

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 611/MP/2020
along with IA Nos. 62/2020 and 63/2020**

- Subject : Petition under Section 79 of the Electricity Act, 2003 and the statutory framework governing the procurement of power through competitive bidding and Article 11 read with Article 13.5 and Article 4.5.3 of the Power Purchase Agreement dated 17.12.2019 executed between Solar Energy Corporation of India Limited and Rihand Floating Solar Private Limited seeking directions to restrain SECI from invoking the bank guarantees and for returning the bank guarantees.
- Date of Hearing : 15.4.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Rihand Floating Solar Private Limited (RFSPL)
- Respondent : Solar Energy Corporation of India Limited (SECI)
- Parties Present : Shri Sujit Ghosh, Advocate, RFSPL
Ms. Mannat Waraich, Advocate, RFSPL
Shri M. G. Ramachandran, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Shri Ajay Kumar Sinha, SECI
Shri Abhishek Kumar Ambasta, SECI
Shri Abhinav Kumar, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking direction to the Respondent, SECI to return the bank guarantee dated 25.9.2019 submitted by the Petitioner on account of termination of the Power Purchase Agreement (PPA) dated 17.12.2019 in accordance with Article 4.5.3 read with Article 13.5 of the PPA. It was further submitted that the Article 4.5.3 read with Article 13 of the PPA provides right to the Petitioner to terminate the PPA if the force majeure event or its effects last for a period exceeding 3 months. Since Covid-19 pandemic, nation-wide lockdown and their effects have lasted for a period exceeding 3 months, the Petitioner has validly terminated the PPA.

3. In response to the specific query of the Commission as to the existence of the composite scheme and role of SECI in the bid process pursuant to which the Petitioner was selected to set-up the project, the learned senior counsel for the Respondent, SECI submitted that bid/tender was floated by SECI at the behest of

buying entity, Uttar Pradesh Power Corporation Limited (UPPCL) in terms of the Guidelines issued on 3.8.2017 for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects issued by the Ministry of Power, Government of India. The learned senior counsel submitted that SECI, as intermediary procurer, has agreed to purchase the power from the generating station in terms of the PPA and to sell it to buying entity, UPPCL on back-to-back basis as per the Power Supply Agreement. It was also submitted that the provisions of RfS and PPA enable SECI to divert the power allocated to UPPCL to anywhere on pan India basis and thus, there is a 'composite scheme' of generation and supply of power in more than one State as elucidated by the Hon'ble Supreme Court in Energy Watchdog Judgment. The learned senior counsel submitted that the PPA defines the 'Appropriate Commission' as the Central Commission.

4. The learned counsel for the Petitioner further submitted that the Petitioner has filed IA No. 62/2020 for restraining the Respondent, SECI from encashment of bank guarantee dated 25.9.2020 furnished by the Petitioner during the pendency of the Petition and IA No. 63/2020 for the early listing of the matter. The learned counsel submitted that the bank guarantee furnished by the Petitioner is already valid till 31.8.2023. In response, the learned senior counsel for the Respondent, SECI submitted that SECI is not contemplating any coercive measures/ steps at this stage. Submission of the learned senior counsel was taken on record. In view of the submissions, IAs No. 62/2020 and 63/2020 are disposed of being infructuous.

5. After hearing the learned senior counsel and the learned counsel for the parties, the Commission reserved order on the admissibility of the matter.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**