

**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 17.6.2019 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** : 18.10.2022
- 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 (SECIL) 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. Lavarya Panwar, Advocate, SBSRPCEPL  
Ms. Roberta Ruth Elwin, Advocate, SBSRPCEPL  
Ms Tanya Sareen, Advocate, SECI  
Ms. Anushree Bardhan, Advocate, SECI  
Shri Anukirat Singh, Advocate, SECI  
Shri Buddy Ranganadhan, Advocate, BYPL  
Shri Jatin Ghuliani, Advocate, BYPL  
Shri Sameer Sharma, Advocate, BYPL  
Shri Kunal Veer Chopra, Advocate, BYPL



**Record of Proceedings**

Learned senior counsel for the Petitioner made the following submissions during the course of hearing:

- a) Pursuant to the Commission's suggestion to discuss the further course of action to be taken in case of 300 MW of power generated from the Petitioner's Solar Power Project ("Project"), a meeting was held on 26.8.2022 wherein SECI, TPDDL, BYPL and the Petitioner were present. In the meeting, SECI denied the extension of SCOD beyond 20.11.2021 for the remaining 150 MW. On the issue of procurement of 62.5 MW power commissioned out of the remaining 150 MW, TPDDL and BYPL expressed their willingness to off-take the said power on the same terms and conditions of PPA and PSAs only through SECI, however without any additional financial implication arising on account of "change in law" events. The same was not agreeable by the Petitioner as there would be additional financial implications on account of "change in law" events. As a result, the parties failed to mutually resolve the issues.
- b) On account of the denial of extension of SCOD, and the stand taken by SECI in its affidavit dated 9.9.2022, in terms of Article 4.6.2 of the PPA, the contracted capacity for the Project now stands reduced to 150 MW, instead of the originally envisaged 300 MW. It is no longer a part of the contracted capacity and now the contracted capacity according to SECI is only 150 MWs.
- c) In order to bring on record subsequent developments in the matter, the Petitioner has filed an IA, vide Diary No. 442/2022, under Order VI Rule 17 of the Code of Civil Procedure, 1908 seeking amendment of the petition including revision of the prayers. Post filing of petition, there has been substantial change in circumstances in terms of the rights and obligations of parties under the PPA and PSA for which amendment has become necessary.
- d) SECI has allowed the Petitioner to self-commission the 62.5 MW capacity and decide on the sale of power in view of the non-extension of SCOD by SECI.
- e) The Petitioner cannot be fastened with any liability including liquidated damages or encashment of the Performance Bank Guarantee (PGB) for the delay in commissioning of 150 MW, since the contracted capacity under the PPA could not be made effective as the BYPL's PSA has not been approved by DERC within a reasonable time. Further, the approval has not been granted by DERC till now.

2. Learned counsel for BYPL and TPDDL submitted 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 DERC's order dated 31.12.2020, SECI filed an Appeal



before APTEL and APTEL vide judgement dated 2.7.2021 set aside the DERC's order 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 and no stay has been granted by the Hon'ble Supreme Court. He further sought time to file reply to the IA filed by the Petitioner.

3. After hearing the parties, the Commission directed:
  - a. the Registry to register the IA filed by the Petitioner
  - b. the Respondents to file their reply to the IA on affidavit by 30.10.2022 with a copy to the Petitioner
  - c. and the Petitioner to file their rejoinder, if any, by 10.11.2022.
4. 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.
5. The petition along with the IAs shall be listed for hearing on 8.12.2022 for which a separate notice will be issued.

**By order of the Commission**

**sd/-**  
(V. Sreenivas)  
Joint Chief (Law)

