

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 605/MP/2020
alongwith IA Nos.57/2020 and 58/2020**

Subject : Petition under Section 79 of the Electricity Act, 2003 and the statutory framework governing the procurement of power through competitive bidding and Article 11 read with Article 13.5 and Article 4.5.3 of the Power Purchase Agreement dated 22.11.2018 executed between the Solar Energy Corporation of India Limited and Arina Solar Power Limited seeking directions to restrain SECI from invoking the bank guarantees and for returning the bank guarantees.

Date of Hearing : 20.8.2020

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

Petitioner : Arina Solar Private Limited (ASPL)

Respondent : Solar Energy Corporation of India Limited (SECI)

Parties present : Shri Sujit Ghosh, Advocate, ASPL
Ms. Mannat Waraich, Advocate, ASPL
Shri. M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Manoj Mathur, SECI
Shri Ajay Sinha, SECI
Shri Sanjeev Singh, SECI
Shri Abhinav Kumar, SECI

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking direction to the Respondent, Solar Energy Corporation of India Limited (SECI) to return Performance Bank Guarantee (PBG) dated 9.3.2020 of Rs. 50 crore as a consequence of the termination of the Power Purchase Agreement (PPA). Learned counsel further submitted as under:



(a) The Petitioner has entered into a PPA dated 22.11.2018 with SECI for setting up a 250 MW Solar Power Project, after its selection as successful bidder in the Competitive Bid Process conducted by SECI.

(b) In terms of Articles 4.5.3 and 13.5 of the PPA, if the force majeure event or its effect continues beyond a period of three months, the Petitioner is entitled to terminate the PPA without any further liability to either party from the date of such termination.

(c) In the present case, due to force majeure events, namely, Covid-19 pandemic and nation-wide lockdown, the Petitioner has terminated the PPA on 7.8.2020 in accordance with Article 4.5.3 read with Article 13.5 of the PPA. Therefore, PBG (performance bank guarantee) furnished by the Petitioner to SECI ought to be returned to the Petitioner as the PPA stands validly terminated as per the above-mentioned Articles of the PPA without any liability of the Petitioner towards SECI.

3. Learned senior counsel for the Respondent, SECI accepted the notice and sought time to file reply to the Petition. Learned senior counsel submitted that the buying entity/ distribution licensee, namely, Jharkhand Bijli Vitran Nigam Limited (JBVNL) ought to be impleaded as party to the Petition.

4. After hearing the learned counsel for the Petitioner and the learned senior counsel for the Respondent, SECI, the Commission admitted the Petition.

5. The Commission directed the Petitioner to implead JBVNL as party to the Petition and to file revised memo of parties by 28.8.2020. The Commission further directed the Petitioner to serve copy of the Petition on the Respondents including JBVNL immediately. The Respondents including JBVNL were directed to file their reply, by 15.9.2020, with advance copy to the Petitioner, who may file its rejoinder, if any, by 30.9.2020.

6. Learned counsel for the Petitioner further sought liberty to file an additional affidavit for correction of certain typographical errors that have crept into the Petition. The request was allowed by the Commission. The Petitioner was directed to file its additional affidavit to the above extent by 25.8.2020. The due date of filing of reply, rejoinder and additional affidavit should be strictly complied with.

7. Learned counsel for the Petitioner submitted that the Petitioner has filed IA No. 57/2020 restraining the Respondent, SECI from invoking/ encashing the PBG of Rs.50 crore furnished in terms of PPA till final disposal of the Petition. Learned counsel further submitted that the Petitioner has also filed IA No. 58/2020 for urgent listing of the matter. In response, learned senior counsel for the Respondent, SECI submitted that SECI does not intend to invoke/ encash the PBG furnished by the Petitioner at this stage subject to the Petitioner keeping the PBG valid. Considering the submissions of the parties, the Commission directed SECI not to invoke/ encash the PBG furnished by the Petitioner till the next date of hearing and the Petitioner was directed to keep the PBG valid. Accordingly, the Commission disposed of the IA No. 57/2020 and IA No. 58/2020.



8. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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

