

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 340/MP/2018
along with the IA No. 95/2018**

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 16.3.1 of the Power Purchase Agreements executed between the Petitioners and NTPC Limited dated 12.5.2016, seeking release of Performance Bank Guarantees arbitrarily and illegally retained by NTPC Limited and seeking extension of time and deferral of the Scheduled Commissioning Date for the commissioning of two 70 MW solar power projects in accordance with Power Purchase Agreements dated 12.5.2016 executed under the National Solar Mission Phase-II, Batch-II, Tranche-I

Date of Hearing : 13.12.2018

Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member

Petitioners : Rising Sun Energy Private Limited and Others

Respondents : NTPC Limited and Others

Parties present : Shri Jafar Alam, Advocate, RSEPL
Shri Saahil Kaul, Advocate, RSEPL
Ms. Poorva Saigal, Advocate, NTPC
Shri I. Uppl, NTPC
Shri Nishant Gupta, NVVNL

Record of Proceeding

Learned counsel for the Petitioner submitted that the present petition has been filed inter *alia* for seeking direction to NTPC to release the Performance Bank Guarantee of Rs. 25.5 crore and pay damages for the period which the Performance Bank Guarantee has been illegally retained by NTPC. Learned counsel submitted that as per the PPA, the project was to be commissioned by 25.5.2017. However, it was commissioned on 18.7.2017 due to various force majeure events. Learned counsel submitted that as per Articles 3.2, 4.5 and 11 of the PPA, no liquidated damages can be imposed if the delay in commissioning the project is due to the force majeure event.

2. Learned counsel for the Petitioner submitted that the Petitioner has also filed Interlocutory Application (I.A.) for seeking stay on the encashment of Performance Bank Guarantee submitted by the Petitioner in favour of NTPC till disposal of the Petition.

3. Learned counsel for NTPC submitted that the Petitioner has not submitted the certificate from Implementing Agency which is required for validation of delay of project.

4. After hearing the learned counsel for the Petitioner and learned counsel for NTPC, the Commission admitted the Petition and directed to issue notice to the respondents.
5. Learned counsel for NTPC accepted notice on behalf of the NTPC
6. The Commission directed the Petitioner to serve the copy of the Petition on the respondents immediately, if not served already. The Commission directed the respondents to file their replies by 28.12.2018, with an advance copy to the Petitioner, who may file its rejoinder, if any, by 16.1.2019. The Commission directed that due date of filing the reply and rejoinder should be strictly complied with. No extension shall be granted on that account.
7. The Commission directed NTPC not to take any coercive measure against the Petitioner till the next date of hearing. Accordingly, the Commission disposed of the I.A No. 95/2018.
8. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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