



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

O. P. No. 6 of 2018

Dated 23.07.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Suryoday Energy Private Ltd.,
Shapoorji Pallonji Centre, 41/44, Minoo Desai,
Colaba, Mumbai – 400 005.

... Petitioner.

AND

Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.

... Respondent.

This petition came up for hearing on 05-05-2018 and 08-06-2018. Ms. Rachana Reddy K, Advocate for the petitioner along with Sri Ashish Indrapu, Senior Manager of the petitioner appeared on 05-05-2018 and Ms. Sangeetha Bhaskar, Advocate for the petitioner along with Sri Ashish Indrapu, Senior Manager of the petitioner appeared on 08-06-2018. Sri Y.Rama Rao, Standing Counsel for the respondent along with Sri. M V R Prasada, Advocate appeared on 05.05.2018 and Sri. Y Rama Rao, Standing Counsel for the Respondent alongwith Ms.Pravalika, Advocate appeared on 08-06-2018. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

1. This petition is filed under Sec.86 (1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 9 days with the following allegations:

(i) The respondent floated tender for procurement of 2000 MW solar power through e-procurement platform on behalf of Telangana State Electricity

Distribution Companies 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 34 MW capacity to be connected to 220 / 132 kV Kamareddy Grid Sub Station at Kamareddy village, Nizamabad District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 23-02-2016 between the petitioner and the respondent. The petitioner furnished performance bank guarantee at the rate of Rs.20 Lakhs per MW as a guarantee for the contracted capacity. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 15 months from the date of PPA and achieve the Commercial Operation by 22-05-2017 (COD). The petitioner executed interconnection facilities for power evacuation from the project to the grid SS. The petitioner claims that the project was synchronised to the respondent company/Transmission Corporation of Telangana Limited (TSTRANSCO) network with the interconnection point in compliance with the connectivity conditions specified in the Grid Code well within the stipulated SCOD of 22-05-2017. The petitioner refers to the bills of supply for energy generated and delivered from its 34 MW Solar Power Plant from 18.05.2017 to 01.06.2017 to buttress its claim. However, the counsel for respondent submitted that project was synchronised to the respondent company/Transmission Corporation of Telangana Limited (TSTRANSCO) network with the interconnection point on 01-06-2017.

(ii) The learned counsel for the petitioner submitted that during the year, 2016 the Government of the State of Telangana initiated re-organisation of the districts and there was confusion in the revenue offices regarding the jurisdiction of villages, mandals, which resulted in delay in processing conversion permission of the project lands for industrial use and for other clearances under the single window clearance through the commissioner of industries, which slowed down the pace of the site mobilisation and delayed handing over of the site to the EPC contractor for setting up the project. Further, introduction of demonetization by the central government caused crunch in the cash flow and difficulties in the bank transactions. The sub-contractor who supplied the labour faced several setbacks due to limited

resources, which had adverse impact in the progress of the project. Owing to these reasons, the petitioner, expecting that it may not reach the dead-line for COD as per the PPA, requested the respondent for extension of time by 2 months from the scheduled COD as per the PPA.

(iii). The counsel for petitioner further stated that in spite of the aforementioned difficulties and obstacles faced, the applicant able to synchronise 5 MW capacity on 18-05-2017 and 14 MW on 19-05-2017 out of the total 34 MW planned within 15 months from as per the terms of PPA (Commercial Operation Date). The balance 15 MW capacity was synchronised on 01.06.2017 which is well within the timelines prescribed in the PPA.

2. The petitioner is seeking condonation of the delay in achieving SCOD for 15 MW of capacity as per the terms of PPA and is relying on Article 6.5 (iv) and (v) of the PPA, which expressly provides for extension of period of SCOD in the event of Force Majeure events. The Petitioner is also relying on Article 9 of the PPA, which deals with non-political events and direct events under the Force Majeure clause, which also includes labour problems and change in the law etc. Under Article 9.2 of the PPA, Force Majeure events may permit extension of time up to a maximum period of 12 months' to rectify the defaults. The petitioner is thus seeking extension of time for a delay of 9 days in achieving SCOD for 15 MW as per the terms of the PPA.

3. The respondent through its Chief General Manager (IPC & RAC), 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 34MW solar power project under competitive bidding 2015 in group II category with interconnection point at 220/132 KV Kamareddy SS at 132 KV voltage level with tariff at Rs.5.5949 per unit. As per the terms of the PPA, the petitioner has to commission the project within 15 months from the effective date of signing of PPA i.e., 25.02.2017. The actual commercial operation date (COD) of the project is 01.06.2017 i.e., there is delay of 10 days in commissioning the SCOD. The total delay is 10 days and not 9 days inviting penalty of Rs.0.15 crores as per clause 10.5 of PPA.

- (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 the land for setting up of 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 demonetization 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. The SCOD as per PPA is 22.05.2017 and the petitioner made a request for permission to synchronisation on 15.05.2017 enclosing CEIG certificate regarding complete installation of 34MW power plant issued by the Chief Electrical Inspector vide letter dated 10.05.2017. Accordingly, the respondent issued permission for synchronisation to the grid on 17.05.2017 and whereas the petitioner has synchronised the plant in a phased manner i.e., 5MW on 18.05.2017, 14MW on 19.05.2017 and 15MW on 01.06.2017 and therefore, the contention of the petitioner regarding the delay is untenable.
- (iii).The allegations made regarding force majeure events by the petitioner are not such events and they do not satisfy the terms of Article 9 of PPA. The petitioner cannot arbitrarily claim any event or circumstance as force majeure without there being any force majeure event as noted in Article 9 of PPA.
- (iv).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 for the solar power projects of competitive bidding of 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. As directed, the respondent filed a petition in the Commission for amending the PPA duly incorporating the SCOD i.e., 30.06.2017, at the same tariff for the solar power projects commissioned beyond the SCOD who have entered into PPAs with the respondents under competitive bidding 2015.

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

5. The point for determination is whether the petitioner is entitled to condonation of delay of 9/10 days in reaching SCOD by 22-05-2017 as per PPA?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 34 MW to be connected to 132 / 220 kV Kamareddy SS at 132KV voltage level. The petitioner has entered into PPA with the respondent on 23-02-2016 and furnished performance bank guarantee at the rate of Rs.20 Lakhs per MW for the contracted capacity. As per the terms of the PPA, the petitioner has to complete the project and make it operational by 22-05-2017 within 15 months from the date of PPA. The project was completed and synchronised in phases: commercial operations for 5MW commenced on 18.05.2017, 14MW on 19.05.2017 and the balance 15MW on 01.06.2017. As per the PV Power Plant commissioning certificate submitted by SE/OMC, Nizamabad and the respondent company confirmed it through letter dated 01.06.2017.

7. The respondent admitted the claim of the petitioner that the Government of Telangana (GoTS), Energy Department gave extension of SCOD upto 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, which has been endorsed in principle by this Commission vide letter dated 18.08.2017 after considering the relevant facts leading to Force Majeure events.

8. The detailed examination of the pleadings and information furnished drive home the point that the petitioner faced certain hurdles in land acquisition and other related issues while carrying out the construction activities. Because such delays, the petitioner was able to commission 5 MW of capacity on 18-05-2017 and 14 MW of on 19-05-2017 out of the total 34 MW capacity planned. Thus 19 MW capacity is commissioned well within the stipulated SCO as per the terms of PPA. The balance 15 MW commissioned on 01-06-2017 which amounts to a delay of 10 days and not 9 days claimed by the petitioner. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of the State Government for extension of SCOD

upto 30-06-2017 without any penalty after examining the merits of the matter. The respondent has admitted these facts in its petition. Considering the proposal of the Government of Telangana and concurrence of this Commission for the extension of SCOD up to 30-06-2017 without any penalty, delay of 10 days in the present case has to be condoned.

9. The Commission vide letter dated 18.08.2017 has approved in principle the extension of SCOD upto 30-06-2017 after examining the merits of the matter and the respondent has admitted the fact. 19 MW of the present project was synchronized with the Grid well within the stipulated time line of 22-05-2017 and the balance 15 MW commissioned on 01-06-2017 well before the extended time line of 30-06-2017 concurred by the Commission. Thus, the delay of 10 days as pleaded by the petitioner is no longer an issue in this case since the SCOD stood extended up to 30-06-2017 by which date, the project was completed in all respects by synchronisation with the grid of the respondent, thus fulfilling the terms of the PPÄ. The point is answered accordingly.

10. The delay of 10 days in achieving SCOD by the petitioner on 01.06.2017 instead of 22-05-2017 as per PPA is condoned on the same tariff as approved by the Commission. The petition is allowed. The respondent is directed to file a copy of the amended PPA with the revised date of commissioning.

This order is corrected and signed on this the 23rd day of July, 2018.

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

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