

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1984 of 2021.

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 read with Article 9 and 11 of the Power Purchase Agreement dated 12.11.2018 entered between the Adani Solar Energy Kutchh Two Private Limited (formerly known as Gaya Solar (Bihar) Private Limited) and GUVNL claiming imposition of Safeguard Duty imposed on import of Solar Cells by Ministry of Finance vide Notification dated 29.07.2020 as Change in Law.

Petitioner : Adani Solar Energy Kutchh Two Pvt. Limited,

Represented By : Ld. Adv. Mr. Prabudh Singh alongwith Mr. Dipak Kumar Panchal and Mr. Rajiv Lochan

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented By : Ld. Adv. Ms. Ashabari Thakur alongwith Mr. Amit Chavda

AND

Petition No. 1993 of 2021.

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 read with Article 9 and 11 of the Power Purchase Agreement dated 22.05.2019 between Adani Solar Energy Kutchh One Limited (formerly known as Adani Green Energy One Limited) and Gujarat Urja Vikas Nigam Limited claiming imposition of Safeguard Duty imposed on import of Solar Cells by Ministry of Finance vide Notification dated 29.07.2020 as Change in Law.

Petitioner : Adani Solar Energy Kutchh One Pvt. Limited,

Represented By : Ld. Adv. Mr. Prabudh Singh alongwith Mr. Dipak Kumar Panchal and Mr. Rajiv Lochan

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented By : Ld. Adv. Ms. Ashabari Thakur alongwith Mr. Amit Chavda

CORAM:

Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 10/08/2023.

DAILY ORDER

1. The above matters were heard on 04.07.2023.
2. Ld. Adv. Mr. Prabudh Singh, appearing on behalf of the Petitioner, submitted that the issue in these Petition is similar to Petition No. 1966 of 2021 in which arguments are advanced by the Ld. counsel for the Petitioner therein and accordingly, without reiterating the same, the Petitioner herein, is adopting the same. It is further submitted that during the last hearing in the present matters, the Petitioner has made the submissions and advanced the arguments and also filed additional affidavit providing the documents for verification of the claim of the Petitioner. It is submitted that the Commission in its Daily Order dated 09.06.2022 directed the Petitioner to provide certain documents as stated in para 5.5 of the said Daily Order for verification of the claim of the Petitioner on account of 'Change in Law' in the present Petition. In compliance to the said directives, the Petitioner vide its additional affidavit dated 08.07.2022 has provided all the aforesaid documents alongwith the technical details as sought by the Commission.
- 2.1. It is submitted that the levy of safeguard duty as per Safeguard Duty Notification 2018 was only for a period of two years i.e., upto 29.07.2020 and there are no provisions of further extension of safeguard duty was provided in the said Notification. It is also submitted that the Petitioner is entitled to carrying cost on the principle of compensation for time value of money towards additional costs incurred and 'Change in Law' provision is for restitution relief required to be granted in a manner to place the affected party in same financial/economic position. and basis as contained in the PPA since both the carrying cost and late payment surcharge are meant to compensate the affected party for time value of money. It is also submitted that the Petitioners are

entitled to “carrying cost” from the date of Change in Law' Notification, in the present matter it is from 30.07.2020 when the safeguard Duty Notification was made applicable. In this regard, reliance is being placed on the judgement of the Hon'ble APTEL in GMR Kamalanga Energy Limited & Ors. V/s. CERC & Ors. in Appeal No. 193 of 2017 wherein the Hon'ble APTEL has granted the carrying cost.

- 2.2. It is further submitted that the reliance placed by the Respondent GUVNL on the case of Parampujya Solar Energy Pvt. Limited Vs. NTPC Limited is not applicable to the present case as the aforesaid judgment pertains to the implementation of the GST laws wherein it was held that the GST shall not be applicable if the tax was paid under earlier laws, i.e., before the implementation of the GST laws, whereas point in the present matters are the point of taxation i.e., levy of safeguard duty was after the coming into effect of the Safeguard Duty Notification 2020.
3. Ld. Adv. Ms Ashabari Thakur, appearing on behalf of the Respondent submitted that the Respondent GUVNL has received the documents submitted by the Petitioner in terms of the directives of the Commission in para 5. 3 of Daily Order in the present matter. In response to query of the Commission as to whether the Respondent has any comments on the issue of carrying cost or upfront payment or spread the increased tariff over entire of period of the PPA, it is submitted that as per the provisions of the PPA, tariff increased is spread over the entire of period of the PPA.
- 3.1. In respect of issue of carrying cost claimed by the Petitioner, it is submitted that there is no increase in project costs and therefore there is no compensation to the Petitioner. It is submitted that the PPA executed between the parties does not provide any provisions which entitled the Petitioner to claim any carrying cost due to implications of the imposition of safeguard duty. It is submitted that there are no provisions in the PPA about restituting principles of restoration to same economic position to the extent that carrying cost may be awarded to the Petitioner. Hence, the Petitioner is not entitled to claim any relief with regard to carrying cost.

- 3.2. It is also submitted that legality of carrying cost has been decided by Apex Courts in various cases in similar PPAs where there is no clause with the restitutionary principle that the carrying cost is not applicable. It is further submitted that the Petitioner is required to give quantification alongwith supporting documents in respect of claim of carrying cost. It is further submitted that Central Commission in case of Parampujya Solar Energy Private Limited clearly directed the contracting parties to carry out reconciliation of additional expenditure along with carrying cost by exhibiting clear and one to one correlation with the projects and the invoices raised supported with auditor certificate. However, the Petitioner has not provided any details of quantification alongwith supporting documents in the present case.
4. In response to the query of the Commission in respect to the documents to be submitted by the Petitioner which are essential to decide the matters and confirmation of the aforesaid details submitted by it and file pending documents on affidavit regarding submissions of pending documents, if any, as per the list provided by the Commission, it was agreed by the Ld. Counsels of both the parties to submit the same, if any, for which three weeks' time has been sought for in both the Petitions.
5. Ld. Adv. Mr. Prabudh Singh, appearing on behalf of the Petitioner, submitted that during the last hearing in the present matters, the Petitioner has made the submissions and advanced the arguments and also filed additional affidavit providing the documents for verification of the claim of the Petitioner. It is submitted that the Commission in its Daily Order dated 09.06.2022 directed the Petitioner to provide certain documents as stated in para 5.5 of the said Daily Order for verification of the claim of the Petitioner on account of 'Change in Law' in the present Petition. In compliance to the said directives, the Petitioner vide its additional affidavit dated 08.07.2022 has provided all the aforesaid documents alongwith the technical details as sought by the Commission.
6. Heard the Ld. counsels appearing for both the parties. We note the submissions of the Ld. counsel of the Petitioner that in terms of the directives of the

Commission vide Daily Order dated 09.06.2022, the Petitioner filed its additional affidavit dated 08.07.2022 and has provided the documents alongwith the technical details as sought by the Commission. The Petitioner also provided the details regarding DC capacity of the solar modules already purchased and the safeguard duty and GST paid on the module imported by the Petitioner.

6.1. We also note the submissions of the Ld. Counsel, appearing on behalf of the Respondent that the Respondent has received all the documents submitted by the Petitioner in terms of the directives of the Commission in para 5.5 of Daily Order in the present matter.

6.2. During the hearing, in response to the query of the Commission about the documents to be submitted by the Petitioner which are essential to decide the matters and confirmation of the aforesaid details submitted by it and file pending documents on affidavit regarding submissions of pending documents, if any, as per the below list provided by the Commission, Ld. Counsels of both the parties, have agreed to submit the same, for which three weeks' time has been sought for in both the Petitions. We, therefore, direct the Petitioner to submit details of documents, if any, as per the list below establishing one to one co-relationship of Safeguard Duty and IGST paid etc., solar modules imported for commissioning in the power plant, in chart as well as tabular formats, within three weeks, with a copy to the Respondent from the date of this Order.

- (a) Copy of relevant supply agreements entered by the Petitioner for supply of solar PV modules.
- (b) Copies of invoices of all solar modules imported by the Petitioner.
- (c) Details of safeguard duty and GST payment challan as well as Bank Statement.
- (d) Details of safeguard duty and taxes paid.
- (e) Details of interest cost alongwith debt.
- (f) Bill of landing for proof of quantity both the master and house bill of landing.
- (g) Packing list.
- (h) Invoice.
- (i) Custom accessed copy of bill of entry.

- (j) Customs out of charge order.
- (k) Marine insurance for sea and island transit.
- (l) Copy of LRs for inland transport from port to projects site and E-way bill.
- (m) Relevant supply agreements entered by the Petitioner for the supply of Solar PV modules.
- (n) Practicing Chartered Accountant certificate substantiating and supporting the claim of the Petitioner for the supply of Solar PV modules.
- (o) Certificate from an Independent Engineer certifying that the modules that have been imported have actually been installed at the project.
- (p) Details of safeguard duty and GST payment challan as well as extracts of bank Statement.
- (q) RFID Details.
- (r) Detailed calculation sheet with Safeguard Duty calculation.
- (s) CEIG approvals and supporting documents.
- (t) Commissioning Certificate stating number of modules installed on which safeguard duty paid along with completion of transmission network, works of the line, bays, transmission etc. at connectivity sub-station.
- (u) Details of interest cost along with details of debt.

The Respondent shall submit its response, if any, within two weeks from receipt of details from the Petitioner.

7. Next date of hearing will be intimated separately.
8. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 10/08/2023.