

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.180/MP/2018

Subject :Petition under (a) Section 79 (1) (f) of the Electricity Act, 2003, (b) Clause 3.11 read with Clause 4.5 of the MNRE Guidelines for implementation of scheme for selection of 3000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-II, Tranch-I for "State Specific Bundling Scheme" read with (c) Article 11 (Force Majeure) and Article 16.3 (Dispute Resolution) of Power Purchase Agreements dated 2.8.2016 executed between Solar Power Developers of Suzlon Energy Ltd. being (i) Alok Solarfarms Ltd. (ii) Abha Solarfarms Ltd. (iii) Shreyas Solarfarms Ltd. (iv) Heramba Renewables Ltd. with NTPC Ltd.

Date of Hearing : 5.6.2018

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioners : Suzlon Energy Ltd. and others

Respondents : NTPC Ltd. and others

Parties present :Shri Amit Kapur, Advocate for the Petitioners
Shri M.G. Ramachandran, Advocate for NTPC

Record of Proceedings

Learned counsel for the Petitioners mentioned the matter and submitted that the present petition has been filed *inter-alia* for seeking direction to NTPC Ltd. to not impose any liquidated damages and/or encashment of the Bank Guarantees for delay in achieving Scheduled Commissioning Date of the project due to force majeure events and not to take any coercive action against the Petitioners. Learned counsel for the Petitioners further submitted as under:

- (a) On 3.7.2015, NTPC issued a Request for Selection for grid connection Solar Photo Voltage projects under Batch-II Tranche-II of National Solar Mission Phase-II for development of cumulative capacity of 100 MW) in the State of Rajasthan. On 13.5.2016, Suzlon was declared a successful bidder. The allotted capacity of 60 MW was split by Suzlon into six parts and Suzlon submitted bank guarantee of Rs. 18 crore in favour of NTPC.
- (b) On 2.8.2016, the Petitioners entered into PPAs with NTPC. As per Article 1.1 of the PPA, SCOD of the project is 12.7.2017 i.e thirteen months from the effective date. On 25.8.2017, Solar Developers approached NTPC for

extension of time for commissioning of the project due to force majeure events which was rejected by NTPC vide its letter dated 12.9.2017.

- (c) On 3.11.2017, the Petitioners requested MNRE to issue suitable directions to NTPC for extension of SCOD by about 104 days without imposition of liquidated damages. MNRE has not disposed of representations/requests till date.
- (d) Bank guarantee is valid till 30.6.2018. On 11.5.2018, NTPC raised a conditional claim upon the Bank of Baroda for encashment of bank Guarantee in case bank Guarantee is not extended. Subsequently, NTPC vide its letter dated 30.5.2018 informed the Petitioners that in terms of Article 4.6 of the PPA, the Petitioners are liable to pay liquidated damages to NTPC for the delay in the commencement of the supply of power and for not making contracted capacity available for despatch by SCOD i.e. by 12.7.2017.
- (e) Learned counsel requested the Commission to direct NTPC not to take any coercive action against the Petitioners and to withdraw its demand for liquidated damages and threat for invocation of bank guarantee.

2. Learned counsel for NTPC submitted that NTPC has issued the letter dated 11.5.2018 and 30.5.2018 strictly as per the provisions of the PPA. Learned counsel further submitted that since no response was received from the Petitioners to the letter dated 11.5.2018, NTPC issued the letter dated 30.5.2018 for extension of bank guarantee. Learned counsel submitted that the letter dated 11.5.2018 was followed with the letter dated 30.5.2018, since no reply was furnished by the Petitioner.

3. With regard to the prayer of the learned counsel for the Petitioners to direct NTPC not to take any coercive measure during the pendency of the petition, the Commission directed the Petitioners to approach NTPC with a request for the same in the light of the NTPC's letters dated 11.5.2018 and 30.5.2018. Learned counsel for NTPC submitted that if the Petitioners make a request to NTPC and agrees to extend the validity of the bank guarantee, their request shall be considered favourably.

4. The Commission admitted the petition and directed to issue notice to the respondents. The Commission directed the Petitioners to serve copy of the petition on the respondents immediately, if not served already. The respondents were directed to file their replies, by 26.7.2018, with an advance copy to the Petitioners, who may file their rejoinders, if any, by 31.7.2018.

5. The petition shall be listed for hearing on 28.8.2018.

By order of the Commission

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