

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A. No.52/2018

in

Petition No. 95/MP/2017

Coram:

Shri P. K. Pujari, Chairperson

Shri A. K. Singhal, Member

Dr. M. K. Iyer, Member

Date of Order: 6th of August, 2018

In the matter of

Application on behalf of the Petitioner under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 seeking permission to bring on record subsequent events and development of the project being developed by the Petitioner.

And

In the matter of

M/s Welspun Energy Private Limited
3rd Floor, PTI Building
4 Parliament Street,
New Delhi-110001

.....Petitioner

Vs.

Solar Energy Corporation of India
1st Floor, D-3, A wing
Religare Building
District Centre, Saket
New Delhi-110017

.....Respondent

The following were present:

Shri Gopal Jain, Senior Advocate, WEPL

Shri Sakiya Singha Chaudhury, Advocate, WEPL



Ms. Molshree Bhatnagar, Advocate, WEPL
Shri Avijeet Lala, WEPL
Shri Prabhas Bajaj, Advocate, SECI
Shri Ankit Roy, Advocate, SECI
Shri Abhinav Kumar, SECI

ORDER

The Petitioner, M/s Welspun Energy Private Limited has filed the present Interlocutory Application under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 (CBR) seeking permission to bring on record subsequent events and development of the project being developed by the Petitioner with the following prayers:

“(a) Allow the present application;

(b) Take on record and consider the further material development during the intervening period from the date of order being reserved and till date and the consequences thereof; and

(c) Pass such other relief(s)/order(s) that this Commission may deem fit.”

2. The Petitioner has submitted that the Petitioner filed the main petition under section 79 of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) in relation to certain disputes arising under the Power Purchase Agreement dated 26.7.2016 entered into between the Petitioner and Solar Energy Corporation of India (SECI), the Respondent with respect to the Solar Power Project of the Petitioner located at Village: Varkute-Malawadi & Shirta, Taluk: Man, District: Satara, Maharashtra under Phase II Batch –III of Jawaharlal Nehru National Solar Mission. The Petitioner has submitted that the IA has been filed to bring on record the current status of the Project and the progress made by the Petitioner towards development and execution of the Project after the order was reserved in the petition. The Petitioner has submitted that during the course of the instant proceedings, the Respondent had raised questions regarding the



bonafide and sincerity of the Petitioner in developing and implementing the Project and therefore, the Petitioner has filed the IA to allay the concern of the Respondent.

3. The Petitioner has submitted that the plant of the Petitioner has been constructed and synchronized with the grid on 16.4.2018 in the presence of officials of Maharashtra State Electricity Transmission Company Limited (MSETCL) and power is flown to the grid on loan with 28 MW capacity on load out of 100 MW. However, the commissioning and commercial operation as per the terms of the PPA is due for declaration as the Respondent/SECI is yet to provide permission for COD as per the PPA, owing to the dispute arising out of the PPA. The Petitioner has submitted about the progress of the project as under;

- (a) Plant synchronized with the grid on 16.4.2018 and power supply has commenced with 28 MW capacity on load;
- (b) Civil work and electrical system completed for 100 MW capacity.
- (c) Evacuation system completed for 100 MW capacity.

4. The Petitioner has annexed the following documents with the IA:

- (a) Sanction of Start-up power dated 3.3.2018 by MSETCL;
- (b) CEIG permission dated 27.3.2018 granted for 28 MW capacity;
- (c) Letter dated 12.4.2018 from MSETCL to the Petitioner granting permission to synchronise 28 MW out of 100 MW;
- (d) Minutes of the Meeting dated 16.4.2018 wherein 28 MW was synchronized with the grid;
- (e) Photographs from the project site- charging of 220 kV Transmission Line,



charging of 220 kV and 132 kV Switchyard, 128 MW DC & 100 MW AC system.

5. The Petitioner has submitted that even though the order was reserved in the petition on 22.2.2018, any material facts having a bearing on the matter ought to be brought to the notice of the Commission before the judgment is pronounced.

6. The Petitioner has further submitted that Hon'ble Supreme Court in its judgment dated 5.4.2018 in Civil Appeal No. 3600 of 2018 (M.P. Management Company Limited V. Renew Clean Energy Pvt. Ltd. & Anr) has held that when the project is at the advance stage of commissioning, termination of the contract is not fair. The Petitioner has submitted that in the said case, even though the delay suffered by the project developer was not covered by force majeure, such delay has been considered by the Hon'ble Supreme Court while addressing the issue of delay in the implementation of the project.

7. The IA was heard on 19.7.2018. Learned Senior Counsel for the Petitioner submitted that the plant has been synchronized with grid on 16.4.2018 and the Petitioner is supplying 28 MW power into the grid on short term basis and in a further period of 3 months, the Petitioner will be in a position to commission the fully operational plant at 100 MW capacity. Learned Senior Counsel submitted that the Petitioner's case is covered under the judgment of MP Management Company supra. Learned senior counsel submitted that the new facts pleaded in the application which occurred after the order was reserved are material and germane to the controversy and would have a bearing on the final outcome of the case. Learned Senior Counsel

submitted that the Industry, Energy and Labour Department of Government of Maharashtra in its letter dated 3.2.2018 has acknowledged the delay on account of Government procedure based on a report from Collector Office Satara and has recommended for twelve months time for extension of SCOD of the project. Learned Senior Counsel further submitted that considering the heavy investment made, the case of the Petitioner needs to be considered for extension of SCOD in the light of the fact that the Petitioner has synchronized the project with the grid.

8. Learned counsel for SECI submitted that the letter dated 3.2.2018 is already on record having been filed with the written submission by the Petitioner. Learned counsel submitted that the dispute in the main petition is whether the Petitioner fulfilled the conditions subsequent as on 10.11.2016 and whether the Petitioner was in a position to implement the project within SCOD of 10.5.2017 in terms of the PPA. Since the Petitioner did not fulfill the condition subsequent, its PPA was automatically terminated as per the position taken by SECI in the main petition. Therefore, the subsequent events of synchronization with the grid are irrelevant to the dispute raised in the petition. Learned counsel submitted that the facts now pleaded in this application are neither material nor germane and have no bearing on the dispute being adjudicated by the Commission. The documents annexed by the Petitioner alongwith the present Application are addressed in the name of M/s Giriraj Renewables Pvt. Ltd. and not the Petitioner. Learned counsel submitted that the judgment of the Hon'ble Supreme Court in MP Management Company Case supra is not applicable in the present case since the project in that case was executed ahead of the schedule but the contract was



terminated at the final stage of commissioning whereas in the present case the Petitioner could not meet the conditions subsequent and the PPA stood terminated at the stage of conditions subsequent/financial closure. In the case of MPPMCL, the selected Bidder had itself demonstrated the compliance with the contractual obligations. Whereas in the present case, the documents have been placed on record by a third party entity i.e. M/s Giriraj Renewables Private Ltd., which is not recognized under the contract wherein the RfS specifically prohibits change in shareholding pattern atleast till 1 year from date of COD. Learned counsel submitted that the application of the Petitioner be rejected.

9. We have considered the submissions of the learned Senior Counsel for the Petitioner and learned counsel for the Respondent. The Petitioner has sought to place on record the documents (as mentioned in para 4) pertaining to synchronization of 28 MW with the grid in order to demonstrate its sincerity and seriousness to execute the project. The Petitioner has also placed on record the judgment of the Hon'ble Supreme Court in M.P. Management Case supra and has submitted that his case is covered under the said judgment. As requested by the Petitioner, the documents submitted at Para 4 of this order have been taken on record.

10. The IA is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(P. K. Pujari)
Chairperson

