

**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 No. 6/MP/2024

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/- along with 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 : **31.1.2024**

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
Shri Parag Tripathi, Sr. Advocate, HPPC
Ms. Sonia Madan, Advocate, HPPC
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI

Record of Proceedings

During the course of the hearing, the learned senior counsel for the Petitioner, HPPC (in Petition No. 6/MP/2024), circulated a tabulated chronology of the events and mainly submitted as under:

(a) A Request for Selection ('RfS') dated 22.06.2018 was floated by Respondent, SECI, wherein the Respondent, Adani Hybrid Energy Jaisalmer One Limited (AHEJ1L), participated in the said RfS and submitted its bid on 20.11.2018. At the time of submission of the bid, the Notification No. 01/2018-Customs (SG) dated 30.07.2018 was already in force, as per which the Safeguard Duty was payable on import of solar cells for a period of 2 years at varying rates ranging from 25% to 15%. At the time of submission of the bid, the date of commissioning of the Project was 18 months from the issuance of Letter of Award ('LOA').

(b) Typically, the issuance of the LOA takes place within 7-15 days after the e-reverse auction. However, in the present case, the e-reverse auction was conducted on 15.12.2018 and the LOA was issued on 25.1.2019. Further, as per Clause 3.14.3 of RfS, the PPA was to be signed within 2 months from the date of issuance of the LOA, and the effective date of the PPA was to be 2 months after the LOA. The PPAs were, however, entered into between SECI and AHEJ1L only after a considerable delay on 28.11.2019, and the Scheduled Commercial Operation Date ('SCoD') as per PPA was 7.5.2021. However, at the time of placing its bid, AHEJ1L had no reason to assume that there would be delays in the issuance of the LOA or signing of the PPAs, and as per the timelines envisaged in the RfS, the project completion date (COD) would have been 20.8.2020 giving merely 22 days' window between the Safeguard Duty cut-off date (29.7.2020) and COD.

(c) Even if the actual date of issuance of the LOA, i.e. 25.1.2019, is considered, the COD of the Project would work out to 25.9.2020 thereby giving only 58 days' window between the Safeguard Duty cut-off date and the COD. This clearly reflects that the Safeguard Duty imposed vide Notification dated 30.07.2018 was already factored in by AHEJ1L in the quoted tariff at the time of submission of its bids.

(d) Further, as per Clause 3.16 of RfS, the financial closure was to be achieved within 9 months from the date of issuance of the LOA i.e. by 25.10.2019. As such, AHEJ1L would have placed the orders for the purchase of the solar cells after achieving the Financial Closure on 25.10.2019 when the prevailing rate of the Safeguard Duty was 20% as per the Notification dated 30.07.2018. Accordingly, it can be safely concluded that at the time of submission of the Financial Bid, the Safeguard Duty at the rate of 20% was factored in the bid by the AHEJ1L.

(e) No prudent or reasonable generator will envisage that the date of issuance of the LOA and subsequent events pursuant thereto, such as execution of the PPA, may happen beyond the reasonable timeline, and therefore, there is no substance in even drawing a presumption that the generator would not have factored in prevailing duties essential for considering financial viability of the project.

(f) Though AHEJ1L has placed on record the invoice (at Annexure 16 of Petition No. 345/MP/2022), it has, however, not placed any purchase order on record to support its claim. Section 114 of the Indian Evidence Act stipulates that if there is some fact or material, particularly that which is through the notice and knowledge of a party and which is relevant to the proceedings and is not produced, then an adverse inference will be drawn.

(g) Reliance placed by the AHEJ1L on the cases on the earlier orders of this Commission in Eden and ReNew matters is misplaced, as the factual matrix of these cases is distinguishable from that of the present case.

2. Learned senior counsel for the Respondent, SECI made brief submissions in the matter and clarified the various timelines – relating to the bid process, issuance of the LoA and execution of the PPAs – actuals as well as originally envisaged. Learned senior counsel also clarified the reasons for delays in the execution of the PPAs. However, in response to the pointed query of the Commission regarding SECI's specific views regarding HPPC's assertion that safeguard duty as per prevailing notification has already been factored into the bid by the Petitioner, the learned senior counsel fairly stated that SECI, in its reply, has not addressed this specific issue raised by HPPC and be permitted to file an additional affidavit on this aspect.

3. Learned counsel for AHEJ1L pointed out that the submissions made by the learned senior counsel for HPPC are not raised in any of HPPC's pleadings in these matters, and HPPC may, therefore, be directed to file its submissions to this effect, thereby allowing AHEJ1L to file its response thereon. Learned counsel also added that the submissions made by HPPC indicating the various timelines are merely on a hypothetical basis. Learned counsel also added that it is well settled that the provisions of the PPA, once having executed, would override the provisions of the RfS, and Respondents cannot, by relying upon the provisions of RfS, deny the legitimate claims of AHEJ1L arising out of the clear terms of the PPAs.

4. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission directed the Respondents, HPPC and SECI to file their respective affidavits to put forth their submissions, not covered by the existing pleadings within two weeks with a copy to AHEJ1L, who may file its response thereon, if any, within a week.

5. These matters will be listed for the hearing on **6.3.2024**.

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