



नईदिल्ली  
NEW DELHI

याचिका संख्या./ Petition No.: 203/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson  
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 04<sup>th</sup> August, 2021

**IN THE MATTER OF:**

Petition under Section 79 of the Electricity Act, 2003 read with Article 16.3.1 of the Power Purchase Agreements dated 02.05.2016 executed between the Petitioner and NTPC Limited, seeking extension of the Scheduled Commissioning Date for two 70 MW solar power projects established under the National Solar Mission Phase-II, Batch-II, Tranche-I and seeking refund of the amount wrongfully and forcibly collected by NTPC Limited purportedly as liquidated damages for delay in commencement of supply of power

**ANDIN THE MATTER:**

Solaire Surya Urja Private Limited,  
Office No. 203, Pentagon P3, 2nd Floor,  
Magarpatta City, Hadapsar, Pune - 411013.

**...Petitioner**

**Versus**

1. NTPC Limited,  
Through its General Manager (Commercial),

Core-7, SCOPE Complex,  
7 Institutional Area, Lodi Road, New Delhi – 110 003.

2. NTPC Vidyut Vyapar Nigam Limited,  
NTPC Bhawan, Core 7, SCOPE Complex,  
7 Institutional Area, Lodhi Road, New Delhi – 110 003.
3. Rajasthan Solar Park Development Company Limited,  
E-166, Yudhisthir Marg, C- Scheme, Jaipur – 302001.

**...Respondent**

**Parties Present:** Shri Sahil Kaul, Advocate, SSUPL  
Shri Venkatesh, Advocate, NTPC  
Shri Ashutosh Srivastava, Advocate, NTPC  
Shri Abhiprav Singh, Advocate, NTPC  
Shri Suhael Buttan, Advocate, NTPC  
Ms. Susan Mathew, Advocate, RSDCL/SPIA  
Shri Ishpaul Uppal, NTPC

### **आदेश/ ORDER**

The Petitioner, Solaire Surya Urja Private Limited, is a generating company and has developed two Solar PV power projects of 70 MW each in Plot No. 8 and Plot No. 10 of the Bhadla Solar Park Phase-II in Jodhpur District situated in the State of Rajasthan (collectively referred to as ‘the Solar Projects’). The Petitioner is seeking extension of the Scheduled Commissioning Date (SCD) for the Solar Projects established under the National Solar Mission (NSM) Phase-II, Batch-II, Tranche-I and also seeking refund of the amount wrongfully and forcibly collected by NTPC as liquidated damages for delay in commencement of supply of power.

2. The Respondent No.1, NTPC, was appointed by the Government of India to purchase and sell solar photo-voltaic power under the Government of India’s National Solar Mission.
3. The Respondent No. 2, NTPC Vidyut Vyapar Nigam Limited (NVTN), is a wholly owned subsidiary of NTPC. Under the Power Purchase Agreements, NVTN will purchase power on behalf of NTPC for further sale to distribution licensees.

4. The Respondent No. 3, Rajasthan Solar Park Development Company Limited (RSDCL), is the designated Solar Park Implementation Agency (SPIA) for the Bhadla Solar Park located in the State of Rajasthan.
5. The Petitioner has made the following prayers:
- a) *Declare that the delay in the commencement of supply from the 2x70MW solar power projects being developed by the Petitioner in Plot No. 8 and 10, Bhadla Solar Park Phase-II, Rajasthan, was caused due to unforeseen, unavoidable and uncontrollable reasons not attributable to the Petitioner and waive any liabilities or any consequences under the PPAs owing to the said delay;*
  - b) *Extend the Scheduled Commissioning Date of the 2x70 MW projects, being developed by the Petitioner in Plot No. 8 and 10, Bhadla Solar Park Phase-II, till the date of actual commissioning;*
  - c) *Declare that NTPC is not entitled to recover any monies towards liquidated damages or otherwise from the Petitioner;*
  - d) *Direct NTPC to immediately refund the amount of Rs. 7.06 crore wrongfully and illegally collected by it purportedly as liquidated damages, along with carrying costs at 14% per annum on the said amount, from 25.09.2018 i.e. the date on which the said amount was collected from the Petitioner till the date of refund;*
  - e) *Direct NTPC to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant Petition; and*
  - f) *Pass such other orders that this Commission deems fit in the interest of justice.*

### **Backdrop and Chronological Date of Events**

6. March, 2015: The Ministry of New and Renewable Energy (MNRE) issued 'Guidelines for selection of 3000 MW Grid-Connected Solar PV Power Projects under Batch-II' (in short,

“the NSM Guidelines”).

7. 21.05.2015: NTPC issued Request for Selection No. NTPC/2015-16/NSM/TI/RAJ/03 (RfS) under the NSM Guidelines.
8. 21.09.2015: Solairedirect Energy India Pvt. Ltd. submitted its bid in response to the RfS.
9. 18.01.2016: NTPC conducted online e-Reverse Auction and Solairedirect Energy India Pvt. Ltd. was selected as the successful bidder for setting up two projects of 70 MW each at Plot No.8 and Plot No.10.
10. 29.02.2016: NTPC issued letter of intent (LOI) in the name of Solairedirect Energy India Pvt. Ltd. for sale of capacity of 70 MW from each of the Solar Projects. Solairedirect Energy India Pvt. Ltd. thereafter formed a Special Purpose Vehicle in the name and style of Solaire Surya Urja Private Limited (the Petitioner).
11. 02.05.2016: The Petitioner executed two Power Purchase Agreements (PPAs) for each of the Solar Projects. As per the PPAs, SCD of the Solar Projects of the Petitioner was 01.06.2017. However, the Petitioner achieved the actual commissioning of the first project on 01.06.2017 for 50 MW and on 21.07.2017 for rest 20 MW. The Petitioner achieved the actual commissioning of the second project on 11.06.2017 for 40 MW and on 11.08.2017 for rest 30 MW.
12. 29.06.2016: The Petitioner executed ‘Implementation Support Agreement’ (ISA) with RSDCL/SPIA.
13. 15.05.2017: The Petitioner sought information on the availability of the necessary evacuation infrastructure from Rajasthan Vidyut Prasaran Nigam Ltd (RVPNL) which is the State Transmission Utility (STU) of State of Rajasthan.
14. 19.05.2017: RVPNL informed the Petitioner that evacuation infrastructure was not available at the Bhadla sub-station and that the same was likely to be made available tentatively by 15.06.2017.

15. 22.05.2017: The Petitioner informed NTPC about the status of 400/220 KV Bhadla sub-station and also informed that neither there was power evacuation margin at 220 KV GSS, Bhadla nor 400 kV line from Bhadla to Bikaner was operational. Further, the entire power evacuation shall be ready by 15.06.2017 (tentatively).
16. 31.05.2017: The Petitioner submitted an undertaking to RVPNL stating that after receiving connectivity of 50 MW, it would not inject any power in the grid without prior approval of STU.
17. 11.06.2017: The Petitioner submitted an undertaking to RVPNL stating that after receiving connectivity of 40 MW, it would not inject any power in the grid without prior approval of STU.
18. 20.06.2017: The Petitioner requested NTPC for an extension of SCD for the Solar Projects due to non-availability of the necessary transmission and evacuation infrastructure by RSDCL/SPIA.
19. 30.06.2017: NTPC informed the Petitioner to approach RSDCL/SPIA for any matter relating to connectivity or commissioning of the Solar Projects. NTPC further stated that it would impose liquidated damages for any delay in commencement of supply from the Solar Projects beyond the SCD.
20. 03.07.2017: The Petitioner informed RSDCL/SPIA that RVPNL had not permitted the Petitioner to inject power from the capacity already commissioned into the grid on account of transmission and evacuation constraints. Further, the transmission and evacuation constraints could take a few more weeks to get resolved.
21. 07.07.2017: RSDCL/SPIA addressed a letter to RVPNL requesting to enable unrestricted evacuation of power from the Bhadla Solar Park.
22. 04.08.2017: RVPNL informed RSDCL/SPIA that power evacuation from the 680 MW Bhadla Solar Park was being carried out through a single Inter-Connecting Transformer (ICT) having a capacity of 500 MVA and that the second ICT of 500 MVA was likely to be

commissioned only by 31.08.2017.

23. 19.08.2017: The Petitioner wrote to RSDCL/SPIA seeking 100% power evacuation i.e. 140 MW from the Solar Projects.
24. 13.10.2017: RSDCL/SPIA sought from the Petitioner, penalty amount due to delay in commissioning the projects under the provisions of the 'Implementation Support Agreements' dated 29.06.2016.
25. 17.01.2018 and 16.03.2018: The Petitioner submitted a detailed representation to RSDCL/SPIA and NTPC respectively requesting for resolution of delay in commissioning the Solar Projects.
26. 08.03.2018: NTPC wrote to the Petitioner regarding delay in the commencement of supply of power from 2 x 70 MW solar power projects to NTPC in terms of PPA dated 02.05.2016 and liquidated damages payable thereof and that they are entitled to invoke the performance bank guarantees (PBGs) for recovery of the liquidated damages.
27. 16.03.2018: The Petitioner wrote to NTPC wherein the chronology of events from May 2017 to September 2017 was explained and requested them for a chance to represent their case.
28. 13.04.2018: NTPC informed the Petitioner that it is liable to pay liquidated damages for the delay in the commencement of the supply and not making the contracted capacity available for despatch by the SCD i.e. 01.06.2017.
29. 07.05.2018: The Petitioner addressed a letter to NTPC requesting to consider the liquidated damages from the CEIG dates instead of commissioning dates.
30. 08.08.2018: NTPC issued demand letter to the Petitioner stating that the request for consideration of liquidated damages from CEIG dates instead of commissioning dates could not be accepted as same was not as per the PPA. Also, based on the letter dated 13.10.2017 received from RSDCL/SPIA, it was clarified to the Petitioner that there were no evacuation

constraints and the sub-station was complete. NTPC requested the Petitioner to deposit the LD amount payable latest by 14.08.2018.

31. 22.08.2018: The Petitioner requested NTPC not to encash the PBGs by 15.09.2018.
32. 24.09.2018: The Petitioner requested NTPC for providing the bank details to them to enable payment of due LD amount by RTGS. The details were provided to them and the amount was received on 25.09.2018. Thereafter, the PBGs for the project were released on 28.09.2018.
33. 25.09.2018: The Petitioner informed NTPC that no amount could have been collected from the Petitioner as liquidated damages for the delay in commencement of supply under the PPAs and NTPC is liable to refund the amount of Rs. 7.06 crore forcibly collected from the Petitioner purportedly on account of liquidated damages.
34. Hence the petition.

#### **Submissions of the Petitioner**

35. The Petitioner has submitted that it was required to commence supply of power from the Solar Projects by SCD i.e. 01.06.2017. However, the commencement of supply was delayed due to delay by RVPNL (STU) in providing transmission infrastructure for connectivity and power evacuation for the Solar Projects. The PPAs specifically provide *inter alia* at Articles 3.2, 4.5 and 11, that no penalty can be imposed on the Petitioner if the delay in commencement of supply of power from the Solar Projects is due to a delay related to the transmission infrastructure. As per Article 3.2, Article 4.5 read with Article 11.7 of the PPAs, the Petitioner is entitled to an extension in SCD of the Solar Projects as the delay in commencement of supply of power from the Solar Projects was due to delay in the availability of transmission infrastructure. Therefore, it is entitled to deferment of SCD by not less than 50 days for Project 1 and 71 days for Project 2.
36. The Petitioner has submitted that RSDCL/SPIA was required to provide connectivity and transmission infrastructure for the Solar Projects not later than SCD as per ISA dated 29.06.2016. The transmission and evacuation infrastructure was severely inadequate till much beyond SCD of the Solar Projects. As a result, the Petitioner could commission the Solar Projects and commence supply of power only in parts as and when adequate transmission and

evacuation capacity was made available by RVPNL.

37. The Petitioner has submitted that it was the absence of adequate transmission and evacuation infrastructure that it was could only partly commission 50 MW capacity of Project 1 by the SCD i.e. 01.06.2017 and 40 MW of Project 2 by 11.06.2017. Further, permission to inject power was granted subject to the Petitioner furnishing undertakings that it would not inject any power into the grid without prior permission of the officials of the RVPNL (STU). The said requirement establishes that the Petitioner was not permitted to inject power into the grid for the capacity commissioned since the already strained evacuation network of RVPNL could not have borne any further load.
38. The Petitioner has submitted that even after commissioning 90 MW capacity in June 2017, it was not permitted to commence any supply of power by RVPNL until fag end of July i.e. 26.07.2017. Even on the aforesaid date, the Petitioner was permitted to inject only 40 MW. While the permitted capacity was subsequently enhanced to 100 MW on 02.08.2017, the said capacity was later reduced to 40 MW on 06.08.2017 due to a transformer breakdown at the STU's substation.
39. The Petitioner has submitted that it commissioned and supplied power from its projects in parts as and when adequate evacuation capacity was made available by RVPNL. The Petitioner was permitted to inject the entire 140 MW capacity of the projects into the grid only by 25.08.2017 and the transmission and evacuation constraints in relation to the entire 680 MW capacity of the Bhadla Solar Park were resolved much later by 06.09.2017.
40. The Petitioner has submitted that in order to reliably evacuate the entire capacity of 680 MW of power being generated at the Bhadla Solar Park, RVPNL was required to commission at least two ICTs. ICT-1 was briefly available from 22.07.2017, after which it suffered a breakdown. Pertinently, ICT-1 was subsequently made available only after November 2017. ICT-2 was thereafter charged on 18.08.2017. Reliable evacuation of power was made available by STU in the Bhadla Solar Park only pursuant to charging ICT-3 on 06.09.2017, which was the first time when the required number of at least two ICTs (with a capacity of 500 MVA each) were functioning to evacuate the entire load of 680 MW generated in the Bhadla Solar Park.



41. The Petitioner has submitted that NTPC vide letters dated 13.04.2018 and 08.08.2018, demanded that the Petitioner pay an amount of Rs. 7.06 crore on account of liquidated damages for the alleged delay in the commencement of supply under the PPAs, failing to consider that delay in the commencement of supply was due to delay in the availability of adequate transmission and evacuation infrastructure. It could not have commenced supply of power by SCD in the absence of adequate transmission infrastructure.
42. The Petitioner has submitted that NTPC has not suffered any loss or damage due to the delay in the commencement of supply from the Solar Projects. Further, NTPC is not entitled to collect the said amount as liquidated damages since the said amount is excessive and in the nature of a penalty and not a genuine pre-estimate of loss.
43. The Petitioner has submitted that the amount of Rs. 7.06 crores is wrongfully, illegally and forcibly collected by NTPC purportedly as liquidated damages for the alleged delay in commencement of supply under the PPAs. The aforesaid amount was paid under protest as the payment was made under duress in order to avoid the invocation and encashment of the PBGs submitted by the Petitioner under the PPAs.
44. The Petitioner has submitted that in view of above, it is entitled to extension of SCD of the Solar Projects alongwith refund of Rs. 7.06 crores wrongfully and illegally collected by NTPC as liquidated damages, along with carrying costs @14% on the said amount, from 25.09.2018 i.e. the date on which the said amount was collected from it, till the date of refund.

**Submissions of Respondent No. 1 (NTPC)**

45. NTPC has submitted that the petition is liable to be rejected on account of the preliminary objection, namely, that the petition suffers from non-joinder of necessary parties. The Rajasthan Utilities (Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited, and Jodhpur Vidyut Vitran Nigam Limited) which are purchasing solar power generated by the Petitioner and purchased by NTPC while utilizing the trading license granted to NVVN on a back-to-back basis under the relevant PSA are necessary parties to the present proceedings. The PPAs as well as the bidding documents envisage sale of the solar power bundled with thermal power from coal-based stations of NTPC out of the unallocated quota of the Government of India (Ministry of Power) in the ratio of 2:1 by NTPC to the Rajasthan

Utilities under the PSAs. Accordingly, NTPC is an intermediary company which facilitates the purchase and resale of solar power, the beneficiaries of the solar power being the Rajasthan Utilities. The Rajasthan Utilities who have entered into PSAs with NTPC for purchase of solar power, which NTPC is procuring from the Petitioner, are, therefore, necessary parties to the present proceedings. Hence, the petition is not maintainable for non-joinder of the necessary parties namely, the Rajasthan Utilities.

46. NTPC has further submitted as under:

- a) It is wrong and denied that that the Petitioner has forcibly paid the amount under protest as the Petitioner in its communications has not mentioned anywhere that the LD amount is being deposited under protest. Further, NTPC has collected the LD amount within the terms of PPA signed with the Petitioner.
  
- b) In terms of Article 3.12.2 of the NSM Guidelines read with Article 3.3.4 and Article 4.6 of the PPAs dated 02.05.2016, NTPC is entitled to the payment of liquidated damages from the Petitioner for delay in commencement of supply of power and delay in making the contracted capacity available for dispatch by SCD, as in the present case. The above-mentioned provisions entitle NTPC to encash the Performance Bank Guarantee on a per day basis in proportion to the capacity not commissioned. The only exceptions to the above consequences provided in the PPA are as under:
  - i. If the Petitioner was prevented by Force Majeure event specified under Article 11. It is relevant to note that the events pleaded by the Petitioner do not constitute a Force Majeure Event.
  - ii. In terms of Article 4.5 of the PPA, if the Petitioner is prevented from commissioning the Solar Projects by SCD for reasons attributable to NTPC or if there is a delay from SPIA in giving possession of land and connectivity with STU/CTU system.
  
- c) The contention of the Petitioner that Articles 3.2, 4.5 and 11 of the PPAs provide that no liquidated damages can be imposed if the delay in commissioning of the Solar Projects is due to delay related to transmission infrastructure (as listed by the Petitioners) is not

admitted. The Petitioner has not been able to establish the delay in commissioning of the Solar Projects as a consequence of the said events.

- d) NTPC suffered a legal injury/ loss entitling it to the recovery of liquidated damages on account of non-availability of power from SCD to the actual COD in terms of the PPAs.
- e) The Petitioner is making contradictory statements about availability of the transmission infrastructure and evacuation infrastructure. The Petitioner has commissioned 50 MW out of 70 MW of project-I well in time. The balance 20 MW could also have been commissioned, had the Petitioner been ready for the same. From the commissioning readiness reports dated 19.04.2017 and 26.05.2017 issued by the Office of Electrical Inspector of Jodhpur, it is evident that as on 26.05.2017, 99 MW was ready for commissioning. The project readiness reports for the balance capacity were issued on 13.07.2017. Also undertaking for supply of 90 MW power from the Solar Projects was given by the Petitioner to Rajasthan Utilities on 31.05.2017. The same establishes that the Petitioner was not ready for the commissioning 20 MW and 30 MW projects on SCD i.e. 01.06.2017.
- f) The Petitioner vide its letter dated 07.05.2018 started requesting to consider the liquidated damages from the commissioning readiness dates issued by CEIG.
- g) The letter dated 13.10.2017 written by SPIA proves that there were no constraints imposed on commissioning of the projects by SPIA. Therefore, delay in commissioning of the Solar Projects is attributable to the Petitioner only.
- h) It is entitled to recover the liquidated damages in terms of the provisions of the PPAs for the contracted capacity and number of days of delay in the commencement of the supply of power. The details are as under:

	MW	SCD	Date Commissioned	Delay in days	Estimated Penalty (in Rs. crore) @ ₹20,000/MW/day
Project-1	50	01.06.2017	01.06.2017	NIL	NIL
	20		21.07.2017	50	2.00
Project-2	40		11.06.2017	10	0.80
	30		11.08.2017	71	4.26
Total Amount (excluding GST):					<b>7.06</b>

- i) It is entitled to recover Rs. 7.06 crore by encashing the PBGs. Therefore, the contention of Petitioner that “NTPC is liable to refund the amount of Rs. 7.06 Crores forcibly collected from the Petitioner purportedly on account of liquidated damages” is wrong.
- j) The PPA provides for the obligation of the Petitioner to commence supply of power from SCD. Article 4.6 deals with the consequences of non-commencement of supply of power from SCD in the form of liquidated damages.
- k) The Petitioner is not entitled to any refund of LD amount paid nor to get any carrying cost.
- l) The Petition is liable to be dismissed with cost.

### **Submissions of Respondent No. 3 (RSDCL/SPIA)**

47. RSDCL/SPIA has submitted that the present petition is filed u/s. 79 of the Electricity Act, 2003 read with Article 16.3.1 of the PPAs dated 02.05.2016. However, the present dispute does not fall under any of the issues mentioned in Article 16.3.1 of the PPAs dated 02.05.2016. As per Article 16.3.1 of the PPA, the disputes can be referred to the Appropriate Commission only under the following two circumstances stipulated therein:
- a) If the dispute arises from a claim made by any party for any change in or determination of the tariff or any matter related to tariff or claims made by any party which partly or wholly relate to any change in the tariff or determination of any of such claims could result in change in the tariff; or
- b) If the dispute relates to any matter agreed to be referred to the Appropriate Commission, such dispute shall be submitted to adjudication by the Central

Commission.

Hence, the present petition has been filed under the wrong provisions of law and, therefore, liable to be dismissed.

48. RSDCL/SPIA has submitted that on 02.12.2016, it had informed the Petitioner that 680 MW power including that of the Petitioner would be evacuated by 2 Nos. 220/132/33 kV pooling sub-stations which in turn would be evacuated to 400 kV RVPNL GSS Bhadla. Further, it was categorically mentioned in the said letter that the power generated by the Petitioner would be evacuated on 132 kV level to under-construction 220/132 kV pooling sub-station being developed by RSDCL/SPIA at Bhadla Solar Park Phase-II, which would further be evacuated to 400 kV GSS of RVPNL at Bhadla.
49. RSDCL/SPIA has submitted that the Petitioner vide its letter dated 08.05.2017 sought certain clarifications with regard to the evacuation of power from the Solar Projects. RSDCL/SPIA replied vide letter dated 19.05.2017 stating that there is no capacity constraint for evacuation of power at 400 kV GSS, RVPNL, Bhadla and further advised the Petitioner to complete the Solar Projects within the given time schedule and arrange for commissioning of the same.
50. RSDCL/SPIA has submitted that the letter dated 19.04.2017 was not issued in pursuance of the letter dated 15.05.2017 but it only stated the tentative dates. The fact that on 01.06.2017, 50 MW was commissioned with respect to Plot No.8 and on 11.06.2017, 40 MW was commissioned with respect to Plot No.10 itself proves that the information provided by RVPNL vide letter dated 19.04.2017 was tentative in nature. Also, the following SPDs of Bhadla Solar Park Phase-II had already commissioned a total capacity of 400 MW as on 01.06.2017:
- a) M/s. NTPC Ltd (260 MW) by 25.03.2017.
  - b) M/s. Fortum Fin Surya Energy Pvt. Ltd (70 MW) by 31.03.2017.
  - c) M/s. Yarrow Infra Structures Ltd (70 MW) by 25.04.2017.
51. RSDCL/SPIA has submitted that on 11.05.2017, the Petitioner for the first time applied for connectively with respect to Plot No.8 only for a capacity of 8 MW which was rejected by it vide letter dated 16.05.2017 due to non-fulfilment of minimum capacity criteria of connectivity (i.e. 40 MW) as per the provisions of the PPAs dated 02.05.2016. Further, it was only vide letters dated 25.05.2017 and 26.05.2017 that the Petitioner intimated its readiness

to commission 50 MW in Plot No.8 and 40 MW in Plot No.10.

52. RSDCL/SPIA has submitted that the commissioning readiness report for the balance work of 20 MW with respect to Plot No.8 was given by the Office of Electrical Inspector at Jodhpur on 13.07.2017 and the Petitioner intimated RSDCL/SPIA on 17.07.2017 that it was ready for energizing the remaining 20 MW with respect to Plot No.8. Further, on 20.07.2017, the Petitioner requested to constitute a committee for commissioning the remaining 20 MW out of 70 MW Solar Power Plant at Plot No.8. Thereafter, the Project was commissioned on 21.07.2017. Further, vide letter dated 21.07.2017, the Petitioner intimated RSDCL/SPIA about the completion of installation work and readiness for energizing the remaining 30 MW out of 70 MW for project at Plot No. 10. The fact is that the Petitioner was not ready for commissioning the remaining 20 MW and 30 MW in Plot No.8 and Plot No. 10 respectively.
53. RSDCL/SPIA has submitted that RVPNL vide its letter dated 04.08.2017 in reply to the letters issued by the RSDCL/SPIA has informed that one ICT of capacity 500 MVA has been commissioned. Therefore, the evacuation of entire capacity of Bhadla Solar Park Phase-II is covered in ICT-1 of 500 MVA along with the existing spare capacity of 220 kV system of RVPNL Bhadla GSS. Before commissioning ICT-I, 400 MW capacity of other developers were already connected and evacuated through the 220 KV system of RVPN Bhadla GSS. Further, ICT-1 caters to the requirement of Phase-II of Solar Park Bhadla and additional ICTs were commissioned as per the requirement of other projects and not for the projects under Phase-II.
54. RSDCL/SPIA has submitted that due to the delay in commissioning of part capacity of the Solar Projects in Plot No.08 and Plot No.10, a penalty has been imposed on the Petitioner as per the provisions of the Implementation Support Agreement. Only on imposition of penalty did the Petitioner start issuing communications in which the issue of connectivity was taken up as the main ground for its request to waive the penalty.
55. RSDCL/SPIA has submitted that as per Article 5 of the PPAs, the intention to synchronize should be intimated with at least 60 days advanced preliminary written notice. The chart given below demonstrates the fact that the Petitioner was not ready for commissioning as per SCD and in spite of the short notices, RSDCL/SPIA has done its best to commission and synchronize the projects at the earliest:

<b>Capacity Commissioned</b>	<b>Date of Notice</b>	<b>Actual Date of Commissioning</b>
50 MW (Plot No. 8)	26.05.2017	01.06.2017
20 MW (Plot No.8)	17.07.2017	21.07.2017
40 MW (Plot No.10)	25.05.2017	11.06.2017
30 MW (Plot No.10)	21.07.2017	11.08.2017

56. RSDCL/SPIA has submitted that the Petitioner has sought extension in SCD by invoking Articles 3.2, 4.5 read with Article 11.7 of the PPA. It is submitted that the delay in commissioning the Solar Projects by the Petitioner does not fall within the scope and purview of the definition of Force Majeure as defined in Article 11.3 of the PPAs. Therefore, the Petitioner is not entitled to any reliefs for Force Majeure under Article. 11.7 of the PPAs. Article 11.5 envisages issuance of notice in case of a Force Majeure event. No such notification was ever made by the Petitioner before commissioning the projects. It was only when the penalty was imposed that the Petitioner raised the issue of connectivity by wrongly placing reliance on a letter dated 19.04.2017 issued by RVPNL. However, there was no such connectivity issue which is evident from the fact that in spite of the short notice of the Petitioner regarding its readiness to connect to the system, RSDCL/SPIA promptly acted to constitute the committee and connected the projects to the system for evacuation and commissioned the projects with respect to the applied capacity.
57. RSDCL/SPIA has submitted that without prejudice to the above contentions, even if it is presumed that there was issue regarding connectivity, the Petitioner was free to do its part of obligation by installing the contracted capacity and intimate RSDCL/SPIA about its willingness to commission the projects.
58. RSDCL/SPIA has submitted that Article 11.6.1 of the PPAs state that to the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to the PPAs. Further, it also casts an obligation on the affected party to use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable. The Petitioner is not entitled for any extension of time in contravention to the provisions of the PPAs. As per the PPAs, extension to SCD can be given only in the event the Petitioner is prevented from performing its obligations under Article 4.1 due to:

- a) any delay from SPIA in giving possession of land and connectivity with STU/CTU system; or
- b) any NTPC Event of Default; or
- c) Force Majeure Events affecting NTPC, or
- d) Force Majeure Events affecting the SPD;

59. RSDCL/SPIA has submitted that the delay in commissioning in the present case is not due to any of the above-mentioned events but due to delay on the part of the Petitioner in completing the installation works of the Solar Projects.
60. RSDCL/SPIA has submitted that in view of the above, the action taken by NTPC is within the four corners of the PPAs and once the PPAs are executed, both the parties are bound to follow the terms and conditions of the PPAs. The decision of NTPC to impose penalty was strictly in terms of the PPAs and the Petitioner has no justifiable ground for claiming waiver of the penalty. Any decision contrary to the terms and conditions of the PPA would frustrate the very purpose of execution of the PPAs. The petition filed by the Petitioner may be dismissed with costs.

**Additional submissions of the Petitioner in response to the submissions made by NTPC**

61. The PPAs specifically provide in Articles 3.2, 4.5 and Article 11 that SCD be deferred and no penalty be imposed on the Petitioner if the delay in commencement of supply of power from the Solar Projects is due to the non-availability of transmission infrastructure.
62. The Petitioner has submitted that NTPC has placed reliance on a letter dated 13.10.2017 issued by RSDCL/SPIA. However, RSDCL/SPIA's assertions contained in its aforesaid letter are belied *inter alia* by STU's letter dated 19.05.2017 which states that no evacuation capacity was available for the Solar Projects till 15.06.2017.
63. The Petitioner submitted that in RSDCL/SPIA's aforesaid letter dated 13.10.2017, on which NTPC has placed reliance, RSDCL/SPIA has misleadingly stated that other developers within the Bhadla Solar Park had commissioned their solar projects by their respective SCD. However, the said letter suppresses information of other solar power developers within the Bhadla Solar Park on whom similar restrictions on power evacuations were imposed and whose commencement of supply was, therefore, delayed. In this regard, reference may be



drawn to Order dated 07.05.2019 in Petition No. 340/MP/2018 decided by the Commission.

64. The Petitioner has submitted that NTPC's reliance on the commissioning readiness reports issued by CEIG is also misplaced as the Petitioner could not have commenced supply of power despite commissioning its entire capacity due to non-availability of transmission and evacuation infrastructure. NTPC's contention that the non-availability of transmission infrastructure is not covered by Articles 3.2, 4.5 or 11 of the PPAs, is misconceived as Article 4.5 and 11 cover all events that are beyond the control of the Petitioner. The availability of the evacuation infrastructure is beyond the control of the Petitioner. Further, Articles 3.1 and 3.2 clearly show that the term connectivity in the PPAs connotes the availability of transmission and evacuation infrastructure for the Projects.
65. The Petitioner has submitted the table below which sets out SCD, the dates of readiness of the Solar Projects along with the time difference between them as well as the actual dates of commissioning.

Sr. No.	Particulars	SCD	Readiness (CEIG Application)	Days Difference	Actual Date of Commissioning
1	Project 1 (50 MW)	01.06.2017	26.05.2017	-	01.06.2017
	Project 1 (20 MW)	01.06.2017	13.07.2017	43	21.07.2017
2	Project 2 (40 MW)	01.06.2017	29.05.2017	-	11.06.2017
	Project 2 (30 MW)	01.06.2017	20.07.2017	50	11.08.2017

66. The Petitioner has submitted that compensation is contemplated under the PPAs if any penalty is imposed by the State Commission on the Rajasthan Utilities under the Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations 2010, if they fail to comply with their Renewable Purchase Obligation (RPO) on account of any short supply of power by the Petitioner.
67. The Petitioner has submitted that the amount stipulated for each day of delay upto 5 months is Rs. 20,000/MW/day while delay beyond 5 months is sought to be penalized at Rs. 1,00,000/MW/day. Evidently, the aforesaid amounts have no correlation with the actual damage which NTPC would suffer as a result of delay in commencement of power supply by the Petitioner.

68. The Petitioner has submitted that no loss was caused to NTPC due to the delay in commissioning of Petitioner's project as NTPC itself was not ready to commence supply of power under its PSA with the Rajasthan Utilities. A perusal of NTPC's letters dated 11.09.2017 and 21.09.2017 issued to the Petitioner clearly demonstrate that the coal allocation and scheduling of thermal power for onward supply by NTPC commenced much after SCD of the Solar Projects. Therefore, the Petitioner cannot be held liable for any loss whatsoever caused to NTPC due to delay in commencement of supply of power by the Solar Projects.

**Additional Submissions of the Petitioner in response to submissions made by RSDCL/SPIA**

69. The Petitioner has submitted that its obligation under the PPAs is to commence supply of power by SCD, and not merely to commission the Solar Projects by SCD as is RSDCL/SPIA's misapprehension. The availability and provision of the transmission and evacuation infrastructure is beyond the control of the Petitioner and is not its responsibility under the PPAs. Therefore, by virtue of Articles 3.6 and 4.5 read with Article 11, no liquidated damages could have been levied on the Petitioner for the delay in the commencement of supply from the Solar Projects and SCD of the Solar Projects ought to be deferred in terms of the PPAs.

70. The Petitioner has submitted that on one hand, RSDCL/SPIA has contended that there were no capacity constraints on 01.06.2017, while on the other, RSDCL/SPIA's own letter dated 19.05.2017 merely states that RSDCL/SPIA did not have any information from RVPNL of a capacity constraint.

71. The Petitioner has submitted that RSDCL/SPIA in its reply has selectively mentioned a few projects within the Bhadla Solar Park which were provided the necessary transmission and evacuation infrastructure for commissioning their projects by respective SCD. The commissioning of a few projects within the Bhadla Solar Park does not demonstrate that the Petitioner did not face any capacity constraints. Further, RSDCL/SPIA has suppressed information of other solar power developers within the Bhadla Solar Park which were similarly placed as the Petitioner and on whom restrictions on power evacuations were imposed. In this regard, reference may be drawn to Order dated 07.05.2019 in Petition No.

340/MP/2018 decided by the Commission.

72. The Petitioner has submitted that this Commission has the jurisdiction to decide the instant petition under section 79(1)(a) and (b) read with section 79(1)(f) of the Electricity Act, 2003 and Article 16.3.1 of the PPAs as the relief prayed for in the instant petition has a bearing on the applicable tariff of the Solar Projects.

#### **Written Submissions by NTPC**

73. NTPC has filed its written submissions on 25.05.2021 in which it has reiterated its stand taken in earlier reply and as such, the same has not been reproduced herewith for the sake of brevity.

#### **Written Submissions by the Petitioner**

74. The Petitioner has filed its written submissions on 25.05.2021 in which it has reiterated its stand taken earlier and as such, the same has not been reproduced herewith for the sake of brevity. The Petitioner has additionally submitted that:
- a. In terms of Clauses 2(c) and (e) of the ISA, the SPIA was under an obligation to arrange transmission and evacuation facility for the Projects from 2 No. 132/ 220 kV Pooling Stations and associated transmission line being established by the STU.
  - b. From Articles 3.2 and 4.1(f) of the PPAs read with Clause 2(c) and (e) of the ISA, the Petitioner was only required to connect the power project switchyard with the interconnection facilities at the delivery point. The commissioning of the transmission system to facilitate the evacuation of power from the Projects was the responsibility of the STU/ SPIA.

#### **Analysis and Decision**

75. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.
76. We think it appropriate to first deal with the preliminary objections raised by NTPC and RSDCL/SPIA. NTPC has submitted that the Rajasthan Utilities who have entered into Power Sale Agreements (PSAs) with NTPC for purchase of solar power are necessary parties to the

present proceedings. Hence, the petition filed by the Petitioner is not maintainable for non-joinder of the necessary parties namely Rajasthan Utilities. *Per contra*, the Petitioner has submitted that the Rajasthan Utilities are neither proper nor necessary parties to the present proceedings. The Rajasthan Utilities are not a party to the PPAs and are not affected in any manner by the claims of the Petitioner under the PPAs.

77. We observe that in the matter of *Udit Narayan Malpaharia Vs. Board of Revenue [AIR 1963 SC 786]*, the Hon'ble Supreme Court has explained the concepts of necessary party and proper party to a proceedings as under:

*“7. To answer the question raised, it would be convenient at the outset to ascertain, who are necessary and proper parties in a proceeding. The law on the subject is well settled: It is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decisions on the questions involved in the proceedings.”*

78. We observe that the Petitioner has filed the petition to adjudicate on the following matters:

- (i) Declare that delay in the commencement of supply from the 2x70 MW solar power projects being developed by the Petitioner in Plot No. 8 and 10, Bhadla Solar Park Phase-II, Rajasthan, was caused due to reasons not attributable to the Petitioner.
- (ii) Extend SCD till the date of actual commissioning and refund the amount of Rs. 7.06 crores collected by NTPC purportedly as liquidated damages, along with carrying costs at 14% per annum on the said amount, from 25.09.2018.

79. It is observed that Hon'ble Supreme Court has held that “necessary party is one without whom no order can be made effectively”. The issues raised in the present petition relate to the commissioning of the Solar Projects, the delay involved in commissioning and the inter-se claims between the contracting parties. The Rajasthan Utilities are not involved at this stage and the decision on this aspect is not dependent on their presence.

80. In light of the above, we are of the view that Rajasthan utilities are neither a necessary nor a proper party to the proceedings, since an effective order can be made in their absence and no relief qua the Rajasthan utilities is required to be granted in the present case.

81. We observe that RSDCL/SPIA has raised another preliminary objection that the present

petition has been filed under Section 79 of the Electricity Act, 2003 read with Article 16.3.1 of the PPAs which are the wrong provisions of law and, therefore, the petition is liable to be dismissed. *Per contra*, the Petitioner has submitted that this Commission has the jurisdiction to decide the instant petition under section 79(1)(a) and (b) read with section 79(1)(f) of the Electricity Act, 2003 and Article 16.3.1 of the PPAs as the relief prayed for in the instant petition has a bearing on the applicable tariff of the projects.

82. From the above, we observe that RSDCL/SPIA has not challenged the jurisdiction of this Commission to adjudicate in the instant Petition, but RSDCL/SPIA has submitted that the petition is not maintainable since the same is filed under wrong provisions of the Electricity Act, 2003 and that prayers of the Petitioner are not covered under Article 16.3.1 of the PPAs.

83. We observe that Section 79 of the Electricity Act, 2003 stipulates as under:

*“79. (1) The Central Commission shall discharge the following functions, namely: -*  
*(a) to regulate the tariff of generating companies owned or controlled by the Central Government;*  
*(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*  
*(c) to regulate the inter-State transmission of electricity;*  
*(d) to determine tariff for inter-State transmission of electricity;*  
*(e) to issue licences to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;*  
*(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*  
*....”*

84. We observe that article 16.3.1 of the PPAs stipulates as under:

*“16.3 Dispute Resolution*  
*16.3.1 Dispute Resolution by the Appropriate Commission*

*(i) Where any Dispute*

*(a) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or*  
*(b) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Central Commission.*

*(ii) NTPC shall be entitled to co-opt the Discoms as a supporting party in such proceedings before the Central Commission.”*

85. Article 16.3.1(i)(a) of the PPAs envisage the process of dispute resolution in case of “any change in or determination or any matter related to Tariff”. However, RSDCL/SPIA has contended that the present dispute does not fall under any of the issues mentioned in Article 16.3.1 of the PPAs. In our opinion, RSDCL/SPIA is seeking to suggest a very narrow interpretation of the provisions of the PPAs by contending that the instant petition does not involve fall under Article 16.3.1 of the PPAs. We note that through the present petition, the Petitioner has requested for condonation of delay in commissioning the Solar Projects on account of claimed unavailability of transmission infrastructure. Thus, this involves adjudication as regards the period from which tariff would be available to the Petitioner. Therefore, in terms of Article 16.3.1 of the PPAs, the decision in the instant petition will have a bearing on the period for which tariff will be payable to the Petitioner.

86. We also take note of the provisions of Article 4.5.5 of the PPAs that provides as under:

*“If the Parties have not agreed, within thirty (30) days after the affected Party’s performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.”*

Thus, in case no agreement is reached within 30 days of ceasing of relevant force majeure situation, the parties may raise dispute to be resolved in accordance with Article 16 of the PPAs.

87. We, therefore, are of the view that the Petition is maintainable before this Commission since it involves matter related to tariff and since the parties have been unable to reach an agreement after ceasing of claimed force majeure situation. Therefore, it is specifically covered under Article 16.3.1 of the PPAs. Even otherwise, had it been the case of wrong mentioning of the provision, it is well settled law that mere mentioning of an incorrect provision is not fatal if the power to pass such an order is available with the court. Reliance in this regard is placed on the case law of the Hon’ble Supreme Court of India vide its Order dated 04.10.2019 in the case titled *Pruthvirajsinh Nodhubha Jadeja (D) by Lrs. Vs. Jayeshkumar Chhakaddas Shah &Ors.* (Civil Appeal No. 10521 of 2013).

88. Having dealt with the preliminary issues, the following issues arise before the Commission for adjudication:

***Issue No.1: Whether the delay in the commencement of supply from the 2x70 MW solar power projects being developed by the Petitioner was on account of reasons not attributable to the Petitioner? And if it is so, whether the Scheduled Commissioning Date of the 2x70 MW solar power projects being developed by the Petitioner should be extended?***

***Issue No.2: Whether NTPC is entitled to recover any monies towards liquidated damages or otherwise from the Petitioner?***

89. No other issues were pressed or claimed.

90. We now discuss the issues in the following paragraphs:

***Issue No.1: Whether the delay in the commencement of supply from the 2x70MW solar power projects being developed by the Petitioner was on account of reasons not attributable to the Petitioner? And if it is so, whether the Scheduled Commissioning Date of the 2x70 MW solar power projects being developed by the Petitioner should be extended?***

91. The Petitioner has submitted that the delay in commencement of supply from the 2x70 MW solar power projects (the Solar Projects) being developed by the Petitioner in Plot No. 8 and Plot No. 10, Bhadla Solar Park Phase-II, Rajasthan, was due to non-availability of transmission and evacuation infrastructure. As a result, the Petitioner could commission the Solar Projects and commence supply of power only in parts, as and when adequate transmission and evacuation capacity was made available by RVPNL (STU for the State of Rajasthan). Accordingly, the delay was due to reasons not attributable to the Petitioner and, therefore, any liabilities or consequences under the PPAs owing to the said delay should be waived.

92. The Petitioner has submitted that the total commissioned capacity to be evacuated from the Bhadla Solar Park was 680 MW, which required commissioning of at least two interconnecting transformers (ICTs) of 500 MVA each on the 400/220 kV Bhadla GSS by SCD i.e. 01.06.2017. However, ICT-1 was commissioned on 21.07.2017 whereupon the Petitioner was permitted to inject power to a limited extent up to only 40 MW for the first time towards the fag end of July i.e. 26.07.2017. The permitted capacity was enhanced to 100 MW on 02.08.2017 that was later reduced to 40 MW on 06.08.2017 as ICT-1 suffered



breakdown on 09.08.2017. Furthermore, despite having commissioned the entire project capacity by 11.08.2017, the Petitioner was permitted to inject the entire 140 MW into the grid only by the last week of August, 2017. This delay between the commissioning of the Solar Projects and commencement of supply of power was due to the evacuation capacity constraints at the Bhadla Solar Park.

93. *Per contra*, the Respondent No. 1, NTPC has submitted that there were delays on the part of the Petitioner in fulfilling the conditions subsequent provided in Article 3 and the obligations with respect to construction and development of the Solar Projects as provided in Article 4 of the PPA. On account of non-commissioning of the Solar Projects by SCD, the Petitioners were liable to pay liquidated damages as specified in the PPAs. Accordingly, in terms of Clause 3.12.2 of the NSM Guidelines read with Article 3.3.4 and Article 4.6 of the PPAs dated 02.05.2016, NTPC is entitled to the payment of liquidated damages from the Petitioner for the delay in commencement of supply of power and delay in making the contracted capacity available for dispatch by SCD. Further, another Respondent, RSDCL/SPIA has submitted that as per Article 5 of the PPAs, the intention to synchronize was to be intimated with at least 60 days advanced preliminary written notice whereas the Petitioner gave the notice for synchronization for 50 MW (Plot No. 8) on 26.05.2017, for 20 MW (Plot No. 8) on 17.07.2017, for 40 MW (Plot No. 10) on 25.05.2017 and for 30 MW (Plot No. 10) on 21.07.2017. Hence, the Petitioner was not ready for commissioning as per SCD and that in spite of the short notices received from the Petitioner, RSDCL/SPIA has done its best to commission and synchronize the Solar Projects at the earliest.

94. The relevant provisions of the RfS stipulate as under:

**“3.6 SPIA and Location of Solar Park**

3.6.1 *The Solar PV Projects to be selected by NTPC under this scheme are to be developed inside Solar Park which is developed by Solar Park Implementing Agency (SPA).*

3.6.2 *Rajasthan Solar park Development Company Ltd. (RSDCL) is SPIA for this Solar Park which is a subsidiary of Rajasthan Renewable Energy Corporation Limited (RRECL). The Bidder will have to approach the SPIA for allotment of land, timelines for availability, possession and connectivity for the projects.*

**“3.9 Technical Criteria and Connectivity with the Grid**

...  
3.9.2 *Connectivity with the Grid*



...  
(v) *STU/CTU shall endeavour to match the commissioning of the transmission system with the commissioning of the solar projects.*”

95. The relevant provisions of the PPAs stipulate as under:

**“ARTICLE 1: DEFINITIONS AND INTERPRETATIONS**

...

*“Scheduled Commissioning Date” shall mean 01<sup>st</sup> June 2017 i.e. thirteen (13) months from the Effective Date;*

*“Commercial Operational Date” shall mean the 30 days from the actual part commissioning date of the capacity where upon the SPD starts injecting power from the part commissioned capacity to the interconnection point/delivery point/ meeting point. COD is intended to match allocation and availability of thermal power for bundling;*

**3. ARTICLE 3: CONDITION SUBSEQUENT**

**3.1. Satisfaction of Conditions subsequent by the SPD**

*c) The SPD shall enter into an Implementation support Agreement with Solar Park Implementation Agency (SIPA) for Land & Associated infrastructure for development of the Project inside the Solar Park and for Connectivity with the STU/CTU System for confirming the evacuation of power by the Scheduled Commissioning date;*

**3.3 Performance Bank Guarantee**

.....

*3.3.4 If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.5, NTPC shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of NTPC under this Agreement.*

.....

**ARTICLE 4 : CONSTRUCTION & DEVELOPMENT OF THE PROJECT**

**4.1 SPD’s Obligations**

**4.1.1. The SPD undertakes to be responsible, at SPD’s own cost and risk, for:**

...

*e) The commencement of supply of power upto the Contracted Capacity to NTPC no later than the Scheduled Commissioning Date and continuation of the supply of power through out the term of the Agreement;*

...

#### **4.2 Information regarding Interconnection Facilities**

- 4.2.1 *The SPD shall be required to obtain all information from SPIA with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all system equipment's and apparatus on the SPD's side of the Interconnection Point/ Delivery Point/ Metering Point to enable delivery of electricity.*
- 4.2.2 *The SPD has to bear entire cost of Transmission from the project up to the interconnection point including cost of construction of line. Losses etc. and the same will not be reimbursed by NTPC or met by the STU/ Rajasthan Utilities;*
- 4.2.3 *The responsibility of getting Transmission Connectivity and Access to the Transmission system owned by the STU will lie with the Project Developer and its cost is to be borne by SPD;*

.....

#### **4.5 Extensions of Time**

4.5.1 *In the event that the SPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:*

- a) Any delay from SPIA in giving possession of land and connectivity with STU / CTU system; or*
- b) any NTPC Event of Default; or*
- c) Force Majeure Events affecting NTPC, or*
- d) Force Majeure Events affecting the SPD,*

*the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.2, for a reasonable period but not less than 'day for day' basis, to permit the SPD or NTPC through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or NTPC, or till such time such Event of Default is rectified by NTPC.*

4.5.2 *Subject to Article 4.5.7, in case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than three (3) months.*

4.5.2.1 *in case of extension is required to give beyond 3 months due to delay in Solar Park development or evacuation, NTPC will approach MNRE, who will be authorized to decide on further extension.*

4.5.3 *subject to Article 4.5.7, in case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than twelve (12) months.*

4.5.4 *In case of extension due to reasons specified in Article 4.5.1(c) and (d), and if such Force Majeure Event continues even after a maximum period of three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.*

4.5.5 *If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.*

4.5.6 *As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.*

4.5.7 *Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond twenty five (25) months from the date of signing of PPA.*

#### **4.6 *Liquidated Damages for delay in commencement of supply of power to NTPC***

4.6.1 *If the SPD is unable to commence supply of power to NTPC by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to NTPC, Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:*

4.6.1.1 *Delay upto five (5) month: NTPC will encash the Performance Bank Guarantee on per day basis and proportionate to capacity not commissioned, with 100% encashment for 5 months delay.*

4.6.1.2 *Delay beyond five months: In case the commissioning of Project is delayed beyond 5 months, the SPD shall, in addition to encashment of Bank Guarantee by NTPC, additionally pay to NTPC the Liquidated Damages @ Rs 1,00,000/- per MW per day of delay for the delay in such remaining Capacity which is not commissioning.*

*The amount of liquidated damages would be recovered from the SPD from the payments due on account of sale of solar power to NTPC thirty (30) equal monthly instalments from first billing cycle.*

4.6.2 *The maximum time period allowed for commissioning of the full Power Project Capacity with encashment of Performance Bank Guarantee and payment of Liquidated Damages shall be limited to twenty five (25) months from the Effective Date. In case, the commissioning of the Power Project is delayed beyond twenty five (25) months from the Effective Date, it shall be considered*

*as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced/ amended to the Project Capacity Commissioned within twenty five (25) months of the Effective Date and the PPA for the balance Capacity will stand terminate and shall be reduced from the list of selected capacity.*

...  
5.1.1 *The SPD shall give the concerned RLDC/SLDC and NTPC at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the respective units of Power Project to the Grid System.”*

96. The relevant provisions of ISA dated 26.06.2016 stipulate as under:

*“2. Obligations of the SPIA: The SPIA will provide the following infrastructure facility to the SPDs within the Solar Park for the effective development of the Solar Park:*

...  
*(c) 2 No. 132/ 220 kV Pooling Stations and associated transmission line for evacuation of power from Plot No. 08 power project of SPD are being constructed. The evacuation would be done on 132 kV from PV plot to pooling station. Interconnection from power project to 132 kV overhead line would be on part of the SPD.*

...  
*(e) Connectivity with the State Transmission Utility will be provided by the SPIA on deposit of Connectivity charges with SPIA. SPIA will provide interconnection facility close to the plot at the voltage level 132 kV and the SPD will have to connect to that point at its cost.”*

97. A conjoint reading of the provisions of RfS, PPAs and ISAs provides for the following:

(a) RSDCL/SPIA was required to facilitate allotment of land, connectivity etc. for the Solar Projects. (Clause 3.6 of RfS and Clause 2 of ISAs)

(b) The Petitioner was required to approach RSDCL/SPIA for allotment of land, timelines for availability, possession and connectivity for the Solar Projects. RSDCL/SPIA was required to provide two 132/ 220 kV Pooling Stations and associated transmission line for evacuation of power. RSDCL/SPIA was also required to provide connectivity with STU on deposit of connectivity charges. However, the responsibility of getting transmission connectivity and access to the transmission system owned by the STU was of the Petitioner and its cost was to be borne by the Petitioner itself. (Clause 3.6.2 of RfS, Article 4.2.3 of PPAs, Clause 2 of the ISAs)

(c) STU/CTU were to endeavour to match the commissioning of the transmission system with the commissioning of the Solar Projects. (Clause 3.9.2(v) of RfS)

(d) In case the Petitioner failed to commence supply of power from SCD (except for reasons covered under Article 4.5.1 of the PPAs), NTPC had the right to encash the Performance Bank Guarantee. (Article 3.3.4 of PPAs)

(e) If the Petitioner was prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to any delay from RSDCL/SPIA in giving possession of land and connectivity with STU/CTU system, SCD shall be deferred (up to maximum of 25 months from the date of signing of PPAs; maximum of 12 months), for a reasonable period but not less than 'day for day' basis, to permit the Petitioner through the use of due diligence, to overcome the effects of the force majeure Events affecting the Petitioner, or till such time such Event of Default is rectified by NTPC. (Articles 4.5.1(a), 4.5.2, 4.5.3 and 4.5.7 of the PPAs)

(f) If the Parties have not agreed as regards the time period by which SCD should be deferred, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, any Party may raise dispute to be resolved in accordance with Article 16. (Article 4.5.5 of the PPAs)

(g) If the Petitioner was unable to commence supply of power by SCD (other than for the reasons stipulated in Article 4.5.1 of the PPAs) and making the Contracted Capacity available for dispatch by SCD up to 5 months, the Petitioner was to pay to NTPC, liquidated damages (encashment of the Performance Bank Guarantee on per day basis and proportionate to capacity not commissioned provided that 100% encashment would take place for 5 months delay) for the delay in such commencement of supply of power. (Articles 4.6.1 and 4.6.1.1 of the PPAs)

(h) The Petitioner was required to give SLDC/RLDC and NTPC 60 days' advance preliminary written notice and 30 days advance final notice to synchronize the Power Projects to the Grid. (Article 5.1.1 of the PPAs)

98. The Petitioner has contended that it was unable to commission full capacity of the Solar Projects on account of unavailability of evacuation infrastructure of STU. The Petitioner has submitted that vide letter dated 15.05.2017, it sought information on the availability of the necessary evacuation infrastructure from RVPNL (STU of State of Rajasthan). In response, vide letter dated 19.05.2017, RVPNL informed the Petitioner that no power evacuation capacity margin was available at 220KV GSS Bhadla. The reply of RVNL is as under:

*“Ref: Your letter no. SSUPL/NSM-Bhadla/RSDCL/17-18/003*

*Dear Sir,*

*On the subject cited above, the desired information is as below:*

- 1) At present no power evacuation capacity margin is available at 220KV GSS Bhadla.*
- 2) The entire power evacuation shall be available by 15th June, 2017 (Tentative).*
- 3) 400KV line from Bhadla to Bikaner shall be ready by 15th June, 2017 (Tentative)”*

99. On receipt of letter dated 19.05.2017 from RVPNL, vide letter dated 22.05.2017, the Petitioner informed NTPC as under:

*“During our recent site visit, we had discussion in respect of the Projects with M/s Rajasthan Rajya Vidyut Prasaran Nigma Limited (RRVNL) officials at 400/220 KV substation and learnt that there is not enough capacity margin available due to delay in charging of the 400 KV line from RRVNL’s Bhadla substation to RRVNL’s Bikaner substation. At our request, and following a number of letters from Solaire Surya Urja Private Limited (SSUPL) to RRVNL and others, RRVNL issued the letter (enclosed) dated 19 May, 2017 to SSUPL setting out the status of the 400/200 KV Bhadla GSS and 400 KV line from Bhadla to Bikaner as follows:*

- 1. No power evacuation capacity margin at 220 KV GSS, Bhadla;*
- 2. The entire power evacuation shall be ready by 15 June, 2017 (tentative); and*
- 3. The 400 kv line from Bhadla to Bikaner is also not operational and shall be operational by 15 June 2017 (tentative)*

*It will be very critical if the evacuation system is not arranged and our power from the Projects is not fully evacuated. This would lead to huge generation loss and, in turn, revenue loss under the PPA’s. Hence, we request you to intervene in this issue as a matter of urgency.*

*We have already intimated Rajasthan Solar Park Development Co Ltd in this regard and look forward to your support and cooperation.”*

100. As required by RVPNL, on 31.05.2017, the Petitioner gave an undertaking to RVPNL (in respect of its Project-1) as under:

*“We M/s Solaire Surya Urja Pvt. Ltd. Plot No.8 Village Bhadla Tehsil Baap, District Jodhpur solemnly undertake that after receiving connectivity of 50 MW to our solar power plant located at Plot-08, we will not inject any power in the grid without prior approval of RVPNL authorities.*

*In the event of any damage to RVPNL on the account of unauthorized injection of power to grid, we shall be responsible and liable to compensate the losses to RVPNL as decided by ZCE (T&C) RVPNL Jodhpur.”*

101. A similar undertaking was given to RVPNL on 11.06.2017 in respect of its Project-2 as



under:

*“We M/s Solaire Surya Urja Pvt. Ltd. Plot No.10 Village Bhadla Tehsil Baap, District Jodhpur. solemnly undertake that after receiving connectivity of 40 MW to our solar power plant located at Plot-10, we will not inject any power in the grid without prior approval of RVPNL authorities.*

*In the event of any damage to RVPNL on the account of unauthorized injection of power to grid, we shall be responsible and liable to compensate the losses to RVPNL as decided by ZCE (T&C) RVPNL Jodhpur.”*

102. We observe that on 07.07.2017, RSDCL/SPIA addressed a letter to RVPNL, the relevant extract of which is as under:

*“In this regard, it is intimated that RVPN has approved power evacuation of 680 MW capacity from RSDCL’s Solar Park Phase-II which is to be evacuated through 400 KV Bhadla-Bikaner line. This line was planned to be completed by March, 2017, but due to non-installation of reactor on this line till date, power evacuation of 680 MW capacity has not been fully utilized.*

*Further, it is intimated that out of 680 MW capacity, 490 MW capacity have already been commissioned which also include 90 MW of M/s. Solaire Surya Urja Private Limited.*

*M/s SSUPL has further mentioned that despite repeated pursuance, RVPNL has offered restricted power evacuation corridor against firm’s undertaking. Firm have commissioned 50 MW of Plot-08 on 1<sup>st</sup> June 2017 and first MW 40 MW in Plot-10 on 11<sup>th</sup> June 2017. As 400 KV line Bhadla to Bikaner, has not come into operational, therefore restriction on power evacuation from above projects have not been relaxed by RVPN. They have been incurring huge generation losses and in turn revenue losses.*

*Here it is relevant to mention that 190 MW capacity M/s SSUPL (50 MW) & 140 MW of M/s Rising Bhadla- 1&2 are yet to commission”*

103. As regards transmission constraint in the evacuation corridor related to Bhadla Solar Park, Superintending Engineer (RVPNL) addressed a letter to Chief Engineer (RVPNL) on 24.07.2017, the relevant extract of which is as under:

*“The Chief Engineer (Contracts)  
RVPN, Jaipur*

*The Chief Engineer (T&C)  
RVPN Jaipur*

*Sub: Status of Power Evacuation System at 400/ 220 kV Bhadla GSS and its impact on power from Plot No. 8 & Plot No. 10 in Bhadla Solar Park Phase II*

*Ref: Director (Technical), RSDCL, Jaipur, letter no. 1748 dated 7.7.2017*

*On the above cited subject and reference dated 7.7.2017 (copy enclosed) Director (Tech) RREC has requested for status of power evacuation system at 400 kV GSS Bhadla for evacuation of generated solar power of Bhadla solar park Phase II (total 680 MW).*

*In this regard, power evacuation of 680 MW capacity generated from RSDCL's Solar Park Phase II which is to be evacuated through 400 kV Bhadla-Bikaner line has not been fully utilized due to non-installation of reactor on this line. Further, M/s SSUPL have commissioned 50 MW of Plot 8 on 01.06.2017 and 40 MW in Plot 10 on 11.06.2017, requested for relaxation on restriction on power evacuation.*

*It is also intimated that following additional transmission system, is under construction for evacuation of solar power from 400 kV GSS Bhadla:*

- 1. 3x500MVA, 400/ 220 kV GSS Bhadla.*
- 2. 400 kV D/C Bhadla-Bikaner line (Quad Moose) (Test charged on 400 kV voltage level from 220 kV GSS Bikaner and presently charged at no load on 132 kV voltage level).*
- 3. LILO of 400 kV S/C Jodhpur-Merta line at 400 kV GSS Bhadla.*

*In this regard, it is requested to kindly expedite the aforesaid works and also intimate the latest progress along with commissioning schedule of the works so that the same may be forwarded to Director (Tech), RSDCL, Jaipur.*

*Encl: As above*

*s/d*  
*SC Sharma*  
*SUPERINTENDING ENGINEER (P&P)''*

104. Similarly, letter dated 04.08.2017 from RVPNL addressed to RSDCL/SPIA also mentions about commissioning of one ICT of 500 MVA and that the second ICT was likely to be commissioned up to 31.08.2017. The relevant extract of the letter is as under:

*“Further it is informed that one ICT of capacity 500 MVA has been commissioned, therefore evacuation of Solar Power is taking place from Bhadla upto the capacity of one No. ICT i.e. 500 MVA. The second ICT of 500 MVA may be commissioned up to 31.08.2017.”*

105. In the foregoing paragraphs, we have quoted and perused various communications related to availability/ non-availability of evacuation system for the Solar Projects. Vide letter dated 19.05.2017, RVPNL (STU for the State of Rajasthan) informed the Petitioner that there was no power evacuation capacity margin available at 220 kV GSS Bhadla and that the 400 kV line from Bhadla to Bikaner would be ready by 15.06.2017. It is pertinent to note that



15.06.2017 was the tentative date given for the entire power evacuation by the RVPNL. As per letter dated 24.07.2017, there was restriction on the Petitioner's power evacuation due to shortfall in transmission capacity owing to the non-completion of construction works on the transmission system. As per letter dated 04.08.2017, RVPNL informed the Petitioner that one ICT of capacity 500 MVA has been commissioned and the second ICT of 500 MVA may be commissioned by 31.08.2017. Further, the Petitioner was also made to execute undertakings on 31.05.2017 and 11.06.2017 by RVPNL that after receiving connectivity, it will not inject any power in the grid without prior approval of RVPNL authorities and in the event of any damage to RVPNL on account of unauthorized injection of power to grid, the Petitioner will be held responsible and liable to compensate the losses to RVPNL. We observe that the total commissioned capacity to be evacuated from the Bhadla Solar Park was 680 MW, which required commissioning of at least two interconnecting transformers of 500 MVA each on the 400/ 220 kV Bhadla GSS by SCD (01.06.2017) of the Solar Projects. As per the Petitioner, ICT-1 was commissioned on 21.07.2017 and the Petitioner was permitted to inject power on 26.07.2017. The permitted capacity was enhanced to 100 MW on 02.08.2017 but was later reduced to 40 MW on 06.08.2017 as ICT-1 suffered a breakdown. The Petitioner commissioned the entire project capacity by 11.08.2017 but was permitted to inject the entire 140 MW capacity into the grid only on 25.08.2017.

106. From the above highlighted facts, it is apparent that there was a constraint in the STU transmission system as regards evacuation of power from Bhadla Solar Park in general and the Solar Projects of the Petitioner in particular.

107. Vide letter dated 07.05.2018, the Petitioner has informed NTPC as under:

*“To recapture the commissioning date following is the summary:*

<b><i>Plot</i></b>	<b><i>Capacity (MW)</i></b>	<b><i>Due Date of Commissioning</i></b>	<b><i>Actual Date of Commissioning</i></b>	<b><i>Commercial Operation Date</i></b>
<i>Plot No. 8 (70 MW)</i>	<i>50</i>	<i>01/06/2017</i>	<i>01/06/2017</i>	<i>20/07/2017</i>
	<i>20</i>	<i>01/06/2017</i>	<i>21/07/2017</i>	<i>08/09/2017</i>
<i>Plot No.10 (70 MW)</i>	<i>40</i>	<i>01/06/2017</i>	<i>11/06/2017</i>	<i>20/07/2017</i>
	<i>30</i>	<i>01/06/2017</i>	<i>11/08/2017</i>	<i>08/09/2017</i>

.....

**Power evacuation status as arranged by RSDCL/RVPL**

<i>Month</i>	<i>June-17</i>	<i>July-17</i>	<i>August-17</i>	<i>September-17</i>
<i>Power evacuation Margin Offered by RVPL/RSDCL after commissioning of the Plot 08 and 10</i>	<i>&lt; 2MW, only for commissioning</i>	<i>July 17 40 MW was offered from 26-July-17 onwards</i>	<i>- 40 MW was enhanced to 100 MW from 2-Aug-2017 onwards; - later it was downsized to 40 MW on 6-Aug-17 onwards (20 MW/Plot) due to 220/400 KV power T/F Fault in RVPL GSS; - Upgraded to 70MW (35MW/plot) from 19-Aug-2017 onwards from both Plot-08 and 10. - Full capacity of 140 MW from 25-Aug-17 onwards</i>	<i>Full 140MW power evacuation capacity has been provided.</i>

108. As per the PPAs dated 02.05.2016, both the projects of 70 MW each were to be commissioned by SCD i.e. 01.06.2017 i.e. within 13 months from the effective date of the PPAs (02.05.2016). The Petitioner has submitted that for Project-1, 50 MW got commissioned on 01.06.2017 (no delay) while remaining 20 MW got commissioned on 21.07.2017 (delay of 50 days from SCD). For Project-2, 40 MW got commissioned on 11.06.2017 (delay of 10 days from SCD) while remaining 30 MW got commissioned on 11.08.2017 (delay of 71 days from SCD).

109. The Respondents have submitted that the delay in commissioning the Solar Projects by the Petitioner does not fall within the scope and purview of the definition of force majeure as defined in Article 11.3 of the PPAs and, therefore, the Petitioner is not entitled to any reliefs for force majeure under Article 11.7 of the PPAs. The Respondents have also referred to Article 11.5 of the PPAs regarding issuance of notice in case of a force majeure event and claimed that no such notification was ever made by the Petitioner before commissioning the projects. It was only when the penalty was imposed that the Petitioner raised the issue of

connectivity. The Respondents have further submitted that even if there were issues regarding connectivity, the Petitioner should have installed the Solar Projects and intimated RSDCL/SPIA about its willingness to commission them.

110. We note that the Respondents have laid emphasis on provisions related to force majeure provided in Article 11 of the PPAs and contended that the delay on account of non-availability of transmission system is not covered under that article. However, as already quoted in earlier part of this order, there are exclusive provisions in RfS, PPAs and ISAs as regards connectivity/ transmission for the Solar Projects and also relief to be granted to the affected party. We, therefore, are not considering the generic provisions in the PPAs related to force majeure (Article 11) in deciding whether delay in commissioning the Solar Projects was attributable to the Petitioner and rather are proceeding with deciding the issue based on the specific provisions related to connectivity/ transmission provided in RfS, PPAs and ISAs. In view of this, contention of Respondents as regards the Petitioner not issuing notice under Article 11.5 of the PPAs has no relevance.
111. As per Article 4.2.3 of the PPAs, *“The responsibility of getting Transmission Connectivity and Access to the Transmission system owned by the STU will lie with the Project Developer and its cost is to be borne by SPD”*. As per Clause 3.6.2 of RfS, *“The Bidder will have to approach the SPIA for allotment of land, timelines for availability, possession and connectivity for the projects.”*. As per clause 2 of ISAs, RSDCL/SPIA was required to facilitate connectivity for the Solar Projects and was also required to provide two 132/220 kV pooling stations and associated transmission line for evacuation of power from the Solar Projects. RSDCL/SPIA was further required to provide Connectivity with STU on deposit of Connectivity charges. The Petitioner was required to approach RSDCL/SPIA for connectivity for the Solar Projects as per RfS. A harmonious reading of these provisions of RfS, PPAs and ISAs, makes it clear that it was the responsibility of the Petitioner to get itself connected to STU transmission system.
112. RSDCL/SPIA has submitted that as per Article 5 of the PPAs, the intention to synchronize should have been intimated by the Petitioner with at least 60 days advanced preliminary written notice. However, it has been claimed that the Petitioner gave a very short notice for connecting the Solar Projects. RSDCL/SPIA has enclosed a chart to prove that in spite of the

short notices by the Petitioner, RSDCL/SPIA has done its best to commission and synchronize the projects at the earliest. RSDCL/SPIA has, therefore, contended that the Petitioner was responsible for delay in commissioning of the Solar Projects and that it cannot be granted any relief.

113. As regards notice for synchronisation, we note that the provision in this regard is at Article 5.1.1 of the PPAs and the same is quoted as under:

*“5.1.1 The SPD shall give the concerned RLDC/SLDC and NTPC at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the respective units of Power Project to the Grid System.”*

114. From a plain reading of Article 5.1.1 of the PPAs, it is clear that such notice was to be given to concerned RLDC/SLDC and NTPC and not to the RSDCL/SPIA. Further, as Connectivity is a pre-requisite for any intent to synchronise the Solar Projects, we are not convinced with interpretation of RSDCL/SPIA as regards Article 5.1.1 of the PPAs to mean that unless the Petitioner gave preliminary/advanced notice, RSDCL/SPIA was not going to take up the matter of providing connectivity to STU system. We have already observed earlier that the Petitioner had taken up with the STU for connectivity of the Solar Projects.

115. In view of the above, the only issue that remains to be decided is the extent of relief to be granted to the Petitioner. A conjoint reading of provisions of Articles 4.5.1(a), 4.5.2, 4.5.3, and 4.5.7 reveals that in cases where a party is affected by Article 4.5.1(a), SCD shall be extended for a reasonable period but not less than on day to day basis.

116. Based on various communications, we have already observed that the Petitioner was allowed connectivity for 40 MW on 26.07.2017 which was increased to 60 MW on 02.08.2017. However, connectivity was reduced to 40 MW on 06.08.2017 and the Petitioner was allowed to enhance the injection into the grid from 40 MW to 70 MW on 19.08.2017. There was no constraint after 25.08.2017 and full 140 MW was allowed to be injected into the Grid. We also observe, as submitted by the Petitioner, that for Project-1, 50 MW got commissioned on 01.06.2017 (no delay) while remaining 20 MW got commissioned on 21.07.2017 (delay of 50 days from SCD) and for Project-2, 40 MW got commissioned on 11.06.2017 (delay of 10 days from SCD) while remaining 30 MW got commissioned on 11.08.2017 (delay of 71 days

from SCD). Thus, the Petitioner did commission the project in stages, though with delay, before connectivity was made available. As the commissioning could be done by the Petitioner without availability of connectivity, the prayer for extension of SCD cannot be considered.

117. The issue is disposed of accordingly.

***Issue No.2: Whether NTPC is entitled to recover any monies towards liquidated damages or otherwise from the Petitioner?***

118. Relevant provisions of PPAs related to liquidated damages provide as under:

***“4.6 Liquidated Damages for delay in commencement of supply of power to NTPC***  
***4.6.1 If the SPD is unable to commence supply of power to NTPC by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to NTPC, Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:***

***4.6.1.1 Delay upto five (5) month: NTPC will encash the Performance Bank Guarantee on per day basis and proportionate to capacity not commissioned, with 100% encashment for 5 months delay.***

***-----”***

Thus, Article 4.6 of the PPAs provides that liquidated damages can be levied by NTPC only when the Petitioner is unable to commence supply of power to NTPC by SCD for reasons other than that specified in Article 4.5.1.

119. As we have already observed above, the commissioning and the start of supply of power to NTPC are as under:

(a) The Petitioner achieved the commissioning of 50 MW for Plot No. 08 on 01.06.2017, which is also the SCD. But, the connectivity by RSDCL/SPIA to the Petitioner was made available only on 26.07.2017. Hence, the Petitioner was prevented from supplying power for the period from 01.06.2017 to 26.07.2017 for the said 50 MW.

(b) The Petitioner had given the first notice to Rajasthan Renewable Energy Corporation Limited (RRECL) for connectivity on 11.05.2017.

- (i) The Petitioner achieved the actual commissioning of 40 MW for Plot No. 10 on 11.06.2017 whereas the SCD was 01.06.2017. Hence, there was delay in commissioning on the part of the Petitioner. But, the connectivity by RSDCL/SPIA to the Petitioner was made available only on 26.07.2017. Hence, the Petitioner was prevented from supplying power for the period from 11.06.2017 to 26.07.2017 for the said 40 MW.
- (ii) The Petitioner achieved the actual commissioning of 20 MW for Plot No. 08 on 21.07.2017 whereas the SCD was 01.06.2017. Hence, there was delay on the part of the Petitioner. But, the connectivity by RSDCL/SPIA to the Petitioner was made available only on 25.08.2017. Hence, the Petitioner was prevented from supplying power for the period from 21.07.2017 to 25.08.2017 for the said 20 MW.
- (iii) The Petitioner achieved the actual commissioning of 30 MW for Plot No. 10 on 11.08.2017 whereas the SCD was 01.06.2017. Hence, there was delay on the part of the Petitioner. But, the connectivity by RSDCL/SPIA to the Petitioner was made available only on 25.08.2017. Hence, the Petitioner was prevented from supplying power for the period from 11.08.2017 to 25.08.2017 for the said 30 MW.

120. We observe that as per Article 4.6.1 of the PPA the liability of the Petitioner to pay liquidated damages goes beyond the SCD of the projects up-till the commencement of supply of power to NTPC. As per records, it is observed that there was delay in the supply of the power. However, given the existence of transmission constraint beyond the commissioning of the projects, the Petitioner cannot be faulted for non supply of power beyond the dates of commissioning of the projects. It is pertinent to mention here that NTPC has levied Liquidated damages till the commissioning of the projects only.

121. Accordingly, the Commission holds that NTPC is entitled to recover Liquidated Damages for the period 01.06.2017 to 10.06.2017 (10 days) corresponding to 40 MW, for the period 01.06.2017 to 20.07.2017 (50 days) corresponding to 20 MW and for the period 01.06.2017

to 10.08.2017 (71 days) corresponding to 30 MW as per the provisions of the PPA.

122. No order as to costs.

123. Accordingly, the Petition No. 203/MP/2019 is disposed of in terms of the above discussions and findings.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
अरुण गोयल  
सदस्य

Sd/-  
आई. एस. झा  
सदस्य

Sd/-  
पी. के. पुजारी  
अध्यक्ष