



नई दिल्ली
NEW DELHI

याचिका संख्या /Petition No.: I.A. No. 17 of 2020 in Petition No.
226/MP/2020

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri. I.S. Jha, Member

आदेश दिनांक /Date of Order: 12th of March, 2020

IN THE MATTER OF:

Application under section 94(2) of the Electricity Act, 2003 seeking interim relief in the nature of directions restraining the Respondents from taking coercive actions against the Petitioner.

AND IN THE MATTER OF:

Wind Four Renergy Pvt. Ltd.
Inox Towers, Plot no. 17
Sector-16A, Film City
Noida- 201301

...Petitioner/Applicant

Versus

1. Solar Energy Corporation of India Limited (SECI)
1st Floor, D-3, A-Wing,
Prius Platinum Building District Centre,
Saket, New Delhi – 110017
2. Power Trading Company India Limited (PTC)

2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi-110066

...Respondents

Parties Present: Shri Alok Krishna Agarwal, Advocate, WFRPL
Shri Mayank Bughani, Advocate, WFRPL
Shri Ravi Sinha, WFRPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Shubham Arya, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Ravi Kishore, Advocate, PTCIL
Ms. Prerna Singh, Advocate, PTCIL
Ms. Rajshree Chaudhary, Advocate, PTCIL
Shri Bharat Sharma, Advocate, PTCIL

आदेश /ORDER

The Petitioner-Applicant, Wind Four Renergy Pvt. Ltd. (hereinafter referred to as 'WFRPL'), is a Power Generating company and a wholly owned subsidiary of Inox Wind Infrastructure Services Ltd. (hereinafter referred to as 'IWISL'). The Petitioner has been incorporated by IWISL as a Special Purpose Vehicle for development & execution of 50 MW ISTS connected Wind Power Project awarded by Solar Energy Corporation of India Limited to IWISL. The project is being setup at Dayapar and other villages, in Bhuj, Gujarat in the name of the Petitioner-Applicant. The IWISL has been declared as a successful bidder against RfP dated 24.06.2016 issued by SECI. Letter of Award was issued in the favour of IWISL on 26.08.2016.

2. The Respondent No.1, Solar Energy Corporation of India Limited (hereinafter referred to as 'SECI') has been designated by the Government of India as the nodal agency for implementation of MNRE Scheme for Setting up of 1000 MW ISTS connected Wind Power Projects for developing grid connected wind power capacity.

3. The Respondent No.2, Power Trading Company India Ltd (hereinafter referred to as 'PTCIL') was incorporated in 1999 to undertake trading of power. PTCIL has also tied up the power to be generated from the awarded projects for sale to BSES Rajdhani Power Ltd (BRPL), New Delhi for this project for the fulfilment of its Renewable Purchase Obligation (RPO). The Petitioner has executed the Power Purchase Agreements with the Respondent No. 2 on 21.07.2017 and respective amendment on 20.12.2017.
4. The Petitioner has made the following prayers:
 - a. *Issue appropriate directions restraining the Respondents from encashing the Bank Guarantees furnished by the Applicant/Petitioner, till the final adjudication of the above titled Petition by this Commission;*
 - b. *Issue appropriate directions restraining the Respondents from terminating the Power Purchase Agreement dated 21.07.2017 executed with the Petitioner, till the final adjudication of the above titled Petition by this Commission;*
 - c. *Pass such other or further orders as the Commission may deem fit and proper in the facts and circumstances of the case.*

Submission of the Petitioner-Applicant

5. The Petition No. 226/MP/2020 has been filed by the Petitioner and is pending adjudication before the Commission.
6. The Petitioner has submitted that facts and circumstances as borne out from the material placed on record in Petition No. 226/MP/2020 demonstrates that the Petitioner was admittedly prevented from executing the work for commissioning of the 50 MW Wind Power Project for reasons beyond its control during the period of 132 days falling between the dates

12.07.2019 (date of termination of PPA) till 21.11.2019 (date of communication of extension of revised SCoD (Scheduled Commissioning Date)).

7. The Petitioner has submitted that non-execution of work during the period of 132 days intervening between 12.07.2019 till 21.11.2019 cannot be attributed to any negligence, or any intentional act, or any omission, or any error on the part of the Petitioner as the Petitioner was kept by the Respondents under a genuine and bonafide belief and impression, that the Power Purchase Agreement stood terminated on 12.07.2019.
8. The Petitioner has submitted that it is a settled law that where the delay is not attributable to the affected party and is caused due to factors beyond the control of such party, no penalty can be imposed upon the said party due to such delay. Consequently, no penalty for delay, as envisaged under the provisions of RfS can be imposed for the said period. As such, in the facts and circumstances of the present case, any imposition of any such penalty during the aforesaid period would tantamount to unjust enrichment of the Respondents thereby causing irreparable harm to the Petitioner.
9. The Petitioner has sought exclusion of period commencing from 12.07.2019 to 21.11.2019 from the computation carried out for the imposition of penalty for delay in commissioning as envisaged in Clause 3.17.B of the RFS and further stated that after condoning the afore-said gap of 132 days the revised SCoD of 13.06.2019 may be shifted to 21.01.2020 allowing 60 days time from the date of communication (i.e.21.11.2019) of project extension as being allowed after LTA operationalization and making it effective from the date of communication.
10. The Petitioner has submitted that it is constrained to file the present application as there is a risk of encashment of Bank Guarantees as well as termination of Power Purchase Agreement, at the hands of the Respondents, even while the above titled Petition is pending adjudication before this Commission.

11. The Petitioner has submitted that the facts and circumstances and the material placed on record in the Petition No. 226/MP/2020 would show and demonstrate that the it has a prima facie case and the balance of convenience also lies in its favour. Therefore, in the unfortunate event of the Respondents either encashing the Bank Guarantees, or terminating the Power Purchase Agreement with the Petitioner, the Petitioner shall suffer grave prejudice and irreparable harm. Whereas, no harm would be caused to the Respondents if the prayers sought in the present application are granted to the Applicant.

Analysis and Decision

12. The Interlocutory Application was filed on 05.03.2020. The Learned Counsel for the Petitioner mentioned the IA during the hearing on 05.03.2020. The Commission fixed the date of hearing of the IA on 12.03.2020. The Learned Counsel for the Petitioner argued that interim direction be issued refraining the Respondent for terminating the PPA and encashment of the bank guarantee till the main petition is decided. The Learned Counsel for the Respondent submitted that since the Petitioner has defaulted in performance of its obligation under the PPA and extended time for the commissioning of the project was due to expire on 13.03.2020, the Commission may consider not to grant relief as prayed in the IA.

13. We have considered the submission of the Learned Counsel of the Petitioner and the Respondents. The Petitioner's PPA was terminated on 12.07.2019 on account of failure to perform the commissioning of the project within the stipulated deadline. Subsequently, on a representation by the Petitioner, MNRE vide its letter dated 21.11.2019 has revised the SCoD of the project to 13.06.2019 on account of delay in operationalization of the LTA by CTU and further granted the period of nine months for execution of the project from the date of the revised SCoD. The extended time lines expires on 13.03.2020.

14. It is pertinent to mention that the Petitioner has approached the Commission with the IA at this very belated stage. Since the prayer in the main petition is to extend the time line for the commissioning of the project by 132 days, the same needs to be adjudicated after completion

of the pleadings by the parties. If the main petition is decided in favour of the Petitioner, it will not only be granted the extended time, but shall also be restored to all consequential reliefs emanating from invoking the bank guarantee. Therefore, we are not inclined to entertain the IA at this stage. It is however clarified that any action taken by the Respondents would be subject to the final decision of the main petition.

15. In view of the above, I.A. No.17 of 2020 in Petition No. 226/MP/2020 is not entertained.

Sd/-
आई. एस. झा
सदस्य

Sd/-
पी. के. पुजारी
अध्यक्ष