



नई दिल्ली
NEW DELHI

याचिकासंख्या./ Petition No.: 722/MP/2020
&
723/MP/2020

कोरम/ Coram:

श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्रीअरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 18th of February, 2022

IN THE MATTER OF PETITION NO. 722/MP/2020

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for the declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement dated 17.9.2019 executed between the Petitioner and the Respondent No.1.

AND IN THE MATTER OF:

Azure Power Forty One Private Limited
5th Floor, Southern Park, D-II,
Saket Place, Saket, New Delhi-110017

...Petitioner

Versus

Solar Energy Corporation of India Limited
1st Floor, A-Wing
D-3, District Centre

Saket, New Delhi, 110017

Grid Corporation of Odisha

Janpath, Bhubaneswar,
Odisha - 751022

BSES Rajdhani Power Limited

BSES Bhawan, Nehru Place,
New Delhi -110019

...Respondents

IN THE MATTER OF PETITION NO. 723/MP/2020:

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for the declaration of 'Change in Law' event due to introduction and imposition of Safeguard Duty by way of Notification No. 2/2020-Customs (SG) dated 29.7.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement dated 27.11.2019 executed between the Petitioner and the Respondent No.1.

AND IN THE MATTER OF:

Azure Power Maple Private Limited

5th Floor, Southern Park, D-II,
Saket Place, Saket, New Delhi-110017

...Petitioner

Versus

Solar Energy Corporation of India Limited

1st Floor, A-Wing
D-3, District Centre
Saket, New Delhi, 110017

Madhya Pradesh Power Management Company Limited

Shakti Bhawan, Rampur,
Jabalpur
Madhya Pradesh – 482008

...Respondents

Parties Present : Shri Shashwat Kumar, Advocate, APFOPL and APMPL
Shri Rahul Chouhan, Advocate, APFOPL and APMPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI

Ms. Neha Singh, SECI
Shri Manoj Kumar Das, GRIDCO
Shri Mahfooz Alam, GRIDCO

आदेश/ ORDER

The Petitioner, M/s Azure Power Forty One Private Limited(in Petition No. 722/MP/2020) is developing 300 MW Solar Photo Voltaic Power Project at village Nooreki Bhurj, Khakhuri, Dedasari, Kushla Ram ki Basti, Ismail ki Dhani, Tehsil Bap, District Jodhpur, Rajasthan. The project is being developed pursuant to the bid conducted by SECI through the RfS document dated 10.01.2019 for selection of Solar Power Developers (SPDs) for development of ISTS connected Solar Power Projects, generation and sale of Solar power under the above RfS for cumulative capacity of 1200 MW. M/s Azure Power India Private Limited (APIPL) (parent company of the Petitioner) participated in the bid conducted by SECI wherein the last date of bid submission was 15.02.2019. APIPL emerged as one of the successful bidders pursuant to its bid submitted on 15.02.2019 and e-Reverse Auction conducted on 25.02.2019. Accordingly, the Letter of Award (LOA) dated 05.03.2019 was issued by SECI in favour of APIPL for development of solar power project with the capacity of 300 MW AC.APIPL has formed the project company Azure Power Forty One Private Limited (petitioner in Petition No. 722/MP/2020) within the provisions of the RfS. The Petitioner has executed a Power Purchase Agreement (PPA) dated 17.09.2019 with Solar Energy Corporation of India Limited for sale of 300 MW.

2. M/s Azure Power Maple Private Limited, the Petitioner in Petition No. 723/MP/2020 is developing a 300 MW Solar Photo Voltaic Power Project at village Sonanda Shekhasar, Bandhari & Kesarapura, Tehsil: Bap District Jodhpur, Rajasthan. The Project is being developed pursuant to the bid conducted by SECI through the RfS document dated 13.03.2019 for selection of Solar Power Developers for development of ISTS connected Solar Power Projects, generation and sale of solar power under the above RfS for cumulative capacity of 1200 MW. The Petitioner participated in the aforesaid bid conducted by SECI wherein the last date of bid submission was 04.06.2019 and emerged as one of the successful bidders pursuant to its bid submitted on 30.05.2019 and e-Reverse Auction conducted on 25.02.2019. Accordingly, the Letter of Award (LOA) dated 25.07.2019 was issued by SECI in favour of the Petitioner for development of solar power project with the capacity of 300

MW AC. The Petitioner has executed a Power Purchase Agreement dated 27.11.2019 with Solar Energy Corporation of India Limited for sale of 300 MW.

3. The Petitioners(in Petition No. 722/MP/2020 & Petition No. 722/MP/2020) are seeking approval of Change in Law event that has occurred due to the coming into force of the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India (“SGD Notification 2020”). The SGD Notification 2020 provides for the imposition of Safeguard Duty on the Solar Cells whether or not assembled in modules or panels being imported into India from 30.07.2020 to 30.07.2021 from countries except from developing countries, as listed in Notification No.19/2016-custom(N.T.) dated 05.02.2016 (except People’s Republic of China, Thailand and Vietnam).
4. The Petitioners have made the following prayers:

In Petition No. 722/MP/2020

- a) *Admit the Petition;*
- b) *Hold and declare the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India as a 'Change in Law' event as under the Article 12 of the PPA;*
- c) *Specify and declare that 30.07.2020, i.e. the date of coming into force of the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, is the date from which the Change in Law is effective for the purposes of the PPA;*
- d) *Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty (including GST paid of Safeguard Duty) as and when paid by the Petitioner no later than sixty (60) days of claim(s) submitted by the Petitioner on the basis of each consignment of solar panel/modules;*
- e) *Allow and declare the Carrying Cost is allowed on the additional cost incurred/to be incurred by the Petitioner due to imposition of Safeguard Duty;*
- f) *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- g) *To pass such other and further order or orders as the Commission deems appropriate under the facts and circumstances of the present case.*

In Petition No. 723/MP/2020

- a) *Admit the Petition;*
- b) *Hold and declare the imposition of Safeguard Duty on the import of solar panels/modules through the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India as a 'Change in Law' event as under the Article 12 of the PPA;*
- c) *Specify and declare that 30.07.2020, i.e. the date of coming into force of the Notification No. 2/2020-CUSTOMS (SG) Dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, is the date from which the Change in Law is effective for the purposes of the PPA;*
- d) *Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty (including GST paid of Safeguard Duty) as and when paid by the Petitioner no later than sixty (60) days of claim(s) submitted by the Petitioner on the basis of each consignment of solar panel/modules;*
- e) *Allow and declare the Carrying Cost is allowed on the additional cost incurred/to be incurred by the Petitioner due to imposition of Safeguard Duty;*
- f) *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- g) *To pass such other and further order or orders as the Commission deems appropriate under the facts and circumstances of the present case.*

5. The case was called out for virtual hearing on 24.1.2022. During the course of hearing, the learned counsel for Petitioners submitted that Change in Law events have occurred due to coming into force of the Notification No. 2/2020- Customs (SG) dated 29.07.2020 issued by Department of Revenue, Ministry of Finance, Government of India and accordingly prayed for direction to the Respondents to compensate the Petitioners for the expenditure incurred/ to be incurred by the Petitioner due to such Change in Law along with carrying cost in terms of Article 12 of the Power Purchase Agreements. If the Commission, in line with the recent Orders passed in the matters relating to Change in Law, decides to direct the Petitioners to comply with the provisions of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, the filing fees paid by the Petitioners may be adjusted against the Petitions to be filed in future in terms of the Change in Law Rules.

6. The Commission observes that the Ministry of Power, Government of India has notified on 22.10.2021, the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”), the relevant provisions of which 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.”

7. The Commission further observes that as per the above quoted provisions, on occurrence of an event of Change in Law, the affected party, in the present case the Petitioners, and other parties, in the present case the Respondents/procurers, 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.
8. In view of the above, the Commission holds that the Petitioners may approach the Respondents/ procurers for settlement of Change in Law claims amongst themselves in terms of the Change in Law Rules and thereafter approach the Commission in terms of Rule 3(8) of the said Rules.
9. The filing fees deposited by the Petitioners in respect of the present Petitions shall be adjusted against the Petitions to be filed by the Petitioner in terms of Rule 3(8) of the Change in Law Rules.
10. Accordingly, Petition No. 722/MP/2020 and Petition No 723/MP/2020 are disposed of in terms of the above discussions and findings.

Sd/-
(पी. के. सिंह)
सदस्य

Sd/-
(अरुण गोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य