

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Date of Hearing : 28.2.2014

Date of Order : 28.2.2014

Petition No. 327/MP/2013

In the matter of

Petition for adjustment of tariff, extension of time for execution of project and other consequential reliefs

And

In the matter of

Diwakar Solar Projects Limited

Petitioner

Vs

1. NTPC Vidyut Vyapar Nigam Ltd,
Core-7, SCOPE Complex,
Institutional Area, Lodhi Road,
New Delhi-110003
2. Union of India
Ministry of New and Renewable Energy,
Block-14, CGO Complex,
Lodhi Road, New Delhi-110003

Respondents

Petition No. 14/MP/2014

In the matter of

Petition for adjustment of tariff, extension of time for execution of project and other consequential reliefs

**And
In the matter of**

KVK Energy Ventures Private Limited
6-2-1109A/1 3rd Floor, Navabharath Chamber,
Raj Bhawan Road, Somajjguda,
Hyderabad- 500082

Petitioner

Vs

1. NTPC Vidyut Vyapar Nigam Ltd,
Core-7, SCOPE Complex,
Institutional Area, Lodhi Road,
New Delhi-110003
2. Ministry of New and Renewable Energy,
Block-14, CGO Complex,
Lodhi Road, New Delhi-110003

Respondents

**Petition No. 16/MP/2014
with I.A. No. 4/2014**

In the matter of

Petition under Section 79(1) (b) read with Section 79 (1) (f) of the Electricity Act, 2003 for adjustment of capacity utilization factor, extension of time for execution of project and other consequential reliefs.

**And
In the matter of**

MEIL Green Power Limited,
S2 Technocrat Industrial Estate,
Balanagar, Hyderabad-500 037
Andhra Pradesh

Petitioner

Vs

3. NTPC Vidyut Vyapar Nigam Ltd,
Core-7, SCOPE Complex,
Institutional Area, Lodhi Road,
New Delhi-110003
4. Union of India
Ministry of New and Renewable Energy,
Block-14, CGO Complex,
Lodhi Road, New Delhi-110003

Respondents

Petition No. 41/MP/2014

In the matter of

Petition for adjustment of capacity utilization, adjustment of tariff, extension of time for execution of project and other consequential reliefs

And

In the matter of

Aurum Renewable Energy Limited,
"Aurum Platz" B N Cross Lane
Pandita Ramabai Marg
Mumbai- 400007

Petitioner

Vs

1. NTPC Vidyut Vyapar Nigam Ltd,
Core-7, SCOPE Complex,
Institutional Area, Lodhi Road,
New Delhi-110003

2. Union of India
Ministry of New and Renewable Energy,
Block-14, CGO Complex,
Lodhi Road, New Delhi-110003

Respondents

Petition No. 42/MP/2014

In the matter of

Petition for adjustment of tariff, extension of time for execution of project and other consequential reliefs

And

In the matter of

Corporate Ispat Alloys Limited,
601, Tulsiani Chambers, Nariman Point,
Mumbai- 44002

Petitioner

Vs

1. NTPC Vidyut Vyapar Nigam Ltd,
Core-7, SCOPE Complex,
Institutional Area, Lodhi Road,
New Delhi-110003

2. Union of India
Ministry of New and Renewable Energy,
Block-14, CGO Complex,
Lodhi Road, New Delhi-110003

Respondents

Following were present:

1. Shri C.S. Vaidyanathan, Senior Advocate, DSPL
2. Shri Ramjee Srinivasan, Senior Advocate, MEIL
3. Shri M.G. Ramachandran, Advocate, NVVNL
4. Ms. Sakya Chowdhary, Advocate, DSPL & KEVPL & MGPL
5. Ms. Mandakini Ghosh, Advocate, DSPL & KEVPL & MGPL
6. Ms. Kanika Chugh, Advocate, DSPL & KEVPL & MGPL
7. Shri Sitesh Mukherjee, Advocate, DSPL & KEVPL & MGPL
8. Shri Shantanu Singh, Advocate, DSPL & KEVPL & MGPL
9. Ms Anushree Badhan, Advocate, NVVNL
10. Shri Dharmendra Singh, NVVNL
11. Shri N.M. Venu Goel, Trilegal
12. Shri Pravesh, DSPL
13. Shri Sanjay Vanghere, DSPL

Interim Order

These Petitions have been filed by Diwakar Solar Projects Limited, KVK Energy Ventures Private Limited, Corporate Ispat Alloys Limited, Aurum Renewable Energy Limited and MEIL Green Power Limited praying for revision of tariff under Article 9 of the PPA on account of variation in DNI level and variation in foreign exchange rate, and for an order restraining NTPC Vidyut Vyapar Nigam Limited (NVVNL) from invoking the Performance Bank Guarantee for any delay in achieving the Scheduled Commissioning Date (SCD) beyond 9.3.2014.

2. These Petitions were listed for hearing on the issue of maintainability and for considering the prayer for an interim order restraining NVVNL from invoking the

Performance Bank Guarantee beyond 9.3.2014. The matters were argued at length by the learned senior counsel for Diwakar Solar Projects Ltd (DSPL), the learned counsel for other petitioners and the learned counsel for NVVNL. Learned Counsel appearing for NVVNL submitted that the Commission has the jurisdiction to adjudicate the dispute raised in the petitions. On the issue of maintainability of the petitions, the arguments remained inconclusive.

3. Learned Senior Counsel for DSPL pleaded that the Solar Power Developers submitted a joint representation dated 21.5.2012 to the Ministry of New & Renewable Energy (MNRE) highlighting the difficulties attributable to the DNI variance affecting the engineering and procurement activities and the overall project schedules. In response to the above representation, MNRE formed an Expert Committee to study the issues raised in the representation. Based on the recommendations of the Expert Committee, MNRE amended Clause 1.5 and 3.12 of the Guidelines for Selection of New Grid Connected Solar Power Projects (Guidelines) under the Jawaharlal Nehru National Solar Mission (JNNSM) by granting the solar power developers an extension of additional 10 months and allowing the commissioning date to be 38 months from the date of the PPA. Accordingly, the PPA was amended and as per the amended PPA, SCD of the petitioner is 9.3.2014. Learned Senior Counsel submitted that the period of 10 months extension in SCD is inadequate in case of the petitioner considering the size and technology applicable to its projects based on parabolic trough technology with thermal storage of 4 hours. Learned Senior Counsel submitted that the petitioner took up the matter with Joint Secretary, MNRE and Chief Executive Officer, NVVNL vide

letter dated 21.8.2013 which inter-alia contained a request for extension of SCD by 18 clear months for execution of the project. Learned Senior Counsel submitted that the said representation has not been disposed of by MNRE. However, NVVNL replied vide its letter dated 11.9.2013 asking petitioner to sign the amendment to the PPA and furnish BG/extension to BG. Learned Senior Counsel submitted that unless the SCD specified in the PPA is postponed for a clear period of 18 months from the date of disposal of the petition, the petitioner will suffer in the form of encashment of bank guarantee in the event of delay in SCD of the project beyond 9.3.2014, apart from the liquidated damages in terms of the Article 4.6 of the PPA. Learned Senior Counsel prayed for an ad-interim directions restraining NVVNL from encashing the BG after 9.3.2014.

4. The Learned Senior Counsel appearing for MEIL and the Learned Counsel appearing for other petitioners adopted the arguments made by Learned Senior Counsel appearing for DSPL.

5. Learned Counsel for NVVNL resisted the prayers of the petitioners to restrain NVVNL from encashing the Performance Bank Guarantee.

6. We have heard the Counsels for the parties. We notice that in the solar projects covered under the petitions have been selected in accordance with the Guidelines. It is further noticed that the SCD of the solar thermal projects were extended under the

Guidelines based on the recommendations of the Expert Committee. Para 4.4 of the Guidelines provides as under:-

"4.4 Power to Remove Difficulties

If any difficulties arise in giving effect to any provision to these guidelines or interpretation of the guidelines or modification to the guidelines, the Secretaries of the Ministry of Power and the Ministry of New and Renewable Energy shall jointly meet and decide the matter which will be binding on all parties concerned.

Any inconsistencies due to oversight may be rectified after obtaining the approval from the Secretaries of the Ministry of Power and the Ministry of New and Renewable Energy."

7. The encashment of Performance Bank Guarantee is linked to the SCD of the project which is going to expire on 9.3.2014. In our view, the petitioners should have approached MNRE for consideration of their requests for extension of SCD under para 4.4 of the Guidelines as quoted above. However, the petitioners have failed to take up the matter with the concerned authority for this purpose. Considering the requests made by the petitioners, we deem it appropriate to direct the petitioners to approach the MNRE within a week, under para 4.4 of the Guidelines for consideration of their request for extension of SCD. Such applications, if made by the petitioners, may be considered by concerned authorities mentioned in para 4.4 of the Guidelines within a period of two weeks thereafter. We direct NRVNL not to encash the Performance Bank Guarantee of the petitioners till that time. It is, however, clarified that NRVNL shall be at liberty to encash the Performance Bank Guarantee anytime after three weeks of this order if no time extension for SCD is allowed by the concerned authorities.

8. The petitions shall be notified for further hearing on the issue of maintainability in due course.

9. I.A. No.4/2014 in Petition No.16/MP/2014 and prayers in other petitions for ad interim order with regard to Performance Bank Guarantee are disposed of in terms of the above.

sd/-
(A.K. Singhal)
Member

sd/-
(M Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson