BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION GANDHINAGAR

Petition No. 2019 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 22.05.2019 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.

AND

IA No. 26 of 2021 in Petition No. 2019 of 2021.

In the Matter of:

Interlocutory Application on behalf of the Petitioner seeking urgent listing of the accompanying Petition.

Petitioner/Applicant	:	Paryapt Solar Energy Pvt. Limited Unit No. 305, Pioneer Urban Square, Third Floor, Tower B, Sector 62 Gurgoan, Haryana – 122 005.
Represented By	:	Ld. Advocates Mr. Aniket Prasoon alongwith Ms. Priya Dhankhar and Mr. Shubham Mudgil.
		V/s.
Respondent	:	Gujarat Urja Vikas Nigam Limited Sardar Patel Vidyut Bhavan, Race Course Circle, Vadodara – 390007.
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. The above matter was heard on 08.03.2022.

2. Ld. Adv. Mr. Aniket Prasoon, appearing on behalf of the Petitioner, at the outset submitted that the issue in the present 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, while adopting them has also addressed on certain other submissions including information related in Petition No. 2010 of 2021. Moreover, since the reliefs claimed by the Petitioner in the present matter is pertaining to 'Change in Law' and submissions / arguments to be advanced are more or less same as in above matters except for the facts, which are different, the Petitioner may be permitted to provide the same.

2.1. It is submitted that present Petition is filed under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement dated 22.05.2019 entered between the Petitioner 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 Ministry of Finance, Government of India.

2.2. It is submitted that the Petitioner participated in competitive bidding process followed by e-reverse auction initiated by the Respondent GUVNL vide RfS No. GUVNL/500 MW/Solar (Phase-IV) dated 29.12.2018 submitting its bid. The last date for bid submission was 30.01.2019 and pursuant to aforesaid bidding, the Petitioner was selected as successful bidder for developing the project and accordingly, Letter of Award dated 21.02.2019 was issued by the Respondent GUVNL. Subsequently, PPA dated 22.05.2019 was executed between the Petitioner Paryapt Solar Energy Pvt. Limited and the Respondent GUVNL for contracted capacity of 50 MW AC power at tariff of Rs. 2.55 per unit. The Petitioner was required to commission the project within 18 months from date of execution of the PPA and accordingly, the SCoD as per PPA being 22.11.2020. However, on account

of COVID-19 pandemic, the Respondent GUVNL extended the SCoD till 24.04.2021. It is also submitted that procurement of Solar PV modules was after 30.07.2020 because the Notification No. 01/2018-Customs (SG) dated 30.07.2018 was with sunset clause. Moreover, the Petitioner had enough time to complete the project till date of SCOD of the project being 22.11.2020 as per PPA but the Respondent GUVNL is disputing the same on basis that the Petitioner ought to assumed that Safeguard duty will continue after 29.07.2020 and factored the same while quoting tariff at time of bid submission. Detailed arguments have been already advanced regarding power to 'Review' as per Rule 18 of the *'Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997'* pursuant to examination of information received in Petition No. 1966 of 2021, which are not repeated but the Respondent GUVNL appears to expand the provisions of the PPA particularly, when tariff discovery and adoption under Section 63 is considered as 'black box'.

2.3. It is also submitted that in so far as contention raised by the Respondent GUVNL that all relevant details/documents need to be provided is concerned, the Petitioner has filed all relevant documents in support except the commissioning certificate issued by GEDA, which is not received by the Petitioner and will be filed after receipt alongwith other information as may be required.

2.4. It is submitted that considering the present Petition preferred on account of Change in Law event pursuant to imposition of Safeguard Duty through Notification dated 29.07.2020 by the Ministry of Finance, Government of India, the Commission may admit the matter.

3. Ld. Adv. Ms. Harsha Manav on behalf of the Respondent GUVNL submitted that contentions raised are adopted in this matter also which may be considered by the Commission.

4. Heard the Ld. counsels appearing for both the parties in the matter. We note that the Petitioner and the Respondent GUVNL have entered into Power Purchase Agreement dated 22.05.2019 for generation and supply of 50 MW AC contracted capacity from Solar PV based project of the Petitioner.

4.1. The aforesaid Petition is filed under Section 86 of the Electricity Act, 2003 readwith Article 9 of aforesaid PPA, seeking declaration that imposition of safeguard duty

vide Notification dated 29.07.2020 on the import of Solar modules as 'Change in Law' in terms of the PPA.

4.2. We note that in the present Petition, pursuant to competitive bidding process followed by e-reverse auction initiated by the Respondent GUVNL vide RfS No. GUVNL/500 MW/Solar (Phase-IV) dated 29.12.2018 the Petitioner was selected as successful bidder for developing the project and accordingly, Letter of Award dated 21.02.2019 was issued by the Respondent GUVNL. Subsequently, PPA dated 22.05.2019 was executed between the Petitioner Paryapt Solar Energy Pvt. Limited and the Respondent GUVNL for contracted capacity of 50 MW AC power at tariff of Rs. 2.55 per unit. In terms of the PPA dated 22.05.2019 executed with the Respondent GUVNL pursuant to Competitive Bidding Process, the Petitioner is a developer for setting up 50 MW Solar PV based Power Project. 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 50 MW Solar PV based Power Project of the Petitioner in terms of PPA executed between the parties.

4.3. Thus, the issue involved in the Petition between the Petitioner and the Respondent GUVNL pertains to the terms & conditions of the PPA executed between them pertaining to 'Change in Law' events. Thus, the issue involved in the 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 present Petition being Petition No. 2019 of 2021.

4.4. We also note that the Petitioner has filed IA being IA No. 26 of 2021 in the present Petition for seeking urgent of listing of Petition No. 2019 of 2021. Since, the Commission has taken up the main matter, the prayer in I.A. No. 26 of 2021 filed for seeking urgent listing of Petition No. 2019 of 2021 is satisfied. Accordingly, I.A. No. 21 of 2021 stands disposed of.

4.5. We also note that the Respondent has sought certain details but 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 details agreed to be filed by the Ld. counsel for the Petitioner. 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/-	**Sd/-**	**Sd/-**
[S. R. Pandey]	**[Mehul M. Gandhi]**	**[Anil Mukim]**
Member	**Member**	**Chairman**

Place: Gandhinagar.
Date: 09/06/2022.