

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Diary No. 74/2021

Subject: Petition filed under Section 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 along with Regulation 68 of the Central Electricity Regulatory (Conduct of Business) Regulations, 1999 read with terms of Power Purchase Agreement dated 8.4.2019 and Power Sale Agreement dated 25.3.2019 (along with supplementary agreements) *inter alia* seeking directions qua extension of timelines for fulfilment of Conditions Precedent along with interim relief from any coercive/ precipitative action by Respondents against the Petitioner.

Date of Hearing : 19.3.2021

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
Shri Prakash S. Mhaske, Member (ex-officio)

Petitioner : SB Energy Six Private Limited (SBESPL)

Respondents : NTPC Limited (NTPC) and Anr.

Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, SBESPL
Ms. Poorva Saigal, Advocate, NTPC

Record of Proceedings

The matter was mentioned today by the learned senior counsel for the Petitioner through video conferencing.

2. Learned senior counsel for the Petitioner submitted that the instant Petition has been filed in terms of the Power Purchase Agreement (in short, 'the PPA') dated 8.4.2019 entered into between the Petitioner and NTPC and Power Sale Agreement (in short 'the PSA') dated 25.3.2019, *inter alia*, seeking directions qua extension of timelines for fulfilment of condition precedent. Learned senior counsel mainly submitted the following:

(a) In terms of condition precedent as specified in the PPA/ PSA, if the PSPCL/NTPC fails to obtain requisite order from Punjab State Electricity Regulatory Commission (PSERC) on granting of adoption of tariff, trading margin to NTPC and procurement of contracted capacity by 31.3.2021, it will result in cancellation of PPA/PSA.

(b) While this Commission has already adopted the tariff under Section 63 of the Electricity Act, 2003 (in short, 'the Act') vide its order dated 24.2.2020 in Petition No.57/AT/2020, PSPCL has filed a Review Petition No. 27/RP/2020 against the said order on the aspect of trading margin, which is pending for consideration. Owing to this, Petition No. 23/2019 filed by PSPCL before PSERC, *inter alia*, seeking approval of power procurement under Section 86(1)(b) of the Act is also pending.



(c) In absence of extension in timelines for completion of condition precedent, the Petitioner apprehends the automatic termination/ cancellation of the PPA/PSA, which would be detrimental to its financial and commercial interest especially when such cancellation/termination will be for the reasons not attributable to the Petitioner since the obligations of completion of condition precedent are that of NTPC and PSPCL.

(d) In the above background, the Petitioner requested for early listing of the Petition.

3. Learned counsel for the Respondent, NTPC submitted that NTPC has already taken up the said matter with PSPCL and has sent a draft supplemental PSA for extension of timeline for fulfilment of condition precedent on 17.3.2021. However, the response of PSPCL thereon is awaited. The timeline for fulfilment of condition precedent has been extended from time to time by entering into supplemental PPAs and PSAs. However, owing to the back-to-back nature of PPA and PSA, NTPC cannot enter into a supplemental PPA with the Petitioner for further extension unless PSPCL enters into such supplemental PSA with NTPC. It was further submitted that NTPC has no objection to the extension of timeline for fulfilment of condition precedent. However, reply of PSPCL also needs to be considered on the above aspect.

4. After hearing the learned senior counsel for the Petitioner and learned counsel for the Respondent, NTPC, the Commission recorded the submission of the learned counsel for the NTPC that it is not contemplating the termination/cancellation of PPA with the Petitioner and as such it has no objection towards extension of timelines for completion of condition precedent.

5. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**SD/-
(T.D. Pant)
Joint Chief (Legal)**