



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.
5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004**

O. P. No. 27 of 2018

Dated 20.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Mytrah Aakash Power Private Limited
Regd. Office: 8001, 8th Floor, Q-city, S.No.109,
Nanakramguda, Gachibowli, Hyderabad – 500 032.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.

2. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.

3. Special Chief Secretary, Energy Department,
Government of Telangana, Telangana Secretariat,
Khairatabad, Hyderabad.

... Respondents.

This petition came up for hearing on 21-07-2018 & 03-08-2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 21-07-2018 and 03-08-2018. Sri Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate appeared on 21.07.2018 and 03.08.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86(1) (f) and 86 (1)(k) of the Electricity Act, 2003 r/w Article 9.2 of the PPA seeking interim direction to the respondents to allow synchronisation of the balance 20 MW of the project with the grid with the following material averments:

2. The petitioner sought several reliefs which are part of the main relief in the O.P. and therefore the interim direction sought by the petitioner is only being considered in this petition.

3. The petitioner claimed that he was a successful bidder in the competitive bidding process conducted by the respondent no.1 for 50 MW solar power project at K. M. Pally, Nalgonda and entered into PPA on 23.02.2016 at a tariff of Rs.5.5949 per unit. The petitioner had to commission the project within 15 months from the date of PPA i.e., by 22.05.2017. Out of 50 MW project, 30MW was already synchronised with the grid in phases: 12.5 MW on 16.03.2018 and 17.5 MW on 12.04.2018. The petitioner claimed that remaining 20 MW of the project has been ready for synchronisation since 30.04.2018. In spite of giving requisite undertaking by the petitioner to abide by the decision of the Commission in the main O. P, the respondent No.1 is refusing to synchronise the remaining 20 MW power to the grid on the ground that this balance capacity was not commissioned within the extended time line specified in the PPA.

4. The petitioner is taking defence of force majeure events as per clause 9.2 of PPA i.e., districts reorganisation, delay in transmission route approval, delay in approval of CTs & PTs drawings by TSTRANSCO, incessant rainfall, injunction order of a court and delay in module reclassification for extension of SCOD. It is further

noticed that synchronisation was permitted by the respondent in phased manner: 12.5 MW on 16.03.2018 and 17.5 MW on 12.04.2018. The GOTS by way of order dated 29.06.2017 extended SCOD for all solar power projects till 30.06.2017 and further extended SCOD by letter dated 23.08.2017 till 31.10.2017. This being the case how and in what manner the synchronisation was permitted by the respondents viz., 12.5 MW on 16.03.2018 and 17.5 MW on 12.04.2018 is not known. Who authorised extension of SCOD and acceptance of force majeure events if they were alleged before permitting synchronisation of 30 MW to the grid is not known. Whether this permission was granted with penalty as per clause 10.5 of PPA is not on record and also not known.

5. The CGM (IPC&RAC), TSSPDCL filed counter affidavit with the following averments:

(i) The claim of the petitioner that balance 20 MW of the project was ready for synchronization since 30.04.2018 is incorrect. The petitioner addressed a letter dated 30.04.2018 to the respondent no.1 which was received on 01.05.2018 requesting for deputation of officials for preparation of work completion report for synchronizing balance 20 MW stating it was ready. The petitioner on 23.05.2018 submitted a letter to CEIG for approval of balance 20 MW capacity solar panel, inverter etc under 43(4) and 32 of CEA Regulation, 2010. On the very next day, SE / Op / Nalgonda inspected the project and submitted work completion report on 24.05.2018 for the balance 20 MW capacity.

ii) The Commission vide letter dated 02.02.2018 permitted the respondent to allow synchronization of the solar project beyond the SCOD who had completed the project and filed work completion certificate subject to the conditions in the undertaking approved by the Commission. The petitioner submitted undertaking on 01.02.2018 and not on 31.01.2018 in the prescribed proforma like (a) amending the PPA in respect of SCOD and for refixation of

tariff (b) to abide by the decision of the Commission on extension of SCOD up to 31.10.2017.

(iii) The petitioner attempted to project that it is the responsibility of the respondent to make arrangements for evacuation of power, coordinate with TRANSCO and guide the petitioner in obtaining approvals for interconnection, synchronization, commercial operations, regular operations omitting the obligation of the petitioner to meet the requirement under Article 3 of PPA.

(iv) The petitioner did not make any representation to the respondent at any point of time expressing difficulty in securing approvals from TSTRANSCO.

(v) The petitioner claimed to have procured Acres 154 (out of Acres 294 required) on 09.09.2016 and remaining Acres 140 on 20.02.2017 and how it could submit route proposal on 12.07.2016 without procurement of land? CE / Rural Zone / TSTRANSCO by letter dated 14.03.2016 requested the petitioner to furnish route proposal and detailed estimate. While the petitioner submitted route proposal on 10.11.2016 and it was approved by the CE / Rural Zone / Transco on 28.11.2016. Consequently, on 21.12.2016 the petitioner submitted the profile roll and tower schedule for necessary action. The petitioner submitted line survey report on 21.12.2016 and the same was granted on 04.01.2017 without any delay.

(vi) The force majeure events alleged by the petitioner are not actually such events and procedural lapses regarding completion of the project are exclusive responsibility of the petitioner.

(vii) The petitioner has no enforceable rights in respect of the enlargement of time fixed under clause 9 of PPA. The petitioner has right to terminate the PPA as the petitioner willfully defaulted in achieving COD by following the terms of PPA.

6. The arguments of both the counsel for the petitioner and the respondents heard.

7. The point for determination is whether the petitioner is entitled to an interim direction to the respondents to synchronise the balance 20 MW of the project to the grid pending disposal of O.P and on what terms?

8. The petitioner was a successful bidder to set up 50 MW solar power project at K. M. Pally, Nalgonda. PPA was entered between the parties on 23.02.2016 with the date of SCOD within 15 months by 22.05.2017. It is also a fact that the GOTS extended SCOD up to 30.06.2017 and further extended for four months up to 31.10.2017. It is also a fact that 30 MW out of 50 MW project was already synchronised to the grid in phases: 12.5 MW on 16.03.2018 and 17.5 MW on 12.04.2018. This synchronisation of 30 MW is obviously beyond 31.10.2017. The date of SCOD 22.05.2017 is exceeded by the petitioner as it is clear from the synchronisation of 12.5 MW and 17.5 MW beyond 31.10.2017, and also beyond the mandated period of 21 months as per the Clause 10.5 (e) of the PPA. And on what basis synchronisation was permitted beyond 31.10.2017 and beyond the period of 21 months as per the Clause 10.5 (e) of the PPA by the respondents is absolutely not known.

9. The petitioner and the respondents have not stated anything about synchronisation of 30 MW to the grid understandably. The parties have to explain this aspect in the O. P without fail.

10. The learned counsel for the petitioner contended that prolonged disuse of the solar power project would damage the entire set up and relied on paras 11 & 13 of the decision of APTEL in *I. A. No. 637 of 2016 in Appeal No. 307 of 2016 dated 13.12.2016*. Para 11 of the decision notes the following.

“11. A prolonged outage may disrupt the normal operation & maintenance of solar PV plant as generation is reduced to zero due to no schedule and as such, all auxiliaries and systems of solar PV stations are switched of. As a result, large number of technical challenges crop in such as:

- (i) *Moisture ingress in transformers may cause failure of transformer. Moreover, such failure may further increase down time if such faults are detected at the time of revival from long shut down.*
- (ii) *Failure of UPS batteries due to lack of charging hence loss of control, protection and communication system.*
- (iii) *Theft of un-energized solar panels may additionally leads to down time from theft etc.”*

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13. *It is fact that the solar panels cannot be allowed to be left idle, as it would result in technical degradation which would result in irreparable loss to the generators who have invested in the project.”*

The main contention of the petitioner is based on the observations in the above cited order of APTEL. The petitioner emphasised about the total loss of investment of public in case interim order is not passed for synchronisation pending O.P.

11. The petitioner further relied on a decision rendered by the Hon'ble Supreme Court in C. A. Nos. 5399-5400 of 2016 in Energy Watchdog vs. CERC & Ors and batch wherein the Hon'ble Supreme Court observed that where there are no guidelines or in a situation which is not covered by the guidelines, the Central Electricity Regulatory Commission's general regulatory power u/s 79 (1)(b) can be used. Similar / equivalent provision for the State Commission is Sec. 86 (1) (b). The present matter relates to examination of terms of PPA which need no clarification to the parties. In fact, the arguments of both sides have not been about clarification needed on the terms of PPA.

12. The learned counsel for the petitioner contended that the petitioner has a prima facie case for interim orders and as otherwise the petitioner would sustain irreparable loss and relied on a decision of Hon'ble Supreme Court dated 11.09.2009 in SLP (Civil) No. 18934 of 2008 between Zenit Mataplast Pvt. Ltd vs. State of

Maharashtra and Ors. Wherein it was observed that interim orders are passed on the basis of prima facie findings which are tentative.

13. The learned counsel for the petitioner represented that a direction may be given to the respondents to ensure reconnection to the state grid and for purchasing power from the petitioner on a provisional tariff, subject to proper adjustment on the outcome of the present appeal while referring to a decision of APTEL dated 13.12.2016 rendered in Subhash Infraengineers Pvt Ltd and another vs Haryana ERC through Secretary and another. In this case, the decision of HERC to the effect that PPA with the appellant's therein are not in line with the purported competitive bidding guidelines for renewable energy generators u/s 63 of the EA 2003, that the deviations were not approved by the State Commission and hence the power purchases are not valid, was questioned in the APTEL. In this decision APTEL observed about the technical challenges and deterioration of the solar PV panels and machinery in case of long shut down / disuse. The learned counsel for the petitioner emphasise on this aspect and pleaded for interim orders.

14. The learned counsel for the respondent strenuously contended that so far as the balance 20 MW which is not synchronised to the grid is concerned, the respondent has a vested right in refusing to connect the balance 20 MW to the grid because as per clause 9.2 of PPA a maximum period of twelve months is permitted to defer COD to permit the solar power developer to overcome the effects of force majeure events affecting the solar power developer or DISCOM or till such event of default is rectified by the solar power developer or DISCOM whichever is earlier. Provided further that, the validity of performance bank guarantee shall be extended suitably covering the extended period. The learned counsel further contended that

the date of SCOD 22.05.2017 is not adhered to by the petitioner who claimed to have been ready with 20MW power for synchronisation by 30.04.2018.

15. Whether the plea of force majeure events pleaded by the petitioner are really so, and if such is the case, the Commission has to examine those claims and decide whether the events can be accepted as force majeure events and in case they are not accepted as such, whether penalties can be imposed to the extent of the plea of force majeure is not accepted and in such case, the respondent has a right to avoid PPA and insist on fresh terms. This aspect can be decided only in the O. P. and the present matter has to be examined relating to the prayer for interim order.

16. The petitioner has made out a prima facie case for interim direction and in case interim direction is not given, the petitioner has convincingly pleaded that the entire project and its investment relating to 20 MW power would be lost which would also be a blow to the philosophy of renewable energy sources and its encouragement by the State. No doubt the respondent also has effectively argued about the rights and obligations of both the parties which are governed only under PPA and the right of the respondent to terminate the contract which is so far not exercised. The learned counsel for the respondent further contended that in case synchronisation is ordered, it would be difficult for identifying the power generated and uploaded to the extent of balance 20MW out of 50 MW power since 30 MW is already synchronised to the grid.

17. It may be noted that the respondent has already synchronized 30 MW capacity out of 50 MW in two phases: 12.5 MW on 16.03.2018 and 17.5 MW on 12.04.2018 respectively, which was well beyond 31.10.2017 and also beyond the mandated period of 21 months as per Clause 10.5 (e) of the PPA. It is not clear why

the respondent is reluctant to synchronize the balance 20 MW on the same lines as it did 30 MW earlier.

18. As the entire 50 MW capacity got synchronized beyond the 21 months' period and there is no material evidence to show that the respondent has issued any notice of termination, pending disposal of the O.P., an interim order has to be given for the synchronisation of the project.

19. Under these circumstances, there shall be an interim direction to the respondent No. 1 to synchronise the balance 20 MW solar power to the grid pending disposal of O. P.

This order is corrected and signed on this the 20th day of August, 2018.

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**