



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 44 of 2018

&

I.A.No.22 of 2018

Dated 21.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Prathmesh Solarfarms Private Limited
Ground Floor, Plot No.44, Road No.2,
Sagar Society, Banjara Hills, Hyderabad – 500 034.

... Petitioner.

AND

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

...Respondent.

This petition came up for hearing on 18-06-2018 & 21-07-2018. Smt. Swapna Seshadri, Advocate for the petitioner appeared on 18-06-2018 & 21-07-2018. Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate appeared on 18-06-2018 & 21-07-2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Section 86(1) (b), 86(1) (e) & 86 (1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 115 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 in Mahaboobnagar Dist. Thereafter, a Power Purchase Agreement (PPA) was executed on 29-02-2016 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) by 28.05.2017.

(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. Further, there was change of revenue circle rates, causing land owners to re-negotiate / renege on land sale agreements, shifting of revenue records, non-availability of contiguous land parcels because the land owners were unwilling to sell their lands for development of projects also caused delay. Drought conditions near the project site which prevailed from March 2016 to May 2016 made the labour migrate to neighbouring states to make a living which is also a ground for delay 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. Land owners were unwilling to accept demand drafts for payment and wanted cash, encumbrances could not be cleared by the land owners for want of cash to settle the loans. 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 rains in the month of September 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. The damage was caused to approach roads which caused substantial delay in the process of land acquisition and construction works. The petitioner had no control over the event which lead to delay in the

commissioning of the project despite the difficulties, the petitioner has taken all possible measures to complete the project at the earliest.

(v) The fourth major cause for delay is that the petitioner did not receive the approvals in time from various authorities including the Directorate of Town & Country Planning, despite applying well in advance for the said approvals. The petitioner applied to the Director on 19.10.2016 and the approval was granted on 01.02.2017 and in the absence of such approval, the civil construction work could not be taken up. These delays are also beyond the control of the petitioner.

(vi) 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 extension of the SCOD.

(vii) The GOTS on representation extended SCOD for all solar power projects till 30.06.2017 without penalties through its letter dated 29.06.2017. The Commission through letter dated 18.08.2017 concurred with the extension of SCOD. The GOTS through its letter dated 23.08.2017 recognised the difficult circumstances the solar power generators faced and further extended SCOD for additional period of 4 months from 30.06.2017 to 31.10.2017. The Commission directed all developers to file a petition giving reasons for delay caused in the commissioning of projects and thus the present petition came to be filed.

(viii) The petitioner completed the synchronisation of the entire 50 MW solar PV project and commenced the commercial operations on 20.09.2017 with a delay of 115 days.

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

(i) The petitioner has entered into PPA with the respondent on 29.02.2016 to set up 50 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 220/132 kV Wanaparthy 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., 28.05.2017. The petitioner commissioned the 50MW solar power project to the grid on 20.09.2017 with a delay of 115 days against SCOD.

(ii) As per Article 6 of the PPA, the petitioner has 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 petitioner's attempt at arbitrarily declaring an event or circumstance as force majeure event cannot be termed as Force Majeure. The events such as land acquisition do not fall under force majeure clause and the petitioner is not justified in pleading delay on this pretext. The reasons cited by the petitioner are made only to avoid obligations under the PPA and to gain extension of time for SCOD on the pretext of alleged force majeure event.

(iv) The petitioner is responsible for executing the inter connection facilities for power evacuation from the proposed project to grid substation i.e., 220 / 132 kV Wanaparthy SS at its own cost. As per clause 3.2 of PPA the respondent is not responsible for getting permissions for sanction from the government authorities and it would not recommend to any department for the grant of permission / sanction for the solar power project. The petitioner on its own has to obtain permissions or sanctions from the government authorities for setting up the project.

(v) The SE / Op / Mahaboobnagar TSSPDCL submitted work completion report through letter dated 08.08.2017 for the proposed 50 MW plant with details of erection of solar PV modules and installation of ABT meters. The CE (SLDC & Telecom) vide letter dt.15.09.2017 had confirmed that the real time data of 50 MW solar power project of the petitioner connecting 220/132

kV Wanaparthy SS at 132 kV level as having been integrated to SLDC. On the instructions of CGM (IPC&RAC) through letter dated 16.09.2017, the SE / Op / Wanaparthy synchronised 50 MW project of the petitioner at Wanaparthy duly following the department procedure in vogue and accordingly the project was synchronised to the grid on 20.09.2017.

(vi) 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 of 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.

(vii) For 115 days delay in reaching SCOD, the petitioner is liable to pay penalty as per clause 10.5 of PPA.

3. The petitioner filed a rejoinder with the following material allegations:
For reasons beyond the control of the petitioner, the actual CoD of the project was achieved on 20.09.2017. There was a delay due to reorganisation of districts, heavy rainfall as also drought in the area which lead to non-availability of labour, demonetisation, delay in obtaining necessary statutory approvals which adversely affected the progress in the project work which contributed to the delay of 115 days in reaching the SCOD.
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 115 days in reaching SCOD by 20.09.2017 instead of 28-05-2017 of 50 MW as per the terms of PPA signed on 29-02-2016?

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 Wanaparthy SS, Mahaboobnagar District at 132 kV voltage level. The petitioner has entered into PPA with the respondent on 29-02-2016. 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 project work was completed as is clear from the work completion report issued by SE / Op / Mahaboobnagar through letter dated 08.08.2017. The date of SCOD as per PPA is 28.05.2017 and whereas the actual SCOD achieved is 20.09.2017 with a delay of 114 / 115 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 faced certain difficulties in implementation of the

subject project. The petitioner pleaded that delay due to re-organisation of districts, the confusion in the offices of the revenue authorities, difficulties in procuring labour to carry out labour work affected land acquisition, building of evacuation system and other related project works. The respondent on the other hand contended that the incidents pleaded by the petitioner are not force majeure events covered by Article 9.2 of PPA and it is not entitled to such benefit of extension of SCOD.

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. The petitioner has no control over the events leading to delay in commissioning of the project. Further, Article 9.1(a) of PPA 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 115 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. The mere denial of events claimed by the petitioner as having caused delay in reaching the SCOD as not force majeure events by the respondents is untenable since the petitioner had no control over the events. 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 apart from the fact that SCOD finally got extended up to 31.10.2017, by which date, the project was completed in all respects and total 50 MW was synchronised with the grid of the respondent by 20.09.2017. The point is answered accordingly.

13. The delay of 115 days in achieving the SCOD by 20.09.2017 instead of 28-05-2017 is condoned. The petition is allowed on the same tariff as approved by the Commission. The respondent is directed to file a copy of the amended PPA with the revised date of commissioning.

14. I.A. shall stand disposed of accordingly.

This order is corrected and signed on this the 21st day of August, 2018.

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