



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

O. P. No. 43 of 2018

&

I.A. No. 21 of 2018

Dated 25.07.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Renew Saur Shakti Private Limited,
(formerly M/s. Surya Prakash Urja Bhoomi Private Limited)
138, Ansal Chamber-2, Bikaji Cama Place,
New Delhi – 110 066.

... Petitioner.

AND

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

...Respondent.

This petition came up for hearing on 18.06.2018. Ms. Swapna Seshadri, Advocate for the petitioner and Sri Y. Rama Rao, standing counsel for the respondent along with Ms.Pravallika, Advocate appeared on 18.06.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sec.86 (1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 9 days with the following material allegations:

- (i) The TSSPDCL floated tender for procurement of 2000 MW solar power through e-procurement platform on behalf of Telangana State Electricity Distribution Companies 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 30 MW capacity to be connected to 132/33 kV Mulkanoor Sub Station, Warangal Urban District (erstwhile Karimnagar District), Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 03-03-2016 between the petitioner and the respondent. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 15 months from the date of PPA and achieve the Commercial Operation Date (COD) i.e., by 03.06.2017. The project was synchronised on 11.06.2017 to the respondent company.

(ii) The learned counsel for the petitioner submitted that during the year, 2016 the Government of the State of Telangana initiated re-organisation of the districts and there was confusion in the revenue offices regarding the jurisdiction of villages, mandals, which resulted in delay in processing revenue records, record of rights, Encumbrance Certificates etc., Further, introduction of demonetization of high value currency by the central government caused panic situation and shortage of currency. Land acquisition came to a complete stand still. Construction activities at the project site was also delayed with daily wage labourers unwilling to work due to currency crisis. There was unprecedented rainfall causing disruption in the project work. The implementation of GST with the State government taking time to constitute the GST council affected the project work. Owing to these reasons, the petitioner could not complete the obligations under PPA within the time granted. The petitioner claimed force majeure events alleging that they have prevented it from completing the obligations. The force majeure events materially affected the petitioner in performing the obligations under the PPA. The force majeure events are covered by Article 9 of PPA and the delay under this head deserves to be condoned.

(iii) The applicant stated that as per the terms of PPA, the petitioner was to make the project operational within 15 months from the date of PPA (Commercial Operation Date), as the project was connected to 132/33 KV level. The project was synchronised to the Telangana State Northern Power Distribution Company Ltd on 11.06.2017 with a delay of 9 days with date of SCOD being 03.06.2017.

2. The petitioner is seeking condonation of the 9 days delay in achieving SCOD within 15 months from the date of PPA and is relying on Article 9.2 of PPA, which expressly provides for extension of period of SCOD in the event of Force Majeure events. Under Article 9.2 of the PPA, Force Majeure events may permit extension of time up to a maximum period of 12 months' to rectify the defaults. The petitioner is thus seeking extension of time for 9 days in achieving SCOD as per the terms of the PPA.

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

- (i) The counsel for respondent argued that the petitioner has entered into PPA with the respondent on 03.03.2016 to set up 30 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 132 / 33 KV Mulkanoor SS at 132 KV voltage level with tariff at Rs.5.5949 per unit. As per the terms of the PPA, the petitioner has to commission the project within 15 months from the effective date of signing of PPA i.e., 03.03.2016. The actual commercial operation date (COD) of the project is 11.06.2017 i.e., with a delay of 9 days in commissioning the SCOD. The total delay is 9 days inviting penalty of Rs.1.80 lakhs as per clause 10.5 of PPA with performance bank guarantee to be encashed.
- (ii) It was further stated that, 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 the land for setting up of 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 demonetization of high value currency in the country have occurred post scheduled date (i.e., 02.09.2016) 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. The SCOD as per PPA is 02.06.2017 and the petitioner made a request for synchronisation on 19.01.2017 for 15MW and on 28.02.2017 for 15MW. The CGM(IPC&RAC) through letters dated 03.02.2017 & 04.03.2017 has issued instructions to SE/OMC / Karimnagar to synchronise

the 15MW & 15MW solar power project at 132/33KV Mulkanoor SS, Warangal Urban district (erstwhile Karimnagar district) by duly following the procedure in vogue. Accordingly, the project was synchronised in a phased manner to the grid on 8MW on 14.02.2017, 10MW on 04.03.2017, 6MW on 30.03.2017, 4.5MW on 30.05.2017 and balance 1.5MW on 11.06.2017. The petitioner has synchronised 28.5MW out of 30MW of the project by 30.05.2017 i.e., 3 days prior to SCOD. Though all the installations were completed well within the SCOD, the petitioner could not synchronise his plant for the total capacity within the SCOD. Only 1.5MW was delayed for 9 days which is not due to the reasons given by the petitioner. Further, the petitioner has not issued any force majeure notice to the respondent.

- (iii) It was argued that the allegations made regarding force majeure events by the petitioner are not such events and they do not satisfy the terms of Article 9 of PPA. The petitioner cannot arbitrarily claim any event or circumstance as force majeure without there being any force majeure event as noted in Article 9 of PPA.
- (iv) 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, which 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 for the solar power projects of competitive bidding of 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.

4. The petitioner filed a rejoinder stating that for the reasons beyond the control of the petitioner, the delay of 9 days occurred in reaching the SCOD relating to 1.5MW out of the 30MW and the project was totally synchronised on 11.06.2017. It is to be noted that 28.5MW project was synchronised by 30.05.2017 before the date of SCOD. Due to heavy rainfall coupled with other factors there was a slight delay in the construction of the project. The GoTS by letter dated 29.06.2017 had extended the SCOD without any penalty upto 30.06.2017. The Commission by way of order

dated 18.08.2017 accorded in principle approval for extending SCOD of all solar power projects to 30.06.2017.

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

6. The point for determination is whether the petitioner is entitled to condonation of delay of 9 days in achieving SCOD by 11-06-2017 instead of 02-06-2017 initially planned as per terms of the PPA?

7. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 30 MW to be connected to 132 /33kV Mulkanoor SS Warangal Urban District (erstwhile Karimnagar Dist). The petitioner has entered into PPA with the respondent on 03-03-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from the date of PPA. The project work was completed on 31.01.2017 and on the basis of the request of the petitioner for synchronisation by letters dated 19.01.2017 & 28.02.2017 for 15MW each, the CGM(IPC&RAC) has issued instructions to SE/OMC/Karimnagar vide letters dated 03.02.2017 & 04.03.2017 to synchronise 15 MW each solar Power Plant of the petitioner at 132/33KV Mulkanoor SS, Warangal Urban District (erstwhile Karimnagar district) duly following the procedure in vogue. Consequently, the project was synchronised in a phased manner: 8MW on 14.02.2017, 10MW on 04.03.2017, 6MW on 30.03.2017, 4.5MW on 30.05.2017 and balance 1.5MW on 11.06.2017 to the grid.

8. The respondent admitted the claim of the petitioner that the Government of Telangana (GoTS), Energy Department gave extension of SCOD upto 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, which has been endorsed in principle by this Commission vide letter dated 18.08.2017 after considering the relevant facts leading to Force Majeure events.

9. The detailed examination of pleadings and information furnished drive home the point that the petitioner faced certain hurdles in completing the project which led to the delay of 9 days in execution of works to meet SCOD. Because of this delay, the last phase of 1.5 MW the project was synchronised on 11-06-2017 instead of

02.06.2017. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of state government for extension of SCOD upto 30-06-2017 without any penalty after examining the merits of the matter. The respondent has admitted these facts in its counter affidavit. Considering the proposal of GOTS and concurrence of this Commission for the extension of SCOD upto 30-06-2017 without any penalty, delay of 9 days in the present case has to be condoned.

10. It is clear from the material on record that the Commission vide letter dated 18.08.2017 has approved in principle the extension of SCOD upto 30.06.2017 after examining the merits of the matter and the respondent has admitted the fact. The present project was synchronised with the grid in this case finally on 11.06.2017 well before the extended time line of 30.06.2017 concurred by the Commission. Thus, the delay of 9 days as pleaded by the petitioner is no longer an issue in this case since the SCOD stood extended upto 30.06.2017 by which date, the project was completed in all respects by synchronisation with the grid of the respondent on 11.06.2017, thus fulfilling the terms of the PPÄ. The point is answered accordingly.

11. The delay of 9 days in reaching SCOD by the petitioner on 11.06.2017 instead of 02-06-2017 as per PPA is condoned on the same tariff as approved by the Commission. The petition is allowed. The respondent is directed to file a copy of the amended PPA with the revised date of commissioning. The I. A. stands disposed of in terms of the above orders.

This order is corrected and signed on this the 25th day of July, 2018.

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