

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 427/MP/2019

Subject : Petition under Section 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 seeking indulgence of the Central Electricity Regulatory Commission to direct NTPC Vidyut Vyapar Nigam Limited to extend the SCOD of Generation Project based on the Notifications dated 2.11.2011, 9.1.2013, 3.1.2014 and 17.12.2014 issued by Government of Andhra Pradesh, whereunder, the government has notified the project area as drought affected area for the period June, 2011 – September 2011, June, 2012 – September, 2012, June, 2013 – September, 2013 and June, 2014 – September, 2014.

Date of Hearing : 5.8.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Megha Engineering & Infrastructures Limited (MEIPL)

Respondents : NTPC Vidyut Vyapar Nigam Limited (NVVNL) and 17 Ors.

Parties Present : Shri Sakya Singha Chaudhuri, Advocate, MEIL
Ms. Shreya Dubey, Advocate, MEIL
Ms. Anushree Bardhan, Advocate, NVVNL
Ms. Surbhi Kapoor, Advocate, NVVNL

Record of Proceedings

Case was called out for virtual hearing.

2. During the course of hearing, learned counsel for the Petitioner made the detailed submissions in the matter. Learned counsel pointed out that the Commission vide order dated 11.10.2017 in Petition No.16/MP/2014 filed by the Petitioner seeking extension of Scheduled Commercial Operation Date (SCOD) of its Solar Thermal Power Project on the ground of various force majeure events viz. variation in DNI, drought, fire, re-organization of State of Andhra Pradesh etc., did not consider the fire as force majeure event and consequently, extended the SCOD only upto 9.7.2014 as against the actual COD on 4.11.2014 (i.e. delay of 240 days). However, subsequently, in an appeal filed by the Petitioner against the said order, the Appellate Tribunal for Electricity (APTEL) vide its judgment dated 26.7.2022 in Appeal No.373 of 2018 and Ors., has allowed the fire as force majeure event under the agreement. Accordingly, in addition to the extension sought by the Petitioner on account of drought on the basis of subsequent notifications of Govt. of Andhra Pradesh, the entire delay in achieving SCOD also covered under force majeure event of fire in terms of judgment of APTEL and consequently, the claim of the Respondent, NVVNL for liquidated damages does not survive.

3. Learned counsel for the Respondent, NVVNL made detailed submissions and, *inter-alia*, submitted that from the judgment of APTEL, the period covered under the fire incident is not clear. Learned counsel further submitted that it is for the Petitioner to quantify and demonstrate the period for which its claims are to be affected by the force majeure event of fire. Learned counsel added that the Petitioner's claim of drought on the basis of the subsequent notifications of the Govt. of Andhra Pradesh as relied upon in the present Petition has not been examined by this Commission or the APTEL.

4. In response, the learned senior counsel for the Petitioner referred to the Commission's order dated 11.10.2017 in Petition No.16/MP/2014 and submitted that in the said order, it has been clearly recorded that the period for which the Petitioner was affected due to the incident of fire was 116 days.

5. In response to the specific query of the Commission as to whether the period for which the Petitioner was affected by the fire incident ran concurrently with the period of drought for which the Commission already extended the SCOD in the order dated 11.10.2017, learned counsel sought liberty to place on record the requisite details in this regard.

6. After hearing the learned counsels for the parties, the Commission directed the Petitioner to file its written submissions, which will also include the details regarding period for which the Petitioner was affected by the incident of fire, within two weeks with copy to the Respondents, who may file their written submissions, if any, within two weeks thereafter. The interim protection granted by the Commission vide its earlier Record of Proceedings shall be continued till the final order of the Commission in the matter.

7. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**