

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 340/MP/2020  
with IA No. 24/2020 and IA No. 25/2020**

Subject: Petition under 79(1)(f) of the Electricity Act, 2003 for adjudicating upon the dispute arising out of the Power Purchase Agreements dated 23.05.2018 executed between Petitioner herein, i.e. M/s Torrent Power Limited and the Respondent, Solar Energy Corporation of India Limited.

Petitioner : Torrent Power Limited

Respondents : Solar Energy Corporation of India Limited and Ors.

Date of Hearing : 14.5.2020

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

Parties present : Shri Sanjay Sen, Senior Advocate for the Petitioner  
Ms. Divya Chaturvedi, Advocate for the Petitioner  
Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI

**Record of Proceedings**

The matter was listed for hearing through video conferencing.

2. Learned senior counsel for the Petitioner, Torrent Power Limited (TPL), submitted that the present Petition has been filed *inter-alia* seeking declaration that the delay in execution of the Projects and the eventual termination of the PPAs has been on account of the force majeure event i.e delay in allocation of revenue land to TPL due to frequent changes in the land allocation policy by the Government of Gujarat. Learned senior counsel mainly submitted as under:

(a) On 23.1.2018, SECI issued Request for Selection in line with the Guidelines issued by Ministry of New and Renewable Energy. Pursuant to the bidding, TPL was declared a successful bidder. On 23.2.2018, SECI issued Letters of Award for 300.3 MW and 199.5 MW Lakhpatand Junachay Projects respectively. On 21.3.2018, TPL furnished two Performance Bank Guarantees amounting to Rs. 99.96 crore .

(b) On 23.5.22018, TPL executed PPAs with SECI for supply of power from proposed wind power projects. As per the PPAs, the Projects were to be executed by 24.11.2019 (SCOD). However, due to force majeure events, i.e. delay in procurement of land, TPL could not execute the Project within SCOD.

(c) Delay in procurement of land was on account of event akin to force majeure which prima-facie is to be allowed as force majeure event in terms of the order dated 17.12.2018 in Petition No. 95/MP/2017.



(d) The Petitioner had sent eleven force majeure notices explaining the reasons for delay beyond its control at every stage of the project. However, no response was received from SECI in this regard. Subsequently, SECI had granted interim extensions to execute the Projects.

(e) SECI in its e-mail dated 24.10.2019 had in-principle accepted the unforeseeable difficulty being faced by the Petitioner in procuring the land and had informed that SECI will consider the issues appropriately.

(f) On 13.3.2020, under Article 13.5 of the PPA, TPL sent notice to SECI terminating the PPAs dated 23.5.2018 on account of force majeure events and/or event akin thereto faced by TPL that had subsisted for 12 months. In the said notice, TPL requested SECI to return the Performance Bank Guarantees. However, SECI vide its letter dated 13.4.2020 has threatened to encash the Performance Bank Guarantees.

3. Learned senior counsel for the Respondent, SECI accepted the notice and sought time to file reply to the Petition. Learned senior counsel further submitted that buying entities/distribution licensees, namely, Madhya Pradesh Power Management Company Limited, North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited should also be impleaded as party to the Petition. Learned senior counsel further submitted as under:

(a) The Petitioner has allegedly terminated the PPA on account of existence of sustained force majeure event.

(b) SECI is disputing that there has been a force majeure event or even if it is there, there is no ground for claiming that it continued for a period of more than twelve (12) months. The responsibility of the identification and procurement of land was that of the Petitioner. Further, the Petitioner was free to implement the project on private land which was available and at a location as the developers may decide.

(c) There has been no notice of force majeure event given as required under the PPA as to when the force majeure event started. It was only in the termination letter dated 13.3.2020 that the Petitioner has referred to the force majeure for the first time.

(d) Without prejudice to the rights and contentions of the parties, SECI is willing to consider the grant of extension to the Petitioner subject to production of requisite documents as sought for by SECI from the Petitioner. SECI and the Petitioner can evolve an agreed methodology for implementation of the power project awarded to the Petitioner and as per the terms of the PPA.

(e) It is incorrect that SECI did not respond to the Petitioner's letter sent in January, 2020. SECI has written to TPL and sought information on 14.2.2020. In response, TPL sought for additional time to provide information that was granted by SECI. However, instead of providing information, TPL has issued the termination letter dated 13.3.2020.



(f) SECI has replied in detail vide letter dated 13.4.2020 to the termination letter dated 13.3.2020. However, this letter dated 13.4.2020 has not been placed on record by the Petitioner.

(g) SECI vide its letter dated 11.5.2020 informed the Petitioner that Performance Bank Guarantee will be considered for invocation if it is not extended in time. Therefore, if the Performance Bank Guarantee is duly and timely extended, there would be no invocation of the same as at present.

(h) The important aspect is that the project as envisaged under the PPA and in the light of the policy of Government of India gets implemented. The issue can be resolved by mutual discussions. SECI is in the process of sending a communication to the Petitioner shortly in this regard.

(i) The Petitioner, in the meanwhile, should ensure that the banks which have issued the Performance Bank Guarantees with validity till 24.5.2020, renew them on the same terms for further period at the earliest as has been stated by SECI in the letter dated 11.5.2020.

4. After hearing the learned senior counsels for the Petitioner and the Respondent, SECI, the Commission admitted the Petition and directed to issue notice to the Respondents.

5. The Commission directed the Petitioner to implead Madhya Pradesh Power Management Company Limited, North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited as parties to the Petition and file revised memo of parties by 28.5.2020. 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 3.6.2020, with an advance copy to the Petitioner, who may file its rejoinder, if any, by 20.6.2020. The Commission directed that the due date of filing of reply and rejoinder should be strictly complied with.

6. Learned senior counsel for the Petitioner submitted that the Petitioner has also filed IA No. 24/2020 restraining the Respondent, SECI from invoking/encashing the Performance Bank Guarantees of Rs.99.96 crore furnished in terms of PPA till the final disposal of the Petition. Learned senior counsel further submitted that the Petitioner has filed IA No. 25/2020 for urgent listing of the matter. The Commission, taking note of the submissions of the Respondent, SECI that no invocation of Performance Bank Guarantees would be done if the Petitioner renews the same on the same terms and on time beyond 24.5.2020, directed the Petitioner to keep the Performance Bank Guarantees furnished under the PPAs valid till the next date of hearing. Accordingly, the Commission disposed of the IA No. 24/2020 and IA No. 25/2020.

7. The Petition shall be listed for hearing in due course for which separate notice will be issued.

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Deputy Chief (Law)**

