



नईदिल्ली
NEW DELHI

याचिका संख्या./ Petition No.149/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 6th of April, 2022

IN THE MATTER OF:

Petition under Section 79 (1) (b), Section 79(1)(f) and Section 79(1) (k) of the Electricity Act, 2003 read with Article 11 of the power purchase agreements entered into between Solar Energy Corporation of India and Parampujya Solar Energy Private Limited seeking directions to Solar Energy Corporation of India to act in accordance with Article 11 of the PPA accepting the impact of Force Majeure Events and extend the timeline for fulfillment of Conditions Subsequent and Scheduled Commissioning Date of the Petitioner's projects.

AND IN THE MATTER OF:

Parampujya Solar Energy Private Limited,
5B, Sambhav House, Judges,
Bungalow Road, Bodakdev,
Ahmedabad-380015, Gujarat

...Petitioner

Versus

Solar Energy Corporation of India Limited (SECI),

1st Floor, A-Wing, 0-3,
District Centre, Saket,
New Delhi- 110017

Chhattisgarh State Power Distribution Company Limited (CSPDCL),

Vidyut Seva Bhawan,
Dangania,
Raipur – 492013, Chhattisgarh

Chhattisgarh State Power Transmission Company Limited (CSPTCL),

Energy Info Tech Centre,
Daganiya,
Raipur – 492013, Chhattisgarh

...Respondents

Parties Present:

Shri Sanjay Sen, Sr. Advocate, PSEPL
Shri Nitish Gupta, Advocate, PSEPL
Shri Nishant Talwar, Advocate, PSEPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Neha Singh, SECI
Shri Abhishek Kumar Ambasta, SECI
Shri Abhinav Kumar, SECI
Shri Nirnay Gupta, Advocate, CSPTCL and CSPDCL

आदेश/ ORDER

The Petitioner, Parampujya Solar Energy Private Limited (in short “PSEPL”) is a generating company and is setting up solar power projects of 50 MW each (cumulative capacity of 100 MW) in the State of Chhattisgarh. The Petitioner has filed the petition under Section 79 (1) (b), Section 79(1)(f) and Section 79(1) (k) of the Electricity Act, 2003 read with Article 11 of the Power Purchase Agreements (PPAs) seeking directions to be issued to Solar Energy Corporation of India to act in accordance with Article 11 of the PPAs accepting the impact of Force Majeure

Events and extend the timeline for fulfilment of Conditions Subsequent and Scheduled Commissioning Date (SCoD) of the Petitioner's projects.

2. The Respondent No. 1, Solar Energy Corporation of India Limited (in short "SECI"), is responsible for implementation of 'State Specific Bundling Scheme' under 'JNNSM Guidelines for selection of 2000 MW Grid Connected Solar PV Power Projects under Phase-II Batch III' notified vide No. 32/2/2014-15/GSP dated 04.08.2015 including its subsequent amendments and clarifications' (Guidelines) of Ministry of New and Renewable Energy for setting up Solar Power Plants.
3. The Respondents 2 & 3, Chhattisgarh State Power Distribution Company Limited (CSPDCL) Chhattisgarh State Power Transmission Company Limited (CSPTCL) are respectively the distribution and transmission companies in Chhattisgarh.
4. The Petitioner has made the following prayers:
 - a. *Declare that the Petitioner was prevented from performing its obligation under the PPA due to occurrence of Force Majeure events affecting it and due to act/omissions of the Respondent and Government Instrumentalities;*
 - b. *to condone the inadvertent delay caused for the reasons beyond the control of the Petitioner due to Force Majeure events and act/omissions of the Respondent and Government Instrumentalities affecting it in fulfillment of the Conditions Subsequent and in achieving the Scheduled Commissioning Date of the Project.*
 - c. *Direct the Respondent to allow time extension in fulfillment of conditions subsequent and consequently time extension in schedule commissioning date.*
 - d. *Direct the Respondent to refund the amount of Penalty levied for non-fulfillment of Conditions Subsequent.*
 - e. *Direct the Respondent to refund the amount deducted as Liquidated Damages by encashing the Bank Guarantees along with interest on the same as per the PPA.*
 - f. *Direct Respondent to pay tariff for total Projects at the rate of INR 4.43/kwh and restore the tariff for 10 MW capacity in both the Projects and pay the differential tariff from the date of commissioning till date along with the interest as per the PPA.*
 - g. *Grant such order, further relief(s) in the facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioner.*

Background

5. On 18.03.2016, SECI under the MNRE Guidelines, issued a request for selection (RfS) for setting up 100 MW grid connected Solar Power Projects.
6. On 20.05.2016 the Petitioner submitted the bid.
7. On 02.07.2016, the Petitioner was selected as the successful bidder.
8. On 02.08.2016, the Petitioner entered into two Power Purchase Agreements (PPAs) with SECI for sale of power from the projects. The projects were to be developed on long term basis at a tariff of Rs. 4.43/kWh.
9. On 12.07.2016, SECI entered into a Power Sale Agreement (PSA) with Chhattisgarh State Power Distribution Company Limited (CSPDCL) at tariff of Rs.4.50/kWh fixed for entire term of the PSA.
10. In terms of PPAs, the Scheduled commissioning (SCoD) date was 02.09.2017.
11. On 14.11.2017, the Petitioner commissioned 40 MW of Project-II.
12. On 16.11.2017, the Petitioner commissioned 40 MW of Project-I.
13. On 06.02.2018, the Petitioner commissioned balance 10 MW of Project-I & Project-II.
14. On 19.03.2018, CREDA issued Commissioning Certificates for the projects.
15. On 11.04.2018, SECI declared Commercial Operation Date (COD) / Unit Commercial Operation Date (UCOD) of the Projects in line with the Commissioning Certificate issued by CREDA.
16. According to the Petitioner, subsequent to the signing of PPAs owing to various unforeseeable events and circumstances, the development and setting up projects were materially and adversely affected by the Force Majeure events.

17. Hence the petition.

Submissions of the Petitioner

18. The Petitioner has submitted as under:

Introduction/modification of Central laws/policies Demonetization

- a) Government of India by way of Notification dated 08.11.2016 withdrew the Legal Tender status of Rs.500 and Rs.1000 denominations of banknotes issued by the Reserve Bank (Demonetization). Demonetization has had a domino effect on land acquisition and other project activities which were delayed considerably. It duly notified occurrence of this Force-Majeure Events on 22.11.2016 in terms of Article 11.5 of the PPA and requested for extension of SCoD.
- b) Vide letter dated 08.02.2017, it requested for extension of the Conditions Subsequent and consequently extension of SCoD by at least 2 months. Post payment of the penalty, timeline for completion of Conditions Subsequent was extended up to 07.04.2017 for Project-I and 15.05.2017 for Project-II.
- c) SECI has allowed time extension of 2 months for fulfillment of Conditions Subsequent for similarly placed solar power developers developing their solar projects under the JNNSM, Phase II, Batch III, Tranche VI, who also had faced delay attributable to the Government policy of demonetization, which was acknowledged by MNRE by way of its office memorandum dated 02.12.2016. Due to demonetization, its efforts for acquiring land were also equally affected and it is entitled for such dispensation and refund of penalty levied by the SECI.

Introduction of GST

- d) Enacting the Central Goods & Services Tax Act, 2017 on 01.07.2017 (GST Laws) brought about fundamental structural changes in the prevailing tax regime in the country and there was a slow-down in the manufacturing as well as service industry across the country from July 2017 to September 2017.
- e) MNRE vide its Office Memorandum dated 20.06.2018 granted 62 days extension in SCoD of Solar Power Plants. SECI vide its letter dated 21.01.2019 conveyed the

Petitioner regarding grant of 62 days (i.e. period between 01.07.2017 to 31.08.2017) extension in SCoD of Projects and the SCoD of the projects was extended till 03.11.2017.

Site execution challenges

- f) The project commissioning was delayed for the reasons of stay granted by the High Court of Chhattisgarh on the project land.
- g) A Public Interest Litigation (PIL) was filed before the Hon'ble High Court of Chhattisgarh seeking stay from the Court for cutting down the trees on the project site. The Hon'ble Court vide its order dated 03.07.2017 issued a stay order due to which the Petitioner could not work on the Project site. The stay was later vacated and the Petitioner could resume its work on 05.08.2017 which was duly informed to SECI. Therefore, due to the stay order of the Hon'ble High Court of Chhattisgarh, there was delay of 33 days.

Delay in clearance of imported solar module by Custom Authorities

- h) In the months of July and August 2016, the classification of solar PV module under CTH 8541, which attracts 0 (Zero) % Basic Custom Duty (BCD), was disputed at various ports by the customs authorities. On 22.09.2016, the Central Board of Excise & Custom (CBEC) issued a clarification regarding the appropriate classification of Solar PV Modules equipped with elements like diodes. Accordingly, on 29.09.2016, the office of the Chief Commissioner of Customs, Mumbai, also issued Public Notice No. 135/2016. After this explanation, the clearance activities went back to *business as usual* and solar modules started being classified.
- i) The classification issue resulted in an inordinate delay as the Petitioner was forced to arrange additional funds for payment of BCD/BG amount to clear the consignment.

Delay in extending 132 KV Grid connectivity to the Petitioner for 2x50 MW Solar Power Projects

- j) Adani Green Energy Ltd. (AGEL), the parent company of the Petitioner, vide its letter dated 29.04.2016, approached CSPTCL for confirmation of technical feasibility at CSPTCL's 132 kV Dhamdha sub-station and 132 KV Simga Sub-station for 50 MW

each. CSPTCL vide its letter dated 19.08.2016 granted feasibility approval. On 13.07.2016, the Petitioner made two separate connectivity applications to CSPTCL, for 50 MW in Dhamdha S/S and 50MW in Simga S/S, in prescribed format along with processing fees. The Petitioner decided to connect both the plants at Dhamdha sub-station accordingly on 01.08.2016 and again submitted a connectivity application to CSPTCL for additional 50 MW at 132 kV Dhamdha Sub-station. Processing fees for connectivity of both the projects from Dhamdha S/S was also submitted vide demand draft dated 12.07.2016 & 30.07.2016. Subsequently on 22.08.2016, site inspection was conducted with a joint meeting between the Petitioner and CSPTCL at 132Kv Dhamdha substation wherein it had been conveyed and agreed that the Petitioner has to provide the land ,free of cost to CSPTCL. Since CSPTCL insisted the Petitioner to make single connectivity application for both the projects together, on 27.01.2017, the Petitioner approached CSPTCL again for connectivity of 2x50 MW solar power projects from 132 kV S/S Dhamdha. The Petitioner submitted grid connectivity application in the prescribed format along with undertaking that once the connectivity from 132kV Dhamdha from both the 50 MW projects is permitted, the Petitioner would withdraw its connectivity application for 50 MW project at 132kV Simga Sub-station and also take up the matter with SECI for change of project location from Simga to Dhamdha sub-station. Considering the strict timelines as per PPAs for project implementation, the Petitioner requested CSPTCL to consider the grid connectivity of 2x50 MW projects from 132 kV Dhamdha S/S.

- k) On 22.02.2017, CSPTCL intimated that grid connectivity on 132 KV Dhamdha S/S as requested is technically feasible subject to the condition that all requirements as per State Grid Code and relevant CSERC regulations are fulfilled. Subsequently, CSPTCL vide its letter dated 29.03.2017 intimated grant of connectivity and also vide another letter dated 29.03.2017 served an estimate for construction of 132kV DCDS line from CSPTCL Dhamdha substation to Project.
- l) There was an inordinate delay on the part of CSPTCL in grant of connectivity which was applied on 13.07.2016 and granted only on 29.03.2017 i.e. after delay of almost eight and half months for grant of grid connectivity. Ideally such intimation of grant of connectivity should be given within six months. Even if the date of second 50 MW connectivity

application at Dhamdha S/S is considered, they took eight months in the grant of connectivity which resulted in delay of 60 days in SCoD. Such delay was beyond reasonable control of the Petitioner and hence the Petitioner requests the Commission to grant extension in schedule commissioning date due to such delay.

Delay in physical connectivity to the Petitioner's 2x50 MW Solar Power Projects with 132kV Dhamdha

- m) Post intimation of grant of connectivity by CSPTCL on 29.03.2017, the Petitioner decided to construct 132 kV D/C dedicated transmission line from project pooling sub-station to 132 kV Dhamdha sub-station on its own by paying supervision charge to CSPTCL. It was also decided to do the construction of two 132 kV feeder bays at 132 kV Dhamdha S/s and line shifting work near Dhamdha sub-station under Deposit work Scheme through CSPTCL, by paying the necessary estimated amount as per notice of the CSPTCL vide its communication dated 29.03.2017. The same was paid by the Petitioner on 31.03.2017. However, the necessary tenders/inquires, regarding construction of 132 kV line bays and shifting of line under deposit scheme to be carried out by CSPTCL were issued by CSPTCL field offices only in the month of August 2017. Such delay on the part of CSPTCL has resulted in delay in commissioning the project.
- n) The Petitioner carried out part of such deposit scheme work required for its project connectivity on its own even though it was supposed to be carried out by CSPTCL and completed the same by 30.08.2017. CSPTCL completed its work on 04.10.2017. Subsequently, grid connectivity was physically given on 05.10.2017 and the solar projects were synchronized. The Petitioner wrote letters dated 08.11.2017 and 01.08.2018 to CSPTCL to issue a letter stating that there was a delay of 33 days (SCoD was 02.09.2017 and work of CSPTCL was completed on 5.10.2017) had occurred in physical connectivity of 100 MW (2X 50 MW) solar power projects at Dhamdha sub-station due to delay in construction of bay and shifting of transmission line which was beyond the control of the Petitioner. Therefore, the delay of 33 days should be allowed and consequently allow equal time extension in SCoD. However, CSPTCL vide its letter dated 01.09.2018 communicated that there has been delay in extending grid connectivity

by only 5 days, since, as per provisions of CSERC (Connectivity & Interstate Open Access) Regulations 2011 read with provisions of the Supply Code 2011, completion time schedule for extending connectivity is 180 days (6 months) after making payments.

Delay in commissioning of the projects due to following acts/omission of SECI

- o) As per Article 5.1 of the PPAs, the Petitioner on 14.06.2017, had given sixty (60) days advanced preliminary written notice to SECI with a copy to CREDA, CSPTCL and CSPDCL, SLDC, prior to synchronization for 100 MW (2 X 50 MW) solar projects, to synchronize such power projects to the CSPTCL Grid System. The Petitioner in the said letter stated that it was at an advanced stage of construction and planning to synchronize 100 MW (2 X 50 MW) solar projects with the Grid by 20.08.2017. Further, as per Article 5.1 of the PPAs, the Petitioner on 17.07.2017, had given thirty (30) days advance final written notice to SECI with a copy to CREDA, CSPTCL and CSPDCL, prior to synchronization for 100 MW (2 X 50 MW) solar projects, to synchronize such power projects with the CSPTCL Grid System. PSEPL in the said letter stated that it was planning to synchronize 100 MW (2 X 50 MW) solar projects with the Grid by 25.08.2017. The Petitioner, subsequently, charged/connected 132 kV lines meant for connectivity of Project with CSPTCL grid on 05.10.2017. However, there was a delay in declaring 100 MW solar power projects commissioned of around 40 days, solely due to SECI.

Delay in appointment of Nodal Agency for facilitation in implementation of the Projects

- p) Even though both the solar projects were synchronized on 05.10.2017, SECI, CREDA, CSPTCL and CSPDCL officials visited the project sites and declared commissioning of only part capacity of 40 MW each of the Project-I and Project-II on 16.11.2017 & 14.11.2017 respectively. The Commissioning Committee again verified the projects on 06.02.2017 and declared commissioning of remaining part capacity of 10 MW each of the Project-I and Project-II.
- q) It should not be penalized for delay on the part of SECI and Chhattisgarh State Nodal Agency CREDA, for coordinating all these efforts. Therefore, delay of around 35 days was due to negligence of SECI and CREDA.

Unforeseen technical problem in string inverters

- r) One of the reasons of delay in commissioning both the projects was the technical problem in HUAWEI make inverters of 43 kW capacity, Model No. SUN2000-43KTL display showing blank or showing zero reading in plant SCADA system which was duly intimated to its vendor (M/s Huawei Telecommunications (India) Co. Pvt. Ltd.) on 02.11.2017 and was asked for rectification of the same. The Petitioner had also informed the Respondent SECI vide its letter 10.11.2017 regarding the above referred technical problem of inverters display, prior to the visit of the Commissioning team. However, SECI ignored the same and negligently declared only 40 MW capacity commissioned out of 50 MW in both the projects. The vendor vide its letter dated 20.11.2017, appraised the Petitioner that there was an error in communication between inverter to SCADA system. CSPTCL vide its letter dated 19.01.2018 on a response of the Petitioner's letter dated 12.01.2018 clarified that the projects were commissioned.
- s) SECI ignored the submission of the Petitioner and the recommendation of CSPTCL. It visited the site of the projects only on 06.02.2018 which resulted in a delay of 84 days in declaring the commissioning of 10 MW each of Project I and II on 06.02.2018.

Delay in commissioning certificate by CREDA and SECI

- t) SECI and CREDA did not issue the Commissioning Certificates to such projects till 14.03.2018. It has resulted in delay in issuance of COD Certificate under the PPAs with SECI. In the absence of such COD Certificate, CSPTCL and CSPDCL could not issue Joint Meter Reading (JMR). On 14.03.2019, the Petitioner requested CREDA and SECI to expedite the formalities for issuing the commissioning certificate and COD certificate. CREDA issued Commissioning Certificates dated 19.03.2018. Subsequently, SECI declared COD/UCOD of the Projects vide its letter dated 11.04.2018 in line with the Commissioning Certificate issued by CREDA.
- u) SECI issued instruction to Yes Bank invoking bank guarantee of an amount of Rs. 12,60,00,000/- &Rs. 12,28,00,000/- w.r.t projects P2B3T6-PSEPL-B-5CG-IV & P2B3T6-PSEPL-B5CG-2V respectively.

- v) SECI further refused to extend SCoD of the Project and it only conveyed its approval of 62 days time extension. SECI vide its letter dated 21.01.2019 extended SCoD of projects on account of disruptions faced by projects due to implementation of GST with effect from 01.07.2017 and SCoD of the projects was extended till 03.11.2017. SECI revised the liquidated damages amount and charged Rs 4,04,00,000/- and Rs3,88,00,000/- for Project I and Project II respectively and reduced the tariff for part capacity of 10 MW of Project I and Project II, from Rs. 4.43/kWh as agreed in PPA to Rs. 4.405/kWh. SECI in terms of the Article 4.6 of the PPA reduced the tariff at the rate of half paisa (0.50 paisa) per kWh per day of delay for the delay in such remaining 10 MW capacity.
- w) Despite such occurrence of force majeure events of about more than 157 days, SECI recognized force majeure events for only 62 days only and even illegally levied penalty for non-fulfillment of Conditions Subsequent and encashed bank guarantees for alleged delayed commissioning and even reduced tariff for 10 MW capacities in both the projects. Such levy of penalty/damages and reduction of the tariff has a cascading impact on the viability of the Project.

Reply of the Respondent No.1 SECI

19. SECI vide its reply dated 06.09.2019 has submitted that:

- a) The PPAs broadly contain three distinct and independent provisions for the monetary compensation to SECI to be paid by the Petitioner. These are as under:
- i) Compensation to be paid for the delay in the fulfilment of the Conditions Subsequent as provided in Article 3.2 of the PPA;
 - ii) Liquidated Damages to be paid to SECI for the delay in commissioning of the power project as provided in Article 4.6 of the PPA. The Liquidated Damages provided in Article 4.6.1 of the PPA is a specific ascertained sum of money;
 - iii) After the commissioning of the power project and during the operation period, the compensation for the shortfall in the generation to be paid to concerned buying utility as provided in Article 4.4 of the PPA.
- b) Article 4.6 read with Article 9.2 of the PPAs provides that in case the commissioning of the Power Project is delayed beyond three months from the Scheduled Commissioning

date, the pre-fixed tariff given in Article 9.1 of the PPAs shall be reduced at the rate of half paisa (0.50 paisa) per Kwh per day.

The effect of demonetisation

- c) The Petitioner has claimed extension in fulfilment of Conditions Subsequent and achievement of SCoD on account of the effect of Demonetisation policy introduced by Government of India on 08.11.2016.
- d) The Petitioner was granted time extension till 31.01.2017 for fulfilment of Conditions Subsequent under the PPAs without any financial implications. The date for completion of the Conditions Subsequent activities as per the provisions of the PPAs was 02.03.2017. Accordingly, no relief is admissible to the Petitioner in terms of the Office Memorandum dated 02.12.2016 and the same has no applicability to the scheduled date of financial Closure under the present PPAs.
- e) Demonetisation is neither force majeure nor change in law for grant of relief under the PPA. SECI has placed its reliance on this Commission's Order dated 29.03.2019 passed in Petition No. 238/MP/2017 in the matter of *Darbhangha-Motihari Transmission Company Limited –v- Bihar State Power transmission Company Limited and Ors.* has, inter-alia, held as under:

“54. We are of the view that the event of ‘Demonetization’ does not fall within the definition of ‘Change in Law’ event as it does not constitute any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal of any law, including rules and regulations framed pursuant to such Law” and was temporary in nature and therefore cannot be considered an event of Change in Law as per Article 12 of TSA. Hence, the claim of the petitioner on account of event of demonetization is rejected.”

Introduction of GST laws

- f) The Petitioner has claimed that there was a slow-down from July 2017- September 2017 in the manufacturing as well as service industry across the country on account of introduction of GST Laws. On the basis of the above Office Memorandum, SECI by letter dated 21.01.2019 granted extension of 62 days for the period 01.07.2017 to 31.08.2017 and accordingly the SCoD of the projects were extended till 03.11.2017. The Petitioner is not entitled to claim further or other extension of time.

Delay on account of interim Stay Order granted by Hon'ble High Court of Chhattisgarh

- g) The Petitioner has claimed delay of 33 days i.e. for the period from 03.07.2017 to 05.08.2017 on account of interim Stay Order passed by Hon'ble High Court of Chhattisgarh with regard to the project sites.
- h) SECI by letter dated 05.04.2018 has denied relief as sought for by the Petitioner with regard to the stay order passed by the Hon'ble High Court of Chhattisgarh and has stated that the above claim does not amount to Force Majeure as per the terms and provisions of the PPAs as alleged or otherwise. Further, SECI has granted extension of 62 days i.e. for the period 01.07.2017 to 31.08.2017 on account of GST Laws in conformity with the principles laid down under the Office Memorandum dated 20.06.2018. The aforesaid Office Memorandum states that *"The implementing agencies shall ensure that no double relief is granted due to overlapping reasons cited for grant of Extension of time"*. SECI in its letter dated 21.01.2019 has also stated that *"No additional time extension in scheduled commissioning date shall be admissible, for any other reason for the aforesaid period, as per MNRE's OM dated 20.06.2018"*. As such, the Petitioner is not entitled to claim further or other extension of time.

Delay in clearance of imported solar modules by Custom Authorities

- i) The Petitioner has claimed delay in clearance of imported solar modules by the Custom Authorities on account of modules classification issue and the consequential requirement to arrange for additional fund for payment of increased Basic Custom Duty (BCD). The alleged delays do not fall within the scope and ambit of the Force Majeure provisions of the PPAs entitling the Petitioner for extension of time. Further, the Office Memorandum dated 20.06.2018 issued by Government of India and the letter dated 21.01.2019 of SECI clearly provides that no additional time extension in SCoD shall be admissible, for any other reason for the period 01.07.2017 to 31.08.2017 for which extension has already being granted by SECI.

Delay attributable to State Authorities - Delay in extending Grid Connectivity and Physical Connectivity by the Chhattisgarh State Power Transmission Company Limited (CSPTCL)

- j) The Petitioner has alleged that there has been delay on part of CSPTCL in providing Grid Connectivity to the Petitioner's solar power projects which resulted in delay in achievement of the scheduled commissioning dates as per the PPAs.
- k) As per Clause 3.8 of the Guidelines, Clause 3.7 of the RfS document, and Article 4.1 and 4.2 of the PPAs, the responsibility of getting connectivity with the transmission system owned by the STU/CTU or any other transmission utility, as may be required, is that of the Petitioner. The Petitioner has undertaken the responsibility of connecting the Power project switchyard with interconnection facilities at the delivery point. Accordingly, the claims for delays relating to connectivity as alleged by the Petitioner are without any merit. SECI has placed its reliance on the Order of Hon'ble High Court of Delhi in the matter of *NTPC Vidyut Vyapar Nigam Limited –v- Precision Technik Private Limited*.

Reliance on MNRE Letter dated 28.07.2017 is misconceived

- l) Reliance by the Petitioner on the letter dated 28.07.2017 issued by MNRE, to state that the delay of any kind on the part of the State Government/PSUs such as land allotment, transmission/evacuation facilities, connectivity permission etc. may be considered as a ground for extension, is misplaced and it is not applicable to the present case. The letter dated 28.07.2017 itself provides that extension (if any) can be granted strictly as per the contractual agreement. In the present case there is no such provision under Article 4.5 of the PPAs dealing with extension of time on account of the delay relating to transmission/evacuation facilities etc.

Delay in appointment of Nodal Agency

- m) The Petitioner has alleged that the commissioning of the project was delayed due to delay in appointment of nodal agency i.e. Chhattisgarh Renewable Energy Development Agency (CREDA) for implementation of the project.

n) In terms of Clause 3.8D of the Guidelines; 3.10 of the RfS document and Article 4.1.1 of the PPAs, the Petitioner is required to obtain the necessary consents, clearances and permits as required for setting up the Solar PV Power Projects. Thus, obligation of the Petitioner to maintain the timeline was not in any manner affected by the delay in appointment of CREDA.

Delay attributable to acts and omissions of SECI

o) The Petitioner has alleged that although the entire projects were synchronized on 05.10.2017, there was delay in declaring commissioning of the solar power projects on account of delay in forming committee by SECI for the site visit and commissioning of projects and the same was not attributable to the Petitioner.

p) As per Article 5 of the PPAs, the Petitioner is required to commission the project in conformity with the commissioning procedure as provided in Schedule 6 to the PPAs and Annexure A of the RfS. As per the Schedule 6, the Petitioner is required to submit copy of certain documents as listed therein to SECI prior to the SCoD. In case any additional supporting/ revised documents are sought by SECI, the same ought to be submitted by the Petitioner. On account of failure of the Petitioner to comply with the above requirements within stipulated time, the entire responsibility for not meeting the deadline for commissioning is of the Petitioner. The documents were sought by SECI from the Petitioner as per list provided in Schedule 6 of the PPAs. The Petitioner delayed in giving the documents as sought by SECI. Accordingly, it is not permissible for the Petitioner to claim that there was any delay attributable to SECI with regard to forming committee for site visit, commissioning of the project etc.

Delay due to Technical problem in Inverter's Display

q) The Petitioner has alleged that one of the reasons of delay in commissioning of the power projects was the technical system error/display problems in 43 kW String inverters of Huawei Technologies Company Limited. The Petitioner has also alleged that SECI ignored the Petitioner's letter dated 10.11.2017 and CSPTCL's letter dated 19.01.2018 and has visited site only 06.02.2018 which resulted in delay in declaring of the commissioning of 10 MW each of the Petitioner's solar power projects.

- r) The allegations made by the Petitioner are misplaced. The commissioning team had visited at the earliest . There has been no default on part of SECI. The alleged delays do not qualify for SECI's event of defaults (Article 13.2 of the PPAs) or Force Majeure (Article 11 of the PPAs) in order to entitle the Petitioner for any extension of time in terms of Article 4.5 of the PPAs. In this regard, it is relevant that the visit to the plant on 06.02.2018 was suggested by the Petitioner itself with regard to the commissioning of the remaining 10 MW capacity of each project of Petitioner for the details contained herein. The Petitioner has wrongly stated that CSPTCL by letter dated 19.01.2018, has clarified that the entire project was commissioned. By the aforesaid letter of CSPTCL to the Petitioner, CSPTCL has only confirmed the synchronization date of the Petitioner's projects for purpose of submission to SECI and not the commissioning date as sought to be contended by the Petitioner.

Delay in second visit by the Commissioning Committee on account of reasons attributable to SECI and CREDA

- s) The Petitioner has alleged that there was delay in second visit by the Commissioning Committee for declaring commissioning of remaining capacity of the projects on account of reasons attributable to SECI and CREDA.
- t) The commissioning committee's second visit was in pursuance to the letter dated 02.02.2018 of the Petitioner and therefore the allegation made by the Petitioner is an after-thought and without any merit.

Delay in issue of the Commissioning Certificate by SECI and CREDA

- u) The Petitioner has alleged that there was a delay in issue of the commissioning certificate by SECI and CREDA and the same caused delay in issuance of the Commercial Operation Date (COD) Certificate under the PPAs with SECI and consequentially the Petitioner was unable to raise the invoices as CSPTCL and CSPDCL could not issue the Joint Meter Reading (JMR).
- v) The allegations made by the Petitioner are unwarranted and misplaced. Admittedly, after the visit of the Commissioning Committee on 14.11.2017 and 16.11.2017, there were various issues to be attended by the Petitioner with regard to the 40 MW capacity as well

as the remaining 10 MW capacity which was yet to be completed. There were certain issues with the inverter, an essential part of the solar power project which necessitated a second visit by the commissioning committee on 06.02.2018. There was no delay attributable to the commissioning committee or SECI in regard to the issue of commissioning certificate when the Petitioner itself had not completed the project in all respects for issue of such commissioning certificate. SECI would crave reference to the summary of events mentioned hereinabove as well as correspondence provided herein for the developments between 14.11.2017/16.11.2017 till the issue of the commissioning certificate. This would show that there was no delay, much less any default on part of SECI in issuance of commissioning certificate.

Liquidated damages are not admissible without proof of actual loss is contrary to settled principles

- w) In the present case, there were delays on the part of the Petitioner in fulfilling the Conditions Subsequent provided in Article 3 of the PPA; the obligations with respect to construction and development of the project as provided in Article 4 of the PPA; as well as in achieving the SCoD. On account of the non-achievement of commissioning by the SCoD, the Petitioner became liable to pay liquidated damages as specified in the PPA. Accordingly, in terms of Article 3.17 of RfS and Article 4.6 of the PPA, SECI is entitled to the payment of liquidated damages from the Solar Power Developer for the delay in commencement of supply of power and for delay in making the contracted capacity available for dispatch by the SCoD.
- x) SECI has suffered legal injury/loss entitling SECI to the recovery of liquidated damages on account of non-availability of power from the SCoD till the actual Commercial Operation Date. No actual loss or damages need to be established. In the present case, the liquidated damages are not a penalty but a genuine pre-estimate of damages, the same being evident from the terms of bidding documents and the PPAs wherein the parties having agreed that that in case of breach of the terms of the PPA on account of non-adherence to the SCoD/delay in commencement of supply of power, SECI is entitled to encash the Performance Bank Guarantees which is a pre estimate of loss. The Petitioner

cannot now claim that the liquidated damages is not reasonable or genuine pre-estimate or that the Respondents are required to prove any loss.

Rejoinder of the Petitioner dated 23.10.2019

20. The Petitioner has reiterated its submissions made in the plaint and the same are not reproduced here again for the sake of the brevity. Additionally, the Petitioner has stated as under:

- a. SECI was never entitled for damages, since the liquidated damages stipulated by the encashment of Performance Bank Guarantee under the PPA is not a genuine pre-estimated loss, rather it is in nature of a penalty. Section 74 does not dispense with the requirement that the party seeking damages should prove that it has suffered loss or damage. The settled position of law is that even if a sum named in the PPA is termed as “liquidated damages”, there is still a requirement of ascertaining loss even when the agreement is binding. The court / tribunal is therefore duty bound to ascertain whether or not there is any actual loss or damage and based on it determine the reasonable compensation.
- b. Under the law on compensation for breach of contract under Section 74 of the Indian Contract Act, 1872, where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive a reasonable compensation of such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Commission.

Hearing dated 04.07.2019

21. On 04.07.2019, the Commission directed the Petitioner to implead CSPDCL as party to this Petition and further directed CSPDCL to file their reply by 26.07.2019.

Reply of Respondent No. 2 CSPDCL dated 20.08.2020

22. The Respondent No. 2 (CSPDCL) filed its reply on 20.08.2020 and submitted as under:

- a) It is neither competent nor authorized to answer allegations made towards CSPTCL. Therefore, CSPTCL should also be impleaded as Party Respondent in this present Petition.

- b) To preserve the protections of force majeure, the Petitioner should have provided notice to either CSPDCL or CSPTCL regarding the delay, which the Petitioner did not do. Furthermore, the Petitioner did not take any other steps to mitigate the delay allegedly caused by CSPTCL.
- c) Earlier, the Petitioner had approached CERC in petition no. 165/MP/2018 which was partly allowed vide Order dated 18.04.2019. The Commission had allowed certain 'Change in Law' events and consequent compensation to the Petitioner. However, the same Order has been challenged before the APTEL in Appeal No. 120/2020, wherein, apart from other issues, the jurisdiction of this Commission has been challenged in passing the above said Order. The Commission does not have the jurisdiction to deal with the matter as the petitioner is not under any composite scheme for supply of power in more than one State. Both the plants of the Petitioner are based in the State of Chhattisgarh only and the entire power is being supplied to this Respondent only. The Respondent has placed its reliance on the judgment passed by the Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC, (201-7) 14 SCC*.

Rejoinder of the Petitioner dated 26.08.2020

23. Against the reply of the CSPDCL dated 20.08.2020, the Petitioner by way of rejoinder has submitted that the addition of parties should not be made merely to avoid multiplicity of suits if their presence is not necessary for determining the real question. SECI has not raised any issue concerning non-joinder of CSPTCL as a party to the Petition. Further, CSPDCL has admitted that this Commission has held that this Commission has jurisdiction over the disputes arising out of this Project.

Hearing dated 27.08.2020

24. On 27.08.2020, the Commission directed the Petitioner to implead CSPTCL as party to the Petition and to file revised memo of parties and further directed that CSPTCL may file its reply on merits by 05.03.2021 and the Petitioner may file the reply thereafter.

Reply of Respondent No. 2 CSPDCL dated 04.08.2021

25. CSPDCL in its additional reply filed on 04.08.2021 has submitted that:

- a) Regarding demonetization by Govt.: The Petitioner had sufficient time for land acquisition as date of PPA execution was 02.08.2016 and issue of notification was 08.11.2016
- b) Regarding site execution challenges: The stay was granted for 4 weeks and not for 33 days and period of stay is already accounted in 62 days extension.
- c) Regarding delay in clearance of imported solar module by custom authorities: Misinterpreting does not fall under the force majeure clause and Petitioner cannot claim any benefit out of this.
- d) Regarding delay in extending 132 kv Grid Connectivity to PSEPL for 2x250 MW solar project; delay in physical connectivity to PSEPL for 2x250 MW solar project with 132 kV Dhamadha; delay in appointment of Nodal Agency for facilitation of implementation of the projects: CSPDCL is not competent authority to explain.
- e) Regarding unforeseen technical problem in string inverters: As per committee report, 10MW-10MW units were not fulfilling the criteria, hence they were not declared as commissioned.
- f) Regarding delay in commissioning certificate by CREDA and SECI: COD was declared as per clause 3.17 (A) and 3.18 of RfS.

Reply of Respondent No. 3 CSPTCL dated 06.08.2021

26. CSPDCL (Respondent No. 2) filed its reply on 06.08.2021 and submitted as under:

- a) CSPTCL has complied on time to permit grid connectivity to the Petitioners and the delay cannot be attributable to the Respondent.
- b) CSPTCL has extended 132KV grid connectivity to M/s Parampujya in 185 days, it means there is only 5 days effective delayed (if any) as per the CSERC (Connectivity and Intra-state Open Access) Regulation 2011.
- c) To preserve the protections of force majeure against CSPTCL, the Petitioner had to provide notice to either the Respondent, or this respondent regarding the delay, which the Petitioner did not do.

Rejoinder of the Petitioner dated 03.09.2021 to Reply by CSPDCL

27. The Petitioner filed a rejoinder on 03.09.2021 to the additional reply filed by CSPDCL and submitted as under:

- a) The Office Memorandum dated 02.12.2016 issue by the Ministry of New and Renewable Energy granted an extension of 2 months to developers for fulfilment of Conditions Subsequent, on account of demonetisation. There is no basis for CSPDCL to negate the effect of the same.
- b) There is hardly any difference between a period of 4 weeks and 33 days. The stay was imposed vide the High Court of Chhattisgarh's Order dated 03.07.2017 and it was only on 05.08.2017 when the Petitioner could resume its work. This led to a delay of 33 days.
- c) The delay on account of delay in clearance by custom authorities hindered the completion of the project of the Petitioner from July to September 2016 and the same is not subsumed under the extension granted to the Petitioner on account of implementation of GST.
- d) MNRE vide its letter dated 28.07.2017 directed Principal Secretaries of all State Governments, Energy/ Power Department, to provide extension of time for SCoD considering the delay on part of the State Government Authorities/PSUs, such as land allotment, transmission/evacuation facilities, connectivity permissions, or Force Majeure strictly as per the agreement.
- e) CSPDCL has stated that it is not competent to answer to the submissions made by the Petitioner in this regard, and has then proceeded to deny the claims of the Petitioner. Such approach of CSPDCL ought to be disallowed.
- f) SECI ignored the CSPTCL letter dated 02.02.2018 stating that the entire project (100 MW) was already commissioned and synchronised, and visited the site on 06.02.2018 only for verifying that the error in display had been rectified. The Commissioning Committee delayed the visit and such delay qualifies as SECI's event of default under Article 13.2 of the PPA and constitutes a Force Majeure event.

Rejoinder of the Petitioner dated 03.09.2021 to Reply by CSPTCL

28. The Petitioner filed a rejoinder on 03.09.2021 to the reply filed by CSPTCL and submitted as under:

- a) CSPTCL took almost eight and half months for grant of grid connectivity to the Petitioner's 2x50 MW Solar PV Projects. In an ideal scenario, connectivity should be granted within a period of 6 months.
- b) Delay on the part of CSPTCL in issuing necessary tenders/ inquiries, etc. regarding the construction of 132 kV line bays, resulted in delay in commissioning of the project.

Hearing dated 13.01.2022

29. The case was called out for virtual hearing on 13.01.2022. The Petition was heard and the Commission reserved the Order in the Petition.

Analysis and Decision

30. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

31. Before dealing with specific claims of the Petitioner, it is imperative that we first address the preliminary objections raised by Chhattisgarh State Power Distribution Company Limited (CSPDCL). CSPDCL objected to the maintainability of the Petition on the ground of jurisdiction. CSPDCL has submitted that the Petitioner's generating station does not have a composite scheme for supply of power in more than one State as the entire power is being supplied to CSPDCL only. CSPDCL has also challenged the Commission's Order dated 18.04.2019 in Petition No. 165/MP/2018 filed by the Petitioner regarding certain Change in Law events, inter-alia, on the ground of jurisdiction before the Appellate Tribunal for Electricity (APTEL) in Appeal No. 120/2020, which is pending for adjudication.

32. The Commission vide Record of Proceedings dated 27.08.2020 has observed that the issue of jurisdiction in respect of the Solar Power Projects set-up under JNNSM Phase-II Batch-III Guidelines has been considered and dealt with by the Commission in Order dated 11.10.2017 in Petition No. 95/MP/2017 (Welspun Energy Pvt. Ltd. v. SECI) as well as in the Order dated

09.10.2018 in Petition No. 188/MP/2018 and Ors. (ACME Bhiwadi Solar Power Private Limited v. SECI and Ors.), wherein the Commission, after examining the provisions of the Guidelines, has held that it has the jurisdiction to adjudicate dispute in respect of such projects. Moreover, the Commission has also exercised its jurisdiction in respect of the Petitioner's project while dealing with 'Change in Law' claims in its Order dated 18.04.2019 in Petition No.165/MP/2018. Though, the said Order has been challenged by CSPDCL, inter-alia, on the ground of jurisdiction, there is no stay on the operation the said Order. Needless to mention, this order will be subject to the outcome of the said appeal filed by CSPDCL.

33. We now proceed to deal with the issues on merit. From the submissions of the parties, the following issues arise for adjudication:

Issue No. 1: Whether the Petitioner was prevented from performing its obligation under the PPA due to occurrence of Force Majeure events and if so, whether the delay in achieving the Scheduled Commissioning Date of the Project is required to be condoned?

Issue No. 2: Whether the Respondents should be directed to allow time extension in fulfilment of Conditions Subsequent and consequently time extension in scheduled commissioning date?

Issue No. 3: Whether the Respondents should be directed to refund the amount of Penalty levied for non-fulfilment of Conditions Subsequent?

Issue No. 4: Whether the Respondent No.1 SECI should be directed to refund the amount deducted as Liquidated Damages by encashing the Bank Guarantees along with interest on the same as per the PPA?

Issue No. 5: Whether the Respondent No. 1 SECI should be directed to pay tariff for total Projects at the rate of INR 4.43/kwh and restore the tariff for 10 MW capacity in both the Projects and pay the differential tariff from the date of commissioning till date along with the interest as per the PPA?

34. No other issue was pressed or claimed. We now discuss the issues one by one.

Issue No.1: Whether the Petitioner was prevented from performing its obligation under the PPA due to occurrence of Force Majeure events and if so, whether the delay in achieving the Scheduled Commissioning Date of the Project is required to be condoned?

and

Issue No.2: Whether the Respondents should be directed to allow time extension in fulfilment of Conditions Subsequent and consequently time extension in scheduled commissioning date?

35. Since the Issue No. 1 and Issue No.2 are related, they are taken together for discussion. The Petitioner has submitted that it executed two PPAs with SECI for its 100 (2 x 50) MW Solar Power Plant project. The SCoD as per PPA was 02.09.2017. SECI extended the SCoD of the projects till 03.11.2017 (i.e. 62 days extension) due to GST implementation on 01.07.2017 by GOI. The Petitioner achieved commissioning of its 100 MW (2 x 50) solar power project on 11.04.2018 i.e. with a delay of more than 157 days. The Petitioner has submitted that delay in achieving commissioning was due to various unforeseeable events and circumstances which adversely affected the development and setting up the projects. Therefore, the delay is required to be condoned.
36. *Per contra*, SECI has submitted that it has already granted extension of sixty-two (62) days and accordingly the SCoD of the projects were extended till 03.11.2017. CSPTCL has submitted that there has been delay in extending grid connectivity by only five (5) days as such, the Petitioner is not entitled to claim extension of time.
37. The gist of force majeure events which are claimed to have affected the projects along with delay period as submitted by the Petitioner and time extension as allowed by the Respondents is as under:

Sr. No.	Delay Particulars as per Petitioner	Delay from (Date)	Delay to (Date)	Total delay (Days/months)	Time extension allowed by Respondents (Days)
A	Introduction/modification of Central laws/policies				

	Demonetization	08.11.2016	08.02.2017	92 days	-
B	Challenges in equipment supplies from India/Abroad:				
	Introduction of GST	01.07.2017	31.08.2017	62 days	62 days
C	Site execution challenge				
	High Court stay on land issue	03.07.2017	05.08.2017	33days	Delay is subsumed in GST relief period
D	Delay in clearance of imported solar module by Custom Authorities				
		July 2016	August 2016	2 Months	-
E	Delay in extending 132 KV Grid connectivity to PSEPL for 2x50 MW Solar Power Project				
	Grant of connectivity by CSPTCL	13.07.2016 Date of application of Connectivity	29.03.2017 Intimation of grant of Connectivity	259 days	-
F	Delay in Physical Connectivity to PSEPL 2X50 MW solar power projects with 132kV Dhamdha				
	Bay infrastructure work under deposit scheme by CSPTCL (Post intimation of grant of connectivity)	02.09.2017 (SCoD)	05.10.2017 (actual commissioning date)	33 days	-
G	Delay in commissioning of the project due to following acts/omission of SECI				
	Constituting of commissioning team by SECI from date of synchronization of projects	05.10.2017	10.11.2017	35 days	-
H	Delay in appointment of nodal agency for facilitation in implementation of the projects				
	Appointment of nodal agency	16.11.2017 (Project-I) 14.11.2017 (Project-II)	06.02.2018	82 days 84 days	
I	Delay due to unforeseen technical problem in String Inverters				
	Technical problem in the Inverters' Display	16.11.2017	06.02.2018	82 days	-
J	Delay in commissioning certificate by CREDA and SECI				
	Commissioning certificate	14.03.2018	11.04.2018		

38. We now discuss the issues in contention in this context as under.

A. Introduction/modification of Central laws/policies

Demonetization:

39. The Petitioner has submitted that due to announcement of ‘Demonetisation’ on 08.11.2016, there was scarcity of funds in the market. In accordance with the Article 11, ‘Demonetisation’ falls within the ambit of force majeure since this was beyond the control of the Petitioner. *Per Contra*, SECI has submitted that the PPA does not expressly provide or otherwise cover the demonetisation as either Force Majeure or Change in Law within the scope of Article 11 and Article 12 of the PPA. The Petitioner has placed reliance on the Office Memorandum dated 02.12.2016 issued by MNRE, Government of India. However, the same has no applicability to the SCoD under the present PPA. In fact, Article 11.4.1 (e) of the PPA expressly states that ‘*insufficiency of finances or funds or the agreements becoming onerous to perform*’ falls under Force Majeure exclusions.

40. The Commission observes that the relevant extract of O.M. No.29/5(6)/2011-12/JNNSM(ST) dated 02.12.2016 issued by MNRE stipulates as under:

“3- Demonetization:

The participants in the meeting were informed that several developers have represented MNRE/ NTPC/ SECI regarding the difficulties being faced by the solar project developers in fulfilling with the requirements of “Financial Closure” and “Conditions Subsequent” due to the Demonetization Order of Government of India and that some time has been requested by the solar power developers for fulfilling with the said requirements. It was agreed that considering the practical problems in the short run, due to Demonetization, time till 31st January, 2017, without penalty, for complying with the requirements of Financial Closure, may be allowed. However; it shall have no effect on the Effective Date of Financial Closure or the Scheduled Commissioning Date as per the respective PPAs.”

41. The Commission observes that the relevant provisions of the PPA stipulate as under:

4.5 Extensions of Time

4.5.1 In the event that the SPD is prevented from performing its obligations under Article

4.1 by the Scheduled Commissioning Date due to:

- a) any SECI Event of Default; or
- b) Force Majeure Events affecting SECI, or
- c) Force Majeure Events affecting the SPD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred for a reasonable period but not less than 'day for day' basis, to permit the SPD or SECI through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or SECI, or till such time such Event of Default is rectified by SECI.

...

11.3 Force Majeure

11.3.1A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared / notified by the competent state / central authority / agency (as applicable);
- b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
- c) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of Force Majeure identified under SECI-Buying Utility PSA, thereby affecting delivery of power from SPD to Buying Utility.

11.4 Force Majeure Exclusions:

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an even of the Force Majeure:

...

- e) insufficiency of finances or funds or the agreements becoming onerous to perform.

42. The Commission observes that on 08.11.2016, the Government of India declared 'demonetisation' of certain denominations of Indian Currency notes. As per the O.M. No.29/5(6)/2011-12/JNNSM(ST) dated 02.12.2016 the MNRE, Government of India decided to extend the time for complying with the requirements of Financial Closure without penalty till 31.01.2017, considering the practical problems due to demonetization, without affecting the SCoD as per the respective PPAs. In the instant case it is observed that the date for completion of the Conditions Subsequent activities as per the provisions of the PPA was 02.03.2017 i.e. beyond 31.01.2017. As per Article 11.3.1 of the PPAs 'Force Majeure' means any event or circumstance or combination of events viz. act of God, act of war, radioactive contamination or an event of Force Majeure identified under SECI-Buying Utility PSA, that wholly prevents in the performance of its obligations. It is observed that Demonetization is not covered under any of these events. Rather, as per Article 11.4.1 (e) of the PPAs, insufficiency of finances or funds is specifically excluded from Force Majeure. In view of above, the Commission holds that no relief can be extended to the Petitioner under this issue.

B. Challenges in equipment supplies from India/Abroad

Introduction of GST:

43. The Commission observes that the Office Memorandum dated 20.06.2018 issued by MNRE with regard to extension in SCoD of solar power plant on account of GST relates issues, inter-alia, reads as under:

(1). The Ministry, by way of various representations as well as during various meetings/discussions with Solar Power Developers and Solar Energy Corporation of India Ltd (SECI) has been receiving requests for allowing extension in Scheduled Commissioning Date of Solar Power Plants, citing temporary business disruption & consequent delays in project commissioning on account of introduction of GST from 1/07/2017.

(2). The issue has been examined in MNRE.

(3). Due to business disruption & consequent delays in project commissioning on account of introduction of GST from 1/7/17, it has been decided to give extension of upto two months for Commissioning Date (COD) to projects which might have been affected due

to this disruption. The extension can be given by SECI/ NTPC/Other Implementing agencies as per following principles. The presumption adopted in suggesting extension is that only those projects whose period between Financial Closure and COD overlapped with the two month period from 1/7/17 to 31/8/17, would have been affected and therefore eligible for extension. For this purpose, following principles shall be followed:

(I) (a). The disruptions due to GST imposition would have occurred for two months i.e. 62 days from the date of imposition of GST i.e. from 1/7/17 to 31/8/17.

(b). Only those projects would have faced the above disruptions, which, during the two month period from 1/7/17, were at a stage between the Financial Closure and COD.

(II) All the Project developers who claim to have been affected by GST induce disruptions shall make a formal application to SECI/ NTPC/ other implementing agencies for Extension of Time (EoT) due to GST disruptions giving all documentary evidence in support of their claim. SECI/ NTPC/ Implementing agencies shall examine the claim objectively and grant EoT based on facts, following above principles. While applying the above principles, SECI/NTPC/any other implementing agency may satisfy itself that the claimants were actually affected due to GST induced disruptions in the period for which extension has been claimed. The implementing agencies shall also ensure that no double relief is granted due to overlapping reasons cited for grant of EoT.

44. The Commission observes that MNRE vide its Office Memorandum dated 20.06.2018 has granted sixty-day (62) days extension in SCoD of Solar Power Plants. SECI vide its letter dated 21.01.2019 granted 62 days extension in SCoD of Projects and the SCoD of the Projects were extended till 03.11.2017. In view of above, the Commission holds that issue already stands addressed.

C. Site execution Challenge

Stay granted by the Hon'ble High Court of Chhattisgarh on the project land:

45. The Petitioner has submitted that the project commissioning was delayed for the reasons of stay granted by the Hon'ble High Court of Chhattisgarh on the project land. A Public Interest Litigation was filed by one of the activists, seeking stay from the Hon'ble Court for cutting down the trees on the project site. The Hon'ble Court vide its Order dated 03.07.2017 issued a Stay Order due to which the Petitioner could not work on the Project site. The stay was finally vacated on 05.08.2017. Hence, there was a delay of 33 days. *Per contra*, SECI has submitted that the

Petitioner is not entitled to claim extension for the aforesaid period as the same does not constitute Force Majeure within the scope of the PPA.

46. The Commission observes that Article 3.2.1 recognizes delay on account of “*delay by Government or Force Majeure*”. It is further observed that the Office Memorandum dated 20.06.2018 stipulates that “*no double relief is granted due to overlapping reasons cited for grant of extension of time*”. It is noted that the Stay Order was effective from 03.07.2017 and was vacated on 05.08.2017. Hence, there was a delay of 33 days. However, the Commission observes that SECI while considering GST issues has already granted extension 62 days (i.e. period between 01.07.2017 to 31.08.2017) extension in SCoD of projects of the Petitioners. Since, the period of Stay from 03.07.2017 to 05.08.2017 lies between the said period of 01.07.2017 to 31.08.2017 (62 days), the same gets subsumed in the latter and needs no adjudication.

D. Delay in clearance of imported solar module by Custom Authorities

47. The Petitioner has submitted that in the months of July 2016 and August 2016, the classification of solar PV module under CTH 8541, which attracts 0 (Zero) % Basic Custom Duty (BCD), was disputed at various ports by the customs authorities. On 22.09.2016, the Central Board of Excise & Custom (CBEC) issued a clarification regarding the appropriate classification of Solar PV Modules equipped with elements like diodes. Accordingly, on 29.09.2016, the office of the Chief Commissioner of Customs, Mumbai, also issued Public Notice No. 135/2016. After this explanation, the clearance activities went back to business as usual and solar modules started classifying. The Petitioner has submitted that the classification issue resulted into an inordinate delay as the Petitioner was forced to arrange additional funds for payment of BCD/BG amount to clear the consignment.
48. As per Article 3.1 of the PPA, the Petitioner had agreed to complete the activities mentioned as ‘Condition Subsequent’ at its own risk and cost within seven months (02.03.2017) from the effective date of the PPA (02.08.2016). The Petitioner was duty bound to obtain or apply (as applicable) for all consents, clearances and permits required for construction of the project as per

the terms of the PPA and for operation and supply of power to SECI before commissioning of the project. An extension in SCoD can be granted under Article 4.5 of the PPAs only in case of any SECI event of default or Force Majeure event affecting the contracting parties. As per Article 3 and Article 4 of the PPA, it was the duty of the Petitioner to complete the activities mentioned as 'Conditions Subsequent' before 02.03.2017 unless and until the events were covered under Force Majeure i.e. Article 11 of the PPAs. Article 11.4.1 (e) expressly states that '*insufficiency of finances or funds or the agreements becoming onerous to perform*' falls under Force Majeure exclusions. The Commission is of the view that the delay in classification of solar PV module under CTH 8541 and arrangement of additional funds for payment of BCD/BG amount to clear the consignment do not constitute Force Majeure in terms of Article 11 of the PPA. In view of above, the Commission holds that no relief can be extended to the Petitioner on this issue.

E. Delay in extending 132 KV Grid Connectivity to PSEPL for 2x50 MW Solar Power Project

and

F. Delay in Physical Connectivity to PSEPL 2X50 MW solar power projects with 132kV Dhamdha

49. The Petitioner has submitted that there has been delay on the part of CSPTCL in providing grid connectivity to the Petitioner's solar power projects which resulted in delay in achievement of the scheduled commissioning dates as per the PPAs. The Petitioner also submitted that there was a delay of 33 days (SCoD was 02.09.2017 and CSPTCL work completed on 05.10.2017) in physical connectivity of 100 MW (2X 50 MW) solar power projects at Dhamdha sub-station. *Per contra*, SECI has submitted that as per Clause 3.8 of the Guidelines, Clause 3.7 of the RfS document, and Article 4.1 and Article 4.2 of the PPA, the responsibility of getting connectivity with the transmission system owned by the STU/CTU or any other transmission utility, as may be required, is that of the Petitioner. Accordingly, the claims for delays relating to connectivity as alleged by the Petitioner are without any merit. CSPTCL has submitted that as per the provisions under *CSERC (Connectivity & Intrastate Open Access) Regulation 2011* read with provisions under *State Supply Code 2011* completion time schedule for extending connectivity is

180 days (6 months) after making payment by applicant. Since, 132KV grid connectivity has been extended on 05.10.2017 hence there was delay of extending grid connectivity for 05 days only.

50. The Commission observes the following timelines from the records:

- i) On 13.07.2016, the Petitioner applied for grid connectivity with CSPTCL for (1x50MW) PV based SPP from 132KV Simga.
- ii) On 30.07.2016, the Petitioner applied for grid connectivity with CSPTCL for another (1x50MW) PV based SPP from 132KV Dhamdha.
- iii) On 01.08.2016, the Petitioner requested CSPTCL that they will avail grid connectivity for their additional upcoming 50MW Solar Power Plant from 132KV sub-station, Dhamdha.
- iv) On 29.04.2016, the Petitioner approached CSPTCL for confirmation of its technical feasibility at CSPTCL's 132 kV Dhamda sub-station and 132 kV Simga Sub - station for 50 MW each.
- v) On 19.08.2016, CSPTCL informed the Petitioner that after examining both the applications of the Petitioners and its technical feasibility, it was found that no space was available at 132KV sub-station, Dhamdha for construction of 132KV feeder bays & hence the Petitioner should arrange required land for construction of 2 numbers 132KV feeder bays adjacent to 132KV sub-station, Dhamdha.
- vi) On 11.08.2016, the Petitioner finally requested to consider grid connectivity from 132KV sub-station, Dhamdha for their 100MW Power Plant and submitted notarized undertaking regarding arranging land adjacent to 132KV sub-station, Dhamdha.
- vii) On 22.08.2016, land selection committee visited the site and agreed with the area of selected land for construction of feeder bays.
- viii) On 29.11.2016, CSPTCL advised the Petitioner to resubmit the separate application for (2x50 MW) connectivity for the Projects.
- ix) On 27.01.2017, the Petitioner submitted its application for grid connectivity of their upcoming (2 x50MW) projects.

- x) On 29.03.2017, CSPTCL conveyed connectivity permission approval along with the required estimate.
- xi) On 31.03.2017, the Petitioner deposited the requisite amount as per the sanction estimate with the CSPTCL.
- xii) On 31.08.2017, the Petitioner applied for modified connectivity since from the field office report. It was gathered that the Petitioner had established their project in two locations in spite of single location. This type of establishment of project in two different locations was violating the terms & conditions of CSPTCL's connectivity permission dated 29.03.2017.
- xiii) On 02.09.2017, CSPTCL conveyed the approval to the Petitioner.
- xiv) 02.09.2017 is the original date of SCoD as per PPA.
- xv) On 06.09.2017, the Petitioner applied for synchronization of their 2x50MW Solar Power Plants.
- xvi) On 04.10.2017, CSPTCL completed its work.
- xvii) On 05.10.2017, grid connectivity was physically given to the Petitioner by CSPTCL and the solar projects got synchronized.
- xviii) 03.11.2017 is the SCoD as extended by SECI.
- xix) On 14.11.2017, the Petitioner commissioned 40 MW of Project-II.
- xx) On 16.11.2017, the Petitioner commissioned 40 MW of Project-I.
- xxi) On 06.02.2018, the Petitioner commissioned balance 10 MW of Project-I & II.

51. Relevant provisions of Chhattisgarh State Electricity Regulatory Commission (Connectivity and Intra-State Open Access) Regulations, 2011 stipulates as under:

Part 3: Connectivity

10. Grant of Connectivity

(7) An intra-state requester will have option to construct dedicated line upto the inter-connection point to enable connectivity to the grid. If an intra-State user is a generating station or captive generating plant it can operate and maintain its dedicated transmission line.

Table-1 Connectivity						
<i>Sr. No.</i>	<i>Licenses system where Connectivity required</i>	<i>Nodal agency</i>	<i>Applicant</i>	<i>Maximum Quantum of Power to be injected / off taken into / from intra-state transmission system and / or distribution system</i>	<i>Application fee (Rs in lakhs)</i>	<i>Time frame for processing of application and execution of work</i>
<i>1</i>	<i>STU</i>	<i>STU</i>	<i>Generating company or captive generating plant</i>	<i>1 MW and above and up to 50 MW</i>	<i>2</i>	<i>1. Informing feasibility after receipt of the application-30 working days. 2. Issue of demand note of estimate charges after issue of notice of feasibility 60 working days ie Maximum 90 working days for processing application from date of receipt of complete application. <u>3. Time frame for execution of connectivity shall be as specified in supply code for EHT connection.</u></i>
				<i>More than 50 MW and up to 250 MW</i>	<i>4</i>	
				<i>More than 250 MW and up to 1000 MW</i>	<i>6</i>	
				<i>More than 1000 MW</i>	<i>9</i>	

52. Relevant provisions of Chhattisgarh State Electricity Supply Code, 2011 stipulates as under:

CHAPTER 4: PROCEDURE FOR RELEASE OF NEW CONNECTION AND CHANGE IN EXISTING CONNECTION.

Procedure for Providing New Service Connection:
Processing of application form

4.31 On payment of necessary charges including security deposit and execution of agreement the licensee shall take up the work of extension of distribution line. The extension work shall be completed within maximum period of 60 days for the LT consumer (excluding pump), 90 days for HT consumers and **180 days for EHT consumers**. For agriculture pump permissible period for extension is 90 days when access to field is available and 180 days when access to field is not available. The responsibility of way leave clearance shall rest with consumer. The licensee after completion of extension of mains up to consumer's premises, and after being ready to release the connection, shall issue a notice as per clause 4.6 of this Code.

.....
4.58 Schedule for completion of various activities relating to new connection and increase of load:

The licensee shall process and give supply of electricity to various consumers within the time specified in the table below. For the purpose of this code urban area means area of Nagar Nigam, Nagar Palika and Nagar Panchayat and other than urban area means rural area:

Sl. No.	Type of Service	Time Limit for Rendering the Service
3	Extra High Tension (EHT) Connection	30 days
	a) Informing feasibility after receipt of the application form including connectivity consent required if any	
	b) Issue of demand note of estimate charges after issue of notice of feasibility	60 days
	<u>c) Completion time of extension work after payment</u>	<u>180 days</u>
	d) Serving of connection after payment necessary charges and execution of agreement by the applicant subject to receipt of clearance from Chief Electrical Inspector after completion of extension work	30 days

53. The Commission notes that the Petitioner admittedly deposited the requisite amount as per the sanction estimate with CSPTCL only on 31.03.2017 and 132KV grid connectivity has been extended on 05.10.2017. As per the provisions under CSERC (Connectivity & Intrastate Open Access) Regulation 2011 read with provisions under State Supply Code 2011, completion time schedule for extending connectivity is 180 days (6 months) after making payment by applicant. Since, 132KV grid connectivity has been extended on 05.10.2017, there was delay of extending grid connectivity for 05 days

54. Further, the original SCoD of the projects as per PPA was 02.09.2017 which was later extended by SECI up to 03.11.2017 (i.e. 62 days extension). CSPTCL completed its work on 04.10.2017. Subsequently, grid connectivity was physically given to the Petitioner on 05.10.2017 and solar projects were synchronized i.e. well before 03.11.2017 (extended SCoD). It is pertinent to mention here that the Petitioner achieved commissioning of its 100 MW (2 x 50 MW) solar power project only on 11.04.2018, therefore the delay cannot be attributed to CSPTCL. Further, the Commission is of the view that delay in extending 132 KV Grid Connectivity to the Petitioner for (2x50 MW) Solar Power Project and delay in physical connectivity are not Force Majeure events in terms of Article 11 of the PPA. In view of above, the Commission holds that no relief can be extended to the Petitioner under this issue.

G. Delay in commissioning of the project due to following acts/omission of SECI and

H. Delay in appointment of nodal agency for facilitation in implementation of the projects

55. The Petitioner has submitted that the entire project was synchronized on 05.10.2017. SECI belatedly formed a Commissioning Committee constituting SECI, CREDA, CSPTCL and CSPDCL's representatives. Such Commissioning Committee visited the Projects site only on 14th/16th November 2017 and as such there was a delay in declaring 100 MW solar power projects commissioned by 40 days, solely attributable to SECI. SECI, CREDA, CSPTCL and CSPDCL officials visited the Project sites and declared commissioning of only part capacity of 40 MW each of the Project-I and Project-II on 16.11.2017 & 14.11.2017 respectively. Thereafter, revisit to the Project sites did not materialize due to the following two reasons: late declaration of CREDA as nodal Agency for the implementation of Petitioner's solar projects under the Batch-III of Phase-2 of JNNSM with VGF funding; and unnecessary linking requirement of submission of additional documents, by PSEPL to SECI, with commissioning of the projects. *Per contra*, SECI has submitted that as per the Schedule 6, the Petitioner is required to submit copy of certain documents as listed therein to SECI prior to the SCoD. However, the Petitioner delayed in giving the documents as sought by SECI in accordance with the PPAs. Accordingly, it is not permissible for the Petitioner to claim that any delay was attributable to SECI with regard to forming committee for site visit, commissioning of the project etc.

56. The Commission observes that SECI has brought on records various emails/letters/reminders dated 06.10.2017, 12.10.2017, 25.10.2017, 26.10.2017, 27.10.2017 exchanged between the Petitioner and SECI to prove that certain additional documents were still pending to be submitted by the Petitioner to SECI. The Petitioner vide e-mail dated 28.10.2017, submitted certain additional documents for the Petitioner's solar power projects. The extract of the e-mail, inter-alia, reads as under:

"In continuation of our earlier letter under Ref – 2 & 6 above and your request for submission of additional documents vide Ref – 1 & 3, we hereby submit following documents for our 100 MW (2 Projects x 50 MW) Solar Projects in the State of Chhattisgarh which are as follows;

Sr. No.	Description	Enclosure
1	Synchronization Report	Flag No. - 1
2	Highly Corrosive Atmosphere (IEC 6170) & Module Test Certificate Reports	Flag No. – 2
3	Installation Report	Flag No. – 3
4	Consent to Operate	Flag No. – 4
5	Warranty Certificate	Flag No. – 5
6	Plant Layout with Nos. of Rows and Nos. Modules	Flag No. – 6
7	Cable Invoice & Delivery Challan	Flag No. – 7
8	WMS & Pyranometer Invoice & Delivery Challan	Flag No. – 8
9	Board Resolution	Flag No. - 9
10	Metering Scheme with CT/PT and SLD Details	Flag No. - 10

57. The Petitioner vide e-mail dated 30.10.2017, submitted Land Mutation Documents, Patwari Registered copy etc. to SECI. The extract of the e-mail, inter-alia, reads as under:

In continuation of our earlier letter under Ref – 1, 3 & 7 above, we hereby submit following documents for our 100 MW (2 Projects x 50 MW) Solar Projects in the State of Chhattisgarh which are as follows;

Sr. No.	Description	Enclosure
1	Land Mutation Documents	Flag No. - 1

This is reference to your query vide your letter under Ref – 2 & 4, with this we have submitted all documents further vide our letter under reference – 1, 3 & 7 and complied against all your queries.

58. Vide e-mail dated 31.10.2018, SECI provided its comments and observations after evaluation of the documents submitted on 28.10.2017 and 30.10.2017 by the Petitioner relating to commissioning of the Petitioner's solar power projects and requested to submit the pending documents. SECI sent reminders vide e-mails dated 01.11.2017, 02.11.2017, 06.10.2017 requesting to submit pending documents. Further vide e-mail dated 10.11.2017, SECI informed the Petitioner as under:

'In regard to commissioning of the subject project, it is noted that some of the compliances as per commissioning procedure of PPA are yet to be complied by you. Meanwhile, a SECI team is planning to visit the site on 14.11.2017 in order to verify the details at site and ascertain the status to take a view on commissioning. You are requested to make necessary arrangements.'

59. In view of the above, the Commission finds the delay in constituting the Commissioning Committee (constituting SECI, CREDA, CSPTCL and CSPDCL's representatives) cannot be attributed to SECI. Rather there was delay on the part of the Petitioner in submitting the required documents as per Schedule 6 of the PPA.

60. Further, the Commission notes that vide letter dated 02.02.2018, the Petitioner requested SECI for revisiting the Project sites on 06.02.2018. The relevant extract of the letter reads as under:

'This is with reference to 2 Projects X 50 MW Solar PV Power Plant at Chhattisgarh under SECI VGF Scheme.

As you are aware that the entire plant was synchronized with the grid on 05.10.2017 and stakeholders site visit to declare commissioning of the plant happened on 14.11.2017. Subsequent to the visit various meetings held with all the stakeholders in which some more documents were asked to submit. We have submitted all the desired documents as communicated.

As per the last meeting held on 25.01.2018, it was communicated that committee wants to revisit the plant.

We suggest revisiting the plant on 06.02.2018. kindly confirm per return mail.'

61. From the above, it is noted that the Commissioning Committee visited the Project sites on 14.11.2017. Subsequently, various meetings were held with the Commissioning Committee in which some more documents were asked to submit. The Petitioner after depositing the required

documents, requested the Commissioning Committee to revisit the Project sites on 06.02.2018. Hence, the delay on the part of SECI cannot be proved on records. In view of above, the Commission holds that no relief can be extended to the Petitioner under this issue.

I. Delay due to unforeseen technical problem in String Inverters

62. The Petitioner has submitted that one of the reasons of delay in commissioning both the projects was due to the technical problem in HUAWEI make inverters of 43 kW capacity wherein the display showed blank or showed zero reading in plant SCADA system which was duly intimated to its vendor (M/s Huawei Telecommunications (India) Co. Pvt. Ltd.) on 02.11.2017 and was asked for rectification of the same. The vendor vide its letter dated 20.11.2017, apprised the Petitioner that there was an error in communication between inverter to SCADA system. CSPTCL vide its letter dated 19.01.2018 in response to the Petitioner's letter dated 12.01.2018 clarified that projects were commissioned. SECI ignored the submission of the Petitioner and even recommendation of CSPTCL. It visited site of the projects only on 06.02.2018 which resulted into delay of 84 days in declaring the commissioning of 10 MW each of Project I and II on 06.02.2018.
63. The Commission notes that the Petitioner has admitted on records that there was technical problem in HUAWEI make inverters and its vendor further confirmed that there was an error in communication between inverter to SCADA system. Further, CSPTCL vide letter dated 19.01.2018 has only confirmed the synchronization date of the Petitioner's projects for purpose of submission to SECI and not the commissioning date as sought to be contended by the Petitioner.
64. The Commission notes that inverters are the essential parts of the solar power project. Clause iii of the Appendix- A-1 appended to the Scheduled 6 of the PPA

iii) A Solar PV Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid .

65. The Commission observes that the technical problem in communication between inverter to SCADA system is not an event of Force Majeure under Article 11 of the PPA. As such, the Commission holds that no relief can be extended to the Petitioner under this issue.

J. Delay in commissioning certificate by CREDA and SECI

66. The Petitioner has submitted that there was a delay in issue of the commissioning certificate by SECI and CREDA and the same caused delay in issuance of the Commercial Operation Date Certificate under the PPA with SECI and consequentially the Petitioner was unable to raise the invoices as CSPTCL and CSPDCL could not issue the Joint Meter Reading (JMR).

67. The Commission notes that the Commissioning Committee recorded at the project site witnessing commissioning activities for 40 MW out of 50 MW capacity each of the solar power projects of the Petitioner. The commissioning of 40 MW capacity out of 50 MW solar power project (Project-1) was considered on 16.11.2017. The commissioning of 40 MW capacity out of 50 MW solar power project (Project-2) was considered on 14.11.2017. As discussed earlier, the Petitioner has admitted on records that there was technical problem in HUAWEI make inverters and its vendor further confirmed that there was an error in communication between inverter to SCADA system. The Petitioner itself requested the Commissioning Committee for revisiting the Project sites on 06.02.2018. The Commissioning Committee visited the project site on 06.02.2018, witnessing commissioning activities for 10 MW out of 50 MW capacity each of the solar power projects of the Petitioner. The commissioning of 10 MW capacity out of each of the 50 MW solar power project was considered on 06.02.2018.

68. The Commission notes that letter dated 11.04.2018 of SECI stipulated as under:

“In line with the Commissioning Certificate issued by CREDA for your 2 x 50 MW Solar PV Projects under JNNSM Phase-II, Batch-III, Tranche-VI, COD/UCOD of the Projects along with applicable tariff are declared as below;

	Name of SPD	Project ID/ Capacity (MW)	Actual Commissioning date (part wise)	UCOD (part wise)	Applicable Tariff (Rs./Unit)	COD of Project
1	Parampujya Solar	P2B3T6-PSEPL-B-	16.11.2017 (40 MW)	16.12.2017 (40 MW)	4.43	08.03.2018

2	Energy Private Limited	5CG-1V (50 MW)	06.02.2018 (10 MW)	08.03.2018 (10 MW)	4.095	08.03.2018
3		P2B3T6- PSEPL-B-	14.11.2017 (40 MW)	14.12.2017 (40 MW)	4.43	
4		5CG-2V (50 MW)	06.02.2018 (10 MW)	08.03.2018 (10 MW)	4.095	

It is also informed that, if any unscheduled power injected in to the Grid after COD/UCOD (as the case may be), SPD would be required to execute an agreement with CSPDCL for supply of such power as per Clause 6.1 (iii) of the CSERC Regulation dated 07/11/2016. Such power shall be paid as per applicable deviation charges in line with aforementioned CSERC Regulation.

This Communication is without any prejudice to the provisions under PPA, VGFSa, RfS, & NSM Guidelines.

69. From the above, the Commission notes that SECI vide letter dated 11.04.2018 declared COD/UCOD of the (2 x50MW) Projects in line with the commissioning Certificate issued by CREDA and no delay can be attributed on the part of SECI. As such, the Commission holds that no relief can be extended to the Petitioner under Issue No.1 and Issue No.2. Accordingly, Issue No.1 and Issue No.2 are answered in negative and against the petitioner.

Issue No. 3: Whether the Respondents should be directed to refund the amount of Penalty levied for non-fulfillment of Conditions Subsequent?

and

Issue No. 4: Whether the Respondent No.1 SECI should be directed to refund the amount deducted as Liquidated Damages by encashing the Bank Guarantees along with interest on the same as per the PPA?

and

Issue No. 5: Whether the Respondent No.1 SECI should be directed to pay tariff for total Projects at the rate of INR 4.43/kwh and restore the tariff for 10 MW capacity in both the Projects and pay the differential tariff from the date of commissioning till date along with the interest as per the PPA?

70. In view of the findings of the Commission on Issue No. 1 and Issue No.2, no relief is made out under Issue No.3, Issue No.4 and Issue No.5. Accordingly, Issue No.3, Issue No.4 and Issue No.5 are also answered in negative and against the Petitioner.

71. Accordingly, the Petition No. 149/MP/2019 is disposed of as discussed above.

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(पी. के. सिंह)
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