

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 95/MP/2017
Alongwith I.A. Nos. 35/2017 & 93/2017**

Subject : Petition under Section 79 of the Electricity Act, 2003 in relation to disputes arising out of the PPA dated 26.7.2016 between the Petitioner and SECI.

Date of hearing : 13.9.2018

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioner : Welspun Energy Private Limited (WEPL)

Respondent : Solar Energy Corporation of India Limited (SECI)

Parties present : Shri Gopal Jain, Senior Advocate, WEPL
Shri Sandeep Sethi, Senior Advocate, WEPL
Shri Avijeet Lala, Advocate, WEPL
Ms. Shikha Pandey, Advocate, WEPL
Shri Amit Ojha, Advocate, WEPL
Shri Ashish Bhardwaj, Advocate, WEPL
Shri Prabhas Bajaj, Advocate, SECI
Shri Ankit Roy, Advocate, SECI
Shri Abhinav Kumar, SECI

Record of Proceedings

At the outset, learned senior counsel for the Petitioner submitted that the Petitioner had filed the Interlocutory Application for seeking permission to place on record the subsequent events and developments in the project which was heard and the documents pertaining to synchronization of 28 MW with the grid was taken on record by the Commission vide its order dated 6.8.2018. Learned senior counsel further submitted as under:

(a) SECI, vide its letter dated 1.3.2017 raised two issues with respect to non-fulfilment of Conditions Subsequent namely; (i) Procurement of land for the Project and (ii) Financial Closure. However, the Petitioner has complied with all the conditions and 28 MW of the project capacity has already been synchronized and power is injected into the grid since April, 2018. With regard to balance 72 MW, majority work has been completed for which Petitioner should be allowed to commission the Project.

(b) With regard to the delay in procurement of land for the project, the Industry, Energy and Labour Department of Government of Maharashtra vide its letter dated 3.2.2018 has acknowledged the delay on account of Government procedure based on a report from Collector Office, Satara and has recommended for twelve months time for extension of SCOD of the project. On the issue of shortcoming in the

financial closure, the Petitioner vide letter dated 29.11.2016 has complied with by submitting a Consent letter from the two Directors (including Managing Director) and subsequently a Board resolution was also submitted on 9.6.2017 by the Petitioner.

(c) In the interest of the solar power project and in order to settle the dispute with the SECI, the Commission may impose penalty (if any), in terms of the PPA for the alleged defaults instead of termination of the PPA. In support of its contention, learned senior counsel relied upon Hon'ble Supreme Court judgment dated 5.4.2018 in *M.P. Power Management Company Ltd. vs. Renew Clean Energy Pvt. Ltd.*, wherein the Hon'ble Supreme Court set aside the termination of the PPA and held that when the project is at the advance stage of commissioning, termination of the contract is 'not fair'. The Hon'ble Supreme Court observed that even though the delay suffered by the project developer was not covered by *force majeure*, it was due to unavoidable circumstances and have to be kept in view for counting the delay and accordingly, imposed penalty while allowing the project to be executed.

(d) With regard to the issue raised by SECI on the shareholding pattern, the learned senior counsel submitted that the issue of change in shareholding pattern was raised for the first time in response to the present petition filed by the Petitioner and is clearly an after-thought. Till date, SECI has not raised the issue of shareholding pattern in any of its letter and SECI cannot raise fresh pleas to the prejudice of affected party. The Petitioner went through reorganization and restructuring process following Demerger through NCLT and subsequent to the NCLT order dated 26.5.2017, M/s. Giriraj Renewable Pvt. Ltd. (GRPL) substituted as the successor to the Petitioner. Thereafter, the shareholding of GRPL has been reorganized and other shareholders of the resultant entity i.e., GRPL were issued redeemable preference share in the same structure as it was in the Petitioner. Moreover, the Petitioner through various letters had intimated SECI for the proposed reorganization/demerger.

(e) The Petitioner has not violated any provisions of the PPA as the PPA contains no provision restricting change of shareholding. There were no shareholders in the Petitioner's company having more than 51% shares i.e. controlling shareholding at the time of signing of the PPA. Therefore, there is no breach of any provisions of the PPA. Further, there is no change in management control as no third party/stranger has been introduced in the Petitioner's Company. The scheme has only resulted in Candor Power Private Limited consolidating its shareholding at 99% in the Petitioner's Company as opposed to 27.7% shares held by it at the time of signing the PPA. As per the NCLT order, the change in shareholding is only an 'Operation of Law' and it supersedes all contracts and binds all parties.

2. Learned counsel for Solar Energy Corporation of India Limited (SECI) submitted as under:

(a) The change in shareholding pattern was a voluntary exercise of breaching the contract by the Petitioner and not just an 'Operation of Law'. The minority shareholder i.e. Candor Power Private Limited of the Petitioner has taken over

99% of the shareholding which is contrary to the contract as there is no clause in the PPA permitting such change in shareholding.

(b) The MNRE guidelines, RFS, LOI and PPA form part of a composite scheme which restricts change in shareholding pattern for a period of one year after COD and the PPA cannot be read in isolation, else there would be no sanctity to the provision of shareholding pattern.

(c) The project was to be commenced by May, 2017. However, the Petitioner in the month of September, 2018 is making submissions that 28 MW of the project is commissioned and for the rest of 72 MW, modules have been installed, therefore, it is a non-issue and is contrary to the provisions of the PPA.

(d) BG submitted by the Petitioner is expiring on 30.9.2018 and requested to direct the Petitioner to extend the validity period of BG till the issuance of the final order in the petition.

3. In his rebuttal, learned senior counsel for the Petitioner submitted that any restriction that was included in the RfS but not reflected in the PPA shall be inconsistent and the PPA shall prevail being binding on the parties. Mere technicalities should not stand in the way when the Petitioner is willing to execute the project within a period of 2-3 months. Learned senior counsel further submitted that the Petitioner has made investments of more than Rs. 167 crore in this project and when the project is at the cusp of commissioning, in the interest of equity and justice, the project should be allowed to be completed.

4. After considering the submissions made by the learned senior counsel for the Petitioner and learned counsel for SECI, the Commission directed the Petitioner and SECI to file their written submissions by 24.9.2018 with a copy to each other. The Commission directed that due date of filing the written submissions should be strictly complied with failing which the order shall be passed on the basis of the documents available on record.

5. The Commission directed the Petitioner to keep the Performance Bank Guarantee valid till the issuance of the final order.

6. Subject to the above, the Commission reserved order in the Petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**