



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

O. P. No. 37 of 2018

Dated 29.12.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Mytrah Agriya Power Private Limited
Regd. Office: 8001, 8th Floor, Q-city, S.No.109,
Nanakramguda, Gachibowli, Hyderabad – 500 032.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
2. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.
3. Special Chief Secretary, Energy Department,
Government of Telangana, Telangana Secretariat,
Khairatabad, Hyderabad.

... Respondents.

This petition came up for hearing on 18.06.2018, 21.07.2018, 03.08.2018, 05.09.2018, 06.10.2018, 27.10.2018, 09.11.2018, 17.11.2018, 24.11.2018 and 01.12.2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 18.06.2018 and 09.11.2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 21.07.2018, 03.08.2018, 05.09.2018, 27.10.2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri. B.Shiva Kumar,

Legal Counsel representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 06.10.2018, Sri. Hemant Sahai, Senior Counsel along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 17.11.2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Molshree Bhatnagar, Advocate and Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 24.11.2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Molshree Bhatnagar, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 01.12.2018. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate appeared on 18.06.2018, 21.07.2018, 03.08.2018, 05.09.2018, 06.10.2018, 27.10.2018, 09.11.2018, 17.11.2018, 24.11.2018 and 01.12.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86 (1) (k) of the Electricity Act, 2003 r/w Article 9.2 of the PPA seeking extension of SCOD by 420 days on the ground of force majeure events with the following material averments:

- (i) The petitioner is a successful bidder for 50 MW solar power project at Kamareddy, in the competitive bidding 2015 conducted on behalf of TS DISCOMs for purchase of 2000 MW solar power. The petitioner entered into PPA on 08.03.2016 with TSNPDCL at a tariff of Rs.5.5949 per unit. The petitioner had to commission the project within 15 months from the date of PPA i.e., by 07.06.2017.
- (ii) The petitioner alleged that due to events like reliance of the farmers on Sada-bainamas instead of registered sale deeds, which needed regularisation, the delay in acquisition of land occurred. GoTS by way of G.O.Ms.No.153, Revenue (SS.1), Department dated 03.06.2016, regularised certain alienation / transfer of land with certain procedure. By this process, the un-registered and unstamped documents throughout the state of Telangana were regularised as one-time settlement, which caused delay in the progress of the project.
- (iii) GoTS by way of G.O.Ms.No.236, initiated the Districts reorganisation in the interest of better administration and development in the state. Because of

the districts reorganisation, change of circle rates causing land owners to renegotiate / renege on land sale agreements, shifting of revenue records from the old district to the new district, non-availability of proper revenue records in the tehsil offices and further non-availability of contiguous land parcels, since some land owners changed their mind post reorganisation, made the acquisition of land for the project very difficult.

(iv) The programs of the Government like Mission Bhagiratha, Mission Kakateeya and Kaleshwaram projects, the policy of the Government not to allot Government lands for private power projects, demonetisation of high value currency and the unwillingness of the land owners to accept cheques and further sufficient money could not be withdrawn from the banks to pay lead to the delay.

(v) The introduction of GST which brought out fundamental structural changes in the prevailing tax regime resulted in slowdown from July, 2017 to September, 2017 in the manufacturing as well as service industry in the country. The contractors / suppliers were delaying contracts due to lack of clarity on tax structure. They have to amend and re-issue purchase orders in tune with GST regime, lack of clarity on percentage of tax, confusion regarding certificate for concessional customs duty, resulted in delay in supply of key equipment for the project.

(vi) The scheme of the government for purchase of land to distribute to the landless SC – ST people increased the land prices in the state substantially, making the petitioner to incur additional capital for purchase of lands.

(vii) The solar panel module suppliers ceased to honour their commitments and started re-negotiating the contractual price even after opening of LCs. The prices have increased due to increase in internal targets by the Government of China for 2017, reduction in anti-dumping duty by the European union, exponential purchases by US based IPPs, have increased the capital cost to the petitioner, which resulted in further delays.

(viii) Module re-classification by the customs authorities since September, 2017 and the release of modules later caused delay also in the project. Due to anti-dumping duties by the Government of India on the imports of steel from China, Korea, EU, South Africa, Taiwan and USA, increased the price of steel

causing additional burden on the petitioner leading to gap in funding and delays.

(ix) The aforementioned causes delayed the project. The causes mentioned are beyond the control of the petitioner. The petitioner could not have prevented the incidents, which caused delay and they are force majeure events covered under Article 9 of the PPA.

(x) 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 up to a maximum period of 12 months and therefore, the petitioner has a genuine cause for retrospectively providing extension of the SCOD. The GOTS on representation, by way of letter dated 29.06.2017, extended the SCOD of all solar power developers without any penalty up to 30.06.2017 and directed the TSDISCOMS to take further action accordingly. The Commission, 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 representations extended SCOD of solar power projects up to 31.10.2017 and directed TSDISCOMS to take further action and extend SCOD. Further, the Commission by way of letter dated 11.01.2018 directed the respondents to allow synchronisation of all solar power projects, which have filed completion certificates, subject to giving an undertaking in the format given.

(xi) The solar power projects affected by force majeure events are being set up pursuant to a competitive bidding process and the tariff so discovered through the said competitive bidding process has been adopted by this Commission and therefore, it is not open to this Commission to re-determine the tariff of the solar power projects.

(xii) The petitioner is seeking acceptance of the force majeure events and extension of SCOD by 420 days.

2. The 2nd Respondent filed counter affidavit with the following material averments:

(i) The petitioner entered into PPA with second respondent on 08-03-2016 to setup 50 MW solar power project under competitive bidding 2015 in group

II category with interconnection point at 220 / 132 kV Kamareddy SS at 132 kV voltage level with tariff 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 the PPA i.e., 07.06.2017. The maximum time period allowed for commissioning of the project with encashment of performance bank guarantee and payment of liquidated damages shall be limited to 21 months from the effective date of signing of the PPA. The petitioner is seeking extension of SCOD by 420 days i.e., up to 01.08.2018 for completing the synchronisation of the total plant capacity of 50 MW. The petitioner on 21-05-2018, requested for synchronization of the plant without submitting the necessary documents such as Work Completion Report, SLDC clearance, EBC compatibility report. The petitioner submitted the necessary documents for giving approval for synchronization on 11-06-2018. The 21 months' period from the effective date of PPA expired by 07-12-2017. The Petitioner is liable to pay penalties and liquidated damages as per Article 10.5 of PPA.

(ii) In case the commissioning of the project is delayed by more than 21 months from the effective date of the PPA, as per Article 10 of PPA, the contracted supply shall stand reduced /amended to the project capacity commissioned within said 21 months from the effective date of PPA and the agreement for the balance capacity shall stand terminated. The present 50 MW project had to commission the project within 15 months from the effective date of signing PPA and had 6 more months' time to synchronize the project with penalty clause i.e,

Penalty for 5 months as per Article 10.5 a to c

Liquidated damages for 1 month as per Article 10.5 d& e

The maximum penalty period after SCOD is 6 months as per the Article 10.5 (e) of PPA. The petitioner has requested extension of SCOD by 420 days on the ground of force majeure events.

(iii) The force majeure events pleaded by the petitioner on the ground of unprecedented incessant rains, re-organisation of districts, demonetisation of high value currency do not satisfy the requirement of Article 9 of PPA. Further, the allegation that the government policy such as regularisation of sadabainamas, Mission Bhagiratha, Mission Kakatiya, Project Kaleswaram,

scheme of land purchases for distribution to landless people, policy of non-allotment of government land to private power projects, introduction of GST are force majeure events is not correct. The petitioner cannot arbitrarily declare the government policies as force majeure events. The introduction of GST w.e.f 01.07.2017 is not applicable to the petitioner, as the SCOD of the project is 07.06.2017.

(iv) The petitioner's claim that the delay occurred on account of module suppliers reneging on orders and module reclassification is not justified.

(v) As per Article 3.8.1 of PPA, the solar power developer 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.

(vi) When the petitioner applied for conversion of lands from agriculture to non-agriculture by 03.06.2017, there was no objection from any competent authority and as per the solar policy, there is a deemed conversion. The petitioner initiated project activities such as construction of main control room etc., in the last week of August. The petitioner claimed that it came to know through local farmers about a canal being planned by the irrigation department under Kaleswaram project for which the land was proposed to be acquired and the petitioner after due diligence and bonafide enquiries again rechecked with the revenue officials. The Executive Engineer (IR & CAD) confirmed that there is a proposal in some part of the survey number at the project site that it was falling under Kaleswaram Project 'Left Main Canal'. The petitioner claimed that after further persuasion, the irrigation officials claimed that the project route was finalised in 2017 and the same was notified to the District Collector to start LA proceedings and thus, the construction of the project was affected and impacted on cost escalation to redo the affected project area after the land is surveyed and demarcated by the government surveyors.

(vii) The request of the petitioner to treat the delay regarding canal affected area of the project, was rejected by the CGM (IPC & RAC) dated 20.11.2017 stating that "even after lapse of more than 19 months period, they have not commissioned the project." The request for extension of SCOD is rejected because the reason given as canal affected land does not attract the definition

of force majeure and also that the request was being made beyond the date of SCOD.

(viii) The Government of Telangana, energy department vide letter dated 29.06.2017 gave extension for SCOD up to 30.06.2017 to the Solar power projects in the state who have concluded PPAs with TSDISCOMs without any penalty duly following all the technical requirements as required under CEA and TSTRANSCO guide lines. The Commission through letter dated 18.08.2017 has issued in principle approval for the extension SCOD up to 30.06.2017 for the solar power projects of competitive bidding 2015 with a condition to refix the tariff and each generator has been directed to file a petition for amending the PPAs. GoTs through letter dated 23.08.2017 issued extension of additional 4 months for the SCOD up to 31.10.2017 to the Solar power projects in the state, who have participated in the bidding 2015.

(ix) For extension of SCOD, the petitioner has to file a petition before the Commission which has to be examined within the terms of PPA.

3. The petitioner filed a rejoinder with the following material allegations:

(i) For reason of force majeure events beyond the control of the petitioner, the actual CoD of the project was yet to be achieved. The force majeure events narrated by the petitioner were acknowledged by the GoTS and therefore, the petitioner is entitled to extension of SCOD of the project commensurate with the delay. There was delay in acquisition of land due to districts reorganisation. Due to this reason, the petitioner suffered difficulties in procuring Acres 350 of contiguous land parcel for its project during the period from June 2016 to September 2016 which took 111 days in acquiring the land. Due to demonetisation, delay in financing, delay in construction of transmission line, delay in transmission route approval from the date of route proposal on 31.03.2017 to grant of approval 24.05.2017 causing 40 days delay, delay in approval of CTs & PTs drawings by TSTRANSCO, delay in upcoming Kaleswaram project, delay due to unprecedented incessant rainfall, delay due to module reclassification by customs authorities, introduction of GST causing structural changes in the tax regime leading to slow down from July 2017 to September 2017 are force majeure events which caused delay in the construction of the project.

(ii) The petitioner attributed delay of 111 days due to pass book circular, 42 days due to DR circular, 120 days delay due to Kaleswaram Project, 79 days delay in transmission route approval, 199 days delay in approval of CTs & PTs drawings, 44 days due to unprecedented rainfall, 30 days due to module reclassification by customs totalling 625 days including overlapping events, the net delay being 402 days. Consider 344 days delay of the project, by treating it as force majeure event under Article 9 of PPA.

4. Arguments on behalf of the petitioner and respondents heard. Additionally, the respondent no.2 filed a memo with additional information after giving notice to the petitioner. The petitioner has not filed any response. Pending the OP, an interim petition seeking a direction to the respondents to allow synchronisation of the project with the grid, pending disposal of OP has been filed. The Commission, by order dated 20.08.2018, passed interim direction to synchronise the project, to avoid loss of investment already made and allow productive use of assets, after noticing that the contract is not terminated.

5. During the hearing, it is reported that 25 MW of the project was synchronised to the grid on 22.11.2018 and the balance 25 MW on 26.11.2018.

6. The issue for determination is whether the petitioner is entitled to extension of SCOD as prayed for and on what terms?

Issue:

7. The petitioner has entered into PPA on 08.03.2016 to set up 50 MW solar power project under competitive bidding 2015 in group-II category with interconnection point at 220/132 KV Kamareddy SS at 132 KV voltage level with tariff Rs.5.5949 per unit. The petitioner was to commission the project within 15 months by 07.06.2017. The petitioner pleaded force majeure events like delay in acquisition of land, demonetisation, introduction of GST, unprecedented incessant rainfall, Government projects like Mission Bhagiratha, Mission Kakatiya, Project Kaleswaram apart from reorganisation of districts, etc. This apart, the petitioner further pleaded that the delay occurred in the construction of transmission line, delay in transmission route approval from the date of route proposal on 31.03.2017 to grant of approval 24.05.2017, delay in approval of CTs & PTs drawings by

TSTRANSCO causing total delay of 344 days net pleading the delays as due to force majeure.

8. The respondent took a stand that none of the grounds taken by the petitioner as constituting force majeure events are force majeure events in terms of Article 9 of the PPA. The respondent claimed that the petitioner approached TSTRANSCO in March 2017 after lapse of 12 months from the date of PPA and requested CE / Warangal / TSTRANSCO for route approval through their letter dated 31.03.2017 with sharing of multi circuit towers laid by other solar power developer. The route approval was issued on 17.05.2017 for transmission line length of 10.791 KM (7.58 KM DC / SC line + 3.211 KM on multi circuit towers) duly obtaining no objection from the other solar power developer. The respondent further claimed that the petitioner has paid engineering charges without any delay. The petitioner procured GTPs and drawings of 132 KV CTs & PTs of a different unapproved make, which required approval of technical committee of TSTRANSCO and after scrutiny, approval was issued on 22.12.2017 with certain modifications (i.e. 132 Kv protection CTs with 3 nos. cores in the secondary side as per relevant standards). The approval for GTPs and drawings were issued vide letter dated 19.03.2018. Thus, the developer is responsible for the delay in the deviation in procurement of the material and equipment for the project.

9. Since the project has been synchronised on the interim directions of the Commission, the consequence of the delay only has to be seen and examined keeping in view the fact that the GOTS extended SCOD by 31.10.2017 to all solar power projects of bidding 2015.

10. The learned counsel for the petitioner contended that the prolonged disuse of the solar power project would damage the entire set up and relied on paras 11 & 13 of the order of APTEL in *I.A.No.637 of 2016 in Appeal No. 307 of 2016 dated 13.12.2016 at Para 11 & 13* which are extracted below for clarity:

“11. A prolonged outage may disrupt the normal operation & maintenance of solar PV plant as generation is reduced to zero due to no schedule and as such, all auxiliaries and systems of solar PV stations are switched of. As a result, large number of technical challenges crop in such as:

- (i) *Moisture ingress in transformers may cause failure of transformer. Moreover, such failure may further increase down time if such faults are detected at the time of revival from long shut down.*
 - (ii) *Failure of UPS batteries due to lack of charging hence loss of control, protection and communication system.*
 - (iii) *Theft of un-energized solar panels may additionally leads to down time from theft etc.”*
13. *It is fact that the solar panels cannot be allowed to be left idle, as it would result in technical degradation which would result in irreparable loss to the generators who have invested in the project.”*

The main contention of the petitioner is based on the observations in the above cited order of APTEL. The petitioner emphasised about the total loss of investment of public in case the petitioner is not allowed to synchronise the project to the grid.

11. The petitioner further relied on a decision rendered by the Hon'ble Supreme Court in C. A. Nos. 5399-5400 of 2016 in Energy Watchdog vs. CERC & Ors and batch wherein the Hon'ble Supreme Court observed that where there are no guidelines or in a situation which is not covered by the guidelines, the Central Electricity Regulatory Commission's general regulatory power u/s 79 (1) (b) can be used. Similar/equivalent provision for the State Commission is Sec.86 (1) (b). The present matter relates to examination of terms of PPA, which need no clarification to the parties. In fact, the arguments of both sides have not been about any clarification needed on the terms of PPA.

12. The petitioner contended that when the project is totally complete in all respects and after huge investment and efforts, when the PPA is not terminated, denying the benefit of condonation of delay, would work out hardship and rightly relied on a decision rendered by Hon'ble Supreme Court in M. P. Power Management Company Ltd. vs Renew Clean Energy Pvt Ltd & another dated 05.04.2018 wherein the Hon'ble Supreme Court observed as follows:

“Respondent no.1 has also spent substantial amount in development of the project in the changed location and reached an advanced stage of commissioning the project by 31.08.2017. The delay in commissioning the

project appears to be due to unavoidable circumstances like resistance faced in the allotted site in Rajgarh district and subsequent change of location of the project. These circumstances though not a force majeure event, time taken by respondent no.1 in change of location and construction of the plant have to be kept in view for counting the delay. Having invested huge amount in purchasing the land and development of the project at Ashok Nagar district and when the project is in the final stage of commissioning, the termination of the contract is not fair.”

The cited decision would support the plea of the petitioner.

13. The learned counsel for the respondent contended that the entire 50 MW capacity is not synchronised to the grid and the respondent has a vested right in refusing to connect the 50 MW to the grid, because as per clause 9.2 of PPA, a maximum period of twelve months is permitted to defer COD to permit the solar power developer to overcome the effects of force majeure events affecting the solar power developer or DISCOM or till such event of default is rectified by the solar power developer or DISCOM whichever is earlier. Provided further that, the validity of performance bank guarantee shall be extended suitably covering the extended period. The learned counsel further contended that the date of SCOD 07.06.2017 is not adhered to by the petitioner, who claimed to have been ready with synchronisation by 16.05.2018. This contention has to be viewed in the light of the respondent not terminating the PPA.

14. The petitioner claimed that there is delay of more than six months in approval of CTs & PTs drawings by TSTRANSCO. The petitioner in its rejoinder admitted that on 06.06.2017 it submitted the guaranteed technical particulars of CTs & PTs to TSTRANSCO for drawing approval. Since the vendor suggested by the petitioner was found to be not a TSTRANSCO approved agency, TSTRANSCO after scrutiny granted the approval on 22.12.2017 admittedly. The petitioner is seeking this six months delay to be exempted on the ground of force majeure.

15. On the aspect of delay in approving drawings of CTs & PTs, the respondent no.2 claimed that the GTPs and drawings of 132KV CTs & PTs of make M/s. Mehuru Electrical and Mechanical Engineers (P) Ltd (Non-approved vendors) required

scrutiny of all GTPs and drawings with respect to type test reports to ensure quality and performance of CTs & PTs which require the approval of the technical committee of TSTRANSCO. After scrutiny, the approval was issued on 22.12.2017 with certain modifications (i.e. 132 KV protection CTs with 3 nos. cores in the secondary side as per the relevant standards).

16. The petitioner vide its letter dated 07.11.2017 informed the respondent that main control room of the switchyard and other related works have been completed as per the approval of the concerned SE, Nizamabad. However, the project authorities have learnt from the Executive Engineer (IR & CAD) that some of the survey numbers of the solar project site are falling under the Kaleshwaram Project "Left Main Canal", which is cutting through the switchyard of the petitioner's solar plant, which is already completed as well as some critical land parcels of the solar project. The Irrigation officials claimed that irrigation canal project route is finalised in consultation with District revenue officials to initiate land acquisition process. In such a situation, how the revenue authorities were able to approve the conversion of land use for petitioner's project for non-agriculture use is not clear. It clearly shows the lack of proper coordination among various government instrumentalities, including the TSTRANSCO, which is mandated to approve the route survey of the transmission line and switchyard and other related items under the provision of Section 10 Electricity Act, 2003.

17. In response to the above letter of the petitioner, Executive Engineer (Construction), Nizamabad vide its letter dated 09-12-2017 and 28-12-2017 informed the SE, Nizamabad to approve the revised schedule for transmission line and revised location of pooling station of the petitioner's project site as these survey numbers are part of the irrigation canal of the Kaleshwaram project. The SE in turn forwarded this request of EE to the Chief Engineer, Karimnagar Zone of TSTRANSCO vide its letter dated 29.12.2017 for approval of the revised schedules. Finally, the revised schedules were approved by the Chief Engineer TSTRANSCO vide its letter dated 10.01.2018.

18. It may be noted that the respondent has taken more than two months to resolve this issue and approval of revised schedule for change of pooling station location and associated transmission system and switchyard, because some of the

survey numbers of the land already acquired by the petitioner for the project site were part of the main canal of Kaleshwaram project. Apart from this, the TSTRANSCO has taken considerable time to approve the GTPs and drawings of 132 KV CTs & PTs for the project as the vendor selected by the petitioner for supply of such items was not from its approved list. In both the cases, the time taken by TSTRANSCO to approve the proposals is well beyond the procedure laid down by itself and under the section 67 (2) of the Act, 2003; Works of Licensee Rules, 2006; as well as CEA (Technical standards for construction, operation and maintenance of Electric Plants and Lines) Regulation, 2010 and cannot be treated as the delay on the part of the petitioner entirely. In light of the rival contentions of the parties, the question arises for our consideration is:

Whether is it justified in holding that the time taken by petitioner beyond the stated milestones in obtaining statutory and government clearances from the Government instrumentalities towards land acquisition, interconnection facilities for evacuation system and right of way issues required for setting up solar power project was due to Force Majeure Events as defined in the PPA and consequently extending the period of SCOD for completion of the project of the petitioner?

19. Let us examine the provisions of PPA entered between the petitioner and the Respondent. Article 3 of the PPA stipulates as under:

“3.1 Upon receipt of requisite information from the solar power developer, TRANSCO or DISCOM shall prepare an estimate of cost for arranging interconnection facilities for power evacuation at the voltage of delivery. The solar power developer has to bear the entire cost of interconnection facilities as per the approved estimate by the TSTRANSCO or DISCOM.

.....

3.3 Any modifications or procedures or changes in arranging the interconnection facilities for power evacuation shall rest with TSTRANSCO or DISCOM as the case may be.”

Article 6.1 gives the responsibilities of solar power developer in completion of the project as per the terms of PPA, Article 6.2 gives the responsibility of the Discom in terms PPA. Article 6.2 says the DISCOM agrees:

- (i) To make all reasonable efforts for making arrangements for evacuation of power from the Project to be completed prior to the CodD of the project subject to Article 3
- (ii) To purchase.....
- (iii) To coordinate with TSTRANSCO and guide the solar power developer in obtaining the approval for the interconnection facilities where the interconnection is at 33 KV or above voltage, for synchronization, commercial operation, regular operation etc., as required by the solar power developer.”

Thus, in terms of the PPA, the petitioner has to take necessary steps required for obtaining the clearances, approvals etc., and bear all the expenditure involve, the Respondent has to render all reasonable assistance as per Article 6.2 in obtaining such clearances without any legal obligation.

20. While the petitioner claims that all such delays where the project developer has no control have to be considered as force majeure events, the Respondent argues that as per the terms of PPA, the responsibility to tie up inputs lies with the petitioner and the delay in obtaining such clearances do not qualify for inclusion under force majeure event. Let us examine the available reliefs under the force majeure event. In Article 9 of the PPA signed between the petitioner and Respondent:

“9.1 Definition of Force Majeure:

(a) Force Majeure” shall mean any event or circumstance or combination of events or circumstances that materially and adversely affects the performance by either party (the “Affected Party”) of its obligations pursuant to the terms of this Agreement (including by preventing, hindering or delaying such performance), but only if and to the extent that such events and circumstance 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 setup in accordance with sola policy announced by Govt. of Telangana State (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 to the Solar Power Developer of the DISCOM, respectively”.

21 In the present case, date of SCOD being 07.06.2017, when the petitioner submitted the guaranteed technical particulars of CTs & PTs on 06.06.2017, the TSTRANSCO no doubt found the unapproved vendor, ought to have taken immediate action since the SCOD date is already over. The petitioner reported about the reminders dated 06.06.2017, 05.08.2017, 16.11.2017 and 22.12.2017 to TSTRANSCO which strengthens the claim that the TSTRANSCO is responsible for the delay to a maximum extent. Some delay in getting all tests done on the machinery secured by the petitioner from an unapproved vendor by the TSTRANSCO cannot be ruled out in the sense that the TSTRANSCO had approved the same machinery with certain modifications while issuing approval on 22.12.2017. This six months' delay cannot be justified as reasonable. Similarly, the delay of two months in approving revised schedules for change of location of pooling station and part of transmission system because part of the land parcels of the petitioner's project fall under the proposed main canal of Kaleshwaram project.

22. Article 6 recognises the critical importance of interconnection and evacuation facilities for the solar power project. Completion these elements is necessary for achieving SCOD of the project. In the present case, location of pooling station and part of transmission line changed as some survey numbers of the petitioner's project fell under the proposed main canal of the Kaleshwaram project. The TSTRANSCO clearance was issued vide its letter dated 10-01-2018, after a delay of two months, recognises the change of pooling station location to avoid proposed irrigation canal. Thus, the petitioner was forced to change the location of pooling station and part of transmission line and incur additional expenditure to acquire alternate land for the purpose. In addition to the change of location of pooling station, the approval for CT & PT drawings was delayed and final approval was given vide its letter dated 22-12-2017.

23. Undoubtedly the obligation to obtain statutory approvals and bearing the cost lies with the project developer as per the terms of PPA. However, the question is

whether it is not the obligation of the project developer to obtain such approvals but whether the delay in obtaining such approvals from the government instrumentalities despite the project developer complying with the legal requirements to obtain such approvals could be covered under Force Majeure Event or not. In a similar case between Gujarat Urja Vikas Nigam Limited (GUVNL) and Cargo Solar, a project developer, the Gujarat State Electricity Regulatory Commission has examined the provisions of PPA dated 30.04.2010 entered between the parties and the Commission held that the delay caused due to obtaining the permission / approval for land, water, etc., are prerequisite for the project and fall under the category of Force Majeure Events. Accordingly, the State Commission decided that the period of delay in obtaining such clearances, it is required to be suspended or excused and to that extent the period of commercial operation date, date of construction default and scheduled commercial operation date are to be extended.

24. The GUVNL filed an appeal with the APTEL against the ruling of the State Commission (Appeal No.123 of 2012 and I.A. No.396 of 2012). The Appellate Tribunal in its judgement dated 04.02.2014 concluded that;

“(i) The approvals under Bombay Tenancy and Agriculture Land (Vidharba Region and Kutch Area) Act, 1958 and for water source under the Environment (Protection) Act, 1986 and CRZ Regulations sought by Cargo Solar are the statutory/legal approvals under the PPA. The delay in obtaining these approvals by the Government instrumentalities by Cargo Solar would fall in the category of Force Majeure Events under Article 8.1 (a) (v) of the PPA. As such the period of such delay is required to be suspended or excused and to that extent the period of Commercial Operation Date, Date of Construction default and Scheduled Commercial Operation Date are to be extended in terms of the PPA.

(ii). The findings of the State Commission and the consequential relief granted to Cargo Solar are correct and therefore, upheld.”

25. This observation of the APTEL with equal vehemence applies to the present matter too. In the light of the above APTEL judgement, the petitioner is also entitled to receive the relief in terms of Article 9 of the PPA. Thus, we can conclude that delays in granting approvals for revised schedules for change of location of pooling

station and associated transmission segments as well as the approval of GTPs and drawings of 132 KV CTs and PTs has to be considered as Force Majeure Events. The petitioner was forced to change the location of pooling station as some of the survey numbers of land of the pooling station and part of transmission line were found to be part of the land acquired for the main canal of the Kaleshwaram project. It may be noted that it is not the case of the petitioner that the contract has been frustrated or it has become impossible to perform due to delay in obtaining such clearances or that they will not be able to perform the obligations under the PPA as it has become onerous or expensive. On the other hand, the petitioner continued with the execution of the project and made efforts to synchronise the project.

26. The respondents approved the GTPs and drawings for 132 KV CTs and PTs and considered the procurement from M/s. Nehru Electrical & Mechanical Engineers Private Limited vide its letter dated 22.12.2017 after a gap of six months from the date of request from the petitioner. Similarly, the petitioner requested for the approval of revised schedules for the change of location of pooling station and associated transmission segment vide its letter dated 07.11.2017. However, TSTRANSCO approved the revised schedules vide its letter dated 10.01.2018.

27. In view of the decisions of APTEL and also in view of the fact that the delay of more than six months in the scrutiny and approval of drawings of CTs & PTs and revised schedules of pooling station by TSTRANSCO, the issue of SCOD has to be examined from the time of extended SCOD up to 31.10.2017 by the State Government to all solar power developers of bidding 2015. Though the Respondent took considerable time to approve both the pre-requisites as stated above, the Commission considers the combined impact of delay in approving drawings of CTs & PTs and revised schedules of pooling station up to 22.12.2017, date on which TSTRANSCO gave approval from the time of extended SCOD up to 31.10.2017 to all solar power developers of bidding 2015 as force majeure event. This will work out to, 52 days from the date of application of the petitioner (07.11.2017) to approve revised schedules in obtaining such clearances. This period from 01.01.2017 to 22.12.2017 required to be suspended or excused and to that extent the period of commercial operation date and scheduled commercial operation date are to be extended. Thus, the petitioner is entitled to extension of SCOD up to 22.12.2017.

28. In view of the aforementioned reasons, the following facts emerge:

Date of PPA - 08.03.2016

SCOD as per PPA - 07.06.2016

Extension of SCOD granted by the State Government up to 31-10-2017 considering certain difficulties as force majeure events. Further the extension of SCOD is granted in the present case up to 22.12.2017.

29. The period to be excluded in view of the delay in approval of drawings CTs & PTs and revised schedules for relocation of pooling station: 52 days from 01.11.2017 to 22.12.2017, which is considered as force majeure event in the present case and needs to be suspended or excused and to that extent the period of commercial operation date, date of construction default and scheduled commercial operation date are to be extended in terms of the PPA.

30. Though the TSTRANSCO issued work completion report vide its letter dated 31.05.2018, the petitioner submitted vide its letter dated 08.06.2018 to the respondent stating it is ready for synchronisation and forward its undertaking to TSERC for further necessary action. Considering the 15 days' notice period to be given by the petitioner to the respondent intending to synchronise the project to the grid, the date of synchronisation to be considered (SCOD) would be 23.06.2018. The petitioner is entitled for the condonation of delay period from 23.06.2018 to actual synchronisation date of 26.11.2018, which is because of the delay in decision making process by the Respondent and regulatory process.

31. The respondent claimed that the maximum time period allowed for commissioning of full project capacity with encashment of performance guarantee and payment of liquidated damages shall be limited to 21 months from the effective date of PPA, which expired by 07.12.2017. To this limit, the extended SCOD as well as the period of force majeure being considered now has to be added to arrive at a just decision.

Date of PPA	08.03.2016
Date of SCOD as per PPA	07.06.2017
Extended SCOD (GOTS)	31.10.2017
Extended SCOD + 52 days	22.12.2017

The period of 21 months has to be calculated from the date of PPA (08.03.2016) minus extended date of SCOD by the State Government (31.10.2017) plus 52 days which works out to 22.12.2017. Since the contract permits imposition of penalty and liquidated damages, Petitioner is liable to pay the penalty and liquidated damages in terms of Article 10.5 of the PPA for the period 22.12.2017 to 23.06.2018. Thus, interest of justice would be met by directing the Respondent to take appropriate steps to levy penalty and liquidated damages for the entire period from 22.12.2017 to 23.06.2018 as per the provisions of PPA.

31. In the result, the following is ordered:

(a) The SCOD as per PPA was 07.06.2017. The State Government extended the SCOD up to 31.10.2017 for all the projects covered under 2015 competitive bidding. In the present case, the Commission extended further the SCOD up to 22.12.2017 considering period from 01.11.2017 to 22.12.2017 as force majeure event because of the delay from government instrumentalities in according approvals for the components of the project which are pre-requisite for completion of the project and that such events and circumstance are not within the petitioner's reasonable control and were not reasonably foreseeable. This period from 01.11.2017 to 22.12.2017 is suspended or excused and to that extent the period of commercial operation date and scheduled commercial operation date are to be extended up to 22.12.2017.

(b) Petitioner is liable to pay the penalty and liquidated damages in terms of Article 10.5 of the PPA for the period 22.12.2017 to 23.06.2018. The respondents shall take appropriate steps in the matter. The issue is answered accordingly.

(c) The actual SCOD of the project took place for 25 MW on 22.11.2018 and balance 25 MW on 26.11.2018. The delay in achieving SCOD as discussed is from 23.06.2018 to 26.11.2018 is condoned as this was because of administrative and regulatory challenges for which the petitioner is not responsible.

(d) The petition is allowed on the same tariff as approved by the Commission. The respondent No. 2 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 29th day of December, 2018.

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

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