



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

**5<sup>th</sup> Floor, Singareni Bhavan Lakdikapul Hyderabad 500004**

O. P. No. 31 of 2018

Dated: 28.09.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Mythrah Adarsh Power Private Limited,  
Regd. Office: 8001, 8<sup>th</sup> 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, Waranal – 506 001.
3. The Special Chief Secretary, Energy Department  
Government of Telangana, Telangana Secretariat,  
Hyderabad.

...Respondents.

This petition came up for hearing on 21-07-2018 and 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 seeking a declaration that no approval is required and no amendment of PPA for extension of SCOD is required which is covered by the impact of Force Majeure conditions as acknowledged by the GOTS and DISCOMS in accordance with Article 9 of PPA and give effect to the decision of GOTS extending SCOD to the Projects by 274 days due to force majeure events with the following material allegations:

(i) The TSSPDCL on behalf of TSDISCOMS floated tender for procurement of 2000 MW solar power through e-procurement platform as per the directions of the Energy Department, GoTS, Hyderabad. In the tender process, the petitioner was a successful bidder through open competitive bidding process to setup the solar photovoltaic power project of 15 MW capacity at Chegunta SS, Medak District Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 23-02-2016 between the petitioner and the respondent. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 12 months from the date of PPA and achieve the Commercial Operation Date (COD) by 22-02-2017.

(ii) After signing PPA, certain unforeseen events and circumstances delayed the development and setting up of all solar power projects across the state of Telangana. These events are force majeure in terms of Article 9 of PPA. During the year, 2016 the Government of the State of Telangana initiated re-organisation of the districts and formation of new districts and there was utter confusion in the offices of the revenue authorities regarding jurisdiction of villages, Mandals etc. The authorities took time to reorganise the records and related documents in the new Mandal headquarter, which resulted in delay in Acquisition of land and further processing of conversion procedures for the project lands. Further, Sada bainamas prevented expeditious acquisition of land because before being transferred, the sada bainamas needed regularisation which took time.

(iii) The second major cause for delay is demonetization of high value currency by the central government, which resulted in shortage of cash and difficulties in bank transactions. The vendors / sub-contractors could not pay rents for machinery and labour charges and faced severe setbacks due to

limited resources which had an adverse impact in the progress of the work. The introduction of GST from 01.07.2017 by the Central Government created ambiguities in the tax rates, delay in supply of material and services at the project site. Thus, the delay caused due to various factors narrated above were beyond the control of the petitioner and they could not be regulated or controlled and the petitioner suffered badly in the process.

(iv) The Government policy of non-allotment of government land for setting up of power projects, further the projects of government like Mission Bhagiratha, Mission Kakatiya and Project Kaleshwaram caused the farmers not to part with their lands which also affected acquisition of land for the solar power project.

(v) The petitioner and others faced issues on the supply front from the module manufacturers like increase in internal targets fixed by the Government of China for the year 2017, reduction in anti-dumping duty by the European Union and exponential purchases by the United States based IPPs lead to delay in supply of modules which also resulted in increase in capital cost due to sourcing of the modules from alternate suppliers. Further, there was an issue regarding module reclassification by the Government of India relating to variable GST. Imposition of anti-dumping duty on steel by the GOI against imports from China, Japan, Korea, Ukraine etc., not only imposed heavy burden on the petitioner but also additional cost.

(vi) Incessant rains in the months of June 2017 till October 2017 resulted in flooding of the project site, idling of labour and equipment hampering the construction work. Added to this, demonetisation lead to shortage of cash and requirement of paying labour in cash on daily basis affected the progress of the work.

(vii) Article 9 of PPA deals with various circumstances which constitute non-political events and direct political events under the force majeure clause. The petitioner suffered due to both direct political and non-political events. Article 9.2 of PPA permits delay in the COD owing to force majeure events or till such event of default is rectified whichever is earlier up to a maximum period of 12 months and therefore, the petitioner has a genuine cause for extension of the SCOD.

(viii) The GOTS on representation of the solar power producers regarding force majeure events extended SCOD up to 30.06.2017 by letter dated 29.06.2017 and directed the TSDISCOMS to take further action. Further, by letter dated 23.08.2017, GOTS after careful consideration of force majeure events, extended SCOD up to 31.10.2017. The Commission by way of letter dated 11.01.2018 directed the TSDISCOMS to allow synchronisation of all solar power projects which have set up their projects and file completion certificates by taking undertakings under the format provided by the Commission.

(ix) The SCOD shall be deferred in case of delay on account of force majeure events as per Article 9.2 of PPA and the petitioner is entitled to such deferment for 274 days.

2. The respondent through its Chief General Manager (IPC & RAC), TSSPDCL, filed counter-affidavit with the following material allegations:

(i) The petitioner has entered into PPA with the respondent on 23.02.2016 to set up 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV Chegunta SS at 33KV voltage level at a tariff at Rs.5.7249 per unit. As per the terms of the PPA, the petitioner has to commission the project within 12 months from the effective date of signing of PPA i.e., 22.02.2017. The actual commercial operation date (COD) of the project is 22.11.2017 i.e., with a delay of 274 days.

(ii) As per Article 6 of the PPA, the petitioner had to obtain all consent, clearances and permits required for supply of power to the respondent and procure land for setting up the project at least at 4 acres per MW in the name of the petitioner within 6 months at its own cost and risk, from the date of signing of the PPA. In fact, the Districts Reorganisation in the State of Telangana and demonetisation of high value currency in the country have occurred post scheduled date (i.e., 22.08.2016) to obtain necessary approvals and to procure land for the said project and therefore, the contention of the petitioner on this aspect is not tenable.

(iii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioners attempt at arbitrarily declaring an event or circumstance as force majeure event cannot be termed as Force Majeure.

(iv) As per Article 3.2 of PPA, it is the petitioner alone which is responsible for executing inter connection facilities for power evacuation from the proposed solar power project to the grid SS at its own cost. The respondent is not responsible for getting permissions or sanctions from the government authorities and the government would not recommend to any department for the grant of permission / sanction for the solar power project as per para 4 of PPA and the petitioner on its own should obtain these permissions and sanctions from the government.

(v) The CGM/TSSPDCL sanctioned evacuation arrangement of solar power from the proposed 15 MW project of the petitioner on 24.06.2017 and the SE / OP / Medak / TSSPDCL submitted the work completion report vide letter dated 13.11.2017 for the 15MW project with details of erection of solar PV modules and installation of ABT energy meters. CE(SLDC & Telecom) vide letter dated 08.11.2017 had confirmed the real time data of 15 MW project connecting at 132 / 33KV Chegunta SS at 33 KV level is integrated to SLDC on 06.11.2017.

(vi) The CGM (IPC & RAC) vide letter dated 18.11.2017 issued instructions to SE / OP/Medak to synchronise the project duly following the department procedure in vogue. In furtherance, thereof the project was synchronised to the grid on 22.11.2017.

(vii) It is further stated that the Government of Telangana State (GoTS), Energy Department, through a letter dated 29-06-2017 gave extension for SCOD on representation up to 30-06-2017 to the solar power projects within the state, who have concluded the PPAs with TS DISCOMS, without any penalty duly following the requirement under CEA and TSTRANSCO guidelines. The Commission had approved the extension of SCOD up to 30-06-2017 by its letter dated 18.08.2017 for the solar power projects of competitive bidding in the year 2015 with a condition to re-fix the tariff and also with a direction to the respondent to file a petition for amending the PPAs in respect of penalties and re-fixation of the tariff. The GOTS in its letter dated 23.08.2017 has issued extension of four additional months relating to SCOD up to 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

3. The petitioner filed rejoinder with the following additional material averments:
- (i) The petitioner attributed to financing agreements which depended on demonstration of ownership of land which was delayed due to issues relating to acquisition and as a result, there was a delay in processing of loans by the banks. There was delay in construction of the transmission line. There was a delay in grant of approval for evacuation scheme. The petitioner requested TSSPDCL on 07.03.2017 seeking approval of scheme for evacuation which came by way of letter dated 24.06.2017 from the CGM/ Commercial. Thus, there is a delay of 110 days in grant of evacuation scheme approval by the respondent.
  - (ii) There was a delay regarding ROW issues affecting erection of transmission line. The transmission line passes through a railway crossing (Mirzapally and Ch. Shankarampet near WDR Railway Station) and NH 44 between its pooling substation and Chegunta SS. The TSSPDCL directed the petitioner to erect 2 nos. of M+9 type towers/lay 3Cx400 Sq.mm underground cable at the railway crossing for which necessary permission had to be obtained by the respondent from the railway authorities, erect 2 nos. M+9 type towers at the NH44 crossing for which necessary permission should be obtained by the respondent from NHAI. There was delay in TSSPDCL communicating the approval to the petitioner, by way of letters dated 01.07.2017, 16.08.2017 and 30.10.2017 the petitioner requested the respondent to expedite the process and procure approvals at the earliest. The petitioner completed laying UG cable and informed the respondent by letter dated 06.11.2017 to issue final charging approval at the earliest which was issued for energising the UG cable by way of letter dated 10.11.2017. The delay of 140 days in grant of approvals is not attributable to the petitioner.
  - (iii) Despite the generic as well as aforesaid project-specific force majeure events which affected the project and resulted in a cumulative delay of 274 days, the project was ready for synchronisation on 22.11.2017.
  - (iv) Due to introduction of GST which brought fundamental structural changes, there was a slowdown in the manufacturing and service industry across the country from July 2017 to September 2017. The suppliers/contractors delayed their contracts due to lack of clarity on tax structure and have to reissue purchase orders to align with GST regime. There was a confusion in

the certificate for concessional customs duty which was kept on hold from June 2017 relating to import of solar modules. The project was ready for synchronisation on 22.11.2017. The petitioner is able to establish delay of 111 days due to pass book circular, 42 days due to DR circular, 110 days in evacuation scheme approval and 140 days delay due to ROW issues / railway approval issues totalling to 403 days which are force majeure events. The petitioner is entitled to extension of SCOD of 274 days as per Article 9 of PPA.

4. I heard the arguments of both the counsel for the petitioner and counsel for the respondent.

5. The point for determination is whether the petitioner is entitled to condonation of delay of 274 days in achieving SCOD by 22-11-2017 instead of 22-02-2017 as per terms of PPA signed on 23-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 15 MW to be connected to 132 / 33 kV Chegunta SS, at 33 KV voltage level. The petitioner has entered into PPA with the respondent on 23-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 12 months from its date. The CGM / TSSPDCL sanctioned evacuation arrangement of solar power from the proposed 15MW plant on 24.06.2017. The SE / Op / Medak / TSSPDCL has submitted the work completion report through letter dated 13.11.2017 with the details of erection of solar PV modules and installation of ABT energy meters. The CE (SLDC & Telecom) vide letter dated 08.11.2017 had confirmed the real time data of the project connecting at 132 / 33 KV Chegunta SS at 33 KV level integrated to SLDC on 06.11.2017.

7. The Government of Telangana (GoTS), Energy Department gave extension of SCOD up to 30-06-2017 to the solar power projects in the state, who have concluded PPAs with TSDISCOMs without any penalty by following all the technical requirements under CEA and TSTRANSCO guidelines. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of the State Government for extension of SCOD up to 30-06-2017 without any penalty, after examining the merits

of the matter. Further, in continuation to its letter dated 29-06-2017, the GOTS by letter dated 23.08.2017 has issued extension of further four additional months relating to SCOD up to 31.10.2017 to the solar power projects in the State, who have participated in the bidding 2015. Though the Government extended SCOD up to 31-10-2017, the Commission did not accede to the request of the DISCOM and instead took a view that individual case has to be examined as to why extension is required based on the merits. It was suggested that individual generators will move the Commission with a proper petition for condonation of delay and extension of SCOD. The Licensees were allowed to synchronise the projects completed in all respects by taking an undertaking from individual developer that they will abide by the decision of the Commission on respective projects.

8. The petitioner pleaded delay due to re-organisation of districts, the confusion in the offices of the revenue authorities, difficulty in cash flow, bank transactions and difficulties in procuring labour to carry out labour work. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., ROW issues relating to laying of UG cables at two railway crossings, issues relating to acquisition of land, which are beyond its control and which resulted in delay of 274 days in reaching the SCOD. The respondent, on the other hand, contended that the issues as force majeure pleaded by the petitioner are not force majeure events and the petitioner is not entitled to such benefit and that the reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA, a perusal of it makes it clear.

9. The detailed examination of the pleadings and information filed by the applicant would drive home the point that the petitioner faced certain hurdles like delays in land acquisition for the project, delay in granting approval for laying of UG cable across the railway line, labour mobilization for execution of site works and delay in granting approvals from the TSTRANSCO and TSSPDCL 24-06-2017. The synchronisation of 15 MW project was achieved on 22-11-2017.

10. Few incidents / facts mentioned by the petitioner have some force to treat them as non-political events, which included labour difficulties mentioned in Article 9.1.(b) (i) as one of the force majeure events. Further, Article 9.1(a) clearly mentions that if the *“events and circumstances are not within the affected party’s reasonable*

*control and were not reasonably foreseeable and the effects of which the affected party could not have prevented by prudent utility practices or, in the case of construction activities, by the exercise of reasonable skill and care. Any events or circumstances meeting the description of force majeure which have the same effect upon the performance of any of the solar power project set up in accordance with solar policy announced by GOTS under the competitive bidding route and which therefore materially and adversely affect the ability of the project or, as the case may be the DISCOM to perform its obligations hereunder, shall constitute force majeure with respect of the solar power developer or the DISCOM, respectively'* which clearly encompasses the reasons given by the petitioner for a part of the delay of 274 days as events termed as force majeure.

11. Thus, it is clear from the material on record that extension of SCOD by the GOTS through letter dated 23.8.2017 of Energy department is in continuation of the SCOD granted up to 30-06-2017 based on reasons. The Commission concurs with the extension of SCOD up to 31-10-2017 and it has to be applied to the petitioner's case. The contention of the respondent that the events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

12. In view of the aforementioned reasons, the delay of 252 days as pleaded by the petitioner is liable to be condoned only up to 31.10.2017. However, the project was complete in all respects and it was synchronised with the grid of the respondent on 22.11.2017, with a delay of 22 days beyond the permitted and extended SCOD, which invites penalty as per clause 10.5 of the PPÄ. The point is answered accordingly.

13. The delay of 252 days in reaching the SCOD of 15 MW up to 31-10-2017 as concurred by the Commission is condoned. However, the project was synchronised with the grid on 22.11.2017 which is a fait accompli achieved by the petitioner at the hands of the respondent. Thus, there is a delay of twenty two days in achieving SCOD beyond the extended timeline of 31.10.2017, for which the petitioner is liable to pay the penalty as per Article 10.5 of PPA. The petition is allowed accordingly on the same tariff as approved by the Commission. The respondent No. 1 is directed to file a copy of the amended PPA with the revised date of commissioning.

14. The petitioner is directed to pay penalty for twenty two days as per Article 10.5 of PPA.

***This order is corrected and signed on this 28<sup>th</sup> day of September 2018.***

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