

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.235/MP/2021

- Subject : Petition under Section 79(1)(f) read with Section 79(1)(a) and (b) of the Electricity Act, 2003 read with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects, 2017 as amended from time to time seeking declaration of discharge from any obligation and liability to the Respondent under the Request for Selection No. SECI/C&P/WPD/1200MW/T7/RfS/022019 dated 22.2.2019, Letter of Award dated 19.6.2019 or otherwise.
- Date of Hearing : **5.3.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Betam Wind Energy Private Limited (BWEPL).
- Respondents : Solar Energy Corporation of India Limited (SECI) and Anr.
- Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, BWEPL
Ms. Molshree Bhatnagar, Advocate, BWEPL
Shri Nimesh Jha, Advocate, BWEPL
Shri Rishabh Sehgal, Advocate, BWEPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Shirsa Saraswati, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Shri Aditya Singh, Advocate, UPPCL
Ms. Tanya Sareen, Advocate, UPPCL

Record of Proceedings

During the course of the hearing, the learned senior counsel for the Petitioner made detailed submissions in the matter and concluded its arguments. The learned senior counsel for the Petitioner recapitulated the background of the Petition and, *inter alia*, submitted that pursuant to the competitive bid process conducted by SECI, the Petitioner was selected as the successful bidder and issued a Letter of Award ('LoA') dated 19.6.2019 for development of the 200 MW wind power project. Subsequently, the Petitioner has furnished a Performance Bank Guarantee ('PBG') of Rs. 40 crore in terms of the RfS. However, due to the occurrence of uncontrollable and unforeseen events beyond the control of the Petitioner including (i) frequent changes in the land allotment policy by the Government of Gujarat, (ii) delay in issuance of the 'No Objection Certificate' by the Ministry of Defence, and (iii) delay in approval of the Power Sale Agreement ('PSA') executed between SECI and UPPCL, it has become impossible for the Petitioner to develop the project within the timeline specified in the RfS and the LoA. Learned senior counsel further submitted that the Petitioner, on several occasions, requested SECI to extend the various project related timelines, including the date of financial closure and scheduled

commissioning date. However, SECI agreed to extend the date of the financial closure and scheduled commissioning date for the first time on 29.10.2021, i.e. after 24 months from the effective date under the proposed PPA. He further submitted that the non-extension of the suitable timeline for the execution of the project by the SECI imposed a situation on the Petitioner to not to execute the PPA. The Petitioner, in the present Petition, prayed the Commission to discharge the Petitioner from any obligation or liability towards the Respondent under the RfS dated 22.2.2019 and/or the Letter of Award (LOI) dated 19.6.2019. Learned senior counsel further added that if the Petitioner is unable to sign the PPA, the maximum liability contemplated under Clause 3.11(x) of the RfS is up to Rs. 12 crore, which can be encashed as liquidated damages not amounting to penalty. The Commission is required to adjudicate the present matter to assess the actual loss suffered by SECI, if any, to assess the liability of the petitioner.

2. Learned proxy counsel for the Respondent, SECI submitted that SECI had issued RfS for a total capacity of 1200 MW, and the other developers selected pursuant to the same bid process have already entered into the PPAs with SECI and have also commissioned their projects after obtaining the NOC in the same region. However, the Petitioner has failed to execute the PPA and to complete its project till date.

3. In response, learned senior counsel for the Petitioner submitted that only two bidders, namely (a) Ostro Energy (P) Ltd and (b) Adani Renewable Energy park (Gujarat) Ltd, out of the four selected bidders have entered into the PPA with SECI and have partly commissioned their projects. However, the Commission vide its order dated 31.1.2023 in Petition No. 118/MP/2021 has relieved one of the successful bidders, i.e. Spring Vayu (P) Ltd from the PPA dated 16.3.2020 since the PSA with KSEBL was not materialized.

4. Matter remains part-heard. The interim direction given vide Record of Proceedings for the hearing dated 23.11.2021 will be continued till the next date of hearing provided the Petitioner keeps the Performance Bank Guarantee as furnished to SECI alive.

5. The Petition will be listed for hearing on **17.4.2024**

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)