



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION HYDERABAD**  
5<sup>th</sup> Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 58 of 2018

Dated 02.01.2019

**Present**

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Clean Solar Power (Chitradurga) Private Limited  
Regd. Office: Plot No. 201, 3<sup>rd</sup> Floor,  
Okhla Industrial Estate Phase – III,  
New Delhi – 110 020.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,  
Corporate Office: 6-1-50, Mint Compound,  
Hyderabad – 500063.

2. Transmission Corporation of Telangana Limited,  
Vidyut Soudha, Hyderabad – 500 052.

... Respondents.

This application came up for hearing on 05.09.2018, 22.09.2018, 06.10.2018, 27.10.2018, 17.11.2018, 24.11.2018 and 01.12.2018. Sri. L. Ravichander, Senior Advocate along with Sri. Avijeet Lala, Advocate, and Ms. Shreya Mukarjee, Advocate representing Sri. S. Niranjan Reddy, Senior Advocate for the petitioner appeared on 05.09.2018. Sri. S. Niranjan Reddy, Senior Advocate for the petitioner along with Sri Avinash Desai, Ms. Shreya Mukarjee and Sri. K. Jashwanth Rao, Advocates appeared on 22.09.2018 and 06.10.2018. Sri. Avinash Desai, Sri. K. Jashwanth Rao, Advocates representing Sri. S. Niranjan Reddy, Senior Advocate appeared on 27.10.2018. Sri. S. Niranjan Reddy, Senior Advocate along with Sri. Avijeet Lala, Ms. Shreya Mukarjee and Sri K.Jashwanth Rao, appeared on 17.11.2018. Sri. Sakya Singha Chaudari, Advocate along with Sri Avijeet Lala, Advocate representing Sri. S. Niranjan Reddy, Senior Advocate appeared on 24.11.2018. Sri. Avijeet Lala, Sri. Avinash Desai and Sri. K. Jashwanth Rao,

Advocates representing Sri. S. Niranjan Reddy, Senior Advocate appeared on 01.12.2018. Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. M. Pravalika, Advocate appeared on 05.09.2018, 22.09.2018, 06.10.2018, 27.10.2018, 17.11.2018, 24.11.2018 and 01.12.2018. This petition having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

This Application is filed under 86(1) (c), (e) and (f) of the Electricity Act, 2003 seeking extension of SCOD by 12 months 23 days with the following material averments:

- (i) The petitioner is a successful bidder for 40 MW solar power project at Siddipet, Medak District with 132 KV transmission line connected to 220/132 KV Siddipet SS, 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 22.02.2016 with TSSPDCL 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 21.05.2017.
- (ii) The petitioner suffered delay on account of challenges and difficulties faced due to rapid urbanisation and space constraints in the progress of the project. As per Article 9.2 of PPA, in the event of SCOD being delayed on account of force majeure event, SCOD shall be deferred for a reasonable period subject to a maximum period of 12 months. The delay in project work is caused due to the facts beyond the reasonable control of the petitioner. After acquiring the requisite land, the petitioner had diligently made all reasonable efforts to ensure completion of the project by the date of SCOD.
- (iii) The project of the petitioner received approval from CEIG for energising 25 MW out of 40MW on 20.07.2017 and for energising the remaining 15 MW on 11.08.2017. The respondent no.2 granted approval for erection of 132 KV DC / SC line from 220 / 132 KV Siddipet SS to the proposed 132 KV pooling station at the plant vide letter dated 15.03.2017 and granted approval for sharing the 9 Km of the line with M/s. Suraj Kiran Solar Technologies (P) Ltd for evacuation of solar power on 26.04.2018. The SLDC clearance for synchronising the project was obtained on 18.05.2018 and CEIG approval for the electrical installation of bay extension at 220 / 132/ 33

Siddipet SS and 132 KV transmission line was obtained on 08.05.2018. Thus, the project is in absolute state of readiness since 18.05.2018 for generation and injection of power.

(iv) The petitioner in spite of acting with due diligence tried to acquire Acres 200 land with certain reservations for about Acres 30, on legal advice regarding lack of clear title of the land, which had the potential of jeopardizing the entire project, terminated the contract for the land. The financial investment was huge to Rs.291crores for the project valid for 25 years, the petitioner as a prudent step decided to move the project to a new site and thus it identified Acres 200 in 2016. Even the registration of the land within the time lines provided under PPA could be met only in piece meal.

(v) Due to bifurcation of State, the petitioner suffered due to non-availability of revenue officers to carry out land survey in spite of best efforts of the petitioner. The contractor with whom the petitioner entrusted the work of engineering, designing work, etc., for the entire project failed to carry out the work and therefore the petitioner had to engage another contractor who completed the work which also took considerable time adding to the delay.

(vi) The petitioner suffered lot of delay regarding evacuation and transmission line. The petitioner sought clearance from the respondents with R-2 to provide the details regarding technical feasibility and estimations relating to the transmission line and bay extension for the project. The petitioner informed R-2 about the issues being faced by the petitioner regarding transmission line as the Siddipet SS is located in the middle of Siddipet town leading to an issue regarding construction of the final 1.5KM transmission line which was to cross over the residential areas with no alternative route.

(vii) R-2 vide letter dated 04.03.2017 sanctioned the proposal of estimate for shifting of 0.84 KM transmission line passing over the site of the petitioner by erection of 0.89KM transmission line at Dubbak village in operation section Dubbak of OP. Subdivision Rural in Siddipet division of Medak district. The petitioner on 09.03.2017 paid Rs.2,58,09,300 to R-2 against the tentative project cost with a required undertaking. R-2 accorded approval for execution of work for erection of 132KV feeder bay at the project through one contractor and erection of 132 KV DC / SC line from 220 / 132KV SS Siddipet to the

project and 132 KV feeder bay with arrangement at 220 / 132 KV SS Siddipet through PVR. R-2 accorded initial route approval of 22.94KM of transmission line on 27.03.2017. The petitioner on 28.03.2017 submitted lay out of 132 KV bay extension at 220/132KV Siddipet SS to R-2 with a request to approve it. R-2 vide letter dated 11.05.2017 handed over the approved layout for erection of 132KV bay and metering bay at Siddipet.

(viii) R-2 vide letter dated 19.04.2017 approved the ground profile roll with tower schedule with overhead as well as underground cable to Siddipet SS for a distance of 16KM out of 22.94KM. R-2 approved 1.2KM UG cable work vide letter dated 11.05.2017. The petitioner vide letter dated 22.06.2017 informed R-2 about the proposed commissioning date of the project on or after 30.06.2017. GOTS vide letter dated 23.08.2017 extended the SCOD without penalties up to 30.06.2017 and further up to 31.10.2017.

(ix) The petitioner vide letter dated 22.09.2017 informed R-1 that the project has been completed with CEIG approval received. As far as transmission line is concerned, due to various reasons already communicated from time to time, its completion is delayed with the petitioner making all efforts.

(x) The petitioner sought assignment of PPA in favour of M/s. Axis Trusteeship Service Limited and requested R-2 by letters dated 20.11.2017, 11.01.2018 and 12.01.2018 for approval of sharing transmission line with SKSTPL as there were issues being faced by the petitioner in obtaining **route approval** for the full line length due to urbanisation and limitations in corridor availability. To ensure timely completion of the transmission line and avoid delay, the petitioner had decided to share a part of the transmission infrastructure of SKSTPL who had 9KM infrastructure available for sharing. The rest of the transmission line was laid by the petitioner separately. R-2 granted permission for sharing the transmission line with SKSTPL for the remaining 1.17KM UG cable, the route approval was accorded.

(xi) The transmission line construction was completed by early October 2017 and on 09.10.2017 and was capable to inject power subject to regularisation of shared line by R-2 and consequent statutory approvals, the CEIG gave consent to SKSTPL whose 9KM line length was shared by the petitioner for DC 132 KV line and UG cable for their plant site to Siddipet 132

/ 220 KV SS. The permission for sharing the line was granted by R-2 only on 24.04.2018, approval of CEIG for entire line including the shared 9KM stretch was received by the petitioner on 08.05.2018. The generator pooling substation and the entire 40MW power plant was ready by 11.08.2017.

(xii) R-2 granted permission / approval vide letter dated 26.04.2018 to share 9 KM EHT line corridor with SKSTPL and asked it to pay cost of Rs. 2,54,30,627/- as 50% cost of transmission line.

(xiii) The petitioner vide letter dated 08.05.2018 informed R-1 about its readiness to synchronise the project. DE vide letter dated 18.05.2018 issued work completion report to the SE. R-2 vide letter dated 18.05.2018 granted SLDC clearance for synchronisation of the project. R-2 informed R-1 about the completion of electrical works, metering bay, feeder bay at pooling SS has completed and ready for charging. R-1 through letter dated 30.05.2018 refused to consider the force majeure events claimed by the petitioner and commission the project. Due to the reasons of force majeure narrated, the petitioner could not commission the project within time as per the terms of PPA.

(xiv) The petitioner sought extension of SCOD beyond 21.05.2017 up to 13.06.2018, the date of filing of OP (12 months 23 days), set aside letter dated 30.05.2018 of R-1 refusing to consider force majeure events and declare that the petitioner is not liable under Article 10.5 of PPA.

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

(i) The petitioner entered into PPA on 22.02.2016 to set up 40 MW solar power project under competitive bidding 2015 in group-II category with inter connection point at 220 / 132 KV Siddipet SS at 132 KV voltage level at a tariff of Rs. 5.5949 per unit. As per the terms of PPA, the petitioner had to commission the project within 15 months from the date of signing of PPA i.e., 21.05.2017.

(ii) As per clause 10.5 (e) of PPA, the maximum period allowed for commission of the full project capacity with encashment of performance bank guarantee and payment of liquidated damages shall be limited to 21 months from the effective date of PPA. In case the project is delayed beyond 21

months, it shall be considered as a SPD event of default and Article 10 of PPA shall apply and the contracted capacity shall stand reduced / amended to the project capacity commenced within 21 months from the effective date of PPA and the balance capacity shall stand terminated.

(iii) As per clause 3.2 of PPA, the petitioner is responsible for laying transmission lines to the interconnection substations. The events cited by the petitioner do not fall under the definition of force majeure under Article 9 of PPA. To avoid obligations to perform under PPA and gain extension of time for SCOD, the pretext of force majeure is taken by the petitioner. The force majeure notice issued by the petitioner is rejected by the respondent vide letter dated 30.05.2018.

(iv) GOTS through letter dated 23.08.2017 extended SCOD by four months from 30.06.2017 to 31.10.2017 to the solar power projects in the state who have entered into PPAs with DISCOMs in the bidding of 2015. Even if the decision of GOTS extending SCOD up to 31.10.2017 is taken without penalties, the petitioner should complete the project by 30.04.2018 with penalties and liquidated damages.

(v) For the delay caused in completing the project, the petitioner is liable to pay penalty under Article 10.5 of PPA.

(vi) The petitioner sought permission to synchronise its project which was rejected vide letter dated 07.08.2018 because the petitioner failed to commission the project within 21 months from the date of PPA. The petitioner having failed to commission the project within the stipulated period, has no right to seek extension of SCOD. The petitioner has rights to terminate the PPA when the petitioner failed to achieve SCOD in time.

(vii) When the petitioner failed to commission the project within the stipulated period, it constituted SPD event of default. Therefore, a preliminary default notice is issued on 04.09.2018 as per clause 10.3 of PPA expressing the intention to terminate the PPA. The petition may be dismissed.

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

(i) In the present case, the transmission line was delayed on account of challenges and difficulties faced by the petitioner in respect of delay in grant

of approval by R-2 apart from others. For synchronising the project, the petitioner was required to obtain all the relevant approvals from R-2 as the project was being connected to 220/132 KV Siddipet SS. In the event of any delay in achieving SCOD on account of force majeure events, SCOD can be extended for a reasonable period but not less than day for day basis to permit the SPD to overcome the effects of force majeure events but that too not more than 12 months.

(ii) R-1 has no right to terminate the PPA in view of the fact that the petitioner was not able to commission the project due to force majeure events beyond the control of the petitioner.

(iii) The claim that the SPD should complete the project by 30.04.2018 with penalties and liquidated damages is denied. The petitioner is not liable to pay penalties as per Article 10.5 of PPA. R-2 accorded approval only on 26.04.2018 on the request of the petitioner for utilising 9KM of transmission line built on shared infrastructure with SKSTPL and whereas the petitioner vide letter dated 01.05.2017 sought permission for sharing the line for the first time. The petitioner obtained approval from CEIG for energising 25MW of the project on 20.07.2017 and remaining 15 MW on 11.08.2017 and thus the project was ready to be commissioned and inject power at the delivery point in October 2017.

(iv) The DE of R-1 vide letter dated 18.05.2018 provided work completion report of the project to the SE. R-2 vide letter of the same date granted SLDC clearance for synchronising the project. In spite of these details, R-1 refused to synchronise and verify the commissioning of the project.

(v) The project could not be synchronised primarily due to the delay in approving the sharing of transmission line by R-2, delay in acquisition of land, aided by non-availability of revenue officials and RoW issues constituted force majeure events. These delays have affected the performance of obligations under PPA. It is not within the reasonable control of petitioner and it could not have been avoided if reasonable care has been taken.

4. R-1 filed a memo with additional information to its counter affidavit with the following material:

(i) TSERC has issued RPPO Regulation No.2 of 2018 mandating the DISCOMs to purchase power from renewable energy sources, a minimum of 6% of its consumption of energy during FY 2018-19. Out of which 5.33% is earmarked for solar energy. The estimated quantum of RE / solar for the year as per retail supply tariff order for FY 2018-19 is 8.77% which the DISCOM would be meeting solar RPPO for FY 2018-19. Therefore, the DISCOM is under no obligation to procure power from the present project. However the petitioner is at liberty to sell power generated from its project either to a third party or to interstate which does not meet the requirement of RPPO obligation. However, R-1 is willing to purchase power to safeguard the consumer interest if the tariff is offered by the petitioner at the prevailing lowest price discovered in the recent competitive bidding in the country.

(ii) Regarding extension of SCOD of the project, the guidelines issued by Ministry of Law and MNRE in letter dated 28.07.2017 show how to deal with the matter as follows:

*“Ministry had requested not to give time extension if all the obligations are fulfilled by the concerned State Government authorities / PSU etc, in a project. However, if there are delays any kind on part of State Government authorities /PSU like land allotment, transmission / evacuation facilities, connectivity permission or force majeure, the competent authority in the state /SECI/NTPC etc., may consider providing extension of the time duration strictly as per the contractual agreement.*

*It is also to be clarified that if in a project equipment / materials have been purchased /ordered and substantial advances paid as per original completion date, and there is a delay on the part of the state organisations regarding land, transmission or any such reasons, the extension of the project may be allowed.”*

(iii) The maximum period allowed under force majeure condition is 12 months to overcome the effects force majeure events affecting the SPD as per Article 9.2 of PPA. The SCOD as per PPA is 22.05.2017. The SCOD of all SPDs in the State have been extended to 30.06.2017 and further up to 31.10.2017 by GOTS considering the difficulties faced by the SPDs due to demonetisation, district re-organisation. TS-ipass approvals, ROW issues

related to erection of transmission line. Even by 31.10.2017 the petitioner failed to complete the project. The Commission is requested not to consider the issues regarding sharing of transmission line under the force majeure event again.

(iv) The scheme approval was communicated to the petitioner on 07.03.2017. The petitioner vide letter dated 30.12.2016 requested approval for taking up 132 KV line and 132 KV bay (at Siddipet SS) through a private agency and this letter was received by the respondent on 21.02.2017 only. The contractor approval was communicated on 15.03.2017 and there is no delay in issuing the approval to the petitioner.

(v) The SPD on 12.01.2018 and 03.04.2018 stated that due to ROW and corridor issues in Siddipet town area, it could not lay separate 132 KV line and shared 9KM of corridor / towers of M/s. SKSTPL without intimating R-2 and the petitioner requested approval for sharing of 9KM corridor. R-2 accorded approval on 26.04.2018 for sharing of 9KM corridor / towers of SKSTPL.

(vi) The petitioner could not complete the project within the extended SCOD. The agreed tariff is Rs.5.5949 per unit as per the PPA which was found through competitive bidding 2015. As per the orders of the Commission, the project was synchronised with the grid on 28.11.2018 with a delay of 555 days. During the year 2017 bidding, the price of solar power came down to very low price. Therefore, the Commission is requested to determine the lowest price discovered in the recent competitive bidding, to safeguard the public interest.

5. Additional affidavit on behalf of the petitioner to the additional submission of the respondent with the following material allegations:

(i) The transmission line had been facing problems from the beginning including the construction of transmission line as the Siddipet SS was located in the middle of Siddipet town. About 1.5KM of transmission line was required to cross over residential areas without there being any alternative route.

(ii) The petitioner vide its letters dated 01.05.2017, 15.05.2017, 20.11.2017, 11.01.2018, 12.01.2018 and 28.02.2018 requested TSTRANSCO for approval to share the line of M/s. SKSTPL for 9KM to overcome the delay, ROW issues and approvals relating to road crossing. In spite of repeated

requests made to respondent there was no response. The delay (01.05.2017 to 26.04.2018) in the present case was due to delay in granting approval by R-2 and not on account of contractor approval which was given only on 26.04.2018 which need to be excluded in the nature of force majeure. The project was ready for commissioning as on 18.05.2018 after obtaining all relevant approvals.

(iii) If the delay in the project is not on account of force majeure event, the delay would be developers default as per Article 10.5 of PPA subject to an extension by 6 months with penalty. If Article 9.2 is r/w Article 3.8 of PPA, it is clear that in the event of non-grant of approvals leading to delay in the project, the petitioner is entitled to extension of SCOD to that extent not with the term 'day for day' basis to overcome the effects of force majeure.

(iv) In view of the fact that delay in approvals which is a force majeure event, the issue of tariff reduction does not arise. The order dated 24.11.2018 of APERC in O. P. Nos. 16,17 and 18 of 2018 relates to the parties reaching a mutual agreement to amend the terms of their respective PPAs but not about the delay in achieving SCOD due to force majeure events. The project was synchronised to the grid on 30.11.2018 on the orders of the Commission and it is generating power.

Arguments on behalf of the Petitioner and the Respondents heard.

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 entered into PPA with the First respondent on 22.02.2016 to setup 40 MW solar power project under competitive bidding 2015 in group II category with interconnection point at 220 / 132 kV Siddipet SS at 132 kV voltage level with tariff Rs.5.5949 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., 21.05.2017.

8. In view of difficulties faced by the petitioner, it could not complete the project even after granting extension of SCOD by GOTS up to 31.10.2017. The petitioner claimed that it requested R-2 for approval to share the line of SKSTPL for 9KM to

overcome the delay and ROW issues and approvals relating to road crossing through letters dated 01.05.2017, 15.05.2017, 20.11.2017, 11.01.2018, 2.01.2018, 28.02.2018 and 03.04.2018 there was no response received from R-2 and therefore the petitioner is seeking exemption of this period from the delay in reaching SCOD. Finally, TSTRANSCO vide its letter dated 26.04.2018 granted the approval for sharing of 9 Km of line with SKSPTL for evacuation of solar power to 220/132 KV Siddipet Sub-station. Further, the petitioner prayed to consider the period 01.05.2017 to 28.02.2018 should be added to the period of SCOD 21.05.2017 (the SCOD as per PPA), to arrive at a proper date of SCOD.

9. The petitioner argued that it completed the construction of solar power plant as per the time schedule of PPA and obtained CEIG approval for 25 MW capacity out of 40 MW on 20.07.2017 and for the balance 15 MW on 11.08.2017. Accordingly TSSPDCL was informed about the completion of the solar project and approval of CEIG vide its letter dated 22.09.2017 pending the approval of the interconnection facilities, including transmission line and 132 KV bay at the Siddipet SS. Construction of the interconnection facility and transmission system started only after the approval of TSTRANSCO vide its letter 26.04.2018. Further, petitioner stated that, as the petitioner was ready with all the pre-project arrangements for the interconnection system, it could complete the construction of the system by 18.05.2018. Based on the request of the petitioner, TSTRANSCO vide its letter dated 18.05.2018 informed TSSPDCL and SLDC that the electrical system of 132 KV terminal and metering bay Siddipet SS, 132 KV line from 220 / 132 KV Siddipet SS to project pooling SS are completed and ready for charging. TSSPDCL also issued work completion report in respect of the petitioner's project on 18-05-2018 itself based on the inputs from TSTRANSCO. In compliance of the terms of the Article 3.8 of the PPA, the petitioner informed the Respondent that its project is ready for synchronisation vide its letter dated 21-05-2018.

10. The respondents on the other hand claimed that as per Article 3.2 of PPA it is the responsibility of the petitioner to lay transmission line from the proposed project to the interconnection substation 220 / 132 KV Siddipet SS. The events claimed by the petitioner as force majeure does not fall under the definition of force majeure as per Article 9 of PPA. Except denying that the delay caused due to ROW issues and

transmission issues amount to force majeure, the respondents have not answered as to why there was no response to the letters of the petitioner right from the letters dated 01.05.2017 to 28.02.2018.

11. In view of fact that the delay occurred from 21.05.2017 and ultimately synchronising the project with the grid on 30.11.2018 on the orders of the Commission, the present matter has to be decided. While the TSTRANSCO took almost one year time i.e from 01.05.2017 to 26.04.2018 to agree for sharing of the transmission line with M/S Suraj Kiran Solar Technologies Pvt. Ltd. to facilitate interconnection and evacuation system for their solar project. The evacuation system was to be built near Siddipet town, the petitioner was not able to move forward because of severe right of way issues and the alternative solution was also not feasible. Under such circumstances, the petitioner had no reasonable control over the situation and could not have prevented the situation by prudent utility practices. The petitioner was forced to wait for the approval from the TSTRANSCO for sharing of transmission line with other developer in the same corridor. Under such circumstances, the delay in granting of approval from TSTRANSCO for the components of the project, which is a pre-requisite for completion of the project has to be considered as Force Majeure Event.

12. The issue for determination is how much period of delay is to be considered as Force Majeure Event from the entire period of delay of around year from 01.05.2017 to 26.04.2018. This period needs to be calculated from 31.10.2017, the date up to which the GOTS extended the SCOD for all the solar power projects implemented under the 2015 competitive bidding. The extent of delay attributable for approval of sharing of transmission line and ROW issues as force majeure has to be calculated from 01.11.2017 up to the planned synchronisation informed by the petitioner on 21.05.2018. The time taken by R-2 to approve the proposals is well beyond the procedure laid down by itself and cannot be treated as the delay on the part of the petitioner entirely. The contention of the respondent that the delay relating to transmission line and ROW issues cannot be considered as force majeure as it is the responsibility of the petitioner to attend to the issues on its own in reaching the SCOD is untenable.

13. At this stage it is relevant to examine the provisions of PPA. Article 3 and 6 of the PPA stipulates as follows:

*“3.1 Upon receipt of requisite information from the solar power developer, TSTRANSCO 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.”*

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 DISCOM in terms of PPA. Article 6.2 says,

6.2 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 interconnection facilities where the interconnection is at 33 Kv or above voltage, for synchronisation, 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.

14. 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 contends 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.

“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".

15. The petitioner claims that the respondent is responsible for the delay in issuing approvals. Undoubtedly, it is the obligation of the petitioner to obtain statutory approvals and bearing the cost in obtaining such approvals 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.

16. The GUVNL filed an appeal with the ATE 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.”*

17. This observation of the ATE with equal vehemence applies to the present matter too. In the light of the above ATE judgement, the petitioner is also entitled to receive the relief in terms of Article 9 of the PPA. 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.

18. In the present case, date of SCOD being 21.05.2017, which has to be seen along with the extended SCOD. One up to 31.10.2017 and another from 31.10.2017 up to date of filing of present O.P., on 13.06.2018. The actual synchronisation took place on the interim direction of the Commission i.e., 28.11.2018. Since this synchronisation took place by virtue of interim order on an issue raised by the petitioner, the delay has to be calculated up to 21.05.2018 only. The respondent has not countered the claim of the petitioner that its letters from 01.05.2017 to 28.02.2018 seeking approval of TSTRANSCO to share the line SKSTPL for 9KM to overcome the delay, ROW issue and approvals relating to road crossing. The

respondent merely claimed that these allegations do not constitute force majeure. Why these issues cropped up because hurdles relating to construction of transmission line as Siddipet SS was located in the middle of the town with 1.5 KM of transmission line crossing over residential areas with no alternative route. These obstacles coupled with the inaction of R-2 to respond quickly and promptly to the request of the petitioner starting from 01.05.2017 to 28.02.2018 which are not within the control of petitioner are certainly force majeure events which prevented the petitioner from achieving SCOD within the prescribed time.

19. In compliance of the Article 3.8 of the PPA, the petitioner informed the Respondent vide its letter dated 21.05.2018 that its plant is ready for synchronisation. Even if the 15 days' notice period is taken into consideration as per Article 3.8 of the PPA, the plant should have been synchronised to the grid by 05.06.2018. While the petitioner requested to consider the delay in granting of sharing of transmission line of the SKSPTL by TRANSCO up to 28.02.2018 as force majeure event, the Commission decides to extend the period of force majeure event further from 1.11.2017 to 31.12.2017 beyond the extended SCOD up to 31.10.2017 already approved by the State Government as per the provisions of Article 9.2 of the PPA. This period from 01.11.2017 to 31.12.2017 should be added to the period of SCOD i.e., 21.05.2017 to arrive at a proper date of SCOD. Thus, the petitioner is entitled to extension of SCOD up to 31.12.2017.

20. 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 dated 22.02.2016 which expired by 22.11.2017. 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	-	22.02.2016
Date of SCOD as per PPA	-	21.05.2017
Extended SCOD (GOTS)	-	31.10.2017
Extended SCOD	-	31.12.2017 (Force majeure)

The period of 21 months has to be calculated from the date of PPA (22.02.2016), plus Extended Date of SCOD by the State Government (31.10.2017), plus 60 days

of force majeure found supra, which works out to 31.12.2017. Thus, the entire material on record discloses that the PPA stood valid within the period of 21 months after adding the force majeure period. The contention of the respondent that the time fixed for achieving SCOD has expired and therefore, the petitioner is liable to pay penalty as per clause 10.5 of PPA and also liquidated damages is found to be untenable.

22. In the result, the following is ordered:

(a) Approval for the transmission system and construction of bay at the existing Siddipet 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 01.11.2017 to 31.12.2017 is suspended or excused and to that extent, the period of commercial operation date and scheduled commercial operation date are extended up to 31.12.2017.

(b) Petitioner is liable to pay penalty and liquidated damages in terms of Article 10.5 of the PPA for the period 01.01.2018 to 05.06.2018, the date of synchronization considered by the Commission as per the material available on record.

(c) The actual SCOD of the project declared by the respondent is 28.11.2018. This delay of 176 days in synchronization of the project by the Respondent from 05.06.2018 to 28.11.2018 shall be considered as delay due to administrative and regulatory challenges and is condoned.

(d) The petition is allowed on the same tariff as approved by the Commission.

The respondent No. 1 is directed to file a copy of the amended PPA with the revised date of commissioning. No costs.

***This order is corrected and signed on this the 02<sup>nd</sup> day of January 2019.***

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

**//CERTIFIED COPY//**