

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 207/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 16th December, 2021

In the matter of:

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 Hon'ble Commission vide its order dated 20.08.2021 in Petition No. 536/MP/2020.

And

In the matter of:

Eden Renewable Cite Private Limited,

Unit No. 236 B&C,

1st Floor, DLF South Court, Saket,

New Delhi-110017

...Petitioner

Vs.

Solar Energy Corporation of India Limited,

6th Floor, Plate B NBCC Office,

Block Tower-2, East Kidwai Nagar,

New Delhi – 110023

...Respondent

Parties Present:

Shri Hemant Sahai, Advocate for the Petitioner

Shri Nitish Gupta, Advocate for the Petitioner

Shri Avdesh Mandloi, Advocate for the Petitioner

Shri Nishant Talwar, Advocate for the Petitioner

ORDER

The Petitioner, Eden Renewable Cite Private Limited, has filed the present Petition with the following prayers:

“(a) Declare 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;

(b) Declare and allow the Petitioner to claim additional cost of Rs. 1,20,69,08,084 (along with carrying cost at 10.41%) on account of the change in law event, i.e. imposition of safeguard duty by the Ministry of Finance vide its notification dated 29.07.2020; and

(c) Direct the Respondent to pay total lump sum of Rs. 4,24,39,836 (assuming date of actual payment as 13.11.2021) or as calculated based on the date of actual payment, and to pay the remaining amount through equal monthly annuity of Rs. 1,41,46,612 spread throughout the remaining period of 13 years from the date of COD, as per the methodology prescribed by this Hon’ble Commission vide its order dated 20.08.2021 in Petition No. 536/MP/2020. The directions sought from this Hon’ble Commission is subject to assumption that the date of actual payment is 13.11.2021 and the claim shall stand revised / modified subject to the date of actual payment to be made by the Respondent;...”

2. The matter was called out for admission through virtual hearing on 14.12.2021.

3. During the course of hearing, the learned counsel for the Petitioner submitted that the present Petition may be disposed of in terms of the Commission`s order dated 6.12.2021 in Petition No. 228/MP/2021 (Mahindra Renewables Private Limited v. SECI) whereby the Commission directed the Petitioner to approach SECI/ procurers for settlement of Change in Law claims among themselves in terms of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”) and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. The learned counsel requested that the filing fees paid by the Petitioner for the present Petition

may be adjusted against the Petition to be filed in terms of Rule 3(8) of the Change in Law Rules.

4. We have considered the submission of the learned counsel for the Petitioner. The Commission in its order dated 6.12.2021 in Petition No. 228/MP/2021 had observed as under:

“10. We have considered the submissions made by the learned counsel for the Petitioner. Relevant portion of Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under

“2(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

- (i) -----*
- (ii) -----*
- (iii) -----*

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

- (a) where the agreement lays down any formula, in accordance with such formula;*
- or*
- (b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;*

(6) *The recovery of the impacted amount, in case of the fixed amount shall be —*

- (a) in case of generation project, within a period of one-hundred eighty months; or*
- (b) in case of recurring impact, until the impact persists.*

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

11. *As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondent, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.*

16. *It is evident that the Change in Law Rules has been framed to facilitate timely recovery of costs due to Change in Law events and provides a process and methodology to be followed. Admittedly, as the Petitioner has no objection in approaching the Procurers with computations and details in terms of the said Rules to claim relief under Change in Law, the Petitioner needs first to approach SECI/procurers in terms of the Change in Law Rules for adjustment of tariff on account of such Change in Law.*

17. *We note that the compensation for Change in Law shall be computed in terms of Rule 3(5) of the Change in Law Rules, which provides that where the agreement lays down any formula, the same shall be in accordance with such formula; or where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to the Change in Law Rules. The Petitioner has contended that it is covered by order dated 20.8.2021 in Petition No. 536/MP/2020 wherein the Commission has prescribed a mechanism of compensation for Change in Law event of imposition of safeguard duty and the provisions of the Change in Law Rules cannot supersede the provisions of the PPA...”*

5. In light of the above finding of the Commission and considering the submission of the learned counsel of the Petitioner, the Petitioner may approach SECI/ procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and may approach the Commission in terms of Rule 3(8) of the Change in Law Rules.

6. The filing fees deposited by the Petitioner in respect of the present Petition shall be adjusted against the Petition to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.

7. The Petition No. 207/MP/2021 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson