

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 227/MP/2022 along with IA No. 55/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 seeking to set aside Transmission Charges bills raised by CTUIL and declaration that the Petitioners stands discharged from performance under, Transmission Service Agreement dated 29.1.2018, LTA Agreement dated 29.1.2018 (Tranche 1), Agreement for Long Term Access dated 6.9.2018 (Tranche 2) and Bipartite Connection Agreement dated 11.1.2019 executed between ReNew Power Pvt. Ltd. and Central Transmission Utility of India Ltd. (earlier Power Grid Corporation of India Ltd.) on account of Force Majeure and impossibility of performance under the Power Purchase Agreement dated 23.5.2022 executed with Solar Energy Corporation of India Ltd and consequential relief thereto.

Petitioner : ReNew Wind Energy (AP2) Private Limited (RWEPL) Anr.

Respondents : Central Transmission Utility of India Limited (CTUIL) and 2 Ors.

Petition No. 56/MP/2022

Subject : Petition under Section 63 and Section 79 of the Electricity Act, 2003 read with Competitive Bidding Guidelines and Articles 11 and 13 of the Power Purchase Agreement dated 23.5.2018 executed between ReNew Wind Energy (AP2) Private Limited and Solar Energy Corporation of India Limited.

Petitioner : ReNew Wind Energy (AP2) Private Limited (RWEPL)

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

Date of Hearing : **21.2.2023**

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

Parties Present : Shri Sanjay Sen, Sr. Advocate, ReNew
Shri Vishrov Mukherjee, Advocate, ReNew
Shri Pratyush Singh, Advocate, ReNew
Ms. Ruth, Advocate, ReNew
Ms. Priyanka Vyas, Advocate, ReNew
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Aneesh Bajaj, Advocate, SECI
Shri Shubham Arya, Advocate, HPPC
Ms. Shikha Sood, Advocate, HPPC
Ms. Reeha Singh, Advocate, HPPC



Record of Proceedings

At the outset, learned senior counsel for the Petitioner handed over an additional affidavit in compliance of Record of the Proceeding for the hearing dated 24.1.2023 and sought permission to upload the same on the e-filing portal. Learned senior counsel further submitted that as per the direction of the Commission therein, the Petitioner has paid 10% of outstanding transmission charges to CTUIL. Learned senior counsel submitted that CTUIL's reliance on the Minutes of 38th meeting of Joint Co-ordination Committee to contend that the Petitioner is misleading the Commission by contending that 100 MW PPA dated 23.5.2018 stands terminated/frustrated is misplaced. The said minutes have incorrectly recorded the commissioning of 119.9 MW under phase 5 on 30.6.2023 (i.e. 19.9 MW under LTA Tranche I and 100 MW under LTA Tranche II). Learned senior counsel submitted that the Petitioners have terminated 100 MW PPA dated 23.5.2018 on 6.2.2022 and the balance un-commissioned capacity of 19.9 MW (out of total 250 MW PPA dated 2.8.2018 executed with SECI) due to force majeure events leading to impossibility of performance and subsequent frustration of the PPAs. While the Petitioners are considering the other projects where LTA to the extent of 119.9 MW may be utilised, no assurance of generation and/or connectivity schedule by 30.6.2023 to the extent of frustrated capacity of 119.9 MW was made by the Petitioners. Learned senior counsel pointed out that as such the Petitioners have not relinquished the LTA for the above capacities.

2. In response to the specific query of the Commission with regard to total capacity commissioned out of the total Projects capacities, learned senior counsel submitted that under SECI Tranche II bidding/tender, the Petitioners entered into the PPA for 250 MW of which 230.1 MW has been commissioned whereas the balance 19.9 MW could not be commissioned. In addition, the entire capacity under the 100 MW PPA under SECI's Tranche III bidding/tender has remained un-commissioned. In response to the further query of the Commission as to how these un-commissioned capacity/terminated capacity correspond/correlate with the LTA quantum in Petition No.227/MP/2022 (i.e.300 MW LTA Tranche I and 50 MW LTA Tranche II), learned senior counsel sought liberty to take necessary instructions and to file a necessary clarification in this regard.

3. Learned counsel for CTUIL sought time to examine the affidavit as handed over by the Petitioners and to file the response, if required.

4. Learned senior counsel for the Petitioners submitted that insofar the Petition No. 56/MP/2022 is concerned, the issue is of the termination of the PPA by the Petitioner on account of force majeure events and impossibility in terms of Article 4.5.3 read with Article 13.5 of the PPAs. Learned senior counsel added that the said PPA itself provides that if the events of Force Majeure or it's effect continues to be present beyond a period of 12 months, either party has the right to cause termination of the agreement. Learned senior counsel submitted that SECI has admittedly given extension in Scheduled Commissioning Date of the Project therein on the basis of the various letters issued by the Petitioner, *inter-alia*, invoking the force majeure provision, SECI as such is not considering the extension as granted under the force majeure provision. Learned senior counsel submitted that the Petitioner has alternatively pleaded the declaration that the PPA stands frustrated on

account of impossibility of performance. Learned senior counsel further suggested that both these matter may be taken up together.

5. Learned senior counsel for the Respondent, SECI pointed that extension granted to the Petitioner was in terms of the notification issued by the MNRE. Learned senior counsel also added that as such the issue of LTA as involved in Petition No. 227/MP/2022 and termination of PPA in Petition No. 56/MP/2022 is not strictly related.

6. Considering the submissions made by the learned senior counsel and learned counsels for the parties, the Commission adjourned the matters. The Commission permitted the Petitioners to file their additional affidavit(s) and rejoinder in the matters within two weeks. The Commission also permitted CTUIL to file its response to the additional affidavit as handed over by the Petitioner, if any, within two weeks thereafter. In the meantime, the interim relief granted vide Record of Proceedings for the hearing dated 21.3.2022 shall continue till next date of hearing and the Petitioner will continue to pay monthly transmission charges to CTUIL in terms of the invoices being raised by CTUIL as directed by the Commission earlier.

7. The Petitions shall be listed for hearing on 18.4.2023.

By order of the Commission

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