

**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: 20.3.2014

Date of Order : 21.3.2014

I.A. No.7/2014

in

Petition No. 41/MP/2014

In the matter of

Application for stay

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

I.A.No.8/2014

in

Petition No. 14/MP/2014

In the matter of

Application for stay

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

I.A. No. 09/2014

in

Petition No. 327/MP/2013

In the matter of

Application for stay

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

I.A.No. 10/2014

in

Petition No. 42/MP/2014

In the matter of

Application for stay

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

I.A.No. 11/2014

in

Petition No. 16/MP/2014

In the matter of

Application for stay

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

I.A.No. 12/2014
in
Petition No. 313/MP/2013

In the matter of
Application for stay

And in the matter of
Rajasthan Sun Technique Energy Pvt. Ltd,
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 Parag Tripathy, Senior Advocate, DSPL
2. Shri Ramjee Srinivasan, Senior Advocate, MEIL
3. Ms. Sakya Chowdhary, Advocate, DSPL, KEVPL & MGPL
4. Ms. Mandakini Ghosh, Advocate, DSPL, KEVPL & MGPL
5. Ms. Kanika Chugh, Advocate, DSPL, KEVPL & MGPL
6. Shri Sitesh Mukherjee, Advocate, DSPL & KEVPL & MGPL
7. Shri Shantanu Singh, Advocate, DSPL & KEVPL & MGPL
8. Shri M.G. Ramachandran, Advocate, NVVNL
9. Ms Anushree Badhan, Advocate, NVVNL
10. Shri Dharmendra Singh, NVVNL
11. Shri Pravesh, DSPL
12. Shri Sanjay Vanghere, DSPL
13. Shri Umesh Bajpai, MEIL
14. Shri N.M.Venugopal, MEIL
15. Shri Hasan Murtaza, Advocate, RSTEPL

Order

The Commission in its order dated 28.2.2014 in Petition No. 323/MP/2013 and other related petitions had issued the following directions:

"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 NVVNL not to encash the Performance Bank Guarantee of the petitioners till that time. It is, however, clarified that NVVNL 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."

2. The petitioners made a combined representation dated 5.3.2014 to the Ministry of New and Renewable Energy (MNRE) for extension of time of the Scheduled Commissioning Date (SCD) in a favourable manner and for direction to NVVNL against encashment of Bank Guarantee in the interim period. MNRE in its letter dated 14.3.2014 wrote to the Commission and requested the Commission to extend the specified period of two weeks for consideration of Solar Power Developers' (SPDs) representation by the concerned authorities as mentioned in para 4.4 of the Guidelines till the Model Code of Conduct issued by the Election Commission of India is in force or till the end of the ongoing election process. The relevant portions of the said letter dated 14.3.2014 are extracted as under:

"2. The Order has, inter-alia, directed 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 and states that their such applications may be considered by the concerned authorities mentioned in para 4.4 of the Guidelines within a period of two weeks thereafter. Consequent to this Order, all the seven SPDs have submitted a

joint representation to Secretary, MNRE on 7/3/2014 i.e. within the time limit of 1 week specified by CERC and as per CERC's Order, MNRE is expected to take a view on the same within a period of two weeks thereafter, i.e., by 21/3/2014.

3. This Ministry has decided to depute an Expert Committee along with NVVN officials to visit these plants at the earliest to make a firsthand assessment of their current status and also of any bottlenecks to their speedy completion. Its report will facilitate this Ministry in taking further view on the SPDs request for extension of SCD. The Committee's visit, however, is likely to take at least 10-12 days and a decision thereafter taking into consideration the Committee's report will need to be taken in consultation with NVVN and Minister (NRE). Meanwhile, due to the ensuing General Elections, the Code of Conduct has come into force which precludes the Ministry from taking major policy decision.

4. Considering these factors, it is requested that CERC may consider to extend the specified period of 2 weeks for consideration of the SPDs representation by the concerned authorities mentioned in para 4.4 of the Guidelines at least till the Code of Conduct is in force/end of the election process."

3. The petitioners have filed IAs to pass an order for restraining NTPC Vidyut Vyapar Nigam Limited (NVVNL) from invoking the Performance Bank Guarantee till final adjudication of the present petitions.

4. Learned senior counsel for Diwakar Solar Power Limited submitted that in the light of the request of MNRE to extend the time for consideration of the prayers of the petitioners till the end of election process, the Commission may consider to direct NVVN not to encash the Performance Bank Guarantee till their representation is disposed of by the concerned authorities. Learned Senior Counsel for MEIL Green Energy Limited submitted that MNRE has set up Expert Committee to examine the issue to facilitate the MNRE in taking view on the SPDs request for extension of time. However, owing to ensuing general election, the Model Code of Conduct has come into force and MNRE is not able to take any decision in this regard. Therefore, MNRE has requested the

Commission to extend the specified period of two weeks for consideration of the request of the petitioners for extension of SCD. Learned counsel requested the Commission to issue directions to NVVNL not to encash the bank guarantees till the decision is taken by concerned authorities. Learned counsel for other petitioners adopted the arguments of learned senior counsel.

5. Learned Counsel for NVVNL objected to the prayers of the petitioners for restraining NVVNL from encashment of Performance Bank Guarantee. Learned counsel submitted that though the petitioners had made a request to MNRE regarding directions to NVVNL against encashment of Bank Guarantee, no order in this regard has been passed by MNRE. Learned counsel submitted that the Commission may pass appropriate order in the matter.

6. We have heard the learned counsels for the parties. After considering the letter of MNRE, we deem it appropriate that time should be granted to the concerned authorities in terms of para 4.4 of the Guidelines to take a decision in the matter after the completion of the election process. Accordingly, we allow time till 30.6.2014 to the concerned authorities to consider and dispose of the representation of the petitioners. Till that time, NVVN is directed not to encash the Performance Bank Guarantee of the petitioners. The petitioners are directed to keep the Performance Bank Guarantee valid taking into account the extended time up to 30.6.2014 in line with terms and conditions of their respective PPAs.

7. The IAs are disposed of in terms of the above.

Sd/-
(A.K. Singhal)
Member

sd/-
(M Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson