

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 580/MP/2020
and IA No. 55/2020**

Subject : Petition under Sections 63 and 79 of the Electricity Act, 2003 read with the Competitive Bidding Guidelines and Articles 11 and 13 of the Power Purchase Agreement dated 4.9.2018 executed between ReNew Wind Energy (TN) Private Limited and Solar Energy Corporation of India Limited.

Date of Hearing : 6.8.2020

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

Petitioner : ReNew Wind Energy (TN) Private Limited (ReNew)

Respondents : Solar Energy Corporation of India Limited (SECI) and 3 Ors.

Parties present : Shri Amit Kapur, Advocate, ReNew
Shri Vishrov Mukerjee, Advocate, ReNew
Shri Akshat Jain, Advocate, ReNew
Shri Girik Bhalla, Advocate, ReNew
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Sunei Kapoor, ReNew
Shri Vasav Anand, ReNew
Shri Shreedhar Singh, SECI
Shri Shubham Mishra, SECI
Ms. Aditee Nitnavare, SECI

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the instant Petition has been filed, *inter-alia*, seeking to (a) terminate the Power Purchase Agreement (PPA) dated 4.9.2018 entered into between the Petitioner and the Respondent, Solar Energy Corporation of India Limited (SECI) on the grounds of force majeure events, and (b) restrain SECI from encashing the Bank Guarantee and to return the same to the Petitioner. Learned counsel further submitted as under:

(a) As per Article 4.5.3 of the PPA, the Petitioner is entitled to terminate the PPA if the force majeure event has continued for more than 9 months.



(b) In the present case, occurrence of the various force majeure events such as (i) delay in allocation of revenue land for the Project, (ii) delay in commissioning of transmission system, (iii) delay in adoption of tariff on the part of SECI, and (iv) outbreak of Covid-19, have delayed the Petitioner's Project for more than 20 months and the said delays are continuing till date. Accordingly, on 26.7.2020, the Petitioner has terminated the PPA on account of said force majeure events, which made it impossible for the Petitioner to commission the Project within timeline specified in the PPA.

(c) Invocation of Performance Bank Guarantee when a force majeure event is subsisting is violative of Article 11.7.1(d) of the PPA, which specifically provides that no payment shall be made by a party affected by Force Majeure as long as the Force Majeure event continues.

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 as under:

(a) SECI is disputing the unilateral termination of the PPA by the Petitioner on alleged grounds of force majeure. Various force majeure events cited by the Petitioner do not constitute force majeure event in terms of the PPA.

(b) In the present case, Scheduled Commercial Operation Date (SCOD) of the Project was 29.2.2020. Since the Petitioner has failed to achieve SCOD as per the provisions of the PPA, SECI is entitled to encash the Bank Guarantee.

(c) With regard to invocation of Bank Guarantee, it is a well settled position of law that courts should not interfere with enforcement of bank guarantee except in cases where fraud or special equity is *prima facie* made out to prevent irretrievable injustice to the parties. In this regard, reliance was placed on the judgment of Hon'ble Supreme Court in the case of Standard Chartered Bank v. Heavy Engineering Corp. Ltd. In the present case, the Petitioner has not cited any such ground for seeking stay on invocation of Bank Guarantee.

(d) If the Petitioner is willing to perform its obligations under the PPA then the parties could mutually decide on the issue of invocation of Bank Guarantee. However, if the Petitioner intends to go ahead with the unilateral termination, then SECI is entitled to invoke the Bank Guarantee.

4. In response, the learned counsel for the Petitioner submitted that the judgment of Hon'ble Supreme Court as relied upon by SECI is not applicable to the present case. Moreover, in the present case, express rights are made available to the Petitioner under Articles 4.5.3 and 13.5 of the PPA to terminate the PPA if a force majeure event continues for more than 9 months without any liability.

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

6. The Commission directed the Petitioner to serve copy of the Petition on the Respondents immediately, if not already served. The Respondents were directed to file



their reply by 25.8.2020 with advance copy to the Petitioner who may file its rejoinder, if any, by 10.9.2020. The due date of filing of reply and rejoinder should be strictly complied with.

7. Learned counsel for the Petitioner submitted that the Petitioner has also filed IA No. 55/2020 seeking ad-interim stay against invocation of Performance bank Guarantee or initiation of any coercive steps by the Respondents. Considering the rival contentions of the learned counsel for the Petitioner and the learned senior counsel for the Respondent, SECI, the Commission directed SECI not to invoke/encash the Bank Guarantee furnished by the Petitioner till the next date of hearing and the Petitioner was directed to keep the Bank Guarantee valid. Accordingly, the Commission disposed of IA No. 55/2020.

8. 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)**

