



Petition No. 1711 of 2021
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

(Date of Order: 01.02.2023)

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Petition under Section 86(1)(b), (e) & (f) of the Electricity Act, 2003 read with Regulation 57 of UPERC (Conduct of Business) Regulations, 2019 for approval of the extension in Scheduled Commercial Operation Date ("SCOD") of Bunda Solar Power Plant to be operated by the Petitioner for supply of 25 MW of Solar Photovoltaic Power to the Noida Power Company Ltd. under the Power Purchase Agreements dated 13.02.2019.

Tata Power Renewable Energy Limited (TPREL)

Corporate Centre, 34 Sant Tukaram Road, Carnac Bunder, Mumbai 400009

.....Petitioner

Versus

1. Noida Power Company Limited (NPCL)

Electric Sub-station, Knowledge Park – IV, Greater Noida,
Gautam Budhha Nagar, Uttar Pradesh – 201310

2. U.P. New and Renewable Energy Development Agency (UPNEDA)

Vibhuti Khand, Gomti Nagar, Lucknow 226010

3. Uttar Pradesh Power Transmission Corporation Limited (UPPTCL)

Shakti Bhawan, 14 Ashok Marg, Lucknow - 226001

.....Respondent(s)

The following were present:

1. Shri Puneet Chandra, Advocate, UPPTCL
2. Shri Amitav Singh, Advocate, UPNEDA
3. Shri Venkatesh, Counsel, TPREL
4. Shri Tanay Chaudhary, Advocate, NPCL

ORDER

(Date of Hearing - 14.10.2022)

1. The present Petition has been filed by Tata Power Renewable Energy Limited ("**Petitioner**" / "**TPREL**") under Section 86 (1) (b), (e) and (f) of the Electricity Act, 2003 ("**Act**") and Regulation 57 of the UPERC (Conduct of Business)

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Regulations, 2019 praying for an approval of the extension in the Scheduled Commercial Operation Date ("**SCOD**") of the Bunda Solar Power Project ("**Bunda Project**") of the Petitioner.

2. On 14.12.2018, Petitioner was issued Letter of Intent ("**LoI**") for the sale of 50 MW of Solar Power from Bunda Project upon being selected as the successful bidder. 25 MW Solar Power was to be supplied to UPPCL and NPCL each. PPA dated 12.02.2019 has been signed with the Uttar Pradesh Power Corporation and that dated 13.12.2019 with NPCL for supply of the 25 MW power each from the Project. PPA dated 12.02.2019 is part of another petition preferred by the Petitioner seeking the relief of *force majeure* and approval of the extension in the SCOD of the Projects being undertaken therein.
3. Under the Power Purchase Agreement ("**PPA**" / "**Agreement**") dated 13.02.2019 to supply 25 MW Solar Power to NPCL NPCL @levelized tariff of Rs. 3.08 per unit, Petitioner is required to achieve Financial Closure within 12 months of the signing of the PPA, i.e., by 13.02.2020. It is also required to commission the Bunda Project within 21 months, i.e., by 13.11.2020. However, on account of the following force majeure events, Commercial Operation could not be achieved within the envisaged SCOD:
 - (a) Delay in receipt of permission for exemption from Land Ceiling due to promulgation of the Uttar Pradesh Revenue Code (Amendment) Ordinance, 2019 ("**Ordinance of 2019**").
 - (b) Outbreak of the novel Covid-19 virus ("**Pandemic**") and the consequent serial lockdown and inevitable delay.
 - (c) Delay in acquisition of land for the Bunda Project due to farmer protest on account of the notification of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; Essential Commodities (Amendment) Act, 2020 and Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 ("**Farm Laws**") by the Parliament.
4. The Petitioner in the original Petition has prayed as follows:
 - (a) Admit and allow the present Petition; and
 - (b) Extend the Scheduled Commercial Operation Date of Petitioner's Bunda Project to 12.09.2021; and
 - (c) Grant any further extension this Hon'ble Commission may deem fit due to further restrictions after March 2021 as may be imposed on account of Covid-19; and
 - (d) Declare the events described in the table forming part of paragraph 51 as force majeure events under Article 11.3.1 of the PPA dated 13.02.2019 read with Article 12.1.1 (iv) of the said PPA;



5. The Petitioner in its amended Petition filed on 25.02.2022 has prayed as follows:
- (a) Admit and allow the present Petition; and
 - (b) Extend the Scheduled Commercial Operation Date of Petitioner's Bunda Project to 03.12.2021; and
 - (c) Grant any further extension this Hon'ble Commission may deem fit due to further restrictions after March 2021 as may be imposed on account of Covid-19; and
 - (d) Declare the events described in the table forming part of paragraph 51 as *force majeure* events under Article 11.3.1 of the PPA dated 13.02.2019 read with Article 12.1.1 (iv) of the said PPA; and

TRPL submission's in amended Petition No. 1711/2021

6. On 14.12.2018, Petitioner was issued Letter of Intents for Project ID: UPNEDA – RS 0000339 (Bunda) of 50MW capacity at the levelized tariff of Rs. 3.08 per unit for supply of power to UPPCL and NPCL (25 MW each). The Bunda Project is being undertaken pursuant to a PPA dated 13.02.2019 signed between Petitioner and NPCL whereby Petitioner is to supply 25 MW of solar photovoltaic power to NPCL for a period of 25 years. Under the PPA, Petitioner is required to achieve Financial Closure within 12 months of the signing of the PPA, i.e., by 13.02.2020 and to commission the Project within 21 months, i.e., by 13.11.2020. However, on account of the following force majeure events, Commercial Operation could not be achieved within the envisaged SCOD:
- a) Delay in receipt of permission for exemption from Land Ceiling due to promulgation of the Uttar Pradesh Revenue Code (Amendment) Ordinance, 2019 ("Ordinance of 2019").
 - b) Outbreak of the novel Covid-19 ("Pandemic") and the consequent serial lockdown and inevitable delay.
 - c) Delay in acquisition of land for the Bunda Project due to farmer protest.
7. The date for achieving Financial Closure and completing acquisition of land (Conditions Subsequent) for the Bunda Project under Article 3.2.2 of the PPA has been extended by the UPNEDA on multiple occasions. The date today stands as 05.02.2021. The SCOD has also been in principle extended by NPCL till 12.09.2021 subject to approval of this Commission. This extension was granted pursuant to a letter dated 18.03.2021 issued by the UPNEDA to NPCL requesting the latter to grant such extension.
8. The SCOD of the Bunda Project was extended by five months by NPCL vide letter dated 29.01.2021 in light of the MNRE Office Memorandum (O.M.) dated 13.08.202. On 30.03.2021, NPCL has in-principle further extended the SCOD to 12.09.2021 subject to approval of the Commission.

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9. As on the date of Bid submission, the permission for Land Ceiling was issued by the concerned District Magistrate (D.M.). For development of the Bunda Project, the Petitioner had identified certain portions of land in Village Vijora Vijauria and/or nearby villages, Tehsil Powayan, Bunda, District Shahjahanpur, Uttar Pradesh. The Petitioner for the purpose of the intended land had on 09.05.2019 entered into an Agreement to Sell (ATS) with Hamu Dalip Singh and other similarly placed farmers. As per these ATSs, the identified lands were owned by farmers hailing from the State of Punjab, Haryana and Uttar Pradesh.
10. On 18.04.2019, Petitioner wrote to the D.M., Shahjahanpur seeking approval for exemption from land ceiling in order to initiate the process of land acquisition for the Bunda Project and acquire the Project Land. As per the prevalent practice of the State Machinery, it was anticipated that permission for exemption from Land Ceiling would be granted by the concerned D.M. within a period of one month. The prior approval of the D.M. was necessary before Project Land could be acquired by the Petitioner. However, on 10.03.2019, the Ordinance of 2019 was notified wherein permission for Land Ceiling as per the amended Section 89 would now be issued by the Officer Authorized by the State Government for acquisition of land beyond the ceiling limit.
11. On 22.08.2019, the Petition for adoption was disposed of by this Commission with liberty being granted to the Petitioners therein (NPCL, UPPCL and UPNEDA) to bring the PPAs signed with the Generators in conformity with the approved RfP. On 03.09.2019, an amended PPA was entered into between Petitioner and NPCL and the same was adopted by this Commission vide its Order dated 18.09.2019 in Petition No. 1479/2019.
12. On 09.09.2019, Petitioner was constrained to issue a Representation to the Principal Secretary, Govt. of U.P. wherein it explained the delay caused to it in meeting the Conditions Subsequent under Article 3.1 of the PPA. Thus, Petitioner requested that Government of U.P. (GoUP) may consider the following pleas:
 - i. An extension in the due date for achieving Financial Closure by an additional three months, i.e., till 12.05.2020 from the initial date of 12.02.2020.
 - ii. In case the date of Financial Closure is not extended, permission to begin land acquisition proceedings (pending ceiling permission) be granted.
13. On 03.10.2019, the land ceiling exemption for the Project Land was finally issued by Additional Chief Secretary, GoUP as per the Ordinance of 2019 with certain terms and conditions. Thus, on account of administrative delays, the prerequisite activities for acquisition of the Project Land were delayed till October 2019. Further, on 11.11.2019, permission for exemption from Stamp Duty in respect of

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the Bunda Project was also granted by the GM-DIC.

14. On 23.12.2019 and 03.02.2020, Petitioner sought an extension of not only the date of Financial Closure till 12.08.2020, but also extension in the delivery date / SCOD by four months, i.e., till 12.03.2021. On 10.02.2020, UPNEDA accepted the Petitioner's request. The timeline for meeting the Conditions Subsequent was extended up to 26.06.2020 without, however, an extension in the SCOD. However, land acquisition activities and the Bunda Project in toto came to a screeching halt with the outbreak of the Pandemic in February 2020. By this point in time, Petitioner had been able to acquire only 75.3 acres of land for the Bunda Project. The outbreak was preceded by a notification issued by the People's Republic of China on 27.01.2020 and 29.01.2020, which stated as follows:
 - i. Extension of Lunar Holidays till 09.02.2020.
 - ii. Announcement by State council of several measures being taken to block the spread of the Pandemic.
 - iii. Enterprises should submit a written application in advance to the Municipal Government in order to resume work.
15. On 19.02.2020, In view of the Pandemic, Petitioner issued letter to NPCL intimating the effects of the Pandemic on the import of critical supplies for the Bunda Project from China, such as Solar PV Modules, inverters and connectors. This letter served as an intimation of the Pandemic being a force majeure event under Article 11 of the PPA. 28. Further, on 19.02.2020, the Department of Expenditure, Ministry of Finance issued an O.M. bearing No. 4 / 18 / 4 / 2020-PDD recommending that the Pandemic be considered as a force majeure event.
16. On 20.03.2020, MNRE also issued an O.M. giving the following directions in view of the disruption in supply chain on account of the Pandemic:
 - i. All RE implementing agencies of MNRE are to treat delay on account of disruption of supply chains as force majeure.
 - ii. RE agencies may grant suitable extension of time for projects on account of Covid-19 based on evidence / documents produced by developers in support of their claims.
 - iii. All project developers claiming disruption and desirous of time extensions shall make a formal application to NECI/NTPC/ other implementing agencies.
17. Thereafter, on 24.03.2020, Ministry of Home Affairs, issued a Notification under Section 3 of the Disaster Management Act, 2005 and declared a nationwide lockdown to the prevent spread of Covid-19. Following this, on 27.03.2020, Petitioner issued a letter to NPCL intimating its intention to seek relief under the O.M. dated 20.03.2020, including extension of time under Article 11 of the PPA,



upon cessation of the force majeure event. On 17.04.2020, MNRE issued another O.M. directing that a blanket extension in the SCOD of RE Projects on account of the Pandemic. This extension was to be for the period of the lockdown plus an additional 30 days for normalization.

18. On 16.06.2020, NPCL granted Petitioner an extension in the SCOD of the Bunda Project by 98 days from the original SCOD in view of O.M. dated 17.04.2020. This came pursuant to the Petitioner's letter dated 05.06.2020. On 06.07.2020, UPNEDA issued a letter to the Petitioner in furtherance of the latter's letter dated 05.06.2020 wherein UPNEDA granted Petitioner an extension of 96 days beyond the previously extended date of 26.06.2020 for fulfilling the Conditions Subsequent, i.e., till 30.09.2020.
19. On 13.08.2020, MNRE issued another O.M. stating as under:
 - i. Lockdown due to the Pandemic is to be treated as force majeure, which is to be observed by State Renewable Energy Departments as well.
 - ii. All projects under the supervision of the RE Implementing Agencies are to be given a blanket extension of five months from 25.03.2020 to 24.08.2020.
20. The lockdown aggravated the delay in the Bunda Project on account of, inter alia, restriction of inter-state movement and delay in acquisition of Project Land. This compelled Petitioner to request NPCL on 27.08.2020 for an extension in the SCOD of the Bunda Project for a period of five months in addition to that granted by the O.M. dated 13.08.2020, i.e., till 12.09.2021 instead of 12.04.2021.
21. On the request of the Petitioner's letter dated 28.09.2020, vide letter dated 07.10.2020, UPNEDA granted an extension till 30.12.2020 for the Conditions Subsequent. However, UPNEDA also stated that for an extension in the SCOD, NPCL may be approached.
22. The Farmer protest events are critical to the present Petition as the landowners in the already executed ATSS' were farmers and hailed from all three affected States, i.e., Punjab, Haryana and U.P. As a result, the difficulties of the Petitioner in land acquisition and inter-state movement intensified. In fact, some of the identified landowners delayed execution of Sale Deeds as they were part of the farmer protests. In view of this, on 26.11.2020 and 16.12.2020 Petitioner issued letter to UPNEDA and sought extension in Financial Closure & SCOD. Accordingly, on 04.01.2021, UPNEDA issued a letter granting an extension for the Conditions Subsequent till 05.02.2021, however, for an extension in the SCOD, Petitioner was asked to approach NPCL.

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23. On 29.01.2021, NPCL issued a letter granting extension in the SCOD of the Bunda Project by five months from the date mentioned in the PPA purely in view of the O.M. dated 13.08.2020 and further stated that this extension subsumed the earlier extension of 98 days granted by NPCL vide its letter dated 16.06.2020. Until February 2020, only 75.30 acres of land could be acquired by the Petitioner. With the Pandemic and farmer protests kicking in, around four months were lost in acquiring land. With great efforts, the process was once again begun on 10.11.2020 and despite the difficulties faced on account of the protests, the entirety of the 205 acres was finally acquired by 21.01.2021.
24. On 10.03.2021, NPCL issued a letter to the Petitioner rejecting the latter's request for an extension in the SCOD of the Bunda Project stating that such a request could only be considered after payment of Liquidated Damages in terms of Article 4.8 of the PPA. However, on 18.03.2021, UPNEDA issued a letter to NPCL requesting that Petitioner's case be considered as an "exceptional circumstance" under the O.M. dated 09.02.2021. In terms thereof, NPCL was requested to approve Petitioner's request for an extension in the SCOD of the Bunda project to 12.09.2021 thereby NPCL granted an extension in the SCOD of the Project to 12.09.2021 without accepting the force majeure claims of the Petitioner.

Continuation of Force Majeure Events

25. On 09.04.2021, the Additional Chief Secretary, GoUP, owing to second wave of COVID-19, issued a letter to the Collector of Lucknow, Varanasi, Prayagraj and Kanpur Nagar to direct all Government and private offices within its jurisdiction to operate at 50% capacity. This arrangement was to last till 30.04.2021. Pursuant thereto, on 20.04.2021 & through various notices, a direction was issued by the Additional Chief Secretary, GoUP imposing a weekend curfew on movement in the State from every Friday on 08:00 P.M. to the following Monday till 07:00 A.M. Further, a prohibition on movement during night was also imposed from 08:00 P.M. to 07:00 A.M. on the rise of Covid-19.
26. On 12.05.2021, the MNRE issued O.M. allowing RE Projects having their SCOD on or after 01.04.2021, to be considered for an extension in their SCOD beyond specified period in the earlier O.M. dated 30.03.2021. On 14.06.2021, NPCL issued a letter to Petitioner requesting for an undertaking in terms of OM dated 12.05.2021 for extension in the SCOD of the Petitioner's Project, details of milestones of the Project qua achievement in percentage terms, list of materials received/ pending till date from Petitioner's suppliers and the actual period of extension of time in SCOD of the Project being sought. In response, the Petitioner on 25.06.2021, shared the information requested therein and the undertaking in terms of MNRE OM dated 12.05.2021.

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27. Thereafter on 29.06.2021, MNRE in furtherance of its O.M. dated 12.05.2021, stipulated the period of the second wave of COVID-19 virus as being from 01.04.2021 to 15.06.2021 and decided that aforesaid period shall be allowed for extension of time in achieving the SCOD of RE Projects. On 13.07.2021, NPCL issued a letter to the Petitioner seeking an unconditional undertaking in terms of O.M dated 12.05.2021. On 27.07.2021, NPCL intimated that O.M dated 29.06.2021, an in-principal acceptance for extension in SCOD of Petitioner's Project was given till 27.11.2021 subject to the approval of this Commission.
28. MNRE issued another O.M. on 15.09.2021, by virtue thereof, the RE Projects were accorded extension of another 2.5 months. As per the said O.M., the entire period of 01.04.2021 to 15.06.2021 was to be allowed for extension of time in the SCOD of RE Projects/RE developers dehors the PPAs as an out of contract concession. Further RE Project developers were also granted liberty to approach the appropriate forum as per their respective PPAs for claiming appropriate time extension.
29. On 28.09.2021, the Petitioner in compliance with the conditions envisaged in Article 5.1.1 of the PPA, issued an advance preliminary notice to UPNEDA and NPCL on readiness of 25 MW solar PV Project at Bunda by 27.11.2021, synchronization/Commissioning as per Article 5.1.1 of the PPA.

Delay in completion of the construction activities of the sub-stations at Bunda

30. The plant end 33 kV and 132 kV meters were sealed and the intimation regarding the same was provided to UPPTCL by the Petitioner vide its letter dated 23.11.2021. Further, the Petitioner also intimated the readiness of 132 kV line for charging. Despite the said fact, the meter sealing activity of 132 kV meters at UPPTCL Bay end could not be completed on time owing to non-completion of GI conduiting of cables by UPPTCL. However, by the support of the Petitioner's project team, UPPTCL was able to complete the meter sealing activity by 27.11.2021.
31. Thereafter, on 29.11.2021, the Petitioner submitted the 132 KV meter sealing certificate to UPSLDC and after verification of documents, UPSLDC issued charging code only on 02.12.2021. On 02.12.2021, Petitioner vide its letter to UPNEDA, UPPCL, NPCL and UPPTCL demonstrated its efforts in the synchronization of the 132 kV transmission line. The Petitioner also requested for deputation of a representative at the project site to witness the synchronization on 03.12.2021.
32. Pursuant, to synchronization of the 132 kV transmission line, the Petitioner was able to achieve the commissioning of the Project, for which a Commissioning

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Certificate dated 03.12.2021 was accordingly signed issued by NPCL. Pursuant to the receipt of the Commissioning Certificates, on 31.12.2021, the Petitioner addressed a letter to UPNEDA requesting issuance of COD Certificate which was issued on 13.01.2022.

Record of Proceedings

33. The hearing on 24.08.21 was adjourned for want of Quorum. The matter was heard on 21.09.21, wherein, the Commission noted that UPPCL is the other beneficiary of the Project and separate Petition as No. 1709/2021 has also been filed. However, on Petitioner's submission that matter is that of extension of COD due to Force Majeure in terms of identical PPA(s) under the same bidding process conducted by UPNEDA, allowed to proceed with Petition as filed with the consent of the parties. The Commission directed the Petitioner to file delay analysis and parties to file reply and rejoinder. During the hearing on 23.11.2021, the Commission allowed further time to complete the pleadings. During the hearing on 08.02.2022, on Petitioner's submission that the extension period of SCOD had increased for interconnection facilities and request to amend the Petition, allowed to amend the Petition and directed parties to complete pleadings in amended Petition with UPPTCL as impleaded party.
34. The amended Petition with UPPTCL as impleaded party was filed on 25.02.2022 and the hearing on 07.04.22 and 21.07.22 was adjourned for Quorum. The Commission heard the arguments of the Petitioner on 01.08.2022. The hearing on 08.09.2022 was adjourned for Quorum. The Commission heard the arguments of NPCL that Change in law being a separate issue, they are concerned with tariff in the instant matter due to SCOD extension. The Commission concluded the hearing with liberty to parties to file their written submissions.

NPCL's reply filed dated 08.04.2022:

35. As per Article 3 of the PPA, UPNEDA is the appropriate body to allow any extension in fulfilment of Conditions Subsequent. The Petitioner vide its Letter dated 18.01.2021 apprised the UPNEDA that it has achieved Financial Closure of the Project and also sought extension for SCOD till 12.09.2021.
36. MNRE, considering the impact of COVID - 19, vide its several O.M.s dated 20.03.2020, 17.04.2020, 30.06.2020, 13.08.2020, 09.02.2021, 30.03.2021, 12.05.2021, 29.06.2021 and 15.09.2021, granted Time-Extensions (Case to Case basis / Blanket as applicable) to RE Projects.
37. In view of the MNRE O.M. dated 17.04.2020, the Petitioner on 05.06.2020 sought extension in SCOD of the Bunda Project. NPCL vide its Letter dated 16.06.2020



granted the extension of 98 days (i.e., lockdown period 25.03.2020 to 31.05.2020 and additional 30 days) in the SCOD and clarified that extension was granted for the disruptions in construction activities due to lockdown activities imposed by the Govt. of India from 25.03.2020 to 31.05.2020 and the same shall not in any manner be construed as acceptance of the Force Majeure Claims of the Petitioner prior to lockdown.

38. MNRE issued another O.M. on 30.06.2020 further clarified that the timelines for intermediate milestones may also be extended within the extended time (period of lockdown plus 30 days) provided for commissioning of a project. MNRE further vide its O.M. dated 13.08.2020 stated as follows:
- a) Lockdown due to the Pandemic is to be treated as force majeure, which is to be observed by State Renewable Energy Departments as well.
 - b) All projects under the supervision of the RE Implementing Agencies are to be given a blanket extension of five months from 25.03.2020 to 24.08.2020.
39. The Petitioner vide its several letters requested NPCL for an extension in the SCOD of the Bunda Project for a period of five months in addition to the 98 days extension already granted by it vide its letter dated 16.06.2020 in line with earlier O.M. dated 17.04.2020 issued by MNRE. Accordingly, NPCL on 29.01.2021, granted an extension of 5 Months in SCOD subsuming the 98 days extension already granted by it vide its letter dated 16.06.2020.
40. NPCL vide its letter dated 10.03.2021 stated that it is not agreeable with the purported Force Majeure as claimed by the Petitioner seeking further extension of 5 months beyond 12.04.2021. However, the Petitioner clarified the request of further extension of SCOD for 5 months which can be considered by the NPCL upon payment of Liquidated Damages in terms of Article 4.8 of the PPA.
41. Thereafter, UPNEDA vide its Letter dated 18.03.2021 issued to the NPCL recommended to consider the circumstances as mentioned in Petitioner's letters dated 04.02.2021 & 08.03.2021 as exceptional case and thereby requested to award an extension in the SCOD of the Bunda Project to 12.09.2021. NPCL in-principally accepted the request of the Petitioner for additional extension in COD till 12.09.2021 subject to approval of this Commission. However, the NPCL in the said letter categorically stated that impact of any additional cost due to change in law etc. on account of above additional extension shall be borne by the concerned party subject to approval of this Commission.
42. Thereafter, NPCL vide its Letter dated 14.06.2021 has not accepted the Force Majeure contentions of the Petitioner. However, based on MNRE's O.M. dated 12.05.2021, the additional time extension may be considered upon submission of



an undertaking in terms of Point 5 (b) of the MNRE's O.M. dated 12.05.2021 subject to approval of this Commission. Accordingly, NPCL requested Petitioner to provide an undertaking and the same was provided by the Petitioner on 25.06.2021.

43. Since the Petitioner's undertaking dated 25.06.2021 was not in line with the Point No. 5 (b) of the MNRE's O.M. dated 12.05.2021, NPCL vide its Letter dated 13.07.2021, informed the Petitioner to provide unconditional undertaking in terms of the MNRE O.M. dated 12.05.2021 to enable it for taking appropriate decision and further clarified that it is not accepting any force majeure claims of the Petitioner.
44. Thereafter, the Petitioner, in view of the MNRE's O.M. dated 12.05.2021 read with 29.06.2021 and NPCL's Letter dated 13.07.2021, issued another request letter on 16.07.2021 to extend SCOD of the Bunda project by an additional 2.5 months from 12.09.2021 i.e., till 27.11.2021. Also, the Petitioner provided an unconditional undertaking for not claiming the extension as a ground for termination of PPA or for claiming any increase in the project cost, including Interest during Construction (IDC) or upward revision of tariff. NPCL vide its letter dated 27.07.2021 in-principally accepted the request of seeking additional time extension till 27.11.2021 subject to approval of this Commission. However, the Project got commissioned after a delay of 6 days i.e., 03.12.2021 due to delay in meter sealing etc. as per the submission of the Petitioner.
45. NPCL on several occasions has granted time extension for SCOD of the Bunda Project primarily on two reasons:
- 3 Occasions - In terms of Office Memorandums issued by MNRE.
 - 1 Occasion - In terms of the recommendation of UPNDEA.

A tabular representation showing the instances of extension in SCOD sought and allowed is reproduced below:

S. No.	SCOD	Extension (No. of Days)	Revised SCOD	Remarks
1.	12.11.2020	98 days	17.02.2021	In Terms of MNRE's O.M. dated 17.04.2020
2.	17.02.2021	5 months from 12.11.2020 (subsuming 98 days)	12.04.2021	In Terms of MNRE's O.M. dated 13.08.2020
3.	12.04.2021	5 months	12.09.2021	In Terms of UPNEDA's Recommendation dated 18.03.2021 based on MNRE's O.M. dated 09.02.2021

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4.	12.09.2021	2.5 months (76 days)	27.11.2021	In Terms of MNRE's O.M. dated 12.05.2021 r/w 29.06.2021
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46. The Petitioner was able to commission its 25 MW solar Power Plant only on 03.12.2021 i.e., 6 days after the extended SCOD. NPCL had not accepted any of the Force Majeure Claims as claimed by the Petitioner except for those mentioned in the MNRE's various O.M. neither it has accepted any Change in Law claims of the Petitioner on account of extension in SCOD. Therefore, this Commission may kindly take a view in granting SCOD extension of 6 days beyond 27.11.2021 in terms of PPA.
47. NPCL prays the Commission to consider the instant Petition after considering the following facts:
- Non-Admissibility of Force Majeure / Change in Law Events: Any of the Force Majeure / Change in Law events as claimed by the Petitioner are not admissible except for those mentioned in MNRE's various O.M. allowing time extension to RE Developers.
 - Unconditional Undertaking: The unconditional undertaking submitted by the Petitioner that the extension in SCOD sought by it shall not be treated as a ground for claiming termination of PPA or for claiming any increase in the project cost, including Interest during Construction (IDC) or upward revision of tariff.
48. **UPPTCL reply dated 23.05.2022.**
- The connection agreement for Bunda Project was signed 16.05.2019 and as per the agreement 132 kV bay at 132 kV substation at Bunda was to be constructed by UPPTCL in 7 months after receipt of funds. 132 kV line from the plant to the substation was to be constructed by TPREL.
 - UPPTCL vide letter dated 23.01.2020 provided the estimate for construction of 13 kV line as requested by TPREL through their letter dated 21.01.2020. TPREL, 09.02.2021 informed UPPTCL that the evacuation line would be constructed by them self and requested to provide estimate of supervision charge. Which was provided by UPPTCL on 23.02.2021.
 - TPREL vide email dated 27.08.2019 requested UPPTCL provide estimate for construction of 132 kV bay at 132 kV Bunda substation which was provided on 28.08.2019. The cost was deposited on 25.10.2019. The project has been connected to old bay of 132 kV substation Bunda without delay on part of UPPTCL.



49. **UPNEDA reply dated 05.04.2022.**

- (a) TPREL vide letter dated 03.02.2020 sought extension of 6 months for financial closure and SCOD by 4 months due to:
- (i) Delay in getting the approval under the Land Ceiling Act from the DM Shahjahanpur which was received on 03.10.2019;
 - (ii) Delay in getting the approval towards 100% stamp duty waiver from GM DIC which was received on 14.11.2019;
 - (iii) Expected delay of 4 months on account of exchange of land process due to existence of 8 acres of gram samaj land;
 - (iv) Increase in land rates on account of Bunda being declared as Nagar Panchayat on 09.12.2019.

UPNEDA vide letter dated 10.02.2020 extended the dated of financial closure till 26.06.2020.

- (b) TPREL, on 05.06.2020, sought further extension of date of financial closure and SCOD on account of COVID -19. UPNEDA on 06.07.2020 granted extension of 96 days beyond extended date of 26.06.2020 for fulfilment of conditions subsequent to 30.09.2020.
- (c) Subsequently on 28.09.2020 TPREL requested for extension on following grounds:
- (i) Detection of Covid case in the district as a result the District remains closed for a full day;
 - (ii) Many of the farmers are staying in Punjab and other states and hence interstate movement in being affected;
 - (iii) Movement of Petitioner's officers across states has been restricted due to various restrictions.
 - (iv) Immense challenge to maintain the land rates and the project viability because of the delays caused beyond control.

UPNEDA extended the timeline till 30.12.2020 from 30.09.2020 in view of MNRE OM dated 13.08.2020.

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- (d) TPREL on 26.11.2020 sought further extension of financial closure and SCOD till 31.03.2021 which was modified to 10.02.2021 for financial closure. UPNEDA on 04.01.2021 extended the timeline for condition subsequent till 05.02.2021 in terms of MNRE OMs and UPPCL letter dated 23.11.2020 and 08.06.2020.
- (e) The condition subsequent were fulfilled on 18.01.2021. UPNEDA vide letter dated 12.02.2021 intimated the following:

Clause	Details	Date on which Condition Subsequent have been met
3.1.1 (a) and (c)	Acquisition of Land and Financial Closure	18.01.2021
3.1.1 (e)	Connectivity Agreement	16.05.2019

- (f) TPREL sought extension of SCOD till 12.09.2021 vide letter dated 08.03.2021. UPNEDA, considering the delay of account of construction of 12 Km transmission line to 132 kV Bunda sub-station which would pass to through farmland requested UPPCL to award SCOD extension till 12.09.2021 without LD.
- (g) TPREL vide letter dated 27.10.2021 issued final written notice for synchronizing 25 MW project and commission certificate was issued on 03.12.2021.

Rejoinder to NPCL's reply:

50. The contentions of NPCL are wholly misconceived and flawed, as the factors on the basis of which extension in SCOD has been claimed by the Petitioner squarely fall within the definition of "Force Majeure" envisaged under Article 11.3 of the PPA. Primarily the factors on the basis of which the project got delayed are enumerated herein below:

- (a) Delay in receipt of permission for exemption from Land Ceiling due to promulgation of "Ordinance 2019".
- (b) Delay in receipt of exemption from payment of Stamp Duty in terms of the Notification dated 12.02.2018 issued by the Government of Uttar Pradesh.
- (c) Outbreak, as well as the resurgence of COVID-19 pandemic and its associated restrictions which led to inevitable delay.
- (d) Delay in acquisition of land for the Project due to Farmers Protest on account of the notification of the "Farm Laws" by the Parliament.
- (e) Gram Panchayat Elections, 2021 which led to restrictions in inter/intra state movement in the State of Uttar Pradesh.

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(f) Delay in completion of construction of transmission facilities at Bunda Sub-station.

51. Keeping in view the definition of Force Majeure as stipulated under Article 11 of the PPA, it is abundantly clear that the factors led to substantial delay in performance of the contractual obligations casted upon the Petitioner under the PPA and such events squarely qualifies falls within the purview of Article 11 of the PPA, as the same were beyond the direct/indirect and reasonable control of the Petitioner.
52. To initiate the process of land acquisition, the Petitioner moved an application on 18.04.2019, under the then applicable regime and not under the Ordinance of 2019. However, upon the promulgation of the Ordinance 2019 on 10.03.2019, the single step process for land acquisition under the old regime underwent a paradigm shift in terms of the amended Section 89(4) of the UP-Revenue Code, 2019. This eventually led to an administrative delay on part of the Governmental Authorities in the grant of Land ceiling exemption for the Project which finally came to be issued on 03.10.2019 and thereby delay the process for nearly 6 months. It was only after the grant of land ceiling exemption that the Petitioner could acquire 75.3 acres of land up to February 2020, which too was not the entire parcel of land required for the Project.
53. In the interregnum, on 12.06.2019, the Petitioner addressed an Application to the District Magistrate, Shahajahanpur and District Industries Center, Shahjahanpur ("DIC") seeking exemption from payment of Stamp Duty while acquiring the land parcel for setting up the Project in terms of the Notification dated 12.02.2018, whereby the GoUP declared remittance of 100% stamp duty chargeable for establishing Solar Power Projects within the state.
54. Despite various follow ups by the Petitioner, the stamp duty exemption was issued only on 11.11.2019. The said permission for exemption from Stamp Duty was received with a considerable delay of 5 months from the date of initial application i.e., 12.06.2019.
55. The obligations under the PPA were contingent on the identification, availability and acquisition of land parcels in the deemed premises of the proposed Project, without any force majeure event impeding their fulfilment. Since this has not been the case, invariably, an inordinate delay in fulfilling the Conditions Subsequent occurred, which was beyond the control of the Petitioner.

Outbreak of COVID-19 Pandemic

56. The outbreak of COVID-19 in China as well as India had a cascading effect on the progress of the Project as well as the timelines for meeting the Condition

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Subsequent and SCOD of the Project. It is an undisputed fact that the outbreak of COVID-19 in India resulted in a screeching halt of various commercial activities and inter/intra state movement of men and material etc. In fact, on account of the outbreak of COVID-19 from March 2020 till August 2020, the import of critical supplies for the Project from China, such as PV Modules inverters and connectors was not only disrupted but the inter-state movement was also stopped.

57. The MNRE after recognizing the outbreak of COVID-19 pandemic and consequent lockdown as a "Force Majeure" Event proceeded to grant blanket extension in the SCOD from 25.03.2020 till 24.08.2020 i.e., 5 months to all Renewable Energy ("RE") Developers across India to mitigate the economic and financial hardships being faced by the RE Sector.
58. Despite several challenges being faced by the Petitioner in overall commissioning the Project, the Petitioner was able to acquire land by 18.01.2021 i.e., much before the extended date of Financial Closure i.e., 05.02.2021. The said fact has also been acknowledged by UPNEDA vide its letter dated 12.02.2021.
59. As and when the land acquisition activities were completed by the Petitioner for the Project, India witnessed a severe and unanticipated resurgence of second wave of COVID-19 virus between April to June 2021 which in turn affected the commercial activity, performance of the PPA and a timely implementation of Project. To combat the resurgence of second wave of COVID-19, the GoUP was compelled to impose stringent restrictions such as night curfew, imposition of Section 144 of CrPC 1973, weekend lockdown etc. Similar restrictions were imposed in other states resulting in difficulties for the Petitioner to commission its Plant. The aforesaid is evident from the notifications issued by GoUP on 09.04.2021, 20.04.2021, 29.04.2021, 01.05.2021, 03.05.2021, 05.05.2021, 09.05.2021.
60. The impact of COVID-19 affected the successful implementation of the Project on account of delay in supply of raw material, restriction in movement of goods, migration of workers and unfortunate deaths of the workers and officers deputed at the Project site. Hence, it can be concluded that the said events were beyond the control of the Petitioner and ought to have been considered as events of "Force Majeure" by NPCL.
61. It is noteworthy to state that similarly placed Distribution Licensees in the state of UP, itself acknowledged that the resurgence of COVID-19 severely hampered their obligations and performances cast upon them in terms of the PPAs signed with the RE Developers. The same is evident from the letter dated 10.05.2021 issued by Uttar Pradesh Power Corporation Limited to all RE developers.

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