



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 11 of 2018

Dated 13.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. ACME Nizamabad Solar Energy Private Limited
Plot.No.152, Sector 44, Gurgaon – 122 002.

... Petitioner.

AND

1. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
3. Transmission Corporation of Telangana Limited
Room No. 628, 6th Floor, Vidyut Soudha Building,
Khairatabad, Hyderabad, Telangana 500 004.

... Respondents.

This petition came up for hearing on 17.05.2018 & 20.06.2018. Ms. Puja Priyadarshini, Advocate representing Sri. Hemant Sahai, Senior Counsel for the petitioner along with Sri Mast Ram Deswal, Assistant General Manager (Legal) of the petitioner appeared on 17.05.2018 and Sri. Hemant Sahai, Senior Counsel for the petitioner along with Ms. Puja Priyadarshini, Advocate appeared on 20-06-2018. Sri Y.Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate appeared on 17.05.2018 and 20-06-2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sections 86(1) (f) and 86(1) (k) of the Electricity Act, 2003 seeking extension of SCOD by 120 days 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 50 MW capacity to be connected to 220/132 kV Nirmal Sub Station, Adilabad District, Telangana for sale to DISCOM at a tariff of Rs.5.5949 per unit. Thereafter, a Power Purchase Agreement (PPA) was executed on 26-02-2016 between the petitioner and the respondent. The petitioner furnished performance Bank guarantee at the rate agreed as a guarantee for the contracted capacity. 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) by 25-05-2017, as the project was connected to the 220 / 132 KV level. The petitioner executed interconnection facilities for power evacuation from the project to the grid sub-station. The project was also synchronised to the respondent / TSTRANSCO network with the interconnection point and complied with the connectivity conditions specified in the Grid code in force.

(ii) 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 difficulty faced by the petitioner. The shifting of revenue records, change of jurisdictions resulted in re-negotiation/negation of land sale agreements etc. There was upgradation of registration and revenue department, those land owners who were willing to offer land for development of solar power project changed their decisions. There were ROW issues, on account of severe congestion at the connecting bay end, the petitioner was unable to erect the last transmission tower for the transmission line connecting the project to 220/132 kV Nirmal SS (Transmission line). In the meanwhile, the third respondent through letter dated 29-08-2017, accorded approval to the petitioner for using the second arm of the last transmission tower erected by

M/s.Divine Solar. By the time the approval was received there was a delay of 103 days for the SCOD.

(iii) The petitioner alleged unprecedented rains and massive storm from 21.09.2016 to 28.09.2016, which resulted in flooding and substantial damage to the roads connecting the project site resulting in stoppage of work with idle equipment and labour. Added to this problem, the petitioner suffered due to demonetisation of high value currency by the Government hampering sale of lands, payment of charges to the labourers and transporters and vendors/sub-contractors, rents to the machinery, which further delayed the execution of the project and implementation of project timelines.

(iv) Article 9 of the PPA, expressly provide that the petitioner shall be granted extension of period for fulfilment of SCOD in the event of occurrence of any force majeure event. 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 upto a maximum period of 12 months and therefore, the petitioner has a genuine cause for retrospectively providing extension of the SCOD. The petitioner issued force majeure notices dt. 28-09-2016, 22-02-2017, 28-08-2017, 04-04-2017 and 10-04-2017 to the Respondents which invited response from R1, Dt.23-03-2017.

(v) In spite of the obstacles, the petitioner completed the synchronisation of the entire 50MW solar PV project and commenced the commercial operations on 15-09-2017. The petitioner came to know that the Energy Department of GoTS through 29-06-2017 extended SCOD of all solar power projects up to 30-06-2017 without penalties and directed the TSDISCOMs to take further action accordingly. The Commission by way of order dated 18-08-2017 accorded in principal approval for extending SCOD for all solar power projects upto 30-06-2017. The Energy Department, GoTS, through letter dated 23-08-2017 after careful consideration and acceptance of force majeure events, further extended SCOD upto 31-10-2017 and directed the TSDISCOMs to take further action, at the same tariff through letter dated 04-12-2017 addressed to the respondents.

(vi) As requested by the respondent, the petitioner filed a petition seeking extension of SCOD of 120 days, the actual delay in achieving the SCOD. The petitioner sought orders extending SCOD for 120 days with retrospective effect due to force majeure events.

2. The 1st respondent through its Chief General Manager (IPC & RAC) Warangal, filed counter-affidavit with the following material allegations:

- (i) The petitioner has entered into PPA with the respondent on 26.02.2016 to set up 50 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 220/132 KV Nirmal SS at 132KV 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., 25.05.2017. The actual commercial operation date (COD) of the project is 15-09-2017 i.e., with a delay of 113 days. This delay of 113 days is inviting penalty of Rs.6.78 crores as per clause 10.5 of PPA.
- (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 the land for setting up of the project atleast 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. Infact, the Districts Reorganisation in the State of Telangana and demonetisation of high value currency in the country have occurred post scheduled date (i.e., 25-08-2016) 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. The SCOD as per PPA is 25-05-2017 and whereas GST effective date is 01-07-2017 which is after the SCOD and therefore GST excuse is not applicable to the present project.
- (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, even though non-political events are not limited to any storm, flood, drought, lightning, Earthquake or other calamities and indirect political events such as sabotage, blockades, civil disobedience and direct political

events such as discriminatory delay, modifications, refusal to grant or renew or any revocation of any required permit or change in law are mentioned in Article 9 of PPA.

- (iv) 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 upto 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015. The same was appraised to the Commission through communication dated 06-09-2017. The Commission through letter dated 31-10-2017 reported that the decision of Hon'ble Supreme Court in Civil Appeal no.6399 of 2016 (Gujarat Urja Vikas Nigam Ltd Vs. Solar Semi-conductor Power company (India) Pvt. Ltd & Others) observed that for extension of time each case has to be examined with reference to the terms of PPA by following principles of natural justice on application with reasons for delay and no general order can be issued for extension of time as such the present application has been filed by the petitioner.

3. The petitioner filed a rejoinder with the following material allegations:
- (i) For reasons beyond the control of the petitioner, the actual CoD of the project was achieved on 11-09-2017 (10 MW with a delay of 109 days), 13-09-2017 (20 MW with a delay of 111 days) and 15-09-2017 (20 MW with a delay of 113 days). The primary contributor for the said delay was ROW issues due to space congestion near the connecting bay end. Nirmal Town is surrounded by forest lands on three sides and evacuation of power from the project can only be done through an available narrow corridor which accommodates transmission towers and lines of the petitioner apart from TSTRANSCO and M/s.Divine Solar. Recognizing the genuine difficulties being faced by the petitioner and the future expansion plans of TSTRANSCO, the SE / OMC, Adilabad, submitted a detailed report on 21-08-2017 proposing that the petitioner be allowed to use the second / spare arm of M/s. Divine

Solar's terminal transmission tower and based on this report, the TSTRANSCO allowed the petitioner to use the second/spare arm of M/s.Divine Solar terminal tower. Thus, the progress of the project was stalled for almost 4 months i.e., 121 days (May, 2017 to 29-08-2017) for the reasons beyond the control of the petitioner. Further, the progress of the construction was stalled due to heavy rainfall from 21-09-2016 to 28-09-2016 hampering construction work, submerging the project line. Copies of the letters from the suppliers/vendors requesting extension of time lines by about 15 days, a letter dated 29-12-2016 from one M/s. Lakshmi Transcon for extension of time by 49 days on account of demonetisation apart from document relating district re-organisation are filed.

(ii) Article 9.2 permits extension of SCOD on a day for day basis subject to a maximum period of 12 months to permit the solar power developers to overcome the effects of the force majeure events. Since, the GOTS has extended SCOD upto 30-06-2017 without any penalties and also upto 31-10-2017, the petitioner is entitled to invoke force majeure events.

(iii) Since, the COD of the project was achieved in phases on 11-09-2017 (10 MW), 13-09-2017 (20 MW) and 15-09-2017 (20 MW), the corresponding delay is 109 days, 111 days and 113 days respectively which is liable to be condoned.

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 120 days in achieving SCOD by 25-05-2017 as per terms of PPA signed on 26-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 50 MW to be connected to 220/132 kV Nirmal SS, Adilabad District for sale of entire capacity to TSNPDCL at a tariff of Rs.5.5949 per unit. The petitioner has entered into PPA with the respondent on 26-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from its date. The CGM (IPC&RAC), TSNPDCL through letter dated 07-09-2017 issued instructions to

SE / OMC / Adilabad to synchronize 50 MW Solar Power Project of the petitioner at 220/132 KV Nirmal SS, Adilabad District duly following the department procedure in vogue. The petitioner plant was synchronized in phases to the Grid: 10 MW on 11-09-2017, 20 MW on 13-09-2017 and 20 MW 15-09-2017.

7. 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. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of the 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, considering the proposal of the GOTS and concurrence of this Commission for the extension of SCOD upto 30-06-2017 without any penalty.

8. in continuation to letter dated 29-06-2017 on the same subject, the GOTS in its letter dated 23-08-2017 has issued extension of further four additional months relating to SCOD upto 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 the extension of SCOD. However, 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.

9. Detailed examination of the pleadings of the petitioner and information placed on record reveals that the petitioner face certain difficulties in implementation of the subject project. The petitioner pleaded that project site is surrounded by forest land on all three sides and evacuation system could be built only through a narrow corridor available. Another project developer, Divine Solar has already erected a transmission line for evacuation of power from its project through that corridor. As a result of this there was not enough space to build second corridor. After prolonged consultation and discussion with the TSTRANSCO, the project developer was

permitted to use the second arm of the same transmission line built by Divine Solar project vide its letter dated 29-08-2017 well beyond the scheduled date of synchronisation of 25-05-2017 as per PPA. This delay is apart from the delays caused due to re-organisation of districts, the confusion in the offices of the revenue authorities, change of circle rates causing land owners to re-negotiate / renege on land sale agreements, non-availability of revenue records, demonetisation resulting in difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work, which are beyond his control and which resulted in delay of 120 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.

10. The incidents 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 the delay of 120 days as events termed as force majeure.

11. The delay caused due to the events narrated by the petitioner and not specifically contradicted by the respondent certainly entitles the petitioner to extension of SCOD. Thus, the extension of SCOD by the GOTS through letter dated 23.8.2017 of Energy department is based on reasons and the Commission concurs with the extension of SCOD. 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 as pleaded by the petitioner is liable to be condoned apart from the fact that the SCOD finally stood extended upto 31-10-2017, by which date the project was completed in all respects by synchronisation with the grid of the respondent on 15-09-2017, thus fulfilling the terms of the PPA. The point is answered accordingly.

13. The delay of 120 days in the petitioner reaching SCOD in three phases: 10 MW on 11.09.2017; 20 MW on 13.09.2017 and 20 MW on 15.09.2017 instead of 25.05.2017 as per PPA is condoned. The petition is allowed 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.

This order is corrected and signed on this the 13th day of August, 2018.

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