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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5154/2024, CM APPL. 21097/2024 (Stay)**

ADANI RENEWABLE ENERGY SEVEN LIMITED. Petitioner

Through: Mr. Anirudh Bakhru, Adv. alongwith
Mr. Rishi Agrawala, Ms. Devika
Mohan, Mr. Ankit Banati, Mr.
Shravan Niranjana, Mr. Prabhav
Bahuguna and Mr. Chetan Garg,
Advts.

versus

SOLAR ENERGY CORPORATION OF INDIA LTD. & ANR.

..... Respondents

Through: Ms. Anushree Bardhan and Ms.
Surbhi Kapoor, Advts. for the R-1.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

08.04.2024

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CM APPL. 21098/2024 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5154/2024&CM APPL. 21097/2024 (Stay)

1. The present petition has been filed by the petitioner seeking that the respondent no.1 [Solar Energy Corporation of India Ltd. ('SECI') be restrained from invoking/encashing/enforcing/ calling upon or receiving any money under Bank Guarantee bearing No.50350IGL0007821 dated 02.09.2021 issued by Union Bank of India.

2. The petitioner also seeks stay of operation and effect of letter dated 05.04.2024 issued by the respondent no.1 till the petition filed by the

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petitioner bearing No.4/MP/2024 under Section 79 of the Electricity Act, 2003 is heard and decided by the Central Electricity Regulatory Commission ('CERC').

3. The background of the matter is that the respondent no.1 issued a Request for Selection (RfS) document for "selection of Wind Power Developers for setting up of 1200 MW ISTS-connected Wind Power Projects in India under Traffic-Based Competitive Bidding (Tranche-X)". Pursuant thereto, the petitioner is stated to have submitted its bid. Consequently, a Power Purchase Agreement (PPA) dated 16.09.2021 has been executed between the petitioner and the respondent no.1. The bank guarantee in question was given pursuant to the said Power Purchase Agreement (PPA).

4. Learned counsel for the petitioner submits that since the covenants mentioned in the Power Purchase Agreement (PPA) became impossible to perform on account of unavailability of land that could be procured for the purpose of the project in question, the petitioner filed a petition before the CERC under Section 79, including 79(1)(b), 79(1)(f) & 79(1)(k) of the Electricity Act, 2003, seeking termination of the said Power Purchase Agreement (PPA) dated 16.09.2021.

5. In the said petition, the petitioner has sought that the said PPA dated 16.09.2021 be declared to have been frustrated and a further declaration that the petitioner stands released/discharged from obligations thereunder. The petitioner has also sought that the respondent no.1 be directed not to take any coercive action against the petitioner. The said petition was filed as far back as on 15.11.2023. However, the same is yet to be taken up for hearing by the CERC.



6. In the meantime, on 05.04.2024, even before the aforesaid petition filed by the petitioner before the CERC could be taken up, a letter is stated to have been addressed by the respondent no.1 to the concerned bank, which issued the bank guarantee at the behest of the petitioner. The said letter reads as under :-

“Ref No. SECI/FIN/BG/ 2024-25/63342 05-04-2024

*To
The Branch Manager,
Union Bank of India,
Industrial Finance Branch,
C.U. Shalt Chamber, Near Gujaral
Vidhyapith, Ashram Road, Ahmedabad- 380014*

Sub: Invocation of Bank Guarantee no – 503501GL0007821 Dated 02-09-2021 amounting Rs 36,00,00,000/- valid up to 10-03-2025.

*Dear Sir,
Please refer the Bank Guarantee No- 503501GL0007821 dated 02-09-2021 amounting Rs 36,00,00,000/- (Rupees Thirty Six Crore Only) valid up to 10-03-2025 issued by you in our favor on behalf of M/s Adani Renewable Energy Seven Ltd. Adani House, Nr Mithakhali Six Roads, Navrangpura, Ahmedabad – 380009 as Performance Bank Guarantee.*

Since Performance Obligation is not fulfilled by the Party and therefore pursuant to terms of NIT, we invoke the said guarantee amounting Rs. 36,00,00,000/- (Rupees Thirty Six Crore Only) and hereby make a demand on you to remit a sum of Rs 36,00,00,000/-(Rupees Thirty Six Crore Only) to us immediately through RTGS/NEFT-Account Name-Solar Energy Corporation of India Ltd, Account No-10070882610, IFSC Code-IDFB0020101, Bank Name-IDFC First Bank Ltd, Branch- Express Building, 2nd Floor, 9-10, Bahadurshah Zafar Marg, New Delhi- 110002.”

7. Learned counsel for the petitioner submits that the invocation of the bank guarantee is impermissible for various reasons. It is submitted that the performance of reciprocal obligations under the PPA has been rendered impossible due to circumstances beyond the control of the petitioner. These circumstances have been elaborated by the petitioner in the petition filed



before the CERC.

8. Further, it is submitted that the reliefs sought by the petitioner before the CERC will itself become infructuous, if the bank guarantee is encashed by the respondent no.1 even before consideration of the matter by the CERC.

9. It is emphasized that the petitioner has invoked the jurisdiction of this Court only in view of the fact that the CERC is expected to take up the petition filed by the petitioner for consideration, only on 19.04.2024 and the respondent No.1 has sought to take precipitative steps even prior thereto.

10. Learned counsel for the petitioner submits that an urgent application is in the process of being filed before the CERC seeking relief qua the bank guarantee in question and the same shall be filed tomorrow itself.

11. It is submitted that the matter shall be mentioned before the CERC whenever the concerned bench of the CERC shall assemble next, to request that the petitioner's urgent application seeking relief qua the bank guarantee in question, be taken up for consideration forthwith. It is requested that interim protection shall be afforded in the meantime so that the petitioner's right to seek appropriate relief from the CERC is not rendered infructuous.

12. Issue notice.

13. Learned counsel, as aforesaid, accepts notice on behalf of the respondent no.1.

14. Learned counsel for the respondent no.1 does not oppose the request of the petitioner that its petition/application be taken up by the CERC at the earliest, however, she submits that the petitioner's prayer seeking a restraint order qua encashment of the bank guarantee is untenable, since the bank guarantee is unconditional and the invocation thereof is in the terms of, and



as per the provisions of the PPA.

15. Considering the factual conspectus of the matter, it is imperative that the petition filed by the petitioner before the CERC, as also the petitioner's urgent application seeking relief qua the bank guarantee in question, is taken up for consideration by the CERC on priority. Further, it is necessary to ensure that pending such consideration, the prayer/s sought by the petitioner from the CERC are not rendered infructuous.

16. Learned counsel for the petitioner draws attention to various orders passed by this Court in similar situations, whereby, while relegating the parties to the CERC, this Court has granted interim relief till consideration of the matter by the CERC. In this regard, attention is drawn to the order dated 04.09.2020 in W.P. (C) 5998/2020 and the order dated 29.12.2022 in W.P. (C) 17782/2022.

17. Considering the above aspects, it is directed as under :-

- i. The CERC is requested to take up the petitioner's petition and/or the urgent application that is in the process of being filed before the CERC, at the earliest possible and preferably on 10.04.2024 itself (on which date the concerned bench of the CERC is stated to be assembling);
- ii. Till consideration of the matter by the CERC, status quo shall be maintained, and no precipitative steps shall be taken by the respondent no.1 qua bank guarantee bearing No.50350IGL0007821 dated 02.09.2021.

It shall be open for the CERC to consider whether or not continuation of the aforesaid interim direction is warranted or not, considering the facts and circumstances of the case. It is made clear that this Court has



not expressed any opinion with regard thereto.

18. The present petition, alongwith pending application/s, stands disposed of in the above terms.

19. *Dasti.*

SACHIN DATTA, J

APRIL 8, 2024/r