



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

I.A. No. 34 of 2018
in
O. P. No. 58 of 2018

Dated: 15.10.2018

Present
Sri. Ismail Ali Khan, Chairman

Between:

M/s. Clean Solar Power (Chitradurga) Private Limited
Regd. Office: Plot No. 201, 3rd 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 and 06.10.2018. Sri. L. Ravinchander, Senior Advocate along with Sri. Avijeet Lala, Advocate, and Ms. Shreya Mukarjee, Advocate representing Sri. S. Niranjan Reddy, Senior Advocate for the applicant / petitioner appeared, Sri. S. Niranjan Reddy, Senior Advocate for the applicant / petitioner along with Sri. Avinash Desai, Ms. Shreya Mukarjee and Sri. K. Jashwanth, Advocates appeared on 22.09.2018 and 06.10.2018. Sri. Y. Rama Rao, standing counsel for the respondents / respondents along with Ms. M. Pravalika, Advocate appeared on 05.09.2018, 22.09.2018 & 06.10.2018. This application having stood over for consideration to this day, the Commission passed the following:

INTERIM ORDER

This Application is filed under 86 (1) (c), (e) and (f) of the Electricity Act, 2003 seeking interim direction to the respondents to allow synchronisation of the project with the grid pending disposal of OP with the following material averments:

(i) The petitioner is a successful bidder in the competitive bidding process conducted by the respondent no.1 for 40 MW solar power project near Siddipet Medak District along with 132 KV transmission line connected to 220/132 KV Siddipet SS and entered into PPA dated 22.02.2016.

(ii) 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 14.03.2017 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.

(iii) The petitioner addressed a letter dated 08.05.2018 to R-1 requesting verification of commissioning of project and in spite of being aware of force majeure conditions on account of which the project was delayed and being aware of the fact that SLDC and R-2 have certified the readiness of the project to be synchronised and commissioned, R-1 through letter dated 30.05.2018 refused to verify the commissioning of project.

(iv) The petitioner is seeking a direction to R-1 to verify and allow the commissioning of project pending disposal of the OP.

(v) The project has to be commissioned in the larger interest of consumers and society which generates clean energy and to prevent wastage of precious natural resource. The petitioner invested a sum of Rs.291 crores to set up the project which also includes debt raised from banks. If interim orders are not passed, the petitioner would suffer total loss of investment and it would cause

irreparable loss to the petitioner. No loss would be caused to be respondent No.1 if the project is allowed to be commissioned pending disposal of the O.P.

2. The respondent No. 1 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) The petitioner is responsible for executing the inter connection facilities for evacuation from the project to grid substation i.e., 220 / 132 KV Siddipet SS at its own cost. The petitioner submitted CEIG approval on 19.05.2018 regarding electrical installation of bay extension at 220 / 132 KV Siddipet SS and 132 KV transmission line.

(iii) The SE / OP / Siddipet through letter dated 19.05.2018 has submitted work completion report for the proposed 40 MW solar power project of the petitioner.

(iv) CE / RZ / TSTRANSCO through letter dated 18.05.2018 informed SE / OMC / Sanga reddy that the electrical works connected with 132 KV terminal and metering bay at Siddipet to proposed substation at the project and 132 KV feeder bay at pooling substation are completed and ready for charging from Siddipet 220 / 132 KV to substation.

(v) CE / SLDC / TSTransco vide letter dated 18.05.2018 has confirmed that the real time data of 40 MW located at Chekode, Dubbak Mandal, Siddipet district connecting at 220 / 132 KV Siddipet is integrated to SLDC on 17.05.2018.

(vi) 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.

(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. This time line is fixed to meet the demand – supply gap. The power procurement planning is done by the respondents duly considering the upcoming projects as per their SCOD and if the project is not commissioned as per the SCOD to meet the demand, the respondents may have to purchase power through IEX at high rates and short term procurement at high rates. The petitioner having failed to commission the project within the stipulated period has no right to seek extension of SCOD. The respondent has rights to terminate the PPA when the petitioner failed to achieve SCOD in time.

(vii) 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.

(viii) The petitioner failed to commission the project within the stipulated period 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 arguments of both the counsel for the petitioner and the respondents heard.

4. The point for determination is whether the petitioner is entitled to an interim direction to the respondents to synchronise 40MW of the project to the grid pending disposal of O.P and on what terms?

5. The petitioner was a successful bidder to set up 40 MW solar power project at Siddipet. PPA was entered between the parties on 22.02.2016 in group II category with inter connection point at 220 / 132 KV Siddipet SS at 132 KV voltage level with tariff Rs.5.5949 per unit. The petitioner was to commission the project within 15

months from the date of PPA i.e., by 21.05.2017. The maximum period allowed for commissioning the full project capacity with encashment of performance Bank Guarantee and payment of liquidated damages which shall be limited to 21 months from the effective date of PPA.

6. 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 of the decision which is extracted below:

“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 off. 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 interim order is not passed for synchronisation pending disposal of O.P.

7. 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.

8. The learned counsel for the petitioner contended that the petitioner has a prima facie case for interim orders and as otherwise, the petitioner would sustain irreparable loss and relied on a decision of Hon'ble Supreme Court dated 11.09.2009 in SLP (Civil) No. 18934 of 2008 between Zenit Mataplast Pvt. Ltd vs. State of Maharashtra and Ors wherein, it was observed that the interim orders are passed on the basis of prima facie findings which are tentative.

9. The learned counsel for the petitioner sought a direction to the respondents to ensure synchronisation to the state grid and for purchasing power from the petitioner pending the disposal of the present appeal, while referring to a decision of APTEL dated 13.12.2016 rendered in Subhash Infraengineers Pvt Ltd and another vs Haryana ERC through Secretary and another. In the cited case, the decision of HERC to the effect that PPA with the appellant's therein are not in line with the purported competitive bidding guidelines for renewable energy generators u/s 63 of the EA 2003 and that the deviations were not approved by the State Commission and hence, the power purchases are not valid, was questioned in the APTEL. In this decision APTEL observed about the technical challenges and deterioration of the solar PV panels and machinery in case of long shut down / disuse. The learned counsel for the petitioner emphasised on this aspect and pleaded for interim orders.

10. The petitioner represented that the project is ready from 18.05.2018 and for want of verification for commissioning of the project by R-1, the project is not synchronised to the grid. R-1 admitted the receipt of request for permission to synchronise the project but rejected the request by letter dated 07.08.2018 since it failed to commission the project within the maximum period stipulated under the terms of PPA. Further, it is to be noted that R-1 gave default notice to the petitioner on 04.09.2018 as per clause 10.3 of PPA expressing the intention to terminate the PPA. This being the case, it is also a fact that the project is ready for commissioning and there is also a threat that the solar panels may deteriorate in case of prolonged non-user which would also cause damage to the machinery.

11. Under these circumstances, the petitioner is found entitled to a direction to R-1 to synchronise the project pending final disposal of O.P. The learned counsel for the respondents contended that they may be given an opportunity to renegotiate the tariff in case interim order is passed, which plea appears to be a reasonable one.

12. Whether the plea of force majeure events pleaded by the petitioner are really so, and if such is the case, the Commission has to examine those claims and decide whether the events can be accepted as force majeure events. In case the plea is not accepted, whether penalties can be imposed to that extent and in such case, the respondent has a right to insist on fresh terms. Further, there is a contention of the respondent that the maximum time period allowed for commissioning of the full project capacity with encashment of performance bank guarantee and payment of liquidated damages shall be limited to twenty one (21) months from the effective date of PPA and it expired by 22.11.2017. This aspect can be decided only in the O.P. The present matter has to be examined in relation to the prayer for interim order.

13. The petitioner has made out a prima facie case for interim direction and in case interim direction is not given, the petitioner has convincingly pleaded that the entire project and its investment relating to 40MW power would be lost, which would also be a blow to the philosophy of renewable energy sources and its encouragement by the State. No doubt, the respondent also has effectively argued about the rights and obligations of both the parties, which are governed only under PPA including the right of the respondent to terminate the contract. These aspects can be looked into in the final disposal of main O.P.

14. Under these circumstances, there shall be a direction to the respondents to synchronise the 40MW solar power to the grid pending disposal of O.P only on the following terms:

- (a) There shall be an interim direction pending disposal of O.P. to the respondent to take steps to synchronize 40 MW of the project to the grid.
- (b) This order is subject to the right of the respondents to renegotiate the tariff.

I.A. is disposed of accordingly.

This order is corrected and signed on this the 15th day of October, 2018.

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

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