

**CENTRAL ELECTRICITY REGULATORY COMMISSION2
NEW DELHI**

Petition No. 2/TDL/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 14th of October, 2016

In the matter of

Application for grant of inter-State Trading Licence to NTPC Limited

And

In the matter of

NTPC Limited
NTPC Bhawan, Core-7, Scope Complex,
7 Institutional Area, Lodhi Road,
New Delhi-110 003

....Petitioner

The following were present:

Shri M.G. Ramachandran, Advocate, NTPC

Shri Shubham Arya, Advocate, NTPC

Shri S.K. Mandal, NTPC

ORDER

The petitioner, NTPC Limited, a company registered under the Companies Act, 1956 (1 of 1956) has made the present application under sub-section (1) of Section 15 of the Electricity Act, 2003 (hereinafter referred to as "the Act") read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading licence and other related matters) Regulations, 2009 (hereinafter referred to as "Trading Licence Regulations") amended from time to time, for grant of Category 'I' licence for inter-State trading in electricity in all States and Union Territories of India.

2. The petitioner has submitted that Ministry of New and Renewable Energy (MNRE) vide its letters dated 5.3.2015 conveyed the sanction of the President of India for implementation of a scheme for setting up of 15000 MW grid connected solar PV Power plants through NTPC under National Solar Mission in a span of 5 years from 2014-15 to 2018-19 in three tranches as mentioned below:

a)	Tranche I	3000 MW	2014-15 to 2016-17
b)	Tranche II	5000 MW	2016-16 to 2017-18
c)	Tranche III	7000 MW	2016-17 to 2018-19

3. The petitioner has submitted that NTPC's overall role in the MNRE scheme shall be limited to selection of Solar Power Developers (SPDs) for the targeted capacity/trading of solar power and would not involve any investment in the solar power projects. The petitioner has further submitted that the Solar Power generated from the selected plants shall be purchased directly by NTPC at the tariff determined for each of the SPDs through the e-bidding process and thereafter NTPC will bundle the Solar Power with unallocated thermal power from coal based generating stations of NTPC and sell the bundled power to Beneficiary States at weighted average tariff of the solar and thermal components alongwith the trading margin on the bundled power as per MNRE guidelines. Accordingly, the petitioner has filed the present application for grant of inter-State trading licence to discharge its obligations under the MNRE Scheme.

4. The Commission has already granted an inter-State Trading Licence to NTPC Vidyut Vikas Nigam (NVVN) which is a 100% subsidiary of NTPC. The Commission directed the petitioner to explain as to why NVVN cannot purchase electricity from the

solar power developer and sell electricity to the distribution licensee under the MNRE Scheme. The petitioner vide its affidavit dated 1.7.2016 has submitted that Government of India has sanctioned for implementation of a scheme for setting up of 15000 MW grid connected solar PV Power plants under National Solar Mission in a span of 5 years from 2014-15 to 2018-19 in three tranches. In order to facilitate the promotion of solar energy, MNRE have envisaged the involvement of NTPC to give comfort to the Solar Power Developers to participate in the National Solar Mission and establish Solar Power Projects of substantial higher capacity. Therefore, the policy of the Government of India and the bundling of thermal power generated by NTPC Generating Stations with Solar Power to be purchased from the Solar Power Developers have necessitated the involvement of NTPC as the purchaser and seller of electricity. Though, NTPC does not intend to undertake trading activity and act as an electricity trader as a normal business activity, the involvement of NTPC to undertake trading is restricted to the purchase of electricity from the Solar Power Developers and sale of electricity after bundling with the thermal electricity generated by NTPC. The petitioner has submitted that in the absence of trading licence, NTPC will not be able to undertake its obligations as per the scheme envisaged in the National Solar Mission.

5. During the hearing of the petition on 26.7.2016, learned Counsel for the petitioner submitted that in the absence of a trading licence, NTPC would not be able to undertake the purchase of electricity from the Solar Power Developers and resell the electricity to the distribution licensee as per the scheme envisaged in the National Solar Mission. The petitioner was directed to submit the following information:-

- (a) The formula to undertake trading in electricity by NTPC and NVVN.
- (b) Audited special balance sheet, profit and loss account along with notes of in respect of NTPC as on any date falling within 30 days immediately preceding the date of making the application.
- (c) Details of loans and advance to associates as on date of special balance sheet.
- (d) Shareholding pattern of the company.

6. The petitioner vide its affidavit dated 24.8.2016 ha submitted the required information in respect of balance sheet, loan and advance to associates, and shareholding pattern of the company. As regards the formulae for undertaking trading in electricity by NTPC and NVVN, the petitioner has submitted that NTPC has established NVVN as a wholly owned subsidiary to undertake trading activities in electricity. The Commission has granted inter-State Trading Licence to NVVN on the basis of the credit worthiness and capital adequacy and other norms of NTPC. NVVN has been acting as an electricity trader for the past 12 years as an independent legal entity. The petitioner has submitted that on account of direct involvement of NTPC as the policy decision of the Government of India in regard to the National Solar Mission, it has become necessary for NTPC to conduct purchase and sale of electricity for which NTPC has approached the Commission for grant of trading licence. In response to the direction of the Commission to NTPC to consider the alternatives which would serve the purposes for which NTPC is seeking trading licence and at the same time, the existing

licence of NVVN is effectively used, the petitioner has submitted that grant of inter-State Trading Licence to NTPC would facilitate the National Solar Mission. As regards the alternatives, the petitioner has suggested that following may be clarified in the order that the purpose for which NTPC has applied for the trading licence can be sorted out, consistent with the scheme under the National Solar Mission. The petitioner has suggested the following alternatives:

(a) The Commission may permit and direct NVVN to be added as a party to the Agreements which have been/are required to be entered into with the Solar Power Developers and also, with the Distribution Licensee on a back to back basis.

(b) The transaction of purchase of electricity from the solar power developers and re-sale thereof to Distribution Companies be directed to be covered under the inter-State Trading Licence of NVVN and therefore, being authorized in accordance with law, notwithstanding NTPC is a party to the transaction and does not hold any licence. The inter-State Trading Licence given to NVVN, when NVVN is the wholly owned subsidiary, may be permitted to be utilized for purchase and re-sale of electricity involving NTPC.

(c) NTPC as a commercial arrangement, enter into such agreement as it thinks appropriate with the SPD, notwithstanding that the purchase of electricity from SPD requires a licence.

7. The petitioner has further submitted that as per the directions of MNRE, the petitioner has already entered into large number of Power Purchase Agreements with many of the Solar Power Project Developers and corresponding Power Supply Agreements with different beneficiary, distribution companies. The petitioner has suggested that keeping these facts in view, alternative (b) may be considered more suitable for the petitioner.

8. We have considered the submission of the petitioner. NVVN which is a fully owned subsidiary of NTPC has been granted a Category '1' inter-State Trading Licence by the Commission based on the networth and credit worthiness of NTPC. Even though, NVVN is a separate legal entity, NTPC exercises pervasive control over the management and operation of NVVN. The issue for consideration is whether there is any legal embargo for NVVN to undertake trading on behalf of NTPC for the purchase of power from the Solar Power Developers and sale of the said power to the distribution companies after bundling with the thermal power of NTPC. Section 14 of the Electricity Act, 2003 (the Act) provides that "no person shall undertake trading electricity unless he is authorized to do so by a licence issued under Section 14". Section 14 of the Act provides that an Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person to undertake trading electricity as an electricity trader in any area as may be specified in the licence. The term "person" has been defined in Section 2 (49) of the Act to include "any company or body corporate or association or body of individuals whether corporate or not or artificial juridical person". Thus, any company is eligible for grant of trading licence subject to its fulfilling the relevant provisions of the Act and Trading Licence Regulations. The Company may be

a holding company or a subsidiary company. The Companies Act, 2013 define the subsidiary company as under:

“87. “Subsidiary Company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries.”

In the present case, NTPC holds 100% equity shareholding of NVVN and the Board of Directors of NTPC is also the Board of Directors of NVVN. Therefore, there is pervasive control of NTPC on the management and operation of NVVN. In other words, NTPC takes all decisions on behalf of NVVN. Viewed in this context, the inter-State Trading Licence issued to NVVN can be utilized by its holding company NTPC for purchase of power from the Solar Power Developers and sale of the said power to distribution companies after bundling with the power of NTPC. The Commission is of

the view that there is no requirement to issue a separate licence to NTPC in the facts of the present case.

9. The Commission had directed NTPC to suggest alternative mechanisms under which the existing licence of NVVN can be utilized to serve the purpose for which NTPC is seeking trading licence. NTPC has submitted three alternatives which have been quoted in para 6 of this order. The third alternative lacks clarity and accordingly, has not been considered. The first alternative is to direct NVVN to be added as a party to the agreements which have been or are required to be entered into with the Solar Power Developers and also with the distribution companies on back to back basis. This alternative requires the Commission to issue directions to the existing contracting parties to modify the contract in order to make NVVN party to the PPA or PSA as the case may be. It is a cardinal principle of Contract Law that the parties should enter into agreement through their free consent. The Solar Power Developers and the distribution companies are not parties to the petition and therefore, no direction can be issued with regard to inclusion of NVVN as a party to the PPA/PSA without hearing these parties. The second alternative suggested by NTPC is that NVVN be directed to undertake the transaction for purchase of electricity from the Solar Power Developers and sale thereof to the distribution companies, notwithstanding the fact that NTPC is a party to the transaction and does not hold any licence. NTPC has further suggested that the licence for inter-State trading issued to NVVN when NVVN is a wholly owned subsidiary, may be permitted to be utilized for purchase and re-sale of electricity involving NTPC. We are of the view that the second alternative suggested by NTPC requires serious consideration. As already held, NVVN is a wholly owned subsidiary of NTPC which

exercises persuasive control over the management and operation of NVVN. Moreover, NTPC in fulfillment of its obligations under the National Solar Mission is required to purchase power from the Solar Power Developers and sell it to the distribution companies after bundling the same with thermal power. Since, the process involves purchase and sale of solar power which has been recognized as trading activity under the Act, NTPC requires a licence to undertake such activity. Since NVVN which is wholly owned subsidiary of NTPC has been issued a Category I inter-State trading licence, we are of the view that NTPC can utilize trading licence issued to NVVN in order to fulfill its obligations under the National Solar Mission. Therefore, the Commission permits NTPC to utilize the licence issued to NVVN, its wholly owned subsidiary, to purchase solar power from Solar Power Developers and sell it to the distribution companies. The billing for purchase and sale of solar power shall be made in the name of NVVN but settlement of the tariff and other dues shall be made by NTPC in terms of the provisions of the PPA or PSA as the case may be. This will obviate the need for any change in the PPA or PSA that NTPC has entered with the Solar Power Developers or the distribution companies respectively. NTPC shall work out the procedure for effecting this arrangement. It is clarified that this special dispensation has been given by the Commission keeping in the furtherance of the objective of procurement and sale of solar power in a viable manner under National Solar Mission being Ministry of MNRE and Government of India Programme to provide comfort to the development for the bankability of the Solar Project and shall not be quoted as precedent.

10. In view of our above decision, it is not necessary to examine the network of NTPC and other requirements for grant of trading licence.

11. The petition No. 2/TDL/2016 is disposed of in terms of the direction in para 9 above.

sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson