



याचिका संख्या/Petition No. 223/AT/2024

कोरम/ Coram:

श्री जिशु बरुआ, अध्यक्ष / Shri Jishnu Barua, Chairperson

श्री रमेश बाबू व., सदस्य / Shri Ramesh Babu V., Member

श्री हरीश दुदानी, सदस्य / Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order 18th of March, 2025

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for Adoption of Tariff discovered through Competitive Bidding Process for procurement of power from the 1500 MW ISTS-Connected Solar PV Power Projects as per the Solar Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects, MOP, GOI dated 28.07.2023 and its amendments thereof.

And

In the matter of

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

.....Petitioner

Vs

1. M/S Furies Solren Private Limited.

B-Block, 6th Floor, Embassy 247,
Vikhroli West, Mumbai-400083

2. M/S JSW Neo Energy Limited JSW Centre,

Bandra Kurla Complex, Bandra (East),
Mumbai, Maharashtra-499951

3. M/s Avaada Energy Pvt Ltd

Reg Office: 406, Hubtown Solaris, N.S Phadke Marg,
Andheri (E) Mumbai-400069

.....Respondents



Parties Present:

Ms. Sakie Jakharia, Advocate, NTPC
Ms. Chumei Mercy, Advocate, NTPC
Shri Nitish Gupta, Advocate, FSPL
Shri Deepak Thakur, Advocate, FSPL
Ms. Parichita Chowdhury, Advocate FSPL

ORDER

The Petitioner, NTPC Limited (hereinafter referred to as 'the NTPC'), has filed the present Petition for the adoption of the tariff of the 1500 MW solar power projects connected with the Inter- State Transmission System (ISTS) and selected through the competitive bidding process as per the "*Solar Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*" dated 28.7.2023 ('the Solar 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) Admit the present Petition;*
- (b) Adopt the Tariff Rate of Rs.2.59/kWh, Rs.2.60/kWh and Rs.2.60/kWh, at which the Petitioner will procure power from M/s Furies Solren Private Limited for 300 MW, M/s JSW Neo Energy Limited for 700 MW & M/s Avaada Energy Private Limited for 500 MW respectively, discovered through competitive bidding carried out by the Petitioner;*
- (c) Approve the trading margin of INR 0.07/kWh; and*
- (d) Pass such other order (s) as may be deemed fit and proper in the facts and circumstances of the present case."*

Submission of the Petitioner

2. The Petitioner NTPC has submitted that on 6.12.2023, it issued a Request for Selection (RfS) along with the Standard Power Purchase Agreement (PPA) and the



Power Sale Agreement (PSA) documents for setting up the 1500 MW ISTS connected Solar PV Power Project, under Competitive Bidding as per the Solar Solar Guidelines dated 28.7.2023, on the ISN Electronic Tender System (ETS) e-bidding portal. In response, seven bids were received, offering an aggregate capacity of 3200 MW, and all were found to fully meet the techno-commercial criteria. On 14.3.2024, as per the prescribed procedure in the RfS, the financial bids of the seven 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, 6 bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 18.3.2024 on the ISN ETS e-bidding portal, on the basis of which the final tariff was arrived at. Pursuant thereto, NTPC, on 19.4.2024, issued a Letter of Award to the successful bidders, namely, Furies Solren Private Limited (300MW), JSW Neo Energy Limited (700 MW) and Avaada Energy Private Limited (500 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 discovered through a competitive bidding process carried out by NTPC. The Petitioner has further prayed to approve the Trading Margin of Rs.0.07/kWh to be paid by the Distribution Companies/Buying Entity(ies) as specified in the Solar Solar Guidelines.

Hearing dated 22.7.2024

3. During the course of the hearing on 22.7.2024, 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 with the Inter-State Transmission System and selected through the competitive bidding process as per the Solar Solar Guidelines.



4. After admitting the matter, notices were issued to Respondents to file their respective replies. Vide Record of Proceedings for the hearing dated 22.7.2024, the Petitioner was directed to file (a) the reasons for the delay in approaching the Commission as per Clause 10.4 of the Solar Solar Guidelines and (b) the status of the tying up the awarded capacity under the PPAs and PSAs.

5. The Petitioner vide its affidavit dated 2.8.2024 has mainly submitted that Clause 10.4 of the Solar Solar Guidelines inter alia provides that the Intermediary Procurer, i.e., NTPC in the present case, shall approach the Appropriate Commission for adoption of tariffs discovered in terms of Section 63 of the Act, within 15 days of the discovery of the tariffs through e-reverse auction or otherwise, in the transparent competitive bidding process conducted in accordance with the Bidding Solar Guidelines. Further, the Indicative Timeline for Bid Process in Clause 9.1 of the Solar Solar Guidelines specifies a timeline of 11 days for issuance of a Letter of Award to the selected bidder after the e-reverse auction. However, as stated above, the petitioner has to approach the Commission for the adoption of the tariff within 15 days of e-RA (e-Reverse Auction), including 11 days' time for issuance of LOA to the successful bidder. Therefore, the petitioner is left with 4 days after the issuance of LOAs to approach the Commission for the adoption of the tariff. Also, it is most humbly submitted that the process for award of tender concludes on the approval of the Bid Evaluation Committee & issuance of LOAs upon discovery of tariff. In the present case, the tariff was discovered by way of an e-Reverse Auction on 18.03.2024. Thereafter, the Standing Tender Committee evaluated the bids and prices discovered in the e-reverse auction as per the requirement of Clause 10.2 of



the Solar Solar Guidelines and recommended the issuance of LoAs to the successful bidders, i.e., Respondents herein. Pursuant to the recommendation, approval was granted by the Competent Authority for awarding the selected project capacity to the Selected Bidders (i.e., the Respondents herein). The time taken for requisite approvals, was unavoidable so as to ensure proper compliance with the provisions of the Solar Solar Guidelines. Soon after the issuance of LOAs, NTPC completed all the activities involved in the filing of the petition, i.e., preparation of petition, compilation of relevant documents, processing of the filing fees, etc., in the least possible time. Moreover, NTPC is currently in the process of identifying and finalizing the End Procurers. Once the End Procurers are finalized by NTPC, NTPC will enter into Power Sales Agreements with the End Procurers, and thereafter, NTPC will enter into Power Purchase Agreements with the Respondents herein. The Petitioner is under discussions with various State Utilities/ Discoms regarding the sale of power. Here, it may be noted that the REIAs are approaching state utilities for the sale of RE power tendered under developer mode, and Discoms are evaluating the tariff discovered in such tenders. It is expected that the Discoms would sign PSA after evaluating the tariff submitted by REIAs. Further, the PPA will be signed with the selected developers after the PSA with the Discoms/ state Utilities is signed.

Reply by Respondent No.1, (FSPL)

6. Respondent No.1, M/S Furies Solren Private Limited (hereinafter 'FSPL'), vide its reply dated 13.8.2024, has mainly submitted as under:

Re. Project implementation timelines in terms of the Bidding Solar Guidelines



a) Clause 10.4 of the Solar Solar Guidelines provides that the intermediary procurer shall approach the Commission for the adoption of tariff within 15 days of the discovery of tariffs in the competitive bidding process. Notably, the bidding process concluded, the tariff was discovered on 18.03.2024, and the present Petition was filed by NTPC only on 01.06.2024. This Commission vide its Record of Proceedings (hereinafter, "RoP") dated 22.07.2024 has sought the reason behind such delay from NTPC, and the same has been provided by NTPC by way of its affidavit dated 05.08.2024. In this regard, it is submitted that no liability under the governing documents can be attributed to FSPL on account of the delay caused in the time taken towards the tariff adoption process, which may or may not impact the SCSD of the Project to be developed by FSPL.

b) Under Clause 10.5 of the Solar Solar Guidelines, if the tariff adoption process does not conclude within 60 days of the filing of the tariff adoption petition or 120 days from the date of execution of PSA, whichever is more, then the procurer shall grant an appropriate extension in SCSD to the generator. A bare perusal of the above provision shows that there are rights vested in favour of the generator in case the tariff adoption gets delayed beyond 120 days from the date of execution of the PSA, i.e., a commensurate extension in SCSD. Therefore, there is no urgency for the adoption of the tariff, and NTPC has sufficient time after the signing of the PSA to approach this Commission seeking the adoption of tariff. However, if NTPC's prayer for the adoption of the tariff is allowed today, then the future rights of FSPL may be impacted adversely.

c) As per Clause 3.14 of the RfS, the Effective Date of the PPA shall be the 90th day from the date of issuance of the LOA or the date of execution of the PPA i.e., from 18.07.2024. Considering that as on date, the PSA is yet to be executed between NTPC and the DISCOM(s), there is a lack of clarity on the project execution timelines of FSPL. Any remedy for delay in achieving SCSD is available to FSPL only if the PSA and PPA are executed. Clause 10.5 of the Solar Solar Guidelines ought to be interpreted keeping in view the interest of generators. The said provision has been specifically carved out to



safeguard the interests of the generator, and therefore, there cannot be an interpretation given to the above provision by NTPC that without signing the PSA, the tariff can be adopted.

Re. Adoption of Tariff can take place only after execution of PSA and thereafter the PPA by NTPC

d) FSPL, by way of its letter dated 27.06.2024 written to NTPC, had *inter alia* requested NTPC to provide an update on the status of the execution of the PSA. FSPL also stated in its letter that the Effective Date of PPA shall be 18.07.2024 (90th day from the date of issuance of LOA), or the actual date of signing of PPA in case of delay by NTPC in execution of PSA. It was also stated by FSPL that as per NTPC's email dated 25.06.2024, the consent for signing the PSA has been received from DISCOM. Further, FSPL also stated that it was in the process of issuance of the documents, such as PBG, Success charges, and L2 schedule for the signing of PPA, as per provisions of the LOA and RfS, and would submit the same prior to the signing of the PPA. FSPL, vide its email dated 22.07.2024, had once again requested NTPC to provide an update on the status of the execution of the PSA. Notably, this Commission, vide its RoP dated 22.07.2024 had also directed NTPC to provide the status of the signing of the tying up the awarded capacity under the PPAs and PSAs.

e) In compliance with the directions of this Commission in the RoP dated 22.07.2024, NTPC has filed an additional affidavit dated 05.08.2024, wherein it has stated that it is currently in the process of identifying the end procurers, and once the end procurers have been identified and finalised by NTPC, NTPC will enter into PSAs with the end procurers and thereafter, the PPAs with the respondents herein, including FSPL. In this regard, it is stated that FSPL has no objection to the said submission of NTPC since the same is in line with the consistent view taken by this Commission wherein this Commission has proceeded to adopt the tariff for the entities in whose respect the PPA has been executed based on and after the PSAs being executed between the intermediary procurer and the end procurer i.e., the distribution licensee



(Reliance has been placed on the order of the Commission dated 5.11.2023 in Petition No.224/AT/2023).

f) Even NTPC, vide its additional affidavit dated 05.08.2024, has stated that it is in the process of identifying and finalising the end procurers, after which the PSAs will be executed, and the PPA will only be executed subsequent to the execution of PSAs. Therefore, it is submitted that till such time NTPC does not execute the PSAs, the process of tariff adoption cannot be completed by this Commission. Therefore, this Commission may direct NTPC to complete the above process and thereafter approach this Commission for the adoption of tariff.

g) As per Clause 3.20 of the RfS, the Bid Validity is 180 days from the technical bid opening date. The technical bid opening date was 4.01.2024, and accordingly, the Bid Validity expired on 4.06.2024. Further, as per Clause 3.14 of the RfS, the PPA is required to be executed within 90 days of the date of issuance of the LOA, subject to the signing of the PSA. However, since the PSA is yet to be executed by NPTC, therefore, there is no urgency in the adoption of tariff till, and therefore, the present petition may be kept in abeyance till such time NTPC executes the PSA. After the execution of the PSA, there is a period of 120 days for the adoption of the tariff by this Commission.

h) FSPL has already incurred/committed costs towards obtaining connectivity, securing land parcels, etc., so that it can complete and deliver the project within the timelines. Further, FSPL is committed to implementing the Project and endeavours to meaningfully contribute to the smooth execution of PPA within the bounds of RfS and the Solar Guidelines. It is also relevant to note that as per the bid documents, the Effective Date of the PPA will be the 90th day from the issuance of LOA by NTPC, or the actual date of signing of the PPA if the same is signed beyond 90 days from the issuance of LOA for delays solely attributable to NTPC. Moreover, as per Clause 3.28 (c) of the RfS, the SCSD of the project will be 24 months from the Effective Date of the PPA. Therefore, the obligations of FSPL would only come into effect after the execution of the PPA, the date of execution of the PPA being the effective date.



i) If the tariff is adopted without the execution of PSA and PPA, then FSPL ought to be allowed to claim for an extension in SCSD and Financial Closure on account of any delay caused by NTPC in the execution of the PSA. Further, as submitted hereinabove, the Effective Date of the PPA shall be the date of execution of the PPA, and the SCSD shall be 24 months from the date of execution of the PPA, i.e., the Effective Date. NTPC cannot claim for any deviation which is beyond the express provisions of the RfS.

j) Therefore, this Commission may direct NTPC to execute the PSA and keep the present petition for the adoption of the tariff in abeyance till such time since there is no urgency for the adoption of the tariff at present, considering that a period of 120 days is provided for the adoption of tariff after the execution of the PSA. It is humbly submitted that this Commission's direction to NTPC for the execution of the PSA would be in the interest of justice and regulatory certainty.

Hearing dated 22.8.2024

7. During the course of the hearing dated 22.8.2024, the learned counsel for Respondent No.1, FSPL, submitted that in terms of liberty granted by the Commission vide Record of Proceedings for the hearing dated 22.7.2024, the Respondent has filed its reply raising certain aspects which may be considered. The learned counsel for the Petitioner sought liberty to file a rejoinder to the reply filed by Respondent No.1, FSPL.

8. Considering the request of the learned counsel for the Petitioner, the Commission permitted the Petitioner to file its rejoinder within a week. The Commission also directed the Petitioner to furnish certain details/information, on affidavit, within a week.



Rejoinder of the Petitioner

9. Pursuant to the liberty granted by the Commission, the Petitioner, in its rejoinder dated 21.8.2024 to the reply of FSPL, has mainly submitted as under:

Re. Project implementation timelines in terms of the Bidding Guidelines

- a) The bare perusal of the provision of Clause 10.5 of the Solar Guidelines clearly shows that the extension of time in SCSD to the generators is contingent upon the delay in the adoption of the tariff by the Commission. Therefore, there is an urgency for the Commission to adopt the tariff within the said stipulated time as provided in the Solar Guidelines i.e., within 60 sixty days of approaching the Commission for adoption of tariff under Section 63 of the Act.
- b) Regarding the lack of clarity on the project execution timelines of FSPL, considering that as on date the PSA is yet to be executed between NTPC and the DISCOM(s), the Petitioner is under discussions with various State Utilities/ Discoms regarding the sale of power. It is noteworthy that the REIAs are approaching the state utilities for the sale of RE power tendered under developer mode, and therefore, the 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 PPA will be signed with the selected developers after the signing of the PSA with the Discoms/ state Utilities. The provisions of the Solar Guidelines and RfS are to safeguard the interest of the Generator only if the adoption of the tariff is delayed beyond the stipulated timeline as per Solar Guidelines. However, Respondent No.1 vide the present Reply has taken the plea that the adoption of the Tariff be kept in abeyance, which is untenable. Section 63 of the Act mandates the Commission to adopt the tariff that is determined by the bidding process on being satisfied that the transparent process of bidding has been followed in accordance with the Solar Guidelines issued by the Government of India under Section 63 of the Act. In view thereof, contrary to the submission of Respondent No. 1, the tariff adoption cannot be kept in abeyance till the signing of the PSA.



Re. Adoption of Tariff can take place only after execution of PSA and thereafter the PPA by NTPC

c) In terms of the Scheme of the Act and the Solar Guidelines, the adoption of tariff under Section 63 is not contingent upon the signing of the PPA/PSA. Further, the Adoption of the tariff by this Commission will facilitate the timely execution of the projects as per the timeline specified in Solar Guidelines and will be beneficial for all stakeholders. The adoption of the tariff discovered by way of the RfS in the present case by this Commission will provide much-needed regulatory certainty over the projects and embolden the Petitioner's attempt to find willing State Utilities/Discoms to procure the said power. It is noteworthy that, in a similar case, this Commission adopted the tariff even prior to the parties entering into the PPAs and PSAs (Reliance in this regard is placed on the Order dated 24.07.2024 in Petition No.71/AT/2024 of this Commission).

d) Once the LOA is issued, the Bid remains valid and there is no question of expiry of the same thereafter. Therefore, it is denied that the Bid Validity expired on 4.06.2024. As stated above, it is reiterated that the Petitioner is under discussions with various State Utilities/ Discoms regarding the sale of power. Additionally, there is an urgency for this Commission to adopt the tariff within the said stipulated time as provided in the Solar Guidelines i.e., within 60 sixty days of approaching the Commission for adoption of tariff under Section 63 of the Electricity Act. Therefore, it is denied that the present petition may be kept in abeyance till the execution of the PSA as sought to be alleged.

e) Regarding the demand that, if the tariff is adopted without the execution of PSA and PPA, the Respondent ought to be allowed to claim for an extension in SCSD and Financial Closure on account of any delay caused by NTPC in execution of the PSA, has no basis. It is submitted that even otherwise, the Petitioner has acted in accordance with the terms of the RfS and will continue to do so. The contention of Respondent 1 that the present Petition for the adoption of tariff be kept in abeyance till such time the Petitioner executes the PSA since there is no urgency for the adoption of tariff at present has no basis and hence, is untenable.



10. The Petitioner, vide its additional affidavit dated 3.9.2024, has furnished the details/ information as directed by the Commission vide Record of Proceedings for the hearing dated 22.8.2024 and mainly submitted as under:

Re: Documents indicating the publication of RfS notice in at least two national newspapers as per Clause 7.5 of the Solar Guidelines.

a) The Petitioner has issued an advisory that the rules in regard to the publication of tender notices in leading newspapers are done away with, in view of the high cost, and the same has been replaced with mandatory e-publishing of advertisement in the relevant portal. In the above context, the Petitioner, on 5.6.2018, vide Circular no.763 had discontinued the tender publication of Tender Notices in the newspaper. Instead, the detailed IFB/NIT, along with salient technical features, after 5.6.2018, was to be 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. It is noteworthy that the said Policy regarding the discontinuation of publication of NIT/IFB in newspapers in future tenders had been published in the leading newspapers.

b) The MoP, Gol, issued the Solar Guidelines on 28.07.2023 vide Resolution No.27/01/2023-RCM inter alia for the promotion of competitive procurement of electricity from grid-connected Solar PV Power Projects through tariff-based competitive bidding. Clause 7.5 of the of the said Solar Guidelines requires the procurer to publish the RfS notice in at least two national newspapers and its own website to accord wide publicity. In continuation of its practice regarding the publication of the notice, the Petitioner, under the Solar Guidelines dated 28.07.2023, published the NIT and all the related requisite information on the Petitioner's tender website www.ntpctender.com and Government's Central Public Procurement Portal <https://eprocure.gov.in>. Further, the Petitioner issued/made available the RfS for setting up of the project including the Draft PPA and Draft PSA, bearing Reference No. NTPC/RE-CS/2023-24/Solar/BOO-14 on the website of <http://www.bharat-electronictender.com>.



c) As per the Solar Guidelines, the Petitioner floated the IFB bearing reference No. NTPC/RE-CS/2023-24/Solar/BOO-14 dated 06.12.2023, which delineated the requisite information on the bidding process. The said IFB clearly provides that the detailed Terms & Conditions are given in the RfS which are made available for examination and downloading at e-Tender Portal. In similar matters for tariff adoption before this Commission under the Solar 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.

Re: Documents indicating that the bid evaluation authority satisfied itself that the price of selected offers is reasonable and consistent with the requirement as per Clause 10.2 of the Solar Guidelines

d) According to Clause 10.2 of the Solar Guidelines, the Evaluation Committee shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS document. Accordingly, the Petitioner issued a Notice dated 02.12.2023 for the constitution of a Standing Tender Committee for the Evaluation of Bids and Recommendation of Award for the tenders invited by the Petitioner as REIA under developer for the sale of power to end procurer(s).

e) After the conclusion of bid submission, the Evaluation Committee, which was constituted for the purpose of evaluation of bids, issued a Certificate of Conformity dated 22.03.2024 stating that the bidding process as well as techno-commercial and financial bid evaluation conducted by NTPC were in conformity to the provisions of the RfS. The said Certificate of Conformity recapitulates the entire bidding process, which was carried out in line with the provisions of the Solar Guidelines/RfS, and furthermore elucidates the



requirement on the basis of which the bidders were shortlisted and finally selected as successful bidders. Additionally, in compliance with this ROP dated 22.08.2024, the Petitioner is also providing a certificate issued by the Evaluation Committee certifying its satisfaction in relation to the tariff discovered in the tender process being reasonable and consistent with the requirement of the tender.

Hearing dated 9.9.2024

11. During the course of the hearing dated 9.9.2024, the learned counsel for the Petitioner submitted that the Petitioner had furnished the additional information/clarification sought by the Commission, and accordingly, the matter may be reserved for the order.

12. Learned counsel for Respondent No.1, Furies Solern Private Limited, submitted that since the adoption of tariff also entails the adoption of terms and conditions of tariff, the Petitioner ought to be directed to ensure that there is no change in the terms and conditions contained in the RfS and/or draft PPA at this stage. Learned counsel submitted that as per Clause 3.28(c) of the RfS read with Article 2.1.1 of the draft PPA, the Scheduled Commencement of Supply Date (SCSD) for supplying the power from the full Project capacity shall be the date as of 24 months from the effective date of the PPA and the effective date of the PPA has been provided as the 90th day of issuance of the LoA by NTPC or the actual date of signing of the agreement if signed beyond 90 days of issuance of the LoA. Learned counsel submitted that since the period of 90 days from the issuance of the LoA has already lapsed, the effective date of the PPA will be the date of signing, and the Petitioner, in turn, will have 24 months from the effective date to achieve the SCSD. Learned

counsel, however, pointed out that in draft Supplemental PPA circulated by NTPC recently, the SCSD appears to have been preponed to June 2026.

13. In response, the learned counsel for the Petitioner clarified that the proposal to advance the Project SCSD to an earlier date is merely discretionary and has been proposed by NTPC based on the request of one of the Distribution Licensees intending to avail of the benefit of waiver of ISTS charges. Learned counsel further submitted that such a proposal, as such, has not been foisted upon any of the selected developers/bidders.

14. Further, considering the request of the learned counsels for the parties, the Commission permitted the Petitioner and Respondent No.1 to file their brief written submissions, if any, within a week with a copy to the other side.

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

16. The Respondent No.1 and the Petitioner, vide their written submissions dated 20.9.2024 and 30.9.2024, have reiterated their earlier submissions. As such, the same is not being reproduced herewith for the sake of brevity.

Analysis and Decision

17. 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 as discovered pursuant to the competitive bid process carried out in terms of the Solar Guidelines issued by the Government of India.

18. 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 Solar Guidelines issued by the Central Government.”

19. 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 Solar Guidelines issued by the Government of India under Section 63 of the Act has been followed in the determination of such tariff.

20. 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 Solar 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 the bid process.

(c) Bids shall be invited in Power Capacity (MW) terms specifying the total quantum to be contracted by procurer. The minimum quantum of power that can be offered by the bidder should be 50 MW for projects connected of inter-state transmission systems. 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 the entire term of the PPA.

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

(e) The Draft PPA proposed to be entered into with the successful bidder and the 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*, the 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) The 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 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 the 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 the RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity with 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 the 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 the tariff 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 the adoption/ approval by the Appropriate Commission till the date of the adoption/ approval by the Appropriate Commission.

21. 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).

22. 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 Solar 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 the PPAs with the successful bidder with back-to-back PSAs for the sale of power to the distribution licensees.

23. On 6.12.2023, 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 solar power projects under tariff-based competitive bidding. The said tender/ RFS document was floated on the ISN Electronic Tender System (ISN ETS) e-Tender portal. As per Clause 7.5 of the Solar 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 the e-publishing system, Government of India. Further, the Petitioner, vide additional affidavit dated 3.9.2024, 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 mandatory e-publishing of advertisement in the relevant portal. In the above context, NTPC on 5.6.2018, vide Circular No. 763, discontinued the publication of Tender Notices in the newspaper. NTPC's above policy regarding discontinuation of publication of NIT/IFB in newspapers in future tenders has also been published in leading newspapers. Accordingly, the detailed IFB/NIT, along with all the related requisite information, was 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.

24. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids under RfS dated 6.12.2023:

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. AbhishekTandon, AGM (Fin)

25. Last date of submission of the bid was 15.1.2024, and the technical part of the bid was opened on 15.1.2024. Response to the RfS was received from the following seven bidders:



S.No.	Bidder Name	Bid Capacity (MW)
1	M/s Furies Solren Private Limited	300
2	M/s Diyos Renewables India Project Private Limited	250
3	M/s Teq Green Power XIX Private Limited	300
4	M/s Solarcraft Power India 8 Pvt Ltd	300
5	M/s Renew Solar Power Private Limited	600
6	M/s Avaada Energy Private Limited	750
7	M/s JSW Neo Energy Limited	700
	Total	3200

26. The financial bids of all the above seven technically qualified bidders were opened on 14.3.2024 on the ISN ETS e-bidding portal, and as per the eligibility criteria mentioned in the RfS documents, out of seven, six bidders were shortlisted for e-reverse auction. The e-reverse auction was carried out on 18.3.2024 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. The result of the e-reverse auction is as under:

Sr No.	Particulars	Tariff (INR/kWh)	Allocated Capacity (MW)
1	M/s Furies Solren Private Limited	2.59	300
2	M/s JSW Neo Energy Limited	2.60	700
3	M/s Avaada Energy Private Limited	2.60	500
	Total		1500

27. On 19.4.2024, NTPC issued the Letters of Award (LoAs) to the above successful bidders. The relevant extract of the Letter of Award issued to one of the successful bidders, namely, Furies Solren Private Limited, is as under:

“Sub: Selection of Solar Power Generators for Setting up of 1500 MW ISTS connected Solar PV Power Projects anywhere in India (NTPC-ISTS-II)- IFB No. NTPC/RE-CS/2023-24/Solar/BOO-14 dated 06.12.2023- 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 Generator / SPG") 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 Generator (SPG) 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 Furies Solren 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 Furies Solren 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 SPG for the entire period of twenty five (25) years of Power Purchase Agreement (PPA) to be entered into between the SPG and NTPC for this project shall be 1NR 2.59/kWh (Indian Rupees Two and Fifty Nine 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:

Sl NO.	Capacity of Project (MW)	Location of Project	Interconnection point details	Declared CUF
1	300	Bikaner or Jaisalmer or Jodhpur District	220 KV GSS of Bikaner-IV or Ramgarh or Bhadla-III	27%

In line with clause 3.6.2 of RfS documents, SPG 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 SPG.

8.0 In line with the provisions of RfS, the SPG 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 Performs 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 SPG.

9.0 The SPG 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 Generators 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."

28. 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 document. Also, the Evaluation Authority



should satisfy itself that the price of the selected offer is reasonable and consistent with the requirement. In compliance with the above, it is observed that the BEC, in its Award Recommendations dated 22.3.2024, 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....”

29. Pursuant to the direction of the Commission vide Record of the Proceedings for the hearing dated 22.8.2024, the Petitioner also filed a conformity certificate indicating 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 conformity certificate is as under:

“CERTIFICATE BY BID EVALUATION COMMITTEE

Subject: Selection of Solar Power Generators for Setting up of 1500 MW ISTS- connected Solar PV Power Projects anywhere in India (ISTS-II); RfS Document No.: NTPC/RE-CS/2023-24/SOLAR/BOO-14

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 seven (07) with cumulative quoted contracted capacity of 3200 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.*

The certificate is being issued for onward submission to honourable CERC for tariff adoption.”

30. 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 the tariffs discovered, in terms of Section 63 of the Act, within fifteen days of the discovery of the tariffs through e-RA or otherwise, in the



transparent, competitive bidding process conducted in accordance with the Solar Guidelines. In the present case, the e-RA was concluded on 18.3.2024, and the Bid Evaluation Committee submitted its Award Recommendation report on 22.3.2024. Whereas, the present Petition, even on the e-filing portal of the Commission, was filed only on 1.6.2024 (Diary No. generation). In this regard, NTPC has submitted that the tariff was discovered by way of an e-Reverse Auction on 18.03.2024; thereafter, the Standing Tender Committee evaluated the bids and prices discovered in the e-reverse auction as per the requirement of Clause 10.2 of the Solar Guidelines and recommended the issuance of LoAs to the successful bidders, i.e., Respondents herein. Pursuant to the recommendation, approval was granted by the Competent Authority for awarding the selected project capacity to the Selected Bidders (i.e., the Respondents herein). The time taken for requisite approvals, was unavoidable so as to ensure proper compliance with the provisions of the Solar Guidelines. NTPC issued LOAs to the successful bidders on 19.04.2024 to the Respondents, and soon after the issuance of LOAs, NTPC completed all the activities involved in the filing of the petition, i.e., preparation of the petition, a compilation of relevant documents, processing of the filing fees, etc. in the best possible time. The present Petition could not be filed within the prescribed period of time and has been filed with a delay of 61 days, which may kindly be condoned by this Commission. Keeping in view that the Commission has already issued suitable directions to the Petitioner in its order dated 24.7.2024 in Petition No. 71/AT/2024 in regard to approaching the Appropriate Commission for the adoption of tariff within the timelines specified in the relevant Guidelines in future, we are not repeating such directions in the present case. However, Respondent No.1, FSPL, on the other hand, has *inter alia* submitted that there is no urgency in the adoption of the tariff and that the present Petition may be



kept in abeyance till such time NTPC executes the PSA as a period 120 days is available to the Commission for the adoption of tariff after the execution of the PSA. As noted above, the Solar Guidelines itself now prescribes a specific timeline for approaching the Commission for the adoption of tariff, i.e., within 15 (fifteen) days of the discovery of tariff through e-reverse auction or otherwise, and as can be seen, the said timeline starts reckoning from the discovery of tariff through e-RA or otherwise and is not linked with the execution of PPA and PSA. Although it is true that the consequences provided for the delay in adoption/approval of tariff by the Appropriate Commission, at Clause 10.5 of the Solar Guidelines, would kick in only in case the Appropriate Commission does not decide upon such Petition within 60 days of its submission or within 120 days from the date of PSA, whichever is more, we do not see any cogent reason for not proceeding with the adoption of tariff when the Solar Guidelines itself do not link the filing of the Petition with the execution of the PPA and PSAs. Also, the scope of adoption proceedings is limited to examining as to the tariff has been determined through a transparent bidding process and in accordance with the provisions of the Guidelines. In any case, such adoption of tariff by the Commission is being made subject to the awarded capacity being tied up under the PPA and PSAs amongst the concerned parties. Hence, we are not inclined to accept Respondent No.1's averment that the present Petition may be kept in abeyance till the execution of PSA(s) by NTPC.

31. In light of the aforesaid discussion, it emerges that the selection of the successful bidders has been made, 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 Solar 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 18.3.2024 for the Solar Power Projects, as agreed to by the following successful bidders subject to the Petitioner tying up the awarded capacity under the PPAs and PSAs:

Sr No.	Particulars	Tariff (INR/kWh)	Allocated Capacity (MW)
1	M/s Furies Solren Private Limited	2.59	300
2	M/s JSW Neo Energy Limited	2.60	700
3	M/s Avaada Energy Private Limited	2.60	500
	Total		1500

32. Prayer (b) of the Petitioner is answered in terms of paragraph 31 above. Moreover, as soon as the 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.

33. The Petitioner, NTPC, has also prayed to approve the trading margin of Rs.0.07/kWh to be charged to the End Procurer or any other entity over & above the PPA tariff on the sale of power as specified in the RfS document and specified in the Solar Guidelines.

34. 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:”

35. 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.”

36. 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.”

37. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensees may mutually agree to trading margin.

38. Prayer (c) of the Petitioner is answered accordingly.

39. Furthermore, during the course of the hearing and by its written submissions dated 20.9.2024, Respondent No. 1, FSPL also sought to point out that FSPL has received a draft Supplementary PPA from NTPC wherein NTPC has sought to prepone the SCSD to 30.6.2026, which is contrary to the terms and conditions as contained in the draft PPA read with LoA basis which the successful bidders had submitted their bid. It is stated that such preponement is in deviation from the terms and conditions stipulated in the bidding documents, and if the Commission is of the view that the tariff must be adopted, the Commission may clarify that the PPA to be signed between NTPC and the successful bidder(s) shall be in line with the bidding

documents and the draft PPA unless otherwise is agreed between the parties to the PPA. In response, NTPC, during the course of the hearing as well as by its written submissions dated 30.9.2024, has clarified that in the process of identifying the end procurers, Maharashtra State Electricity Distribution Co. Ltd., a prospective end procurer, intimated to NTPC regarding its requirement of commencement of supply of power on or before 30.6.2026 irrespective of date of signing of PSA in order to avail the benefit of waiver of ISTS charges. Accordingly, NTPC proposed the Supplementary PPA and PSA incorporating the preponed SCSD viz. 30.6.2026 as per the requirement of MSEDCL to all the successful bidders in the present bid, including Respondent No.1, requesting their consent/comments to the same. The said Supplementary PPA and PSA was simply a proposed offer, and the discretion to accept or reject it was solely up to the successful bidders, including Respondent No.1. Petitioner has submitted that mere suggestion or proposal of Supplementary PPA and PSA do not entail a deviate from the terms and conditions stipulated in the bidding documents as the said proposal has not been foisted upon the successful bidders and the Respondent No.1 and the other bidders are free to consent to or reject the said proposal. We have considered the submissions made by both sides on the above aspect. Keeping in view the clarification provided by the Petitioner that the supplementary PPA incorporating the preponed SCSD as circulated to the successful bidders was merely a proposal to them – it is entirely in their discretion to accept/reject such proposal – and that such Supplementary PPA has not been foisted upon any of the successful bidders, we do not find any need to intervene in this matter and/or to issue any further direction on this aspect. The apprehensions of Respondent No.1, in our view, are squarely addressed by the Petitioner's above clarification.



40. Petition No. 223/AT/2024 is disposed of in terms of the above.

Sd/-
(श्री हरीश दुदानी)
सदस्य

Sd/-
(श्री रमेश बाबू व.)
सदस्य

Sd/-
(श्री जिशु बरुआ)
अध्यक्ष

