

NOTICE

Subject: New Petition, Petition filed by Clean Wind Power (Bhavnagar) Private Limited Petition under seeking extension/ deferment of Scheduled Commissioning Date on account of Force Majeure events related to COVID-19 outbreak which prevented the Petitioner from undertaking its obligations under the Power Purchase Agreement dated 17.07.2019 and consequential reliefs.

- Application seeking permission to file Petition online and seeking urgent hearing for urgent reliefs
- Application seeking ad-interim ex-parte directions against the respondent.

Case No. 138 of 2020 and MA No. 43 of 2020

1. The Petitioner Clean Wind Power (Bhavnagar) Private Limited has filed this Petition on 3.7.2020 under Section 86(l) (f) and other relevant provisions of the Electricity Act, 2003 seeking extension/ deferment of Scheduled Commissioning Date on account of Force Majeure events related to COVID-19 outbreak which prevented the Petitioner from undertaking its obligations under the Power Purchase Agreement dated 17.07.2019 and consequential reliefs.

The main prayers of the Petitioner are as under-

- (i) *Hold and declare that the Covid-19 pandemic and its consequent implications as set out in the Petition which prevented the Petitioner from achieving commissioning of the Project by the extended SCOD (i.e., 23.06.2020) is a Force Majeure Event under Article 8 of the Power Purchase Agreement dated 17.07.2018*
- (ii) *Hold and declare that the Petitioner is not liable to pay any Liquidated Damages or any penalty in terms of PPA as the delay in commissioning is due to a Force Majeure event and as such the Petitioner cannot be held liable for the same;*
- (iii) *Hold and declare that the COVID-19 pandemic and its consequent implications as set out in the Petition are a continuing Force Majeure Event affecting the Project with effect from 19.02.2020;*

- (iv) *Extend the Scheduled Commercial Operation Date of the Project from 23.06.2020 without any adverse consequences, till such time that the effects of the Force Majeure event involving COVID-19 pandemic on the Project as narrated in the Petition completely subsides, and in any event not for a period lesser than one year i.e., till 22.06.2021;*
- (v) *Hold and declare that the buffer period of 9 months' beyond the SCOD stipulated under Article 3 of the PPA for commissioning the Project will be reckoned from the further extended SCOD in terms of prayer (iv) above, as the Petitioner is unable to complete the Project due to Force Majeure Event;*
- (vi) *Grant ex-parte ad-interim order restraining the Respondent from taking any coercive steps against the Petitioner, including restraining the Respondent from invoking the Performance Bank Guarantee of the Petitioner, during the pendency of the present proceedings; and*
- (vii) *Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.*

The Petitioner has also file an Application for urgent hearing the prayers are as under:

(i) grant ad interim ex-parte order restraining the Respondent from initiating any coercive step against the Petitioner including specifically restraining it from invoking the Petitioner's Performance Bank Guarantee dated 13.07.2019 bearing no. OGT0005180022568, until the final disposal of the present matter ;and

(ii) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

The Petitioner has subsequent to filing of Petition on 6.7.2020 has filed an Application for *ad-interim ex-parte* order the prayers are as under:

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- (i) *Direct early listing/mentioning of the Petition along with the Applications on 07.07.2020;*
- (ii) *Grant an ad-interim ex-parte order staying the operation of the Respondent's letter dated 04.07.2020 until the final disposal of the present matter;*
- (iii) *Grant an ad interim ex-parte order restraining the Respondent from invoking/encashing the Petitioner's Performance Bank Guarantee dated 13.07.2019 bearing no. OGT0005180022568, until the final disposal of the present matter;*
- (iv) *Grant a time period of two weeks' to the Petitioner to submit the Extended Performance Bank Guarantee as being sought by the Respondent replacing the Existing Performance Bank Guarantee;*
- (v) *Grant an ad interim ex-parte order restraining the Respondent from initiating any coercive step against the Petitioner including specifically restraining it from invoking the Extended Performance Bank Guarantee once submitted by the Petitioner, until the final disposal of the present matter; and*
- (vi) *Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."*

2. I am directed to communicate that e-Hearing in this matter is scheduled on **Tuesday, 28 July 2020 at 10.30 am**. Kindly refer the Practice Directions dated 11 May 2020 available on MERC website (www.merc.gov.in) for the protocol to be followed for and during the e-Hearing.
3. Petitioner(s) and Respondent(s) shall communicate the name(s), email ID(s), contact number(s), and the address(es) of their Representative(s) (maximum 3 persons) who will be attending e-Hearing. MERC – IT Team will communicate the credentials for login into e-Hearing Application and will also provide assistance for using this Application.
4. Documents to be referred during the e-Hearing shall be emailed to 'ehearing@merc.gov.in' at least one day before the scheduled e-Hearing. The said documents will be uploaded in e-Hearing Application for reference of the Commission and all concerned parties. During the e-Hearing, parties shall refer these uploaded documents only.
5. All communication related to e-Hearing shall be made on 'ehearing@merc.gov.in' mentioning MERC Case number.

Sd/-
(R. S. Sonawane)
Dy. Director (Legal)

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Petitioner

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Respondent