

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 88/AT/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 23rd September, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff of 1500 MW Solar Power Projects connected to the inter-State Transmission System (ISTS) and selected through Competitive Bidding Process as per the Guidelines dated 28.07.2023 of the Ministry of Power, Government of India as amended from time to time and interpreted and modified by the Central Government vide subsequent communication/notifications.

And

In the matter of

NTPC Limited,
NTPC Bhawan,
Core – 7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003

.....Petitioner

Vs

- 1. ReNew Solar Power Private Limited,**
ReNew Power, Commercial Block-1,
Zone 6, Golf Course Road, DLF City Phase-V,
Gurugram-122009, Haryana
- 2. Avaada Energy Private Limited,**
406, Hubtown Solaris,
N.S Phadke Marg, Andheri (E),
Mumbai- 400069, Maharashtra
- 3. Apraava Energy Private Limited,**
7th Floor, Fulcrum, Sahar Road,
Andheri (East), Mumbai- 400099,
Maharashtra



4. **Anboto Solar Private Limited,**
Level 1, Southern Park Building,
D-2 District Centre Saket,
New Delhi- 110007
5. **Maharashtra State Electricity Distribution Co. Ltd.,**
Prakashgad, Plot No. G-9,
Anant Kanekar Marg Bandra (E),
Mumbai- 400051

.....Respondents

Parties Present:

Ms. Shikha Ohri, Advocate, NTPC
Shri Kartik Sharma, Advocate, NTPC

ORDER

The Petitioner, NTPC Limited (hereinafter referred to as 'NTPC'), has filed the present Petition for the adoption of the tariff of 1500 MW solar power projects connected with the Inter-State Transmission System (ISTS) and selected through the competitive bidding process as per the "*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*" dated 28.7.2023 ('the Solar Guidelines') issued by the Ministry of Power, Government of India, as amended from time to time and interpreted and modified by the Central Government vide subsequent communications/ notifications. The Petitioner has made the following prayers:

- a) *Adopt the tariff discovered in the tariff based competitive bid process for the power projects as stated above on the terms and conditions contained in the LoAs dated 24.01.2024 issued to M/s Anboto Solar Private Limited, M/s Apraava Energy Private Limited, M/s Avaada Energy Private Limited and ReNew Solar Power Private Limited; and*
- b) *Approve the trading margin of INR 0.07k/Wh;*
- c) *Pass any such order as this Commission deems just and proper in the nature and circumstances of the present case."*



Submission of the Petitioner

2. The Petitioner NTPC has submitted that on 25.7.2023, it issued a Request for Selection (RfS) along with the Standard Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for setting up of the 1500 MW ISTS connected Solar PV Power Project(s), under the tariff-based Competitive Bidding as per the Solar Guidelines dated 28.7.2023 on the ISN Electronic Tender System (ETS) e-bidding portal. In response, six bids were received, offering an aggregate capacity of 2250 MW, and all were found to fully meet the techno-commercial criteria. On 29.12.2023, as per the prescribed procedure in the RfS, the financial bids of the six technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS, five bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 4.1.2024 on the ISN ETS e-bidding portal, on the basis of which the final tariff was arrived at. Pursuant thereto, NTPC, on 24.1.2024, issued the Letter of Award (LoA) to the successful bidders, namely, Anboto Solar Private Limited (300 MW), Apraava Energy Private Limited (300 MW), Avaada Energy Private Limited (500 MW) and ReNew Solar Power Private Limited (400 MW). In view of the above, the Petitioner has prayed for the adoption of a tariff for the procurement of 1500 MW Solar Power Projects as discovered through a competitive bidding process carried out by NTPC.

3. The Petitioner, vide additional affidavit dated 2.9.2024, has submitted that subsequent to the filing of the present Petition, NTPC has executed PSA dated 13.8.2024 with Respondent No. 5, MSEDCL for 300 MW and correspondingly, PPA



dated 13.8.2024 with Anboto Solar Private Limited for 300 MW. The Petitioner has also submitted that it is under discussions with various other State Utilities/Discoms regarding the sale of the balance capacity, and the PPAs will be signed with the selected developers after the signing of the PSAs with the Discoms/State Utilities.

Hearing dated 29.4.2024

4. During the course of the hearing on 29.4.2024, learned counsel for the Petitioner, NTPC, reiterated the submissions made in the pleadings and requested the Commission for the adoption of the tariff of the 1500 MW Solar PV Power Projects connected to Inter-State Transmission System and selected through the competitive bidding process as per the Solar Guidelines.

5. In response to the specific query of the Commission regarding the status of the PPAs & PSAs, the learned counsel for the Petitioner submitted that the Petitioner is already in discussion with certain distribution licensees and is in the process of tying up the capacities. Learned counsel submitted that the Petitioner, in terms of the Solar Guidelines, is required to approach the Commission for the adoption of the tariff discovered within 15 (fifteen) days of the discovery of the tariff through e-reverse auction. Learned counsel further submitted that the Petitioner is expecting the tying up of the awarded capacities soon and meanwhile, the Commission may consider issuing the notice after admitting the matter.

6. After hearing the learned counsel for the Petitioner, notices were issued to Respondents to file their respective replies. However, no reply has been filed by them.



7. Vide Record of Proceedings for the hearing dated 29.4.2024, the Petitioner was directed to file its brief submission on the certain aspects, namely, (a) appropriateness of the adoption of tariff without the PPAs and PSAs having been executed, (b) in case the tariff is adopted without awaiting execution of the PPAs and PSAs, the relevancy of such adoption in case the Petitioner fails to tie-up the awarded capacity or ties such capacity with open access consumers/consuming entities, (c) keeping in view that as per Clause 10.5 of the Solar Guidelines, the extension to the Scheduled Commencement of Supply Date of the generators gets triggered in case the Appropriate Commission fails to adopt the tariff within the 60 days of submission of the Petition or within 120 days of the PSA, whichever is later, whether these adoption proceedings should await the signing of the PSAs and (d) status of the execution of the PPAs and PSAs and the anticipated timeline for tying up the entire awarded capacity.

8. In response, the Petitioner, vide its affidavit dated 21.5.2024, has submitted that as per Clause 10.4 of the Solar Guidelines, the Petitioner as an intermediary procurer shall approach the Appropriate Commission for adoption of tariff discovered, in terms of Section 63 of the Act, within 15 (fifteen) days of the discovery of the tariff through e-reverse auction or otherwise, in the transparent competitive bidding process conducted in accordance with these Guidelines. Thus, an obligation has been cast on the intermediary procurer to approach the Appropriate Commission within 15 days of the discovery of the tariffs without any pre-condition of execution of the PPA and the PSA. Accordingly, the Petitioner filed the present Petition on 14.02.2024 within 21 days of issuance of the Letter of Award to the successful bidders. Further, in terms of the indicative timetable for the bid process provided

under the Guidelines, there is a period of 30 days available between the issuance of the LoA and the signing of the PPAs and PSAs. At the same time in terms of Clause 10.4, the Petition for adoption of tariff discovered has to be filed within 15 days only. Thus, as per the provisions of the Solar Guidelines, the execution of the PPA and PSA is not a precondition for filing of the present Petition. However, the Petitioner is making all efforts for signing of the PSAs and PPAs. While an obligation has been cast on the intermediary procurer to approach the Appropriate Commission within the prescribed timelines under Clause 10.4, Clause 10.5 of the Solar Guidelines permits the Appropriate Commission to allow an extension of time in Scheduled Commencement of Supply Date (SCSD) to the generators for any delay in the adoption of tariff or in the execution of the PSA. Therefore, while a duty is cast on the intermediary procurer under Clause 10.4, the power to relax/extend has been granted to the Appropriate Commission under Clause 10.5. In the past, this Commission has sought reasons from intermediary procurers for any delay in filing the tariff adoption Petition. Accordingly, the Petitioner, by way of abundant caution, has approached this Commission even in the absence of executed PPAs and PSAs. Moreover, the Petitioner is under discussions with various State Utilities/ Discoms regarding the sale of power. It is also stated that all Renewable Energy Implementation Agencies (REIAs) are approaching State Utilities for the sale of RE power tendered under developer mode, and therefore, Discoms are evaluating the tariff discovered in such tenders. It is expected that the Discoms would sign the PSA after evaluating the tariff submitted by the REIAs. Further, the PPAs will be signed with the selected developers after signing of the PSAs with the Discoms/State Utilities.



Hearing dated 22.5.2024

9. During the course of the hearing, learned counsel for the Petitioner, NTPC reiterated the submissions made in the affidavit dated 21.5.2024 and submitted that the Petitioner is under discussions with various State Utilities/Discoms regarding the sale of power and is yet to tie up the awarded capacity under the PSAs and consequently, the PPAs with the successful developers. Learned counsel further added that if deemed fit, the Commission may consider keeping the present Petition in abeyance till the Petitioner signs the PSAs with the State Utilities/Discoms.

10. Considering the submissions made by the learned counsel for the Petitioner, the Commission directed the Petitioner and Respondents (successful bidders) to furnish their concise views on the aspect of the adoption of tariff without the execution of the PPAs and PSAs having been entered into on affidavit, within two weeks.

11. However, none of the Respondents furnished their views on the above aspects in terms of liberty granted by the Commission. Whereas, the Petitioner vide affidavit dated 10.6.2024 reiterated the submissions made in the earlier affidavit dated 21.5.2024, and the same are not being reproduced hereunder for the sake of brevity.

Hearing dated 25.7.2024

12. The matter was, thereafter, heard on 25.7.2024. Considering the submissions made by the learned counsel for the Petitioner, the Commission again permitted the Respondents to file their respective replies, including their concise views on the aspect of the adoption of tariff without the execution of the PPAs and PSAs, as a last

opportunity. The Commission further directed the Petitioner to furnish the status of the PPAs and PSAs and the anticipated timeline for tying up the entire awarded capacity. The Petitioner was further directed to furnish the certificate issued by the Bid Evaluation Committee to the effect that the price of the selected bidder is reasonable and consistent with the requirement as stipulated in Clause 10.2 of the Solar Guidelines.

13. Despite the repeated opportunities, none of the Respondents filed any reply in the matter.

Hearing dated 22.8.2024

14. The learned counsel for the Petitioner prayed for an additional time to file an affidavit furnishing the details/information as called for by the Commission vide Record of Proceedings for the hearing dated 25.7.2024. Considering the above request, the Commission adjourned the matter and permitted the Petitioner to file its additional affidavit, as above, within a week. The Commission directed the Petitioner to include, in the said affidavit, the details of the publication of the RfS notice in two national newspapers as per Clause 7.5 of the Solar Guidelines, if any.

15. Pursuant to the direction of the Commission, the Petitioner vide its affidavit dated 2.9.2024 has mainly submitted as under:

- a) The Petitioner has signed the PSA with Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) on 13.8.2024 for the procurement of 300 MW Solar Power. Further, the Petitioner entered into a Supplementary PSA with MSEDCL on 14.8.2024 wherein the Scheduled Commencement of Supply Date (SCSD) in the PPA dated 13.8.2024 was amended.

- b) The Petitioner has also signed the PPA with one of the successful bidders, i.e., Anboto Solar Private Limited, on 13.8.2024, for procurement of the 300 MW Solar Power. Further, the Petitioner entered into a Supplementary PPA with Anboto Solar Private Limited on 13.8.2024, amending the Scheduled Commencement of Supply Date (SCSD) date. Copies of the above PPA and PSA, along with Supplementary PPA and PSA, have been placed on record. Further, MSEDCL has been impleaded as a party to the present Petition, and a revised memo of parties has also been filed.
- c) Insofar as the balance capacity is concerned, the Petitioner is in discussions with various other State Utilities/Discoms. The PPAs will be signed with the selected developers after the signing of the PSAs with the Discoms/State Utilities.
- d) The Petitioner has placed on record a copy of the certificate issued by the Bid evaluation committee stating that the tariff discovered in the tender appears to be reasonable and consistent with the requirement of the tender.
- e) As to the publication of the RfS notice in two national newspapers as per Clause 7.5 of the Solar Guidelines, the Petitioner has submitted that the Government of India has issued an advisory that the rules in regard to the publication tender notices in leading newspaper are done away with, in view of the high cost and the same has been replaced with the mandatory e-publishing of advertisement in the relevant portal. In the above context, NTPC, on 5.6.2018, vide Circular No. 763, discontinued the tender publication of Tender Notices in the newspaper. On the basis of the above circular dated 5.6.2018, NTPC published a Notification regarding tenders of NTPC in the newspaper. Accordingly, the detailed IFB/NIT, along with all the related requisite information, has been published on the Petitioner's tender website www.ntpctender.com, Government's Central Public Procurement Portal <https://eprocure.gov.in> and Government E-Marketplace (GeM) portal.
- f) In similar matters for tariff adoption before this Commission under the Guidelines for Tariff Based Competitive Bidding Process for Procurement of

Power from Grid Connected Solar PV Power Projects dated 3.08.2017, wherein Clause 6.4 was identical to Clause 7.5 of the Solar Guidelines dated 28.07.2023, in relation to the requirement to publish the RfS/RfP notice in two national newspapers, dispensation has been allowed by this Commission to the REIAs such as the Petitioner, SECI & other CPUs and the publication of RfS notice on the website such as www.ntpctender.com and Government's Central Public Procurement Portal <https://eprocure.gov.in> has been permitted.

Hearing dated 5.9.2024

16. During the course of the hearing, learned counsel for the Petitioner submitted that the Petitioner has already filed all the additional details/information as called for by the Commission. Learned counsel also apprised that out of the total awarded capacity of 1500 MW, the Petitioner has already signed the PSA with MSEDCL dated 13.8.2024 for the 300 MW and consequently, PPA dated 13.8.2024 with one of the successful developers, namely, Anboto Solar Private Limited for corresponding capacity. Learned counsel further added that the copies of the above PPA and PSA have already been placed on record.

17. Considering the submissions of the learned counsel for the Petitioner, the Commission reserved the matter for order.

Analysis and Decision

18. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the solar power projects discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India.

19. Section 63 of the Act provides as under:



“Section 63. Determination of tariff by bidding process: Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

20. Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff on being satisfied that the transparent process of bidding in accordance with the Guidelines issued by the Central Government under Section 63 of the Act has been followed in the determination of such tariff.

21. The Ministry of Power, Government of India, has notified the Solar Guidelines under Section 63 of the Act vide Resolution No.27/01/2023-RCM on 28.7.2023. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for the procurement of power from grid connected solar PV power projects, with or without Energy Storage, through tariff based competitive bidding to be conducted by ‘Procurer’, which includes distribution licensees, or the Authorized Representative(s), or Intermediary procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines. The principles outlined in the Guidelines may be suitable expanded and made exhaustive in the Standard Bid Documents. In case of any deviation from the provisions of the Guidelines and/or Standard Bid Documents, approval of the Appropriate Government would be necessary prior to initiation of bid process.

(c) Bids shall be invited in Power Capacity (MW) terms specifying the total quantum to be contracted by the procurer. The minimum quantum of power that can be offered by the bidder should be 50 MW for projects connected with the inter-State transmission system. The bidder can quote for a part of the total quantum to be procured by the procurer. A maximum of 50 percent of total capacity as specified in the RfS can be allocated to a single bidder. The

bid evaluation parameter shall be the tariff per unit supply of solar power fixed for entire term of the PPA.

(d) The procurement of power - shall be in power (MW) terms. The range of Capacity Utilisation Factor (CUF) will be indicated in the bidding documents. Calculation of CUF will be on yearly basis.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA Period, Power Procurement, Payment Security Mechanism (PSM), Force Majeure, Generation Compensation for off-take Constraints, Event of default and consequences thereof, and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) Adequate payment security shall be provided as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 including amendments and clarification, if any, thereof, issued from time to time. In addition, the Intermediary Procurer may maintain a payment security fund. To be eligible for the coverage from the fund, the developer will undertake to pay the PSM charges at the rate of 2 paise per unit.

(g) The Procurer/intermediate procurer shall call for the bids adopting a single stage, two part (Technical Bid & Financial Bid), bidding process to be conducted through electronic mode (e-bidding). The technical bid shall be opened first. The financial bids of only those bidders who qualify in the technical bid shall be opened. E-procurement platforms with a successful track record and with adequate safety, security, and confidentiality features will be used.

(h) The RfS notice shall be issued in at least two national newspapers and on the websites of the procurer to provide the wide publicity. Standard provisions to be provided by the Procurer in the RfS document shall include Bid Responsiveness, Technical Criteria, Financial Criteria, Quantum of the Earnest Money Deposit (EMD), and Compliance of FDI Laws by foreign bidders, etc.

(i) The bidders shall be required to submit separate technical and price bids. The bidders shall also be required to furnish the necessary bid-guarantee in the form of an Earnest Money Deposit (EMD) along with the bids. The technical bids shall be evaluated to ensure that the bids submitted meet the eligibility criteria set out in the RfS document on all evaluation parameters. Only the bids that meet the evaluation criteria set out in the RfS document shall be considered for further evaluation on the price bids. To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of the bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(j) The procurer shall constitute a committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters / bid evaluation. After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS document. The Evaluation Authority should also satisfy itself that the price of the selected offer is reasonable and consistent with the requirement.

(k) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder.

(l) After the execution of the PPA, publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least 30 (thirty) days.

(m) The distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of tariffs discovered, in terms of Section 63 of the Act, within 15 (fifteen) days of the discovery of the tariffs through e-reverse auction or otherwise, in the transparent competitive bidding process conducted in accordance with these

Guidelines. In case the Appropriate Commission does not decide upon the same within 60 (sixty) days of such submission or within 120 (one hundred and twenty) days from the date of the PSA, whichever is more, the procurer shall grant the appropriate extension of time in Scheduled Commencement of Supply Date (SCSD) to the generators corresponding to the delay (beyond 60 days of submission or 120 days of PSA, whichever is more) in adoption/ approval by the Appropriate Commission till the date of adoption/ approval by the Appropriate Commission.

22. In terms of the provisions of Section 63 of the Act, we have to examine whether the process as per provisions of the Solar Guidelines has been followed in the present case for arriving at the lowest tariff and for the selection of the successful bidder(s).

23. The Solar Guidelines provide for the procurement of solar power at a tariff to be determined through a transparent process of bidding by the procurer(s) from the grid-connected solar power projects with or without energy storage. As per the Guidelines, NTPC, in the capacity of intermediary procurer, invited proposals for the selection of Solar Power Developers for setting up the 1500 MW ISTS connected-solar power projects. As per the arrangements, NTPC is to procure the power by entering into PPAs with the successful bidder with back-to-back PSAs for the sale of power to the distribution licensees.

24. On 25.7.2023, NTPC issued the RfS documents, along with the draft PPA and PSA, for the selection of the Solar Power Developers for setting up the 1500 MW ISTS connected with the solar power projects under tariff-based competitive bidding. The tender/ RfS document was floated on the ISN Electronic Tender System (ISN ETS) e-Tender portal. Subsequently, RfS documents were also amended by

Amendments dated 1.11.2023, 9.11.2023, 17.11.2023 and 26.11.2023. As per Clause 7.5 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, NTPC has placed on record the documents demonstrating the publication of the RfS on its own website and the Government's Central Public Procurement Portal. Further, the Petitioner vide additional affidavit dated 2.9.2024 has submitted that the Government of India has issued an advisory that the rules in regard to the publication tender notices in leading newspapers are done away with, in view of the high cost, and the same has been replaced with the mandatory e-publishing of advertisement in the relevant portal. In the above context, NTPC vide Circular No. 763 dated 5.6.2018 had discontinued the tender publication of Tender Notices in the newspaper. On the basis of the above Circular, NTPC also published a Notification regarding tenders of NTPC in newspapers, indicating that henceforth, the tender requirements of NTPC will not be published in newspapers and shall be published only on its tender website, the Government's Central Public Procurement Portal, and Government E-marketplace portal. Accordingly, the detailed IFB/NIT, along with all the related requisite information, was published on the Petitioner's tender website www.ntpctender.com, the Government's Central Public Procurement Portal <https://eprocure.gov.in>, and the Government E-Marketplace (GeM) portal.

25. The Bid Evaluation Committee (BEC) comprising the following was constituted for opening and evaluation of bids for the RfS dated 25.7.2023:

S. No.	Department	Name & Designation of Tender committee member
1	RE-CS	Sh. Dhananjay Mohapatra, AGM (RE-CS)
2	Commercial	Sh. Manish Kumar Verma, AGM (Commercial)
3	Finance	Sh. Abhishek Tandon, AGM (Fin)

26. Last date of submission of the bid was 30.11.2023 and the technical part of the bid was opened on 30.11.2023. Response to RfS was received from the following six bidders:

S.No.	Bidder Name	Bid Capacity (MW)
1	Spring Energy Private Limited	250
2	Avaada Energy Private Limited	500
3	Anboto Solar Private Limited	300
4	Solarcraft Power India 11 Private Ltd.	300
5	Apraava Energy Private Limited	300
6	Renew Solar Power Private Limited	600
	Total	2250

27. The financial bids of all the above six technically qualified bidders were opened on 29.12.2023 on the ISN ETS e-bidding portal, and as per the criteria mentioned in RfS documents, five bidders for capacity aggregating 1950 MW were shortlisted for an e-reverse auction. The e-reverse auction was carried out on 4.1.2024 on the ISN ETS e-bidding portal. The selection of the bidders and the final tariff were arrived at after the completion of the e-reverse auction. Based on the result of e-RA, the bidders, Spring Energy Private Limited, did not fall under L1 tariff +2% of L1 tariff and hence, was not awarded its respective capacities of 250 MW.

The result of the e-reverse auction is as under:

S. No	Name of the Successful Bidder	Bid Capacity (MW)	Final Tariff (Rs./kWh)	Allotted Capacity (MW)
1	Anboto Solar Private Limited	300	2.60	300
2	Apraava Energy Private Limited	300	2.65	300
3	Avaada Energy Private Limited	500	2.65	500
4	ReNew Solar Power Private Limited	600	2.65	400
Total awarded capacity				1500

28. On 24.1.2024, NTPC issued Letters of Award to the aforesaid successful bidders. The relevant extract of the Letter of Award issued to one of the successful bidders, namely, Anboto Solar Private Limited, is as under:

*“Sub: Selection of Solar Power Developers for Setting up 1500 MW ISTS connected Solar PV Power Projects anywhere in India (NTPC-ISTS-I)- IFB No. NTPC/RE-CS/2023-24/Solar/BOO-9 dated 25.07.2023- Letter of Award (LOA) for 300 MW contracted capacity.

2.0 NTPC is pleased to accept your Response to Request for Selection for the subject tender read in conjunction with all the terms & conditions of the RfS Documents including its Amendments & Clarifications and letters/emails referred to in Para 1.0 above and issue this Letter of Award (LoA) for setting up of 300 MW ISTS connected Solar PV Power Project and Supply of Solar Power from this project to NTPC subject to the terms and conditions contained in RfS mentioned at para 1.0 above.

Further, the Power Purchase Agreement (PPA) shall be signed with you only after signing of Power Sale Agreement (PSA) with the end procurers and NTPC shall not be liable on any account for any delay / inability in signing of PSA and PPA.

3.0 In line with the terms and conditions of RfS, before signing of PPA, you have the option to form Special Purpose Vehicle (hereinafter called “Project Company”) under Indian Companies Act. The company (Bidding Company or Project Company) executing the project (hereinafter called “Solar Power Developer / SPD”) shall enter into Power Purchase Agreement (PPA) as per the format given along with RfS within 90 days of issue of this Letter of Award (LOA) subject to signing of Power Sale Agreement (PSA) with the End Procurer(s) for identified capacity. All the documents referred to at para 1.0 above shall form integral part of the Power Purchase Agreement to be entered into between Project Company / Solar Power Developer (SPD) and NTPC so far these are not repugnant to the terms and conditions contained in the RfS referred to in para 1.0 above.

The signing of PPA shall constitute the agreement for setting up of the project. As specified in clause no.-3.14 of RfS, irrespective of the date of signing of PPA, the Effective Date of the PPA shall be the date as on 90th day from the date of issuance of LOA. In extraordinary cases of unavoidable delays on the part of NTPC in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

4.0 As per clause 3.26 of RfS document, you shall ensure that the Shareholding of Bidding Company M/s Anboto Solar Private Limited in the SPV/ project company executing the PPA shall not fall below 51% (fifty one per cent) at any time prior to One (01) year from the Scheduled Commencement of Supply Date (SCSD), except with the prior approval of NTPC.

Further, in case, you yourself shall be executing the PPA, you shall also ensure that the promoters shall not cede control of M/s Anboto Solar Private Limited till One (01) year from the SCSD except with the prior approval of NTPC. Any change in the shareholding after the expiry of One (01) year from the SCSD can be undertaken under intimation to NTPC.

5.0 The Tariff for electricity generated from the Solar Power Project to be developed by the SPD for the entire period of twenty five (25) years of Power Purchase Agreement (PPA) to be entered into between the SPD and NTPC for this project shall be INR 2.60/kWh (Indian Rupees Two and Sixty paise only per Kilowatt hour).

6.0 You along with your Project Company (if formed by your Company) are required to submit the following documents along with originals for verification within 15 days of issuance of this Letter of Award (LOA):

i) Original Response to RfS referred to in para 1.0 (E) above.

ii) If Project Company is formed by your company for this project, Board Resolutions from your Company and your Parent and/or Affiliates duly certified by the Company Secretary or the Director, as applicable, regarding fulfilment of equity investment obligations of Project Company in the same manner as provided by you and your Affiliates in your favour at the time of submission of RfS.

iii) Copy of the Certificate of Incorporation along with Memorandum & Article of Association of SPD highlighting the relevant provision of Power/Energy/Renewable energy/Solar Energy Power Plant development as per clause 3.15 (A 11) of RfS duly certified to be True copy by Company Secretary.

iv) Details of promoters and current shareholding pattern of the Bidding Company and Project Company (if formed) developing the project, duly certified by the Company Secretary in original along with a copy of Return filed with Registrar of Companies (ROC) for registering the shareholding and its terms and conditions which became due for filing during this period.

v) If Project Company is formed by your company to execute the project, a fresh Integrity Pact between Project Company and NTPC has to be signed. Certificate for Compliance to all Provisions of RfS Document is also to be submitted by Project Company.

7.0 Vide covering letter of your bid submitted against the RfS (copy enclosed at Annexure-II), you have indicated that you shall develop one (01) project of 300 MW with details as under:

SI NO.	Capacity of Project (MW)	Location of Project	Interconnection point details	Declared CUF
1	300	Village Likadi & Bhibda, Tehsil Sheo, Duda Beri, Tehsil Barmer, District-Barmer, Rajasthan	Barmer-I ISTS Substation	31.60%

In line with clause 3.6.2 of RfS documents, SPD shall have option to change the Project location until SCSD. However, implications of any delay in obtaining connectivity and subsequently, commencement of supply of power on account of the above, will be borne by the SPD.

8.0 In line with the provisions of RfS, the SPD shall submit Performance Guarantee of Rs. 28 Lakh/MW to NTPC within 70 days from the date of issue of Letter of Award or before signing of PPA, whichever is earlier, either in form of Bank Guarantee (BG) from any bank listed in the RfS for this purpose or Payment of Order Instrument (POI) issued by IREDA/PFC/REC as per the Performa available in RfS document. The total value of the Performance Guarantee for the project of 300 MW capacity shall be INR 84 Crore. The Performance Guarantees shall be valid for a period of six (06) months beyond SCSD. Further, the PPA shall be signed only upon successful verification of the PBG of requisite value submitted by the SPD.

9.0 The SPD shall pay to NTPC, success charge of Rs 1 lakh/MW +18% GST prior to signing of PPA in line with the provisions of clause no.-3.24.3 of RfS.

10.0 The Scheduled Commencement of Supply Date (SCSD) for supplying power from the full Project capacity shall be within a period of 24 (twenty-four) months from the Effective Date of the PPA in line with clause no.-3.28.c of RfS.



11.0 All disputes arising out of and / or in connection with this Selection of Solar Power Developers for Setting up 1500 MW ISTS connected Solar PV Power Projects anywhere in India and Supply of Solar Power therefrom and execution of PPA thereto shall be governed by laws of India and Courts of Delhi shall have exclusive jurisdiction.

12.0 This Letter of Award (LOA) is being issued to you in duplicate. You are kindly requested to return the duplicate copy of this LOA including all Annexure, duly signed on each page by your authorized signatory in token of your unequivocal acknowledgement of the same within 7 days from the date of this LOA.”

29. As per Clause 10.2 of the Solar Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. In this regard, it is observed that the BEC, in its Award Recommendations dated 8.1.2024, has indicated as under:

“...9.0 In line with Contract System Circular No. 613 dated 16.11.2007, it is hereby certified that the evaluation criteria as specified in the RfS document has been strictly complied with and the entire process of evaluation has been transparent....”

30. Further, pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 25.7.2024, the Petitioner vide affidavit dated 2.9.2024 has also submitted as a certificate by the Bid Evaluation Committee to the effect that the tariff discovered in the present tender appears to be reasonable and consistent with the requirement of the tender. The relevant extract of the said certificate is as under:

“CERTIFICATE BY BID EVALUATION COMMITTEE

It is certified that:

- A. *The bidding process and evaluation criteria as specified in the RfS document has been strictly complied with and the entire process of evaluation has been transparent.*
- B. *The levelized tariffs quoted by the bidders for supply of solar power for 25 years have been discovered through International Competitive Bidding process under Open Tender mode followed by Reverse Auction. Total number of bidders who have participated in the tender was six (06) with cumulative quoted contracted capacity of*

2250 MW against the total bid capacity of 1500 MW, from which it can be considered that there has been adequate participation of the bidders in the aforesaid tender. Considering above, the tariff discovered in the present tender appears to be reasonable and consistent with the requirement of the tender.”

31. As per Clause 10.4 of the Solar Guidelines, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of tariffs discovered, in terms of Section 63 of the Act, within 15 (fifteen) days of the discovery of the tariffs through e-reverse auction or otherwise, in the transparent, competitive bidding process conducted in accordance with these Guidelines. In the present case, the e-RA was concluded on 4.1.2024, and accordingly, the Petitioner was required to approach the Commission for the adoption of the tariff by 19.1.2024. However, even on the e-filing portal, the present Petition has been filed only on 14.2.2024. In this regard, the Commission vide order dated 24.7.2024 in Petition No. 71/AT/2024 (NTPC Ltd. v. Solalite Power Private Limited and Ors.) has observed as under:

“25.....We have considered the justification provided by NTPC for the delay in approaching the Commission for the adoption of the tariff as per Clause 12.4 of the Hybrid Guidelines. Keeping in view that, unlike the previous Hybrid Guidelines, 2018, the Hybrid Guidelines, 2023 specifically provide a timeline for the distribution licensee or intermediary procurer to approach the Appropriate Commission for the adoption of tariff, we expect the Petitioner to strictly adhere to the said timelines in future.”

32. Hence, we direct the Petitioner, NTPC, to strictly adhere to the timelines as provided in the Solar Guidelines in the future in letter and spirit.

33. Vide Record of the Proceedings for the hearing dated 29.4.2024, the Petitioner was also directed to file the appropriateness of the adoption of tariff without executing the PPAs and PSAs, and in case the tariff is adopted without awaiting execution of the PPAs and PSAs, the relevancy of such adoption in case

the Petitioner fails to tie up the awarded capacity or ties such capacity with open access consumers/consuming entities. The Petitioner vide affidavit dated 21.5.2024 has submitted that as per Clause 10.4 of the Solar Guidelines, the Petitioner as an intermediary procurer is required to approach the Appropriate Commission for the adoption of tariffs discovered, in terms of Section 63 of the Act within 15 (fifteen) days of the discovery of the tariffs through e-reverse auction or otherwise, in the transparent, competitive bidding process conducted in accordance with the Guidelines. Thus, an obligation has been cast on the intermediary procurer to approach the Appropriate Commission within 15 days of the discovery of the tariff without any precondition of execution of the PPA and PSA. Accordingly, the Petitioner filed the present Petition on 14.2.2024 within 21 days of issuance of the LoA to the successful bidders. NTPC has further submitted that in terms of the indicative time table for the bid process provided under the said Guidelines, there is a period of 30 days available between the issuance of the LoA and the signing of the PPAs and PSAs. At the same time, in terms of Clause 10.4, the Petition for the adoption of the tariff discovered has to be filed within 15 days only. Thus, as per the provisions of the guidelines, the execution of the PPA and PSA is not a precondition for filing the present petition. However, the Petitioner is making all efforts for signing the PSAs and PPAs. In the past, this Commission has sought reasons from intermediary procurers for any delay in filing the tariff adoption Petition. Accordingly, the Petitioner, by way of abundant caution, has approached this Commission even in the absence of executed PPAs and PSAs. Moreover, during the pendency of the present Petition, the Petitioner has tied up the 300 MW under the PSA dated 13.8.2024 with MSEDCL and, correspondingly, PPA of even date with Anboto Solar Private Limited.



34. We have considered the submissions made by the Petitioner, NTPC. In the past, the Commission has been proceeding with the adoption of tariffs only to the extent of the awarded capacity having been tied up under the PPAs and PSAs with the successful bidders/developers and the distribution licensees, respectively. In the present case, out of the total awarded capacity of 1500 MW, the Petitioner has so far tied up only 300 MW under the PPA and PSA. However, keeping in view the overall emphasis of the Solar Guidelines on the expeditious adoption of the tariff, we consider it appropriate to proceed with the adoption of the tariff without waiting tying up of the entire awarded capacity under the PPAs and PSAs, albeit such adoption shall be subject to the Petitioner tying up the balance awarded capacity under the PPAs and PSAs.

35. In light of the aforesaid discussion, it emerges that the selection of the successful bidders has been done, and the tariff of the Solar Power Projects has been discovered by the Petitioner, NTPC, through a transparent process of competitive bidding and in accordance with the Guidelines issued by the Ministry of Power, Government of India. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff in terms of the LoAs dated 24.1.2024 for the Solar Power Projects, as agreed to by the successful bidders as under, subject to the Petitioner tying up the balance awarded capacity under the PPAs and PSAs:

S. No	Name of the Successful Bidder	Bid Capacity (MW)	Final Tariff (Rs./kWh)	Allotted Capacity (MW)
1	Anboto Solar Private Limited	300	2.60	300
2	Apraava Energy Private Limited	300	2.65	300
3	Avaada Energy Private Limited	500	2.65	500
4	ReNew Solar Power Private Limited	600	2.65	400
Total awarded capacity				1500

36. Prayer (a) of the Petitioner is answered in terms of paragraph 35 above. Moreover, as soon as the balance awarded capacity is tied-up under the PPAs and PSAs, the Petitioner shall place on record the copies of such PPAs and PSAs in the present case. Also, in the event that the awarded capacity does not fructify into PPAs and PSAs, the Petitioner shall also place on record such development(s) on the file of the present case.

37. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly / Supplementary Bills

10.3.1 Subject to the provisions of Article 10.3.4, NTPC shall pay the amount payable under the Monthly Bill by due date to such account of the SPG, as shall have been previously notified by the SPG in accordance with Article 10.3.2 below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- (i) deductions required by the Law; and*
- (ii) amount claimed by NTPC, if any, from the SPG, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day-to-day basis.*

The SPG shall open a bank account at [Insert name of place] (the "SPG's Designated Account") for all Tariff Payments to be made by NTPC to the SPG, and notify NTPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NTPC shall also designate a bank account at New Delhi ("NTPC's Designated Account") for payments to be made by the SPG to NTPC, if any, and notify the SPG of the details of such account ninety (90) Days before the SCSD. NTPC and the SPG shall instruct their respective bankers to make all payments under this Agreement to the SPG' Designated Account or NTPC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.”

38. Further, Article 10.4 of the PPA provides as under:

“10.4 Payment Security Mechanism- Letter of Credit (LC)

10.4.1 NTPC shall provide to the SPG, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit” i.e. LC), opened and maintained which may be drawn upon by the SPG in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, NTPC through a scheduled bank shall provide payment security to the SPG through Revolving Letter of Credit (LC) ., NTPC shall open a Letter of Credit in favour of the SPG, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The LC shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i. for the first Contract Year, equal to the estimated average monthly billing;
- ii. for each subsequent Contract Year, equal to the 100% of the average monthly billing of the previous Contract Year.

10.4.3 Provided that the SPG shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill/ supplementary Bill and shall not make more than one drawl in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, NTPC shall restore such shortfall before next drawl.

10.4.5 NTPC shall cause the scheduled bank issuing the Letter of Credit to intimate the SPG, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 NTPC shall ensure that the Letter of Credit shall be renewed not later than its expiry,

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NTPC.

10.4.8 If NTPC fails to pay undisputed Monthly Bill/ supplementary Bill or part thereof within and including the Due Date, then, the SPG may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill/ supplementary Bill or part thereof, in accordance with Article 10.4.3 & 10.5.2, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill/ supplementary Bill (only for energy related bills) which has remained unpaid to SPG and,
- ii) a certificate from the SPG to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

39. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as “the Trading Licence Regulations”) provides as under:

“9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.

40. The above provisions provide for the payment security mechanism to be complied with by the parties. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Clause (10) of Regulation 9 of the Trading Licence Regulations shall be abided by the concerned parties.

41. The Petitioner, NTPC, has also prayed to approve the trading margin of Rs.0.07/kWh. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller.”

42. The above provision gives a choice to the contracting parties to mutually agree on trading margin for long-term transactions. However, proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1) (d) * * * * **

Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not

provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

43. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

“For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

44. The above two provisions are exceptions to the main provision as regards trading margin. In the present case, the distribution licensee, MSEDCL, has agreed to a trading margin of Rs.0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. For the balance capacity also, the trading margin shall be as per the provisions of the PSAs to be entered into between NTPC and the distribution licensees. However, in case of failure by the NTPC to provide an escrow arrangement or irrevocable, unconditional, and revolving letter of credit to the solar generators, the trading margin shall be limited to Rs.0.02/kWh specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

45. Prayer (b) of the Petitioner is answered accordingly.

46. Petition No. 88/AT/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson

