

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 280/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of Order: 22nd October, 2023

In the matter of:

Petition under Sections 79(1)(c), 79(1)(d), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003, read with Articles 11, 12 and 16 of the Transmission Service Agreement dated 2.12.2021, seeking extension of time period for achieving Scheduled Date of Commercial Operation (SCOD) of the Project on account of occurrence of force majeure events and change in law event and other consequential reliefs.

And

In the matter of

Rajgarh Transmission Limited,

2nd Floor, Novus Tower,

Plot No. 18, Sector-18,

Gurugram-122015, Haryana.

...PETITIONER

VERSUS

1. Rewa Ultra Mega Solar Limited,

Urja Bhawan, Shivaji Nagar,

Link Road No. 2,

Bhopal- 462016, Madhya Pradesh.

2. REC Power Development and Consultancy Limited,

Core-4, Scope Complex,

7, Lodhi Road, New Delhi- 110003

3. Central Electricity Authority,

Power System Project Monitoring Division,

Sewa Bhawan, R.K.Puram,

New Delhi-110066

4. Central Transmission Utility of India Limited,

First Floor, Saudamini, Plot No.-2,

Sector-29 Near IFFCO Chowk Metro Station,

Gurugram-122 001, Haryana

...Respondents

Parties Present:

Shri Hemant Singh, Advocate, RTL
Shri Lakshyjeet Singh, Advocate, RTL
Ms. Ankita Bafna, Advocate, RTL
Shri Chetan Garg, RTL
Ms. Lavanya Panwar, Advocate, RTL
Shri Harshit Singh, RTL
Shri Shaurya Kumar, RTL
Shri P.C. Tripathi, RTL
Shri Aditya Singh, Advocate, RUMSL

ORDER

The Petitioner, Rajgarh Transmission Limited (hereinafter referred to as 'the Petitioner' or 'RTL'), has filed the present Petition seeking extension of Scheduled Commercial Operation Date (SCOD) of the transmission system being developed by it, on account of Force Majeure and Change in Law events. The Petitioner has made the following prayers:

“(a) Declare that the following events are in the nature of force majeure, as per Articles 4.4.2 and 11 of the TSA, affecting the Scheduled Commercial Operation Date (SCOD) of the Transmission Project of the Petitioner:

a. Delay of 197 days in grant of approval by MPPTCL qua the proposal of power line crossing submitted by the Petitioner;

b. Delay of 166 days in grant of approval by the District Authority qua the blasting work to be undertaken by the Petitioner for excavation of hard rock found underneath the land allotted for construction of a sub-station.

c. Delay of 180 days (as on 05.09.2023 which is continuing) in granting approval by the office of Divisional Railway Manager (DRM), Bhopal for laying of overhead 400 KV DC Pachora- Bhopal Transmission Line which will cross Bhopal-Biaora Single Railway Track. Pertinently, this approval has not been granted till date.

(b) Declare and hold that the SCOD provided in the TSA stands extended by 368 days on account of occurrence of Force Majeure events or extended till the actual date of commissioning, whichever is earlier;

(c) extend the term of the TSA by a period of 368 days or till the actual date of commissioning, whichever is earlier, which is the time period of the contract lost on account of force majeure events as pleaded in the present petition treating actual COD as the start of 1st contract year;

(d) Grant liberty to the Petitioner to file a separate petition for claiming monetary relief due to force majeure events, change-in-law events and/ or due to change in scope of the Project, after commissioning of the Transmission Project;

(e) In the interim, direct the Respondent No. 1/ LTTC not to take any coercive action on account of delay in achievement of SCOD; and

(f) pass any other order as this Commission may deem fit in the facts and circumstances of the present case.”

2. RTL is a fully owned subsidiary of GR Infraprojects Limited (In short ‘GRInfra’) which was selected as a successful bidder through the international tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 (‘the Act’) to establish the “Transmission System for Evacuation of Power from RE Projects in Rajgarh (2500 MW) SEZ in Madhya Pradesh” (hereinafter referred to as “the Transmission System” or “the Project”) on Build, Own, Operate and Maintain (BOOM) basis and to provide transmission service to the Long Term Transmission Customer (LTTC) of the Project.

3. RTL was incorporated as a special purpose vehicle by the Bid Process Coordinator, REC Transmission Projects Company Limited (RECTPCL) as a part of Tariff Based Competitive Bidding process for implementing the Project on a BOOM basis. On 2.12.2021, a Transmission Service Agreement (TSA) was executed between RTL and LTTC of the Project. GR Infra participated in the competitive bidding process conducted by RECTPCL, and upon emerging as the successful bidder, a Letter of Intent (LOI) was issued to the GR Infra on 31.3.2022. In accordance with the bidding documents, GR Infra acquired 100% of the shareholding in RTL by executing a Share Purchase Agreement with RECTPCL on 21.5.2022. The Commission by its order dated 13.9.2022 in Petition No.

171/TL/2022 granted a transmission licence to RTL for inter-State transmission of electricity.

4. As per the TSA dated 2.12.2021, the Scheduled Commercial Operation Date (SCOD) is 29.11.2023 i.e., 18 months from the effective date.

Submissions of the Petitioner

5. The Petitioner has submitted that the following various force majeure events have impacted the execution of the Project and led to delay.

(a) Delay in the grant of approval by the Madhya Pradesh Power Transmission Company Limited regarding usage of a particular tower by the Petitioner for the overhead crossing of the existing 132 kV & 220 KV Lines of MPPTCL:

6. The Petitioner has submitted that on account of the transmission line of the Petitioner, crossing the various existing 132 kV and 220 kV lines of MPPTCL, the Petitioner, vide several letters dated 30.9.2022, 8.10.2022, 26.11.2022, 6.12.2022, approached Madhya Pradesh Power Transmission Company Limited (MPPTCL) and submitted its detailed proposal comprising of crossing details, tower schedule, profile of proposed crossing, single line diagram of proposed crossing, electrical clearance, and sag calculation, etc. Based on the aforesaid detailed proposal, the Petitioner sought approval of MPPTCL for the overhead crossing of the said existing lines. In view of this and considering the timeline for completion of the transmission line, the Petitioner requested MPPTCL to provide the gantries on MPPTCL's 132kV line at crossing locations. Consequently, MPPTCL (Jabalpur) vide its letter dated 17.11.2022 requested the Superintending Engineer of MPPTCL, Bhopal Office to carry out a survey of the proposed 132 kV Shujalpur-Pachore LILO of MPPTCL at Nahli line considering the crossing of RTL line and submit the case for the route and

profile approval. Meanwhile, pursuant to the submission of the elaborate proposal qua overhead power line crossing by the Petitioner, on 13.10.2022 and 04.11.2022, a joint site visit was conducted in the presence of the representatives of the Petitioner, MPPTCL and KEC International Ltd. in order to inspect the tower locations, angle of crossing and other site conditions relevant for approval of the line crossing.

(b) Mandatory usage of 'D' type Towers on either side of crossings

7. The Petitioner has submitted that pursuant to the proposal of the Petitioner submitted vide letter dated 1.2.2023 regarding usage of DB/DC/DD type towers for crossing the intervening lines, MPPTCL vide its letter dated 7.2.2023 rejected the said proposal, instead, asked the Petitioner to “cross the line strictly with D/DD/QD type towers with suitable extension as per MPPTCL requirement.” MPPTCL through the said communication also asked the Petitioner to submit an undertaking to the effect that “In case of failure of 400 kV D/C Pachora- Bhopal line, RTL shall ensure and take necessary course of action for clearing/restoring MPPTCL lines on first priority.

8. The Petitioner has submitted that despite there being a binding obligation upon TSP as provided under law to adopt prudent construction practices, MPPTCL insisted on furnishing the undertaking and made the approval conditional. The Petitioner was left with no option but to provide the undertaking to the effect that while erecting the B/C/D/DB/DC/DD/QB/QC/QD type towers depending upon the prevailing site conditions and line crossing requirements, the Petitioner shall abide by the provisions of the CEA Technical Standards Regulations, 2022, CEA (Safety requirements for construction, operation and maintenance of electrical plants and

electric lines) Regulations, 2011, and CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 as amended from time to time. The Petitioner has submitted that while granting approval/ consent/ clearance for power line crossing, caused a significant delay of approximately 197 days (from 1.11.2022 i.e., 30 days after 30.9.2022 when the Petitioner submitted its proposals to MPPTCL till 17.5.2023). The Petitioner being a bona-fide TSP, always apprised the LTTC regarding the progress of the issue of line crossing by sending monthly progress reports and also by sending (by marking copy to the LTTC) each communication exchanged with MPPTCL/ CEA/ other Authorities, in terms of Article 11, including Articles 11.5 and 5.3 of the TSA. Due to the delay in grant of the approval by MPPTCL regarding the proposal of power line crossing submitted by the Petitioner, a total of 44.958 km which accounts for 32% of the complete stringing work followed by the foundation of the towers at 29 locations and their erection, was severely affected. Further, the delay of approximately 197 days (from 1.11.2022 i.e., 30 days after 30.0.2022 when the Petitioner submitted its proposals to MPPTCL till 17.5.2023) in the grant of approval by the MPPTCL is likely to cause significant delay in achieving the SCOD of the transmission project.

(c) Delay in grant of permission for blasting by District Authority for excavation of the hard-rock found underneath the land allotted for construction of 220/ 400 KV CTUIL Sub-station

9. On 15.7.2022, LTTC/ RUMSL allotted land to the Petitioner for the construction of 220/ 400 kV CTUIL sub-station in Villages Pachora and Pipliya Kumar, district: Malwa, Agar which is a part of the Transmission Project being implemented by the Petitioner. Pursuant to the grant of the land, the Petitioner commenced the land development work. While undertaking the said land development, the Petitioner found hard rock underneath which required blasting for

excavation in order to achieve the required level. For executing the blasting work, the Petitioner duly deployed the expert blasting agency, namely, Shri Bherunath Explosives (having License No. E/ CC/ MP/ 22/ 759 (E128961). The said expert agency was specifically instructed to perform the blasting work with a control rock blasting process with a pit size of (LxW) 6x6 ft. and depth of 5ft. while undertaking all precautionary measures required to ensure the safety at the site including the public and third party/ public properties in the site and surrounding area. In order to initiate the blasting work, on 4.8.2022, the Petitioner approached the Additional District Magistrate (ADM), Agar, Malwa (MP) seeking permission to carry out the blasting work. However, no response was received from the office of ADM which caused a delay in the implementation of the transmission Project as the subsequent activities of the Project, were solely dependent on the land development for the sub-station at the design level. Accordingly, the Petitioner has sought an extension of SCOD for 166 days (from 3.9.2022 i.e., 30 days after 4.8.2022 when the Petitioner first submitted its request for approval till 15.2.2023) since the delay of the said period was not attributable to the developer, however, the same was caused due to the non-responsiveness of local authorities which was an uncontrollable event for the Petitioner.

(d) Non-grant of approval by the office of Divisional Railway Manager (DRM), Bhopal for laying of overhead 400 KV DC Pachora- Bhopal Transmission Line which will cross Bhopal-Biaora Single Railway Track

10. On 9.12.2022, the Petitioner approached the office of the Divisional Railway Manager, Bhopal for the submission of a proposal for the grant of approval for laying of the overhead 400 kV DC Pachora- Bhopal Transmission Line which will cross the Bhopal-Biaora Single Railway Track (under-construction) between KM Stone Nos. 230/1 & 230/2 and the Sarangpur- Biaora- Single Railway Track in the single span

between Chain edge 1244/6 & 1244/7. Therefore, the DRM office has not granted the approval to the railway crossing proposal submitted by the Petitioner to date. The said event of force majeure has caused a delay of approximately 180 days since 9.3.2023 (i.e., after three months since the date of application on 9.12.2022 when the approval was expected to be granted) till 5.9.2023 (i.e., the date of preparation of petition) and the same is a continuing event of force majeure which will further delay the implementation of the Project.

11. The Petitioner has submitted that in addition to the above force majeure claims, the Petitioner has encountered certain Change in Law events and/ or been subjected to change-in-scope post bid, for which the said Petitioner craves leave to approach the Commission separately, once the Project achieves commissioning. The Petitioner has submitted that despite confronting the issues of force majeure/ change-in-scope, the Petitioner continues to make best efforts to achieve the SCOD of the Transmission Project i.e., 29.11.2023. However, with the occurrence of uncontrollable events of force majeure events, the Petitioner is apprehensive that there is likelihood of delay being caused in the commissioning of the Project. Therefore, the Petitioner through this petition is seeking a declaration that delay was caused on account of the force majeure events and, thereby extension of SCOD needs to be allowed for 368 days, or the date of actual commissioning, whichever is earlier.

Hearing dated 18.10.2023.

12. The case was heard on 18.10.2023. During the course of the hearing, the learned counsel for the Petitioner reiterated the submissions made in the Petition and submitted that the Commission in its various orders, keeping in view that the force majeure events were still continuing and there was uncertainty about the likely

COD, granted a liberty to the Petitioner therein to approach the Commission after completion of the project to take a view on the delay due to force majeure and extension of SCOD. In the meantime, the Commission, however, also directed the LTTCs not to take any precipitative actions against the Petitioner as the subsistence of the TSA in the interregnum was vital to the completion of the project therein. Accordingly, a similar approach may also be adopted in the present case, wherein, the LTTC have not proceeded with/issued any communication with regard to the invocation/encashment of the Bank Guarantee as given by the Petitioner under the TSA. Accordingly, learned counsel submitted that interim protection may also be given to the Petitioner in the present case by restraining the LTTCs from taking any coercive action including invocation/encashment of Bank Guarantee till such time the Petitioner approaches the Commission seeking the various reliefs including extension of SCOD on account of the force majeure and Change in Law events after the completion of the Project.

13. The learned counsel for the LTTC submitted that it has no objection if the Commission disposes of the present Petition.

Analysis and Decision

14. We have considered the submissions of the Petitioner and perused the documents available on record. According to the Petitioner, its Project has been affected due to various force majeure events enumerated in the Petition.

15. It is observed that the events cited above are still continuing and the Petitioner has approached the Commission for declaration of these events as force majeure events and requested for an extension of SCOD of the Project, in advance. However, we are of the view that since the project has not been completed by the

Petitioner till date and is still under implementation, it would not be appropriate to take any view at this stage on the claimed force majeure issues and extension of SCOD. Accordingly, the Petitioner is granted liberty to approach the Commission to seek the appropriate relief for force majeure events and Change in Law events, after completion of the Project.

16. The Petitioner has prayed for restraining the LTTC from taking any coercive action against the Petitioner in terms of TSA including the encashment of Contract Performance Guarantee (CPG). As in the above paragraph, we have directed the Petitioner to approach the Commission only after the completion/ implementation of the Project, it is imperative that no precipitative actions be taken against the Petitioner as the subsistence of TSA in the interregnum is vital to the completion/ implementation of the Project. Meanwhile, the Petitioner shall make sincere endeavours to complete the Project at the earliest.

17. This order disposes of Petition No. 280/MP/2023.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson