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

\+ W.P.(C) 8582/2025 and CM APPL.37052/2025

SCATEC INDIA RENEWABLES ONE PRIVATE LIMITED .....Petitioner

Through: Mr. B.P. Patil, Sr. Adv. alongwith Mr. Bibin Kurian, Mr. Dinesh Pardarsani, Mr. Kaustubh Srinarain, Mr. Arijeet Shukla and Ms. Geeta, Advocates.

versus

CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED & ORS. .....Respondents

Through: Mr. Shubham Arya, Mr. Poorav Saigal, Ms. Pallavi Saigal and Mr. Shirin Gupta, Advocates for R1.
Ms. Shikha Ohri and Mr. Kartik Sharma, Advocates for R2.
Mr. Amit Tiwari, CGSC along with Ms. Ayushi Srivastava, Ms. Nishtha Dhall and Mr. Ayush Tanwar, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

<u>O R D E R</u>

% 23.07.2025

1. The present petition has been filed by the petitioner *inter-alia* seeking that it be allowed to withdraw from Power Purchase Agreement dated 28.06.2023 (hereinafter referred as 'the PPA') pursuant to a bidding process initiated by the respondent no.2 for purchase of Wind Power.

2. The petitioner seeks to withdraw from the said PPA without any financial liability and also seeks refund of its bid securities. The petitioner also seeks that respondent no.1 be restrained from invoking/withdrawing

bank guarantees submitted by the petitioner in connection with the aforesaid bids.

3. The Petitioner is a SPV which is incorporated by Scatec India II B.V., a successful bidding entity, for the purpose of entering into the PPA with the Solar Energy Corporation of India (SECI)/Respondent No. 2 for supplying wind power. Respondent No. 1/ Central Transmission Utility of India Limited (CTUIL) is a nodal agency assigned the responsibility of undertaking transmission of electricity through inter-state transmission system and discharge all functions of planning and coordination relating to ISTS and is responsible for grant of non-discriminatory open access to ISTS through grant of connectivity & GNA. Respondent No. 2 is a nodal agency designated for the implementation of the scheme of the Government of India for setting up ISTS connected wind and solar power projects.

4. Learned senior counsel for the petitioner submits that the very basis for the petitioner to participate in the bidding process for the aforesaid project was the regulatory framework as encapsulated in the order/s dated 30.09.2016, 23.11.2021 and 30.11.2021 issued by the Ministry of Power, Government of India. In terms thereof, the petitioner was entitled to waiver of ISTS charges in the event of the commissioning of the project being delayed due to *force majure* or any transmission delay caused by the transmission provider.

5. It is submitted that the aforesaid regulatory position substantially changed by virtue of notification dated 09.06.2023 which introduced a new condition limiting the ISTS charge waiver period. The same reads as under:

Shram Shakti Bhawan, New Delhi
Dated, 09th June 2023

ORDER

Subject: Waiver of Inter-State Transmission Charges on transmission of the electricity generated from solar and wind sources of energy under Para 6.4 (6) of the Tariff Policy, 2016- Addendum- regarding.

In continuation to the Ministry of Power Order Nos. 23/12/2016-R&R dated 23.11.2021, 30.11.2021, 01.12.2022, 06.12.2022 and Order No. 12/07/2023-RCM dated 29.05.2023 on the waiver of Inter-State Transmission (ISTS) Charges on transmission of the electricity generated from solar and wind sources of energy, the para 3.1 (vii) of the Order dated 30.11.2021 shall be substituted as under:

"(vii) for any solar, wind and sources mentioned in para 3.1 (i), (ii) and (iii) of the Order dated 23.11.2021, which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2025 is granted extension of time from the commissioning by Ministry of New and Renewable Energy after careful consideration, on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by such power plant as if the said plant had been commissioned on or before 30th June 2025.

Provided that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

Provided also such extension in Date of Commissioning (CoD) of a project shall be granted for a period of six months at a time and not more than 2 times."

2. This issues with the approval of the approval of the **Hon'ble Minister of Power and New and Renewable Energy**.

A.Suresh 9/6/23

(Suresh Annepu)
Director (RCM)
Tel: 011- 2371 7737

To,

Secretary, CERC, New Delhi

6. It is submitted that apart from this significant change in the regulatory position, delays were occasioned on account of time consumed by the respondent no.2 in filing the requisite tariff petition in the Central Electricity Regulatory Commission (CERC), and the time consumption in disposal of the same.

7. Even when the matter was pending before the CERC, the petitioner sought to contend that the execution of the project would not be possible if the regulatory position as existing at the time of submission of tender, is deviated from. It was further sought to be contended before the CERC that the Ministry of Power order dated 09.06.2023 be construed as a change in law under PPA. Alternatively, the petitioner specifically sought exit from the project without any cost and claims. The same was, however, not accepted by the CERC. Certain interim reliefs sought by the petitioner pursuant to the aforesaid pleas were rejected in Petition No.26/MP/2024 by the CERC *vide* order dated 27.03.2024. The CERC in Petition No. 337/AT/2023 also passed an order dated 31.03.2024 under Section 63 of the Electricity Act, 2003 adopting the tariff. It is submitted that the said order was passed without acknowledging the issue of change in law and other pleas raised by the petitioner.

8. Consequently, the petitioner filed appeals before the Appellate Tribunal for Electricity against orders dated 27.03.2024 and 31.03.2024. The Appellate Tribunal *vide* a common order dated 02.07.2024 *inter-alia* remanded the matter to the CERC. Thereafter, the matter is stated to have been heard by the CERC and reserved for orders as far back on 09.09.2024.

9. The grievance of the petitioner is that despite the lapse of an inordinately long period, the CERC has not yet pronounced the orders. It is further submitted that in the meantime, the connectivity that was earlier granted to the petitioner has been revoked by the respondent no.1. It is submitted that in the circumstances, there is no possibility for the petitioner being able to continue the project, therefore the present petition has been filed seek that the petitioner be allowed to withdraw from the PPA dated

28.06.2023 without any financial implication.

10. During the course of arguments, it is acceded that the pleas identical to those raised in the present petition have already been canvassed before the CERC. The judgment of the CERC is awaited on the said aspects.

11. In the circumstances, this Court is not inclined to entertain the present petition while leaving it open for the petitioner to pursue its pending petition before the CERC. Given that the arguments before the CERC were concluded quite some time ago and judgment was reserved on 09.09.2024, the CERC is requested to bestow its urgent consideration to the matter and pronounce the judgment as expeditiously as possible, preferably within a period of 3 months.

12. The petitioner would be at liberty to bring to the notice of the CERC the subsequent development, *viz.* withdrawal of connectivity by respondent no.1 by moving an application/filing affidavit before the CERC within a period of two weeks from today. If necessary, the CERC will afford an opportunity of hearing to the parties including to the CTUIL on this aspect. Let the same be done as expeditiously as possible.

13. Till the matter is finally decided by the CERC in terms of the aforesaid directions, the respondent shall not take any coercive/precipitative steps against the petitioner including with regard to the bid securities and the bank guarantees submitted by the petitioner to the respondent.

14. The present petition stands disposed of in the above terms. Pending application also stand disposed of.

SACHIN DATTA, J

JULY 23, 2025/*at*