



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

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

O. P. No. 16 of 2018

Dated 20.08.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between

M/s. Rewanchal Solar Power 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, 6<sup>th</sup> 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 86(1) (f) & 86 (1)(k) of the Electricity Act, 2003 seeking extension of SCOD by 165 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 15 MW capacity to be connected to 132/33 kV Jangaon SS at Warangal District, Telangana for sale to DISCOM at a tariff of Rs.5.7249 per unit. Thereafter, a Power Purchase Agreement (PPA) was executed on 26-02-2016 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 25.02.2017, as the project was connected to the 132/33KV level. The project was synchronised to the respondent's grid in phases: 5 MW on 24-03-2017; 5 MW on 23-06-2017 and; 5 MW on 09-08-2017.

(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 uncertainty in the offices of the revenue authorities regarding jurisdiction of villages, Mandals etc. This has slowed down the pace of site mobilisation and delayed handing over of site to the EPC contractor for setting up of the project.

(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. 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 third major cause for delay is unprecedented and incessant rains and massive storm from 21.09.2016 to 28.09.2016 which caused flooding of roads

and also at project site which lead to stoppage of work, idling of labour and equipment hampering the construction work.

(v) 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 GOTS by way of letter dated 29.06.2017, extended the SCOD of all solar power developers without any penalty upto 30.06.2017 and directed the TSDISCOMS to take further action accordingly. Further, the Commission by way of order dated 18.08.2017 after examining the merits of force majeure events narrated by the petitioner accorded in-principle approval for extending SCOD up to 30.06.2017. Further, Energy department, GOTS by way of letter dated 23.08.2017, after careful consideration of the representation of force majeure events extended SCOD of solar power projects up to 31.10.2017 and directed TSDISCOMS to take further action and extend SCOD.

(vi) In spite of the difficulties beyond his control, the petitioner completed the synchronisation of the entire 15 MW solar PV project and commenced the commercial operations on 09.08.2017 with a delay of 165 days.

2. The 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 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV Jangaon SS at 33KV voltage level with 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., 25.02.2017. The actual commercial operation date (COD) of the project is 09.08.2017 i.e., with a delay of 165 days. This delay of 165 days is inviting penalty of Rs.1.94 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 land for setting up 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. 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., 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 09.08.2017.

(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 project work was partly completed by 20.03.2017. On the petitioner's request through letter dated 21.03.2017 for synchronisation the CGM(IPC&RAC) through letter dated 23.03.2017 issued instructions to SE/OMC/Warangal to synchronise 5MW solar power project of the petitioner at 132/33 KV Janagaon SS, Warangal district duly following the department procedure in vogue and the 5MW of the project was synchronised to the grid on 24.03.2017. Further, 5MW was synchronised on 23.06.2017 and balance 5MW on 09.08.2017.

(iv) 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 upto 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

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 24-03-2017 (5MW with no delay), 23-06-2017 (5MW with a delay of 28 days) and 09-08-2017 (5 MW with a delay of 165 days). 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. Copy of the letter dated 03.10.2016 from the suppliers informing about the impact of incessant rain on the project is filed. The impact of demonetization was also on the construction activity of the project.
  - (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 up to 30-06-2017 without any penalties and also up to 31-10-2017, the petitioner is entitled to invoke force majeure events. Therefore, the delay of 165 days in getting 5MW project synchronised may 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 28 days in reaching SCOD to the extent of 5MW on 23.06.2017 and 165 days in achieving SCOD to the extent of 5MW on 09-08-2017 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 15 MW to be connected to /33KV132 kV Janagaon SS, Warangal District at 33KV voltage level. 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 12 months from its date. The project work was completed with the actual CoD of the

project achieved on 24-03-2017 (5MW with no delay), 23-06-2017 (5MW with a delay of 28 days) and 09-08-2017 (5 MW with a delay of 165 days).

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.

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 up to 31-10-2017 to the solar power projects in the State, who have participated in the bidding 2015. It is clear from the material on record that the extension of SCOD up to 31.10.2017 is in continuation of extension of SCOD up to 30.06.2017 by GOTS. 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 got delayed due to re-organisation of districts, the confusion in the offices of the revenue authorities, difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work. It is a fact that the subject project location was in Warangal District before re-organisation of districts and became part of Janagaon District after re-organisation. It is also a fact that the land acquisition process got significantly delayed with the issue of a circular dated 10-06-2016 from Chief Commissioner of Land Administration directing all the concerned revenue officials to stop issuance of

manual Pattadar passbooks which have no linkage with Telangana Land Records Management System (TLRMS). The circular also directed the revenue officials to issue online Pattadar passbooks (e-Passbooks) automatically generated from the TLRMS Portal. The process further got delayed because of the data updation process and huge pendency in issuance of e-passbooks from MeeSeva centres. The Chief Commissioner of Land Administration vide its circular dated 29-09-2016 acknowledging huge pendency in issuance of e-passbooks advised the revenue officials to opt for alternative methods and issue manual pattadar passbooks to bring down the level of pendency till on-line services gets ready. All such delays in acquiring land are attributable to the State Government agencies and which are beyond the control of the petitioner. It would have a cumulative effect in tying up finances from financial institutions and obtaining financial closure of the project. 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 the reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA.

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 165 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 up to 31.10.2017. 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 up to 31.10.2017. The project was completed in all respects by 09.08.2017, which is much before the agreed extended date of 31-10-2017. Total 15MW was synchronised with the grid of the respondent in phases: 5 MW on 24-03-2017; 5 MW on 23-06-2017 and; 5 MW on 09-08-2017. The point is answered accordingly.

13. The delay in reaching the SCOD up to 31.10.2017 (165 days) 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 20<sup>th</sup> day of August, 2018.***

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