

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 227/MP/2020 and IA No.16/2020

Subject : Petition under Section 79(1)(f) read with Section 79(1)(f) of the Electricity Act, 2003 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking issuance of appropriate orders/direction to Solar Energy Corporation of India Limited pursuant to the issues arising out of the Power Purchase Agreement dated 4.9.2018 and seeking consequent relief for releasing the Bank Guarantee issued by the Petitioner in favour of Solar Energy Corporation of India Limited.

Petitioner : Mytrah Vayu (Brahmaputra) Private Limited (MV(B)PL)

Respondents : Solar Energy Corporation of India Limited (SECI)

Date of Hearing : 5.3.2020

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

Parties present : Shri Sanjay Sen, Sr. Advocate, MV(B)PL
Shri Dharmendra Gupta, MV(B)PL
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking declaration that the termination of the Power Purchase Agreement dated 4.9.2018 by the Petitioner is legal and valid and consequently direction to the Respondent, SECI to return the Performance Bank Guarantee of Rs.60 crore furnished thereof. Learned senior counsel submitted that despite having been awarded 300 MW Wind Power Project vide Letter of Award dated 1.6.2018 and having entered into Power Purchase Agreement on 4.9.2018, the Respondent, SECI did not approach the Commission for adoption of tariff as required in terms of Competitive Bidding Guidelines issued by Ministry of Power till November, 2019 i.e. after a passage of almost 15 months from the date of execution of the PPA. The tariff was finally adopted by the Commission in its order dated 19.2.2020 and this prolonged delay has affected the underlying economic and financial viability and assumption on the basis of which the Petitioner had bid during the competitive bid process. Accordingly, the Petitioner, vide its letter dated 25.2.2020, terminated the PPA on account of non-fulfillment of material obligation by SECI.

2. Learned counsel for the Respondent, SECI accepted the notice and sought time to file reply to the Petition. Learned counsel further submitted that after the date of signing of the PPA i.e. from 4.9.2018 till August, 2019, the Petitioner has repeatedly intimated the Respondent that it is willing to execute the Project.



However, the Petitioner never raised the issue of adoption of tariff. Learned counsel further submitted that distribution licensee with whom Power Sale Agreement has been signed on the basis of the PPA with the Petitioner, on back to back basis, should also be impleaded as party to the Petition.

3. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, SECI, the Commission admitted the Petition and directed to issue notice to the Respondent.

4. The Commission directed the Respondent, SECI to submit the list of distribution licensees to whom the power would be supplied by the Petitioner. The Commission directed the Petitioner to implead such distribution licensees as parties to the Petition and file revised memo of parties by 13.3.2020. The Commission further directed the Petitioner to serve copy of the Petition on the Respondents including the impleaded distribution licensees immediately. The Respondents including the distribution licensees were directed to file their reply by 7.4.2020, with an advance copy to the Petitioner, who may file its rejoinder, if any, by 21.4.2020. The Commission directed that the due date of filing of reply and rejoinder should be strictly complied with.

5. Learned senior counsel for the Petitioner submitted that the Petitioner has also filed IA No. 16/2020 restraining the Respondent, SECI from invoking/encashing the Performance Bank Guarantee of Rs. 60 crore furnished in terms of PPA till the final disposal of the Petition. The Commission directed the Respondent, SECI not to take any coercive action against the Petitioner till further order and the Petitioner is directed to keep the Performance Bank Guarantee furnished under the PPA valid. Accordingly, the Commission disposed of the IA No. 16/2020.

6. The Petition shall be listed for hearing on due course for which separate notice will be issued.

By order of the Commission

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

