



Petition No. 1665/2021

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order: 17.05.2021

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Kaushal Kishore Sharma, Member
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF

Petition under Section 86(1)(b), Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 13.02.2019 filed on behalf of M/s. Tata Power Renewable Energy Limited, seeking declaration from this Hon'ble Commission that the imposition of safeguard duty for the period of 30.07.2020 to 29.07.2021 on the import of solar cells vide Notification No. 02/2020- Customs (SG) dated 29.07.2020 of the Ministry of Finance as an event of 'change in law'.

M/s. Tata Power Renewable Energy Limited
Through its Authorized Representative
Corporate Centre, A Block, 34, Sant Tukaram Road, Carnac Sunder, Mumbai-400009

..... **Petitioner**

Noida Power Company Limited
Through its Chairman
Commercial Complex H Block, Alpha-II sector, Greater Noida City - 201308

..... **Respondent**

The following were present:

1. Shri Deepak Raizada, CE, UPPCL
2. Ms. Namrata Kalara, Sr. Project Officer, UPNEDA
3. Shri Anand Shrivastava, Advocate, TPREL
4. Shri Shivam Sinha, Advocate, TPREL

ORDER

(Date of Hearing 27.04.2021)

1. The present petition is filed by the Petitioner, M/s. Tata Power Renewable Energy Limited, under Section 86(1)(b), Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 read with Article 12 of



the Power Purchase Agreement dated 12.02.2019 ("PPA") seeking declaration from this Commission that the imposition of safeguard duty on the import of solar cells *vide* Notification No. 02/2020-Customs (SG) dated 29.07.2020 by the Ministry of Finance ("New Notification") as an event of 'change in law' with effect from 30.07.2020. The Prayers are as follows:

- i. Admit the present petition;
 - ii. Hold and declare that the imposition of safeguard duty by the Ministry of Finance *vide* its Notification dated 29.07.2020 as a 'change in law' event under Article 12 of the PPA with effect from 30.07.2020;
 - iii. Hold and declare that the Petitioner shall be entitled to recover the additional cost incurred, if any, in terms of the Article 12 of the PPA;
 - iv. Grant liberty to the Petitioner to file a separate petition subsequently and approach this Hon'ble Commission for seeking approval of the cost incurred due to the imposition of safeguard duty by the Ministry of Finance *vide* its Notification dated 29.07.2020 and restitute the Petitioner to the same economic position as if such 'change in law' event had not occurred;
 - v. Condone any inadvertent omissions/errors and permit the Petitioner to add/alter this filing and make further submissions as may be required in future;
2. UPNEDA representative submitted that they have not received the copies of Petition for submitting their reply. Further, Ms Namrata requested for six week time for filing their reply.
 3. Sh. Anand, Petitioner's counsel submitted that SCOD of the Project is 13.11.2020, however, as per MNRE notification dated 13.08.2020, the project is eligible for five month's extension. The Petitioner would be filing a separate Petition for approval of SCOD extension of the Project. However, the present petition is only for declaring Notification dated 29.07.2020 as "change in law".
 4. The Commission observed that before taking up the matter of "change in law", the impact of Safe Guard Duty on project cost and consequential impact on tariff, if any, need to be ascertained once the Project is commissioned.



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5. Therefore, the present matter shall be kept in abeyance till the SCOD extension matter is adjudicated and decided by the Commission. However, Petitioner is directed to serve copies of the Petition to the Respondent(s) and Respondents(s) are allowed six week time for reply and Petitioner may file its rejoinder in two weeks thereafter.

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow
Dated: 17.05.2021

