

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 23 of 2019
Alongwith IA No. 04 of 2020
Date of Order: 23.12.2021

Petition for seeking approval of procurement of 300 MW solar power and 200 MW wind power from NTPC limited on long term basis through PSAs signed on 25.03.2019 & approval of the tariff and trading margin of (seven) 7 paisa/kWh to NTPC under Section 86(1)(b) of the Electricity Act, 2003

AND

In the matter of: Punjab State Power Corporation Ltd. (PSPCL),
The Mall, Patiala.

...Petitioner

Vs

NTPC Limited, NTPC Bhavan, Scope Complex,
Core-7, Institutional Area, Lodhi Road, New
Delhi- 110003

...Respondent

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER:

1. Punjab State Power Corporation Limited (PSPCL) has filed the present petition seeking approval for procurement of 300 MW Solar Power and 200 MW Wind Power from NTPC on long term

basis for which PSAs were entered with NTPC on 25.03.2019. PSPCL has submitted as here under:

- a) NTPC initiated a competitive bid process for selection of the Wind Power Developers (WPDs) and Solar Power Developers (SPDs) to set up the Wind Power Projects and Solar Power Projects in the States of Madhya Pradesh and Rajasthan respectively wherein, M/s Spring Vayu Vidyut Pvt. Ltd. (WPD) and M/s SB Energy Six Private Ltd. (SPD) have been selected for establishment of 200 MW Wind Power Project and 300 MW Solar Power Project respectively.
- b) As per the PPAs, WPD & SPD shall commission the projects within 18 and 24 months respectively from the date of signing of PPA. The expiry date of the PPAs is 25 years from the Commercial Operation Date unless extended by the parties. NTPC will sell and make available to PSPCL the entire contracted capacity agreed to between NTPC and the WPD & SPD on back to back basis.
- c) As per, CERC Sharing of Inter-State Transmission Charges and Losses Regulations (5th amendment), 2017 and MoP Order No. 23/12/2016-R&R dated 13.02.2018, the Solar & Wind based power generation projects are exempted from payment of Transmission Charges and losses for use of inter-State Transmission System, if any.
- d) The Board of Directors of PSPCL in its 75th meeting held on 01.06.2019 had accorded the approval to PSAs for 300 MW and 200 MW Solar & Wind power respectively on long term basis. This Wind & Solar Power will help PSPCL in reducing the shortfall in Solar & Non-Solar RPOs in the coming FYs.

e) PSAs (Both for Wind & Solar) dated 25.03.2019 states as under:

“Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that within 06 (Six) months from the Effective Date, the PSPCL shall duly obtain the order of the Punjab State Electricity Regulatory Commission adopting the Tariff and the trading margin of (seven) 7Paisa/kWh to NTPC and approving the procurement of the contracted capacity on the terms and conditions contained in this Agreement entered into between NTPC and PSPCL read with the terms and conditions contained in the PPAs to be entered into between NTPC and the WPD & SPD”

.....

The parties agree that in the event, the order of adoption of Tariff, Trading Margin and the Agreements for procurement of Power, as mentioned above is not given by the Punjab State Electricity Regulatory Commission within the time specified above, this Agreement as well as the Power Purchase Agreement entered into between NTPC and the WPD/SPD shall stand cancelled and terminated with no liability of either party to the other or vis a vis the WPD/SPD, unless the parties and the WPD/SPD mutually agree to extend the time for fulfilling the Conditions Precedent.”

2. The Petition was admitted vide Commission's Order dated 25.09.2019 with directions to implead Punjab State Transmission Corporation Ltd. (PSTCL) and State Load

Dispatch Centre (SLDC) as parties in the petition. In compliance thereof PSTCL and SLDC submitted joint reply dated 16.10.2019 stating that the available transfer capability assessed by PSLDC/NRLDC was 6400 MW in respect of Punjab control area during summer/paddy 2019. Augmentation of the intra- State transmission /distribution network shall be carried out by PSTCL/PSPCL, if required, based on the system studies to be carried out by PSTCL while granting long term access to PSPCL for procurement of said 500 MW power.

3. The Commission vide Order dated 29.10.2019 directed PSPCL to submit the following:

- a) Reasons for the disparity in the tariff mentioned in PSAs and the back to back PPAs.
- b) Justification of trading margin of 7 paisa/kWh especially in the light of absence of accountability of NTPC in case of any default on its part in the PSA.
- c) PSA terms are not aligned to PPA terms despite stated to be back to back agreements.
- d) Comments on submissions made by PSTCL with respect to Transmission Capacity/Corridor.
- e) Whether the CTU delivery point is situated within or outside Punjab periphery.
- f) Justification for proposed Wind Power purchase which is usually available during the night hours considering the surplus scenario.

Vide said Order, NTPC was also directed to justify its claim for trading margin of 7 paisa/kWh.

4. PSPCL filed its reply dated 06.01.2020 submitting that:

a) The tariff of wind power will be Rs. 2.77/kWh + 7 paise trading margin which will be same both in PSA and back to back PPA up to commissioning of 50 MW wind power project of Srijan Energy Systems Pvt. Ltd. After commissioning of 50 MW wind power project, the tariff will be Rs. 2.776/kWh + 7 paise trading margin which will be more than the tariff of back to back PPA by Rs. 0.006/kWh.

For Solar Power, the tariff will be Rs. 2.60/kWh + 7 paise trading margin, which will be same both in PSA and back to back PPA.

b) NTPC being a trading licensee will facilitate billing, realization, data submission and other day to day activities for fulfilling the obligation of NTPC as assigned in the agreement.

c) PSA and PPA clauses are on back to back basis as agreed by the parties and are to be read together and in order to avoid any inconsistency between the two. All the terms and conditions of the PPAs shall mutatis mutandi apply to PSAs between the parties.

d) Out of 6400 MW, 4580 MW is for Long Term Access (LTA)/Medium Term Open Access (MTOA) and remaining 1820 MW is for Short-term Open Access (STOA). With the addition of 200 MW Wind Power & 300 MW Solar Power, capacity of Long Term Access (LTA)/Medium Term Open Access (MTOA) will increase accordingly, whereas demand in ATC for Short-Term Open Access (STOA) will be reduced.

e) As per PPA signed between NTPC with WPD & SPD, Delivery/Interconnection/Metering Point shall be at 220 kV or

above at the CTU Sub-Station where the power is injected into the Inter State Transmission System (ISTS). However, the CTU delivery point with respect to PSPCL/PSTCL shall only be decided once the PPA is approved. Subsequently, the developer shall take up the matter of Long Term Access (LTA) with CTU i.e. PGCIL for allocation/development of corridor for supply of power. Afterwards identification of CTU delivery point for supply of power to PSTCL shall be carried out and consent of PSTCL shall be taken for technical clearance. Consequently CTU delivery point for supply of power to PSTCL shall be finalized.

f) Perusal of the data projected by the WPD reveals that; during winters i.e. in the months from October to March, night generation is at par with day generation, but in summers i.e. April to September, day generation is substantially higher than night generation. It is also observed that, more energy (approx. 51% of the total energy supplied in year) is available during the period from May to September, the period of paddy season for PSPCL. During the remaining months i.e. October to April, the monthly energy available during nights is approx. 3% of the total energy supplied in year which is relatively smaller and acceptable.

5. NTPC filed reply dated 07.01.2020 stating that it has filed a petition before CERC for tariff adoption for said solar and wind projects. The Commission may adjudicate the matter for procurement of power by PSPCL for 300 MW solar project and 200 MW wind project through ISTS in accordance with the PSAs signed between NTPC and PSPCL.

6. The Commission vide order dated 13.01.2020 observed that CERC in its draft notification dated 24.07.2019 for Procedure, Terms and Conditions for grant of trading license and other related matters Regulation, 2019 has proposed that in case of back to back deals as in this case the Trading Licensee shall charge a minimum trading margin of zero (0.0) paise/kWh and a maximum trading margin of one (1.0) paise/kWh. Therefore, in this case it would not be appropriate to approve the trading margin of 7 paisa/kWh. Accordingly, the approval of tariff and trading margin as sought in the petition would prejudice the rights of the parties to the petition and therefore the parties would first agitate their respective stand before the CERC. The present petition would be taken up for hearing after the decision in the tariff petition before the CERC. PSPCL was directed to apply for fixing the next date of hearing after the decision in the said tariff petition by CERC.

7. PSPCL filed Interlocutory Application No. 04 of 2020 stating as under:

a) CERC has adopted the tariffs vide its Orders dated 18.03.2020 and 24.02.2020 in Petition Nos. 188/AT/2020 and 57/AT/2020 for said wind & Solar Power projects respectively. PSPCL was not provided with a reasonable opportunity before CERC to make its submissions with respect to the quantum of trading margin. PSPCL has preferred two review petitions against the said orders of CERC, which are pending before CERC.

b) As per the PSAs, PSPCL shall obtain the order of the PSERC for adoption of tariff and trading margin within six months from the date of signing of PSAs. Accordingly, the

supplementary PPAs were signed on 30.12.2019 extending the deadline for approval upto 31.03.2020. Thereafter, other supplementary PSAs were signed on 10.06.2020 extending the deadline for approval upto 31.10.2020.

- c) The Commission is requested to approve the procurement of contracted capacity from WPD and SPD on the terms and conditions contained in the PSAs read with the PPAs at the tariff as adopted by CERC, subject to the decision on the issue of the trading margin.
8. The Commission vide Order dated 19.08.2020, observed that for approving the power procurement it is mandatory to consider the price (including trading margin) as well. Further, since PSPCL has filed the review petition(s) against the CERC tariff adoption Order(s) which are pending adjudication, therefore it is not appropriate to grant partial approval in the petition. PSPCL and NTPC were directed to await the final Orders pertaining to the trading margin and amend the PSAs, if required, accordingly and thereafter approach the Commission. The matter was adjourned sine die.
9. PSPCL vide memo no. 5158 dated 09.11.2020 submitted that NTPC vide letter dated 04.08.2020 informed it that WPD has notified NTPC about the cancellation and termination of the PPA on account of non-fulfillment of the condition precedent in the PPA for obtaining approval from PSERC. After that, NTPC vide letter dated 19.08.2020 has informed that WPD has terminated the PPA with NTPC, therefore the PPA between NTPC and WPD and back to back PSA between NTPC and PSPCL stands cancelled and terminated with no liability on

either party.

10. PSPCL filed an additional affidavit on 23.07.2021 stating as under:

- a) The SB Energy Six Private Ltd. (SPD) approached Hon'ble APTEL by OP No. 10 of 2020 anticipating the termination of its PPA with NTPC. The parties thereafter entered into another supplementary PSA on 27.10.2020 thereby extending the deadline for approval till 31.03.2021, the Proceedings before Hon'ble APTEL were accordingly disposed of on 23.03.2021. The parties have entered into another PSA extending the date of approval to 31.10.2021.
- b) The review petitions were dismissed by CERC on 28.06.2021 holding that the issue of trading margin shall be governed by the provisions of CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020.
- c) MNRE on 09.03.2021 issued a notification regarding implementation of Basic Customs Duty (BCD) of 40% & 25% w.e.f. 01.04.2022 on import of Solar PV modules/panels & cells respectively in order to boost the domestic solar panel and equipment market. As such, there would be substantial financial implications, in case the project developer imports the Solar PV modules/panels & cells after 01.04.2022, in case the same is allowed as change in law. It would not be economical & competitive for PSPCL to procure the electricity after the implication of BCD. The Commission may consider the approval of the procurement of power subject to non-applicability of financial impact of BCD.

d) MoP had issued a notification dated 30.09.2016 which provided that interstate transmission charges & losses will not be levied on the transmission of power generated from solar and wind power plants. Further, MoP vide notification dated 05.08.2020 extended the waiver of interstate transmission charges & losses for the plants which would commissioned on or before 30.06.2023. However, MoP vide notifications dated 15.01.2021 and 21.06.2021 has limited the said exemptions only to transmission charges and not losses. The impact of the levy of transmission losses would be 10 paise/unit, the Commission may consider the same.

11. During hearing on 04.08.2021, in response to a query by the Commission regarding the timelines for procurement of cells and modules; the learned counsel for NTPC requested that the SPD may be impleaded for providing details for proper adjudication of the matter. The Commission vide Order dated 05.08.2021 impleaded M/s SB Energy Six Pvt. Ltd., the SPD, as respondent with direction to file a reply to which PSPCL was directed to file their rejoinder. In compliance to thereof, the SPD filed their reply dated 24.08.2021 stating as under:

- a) PSPCL has now made its prayer conditional upon it being exempted from Change in Law liability towards levy of BCD proposed to be levied on import of solar modules/cells w.e.f 01.04.2022 and therefore seeking a direction from the Commission to alter the terms of the concluded PPA, which is untenable.
- b) The PPA as well as the PSA were part of the Standard

Bidding Documents under the RfS and were based upon the Guidelines for Tariff based Competitive Bidding process for procurement of power from grid connected solar PV power projects. After the award of bid, it is not open for PSPCL to seek deviation from the SBDs (here PPA/PSA) and SB Energy cannot be deprived of its rights under the PPA.

- c) The bid documents including PPA as well as the PSA do not envisage implication of BCD on import of solar modules and cells on SB Energy. The PPA under Article 9.3, only covers the implication of 'safeguard duty'. However, any other tax/duty changes during the project execution cycle are to be dealt under the Change in Law clause of PPA. SB Energy cannot be deprived of its rights under the PPA available to SB Energy post bid cut-off date.
- d) PSPCL's prayer if allowed would amount to unilaterally amending the Change in Law clause of the PPA, which is not permitted. Consent of the parties and sanctity of terms are the two basic attributes of any contract. Hon'ble Supreme Court in its judgments in the cases of DDA vs Joint Action Committee, Allottee of SFS Flats, (2008) 2 SCC 672 and Ssangyong Engg. & Construction Co. Ltd. Vs NHA, (2019) 15 SCC 131 has criticized statutory authorities making unilateral attempts to amend the contracts.
- e) PSPCL's dictum to procure solar modules and panels as per instructions of PSPCL is untenable. It is not practical & commercially viable to procure all solar modules/panels on or before 31.03.2022 (before imposition of BCD). The power procurement is yet to be approved by the Commission as such SB Energy's obligations under PPA are yet to kick-in.

There are lots of project obligations apart from the solar module procurement and accordingly 24 months of the project timeline was agreed for completion of all obligations. Assuming that the Commission approves the power procurement within a week, even then it is impossible for SB Energy to procure all solar equipment required for setting up the plant by 31.03.2022. The process entails due diligence, technical confirmation, commercial negotiations, and delivery confirmation etc. prior to placing any order for equipment. It is difficult to even place all Orders by 31.03.2022, let alone importing of equipment required by such date. Therefore, it is impossible to ensure project procurement before the imposition of BCD comes into effect.

- f) The Commission's jurisdiction is limited in view of Rule 8 of Electricity Rules, 2003. The same restricts the scope of regulatory power of the Commission while approving power procurement where tariff is already approved by CERC. As such, the Commission has to merely approve the power procurement based on the already approved tariff. There is statutory power conferred on the Commission to consider any issue beyond the approved tariff.
- g) As on date, imposition of BCD is only a proposal and a futuristic and uncertain liability cannot be the basis for PSPCL to delay the power procurement approval process. Also, the issues concerning Change In Law compensation cannot be raised before the Commission. Article 12.2 of the PPA confers the jurisdiction over CERC qua Change in Law disputes. As such, the Commission is not empowered to consider any prayer regarding Change in Law liability for

PSPCL.

12. During hearing on 01.09.2021, the learned counsel for PSPCL requested for two weeks time to file their rejoinder to the reply of SPD. PSPCL filed its rejoinder vide memo no. 7243 dated 21.09.2021 submitting that:

- a) 300 MW Solar Power procurement would be reasonable, economical and in the interest of the consumers in the State of Punjab only if the generating station would be commissioned without the impact of BCD.
- b) The jurisdiction of the Commission under Section 86(1)(b) is to verify the requirement of power vis-à-vis the consumer requirements and the economical procurement of such power. The Hon'ble Supreme Court in the case of Tata Power Company Ltd. Vs. Reliance Energy Ltd. (2009) 16 SCC 659 has held that the Commission has a duty to check if the allocation of power is reasonable.
- c) As per the Regulation 46 of PSERC (Conduct of Business) Regulations 2005, the primary objective of the process of approval is that the cost of purchase is minimized and that the procurement is economical and efficient. And, PSPCL has sought directions from the Commission to the effect of not approving the said procurement of power in view of the implication of BCD in the tariff, rendering the tariff uneconomical and contrary to the interest of public at large. The Commission is requested to disapprove the said power procurement.
- d) PSPCL is not seeking to rewrite the terms of the PPA. The prayer of PSPCL is that when it is now certain that the cost of solar modules, cells and inverters are going to

substantially increase on account of BCD, the Commission may not approve the said power purchase as it would not be economical to procure the power.

13. After hearing the counsel of the parties on 06.10.2021, the Commission vide Order dated 12.10.2021 reserved the Order and parties were directed to file their respective written submissions if any within a week. In compliance thereof:

- a) PSPCL filed its written submissions dated 15.10.2021. While reiterating its earlier submissions it further stated that considering the BCD impact the tariff would be Rs. 2.75/kWh and higher, whereas Solar Power under long term agreements (including the impact of BCD) is available at a much lower tariff from alternate sources. PSPCL also informed that SECI in its latest letter has offered Solar Power to PSPCL @ Rs. 2.37/kWh plus trading margin of 7 paise/kWh. As such the present tariffs discovered are much lower and it is in public interest that the power purchase approval is not given.
- b) SB Energy Six Pvt. Ltd. vide note dated 20.10.2021, while reiterating its earlier submissions has further stated that the tariff now works out to Rs. 2.35 per unit instead of Rs. 2.60 per unit as the imposition of Safeguard duty expired on 29.07.2021. The benefit of Rs. 0.25 per unit as per article 9.3 of the PPA has been passed on to PSPCL. Any implication of increase or decrease in any other taxes/duties/levies is to be dealt with in accordance with the PPA.
- c) NTPC vide its written note dated 21.10.2021 submitted that PSPCL is making an attempt to either modify the contents of the already concluded PSA and PPA or wriggle out of its

contractual obligations in so far as the impact of BCD as Change in Law is concerned. The indulgence of the Commission with regard to the issue of BCD is not warranted in as much as the PSA and PPA have been executed in accordance with the Bidding Guidelines issued under Section 63 of the Act. The Commission cannot entertain any fresh deviation like exclusion of Basic Customs Duty from the ambit of Change in Law provisions or reduction in Contracted Capacity (i.e. 300 MW), once the competitive bidding process has been concluded and the rights of the parties are already crystallized.

14. Observations and Decision of the Commission

The Commission has examined the submissions made in the petition, replies by the respondents, rejoinders by PSPCL and written submissions by the parties pursuant to the arguments. It has been submitted that PSAs (Both for Wind & Solar) dated 25.03.2019 provides as under:

“Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that within 06 (Six) months from the Effective Date, the Discoms shall duly obtain the order of the Punjab State Electricity Regulatory Commission adopting the Tariff and the trading margin of (seven) 7Paisa/kWh to NTPC and approving the procurement of the contracted capacity on the terms and conditions contained in this Agreement entered into between NTPC and Discom read with the terms and conditions contained in the PPAs to be entered into

between NTPC and the WPD/SPD”

The parties agree that in the event, the order of adoption of Tariff, Trading Margin and the Agreements for procurement of Power, as mentioned above is not given by the Punjab State Electricity Regulatory Commission within the time specified above, this Agreement as well as the Power Purchase Agreement entered into between NTPC and the WPD/SPD shall stand cancelled and terminated with no liability of either party to the other or vis a vis the WPD/SPD, unless the parties and the WPD/SPD mutually agree to extend the time for fulfilling the Conditions Precedent.”

And, in both cases i.e. for wind and solar, the deadline specified for obtaining the order of the Commission approving the procurement of the contracted capacity on the terms and conditions contained in the Agreements were extended through the supplementary PPAs/PSAs, upto 31.10.2020.

It has been further submitted that on account of non-fulfillment of the said condition of obtaining approval from the Commission, the WPD has terminated its PPA with NTPC, therefore the PPA and back to back PSA between the parties stands cancelled and terminated with no liability on either party. However, the deadline in case of the Solar Power was further extended first upto 31.03.2021 and then upto 31.10.2021.

Accordingly, PSPCL’s prayer in the instant Petition stand limited to the consideration of Procurement of Solar Power only. The observation and decision of the Commission on the same is as hereunder:

14.1 The Commission refers to the Electricity Act, the Electricity Rules and PSERC Regulations framed under the powers conferred therein for regulating the Power Purchase and procurement process of the Licensee. The same specifies as here under:

“The Electricity Act, 2003

86. Functions of State Commission-

(1) The State Commission shall discharge the following functions, namely:-

(a)

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

.....

Section 181 (Powers of State Commissions to make regulations): ---

(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

.....

The Electricity Rules, 2005

8. Tariffs of generating companies under section 79:

The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in

exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.

**The Punjab State Electricity Regulatory Commission
(Power Purchase and Procurement Process of Licensee)
Regulations 2012:**

“10 Criterion for Power Purchases

(i).....

(ii) While effecting power purchase, the Distribution Licensee(s) shall adhere to the principle of least cost plan (least financial cost to the Distribution Licensee), the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards.

13. Power Purchase Arrangements or Agreements

Any new long term power purchase arrangement or agreement and amendments to existing PPA entered into by Distribution Licensee(s), shall be subject to prior approval of the Commission under section 86 of the Act, in respect of:-

(i) Necessity;

(ii) Reasonability of cost;

(iii) Promoting efficiency, economy, equitability and competition;

- (iv) Conformity with regulations for investment approval;*
- (v) Conformity with requirements of quality, continuity and reliability of supply;*
- (vi) Conformity with safety and environmental standards;*
- (vii) Conformity with criterion of power purchase as laid down by the Commission;*
- (viii) Conformity with policy directives of the State Government and policies issued by the Government of India viz. National Electricity Policy, Tariff Policy, long term and short term power procurement guidelines.”*

The Commission observes that the Electricity Act, 2003 read with Electricity Rules, 2005 and the provisions specified in PSERC Regulations mandates the Commission to examine all long term power purchase arrangements by the Distribution Licensee on the criteria of its need/necessity and whether the same has reasonable cost and is economical in the prevalent circumstances.

14.2 The Commission is of the view that there are no two opinion regarding the need of RE Power in the present circumstances, particularly so when PSPCL is finding it hard to comply with its mandated RPOs. Thus, the real issue before the Commission in the instant petition is to examine whether the said proposal of Solar Power procurement on long term basis is also economical in the prevalent circumstances. The Commission proceeds to examine the same as here under:

- a) PSPCL has filed the instant petition for approval for procurement of Solar Power at a tariff of Rs. 2.593 per

kWh plus trading margin of 7 paise per kWh. However, on being queried by the Commission regarding the disparity in the tariff mentioned in PSA and the back to back PPA, the same was corrected to Rs. 2.60 per kWh. Thereafter, vide additional affidavit dated 23.07.2021, while referring to the MNRE notification dated 09.03.2021 regarding implementation of Basic Customs Duty (BCD) w.e.f. 01.04.2022 on import of Solar PV modules/panels & cells respectively, PSPCL submitted that there would be substantial financial implications, in case the project developer imports the Solar PV modules/panels & cells after 01.04.2022. Further, it would not be economical & competitive for PSPCL to procure the electricity after the implication of BCD, the Commission may consider the approval of the procurement of power subject to non-applicability of financial impact of BCD.

- b) On being queried by the Commission regarding the timelines for procurement of cells and modules, the respondent NTPC could not provide satisfactory response and requested for impleading the SPD for the same. And, SPD vide its reply dated 24.08.2021 submitted that it is not practical & commercially viable to procure all solar modules/panels on or before 31.03.2022 (before imposition of BCD). SPD further submitted that, the power procurement is yet to be approved by the Commission as such it's obligations under PPA are yet to become operational and there are a number of project obligations apart from the solar

module procurement. Accordingly 24 months of the project timeline was agreed for completion of all obligations. The PPA as well as the PSA does not envisage implication of BCD, the PPA under Article 9.3 only covers the implication of 'safeguard duty', implication of increase or decrease in any other taxes/duties/levies is to be dealt in accordance with the PPA. Subsequently, the SPD vide its note dated 20.10.2021 informed that the tariff works out to Rs. 2.35 per unit instead of Rs. 2.60 per unit as per article 9.3 of the PPA, as the imposition of Safeguard duty expired on 29.07.2021.

- c) PSPCL, vide submissions dated 21.09.2021 submitted that since it is now certain that the cost of solar modules and cells is going to substantially increase on account of BCD as the developer is stating in no uncertain terms that the solar modules will not be procured before 31st March 2022 after which BCD become effective, the Commission may not approve the said power purchase as it would not be economical to procure the power at the increased rate. Also, vide submissions dated 15.10.2021, PSPCL has contended that with the BCD impact the tariff would increase to Rs. 2.75/kWh and even higher, and thus it would not be economical for PSPCL to purchase the power at such a high tariff since it is not in public interest. Therefore, the Commission may not grant such approval and reject the same. PSPCL also informed that SECI has recently offered Solar Power to PSPCL

at the tariff of Rs. 2.37/kWh plus trading margin of 7 paise and thus alternative source of solar power at a much cheaper rate is already available.

The Commission notes that, PSPCL now has a standing offer of Solar Power supply from the SECI at a tariff of Rs.2.37 per kWh plus trading margin of 7 paise. Further, in a recently concluded bid PSPCL had discovered a lower tariff of Rs.2.33 per kWh (without any trading margin). Both of these offers are insulated from the likely BCD impact (expected to be about 40 paise per unit), as the MNRE office memorandum (OM) dated 9th March 2021 has mandated that in bids where date of bid is subsequent to the said OM, the imposition of BCD shall not be considered as change in law. The Commission has also taken note of SPD's submission that as on date the imposition of BCD is only a proposal and a futuristic calculation. However, the Commission cannot ignore the OM issued by the Govt. of India indicating the proposed BCD, specially because the SPD and NTPC in spite of various queries by the Commission have not committed to ensure procuring of the solar modules before 31st March, 2022 so as to avoid the impact of BCD. In case the same is made applicable as mandated in the MNRE OM, it implies huge financial implications lasting over a long-term period of 25 years on the consumers of the State. When the power is available in the market at far more competitive firm tariffs without any risk of escalation on account of the

same, it is not viable to accept the tariff or terms of the PPA under consideration.

In view of above, PSPCL's instant proposal of procurement of 300 MW Solar Power on long term basis through NTPC at the given tariff does not appear to be an economically viable proposition. PSPCL itself is on record stating that the Commission may not approve the said power purchase as it would not be economical to procure the power. As such, under the prevalent circumstances, it would not be in the interest of consumers of the Punjab if the said power procurement arrangement is approved.

The Commission further notes that the PSA as well as back to back PPA mandates that the condition precedent for the enforcement of the obligations of either party against the other under this Agreement are subject to the approval of the same by the Commission.

And, in the event, approval is not given by the Commission, the same shall stand cancelled and terminated with no liability of either party to the other. The SPD is also on record stating that the power procurement is yet to be approved by the Commission as such SB Energy's obligations under PPA are yet to become operational.

In view of the above, the Commission is of the opinion that it is not prudent to approve the said solar power arrangement on long term basis and hence disallows the same.

The petition and IA No. 04 of 2020 are disposed of in terms of above order.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Anjuli Chandra)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 23.12.2021

