



Petition No. 1771 of 2021

**BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Date of Order: 06.10.2021

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Kaushal Kishore Sharma, Member
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF

Petition under Section 86 (1) (b) read with Section 63 of the Electricity Act 2003 and Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019 and Article 11 read with Article 13.5 and Article 4.5.3 of the Power Purchase Agreement dated 20.12.2019 executed between Solar Energy Corporation of India Limited and the Petitioners seeking direction to Solar Energy Corporation of India for granting extension of timelines for completion of the project and restraining Solar Energy Corporation of India from invoking the Performance Bank Guarantees.

Renew Solar Power Private Limited
10th floor DLF Square Building,
DLF Phase - II M Block,
Jacaranda Marg,
Gurugram, Haryana - 122 002

Auxo Sunlight Private Limited
138, Ansal Chambers - II, Bhikaji Cama Place
New Delhi - 110 066

Renew Sun Power Private Limited
138, Ansal Chambers - II, Bhikaji Cama Place
New Delhi - 110 066

..... Petitioner

AND

Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing - A, Prius Platinum Building
District Centre, Saket
New Delhi - 110 017

Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14 Ashok Marg,
Lucknow, Uttar Pradesh - 226 001

..... Respondent



The following were present:

1. Shri. Sajan Poovayya, Senior Counsel, Renew Solar
2. Shri. Apoorva Misra, Advocate, Renew Solar
3. Ms. Nishtha Kumar, Advocate, Renew Solar
4. Shri. Tushar Goyal, Renew Solar
5. Shri. Divyanshu Bhatt, Counsel, UPPCL
6. Shri. Deepak Raizada, SE-PPA, UPPCL
7. Shri. M G Ramachandran, Senior Advocate, SECI
8. Ms. Poorva Saigal, Counsel, SECI

Order
(Date of Hearing: 28.09.2021)

1. The instant petition has been filed seeking specific directions and relief on account of the Force Majeure events, which have rendered the Petitioners in developing the Project and fulfilling their obligations, within the stipulated timelines, under the PPA dated 20.12.2019 executed with the Respondent. The Petitioner is also seeking ancillary interim relief of restraining SECI from taking any coercive actions against the Petitioner, including encashment of Performance Bank Guarantees submitted to SECI in terms of the PPA during the pendency of the instant petition.
2. The Petitioner has made the following prayers vide the instant Petition:
 - i. Admit the instant Petition;
 - ii. Direct the Respondent No. 1/SECI to grant extension of timelines to the Petitioner for Financial Closure of the Project by a period of at least 12 months with the SCOD of the project extended by a period of at least 21 months, i.e., to 30.04.2023 from the date of tariff adoption by this Commission and a commensurate extension of all consequential timelines including expiry date of the PPA thereof;
 - iii. In case Prayer (ii) is allowed, issue consequential directions to all parties;
 - a) In the interregnum, issue ad-interim, ex-parte directions injuncting and restraining the Respondent No. 1 / SECI from invoking and encashing the PBGs dated 19.11.2019;
 - b) In the interregnum, further issue ad-interim ex-parte directions to Respondent No. 1 and 2, i.e., SECI and UPPCL from taking any other coercive steps detrimental to the interest of the Petitioners; and
 - iv. Pass any such further and other orders as the Commission may deem fit, just and proper in the facts and circumstances of the instant case.
3. The Hon'ble High court, in the matter of interim relief filed by the Petitioner, vide its judgement dated 15.09.21 has decided that the Commission shall take up the



Petition filed on 28.09.21 and till the prayer for grant of interim relief is considered and decided by the Commission, SECI shall not invoke and encash the BG.

The matter, accordingly, came up for the hearing today.

4. Shri. Sajan Poovayya, Sr. Counsel, Renew Solar submitted the following:

- i. On 05.09.2019, SECI issued the LOA to Renew Solar and on 20.12.2019 and PPA was signed between SECI and Renew Solar's SPVs with the effective date as 04.12.2019.
- ii. There was a delay in tariff adoption as the petition for power procurement was filed in October 2020 and tariff adoption petition was filed before CERC in January 2021. CERC, vide its order dated 15.04.21 dismissed the petition holding this Commission's jurisdiction. Thereafter, the Commission, after allowing amendment of petition filed, adopted the tariff vide its Order dated 30.07.2021.
- iii. On several occasions, the Petitioner had issued Force Majeure Notices as well as letters requesting SECI for extension in timelines for Financial Closure and the Scheduled Commercial Operation Date. However, vide its email dated 28.05.2021, SECI stated that it would be willing to consider time extension, but the Petitioner would have to forego certain rights under the PPA, including claim for Change in law and right to terminate the PPA. Further, the extension of time would be subject to the approval by the ultimate end-procurer.
- iv. The Petitioner is constrained to approach the Commission by way of the instant petition, seeking the appropriate Orders directing SECI to
- v. To direct SECI from taking any coercive action against the Petitioners, including encashment of PBGs, since the Petitioners have not intentionally committed any breach of the clauses of the PPAs, and the delay in achieving Financial Closure has been wholly on account of uncontrollable and unforeseen factors.
- vi. Grant extension of timelines for the project as prayed.
- vii. Grant of time to file rejoinder to the replies of the Respondents.

5. Shri. M G Ramachandran, Senior Advocate, SECI submitted the followings:

- i. The Petitioner have not given any undertaking in line with the conditions cited under MNRE's OM dated 12.05.2021 and 29.07.2021.
- ii. There is no provision under PPA, RFS and the bidding guidelines applicable, which provides for any timeline for adoption of tariff.
- iii. The Petitioner have signed Water Body Lease Agreement with UPJVNL in respect of Floating Solar Power Projects. Therefore, UPJVNL shall be impleaded in the matter as a Respondent.
- iv. SECI has filed its reply in the matter.



6. The Commission asked the Petitioner for any objection to UPJVNL being made as Respondent; the Petitioner has no objection. The Commission while allowing UPJVNL as a Respondent in the matter directed the Petitioner to submit revised memo of parties along with a copy of petition to UPJVNL.
7. On a specific query of the Commission regarding delay in approval of PSA and if there was no timeline mentioned in the PPA for tariff adoption, why financial closure was not done, Shri. Sajan Poovayya, Sr. Counsel, Petitioner, submitted that despite the PPAs having been signed in December 2019, the PSA approval was obtained only on 30.07.2021 and without certainty of tariff no banker comes up to provide any funds.
8. Shri. Divyanshu Bhatt, Counsel, UPPCL requested time for filing reply. The Commission noted that bidding was conducted in Sept 2018 wherein tariff was discovered @Rs. 3.29 per unit with scheduled commissioning date of Sept 21. The Commission opined that though UPPCL is obligated to meet Solar RPO, UPPCL may consider the aspect of availing Solar power at the same tariff, under prevailing market conditions which may be available in FY 2023-24 only, while replying to the Petition.
9. After taking consensus of all the parties involved, the Commission granted 2 weeks' time to UPPCL and newly impleaded Respondent to file its reply and Petitioner to file rejoinder in a week thereafter to the replies of SECI, UPPCL and UPJVNL.
10. Upon the request of SECI, the Commission also directed SECI to co-ordinate the meeting between all the parties involved including UPJVNL to arrive at a mutually acceptable proposition and appraise the Commission on the next date of hearing.

List the matter for the next hearing on 10th November 2021.

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Dated: 06.10.2021