

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 118/MP/2021 along with IA No. 40/2021

Subject : Petition under Section 79(1)(f) read with section 79(1)(a), (b) and (k) of the Electricity Act, 2003 seeking *inter-alia* a declaration that the Power Purchase Agreement dated 16.03.2020 stands validly terminated and/ or discharged, and seeking the release of the Performance Bank Guarantee issued to the Respondent.

Date of Hearing : 17.1.2023

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

Petitioner : Sprng Wind Energy Private Limited (SWEPL)

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

Parties Present : Shri Sanjay Sen, Sr. Advocate, SWEPL
Shri Deep Rao, Advocate, SWEPL
Shri Saahil Kaul, Advocate, SWEPL
Ms. Ankita Gupta, Advocate, SWEPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Ms. Neha Singh, SECI
Shri Shubham Mishra, SECI
Ms. Aditee Nitnavare, SECI

Record of Proceedings

The learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking a declaration that the Power Purchase Agreement (PPA) dated 16.3.2020 stands validly terminated and/or discharged and consequently, release of the Performance Bank Guarantee (PBG) issued to Respondent No.1, SECI. The learned senior counsel submitted that the said PPA was terminated by the Petitioner owing to its performance having been rendered impossible on account of certain unavoidable and uncontrollable force majeure events viz. refusal by Kerala State Electricity Regulatory Commission (KSERC) to approve the Power Supply Agreement (PSA), delay in receipt of wildlife approval and outbreak of Covid-19.

2. Learned senior counsel for the Respondent No.1, SECI submitted that while order for adoption of tariff or approval of the power procurement was not a condition precedent for the Petitioner to implement its obligations under the PPA, in the present case, the PSA with Kerala State Electricity Board Ltd. could not be materialized. Learned senior counsel submitted that the Respondent KSEBL, at paragraph 18 of its reply, has indicated that despite KSEBL having made all efforts to materialize the PSA by duly complying with the order of KSERC, certain modifications directed by KSERC were not acceptable to SECI and therefore, the PSA could not be materialized. The



learned senior counsel further submitted that in view of the PSA with KSEBL having not materialized as above, the PPA with the Petitioner cannot be enforced and accordingly, the Commission may, without going into the various aspects raised in the matter, pass an appropriate order in this regard.

3. In response to the specific query of the Commission, the learned senior counsel also added that SECI had made certain efforts to identify alternate buyer for the said PPA, but they did not fructify.

4. Learned senior counsel for the Petitioner submitted that since SECI has no objection for returning the BG, the instant Petition may be disposed of accordingly.

5. Considering the submissions made by the learned senior counsel for the parties, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**