



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

O. P. No. 48 of 2018

Dated: 23.10.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Padmajiwadi Solar Pvt. Ltd
Regd. Office – 4th floor, Rectangle One, D-4,
Dist. Center, Saket, New Delhi – 110017.

... Petitioner.

AND

Northern Power Distribution Company of Telangana Limited,
H.No.2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Waranal – 506 001.

...Respondent.

This petition came up for hearing on 06.09.2018 and 29.09.2018. Sri. Tarun Johri, Advocate for the petitioner along with Sri. Pradeep Chauhan, Advocate appeared on 06.09.2018 and Sri Ankur Gupta, Advocate representing Sri Tarun Johri, Advocate for the petitioner appeared on 29.09.2018. Sri. Y. Rama Rao, standing counsel for the respondent along with Ms. M. Pravalika, Advocate appeared on 06.09.2018 and 29.09.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86(1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 176 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 10 MW capacity near 132/33 KV Padmajiwadi SS, Nizamabad reorganised as Kamareddy District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 01-03-2016 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.

(ii) After signing PPA, during July 2016 and March 2017, the petitioner was able to acquire land under various registered sale deeds. There was delay in land acquisition due to reorganisation of districts till the month of October 2016 and 2 months subsequently the construction of the project could not be started. Due to excessive rainfall there was delay in commissioning of project. The revenue officials engaged in the reorganisation of districts and were unavailable at the offices to support the land acquisition process. The petitioner requested the Principal Secretary of the State of Telangana not to encash the performance bank guarantee. The petitioner narrating force majeure events causing delays sought extension of SCOD by 120 days.

(iii) GOTS on considering force majeure events extended SCOD of solar power projects initially up to 30.06.2017 and later up to 31.10.2017.

(iv) The petitioner was informed by the respondent in the month of February 2018 that it would be invoking the performance bank guarantees submitted by the petitioner due to delay in commissioning of project beyond SCOD which is against the facts representing force majeure events.

(v) Article 10.5 of PPA is in the nature of penalty and it is against public policy / law which is liable to be read down / struck down by the Commission. The respondent has not sustained any loss / damage and therefore it is not entitled to encash performance bank guarantee. The respondent is also not entitled to liquidated damages.

(vi) The respondent invoked one of the bank guarantees in April 2017 and further orally informed the petitioner that it would invoke the remaining PBGs.

(vii) The SCOD may be extended by 176 days in commissioning of project in view of force majeure events and restrain the respondent from invoking PBGs and direct refund of already invoked PBG.

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 01.03.2016 to set up 10 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV Padmajiwadi 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., 28.02.2017 and the project of the petitioner was synchronised to the grid on 23.08.2017 with a delay of 176 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., 31.08.2016) 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.

(iv) The petitioner vide letter dated 10.11.2016 stated that it has completed the land acquisition and submitted registration documents made during July 2016. The Districts reorganisation in the state was notified on 11.10.2016 which is post procurement of land by the petitioner and therefore the delay occurred on account of districts reorganisation is not correct.

(v) As per Article 3.8.1 of PPA, the SPD shall give a notice in writing to the SLDC and DISCOM at least 15 days before the date on which it intends to synchronise the project to the grid. Based on the request of the petitioner dated 19.08.2017 for 10MW synchronisation on the same day, the CGM (IPC & RAC), vide letter dated 19.08.2017 issued instructions to SE/OMC /Nizamabad to synchronise 10MW project at 132/33 KV Padmajiwadi SS , Nizamabad duly following department procedure in vogue. The project was synchronised to the grid on 23.08.2017.

(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 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.

(vii) The petitioner is liable to pay a penalty of Rs.2.26 crores for the delay of 176 days in commissioning of the project as per Article 10.5 of PPA and appropriate orders may be passed.

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

4. The point for determination is whether the petitioner is entitled to condonation of delay of 176 days in achieving SCOD by 23-08-2017 instead of 28-02-2017 as per terms of PPA signed on 01-03-2016?

5. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 10 MW to be connected to 132 / 33 kV Padmajiwadi SS, at 33 KV voltage level. The petitioner has entered into PPA with the respondent on 01-03-2016. 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 petitioner claimed that due to delay in acquisition of land pursuant to the districts reorganisation and other reasons in execution of the project. The project was ultimately synchronised to the grid on 23.08.2017. Taking advantage of the delay of 176 days, the respondent invoked one performance bank guarantee with a threat that it would do so regarding the other PBGs.

6. 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.

7. A 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 etc., in achieving SCOD which has to be examined in the light of extension of SCOD granted by GOTS and concurred by the Commission.

8. 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 the delay of 176 days as events etc., termed as force majeure.

9. Thus, it is clear from the material on record that extension of SCOD by the GOTS by 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 too. The contention of the respondent that the events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

10. In view of the aforementioned reasons, the delay as pleaded by the petitioner is liable to be condoned up to 31.10.2017 for the reasons stated supra. However, the project was complete in all respects and it was synchronised with the grid of the respondent within the period of extended SCOD i.e., 31.10.2017. The petitioner achieved SCOD on 23.08.2017 which is well within the extended SCOD i.e., 31.10.2017. Thus, the petitioner is entitled to condonation of delay of 176 days in achieving SCOD. The point is answered accordingly.

11. In the result, the delay of 176 days in achieving SCOD is condoned. The invoking of performance bank guarantees by the respondent is set aside. The amount so realised shall be refunded to the petitioner. 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. No costs.

This order is corrected and signed on this 23rd day of October, 2018.

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

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