

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 62/MP/2020

Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Article 11 of the Power Purchase Agreements dated 4.8.2016 seeking direction to NTPC Limited to act in accordance with the said Article 11 of the Power Purchase Agreements and accepting the impact of Force Majeure events and thereby extend the Scheduled Commissioning Date of the Project of the Petitioner.

Date of Hearing : 23.6.2022

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

Petitioner : Parampujya Solar Energy Private Limited (PSEPL)

Respondents : NTPC Limited (NTPC) and Anr.

Parties Present : Shri Sanjay Sen, Sr. Advocate, PSEPL
Shri Nitish Gupta, Advocate, PSEPL
Ms. Parichita Chowdhury, Advocate, PSEPL
Ms. Nipun Sharma, Advocate, PSEPL
Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Abhishek Nangia, Advocate, NTPC
Shri M. S. Nagar, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. During the course of hearing, learned senior counsel for the Petitioner made detailed submissions in the matter. Learned senior counsel for the Petitioner mainly submitted that there was a delay of 23 days in commissioning of its 10x5 MW solar power project for supply of power through NTPC in terms of PPA dated 4.8.2016. NTPC has acknowledged delay in development of the Project on account of introduction of GST and stoppage of work by Tehsildar and extended the SCOD of the projects by 42 days and 26 days respectively, till 25.10.2017. However, NTPC has refused to extend SCOD on account of delay in synchronization due to delay in approval of PSA by TSERC and levied Liquidated Damages (LD). He further added that NTPC is required to prove the damages incurred by it. In this regard, reliance was placed on the judgment of Hon`ble Supreme Court in the matter of Kailash Nath Associates vs DDA [(2015) 4 SCC 136], Construction & M/s Godawari Green Energy Limited vs NTPC Vidyut Vyapar Ltd. to contend that LD prescribed in the contract is only a ceiling and damages could only be levied to an extent NTPC could demonstrate the actual damages caused to it. Reliance was also placed on the order dated 11.10.2017 in Petition No 304/MP/2013 in the case of Godawari Green Energy Limited vs NTPC Vidyut Vyapar Nigam Limited & Ors and judgment of Hon`ble High

Court of Delhi in the case of Engineers India Limited vs Tema India Limited [FAO (OS) 487/2017].

3. Learned counsel for NTPC submitted that, contrary to the plea taken in the Petition, the Petitioner has not made out any case of force majeure in its arguments. It was further submitted that the claim of the Petitioner is categorically covered in the force majeure exclusion provision of the contract. As regards law of damages, the judgment of Hon'ble Supreme Court can be distinguished as the Petitioner was aware of the liability to pay LD on account of delay in COD in terms of the provisions of the PPA.

4. Considering the request of the learned counsel for the Respondent, the Commission permitted the Respondent to file its written submissions including on the aspect of applicability of the various judgments/authorities relied upon by the Petitioner with regard to claims of liquidated damages within two weeks with copy to the Petitioner, who may file its response/written submissions, if any, within two weeks thereafter.

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

By order of the Commission

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