

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
New Delhi**

**Petition No. 192/MP/2021 along with IA No. 52/2022**

**Subject** : Petition under Sections 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003, read with Article 4.5(a) of the Power Purchase Agreement (PPA) dated 20.8.2019 executed between the Petitioner and Solar Energy Corporation of India Limited (SECI), read with the back-to-back Power Sale Agreements (PSAs) dated 17.06.2019 and 26.6.2019 executed between SECI and BSES Yamuna Power Limited (BYPL) and Tata Power Delhi Distribution Limited (TPDDL), respectively, seeking extension of Scheduled Commercial Operation Date (SCOD) and based on the extension of SCOD sought in the instant petition, seeking consequent deferment of operationalization of Long-Term Access (LTA) granted by the Central Transmission Utility (CTU) to the Petitioner.

**Date of Hearing** : 22.8.2022

**Coram** : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

**Petitioner** : SBSR Power Cleantech Eleven Private Limited (SBSRPCEPL)

**Respondents** : Solar Energy Corporation of India Limited (SECI) and 2 Ors.

**Parties Present** : Shri Sanjay Sen, Senior Advocate, SBSRPCEPL  
Shri M. G. Ramachandran, Senior Advocate, SECI  
Shri Hemant Singh, Advocate, SBSRPCEPL  
Shri Lakshyajit Singh Bagdwa, Advocate, SBSRPCEPL  
Ms. Roberta Ruth Elwin, Advocate, SBSRPCEPL  
Ms. Neha Dabral, Advocate, SBSRPCEPL  
Ms Tanya Sareen, Advocate, SECI  
Ms. Srishti Khindaria, Advocate, SECI  
Ms. Srishti Khindaria, Advocate, SECI  
Shri Venkatesh, Advocate, TPDDL,  
Shri Anant Singh, Advocate, TPDDL,  
Ms. Mohit Mansharamani, Advocate, TPDDL,



Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Soumya Singh, Advocate, PGCIL  
Shri Tushar Mathur, Advocate, PGCIL  
Shri Buddy A Ranganadhan, Advocate, BYPL  
Shri Hasan Murtaza, Advocate, BYPL  
Shri Yatin Sharma, CTUIL  
Shri Swapnil Verma, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Rajneet Singh Rajput, CTUIL  
Ms. Kavya Bhardwaj, CTUIL  
Ms. Ms.AkshayvatKislay, CTUIL  
Ms. Neha Singh, SECI  
Shri Manas Ranjan Mishra, SECI  
Shri Piyush Gupta, SECI  
Shri Neeraj Kumar, NLDC/POSOCO  
Shri Alok Kumar Mishra NLDC/POSOCO  
Shri. M.R. Krishna Rao, SBSRPCEPL  
Mr. Rajeev Lochan, SBSRPCEPL  
Shri Ravi Shankar Sinha, SBSRPCEPL  
Ms. Shefali Sobti, TPDDL

### **Record of Proceedings**

Case was called out for virtual hearing.

2. The instant petition has been filed by SBSR Power Cleantech Eleven Private Limited for extension of Scheduled Commercial Operation Date (SCOD) of the Petitioner in terms of the Power Purchase Agreement (PPA) dated 20.8.2019 entered between the Petitioner and Solar Energy Corporation of India Limited (SECI) for supplying 300 MW of power generated from its project ('Project'). The Petitioner had also prayed for a direction that consequent to the extension of SCOD, the operationalization of Long-Term Access (LTA) granted by the Central Transmission Utility of India Limited (CTUIL] be also deferred/extended. However, the Commission vide Record of Proceedings (RoP) for the hearing dated 6.10.2021 directed the Petitioner to file a separate petition seeking deferment of LTA granted to it by CTUIL/ PGCIL. In compliance with the directions of the Commission, the Petitioner has filed a Petition No. 259/MP/2021, seeking deferment of operationalization of LTA which is pending adjudication. The Petitioner has also filed the amended prayer in the instant petition. Accordingly, the instant petition along with I.A is listed today.

3. Learned senior counsel for the Petitioner submitted that Interlocutory Application (IA) No.52/2022 has been filed by the Petitioner (i) seeking appropriate directions for extension of SCOD as contemplated under the PPA dated 20.8.2019, (ii) to issue appropriate directions to SECI not to take any coercive actions against the Petitioner including encashment of the Performance Bank Guarantee and (iii) to accept and issue commissioning certificate for 62.5 MW or issue NOC for sale of 62.5 MW in the open market. During the course of hearing, he made the following submissions:



- a) While the instant petition is pending before the Commission, SECI has issued a letter dated 30.6.2022 intimating that it is not considering the request for extension of SCOD of its remaining 150 MW Project. He submitted that out of 300 MW, the Petitioner has part commissioned 150 MW of its solar project i.e 50MW, 50MW and 50MW on 15.8.2021, 4.4.2022, 11.4.2022 respectively and the same has been accepted by SECI.
- b) Out of 150 MW, 62.5 MW was ready on 20.6.2022 and the Petitioner vide letter dated 20.6.2022 had written to SECI seeking approval for commissioning of 62.5 MW. However, SECI vide its letter dated 30.6.2022 had denied the request of extension of SCOD of the project thereby exposing the Project of the Petitioner to risk and uncertainties.
- c) Pursuant to the PPA executed between the Petitioner and SECI, SECI had executed back to back Power Supply Agreements (PSA) dated 26.6.2019 with Tata Power Delhi Distribution Limited for 200MW of solar power and PSA dated 17.6.2019 with BSES Yamuna Power Limited (BYPL) for 150 MW of solar power. As per the PPA, the SCOD was 18 months from the effective date of 3.7.2019, i.e.3.1.2021. However, subsequently, the SCOD has been extended by SECI multiple times.
- d) In case of TPDDL's PPA, the timeline of 12 months for fulfilment of obligation by the Petitioner to achieve commissioning (i.e., SCOD) of the solar power plant starts from the date of the approval of the PSA by APTEL (i.e. on 2.7.2021). As regard the BYPL's PSA, the same is yet to become enforceable as there is no regulatory approval for procurement of power by the DERC.
- e) The extension of SCOD of the Project was sought on the ground of failure on the part of the buying entities i.e BYPL and TPDDL to get their PSA's approved by the State Commission. BYPL's PSA has not been approved till date by DERC. TPDDL's PSA was approved by the DERC on 31.12.2020. As per overall scheme of PPA and PSA, the obligations of parties are inter-linked. Therefore, the approval of the PSA is necessary conditions for effectiveness of the PPA's/ PSA's.
- f) SECI, vide letter dated 30.6.2022, has refused to accept the commissioning of 62.5 MW and the balance which is under process. As a result, the asset is stranded and the Petitioner is not able to schedule the power for sale to the buying entities. Accordingly, the Petitioner has filed the instant I.A *inter-alia* seeking direction to SECI to accept and issue commissioning certificate for 62.5 MW or to issue NOC for 62.5 MW for third party sale in open market/ power exchange.
- g) Since, the Petitioner is in state of uncertainty as far as the balance 150MW capacity is concerned, necessary direction is required on the status of the commissioned 62.5 MW which has been ready since June, 2022 and SECI may be directed to clear its stand on the 62.5 MW and the balance capacity as the asset cannot be kept stranded as huge investment has been made by the Petitioner in the project.



3. Learned senior counsel appearing on behalf of Respondent No.1, Solar Energy Corporation of India Limited (SECI), giving the details of the actual commissioning of the Project submitted that 50 MW was commissioned on 15.8.2021 (within the extended SCOD). Later 50 MW and 50 MW was commissioned on 4.4.2020 and 11.4.2022 respectively within six months of extended SCOD along with liquidated damages. Thus, 150 MW has been commissioned and has been accepted by SECI and is being scheduled to TPDDL and BYPL. Out of 300 MW, the balance 150 MW is yet to be commissioned, and the SECI has not extended the SCOD of the Project. He further added that vide order dated 31.12.2020, DERC has approved the PSA however while doing so, DERC had reduced the trading margin of 7 paise/kWh stipulated in PSA to 2 paise/kWh payable to SECI. Aggrieved with the order dated 31.12.2020, SECI approached APTEL. By judgement dated 2.7.2021. APTEL set aside the order dated 31.12.2020 on the ground that DERC had no jurisdiction to adjudicate upon the trading margin agreed between the parties. Subsequently, DERC filed Civil Appeal before the Hon'ble Supreme Court which is sub-judice till date. He further submitted that it is incorrect to say that there was no approval of PSA's. There was in-principle approval by the DERC for BYPL's and TPDDL's PSA on 14.8.2018 and 17.1.2019 respectively.

4. In response to a query of the Commission regarding as to when the Petitioner approached SECI for extension of SCOD of the Project and the tariff for the same, the learned senior counsel for the Petitioner submitted that the Petitioner applied for grant of extension of the SCOD on 22.6.2022 as the Petitioner was ready only on 22.6.2022 and the tariff for 62.5 MW was determined at Rs. 2.61 per unit.

5. The learned senior counsel for SECI submitted that the Petitioner has been given extension of SCOD of the Project from time to time. The SCOD stood extended till 20.11.2021. However, after the said date, there is no occasion for the Petitioner to be granted an extension. Thus, in terms of Article 4.6.2 of the PPA, the maximum period till which the Petitioner can commission its Project was till 20.5.2022. He further submitted that if the distribution companies express their need for grant of power, Respondent No.1 being an Intermediary will have no objection to it. However, as per the provisions of the PPA, the Petitioner has been given extension several times. Further, the Commission vide order dated 20.11.2019 in Petition No. 204/AT/2019 had adopted tariff for Solar Tranche-III Scheme.

6. Learned counsel appearing for TPDDL submitted that TPDDL requires the power of the Petitioner. He further sought time to file its reply to the IA filed by the Petitioner.

7. Learned counsel appearing for BYPL sought time to file its reply to the I.A filed by the Petitioner. He submitted that due to delay in commissioning of the Project of the Petitioner, BYPL is not able to fulfil its Renewable Purchase Obligation (RPO). He submitted that when the Petitioner had partially commissioned the Project and supply power and raise bills in terms of the PPA, then the Petitioner cannot seek extension of SCOD on the ground that there is delay in getting approval of PSA. In response to a query of the Commission regarding whether BYPL needs the power from the generator, he clarified that without filing reply to the said I.A, it would be inappropriate to answer the query of the Commission. In response to another query of the Commission regarding whether the distribution companies are willing to take



power at Rs. 2.61 per unit from the generator, the learned counsel for BYPL submitted that if the Petitioner is not claiming Basic Custom Duty (BCD) on ₹2.61 paise after 1.4.2022, then the tariff appears to be reasonable.

8. Learned counsel for CTUIL submitted that as the issue involved is extension of SCOD, there is no requirement for CTUIL to be a party to the present proceedings. Accordingly, requested the Commission to delete CTUIL as a party to the Petition. Request was allowed and accordingly, the Commission directed the Petitioner to file revised "Memo of Parties" deleting CTUIL from the array of Respondents.

9. After hearing the parties, the Commission directed the Respondents to file their reply to the I.A No. 52/2022 on affidavit by 9.9.2022 with a copy to the Petitioner and the Petitioner to file their rejoinder to the IA, if any, by 22.9.2022.

10. On the request of the learned senior counsel for the Petitioner to allow commissioning of 62.5 MW, the Commission observed that there should not be any impediment in allowing the Petitioner to commission 62.5 MW capacity to prevent idling of capacity during the pendency of the present petition, without prejudice to the rights of the Respondents, SECI and distribution companies in the present case.

11. The Commission further directed the parties to comply with the directions within the timeline specified and observed that no extension of time shall be granted.

12. The Petition along with the I.A. shall be listed on 11.10.2022 for further hearing.

**By order of the Commission**

Sd/-

(V. Sreenivas)

Joint Chief (Law)

