



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 38 of 2018

Dated 31.12.2018

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 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 Application is filed under Sections 86 (1) (f) and (k) of the Electricity Act, 2003 r/w Article 9.2 of the PPA seeking extension of SCOD by 436 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 Wanaparthy, in the competitive bidding 2015 in group II category, conducted on behalf of TS DISCOMs for purchase of 2000 MW solar power. The petitioner entered into PPA on 23.02.2016 with TSSPDCL at a tariff of Rs.5.5644/- per unit. The petitioner had to commission the project within 15 months from the date of PPA i.e., by 22.05.2017.
- (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 re-organisation 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 and 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 and ST people increased the land prices in the state substantially, making the petitioner to secure 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, the price of steel increased

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 436 days.

2. The 1st respondent filed counter affidavit with the following material averments:

(i) The petitioner entered into PPA with the 1st respondent on 23.02.2016 to setup 50 MW solar power project under competitive bidding 2015 in group

II category with interconnection point at 220 / 132 kV Wanaparthy SS at 132 kV voltage level with tariff Rs.5.5644 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., 22-05-2017. 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 436 days. The Petitioner has neither submitted the necessary documents such as Work Completion Report, nor synchronized the project. The 21 months' period from the effective date of PPA expired by 22.11.2017. The Petitioner is liable to pay penalties and liquidated damages as per Article 10.5 of PPA.

(ii) The force majeure events pleaded by the petitioner on the ground of unprecedented incessant rains, reorganisation 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 22.05.2017.

(iv) 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) As per clause 10.5 of PPA, the penalty is levied on the petitioner and PPA is also terminated.

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 is 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 324 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, ROW issues and resistance from residents / local leaders, the petitioner secured alternative solution and sought permission to share the transmission corridor to the extent of 6.14 KM from M/s. Prathamesh Solarfarms Ltd. There was a delay in submitting undertaking that it would follow all applicable standards and norms of TSTRANSCO for construction of transmission line. It submitted an undertaking and gave consent for 50% cost of 4 nos. of multi circuit tower and requested sanction of estimates and engineering charges. The correspondence from the petitioner dated 20.05.2017 requesting TSTRANSCO to allow it to utilise the transmission line towers of PSL for giving consent for sharing 50% cost of 4 nos. of multi circuit tower vide letter dated 20.02.2018 are filed by the petitioner.

(ii) On receiving no reply from TSTRANSCO, the petitioner by way of letters dated 16.03.2018, 29.03.2018, 04.04.2018 and 16.04.2018 highlighted that it had already invested 65% on the total project cost envisaged and only constraint was delay in construction of transmission line and bay due to non-issue of approvals by TSTRANSCO including revised scheme approval, route profile approval, equipment approval and approvals to start construction of terminal bay at Wanaparty SS. On 15.06.2018, TSTRANSCO informed the tentative amount to be paid by the petitioner for erection of 132 KV DC / SC

line from Wanaparthy SS to the project and specified terms and condition for conducting the works under its supervision. The undertakings given by the petitioner were under duress and by way of necessity. The petitioner, in spite of constraints aforesaid, completed erection of transmission line and bay in the month of August 2018 which was certified by the DISCOM through letter dated 20.08.2018, which also resulted in delay of 392 days in granting route approval.

iii. The petitioner attributed 50 days delay on account of revenue records, delay of 111 days due to pass book circular, 42 days due to DR circular, 60 days delay due to demonetisation, 392 days in granting evacuation approval, 37 days due to unprecedented rainfall, 30 days due to module reclassification by customs authorities totalling 722 days including overlapping events. The net delay being 624 days.

4. Arguments on behalf of the petitioner and respondents heard. Additionally, the respondent No.1 filed a memo with additional information as directed during the hearing. 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 15.10.2018, passed interim direction to synchronise the project subject to the right of the respondent to renegotiate the tariff.

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

Issue:

6. The petitioner entered into PPA with the First respondent on 23.02.2016 to setup 50 MW solar power project under competitive bidding 2015 in group II category with interconnection point at 220 / 132 kV Wanaparthy SS at 132 kV voltage level with tariff Rs. 5.5644 per unit. As per Article 10.5 of the PPA, the petitioner has to commission the project within 15 months from the effective date of signing of the PPA i.e., 22.05.2017. 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.

7. In view of difficulties stated to have been faced by the solar power developers, the petitioner could not complete the project even after granting extension of SCOD by GoTS up to 31.10.2017.

8. The petitioner requested approval for sharing of towers laid by M/s. Prathmesh Solarfarms Ltd (PSL) for the project by laying 2nd circuit stringing for length of 6.14 KM from 220 / 132 KV Wanaparthy SS to 132 KV DC / SC line of M/s. PSL due to severe ROW problems, with PSL issuing consent letter for sharing the line. The sharing proposal was received even before approval of the scheme by TSTRANSCO. Since sharing of towers is not a practice in TSTRANSCO and keeping in view the technical hindrance and maintenance issue, the proposal of sharing was rejected on 11.09.2017. Again the petitioner had requested for revised route approval for sharing of 4 nos. multi circuit towers of PSL near Wanaparthy SS or to approve the usage of 132 KV UG cable. TSTRANSCO on 27.01.2018 requested the petitioner for submitting joint deed of undertaking for sharing 4 nos. towers by both the parties, which was accordingly submitted on 16.05.2018 which was approved on 15.06.2018.

9. The petitioner again on 02.08.2018 requested TSTRANSCO permission to utilise additional 15 nos. towers laid by PSL which was approved on 22.09.2018. The petitioner submitted the undertaking on 25.06.2018 which shows that there is no delay on the part of TSTRANSCO for processing the scheme approval.

10. The agreed tariff is Rs. 5.5644 per unit as per PPA discovered in the competitive bidding 2015 expecting the project to be synchronised in 2017. The petitioner failed to get the project synchronised even by extended SCOD. Ultimately, on the order of the Commission the project was synchronised to the grid on 28.11.2018 with a delay of 555 days. The respondent claimed that because the project had not achieved SCOD in 2017, and the price discovered through competitive bidding subsequently came down to very low price, the cost of power purchase now would have been low.

11. 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.”*

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 ATE. 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.

12. 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.

13. 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 (AIR 2018 SC 3632) 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.

14. 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 22.05.2017 is not adhered to by the petitioner.

15. In the present case, the date of PPA is 23.02.2016. SCOD as per PPA is 22.05.2017. The actual SCOD for 50 MW is 28.11.2018 pursuant to an interim direction by the Commission dated 15.10.2018. In view of the decisions of ATE as well as the Hon'ble Supreme Court, the issue of SCOD has to be examined from the time of extended SCOD up to 31.10.2017 to all solar power developers of bidding 2015. The other reasons claimed by the petitioner for delay due to demonetisation, delay in financing, delay in construction of transmission line and resistance from

residents / local leaders, etc., as force majeure events are not force majeure events under Article 9 of PPA. The petitioner is required to obtain all the consents, clearances, approvals and permits required and to procure land at its own cost and risk from the date of PPA under Article 6 of PPA.

16. Arguments on behalf of the petitioner and respondents heard. The issue for determination is whether the petitioner is entitled to extension of SCOD as requested.

17. The counsel for the petitioner argued that the project is located close to Wanaparthy town and evacuation system is proposed to be connected to Wanaparthy sub-station of TSTRANSCO. Considering the severe right of way (RoW) issues, the petitioner requested the TSTRANSCO vide its letter dated 23-01-2017, to allow them to utilize the same corridor of double circuit 132 KV circuit line being constructed by another solar power developer (M/s. Prathamesh Solarfarms Ltd.) up to 6.14 Km from Wanaparthy existing sub-station. The petitioner also obtained the consent of the above developer. Further, the petitioner made efforts to get approval of sharing of the second circuit of the Prathamesh project. The petitioner again requested TSTRANSCO vide its letter dated 20.05.2017 to allow it to utilise the transmission line towers of PSL for 6.14 Km transmission line from the existing sub-station. However, TSTRANSCO did not agree to the proposal of sharing of the multi-circuit towers of Prathamesh Solarfarms Ltd. and instead, rejected the proposal vide its letter dated 11.09.2017 without assigning any reason for rejection after a delay of eight months. The Section 67(2) of the Act, 2003 and the Works of Licensee Rules, 2006 notified by the Government under this section as well as CEA (Technical Standards for construction, operation and maintenance Electric Plants and Electric Lines) Regulation 2010 specify the procedures for grant of permission, time required to grant approval etc.

18. It was stated that the petitioner continued to pursue the issue with the TSTRANSCO vide its letters dated 25 October 2017, 31 October 2017, 15 November 2017 and 29 December 2017 impressing on the Respondent to allow sharing of transmission towers with the Prathamesh, as efforts to explore alternate route in consultation with TSTRANSCO team have not been successful.

TSTRANSCO agreed for utilisation of existing 4 nos. multi-circuit towers erected by Prathamesh Solarfarms Ltd vide its letter dated 27.01.2018 on cost basis for erection of 132 KV DC / SC line from the petitioner's plant to 132 KV Wanaparthy SS due to severe RoW issue near 132 KV existing SS. Thus, TSTRANSCO took around one year time from 23.01.2017 (date of request by the petitioner) to 27.01.2018 to agree for sharing of transmission line towers: after first eight months period vide its letter dated 11.09.2017, it rejected the proposal without any reason; next four month to reconsider the proposal and agree for sharing the multi-circuit towers of the Prathamesh. Based on this approval, the petitioner was directed to execute a joint deed of undertaking with a condition that TSTRANSCO will utilise the other two circuits of multi-circuit towers at its discretion.

19. The next step for the petitioner was to get approval for route profile, permission to start construction for terminal bay at 132 KV Wanaparthy SS, equipment approvals which include CT, PT etc. and cost estimates approval so as to enable the petitioner to pay engineering charges to TSTRANSCO and continue with the procurement of equipment and construction of the evacuation system. It is stated that, with continued follow up vide its letters dated 20.02.2018, 16 March, 2018, and 4 April 2018, the petitioner submitted a joint undertaking with PSL based on which, TSTRANSCO approved the tentative amount to be by the petitioner to take up the construction of the 132 KV DC / SC line from the existing Wanaparthy SS to the project vide its letter dated 15-06-2018. Thus, it took almost 18 months for the TSTRANSCO to grant approvals for the sharing of transmission line, route approval and cost estimates, which resulted in huge delay in getting the work completion report from the Respondent and in the project getting ready for synchronisation.

20. While the petitioner requested for issue of work completion report vide its letter dated 30 July 2018, the SE (Operation), Wanaparthy issued work completion report in respect of evacuation system on 20.08.2018. Further, SE Construction Division, Mahboobnagar issued another work completion report in respect of 132 KV DC / SC line from the Wanaparthy SS to the project on 19.09.2018. The Commission gave interim direction to the Respondents to synchronise the project vide its interim order on 15.10.2018 based on the Interim Application filed by the petitioner under Section 86 (1) (f) and 86 (1) (k) of the Act, 2003 read with Article 9.2 of PPA.

21. The issue is whether delays from the TSTRANSCO in granting approvals for sharing of the multi circuit transmission corridor being built by Prathamesh Solarfarms Ltd, route profile approval and other related approvals can be considered as Force Majeure Events as requested by the petitioner. A major part of the delay occurred due to the ROW issues and the efforts to obtain approvals from TSTRANSCO to resolve the ROW issues in Wanaparthy project. The delay regarding ROW issues is only due to difficult terrain for laying lines and towers apart from the administrative hurdles for getting approvals and sanctions from the relevant authorities which were not within the control of the petitioner. Though the petitioner sought approval for sharing of multi-circuit transmission line towers being built by M/s. Prathamesh Solarfarms Ltd vide its letter dated 23.01.2017, TSTRANSCO took around one year time to agree for sharing of transmission towers. Finally, TSTRANSCO approved the tentative amount to be borne by the petitioner to take up the construction of the 132 KV DC / SC line from the existing Wanaparthy SS. to the project vide its letter dated 15.06.2018. The petitioner could take up the procurement of equipment and construction of the transmission line and 132 KV bay at the existing Wanaparthy SS after this approval.

22. The issue of the extent of force majeure event to be considered has to be examined from the extended SCOD by the State Government up to 31.10.2017 to all solar power developers of competitive bidding of 2015. 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?

23. 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 CoD 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 involved, the Respondent has to render all reasonable assistance as per Article 6.2 in obtaining such clearances without any legal obligation.

24. 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:

“Article 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 solar 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 or the DISCOM, respectively”.

25 In the present case, date of SCOD was 22.05.2017. Though the petitioner sought approval for sharing of multi-circuit transmission line towers being built by Prathamesh Solarfarms Ltd vide its letter dated 23.01.2017, TSTRANSCO took around one year time to agree for sharing of transmission towers vide its letter dated 27.01.2018. Finally, TSTRANSCO approved the tentative amount to be by the petitioner to take up the construction of the 132 KV DC / SC line from the existing Wanaparthy SS. to the project vide its letter dated 15-06-2018. Some delay in getting approval from the TSTRANSCO as per the Section 67 (2) of the Act, 2003 and the Works of Licensee Rules, 2006 notified by the Government under this section as well as CEA (Technical Standards for construction, operation and maintenance Electric Plants and Electric Lines) Regulation 2010 cannot be ruled out and this delay of around 18 months cannot be justified as reasonable.

26. Article 6 recognises the critical importance of interconnection and evacuation facilities for the solar power project. Completion of these elements is pre-requisite for completion of the project and necessary for achieving SCOD of the project as per the terms of the PPA. In the present case, because of severe RoW constraints, the Petitioner was requesting approval for sharing of the transmission system being constructed by Prathamesh Solarfarms Ltd as the alternative solution was not feasible. The TSTRANSCO took almost a year to agree to the proposal on 27.01.2018 and then approved the route profile and cost estimated vide its letter

dated 15.06.2018 to facilitate the process of obtaining route profile clearance, permission to start construction for terminal bay at 132 KV Wanaparthy SS, equipment approvals which include CT, PT etc. and cost estimates approval so as to enable the petitioner to pay engineering charges to TSTRANSCO and continue with the procurement of equipment and construction of the evacuation system.

27. 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 dt: 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, 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.

28. The GUVNL filed an appeal before 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 dt: 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, 19986 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.”

29. 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 sharing of associated transmission towers with Prathamesh Solarfarms Ltd and construction of 132 KV bay and associated works at the existing Wanaparthy SS has to be considered as Force Majeure Events. 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.

30. The Respondents approved the proposal of the Petitioner for sharing of associated transmission towers with Prathamesh Solarfarms Ltd and construction of 132 KV bay and associated works at the existing Wanaparthy SS vide its letter dt:27.01.2018 after a gap of a year from the date of request from the petitioner. In view of the decisions of APTEL delay of more than a year in getting approval from 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 the pre-requisites for completion of the project on 15-06-2018 as stated above, the Commission considers the period of delay up to end of March 2018 from the time of extended SCOD up to 31.10.2017 to all solar power developers of bidding 2015 as Force Majeure Event.

31. Article 9.2 of the PPA provides for extension of SCOD for a maximum period of 12 months, which is reproduced below:

a. Force Majeure Events affecting the Solar Power Developer;

or

b. DISCOM Event of Default as defined in 10.2, the scheduled COD shall be deferred, for a reasonable period but not less than, day-for-day basis subject to a maximum period of 12 months, to permit the Solar Power Developer or to overcome the effects of the Force Majeure events affecting the Solar Power Developer or DISCOM, or till such time such event of default is rectified by the Solar Power Developer or the DISCOM, whichever is earlier. Provided further that, the validity of Performance Bank Guarantee shall be extended suitably covering the extended period.

32. While the petitioner is entitled to a maximum relief of 12 months in the event of Force Majeure Events as per the provisions of the Article 9.2 of the PPA, the Commission considers extension of SCOD for a period of ten months beyond the SCOD of 22.05.2017 up to 21.03.2018. In other words, the Commission considers around five months extension of SCOD in addition to the period of SCOD extension already granted by the State Government up to 31-10-2017. This period from 01.11.2017 to 21.03.2018 is 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 21.03.2018. The argument of the respondent counsel that the petitioner is responsible for all the delays and all such delays cannot be considered as Force Majeure Event is not tenable.

33. While the petitioner requested for issue of work completion report vide its letter dated 30 July 2018, the SE (Operation), Wanaparthy issued work completion report on 20 August 2018. Further, the SE Construction Division, Mahboobnagar issued another work completion report in respect of 132 KV DC/SC line from the Wanaparthy SS to the project on 19.09.2018. From the material on record, why the respondent has taken so much time to issue work completion certificate is not clear. The Commission considers 19.09.2018 as the date of synchronisation of the project to the grid. The Commission gave interim direction to the Respondents to synchronise the project vide its interim order on 15.10.2018 based on the Interim Application filed by the petitioner under Section 86 (1) (f) and 86 (1) (k) of the Electricity Act, 2003.

34. Validity of PPA in view of the limitation of 21 months as per Article 10.5.

Date of PPA.	-	23.02.2016
Date of SCOD	-	22.05.2017
Extended SCOD	-	31.10.2017

Further extension of SCOD due to force majeure event considered by the Commission from 01.11.2017 to 21.03.2018 = 141 days

Total Force Majeure period considered from 22.05.2017 up to 21.03.2018
= 303 days

In view of the above calculation, the PPA remained valid till 21.09.2018 after taking into consideration the force majeure events. The claim of the respondent that the delay is 555 days from the date of PPA and hence the PPA is no more in operation and its termination is valid is in correct and untenable.

35. Actual SCOD achieved on 28.11.2018 based on the direction of the Commission on the Interim Application 41 / 2018 dated 15.10.2018. As the Commission considered 19.09.2018 as the date of synchronisation of the project, the delay of 70 days in synchronisation of the project by the Respondent on 28.11.2018 shall be considered as delay due to administrative and regulatory challenges and is condoned.

36. In the result, the following is ordered:

(a) The SCOD of the petitioner's project as per PPA was on 22.05.2017. The State Government extended SCOD for all the solar power projects under 2015 competitive bidding up to 31.10.2017 considering certain difficulties faced by the developers as Force Majeure Events. In the present case, the Commission further extend the SCOD up to 21.03.2018 considering the period from 01.11.2017 to 21.03.2018 as force majeure event because of the delay from the government instrumentalities in granting approval to the sharing of transmission towers being built by another solar power developer in the same corridor, which led to further delays in obtaining approvals for the route profile for transmission system, construction of 132 KV bay and other related components.

(b) Approval for the transmission system and construction of bay at the existing Wanaparthy sub-station and related components is pre-requisite for the completion of the interconnection facilities and for synchronization of the

project as per Article 3 of the PPA and delays in granting such approvals are not within the petitioner's reasonable control and were not reasonably foreseeable. Thus, the total period of delay from 22.05.2017 up to 21.03.2018 (including the period up to 31.10.2017) is suspended or excused and to that extent the period of commercial operation date and scheduled commercial operation date (SCOD) are to be extended up to 21.03.2018.

(c) The petitioner is liable to pay penalty and liquidated damages in terms of Article 10.5 of the PPA for the period 22.03.2018 to 19.09.2018, the date of synchronization considered by the Commission as per the material available on record.

(d) The actual SCOD of the project declared by the respondent is 28.11.2018. This delay of 70 days in synchronization of the project by the respondent from 20.09.2018 to 28.11.2018 shall be considered as delay due to administrative and regulatory challenges and is condoned.

(e) 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.

The Issue is answered accordingly. No costs.

This order is corrected and signed on this the 31st day of December, 2018.

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

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