

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 95/MP/2021

Subject : Petition under Section 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 along with Regulation 68 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with terms of the Power Purchase Agreement dated 8.4.2019 and Power Sale Agreement dated 25.3.2019 (along with supplementary agreements) inter alia seeking directions qua extension of timelines for fulfilment of Condition Precedent along with interim relief from any coercive/precipitative action by Respondents against the Petitioner.

Date of Hearing : 29.10.2021

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

Petitioner : SB Energy Six Private Limited (SBESPL)

Respondents : NTPC Limited (NTPC) and Anr.

Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, SBESPL
Ms. Molshree Bhatnagar, Advocate, SBESPL
Ms. Shikha Ohiri, Advocate, NTPC
Shri Samyak Mishra, Advocate, NTPC
Shri Ravi Shankar Sharma, SBESPL
Shri Pranav Kapoor, NTPC
Shri I. Uppal, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. The learned senior counsel for the Petitioner submitted that the instant Petition has been filed in terms of the Power Purchase Agreement ('PPA') dated 8.4.2019 entered into between the Petitioner and NTPC and Power Sale Agreement ('PSA') dated 25.3.2019, *inter alia*, seeking directions qua extension of timelines for fulfilment of condition precedent. The learned senior counsel mainly submitted the following:

(a) In terms of condition precedent as specified in the PPA/PSA, if the PSPCL/NTPC fails to obtain requisite order from Punjab State Electricity Regulatory Commission ('PSERC') regarding adoption of tariff, trading margin to NTPC and procurement of contracted capacity by 31.3.2021, it will result in cancellation of PPA/PSA.

(b) Subsequently, in terms of Supplemental PPA dated 26.3.2021 entered into between the Petitioner and NTPC, the date for completion of Condition Precedent has been extended from 31.3.2021 to 31.10.2021.

(c) However, the aforesaid condition precedent is yet to be completed by the Respondents. The proceeding for approval of power procurement arrangement is pending before the PSERC. While the said proceeding has been reserved for order by PSERC on 12.10.2021, the Petitioner has reasonable apprehension that the order may not be issued before 31.10.2021, which is the agreed date for completion of condition precedent.

(d) Vide Record of Proceedings for the hearing dated 19.03.2021, the Commission has already recorded the submissions of NTPC regarding it having no objection towards extension of timelines for completion of condition precedent and not contemplating the termination/cancellation of the PPA with the Petitioner. Since, as on date, the position remains the same, inasmuch as the condition precedent is yet to be completed by the Respondents, a similar Record of Proceedings may be issued in the matter.

3. The learned counsel for the Respondent, NTPC submitted that the PPA entered into with the Petitioner and the PSA entered into by NTPC with PSPCL are on back-to-back basis. The learned counsel further submitted that while the Respondent, NTPC is already pursuing the matter with PSPCL, unless the PSPCL signs the supplementary PSA with NTPC extending the timeline for completion of condition precedent, NTPC cannot sign the corresponding supplementary PPA with the Petitioner. The learned counsel also added that in absence of any clarity on the extension of the PSA, NTPC cannot give no-objection to extension of timelines for fulfilment of condition precedent.

4. On the specific observation of the Commission that as per the Article 2.1.3 of the PPA, any extension of time for fulfilling the condition precedent has to be by way of mutual agreement between the parties only and in the present case there appears to be no mutual agreement between the parties, the learned senior counsel for the Petitioner submitted that the Respondent, NTPC as such may not have any objection to extension of timelines for fulfilment of condition precedent, but is not willing to sign the supplementary PPA to this effect till the signing of the corresponding supplementary PSA with PSPCL. The learned counsel further submitted that in the absence of any mutual agreement between the parties, the dispute in this regard would need to be adjudicated by the Commission under Article 16.3.1 ('Dispute Resolution') of the PPA.

5. After hearing the learned counsel for the Petitioner and learned counsel for the Respondent, NTPC, the Commission reserved the matter for order on the limited point for extension of timeline

By order of the Commission
Sd/
(T.D. Pant)
Joint Chief (Law)