



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

O. P. No. 55 of 2018

Dated 29.10.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Avighna Solarfarms Limited
Regd Office "Suzlon"5, Shrimali Society,
Near Shri Krishna complex, Navarangpura,
Ahmedabad – 380009.

... 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 S. Subba Reddy, Advocate for the petitioner, 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 122 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 connected to 132 / 33 KV Ramannapet SS, Nalgonda 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 has to make solar photovoltaic power project operational within 12 months from the date of PPA i.e. by 28-02-2017.

(ii) After signing PPA, the petitioner faced difficulties in acquisition of land due to reorganisation of districts. There was delay in procuring clearances, approvals from the state and local administration. There was delay in site mobilisation and handing over of the site to the contractors. As a result, there was a delay in completing the project beyond December 2016.

(iii) There was drought in the region in and around the project site. There was heavy rainfall during June 2016 to September 2016. The near flood situation impacted the project works and completion schedules which adversely affected the petitioner's land levelling works, approach roads and activities related to evacuation works. The petitioner had no control over the events leading to the delay in commissioning of the project.

(iv) The GOI ordered demonetisation of high value currency in the month of November 2016 withdrawing Rs.1000 and Rs.500 currency notes which affected primarily the daily wage workers who had no access to banking channels. The land acquisition, statutory permissions, logistics and mobilisation of labour force were seriously affected due to shortage of cash. The development activities were impacted during the relevant period.

(v) There was a delay in obtaining statutory approvals from government authorities. The petitioner sought extension of SCOD from 28.02.2017 to 28.08.2017.

(vi) As per Article 9 of PPA, the circumstances narrated supra delaying the project are force majeure events so also the natural calamities, delay in statutory approvals, reorganisation of districts qualify as direct political events impacting the completion of project which are force majeure events.

(vii) As per Article 6.5 (iv) & (v) of PPA, non-fulfilment of obligations under clause 6 can be condoned including inability to achieve SCOD within 12 months of PPA on the basis of force majeure events. As per Article 9.2 of PPA, delay due to force majeure events can be condoned up to a maximum period of 12 months to permit the petitioner to overcome the force majeure events or till such event of default is rectified. The petitioner has a genuine case for extension of SCOD.

(viii) In spite of force majeure events the petitioner was able to commission the project to the extent of 8MW on 30.04.2017 and 7MW on 30.06.2017 with a delay of 122 days (from 28.02.2017 to 30.06.2017) which may be condoned.

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 Ramannapet SS at 33KV voltage level. 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 in a phased manner i.e., 8MW on 30.04.2017 and 7MW on 30.06.2017 to the grid with a delay of maximum 122 days.

(ii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioner's attempt at events occurring as a result of seasonal changes cannot be termed as Force Majeure events.

(iv) The SE / Op / Nalgonda / TSSPDCL has submitted the work completion report dated 23.03.2017 for the proposed 15MW solar project with the details of erection of solar PV modules and installation of ABT energy meters. The CE / SLDC & Telecom vide letter dated 16.06.2017 had confirmed the real time data of 15MW solar project connecting at 132 / 33 KV Ramannapet SS at 33 KV level is integrated to SLDC on 14.06.2017.

(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 01.04.2017 and 24.06.2017 has issued instructions to SE / OP / Nalgonda to take necessary steps to synchronise 15 MW project at 132 / 33 KV Ramannapet SS, Nalgonda District duly following department procedure in vogue. The project was synchronised to the grid in phases: 8 MW on 30.04.2017 and balance 7 MW on 30.06.2017 respectively.

(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) 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 maximum 62 days in achieving SCOD for 8MW by 30-04-2017 instead of 28-02-2017 and delay of 122 days in achieving SCOD for 7MW by 30-06-2017 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 Ramannapet SS, at 33 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 12 months from its date. The petitioner claimed delay in acquisition of land pursuant to the districts reorganisation, excessive rainfall and demonetisation and other reasons in execution of the project. The project was synchronised to the grid in a phased manner: 8MW on 30.04.2017 and 7 MW on 30.06.2017.

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. 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”* clearly encompasses some of the reasons given by the petitioner for the delay of maximum 122 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. Thus the petitioner achieved SCOD in a phased manner: 8MW on 30.04.2017 and 7MW on 30.06.2017 which is well within the extended SCOD i.e., 31.10.2017. Thus, the petitioner is entitled to condonation of delay of maximum 122 days in achieving SCOD. The point is answered accordingly.

11. In the result, the delay of 62 days in achieving SCOD of 8 MW on 30.04.2017 and 122 days in achieving SCOD of 7MW on 30.06.2017 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 of the project. No costs.

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

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

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