



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

O. P. No. 36 of 2018

Dated 15.09.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. GEA BGR Energy System India Limited
Regd. Office: 443, Anna Salai,
Teynampet, Chennai – 600 018.

... Petitioner.

AND

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

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

3. The Chief General Manager (IPC & RAC),
TSSPDCL, Corp. Office: 6-1-50, 5th Floor,
Mint Compound, Hyderabad – 500 063.

... Respondents.

This petition came up for hearing on 18-06-2018 & 21-07-2018. Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 18-06-2018 & 21-07-2018. Sri Y.Rama Rao, standing counsel for the respondents along with Ms.Pravalika, Advocate appeared on 18-06-2018 & 21-07-2018. 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 347 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 2 MW capacity at Damaragidda SS, Mahaboobnagar Dist, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 26-02-2016 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 25 -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.

(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) Unprecedented and Incessant rains in the months of July 2017 till September 2017 resulted in flooding and substantial damage to roads connecting 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.

(v) 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. The petitioner while continuing its best efforts to mitigate the delays caused due to force majeure events addressed letters dated 04.08.2016, 03.01.2017, 10.08.2017, 15.09.2017 requesting extension of time on the ground of force majeure events.

(vi) 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.

(vii) The petitioner's project was completed by October 2017. On 31.10.2017, the CEIG, Telangana issued statutory approval for the project. The SE / Mahaboobnagar addressed work completion report for evacuation arrangements for the project to the respondent no.3 on 20.11.2017. The petitioner addressed respondent no.3 on 23.11.2017 explaining causes for delay of SCOD and informing that the project was ready for synchronisation. SLDC clearance was given to the project on 08.12.2017. 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.

(viii) The respondent No.3 through letter dated 05.02.2018 issued synchronisation certificate to the project.

(ix) The petitioner relied on the decision of Hon'ble Supreme Court viz., *Dhanrajamal Gobindram v. Shamji Kalidas & Co.*, where the term force majeure was interpreted, the decision dated 04.02.2014 in Appeal No. 123 of 2012 of APTEL in *GUVNL vs. GERC, Cargo Solar*, whether delay in approvals by the Government instrumentalities by Cargo solar would fall in the category of force majeure events as per the terms of PPA was discussed.

Similarly, in petition no. 882 of 2012 by *M/s. Lanco Anpara*, UPERC considered factors leading to delay and extension of SCOD in support of its case.

(x) The petitioner sought extension of SCOD by condoning the delay of 347 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 26.02.2016 to set up 2 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 33 / 11 KV Damaragidda SS at 33 KV voltage level at a tariff at Rs.5.7249 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., 25.02.2017. The actual commercial operation date (COD) of the project is 08.02.2018 i.e., with a delay of 347 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 demonetisation of high value currency in the country have occurred post scheduled date (i.e., 25.08.2016) 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 2 MW project of the petitioner on 09.05.2017 and the SE / OP / Mababubnagar / TSSPDCL submitted the work completion report vide letter dated 20.11.2017 for the 2 MW project with details of erection of solar PV modules and installation of ABT energy meters. CE(SLDC & Telecom) vide letter dated 08.12.2017 had confirmed the real time data of 2 MW project connecting at 33 / 11KV Damaragidda SS at 33 KV level is integrated to SLDC on 06.12.2017.

(vi) The CGM (IPC & RAC) vide letter dated 05.02.2018 issued instructions to SE / OP / Mahabubnagar to synchronise the project duly following the department procedure in vogue. In furtherance, thereof the project was synchronised to the grid on 08.02.2018.

(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. The GOTS in its letter dated 23.08.2017 has issued extension of four additional months relating to SCOD up to 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

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

4. The point for determination is whether the petitioner is entitled to condonation of delay of 347 days in achieving SCOD by 08-02-2018 instead of 25-02-2017 as per terms of PPA signed on 26-02-2016?

5. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 2 MW to be connected to 33/11 kV Damaragidda SS, at 33KV voltage level. The petitioner has entered into PPA with the respondent on 26-02-2016. 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 2 MW plant on 09.05.2017. The SE/Op/Mahabubnagar/TSSPDCL has submitted the work completion report through letter dated 20.11.2017 with the details of erection of solar PV modules and installation of ABT energy meters. The CE(SLDC&Telecom) vide letter dated 08.12.2017 had confirmed the real time data of the project connecting at 33/11 KV Damaragidda SS at 33 KV level integrated to SLDC on 06.12.2017.

6. 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. Further, in continuation to its letter dated 29-06-2017, the GOTS by letter dated 23.08.2017 has issued extension of further four additional months relating to SCOD up to 31.10.2017 to the solar power projects in the State, who have participated in the bidding 2015. Though the Government extended SCOD up to 31-10-2017, the Commission did not accede to the request of the DISCOM and instead took a view that individual case has to be examined as to why extension is required based on the merits. 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.

7. 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 347 days in reaching the SCOD. The petitioner cited a decision of Hon'ble Supreme court and two decisions one of APTEL and another UPERC in support of its contention that the incident narrated in the petition are upheld as force majeure events. In the present case, the nature of force majeure events depended on the terms contained in PPA and accordingly suitable steps have to be taken. 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.

8. 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. Ultimately, in spite of the delays claimed by the petitioner, the synchronisation of 2 MW project was achieved on 08-02-2018.

9. 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 347 days as events termed as force majeure.

10. Thus, it is clear from the material on record that extension of SCOD by the GOTS through letter dated 23.8.2017 of Energy department is in continuation of the SCOD granted up to 30-06-2017 based on reasons. The Commission concurs with the extension of SCOD up to 31-10-2017 by letter dated 23.08.2017 and it has to be applied to the petitioner's case. The contention of the respondent that some events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

11. In view of the aforementioned reasons, the delay as pleaded by the petitioner is liable to be condoned only up to 31.10.2017 and not up to 08.02.2018. However, the project was complete in all respects and it was synchronised with the grid of the respondent on 08.02.2018, with a delay of 100 days beyond the permitted and extended SCOD, which invites penalty as per clause 10.5 of the PPÄ. The point is answered accordingly. The contention of the petitioner that in view of force majeure events narrated in this case, the SCOD has to be extended up to 08.02.2018 since GOTS accepted the force majeure events and extended SCOD up to 31.10.2017 is untenable since many of the grounds pleaded by the petitioner are not covered under Article 9.2 of PPA.

12. The delay in reaching the SCOD of 2 MW up to 31-10-2017 as concurred by the Commission is condoned. However, the project was synchronised with the grid on 08.02.2018 which is a fait accompli achieved by the petitioner at the hands of the respondent. Thus, there is a delay of one hundred days in achieving SCOD beyond the extended timeline of 31.10.2017, for which the petitioner is liable to pay the penalty as per Article 10.5 of PPA. The petition is allowed accordingly on the same tariff as approved by the Commission. The respondent No. 2 is directed to file a copy of the amended PPA with the revised date of commissioning.

13. The petitioner is directed to pay penalty for one hundred days delay in reaching SCOD as per Article 10.5 of PPA.

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

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