

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 27/MP/2018
Along with I.A No. 8/2018**

Subject : Petition under Section 79 (1) (f) read with Section 79 (1) (b) of the Electricity Act, 2003 in relation to the disputes arising out of the Power Purchase Agreement dated 3.8.2016 between Petitioner herein i.e. Krishna Wind farms Developers Private Limited and Solar Energy Corporation of India Limited. .

Date of Hearing : 9.3.2018

Coram : Shri P. K. Pujari, Chairperson
Shri A. K. Singhal, Member
Shri A. S. Bakshi, Member
Dr. M. K. Iyer, Member

Petitioner : Krishna Windfarms Private Limited (KWPL)

Respondent : Solar Energy Corporation of India Limited (SECIL)

Parties present : Shri Sanjay Sen, Senior Advocate, KWPL
Shri Matrugupta Mishra, Advocate, KWPL
Ms. Ankita Bafna, Advocate, KWPL
Shri P. S. Bindra, Advocate, KWPL
Shri Sanjive Sharna, KWPL

Record of Proceedings

Learned senior counsel for the petitioner submitted that present petition has been filed for seeking declaration that the petitioner's project has been commissioned on 11.8.2017, which is prior to the Scheduled Commercial Operation Date (SCOD) as per Article 5.1 of the PPA and declaration that the delay in completion of Condition Subsequent under Article 3.1 of PPA was on account of force majeure events. Learned senior counsel further submitted as under:

- a) The petitioner has set up a 10 MW Solar Photovoltaic (PV) project in the state of Maharashtra. The petitioner and respondent executed a PPA dated 3.8.2016. As per Article 3.1 of the PPA, it was agreed that there are Condition Subsequent which the Petitioner agreed and undertook to perform at its own risk within seven months from the effective date i.e. 10.4.2016.
- b) The petitioner has duly performed its obligations under the PPA and delay caused in fulfilling its Condition Subsequent is solely due to the force majeure events and the reasons attributable to the Government and its instrumentalities.

- c) As per Article 2.1 of the PPA, the effective date of the PPA is 10.4.2016. Further, the definition clause of the PPA provides SCOD as 10.5.2017. However, Article 5.1.5 of the PPA provides that the petitioner shall commission the project within 13 months from the date of signing of the PPA i.e. 3.8.2016. The definition of effective date under RfS also provides that the date of signing the PPA shall be the effective date. Therefore, the effective date shall be reckoned from the date of signing the PPA i.e. 3.8.2016 rather than 10.4.2016.
- d) The project was duly commissioned on 11.8.2017 and requisite certificate was issued without reckoning any delay or default on the part of the petitioner. However, the respondent started alleging delay on the part of petitioner in meeting SCOD of 10.5.2017. The respondent issued letter dated 29.9.2017 to Bank of India for invoking the Bank Guarantee (BG) furnished by the petitioner.
- e) The respondent has admitted vide its letter dated 31.10.2017 that the project is to be commissioned within 13 months from the date of signing of the PPA. Therefore, the admission on the part of the respondent nullifies the very basis of invocation of BG.
- f) Learned senior counsel submitted that the petitioner has also filed an IA seeking ad- interim ex- parte order restraining the respondent from taking any coercive measures against the petitioner. Learned senior counsel requested the Commission to admit the petition and IA.
2. After hearing the learned senior counsel for the petitioner, the Commission admitted the petition and IA and directed to issue notices to the respondent.
3. The Commission directed the petitioner to serve copy of the petition and IA on the respondent immediately. The Commission directed the respondent to file its reply, by 22.3.2018, with an advance copy to the petitioner, who may file its rejoinder, if any, by 12.4.2018. The Commission directed that due date of filing the reply and rejoinder should be strictly complied with. No extension shall be granted on that account.
4. The petition and IA shall be listed for hearing on 26.4.2018

By order of the Commission

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