

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 611/MP/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 24th May, 2021

In the matter of

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.

And

In the matter of

Rihand Floating Solar Private Limited.
SP Centre, 41/44, Minoo Desai Marg
Colaba, Mumbai, Maharashtra

...**Petitioner**

Versus

Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing-A, Prius Platinum Building,
District Centre, Saket, New Delhi – 110 017

....**Respondent**

Parties Present:

Shri Sujit Ghosh, Advocate, RFSP

Ms. Mannat Waraich, Advocate, RFSP

Shri M. G. Ramachandran, Senior 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



ORDER

The Petitioner, Rihand Floating Solar Private Limited, has filed the present Petition under Section 79 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking direction to the Respondent, Solar Corporation of India Limited ('SECI') to return the bank guarantee dated 25.9.2019 submitted by the Petitioner as a consequence 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. The Petitioner has made the following prayers:

“(a) Direct SECI to return the Bank Guarantee dated 25.09.2019 submitted by the Petitioner on account of the termination of the PPA dated 17.12.2019 which is in accordance with Article 4.5.3 read with Article 13.5 of the PPA dated 17.12.2019; and

(b) In the interim, injunct SECI from encashing the Bank Guarantee dated 25.09.2019 or taking any other coercive steps detrimental to the interest of the Petitioner.”

Submission of the Petitioner

2. The brief facts of the case as submitted by the Petitioner are as under:

(a) On 6.9.2018, SECI issued Request for Selection (RfS) for setting up of 150 MW (Packages A, B and C of 50 MW each) grid-connected floating solar power project at Rihand Dam in the State of Uttar Pradesh (hereinafter referred to as 'the Project') in line with the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by the Ministry of Power, Government of India. After completion of bidding, on 5.9.2019, SECI issued Letter of Award ('LoA') in favour of Shapoorji Pallonji Infrastructure Capital Co. Pvt. Ltd. (SP Infra) for 50 MW. Pursuant to issuance of the LoA, the Petitioner Company was incorporated as a Special Purpose Vehicle of SP Infra, *inter-alia*, for the development of the Project.

(b) On 17.12.2019, the Petitioner executed PPA with SECI. As per the PPA,

the Project is scheduled to be commissioned on 3.9.2021.

(c) In order to meet obligation under the PPA, the Petitioner undertook studies with the help of M/s Sterling and Wilson Solar Limited (SWL), M/s Aryatech (technical consultant) and M/s Geosense Surveys (survey agency). M/s Geosense Surveys obtained necessary permissions in February 2020 and completed the initial bathymetry survey. Based on the initial bathymetry survey data, M/s Aryatech identified locations where the detailed bathymetry survey was required to be conducted.

(d) Rihand Dam Reservoir has been formed over an area which has numerous mountains, ridges and valleys. Accordingly, accurate mapping of these geological formations are essential primary data for safe design of the floating structures of Solar Power Plant to be installed at such sites. The detailed feasibility studies were required to be conducted over three to four months and it was also required to be conducted when the water level was lowest in the reservoir. This study was expected to be conducted from February to May 2020 prior to the commencement of monsoon.

(e) As the Project was the first of its kind in the country, the Petitioner through its parent company, namely, SP Infra initiated discussions and commenced inquiries for floater systems, for such large capacity floating solar projects, from overseas. Certain overseas suppliers were in the process of setting up their manufacturing facilities in India to cater to the floating solar projects in the domestic market. However, the same would take around 6 months to be operational. However, from March 2020, the survey activities at the reservoir site had come to a standstill due to nationwide lockdown imposed by Government of India to contain the spread of COVID-19 pandemic. Also, no confirmation could be obtained from the suppliers regarding exact date when the supplies could be made.

(f) In the meanwhile, the Government of India, Ministry of Finance, Department of Expenditure vide Office Memorandum dated 19.2.2020 declared/ notified (by referring to para 9.7.7 of the 'Manual for Procurement of Goods') that the

outbreak of Covid-19 in China or any other country would be considered as a natural calamity and the Force Majeure clause may be invoked wherever appropriate.

(g) Subsequently, Ministry of New and Renewable Energy (MNRE) vide its Office Memorandum dated 20.3.2020 while acknowledging the Office Memorandum dated 19.2.2020 issued by Ministry of Finance declaring outbreak of Covid-19 in China as an event of Force Majeure, directed renewable energy implementing agencies to treat delay on account of disruption of supply chains due to the spread of coronavirus in China or any other country, as a Force Majeure event. On 24.3.2020, Ministry of Home Affairs, Government of India imposed a nation-wide lockdown which extended from time to time vide orders dated 14.4.2020, 1.5.2020 and 17.5.2020.

(h) Accordingly, the Petitioner vide its letters dated 18.3.2020, 29.4.2020 and 15.5.2020 invoked Force Majeure under Article 11 of the PPA and informed SECI that on account of continuing of spread of Covid-19, it would be unable to estimate the impact on time and cost at this stage. The Petitioner also informed SECI that despite best efforts, due to the onset of monsoon, such feasibility studies can only be carried out in February 2021, once the monsoon water recedes. Based on this, the Petitioner anticipated a minimum delay of 300 days in the Project Commissioning Schedule.

(i) Pursuant to the MNRE's Office Memorandum dated 17.4.2020 wherein MNRE had directed that all the Renewable Energy implementing agency will treat the period of lockdown due to Covid-19 as Force Majeure and that agencies shall grant the extension of time for the entire period of lockdown plus 30 days for normalization, SECI on 19.5.2020, declared that the lockdown period will be considered between 25.3.2020 and 17.5.2020 (both days inclusive) and extended the date of financial closure from 4.12.2020 to 26.2.2021 and date of commissioning of the Project from 3.9.2021 to 26.11.2021. Further, in the said letter, it was also declared that any claim for extension of time prior to or beyond the period can be requested for along with supporting documents.

(j) In the meanwhile, in the second half of May 2020, the survey team re-grouped at the site of the Project to carry out the balance activities of the feasibility study. However, due to the increased water level, recent cyclones and low visibility due to heavy rains, the progress of survey was badly affected. Thereafter, vide letter dated 15.6.2020, Geosense Surveys informed SWL who further communicated to the Petitioner that the survey activities could not be completed.

(k) SWL vide email dated 1.7.2020 also informed the Petitioner about the e-mail received from the proposed manufacturer of floaters, Ciel and Terre ("C&T") showing its inability to finalise a location for the manufacturing setup due to Covid-19 pandemic and nation-wide lockdown.

(l) MNRE vide Office Memorandum dated 30.6.2020 clarified that the period of lockdown is to be treated from 25.3.2020 to 31.5.2020 and the extension would be granted from 25.3.2020 till 31.5.2020 plus 30 days for normalization.

(m) Since the cumulative and individual effects of Force Majeure have caused an unreasonable delay in execution of the Project, the Petitioner proceeded to exercise its right to terminate the PPA in accordance with Article 13.5.1 of the PPA. As per the said Article, if Force Majeure event or its effect continue for a period beyond specified under Article 4.5.3 (which is 3 months), either party has the right to terminate the PPA without any further liability to other party. Therefore, in view of the circumstances, cumulative delays and the right available under Article 13.5.1 of the PPA, the Petitioner has terminated the PPA on 18.8.2020.

3. The matter was called out for hearing on 15.4.2021 through video conferencing. During the course of hearing, 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 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. After hearing the learned counsel for the Petitioner and the learned senior counsel for SECI, the order was reserved on the issue of admissibility of the matter.

Re: Admissibility

4. Accordingly, we now proceed to examine the instant Petition on the issue of jurisdiction of the Commission.

Analysis and decision

5. During the course of hearing, the learned senior counsel for SECI argued that this Commission is the Appropriate Commission within the meaning of the Act. 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 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 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 ('PSA'). 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 of 11.4.2017. The learned senior counsel submitted that the PPA defines the 'Appropriate Commission' as the Central Commission.

6. The Petitioner has filed the present Petition under Section 79 of the Act. The relevant extract of Section 79(1) of the Act, which provides for the functions of the Central Commission, reads as under:

“Section 79. Functions of Central Commission:- (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State; “

(f) to adjudicate upon the disputes involving generating companies or the transmission licensee in regard to matter connected with clauses (a) to (d) above and to refer to any dispute for arbitration....”

7. As per the clause (a) of sub-section (1) of Section 79 of the Act, the Commission has been entrusted with the jurisdiction to regulate the tariff of the generating companies owned or controlled by the Central Government. Under clause (b) of sub-section (1) of Section 79 of the Act, the Commission has been entrusted with the jurisdiction to regulate the tariff of generating companies other than those owned or controlled by the Central Government if those companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State. Further, under clause (f) of sub-section (1) of Section 79 of the Act, the Commission has been entrusted to adjudicate upon the disputes involving the

generating companies in regard to the matters connected with clauses (a) to (d) of the sub-section (1) of Section 79 of the Act.

8. The expression 'composite scheme' and the jurisdiction of the Central Commission in regulating the tariff of the project meeting the 'composite scheme' has been explained by the Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v. CERC & Ors. [(2017 (4) SCALE 580)] (in short, 'Energy Watchdog Case') as under:

*"22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in sub-clauses (a), (b), and (d), and "intra-state" in sub-clause (c). **This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act.** What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. **This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State.***

23. This also follows from the dictionary meaning [(Mc-Graw-Hill Dictionary of Scientific and Technical Terms (6th Edition), and P.Ramanatha Aiyar's Advanced Law Lexicon (3rd Edition)] of the expression "composite":

(a) 'Composite' – "A re-recording consisting of at least two elements. A material that results when two or more materials, each having its own, usually different characteristics, are combined, giving useful properties for specific applications. Also known as composite material.

(b) 'Composite character' – "A character that is produced by two or more characters one on top of the other."

(c) 'Composite unit' – "A unit made of diverse elements."

The aforesaid dictionary definitions lead to the conclusion that the expression “composite” only means “consisting of at least two elements”. In the context of the present case, generation and sale being in more than one State, this could be referred to as “composite”.

24. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a “composite scheme”. **This makes it clear that the expression “composite scheme” does not have some special meaning – it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.**

9. As per the above findings of the Hon’ble Supreme Court, the State Commission has jurisdiction where the generation and supply take place within the State. The moment the generation and sale involve more than one State, the Central Commission becomes the Appropriate Commission under the Act. Hon’ble Supreme Court has also ruled that the expression ‘composite scheme’ does not mean anything more than a scheme for generation and sale of electricity in more than one State and that it is enough that generating companies have in any manner a scheme of generation and sale of electricity in more than one State.

10. The learned senior counsel for SECI during the course of hearing submitted that in the instant case, SECI, at the behest of UPPCL, conducted bid process in the capacity of Intermediary Procurer in terms of the Guidelines dated 3.8.2017 issued by Ministry of Power, Government of India under Section 63 of the Act. It is noticed that the Guidelines *inter alia* provides for a framework for an ‘Intermediary Procurer’ as an aggregator/ trader for inter-State/ intra-State sale or purchase of long-term power. The Guidelines envisage the role of ‘Intermediary Procurer’ as under:

“c) ‘Intermediary Procurer’ & ‘End Procurer’:

i (a) In some cases, an intermediary, between the distribution licensees and the generator (“Solar Power Generator”), may be required either to aggregate the solar power purchased from different Solar Power Generators and sell it to the distribution licensee(s), or to enhance the credit profile. In such cases, the “Procurer” would be a trader, buying power from the Solar Power Generators and selling the same to one or

more distribution licensees, such distribution licensees shall be the “End Procurer” and the trader shall be “Intermediary Procurer” for the purpose of these Guidelines.”

11. As per the above provision of the Guidelines, ‘Intermediary Procurer’ is a trader acting between the distribution licensees and the solar power generators which aggregates the solar power purchased from different solar power generators and sells it to one or more distribution licensees. The Intermediary Procurer may be an inter-State trading licensee like SECI. Learned senior counsel for SECI argued that the instant matter is a composite scheme for generation and sale of electricity in more than one State. However, in our view, mere involvement of an inter-State trading licensee as an Intermediary Procurer does not render the generating company to qualify as a composite scheme for generation and sale of power in more than one State in terms of Section 79(1)(b) of Act. It is more so, when the facts of the case establish that the generators and the sole end-procurer i.e. the distribution licensee is located in the same State.

12. It is noted that SECI has been roped in as Intermediary Procurer by the end-procurer, UPPCL for conducting the tariff based competitive bidding in accordance with the Guidelines. The bids were called for pre-specified project site and accordingly, the successful bidders were required to set-up the project at Rihand Dam, Sonbhadra District in the State of Uttar Pradesh. The bid process was initiated by SECI after obtaining consent from UP Jal Vidyut Nigam Limited for setting-up of 150 MW grid-connected floating solar projects which stipulated that the entire power to be generated (i.e.150 MW) from the generating station is provisioned for sale to UPPCL only. Not only these particulars were so specified in the RfS documents beforehand, but the PSA for the entire 150 MW capacity has also been executed between SECI and UPPCL on 4.9.2019. Since all generating companies including

the Petitioner shall be located in the State of Uttar Pradesh and shall be selling power to the end-procurer, UPPCL, the present arrangement for generation and sale of power fails the test of 'composite scheme' in terms of Section 79(1)(b) of the Act. In our view, the entire transaction is purely intra-State in nature and does not involve any 'composite scheme' of generation and sale of electricity in more than one State.

13. The learned counsel for the Petitioner and the learned senior counsel for SECI during the course of hearing relied upon the definition of 'Appropriate Commission' under PPA executed with the Petitioner and 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 PSA. Though the copy of the PSA entered into between SECI and UPPCL has not been filed on record of the present Petition, the Commission had an opportunity to examine the provisions of PSA in Petition No. 52/AT/2021 filed by SECI seeking adoption of tariff under Section 63 of the Act for the Project in question. The relevant provisions of PPA and PSA are reproduced below:

PPA

"ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

"Appropriate Commission" Unless otherwise stated, Appropriate Commission shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76;"

PSA

"6.5.5 In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, SECI would have a right to regulate and sell Buying Utility's allocation of the solar power third parties to the extent of 40% (i.e. 10/25x100). SECI/SPD shall have the right to divert the Solar Power or part thereof and sell it to any third party namely;

i) Any consumer, subject to applicable law; or

ii) Any licensee under the Act;

SECI shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate”

“6.8.4 Notwithstanding Article 6.8.3, the SECI/SPD is free to sell such power to any third party which is in excess of the quantum of power as per Article 6.8.3 of this Agreement from SCD. Any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the Buying utility at the tariff as per Article 5.1.5, and in case the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.”

14. In terms of Article 6.5.5 of the PSA, in the event bill amounting to Rs. 25 crore is unpaid to the extent of Rs. 10 crore, SECI will have the right to divert and sale the UPPCL’s allocation to third parties, namely, any consumer or any licensee under the Act. Similarly, under Article 6.8.4 of the PSA, SECI or SPD is free to sell surplus power to any third party in case UPPCL refuses to accept the same. SECI has argued that since in terms of the above provisions of the PSA, SECI is entitled to divert the power on pan-India basis, the Project in question qualify as ‘composite scheme’ as interpreted and decided by the Hon’ble Supreme Court in Energy Watchdog Case.

15. It is noticed that the scheme which has been agreed upon between the Petitioner including two other renewable generating companies, SECI and UPPCL is for generation and sale of power to UPPCL only. The right available to SECI to regulate or sell the allocation of the buying entity to third parties is only a recourse envisaged to address the incidences of payment default. It only triggers upon occurrence of certain eventualities and not otherwise. These provisions are only supplemental to the main scheme of generation and sale of power to Uttar Pradesh. Further, these articles, in our view, also do not envisage the composite scheme of generation and sale of power in more than one State as the entire capacity is tied up for sale to UPPCL within the State of Uttar Pradesh and the temporary sale of power

to any other entity in case of default does not change the ratio of arrangement of sale of power to UPPCL.

16. As regards the Central Commission having been defined as 'the Appropriate Commission' under the PPA with the Petitioner, it is well settled principle that the parties cannot confer the jurisdiction on any forum by consent. Unless the jurisdiction of the Central Commission can be traced to the provisions of the Act and the Guidelines, the definition under the PPAs as agreed to between the parties, in our view, will not have any bearing while examining the jurisdiction of the Commission.

17. It is pertinent to mention that SECI had approached the Commission for adoption of tariff under Section 63 of the Act for the same Project wherein parent company of the Petitioner was Respondent No. 1. The Commission disagreeing with the claim of SECI, in its order dated 15.4.2021 in Petition No. 52/AT/2021, observed that the Central Commission is not the Appropriate Commission within the meaning of the Act. Relevant portion of the said order is extracted as under:

"23. It is not disputed that SECI is an inter-State trading licensee in terms of the licence granted by this Commission to SECI and that in terms of Rule 9 of the Electricity Rules, 2005, SECI is entitled to undertake intra-State trading without need of separate licence from the State Commission. However, this fact alone does not oust the jurisdiction of the State Commission for the transactions which are purely of intra-State in nature and are not of the nature of 'composite scheme'. In this regard, the reliance may be placed on decision of the Appellate Tribunal for Electricity in Pune Power Development Private Ltd. v. Karnataka Electricity Regulatory Commission and Ors. in Appeal No. 200 of 2009 and PTC India Limited v. Gujarat Electricity Regulatory Commission and Anr. in Appeal No. 31 of 2012. The relevant extract of the said judgments are reproduced below:

Appeal No. 200 of 2009:

"21. Section 14 deals with licence issued by the Appropriate Commission for undertaking transmission, distribution and trading in Electricity. Having regard to the language of Section 86(1)(f) and Section 2(39) of the Act, there cannot be any distinction between the licences issued by the Commission whether Central or State. The State Commission will have jurisdiction to entertain the dispute and adjudicate the same so long as the part of the cause of action arose within its statutory jurisdiction."

Appeal No. 31 of 2012

“105.the sale by the Gujarat Urja to the PTC within the State amounting to intra State sale would fall within the jurisdiction of the State Commission as the cause of action has taken place within the State of Gujarat.

.....
109. In view of the above reasons, we are to conclude that *merely because the PTC, the Appellant is an inter State Trading licensee and the licence was granted by the Central Commission it would not oust the jurisdiction of the State Commission especially when we find that cause of action had taken place within the jurisdiction of the Gujarat State Commission.*”

24. In the foregoing paragraphs, we have already observed that in the instant case, it is at the behest of the end-procurer, UPPCL that the bid process was conducted by SECI for the Projects to be located at Rihand Reservoir in the State of Uttar Pradesh. Also, the entire power is to be procured by UPPCL in terms of PSA dated 4.9.2019. Thus, entire transaction is of intra-State in nature and does not have any flavor of ‘composite scheme’. Therefore, SECI cannot invoke the jurisdiction of this Commission as Appropriate Commission for adoption of tariff merely on the ground of it being inter-State trading licensee and being entitled to undertake intra-State trading in electricity without obtaining separate licence.

26. It is pertinent to mention that the instant case neither involves the sale from the generating companies owned or controlled by the Central Government nor the SECI is acting/ functioning in its capacity of Central Government controlled or owned generating company. Further, if a Central Government owned company is declared as a successful bidder in a competitive bidding process conducted under Section 63 of the Act, its tariff shall be regulated under Section 79(1)(a) read with the terms of the PPAs and not under Section 79(1)(b) of the Act. Admittedly, SECI’s role in the present proceedings and during the bid process was that of an ‘Intermediary Procurer’ i.e. a trader between the generating company and the end Procurer/ distribution licensee. In this regard, the relevant extract of the clauses/ articles of RfS and PPAs/ PSA as reproduced below:

RfS

“11.0 Solar Energy Corporation of India Limited (SECI) has issued this RfS in the capacity of ‘Intermediary Procurer’ as defined in the aforementioned Guidelines..”

PPA

“F. SECI has agreed to purchase such Solar Power from SPD as an Intermediary Procurer and sell it to Buying Utilities on back-to-back basis as per the provisions of above stated scheme, accordingly SECI has agreed to sign/has signed a Power Sale Agreement with Buying Entity(ies) to sell such power as per the provisions of the above said scheme.”

27. In our view, only in its capacity of Intermediary Procurer as provided in the Guidelines, SECI has initiated a bid process on behalf of UPPCL and entered into PPAs with the Solar Power Generators and PSA with UPPCL. Merely because the Petitioner is a Central Government Company and has set up some generating

stations, does not overcast its role as Intermediary Procurer/ trader in terms of the Guidelines. Accordingly, the jurisdiction of this Commission under Section 63 read with Section 79(1)(a) of the Act cannot be invoked in the instant case particularly when SECI has been functioning in its capacity of an Intermediary Trader as provided in the Guidelines.

* * * * *

34. Clause 2.2 of the Guidelines defines 'Appropriate Commission' as under:
"2.2. Appropriate Commission:

2.2.1 Subject to the provisions of the Act:

a) In case of a single distribution licensee being the Procurer, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the State Electricity Regulatory Commission of the concerned State where the distribution licensee is located.

b) In case of combined procurement where the distribution licensees are located in more than one State, the Appropriate Commission for the purpose of these bidding Guidelines, shall be the Central Electricity Regulatory Commission.

c) For cases involving sale of power from Central Generating Stations, the Appropriate Commission shall be the Central Electricity Regulatory Commission."

35. As per the above provisions of the Guidelines, where a procurer is single distribution licensee, the Appropriate Commission for the purpose of these Guidelines, including for adoption of tariffs shall be the State Electricity Regulatory Commission of the concerned State where the distribution licensee is located, whereas in case of combined procurement where the distribution licensees are located in more than one State, the Appropriate Commission is the Central Commission.

36. The present case is not a case of combined procurement where the distribution licensees are located in more than one State as provided in Clause 2.2.1(b) quoted above, where the Appropriate Commission would be the Central Commission. Hence, the aforesaid contention of SECI deserves to be rejected.

38. In view of the above discussions, we are of the opinion that this Commission is not Appropriate Commission within the meaning of the Act. Having held that this Commission does not have jurisdiction, we have not examined merits of the case. The parties are at liberty to approach the 'Appropriate Commission' within the meaning of the Act."

18. In light of the foregoing observations, in our view, there is no composite scheme for generation and sale of electricity in more than one State in the present case as envisaged under clause (b) of the sub-section (1) of Section 79 of the Act and consequently, the jurisdiction of the Commission does not get attracted either under clause (b) of sub-section (1) of Section 79 of the Act or clause (f) of sub-

section (1) of Section 79 of the Act. Accordingly, the Petition is dismissed at the admission stage itself on preliminary issue of jurisdiction. The Petitioner is at liberty to move to the Appropriate Commission.

19. The Petition No. 611/MP/2020 is dismissed for want of jurisdiction.

**Sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I.S. Jha)
Member**

**sd/-
(P.K. Pujari)
Chairperson**