

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 57/2016
inPetition No.304/MP/2013**

Subject : Interlocutory Application seeking immediate stay of the Compensation Bill dated 12.10.2016 issued by Respondent No.1, NVVNL during pending of the petition under section 79(1)(b) read with Section 79(1)(f) of the Electricity Act,2003 and in the matter of adjustment of generation tariff and other consequential reliefs.

Date of hearing : 7.2.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : M/s Godavari Green Energy Limited

Respondents : NTPC Vidyut Vyapar Nigam Limited and Others

Parties present : Shri A. Mariarputham, Senior Advocate, GGEL
Shri Amit Arora, Advocate, GGEL
Shri Raunak Jain, Advocate, GGEL
Ms. Anuradha Arputham, Advocate, GGEL
Shri Avneesh Arputham, Advocate, GGEL
Shri Viney Agrawal, GGEL
Shri M.G. Ramachandran, Advocate, NVVNL
Ms. Anushree Bardhan, Advocate, NVVNL

Record of Proceedings

At the outset, learned counsel for NVVNL submitted that NVVNL has claimed Liquidated Damages against the petitioner in terms of the provisions of the PPA dated 10.1.2011 as amended by Amendment No. 1 dated 28.11.2011. In support of his arguments, learned counsel relied upon the Hon'ble Supreme Court's judgments dated 9.1.2015 and 4.2.2015 in Civil Appeal No. 193 of 2015 [*Kailash Nath Associates V. Delhi Development Authority*] and Civil Appeal Nos. 1440-41 of 2015 [*Construction and Design Service V. Delhi Development Authority and another*] respectively, Hon'ble High Court of Delhi's judgment dated 8.9.2016 in OMP No. 410/2015 and I.A. No. 15360/2015 [*Saisudhir Energy Limited V. NTPC Vidyut Vyapar Nigam Limited*] and High Court of Bombay judgment in Appeal No. 881 of 2005 [*Ultratech Cement Ltd., V. Sunfield Resources Pvt. Ltd.*] Learned counsel for NVVNL further submitted as under:

- (a) For the financial year 2013-14 and 2014-15, Rajasthan Discoms have adjusted a claim of Rs. 14.12 crore from NVVNL for non-supply of power qua

the petitioner and accordingly, they have claimed the same from the petitioner.

(b) Rajasthan Discoms are making a claim of Rs. 143.84 crore (pending as on October, 2016) for the financial year 2015-16 and had withheld bills of the NVVNL.

(c) During the pre-bid meeting, it was made clear to the bidders (including the petitioner) that the 'Deemed Generation' is not permitted.

(d) From the conjoint reading of the Articles 4.4.1 and 4.8.3 of the PPA, it can be inferred that the petitioner has to generate energy of 98.550 MUs at the delivery point to avoid liability to pay compensation and therefore, the same can be considered as the net amount of generation.

(e) Article 4.4.1 of the PPA begins with the obligation on the part of NVVNL to purchase in a contract year 129.210 MUs. Article 4.8.3 specifies the CUF of 24.5% in a contract year which translates into 107.31 MUs for a plant capacity of 50 MW. Article 4.4.1 which deals with the generation of minimum energy of 98.550 MUs, necessarily relates to the units to be injected into the grid for purchase by NVVNL at delivery point where metering is done and it cannot, therefore, be the actual quantum of units generated inclusive of units used for auxiliary consumption and adjustments for the units taken from the grid for such auxiliary consumption and start-up power, etc. In terms of Article 4.8.3, the petitioner would be liable for non-fulfillment of the obligation under the PPA if it generates less than 107.31 MUs which is the CUF at 24.5% and the liability shall be equal to the amount levied by the Discoms on NVVNL for non-supply of power by NVVNL.

2. Learned senior counsel for the petitioner submitted that Article 4.4.1 provides for energy generation of 98.550 MUs. However, as per Commission's regulations, the auxiliary consumption factor is 10% and if the same is applied to 107.31 MUs then the value comes to 96.58 MUs, which is different from the figure 98.550 MUs mentioned in Article 4.4.1. Therefore, the contention NVVNL regarding auxiliary consumption is not correct.

3. Learned senior counsel for the petitioner relied on clause 'd' of Article 11.3.1 (d) of the PPA and Article 7.3.1 (f) of the Power Sale Agreement (PSA) executed between respondent and the Discoms. Learned senior counsel submitted that from the conjoint reading of above two clauses it can be easily inferred that in the event where direction by STU/CTU affects the evacuation of power, it can be considered as Force Majeure, and therefore, the argument of 'deemed generation' is being raised.

4. After hearing the learned senior counsel for the petitioner and the learned counsel for NVVNL, the Commission directed the petitioner to file on affidavit by 23.2.2017, the full details of backing down instructions from SLDC/RLDC alongwith loss of generation in the year 2013-14, 2014-15 and 2015-16 as claimed by the petitioner.

5. The Commission directed the petitioner and NVVNL to file their written submissions with copy to each other, by 23.2.2017. The Commission directed that due date of filing the written submissions and replies should be strictly complied with failing which order would be passed based on documents available on record.

6. Subject to the above, the Commission reserved the order in I.A.

By order of the Commission

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