

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2003 of 2021.

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 readwith Power Purchase Agreement dated 26.08.2019 executed between GIPCL and GUVNL seeking approval for compensation due to Change in Law Event being imposition of Safeguard Duty having its direct effect on the project Cost.

Petitioner : Gujarat Industries Power Company Limited

Represented By : Ms. Kiran R. Mishra and Mr. S. Mani.

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented By : Ld. Adv. Ms. Harsha Manav alongwith Parthik Joshi.

CORAM:

Anil Mukim, Chairman

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 09/06/2022.

DAILY ORDER

1. This matter was heard on 08.03.2022.
2. The representative appearing on behalf of the Petitioner, submitted that this Petition is filed under Section 86 of the Electricity Act, 2003 readwith Power Purchase Agreement (PPA) dated 26.08.2019 executed with the Respondent GUVNL seeking declaration by this Commission that imposition of the safeguard duty vide Notification No. 02/2020- Customs (SG) dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance, Government of India is a Change in Law under Article 9 of the PPA dated 22.05.2019 executed between the parties and allowing compensation in tariff as per Article 9.2.2 of the PPA.

- 2.1. It is submitted that earlier vide Notification dated 30.07.2018 safeguard duty was imposed on the import of solar cells when imported into India particularly from China and Malaysia varying from 25% to 15% for a period of two years commencing from 30.07.2018 upto 29.07.2020. Since, the aforesaid Notification No. 2/2020 – Customs (SG) dated 29.07.2020 was issued subsequently imposing safeguard duty on the import of solar cells and modules and hence the Petitioner is invoking 'Change in Law' provisions under the PPA.
- 2.2. It is submitted that the Respondent Gujarat Urja Vikas Nigam Limited (GUVNL) had invited bids for procurement of 700 MW power from grid connected Solar PV power projects to be set-up in Raghanesda Solar Park through Competitive Bidding Process followed by reverse e-auction vide Request for Selection (Rfs) No. GUVNL/700 MW/Solar (Phase III-R) dated 06.03.2019, wherein, the Petitioner submitted bid submitted on 25.04.2019 and participated in reverse e-auction. Pursuant to emerging as one of the successful bidder for development of 100 MW capacity of Solar Power Project the Respondent GUVNL issued Letter of Award dated 28.05.2019 to the Petitioner. It is also submitted that the last date for bid submission in aforesaid tender was 25.04.2019 and thus, the bid deadline as per definition in the PPA is 25.04.2019.
- 2.3. It is submitted that subsequently, Power Purchase Agreement dated 26.08.2019 came to be executed between the Petitioner and the Respondent GUVNL for generation & supply of 100 MW power from the Solar PV based project in Raghanesda Solar Park at the tariff of Rs. 2.68 per unit by the Petitioner to the Respondent GUVNL. The Scheduled Commercial Operation Date (SCOD) under the said PPA is 25.11.2020.
- 2.4. It is further submitted that the Petitioner had not considered the Safeguard Duty in competitive tariff quoted at the time of bid submission and without considering in project cost since the Safeguard Duty was not applicable after 29.07.2020 as per the sunset clause in the Notification No. 01/2018 - Customs (SG) dated 30.07.2018. It is also submitted that the Petitioner had planned to import Solar PV modules between 07.08.2020 to 10.09.2020 i.e. after the sunset date of 29.07.2020 for Safeguard Duty.

- 2.5. It is also submitted that the Petitioner engaged M/s Tata Power Solar Systems Ltd. (TPSSL) after selection through transparent competitive bidding process as its EPC contractor to for aforesaid 100 MW project and during said tendering process provision was made for compensation to the contractor for any un-foreseen Change in Law event like imposition of safeguard duty.
- 2.6. It is submitted that the imposition of safeguard duty which is imposed after bid deadline date under RFS of the Respondent GUVNL vide above Notification dated 29.07.2020 falls under Article 9.1.1 (b) of the PPA since as per earlier notification dated 30.07.2018 it was only up to 29.07.2020. The Petitioner had also planned module supply procurement in August-2020 but due to imposition of safeguard duty vide aforesaid Notification dated 29.07.2020, the project cost of the Petitioner has increased and the Petitioner needs to be compensated in terms the provisions under the PPA by holding & declaring that imposition of safeguard duty vide aforesaid Notification dated 29.07.2020 qualifies as an event of Change in law.
- 2.7. Relevant documents / details in this regard are already provided by the Petitioner against the claim raised in this Petition. It is submitted that original SCOD under the PPA was four months after sun-set date. Also, the SCOD is extended by 5 months by the Respondent GUVNL as per MNRE Notification up to 25.04.2021. The Petitioner has commissioned the Solar project at Raghnesda Solar Park on 10.08.2021 as per certification of GEDA and COD is achieved on 14.08.2021 after operationalization of LTA on 12.08.2021.
- 2.8. In response to decision and approval regarding procurement of Solar PV modules, timelines for procurement of solar modules, approval of capital cost projections including funding, approval of bidding parameters, assumptions, other evidences regarding import planning schedule for import, construction, commissioning etc., the representative of the Petitioner submitted that being Government PSU, necessary approvals have been taken on file, which can be perused by the Commission during next hearing in the matter.
3. Ld. Adv. Ms. Harsha Manav on behalf of the Respondent GUVNL submitted that the original Scheduled Commercial Operation Date for entire 100 MW contracted capacity in terms of the PPA dated 26.08.2019 executed between the parties was

25.11.2020. Thus, the Petitioner ought to have proceeded with consideration of levy of safeguard duty as per Notification No. 01/2018-Customs (SG) dated 30.07.2018 considering period of 3-4 months for achieving original SCOD. It is submitted that procurement, transportation, installation, testing, commissioning etc. of all the solar modules required for the contracted capacity of 100 MW under the PPA is significant. Hence, there is no reason to believe that the Petitioner had not factored the safeguard duty in quoted tariff as per the applicable rates of Notification No. 01/2018-Customs (SG) dated 30.07.2018 because safeguard duty was applicable till 29.07.2020. Hence, the question of any change in law does not arise.

- 3.1. It is submitted that, in any case, since the said Notification dated 30.07.2018 was the law prevailing at time of bid submission in both the Petitions, the Petitioners were required to consider financial impact for safeguard duty & GST, while quoting tariff in the bidding processes undertaken by the Respondent GUVNL. Hence, the relief prayed cannot be granted to the Petitioner.
4. Heard the representatives appearing for the Petitioner and the Ld. counsel for the Respondent. We note that the Petitioner and the Respondent GUVNL have entered into Power Purchase Agreement dated 26.08.2019 for generation and supply of 100 MW AC power by the Petitioner from Solar PV based project in Raghnesda Solar Park.
 - 4.1. The Petitioner has filed present Petition under Section 86 of the Electricity Act, 2003 readwith aforesaid PPA, seeking declaration that imposition of safeguard duty on the import of Solar modules as 'Change in Law' in terms of the PPA and to allow compensation in tariff as per Article 9.2.2 of the PPA.
 - 4.2. We note that in the present matter, the Petitioner M/s Gujarat Industries Power Company Limited is a developer for setting up 100 MW Solar PV based Power Project in Raghnesda Solar Park after being selected as successful bidder by the Respondent GUVNL under Competitive Bidding Process and the Petitioner has entered in to Power Purchase Agreement (PPA) dated 26.08.2019 with the Respondent GUVNL. Accordingly, the Petitioner is a generating company under Section 2 (28) of the Electricity Act, 2003. We also note that the Respondent GUVNL

is a licensee which is to procure power from the aforesaid 100 MW Solar PV based Power Project of the Petitioner in terms of PPA executed between the parties. Thus, the issue involved in the present matter between the Petitioner and the Respondent pertains to the terms & conditions of the PPA executed between them pertaining to 'Change in Law' events. Thus, the issue involved in present matter is between a Generating Company and licensee and hence, this Commission has jurisdiction to decide the same under Section 86 of the Electricity Act, 2003. Hence, we decide to admit the Petition.

- 4.3. We note that according to the submissions made by the Petitioner, relevant details are already filed. However, any details that are not filed needs to be filed by the Petitioner alongwith relevant file(s) of the Petitioner for perusal of the Commission. Moreover, while filing the same, the Petitioner is also required to submit the following documents / evidence for verification of the claim of the Petitioner, if not already filed:

- (i) RFID Details
- (ii) CEIG certificate
- (iii) Commissioning Certificate
- (iv) Project specific documents;
- (v) Detailed breakup of the project cost incurred with item-wise break-up for the project;
- (vi) Detailed Calculations sheet with Safeguard duty and GST calculations;
- (vii) Details of interest cost with (a) Details of debt, (b) Details of Equity, (c) Details of Debt sanctioned along with the terms and conditions of Debt approval, (d) Release of Debt/Debt availed, (e) Original documents of the assumption while bidding carried out by the Petitioner with consideration of different items considered including Solar Module cost, Inverter cost, balance of plant cost etc. and the same was approved by Board or Management of the Petitioner company and it is part of loan documents etc.
- (viii) Capacity in DC of Solar Modules actually installed and commissioned for Solar generation on which safeguard duty is paid including GST paid thereon,
- (ix) Entire copy of the Original Contracts consisting of different clauses including Performance guarantees, delivery schedule, liquidated damages etc. and any amendments made thereto between (a) the Petitioner company and EPC Contractor & (b) EPC contractor with Equipment suppliers;

5. Next date of hearing will be intimated separately.
6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.

Date: 09/06/2022.

