

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/MP/2024 along with IA (Diary) No. 199/2024

Subject : Petition under Section 79, including 79(1)(b), 79(1)(f) & 79(1)(k) of the Electricity Act, 2003 seeking termination of the Power Purchase Agreement (PPA) dated 16.09.2021, executed by the Petitioner with Solar Energy Corporation of India Limited (SECI), without any financial liability and consequence thereof.

Petitioner : Adani Renewable Energy Seven Limited (ARESL)

Respondent : Solar Energy Corporation of India Limited (SECI)

Date of Hearing : **19.4.2024**

Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Parties Present : Shri Amit Kapur, Advocate, ARESL
Shri Hemant Singh, Advocate, ARESL
Shri Chetan Garg, Advocate, ARESL
Ms. Lavanya Panwar, Advocate, ARESL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Shirsas Saraswati, Advocate, SECI

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking termination of the Power Purchase Agreement dated 16.9.2021 executed between the Petitioner and the Respondent SECI, mainly on the ground that due to non-availability of suitable land at the nearby identified sub-station, out of the designated sub-stations as per the RfS in the State of Karnataka, had made it impossible for the Petitioner to commission the Project in a timely manner.

2. Learned counsel for Respondent, SECI submitted that upon Respondent, SECI having moved to invoke the Bank Guarantee (BG), furnished by the Petitioner under the PPA, by its letter dated 5.4.2024, the Petitioner herein had approached the Hon'ble High Court of Delhi by WP (C) No. 5154/2024 and CM Appl. No.21097/2024 restraining SECI from invoking/encashing the BG, and the Hon'ble High Court, vide its order dated 8.4.2024, has directed to maintain the *status quo* till the consideration of the matter by this Commission and has further held that it shall be open for this Commission to consider whether or not continuation of the aforesaid interim direction is warranted ?.. Learned counsel accordingly submitted that the Commission is required to take up the aspect of continuation of interim direction today itself and SECI strongly objected to any further stay on the invocation/encashment of the BG. Learned counsel for the Respondent SECI submitted that the Appellate Tribunal for Electricity, in its various recent judgments, has categorically held that a BG is an independent and distinct contract between the bank and beneficiary and is not qualified by the underlying transaction between the person at whose instance the BG

was given and the beneficiary and that encashment of amount specified in BG does not depend upon the result of the decision in the dispute between the parties and has accordingly, refused to grant any stay on invocation / encashment of the BG. Learned counsel tendered a copy of the compilation of the judgments on the above aspect.

3. In response, the learned counsel for the Petitioner pointed out that as per the order of the Hon'ble High Court, the Commission has to consider whether or not continuation of the interim direction given by the Hon'ble High Court is warranted only after considering the facts and circumstances of the case and accordingly, the parties may be permitted to first complete pleadings in the matter.

4. Learned counsel for Respondent, SECI, however, submitted that SECI does not wish to file any further submissions on the aspect of invocation of the BG and insisted that in view of the various judgments of APTEL on the above subject, no further stay may be granted on invocation / encashment of the BG.

5. Considering the submissions of the learned counsels for the parties, the Commission ordered as under:

- (a) Admit.
- (b) Respondent to file its reply to the Petition within four weeks with a copy to the Petitioner, who may file its rejoinder, if any, within four weeks.
- (c) Insofar as the aspect of encashment/invocation of the BG is concerned, the Petitioner may file its brief submissions, if any, on or before 26.4.2024.

6. The matter will be listed for the hearing, particularly on the aspect of *continuation of interim direction of the Hon'ble High Court dated 8.4.2024*, on **29.4.2024 at 2.30 P.M.** The interim protection in terms of the direction of the Hon'ble High Court dated 8.4.2024 is extended till the next date of the hearing.

By order of the Commission

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