

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-351/20-21

Date of hearing: 9th September, 2021

Time of hearing: 14.30 hours

Quorum:

Shri Sutirtha Bhattacharya, Chairperson

Shri Durgadas Goswami, Member

Shri Pulak Kumar Tewari, Member

In the matter of

Petition for net metering for Roof Top Grid Connected Solar Plant under RESCO Model, adjudication or resolution of dispute regarding regulation of purchase and procurement process of electricity.

And

In the matter of
Rule (3) of the Electricity Rules, 2005 read with section 2(8) of the Electricity Act, 2003

And

In the matter of

Braithwaite & Co Limited,
(A Govt. of India Undertaking)
Under Ministry of Railways
5, Hide Road, Calcutta 700 043

..... Petitioner

And

CESC Limited,
CESC House, Chowringhee square, Kolkata-700001

..... Respondent

Representatives attended:

Braithwaite & Co Limited [Petitioner]

1. Mr. Debanik Banerjee, Advocate
2. Mr. Debasish Ghosh, Senior Manager (Project)

CESC Limited [Respondent]

1. Mr. Avijeet Lala, Advocate
2. Ms. Astha Sharma, Advocate
3. Ms. Gargi Chatterjea, Executive Director, CESC Limited

CASE IN BRIEF

1. The petitioner, Braithwaite & Co Limited (in short 'BCL'), has three manufacturing units located at different places within the licensed area of CESC Limited, viz. Clive Works, Victoria Works and Angus Works. The petitioner contemplated to install roof top grid connected solar power system at their three units to a summated load of 3.7 MW (Clive work – 0.9 MW, Victoria works – 0.3 MW and Angus Works – 2.5 MW) under RESCO model in line with the extant guidelines of the Government of India related to installation capacities, due to lack of funding capacity for investing in capex model. Accordingly, Braithwaite & Co Limited approached Solar Energy Corporation of India (SECI), nodal agency of GOI for promoting, coordinating, guiding and realizing the solar energy projects all over India, who in turn included their requirement in their collective national tender for identification of a suitable vendor who would supply the solar units.
2. During the last hearing held on 10.08.20212, it was directed by the Commission that –
 - a) M/s Braithwaite & Company shall submit their affidavit duly sworn in a Non-Judicial stamp paper of requisite value within 7 days from the date of receipt of this order;
 - b) Upon receipt of the above, the next date of hearing will be fixed.
3. Accordingly, BCL, vide their letter dated 11th August, 2021 submitted their rejoinder duly sworn in a Non-Judicial Stamp paper of requisite value within the scheduled date, with copy to CESC and Neeti Niyaman (Counsel for CESC) through e-mail.
4. Based on above, an e-hearing was scheduled on 9th September, 2021 at 14.30 hrs. The e-hearing was held as scheduled and the representatives from both the parties were present.

SUBMISSION DURING HEARING

5. The Ld. Advocate, on behalf of BCL, submitted that –

- a) From the very beginning the petitioner opted only for RESCO model for installation of roof top grid connected solar power system at its 3 units in line with the extant guidelines of the Government of India related to installation capacities, due to lack of funding capacity for investing in capex model. Accordingly, Braithwaite & Co Limited approached Solar Energy Corporation of India (SECI), nodal agency of GOI for promoting, coordinating, guiding and realizing the solar energy projects all over India. As per the guidelines of SECI, BCL can engage any of the vendors identified through SECI tender who shall install the solar units at their cost and shall operate them for a period of 25/15/10 years. The petitioner shall have to purchase the entire power generated by them at a rate finalized by SECI and the power in excess of instantaneous consumption shall be fed to the grid through a net metering system for which the Government pay back for the excess power exported.
- b) It is submitted that the petitioner intimated the respondent the status of their solar project and requested the respondent to initiate adequate measures for approval and installation of net metering systems in all the three units of the petitioner. But, the respondent stated their inability to extend net metering arrangements for the reasons that the units are to be set up and owned by separate entities as per RESCO Model and therefore will not qualify as captive generating plant within the meaning of the Electricity Act, 2003.
- c) It is also submitted that the proposed association of RESCO & BCL qualifies as a generating company as per the definition laid down in the provisions of the Electricity Act, 2003. Therefore, the RESCO units can be declared as 'Captive Generating Unit' for implementation of net metering by the respondent.
- d) The petitioner herein does not come within the ambit of the definition of "consumer" as defined in Section 2 (15) of the Act, but ought to be considered as a "generating company" as defined in Section 2(28). In such a case, the remedy of the petitioner lies before this Hon'ble Commission, in terms of Section 86 of the Electricity Act, 2003 and not before the CGRF, as alleged by the respondent or at all.