

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 727/MP/2020 along with IA No. 29/IA/2022

Subject : Petition under Section 79(1)(c) of the Electricity Act, 2003 read with Regulation 32 and 33A of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking, inter alia, relaxation of Clause 11.2 of the Detailed Procedure issued by the Central Electricity Regulatory Commission for “Grant of Connectivity to Projects based on Renewable Sources to the Inter-State Transmission System” dated 15.5.2018 and adjudicating the dispute that has arisen in relation to the agreements entered between Central Transmission Utility and the Petitioner herein.

Petitioner : Mytrah Energy (India) Private Limited (MEIPL)

Respondent : Power Grid Corporation of India Limited

Petition No. 227/MP/2020 along with IA No.7/IA/2022

Subject : Petition under Section 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 along with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking issuance of appropriate orders/directions to Solar Energy Corporation of India Limited pursuant to issues arising out of the Power Purchase Agreement dated 4.9.2018 and seeking consequent relief for releasing the Bank Guarantee issued by the Petitioner in favour of Solar Energy Corporation of India Limited.

Petitioner : Mytrah Vayu (Brahmaputra) Private Limited (MVBPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and 3 Ors.

Date of Hearing : 28.4.2022

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

Parties Present : Shri Sajan Poovayya, Sr. Advocate, MEIPL & MVBPL
Shri Venkatesh, Advocate, MEIPL & MVBPL
Shri Vineet Kumar, Advocate, MEIPL & MVBPL
Shri Suhael Butta, Advocate, MEIPL & MVBPL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri M. G. Ramachandran, Sr. Advocate, SECI



Ms. Tanya Sareen, Advocate, SECI
Shri Hasan Murtaza, Advocate, BYPL
Shri Mahesh K Kollipara, MEIPL & MVBPL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Ms. Neha Singh, SECI
Shri Shubham Mishra, SECI
Ms. Aditee Nitnavare, SECI

Record of Proceedings

Cases were called out for virtual hearing.

2. Learned senior counsel for the Petitioners submitted that the Petition No. 727/MP/2020 has been filed, *inter alia*, seeking relaxation of Clause 11.2 of the Detailed Procedure issued by the Commission for 'Grant of Connectivity to Projects based on Renewable Sources to the inter-State Transmission System' dated 15.5.2018 ('Detailed Procedure') and other disputes that have arisen in relation to the agreements executed between CTU and the Petitioner. Learned senior counsel and learned counsel for the Petitioners mainly submitted the following:

(a) The Petitioner was declared as the successful bidder in a competitive bid process conducted by SECI for setting up of 2000 MW ISTS connected Wind Power Projects (Tranche IV) and was issued a Letter of Award ('LoA') dated 1.6.2018 for development of 300 MW Wind Power Project. Subsequent to issuance of LoA, Power Purchase Agreement ('PPA') was entered into between the Petitioner (Project Company of MEIPL) and SECI on 4.9.2018.

(b) On 23.2.2017, the Petitioner had applied for Stage-I connectivity for the then proposed capacity of 200 MW (which was revised subsequently) for wind farms in Coimbatore District, Tamil Nadu and subsequent to the issuance of LoA from SECI, it applied for Stage-II connectivity on 19.6.2018. The Stage-I and Stage-II connectivity was granted in favour of Petitioner by CTUIL vide its letters dated 12.7.2018 and 13.7.2018 respectively.

(c) Pursuant to grant of Stage-II connectivity, the Petitioner entered into Transmission Agreement dated 8.8.2018 with CTUIL and submitted the Performance Bank Guarantee ('PBG') of Rs. 5 crore dated 10.8.2018 in favour of CTUIL thereunder. Subsequently, LTA was also granted in favour of the Petitioner on 12.11.2018 and the Petitioner and CTUIL entered into Long-Term Access Agreement on 7.12.2018 for the purpose of evacuation of 300 MW power from its Project.

(d) Pertinently, the Connectivity and the LTA were granted to the Petitioner on the margins of the existing transmission corridor and no new augmentation works were undertaken by the CTUIL qua the Petitioner.

(e) Despite the execution of the PPA on 4.9.2018, SECI did not approach the Appropriate Commission seeking adoption of tariff till November, 2019 i.e. after passing of almost 15 months from the execution of the PPA. Finally, adoption of tariff order was issued by the Commission on 19.2.2020. Such delays in adoption in tariff affected the underlying economic and financial viability and assumptions on basis which the Petitioner had participated in the bid process. In absence of any clarity on adoption of tariff, the lenders were reluctant to finance the Project and as a result, the Petitioner could not achieve the financial closure.

(f) Further, in February, 2019, the Government of Tamil Nadu vide G.O (Ms) dated 4.2.2019 made critical changes to the land allocation Policy, which had a direct impact on the land acquisition process for the Project. Ultimately, on account of force majeure conditions and non-fulfilment of its material obligation under the PPA by SECI, the Petitioner terminated the PPA vide its letter dated 25.2.2020 and requested SECI to return the PBG for an amount of Rs. 60 crore furnished under the PPA. The said issue is under consideration of the Commission in Petition No. 227/MP/2020 filed by MVBPL and in the said matter, SECI has been restrained from taking any coercive action against the Petitioner till the further orders.

(g) Despite having apprised the CTUIL about the above events including termination of the PPA, CTUIL vide its letter dated 9.9.2020 issued the notice for encashment of PBG. Thereafter, CTUIL vide its letter dated 11.9.2020 proceeded to invoke the PBG furnished to it and issued the necessary intimation upon the bankers.

(h) Since at the relevant time, the Commission was not holding the proceedings in terms of the order of the Hon'ble Supreme Court dated 28.8.2020 in Contempt Petition (C) No. 429 of 2020 in CA No. 14697 of 2015, the Petitioner had approached APTEL vide OP No. 6 of 2020 and APTEL issued the interim order in favour of the Petitioner directing the banker to not to credit the amount equivalent to the PBGs furnished to CTUIL.

(i) The Commission having resumed the functioning, the Petitioner had filed IA No. 522 of 2022 before the APTEL seeking withdrawal of OP as well as the direction to the banker not to credit the amount equivalent to PBGs in favour of CTUIL during the pendency of the present Petition. APTEL vide its order dated 22.4.2022 disposed of the OP and granted the interim protection for a week from the date of order during which the Petitioner was required to approach this Commission to secure further order in that regard. Accordingly, the Petitioner has also filed IA in the present matter for restraining CTUIL from taking any coercive action qua invocation of PBGs during the pendency of the present Petition.

(j) With termination of the PPA, the underlying assumption on basis of which the Transmission Agreement and LTAA were executed between CTUIL and Petitioner have become completely dislodged and therefore, the Petitioner was left with no option but to terminate the LTAA and consequently, all other agreements executed between the Petitioner and CTUIL were also rendered void and frustrated.

(k) As per the Detailed Procedure, an entity can only be eligible for grant of Stage-II connectivity when it has been awarded with LoA for development of the Project. Further, after grant of Stage-II connectivity, the entity is also required to furnish the details such as achievement of financial closure under the PPA, etc. to CTUIL. Hence, it is clear that the grant of Stage-II connectivity and subsequent access rights through LTA are intrinsically and inextricably linked to the PPA executed with SECI.

(l) Further, the connectivity and LTA having been granted on the already existing system and no new augmentation works having been undertaken, no loss/damage has been caused to CTUIL upon the termination of the agreements.

(m) Admittedly, there has been certain delay on the part of the Petitioner in seeking withdrawal of the OP and approaching this Commission after it having

resumed the functioning. However, such delay cannot be held against the Petitioner in grant of interim relief as prayed for. The issue of termination of the PPA was already pending before the Commission in Petition No. 227/MP/2020. Besides, similar objection had also been raised before APTEL and the APTEL continued the interim protection for a week till the time the Petitioner approaches this Commission.

(n) Accordingly, the interim relief as prayed for by the Petitioner may be considered and CTUIL be restrained from taking any coercive action qua invocation of PBGs during the pendency of the Petition. Similar relief has been allowed by the Commission in Petition No.701/MP/2020, Petition No. 63/MP/2021, Petition No. 43/MP/2021 etc. and therefore, similar treatment may be considered in present case.

3. Learned counsel for the Respondent, CTUIL submitted that the Petition No. 727/MP/2020 is at the admission stage and the Respondent may be permitted to file its reply in the matter. Learned counsel further submitted that the Respondent had proceeded to invoke the PBG in the case of the Petitioner as per the mandate of Clause 11.2 of the Detail Procedure, which provides that in the event Stage-II connectivity grantee fails to complete the dedicated transmission line within the stipulated period, the connectivity BG of the grantee shall be encashed and the Stage-II connectivity shall be revoked. She added that in number of cases, the Commission has already held that the transmission agreement and the PPA are not interlinked. Learned counsel further added that as regard the invocation of the PBG during the pendency of the Petition, the Respondent will abide by the direction to be issued by the Commission in this regard.

4. Learned senior counsel for the Petitioners submitted that in Petition No. 227/MP/2020, the Petitioner has filed IA No. 7/IA/2022 seeking amendment to the Petition in order to place on record the events that have transpired after the filing of the said Petition, which may be allowed. In response, learned senior counsel for the Respondent, SECI submitted that the Commission may take on record the additional pleadings but may not formally allow the IA seeking amendment to the Petition at this stage. Such submission of the learned senior counsel for SECI was agreed to by the learned senior counsel for the Petitioners.

5. After hearing the learned senior counsel and learned counsel for the parties, the Commission ordered as under:

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(a) Admit.

(b) The Petitioner to serve copy of the Petition and IA on the Respondents immediately, if not already served and the Respondent to file its reply by 13.5.2022 after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 24.5.2022

(c) The interim protection granted by the APTEL vide its order dated 22.4.2022 shall be continued till the next date of hearing and the Petitioner shall keep the PBG alive.

Petition No. 227/MP/2020 and IA No.7/IA/2022

(d) The Respondents to file their reply to the additional documents placed on record by the Petitioner vide IA No.7/IA/2022 by 13.5.2022 with a copy to the Petitioner, who may file its rejoinder, if any, by 25.5.2022.

(e) The Petitioner to furnish the following details/information on affidavit by 20.5.2022:

(i) Correspondence exchanged indicating that the Petitioner took up the matter with SECI from time to time for getting early adoption of tariff by the Appropriate Commission ; and

(ii) Correspondence exchanged with lender(s) whereby the lender(s) expressed their difficulty/inability to finance the Project in absence of the adoption of tariff by the Appropriate Commission.

6. The Petitions 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)**