

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 95/MP/2017
alongwith IA No. 93/2017**

Subject : Petition under Section 79 of the Electricity Act, 2003 in relation to disputes arising out of the PPA dated 26.7.2016 between the petitioner and Solar energy Corporation of India Limited.

Petitioner : Welspun Energy Private Limited (WEPL).

Respondent : Solar Energy Corporation of India Limited (SECI).

Date of hearing : 16.1.2018

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

Parties present : Shri Vikas Singh, Senior Advocate, WEPL
Ms. Pragya Ohri, Advocate, WEPL
Ms. Kanika Kumar, Advocate, WEPL
Shri Prabhas Bajaj, Advocate, SECI
Shri Ankit Roy, Advocate, SECI

Record of Proceedings

Learned senior counsel for the petitioner argued at length and submitted that SECI had preferred an appeal against the Commission's order dated 11.10.2017 in the instant petition on the issue of maintainability which was heard on 10.1.2018 by the APTEL wherein no stay has been granted on maintainability. Learned senior counsel further submitted as under:

a. In consonance with the MNRE guidelines for implementation of Scheme for setting up of 2000 MW Grid-connected Solar PV Power Projects under Jawahar Lal Nehru Solar Mission (JNNSM), SECI had issued the RFS document for 500 MW Grid Connected Solar PV Power Projects in Maharashtra. In response to the RfS, various SPDs including the petitioner submitted their bids. The petitioner's bid for 100 MW Solar PV Project in Jalgaon, Maharashtra was accepted and the Lol was issued to the petitioner on 10.3.2016. Subsequently, on 30.4.2016, the petitioner applied to MSETCL for grant of grid-connectivity. On 26.7.2016, SECI entered into a PPA with the petitioner with effective date of 10.4.2016. In terms of the RfS and the PPA, the petitioner submitted the Bank Guarantees (BG) for an amount of Rs. 30 crore.

b. The petitioner vide letter dated 5.9.2016 informed SECI that it is not in a position to execute the project and requested for release of the Performance Bank Guarantee submitted by it before signing the PPA. SECI vide its letter dated 2.11.2016 informed the petitioner that the matter shall be dealt with as per the provisions of the PPA.



c. The land aggregator of the petitioner had started acquiring land via sale deed from 7.11.2015 and upto 14.9.2016 had acquired 320.28 acres of land. The Office of District Collector vide circular dated 4.10.2016 informed to all that the registration process at sub-registrar Dahiwadi Satara Circle (where the project site of the petitioner is situated) was on hold due to digitalization of record.

d. In terms of Article 3.1 of the PPA, the Condition Subsequent Activities (CS Activities) were to be fulfilled within 7 months from 10.4.2016. The PPA also envisages extension of the time period for completion of CS activities by way of payment of extension charges in terms of Article 3.2.2 of the PPA. Since, the completion of the CS activities could not take place by 10.11.2016, SECI vide letter dated 11.11.2016 sought information regarding compliance of CS activities under Article 3.1 of the PPA and also directed the petitioner to submit all the documents in relation to satisfaction of CS activities, failing which, SECI threatened to take action as per the provisions of RfS/PPA/MNRE guidelines .

e. Subsequently, on 28.11.2016, the petitioner received the grid connectivity from MSETCL-one of the CS activity under the PPA. SECI vide its letter dated 29.11.2016 invoked the bank guarantees submitted by the petitioner. The petitioner vide letter dated 29.11.2016 in response to SECI's letter dated 11.11.2016 provided the details of all CS activities and also explained the delays faced by it on account of force majeure events. The petitioner also informed SECI that as a business strategy, Welpsun Energy Private Limited (WEPL) was being demerged and as per the Scheme of Demerger, Giriraj Renewable Private Limited (GRPL) would inherit the entire renewable portfolio of WEPL. The petitioner also submitted the draft demerger scheme to SECI and requested for an extension of 19 days for meeting CS activities and informed that it would immediately remit a sum of Rs.1.9 crore through RTGS as extension charges. The petitioner also assured SECI that it had adequate funds for the purpose of equity infusion and would execute the project entirely through internal sources in terms of the terms and conditions of the PPA.

f. The petitioner vide letter dated 7.12.2016 informed SECI that it had paid the extension charges of Rs. 1.9 crore for extension from 11.11.2016 to 29.11.2016 along with interest. In response, SECI vide its email dated 8.12.2016 to the petitioner sought interest on delayed payment of extension charges and the same were paid by the petitioner on 9.12.2016. Subsequently, the petitioner vide letter dated 28.2.2017 to MNRE sought approval for transfer of PPA to GRPL in terms of Article 15 of the PPA since the petitioner was undergoing a court-led demerger and to ensure smooth transition.

g. The petitioner vide various letters requested SECI to allow it to continue to execute the project. On 19.4.2017, the petitioner approached the High Court of Delhi under Section 9 of the Arbitration and Conciliation Act, 1996 seeking injunction against encashment of BGs as SECI invoked BGs on 19.4.2017. The High Court of Delhi by way of its order granted interim injunction against encashment of BGs.

h. SECI vide letter dated 1.3.2017 informed the petitioner that it was not satisfied with two specific condition subsequent (CS) activities and directed the petitioner to pay extension charges. The petitioner wrote various letters to SECI to allow the extension



and assignment of PPA to GRPL. Subsequently, SECI vide letter dated 8.5.2017 informed the petitioner for the first time that the PPA had stood terminated by efflux of time under Article 3.2.1 on 17.11.2016 and the notice dated 1.3.2017 was issued as a follow up notice, even though it stood terminated in November, 2016.

i. On 1.4.2016, NCLT, Ahmedabad sanctioned the scheme of de-merger. The effective date as per the scheme is 1.4.2016. The petitioner vide letter dated 30.5.2017 informed SECI that GRPL has become the successor and the resultant company of the petitioner and all responsibilities of the renewable energy business of the demerged undertaking i.e. WEPL would now vest with GRPL. The petitioner also confirmed that GRPL intended to fulfill all conditions subsequent in terms of Article 3.1 of the PPA. Subsequently, the petitioner vide various letters requested SECI to issue the letter confirming the change of name of the SPD to GRPL in SECI's records.

j. The Commission vide order dated 11.10.2017 held the present petition to be maintainable and directed SECI to provide the name of the buying utilities. SECI vide its letter dated 29.12.2017 provided the name of the buying utilities.

2. In his rebuttal, learned counsel for SECI submitted that once the PPA between the petitioner and SECI had stood automatically terminated by efflux of time, there was neither any occasion nor any permissibility for the petitioner to seek any extension of time or to seek permission for assignment of the PPA. The request of the petitioner to assign the PPA to another entity further demonstrates that the petitioner had no intention to comply with the fundamental conditions of the contract or fulfill its obligations under the contract. Learned counsel further submitted that from the perusal of the NCLT's order dated 14.3.2017, it was revealed for the first time to SECI that the petitioner had even breached another fundamental obligation under the RfS of maintaining the shareholding pattern for a period of one year. The petitioner by its conduct has willfully and deliberately breached the fundamental and crucial obligations under the contract.

3. Due to paucity of time, learned counsel for SECI could not complete his arguments.

4. The Commission directed SECI to clarify on affidavit, by 5.2.2018 as to why no action was taken on the letter dated 5.9.2016 written by the petitioner to SECI and as to why there is no reference to the said letter in the subsequent correspondences dated 2.11.2016 and 9.11.2016 made by SECI with the petitioner.

5. The petition shall be listed for final hearing on 15.2.2018.

By order of the Commission

**(T. Rout)
Chief (Legal)**

