

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.523/MP/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 15.2.2022

In the matter of:

Petition under Section 79(1)(c) and Section 79(1)(f) of the Electricity Act, 2003 read with Regulation 33 A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 seeking relaxation of the procedure set out under Clause 10.11 of Detailed Procedure for “Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System”

And in the matter of:

M/s. Shapoorji Pallonji Infrastructure Capital Company Private Limited,
SP Centre, 4144 Minoo desai Marg, Colaba,
Mumbai-400005

...Petitioner

Versus

Power Grid Corporation of India Limited,
(Through Its Chief Operating Officer-CTU),
B-9, Qutub Institutional Area, Katwaria Sarai,
New Delhi – 110016

...Respondent

Parties Present:

Shri Venkatesh, Advocate, SPICCPPL
Shri Suhael Buttan, Advocate, SPICCL
Shri Abhishek Nangia, Advocate, SPICCPPL
Shri Jatin Ghuliani, Advocate, SPICCPPL
Ms. Simran Saluja, Advocate, SPICCPPL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri Tushar Mathru, Advocate, PGCIL
Shri Pankay Latey, SPICCPPL
Shri Anil Kr. Meena, CTU
Shri Ankush Patel, CTU
Shri Swapnil Verma, CTU

Shri Siddharth Sharma, CTU

ORDER

The Petitioner, M/s Shapoorji Pallonji Infrastructure Capital Company Private Limited, has filed the present Petition under Section 79(1)(c) and Section 79(1)(f) of the Electricity Act, 2003 read with Regulation 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as 'Connectivity Regulations, 2009'), seeking discharge of the two Connectivity Bank Guarantees (CBGs) amounting to Rs.10 crore (Rs.5 crore each) furnished by the Petitioner to the Respondent under the Transmission Service Agreements ("TSAs") dated 12.02.2019 signed between the Petitioner and the Respondent, which have now been revoked.

2. The Petitioner has made the following prayers:

"a) To exercise power under Regulation 33A of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and relax the procedure set out in Clause 10.11 of the Detailed Procedure for "Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System";

b) Direct Respondent to discharge/return Connectivity Bank Guarantee No. OGT0005190028926 and Connectivity Bank Guarantee No. OGT0005190028921 of Rs.5 Cr. each issued by IndusInd Bank; and /or

c) Pass such other order / orders, as may be deemed fit and proper in the facts and circumstances of the case."

Submissions of the Petitioner

3. The Petitioner has submitted as follows:

a) National Thermal Power Corporation Limited (NTPC), as an intermediary procurer, vide Resolution dated 3.8.2017 had issued RFS (Request for Selection) for the selection of Solar Power Developers (SPDs) for

development of 2000 MW solar power project connected with ISTS. NTPC vide letter dated 17.10.2018 issued Letter of Intent (LoI) to the Petitioner for development of Solar Power Projects of 250 MW each at Anantpur (Andhra Pradesh) and Tuticorin (Tamil Nadu). In response to LoI issued by NTPC, a Power Sale Agreement dated 11.03.2019 was executed between NTPC and Northern Power Distribution Company of Telangana and Southern Power Distribution Company of Telangana (in short, collectively referred to as “the Telangana Discoms”).

b) Subsequently, on 20.03.2019, the Petitioner, through its SPVs (special purpose vehicles) executed the following PPAs with NTPC:

i. M/s Eloise Energy Private Limited (“EEPL”) entered into a PPA with NTPC for development of 250 MW solar PV power project in Anantpur, Andhra Pradesh; and

ii. M/s Elaine Renewable Energy Private Limited (“EREPL”) entered into a PPA with NTPC for development of 250 MW solar PV power project in Tuticorin, Tamil Nadu.

c) The Petitioner vide its applications dated 26.07.2018 applied for Stage-I connectivity for its proposed 500 MW solar power projects at Tuticorin and Anantpur and the same was granted by the Respondent vide intimation dated 24.08.2018. The Petitioner vide its applications dated 30.10.2018 applied for Stage-II connectivity with respect to the proposed solar power projects at Tuticorin and Anantpur and the same was granted by the Respondent vide its intimations dated 17.01.2019. The Petitioner and Respondent have also executed Transmission Service Agreements dated 12.02.2019.

d) As per the PPAs signed by the SPVs of the Petitioner, the Telangana Discoms had, as a Condition Precedent, to obtain approval of the respective PPAs and trading margin payable to NTPC from the Telangana State Electricity Regulatory Commission (TSERC), within 60 days of effective date of the PPAs. However, despite extension of 3 months granted by NTPC to the Telangana Discoms, the said PPAs were not approved by TSERC and the Condition

Precedent was not satisfied making the projects financially unviable. Therefore, the parties terminated PPAs and NTPC returned the Performance Bank Guarantees submitted by SPVs of the Petitioner.

e) Pursuant to termination of PPA with NTPC, the Petitioner vide its letters dated 15.01.2020 brought to the knowledge of the Respondent that the Petitioner's SPVs had terminated PPAs with NTPC, since the Telangana Discoms could not obtain the approval of TSERC, which has been acknowledged by NTPC and the Performance Bank Guarantee has also been returned. Accordingly, the Petitioner requested the Respondent to cancel its Stage-II Connectivity issued with respect to Anantpur and Tuticorin solar power projects, granted vide intimation letter dated 17.01.2019 and requested to return CBGs of Rs.10 crore for the projects.

f) In response to the Petitioner's request, the Respondent vide its letter dated 04.03.2020 revoked the Stage-II Connectivity granted to the Petitioner. However, the Respondent did not entertain the request for return of CBGs as the Connectivity Bank Guarantees can be discharged, subsequent to commencement of power flow from the projects. The Respondent referred to provisions of clause 10.11 of the Detailed Procedure for "Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System" dated 15.05.2018 (in short, "the Detailed Procedure") in this regard.

g) However, clause 10.11 of the Detailed procedure deals with discharge of CBG 6 months after of commencement of evacuation of power from a renewable project. The Detailed Procedure does not deal with a scenario wherein the connectivity granted by CTU (Central Transmission Utility) is revoked on account of termination of PPA of a renewable project especially when the termination is not attributable to generator/ developer.

h) The Commission in its Order dated 07.01.2020 in Petition No. 159/MP/2019 titled as Toramba Renewable Energy Private Limited vs. PGCIL has exercised the "Power to Relax" under Regulation 33A of the Connectivity

Regulations, 2009 and has relaxed Clause 10.11 of the Detailed Procedure and directed the Respondent to discharge CBG withheld therein.

i) Thus, the Petitioner has approached this Commission under Regulation 33A of the Connectivity Regulations, 2009 to remove the hardship on account of operation of clause 10.11 of the Detailed Procedure. Due to continuance of CBGs, the credit facilities available to the Petitioner have been blocked and also the Petitioner has incurred Bank Charges of approximately Rs.14,60,000/- towards issuance of CBGs. Further, no prejudice will be caused to the Respondent, if CBGs are directed to be returned to the Petitioner as the Respondent has not incurred any expenditure to provide connectivity to the Petitioner.

4. During the hearing dated 27.8.2020, the Commission admitted the Petition.

Reply of the Respondent

5. The Respondent in its reply vide affidavit dated 10.12.2020 has mainly submitted as under:

a) Under the Detailed Procedure, the Respondent is entitled to encash connectivity bank guarantee in the event of failure to complete the dedicated transmission line within the stipulated period of 24 months. This event is also reiterated in the TSA.

b) There is no provision in the Detailed Procedure or under the TSA for return of CBG. As per clause 11.2 of the Detailed Procedure, CBG is liable to be adjusted in the PoC (point of connection) pool.

c) The Commission in its Order dated 13.01.2020 in Petition No. 56/MP/2019, Petition No.57/MP/2019 and Petition No.58/MP/2019 (in short, "the Vaayu Order") has directed for encashment of connectivity bank guarantee when a renewable energy project is abandoned prior to the period of 24 months from the date of intimation of bay allocation. The Vaayu Order is under

challenge in Appeal No.26/2020, Appeal No. 27/2020 and Appeal No.28/2020 before the Appellate Tribunal for Electricity (APTEL).

d) The Petitioner has placed reliance on the Order dated 07.01.2020 passed by this Commission in Petition No.159/MP/2019, to contend that this Commission has exercised the “*power to relax*” under Regulation 33A of the Connectivity Regulations, 2009 and has relaxed the provision of clause 10.11 of the Detailed Procedure to direct the Respondent to discharge the connectivity bank guarantee to the concerned generator. However, the said Order has been passed on the consideration that on revocation of connectivity granted, no assets would remain unutilized or stranded.

e) However, in the present case, 3rd 1x500 MVA, 400/230 kV ICT was required for evacuation of additional power from RE projects at Tuticorin-II PS including the Petitioner’s project. ICT was under implementation as part of Regional System Strengthening scheme. Further, for facilitating interconnection for RE projects of the area including the Petitioner’s project, extension of indoor GIS bus up to the outdoor AIS bus bar for Hybrid switchyard using GIB arrangement and other necessary common facilities works at 230 kV switchyard are under implementation as part of ICT under ISTS. ICT including common facility works is under advance stage of completion and expected to be commissioned shortly.

f) Though the Stage-II connectivity granted to the Petitioner has been revoked, the regulatory implications vis-à-vis treatment of the connectivity bank guarantees submitted by the Petitioner in such a scenario have not been provided in the Detailed Procedure, which is also the admitted case of the Petitioner. As such, any action with respect to the two CBGs of Rs.5 crore each submitted by the Petitioner can be taken by the Respondent as per the directions of this Commission.

Rejoinder of the Petitioner to the reply filed by the Respondent

6. The Petitioner in its rejoinder vide affidavit dated 08.03.2021 has mainly submitted as under:

a) The parties terminated the PPAs and NTPC returned the Performance BGs submitted by SPVs of the Petitioner. Therefore, the projects could not be executed for no fault of the Petitioner and, accordingly, the Petitioner also sought the return of the CBGs submitted to the Respondent.

b) The Respondent while acknowledging the termination of the PPA and cancellation of Stage-II Connectivity, has returned consultancy fees and ad hoc O&M charges paid by the Petitioner to the Respondent for both projects, i.e. the Tuticorin solar power project in Tamil Nadu and Anantapur solar power project in Andhra Pradesh on 24.06.2020 and 25.08.2020 respectively.

c) Further, the Respondent's reliance upon the Vaayu Order is not tenable as the facts of the said case are distinguishable. The petitions wherein the Vaayu Order was passed were filed by Vaayu Renewable Energy Ltd was for seeking an extension of time for 8 months to complete the balance activities and achieving Financial Closure under clause 9.3.2 of the Detailed Procedure. However, the instant petition has been filed under clause 10.11 of the Detailed Procedure seeking discharge of CBGs read with Regulation 33A of the Connectivity Regulations, 2009 which bestows upon this Commission the power to relax any of the provisions of the Connectivity Regulations, 2009 as to remove the hardship arising out of the operation of a Regulation.

d) The Vaayu Order has admittedly been challenged before the Appellate Tribunal for Electricity in Appeal No. 26 of 2020, Appeal No. 27 of 2020 and Appeal No. 28 of 2020 and, therefore, the same has not attained finality. In fact, the Order passed by the Commission has already been stayed.

e) In addition, in the case of Vaayu Renewable Energy Ltd, there was an issue qua allotment of land pursuant to the new land policy issued by the Government of Gujarat and that Vaayu Renewable Energy Ltd had already applied for allotment of balance revenue land required for its project. Further,

this Commission in the Vaayu Order had categorically observed that the government policy was for revenue land and that the developer in that case had option to acquire other land such as private land. However, in the instant case, the Petitioner was in a *fait accompli* as the PPAs signed by SPVs of the Petitioner and the trading margin of NTPC had to be approved by TSERC within 60 days of signing of PPAs in terms of Clause 2.1.2 of PPA, but the Telangana Discoms failed to do so despite an extension of 3 months being granted to them. In view of the aforesaid, PPAs were mutually terminated by the parties for reasons not attributable to the Petitioner.

f) Furthermore, in the case of Vaayu Renewable Energy Ltd, there were no pending applications from other developers for the bays that were vacated. However, in the instant case, 500 MVA, 400/230 kV ICT at Tuticorin-II PS was part of Regional System Strengthening scheme and already envisaged as part of the Respondent's future planning for strengthening of system for evacuation of power. In fact, the Respondent has already granted connectivity to other developers. Therefore, the same was not specifically for the Petitioner's project.

g) As per the status of Applications qua Stage-II connectivity to ISTS for RE based projects as uploaded on the Respondent's website, the same does not mention/ show the status of the 2 projects germane to the present petition thereby establishing the fact that both projects are not even being pursued by the Respondent.

h) Moreover, as per the Application status uploaded on the Respondent's website, it is also understood that other developers, namely GRT Jewellers (India) Pvt. Ltd. and NTPC have applied to the Respondent for connectivity at the very same Tuticorin-II PS and have already been granted connectivity. Therefore, these bays can be utilised by the aforesaid developers, if not already allotted.

i) The Petitioner via its SPV had also executed a PPA for the Kunta Project at Anantapur which was also subsequently terminated and the

Respondent was requested to discharge CBGs furnished by the Petitioner. However, the Respondent in its reply has not adverted to the Anantapur solar power project. Hence, it can be inferred that no infrastructure was created by the Respondent for Anantapur solar power project and, therefore, the prayer with respect to the CBG qua Anantapur solar power project ought to be returned in the meantime.

j) The Commission vide its RoP dated 27.08.2020 had directed the Respondent to furnish information/ data regarding the expenditure that has been incurred basis the connectivity granted to the Petitioner. However, the Respondent has not provided any such information. Hence, it is inferred that no specific expenditure qua the Petitioner has been incurred by the Respondent in establishing the said bays and the Petition, therefore, ought to be allowed.

Hearing dated 06.10.2021

7. The Petitioner submitted that Bay No. 211 at Tuticorin-II and Bay No. 224 at NP Kunta were allocated to the Petitioner and the Petitioner was required to construct all the infrastructure up to the bays. However, Bay No.211 at Tuticorin-II PS has already been allocated to NTPC and Bay No. 224 has been allotted to APGECL.

8. The Respondent submitted that the present case is identical to facts in Petition No. 477/MP/2020, wherein the Commission vide order dated 26.07.2021 observed that as per clause 5.4(i) of the Revised Detailed Procedure (revised vide order dated 20.02.2021), if the associated bays(s) at the ISTS sub-station is being constructed by Stage-II grantee itself, amount corresponding to Connectivity BG1 shall be forfeited and balance amount (Connectivity BG2) shall be refunded.

9. After hearing, the Commission directed the Respondent to file certain information vide RoP dated 06.10.2021 and reserved the order in the matter.

10. In response to RoP dated 06.10.2021, the Respondent vide affidavit dated 22.10.2021 has submitted as under:

a) Action regarding revocation of Stage-II Connectivity had been undertaken by CTU in accordance with the Detailed Procedure issued vide order 15.05.2018. Treatment of cases such as that of the Petitioner is covered under clause 5 of the Revised Detailed Procedure which is in force from 20.02.2021.

b) No expenditure has been incurred for Connectivity granted at N P Kunta (Bay no. 224) for proposed 250 MW solar power project at Anantapur. Further, the 220 kV bay has not been allocated to anyone else till date.

c) Regarding Connectivity granted at Tuticorin-II GIS for proposed 250 MW solar power project at Tuticorin, Tamil Nadu, following is submitted:

i. For facilitating smooth implementation of bay and bus extension, 230 kV switchyard of Tuticorin-II GIS substation was transformed into hybrid switchyard (Bus bar AIS and line bay equipment GIS). This arrangement reduces the overall implementation period of bay extension works and also avoids the GIS supply extension requirements. Accordingly, these works were identified as common facilities works at Tuticorin-II GIS S/s for facilitating connectivity to RE developers including the Petitioner's RE generation project and its implementation was scheduled in the time frame of petitioner's project. The proposal was agreed as part of augmentation of 3rd 500 MVA, 400/230 kV ICT at Tuticorin-II and covered under the scheme- "System Strengthening at Tuticorin-II".

ii. The Common Facility works as part of ICT#3 at Tuticorin-II GIS are under advanced stage of commissioning and is expected by October/ November 2021.

iii. Subsequently, upon revocation of Stage-II Connectivity of the Petitioner, Bay no 211 at Tuticorin-II GIS S/s, was allocated to M/s NTPC. The 230kV Bay no. 211 is being implemented and is expected by July 2022.

Analysis and Decision

11. We have heard the submissions of the parties and perused the documents available on record. The only issue which arises for our consideration is regarding treatment of Connectivity Bank Guarantee furnished by the Petitioner to the Respondent, for its solar power projects at Anantpur and Tuticorin.

12. The Petitioner has stated that it was awarded two 250 MW solar projects, one each at Tuticorin (in the State of Tamil Nadu) and Anantpur (in the State of Andhra Pradesh) and the power from these solar power projects was to be supplied to the Telangana Discoms through an intermediary procurer, NTPC. Subsequently, the Petitioner was granted Stage-II connectivity by the Respondent for 250 MW each with respect to its Tuticorin solar power project and Anantpur solar power project. Consequently, TSAs were entered into with the Respondent and the Petitioner furnished BG of Rs.5 crore under each TSA. The Connectivity was sought for PPAs that was entered into by SPVs of the Petitioner with the Telangana Discoms wherein PPAs required approval of TSERC as a condition precedent within a period of 60 days of effective date of PPAs. However, despite extension of 3 months, the PPAs were not approved by TSERC and accordingly, the parties terminated the PPAs. Consequent to termination of the PPAs, the Petitioner vide its letters dated 15.01.2020 sought to cancel Stage-II connectivity granted to it and requested to return CBGs (of Rs.10 crore). The Respondent vide its letter dated 04.03.2020

revoked the Stage-II Connectivity granted to the Petitioner. However, the Petitioner's request for return of CBGs was declined by the Respondent.

13. We have considered the submission of the parties. We observe that this Commission has issued the Revised Detailed Procedure which is applicable from 20.02.2021. The relevant provisions are:

“5. Provisions with regards to Connectivity and Bank Guarantee

5.1 After coming into force of this Procedure, for an entity which has been granted Stage-II Connectivity under the Pre-revised Procedure,

(1) Any action already initiated for revocation of Stage-II Connectivity or encashment of Bank Guarantee prior to the issue of this Procedure shall be completed under the Pre-revised Procedure.

(2) Any action including revocation of Stage-II Connectivity or encashment of Bank Guarantee initiated after the issue of this Procedure shall be in accordance with this Procedure.

(3) Conn-BG submitted under the Pre-revised Procedure shall be treated as ConnBG1 for Rs. 50 lakh and Conn-BG2 for the balance amount.

(4) In the event of encashment of such Conn-BG1 or Conn-BG2 as worked out in terms of sub-clause (3) of Clause 5.1 above, under Clause 10.8 of this Procedure

(i) If the associated bay(s) at the ISTS sub-station is being constructed by Stage-II grantee itself, amount corresponding to Conn-BG1 shall be forfeited and balance amount being treated as Conn-BG2 under this Procedure shall be refunded.

(ii) If the associated bay(s) at the ISTS sub-station is being constructed by ISTS licensee, amount corresponding to Conn-BG1 and amount of Conn-BG2 in terms of Clause 10.8(a) of this Procedure shall be forfeited and any excess amount submitted as Conn-BG under the Pre-revised Procedure shall be refunded.”

14. A plain reading of clause 5.1(3) of the Revised Detailed Procedure indicates that a Connectivity Bank Guarantee submitted under the Detailed Procedure (pre-revised) shall be treated as Conn-BG1 for Rs.50 lakh and Conn-BG2 for the balance amount. Further, in terms of clause 5.1(4)(i) of the Revised Detailed Procedure, in the event of encashment of BG, if the associated bay(s) at the ISTS sub-station is

being constructed by Stage-II grantee itself, amount corresponding to Conn-BG1 shall be forfeited and balance amount (being treated as Conn-BG2) shall be refunded. We are of the view that the Revised Detailed Procedure is a procedural law and is to be applied even on existing agreements.

15. We observe that in the present case, the Respondent had revoked the Stage-II Connectivity granted to the Petitioner vide its letter dated 04.03.2020. However, the Respondent had not initiated any action for encashment of Bank Guarantee under the Detailed Procedure (pre-revised). Therefore, any action pertaining to encashment of Connectivity BG has to be dealt under the Revised Detailed Procedure in terms of clause 5.1(2) of the Revised Detailed Procedure.

16. Since the terminal bays for the Anantpur solar power project and Tuticorin solar power project was under the scope of the Petitioner, in terms of clause 5.1(3) read with clause 5.1(4)(i) of the Revised Detailed Procedure, the amount of Rs.50 lakh (corresponding to Conn-BG1) shall be forfeited and balance amount of Rs.4.5 crore (corresponding to Conn-BG2) shall be refunded to the Petitioner for each solar power project.

17. Petition No. 523/MP/2020 is disposed of in terms of above.

Sd/-
(P. K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S Jha)
Member

Sd/-
(P. K. Pujari)
Chairperson