

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 63/MP/2021 and IA No. 11/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 seeking declaration that the Transmission Agreement for Connectivity dated 7.8.2018, Transmission Service Agreement dated 6.9.2018 and Agreement for Long Term Access dated 6.9.2018 executed between ReNew Wind Energy (TN) Pvt. Ltd. and Power Grid Corporation of India Limited stand frustrated on account of Force Majeure Even and impossibility of performance along with directions to restrain Power Grid Corporation of India Limited from invoking bank guarantees and levying relinquishment charges.

Date of Hearing : 21.5.2021

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

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

Respondent : Power Grid Corporation of India Limited (PGCIL)

Parties Present : Shri Sajan Poovayya, Sr. Advocate, ReNew
Shri Vishrov Mukerjee, Advocate, ReNew
Shri Girik Bhalla, Advocate, ReNew
Shri Vasav Anand, ReNew
Shri Ishan Nagpal, ReNew

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking declaration that Transmission Agreement for Connectivity dated 7.8.2018, Long-Term Access Agreement dated 6.9.2018 and Transmission Service Agreement ('the TSA') dated 6.9.2018 (collectively referred to as 'the Transmission Agreements') stand frustrated on account of force majeure under the Transmission Agreements and impossibility/ frustration in terms of Section 56 of Indian Contract Act, 1956. Learned senior counsel mainly submitted the following:

(a) The Petitioner had entered into a Power Purchase Agreement ('the PPA') with SECI for development of 265 MW wind power projects ('the Project') and for the purpose of evacuation of the power generated therein had entered into Transmission Agreements with the Respondent, PGCIL.

(b) However, due to occurrence of various force majeure events and events beyond the control of the Petitioner, it became impossible for the Petitioner to commission the Project within timelines specified under the PPA as a result of which the PPA stood frustrated and was consequently terminated by the Petitioner on 26.7.2020.

(c) The Petitioner has already filed Petition No. 580/MP/2020 before the Commission seeking declaration that the Petitioner is entitled to terminate the PPA due to occurrence of the force majeure events and for return of the bank guarantees submitted thereof. The said Petition has been admitted by the Commission vide Record of Proceedings for the hearing dated 6.8.2020 and SECI has been directed not to invoke/encash the bank guarantee till the next date of hearing.

(d) The force majeure events affecting the PPA have also rendered the performance of obligations under the Transmission Agreements impossible and thus, the Transmission Agreements also stand frustrated due to impossibility of performance as the Project cannot be implemented.

(e) As per the minutes of the Joint Coordination Committee meetings, the identified transmission system through which the Petitioner was to evacuate the power from its Project (i.e. 3 Nos. of ICTs at Bhuj Pooling Station) has also been significantly delayed. As on May 2021, out of the three ICTs, only one has come up.

(f) The Petitioner has also filed IA No.11/2021 seeking an ad-interim stay against the invocation of Connectivity bank guarantee dated 14.8.2018, LTA bank guarantee dated 1.10.2018 or initiation of any coercive steps by the Respondent, PGCIL.

(g) At present, in terms of direction of Appellate Tribunal for Electricity ('the APTEL') dated 10.11.2020 in OP No. 9 of 2020, PGCIL is restrained from encashing the bank guarantees till the time the Commission hears and decides the IA filed by the Petitioner.

3. The learned counsel for the Respondent, PGCIL accepted the notice and clarified that the Respondent had already proceeded with the invocation of Connectivity bank guarantee. However, the said bank guarantee has not been encashed in view of the directions of APTEL dated 10.11.2020.

4. In response to the specific query of the Commission regarding relevant provisions on which basis the Petitioner is seeking termination of the agreements, learned senior counsel for the Petitioner submitted that the Petitioner is seeking frustration of the Transmission Agreements primarily under Section 56 of the Indian Contract Act, 1956. It was submitted by the learned senior counsel that since the performance of the obligations under the Transmission Agreements has become impossible as the Project of the Petitioner, which is an underlying premise of these agreements, cannot be constructed due to the various force majeure events. In this regard, the learned senior counsel referred and relied upon the Article 14 of the TSA.

5. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, PGCIL, the Commission ordered as:

a. Admit the Petition.

b. The Petitioner is directed to serve copy of the Petition and IA on the Respondent immediately, if not already served. The Respondent is directed to file its reply to the Petition and IA, if any, by 18.6.2021 with advance copy to the Petitioner, who may file its rejoinder, if any, by 9.7.2021.

c. The parties are directed to maintain the *status- quo* in respect of invocation and/or encashment of bank guarantees furnished under the Transmission Agreements till the next date of hearing.

6. The Petition along with IA 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)