

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Diary (Petition) No.323/2021 and Diary (IA) No. 324/2021

- Subject : Petition under Section 79(1)(f) read with Section 79(1)(a) and (b) of the Electricity Act, 2003 read with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects, 2017 as amended from time to time seeking declaration of discharge from any obligation and liability to the Respondent under the Request for Selection No. SECI/C&P/WPD/1200MW/T7/RfS/022019 dated 22.2.2019, Letter of Award dated 19.6.2019 or otherwise.
- Date of Hearing : 11.11.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Betam Wind Energy Private Limited (BWEPL)
- Respondent : Solar Energy Corporation of India Limited (SECI)
- Parties Present : Shri Sajjan Poovayya, Sr. Advocate, BWEPL
Shri Jafar Alam, Advocate, BWEPL
Shri M. G. Ramachandran, Sr. Advocate, SECI

Record of Proceedings

Date is not fixed for the case. The matter was mentioned today by the learned senior counsel for the Petitioner through video conferencing.

2. At the outset, the learned senior counsel for the Petitioner submitted that despite the matter being mentioned by the Petitioner during the course of hearing on 9.11.2021, including the Petitioner's apprehension that SECI might proceed with invocation of Performance Bank Guarantee ('PBG') furnished by the Petitioner and that the Petitioner has also prayed for interim relief of restraining SECI from taking any coercive measures, SECI has proceeded with invocation of PBG vide its letter dated 10.11.2021 even before the Commission could hear the matter and consider its prayer of interim relief. The learned senior counsel mainly submitted the following:

(a) Pursuant to the competitive bid process conducted by SECI, the Petitioner was selected as successful bidder and issued Letter of Award ('LoA') dated 19.6.2019 for development of 200 MW wind power project. Till date, no PPA has been executed between the Petitioner and SECI. Initially, as per the draft PPA shared by SECI, the proposed effective date was 18.10.2019 and the Scheduled Commissioning Date of the project was 17.4.2021. However, due to occurrence of uncontrollable and unforeseen



events after issuance of LoA, it has become impossible for the Petitioner to develop the project within the timeline specified in the RfS and the LoA.

(b) The Petitioner, vide its various communications, requested SECI for extension of timelines for development of the project. However, SECI offered to extend the timeline including the scheduled commissioning date to 5.9.2022.

(c) SECI vide its letter dated 29.10.2021, *inter alia*, also directed the Petitioner to convey its acceptance for signing of PPA within 3 working days i.e. by 3.11.2021, failing which it will proceed to cancel the LoA and recover various amounts by invoking its PBG of Rs. 40 crore submitted under RfS.

(d) While the Petitioner vide letter dated 3.11.2021 immediately conveyed its inability to develop the project in such a short timeframe and despite the mentioning of the matter by the Petitioner during the course of hearing on 9.11.2021, SECI vide its letter 10.11.2021 has proceeded to issue a letter to the Bank for invoking the PBG for recovering an amount of approximately Rs.15 crore. However, the encashment of PBG is yet to take place.

(e) In the above circumstances, SECI may be restrained from taking any coercive measures against the Petitioner, including encashment and/or invocation of its PBG.

3. Learned senior counsel for the Respondent, SECI mainly submitted as under:

(a) The other developers selected pursuant to the bid process have already entered into the PPA with SECI and are on verge of completion of their projects. However, the Petitioner has failed to execute the PPA till date.

(b) The amount sought to be encashed by SECI is towards Earnest Money Deposit ('EMD') and the LoA gives express right to SECI to encash the bank guarantee for the amount equivalent to EMD in case the developer refuses to execute the PPA. Thus, SECI has proceeded to encash the bank guarantee furnished by the Petitioner as it has refused to sign the PPA.

(c) The Petitioner has even failed to pay the success charges as specified in the LoA till date.

4. In response to the specific query of the Commission as to whether the Petitioner is interested in execution of the PPA or is only seeking discharge from the executing the PPA, the learned senior counsel for the Petitioner submitted that the Petitioner is requesting for reasonable time to decide upon the signing of the PPA. In response to the further query to SECI about providing additional time to the Petitioner for signing of PPA, the learned senior counsel for SECI submitted that SECI has already granted time to the Petitioner upto 23.11.2021 for signing PPA. This was also confirmed by the learned senior counsel for the Petitioner.

5. After hearing the learned senior counsels for the Petitioner and SECI, the Commission directed SECI not to encash the bank guarantee furnished by the Petitioner till 23.11.2021 and the Petitioner was directed to clarify by 22.11.2021 as to whether it intends to execute the PPA or not, by the said date.

6. 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)
Joint Chief (Law)**