



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No.: 340/MP/2018

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member
श्री आई. एस. झा, सदस्य/ Sh. I.S. Jha, Member

आदेश दिनांक /Date of Order: 07th of May, 2019

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Article 16.3.1 of the Power Purchase Agreements executed between the Petitioners and NTPC Limited dated 12.05.2016, seeking release of Performance Bank Guarantees arbitrarily and illegally retained by NTPC Limited and seeking extension of time and deferral of the Scheduled Commissioning Date for the commissioning of two 70 MW solar power projects in accordance with Power Purchase Agreements dated 12.05.2016 executed under the National Solar Mission Phase-II, Batch-II, Tranche-I.

AND IN THE MATTER OF:

1. Rising Sun Energy Private Limited
S-18 Second Floor, Green Park Extension,
New Delhi – 110 016
2. Rising Bhadla 1 Private Limited
S-18 Second Floor, Green Park Extension,
New Delhi – 110 016

3. Rising Bhadla 2 Private Limited
S-18 Second Floor, Green Park Extension,
New Delhi – 110 016

...Petitioners

Versus

1. NTPC Limited
Through its General Manager (Commercial)
Core-7, SCOPE Complex
7 Institutional Area, Lodi Road
New Delhi – 110 003
2. NTPC Vidyut Vyapar Nigam Limited
Through its Chief Executive Officer
NTPC Bhawan, Core 7, SCOPE Complex
7 Institutional Area, Lodhi Road,
New Delhi – 110 003
3. Jodhpur Vidyut Vitran Nigam Limited
Through its General Manager
New Power House, Industrial Area,
Jodhpur -342 003,
Rajasthan
4. Jaipur Vidyut Vitran Nigam Limited
Through its General Manager
Vidyut Bhawan, Jyoti Nagar,
Jaipur -302 005,
Rajasthan
5. Ajmer Vidyut Vitran Nigam Limited
Through its General Manager
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer -305 004,
Rajasthan
6. Rajasthan Solar Power Development Company Limited
Through its General Manager
E-178, Ramesh Marg, C Scheme,
Ashok Nagar, Jaipur- 302 001
Rajasthan

...Respondents

Parties Present: Shri Jafar Alam, Advocate, RSEPL

Shri Saahil Kaul, Advocate, RSEPL
Shri B.S. Dondona, RSEPL
Shri M.G. Ramachandran, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri Nishant Gupta, NTPC
Shri T. Sareen, NTPC
Shri Shubham Arya, Advocate, NTPC
Ms. Sheela, NTPC
Ms. Susan Mathew, Advocate, RSPDCL

आदेश/ ORDER

The Petitioner No.1, M/s Rising Sun Energy Private Limited is a generating company and has established two Special Purpose Vehicles (hereinafter referred to as “SPVs”) viz. M/s Rising Bhadla 1 Private Ltd. (Petitioner Nos. 2) and M/s Rising Bhadla 2 Private Ltd. (Petitioner No. 3) with capacity of 70 MW each in Plot No. 1 and Plot No.2 of the Bhadla Solar Park, Phase-II in State of Rajasthan (hereinafter collectively referred to as “Projects”). Pursuant to competitive bidding under National Solar Mission Phase II Guidelines for Selection of 3000 MW Grid-Connected Solar PV Power Projects under Batch-II, Tranche-I, State Specific Bundling Scheme, (hereinafter collectively referred to as “NSM Guidelines”). The Petitioners have executed two identical Power Purchase Agreements (hereinafter referred to as “PPAs”) on 12.05.2016. The Petitioners are supplying solar power to NTPC as per PPAs.

2. The Respondent No.1, M/s NTPC Limited was appointed by the Government of India to purchase and sell solar photo-voltaic power under the Government of India’s National Solar Mission.
3. The Respondent No.2. M/s NTPC Vidyut Vyapar Nigam Limited (hereinafter referred to as “NVVN”), is a wholly owned subsidiary of Respondent No.1. Under the PPAs, NVVN purchases power on behalf of NTPC for further sale to distribution licensees.
4. The Respondent No. 3 is Jodhpur Vidyut Vitran Nigam Ltd, the Respondent No. 4 is Jaipur Vidyut Vitran Nigam Ltd and the Respondent No. 5 is Ajmer Vidyut Vitran Nigam Ltd., (hereinafter collectively referred to as “Rajasthan Discoms”). They are the three distribution utilities created with the principal object of engaging in the business of distribution and

supply of electricity across all districts in the State of Rajasthan.

5. The Respondent No. 6, M/s Rajasthan Solar Power Development Company Limited is the Solar Park Implementation Agency (hereinafter referred to as “RSPDCL/SPIA”) in the State of Rajasthan. It is responsible for granting possession of land and other related issues.
6. The Petitioners have made following prayer:
 - a) *Direct NTPC to immediately release the Performance Bank Guarantees in the sum of Rs. 25.5 crore (the details whereof are set out at paragraph 3.26 of the instant Petition);*
 - b) *Direct NTPC to pay damages amounting to Rs. 1.54 crores for the period during which the Performance Bank Guarantees have been arbitrarily and illegally retained by NTPC;*
 - c) *Declare that NTPC is not entitled to recover any monies towards liquidated damages or otherwise from the Petitioners;*
 - d) *Declare that the delays in the commissioning of the 2x70MW solar power projects being developed by the Petitioners in Plot No. 1 and 2, Bhadla Solar Park Phase-II, Rajasthan, were caused due to unforeseen, unavoidable and uncontrollable reasons not attributable to the Petitioners and waive any liabilities or any consequences under the PPAs owing to the said delays;*
 - e) *Extend the Scheduled Commissioning Date of the 2x70 MW projects, being developed by the Petitioners in Plot No. 1 and 2, Bhadla Solar Park Phase-II, by 275 days for Project 1 and 330 days for Project 2 in terms of Article 11 of the PPAs;*
 - f) *Direct NTPC to reimburse the legal and administrative costs incurred by the Petitioners in pursuing the instant Petition; and*
 - g) *Pass such other orders that the Commission deems fit in the interest of justice.*

Brief facts of the case

7. In March 2015, the Government of India introduced National Solar Mission Phase-II Guidelines for selection of 3000 MW Grid connected Solar PV Power Projects under Batch-II, Tranche-I -State Specific Bundling Scheme.

8. On 21.05.2015, NTPC issued the Request for Selection (hereinafter referred to as “RfS”) Document for Grid Connected Solar Photo Voltaic Projects under NSM Guidelines.
9. On 29.02.2016, the Letters of Intent (hereinafter referred to as “LOI”) were issued for allotment of Plots for the Projects.
10. On 12.05.2016, NTPC entered into PPAs with Respondent No. 2 and Respondent No. 3 with effective date 26.04.2016 with respect to their solar projects of 70 MW each in Phase II of Bhadla Solar Park, District Jodhpur, Rajasthan.
11. On 02.06.2016, the Petitioner No. 1 requested Rajasthan Renewable Energy Corporation Limited (hereinafter referred to as “RREC”) to provide Plot No.1 and Plot No.2 in Bhadla Solar Park Phase-II.
12. On 06.06.2016, RSPDCL/SPIA informed the Petitioner No. 1 that necessary action has already been initiated to remove encroachments/ obstructions from the allotted land and also advised the Petitioner No. 1 to initiate land allotment procedure as stated in the said letter to avoid delay in commissioning of the project.
13. On 02.07.2016, Petitioner No. 1 informed RREC that they had not provided hassle-free, encroachment-free, obstruction-free land leading to delay in Project development by 2 months. In light of the above, Petitioner No. 1 requested for extension of the land allotment milestone by at least 2 months for completing the requisite formalities for land allotment.
14. On 22.07.2016, RSPDCL/SPIA informed Petitioner No. 1 that the land for Kabristan has been excluded from Plot No. 1 and administration has taken decision to remove Mr. Maula Baksh from Plot No. 2. Accordingly, revised co-ordinates from Plot No. 1 & 2 have been finalized. Further, with regard to shifting of 11 kV line, matter has been taken up and the same is being shifted. Petitioner No.1 was also advised to execute Implementation Support Agreement and to submit Performance Bank Guarantee (hereinafter referred to as “PBG”). On completion of necessary formalities and deposition of requisite amount, hassle free land will be allotted immediately.

15. On 12.08.2016, a Review Meeting was held between Petitioner No. 1 and NTPC wherein information/ status was provided with regard to Solar PV Power Project of 2x70 MW capacity. The Petitioner No. 1 informed that they will take up the possession of land only after it is provided with land free from encumbrances and layout is finalized by RSPDCL/SPIA.
16. On 22.08.2016, RREC informed the Petitioner No.1 that the co-ordinates intimated by RREC were confirmed.
17. On 03.11.2016, Petitioner No.1 requested NTPC for an extension of 129 days in achieving the timelines for Financial Closure and Commercial Operation date since the physical handover of the allotted land was done on September 2, 2016 i.e. with a delay of 129 days (more than 4 months) from the effective date of PPA. This delay was due to various issues involving RREC, revenue authorities of Rajasthan and local villagers.
18. On 04.11.2016, in response to the above letter dated 03.11.2016, NTPC informed the Petitioner No.1 that as per MNRE guidelines for Phase-II Batch-II Trench-I, the request of the time extension shall be considered by NTPC only after certification from RSPDCL/SPIA justifying reasons for delay. Therefore, Petitioner No.1 was advised to submit a certificate from RSPDCL/SPIA justifying the reasons for delay and clearly indicating the no. of days of such delay by which extension is to be granted.
19. On 07.11.2016, RSPDCL/SPIA informed NTPC that final co-ordinates of Plot No. 1 were informed to the Petitioner No.1 on 22.07.2016 and for Plot No. 2 on 22.08.2016.
20. On 08.11.2016, the Petitioner No. 1 again requested NTPC to grant extension in timelines of Financial Closure and Commercial Operation Date.
21. On 15.11.2016, NTPC requested RSPDCL/SPIA to furnish certification with regard to the events.

22. On 18.11.2016, RSPDCL/SPIA provided the required information to NTPC.
23. On 18.11.2016, the Petitioner No. 1 again requested NTPC for extension of timelines for Financial Closure and Commercial Operation Date.
24. On 29.11.2016, the Petitioner No. 2 entered into Implementation Support Agreement with RSPDCL/SPIA.
25. On 01.12.2016, RSPDCL/SPIA issued 'Letter of Allotment' to Petitioner No.2 whereby Plot No. 1 in Bhadla Solar Park Phase-II was allotted for setting up 70 MW Power Project upon fulfillment of certain conditions stipulated therein.
26. On 02.12.2016, MNRE issued Office Memorandum providing Minutes of the Meeting held on 29.11.2016 with regard to issues related to Solar PV Power projects due to 'Demonetization'.
27. On 14.12.2016, the Petitioner No. 2 and Petitioner No. 3 issued Affidavits in support of their request for financial closure.
28. On 09.01.2017, NTPC informed Petitioner No. 2 that extension in achieving Financial Closure was granted till 31.01.2017. However, as agreed in affidavit dated 14.12.2016, scheduled commissioning date of the Project i.e. 25.05.2017 would remain unchanged.
29. On 09.01.2017, NTPC informed Petitioner No. 3 that extension of 28 days i.e. up to 22.06.2017 for achieving the Scheduled Commissioning Date on account of delay in handing over the land for Plot No. 2 by RSPDCL/SPIA was granted. Further, extension up to 31.01.2017 was also granted for the Financial Closure subject to submission of required affidavit and amendment of PBGs extending validity for a period of 28 days.
30. On 23.01.2017, Petitioner No. 3 entered into Implementation Support Agreement with RSPDCL/SPIA.

31. On 24.01.2017, RSPDCL/SPIA issued 'Letter of Allotment' to Petitioner No. 2 whereby Plot No. 02 in Bhadla Solar Park Phase-II was allotted for setting up 70 MW Power Project upon fulfillment of certain conditions stipulated therein.
32. On 08.04.2017, Petitioner No.3 requested NTPC for extension of Commercial Operation Date up to 18.08.2017 on account of delay in identification and handing over the land by the RSPDCL/SPIA.
33. On 11.04.2017, Petitioner No. 2 gave NTPC advance preliminary written notice to synchronize the 70 MW solar power project on 18.05.2017 in terms of Article 5.1.1 of the PPA.
34. On 17.05.2017, Petitioner No. 3 requested NTPC for advice with regard to the approval pending from Rajasthan Urja Vikas Nigam Limited (hereinafter referred to as "RUVNL") for planning the commissioning schedule and for submission of synchronization notice.
35. On 26.05.2017, Petitioner No. 3 informed RSPDCL/SPIA and Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter referred to as "RVPNL") that the 70 MW solar Project is in advance stages of commissioning and ready for synchronization and requested them to provide information on the exact availability of transmission/ evacuation system for the solar power Project for planning the commissioning activities.
36. 25.05.2017 was the Scheduled Commissioning Date (hereinafter referred to as "SCoD") of the projects as per the PPAs dated 12.05.2016.
37. On 29.05.2017, RVPNL informed the Petitioners that at present no power evacuation capacity margin is available at 220 KV GSS Bhadla and the entire power evacuation shall be available by 15th June, 2017. Further, 400 KV line from Bhadla to Bikaner shall be ready by 15th June, 2017 (Tentative).
38. On 31.05.2017, Petitioner no. 3 informed NTPC that it was ready for starting pre-commissioning activities as per schedule. However, as per RVPNL, there is delay in power

evacuation and connectivity up to 15th June 2017 and therefore an extension of time in SCOD up to 19th July, 2017 may be provided.

39. On 22.06.2017, Petitioner no. 3 informed NTPC that it was ready for starting pre-commissioning activities as per schedule and that as per RVPNL there was delay in power evacuation and connectivity up to 15th June 2017. It, therefore, requested that extension of time in SCOD up to 19th July, 2017 may be provided.
40. On 28.06.2017, Petitioner No.2 requested RREC for approval for Connectivity & Commissioning of 40 MW out of total capacity of 70 MW Solar PV Power Plant located at Plot No. 01.
41. On 04.07.2017, RVPNL informed the Petitioners that at present no power evacuation capacity margin is available at 220 KV GSS Bhadla. The entire power evacuation shall be available by 15th July 2017 (Tentative) subject to availability of 400 KV line from Bhadla to Bikaner for evacuation of power from 400 KV GSS Bhadla.
42. On 18.07.2017, the Petitioners gave an undertaking to RVPNL that they will not inject any power into the grid without prior approval of RVPNL authorities and in the event of any damage to RVPNL on account of unauthorized injection of power to grid, they will be responsible and liable to compensate the losses to RVPNL.
43. On 20.11.2017, RVPNL informed the Petitioner No. 3 that 220 kV GSS Bhadla has not been fully commissioned due to prevailing transformer breakdown/ faults which is currently under repair in the transformer manufacturing unit. RVPNL also provided, inter alia, the status of complete transmission system for evacuation of solar power from 400/200kV GSS Bhadla.
44. On 07.12.2017, Petitioner No. 2 and Petitioner No.3 informed NTPC that as per RVPNL, full uninterrupted power evacuation & connectivity was available after the commissioning of ICT-3 on 06.09.2017.

45. On 08.12.2017, RVPNL informed RSDCL/SPIA the factual position regarding availability of power evacuation from 400 kV GSS Bhadla in respect of solar park projects.
46. On 18.12.2017, NTPC informed RREC to verify the Petitioner's letters and provide clarification with respect to the exact dates by which full connectivity and evacuation system was made available for the projects.
47. On 27.12.2017, RSPDCL/SPIA informed NTPC the exact dates by which full connectivity & evacuation system would be made available to the Projects.
48. On 29.01.2018, Petitioner No. 2 requested NTPC for an extension of 279 days from the SCoD and Petitioner No. 3 requested NTPC for an extension of 251 days from the SCoD.
49. On 08.03.2018, NTPC informed Petitioner No.3 that it is entitled to invoke the PBGs in terms of Article 4.6 of the PPA for the delay in the commencement of the supply of power and not making the contracted capacity available for despatch by the SCoD (agreed to be shifted from 25.05.2019 to 22.06.2018 by NTPC).
50. On 29.03.2018, Petitioner No. 2 and Petitioner No.3 requested NTPC to release one (1) PBG of Rs.8.4 cores (over and above the value of penalty proposed by NTPC) in respect of Projects.
51. On 16.04.2018, Petitioner No. 2 requested NTPC to reduce the amount of the three (3) PBGs to the proposed amount of penalty as per the decision of NTPC vide letters dated 08.03.2018 and 20.03.2018.
52. On 27.04.2018, NTPC permitted amendments/ reduction of PBGs from 42.0 crores to Rs. 25.5 crores.
53. On 27.06.2018, the Petitioners submitted revised representation against the Liquidated Damages imposed by NTPC vide letter dated 08.03.2018 for consideration.

54. The Petitioners have filed the instant Petition seeking inter alia an immediate release of the PBGs amounting to Rs. 25.5 crores, which have been retained by NTPC. Under the PPAs, NTPC was bound and required to release the PBGs three months after the Commercial Operation Date (“COD”) of the Projects.

Submissions of the Petitioner in the pleadings and during hearings

55. The Petitioners have filed the instant Petition on 28.11.2018 and was admitted by the Commission on 13.12.2018. In the petition and during various hearings held on 07.02.2019, 27.02.2019 and 08.03.2019, the Petitioners have submitted that it has developed two Solar Power Generating Systems (hereinafter referred to as “SPGS”) of 70 MW each in Plot No. 01 and Plot No. 02 of the Bhadla Solar Park Phase-II in Rajasthan under the NSM guidelines, through two SPVs namely, Rising Bhadla 1 Private Limited and Rising Bhadla 2 Private Limited pursuant to 2 (two) identical PPAs dated 12.05.2016.

56. The Petitioners have submitted that they have filed the Petition seeking inter alia an immediate release of PBGs in the amount of Rs. 25.5 crores, which have been arbitrarily and illegally retained by NTPC. The Petitioners submitted that NTPC was bound and required to release the PBGs three months after the Commercial Operation Date (hereinafter referred to as “COD”) of the Projects. However, NTPC has continued to arbitrarily and illegally retain the said PBGs despite both the Projects having been in commercial operation since 2017.

57. The Petitioners have submitted that the commissioning of the Projects was delayed due to the occurrence of various Force Majeure events, namely, delay by RSPDCL/SPIA in giving possession of land, delay in obtaining possession of land due to the Central Government’s demonetization order (hereinafter referred to as “Demonetization”) and delay by the State Transmission Utility (hereinafter referred to as “STU”) in providing transmission infrastructure for connectivity and power evacuation for the Projects. The PPAs specifically provide inter alia at Article 3.2, 4.5 and Article 11, that no liquidated damages can be imposed if the delay in commissioning the Projects is due to the aforesaid reasons. Thus, NTPC’s retention of the PBGs is entirely arbitrary and illegal.

a) Re: Delay in allotment and possession of land for the Projects

(i) Due to encroachments.

58. The Petitioners have submitted that as per the terms of the NSM and the RFS, the RSPDCL/SPIA was required to identify the solar park and specify the plots before bidding. The Bidders were required to bid based on their preference from among the plots specified by the RSPDCL/SPIA in the RFS.
59. The Petitioners have submitted that in the instant case, the plots were to be allotted to the successful bidder immediately upon the issuance of the Letter of Intent on 29.02.2016 so that the successful bidder could commence development activities immediately upon the issuance of the LOI. However, RSPDCL/SPIA specified the plots to the Petitioners only on 22.08.2016 that is approximately six months after the issuance of the LOI. Thus, the Petitioners were able to commence development activities for the Projects in right earnest after a delay of six months. The delay was due to deficiencies in the plots earmarked for the Petitioners, which included several encroachments and obstructions on the said land such as a graveyard, illegal hutments, an underground water tank, a dead transmission line and a place of worship. The encroachments and obstructions were present on the land earmarked for both the Projects, and it was, therefore, impossible for the Petitioners to commence work on the project sites. As a matter of fact, RSPDCL/SPIA was finding it difficult to remove the encroachments. RSPDCL/SPIA even contemplated a complete relocation of the Projects. Clearly, with such significant uncertainty over the allotted land for the Projects, the Petitioners could not have commenced any pre-developmental activities.
60. The Petitioners have submitted that upon execution of the PPAs, the Petitioners had a period of 90 days to complete all requisite formalities for handover of the allotted land to it by RSPDCL/SPIA. The said period of 90 days was not to enable the RSPDCL/SPIA to clear encroachments on the said land. RSPDCL/SPIA has admitted the same as evidenced from a perusal of para 3.8 of its reply.

61. The Petitioners have submitted that RSPDCL/SPIA has relied upon Article 4.3 of the NSM guidelines to assert that it had 90 days to clear encroachments and provide confirmed coordinates for the plots within the solar park. The submission of the RSPDCL/SPIA is wholly misconceived and would clearly fall foul of the intent of the NSM guidelines as well as the Solar Park Scheme issued by the MNRE. The very purpose of setting up a solar park under the Solar Park Scheme dated 12.12.2014 was to ensure that the solar power developers would get hassle free land with definite coordinates so that they are saved from making the effort of identifying the ideal site for the plant. The RSPDCL/SPIA charges a premium for allotting land within such parks precisely because of the aforesaid services that it is expected to offer. In the present case, the RSPDCL/SPIA evidently failed in carrying out its obligations under the NSM guidelines.
62. The Petitioners have submitted that even after execution of the PPAs, there were multiple encroachments on the land allotted to the Petitioners for both the Projects. While plot 1 had a graveyard, a place of worship and an 11 kV overhead transmission line running across the land, plot 2 had illegal hutments, farms and a road. Therefore, immediately upon inspecting the allotted land for both Projects, RSPDCL/SPIA was apprised of the aforesaid encroachments and was requested to provide hassle free land to the Petitioners at the earliest to enable them to commence project development activities. The issue of encroachments was resolved by the RSPDCL/SPIA only by 22.08.2016.
63. The Petitioners have submitted that vide letter dated 18.11.2016, RSPDCL/SPIA had falsely certified that hassle free land for plot 1 was provided to the Petitioners by 22.07.2016. The said certificate is contradicted by RSPDCL/SPIA where its own letter dated 22.07.2016 states that the 11 KV line which was causing obstruction in plot 1 was in the process of being shifted. The 11 KV line was only shifted thereafter and not before 22.08.2016. Further, the illegal occupants residing on plot 2 were also not removed by the above date and only an administrative decision to remove the said occupants had been taken.
64. The Petitioners have submitted that RSPDCL/SPIA email dated 22.08.2016 further belie the above-mentioned certificate as it states that the boundaries of both plot 1 and 2 were resized

between 22.07.2016 and 22.08.2016 to deal with the various encroachments as detailed above.

(ii) Due to wrong coordinates

65. The Petitioners have submitted that in addition to the aforesaid encroachments, the coordinates for plot 1 provided by the RSPDCL/SPIA on 22.07.2016 were grossly erroneous and lay in the Baluchistan province of Pakistan i.e. around 590 km away from the actual project site. In fact, the land coordinates for plot 1 provided by the RSPDCL/SPIA on 22.07.2016 were entirely different from those confirmed vide email dated 22.08.2016. Clearly, in the absence of definite land coordinates, the Petitioners could not have commenced significant project development activities before 22.08.2016.
66. The Petitioners have submitted that the RSPDCL/SPIA has further averred that the coordinates supplied by it on 22.07.2016 were generated with the Autocad software and were correct. The Petitioners submit that the said averment is manifestly false as the RSPDCL/SPIA never informed the Petitioners at the relevant point in time that the said coordinates were in fact AutoCad drawings. In any case, the AutoCad coordinates purportedly provided by the RSPDCL/SPIA on 22.07.2016 were worthless without a reference point, which was never provided. The issues relating to encroachments and changes in the layout and coordinates of the plots, as contained in the SPIA's letter of 22.07.2016 and email dated 22.08.2016 are corroborated by the Minutes of Meeting dated 12.08.2016 between the Petitioners and NTPC.
67. The Petitioners have submitted that despite the fact that the boundaries for both the plots were confirmed only on 22.08.2016, NTPC vide letter dated 09.01.2017 granted an extension of a mere 28 days and only for the delay in allotment of land for Project 2.
68. The Petitioners have submitted that since the Petitioners were entitled to allotment of hassle-free land with definite coordinates by the Effective Date of the PPAs i.e. 26.04.2016, the Petitioners are entitled to an extension of a reasonable period not less than on a 'day for day' basis for the delay in allotment of such land as per the provisions of Article 4.5.1(d) of the

PPAs. Pertinently, the said delay even by the RSPDCL/SPIA's own admission in its certificate dated 18.11.2016, is at least 87 days and 118 days for Project 1 and 2 respectively. However, since the reasons for delay in allotment of land for both the plots are similar as explained above, the Petitioners submit that they are entitled to an extension of at least 118 days for both the Projects.

(iii) Due to demonetization

69. The Petitioners have submitted that they had 90 days from 22.08.2016 to complete the formalities and obtain handover of the allotted land for the Projects. Thus, they were required to take possession of allotted land on or before 21.11.2016. However, they could not execute the land registration and handover documents with the RSPDCL/SPIA before 22.08.2016 as the said documents required the parties to specify definite boundaries of the allotted land, which was not possible earlier due to multiple encroachments and frequent resizing of the allotted land for the Projects. The possession letter dated 01.12.2016 issued to the Petitioners refers to the specific coordinates of the land handed over to the Petitioners along with the drawing of the said land as per scale. Therefore, in the absence of clear, demarcated and definite land, the Petitioners could not have obtained the said possession letter. Further, it is pertinent to refer to the relevant provisions of the sub-lease agreements, which require the parties to specify definite boundaries of the land sought to be leased.

70. The Petitioners have submitted that they were unable to complete the handover and possession of the allotted land for the Projects due to the Central Government's Demonetization order. The Petitioners submit that the difficulties faced by the solar power developers due to Demonetization has been recognized by the MNRE which granted the affected solar power developers an extension of time till 31.01.2017 to fulfill the conditions subsequent of the PPAs without any financial implications vide Office Memorandum dated 02.12.2016. NTPC applied the said extension to the Petitioners after the Petitioners furnished an undertaking as per a format provided by NTPC. The Petitioners had taken over possession of land for both the Projects by 24.01.2017 i.e. within the extended timeline granted by MNRE for achieving the Conditions Subsequent mentioned in the PPAs.

71. The Petitioners have submitted that in the aforesaid circumstances, the allegation raised by the RSPDCL/SPIA that the Petitioners did not have sufficient funds to obtain possession of land is false, unfounded and irrelevant. In view of the relaxation granted by MNRE, no financial implication ought to be imposed upon the Petitioners for the uncontrollable delay in obtaining possession of land allotted for the Projects up to 24.01.2017.

72. The Petitioners have submitted that as a result of the delay in the Petitioners obtaining possession of the plots and achieving financial closure milestone as per PPAs, the development and commissioning of Project 1 was delayed by 275 days and Project 2 by 330 days. The number of days lost due to each of the above Force Majeure events is tabulated below:

S. No.	Issue	Time Elapsed	Time Overrun (No of days)
1.	Delay in land allotment by the SPIA	29.02.2016 – 22.08.2016	175
2.	Delay in possession of allotted land	Project 1: 22.08.2016 – 01.12.2016	100
		Project 2: 22.08.2016 – 24.01.2017	155
TOTAL DELAY (IN DAYS)		Project 1	275
		Project 2	330

b) Re: Non-availability of connectivity and transmission system for the Projects

73. The Petitioners have submitted that the SCoD was further delayed due to significant delay in providing connectivity and transmission capacity to the Projects by the RSPDCL/SPIA, RVPNL and RUVNL. The grant of connectivity was delayed due to a delay in the construction and commissioning of the associated transmission and evacuation infrastructure by the SPIA, RVPNL and RUVNL. The said evacuation infrastructure was admittedly completed only on or about 06.09.2017, i.e., almost four months after the SCoD.

74. The Petitioners have submitted that in order to commission the Projects by the SCoD, it was imperative that the Petitioners be provided connectivity to the grid by the RSPDCL/SPIA in a timely manner so as to enable the Petitioners to carry out the necessary project synchronization and commissioning activities. However, there was gross delay by RSPDCL/SPIA, RVPNL and RUVNL in providing connectivity and transmission capacity for the Projects. This delay resulted in a delay in the commissioning of the Projects.
75. The Petitioners have submitted that they were in continuous correspondence with RVPNL and the RSPDCL/SPIA inter alia for information on the availability of the necessary transmission system and paced the development of their Projects accordingly. The Petitioners also kept NTPC apprised of the delay in connectivity and transmission capacity and sought extension of SCoD for the Projects. The details of various letters issued by the Petitioners conveying readiness to commission the projects as well as highlighting the issues in relation to the transmission and evacuation system are consolidated as under:

Date	Particulars
11.04.2017	The Petitioners intimated NTPC of their intention to synchronize a capacity of 70 MW by 18.05.2017.
20.04.2017	NTPC replied evasively saying that it would revert on the date of synchronization after getting a confirmation from Rajasthan Urja Vidyut Nigam Limited.
17.05.2017	Upon receiving no response from NTPC for over a month, the Petitioners issued another letter apprising NTPC of their readiness to synchronize by 18.05.2017.
23.05.2017	The issue relating to non-availability of the transmission and evacuation system was raised by the Petitioners during a meeting held on 23.05.2017 between the representatives of the Petitioners, NTPC, SPIA, STU and other State utilities. During the meeting, the STU apprised the Petitioners that the transmission system for connectivity and evacuation of power from the Petitioners' Projects would not be ready before 15.06.2017.
26.05.2017	The Petitioners requested the SPIA and the STU to inform the Petitioners on the exact availability of transmission and evacuation system so as to enable the Petitioners to plan

	their commissioning activities accordingly.
29.05.2017	The STU informed the Petitioners that there was no power evacuation capacity available at the 220 kV Bhadla substation and further stated that the necessary power evacuation capacity was expected to be available only by 15.06.2017
22.06.2017	With the SPIA and the STU failing to provide connectivity and evacuation infrastructure by the SCD, the Petitioners were constrained to issue a letter to NVVN i.e. the procurement arm of NTPC under the PPAs, seeking an extension of SCD for the Projects due to non-availability of the necessary transmission and evacuation infrastructure. The Petitioners further apprised NVVN of their readiness to commence pre-commissioning activities for the Projects.
03.07.2017	The Petitioners once again requested the STU to inform the Petitioners on the exact availability of the transmission and evacuation system.
04.07.2017	The STU apprised the Petitioners of the unavailability of power evacuation capacity margin stating that requisite evacuation infrastructure was expected to be available by 15.07.2017.
20.11.2017	The STU inter alia provided details to the Petitioners regarding the commissioning dates of the three 500 MVA transformers, which were required to evacuate the 680 MW capacity of power from the Bhadla Solar Park.

76. The Petitioners have submitted that they could have commenced supply of power only when the requisite transmission infrastructure was available. Adequate transmission infrastructure became available only on or about 06.09.2017, soon after which the Petitioners commenced the supply of power from the remaining capacity of both Projects.

77. The Petitioners have submitted that the RSPDCL/SPIA has relied upon the STU's letter dated 08.12.2017 to state that adequate transmission and evacuation capacity was available on and from 21.07.2018. However, the said averment is patently false. Owing to transmission capacity constraints, the Petitioners were only allowed to partially commission a capacity of 40 MW on 18.07.2017 subject to furnishing an undertaking that the Petitioners would not

inject any power into the grid without prior permission of the officials of the STU. Even as late as 02.08.2017, they were only permitted to inject 20 MW power out of the total commissioned capacity of 40 MW. The additional 20 MW capacity commissioned by the Petitioners on 18.07.2017 was permitted to be injected by the STU only on 19.08.2017.

78. The Petitioners have submitted that the transmission capacity constraints as on 02.08.2017 are evident from a perusal of STU's letter dated 08.12.2017. Due to the above constraints, ICT-1, which was charged on 22.07.2017, suffered a breakdown on 09.08.2017. ICT-2 was commissioned thereafter on 19.08.2017. It was only on 06.09.2017 when ICT-3 was commissioned, that two ICTs were simultaneously functioning in tandem to reliably evacuate the entire commissioned load of 680 MW from the Bhadla Solar Park.
79. The Petitioners have submitted that the RSPDCL/SPIA has also falsely averred that it was simultaneously using the spare capacity of the 220 KV Bhadla Substation along with the 500 MVA capacity of ICT-1 commissioned on 21.07.2017 to evacuate power from the Bhadla Solar Park. Prior to the commissioning of ICT-1, power from the Bhadla Solar Park was being evacuated through the spare capacity available at the 220 kV Bhadla Substation. While the available capacity at the Bhadla Substation was only 270 MW, the STU was evacuating a much higher capacity of around 470 MW through the said substation until ICT-1 was commissioned on 21.07.2017. Evidently, the available transmission and evacuation network of the STU, which was substantially strained, could not have handled any further load.
80. The Petitioners have submitted that the above transmission constraints prompted the STU to permit the commissioning of only 40 MW on 18.07.2017 as aforesaid. The inadequacy of the available transmission and evacuation infrastructure is further evident from the fact that the STU had imposed similar evacuation restrictions on other solar power developers within the Bhadla Solar Park. Further, a perusal of the STU's letter dated 04.12.2017 would show that the spare capacity of 220 kV at the Bhadla Substation was being utilized only up to the commissioning of ICT-1 and the entire load of the Bhadla Solar Park was shifted on ICT-1 pursuant to its commissioning on 21.07.2017.

c) Re: Illegal and arbitrary retention of the PBGs by NTPC

81. The Petitioners have submitted that they kept NTPC apprised of the aforesaid delays and submitted several representations to NTPC explaining that they are not liable to pay any liquidated damages for the said delays, including by way of letters dated 29.01.2018 and 27.06.2018, and seeking a deferral of the SCoD of the Projects. However, NTPC has arbitrarily decided that the Petitioners are liable to pay liquidated damages to it, although it is yet to determine what the purported delay is and the amount of the Petitioners' liability, if any, at all.
82. The Petitioners have submitted that contrary to the terms of the PPAs, NTPC has required the Petitioners to maintain PBGs in the sum of Rs. 42 crore for an extended period of time. In order to maintain the PBGs, the Petitioners have had to maintain a sum of Rs. 42 crore in deposit with the guarantor bank, which is an enormous financial burden upon the Petitioners. Upon numerous requests and representations, NTPC only recently reduced the PBGs to Rs. 25.5 crore, albeit without affording any reasoning as to how it arrived even at the said amount of Rs. 25.5 crore. Since then the Petitioners have been constrained to maintain the PBGs in order to avoid their invocation and encashment. Thus, the Petitioners are suffering under the onerous financial burden of maintaining a sum of Rs. 25.5 crore in deposit with the guarantor bank in order to maintain the said PBGs. The Petitioners have suffered losses in the sum of Rs. 1.54 crore in order to maintain the PBGs beyond the period of three months stipulated in the PPAs. They have been extending the PBGs only in order to avoid their invocation and encashment. The said extensions were carried out under coercion and were not done by way of waiver of their rights under the PPAs. The Respondents are liable to compensate the Petitioners in the said sum, having wrongfully required the Petitioners to maintain the PBGs beyond the period stipulated under the PPAs.
83. The Petitioners have submitted that in accordance with Article 3.3 of the PPAs, the Petitioners were required to maintain the PBGs to guarantee the commencement of supply of power up to the contracted capacity within the timeline specified in the PPAs. NTPC was required to release the PBGs within 3 months of the Commercial Operation Date of the Projects as per Article 3.4 of the PPA. However, NTPC arbitrarily and illegally required the

Petitioners to keep the PBGs valid long after the COD of the Projects. The details of the PBGs amounting to Rs. 25.5 crore, illegally retained by NTPC for the Projects are as under:

Project	PBG Reference No.	Amount (In Rs. crore)	Total (In Rs. crore)
1	820-02-0046253	5	12
	820-02-0046462	5	
	820-02-0046235	2	
2	820-02-0046226	5.5	13.5
	820-02-0046244	5.5	
	820-02-0046217	2.5	

84. The Petitioners have submitted that the delay in the commissioning of the Projects has been caused due to Force Majeure events affecting the development of the said Projects, as already elaborated in the foregoing paragraphs, and the Petitioners are not liable to pay any amounts to the Respondents by way of liquidated damages or otherwise in respect of the Projects by virtue of Articles 3.2, 4.5 and 11 of the PPA. Moreover, having suffered no loss or damage on account of the delay in the commissioning of the Projects, the Respondents are not entitled to recover any monies from the Petitioners as damages. In any case, NTPC has sufficient security available with it in the form of the Performance Guarantee Deposit (hereinafter referred to as “PGD”). NTPC has deducted an amount of around Rs. 9 crores on account of PGD from the monthly invoices raised by the Petitioners, in terms of Article 10.3.2(iv) of the PPAs, and the PGD amount is bound to increase further with each subsequent monthly deduction. Moreover, the Petitioners are selling power worth over Rs.11.20 crores to NTPC each month from both the Projects. Therefore, NTPC has sufficient security already available with it, thereby making further retention of the PBGs illegal and wrongful.

85. The Petitioners have submitted that they have also suffered significant generation losses amounting to over Rs. 12.52 crore due to the delay in the possession of land, Demonetization and delay in the provision of transmission infrastructure for connectivity and evacuation of power from the Projects. The Petitioners have further suffered losses due to delay in grant of COD approval by NTPC. However, the instant proceedings relate only to the release of the

PBGs and the Petitioners reserve their right to seek redressal in respect of the wrongful loss of tariff suffered by them under the PPA.

d) Re: Article 4.6 not genuine pre-estimate of damages and no loss to NTPC

86. The Petitioners have submitted that it is settled law that where a sum is named in the contract as a liquidated amount payable by way of damages, the party complaining of breach can receive the said amount only if a court finds that it is a genuine pre-estimate of the loss suffered. Further, the party complaining of breach cannot recover liquidated damages without demonstrating at least a semblance of loss. In this regard, reliance is placed on *Kailash Nath, Subbarama Shastry, Vishal Engineers and Indian Oil Corporation*.
87. The Petitioners have submitted that a plain reading of the PPAs establishes that Article 4.6 does not stipulate a genuine pre-estimate of the loss, if any, suffered by NTPC. In this regard, following is submitted:
- i. First, the only loss contemplated by the parties as payable by the Petitioners is the amount of penalty imposed by the State Commission upon the Rajasthan Discoms (under the Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations 2010) if they fail to comply with their 'Renewable Purchase Obligation' in proportion to the short supply of power by the Petitioners.
 - ii. Second, the PPAs do not contemplate that the Petitioners must suffer the consequences of both Articles 4.6 and 4.4.1 on account of a delay in the commencement of supply of power. However, if NTPC is allowed to invoke the PBGs, it would mean that the Petitioners would have to pay Rs. 20,000/MW/day as liquidated damages under Article 4.6 as well as a share of the penalty imposed on the Discoms under Article 4.4.1 of the PPAs, which is clearly unjust and contrary to the provisions of the PPAs.
 - iii. Third, the amounts named in Article 4.6.1 do not reflect the actual damage which NTPC would suffer as a result of delay in commencement of power supply by the Petitioners. This is clear from the fact that the amount stipulated for each day of delay up to 5 months is Rs.20,000/MW/day while delay beyond 5 months is sought to be penalized at Rs. 1,00,000/MW/day. Evidently, the aforesaid amounts have no correlation with the actual damage which NTPC would suffer as a result of delay in commencement of power supply by the Petitioners.

Therefore Article 4.6.1 is not a genuine pre-estimate of losses and the PBGs cannot be invoked.

88. The Petitioners have submitted that in the instant case, NTPC has not pleaded any loss on account of the Petitioners. There is no shortfall in RPO compliance by the Rajasthan Discoms. The Rajasthan Discoms have not raised any claims against NTPC for any alleged short supply of power by the Petitioners. In the absence of any loss to NTPC or the Rajasthan Discoms, any claim for liquidated damages by NTPC through encashment of the PBGs or otherwise is untenable and must be rejected.

e) Re: Delay is covered by Article 4.5.1 of the PPAs

89. The Petitioners have submitted that in any event they are not liable to pay any amounts under Article 4.6 as the reasons for the delay in the commencement of supply of power to NTPC are covered by Article 4.5.1 as aforesaid. The table below sets out the SCoD, the dates of readiness of the Petitioners' Projects along with the time difference between them:

Table I: Time Difference between SCoD and Date of Readiness				
S. No.	Particulars	SCoD	Readiness (CEIG Application)	Days Difference
1	Project 1 (40MW)	25.05.2017	19.06.2017	25
	Project 1 (30MW)	25.05.2017	18.09.2017	116
2.	Project 2 (40MW)	22.06.2017	04.08.2017	43
	Project 2 (30MW)	22.06.2017	23.10.2017	123

90. The Petitioners have submitted that the period of delay from the SCoD ought to be calculated only till the date on which the Petitioners submitted a request for energisation of their Projects to the CEIG. The date of actual commissioning is beyond the control of the Petitioners as it depends on the time taken by the officials of NTPC and the STU to issue a commissioning certificate to the Petitioners after inspecting the plant. Further, both NTPC as

well as the RSPDCL/SPIA have considered and accepted the Petitioners' readiness to supply power from the dates provided above.

91. The time difference between the SCoD and the date of readiness is far less than the period of delay in possession of land by the RSPDCL/SPIA and due to demonetization and the period of non-availability of transmission and evacuation infrastructure.
92. The number of days of delay in possession of land and non-availability of transmission infrastructure are tabulated below:

S. No.	Reasons for Delay	Delay	Delay in days
1.	Delay in possession of land due to encroachments and erroneous coordinate	26.04.2016 - 22.08.2016 (from Effective Date)	118
		29.02.2016 - 22.08.2016 (from LOI date)	175
2.	Delay in possession of land due to Demonetization	22.08.2016 - 01.12.2016	100
3.	Non-availability of transmission infrastructure	25.05.2017 - 06.09.2017	103
Total Delay (from Effective Date of PPAs)			321
Total Delay (from LOI date)			378

S. No.	Reasons for Delay	Delay	Delay in days
1.	Delay in possession of land due to encroachments and erroneous coordinates	26.04.2016 - 22.08.2016 (per Effective Date)	118
		29.02.2016 - 22.08.2016 (per LOI date)	175

2.	Delay in possession of land due to Demonetization	22.08.2016 - 24.01.2017	155
3.	Non-availability of transmission infrastructure	22.06.2017 - 06.09.2017	75
Total Delay (from Effective Date of PPAs)			348
Total Delay (from date of issuance of LOI)			405

93. The Petitioners have submitted that they are not liable to pay any amounts under Article 4.6 as the reasons for the delay in the commencement of supply of power to NTPC are covered by Article 4.5.1.
94. The Petitioners have submitted that in view thereof, by virtue of Articles 3.2, 4.5 and 11 of the PPAs, no liquidated damages can be recovered from the Petitioners for the delay in the commencement of supply since the delay was the result of the non-availability of connectivity and non-readiness of the necessary transmission and evacuation infrastructure. Further, the Petitioners are entitled to a reasonable extension of time beyond the SCoD for the commissioning of the Projects, in lieu of the delay in the availability of connectivity and the necessary transmission and evacuation infrastructure. NTPC's reliance on RSPDCL/SPIA certificate dated 18.11.2016 is incorrect.
95. The Petitioners have submitted that NTPC has placed reliance on paras 7 and 8 of the Hon'ble Supreme Court's judgment in *Gujarat Urja Vikas Nigam Limited v. Acme Solar Technologies (Gujarat) Private Limited & Ors.* (2017) 11 SCC 801, in which the Hon'ble Court has referred to the certificate issued by the concerned authority to determine the readiness of the solar power developer's project. The Petitioners have submitted that the requirement of a certificate from the RSPDCL/SPIA in the present case has only been provided as an inter se arrangement between the RSPDCL/SPIA and NTPC, to enable NTPC to effectively administer and implement the terms and conditions of the NSM guidelines. However, in that above case, the certificate in question was a certificate of commissioning. Therefore, the said judgment is irrelevant for adjudication of the present matter as the said judgment does not hold that the rights of the solar power developer are subject to the certificate issued by the RSPDCL/SPIA under the NSM. The certificates issued by the RSPDCL/SPIA under the

NSM are not infallible and are subject to scrutiny before a court of law i.e. the Commission in the present case. The certificates issued by the RSPDCL/SPIA are false and misleading and, therefore, cannot be relied upon for determination of the Petitioners' rights in the present case.

Submissions of the Respondent No. 1

96. The Respondent No.1 has submitted that the petition is liable to be rejected in limine as it suffers from non-joinder of necessary parties. Respondent No. 1 while utilizing the trading license granted to Respondent No. 2 herein, on a back-to-back basis under the relevant Power Sale Agreement (hereinafter referred to as “PSA”) are necessary parties to the present proceedings. The PPAs as well as the Bidding Documents envisage sale of the solar purchased power bundled with the thermal power from NTPC coal based stations out of the unallocated quota of the Government of India (Ministry of Power) in the ratio of 2:1 by NTPC to the Rajasthan Utilities under the PSAs. The Respondent No.1 has submitted that it is an intermediary Company which facilitates the purchase and resale of solar power, the beneficiaries of the solar power being Rajasthan DISCOMS in Rajasthan. The Rajasthan DISCOMS who have entered into PSAs with NTPC for purchase of solar power, which NTPC is procuring from the Petitioners, are, therefore, necessary parties to the present proceedings. Further, RSPDCL/SPIA is also a necessary party to the present proceedings.
97. The Respondent No.1 has submitted that the Petitioners are not entitled to a release of the PBGs amounting to Rs. 25.5 crores in terms of the PPAs. The PPAs and other bidding documents provide for the timeline within which the Petitioners are required to fulfil various obligations, the consequence of the default in fulfilling the terms and conditions of the PPAs and the consequential liability to pay the liquidated damages to NTPC.
98. The Respondent No.1 has submitted that there were delays on the part of the Petitioners in:
- a. fulfilling the conditions subsequent provided in Article 3;
 - b. the obligations with respect to construction and development of the project as provided in Article 4 of the PPAs; and

c. in achieving the SCoD, which, as per the PPA, is 25.05.2017.

99. The Respondent No.1 has submitted that on account of the non-achievement of commissioning by the SCoD, the Petitioners became liable to pay liquidated Damages as specified in the PPA. Accordingly, in terms of Article 3.12.2 of the NSM Guidelines read with Article 3.3.4 and Article 4.6 of the PPAs dated 12.05.2016, it is entitled to the payment of liquidated damages from the Solar Power Developers for the delay in commencement of supply of power and delay in making the contracted capacity available for dispatch by the SCoD i.e. by 25.05.2017 (13 month from the effective date i.e. 26.04.2016). In the event of delay up to five (5) months, as in the present case, the above-mentioned provisions entitle NTPC to encash the PBGs on a per day basis in proportion to the capacity not commissioned. The only exceptions to the above consequences provided in the PPAs are as under:

- a) If the Petitioners were prevented by Force Majeure Event specified under Article 11. The events pleaded by the Petitioners do not constitute a Force Majeure Event. Article 11.5 of the PPAs requires the Affected Party to give notice to the other Party of the event of Force Majeure as soon as reasonably practicable but not later than seven (7) days after the date on which such party knew or should have reasonably known of the commencement of event of Force Majeure. Further, the Petitioners have the duty to mitigate the effect of Force Majeure Events, if any, and in the event of the existence of Force Majeure Event, the relief available to the Petitioners is as provided in the PPA.
- b) In terms of Article 4.5 of the PPAs, if the Petitioners are prevented from achieving the commissioning by the SCoD for reasons attributable to the NTPC.
- c) In terms of Article 4.5 of the PPA, if there is a delay from RSPDCL/SPIA in giving possession of land and connectivity with STU/CTU system.

100. The Respondent No.1 has submitted that the PPAs sets out the limited Force Majeure events in Article 11 which alone could be considered as Force Majeure events for the purpose of extension of the SCoD. The events pleaded by the Petitioners as Force Majeure do not fall within the scope of Article 11.3 of the PPAs. Further, the events pleaded by the Petitioners as

Force majeure fall within the scope of Article 11.4 of the PPAs providing the Force Majeure exclusions including insufficiency of finances or the funds or the agreement becoming onerous to perform, non-performance cause by Affected Party's Negligent or intentional acts, errors or omissions, Breach or default under this agreement. Moreover, the Petitioners have not issued a Force Majeure Notice as prescribed under Article 11.5 of the PPA.

101. The Respondent No.1 has submitted that the contention of the Petitioners that Articles 3.2, 4.5 and 11 of the PPAs provide that no liquidated damages can be imposed if the delay in commissioning of the project is due to the events is not admitted to the extent the same is not expressly provided and dealt with by the said provisions. Moreover, in the facts and circumstances of the case, the Petitioners have not been able to establish the delay in commissioning of the projects as a consequence of the said events. Each and every allegation to the contrary is wrong and denied.

102. The Respondent No.1 has submitted that as regards the specific events of the force majeure pleaded by the Petitioners, to the extent the extension was admissible in terms of the specific provisions of NSM Guidelines (Article 3.4) and the PPAs (Article 4.5), NTPC has considered the same and allowed an extension of 28 days by letter dated 09.01.2017. There was no force majeure event in terms of the PPAs. The Respondent No.1 denies that the Petitioners are entitled to any relief on account of any other Force Majeure event.

103. The Respondent No.1 has submitted that it is entitled to recover the said amount of Rs. 25,30,00,000 by encashing the PBGs as below:

Company	MW	SCoD	COD	Delay in days	Estimated Penalty @ Rs. 20,000/MW/day
Rising Bhadla1 Pvt. Ltd.	70	25-05-17	40 MW: 18-07-17	40 MW: 54 days	4,32,00,000
			30 MW: 29-09-17	30 MW: 127 days	7,62,00,000
Rising Bhadla2 Pvt. Ltd.	70	22-06-17	40 MW: 29-08-17	40 MW: 68 days	5,44,00,000
			30 MW:	30 MW: 132	7,92,00,000

		01-11-17	days	
Total	140			25,30,00,000

104. The Respondent No.1 has submitted that the RfS requires the RSPDCL/SPIA to hand over the land to the developer within 3 months of the signing of the PPA i.e. by 25.07.2016. In terms of Clause 3.2, NVVN is entitled to extend the time up to 3 months in case of delay in land allotment (handing over the land). The clause however provides that such extension shall be subject to certification from the RSPDCL/SPIA or the respective State. RSPDCL/SPIA vide its letter dated 18.11.2016 informed NTPC that the final co-ordinates were intimated to the Petitioners after 87 days (No delay) and 118 days (28 days delay) for Plot No.1 and 2 respectively from the date of signing the PPA. In view of the certification received from RSPDCL/SPIA, the Respondent granted an extension of 28 days in achieving SCoD i.e. upto 22.06.2017 and extension upto 31.01.2017 for achieving the Financial Closure on account of delay in handing over the land for plot No.2.

a) Re: Issue of demonetization:

105. The Respondent No.1 has submitted that it has granted an extension for achieving financial closure till 31.01.2017 to Petitioner No. 2 and Petitioner No. 3 in pursuance of the MNRE's office memorandum dated 02.12.2016. Further, the demonetization action taken by the Central Government cannot be considered as a Force Majeure Event within the scope of Article 11 of the PPA entitling the Petitioner for an extension of time with regard to the Scheduled Commissioning Date. The funds and financing arrangements is entirely the responsibility of the Petitioner. Article 11.4 of the PPA, providing for the Force Majeure exclusions, specifically excludes any relief on account of insufficiency of finances or funds or agreement becoming onerous to perform.

b) Re: Issue of connectivity and transmission system:

106. The Respondent No.1 has submitted that in terms of the clause 3.4 of Guidelines and Article 4.1 and 4.2 of the PPA, the obligation for obtaining connectivity is of the Petitioner. It was

for the Petitioner to take appropriate steps for connecting the solar power project with the interconnection facilities and further, to obtain all requisite information for the interconnection facilities. Article 4.2.3 specifically states that the responsibility for getting transmission connectivity and access to the transmission system is of the Project Developer i.e. Petitioners at its cost. Accordingly, the Petitioner cannot claim the alleged non-availability of the connectivity or the transmission system as reasons for delay in the implementation of the project. In any event, there is no sufficient material available to show that the Rajasthan Utilities or the STU caused any delay in regard to the connectivity or transmission system facilities if the Petitioner had taken the appropriate steps for the same.

c) Re: Reducing the amount of PBGs:

107. The Respondent No.1 has submitted that the amendment in the PBGs were agreed to vide letter dated 27.04.2018. However, regarding contention of the Petitioners suffering a loss of Rs. 1.54 crores on account of maintaining the PBGs beyond the expiry of three months from CoD, the same was entirely the responsibility of the Petitioners and due to its own default.

Written Submissions of Respondent No. 6 (RSPDCL/SPIA)

108. The Respondent No. 6 has made submissions on the following prayers of the Petitioners:

“d) Declare that the delays in the commissioning of the 2 x 70 MW solar power projects being developed by the Petitioners in Plot No.1 and 2, Bhadla Solar Park Phase-II, Rajasthan, were caused due to unforeseen, unavoidable and uncontrollable reasons not attributable to the petitioners and waive any liabilities or any consequences under the PPAs owing to the said delays;

e) Extend the Scheduled Commissioning Date of the 2 x 70 MW projects being developed by the Petitioners in Plot No.1 and 2, Bhadla Solar Park Phase-II, by 275 days for Project 1 and 330 days for Project 2 in terms of Article 11 of the PPAs;”

109. The Respondent No. 6 has submitted that as far as prayer (d) is concerned, the Petitioners have sought a declaration that the delay in commissioning is due to unforeseen, unavoidable and uncontrollable reasons not attributable to the Petitioners and sought waiving off the liabilities and consequences for the delay as stipulated under the PPAs. From the prayer itself it is evident that there is no delay on the part of the Respondents for fulfilling any of its

obligations under the Contract between the parties. In fact, it is due to the reasons attributable to the Petitioners that the project could not be commissioned within time.

110. The Respondent No. 6 has submitted that as far as prayer (e) is concerned, the same is in clear violation to the terms and conditions of the PPAs and further the extension has been sought in view of the provisions of Article. 11 of the PPAs which provides Force Majeure event. The case of the Petitioners does not fall under the Force Majeure clause. However, it falls under Article 11.4 which specifies the Force Majeure Exclusion events.

111. The Respondent No. 6 has submitted that the Petitioners in their contentions have sought extension mainly on three grounds:

- a. Delay in land allotment/ delay in giving possession of the land.
- b. Delay due to Non availability of connectivity and transmission system for the projects
- c. Demonetization.
- d. Others

The submission of the Respondent No. 6 on each of the above grounds is as under:

a) Re: Delay in allotment of land/ delay in possession of allotted land:

112. The Respondent No. 6 has submitted that Clause No. 3.4 of the NSM Guidelines requires a Solar Park Developer to enter into an Implementation Support Agreement with the Solar Park Implementation Agency (RSPDCL/SPIA) for land and associated infrastructure for development of the Project inside the Solar Park, connectivity with the STU system and all clearances relate thereto immediately after the signing of the PPA. RSPDCL/SPIA was required to hand over the land to the developer within 3 months of signing of the PPA.

113. The Respondent No. 6 has submitted that the Petitioners have not taken any action to execute the Implementation Support Agreement or other formalities to enable the answering Respondent to allot the land within the stipulated time of 3 months from the date of entering into the PPAs dated 12.05.2016. The physical possession of the sites were handed over to the

Petitioners immediately upon the execution of the PPAs dated 12.05.2016 so that the Petitioners while doing the procedural requirement can commence the development work of the project in order to avoid any delay, as is reflected from the letter dated 22.07.2016.

114. The Respondent No. 6 has submitted that though there were few encumbrances, RSPDCL/SPIA cleared all the encroachments/ hindrances by 22.07.2016. From the minutes of meeting dated 12.08.2016, it is clear that as per earlier layout the boundary demarcation was completed and the pillars were erected. Peripheral road was under construction out of which compaction of approx. 3.5 km was completed. Further it was also recorded that the site levelling work was under process and awarded to local contractor and foundation work to be done by EPC contractor was likely to be finalized by 15.09.2016. NTPC in the said Meeting clarified that as per the terms of the RfS document and PPAs, the Petitioners shall be solely responsible for overall development of the projects and the information/ commitment given therein shall not in any way affect the obligations and responsibilities of the Petitioners and rights of NTPC stipulated in RfS and PPAs. Therefore the contention of the Petitioners in the rejoinder that the land parcels of the projects were ultimately finalized only on 22.08.2016 and the Petitioners could commence pre-developmental activities only from the said date is baseless and vague. The letters issued by Petitioners in which they have mentioned about the Dead Transmission Line passing through north part of Plot No.1 are dated 02.06.2016 and 02.07.2016, is prior to the final handover date of 22.07.2016 and thereafter no communications were issued by the Petitioners regarding the 11 KV line from which it is clear that the 11 KV Line was removed in the month of July 2016 itself, much before 22.07.2016 and the Respondent No. 6 put the Petitioners to strict proof. In fact the 11 KV line was removed without even waiting for the formalities and promptly upon receipt of the letter dated 02.07.2017.

115. The Respondent No. 6 has submitted that from the Minutes of meeting held on 12.08.2016, it is clear that after resizing of both the Plots in the month of July, there was problem only related to Plot No.2 after 22.7.2016 due to which in the meeting the co-ordinates problems with respect to Plot No.2 was resolved by extending the boundary of Plot No.2 towards East direction upto the area equivalent to the area reduced due to road, which is a minor portion, which was finally done by 22.08.2016. Therefore, 28 days extension was already granted

with respect to Plot No. 2 and the Petitioners are not entitled to any further extension either with respect to Plot No.1 or Plot No.2.

116. The Respondent No. 6 has submitted that due to the delay on the part of the Petitioners due to financial constraints they were intentionally delaying the execution of Implementation Support Agreements, Submission of PBGs, Execution of Sub-Lease agreements and payment of the requisite fees. The Respondents have sent repeated reminders to do the mandatory requirements which are condition precedent to the allotment of the land and to enable them to issue the formal allotment letter.
117. The Respondent No. 6 has submitted that it has issued a certificate dated 18.11.2016 wherein it has been certified that Plot No.1 was handed over to the Petitioners free from all encumbrances, encroachments and hindrance on 22.07.2016 i.e. before the stipulated date of 25.07.2016. This certificate was issued after verification from the DISCOMS regarding the shifting of the 11 KV dead transmission line which was going through one small corner of the land. As far as Plot No. 2 is concerned, the same was handed over free from all encumbrances, encroachments and hindrances on 22.08.2016 for which an extension of 28 days has already been granted to the Petitioners. It was further certified that the final coordinates were intimated to the Petitioners in 87 days and in 118 days for Plot No.1 and 2 respectively from the effective date of the PPA i.e. 26.04.2016.
118. The Respondent No. 6 has submitted that in the entire pleadings of the Petitioners, there is no averment that the 11 KV Line was shifted after 22.07.2016. In fact, the only issue raised by the Petitioners is related to the coordinates. Further, after the issuance of the certificate, the Petitioners did not raise any objection in respect of plot no. 1 with regard to the date of 22.07.2016 and in respect of plot no. 2 with regard to date of 22.08.2016. But the entire case of the Petitioners as is evident from the pleadings is that they wanted the extension from the date of issuance of LOI which is in clear violation to the provisions of the RfS, PPAs and the Letter of Intent.
119. The Respondent No. 6 has submitted that it was only on 29.11.2016 and 23.01.2017 that the Petitioners executed the Implementation Support Agreement for Plot No.1 and 2 respectively,

that too after much persuasion by Respondent No. 6. Immediately after the completion of all formalities, allotment letters were issued and paper possession of the plots were given on 01.12.2016 and 24.01.2017 respectively with regard to Plot No.1 and 2 as the Respondents promptly acted upon to complete all the formalities before the required time so that the projects would be commissioned within the SCoD. From the Allotment letters dated 1.12.2016 and 24.01.2017, it is clear that the amount of Rs. 22,19,40,336/- for allotment of land was deposited on 30.11.2016 with respect to Plot No.1 and on 24.01.2017 with respect to Plot No.2.

120. The Respondent No. 6 has submitted that the Petitioners cannot allege any delay in allotment of the land or as regards giving possession of the land as the delay in formal allotment was due to the delay on the part of the petitioners. On the contrary, the Respondents without waiting for the formal allotment permitted the Petitioners to carry out the development work immediately after the execution of PPAs and further within the stipulated time of 3 months from the date of PPAs, handed over the land free from all encumbrances. Therefore, there was no delay on the part of the Respondents in allotting the land. With respect to plot No.2 since some clarification was required related to the coordinates, 28 days extension was already granted in the SCoD, in spite of the fact that no actions were taken by the Petitioners in executing the requisite agreements and paying the requisite fee etc. for the allotment of the land formally.
121. The Respondent No. 6 has submitted that a person who is at fault cannot take advantage of non-fulfilment of a condition by the other party. In the present case, there is no fault on the part of Respondents but it is the Petitioners who committed breach of all the conditions pre-requisite for allotment of the land.

b) Re: Delay due to non-availability and Transmission System for the Projects

122. The Respondent No. 6 has submitted that as per the PPAs dated 12.05.2016, both the projects of 70 MW each were to be commissioned by 25.05.2017 i.e. within 13 months from the date of execution of the PPAs, the effective date of the PPAs was 26.04.2016. The responsibility of getting Transmission Connectivity and Access to the Transmission system owned by the

STU was of the Project Developer and the cost was to be borne by SPD. The Petitioners were to intimate 60 days in advance the preliminary written notice showing intention of synchronisation of the Projects. In the present case, it was only vide letter dated 11.04.2017 that the Petitioners intimated about its intention to synchronize and that too only 40 MW out of the total 140 MW of the project. It was only on 26.05.2017 that the Petitioners vide its letter informed the Respondents that they are ready for synchronization. However, their subsequent letter dated 29.06.2017 demonstrates that the Petitioners have completed the installation work of 40 MW out of 140 MW capacity only at the end of June, 2017.

123. The Respondent No. 6 has submitted that the Petitioners were allowed to connect partially (i.e. 40 MW) on 18.07.2017. It was only on 19.06.2017 that the Petitioners made request to the electrical inspectorate regarding project readiness. Thereafter, the partly ready project of 40 MW was connected on 18.07.2017 after getting clearance from the STU. Further, as per the report of RVPNL dated 8.12.2017, there was no restrictions imposed and the connectivity was available from 21.07.2017. The petitioners commissioned the remaining 30 MW capacity of Project 1 only on 29.09.2017 as the same was ready in all respects only on 18.09.2017 as the project readiness request was made to the electrical inspectorate only on 18.09.2017.
124. The Respondent No. 6 has submitted in its letter dated 20.11.2017 that 400 KV D/C Bhadla-Bikaner line along with 50 MVA reactor was commissioned on 20.07.2017 and 22.07.2017 respectively and power evacuation is also being done by these circuits. In addition to the said transmission system, 220 KV S/C line from 400 kV GSS Bhadla to 220 KV Bhadla and 220 KV S/C line from 400 kV GSS Bhadla to 220 KV have been commissioned on 13.03.2016 & 18.06.2016 respectively and power evacuation is also being done by these circuits. The Petitioner's 40 MW out of the total 140 MW was connected and commissioned on 18.07.2017 and the Petitioners were not ready with the remaining capacity and, therefore, the allegations regarding the break down etc. will not help the Petitioners while seeking extension.
125. The Respondent No. 6 has submitted that ICT-2 of 500 MVA of additional capacity was charged on 18.08.2017 that is much before the Petitioners were ready with the first 40 MW of Project No. 2. The Project No. 2 was partly commissioned on 29.08.2017 due to the delay on

the part of the Petitioners in obtaining financial closure etc. and the remaining 30 MW was commissioned only on 01.11.2017. The Petitioners, after commissioning 40 MW out of total 140 MW had further commissioned the remaining 40MW on 29.08.2017, 30MW on 29.09.2017 and remaining 30 MW on 01.11.2017.

126. The Respondent No. 6 has submitted that vide report dated 08.12.2017, RVPNL further informed that power evacuation through 400 KV lines started on 21.07.2017 and, thereafter, there is no restriction imposed on the power evacuation. The contentions of the Petitioners that the transmission lines were available only on 06.09.2017 is incorrect and false as the Petitioners were partly connected and commissioned on 18.07.2017 and 29.08.2017 as and when they were ready for part commissioning. Even if it is presumed without admitting that the transmission line was available only on 06.09.2017, the Petitioners were not ready for commissioning the remaining capacity and it was only on 29.09.2017 and 01.11.2017 that the Petitioners could commission its remaining 30 MW with respect to Plot No.1 and 2 respectively. Therefore, there is no delay on the part of Respondents or the STU regarding connectivity. Therefore it is stated that NTPC has rightly refused to grant extension in the SCoD and invoked the relevant provisions of the PPA for liquidated damages.

c) Re: Demonetisation

127. The Respondent No. 6 has submitted that the PPAs were entered into between the parties on 12.05.2016 and the Petitioners were required to make all the payments before July, 2016 as the same is a 'Condition Precedent' in allotment of the land and therefore the Petitioners cannot take advantage of its own fault and take advantage of Demonetisation. Further, the notification relied upon by the Petitioners which was issued by MNRE is for projects which need to make payments after the demonetisation notification. Therefore, the Petitioners are not entitled to take benefit of the said notification since it is not applicable in the case of the petitioners.

d) Re: Other Grounds

128. The Respondent No. 6 has submitted that as per Article. 3.1 of the PPAs, the Petitioners were required to complete all the activities mentioned therein including Financial Closure at its own risk within 210 days from the effective date and submit to NTPC all the requisite documents within 210 days period from the Effective Date including the Implementation Support Agreement with RSPDCL/SPIA for land and associated infrastructure for development of the Project inside the Solar Park and for Connectivity with the STU system for confirming the evacuation of power by the SCoD. However, the Petitioners neither could submit the financial closure within the stipulated time nor submit the Implementation Support Agreement and other documents by November, 2016. The Implementation Support Agreements with regard to the projects were executed on 29.11.2016 and 23.01.2017 respectively due to insufficiency of funds/ financial constraints and not because there was any delay in allotment of the land as the petitioners were permitted to commence the construction and other activities in the month of July itself, without waiting for the petitioners to deposit the requisite amount etc. The delay in issuance of the formal allotment letter was solely attributable to the Petitioners as the Petitioners could not enter into Implementation Support Agreements and lease agreements etc. due to financial constraints. It is further stated that the Petitioners miserably failed in satisfying the conditions stipulated in Article. 3.1.

129. The Respondent No. 6 has submitted that the Petitioners are not entitled for any extension of time in contravention to the provisions of the PPAs. As per the PPA, the SCoD and the Expiry Date can be extended subject to maximum 3 months only in the event the SPD is prevented from performing its obligations under Article 4.1. i.e. due to:

- a) any delay from RSPDCL/SPIA in giving possession of land and connectivity with STU/CTU system; or
- b) any NTPC Event of Default; or
- c) Force Majeure Events affecting NTPC, or
- d) Force Majeure Events affecting the SPD

130. The Respondent No. 6 has submitted that the delay in commissioning in the present case is not due to any of the above mentioned events but due to insufficient funds by the Petitioners.

As per Article 4.6.1 of the PPAs, the Petitioners are also liable to pay the liquidated damages for each day of delay.

131. The Respondent No. 6 has submitted that it is apparent from the above that there is no logic in the claim of the petitioners that there is 275 days delay in allotment of land by the answering respondents in the first project and 330 days delay in allotment of land by the answering respondents in the second project. It is stated that the petitioners are not entitled for any relief as claimed by them in the petition and the petition is liable to be rejected.

Analysis and Decision:

132. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.

133. The Brief facts of the case are that the Petitioner No.1, M/s Rising Sun Energy Pvt. Ltd. has established two SPVs viz. M/s Rising Bhadla 1 Private Ltd. (Petitioner Nos. 2) and M/s Rising Bhadla 2 Private Ltd. (Petitioner No. 3) with capacity of 70 MW each in Plot No. 1 and Plot No. 2 of the Bhadla Solar Park, Phase-II in State of Rajasthan. Pursuant to competitive bidding under NSM Guidelines, the Petitioners have executed two identical PPAs on 12.05.2016. The Petitioners are supplying solar power to NTPC for distribution and supply of electricity across all districts in the State of Rajasthan. Petitioners have prayed that due to delay in allotment of land and handing over the possession of land and delay in providing the connectivity and transmission system by the Respondents, the delay in achieving the SCoD may be condoned and accordingly the SCoD of the 2x70 MW of the Projects may be extended by 275 days for Project 1 and 330 days for Project 2 in terms of Article 11 of the PPAs since the delay was caused due to unforeseen, unavoidable and uncontrollable reasons not attributable to the Petitioners and waive any liabilities or any consequences under the PPAs owing to the said delays. The Petitioners have also requested that the Respondent NTPC may also be directed to immediately release the PBGs in the sum of Rs. 25.5 crores and to pay damages amounting to Rs. 1.54 crores for the period during which the PBGs have been arbitrarily and illegally retained by NTPC. **Per Contra**, the Respondents have submitted that resizing of both the Plots was done in the month of July.

There was minor problem only related to Plot No. 2 after 22.7.2016 due to which in the meeting the issues relating to co-ordinates with respect to Plot No. 2 were resolved by extending the boundary of Plot No.2 on 22.08.2016, The Petitioners are not entitled to any further extension either with respect to Plot No. 1 or Plot No. 2. Further, Article 4.2.3 specifically states that the responsibility for getting transmission connectivity and access to the transmission system is of the Petitioners at its cost. Further, in pursuance of the MNRE's Office Memorandum (Demonetisation) dated 02.12.2016, the Petitioners have been granted an extension for achieving financial closure till 31.01.2017. The Respondents have submitted that the amendments in the PBGs were agreed to vide letter dated 27.04.2018. However, regarding contention of the Petitioners suffering a loss of Rs. 1.54 crores on account of maintaining the PBGs beyond the expiry of three months from CoD, the same was entirely the responsibility of the Petitioners and due to their own fault. There is no fault on the part of Respondents. The Petitioners are not entitled for any relief as claimed by them and the petition is liable to be rejected.

134. From the submissions of the parties, the following issues arise before this Commission for consideration:

***Issue No. 1:** Whether the delay in commissioning of the 2 X 70 MW solar power projects being developed by the Petitioners in Plot No. 1 and 2, Bhadla Solar Park Phase-II, Rajasthan, was caused due to Force Majeure events not attributable to the Petitioners? viz.*

a) delay in allotment of land & handing over the possession of the allotted land for the projects to the Petitioners by the Respondent; and

b) delay due to non-availability of connectivity and transmission system for the projects to the Petitioners by the Respondent.

***Issue No. 2:** Whether in view of above, the Scheduled Commissioning Date of the 2x70 MW projects, being developed by the Petitioners in Plot No. 1 and 2, Bhadla Solar Park Phase-II, should be extended by 275 days for Project 1 and 330 days for Project 2 in terms of Article 11 of the PPAs?*

Issue No. 3: *Whether the Respondents should be directed to immediately release the Performance Bank Guarantees in the sum of Rs. 25.5 crores and pay damages amounting to Rs. 1.54 crores for the period during which the Performance Bank Guarantees have been retained by NTPC?*

Issue No. 4: *Whether the Respondent No.1 is entitled to recover any amount towards liquidated damages or otherwise from the Petitioners?*

135. No other issues were pressed or claimed.

136. We now discuss the issues in the following paragraphs:

137. **Issue No. 1:** *Whether the delay in commissioning of the 2 X 70 MW solar power projects being developed by the Petitioners in Plot No. 1 and 2, Bhadla Solar Park Phase-II, Rajasthan, was caused due to Force Majeure events not attributable to the Petitioners? viz.*

a) delay in allotment of land & handing over the possession of the allotted land for the projects to the Petitioners by the Respondent; and

b) delay due to non-availability of connectivity and transmission system for the projects to the Petitioners by the Respondent.

And

Issue No. 2: *Whether in view of above, the Scheduled Commissioning Date of the 2x70 MW projects, being developed by the Petitioners in Plot No. 1 and 2, Bhadla Solar Park Phase-II, should be extended by 275 days for Project 1 and 330 days for Project 2 in terms of Article 11 of the PPAs?*

138. The issue no. 1 and 2 are inter related and as such are taken together. The Petitioners have submitted that the commissioning of the Projects was delayed due to the occurrence of various Force Majeure events, namely: delay by RSPDCL/SPIA in giving possession of land; delay in obtaining possession of land due to the Government of India's demonetization order; and delay by the State Transmission Utility in providing transmission infrastructure for

connectivity and power evacuation for the Projects. The PPAs specifically provide, inter alia, at Article 3.2, Article 4.5 and Article 11, that no liquidated damages can be imposed if the delay in commissioning the Projects is due to the aforesaid reasons. Thus, NTPC's retention of the PBGs is entirely arbitrary and illegal.

a) Delay in allotment of land & handing over the possession of the allotted land;

139. The Petitioners have submitted that the plots for the Projects were to be allotted to the successful bidder immediately upon the issuance of the Letter of Intent on 29.02.2016 so that the successful bidder could commence development activities immediately upon the issuance of the LOI. However, RSPDCL/SPIA specified the plots to the Petitioners only on 22.08.2016, that is, approximately, six months after the issuance of the LOI. Thus, the Petitioners were able to commence development activities for the Projects in right earnest after a delay of six months. Plot No. 1 had a graveyard, a place of worship and a dead 11 KV overhead transmission line running across the land whereas Plot No. 2 had illegal hutments, farms and a road. Therefore, immediately upon inspecting the allotted land for both Projects, RSPDCL/SPIA was apprised of the aforesaid encroachments and was requested to provide hassle free land to the Petitioners at the earliest to enable them to commence project development activities. However, the issue of encroachments was resolved by the RSPDCL/SPIA only by 22.08.2016.

140. The Petitioners have submitted that vide letter dated 18.11.2016, RSPDCL/SPIA had falsely certified that hassle free land for plot no. 1 was provided to the Petitioners by 22.07.2016. The said certificate is contradicted by RSPDCL/SPIA vide its own letter dated 22.07.2016 which states that the 11 KV line which was causing obstruction in Plot No. 1, was in the process of being shifted. The 11 KV line was only shifted thereafter and not before 22.08.2016. The Petitioners have submitted that RSPDCL/SPIA email dated 22.08.2016 further belie the abovementioned certificate as it states that the boundaries of both plot no. 1 and 2 were resized between 22.07.2016 and 22.08.2016 to deal with the various encroachments as detailed above.

141. The Petitioners have submitted that in addition to the aforesaid encroachments, the coordinates for plot no. 1 provided by the RSPDCL/SPIA on 22.07.2016 were grossly erroneous and lay in the Baluchistan province of Pakistan i.e. around 590 km away from the actual project site. In fact, the land coordinates for plot no. 1 provided by the RSPDCL/SPIA on 22.07.2016 were entirely different from those confirmed vide email dated 22.08.2016. The issues relating to encroachments and changes in the layout and coordinates of the plots, as contained in the SPIA's letter of 22.07.2016 and email dated 22.08.2016 are corroborated by the Minutes of Meeting dated 12.08.2016 between the Petitioners and NTPC. The Petitioners have submitted that despite the fact that the boundaries for both the plots were confirmed only on 22.08.2016, NTPC vide letter dated 09.01.2017 granted an extension of a mere 28 days and only for the delay in allotment of land for Project 2. However, they were entitled to allotment of hassle-free land with definite coordinates by the Effective Date of the PPAs i.e. 26.04.2016. The Petitioners are entitled to an extension of a reasonable period not less than on a 'day for day' basis for the delay in allotment of such land as per the provisions of Article 4.5.1(d) of the PPAs. Pertinently, the said delay even by the RSPDCL/SPIA's own admission in its certificate dated 18.11.2016, is at least 87 days and 118 days for Project 1 and 2 respectively. However, since the reasons for delay in allotment of land for both the plots are similar as explained above, the Petitioners submit that they are entitled to an extension of at least 118 days for both the Projects.

142. The Petitioners have submitted that they could not execute the land registration and handover documents with the RSPDCL/SPIA before 22.08.2016 as the said documents required the parties to specify definite boundaries of the allotted land. The possession letter dated 01.12.2016, sub-lease agreements etc. requires specific coordinates of the land along with the drawing of the said land as per scale. Therefore, in the absence of clear, demarcated and definite land, the Petitioners could not have obtained the said possession letter. The Petitioners had 90 days from 22.08.2016 to complete the formalities and obtain handover of the allotted land for the Projects. Thus, they were required to take possession of allotted land on or before 21.11.2016. However, they were unable to complete the handover and possession of the allotted land for the Projects due to the Central Government's Demonetization order. Demonetization has been recognized by the Respondents and MNRE which granted the affected solar power developers an extension of time till 31.01.2017 to

fulfill the conditions subsequent of the PPAs without any financial implications. The Petitioners had taken over possession of land for both the Projects by 24.01.2017 i.e. within the extended timeline granted by MNRE for achieving the Conditions Subsequent mentioned in the PPAs.

143. The Petitioners have submitted that in the aforesaid circumstances, the allegation made by RSPDCL/SPIA that the Petitioners did not have sufficient funds to obtain possession of land is false, unfounded and irrelevant. In view of the relaxation granted vide the MNRE, no financial implication ought to be imposed upon the Petitioners for the uncontrollable delay in obtaining possession of land allotted for the Projects up to 24.01.2017.

144. The Petitioners have submitted that as a result of the delay in the Petitioners obtaining possession of the plots and achieving financial closure milestone as per PPAs, the development and commissioning of Project 1 was delayed by 275 days and Project 2 by 330 days. The number of days lost due to each of the above Force Majeure events is tabulated below:

S. No.	Issue	Time Elapsed	Time Overrun (No of days)
1.	Delay in land allotment by the SPIA	29.02.2016 – 22.08.2016	175
2.	Delay in possession of allotted land	Project 1: 22.08.2016 – 01.12.2016	100
		Project 2: 22.08.2016 – 24.01.2017	155
TOTAL DELAY (IN DAYS)		Project 1	275
		Project 2	330

145. **Per Contra**, the Respondents have submitted that the Petitioners have not taken any action to execute the Implementation Support Agreement or other formalities to enable the answering Respondent to allot the land within the stipulated time of 3 months from the date of entering into the PPAs dated 12.05.2016. The physical possession of the sites were handed over to the Petitioners immediately upon the execution of the PPAs dated 12.05.2016 so that

the Petitioners while doing the procedural requirement can commence the development work of the project in order to avoid any delay, as is reflected from the letter dated 22.07.2016. There were few encumbrances which were timely cleared by RSPDCL/SPIA on 22.07.2016. As per the terms of the RfS document and PPAs, the Petitioners were solely responsible for overall development of the projects. Therefore, the contention of the Petitioners that the land parcels of the projects were ultimately finalized only on 22.08.2016 is baseless and vague. The 11 KV Dead Transmission Line passing through north part of Plot No. 1 was removed in the month of July 2016 itself, much before 22.07.2016. From the Minutes of meeting held on 12.08.2016, it is clear that after resizing of both the Plots in the month of July, there was problem only related to Plot No.2 after 22.7.2016 due to which in the meeting the issues relating to co-ordinates with respect to Plot No.2 were resolved by extending the boundary of Plot No.2 towards East direction up to the area equivalent to the area reduced due to road, which is a minor portion, which was finally done by 22.08.2016 and, therefore, 28 days extension was already granted with respect to Plot No. 2 and the Petitioners are not entitled to any further extension neither with respect to Plot No. 1 nor Plot No. 2.

146. The Respondents have submitted that due to delay on part of the Petitioners due to financial constraints they were intentionally delaying the execution of Implementation Support Agreements, Submission of PBGs, Execution of Sub-Lease agreements and payment of the requisite fees. The Respondents have sent repeated reminders to complete the mandatory requirements which are conditions precedent to the allotment of the land and to enable them to issue the formal allotment letter. It had issued a certificate dated 18.11.2016 wherein it has been certified that Plot No. 1 was handed over to the Petitioners free from all encumbrances, encroachments and hindrance on 22.07.2016 i.e. before the stipulated date of 25.07.2016. This certificate was issued after verification from the DISCOMS regarding the shifting of the 11 KV dead transmission line which was going through one small corner of the land. Therefore, the final coordinates were intimated to the Petitioners in 87 days and in 118 days for Plot No. 1 and 2 respectively from the effective date of the PPA i.e. 26.04.2016. The Respondents have submitted that it was only on 29.11.2016 and 23.01.2017 that the Petitioners executed the Implementation Support Agreement for Plot No. 1 and 2 respectively, that too after much persuasion by the Respondents. Immediately after the completion of all formalities, formal allotment letters were issued and paper possession of

the plots were given on 01.12.2016 and 24.01.2017 respectively with regard to Plot No. 1 and 2 as the Respondents promptly acted upon to complete all the formalities before the required time so that the projects will be commissioned within the SCoD. In the present case, there is no fault on the part of Respondents but it is the Petitioners who committed breach of all the conditions.

147. The Commission observes that Clause 3.6 of the RfS stipulates as:

“3.6 SPIA and Location of Solar Park

3.6.1 The Solar PV Projects to be selected by NTPC under this scheme are to be developed inside Solar Park which is developed by Solar Park Implementing Agency (SPA).

3.6.2 Rajasthan Solar Park Development Company Ltd. (RSDCL) is SPIA for this Solar Park which is a subsidiary of Rajasthan Renewable Energy Corporation Limited (RRECL). The Bidder will have to approach the SPIA for allotment of land, timelines for availability, possession and connectivity for the projects. The contract details of the concerned SPIA are as follows:

.....”

148. The Commission observes that relevant provisions of the Solar Park Scheme dated 12.12.2014 stipulates as under:

“4. Land acquisition / site selection

Land for the setting up of the solar park will be identified by the State Government unless the implementing agency has its own land. It will be the responsibility of the State Government to make the land available. States are encouraged to identify sites receiving good solar radiation and sites which are closer to CTU (i.e. Power Grid Corporation of India Limited). Preferably locations with spare transmission capacities and water avail ability. The park must have at least 5 Acres per MW towards installation of solar projects and will give opportunity for all technologies in a technologically agnostic fashion.

5. Facilities to be provided

The solar park will provide specialized services to incentivize private developers to invest in solar energy in the park. These services while not being unique to the park are provided in a central, one-stop-shop, single window format, making it easier for investors to implement their projects within the park in a significantly shorter period of time, as compared to projects outside the park which would have to obtain these services individually.

On the Charanka pattern, the implementing agency is tasked with acquiring the land for the Park, cleaning it, leveling it and allocating the plots for individual protectors. Apart from this, the agency will also be entrusted with providing the following facilities to the solar project developers for the development of the solar park:-

....

The solar park will be a large contiguous stretch of land with high insolation levels, saving the private developer from making the effort of identifying the ideal site for the plant. In addition, the site within the park is already leveled and developed reducing these costs for the project developer.

In addition, the Park will provide road access (both approach roads and smaller access roads to individual plots), water (via a dedicated reservoir located within the premises), boundary fence and security, each of which would have entailed additional costs for the developer outside the park.

Each of these specialized services offer significant benefits to the developers but come at a premium. Land plots within the solar park are more expensive than outside. But this premium is easily justifiable by these services, which are bundled into the land cost. However, the most important benefit from the park for the private developer is the significant time saved. The centralized, single window nature of the services within the park reduces the time between project conceptualization and operations, translating into economic and real monetary gains for the private developers and the State. "

149. From the conjoint readings of Clause 3.6 of the RfS and the relevant provision of the Solar Park Scheme dated 12.12 2014, the Commission observes that land for setting up of the solar park was to be identified by the State Government unless the implementing agency has its own land. It was the responsibility of the State Government to make the land available which receive good solar radiation and sites are closer to CTU. The Solar PV Projects selected by NTPC under the scheme were to be developed inside Solar Park which is developed by RSPDCL/SPIA. The bidders were to approach RSPDCL/SPIA for allotment of land, timelines for availability, possession and connectivity for the projects.
150. The Commission further observes that the selected SPDs were required to set-up Solar Power Projects at Plot No.1 to 3 and 8 to 10. The bidders were required to mention their preference of plots in the decreasing order of their choice. The selected bidders were to be allocated plots in the solar parks. The RfS further requires that the RSPDCL/SPIA was to hand over the land to the developer within 3 months of the Effective date of the PPA i.e. by 25.07.2016. In terms of Clause 3.2, NTPC was entitled to extend the time up to 3 months in case of delay in land

allotment (handing over the land). The clause, however, provides that such extension shall be subject to certification from the RSPDCL/SPIA justifying reasons for the delay. The provision was also made that in case of delay in giving possession of land and connectivity, the Petitioners were to be given extra time equivalent to delay. However, no compensation or liquidated damages or deemed generation was to be given for any delay in Solar Park. NTPC/NVVN was authorized to extend time by up to 3 months in case of delay in land allotment, transmission facility, infrastructure facilities etc. subject to certification from RSPDCL/SPIA justifying reasons for delay.

151. The Commission observes that letter dated 22.07.2016 that was sent from RSPDCL/SPIA to the Petitioners reads as under:

“Kindly refer aforesaid letter dated 02.07.16 vide which you have raised some problems with regard to Plot No. 01 & 02 of Bhadla Solar Park Phase-II. In this regard, it is intimated that we have excluded land for Kabristan from Plot No.01 and administration has taken decision to remove Mr. Maula Baksh from Plot No.2. Accordingly, revised co-ordinates from Plot No.01 & 02 have been finalized. Same have been intimated and verified by your representative at site on date 20.07.2016. However, copy of revised map and co-ordinates is attached here with.

Further, with regard to shifting of 11 kV line, matter has been taken up and is being shifted.

You have still not registered with RREC, not executed Implementation Support Agreement & not submitted PBG. On completion of necessary formalities and deposition of requisite amount, hassle free land will be allotted immediately. Therefore, you are requested to take immediate necessary action in the matter. We have already allowed your team to work at site. You can immediately start work on the site without further delay.”

152. The Commission observes that Minutes of Review Meeting held on 12.08.2016 between the Petitioners and NTPC reads as under:

“At the outset NTPC stated that though M/s Rising Sun is the Implementing agency and solely responsible for the development of the solar projects, the need has been felt for periodic monitoring of the progress of the projects by NTPC so as to ensure the financial closure and commissioning as per schedule specified in the RfS documents and PPA(s). However, it was clarified that NTPC shall not have any obligation to co-ordinate with any agency in the matter of the development of the projects. NTPC emphasized the need for timely commencement of various activities to be taken up by M/s Rising Sun such as possession of land, establishment of site office, engagement of civil contractor, fencing, site enabling work, ordering of Bought Out Items (BOIs) and other activities for development and commissioning of the solar projects as per the schedule identified in the PPA.

M/s Rising Sun informed that they have already taken actions to commence the work and assured NTPC that the financial closure and project commissioning shall be achieved as per schedule.

The following information/status was provided by M/s Rising Sun during the meeting:

Sl. No.	Issues	Status as on 12.08.2016
1	<i>Offer of land by the SPA</i>	<i>Rising Sun informed that SPIA had offered 280 hectares of land for both of the projects. However, as per assessment of Rising Sun the lands are not hassle free. They informed that RSDCL has already revised the layout of plots and they are further revising the layout and coordinates of the plots. Rising Sun will take up the possession of land only after it is provided free from encumbrances and layout is finalized by RSDCL.</i>

153. The Commission observes that E-mail dated 22.08.2016 was sent by RREC to the Petitioners informing that the “the co-ordinates intimated by PM, RREC, Jodhpur are hereby confirmed”. The E-mail also provided Minutes of Meeting with regard to plot co-ordinates of Plot No. 2 of Bhadla Solar Park Phase-II held on 12.08.2016. The relevant extract of minutes of meeting reads as under:

“This is in reference to the letter no. RSDCL/Solar Park/ Rising Sun Energy/ D 318 dated 22/07/2016 and difficulty pointed point by the representative of Rising Sun Energy during site visit of TM, RRECL on dated 09.08.2016, it is observed that after resizing of plot-1 and plot-2 following points are classing on the existing 5.2 KM approach road for the PV plots:-

.....
While carried out the survey and cross checking the co-ordinates provided vide aforesaid letter it was come into notice that, this is due to merging of portion in the plot-2 which excluded, previously. And, road is passing through this area (marked in red ink), approximately 0.32 Hectare. Corners co-ordinates (A, B, C, D & E) are as under:

.....
To resolve this issue it is proposed that boundary (marked as G-F, in ink) of plot-2 may be extended towards East direction (marked in green ink) up to the area equivalent to the area reduced due to road. Corners co-ordinates (F,G,H&I) are as under:

.....
After this modification new boundary co-ordinates of the plot-2 will be as following-

.....
Auto CAD drawing is also being sent on official email i.e. pmrrecjodhpur@gmail.com and solar.rrec@gmail.com, submitted for kind perusal and necessary approval for the same.”

154. From the above letters dated 22.07.2016, the minutes of the meeting dated 12.08.2016 and email dated 22.08.2016, the Commission observes that resizing of plot no. 1 and plot no. 2 of the Projects were undertaken by the Respondents and the revised coordinates were provided for plot no. 1 by excluding the land for Kabristan on 22.07.2016 and revised coordinates were provided for Plot No. 2 by excluding the Road on 22.08.2016. Further, with regard to shifting of 11 KV line which was in plot no.1, the matter was taken up and was still to be shifted. As per hearing on 08.03.2019 before the Commission, the parties were directed to file the reply regarding shifting of 11 KV line from Plot No. 1. The Petitioners have submitted on record an internal email dated 06.08.2016 which shows that the 11 KV line from Plot No. 1 was not removed till that date. The Respondents have claimed that the 11 KV line was removed on 22.07.2016 itself. However, the Commission observes that as per letter dated 22.07.2016, it is specifically mentioned as below:

“Further, with regard to shifting of 11 kV line, matter has been taken up and is being shifted.”

155. From the above discussion, the Commission observes that the PPAs were executed by the parties on 12.05.2016 (effective date 26.04.2016). It was the duty of RSPDCL/SPIA to allot encumbrance-free land to the Petitioners on the Effective date of the PPAs. The Effective date being earlier than the date of signing the PPAs, the land should have been allotted by 12.05.2016. The Respondents changed the land coordinates three times and finally gave the correct coordinates only on 22.08.2016 i.e. after a delay 101 days from the date of signing the PPAs i.e. 12.05.2016. The Respondents kept on changing the size, boundary and location of the plots and in our opinion, it is the Respondents who are responsible for any such delay since it was their responsibility for handing over encumbrance-free land to the Petitioners for development of the projects. Hence, the Commission is of the view that RSPDCL/SPIA could allot the encumbrance-free land to the Petitioners only on 22.08.2016 and not with the execution of PPAs with a delay of 101 days and the Petitioners could not have commenced significant project development activities before 22.08.2016.

156. The Commission further observes that RSPDCL/SPIA has stated in para 3.8 of its reply that:

“3.8 the purpose of granting 3 months’ time to allot the land from the date of execution of PPA was to provide sufficient time for the parties to register the project,

execute the implementation Support agreement and do all requisite formalities so that the land can be allotted within the stipulated time without any further delay....”

157. The Commission, therefore, observes that the Petitioners had 90 days from 22.08.2016 to complete the formalities and obtain possession of the allotted land for the Projects. Thus, the Petitioners were required to take possession of allotted land on or before 21.11.2016. However, the Petitioners have claimed that they were unable to complete the possession of the allotted land for the Projects due to the Demonetization dated 08.11.2016. MNRE recognized the difficulties faced by the Solar Power Developers and gave an extension of time till 31.01.2017 to fulfill the conditions subsequent of the PPAs without any financial implications vide Office Memorandum dated 02.12.2016. The O.M. specifically mentioned that *“it shall have no effect on the Effective date of Financial closure or the Scheduled Commissioning Date as per the respective PPAs.”* NTPC applied the said extension to the Petitioners after the Petitioners furnished an undertaking as per the format provided by NTPC. The Petitioners executed the Implementation Support Agreement on 29.11.2016 regarding Plot No. 1 and on 23.01.2017 regarding Plot No. 2. The Petitioners took the formal possession on 01.12.2016 with regard to Plot No. 1 and on 24.01.2017 with regard to Plot No. 2. i.e. within the extended timeline granted by MNRE for achieving the Conditions Subsequent mentioned in the PPAs.

158. From the discussion above, the Commission is of the view that there is a total delay of 101 days in allotment of land with regard to Plot No.1 and Plot No. 2. The Commission is also of the view that the delay in obtaining the possession of the land by the Petitioners was caused due to unforeseen, unavoidable and uncontrollable reasons not attributable to the Petitioners and hence are the covered as Force Majeure events. In view of the discussions held above, the Commission holds that the delay in obtaining possession of land by the Petitioners is due to Force Majeure events. This event of force majeure had an impact on fulfillment of conditions subsequent as well as achieving CoD by the Petitioners. The contention of the Respondents that there was delay on part of the Petitioners due to financial constraints and that the Petitioners were intentionally delaying the execution of Implementation Support Agreements, Submission of PBGs, Execution of Sub-Lease agreements and payment of the requisite fees because of this reason is not borne out by documents on record. It has been stated by the Respondents that the physical possession of the sites were handed over to the Petitioners immediately upon the execution of the PPAs dated 12.05.2016 so that the Petitioners while

doing the procedural requirement can commence the development work of the project in order to avoid any delay. The Respondents have also stated that they sent repeated reminders to complete the mandatory requirements which are conditions precedent to the allotment of the land and to enable them to issue the formal allotment letter. Respondent has also claimed that it had issued a certificate on 18.11.2016 wherein it was certified that Plot No. 1 was handed over to the Petitioners free from all encumbrances, encroachments and hindrance on 22.07.2016 i.e. before the stipulated date of 25.07.2016. In our view, as discussed above, the encumbrance-free land was allotted by the Respondent to the Petitioner only on 22.08.2016. Thus, the delay in providing encumbrance-free land to the Petitioner has been due to delay on part of the Respondents and the Petitioner should not be penalized for that.

b) Non-availability of connectivity and transmission system for the projects

159. The Petitioners have submitted that there was significant delay in providing connectivity and transmission capacity to the Projects by the RSPDCL/SPIA, RVPNL and RUVNL. It was imperative that the Petitioners be provided connectivity to the grid by the RSPDCL/SPIA in a timely manner so as to enable the Petitioners to carry out the necessary project synchronization and commissioning activities. However, there was delay by the RSPDCL/SPIA, RVPNL and RUVNL in providing connectivity and transmission capacity for the Projects. This delay resulted in further delay in the commissioning of the Projects. Adequate transmission infrastructure became available only from 06.09.2017 and thereafter only the Petitioners could commence the supply of power from the remaining capacity of both Projects. Owing to transmission capacity constraints, the Petitioners were allowed to only partially commission a capacity of 40 MW on 18.07.2017 subject to furnishing an undertaking that the Petitioners would not inject any power into the grid without prior permission of the officials of the STU. Even as late as 02.08.2017, they were only permitted to inject 20 MW power out of the total commissioned capacity of 40 MW. The additional 20 MW capacity commissioned by the Petitioners on 18.07.2017 was permitted to be injected by the STU only on 19.08.2017.
160. The Petitioners have submitted that the transmission capacity constraints as on 02.08.2017 are evident from a perusal of STU's letter dated 08.12.2017. Due to the above constraints, ICT-1, which was charged on 22.07.2017, suffered a breakdown on 09.08.2017. ICT-2 was

commissioned thereafter on 19.08.2017. It was only on 06.09.2017 when ICT-3 was commissioned that two ICTs could simultaneously function in tandem to reliably evacuate the entire commissioned load of 680 MW from the Bhadla Solar Park. RSPDCL/SPIA has also falsely averred that it was simultaneously using the spare capacity of the 220 KV Bhadla substation along with the 500 MVA capacity of ICT-1 commissioned on 21.07.2017 to evacuate power from the Bhadla Solar Park. Prior to the commissioning of ICT-1, power from the Bhadla Solar Park was being evacuated through the spare capacity available at the 220 kV Bhadla Substation. While the available capacity at the Bhadla Substation was only 270 MW, the STU was evacuating a much higher capacity of around 470 MW through the said substation until ICT-1 was commissioned on 21.07.2017. Evidently, the available transmission and evacuation network of the STU, which was substantially strained, could not have handled any further load. The above transmission constraints prompted the STU to permit the commissioning of only 40 MW on 18.07.2017 as aforesaid. The inadequacy of the available transmission and evacuation infrastructure is further evident from the fact that the STU had imposed similar evacuation restrictions on other solar power developers within the Bhadla Solar Park. Further, a perusal of the STU's letter dated 04.12.2017 show that the spare capacity of 220 kV at the Bhadla Substation was being utilized only up to the commissioning of ICT-1 and the entire load of the Bhadla Solar Park was shifted on ICT-1 pursuant to its commissioning on 21.07.2017.

161. **Per Contra**, the Respondents have submitted that as per the PPAs dated 12.05.2016 (with effective date of 26.04.2016) both the projects of 70 MW each were to be commissioned by 25.05.2017 i.e. within 13 months from the effective date of the PPAs. The responsibility of getting Transmission Connectivity and Access to the Transmission system owned by the STU was of the SPD and also the cost was to be borne by SPD itself. The Petitioners were to intimate 60 days in advance with the preliminary written notice showing intention of synchronisation of the Projects. In the present case, it was only vide letter dated 11.04.2017 that the Petitioners intimated about its intention to synchronize, that too, only 40 MW, out of the total 140 MW of the project. It was only on 26.05.2017 that the Petitioners vide its letter informed the Respondents that they were ready for synchronization. However, their subsequent letter dated 29.06.2017 demonstrates that the Petitioners had completed the installation work of only 40 MW out of 140 MW capacity at the end of June 2017.

162. The Respondents have submitted that the Petitioners made request to the electrical inspectorate regarding project readiness only on 19.06.2017 and the Petitioners were allowed to connect partially (i.e. 40 MW) on 18.07.2017 after getting clearance from the STU. Further, as per the report of RVPNL dated 08.12.2017, there was no restriction imposed and the connectivity was available from 21.07.2017. The Petitioners commissioned the remaining 30 MW capacity of Project 1 only on 29.09.2017 as the same was ready in all respect only on 18.09.2017.
163. The Respondents have submitted that from the letter dated 20.11.2017 it is clear that 400 KV D/C Bhadla-Bikaner transmission line along with 50 MVA reactor was commissioned on 20.07.2017 and 22.07.2017 respectively and power evacuation was being done by these circuits. In addition to the said transmission system, 220 KV S/C line from 400 kV GSS Bhadla to 220 KV Bhadla and 220 KV S/C line from 400 kV GSS Bhadla to 220 KV had been commissioned on 13.03.2016 & 18.06.2016 respectively and power evacuation was also being done by these circuits. The Petitioner's 40 MW out of the total 140 MW was connected and commissioned on 18.07.2017, as the Petitioners were not ready with the remaining capacity. ICT-2 of 500 MVA of additional capacity was charged on 18.08.2017 which was much before the Petitioners were ready with the first 40 MW of Project No. 2. The Project No. 2 was partly commissioned on 29.08.2017 due to the delay on the part of the Petitioners in obtaining financial closure. The Petitioners, commissioned 40 MW on 29.08.2017, 30 MW on 29.09.2017 and remaining 30 MW on 01.11.2017. Vide report dated 08.12.2017, RVPNL further informed that power evacuation through 400 KV lines started on 21.07.2017 and thereafter, there were no restrictions imposed on the power evacuation. The contentions of the Petitioners that the transmission lines were made available only on 06.09.2017 are incorrect and false as per Respondents.
164. The Commission observes that vide letter dated 29.05.2017, RVPNL informed the Petitioners as under:

"1) At present no power evacuation capacity margin is available at 220KV GSS Bhadla.

2) The entire power evacuation shall be available by 15th June, 2017.

3) 400KV line from Bhadla to Bikaner shall be ready by 15th June, 2017 (Tentative)”

165. The Commission observes that vide letter dated 31.05.2017 and 22.06.2017, the Petitioners informed NTPC as under:

“It is once again brought to your kind notice that we are ready for starting our pre-commissioning activities as per schedule of activities listed in Annexure-1. Keeping in view the letter received from RVPNL dated 29.05.2017, informing us regarding delay in power evacuation and connectivity up to 15th June, 2017, but the same has not been made available till date. You are requested to kindly grant an extension of time in SCOD up to 31st July 2017.”

166. The Commission observes that vide letter dated 04.07.2017, RVPNL informed the Petitioners as under:

“On the subject cited above the desired information is as below:

- 1. At present no power evacuation capacity margin is available at 220KV GSS Bhadla.*
- 2. The entire power evacuation shall be available by 15th July 2017 (Tentative). Subjected to availability of 400KV line from Bhadla to Bikaner for evacuation of power from 400KV GSS Bhadla.”*

167. The Commission observes that on 18.07.2017, the Petitioners gave an undertaking to RVPNL. The extract of the undertaking reads as under:

“We M/s Rising Bhadla 1 Pvt. Ltd. Plot No.1 Village Bhadla Tehsil Baap, District Jodhpur. Solemnly undertake that after receiving connectivity of 40 MW to our solar power plant located at plot no.1, we will not inject any power in the grid without prior approval of RVPNL authorities.

In the event of any damage to RVPNL on the account of unauthorized injection of power to grid, we shall be responsible and liable to compensate the losses to RVPNL as decided by ZCE (T&C) RVPNL Jodhpur.”

168. Further the Commission observes that as per letter dated 04.08.2017, RVPNL has informed the Petitioners that *“one ICT of Capacity 500MVA has been commissioned therefore evacuation of Solar Power is taking place from Bhadla upto capacity of One No. ICT i.e. 500 MVA. The Second ICT of 500 MVA may be commissioned upto 31.08.2017.”* Further, vide another letter dated 20.11.2017, RVPNL has informed the Petitioners regarding the status of transmission system for evacuation of solar power from 400/220 kV GSS Bhadla. The extract of the letter reads as under:

“On the above cited subject please refer your letter dated 15.11.2017 vide which it is intimated that you have set up 70 MW solar power project under Bhadla Solar Park, Phase-II.

Further, vide your aforesaid letter it is also intimated that 220kV GSS Bhadla is not been fully commissioned due to prevailing transformer breakdown/faults which is currently repair in the transformer manufacturing unit.

In the matter it is intimated that connectivity to Bhadla Solar Park, Phase-II has been provided from 400kV GSS Bhadla of RVPN via 2 Nos. 220kV D/C lines connected to 220kV common pooling substation of the developer. Further, the status of complete transmission system for evacuation of solar power from 400/200kV GSS Bhadla is as under:

- 1. Date of Commissioning 3 Nos. ICTs of capacity 500 MVA each at 400/200kV GSS Bhadla.*
 - (a) ICT-1 (Sr. No. PM0100191) Charged on 22.07.2017, but failed on 09.08.2017, removed from the circuit dispatched back to M/s T&R Ahmedabad for repair. The repair of transformer is under process and at present the core coil assembly is under inspection.*
 - (b) ICT-2 (Sr. No. PM0100193) Charged on 18.08.2017 at 14.05 Hrs.*
 - (c) ICT-3 (Sr. No. PM0100195) Charged on 05.09.2017 at 13.57 Hrs.*
- 2. 400kV D/C Bhadla – Bikaner line (Quad Moose ckt-1 & II) along with 50 MVA reactor commissioned on 20.07.2017 and 22.07.2017 respectively and power evacuation is also being done by these circuits.*
- 3. In addition to above transmission system 220kV S/C line from 400kV GSS Bhadla to 220kV Badisid and 220kV S/C line from 400kV GSS Bhadla to 220kV Bap have been commissioned on 13.03.2016 & 18.06.2016 respectively and power evacuation is also being done by these circuits.*

Further, presently 1000MVA capacity of transformers is commissioned at 400/220kV GSS Bhadla and power evacuation for commissioned capacity of solar power projects is taking place without any curtailment.”

169. From the above, the Commission observes that as per the PPAs dated 12.05.2016, both the projects of 70 MW each were to be commissioned by 25.05.2017 i.e. within 13 months from the effective date of the PPAs (26.04.2016). As per Respondents, the responsibility of getting Transmission Connectivity and Access to the Transmission system owned by the STU was of

the Project Developer and the cost was to be borne by Petitioners. However, vide letters dated 29.05.2017 and 04.07.2017, the Respondents have informed the Petitioners that there was no power evacuation capacity margin available at 220 KV GSS Bhadla as on date and that the entire power evacuation facility shall be available by 15th July 2017 subject to availability of 400 KV line from Bhadla to Bikaner for evacuation of power from 400 KV GSS Bhadla. It is pertinent to note that 15th July 2017 was the tentative date given for the entire power evacuation by the Respondents. As per letter dated 04.08.2017, RVPNL has informed the Petitioners that one ICT of Capacity 500 MVA has been commissioned and the Second ICT of 500 MVA may be commissioned up to 31.08.2017. Further, vide another letter dated 20.11.2017, the Respondents have acknowledged that last of the three ICTs of capacity 500 MVA each at 400/200kV GSS Bhadla was charged on 05.09.2017 at 13.57 hrs. meaning thereby that all the three ICTs stood commissioned only on 05.09.2017 (1357 hrs.). Hence, there was delay on the part of the Respondents in providing the connectivity for evacuation of power from 400 KV GSS Bhadla. The Respondents were to be ready with the power evacuation system qua Petitioners by 25.05.2017 i.e. date of SCoD as mentioned in the respective PPAs. However, the Respondents were ready with the power evacuation system on 05.09.2017 (1357 hrs.). Hence, there was a clear delay on the part of the Respondents. It is pertinent to mention here that the Respondents vide letter dated 29.05.2017 had specifically informed the Petitioners that there was no evacuation capacity margin available at 220 kV GSS Bhadla and further 400 kV line from Bhadla to Bikaner was expected to be ready from 15.06.2017. Further, the Petitioners were also made to execute an undertaking on 18.07.2017 by the Respondents that after receiving connectivity, they will not inject any power in the grid without prior approval of RVPNL authorities and in the event of any damage to RVPNL on account of unauthorized injection of power to grid, the Petitioners will be held responsible and liable to compensate the losses to RVPNL. Admittedly, the Petitioners part commissioned 40 MW on 18.07.2017 with regards to Petitioner No. 2 and 29.08.2017 with regard to Petitioner No. 3. However, the power evacuation system was ready only on 05.09.2017 (1357 hrs.) for evacuation of full capacity of power of the Respondents. Hence, the Commission is of the view that there is a delay from 29.05.2017 to 05.09.2017 i.e. total of 99 days in providing of the infrastructure for transmission and evacuation of power with regard to Projects and this delay was for reasons not attributable to the Petitioners. Hence, these are covered under Force Majeure events.

170. To summarize there was a total delay of 200 days (i.e. 101 days due to late ‘allotment of land’ and 99 days due to late providing of ‘infrastructure for transmission and evacuation of power’) for unavoidable and uncontrollable reasons not attributable to the Petitioners and hence are covered under Force Majeure events. Therefore, the Petitioners are eligible for extension of SCoD as per Article 4.5.1 of the PPAs. The Scheduled date of Commissioning for the Petitioner No. 2 and Petitioner No. 3 was 25.05.2017. However, Petitioner No. 2 actually commissioned the Project (Total of 70MW) on 29.09.2017 and Petitioner No. 3 actually commissioned the Project (Total of 70MW) on 01.11.2017. Thus, there was an actual delay of 127 days and 160 days only for Petitioner No. 2 & Petitioner No. 3, respectively. Accordingly, the SCoD is extended from 25.05.2017 to 29.09.2017 with respect to Petitioner No. 2 and from 25.05.2017 to 01.11. 2017 with respect to Petitioner No. 3.

171. **Issue No. 3:** *Whether the Respondents should be directed to immediately release the Performance Bank Guarantees in the sum of Rs. 25.5 Crores and pay damages amounting to Rs. 1.54 Crores for the period during which the Performance Bank Guarantees have been retained by NTPC?*

And

Issue No.4: *Whether the Respondent No.1 is entitled to recover any amount towards liquidated damages or otherwise from the Petitioners?*

172. As above, the SCoD has been extended to 29.09.2017 and 01.11.2017 for Petitioner No. 2 & Petitioner No. 3, respectively. Accordingly, the Commission directs the Respondents to immediately release the Performance Bank Guarantees amounting to Rs. 25.5 crores.

173. Vide I.A. 95 of 2018, the Petitioners had sought stay on encashment of PBGs which was accepted by the Commission on 13.12.2018. However, the request of the Petitioner that they have suffered a loss amounting to Rs. 1.54 Crores for maintaining the PBGs beyond three months and hence may be compensated is not accepted. Further, the Commission makes no Order as to cost.

174. Accordingly, the Petition No. 340/MP/2018 is disposed of.

Sd/-

आई. एस. झा
सदस्य

Sd/-

डॉ. एम. के. अय्यर
सदस्य

Sd/-

पी. के. पुजारी
अध्यक्ष