

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 206/MP/2020

- Subject : Petition under Section 79(1)(c) of the Electricity Act, 2003 read with Section 79(1)(k) of the Electricity Act, 2003 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking appropriate direction(s) and/or order(s) from the Commission in relation to the provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 which are preventing the Petitioner from exercising its rights under certain provisions of the Power Purchase Agreement entered pursuant to Competitive Bidding Guidelines 2017 with Solar Energy Corporation of India Limited and seeking the Commission to give effect to the detailed procedure as approved by the Commission to issue consequential directions to Power Grid Corporation of India Limited in terms of the relief sought in the Petition.
- Petitioner : ReNew Sun Waves Private Limited (RSWPL)
- Respondents : Power Grid Corporation of India Limited (PGCIL) and Ors.
- Date of Hearing : 30.7.2020
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
- Parties present : Shri Apoorva Mishra, Advocate, RSWPL
Ms. Molshree Bhatnagar, Advocate, RSWPL
Shri Sunei Kapoor, RSWPL
Shri Ishan Nagpal, RSWPL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Nehul Sharma, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Ms. Swapnil Verma, PGCIL
Shri S. S. Raju, PGCIL
Shri A. K. Verma, PGCIL
Shri B. Dash, PGCIL



Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the instant Petition has been filed, *inter-alia*, seeking appropriate direction(s)/order(s) of the Commission in relation to (i) provisions of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 (in short 'Connectivity Regulations') preventing the Petitioner from exercising its right under certain provisions of the Power Purchase Agreement (PPA) entered into by the Petitioner, and (ii) to give effect to the Detailed Procedure made under Connectivity Regulations and approved by the Commission vide its order dated 15.5.2018 conveying its intent and purpose of allowing transfer of Connectivity and Long-Term Access. Learned counsel further submitted as under:

(a) 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Projects' (in short 'the Guidelines') issued by the Ministry of Power on 3.8.2017 as well as the Bid Documents (RfS and PPA) issued by SECI in line with the Guidelines, permit the successful bidder to transfer its shareholding in the SPV/Project Company executing the PPA to any third party at any time prior to expiry of 1 (one) year from the Commercial Operation Date (COD) upto 49% without approval of the Procurer and beyond 49%, with prior approval of the Procurer. Also, the Guidelines and Bid Documents do not restrict any change in the shareholding after the expiry of 1 (one) year from the COD upon intimation of the same to the Procurer.

(b) For Connectivity and LTA, Regulation 8A of the Connectivity Regulations provides that a person shall not transfer, assign or pledge its connectivity or LTA either in full or part to any other person and only 100% subsidiary companies shall be allowed to transfer the Connectivity and LTA to the parent company and vice versa one year after achieving commercial operation of the renewable energy generating station.

(c) Thus, there is a direct conflict between the Guidelines and Detailed Procedure made under Connectivity Regulations on one hand and subsequent provision i.e. Regulation 8A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and related matters) (Seventh Amendment) Regulations, 2020.

(d) In terms of the Guidelines and the provisions of the PPA, the Petitioner is entitled to transfer 49% shareholding prior to lock-in-period (without approval of Procurer) and 100% shareholding prior to lock-in-period (with approval of Procurer) and/or after lock-in-period (without approval of Procurer). However, the Petitioner was restricted to do so due to application of Regulation 8A of the Connectivity Regulations.



(e) Regulation 8A is silent on the aspect if such Connectivity and LTA granted to the parent company could also be utilised between two wholly owned subsidiary company of the same parent company and/or a company where the parent company exercises its control i.e. where the ownership is directly or indirectly, of more than 50% of the voting shares of such company or right to appoint majority Directors. Therefore, the same is also required to be clarified.

3. Learned counsel for the Respondent, Power Grid Corporation of India Limited (PGCIL), submitted that the Petitioner is primarily seeking alignment of the Commission's Connectivity Regulations and Detailed Procedure with Bid Documents (RfS and PPA) issued by SECI under the Guidelines. Learned counsel submitted that while participating in tariff based competitive bidding process, the bidders are required to be cognizant of the existing/prevaling Rules and Regulations. After being selected, the bidder cannot seek amendments to the existing Regulations and Detailed Procedure on the basis of the Bid Documents. Learned counsel further submitted that the Respondent, being the nodal agency for grant of Connectivity and LTA, is required to act as per the Connectivity Regulations and Detailed Procedure. However, if the Commission deems it appropriate that the regulatory intervention is required in the present case, due process for incorporating the amendment to the Regulations is required to be followed.

4. In response, learned counsel for the Petitioner submitted that the Petitioner is not merely seeking the alignment of Regulations with the Bid Documents but with the Statutory Guidelines issued by Ministry of Power under the Act. Learned counsel further submitted that the instant Petition may be considered as a representation to the Commission and suitable amendments may be carried out in Regulation 8A of the Connectivity Regulations to give effect to clause 5.2.1 of the Detailed Procedure i.e allow the Petitioner and such other entities to transfer/utilize the Connectivity/LTA to a third party after expiry of the lock-in-period. The same will not prejudice any existing rights of PGCIL and its financial interest will continue to be protected.

5. After hearing the learned counsels for the Petitioner and the Respondent, PGCIL, the Commission reserved order in the matter.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

