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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9436/2018**

MBP SOLAR PRIVATE LTD - A SUBSIDIARY
OF PATIL CONSTRUCTION AND
INFRASTRUCTURE LTD

..... Petitioner

Through

Mr Santosh Tripathi, Adv. with Mr
Shivaji M. Jadhav, Mr Nicholas
Choudhury, Mr Gautam Prabhakar &
Mr Brij Kishor Sah, Advs.

versus

THE GOVERNMENT OF INDIA & ORS

..... Respondents

Through

Mr Dev P. Bhardwaj, CGSC for UOI
with Ms Anubha Bhardwaj & Ms
Akanksha Mishra, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.09.2018

C.M. No. 36592/2018 (exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. Issue notice. The learned counsel appearing for the respondents accept notice.
4. The petitioner has filed the present petition, *inter alia*, praying as under:

“A. Issue Writ in the nature of mandamus or any other Writ or Order or Direction to the respondent no.2 to consider the representation dated 03.08.2017 and 25.07.2018 submitted by the petitioner, and direct to grant an extension of time for

commissioning of project under the power purchase agreement dated 21.09.2016, the and,

B. Direct the respondents not to initiate any coercive steps against the petitioner to affect the finances of petitioner till extension for Commissioning of project under power purchase agreement is granted by the respondent no.2, and”

5. The controversy in the present petition arises in context of the Solar Photo Voltaic Power Project awarded to the petitioner under JNNSM Phase II Batch III Tranche-V in the state of Karnataka.

6. Respondent no.2 (hereafter SECI) published a request for selection of Solar Power Developers on 15.02.2016 and invited offers for undertaking such projects. The petitioner participated in the same and on 02.07.2016 a Letter of Intent was issued in favour of the holding company of the petitioner. Thereafter, on 21.09.2016, the petitioner entered into a Power Purchase Agreement (PPA) with SECI to sell solar power as per the terms and conditions stated therein. In compliance of the contractual terms; the petitioner also submitted two Bank Guarantees in the sum of ₹2.4 crores and ₹9.6 crores respectively.

7. Apparently, there has been delay in the commissioning of the said project. The petitioner claims that the holding company of the petitioner had already purchased 300 acres of land at village Santhapur near 110 KV sub-station Santhapur, Tehsil Aurad, District Bidar. But, as there were some objections in regard to use of the said land and on 12.01.2017 the petitioner requested SECI to change the location of the solar plant from village Santhapur to Lingi village.

8. It is stated that in the meanwhile, the petitioner company also

purchased 146 acres of land at Lingi village and leased additional land measuring 250 acres at the said village.

9. The grievance of the petitioner is that the No Objection Certificate, which is required under the relevant revenue laws have not been forthcoming. According to the petitioner, the same has delayed the project.

10. Admittedly, the petitioner has failed to meet the deadline to commission the solar project. The petitioner now desires that SECI considers the petitioner's representation and extends the date of commissioning of the project. Clearly, no mandamus in this regard can be issued. The issue whether the petitioner is entitled to extension would have to be considered in the context of the PPA executed between the parties. It is also seen that the PPA includes the Dispute Resolution Clause.

11. In view of the above, the relief as sought for by the petitioner cannot be granted. However, it would be open for the petitioner to seek reference of the dispute, in accordance with the Dispute Resolution Clause in the PPA.

12. Having stated the above, this Court is of the view that since petitioner has already made a representation, it is also apposite for the SECI to consider the same and communicate a decision as expeditiously as possible. It is so directed.

13. The petition is disposed of with the aforesaid observations.

14. Order *dasti*.

VIBHU BAKHRU, J

SEPTEMBER 07, 2018

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