

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.192/MP/2021

Subject : Petition under Sections 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003, read with Article 4.5(a) of the Power Purchase Agreement (PPA) dated 20.8.2019 executed between the Petitioner and Solar Energy Corporation of India Limited (SECI), read with the back-to-back Power Sale Agreements (PSAs) dated 17.6.2019 and 26.6.2019 executed between SECI and BSES Yamuna Power Limited (BYPL) and Tata Power Delhi Distribution Limited (TPDDL), respectively, seeking extension of Scheduled Commercial Operation Date (SCOD) and based on the extension of SCOD sought in the instant petition, seeking consequent deferment of operationalization of Long-Term Access (LTA) granted by the Central Transmission Utility of India Limited (CTUIL) to the Petitioner.

Petitioner : SBSR Power Cleantech Eleven Private Limited (SBSR).

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

Petition No. 235/MP/2023 along with IA No.56/2023

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking adjudication of dispute against SBSR Power Cleantech Eleven Private Limited ("Respondent No. 1") and Solar Energy Corporation of India ("SECI"/ "Respondent No. 2").

Petitioner : Tata Power Delhi Distribution Limited (TPDDL).

Respondent : SBSR Power Cleantech Eleven Private Limited (SBSRPCEPL) & Ors.

Date of Hearing : **30.4.2025**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Shri Hemant Singh, Advocate, SBSR
Shri Lakshyajit Singh Bagdwa, Advocate, SBSR
Ms. Lavanya Panwar, Advocate, SBSR
Shri Sajan Poovayya, Senior Advocate, TPDDL
Shri Shri Venkatesh, Advocate, TPDDL
Shri Shryesth Ramesh Sharma, Advocate, TPDDL
Ms. Priya Dhankhar, Advocate, TPDDL
Shri Anant Singh Ubeja, Advocate, TPDDL
Shri Palash Maheshwari, Advocate, TPDDL
Shri Manav Bhatia, Advocate, TPDDL
Ms. Shefali Sobti, TPDDL
Ms. Sarika Jerath, TPDDL



Shri M.G Ramachandran, Senior Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Ritika Singh, Advocate, SECI
Ms. Shrishti Khindaria, Advocate, SECI

Record of Proceedings

During the course of the hearing, learned senior counsel for the Petitioner in Petition No. 235/MP/2023 referred to the pleadings and mainly submitted as under:

(a) The present Petition relates to the illegal diversion and sale of the contractually committed and 'Contracted Capacity' by the Respondent, SBSR Power Cleantech Eleven Private Limited ('SBSR'), to third parties. As per the Contracts signed by the parties, the Petitioner is the beneficiary of the entire Contracted Capacity installed/commissioned by the Respondent, SBSR. However, SBSR, in abject disregard of its contractual obligations, has perpetuated a device by which 62.5 MW of its installed capacity is being diverted to third parties, depriving the Petitioner of its share of Renewable Power.

(b) The Respondent, SBSR, belatedly, achieved the part commission of the Project (out of the total Project capacity of 300 MW) in the following manner, viz. 50 MW on 15.8.2021, 50 MW on 4.4.2022 and 50 MW on 11.4.2022. Out of said 150 MW commissioned capacity, only 100 MW is being supplied to the Petitioner, and the remaining 50 MW is being supplied to BYPL. Since the subject capacity of 62.5 MW was ready for commissioning after the extended period of 20.5.2022, Respondent, SBSR, sought an extension from Respondent, SECI, which was denied by SECI. Subsequently, Respondent, SBSR, filed the Petition No. 192/MP/2021 titled as before this Commission, seeking extension of the SCOD till 2.7.2022 on account of various force majeure events.

(c) This Commission is seized of Petition No. 192/MP/2021 and vide its Record of Proceedings (RoP) for the hearing dated 22.8.2022 had permitted self-commissioning of 62.5 MW so as to prevent the idling of the capacity, albeit without prejudice to the rights of the Respondent, SECI, and distribution companies in the present case. On 23.8.2022, following the RoP dated 22.8.2022, Respondent, SBSR, issued a letter to SECI requesting a NoC for the sale of the 62.5 MW to any third party through exchange. In response, SECI convened a meeting on 26.8.2022, involving all concerned parties, to attempt a resolution of the dispute regarding the subject capacity. After detailed deliberations and no mutual agreement by 31.8.2022, SECI issued a letter advising Respondent, SBSR, to self-commission the said capacity and granted the requested NoC for sale to a third party. SECI also clarified that its decision would not be binding on the beneficiaries.

(d) Subsequently, on 17.10.2022, Respondent, SBSR, filed Application No. 62 of 2022, seeking to amend its pending Petition No. 192/MP/2021 before this Commission. In the said application, SBSR also requested the Commission to restrain SECI from taking any coercive measures against it, including encashment or invocation of the Performance Bank Guarantee (PBG). Further, SBSR sought a declaration that it is not liable to pay any liquidated damages or other penalties in respect of the 150 MW capacity already commissioned under the PPA. The IA No. 62 of 2022 was taken up for the hearing before the Commission on 12.12.2022, and during the course of said hearing, the Petitioner orally prayed that the Application may be allowed 'Subject to Just Exceptions'. Further, the Petitioner made detailed

submissions that the amended prayers as sought by the Respondent, SBSR, are not in accordance with the express terms of the PPA/PSA. However, the Commission issued the RoP and unfortunately did not record the submission of the Petitioner that the IA may be allowed, subject to just exceptions.

(e) The Petitioner on multiple occasions including additional affidavit filed in compliance of the RoP issued by the Commission on 17.5.2023, had confirmed that Petitioner is willing to offtake power from Respondent, SBSR, as per the terms of the PPA and the Petitioner maintained that in case any Change in Law relief is granted by the Commission to the Respondent, SBSR, the same would be complied with.

(f) On 21.12.2022, another meeting convened by the SECI, the Petitioner had submitted that it is willing to offtake the power as per the terms & conditions of the PPA & PSA through SECI, without any additional financial liability and novation of the contract. However, no resolution could be arrived at between the parties. Thereafter, the Petitioner filed IA No. 3 of 2023 in Petition No. 192/MP/2021 thereby highlighting the fact that the Petitioner being the beneficiary/end procurer of the power generated by Respondent, SBSR, is being deprived of its total tied up capacity i.e. 200 MW on account of the Respondent, SBSR, third party sale of 62.5 MW power as also the failure/delay in commissioning the balance remaining capacity. Vide the said IA, the Petitioner also sought directions against Respondent, SBSR, to supply forthwith the commissioned capacity of 62.5 MW on a pro-rata basis under the terms and conditions as stipulated under the PPA dated 20.8.2019, the PSA dated 26.6.2019.

(g) After hearing the parties, this Commission vide Order dated 5.6.2023 disposed of the said IA and held that the maximum period for commissioning the project, inclusive of the levy of liquidated damages, expired on 20.5.2022. As the Respondent, SBSR, had commissioned only 150 MW (out of 300 MW) by the deadline i.e. 20.5.2022, so as per the terms of the PPA, the contracted capacity will reduce to the capacity commissioned till 20.5.2022 and Respondent, SBSR is not obligated to supply the commissioned capacity of 62.5 MW to the Petitioner on a pro-rata basis in terms of the PPA and PSA. Aggrieved by the Commission's order dated 5.6.2023, the Petitioner challenged the same before the APTEL. After hearing the parties at length, the APTEL permitted the Petitioner to withdraw the IA No. 3 of 2023, with liberty to file a fresh Petition before this Commission seeking appropriate relief.

(h) In view of the liberty granted by the APTEL, the Petitioner has preferred the present petition seeking a declaration that the Respondent, SBSR, having defaulted to supply 100 MW to the Petitioner, is obligated to supply the 62.5 MW to the Petitioner in terms of the binding obligations of the PSA/PPA and the Respondent, SBSR cannot sell the commissioned 62.5MW power to third party to the exclusion of the Petitioner. The Petitioner has also sought directions upon the Respondents to indemnify the Petitioner for the amount of any additional cost for compliance with RPO owing to making alternative arrangements, penalty for any shortfall in meeting the RPO qua non-commissioning of the 100 MW capacity/38.5 MW capacity.

(i) The entire case of the Respondent, SBSR, is grounded upon a selective and convenient reading of Article 4.6.2 of PPA, merely with the intent to wriggle out of its obligations on account of breach/non-fulfilment of the obligations stipulated therein. If the Respondent wishes to claim the reduction of the contracted capacity of the Project from 300 MW to 150 MW, then it shall first have to face the ensuing consequences as envisaged in Article 4.6.2 read with Article 13 (SPD's default

provisions). Article 13.1, read with Article 13.3.5 of the PPA, clearly states that the termination of the PPA would be warranted only in the event of SPD's default. Further, such termination would entitle the Buying Utility, i.e., the Petitioner to follow the process envisaged under Article 13 and acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which lenders of the Project may exercise their mortgage rights and liquidated the Project assets.

2. Learned senior counsel for the Respondent, SECI, mainly submitted as under:

(a) As per Article 4.6.2 of PPA, the maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee was specified as 24 months from the Effective Date of the PPA (3.7.2019), i.e., by 3.7.2021. The above date of 3.7.2021 was extended to 20.5.2022 (6 months from 20.11.2021) in terms of the letter issued by SECI dated 15.11.2021.

(b) Meanwhile, on 27.8.2021, SBSR filed Petition No.192/MP/2021 before this Commission praying, *inter-alia*, extension of Scheduled Commercial Operation Date (SCOD). Vide order dated 6.10.2021, the Commission had directed the SBSR to also implead the TPDDL and BYPL in Petition No.192/MP/2021. Further, the Commission vide various Record of Proceedings for the hearing directed the parties to explore the possibility of an amicable solution to the issues involved in the petition, pursuant to which, three meetings dated 26.8.2022, 21.12.2022, and 31.1.2023 were convened by SECI. However, no consensus was reached between the SPD & Buying Entities. In the meeting dated 31.1.2023, the SPD had submitted that there will be additional financial implications under a change in law event due to the imposition of GST and BCD, etc. Notwithstanding the above, the Buying Entities became ready to off-take their quota of 62.5 MW and would bear the additional cost, if any, due to "Change in Law" events as per the decision of the Commission.

(c) SECI, through its affidavit dated 17.5.2023, had placed on record the respective positions of the parties. However, by order dated 5.6.2023, passed in IA No. 3 of 2023 filed by TPDDL in Petition No. 192/MP/2021, the Commission, *inter alia*, reduced the Project capacity commissioned (150 MW) prior to 20.5.2022 in accordance with Article 4.6.2 of the PPA.

(d) SECI had only refused to extend the SCD as claimed by SBSR but did not take any precipitative action of either terminating the PPA in regard to capacity not commissioning by the maximum timeline allowed or otherwise taking any steps to allow SBSR to not perform its part of the contract. In any case, the defaulting party cannot be permitted to unilaterally terminate the PPA on the ground of its own default.

3. The matters remained part-heard and will be listed for the hearing on **23.5.2025 at 2.30 P.M.**

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)