



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

O. P. No. 52 of 2018

&

I. A. No. 28 of 2018

Dated 29.10.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Gummadidala Solar Private Ltd.,
4th Floor, Rectangle one, D-4, Dist. Center,
Saket, New Delhi – 110 01

... 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 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. Pravallika 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 269 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 near Gummadidala, Medak District, Telangana for sale to DISCOM. 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 12 months from the date of PPA i.e. 28-02-2017. The project of the petitioner was synchronised to the grid on 23.11.2017 with a delay of 268 days.

(ii) After signing PPA, during July 2016 and March 2017, the petitioner was able to acquire land under various registered sale deeds for the purpose of the project. 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 and demonetisation there was delay in commissioning of the project. The revenue officials engaged in the reorganisation of districts 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. Based on the force majeure events causing delays, extension of SCOD may be granted.

(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 respondent in the month of April, 2017 appropriated a Bank guarantee. This appropriated amount has not been refunded to 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 SCOD may be extended by 269 days in commissioning of project in view of force majeure events and restrain the respondent from invoking other 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 29.02.2016 to set up 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132 / 33 KV Gummadidala SS at 33 KV 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. The project of the petitioner was synchronised to the grid on 23.11.2017 with a delay of 268 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, excessive rainfall and demonetisation of high value currency in the country have occurred post scheduled date (i.e., 28.08.2016) 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 SE / Op / Medak / TSSPDCL has submitted the work completion report vide letter dated 14.11.2017 for the proposed 15 MW solar project with the details of erection of solar PV modules and installation of ABT energy meters. The CE / SLDC & Telecom vide letter dated 17.11.2017 had confirmed the real time data of 15 MW solar project connecting at 132 / 33 KV Gummadidala SS at 33 KV level is integrated to SLDC on 14.11.2017.

(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. The CGM (IPC & RAC), vide letter dated 22.11.2017 has issued instructions to SE / OP / Medak to take necessary steps to synchronise 15 MW project at 132 / 33 KV Gummadidala SS, Medak Dist. duly following department procedure in vogue. The project was synchronised to the grid on 23.11.2017.

(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) In view of the delay in commissioning of the project, the respondent is entitled to invoke and encash performance bank guarantee and had encashed one PBG and it is also entitled to levy liquidated damages as per the PPA.

(vii) Appropriate orders may please 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 268 days in achieving SCOD by 23.11.2017 instead of 28.02.2017 as per terms of PPA signed on 29.02.2016?

5. 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 132 / 33 kV Gummadidala SS, at 33 KV voltage level. The petitioner had 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 12 months from its date. The petitioner claimed delay in acquisition of land pursuant to the districts reorganisation, demonetisation, excessive rainfall and other reasons in execution of the project. The project was synchronised to the grid on 23.11.2017. Taking advantage of the delay, the respondent invoked one performance bank guarantee which was not refunded to the petitioner.

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 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, demonetisation, excessive rainfall 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 some of the reasons given by the petitioner for the delay 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 some of 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 only 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 on 23.11.2017 with a delay of 23 days. The work completion was reported vide letter of SE/Op/Medak vide letter dated 14.11.2017 and ultimately the plant was synchronised to grid on 23.11.2017 after taking appropriate department steps. Thus, there is no delay on the part of the respondent in ordering synchronisation which is in tune with Article 3.8.1 of PPA which mandates 15 days advance notice for synchronisation of the project.

11. There is a further delay of 23 days in achieving SCOD by the petitioner in the present case. As per Article 10.5 of PPA, the DISCOM is entitled to encash such PBG if there is delay in achieving SCOD. For the delay of 23 days (beyond 31.10.2017), the Discom is entitled to take steps as per the terms of PPA. The record shows that the respondent had already invoked and encashed one performance bank guarantee on the ground of delay in achieving SCOD about which suitable orders are warranted. The point is answered accordingly.

12. In the result, the delay in achieving SCOD is condoned only up to 31.10.2017. There is further delay of 23 days in achieving the SCOD by the petitioner. The respondent may take appropriate steps commensurate with this delay of 23 days as per Article 10.5 of PPA by adjusting the amount already encashed and refunding the

excess amount, if any to the petitioner. The petition is allowed accordingly 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 of the project. No costs.

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13. In view of the disposal of main O.P., this I.A. is closed.

This order is corrected and signed on this 29th day of October, 2018.

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

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