BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

Petition No. 2010 of 2021.

In the matter of:

Petition under Section 86(1)(f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement dated 26.08.2019 executed between the Petitioner and the Respondent seeking declaration of Change in Law Event, viz., the imposition of Safeguard Duty by Notification No. 02/2020-Customs (SG) dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India, and grant of consequential reliefs.

Petitioner	:	Electro Solaire Pvt. Limited
Represented by	:	Ld. Adv. Mr. Aniket Prasoon along with Advocates Mr. Vinit Kumar, and Mr. Vikalp Wange.

V/s.

Respondent	:	Gujarat Urja Vikas Nigam Limited
Represented by	:	Ld. Adv. Shrishti Kindaria along with Mr. Amit Chavda.

CORAM:

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

Date: 03.04.2024.

DAILY ORDER

1. The matter is kept for hearing on 02.01.2024.

2. Ld. Adv. Aniket Prasoon on behalf of the Petitioner submitted that the present Petition has been filed by the Petitioner under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement dated 26.08.2019 entered between the Petitioner Electro Solaire Pvt. Limited and the Respondent GUVNL. The Petitioner is claiming relief under 'Change in Law' provisions under the PPA pursuant to imposition of Safeguard Duty imposed on import of Solar Cells vide Notification dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India.

2.1. It is further submitted that the matter was lastly listed on 04.07.2023 and detailed Order was passed by the Commission on 10.08.2023 directing the Petitioner to file list of documents. It is submitted that certain documents were earlier filed as per the earlier Daily Orders issued by the Commission. In the last Daily Order dated 10.08.2023 there were directions to file documents which were not filed by the Petitioner along with Petition. In compliance of the same the Petitioner has filed the documents on 10.10.2023 and thereby all the relevant documents have been submitted by the Petitioner as per the said Daily Order. He further submitted that the details of comparative table setting out relevant dates for various events such as RfS, LOA, PPA date, Tariff, project commissioning dates, change of law events, decided in Petition No. 1941 of 2021 by the Commission and the present matter of the Petitioner are also filed.

2.2. He requested that the Petitioner want to coordinate with the Respondent GUVNL and settle the queries for the issues of one-to-one correlation of the invoices with the bill of entry and other required details which are missing or not provided by the Petitioner with the Petition till date to prove the case of Change in Law by the Petitioner.

2.3. He further referred the Order dated 12.10.2023 in the Petition No. 1941 of 2021 filed by Juniper Green Sigma Pvt. Ltd. and submitted that the Petitioner's case is similar to that Petition. It is further submitted that GUVNL issued the RfS No. GUVNL/700 MW/Solar (Phase III-R) dated 06.03.2019 for selection of Solar Power Developers for setting up of grid-connected solar PV power projects of 700 MW capacity in Raghaneshda Solar Park in Gujarat (Phase III - R) and the last date of submission of the bids was 30.04.2019. The Petitioner participated in the aforesaid bidding process and was selected as successful bidder for setting up the solar PV project of 200MW vide GUVNL's letter of Award dated 28.05.2019 bearing ref. No. GM/IPP/Solar/Comp Bidding II R/557. Thereafter, the parties entered into PPA on 26.08.2019.

2.4. It is submitted that as per PPA dated 26.08.2019 the Scheduled Commercial Operation Date (SCoD) for 200 MW contracted capacity was 25.11.2020 and the same was extended till 24.04.2021 by the Respondent GUVNL due to

COVID-19, out of which 150 MW was commissioned on 10.08.2021 and balance 50 MW capacity of the projects was commissioned on 13.08.2021.

2.5. It is further submitted that the solar modules were received by the Petitioner after the sunset date of the said Notification No. 02/2020- Customs (SG) dated 29.07.2020 issued by the Ministry of Finance, Govt. of India.

2.6. Ld. Adv. of the Petitioner also requested to the Commission to allow them for a meeting with the Respondent to settle their claims on one-to-one basis for verification of the documents and after the said meeting both the parties would approach to Commission in the subject matter.

2.7. On the query raised by the Commission about filing the details of packing list, Ld. Adv. of the Petitioner submitted that it is already filed on affidavit dated 10.10.2023, vide Annexure A. He also submitted that vide its affidavit 10.10.2023, the Petitioner has submitted the details such as customs assessed Bill of Entry (Annexure B), Bill of lading, of proof of quality both the master and house bill of lading (Annexure C) as per the Daily Order dated 10.08.2023.

2.8. On the query of the Commission that copy of the challans and other documents are not found in regard to the claim. Ld. Adv. of the Petitioner submitted that the Practicing Chartered Accountant's certificate is already filed with regard

to the Petitioner's claim. The details filed are bulky in nature it may be either filed earlier or otherwise it may be filed afterwards in bunch of documents. However, if it is any further documents are required then the Petitioner is ready to file the same.

2.9. On the further query of the Commission regarding signing date of the module supply agreement between the Longi and the Petitioner. Ld. Adv. for the Petitioner replied that it is dated 06.03.2020. On further query that what is the date of stamp paper on which the agreement was executed between the parties for supply of solar modules, Ld. Adv. submitted that the stamp paper is of dated 11.03.2020. On further query as regard the date below in the said stamp paper, he replied that there is Chinese language stamp affixed on the agreement and the date mentioned is 26.03.2020.

2.10. Ld. Adv. for the Petitioner submitted that if the Petitioner challenges the utilization of the modules purchased by the Petitioner in some other project, then it can be easily traced and verified by project site verification. The Petitioner has also filed the certificate from Chartered Engineer for verification of the modules installed at the project site. He also submitted that pursuant to the said agreement the modules are imported in India by the Petitioner.

2.11. On the further query of the Commission that Amendment Agreement executed on 30.06.2020 between the Petitioner and Longi Solar and it is its sign dated 02.07.2020. The Ld. Adv. submitted that in this case stamp paper date is of 29.06.2020 and amendment agreement is executed on 02.07.2020 with Longi Solar Technology Co. Ltd. Ld. Adv. further submitted that the modules are brought through the proper channel by way of legal agreements and there are other documents such as bill of lading, customs invoices, etc. which may be considered in the present case. Ld. Adv. further submitted that as it was directed in the Petition No. 1941 of 2021 to the Respondent GUVNL to verify the details of solar PV modules installed at plant site, similarly in the Petitioner's case, the Commission can direct the Respondent GUVNL to verify the solar PV modules installed at the Petitioner's site. The only issues arise to decide is that whether the said modules were imported and received after the sunset date of the said Notification dated 29.07.2020.

2.12. On the query of the Commission by referring page No. 565 of the Petition the amendment agreement # 2 – MCKKAAG2Q1002 – V2 dated 20.01.2021 wherein, amendment agreement to original contract No. MCKKAAG2Q1002 – V1 dated 30.06.2020 has been referred but the said copy of the amendment agreement is not filed, Ld. Adv. replied that the same may be submitted by the Petitioner.

2.13. Upon query of the Commission to verify the documents filed with regard to installation certificate issued by the CEI and GEDA for the installed capacity of the solar modules. Ld. Adv. submitted that the CEI has issued the certificate on (i)15.04.2021 wherein Solar PV modules of LONGI and JINKO made of capacity of 445,470,465 Wp installed on project site of having total capacity of 145084.96 KWp and (ii) on 23.03.2021 wherein Solar PV modules of LONGI and JINKO made of capacity of 445,470,465 Wp installed on project site of having total capacity of 72022.24 KWp. Further, GEDA vide letter dated 13.08.2021 has certified the 143985 modules/445Wp, 13104 modules /465Wp, 3948/470Wp for the project of the Petitioner of 50 MW AC capacity solar power plant and GEDA vide certificate dated 13.08.2021 certified 80736 modules /445 Wp, 129920 modules /465Wp. 258832 modules /470 Wp for the project of Petitioner of 150 MW Solar Power Plant.

2.14. Upon query of the Commission about the actual Nos. of the Jinko and Longi supplied modules installed at the project site of the Petitioner and certified by the independent Engineer, Ld. Adv. submitted that the Petitioner has produced the certificate dated 01.06.2021 mentioning the details of the module's supplier i.e., Longi and Jinko, module capacity wise, no. of modules installed at project site of the Petitioner and verified by the independent agency i.e., TUVSUD South Asia Pvt. Ltd. He further submitted and referred the certificate dated 02.06.2021 of Sterling and Wilson Solar Ltd. for solar module

installation at project site of the Petitioner. Ld. Adv. submitted that the only issue is whether the modules which were imported and installed on the Petitioner's project site.

2.15. Ld. Adv. of the Petitioner has referred the Para No. 6.124 of the Order dated 12.10.2023 of the Commission in Petition No. 1941 of 2021 in support of its arguments that the compensation should be worked out based on the precedence as observed by the Commission for pre-COD and post COD period for the case of the Petitioner's power project.

2.16. Ld. Adv. further referred the Para No. 6.134 and 6.133 of the Order dated 12.10.2023 of the Commission in Petition No. 1941 of 2021 and submitted that the Petitioner is entitled to get the interest as well as the carrying cost on the amount paid against the safeguard duty and IGST on the ground of Change in Law as per the PPA executed between the parties.

2.17. He further submitted that the interest payable could be the lowest as per the GERC MYT Regulations, or if the Petitioner has obtained the loan from outside or internal funds used. In the present case the Petitioner has taken the loan from its parent company and there is structured finance. It is further submitted that as per affidavit dated 10.10.2023 the interest/carrying cost is payable as per the provisions of the PPA as well as the Judgement of the Hon.

APTEL, to compensate the affected party for time value of funds deployed on account of change in law events. He further submitted the comparison of the rate of return on equity for various ERC's and stated that Return on Equity is in the range of 14% to 16%. In view of the same, Commission may decide accordingly for recovery of the carrying cost.

2.18. Ld. Adv. of the Petitioner further submitted and once again requested to the Commission to grant time and allow the Petitioner's officers to conduct a meeting and reconcile all the documents on one-to-one basis subject to verification and approval of the Commission.

3. Ld. Adv. Srishti Kindaria appearing on behalf of the Respondent submitted that the Petitioner has not submitted all documents with the Petition. It is duty of the Petitioner to provide all relevant documents along with the Petition to prove its claim. Further, the Respondent GUVNL has reported certain discrepancies in the documents submitted by the Petitioner and their response is pending. In compliance to the Commission's directives wherein certain documents were required to submit by the Petitioner, the Petitioner had provided some documents required for decision on the claim of the Petitioner. However, some documents are still not provided which needs to be provided by the Petitioner to prove its case. Moreover, the Respondent has received the affidavit of the Petitioner few

days back. Hence, it requires time to study and file the further reply in the said Petition.

4. We have heard the parties. We note that the Petitioner has requested to allow the meeting with the Respondent GUVNL for reconciling the documents on one to one basis. It is the duty of the Petitioner to file the Petition along with all supporting documents on record at the time of filling the Petition. We note that the Petitioner has not submitted all necessary documents with the Petition. Thereafter, the Commission directed to the Petitioner to file further documents which are essential to verify the claim of the Petitioner vide Order dated 09.06.2022 and 10.08.2023. In response to above the Petitioner has filed documents with affidavit on 16.10.2023. The Respondent has also raised certain query and shown discrepancies in the documents and also stated that certain documents are still not provided by the Petitioner. Further, the Commission has also observed that there are certain discrepancies in the documents as referred in earlier para of this Order. The Petitioner is therefore directed to submit all the necessary documents on record with a copy to the Respondent to prove its claim. As now, the Petitioner has requested to reconcile the documents with the Respondent and the Respondent has stated that certain documents are not provided by the Petitioner, the Petitioner is directed to file the same on affidavit, with a copy to the Respondent.

5. We also note that non-filling of documents along with Petition and also on directions by the Commission even as on today, it is duty of the Petitioner to submit all relevant documents on which it relied upon for its claim with the Petition. Further, the documents which are produced should not have any discrepancy with the provisions of law or claim of the Petitioner. As the Petitioner has requested at this stage to reconcile the documents with the Respondent and seek adjournment, the same is granted. Further, the Respondent has raised certain discrepancies which are required to respond by the Petitioner. The Respondent has also requested time to grant, as the Petitioner has provided documents before someday and make it granted. The Petitioner has also sought time to file their submissions, the same is granted. We direct the parties to make their submission, if any, within two week's with a copy to other party.

6. The next date of hearing would be intimated separately.

7. We order accordingly.

Sd/-	**Sd/-**	**Sd/-**
[S.R. Pandey]	**[Mehul M. Gandhi]**	**[Anil Mukim]**
Member	**Member**	**Chairman**

Place: Gandhinagar.
Date: 03.04.2024.