



Petition No. 1741 of 2021
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order (02.04.2022)

PRESENT:

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

IN THE MATTER OF: Petition under Section 86 of the Electricity Act, 2003 read with Articles 12 and 17 of the Power Purchase Agreement dated 14.02.2019 between Adani Solar Energy Chitrakoot One Limited (formerly Adani Wind Energy (TN) Limited) and NOIDA Power Company Limited claiming imposition of Safeguard Duty on import of Solar Cells vide Notification dated 29.07.2020 as Change in Law.

Adani Solar Energy Chitrakoot One Limited
"Adani Corporate House", 4th Floor – South Wing,
Shantigram, Near Vaishno Devi Circle, S. G. Highway,
Khodiyar, Ahmedabad, Gujarat – 382421.

----- Petitioner

Versus

Noida Power Company Limited
Commercial Complex, H Block, Alpha-II Sector,
Greater NOIDA City, Uttar Pradesh-2013018

----- Respondent

Following were present:

1. Sh. Sourav Roy, Counsel, Adani Solar Energy
2. Sh. Ravi Sinha, Adani Solar Energy
3. Sh. Sanket Srivastava, NPCL
4. Sh. Alok Sharma, NPCL
5. Sh. Dipak Kumar Patel

ORDER

(Date of Hearing 19.04.2022)

1. During the last hearing, the Commission vide order dated 11.03.2022 directed the Petitioner to furnish detail calculation of claimed amount of Rs. 8.77 Cr. The Petitioner has not filed the requisite details, however, filed its rejoinder on 28.02.2022.



The matter came up for hearing on today.

2. Sh. Sourav Roy, counsel of the Petitioner stated that the PPA was executed on 14.02.2019 and the bid deadline for the said PPA was 27.11.2018 and therefore, any change in taxes, duty etc. after this bid deadline is a Change in Law event under the PPA. Further, Sh. Sourav Roy stated that at the time of bid deadline, Safeguard Duty notification dated 30.07.2018 was existing which was supposed to end on 29.07.2020 and thereafter on 29.07.2020, another Safeguard Duty (SGD) notification came imposing levy of 14.9% and 14.5% from 30.07.2020 to 29.07.2021 and therefore, Safeguard Duty increased from zero to 14.9% for the Petitioner. The counsel also emphasized the MERC judgement in the case no. 218 of 2020 (Tata Power) wherein the MERC upheld the Safeguard Duty notification dated 29.07.2020 to be a Change in Law event.
3. Further, Sh. Sourav Roy submitted that the original SCOD of the project was 13.11.2020 however, it was extended on several times. The Commission enquired the Petitioner, from where these extension of SCOD were granted, Sh. Roy responded that the Respondents are not contending the extension of SCOD but raising the issue that applicable RfP mentioned all-inclusive tariff. Furthermore, Counsel stated that all the Bill of Entry dates are within the months of September-December 2020 i.e., after SGD notification dated 29.07.2020.
4. Sh. Alok Sharma on behalf of NPCL submitted that the SGD notification dated 29.07.2020 is not a new notification but a continuation of the existing SGD notification dated 30.07.2018 and therefore, it is not a Change in Law event and emphasized the RERC judgement wherein the RERC has disallowed the SGD notification dated 29.07.2020 to be a Change in Law event. Further, Sh. Sharma submitted that as per Hon'ble Supreme Court Judgement in Energy Watchdog case, when the PPA does not have the provision for economic restoration then the compensation under Change in Law event cannot be allowed.
5. After hearing the parties, the Commission allowed the Petitioner and the Respondent to file their Written Submission within ten days along with relevant judgements. The Commission shall pass appropriate orders after receipt of written submission of the parties.

(Vinod Kumar Srivastava)
Member

Place: Lucknow
Date: 09.05.2022

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman