

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 79/MP/2022 Along with 10/IA/2022

- Subject** : Petition under Section 79 of the Electricity Act, 2003 read with the relevant provisions of the Agreement for Long Term Access without System Strengthening dated 11.9.2020, the Power Purchase Agreement dated 3.7.2020 and the other applicable laws inter alia seeking direction to the Respondent Nos. 1 and 2 to extend and/or defer the commencement of the Petitioner's Long-Term Access to coincide with the revised/extended Scheduled Commissioning Date of the Petitioner's 300 MW Solar Power Project under the Power Purchase Agreement dated 3.7.2020.
- Petitioner** : Masaya Solar Energy Private Limited (MSEPL)
- Respondents** : Solar Energy Corporation of India Limited (SECI) and Ors.
- Date of Hearing** : 22.3.2022
- Coram** : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present** : Shri Aniket Prasoon, Advocate, MSEPL
Ms. Shweta Vashist, Advocate, MSEPL
Ms. Priya Dhankhar, Advocate, MSEPL
Ms. Shubham Mudgil, Advocate, MSEPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Ravi Nair, Advocate, SECI
Ms. Suparna Srivastava, Advocate, CTUIL/PGCIL
Shri Tushar Mathur, Advocate, CTUIL/PGCIL
Ms. Soumya Singh, Advocate, CTUIL/PGCIL
Shri Partha Sarathi Das, CTUIL
Shri Bhaskar Laxmanrao Wagh, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Shri Vikash Kumar, MSEPL



Record of Proceeding

Case was called out for virtual hearing

2. The learned counsel for the Petitioner submitted that the instant petition has been filed seeking direction to CTUIL, Respondent No. 1 and PGCIL, Respondent No. 2 to extend and/or defer the commencement of the Petitioner's Long Term Access (LTA) to coincide with the revised SCOD of the Petitioner's 300 MW Solar Power Project ('Project') under the Power Purchase Agreement (PPA) dated 3.7.2020 executed between the Petitioner and the Respondent No. 3, i.e., Solar Energy Corporation of India Ltd. ("SECI"). He submitted that on account of *force majeure* events beyond the control of the Petitioner, viz. first and second wave of Covid-19 pandemic and time taken by the Government of India (GoI) in approving the Petitioner's Foreign Direct Investment (FDI) application, the Project was delayed which resulted in delay in accessing and utilizing the LTA granted for the Project.

3. He submitted that SECI on account of Covid-19 pandemic has already granted extension of 182 days to the Petitioner under the PPA. The Petitioner applied for grant of LTA for transfer of power from its Project to the Southern Region on 27.1.2020 and said LTA is to be operationalised from 25.3.2022. As per the notification issued on 17.4.2020 by the Department for Promotion of Industry and Internal Trade ("DPIIT"), any entity of a country which shares a land border with India has to obtain approval to invest in India. The Petitioner is a subsidiary of a foreign based entity with its headquarters in Hong Kong, which is an administrative region of the People's Republic of China, that shares a land border with India. Thus, there was a requirement for obtaining an approval of the GoI. This was new condition imposed by the Government and the same could not be contemplated at the time of the submission of bid or obtaining the connectivity or LTA for the Project. Further, in compliance of the government notification, MNRE on 8.6.2020 created an FDI Cell for processing of FDI proposals/applications. The Petitioner on 19.8.2020 made an application to MNRE for FDI Approval and the same was approved on 29.6.2021 i.e. after 315 days of making application.

4. As regard to the extension of LTA, the learned counsel for the Petitioner submitted that in the instant petition, the Petitioner has already submitted documents to show that SECI has granted extension to the Petitioner due to Covid-19 pandemic. However, CTUIL has not granted any extension of LTA to the Petitioner.

5. In response to a query of the Commission, the learned counsel for the Petitioner submitted that the CTUIL has not granted extension to the Petitioner on the ground that the LTA has been given on the existing system/network and there is no provision of *force majeure* in the LTA Agreement. Referring to RoP dated 11.8.2020 in Petition No. 525/MP/2020, he submitted that CTUIL did not grant extension to Sprng Energy Renewables Ltd. (SERL) and insisted to open a LC



towards payment security mechanism. However, the Commission granted interim protection to SERL and directed CTUIL not to take any coercive till the next date of hearing. He submitted that the Petitioner is also placed in a similar position as no extension of the start date of LTA has been granted by the CTUIL and the current start date of LTA is 25.3.2022. Hence, the Petitioner apprehends that CTUIL may operationalise the LTA granted to it and impose transmission charges. Accordingly, he requested the Commission to grant interim protection to the Petitioner against any coercive action by CTUIL for which the Petitioner has filed an IA. No. 10/IA/2022. Further, referring to MoP order dated 15.1.2020, he submitted that the operationalization of LTA has to be deferred in the event SCOD of a renewable project is extended on account of a *force majeure* event and consequently, no transmission charges/losses can be levied for the period before the extended SCOD.

6. In response to another query of the Commission regarding the coercive action apprehended by the Petitioner from CTUIL/PGCIL, learned counsel for the Petitioner referring to CTUIL's letter dated 16.3.2022 submitted that CTUIL has reaffirmed that the start date of operationalisation of LTA as 25.3.2022 and has stated that the Petitioner has to bear all the commercial and operational liabilities corresponding to the quantum of the LTA operationalised with the effect from the date of operationalisation of LTA. He further submitted that the CTUIL has also called upon the Petitioner to establish payment security mechanism or submit requisite documents for waiver of inter-State transmission charges and losses. Referring to clause 1(c) and clause 4 of the LTAA which pertains to default on account of breach of LTA, he submitted that the Petitioner apprehends that the Petitioner is at risk of being burdened with establishing payment security mechanism and imposition of transmission charges. Accordingly, in the interim application, the Petitioner has prayed that the Petitioner should not be insisted upon to make any payments during the pendency of the petition or opening of LC and no coercive action be taken against the Petitioner till the disposal of the petition. He further submitted that the Petitioner has already furnished a Bank Guarantee (BG) of Rs.5 crore under Connectivity Agreement, which will be kept alive during the pendency of the Petition. Referring to the Commission's RoPs dated 9.3.2022 in Petition No. 244/MP/2021 and 11.8.2020 in Petition No.525/MP/2020, requested to grant similar protection as granted to other project developers.

7. The representative of the CTUIL clarified that only the Application Bank Guarantee (ABG) was submitted by the Petitioner at the time of making of application of LTA and the same has also been returned to the Petitioner in terms of the Commission's order dated 9.5.2020 in I.A.No.91/2019 and I.A.No.92/2019 in Petition No. 108/MP/2019 and 109/MP/2019 respectively. He submitted that the LTA BG has been returned to the Petitioner by CTUIL and the Connectivity BG is different from LTA BG.

8. Learned counsel for CTUIL submitted that the reliance placed by the Petitioner on the Commission's RoP dated 11.8.2020 in Petition No. 525/MP/2020 is misplaced as the Commission had given protection to the Petitioner subject to the condition of



opening of LC. She submitted that some form of protection is required to be furnished by the Petitioner to CTUIL for not taking any coercive action. She suggested that the Petitioner may also be directed to open the LC subject to which no coercive action will be taken against the Petitioner during the pendency of the Petition. She further sought time to file its reply in the matter.

9. After hearing the learned counsel for the Petitioner and CTUIL, the Commission admitted the Petition and directed to issue notice to the Respondents. The Commission further directed the Petitioner to open LC towards payment security mechanism by 31.3.2022 and the CTUIL to raise invoices for transmission charges as per the normal practice but not to take any coercive action till further orders and disposed of I.A. No.10/IA/2022 accordingly.

10. The Commission further directed the Petitioner to submit the current status of the project, including status of financial closure on affidavit by 4.4.2022 with an advance copy to the Respondents.

11. The Commission directed the Petitioner to serve copy of the Petition on the Respondents immediately, if not already served. The Respondents were directed to file their reply by 13.4.2022 with advance copy to the Petitioner who may file its rejoinder, if any, by 27.4.2022. The Commission further directed the parties to comply with the directions with the specified date and observed that no extension will be granted.

12. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

Sd/-
(V. Sreenivas)
Joint Chief (Law)

