



ASSAM ELECTRICITY REGULATORY COMMISSION

ORDER SHEET

FILE NO. AERC 730/2019

PETITION NO: 16/2020

CORAM: HON'BLE SHRI S.C. DAS, CHAIRPERSON
HON'BLE SHRI S. N. KALITA, MEMBER
HON'BLE SMTI B. BORTHAKUR, MEMBER

In the matter of

Azure Power Forty Private limited.

AND

In the matter of

Assam Power Distribution Company Limited (APDCL)

Present

Petitioner

Advocate Shashwat Kumar

ORDER
05.12.2020

1. Azure Power Forty Private Limited filed the instant Petition under Section 86(1)(b) read with Section 86(1)(f) and Section 86(1)(k) of the Electricity Act, 2003 for declaration of "Change in Law" and Grant of Consequential relief to compensate for the increase in capital cost due to introduction and imposition of safeguard duty by way of Notification No. 01/2018 Customs SG Dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance.
2. The Petition was registered as Petition No. 16/ 2020 and hearing for admission was held on 05.12.2020.

Submission of Petitioner

3. The Petitioner submitted that Azure power was declared as a successful bidder for setting up of solar power plants of the following capacity in following locations:

Region	Covering Districts	Capacity
Region 1	Dhubri, Kokrajhar, Chirang, Baksa, Udalguri, Darrang	25 MW
Region 2	Goalpara, Bongaigaon, Barpeta, Nalbari, Kamrup	25 MW
Region 3	Sonitpur, Nagaon, Morigaon, Karbi Anglong, Dima Hasso, Lakhimpur, Dhemaji	15 MW
Region 4	Cachar, Hailakandi, Karimganj	25 MW

4. The Petitioner executed four power purchase agreements ("PPAs") with the Respondent on 25.06.2018.
5. Subsequently the Department of Revenue, Ministry of Finance by way of Notification dated 30.07.2018 imposed Safeguard Duty on the import of solar cells falling for a period of two years. The Department of Revenue, Ministry of Finance, issued Notification No. 02/2020-Customs (SG), vide which it has continued the levy of Safeguard Duty for another year i.e. till 29.07.2021.

6. The petitioner through this petition prayed before the Commission to –

- a) Declare and hold that introduction of Safeguard Duty through the Notification No. 01/2018-Customs (SG) dated 30.07.2018 and the continuation of such safeguard duty as per Notification No. 02/2020-Customs (SG) dated 29.07.2020 qualifies as 'Change in Law' events in terms of Article 8 of the Power Purchase Agreements dated 25.06.2018 executed between the Petitioner and the Respondent for Regions 1 to 4 and that the Petitioner is entitled to relief there under;
- b) Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty aggregating to INR 5,40,69,171 (Rupees Five Crore Forty Lakh Sixty Nine Thousand One Hundred and Seventy One) as actually levied on the Petitioner and paid by the Petitioner;
- c) Direct the Respondent to pay the above mentioned amount(s) as lump sum payment within a period of 30 days of the Hon'ble Commission's order;
- d) Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of Safeguard Duty for the remaining modules to be procured by the Petitioner within 30 days of furnishing of the information as directed by the Hon'ble Commission including the challans with respect to payment of Safeguard Duty;
- e) Allow carrying cost on the additional cost incurred by the Petitioner towards of safeguard duty;
- f) Direct the Respondent to pay the additional carrying costs if the lump sum payment or payment of the carrying cost is delayed for a period beyond 30 days of the Hon'ble Commission's order;

Commissions analysis and observation.

7. The Commission mentioned that the bidding for selection of developer for setting up of solar grid connected PV plant was initiated by APDCL. Subsequently after selection of the lowest bidder LOA was awarded. APDCL approached the Commission for adoption of tariff for these four locations. After considering the facts and submission made by APDCL the Commission allowed the purchase of power and adoption of tariff for these four locations vide individual petitions for all the four regions.
8. The Commission is of the view that the Petitioner in the instant Petition should have approached APDCL first for introduction of safeguard duty as per Government Notification under “Change in Law” as per provision of Article 8 mentioned in the PPA and APDCL should have come with Petitions for revised tariff (if any) for necessary approval from the Commission.
9. The learned advocate of the Petitioner also agreed to the views of the Commission but desired that APDCL should be directed to file Petition in this regard expeditiously.

ORDER

In view of the observation and analysis of the Commission above, the Petition is not admitted. However, the Petitioner may approach APDCL as per terms of the PPA and APDCL may consider approaching the Commission for approval of revised tariff with proper justification.

The Petition No.16/2020 is disposed off accordingly.

s/d

(B. Borthakur)
Member, AERC

s/d

(S. N. Kalita)
Member, AERC

s/d

(S. C. Das)
Chairperson, AERC