argued before the Commission. Learned counsel submitted that since Respondent, HPPC has already raised the issue of reduction in the Safeguard Duty in its reply, there is no need to tag or take up the Petition filed by HPPC, which is only at Diary Stage, with Petition No. 345/MP/2022. Learned counsel referred the Commission's order dated 19.12.2023 in Petition No. 171/MP/2021 (ReNew Sun Waves Pvt. Ltd. v. SECI and Ors.) and submitted that the similar contentions, as raised by HPPC, have already been considered and rejected by the Commission while allowing the Change in Law claim towards the imposition of Safeguard Duty. Learned counsel submitted that the conduct of the Respondent, HPPC, in filing the Petition (Diary) No. 541 of 2023 only at this stage is nothing but a dilatory tactic, and the Hon'ble Supreme Court, in catena of judgments, has condemned such dilatory tactics of public utilities such as the Respondent, HPPC herein and has also proceeded to impose cost in certain cases. Learned counsel, accordingly, requested not to tag Petition (Diary) No. 541 of 2023 with Petition No. 345/MP/2022 and to reserve the matter for order.

3. In response, the learned counsel for the Respondent, HPPC, submitted that the cut-off date, as mentioned by the Respondent has been so indicated in the Petition filed by the Petitioner itself. Learned counsel submitted that there is no dilatory tactic on the part of the Respondent, HPPC, as alleged, and pointed out that the counter claim (recovery amount) by the Respondent could have been made only upon the Petitioner having furnished various information/details relating to its Change in Law claim of Safeguard Duty. Learned counsel further added that the delay, in fact, is on the part of the Petitioner, AHEJOL, who had issued the Change in Law notice for claiming the imposition of Safeguard Duty as Change in Law event just before filing of the Petition No. 345/MP/2022 and more than 2 years after the concerned Notification of 29.7.2020.

4. Learned counsel for the Respondent, SECI, submitted that Respondent, HPPC, in its Diary No. 541/2023, has raised the issue of reduction in the Safeguard Duty, whereas the Petitioner in Petition No. 345/MP/2022 has sought to raise a claim of imposition of the Safeguard Duty and any decision taken in Petition No. 345/MP/2022 would affect the contention of HPPC in the former. However, keeping in view that similar contentions have also been raised by HPPC in its reply in Petition No. 345/MP/2022 and if considered by the Commission in this case itself, it may not prejudice HPPC in any manner.

5. Considering the submissions made by the learned counsel for the parties, the Commission observed that insofar as the Change in Law claim of AHEJOL towards Safeguard Duty is concerned, Petition No. 345/MP/2022 and Petition (Diary) No. 541/2023 appear to be in the nature of counter-claims and the Commission, accordingly, deemed it appropriate to take up the Petition (Diary) No.541/2023 along with Petition No. 345/MP/2022. However, keeping in view the primary objection of AHEJOL towards taking up both matters together being the prolongation of proceedings in Petition No. 345/MP/2022, the Commission directed to list both matters for final hearing on 31.1.2024 itself. Accordingly, the Commission directed the Respondents in Petition (Diary) No. 541/2023 to file their reply(s) to the Petition, if any, within 10 days after serving a copy of the same to the HPPC, who may file its rejoinder within a week thereafter. The Commission indicated that the parties should strictly comply with the above timelines and that the request for an extension of time/ or adjournment of the matter on that day will not be entertained.

6. Petition No. 345/MP/2022, along with Diary No. 541/2023, will be listed for hearing on **31.1.2024**.

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Joint Chief (Law)**