

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**I.A. No.8 of 2017 in  
Petition No. 16/MP/2014**

Subject : Application under Section 94(2) of the Electricity Act, 2003 read with Regulation 68 of the Central Electricity Regulatory Commission (Conduct of Business Regulations), 1999 for urgent interim orders filed on behalf of the petitioner.

Date of hearing : 27.3.2017

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member

Petitioner : Megha Engineering and Infrastructure Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. & Others.

Parties present : Shri Avijeet Lala, Advocate, MEIL  
Shri N.M. Venugopal, Advocate, MEIL  
Ms. Molshree Bhatnagar, Advocate, MEIL  
Ms. Manpreet Kaur, Advocate, MEIL  
Shri M.G. Ramachandran, Advocate, NVVNL  
Ms. Anushree Bardhan, Advocate, NVVNL  
Ms. Suparna Seshadhri, Advocate, PSPCL

**Record of Proceedings**

Learned counsel for the petitioner submitted that the present Interlocutory Application has been filed directing NVVNL to keep in abeyance the letters regarding compensation for short supply of minimum committed energy in the contract years 2014-15 and 2015-16 till final the decision in the petition. Learned counsel further submitted as under:

(a) As per Article 4.4.1 of the amended PPA, in a contract year, in the event the applicant is not able to generate even minimum energy of 91.980 MUs (21%) on account of reasons solely attributable to itself, it will be liable to compensate NVVNL. Article 4.8.33 of the PPA provides that in the event CUF of the project falls below 23% or is below 25% for a consecutive period of three months during a contract year for reasons solely attributable to the applicant, MEIL will compensate NVVNL to the extent of the amount levied by particular distribution licensees on NVVNL for non-supply of power by the applicant.

(b) In the present case, the reduction/shortfall in the generation is not attributable to the petitioner and solely due to reduction of applicable DNI. The fall in DNI is for reasons beyond the control of the petitioner.

(c) NVVNL, despite being aware of the difficulties being faced by the petitioner due to reduced DNI has sought compensation vide letters dated 21.8.2015, 12.10.2016, 16.12.2016 and 27.12.2016 for the contract years 2014-15 and 2015-16 in terms of Article 4.4.1 of the PPA due to shortfall in supply of minimum power. NVVNL cannot impose penalty upon the petitioner for eventualities which are beyond its reasonable control.

2. In its rebuttal, learned counsel for NVVNL submitted that the issue in the present IA is squarely covered by the Commission's ROP dated 3.1.2017 in Petition No. 304/MP/2013. Learned counsel submitted that the amount claimed by NVVNL from the petitioner for compensation for shortfall in the generation and supply of electricity is in the nature of liquidated damages specifically provided in Article 4.4.1 of the PPA and such liquidated damages as per the contract cannot be denied. In support of his arguments, learned counsel for NVVNL relied upon the judgment of the Hon'ble Delhi High Court in Dalmia Solar Power Ltd. V/s. NTPC Vidyut Vyapar Nigam Ltd. {O.M.P. (Comm.) 120/2007}.

3. Learned counsel for PSPCL submitted that despite reminders, the petitioner has not served copy of the IA on PSPCL and sought time to file reply.

4. After hearing the learned counsels for the petitioner and respondents, the Commission directed the petitioner to serve copy of the I.A. on PSPCL immediately.

5. The Commission directed PSPCL to file its reply to the I.A. on affidavit, on or before 3.4.2017 with an advance copy to the petitioner. The Commission directed the petitioner and NVVNL to file their written submissions on or before 3.4.2017 with copy to each other. The Commission directed the parties that due date of filing the reply, and written submissions should be strictly complied with. No extension shall be granted on that account.

6. The Commission directed to list the I.A. for hearing on 5.4.2017.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Legal)**