Petition No. 1742 of 2021

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order (04.05.2022)

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 12.02.2019 between Adani Solar Energy Chitrakoot One Limited (formerly Adani Wind Energy (TN) Limited) and Uttar Pradesh Power Corporation 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

Uttar Pradesh Power Corporation Ltd. (UPPCL),
7th Floor, Shakti Bhawan, 14- Ashok Marg,
Lucknow, Uttar Pradesh-226001 ------- **Respondent**

Following were present:

1. Sh. Sourav Roy, Counsel, Adani Solar Energy
2. Sh. Kaushal Sharma, Advocate, Adani Solar Energy
3. Sh. Ravi Sinha, Adani Solar Energy
4. Sh. Deepak Raizada, C.E (PPA), UPPCL
5. Sh. Paresh Lal, Counsel, UPPCL
6. Sh. Dipak Kumar Panchal
7. Sh. Abhijeet Swaroop

ORDER

(Date of Hearing 31.03.2022)

1. During the last hearing, the Commission vide order dated 08.03.2022 directed the Petitioner to furnish detail calculation of its claim towards Safeguard Duty along with the copy of invoices and proof for the same. The Petitioner has not filed the requisite details, however, filed its rejoinder on 22.03.2022 to the UPPCL's reply.

   The matter came up for hearing on today.

3. Sh. Sourav Roy, counsel of the Petitioner stated that instant matter is for seeking compensation of Rs. 18.77 Cr. towards Change in Law events i.e., Safeguard Duty notification dated 29.07.2020.

4. The Commission observed that any claim towards Change in Law events consists of two steps i.e., first establishing the Change in Law events and then compensation on account of Change in Law event to the claimant.

5. Sh. Sourav Roy made its submission to establish Safeguard Duty notification dated 29.07.2020 as a "Change in Law event". He submitted that the applicable RfP date was 12.10.2018 and its bidding deadline was 27.11.2018 for which they submitted bid on 14.11.2018. The original SCOD was November 2020 which was extended to 14.04.2021 and actual COD was 06.01.2021 (for ~19 MW) and 09.04.2021 (for ~31 MW). Further, Sh. Sourav Roy argued that Safeguard Duty notification dated 30.07.2018 was to end on 29.07.2020 and considering Project SCOD, there was zero Safeguard Duty. He further submitted that thereafter on 29.07.2020, another Safeguard Duty notification came which imposes levy of 14.9% and 14.5% from 30.07.2020 to 29.07.2021.

6. The Commission asked the Petitioner, whether it was mandatory in the RfP document to procure the Modules/Cell from the abroad? Sh. Sourav Roy responded that it was not mandatory rather it was a commercial choice. The Commission observed that the Petitioner had planned to procure the Module/Cells after 29.07.2020, i.e. date of Safeguard Duty notification period and with in the 4 months of their SCOD, Sh. Sourav Roy responded in affirmation.

7. Further, Sh. Sourav Roy submitted that as per clause 12.1.1 (v) of the PPA, Safeguard Duty notification dated 29.07.2020 is a change is law event as the rates of duty changes from zero to 14.9% for 30.07.2020 to 29.01.2021 and argued that the MERC has upheld it to be a Change in Law event. The Commission asked the Petitioner whether there was any gap in the applicability of Safeguard Duty considering the notification dated 30.07.2018 & 29.07.2020, Sh. Sourav Roy responded that virtually there was no gap during the period of applicability. Sh. Sourav Roy further argued that as per

rules of the Custom Tariff Act, the Petitioner is entitled for a Change in Law event under the Safeguard Duty notification dated 29.07.2020.

8. Sh. Paresh Lal, Counsel of UPPCL submitted that the MERC's order is related to Tata Power wherein the procurer was also a group company of Tata Power and have not contested the Change in Law event. Further, Sh. Paresh Lal submitted that a Change in Law event has to satisfy; unforeseen event, whether claimed promptly and the event relates to the business of supply of power, as set out by various judgement of Hon'ble Supreme Court and Hon'ble APTEL. Petitioner has not satisfied all the above three conditions. The Counsel further stated that as per clause 2.24.3 of the RfP, the bidder has to examine all applicable customs acts and other factors before submitting the bid.

9. Further, Sh. Paresh Lal submitted that as per Custom Tariff Act, the Central Govt. can levy Safeguard Duty for a maximum 8 years to protect the domestic industries and this could happen either in Suo Moto proceedings or on application and in this case, the domestic industries have filed an application on 03.01.2020. The Counsel also added that the Petitioner's project is a section 63 project of fixed tariff for supply of power and therefore, Petitioner cannot claim the cost for setting up its plants. Accordingly, change in law cannot be claimed when there is no loss to the claimant and in this case the rate of Safeguard has reduced from 25% to 14.9%.

10. Sh. Sourav Roy in its rebuttal stated that there is a difference between this Renewable PPA and old thermal plant PPA, wherein compensation was categorized into construction and operation phase. Further, Sh. Sourav Roy submitted that it is difficult to predict whether somebody will approach the Central Government to extend the period of Safeguard Duty.

11. After hearing the parties, the Commission allowed the Petitioner and the Respondents to file their Written Submission within ten days along with relevant judgement including MERC order.

12. The Commission shall pass appropriate orders after receipt of written submission of the parties.

(Vinod Kumar Srivastava)	(Kaushal Kishore Sharma)	(Raj Pratap Singh)
Member	**Member**	**Chairman**

Place: Lucknow
Date: 04.05.2022