

TELANGANA STATE ELECTRICITY REGULATORY COMMISSION HYDERABAD.

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 10 of 2018

Dated: 07.07.2018

Present: Sri Ismail Ali Khan, Chairman.

Between:

ACME Solar Power Technology Private Limited,

Having its registered office at Plot No.152.

Sector 44, Gurgaon – 122002

Rep. by its Director/Authorized

Signatory Mr. MVVS Reddy

S/o Manda Appa Rao aged 47 years

R/o G3, Sri Rama Apartments

Bowenpally, Secunderabad Telangana-500 011.

... Petitioner.

A N D

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
2. Transmission Corporation of Telangana Limited
Room No. 628, 6th Floor,
Vidyut Soudha Building,
Khairatabad Road, Near Eenadu Office,
Khairatabad, Hyderabad,
Telangana 500004.

...Respondents.

This petition came up for hearing on 17.05.2018, and 20.06.2018. Ms. Puja Priyadarshini, Advocate representing Sri Hemanth Sahai, Senior Counsel for the petitioner along with Sri Mast Ram Distal, Assistant General Manager (Legal) of the petitioner appeared on 17.05.2018 and Sri Hemanth Sahai, Senior Counsel for the petitioner along with Ms. Puja Priyadarshini, Advocate appeared on 20.06.2018. Sri Y.Rama Rao, standing counsel for the respondents along Ms. Pravalika, Advocate appeared on 17.05.2018 and 20.06.2018. The petition stood for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sec.86 (1) (f) of the Electricity Act, 2003 (Act 2003) seeking directions to the M/s.Southern Power Distribution Company of Telangana Ltd. (TSSPDCL) for extension of SCOD beyond the stipulated date as per the PPA on the following considerations:

2. The Government of Telangana by a letter dt.18.03.2015 directed TSTRANSCO to initiate the process of purchase of 2,000 MW Solar Power through competitive bidding route on behalf of the Telangana State distribution companies. TSTRANSCO & TSPCC instructed the TSSPDCL to initiate competitive bidding process on behalf of TSDISCOM for purchase of the solar power. The TSSPDCL issued request for selection (RFS) document for selection of Solar power developers in the state of Telangana for procuring 2,000 MW through Tariff based competitive bidding process on 01.04.2015 inviting proposals for setting up grid connected solar PV projects in Telangana on "BUILD Own Operate" basis.

3. TSSPDCL submitted a letter dt.07.04.2015 to this commission for procurement of 2,000 MW solar PV power on long term basis under the competitive and reverse bidding model with maximum cut off rate of Rs.6.45 from Solar power developers willing to setup new solar power projects at pre identified locations. The TSSPDCL also submitted the RFS (Request for Selection) and draft PPA seeking this Commission's approval, in regard to certain modifications thereto. This commission by way of letter dated 02.05.2015 accorded approval to the TSSPDCL proposal and on 08.06.2015 after considering the comments and suggestions from all the stake holders, approved the model PPA and RFS with certain modifications to the draft PPA.

4. In the competitive bidding process, the petitioner was declared as the successful bidder against the RFS for a capacity of 50 MW. The TSSPDCL issued a letter of intent to the petitioner on 31.12.2015 for development of solar power project for generation of solar power and sale to TSSPDCL. Copy of LOI is filed. This commission by way of order dt.15.02.2016 in O.P.No.03 of 2016 U/s 63 of E.A. Act, adopted the tariffs discovered by TSSPDCL, through the tariff based competitive bidding process. In pursuance of LOI, this petitioner entered in to the power purchase agreement with TSSPDCL on 19.02.2016 for setting up solar power project at Bhongir, Nalgonda District and for onward sale of the entire solar energy generated to the TSSPDCL for a period of 25 years. In terms of the PPA, the scheduled commissioning date (SCOD) of the project was 19.05.2017.

5. The project could not be set up and completed before the SCOD in view of the incidents mentioned below which fall within the definition of Force Majeure events in terms of Article 9 of PPA.

(i) The petitioner on 17.08.2016 identified land which is approximately at a distance of 6 K.M., near 220/132/33 KV Bhongir substation for erection of 132 KVDC/SC transmission line from Bhongir SS to the project. The petitioner requested the TSTRANSCO to release the cost estimate and invoice for erection of transmission line so that it could start BAY work after payment of necessary charges. The petitioner, on 23.12.2016, submitted its route proposal for erection of transmission line under the supervision of TSTRANSCO and the Superintending engineer/OMC/ Nalgonda on 07.01.2017, for approval to the TSTRANSCO. On 11.01.2017 the route proposal was approved and a tentative evacuation scheme cost for erection of

transmission line was provided. On 16.01.2017 the petitioner submitted DD for an amount of Rs.68,71,000/- towards engineering charges, spares and bay land cost and requested the TSTRANSCO to provide clearance for executing the evacuation scheme. Till this date, the commissioning of the project and transmission line was as per the schedule provided in the PPA.

(ii) The irrigation and CAD (PW) Department of Government of Telangana informed TS Transco on 13.04.2017 that Baswapur reservoir near Bhongir town of Yadadri Bhongir District has been accorded administrative approval and further stated that the various HT line and towers which were setup by the petitioner in the submergence area have to be shifted outside of BR Submergence area. On 19.04.2017 the TSTRANSCO field construction department orally instructed the petitioner to stop the transmission line erection work and to modify the already approved transmission line route. By the above date, the petitioner has laid foundation work up to 4 K.M., which fell within the BR submergence area. Except transmission line and BAY, the project was ready for charging in May, 2017. On 15.05.2017 the petitioner issued a notice of occurrence of Force Majeure event under Article 9 of PPA informing that change in modification of route amounts to Force Majeure event. On 17.05.2017 the petitioner submitted its revised route proposal for erection of transmission line which was approved by the TSTRANSCO on 30.05.2017. The earlier approved route proposal had to be revised on account of the Baswapur reservoir. By this approval, the total length of the transmission line was increased from the previously approved 25 K.M., to 32 K.M. and the petitioner requested TSSPDCL to extend SCOD of his project for a period commensurate with the period of delay in construction of its transmission line.

(iii) Subsequently, petitioner started facing resistance from the villagers of Mallapur and same was informed to the petitioner to solve the ROW issue. On 07.09.2017 the TSTRANSCO requested the District Collector/ Magistrate to provide support so that the transmission line could be completed at the earliest and the project could be synchronized for providing power. By the above date, the petitioner completed 72 out of 122 towers. On 02.12.2017 the petitioner completed the transmission line, their Bhongir SS, pooling bay and requested the Transco to make arrangements for the statutory inspection. The Superintending engineer/ OMC / Nalgonda informed the TSTRANSCO that the electrical works relating to erection of the transmission line, 132 KV Feeder BAY extension with metering arrangement at Bhongir SS and 132 KV Feeder BAY extension, essential for charging the project have been ready. On 18.12.2017 the TSTRANSCO issued a Work Completion Certificate and informed that the project was ready for charging and requested TSSPDCL and SLDC to take necessary action.

(iv) The petitioner on 18.12.2017 in terms of article 3.81 of the PPA submitted all documents and requested the TSSPDCL to issue permission for synchronization of the project subject to the final decision of GOT/this commission on extension of SCOD. Copies of letters dated 18.12.2017 and 28.12.2017 are filed.

(v) The above facts mentioned in the earlier paragraphs abundantly make it clear that the petitioner's project was affected by Force Majeure and the same have

resulted in severe unforeseen financial implications and also additional constructions of 7.5 K.M. transmission line and re-work on 4.K.M. as the length increased up to 31.5 K.M., which also resulted in wastage of 16 foundations Tower material to the tune of Rs.40,00,000/- and additional investment of Rs.36, 00,000/- in foundations and tower erections in 16 locations. However, the petitioner managed to secure the additional capital incurred and completed the project.

(vi) In view of the Article 9 of the PPA, the petitioner is entitled to extension of SCOD of his solar power project up to 12 months and this extension will not amount to an amendment of the PPA.

(vii) This Commission by letter dt.11.01.2018 directed the TSDISCOMs to allow synchronization of all the solar projects which are completed and filed completion certificates, subject to giving an undertaking to abide by the decision of the commission. In the said letter, it is also stated that this commission has not yet accorded consent/approval for the extension of SCOD up to 31.10.2017 and directed filing of a petition for amending PPA in respect of SCOD and determination of the tariff. The petitioner accordingly submitted the approved undertaking on 31.01.2018 and filed the present petition to extend the SCOD. On 05.02.2018 the TSSPDCL accorded permission for synchronization of the petitioner project to the grid subject to the aforementioned conditions in the undertaking.

6, The petitioner sought the following prayer in the petition.

“The petitioner requests this Commission to kindly consider all the aforementioned submissions made to give effect to Article 9 of the PPA and implement the decision of the Government of Telangana accepting the impact of Force Majeure events and extend the SCOD of the Petitioner’s project by 7 months”.

7. The 1st respondent /TSSPDCL through its CGM filed counter affidavit with the following allegations

(i). the petitioner has entered into PPA with the first respondent on 19.02.2016 for sale of energy from the proposed 50MW solar power plant which is admitted. It is further admitted that on 13.04.2017 the CE/TSTRANSCO was informed about Basvapur reservoir near Bhongir Town of Yadadri district was accorded administrative approval by the Government of the State of Telangana (GOTS) on 08.03.2017 from the Irrigation and CAD department. The HT lines (220KV SE lines and 132KV SE lines) and towers existing across the submergence area of Basvapur reservoir shall be shifted outside of Basvapur reservoir. In view of the letter from the irrigation I & CAD, the CE/Rural Zone /Hyderabad has approved the revised route proposal on account of Basvapur reservoir under Kaleshwaram lift Irrigation scheme.

(ii). The Government of Telangana, Energy department through letter dated 29.06.2017 gave extension of time 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 are required under CEA and TSTRANSCO guidelines. Through letter dated 18.08.2017, this Commission in-principle has approved the extension of SCOD up to 30.06.2017 to the projects of competitive bidding in the year, 2015 and directed the petitioner and others to file

petitions for amending PPAs regarding penalties and re-fixation of tariff and file consolidated petition in respect of the projects of 2015 by making all those projects which have been commissioned or ready to be commissioned beyond the stipulated period of SCOD in the PPAs they have entered into.

(iii). The respondent No.1 as per the directions of the Commission filed petition for amending PPAs duly incorporating SCOD on 30.06.2017 at the same tariff, who have entered into PPAs with the respondent No.1 in the competitive bidding, which has been returned and it remained at that stage.

(iv). The GOTS, Energy department by letter dated 23.08.2017 gave extension of time for SCOD for additional four months from 30.06.2017 to 31.10.2017 to the solar power projects who had PPAs with DISCOMS and participated in the bidding of 2015.

(v). This Commission in response to the letter dated 30.11.2017 of the respondent No.1, observed that no general order can be issued for extension of time and each case has to be examined on merit with reference to the terms of the PPA by following the principles of natural justice and each solar power developer has to file a petition before the Commission furnishing reasons for extension of time which can be examined within the framework of the PPA.

(vi). The first respondent as per the directions of the Commission filed petitions.

(vii). The petitioner furnished work completion report on 18.12.2017 beyond the stipulated period of SCOD i.e., 18.05.2017 as per the PPA including penalties and liquidated damages and requested the respondent No.1 to issue clearance for synchronization of the project and a letter dated 03.01.2018 was submitted to the Commission to accord permission for synchronization of the solar power plants of 2015 bidding who have submitted work completion reports duly collecting undertakings from the solar power developers. The Commission through letter dated 02.02.2018 permitted the first respondent to allow synchronisation subject to conditions approved by the Commission. The orders were issued to SE/Bhongir on 05.02.2018 permitting synchronization of 50MW solar power project of M/s. ACME solar power technology Pvt. Ltd (petitioner) at Bhongir substation and the same was commissioned to the grid on 07.02.2018.

(viii). The petitioner has submitted a representation to the CE/Commercial/TSPCC for extension of SCOD on the ground of force majeure. Accordingly, TSPCC directed the Director/Transmission/ TSTRANSCO to assess the delay period attributable to Force Majeure as claimed by the petitioner in re-routing of the evacuation of 132KV transmission line for further examination by TSPCC.

(ix) The Director/Transmission/TSTRANSCO gave a report for extension of SCOD by two months from 31.10.2017.

(x) In the minutes of the meeting held on 28.02.2018 there was a decision to the effect that, TSPCC decide to consider the delay period caused due to re-routing of 132 KV transmission line on account of construction of Basvapur reservoir under

Force Majeure. TSPCC also decided to send a detailed factual report to TSERC and await for TSERC decision”.

(xi) Clause 9.2 of PPA enables that the SCOD shall be deferred to a period of twelve months in the event of delay in SCOD due to Force Majeure event affecting the solar power developer.

8. The first respondent thus sought suitable orders as may be deemed fit and proper under the circumstances in the matter. The respondent has not filed any counter affidavit.

9. The petitioner filed a rejoinder to the reply of the first respondent and the material allegations are as follows:

(i). The PPA shows the SCOD of the 50MW solar power project near 220 /132 / 33 KV level Bhongir SS, Yadadri Bhongir District, Telangana is 18.05.2017 i.e. within 15 months from the signing of the PPA. However, for the reasons beyond the control of the petitioner, the actual COD of the project is achieved on 07.02.2018 thereby leading to a delay of seven months. This delay occurred in shifting the transmission towers and revision of approved route proposal on account of the upcoming Baswapur reservoir.

(ii). The petitioner submitted route proposal which were duly approved by the TSTRANSCO and commenced construction works well within the time schedule provided in the PPA.

(iii). The Irrigation & CAD (PW) Department, GOTS on 13.04.2017 informed TSTRANSCO that Baswapur Reservoir near Bhongir Town of Yadadri Bhongir district has been accorded administrative approval. Accordingly, various HT lines and towers 220 KV SE lines & 132 KV SE lines had been set up / were being set up on the submergence area of Baswapur Reservoir to be set up outside of BR submergence area. The first respondent field construction department on 19.04.2017 orally instructed the petitioner to stop transmission line erection works and to modify the already approved transmission line. By the time of the related letter dated 13.04.2017, 4.8KM of its transmission line (16 foundations including four erected towers) which have been completed fell within the submergence area. The present project transmission line and bay was ready for charging in May 2017.

(iv). The petitioner further stated that any modification to the transmission line Route would necessitate site survey, approval from TSTRANSCO, construction & erection of transmission line which will take about 3-4 months. Further, the petitioner stated that whatever delay that occurred, it was due to unforeseeable and beyond the reasonable control of the petitioner and this modification of the transmission line amounted to a force majeure condition for extending SCOD of the project commensurate with the delay.

(v). The petitioner on 17.05.2017 filed a revised route proposal which was approved by the TSTRANSCO on 30.05.2017. The petitioner stated that in this approval, the total length of transmission line is increased from the previously approved 25 KM to 32 KM. The petitioner has sent an update on 20.06.2017 claiming force majeure

events seeking extension of SCOD of its project commensurate with the delay in erecting the transmission line.

(vi). Regarding the allegation of row (Right of way) issue in view of the resistance from residents of Mallapur village, the first respondent on 07.09.2017 requested the District Collector, Bhongir to provide support for laying transmission line at the earliest. The petitioner by that time erected 72 towers out of 132 towers. The petitioner has completed the transmission line, bay at Bhongir SS, pooling bay at the project by 02.12.2017 and requested the first respondent for statutory inspection which was done on 16.12.2017 by the SE/OMC/Nalgonda and the project was ready for charging. The second respondent issued work completion Certificate dated 18.12.2017 and informed the first respondent as well as the SLDC that the project was ready for charging and then on 03.01.2018 the first respondent through letter dated 03.01.2018 requested the Commission to accord synchronization which was accorded on 02.02.2018 by the Commission and on 05.02.2018 TSTRANSCO accorded Synchronization approval to the petitioner and the project was successfully Commissioned on 07.02.2018.

(vii). The delay in shifting transmission lines and ROW issues led to a delay of approximately 7 months (19.04.2017 to 18.12.2017). Further, the petitioner states that the project was delayed for about one and half months on account of delay in permission for synchronization in view of the genuine difficulties faced and seeks implementation of Article 9 of PPA and particularly Article 9.2 which permits the extension of SCOD on day-to-day basis subject to a maximum of 12 months to overcome the effects of force majeure events. The petitioner further reports that from the time of commissioning of the project, the 1st Respondent has not been making payments and seeks a direction to the DISCOM to pay.

10. Heard both sides. Now the Point for determination is:

Whether the petitioner is entitled for extension of SCOD from 18.05.2017 to 07.02.2018?

11. There is no dispute about the petitioner participating in the open competitive bidding for establishing 50 MW Solar Power Project at pre identified location i.e. at Bhongir, in the erstwhile Nalgonda District and agreeing to supply entire 50 MW power to respondents. In pursuance of the same, the petitioner entered in to PPA with the respondents on 19.02.2016 for setting up a 50 MW Solar Power project at Bhongir and for sale of the entire solar energy generated to R-1 for a period of 25 years. In terms of PPA the petitioner has to complete the solar power project on or before 18.05.2017 i.e. 15 months from the date of entering in to PPA. It is also an admitted fact that the project was not completed as per the terms and conditions of the PPA, but it was completed on 18.12.2017. That is with a delay of 7 months.

12. According to petitioner he could not complete the project with in the stipulated time, because on 13.04.2017 the Telangana Govt. informed TSTRANSCO that the Baswapur Reservoir is coming up near Bhongir town of Yadadri Bhongir District and various HT line and Towers which were setup in the submergence area have to be shifted outside the Baswapur Reservoir submergence area. On 19.04.2017

TSTRANSCO field construction department orally instructed the petitioner to stop the transmission line erection work and to modify the already approved transmission line. By the above date, the project of the petitioner was ready for charging in May,2017 except for transmission line and Bay. On 15.05.2017 the petitioner issued a notice of occurrence of Force majeure event under Article 9 of PPA to the respondent No.1 informing that the change in modification of route amounted to Force majeure event.

13. On 17.05.2017 the petitioner submitted its revised route proposal for erection of transmission line which was approved by TSTRANSCO on 30.05.2017 acknowledging change in the earlier approved route proposal on account of the Baswapur Reservoir. In view of Re-Route work, the length of the transmission line has increased from 25 K.M. to 32 K.M. The petitioner has also requested to extend SCOD for a period commensurate with the pleaded delay in the construction of its transmission line. While the petitioner started laying the line, he faced resistance from the villagers of Mallapur and the same was informed to the respondent to solve the issue. On 07.09.2017 TSTRANSCO requested the District Collector to provide support, so that the Transmission line could be completed at the earliest and the project could be synchronized.

14. The respondents asserted that there is no obligation on their part to request the District Collector to provide support and it is the responsibility of the petitioner to sort out the issues with the concerned authorities.

15. The learned counsel for the petitioner contended that there are ROW issues in the project and the same were informed to the TSTRANSCO who requested the concerned Revenue officials to ensure removal of the difficulty in laying the lines. He further contended that the issue of Right of way resulted in delay of two and half months i.e. from September 2017 to November 2017. The petitioner counsel contended that there is no necessity to amend the PPA and submitted that on the representation of the Solar Power Producers, whoever entered in to PPAs in 2016 faced Force Majeure events and requested the Government to extend the SCOD and in pursuance of their representations, the Telangana State Government extended the SCOD till 30.06.2017, accepting the Force Majeure events pleaded by the Solar Power Producers. The counsel for the petitioner contended that the conduct of the DISCOM is sufficient to show that it accepted the Force Majeure conditions agreeing to extension of SCOD as provided in the PPA and the respondent then approached the Commission and obtained approval with some rider.

16. The learned counsel for the respondents contended that the time lines have been set forth in the PPA itself and deviation of the same would entail invoking of penal provisions including termination of the agreement. He further contended that the Force Majeure conditions sought to be relied on by the petitioner neither constitute a Force Majeure situation nor does it fit into the definition provided in the agreement. He further contended that Article 6 is available to the DISCOM which provides for time lines upon signing of the PPA and further contended that the petitioner committed delay in completing the project and synchronizing it to the grid.

The counsel for the respondent further stated that there are no reasons and evidence to accept the alleged Force Majeure conditions.

17. The respondents have admitted that on 13.04.2017 Irrigation and CAD Department addressed CE/Transmission/ TSTRANCO that due to the formation of Baswapur Reservoir nearby Bhongir, there is necessity to shift the number of HT Lines and Towers existing across the submergence area of Baswapur Reservoir to the outside of Baswapur Reservoir submergence area. In view of the same, the C.E./Rural Zone Hyderabad vide letter dated 30.05.2017 has approved the revised route proposal. Therefore, in effect, the respondents have also admitted the fact of shifting of the line and towers from the Baswapur Reservoir Submergence area. The respondents have not specifically denied the fact of increase in the length of revised line by 7 K.M. as alleged by the petitioner. Therefore, it is clear that the fact of increase in the length and revised route line must have delayed the project leading to additional expenditure.

18. Now the Commission has to examine as to what is the extent of time actually taken by the petitioner in shifting and erecting the revised route line and completing the project. According to petitioner, there is a total delay of 7 months in completing the work, because of the extra line of length and approved re-route and therefore, the same has to be taken in to account in extending the SCOD.

19. The petitioner in para vii of his petition stated that after approval from TSTRANSCO it may take above 3 to 4 months for completion of the construction and erection of the transmission line. This fact has not been disputed by the respondents either in the counter or in the arguments.

20. Now the learned counsel for the petitioner claimed that the petitioner faced resistance from the villagers of Mallapur while constructing the line from September, 2017 to November, 2017 and in this regard, the petitioner addressed a letter to the DISCOM on 07.09.2017 to request the Collector to provide support and the Collector has provided the support and this caused another two and half months of delay in completing the project. The petitioner's counsel further contended that the respondents cannot invoke either article 6 or article 10 of the PPA as they have not issued notices under the above said articles.

21. The learned counsel for the respondent contended that there is no obligation on the part of respondent in sorting out the issues faced by the petitioner from the Government authorities as per clause 4 of PPA which is as follows.

“Whereas, TSDISCOM has no obligation to recommend to any department the grant of permission or sanction for the solar power project. The Solar Power developer shall on its own obtain permission or sanction from the Government Authorities, if any required for establishing the project.”

22. The further contention of the respondents is that they have not given notices either under Article 6 or Article 9 of PPA, in view of the Telangana Government Policy to encourage Solar Power Projects. Though the DISCOMs are entitled to terminate the PPA under the above said articles, but by not giving notices, they helped the petitioner. Had the agreement of the petitioner been terminated, it would

have forced the DISCOM to purchase power with fresh revised rate of tariff. Therefore, the respondents contended that they are entitled to Levy penalties and also claim liquidated damages under Article 10 of PPA.

23. In view of the terms and conditions of the agreement, the delay of 2 and half months i.e. from 07.09.2017 to November 2017 cannot be deducted as claimed by the petitioner, because that delay is due to resistance by the villagers of Mallapur. Though there is no obligation on the part of the respondents, but only with a view to help the petitioner, they have addressed a letter to the Collector on 07.09.2017. Therefore, the petitioner's counsel cannot contend that the above delay of 2 and half months is due to the respondent's attitude only.

24. The petitioner submitted a revised route proposal to the respondents on 17.05.2017 regarding upcoming Baswapur Reservoir and the same was approved on 30.05.2017 by respondents. Thus, the delay of 14 days is caused in giving approval to the revised route, which is also a circumstance in favour of the petitioner in explaining the delay, which is not avoidable from its side.

25. The learned counsel for the petitioner represented that the Government has extended SCOD of the Solar Projects under two letters and under the first letter SCOD was extended up to 30.06.2017 and under the second letter SCOD was further extended up to 30.10.2017. He further added to state that the Government has accepted the Force Majeure conditions in extending the SCOD's. The learned not consider the Force Majeure events while extending SCOD.

26. In the first letter, the Government specified that the SCOD is extended without any penalties, but the same has not been specifically mentioned in the second letter. The counsel for the petitioner contended that the extension of SCOD up to 30.10.2017 under the second letter is also without any penalties. Subsequently, it was clarified by the Government that the extension of SCOD up to 30.10.2017 was also without any penalties.

27. The petitioner addressed a letter dated 28.02.2017 to the Special Chief Secretary, Energy Department, Government of Telangana to accept the Force Majeure events as mentioned in the letter and to extend SCOD. A reply was given by the DISCOM on 23.03.2017 rejecting the request made by the petitioner in the letter dated 28.02.2017. In view of the reply given by the respondents, it is clear that they have rejected the request of the petitioner to accept the incidents mentioned as "Force Majeure" events.

28. Thereafter, the petitioner has written another letter dated 10.04.2017, again requesting to extend SCOD. On 29.06.2017 GOTS issued a letter extending the SCOD up to 30.06.2017 and subsequently, the same was extended up to 31.10.2017 as mentioned above. In both the letters, the GOT stated that the extensions were granted by it after considering the facts, but there is no mention that the GOT accepted the Force Majeure events specifically pleaded by the Solar Power producers.

29. According to learned counsel for the petitioner, the period of impact of delay is from 19.04.2017 (date of oral instructions to stop work) to 18.12.2017 that is 8

months approximately. The above period of impact also included the two and half months of approximate delay due to ROW issue and finally, he stated that the period of further delay is from 18.12.2017 (work completion certificate) to 05.02.2018 (approval of Synchronization) that is approximately one and half months.

30. The Petitioner has submitted the Work Completion Report issued by the 2nd Respondent on 18.12.2017 to the First Respondent as well as SLDC to the effect that the Project was ready for charging. The DISCOM on 03.01.2018 requested this Commission to accord approval for synchronization, which was accorded on 2.2.2018 and the 2nd Respondent permitted Synchronization which was successfully commissioned on 07.02.2018 to the GRID. The Petitioner was ready with SCOD on 18.12.2018 and the time taken to permit synchronization to the GRID on 07.02.2018 is only administrative delay for which the Petitioner has no control. Therefore the date of SCOD is taken as **07.02.2018**.

31. It is a fact that the Baswapur Reservoir was proposed and its capacity was enhanced and thereby, the original route of line and some of the towers constructed by the petitioner were found affected in the submergence area of the Baswapur reservoir near Bhongir town. It necessitated to submit a revised route proposal for shifting the already constructed line and towers from the submergence area. The petitioner has also pleaded in his petition that it requires about 4 months" time to complete the re-routing of the line and towers in the extended area of 7 K.M. from the original 25 K.M. route. In view of the facts and circumstances, the commission accepts the plea of the petitioner that it took about 4 months to complete the rerouting of the line. The correspondence between the parties shows that the approval for the revised route proposal was given with delay on 30.05.2017 by the TS Transco. Admittedly the project was completed on 18.12.2017, according to both the parties.

32. In view of approval of SCOD by the Commission in principle up to 31.10.2017 without any penalties and in view of the re-routing of the line, which was not in the hands of both the parties, the actual delay in completing the project from 31.10.2017 is approximately one and half months. In view of the reasons aforementioned, the delay in completing the project is found to be one and half month approximately even according to the petitioner and the Commission.

33. The TSSPDCL (respondent) has examined and deliberated on the representation of the petitioner for considering the delay in shifting the route line regarding Basavapur Reservoir submergence area and agreed with the petitioner that the reasons for causing the delay in synchronization was due to the "force majeure" event and communicated the consent to the Commission through letter dated 23.3.2018. Article 9 of PPA provides for similar circumstances for extension of SCOD and relevant part of the Article is as follows:

"Force Majeure" shall mean any event or circumstance that materially and adversely affects the performance by either party (the affected party) of its obligations pursuant to the terms of the agreement (including by preventing, hindering or delaying such performance, but only if and to the extent that such events and circumstances are not within the affected party's reasonable control and were not reasonably

foreseeable and effects of which the affected party could not have prevented by prudent utility practices or, in the case of constructive activities, by the exercise of reasonable skill and care etc...

34. In the present case also the petitioner, after fixing some Towers and drawing line, had to remove the fixtures, change the line, got the rerouting approved, carried out rerouting and laid the lines as per the changed increased route. These changes caused the delay. The petitioner could not have prevented the delay. In fact the petitioner was proceeding as per the schedule, which was interrupted due to the proposal for the Baswapur Reservoir. It was neither in the hands of the petitioner nor in the hands of the respondent to predict and prevent the obstruction of the work. Thus the delay cause due to the rerouting and laying of the lines can be treated as "Force Majeure Events" as described in the Article 9 of PPA and agreed to by the Respondent No.1.

35. It is relevant to mention here that the 2nd respondent has advised re-routing of Towers and lines in view of the proposed Baswapur Reservoir and is also a privy to the difficulties faced by the petitioner who had to remove the structures and lines and start afresh outside the submergence area. The second respondent through a letter dated 10.02.2018 addressed to the 1st respondent has recommended for extension of SCOD by further two months beyond 31.10.2017 to offset the extra efforts the petitioner had to make, suffer the delay and expense. The first respondent too had reciprocated through a letter dated 23.03.2018 addressed to this Commission recommending for extension of SCOD by further two months from 31.10.2017, obviously in view of the real difficulties faced by the petitioner in the matter. Keeping in view the fact that the petitioner had to bear the sudden changes as a result of submergence of Baswapur reservoir and its realisation by both the respondents, it is found reasonable and also necessary to condone the delay of about one and half months from 31.10.2017 to 18.12.2017 on the ground of Force Majeure events.

36. It is also clear that a maximum period of 12 months is fixed as per Article 9.2 of PPA for condoning the delay caused due to Force Majeure Events to overcome the effects. In the present case the SCOD is fixed as 18.05.2017 and whereas the petitioner has submitted the Work Completion Report on 18.12.2017 which is within the period of 12 months (18.05.2018) and thus the project of the petitioner has come to fruition as per the terms of the PPA.

37. The learned counsel for the petitioner ha relied on a decision rendered by the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited V/s Solar Semi-Conductor Power Company (India) Private Limited and another {(2017) 16 SCC 498} wherein the Hon'ble Supreme Court observed that the Commission is enjoined with power to issue appropriate orders in the interest of justice and for preventing abuse of process of the Commission, to the extent not otherwise provided for under the Act or rules. In other words, the inherent power of the Commission is available to it for exercise only in those areas where the Act and the Rules are silent. In case of PPA, which is an agreement between the parties, the Commission cannot extend the time stipulated under the agreement in exercise of power under Section 85 of the Electricity Act.

38. In the present case, the Commission is exercising power to enforce and interpret the terms of PPA and not otherwise. The contention of the petitioner that the Commission can exercise its inherent powers to condone the delay is untenable because the terms of PPA sufficiently covers the present issue also.

39. The learned counsel for the petitioner has cited G.Jayashree and others Vs. Bhagawandas Patel and others {(2009) 3 SCC 141} wherein the question of discretionary power to be exercised and conduct of the parties was observed to be relevant and contended that the conduct of the parties to the present petition is important to arrive at a decision in this case. The facts and circumstances and also the conduct of the parties is scrutinised supra to arrive at a decision but within the confines of terms of PPA.

40. In view of the forgoing reasons, the petitioner is found entitled to extension of SCOD for a period of 7 months from 18.5.2017 to **07.02.2018**. The petition is allowed. The parties to bear their own costs.

The order is corrected and signed on this the 07th day of July, 2018.

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN.