



नई दिल्ली
NEW DELHI

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

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 31st of January, 2023

IN THE MATTER OF:

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.

AND IN THE MATTER OF:

Sprng Wind Energy Private Limited
Office No: A-001, Upper Ground,
P-5 Pentagon Tower,
Magarpatta City, Hadapsar,
Pune, Maharashtra – 411 013

...Petitioner

VERSUS

1. Solar Energy Corporation of India Limited
1st Floor, A-Wing, 0-3,
District Centre, Saket,
New Delhi- 110017

2. Kerala State Electricity Board Limited

Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram,
Kerala- 695004.

...Respondents

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

आदेश/ ORDER

The Petitioner, Sprng Wind Energy Private Limited (SWEPL), is a generating company which is developing a 100 MW wind power project in the State of Madhya Pradesh pursuant to the issuance of Letter of Award (LoA) dated 19.06.2019 and a Power Purchase Agreement dated 16.03.2020 executed between SECI and SWEPL.

2. The Respondent No.1, Solar Energy Corporation of India (SECI) is a Government of India Enterprise under the administrative control of the Ministry of New & Renewable Energy (MNRE). SECI is the nodal agency of MNRE for implementation of renewable energy schemes including for setting up of wind power projects in the country.
3. The Petitioner has made the following prayers:
 - a) *Direct the Respondent to release the Performance Bank Guarantee dated 15.07.2019 bearing reference number OGT0005190033865, as amended on 19.10.2019 and 17.05.2021, issued by IndusInd Bank Limited for an amount of Rs. 18,59,40,000/- to the Petitioner in light of the termination of the Power Purchase Agreement dated 16.03.2020 by the Petitioner;*
 - b) *Without prejudice and in the alternative to prayer a), declare that the Petitioner*

stands discharged from any obligation or liability toward the Respondent under Power Purchase Agreement dated 16.03.2020;

- c) Pending the present Petition, restrain the Respondent from taking any coercive steps against the Petitioner including invocation or encashment of the Performance Bank Guarantee dated 15.07.2019 bearing reference number OGT0005190033865, as amended on 19.10.2019 and 17.05.2021, issued by IndusInd Bank Limited for an amount of Rs. 18,59,40,000/- and direct the Respondent to maintain status quo;*
- d) Grant ex-parte ad interim, ad interim and interim reliefs in terms of the above prayers;*
- e) Direct the Respondent to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
- f) Pass such other orders that this Hon'ble Commission deems fit in the interest of justice.*

4. The hearing was conducted in the instant petition through virtual mode on 17.01.2023. Vide ROP dated 17.01.2023 it was recorded as under:

*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. We observe that in Para 18, KSEBL has submitted as under:

*18. KSEBL had taken all earnest efforts to materialize the PSA duly complying with the order of the State Commission. However, the modifications directed by the State Commission was not acceptable to SECI and therefore PSA could not be materialized so far. It is further submitted that if the **PSA with KSEBL was not materializing**, SECI was free to find alternate buyers for the power from the developer.*

6. In the hearing dated 17.01.2023, SECI has submitted that since the PSA with KSEBL has not materialized, the PPA with the Petitioner cannot be enforced. Accordingly, the Commission may, without going into various aspects raised in the matter, pass an appropriate order in this regard. The Petitioner has also submitted that since SECI has no objection for returning of the Performance Bank Guarantee, the instant Petition may be disposed of accordingly.
7. Considering the submissions made by the learned senior counsels for the parties, nothing remains for adjudication. The Petition No. 118/MP/2021 and IA No. 40/2021 is disposed of accordingly.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)