

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 226/MP/2020**

Subject : Petition under Section 79 of the Electricity Act, 2003 seeking relief in time extension granted for commissioning of Petitioner's 50 MW Wind Power Project connected to Central Grid.

Date of Hearing : 11.8.2020

Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member

Petitioner : Wind Four Renergy Private Limited (WFRPL)

Respondents : Solar Energy Corporation of Limited (SECI) and Anr.

Parties present : Shri Alok Aggarwal, Advocate, WFRPL  
Shri Mayank Bughani, Advocate, WFRPL  
Shri M. G. Ramachandran, Advocate, SECI  
Ms. Poorva Saigal, Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI  
Shri Ravi Kishore, Advocate, PTC  
Ms. Rajashree Chaudhary, Advocate, PTC  
Shri Bhupesh Juneja, WFRPL  
Shri Ravi Sinha, WFRPL  
Shri Shreedhar Singh, SECI  
Shri Shubham Mishra, SECI  
Ms. Aditee Nitnavare, SECI

**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 exclusion of 132 days, intervening between 12.7.2019 (date of termination of the Power Purchase Agreement) to 21.11.2019 (date of communication of extension of revised Scheduled Commissioning Date) from the imposition of penalty for delay in commissioning of its 50 MW Wind Power Project. Learned counsel for the Petitioner further submitted as under:

(a) The Petitioner, selected through competitive bidding process conducted by Solar Energy Corporation of Limited (SECI), is setting up a 50 MW Wind Power Project (the Project). On 21.7.2017, the Petitioner and the Respondent No.2, PTC entered into PPA and the Scheduled Commissioning Date (in short



'SCD') of the Project was 5.10.2018. The deadline for the commissioning of the Project including implications of liquidated damages was 5.7.2019.

(b) Due to various reasons, particularly the delay in readiness of PGCIL's evacuation system, the Project could not achieve SCD. PGCIL's system was commissioned in April, 2019, i.e. after a delay of more than 9 months. However, while the Petitioner's parent company has successfully commissioned 200 MW (out of 250 MW Projects being executed by its 5 SPVs under Tranche-I bid) of Wind Power Projects within specified time, despite its best efforts, the Petitioner's Project (50 MW) could not be commissioned within the stipulated time.

(d) On 12.7.2019, SECI terminated the Petitioner's PPA dated 21.7.2019, leading to suspension of Project works until 21.11.2019.

(e) SECI vide its letter dated 21.11.2019 acknowledging the delay in operationalization of LTA by CTU, revised the SCD for the Project to 13.6.2019 (by 60 days from the operationalization of LTA on 13.4.2019). Moreover, in terms of said letter, the Petitioner was permitted to achieve SCD of the Project within 9 months from the revised SCD i.e. by 13.3.2020 subject to imposition of liquidated damages as per RfS and PPA.

(f) By virtue of termination of PPA by SECI on 12.7.2019 until the extension in SCD was granted and communicated on 21.11.2019, the Petitioner was prevented from executing the work of commissioning of the Project for reasons beyond its control. Consequently, the aforesaid intervening period cannot be included in the period of SCD extension granted on 21.11.2019 and also no penalty, as envisaged under RfS/PPA can be imposed for the such period.

(g) Moreover, in terms of the provisions of Clause 3.17B of the RfS and PPA, the Petitioner is permitted to achieve SCD of the Project with delay of six months with implication of proportionate per day liquidated damages. Thus, revised SCD being 13.3.2020, SECI could not have encashed the entire BG furnished by the Petitioner until 13.12.2020. Regardless, SECI has encashed the entire BG.

3. Learned senior counsel for the Respondent, SECI, submitted as under:

(a) Bank Guarantee has been encashed in line with the Commission's order dated 12.3.2020 in IA No.17/2020, wherein the Commission had declined to grant any interim relief to the Petitioner.

(b) Since the Petitioner has failed to achieve SCD of the Project by 5.7.2019 i.e. within the maximum permissible time limit for commissioning of the Project, SECI proceeded with termination of the PPA as per the provisions of RfS/PPA.

(c) Subsequent to the termination, the Petitioner approached Ministry of New and Renewable Energy (MNRE) for extension of time for commissioning of the Project on the ground that since the operationalization of LTA was delayed, SCD of the Project could not be achieved.



(d) MNRE, vide its letter dated 22.10.2019, prescribed the extension in SCD for the wind power projects under tranches I to V for a period equal to 60 days subsequent to operationalization of LTA for allowing the additional time to developers to complete the commissioning activities.

(e) Consequently, SECI, vide its letter dated 21.11.2019, revised the SCD for the Project to 13.6.2019 since the LTA was operationalized on 13.4.2019. The Petitioner was also permitted an additional period of 9 months from the revised SCD (13.6.2019), i.e. upto 13.3.2020, to achieve SCD subject to levy of liquidated damages. Thus, delay in achieving SCD beyond 13.6.2019 was subject to liquidated damages and the Petitioner has wrongly contended that additional six months to achieve SCD as per Clause 3.17B of RfS was from 13.3.2020.

(f) In terms of Clause 3.14 of the Guidelines and Clause 3.17 of RfS, SECI could extend the time for commissioning date, after having satisfied with the documentary evidences, upto 3 months. For any extension beyond 3 months, the MNRE was the competent authority. SECI could have only forwarded the Petitioner's requests for extension in SCD beyond 3 months to MNRE, which were duly forwarded by it.

(g) The Petitioner, in its various letters, ranging from 24.11.2018 to 13.6.2019, had informed SECI that the Project would to be commissioned before 5.7.2019. Even after the operationalization of LTA, the Petitioner had maintained its position that it would complete the Project by 5.7.2019.

(h) The Petition suffers from non-joinder of necessary party. The Petitioner is required to implead BSES Rajdhani Power Limited (BRPL), the distribution licensee who has entered into Power Sale Agreement with PTC to purchase on back-to-back basis, as party to the present proceedings.

4. In response to contention of learned senior counsel of the Respondent that the Petition suffers from non-joinder of necessary party, learned counsel for the Petitioner submitted that BRPL is neither a necessary nor a proper party to the present Petition as none of the reliefs sought for by the Petitioner concerns BRPL.

5. After hearing the learned counsel for the Petitioner and learned senior counsel for the Respondent, SECI, the Commission reserved order in the matter.

**By order of the Commission**

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

