

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 283/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 21.04.2024

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 read with Regulation 41 and 42 of the Central Electricity Regulatory Commission (Connectivity and General Network Access) Regulations, 2022 seeking exercise of this Hon'ble Commission's "Power to Relax" and "Power to Remove Difficulty" and allow utilisation of Petitioners' existing Connectivity dated 10.05.2022 for other project to be connected to the same substation.

And in the matter of:

- 1. ACME Solar Holdings Pvt. Ltd.**
Plot No. 152, Sector 44, Gurgaon,
Haryana-122002

- 2. ACME Sikar Solar Pvt. Ltd.**
Plot No. 152, Sector 44, Gurgaon,
Haryana- 122002

.....Petitioner(s)

Versus

- 1. Central Transmission Utility of India Limited**
"Saudamini", Plot No-2
Sector-29, Gurgaon
Haryana – 122001

.....Respondent(s)

Parties Present: Shri Sanjay Sen, Sr. Advocate, ACME
Shri Vishrov Mukerjee, Advocate, ACME
Shri Girik Bhalla, Advocate, ACME
Ms. Priyanka Vyas, Advocate, ACME
Ms. Neha M Dabral, Advocate, ACME
Shri Shubham Arya, Advocate, CTUIL
Ms. Pallavi Saigal, Advocate, CTUIL
Ms. Poorva Saigal, Advocate, CTUIL
Shri Ravi Nair, Advocate, CTUIL

Ms. Reeha Singh, Advocate, CTUIL
Ms. Anumeha Smiti, Advocate, CTUIL

ORDER

The instant petition has been filed by the Petitioners, ACME Solar Holdings Pvt. Ltd. & ACME Sikar Solar Pvt. Ltd. under Section 79 of the Electricity Act, 2003, read with Regulation 41 and 42 of the Central Electricity Regulatory Commission (Connectivity and General Network Access) Regulations, 2022. The Petitioner has made the following prayers:

- (a) *Exercise its power under Regulation 41 and Regulation 42 of the GNA Regulations 2022 and thereby allow the Petitioners to utilise the Connectivity dated 10.05.2022 granted by CTUIL for its other project.*
- (b) *In the interim, injunct CTUIL from revoking the Connectivity dated 10.05.2022 granted to the Petitioners basis Letter of Award dated 14.12.2021 issued by MSEDCL, during the pendency of the present Petition;*
- (c) *Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case.*

Submissions of the Petitioner:

2. The petitioner has explained chronological date of events and has mainly submitted as follows:
 - a. The present Petition is filed by ACME Sikar Solar Pvt. Ltd. (“ASSPL”/ Petitioner No. 1) and ACME Solar Holdings Private Limited (“ASHPL”/ “Petitioner No.2”) (i.e., holding company of the Petitioner No.1) for issuance of directions from this Commission to permit the Petitioner to utilise its existing Connectivity granted on 10.05.2022 under LoA/PPA route for another project being setup by the Petitioners, under Central Electricity Regulatory Commission (Connectivity and General Network Access) Regulations, 2022.
 - b. On 06.05.2021, MSEDCL vide Request for Selection (“RfS”) floated a tender for procurement of power from Solar power Projects through competitive bidding.
 - c. On 30.07.2021, ASHPL applied to CTUIL for Stage I Connectivity for its 300 MW Project in Bikaner, Rajasthan, to 400/220 kV Bikaner 2 S/s of CTUIL/PGCIL in terms of the CERC (“Connectivity Regulations 2009”). On 10.09.2021, CTUIL (formerly Power Grid Corporation of India Ltd.) granted Stage I connectivity to

ASHPL for its 300 MW Project. ASHPL was granted connectivity at Bikaner II Pooling Station.

- d. On 14.12.2021, the Letter of Award (“LoA”) was issued to ASHPL by MSEDCL for 300 MW capacity with a tariff of Rs. 2.42/kWh for a term of 25 years from the date of Commercial Operation Date (“CoD”)
- e. ASHPL has incorporated a Special Purpose Vehicle, ASSPL, for the purpose of setting up the Project and signing of PPA with MSEDCL. ASSPL is a 100% subsidiary of ASHPL (Bidding Company).
- f. On 01.02.2022, ASHPL applied to CTUIL for Stage II Connectivity for its 300 MW Project in Bikaner, Rajasthan. The start date of connectivity intimated by the petitioner in the application was 30.09.2023.
- g. On 11.03.2022, Maharashtra Electricity Regulatory Commission (“MERC”) passed the Order in Case No. 10 of 2022 titled ‘MSEDCL v. ASHPL & Anr.’ (“Tariff Adoption Order”) and *inter-alia* approved the procurement of 500MW power by MSEDCL and adopted tariff of Rs. 2.42 per unit discovered through competitive bidding in respect of the successful bidders.
- h. On 21.03.2022, ASHPL wrote to MSETCL *inter-alia* requesting to issue NOC in respect of its 300 MW Project to enable ASHPL to seek a grant of LTA from CTUIL.
- i. On 28.03.2022, ASHPL applied to CTUIL for LTA for its 300 MW Project in Bikaner, Rajasthan. The start date of LTA intimated by the petitioner in the application was 30.09.2023.
- j. On 28.04.2022, the “6th Consultation Meeting for Evolving Transmission Schemes in Northern Region” was held, and the proposal for grant of LTA of 300 MW to ASHPL was considered. CTUIL noted the start date of LTA as 30.09.2023 and that NOC from STU (MSETCL) had not been granted.
- k. On 10.05.2022, CTUIL granted Stage II Connectivity to ASHPL for 300 MW capacity from CTUIL’s Bikaner II S/s (in terms of Clause 9.2.1 of RE Revised Procedure, i.e., connectivity basis LoA or PPA). The start date of connectivity was 30.09.2023.

- l.** On 26.05.2022, a Transmission Agreement for connectivity was executed between CTUIL and ASHPL.
- m.** On 15.06.2022, CTUIL granted LTA to ASHPL for the Project subject to the condition that if the NOC of the concerned STU (MSETCL) is not available or the NOC is not effective as on Start Date of LTA (i.e., 31.03.2024), the billing for payment of transmission charges shall be undertaken on the LTA grantee (ASHPL) till such time NOC is made available and becomes effective.
- n.** On 27.06.2022, the Long Term Access Agreement (“LTA Agreement”) was executed between CTUIL and ASHPL.
- o.** On 04.07.2022, ASHPL wrote to MSETCL regarding the submission of additional documents pertaining to NOC for firming up of LTA application in CTUIL for its 300 MW Project and, *inter-alia*, stated that pursuant to execution of PPA, ASHPL is submitting Indemnity Cum Declaration Undertaking for compliance for issuance of NOC, as requested by MSETCL vide its email dated 29.06.2022. On 12.07.2022, MSETCL wrote to ASHPL regarding the grant of conditional NOC for LTA for ASHPL’s 300 MW Project and, *inter alia*, stated that:
- “At present, the Available Transmission Capability (ATC) is not available. For enhancing the ATC, certain CTU-STU network strengthening projects are under execution.*
- As such, considering your request, the conditional NOC (subject to completion of schemes and availability of spare capacity thereof) is issued herewith.”*
- p.** On 12.07.2022, CTUIL wrote to ASHPL and issued an amendment to the Stage II connectivity dated 10.05.2022 whereby ISTS substation and bay was specified (i.e., Bay No. 201 was allotted to ASHPL at the Bikaner-II PS).
- q.** On 02.08.2022, MSETCL wrote to ASHPL in response to ASHPL’s letter dated 18.07.2022 and, *inter-alia*, reiterated that un-conditional NOC cannot be issued by MSETCL since certain STU-CTU projects are under-execution and the same would be issued after strengthening of projects on a first-come-first-serve basis.
- r.** On 10.08.2022, ASSPL issued a Force Majeure Notice under Article 8 of the PPA dated 04.04.2022 to MSEDCL and stated that :-
- i.** ASHPL received a ‘Conditional’ NOC from MSETCL on 12.07.2022 stating that ATC is presently not available and system strengthening is underway for ensuring the evacuation of power by ASHPL to MSEDCL.

- ii. MSETCL, vide its letter dated 02.08.2022, has reiterated that un-conditional NOC cannot be issued by MSETCL since certain STU-CTU projects are under-execution and the same would be issued after strengthening the projects on a first-come-first-serve basis.
- iii. The non-confirmation of transmission system availability at MSETCL's end has created ambiguity over timely evacuation of power from ASHPL's Project.
- iv. Since projects such as ASHPL's Project are funded by lenders and financial institutions, the absence of unconditional NOC by MSETCL has led to the lenders becoming unwilling to fund ASHPL's Project due to uncertainty of evacuation/ delivery of power to MSEDCL.
- v. This situation is obstructing ASHPL (ASSPL) from performing its obligations under the PPA dated 04.04.2022
- s. On 12.08.2022, MSETCL wrote to ASHPL and, *inter-alia*, stated that for enhancing ATC, certain CTU-STU network strengthening projects are underway, and regular follow-up of CTU-STU network strengthening projects is being taken by MSETCL. Further, unconditional NOC cannot be issued as there is no ATC available at present, and it will be issued after strengthening projects on a first-come-first-serve basis.
- t. On 31.08.2022, CTUIL wrote to ASHPL and issued an amendment to the Stage II connectivity dated 10.05.2022, whereby the date from which connectivity was to be granted was revised to 25.11.2023.
- u. On 26.12.2022, CTUIL issued an amendment to the LTA dated 15.06.2022 granted to ASHPL. By way of the amendment, the start date of the LTA was changed to 15.05.2024.
- v. Since the period of 180 days from the date of Force Majeure Notice dated 10.08.2022 (w.e.f. 02.08.2022) lapsed on 29.01.2023. The Petitioners, on 21.02.2023, issued a Termination Notice to MSEDCL in terms of Article 8.8.2 (a) of the PPA, *inter-alia*, terminating the PPA and requesting to return the Performance Bank Guarantee dated 22.03.2022 ("PBG") of Rs. 24 Crores deposited by ASSPL within a period of 7 days of receipt of the notice. However, MSEDCL has not responded to the Petitioner's Termination Notice.
- w. On 03.05.2023, in order to be considered as a deemed grantee under the GNA Regulations 2022, ASHPL submitted a Format Transition undertaking to CTUIL for LTA and requested CTUIL for deemed conversion under the GNA Regulations

2022. On 28.07.2023, pursuant to CTUIL's email dated 21.07.2023 regarding the requirement of changes/amendment in the BGs dated 30.06.2023, ASHPL amended BGS AS Conn-BG1 of Rs. 50,00,000/- valid till 15.06.2024 and Conn-BG3 of Rs. 6,00,00,000/- valid till 15.11.2025 in compliance with the GNA Regulations 2022 and it was submitted to CTUIL.

- x. The Petitioners were constrained to terminate the PPA, which provides that if a non-natural Force Majeure event continued for more than 180 days, the Affected Party (ASSPL) has the right to terminate the PPA, but ASHPL would like to utilize the connectivity for other PPA/LOA based projects or Land based Connectivity projects. The occurrence of the Force Majeure was also intimated to CTUIL vide letter dated 19.04.2023.
- y. The Petitioners have filed a petition bearing Case No. 56/AD/2023 before the Maharashtra Electricity Regulatory Commission ("MERC") *inter alia* seeking a declaration that the PPA stands validly terminated and FOR return of Performance Bank Guarantee dated 22.03.2022. The said Case No. 56/AD/2023 is pending adjudication before the MERC.
- z. The inability to utilise the existing connectivity dated 10.05.2022 is on account of Force Majeure events that were beyond the Petitioners' control and for reasons not attributable to it. In such a situation, allowing CTUIL to revoke the connectivity granted to the Petitioners (ASHPL) under the LoA/PPA route in terms of Regulation 24.6(c) of the GNA Regulations 2022 would tantamount to punishing the Petitioners for events beyond their control and for reasons not attributable to them. In terms of Regulation 24.6(c) of the GNA Regulations 2022, connectivity granted to a Renewable Energy Generating Station shall be revoked if LoA or PPA on the basis of which Connectivity was granted, is terminated prior to the COD of the Project.
- aa. Considering the peculiar facts and circumstances of the present case, the Petitioner prayed that the Commission ought to exercise its power to relax (Regulation 41) and power to remove difficulties (Regulation 42) under the GNA Regulations 2022 and allow utilisation of Connectivity dated 10.05.2022 granted under LoA route to the Petitioners for the other project to be developed by the Petitioners, since:

- i. The Petitioners have acquired about 275 acres of land for the Project, out of the total requirement of about 1000 acres for setting up of the Project. The balance the land would be acquired by October 2023, and 50% of the land requirement, i.e., about 500 acres, would be completed by October 2023, Therefore, the Petitioners would also be eligible for a grant of connectivity under Regulation 5.8(xi)(b) of the GNA Regulations 2022.
 - ii. In terms of the Minutes of Meeting (“MoM”) dated 24.05.2023 chaired by the Secretary, Ministry of Power, the very same issue has been recognised. In fact, it has been specifically recommended that the GNA Regulations 2022 be amended to provide for change/ transfer of connectivity from the LoA route to the Land route.
- bb.** The Petitioners are committed to utilise the existing connectivity granted to them by CTUIL, which is evinced from the fact that the Petitioners have undertaken substantial Project development activities, including the acquisition of a significant part of the land (around 275 acres), tying-up of funds, obtaining connectivity and is in the process of setting up a new project. The Petitioners are facing undue hardship and injustice in as much as despite complying with the procedure and rigors, for no fault of their own, the Petitioners are unable to utilise the connectivity granted under the LoA route on account of Force Majeure events beyond the control of the Petitioners.

Additional Submissions by the Petitioner

3. The petitioner vide affidavit dated 17.10.2023 has submitted the following additional information:
 - a. As on date, the Petitioners have acquired land of around 502 acres out of the total land requirement of approximately 1000 acres for the Project. The balance of land will be acquired by November 2023. Therefore, the Petitioners are in substantial compliance with Regulation 5.8 (xi) (b) of the GNA Regulations 2022, which allows the grant of connectivity based on the submission of Land documents for 50% of the land required for the capacity for which Connectivity is sought.
 - b. The petitioner, ASSPL, is committed to the construction of the Project and utilisation of the existing connectivity. In this regard, ASSPL has executed the following agreement for the timely development and construction of the Project: -
 - i. Agreement for Supply and Service with ASHPL to avail of the services for procurement and supply of all the required materials (except photovoltaic modules) and installation, testing, and commissioning of all the Equipment, i.e.,

Photovoltaic Modules, Inverters, Power and Distribution Transformers, Junction Boxes, Transmission Line including Civil Works, for the Project.

- ii. Agreement for Supply with ACME Cleantech Solutions Pvt. Ltd. for procurement and supply of Solar Photovoltaic Modules for solar power plant.

Hearing dated 18.10.2023

4. The commission vide RoP for the hearing dated 18.10.2023 admitted the petition & also directed the parties to maintain status-quo with regard to the Petitioner's connectivity dated 10.5.2022 till the next date of hearing.

Reply on behalf of the respondent, CTUIL, vide affidavit dated 08.12.2023

5. The respondent, CTUIL, in its reply vide affidavit dated 08.12.2023, has mainly submitted as follows:
 - a. From the reliefs sought by the Petitioner, the only relief which is sought against the CTU is for the grant of an injunction against revoking the Stage-II Connectivity for 300 MW at Bikaner-II PS granted by CTU vide letter dated 10.05.2022 during the pendency of the instant Petition. It is evident that the Petitioner has sought reliefs outside the scope of the existing regulations being administered by CTU and that there is no regulatory prescription for the transfer of Connectivity granted under the LoA route for one project to another project under other routes.
 - b. The Regulatory prescription for treatment of connectivity in case of termination of LoA or PPA (prior to CoD of the project) has been provided under Regulation 24.6, to which no exceptions, including force majeure, have been stipulated. In the absence of regulatory provisions that allow the conversion of Connectivity obtained through the LoA/PPA route to the Land/Land Bank Guarantee route, CTU could not have allowed or cannot allow the Petitioners to utilize the Connectivity dated 10.05.2022 granted for the 300 MW solar power project to any other project being implemented by the Petitioners.
 - c. The GNA Regulations, 2022 may not have expressly denied the utilization of connectivity through the LoA/PPA route in one project in any other project (under the Land/BG route). Further, there are only two prescriptions for the administration of Connectivity granted on the LoA/PPA Route up to the COD of the generation project. In the ordinary course, it is assumed that the LoA/PPA shall subsist and

the connectivity shall be utilized by the grantee. In the only other event of termination of LoA/PPA, the regulatory prescription as provided under Regulation 24.6 is that the connectivity shall be terminated, and the subject bank guarantees shall be encashed. As such, there does not appear to be any regulatory lacuna in this regard.

- d. Since the factum of revocation of PPA has only come forth during the process of transition of erstwhile Connectivity/GNA, therefore, there is no question of revisiting the eligibility routes (i.e., Land or Land & BG) at or after the stage of transition of Connectivity and LTA. The provision under Regulation 37 only prescribes a binary window of either transitioning into GNA/Connectivity based on the current status of erstwhile Stage-II Connectivity/LTA or simply surrendering the said Stage-II Connectivity/LTA. It is also submitted that in light of unequivocal submissions in the Petitioner's letter dated 03.05.2023 regarding force majeure in the matters of its PPA and pendency of adjudication in MERC, there was no clarity available with CTU regarding the applicability of Regulation 24.6 while transitioning the Petitioner's Stage-II Connectivity/LTA.

Rejoinder on behalf of the petitioner to the reply filed by CTUIL

6. The petitioner, in its rejoinder vide affidavit dated 17.01.2024 to the reply filed by CTUIL, has mainly submitted as follows:
 - a. The Petitioners' inability to utilise the connectivity dated 10.05.2022 granted under the LoA (under the erstwhile CERC Connectivity Regulations 2009) route was on account of Force Majeure events, which were beyond its control and not attributable to it. The Force Majeure event that has impacted the performance of obligations by the Petitioners is twofold. First is the non-availability of state transmission capacity to withdraw power from Petitioner's solar project through ISTS network; second is the failure of MSETCL to grant unconditional NOC for drawal of power from ASSPL's 300 MW Solar Power Project at Bikaner, Rajasthan, to MSETCL's network. The grant of un-conditional NOC is mandatory for the evacuation of power from the Project.
 - b. The MERC vide Order dated 27.12.2023 in case no. 56/AD/2023 has accepted the Petitioners' submissions and held that failure of MSETCL to grant unconditional NOC is a force majeure event and also upheld the termination of the

PPA by the Petitioners and directed them to return the Petitioners' Bank Guarantee. In such a situation, allowing CTUIL to revoke the connectivity granted to the Petitioners (ASHPL) under the LoA/PPA route in terms of Regulation 24.6(c) of the GNA Regulations 2022 would be tantamount to punishing the Petitioners for events beyond its control and for reasons not attributable to it.

- c. The Petitioners are committed to utilise the existing connectivity dated 10.05.2022 & have undertaken substantial development activities for the other project. In this regard, the following is noteworthy: -
- i. The Petitioners have successfully acquired 845 acres out of the total land requirement of approximately 1000 acres for the project. The balance of land will be acquired by the Petitioners by the end of January 2024.
 - ii. The Petitioners have awarded the Engineering, Procurement and construction (EPC) agreement for supply and services and has placed orders for major equipment like Power Transformer, Switchyard.
 - iii. The Petitioners have secured a long--term loan from Power Finance Corporation (PFC).
 - iv. Petitioners have made payment of more than Rs. 400 Crs to its EPC contractors towards project, which can be evidenced by the certificate dated 17.01.2024 issued by the Chartered Accountant.
- d. The GNA Regulations 2022 are silent upon utilisation and transfer/conversion of connectivity granted under the LoA route to another project under other routes. There cannot be any difference in priority for the grant of connectivity either under the LoA route, the Land route, or the BG route, and all are to be treated equally. Therefore, it will be equitable to permit the Petitioners to utilise the connectivity dated 10.05.2022 granted under the LoA route for the project under alternate routes provided under the GNA Regulations 2022, especially when the PPA termination has been approved and upheld by MERC, and power cannot be delivered to MSEDCL in the absence of adequate MSETCL STU availability. It cannot be said that connectivity granted under the LoA route would have priority over connectivity granted under the land or BG route.

Hearing dated 02.02.2024

7. The commission on 02.02.2024, after hearing the arguments of both the counsels of the petitioner and the respondent, directed to list the present matter along with Petition No. 291/MP/2023 & 292/MP/2023.

Hearing dated 12.02.2024

8. After hearing the arguments of both the counsels of the petitioner and the respondent, matters were reserved for order. Further, the commission directed the respondent, CTUIL, to submit on an affidavit within two weeks, the current status of Stage II Connectivity granted to the Petitioner by intimation dated 10.5.2022.

Written Submission on behalf of the petitioner

9. The petitioner vide written submissions dated 04.03.2024 has submitted as follows:

a. The Petitioners have satisfied the condition for the grant of connectivity under Regulation 5.8(xi)(b) (Land route) of GNA Regulations, 2022, which requires registered lease deeds for 50% of the land required for the capacity for which Connectivity is sought. In this regard, the following is noteworthy: -

i. Land acquired to date: 876 acres. As per CTUIL's Advisory dated 22.09.2022, 3 acres/MW is required for solar projects; thereby 900 acres of land is required for the Project. Therefore, Petitioners have acquired 97% of the land for the Project.

ii. Financial Closure: Power Finance Corporation (PFC) has approved the financing for the 300 MW Project at an estimated cost of Rs. 1614.60 Crores. Final sanction letter has been issued by PFC agreeing to grant Rupee Term Loan Assistance to the extent of Rs. 1210.95 Crores with a Debt:Equity ratio of 75:25.

iii. EPC Contracts: Petitioners have made payment of Rs. 403.65 Crores to its EPC contractors towards the Project.

iv. Further, the Petitioners have ordered the Major Power Equipment:

a) Modules: Order placed to ZN-shine with delivery date starting from May 2024 till July 2024.

b) Power Transformer: Order placed to TBEA Energy India Pvt Ltd for 02 nos of 150 MVA (220/33 kV) transformers with delivery dates of May and June 2024.

c) Switchyard: Order placed to Onix Renewable Ltd for erection, supply, testing, and commissioning of 220/33 kV switchyard, which includes bays also with a target completion date of July 2024.

v. The schedule of effectiveness of bay at the Bikaner II Sub-station is 01.09.2024 by which the Petitioners will also commission the Project.

b. Therefore, it is reiterated that the Inability to utilise the existing connectivity dated 10.05.2022 is not attributable to Petitioners and is due to Force Majeure events

which have already been upheld by MERC vide Order dated 27.12.2023 in Case No. 56/AD/2023. Further, the Order dated 27.12.2023 lends credence to the fact that the PPA has not been terminated for mere onerousness or performance becoming difficult but due to genuine force majeure events in accordance with PPA provisions, being the non-availability of the state transmission network. The MERC has also recognised the failure of State entities such as MSEDCL and MSETCL in performing their statutory functions of not having adequate evacuation facilities.

Additional Information on behalf of Respondent, CTUIL

10. The Respondent, CTUIL, vide affidavit dated 05.03.2024, in compliance with the RoP for the hearing dated 12.02.2024, has submitted the following:

- a. ACME Solar Holdings Pvt. Ltd. was granted 300MW Stage-II Connectivity with effect from 25.11.2023 and LTA with effect from 15.05.2024 at Bikaner-II PS vide intimations dated 10.05.2022 & 15.06.2022 respectively.
- b. The 220kV bay for M/s ACME at Bikaner-II PS is in the advanced stage of implementation (expected by March 2024) by POWERGRID Bikaner Transmission System Ltd. Further, the transmission system for effecting above deemed GNA is also under the advanced stage of implementation and expected to be commissioned by May 2024.

Analysis and Decision

11. We have considered the submission of the Petitioner and the Respondents.

12. The Petitioner has submitted that it was granted Stage-II Connectivity by CTU on 10.05.2022 for 300 MW capacity at Bikaner II S/s. On 15.06.2022, CTUIL granted LTA to ASHPL for 300 MW. Petitioner sought NOC from MSETCL for drawl of power by MSEDCL, to which MSETCL issued conditional NOC stating as follows:

“At present, the Available Transmission Capability (ATC) is not available. For enhancing the ATC, certain CTU-STU network strengthening projects are under execution. As such, considering your request, the conditional NOC (subject to completion of schemes and availability of spare capacity thereof) is issued herewith.”

On 02.08.2022, MSETCL wrote to ASHPL in response to ASHPL's letter dated 18.07.2022 and reiterated that MSETCL cannot issue unconditional NOCs since

certain STU-CTU projects are under-execution and the same would be issued after strengthening of projects on a first-come-first-serve basis.

13. Petitioner issued Force Majeure Notice under Article 8 of the PPA dated 04.04.2022 to MSEDCL on the grounds of non-availability of NOC from MSETCL. After lapse of 180 days from the date of Force Majeure Notice dated 10.08.2022 (w.e.f. 02.08.2022) on 29.01.2023, the Petitioners, on 21.02.2023, issued Termination Notice to MSEDCL in terms of Article 8.8.2 (a) of the PPA, *inter-alia*, terminating the PPA and requesting to return the Performance Bank Guarantee dated 22.03.2022 ("PBG"). MERC, vide Order dated 27.12.2023 in case no. 56/AD/2023, has accepted the Petitioners' submissions and held that failure of MSETCL to grant un-conditional NOC is a force majeure event and also upheld the termination of the PPA by the Petitioners while directing MSETCL to return the Petitioners' Bank Guarantee.
14. Petitioners have submitted that they are committed to utilizing the existing connectivity granted to them by CTUIL, which is evinced from the fact that the Petitioners have acquired a significant part of the land (around 876 acres out of a total of 900 acres), achieved financial closure (PFC has approved the financing for the 300 MW Project at an estimated cost of Rs. 1614.60 Crores. A final sanction letter has been issued by PFC agreeing to grant Rupee Term Loan Assistance to the extent of Rs. 1210.95 Crores with a Debt: Equity ratio of 75:25.), EPC Contracts (payment of Rs. 403.65 Crores to its EPC contractors towards the Project has been released). Further, the petitioner has submitted that the schedule of the effectiveness of the bay at the Bikaner II Sub-station is 01.09.2024, by which the Petitioners will also commission the Project.
15. CTUIL has submitted that the Petitioner has sought reliefs outside the scope of the existing regulations being administered by CTU and that there is no regulatory prescription for the transfer of Connectivity granted under the LoA route for one project to another project under a different route. CTU has also mentioned that the regulatory prescription for treatment of connectivity in case of termination of LoA or PPA (prior to CoD of the project) has been provided under Regulation 24.6, to which no exceptions, including force majeure, have been stipulated.
16. In light of the submissions of the Petitioners and the Respondents, the issue, that arises for our consideration is **Whether the petitioner is entitled to any relief with respect to retaining its connectivity granted at the Bikaner II Substation?**

17. Petitioner has been granted Stage II connectivity for 300 MW capacity at Bikaner II S/s on the basis of LoA issued by MSEDCL. The petitioner also signed PPA with MSEDCL on 04.04.2022. The PPA has been terminated by the petitioner, and the same has been upheld by the MERC in its order dated 27.12.2023 in Case No. 56/AD/2023. The relevant extracts of the order of MERC are as follows:

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24. In view of submissions made by parties, the Commission frames following issues which need to be decided for addressing dispute in present Petitions:

(A) Whether ASSPL and RDUPL are affected by Force Majeure event?

(B) Whether PPA can be considered as terminated on account of sustained Force Majeure condition? if yes, whether PBG be returned to ASSPL and RDUPL?

The above issues are interrelated and hence are being addressed together in subsequent paragraphs.

26. In both the cases, Petitioners have stated that their lenders are concerned with uncertainty in evacuation arrangement and are backing off from financing of project. Further, CTU has indicated that the Petitioners will be penalised for MSETCL's failure to issue NOC by levy of transmission charges till such time that the NOC from MSETCL becomes effective.

27. The Commission notes that the Petitioners have been diligently following up with MSETCL for issuance of un-conditional NOC. ReNew in fact sought details of capacity available in MSETCL substations and raised evacuation related issues at pre-bidding stage itself, which were unanswered.

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29. The Commission notes that while issuing the conditional NOCs, STU has insisted upon Indemnity Bond. In present cases, ASSPL furnished the Indemnity Bond, but the RDUPL has not provided the same. Hence, STU has granted conditional NOC to ASSPL and no NOC is granted to RDUPL.

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31. The Commission notes that MSETCL/STU being Authority under the Electricity Act, 2003 is covered under 'Government Authority' in Force Majeure clause. Further, failure to grant any of the clearance or any permits is categorized as Force Majeure event. PPA provides that any event which is beyond the reasonable control of affected party can be considered as Force Majeure event. Grant of unconditional NoC by MSETCL is clearly beyond the Control of the Petitioners.

33. The Commission notes that backing off by financial institution would impact Petitioners obligation to achieve financial closure and project completion within 12 and 18 months, respectively from date of PPA. Even it assumes that non-availability of un-conditional NoC from MSETCL does not impact setting of projects as it is situated outside Maharashtra and Petitioners have already obtain conditional Grid Connectivity (Stage-I and II) from CTU, but once project is commissioned, evacuation of power will be dependent upon transmission capacity available at CTU-STU interconnections. PPAs under consideration do not provide any immediate monetary compensation for non-evacuation of power on account of non-availability of Grid.

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35. The Commission also notes that MSETCL in its submission has stated that at present there is no ATC available (-84 MW) on CTU-STU tie lines and hence un-conditional NoC cannot be issued. Further as per applications received with STU/MSETCL, ATC of CTU-STU tie-lines needs to be increased by 3079.41 MW. MSETCL is coordination with CTU have planned transmission schemes for enhancing CTU-STU tie line capacities. However, until commissioning of such transmission schemes, un-conditional NoC cannot be issued.

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37. In view of above, the Commission notes that MSETCL's inability to issue unconditional NOC to Petitioners have created uncertainty of power evacuation from Petitioner's proposed Solar project. Such uncertainty would impact the cashflow of the project and hence lenders are backing off. Due to which, Petitioners are not able to achieve financial closure. MSETCL is not able to issue unconditional NOC because there is no capacity available in CTU-STU tie-lines. This is completely beyond the control of the Petitioners. Hence, this is covered by Force Majeure under the PPA. Further such Force Majeure is continuing till date. As per Clause 8.8.2 (a) of the PPA reproduced in earlier part of Order, in case of continuation of non-natural force majeure event beyond 180 days, project developers can terminate the PPA. Petitioners vide their notices dated 21 February 2023 (ASSPL) and 8 May 2023 (RDUPL) have accordingly terminated their respective PPA. As said Termination of PPA is in accordance with provisions of PPA, the Commission cannot nullify it. Accordingly, the Commission rules that PPAs under present Petitions have been terminated validly by the Petitioners.

38. Once the PPA has been terminated under Force Majeure conditions by the project developer (Petitioners), procurer (MSEDCL) has the option under clause 8.8.2(b) to take over the project by paying for outstanding debt and equity in the project. But in present case such option cannot be exercised as projects have not completed financial closure itself.

39. Bank Guarantee under the PPA is given for ensuring timely completion of the project. Once the PPA itself has been terminated, there is no purpose for retaining Bank. Hence, the Commission directs MSEDCL to return the respective Bank Guarantee to the Petitioners within 15 days of the date of this Order.

40. Having ruled as above, the Commission notes that it is very unfortunate that Solar PPA of 500 MW with tariff as low as Rs. 2.42 to 2.43 per unit is terminated on account of non-availability of transmission capacity to bring power into Maharashtra. MSETCL/STU shall coordinate with all agencies to expedite the implementation of transmission schemes to increase CTU-STU tieline capacities.”

As per the above, the termination of PPA has been upheld by MERC on account of force majeure events.

18. Regulation 24.6 of the GNA Regulations provides as under:

“24.6 Revocation of Connectivity

(1)

.....

- i. Connectivity granted to an REGS (other than Hydro generating station) or ESS (excluding PSP) shall be revoked, if LOA or PPA on basis of which Connectivity was granted, is terminated prior to the COD of the project.*



.....
(2) In case of revocation of Connectivity under subclauses (a) to (d) of Clause (1) of this regulation, Conn-BG-1, Conn-BG2 and Conn-BG3 shall be dealt with in terms of regulation 24.2 or regulation 24.3 of these regulations, as applicable.”

As per the above, in the case of termination of an LOA or PPA, based on which Connectivity was granted prior to the project's COD, such Connectivity shall be revoked.

19. We observe that the Petitioner, under Petition No. 283/MP/2023, has been granted Connectivity for 300 MW at Bikaner II Substation based on the LoA dated 14.12.2021 issued by MSEDCL for setting up the RE Power Plant, which has been terminated.

20. We observe that though the Connectivity Regulations, 2009 and GNA Regulations have provisions for the conversion of Connectivity from the Land route to the LoA/PPA route, neither Regulation allows the conversion of Connectivity granted on the LOA/PPA route to any other route. Further, Regulation 24.2 of the GNA Regulations provides that Connectivity granted to an applicant based on the LoA or PPA shall be revoked in the event of the termination of such a LoA or PPA.

21. We are of the considered view that in light of MERC's Order allowing termination of PPA on account of a Force majeure event, the termination of the PPA is not attributable to the Petitioner. Further, the Petitioner has made progress in the implementation of the project noted as per submissions of the Petitioner as follows:

“

- i. Land acquired till date: 876 acres. As per CTUIL's Advisory dated 22.09.2022, 3 acres/MW is required for solar projects, thereby 900 acres land is required for the Project. Therefore, Petitioners have acquired 97% of the land for the Project.*
- ii. Financial Closure: Power Finance Corporation (PFC) has approved the financing for the 300 MW Project at an estimated cost of Rs. 1614.60 Crores. Final sanction letter has been issued by PFC agreeing to grant Rupee Term Loan Assistance to the extent of Rs. 1210.95 Crores with a Debt:Equity ratio of 75:25.*
- iii. EPC Contracts: Petitioners have made payment of Rs. 403.65 Crores to its EPC contractors towards the Project.*
- iv. Further, the Petitioners have ordered the Major Power Equipment:*

 - a) Modules: Order placed to ZN-shine with delivery date starting from May 2024 till July 2024.*
 - b) Power Transformer: Order placed to TBEA Energy India Pvt Ltd for 02 nos*

of 150 MVA (220/33 kV) transformers with delivery dates of May and June 2024.

c) Switchyard: Order placed to Onix Renewable Ltd for erection, supply, testing and commissioning of 220/33 kV switchyard, which includes bays also with target completion date of July 2024.

v. The schedule of effectiveness of bay at the Bikaner II Sub-station is 01.09.2024 by which the Petitioners will also commission the Project.”

As per the above, the Petitioner has acquired a major part of the land and has ordered the major power equipment, and wishes to commission the project by 1.09.2024.

22. We observe that Petitioner has made substantial progress in the implementation of the project and has demonstrated its seriousness and commitment to developing the project and hence seeks to retain the Connectivity. We observe that the GNA Regulations do not have the provision to allow such conversion. However, we find merit in the submission of the Petitioner that it may be allowed to retain the Connectivity, keeping in view the progress made by Petitioner on the ground as noted in paragraph 21 above and the seriousness with which the Petitioner had demonstrated his intent in developing the project. We are of the considered view that different routes of Connectivity were introduced in the first amendment to the GNA Regulations to ensure the serious and genuine applications are submitted and that applicants implement projects as per the committed timeline. Considering the above facts, we find the Petitioner's prayer to be a fit case to be considered under our powers to relax and powers to remove the difficulty. Regulation 41 of the GNA Regulations vests the Commission with the power to relax any of the provisions of the GNA Regulations to remove the hardship in operation of the GNA Regulations. Regulation 41 of the GNA Regulations extracted as under:

“41. Power to Relax

The Central Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an affected party to remove the hardship arising out of the operation of these regulations.”

23. Further, Regulation 42 of the GNA Regulations vests the Commission with the remove difficulty under certain circumstances. Regulation 42 of the GNA Regulations extracted as under:

“42. Power to Remove Difficulty

If any difficulty arises in giving effect to the provisions of these regulations, the Central Commission may, on its own motion or on an application made before it by affected party by order, make such provision not inconsistent with the provisions of the Act or provisions of other regulations specified by the Central Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these regulations.”

24. We note that Petitioner has been holding on the Connectivity since May 2022, which is approximately two years. We are also aware that Connectivity is a crucial resource that should be optimally utilized. Keeping in view the MERC’s Order allowing termination of PPA on account of Force majeure event establishes the fact that the termination of the PPA is not attributable to the Petitioner. Further, substantial progress has been made in the execution of the project, which testifies to the seriousness and commitment shown by the petitioner to complete the project. Accordingly, we, in the exercise of our powers under Regulation 41 and Regulation 42 of the GNA Regulations, relax the provisions of Regulation 24.6 and allow the Petitioners to convert its Connectivity grant from the LOA route to the Land route as provided for in Regulation 5.8(xi) of the GNA Regulations, subject to the following conditions:

- a.** The Petitioner, within four weeks of the issuance of the order, shall submit the Land documents in terms of Regulation 5.8(xi) of the GNA Regulations for full 300 MW Connectivity. Failing which, CTUIL shall revoke the Connectivity granted to the Petitioner.
- b.** After the termination of the PPA, the SCOD of the project mentioned under the PPA does not hold. Considering that nearly two years have elapsed since the grant of connectivity and the Petitioners have shown that considerable progress has already been made in the implementation of the project and that Petitioners have submitted that they can commission the project by 1.09.2024, we are of the considered view that 6 months from the issuance of this order shall be sufficient time to commission the project. We, accordingly, direct that the project developer shall commission its project within six (6) months of the issuance of this order. Further, the milestones of achieving Financial closure and the release of 10% project cost under equity as required under Regulation 11(A) and 11(B) of the GNA Regulations shall have to be achieved within three months of the issue of this Order. In case of failure of Petitioner(s) to achieve financial closure or

the release of 10% of project cost under equity, the connectivity shall be revoked.

- c. The time to achieve various milestones has been relaxed for the Petitioner under Regulations 41 and 42 of the GNA Regulations. This relaxed timeline to achieve various milestones shall have no bearing on the liabilities under the Sharing Regulation 2020. The Petitioner shall ensure that the project is implemented in the timeframe mentioned above.
- d. The treatment of the Bank Guarantee submitted by the Petitioner shall be as per the applicable provisions of the GNA Regulations.

25. The issue is answered accordingly.

26. Accordingly, the Petition No. 283/MP/2023 is disposed of in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(Jishnu Barua)
Chairperson