



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

**5<sup>th</sup> Floor, Singareni Bhavan Lakdikapul Hyderabad 500004**

O. P. No. 34 of 2018

Dated 01.09.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Mythrah Abhinav Power Private Limited,  
Regd. Office: 8001, 8<sup>th</sup> 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, Waranal – 506 001.

3. The Special Chief Secretary, Energy Department  
Government of Telangana, Telangana Secretariat,  
Hyderabad.

... Respondents.

This petition came up for hearing on 21-07-2018 & 03-08-2018. 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 and 03-08-2018. Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate appeared on 21.07.2018 and 03.08.2018. The petition having stood over for consideration to this day, the Commission passed the following:

## ORDER

This petition is filed under 86(1) (f) & 86 (1) (k) of the Electricity Act, 2003 seeking extension of SCOD by 128 days with the following material allegations:

(i) The TSSPDCL on behalf of TSDISCOMS floated tender for procurement of 2000 MW solar power through e-procurement platform as per the directions of the Energy Department, GoTS, Hyderabad. In the tender process, the petitioner was a successful bidder through open competitive bidding process to setup the solar photovoltaic power project of 8 MW capacity at Thimmajipet, Mahaboobnagar Dist, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 23-02-2016 between the petitioner and the respondent. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 12 months from the date of PPA and achieve the Commercial Operation Date (COD) by 22-02-2017.

(ii) After signing PPA, certain unforeseen events and circumstances delayed the development and setting up of all solar power projects across the state of Telangana. These events are force majeure in terms of Article 9 of PPA. During the year, 2016 the Government of the State of Telangana initiated re-organisation of the districts and formation of new districts and there was utter confusion in the offices of the revenue authorities regarding jurisdiction of villages, Mandals etc. The authorities took time to reorganise the records and related documents in the new Mandal headquarter, which resulted in delay in Acquisition of land and further processing of conversion procedures for the project lands. Further, Sada bainamas prevented expeditious acquisition of land because before being transferred, the sada bainamas needed regularisation which took time.

(iii) The second major cause for delay is demonetization of high value currency by the central government, which resulted in shortage of cash and difficulties in bank transactions. The vendors / sub-contractors could not pay rents for machinery and labour charges and faced severe setbacks due to limited resources which had an adverse impact in the progress of the work. The introduction of GST from 01.07.2017 by the Central Government created ambiguities in the tax rates, delay in supply of material and services at the

project site. Thus, the delay caused due to various factors narrated above were beyond the control of the petitioner and they could not be regulated or controlled and the petitioner suffered badly in the process.

(iv) The Government policy of non-allotment of government land for setting up of power projects, further the projects of government like Mission Bhagiratha, Mission Kakatiya and Project Kaleshwaram caused the farmers not to part with their lands which also affected acquisition of land for the solar power project.

(v) The petitioner and others faced issues on the supply front from the module manufacturers like increase in internal targets fixed by the Government of China for the year 2017, reduction in anti-dumping duty by the European Union and exponential purchases by the United States based IPPs lead to delay in supply of modules which also resulted in increase in capital cost due to sourcing of the modules from alternate suppliers. Further, there was an issue regarding module reclassification by the Government of India relating to variable GST. Imposition of anti-dumping duty on steel by the GOI against imports from China, Japan, Korea, Ukraine etc., not only imposed heavy burden on the petitioner but also additional cost.

(vi) Incessant rains in the months of June 2017 till October 2017 resulted in flooding of the project site, idling of labour and equipment hampering the construction work. Added to this, demonetisation lead to shortage of cash and requirement of paying labour in cash on daily basis affected the progress of the work.

(vii) Article 9 of PPA deals with various circumstances which constitute non-political events and direct political events under the force majeure clause. The petitioner suffered due to both direct political and non-political events. 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 extension of the SCOD.

(viii) The GOTS on representation of the solar power producers regarding force majeure events extended SCOD up to 30.06.2017 by letter dated 29.06.2017 and directed the TSDISCOMS to take further action. Further, by letter dated 23.08.2017, GOTS after careful consideration of force majeure

events, extended SCOD up to 31.10.2017. The Commission by way of letter dated 11.01.2018 directed the TSDISCOMS to allow synchronisation of all solar power projects which have set up their projects and file completion certificates by taking undertakings under the format provided by the Commission.

(ix) The SCOD shall be extended in case of delay on account of force majeure events as per Article 9.2 of PPA and the petitioner is entitled to such deferment for 128 days.

2. The respondent through its Chief General Manager (IPC & RAC), TSSPDCL, filed counter-affidavit with the following material allegations:

(i) The petitioner has entered into PPA with the respondent on 23.02.2016 to set up 8 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 33 / 11 KV Thimmajipet SS at 33 KV voltage level at a tariff at Rs.5.6887 per unit. As per the terms of the PPA, the petitioner has to commission the project within 12 months from the effective date of signing of PPA i.e., 22.02.2017. The actual commercial operation date (COD) of the project is 30.06.2017 i.e., with a delay of 128 days.

(ii) As per Article 6 of the PPA, the petitioner had to obtain all consent, clearances and permits required for supply of power to the respondent and procure land for setting up the project at least at 4 acres per MW in the name of the petitioner within 6 months at its own cost and risk, from the date of signing of the PPA. In fact, the Districts Reorganisation in the State of Telangana and demonitisation of high value currency in the country have occurred post scheduled date (i.e., 22.08.2016) to obtain necessary approvals and to procure land for the said project and therefore, the contention of the petitioner on this aspect is not tenable.

(iii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioners attempt at arbitrarily declaring an event or circumstance as force majeure event cannot be termed as Force Majeure.

(iv) As per Article 3.2 of PPA, it is the petitioner alone which is responsible for executing inter connection facilities for power evacuation from the proposed solar power project to the grid SS at its own cost. The respondent is not responsible for getting permissions or sanctions from the government

authorities and the government would not recommend to any department for the grant of permission / sanction for the solar power project as per para 4 of PPA and the petitioner on its own should obtain these permissions and sanctions from the government.

(v) The CGM / TSSPDCL sanctioned evacuation arrangement of solar power from the proposed 8 MW project of the petitioner on 15.06.2016 and the SE / OP / Mahaboobnagar / TSSPDCL submitted the work completion report vide letter dated 24.06.2017 for the 8 MW project with details of erection of solar PV modules and installation of ABT energy meters. CE (SLDC & Telecom) vide letter dated 26.08.2017 had confirmed the real time data of 8 MW project connecting at 33 / 11KV Thimmajipet SS at 33 KV level is integrated to SLDC on 23.08.2017.

(vi) The CGM (IPC & RAC) vide letter dated 30.06.2017 issued instructions to SE / OP / Mahaboobnagar to synchronise the project duly following the department procedure in vogue. In furtherance thereof the project was synchronised to the grid on 30.06.2017.

(vii) It is further stated that the Government of Telangana State (GoTS), Energy Department, through a letter dated 29-06-2017 gave extension for SCOD on representation up to 30-06-2017 to the solar power projects within the state, who have concluded the PPAs with TS DISCOMS, without any penalty duly following the requirement under CEA and TSTRANSCO guidelines. The Commission had approved the extension of SCOD up to 30-06-2017 by its letter dated 18.08.2017 for the solar power projects of competitive bidding in the year 2015 with a condition to re-fix the tariff and also with a direction to the respondent to file a petition for amending the PPAs in respect of penalties and re-fixation of the tariff.

3. The petitioner filed rejoinder with the following additional material averments:
  - (i) The petitioner attributed to financing agreements which depended on demonstration of ownership of land which was delayed due to issues relating to acquisition and as a result, there was a delay in processing of loans by the banks. There was delay in construction of the transmission line. There was a delay in grant of approval for evacuation scheme. The petitioner requested TSSPDCL on 10.05.2016 seeking approval of scheme for evacuation which

came by way of letter dated 15.06.2016 from the CGM/ Commercial. Thus, there is a delay of 26 days in grant of evacuation scheme approval by the respondent.

(ii) Due to incessant rainfall in the month of June 2016 to September 2016 there was flooding of the project site, idling of labour and equipment of the project site which hampered the construction work. The petitioner took all possible steps to overcome the effect of heavy rains to drain water from the project site, relaying of damaged road, etc., which caused delay of 30 days.

4. I heard the arguments of both the counsel for the petitioner and counsel for the respondent.

5. The point for determination is whether the petitioner is entitled to condonation of delay of 129 days in achieving SCOD by 30-06-2017 instead of 22-02-2017 as per terms of PPA signed on 23-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 8 MW to be connected to 33 / 11 kV Thimmajipet SS, at 33 KV voltage level. The petitioner has entered into PPA with the respondent on 23-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 12 months from its date. The CGM/TSSPDCL sanctioned evacuation arrangement of solar power from the proposed 8 MW plant on 15.06.2016. The SE / Op / Mahaboobnagar / TSSPDCL has submitted the work completion report through letter dated 24.06.2017 with the details of erection of solar PV modules and installation of ABT energy meters. The CE (SLDC & Telecom) vide letter dated 26.08.2017 had confirmed the real time data of the project connecting at 33/11 KV Thimmajipet SS at 33 KV level integrated to SLDC on 23.08.2017.

7. The Government of Telangana (GoTS), Energy Department gave extension of SCOD up to 30-06-2017 to the solar power projects in the state, who have concluded PPAs with TSDISCOMs without any penalty by following all the technical requirements under CEA and TSTRANSCO guidelines. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of the State Government for extension of SCOD up to 30-06-2017 without any penalty, after examining the merits

of the matter. It was suggested that individual generators will move the Commission with a proper petition for condonation of delay and extension of SCOD. The Licensees were allowed to synchronise the projects completed in all respects by taking an undertaking from individual developer that they will abide by the decision of the Commission on respective projects.

8. The petitioner pleaded delay due to re-organisation of districts, the confusion in the offices of the revenue authorities, difficulty in cash flow, bank transactions and difficulties in procuring labour to carry out labour work. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., issues relating to acquisition of land, which are beyond its control and which resulted in delay of 129 days in reaching the SCOD. The respondent, on the other hand, contended that the issues as force majeure pleaded by the petitioner are not force majeure events and the petitioner is not entitled to such benefit and that the reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA, a perusal of it makes it clear.

9. The detailed examination of the pleadings and information filed by the applicant would drive home the point that the petitioner faced certain hurdles like delays in land acquisition for the project, impact of demonetization, labour mobilization for execution of site works and delay in granting approvals from the TSTRANSCO and TSSPDCL. The synchronisation of 8 MW project was achieved on 30-06-2017.

10. Few incidents / facts mentioned by the petitioner have some force to treat them as non-political events, which included labour difficulties mentioned in Article 9.1.(b) (i) as one of the force majeure events. Further, Article 9.1(a) clearly mentions that if the *“events and circumstances 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 set up in accordance with solar policy announced by 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 of the solar power developer or the DISCOM, respectively'* which clearly encompasses the reasons given by the petitioner for a part of the delay of 128 days as events termed as force majeure.

11. Thus, it is clear from the material on record that extension of SCOD up to 30.06.2017 by the GOTS through letter dated 29.6.2017 of Energy department is based on reasons. The Commission concurred with the extension of SCOD up to 30-06-2017 and it has to be applied to the petitioner's case. The contention of the respondent that the events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

12. In view of the aforementioned reasons, the delay as pleaded by the petitioner is liable to be condoned up to 30.06.2017. However, the project was complete in all respects and it was synchronised with the grid of the respondent on 30.06.2017, which is within the permitted and extended SCOD up to 30.06.2017. The point is answered accordingly.

13. The delay of 128 days in reaching the SCOD of 8 MW up to 30-06-2017 as concurred by the Commission is condoned. The petition is allowed accordingly 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.

***This order is corrected and signed on this 1<sup>st</sup> day of September 2018.***

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