

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 282/MP/2024 along with IA No. 70/2024

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022 along with Regulation 65-68 of the CERC (Conduct of Business) Regulations, 2023 seeking reliefs(s) against the Central Transmission Utility of India Limited in connection with the 160 MW Connectivity at Koppal District in State of Karnataka, granted to the Petitioner.
- Petitioner : Halvad Renewables Private Limited (HRPL)
- Respondent : Central Transmission Utility of India Limited (CTUIL)
- Date of Hearing : **28.8.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
- Parties present : Shri Basava Prabhu Patil, Sr. Advocate, HRPL
Ms. Molshree Bhatnagar, Advocate, HRPL
Ms. Kamyia Sharma, Advocate, HRPL
Shri Punyam Bhutani, Advocate, HRPL
Shri Shubham Arya, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Ms. Kavya Bhardwaj, CTUIL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed *inter alia* challenging the action of revocation of 160 MW connectivity at Gadag-II PS undertaken by CTUIL without considering the change in regulatory dynamics, especially the amendments to the GNA Regulations and the recent orders passed by the Commission which protects the rights and interest of the Petitioner. Learned senior counsel mainly submitted as under:

(a) On 8.2.2022, the Petitioner applied for the grant of Stage I connectivity for its 300 MW wind Project at Gadag S/s in terms of the Connectivity Regulations, 2009. The Petitioner was granted the Stage I connectivity on 29.4.2022.

(b) The Petitioner also participated in the RfS dated 12.10.2021 issued by SECI for the selection of Wind Power Developers for setting up of the 1200 MW ISTS –

connected Wind Projects in the State of Karnataka under a tariff based competitive bidding (Tranche XII) and emerged as one of the successful bidders therein. Consequently, SECI issued a Letter of Award (LoA) dated 12.7.2022 in favour of the Petitioner for setting up Project – 300 MW at Koppal district in the State of Karnataka with an interconnection point at Gadag.

(c) On 7.6.2022, the Commission issued the GNA Regulations. However, the same were made effective from 15.10.2022 except for a few provisions, which were made effective subsequently. Further, on 1.4.2023, the Commission notified the First Amendment to the GNA Regulations and also notified that the effective date of Regulations 37.1 to 37.8 (Arrangement for Transition) shall be 5.4.2023 instead of 15.10.2022.

(d) The Petitioner applied for the Stage II connectivity vide its application dated 7.9.2022 and was granted the Stage II connectivity by CTUIL by communication dated 16.2.2023. Although the above grant of Stage II connectivity was post notification of GNA Regulations, CTUIL insisted on compliance under the previous regime, i.e., Connectivity Regulations, 2009. Consequent to the said grant, the Petitioner also submitted the Conn BG 1 and Conn BG 2 amounting to Rs. 50 lakh and Rs. 3 crores, respectively, to CTUIL.

(e) On 2.5.2023, CTUIL, vide its communication required the Petitioner to submit the transition documents, which were duly provided by the Petitioner. Thereafter, CTUIL, vide its communication dated 9.10.2023, granted the in-principle connectivity to the Petitioner under Regulation 7.1 and 7.2 of the GNA Regulations for 160 MW at Gadag II PS with tentative start date of 30.9.2025. By the said communication, the Petitioner was also directed to furnish the applicable Conn BGs within a period of two months.

(f) Pertinently, at that point in time, the Commission was also dealing with the issue of retention of the connectivity by a solar / wind developer in the absence of the LoA/ PPA, which was annulled by SECI since no PSA was executed in 90 days from the LoA in Petition Nos. 291/MP/2023 and 292/MP/2023 (SolarOne Energy Pvt. Ltd. v. CTUIL and Anr.) In the said cases, the Commission, by its order dated 20.9.2023, had also granted an interim stay on the revocation of the connectivity by CTUIL.

(g) In the Petitioner's case also, SECI had failed to execute the PPA within 90 days of issuance of the LoA, and upon the request of the Petitioner, SECI allowed the Petitioner to exit the LoA process without any liability. The LoA issued in favour of the Petitioner also came to be cancelled in December 2023, and the entire Performance Bank Guarantee submitted by the Petitioner was returned without any deduction.

(h) Only on 21.4.2024 the Commission passed the order in Petition Nos. 291/MP/2023 and 292/MP/2023 wherein by exercising its powers under Regulations 41 & 42 of the GNA Regulations, the Commission relaxed the provisions of Regulation 24.6 and allowed the Petitioners therein to convert their connectivity granted under LoA route to any other route as provided for in Regulation 5.8(xi), keeping in view that the annulment of the LoA was not due to the default on the part of the Petitioners and the seriousness and commitment shown by the Petitioners by way of the progress made to bring on the Projects. Thereafter, on 19.6.2024, the Commission also issued the Second

Amendment to the GNA Regulations incorporating the necessary provisions therein for enabling such conversion.

(i) However, during the pendency of the proceedings in the said cases, both the Petitioner and CTUIL, having no certainty regarding in what manner the provisions of the GNA shall be interpreted by the Commission, had maintained the status quo of their action.

(j) The Petitioner did not submit the Conn BG 3 under the *bona fide* assumption that the issue of transition in cases where the LoA is cancelled/annulled for a reason not attributable to the developer is sub-judice before the Commission. However, the Petitioner had already submitted the Conn BG 1 and Con BG 2. Also, CTUIL too did not take any coercive and/or precipitative steps against the Petitioner during the entire pendency of the proceedings.

(k) Once there was regulatory certainty in terms of the orders passed by the Commission and the Second Amendment to the GNA Regulations, the Petitioner reached out to the CTUIL seeking clarity on how to proceed with the submission of Conn BG 3. However, instead of reverting to the Petitioner's request, CTUIL, by its communication dated 8.8.2024, proceeded to revoke the grant of connectivity.

(l) The Petitioner's case is similar to those involved in Petition Nos.291/MP/2023 and 292/MP/2023 and is covered by the Second Amendment to the GNA Regulations, which has been notified by the Commission to protect the rights and interests of the Project developers like the Petitioner, whose LoA/PPA has been cancelled for the reasons not attributable to the Petitioner and the same has been agreed or approved by the Renewable Energy Implementing Agency (SECI) to convert its connectivity either in full or in part from the LoA/PPA route to land/ land BG route with no change in the start date of connectivity.

(m) Insofar as the implementation of the Project is concerned, the Petitioner has already invested a substantial amount and is committed to investing approximately Rs. 1400 crores for the development of the 160 MW wind project. The Petitioner has also executed the sale deeds/GPA deeds for 25 locations totalling 25.8 acres for the footprint area and a total of 175 acres inclusive of the access path and swept area. Thus, the Petitioner is already meeting 50% of the total land requirement criteria under the GNA Regulations to retain its 160 MW connectivity. In the above context, an affidavit was also tendered to indicate the progress made by the Petitioner so far.

(n) The Petitioner is committed and willing to retain its 160 MW connectivity at Gadag-II PS and is willing to submit the Conn BG 3 within a period of 2 weeks. In the interregnum, the Petitioner is also willing to submit the demand draft for the equivalent amount to CTUIL by tomorrow.

(o) The Petitioner is also pressing for interim directions *inter alia* seeking an ad-interim order/direction to keep in abeyance the implementation and application of CTUIL's letter dated 8.8.2024 till the final disposal of the main matter and restricting CTUIL to take any coercive/precipitative against the Petitioner pursuant to the said letter, including invocation of Conn BG 2 and/or allotting 160 MW connectivity at Gadag II to any other entity. If a third-party right gets created over such quantum, the instant

Petition may be rendered infructuous. Also, no prejudice is likely to be caused to CTUIL in case the above interim reliefs are granted by the Commission.

2. In response to the specific query of the Commission as to why the Petitioner did not approach the Commission at the relevant point in time back in December 2023, learned senior counsel fairly submitted that there has been a delay on the part of the Petitioner in approaching the Commission. Learned senior counsel, however, hasten to add that keeping in view the regulatory uncertainty prevailing at that time, CTUIL also did not take any coercive and/or precipitative steps against the Petitioner.

3. Learned counsel for the Respondent, CTUIL, mainly submitted as under:

(a) In terms of the in-principle grant of the connectivity vide communication dated 9.10.2023, the Petitioner was required to submit the applicable Conn BGs within the period of two months, i.e., by 9.12.2023, failing which the application of the Petitioner was liable to be closed.

(b) Since the Petitioner failed to submit the Conn BG 3 within the stipulated time frame, the in-principle grant of connectivity to the Petitioner for 160 MW at Gadag II PS was revoked, and consequently, Conn BG 1 has been invoked.

(c) The Petitioner, in its letter dated 14.8.2024, has *inter alia* averred that CTUIL sought the additional Conn BG 3 to be submitted without giving any firm date as to the start date of connectivity and it could not have submitted the Conn BG 3 without any clarity on the availability of the transmission system and constant change of regulations. However, such averment is not only incorrect but against the provisions of the GNA Regulations. Reliance was placed on CTUIL's communication dated 9.10.2023 and Regulation 9 of the GNA Regulations.

(d) Despite the Petitioner's LoA having been cancelled back in December 2023, the Petitioner did not disclose the said development in any of the subsequent JCC meetings held and as attended by the Petitioner.

(e) The Petitioner has also averred that CTUIL, by its conduct, acquiesced in the conduct of the Petitioner of non-submission of Conn BG 3 and waived its right to invoke the connectivity by its conduct. However, such averment is also misconceived. The delay on the part of CTUIL to revoke the connectivity cannot be treated as a waiver. In any case, it is settled law that if any element of public interest is involved, a waiver will not be given effect if it is contrary to such public interest, and the Court can step in to thwart any such waiver. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in *All India Power Engineer Federation and Ors. v. Sasan Power Ltd. and Ors.* All proceeds from the invocations of the BGs go to the common pool and are not being retained by CTUIL.

(f) Admittedly, there has been a mistake on the part of CTUIL in not taking timely action to revoke the connectivity on account of the Petitioner's failure to submit the Conn BG 3 in the stipulated timeframe. During the transition to the GNA regime, CTUIL was handling around 1400 Conn BGs and more than 500 applications of the various developers, which has led to the above inadvertence.

(g) Without prejudice, the Petitioner's reliance on the Second Amendment to the GNA Regulations is also misplaced. The Petitioner's case is not covered by the Second Amendment as the Petitioner is not a Connectivity Grantee in terms of the GNA Regulations. In this regard, the reliance was also placed on the order of the Commission dated 12.5.2024 in Petition No.9/MP/2024 (ACME Cleantech Solutions Pvt. Ltd. and Anr. v. CTUIL).

(h) The Petitioner's case is also distinguishable from the cases of Solarone Energy Pvt. Ltd. involved in Petition Nos. 291/MP/2023 and Anr.

4. In response to the specific query of the Commission regarding any pending application for the grant of connectivity at Gadag II PS and the allocation/re-allocation of the 160 MW capacity pursuant to revocation, if any, learned counsel for CTUIL sought liberty to seek necessary instructions on the above aspect.

5. Considering the submissions made by the learned counsel for the parties, the Commission ordered as under:

(a) Issue notice to the Respondents subject to just exceptions;

(b) The Petitioner is to implead SECI as a party to the present Petition and file a revised memo of parties within a week;

(c) The Respondents are to file their reply to the Petition as well as IA within three weeks with a copy to the Petitioner, who may file its rejoinder(s), if any, within three weeks.

(d) The Petitioner is to submit the following details/information on an affidavit within two weeks:

- i. A copy of SECI's letter allowing the Petitioner to exit from the LoA,
- ii. A copy of the RfS issued by SECI corresponding to the LoA dated 12.7.2022,
- iii. Reasons for non-submission of the Conn-BG3 within the stipulated timelines subsequent to the conversion of the 160 MW of Connectivity under the GNA Regulations.
- iv. Status of the project. Indicate the steps taken by the Petitioner towards implementation of the Project, including the status of acquiring of land for the project, i.e., land required vis-à-vis land acquired for the project, with actual land acquired through a registered title deed or on lease or land use rights basis.
- v. Details of investment made with timeline for the project along with the supporting documents.

(e) The Respondent, CTUIL, is to provide the reasons for the delay in revocation of the connectivity for non-submission of Conn BGs by the Petitioner along with its reply.

(f) The Respondent, SECI to respond, in its reply, to the Petitioner's averment that the Petitioner was allowed to exit from the LoA for the reasons not attributable to the Petitioner.

(g) Insofar as the grant of interim reliefs/directions as prayed for by the Petitioner is concerned, the Commission declined to grant any reliefs at this stage prior to considering the submissions of the Respondents thereon.

6. The Petition, along with IA, will be listed for hearing on **17.10.2024**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)