

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 133/MP/2021 along with IA No. 52/2021

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and the relevant provisions of the PPA, *inter alia* seeking extension/deferment of Scheduled Commissioning Date for 45.6 MW out of the total 250 MW wind power project on account of Force Majeure events which delayed the Petitioner in performing its obligations under the Power Purchase Agreement dated 2.1.2018 ("PPA"); declaration that the Petitioner's Termination Notice dated 20.6.2021 claiming discharge by way of termination of the PPA with respect to the limited un-commissioned capacity of 19.9 MW out the Project, in accordance with Article 4.5.3 read with Article 13.5 of the PPA is valid and binding; and consequential reliefs in relation thereto.
- Date of Hearing : 6.8.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : ReNew Power Private Limited (ReNew)
- Respondents : Solar Energy Corporation of India Limited (SECI) Limited and 3 Ors.
- Parties Present : Shri Sajjan Poovayya, Sr. Advocate, ReNew
Shri Aniket Prasoon, Advocate, ReNew
Ms. Raksha Agarwal, Advocate, ReNew
Ms. Priya Dhankhar, Advocate, ReNew
Ms. Shweta Vashist, Advocate, ReNew
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Ishan Nagpal, ReNew
Shri Vasav A, ReNew
Shri Neha Singh, SECI
Shri Shreedhar Singh, SECI
Shri Shubham Mishra, SECI
Ms. Aditee Nitnavare, SECI

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed *inter alia* seeking extension/ deferment of the Scheduled

Commissioning Date ('SCOD') for part capacity of 45.6 MW out of its 250 MW Wind Power Project ('the Project') on account of various prolonged force majeure events, which delayed and/or prevented the Petitioner in performing its obligation in terms of Power Purchase Agreement ('PPA') dated 2.1.2018 and declaration that the Termination Notice of the Petitioner dated 20.6.2021 claiming discharge by way of termination of the PPA with respect to the limited un-commissioned capacity of 19.9 MW out of the Project, in accordance with Article 4.5.3 read with Article 13.5 of the PPA is valid and binding. Learned senior counsel mainly submitted the following:

(a) The Petitioner and the Respondent No.1, SECI entered into a PPA for development of 250 MW Wind Power Project and supply of electricity generated therefrom at the tariff of Rs. 2.64/kWh.

(b) As per the PPA, SCOD of the Project was 3.5.2019, which was extended by SECI to 12.12.2019. The Petitioner successfully commissioned 184.5 MW out of the total Project capacity of 250 MW by 29.9.2019. However, due to various force majeure events, the Petitioner could not commission balance 65.5 MW.

(c) Out of the aforesaid balance capacity of 65.5 MW, the Petitioner was able to further commission 45.6 MW of the Project in two phases i.e. 27.6 MW on 1.9.2020 and 18 MW on 7.2.2021. Accordingly, as on date, the Petitioner has successfully commissioned 230.1 MW out of 250 MW.

(d) However, for balance un-commissioned capacity of 19.9 MW, on 20.6.2021, the Petitioner had issued Termination Notice to SECI claiming discharge by way of termination of the PPA in accordance with Article 4.5.2 read with Article 13.5 of the PPA.

(e) SECI has admitted/ accepted that as per the provisions of the PPA, un-commissioned capacity of 19.9 MW stands automatically terminated. However, SECI vide its letters dated 5.5.2021 and 7.5.2021 has reduced the tariff for the Project from Rs. 2.64 per unit to Rs. 2.61 per unit and has directed the Petitioner to deposit the excess paid energy charges by SECI (to the tune of Rs. 19 lakh) due to the downward revision in tariff along with the applicable surcharge.

(f) Accordingly, the Petitioner has filed IA No. 52/2021, *inter alia*, praying for *ad-interim ex parte* stay on the operation of the letters dated 5.5.2021 (to the extent of reduction of tariff) and 7.5.2021 issued by SECI. Having successfully commissioned 184.5 MW within the extended SCOD and the commissioning of the balance 45.6 MW capacity being delayed on account of force majeure events, the Petitioner ought to receive tariff of Rs. 2.64/kWh pending outcome of the present Petition.

(g) The Petitioner has already made payment of Rs. 10.98 crore as claimed by SECI towards liquidated damages, subject to the outcome of the present Petition.

3. Learned senior counsel for the Respondent No.1, SECI accepted the notice and requested for time to file reply to the Petition. Learned senior counsel submitted that reduction in tariff of the delayed capacity is as per Article 4.6.2 of the PPA and that the tariff of Rs. 2.61/- has been arrived at after considering the weightage average tariff of the entire capacity of the Project.

4. After hearing the learned senior counsels for the parties, the Commission ordered as under:

- (a) Admit. Issue notice to the Respondents;
- (b) The Petitioner to serve copy of the Petition on the Respondents immediately, if not already served and the Respondents to file their reply, if any, by 31.8.2021 after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 13.9.2021; and
- (c) Parties to comply with above directions within the specified timeline and no extension of time shall be granted.

5. As regards the Petitioner's prayer for interim relief, the Commission observed that reduction in tariff has been claimed to have been arrived at by SECI in accordance with the provisions of the PPA. Accordingly, the Commission declined to grant any interim relief at this stage.

6. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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