

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 201/MP/2022

Subject : Petition under Sections 79 of the Electricity Act, 2003, read-with Article 4.5(a) of the Power Purchase Agreements (PPA) dated 14.2.2020 executed between the Petitioner and Solar Energy Corporation of India Limited (SECI) for supply of 180 MW and 150 MW respectively, read with the back-to-back Power Sale Agreement (PSA) dated 5.2.2020 executed between SECI and Bihar State Power (Holding) Company Limited seeking extension of Scheduled Commercial Operation Date (SCOD).

Date of Hearing : 22.9.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Adani Solar Energy RJ Two Private Limited (ASERJTPL)

Respondents : Solar Energy Corporation of India Ltd. (SECI) and 3 Ors.

Parties Present : Shri Sitiesh Mukherjee, Advocate, ASERJTPL
Shri Hemant Singh, Advocate, ASERJTPL
Shri Lakshyajit Singh Bagdwal, Advocate, ASERJTPL
Ms. Lavanya Panwar, Advocate, ASERJTPL

Record of Proceedings

The learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking appropriate directions for extension of Scheduled Commercial Operation Date (SCOD) as contemplated under the Power Purchase Agreements (PPAs) dated 14.2.2020 executed between the Petitioner and SECI. The learned counsel further submitted the following:

(a) The Petitioner is in process of setting-up of solar power plants having capacity of 150 MW and 180 MW in the State of Rajasthan and has executed two separate PPAs both dated 14.2.2020 with SECI for supply of power generated from the said projects. SECI has executed the back-to-back Power Supply Agreement (PSA) dated 5.2.2020 with Bihar State Power Holding Co. Ltd. (BSPHCL) & Bihar Utilities for supply of 480 MW out of which 330 MW is to be supplied by the Petitioner in terms of the PPAs dated 14.2.2020.

(b) As per the PPAs and PSA, the entire scheme of arrangement is that, whatever obligation is enforced by BSPHCL under the PSA against SECI, the Petitioner is bound to fulfil such obligations on a back-to-back basis towards SECI in terms of the PPAs. Similarly, the rights conferred to the Petitioner, which may be claimed under the PPA with SECI, shall be subject to due enforcement of the corresponding rights on a back-to-back basis by SECI against BSPHCL, without an independent obligation on the part of SECI.

(c) The effective date of both the PPAs as mentioned therein is 11.2.2020 and the SCOD being 18 months from the effective date was 11.8.2021. As per PSA also, the SCOD is 18 months from the effective date of the PPA i.e. 11.8.2021. Presently, however, the SCOD of the projects is 28.3.2022 in terms of the subsequent extension granted by SECI.

(d) As per the provisions of the PSA, it was the duty /obligation of SECI/Buying entity to obtain an order from the Appropriate Commission for adopting the tariff and trading margin and approving the other terms and conditions of the PSA. In the present case, while the tariff for the projects had been adopted by this Commission under Section 63 of the Act by an order dated 4.8.2022, the PSA was approved by Bihar Electricity Regulatory Commission (BERC) only on 18.2.2022.

(e) Hence, the PSA read with PPAs became enforceable/ effective only after the approval of BERC on 18.2.2022 and accordingly, the SCOD of the Petitioner's projects has to be considered as 18 months from the date SECI/ Buying entity obtained the approval under Section 86(1)(b) of the Electricity Act, 2003 from BERC i.e. 18.2.2022.

(f) Appellate Tribunal for Electricity (APTEL) on several occasions has held that a contract is enforceable /effective only from the date when such contract received a regulatory seal of approval by the Appropriate Commission. In this regard, reliance was placed on the judgment of APTEL dated 27.2.2020 in Appeal No. 368 of 2019 & Batch in the matter of Ayana Ananthapuramu Solar Pvt. Ltd. v. APERC and Ors.

(g) In order to ensure that Respondents may not proceed to terminate the PPAs, the Petitioner is pressing for interim direction to the Respondents to not take any coercive actions against the Petitioner in any manner whatsoever till the pendency of the petition.

2. After hearing the learned counsel for the Petitioner, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition on the Respondents and the Respondents to file their reply to the Petition, if any, within three weeks after serving copy of the same to the Petitioner, who may file its rejoinder within three weeks thereafter.

(c) Parties to comply with the above directions within specified timeline and no extension of time shall be granted.

(d) In the meantime, the Respondents shall not take any coercive action against the Petitioner till the next date of hearing.

3. The Petition shall be listed for hearing on 22.11.2022.

By order of the Commission

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

