



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

O. P. No. 9 of 2018

Dated 24.07.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Vayudoot Solarfarms Limited.,

Registered office: Suzlon, 5, Shrimali Society

Near Sri Krishna complex, Navarangpura, Ahmedabad

Gujrat – 380 009.

... 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. Sri Sheik Jeelani, Authorised signatory of the petitioner company appeared on 05.05.2018 and Sri S.Subba Reddy, Advocate for 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 along with Ms. Pravalika, Advocate appeared on 08.06.2018. The petition having stood over 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 seeking extension of SCOD by 122 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 15 MW capacity to be connected to 220 / 132 kV Bhainsa SS at Bhainsa village, erstwhile Adilabad District, Telangana presently Nirmal Dist. for sale of solar power to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 29-02-2016 between the petitioner and the respondent. The petitioner furnished performance bank guarantee of Rs.3,00,00,000/- as a guarantee for the contracted capacity. 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 28.02.2017, as the project was connected to 132 / 220 kV level. The project was synchronised to the respondent company on 30.06.2017.

(ii) 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. There were unprecedented rains in the project area which caused delay in execution of the project. Further, introduction of demonetization by the central government caused crunch in the cash flow and difficulties in the bank transactions. The petitioner also faced challenges and delays in obtaining statutory approvals, for reasons beyond the control of the petitioner. Owing to these reasons, the petitioner, expecting that it may not reach the dead-line for COD as per the PPA, requested the CGM (IPC&RAC) of the respondent through letter dated 05.01.2017 for extension of time from 28.02.2017 to 28.08.2017 from the scheduled COD as per the PPA.

(iii). As per the terms of PPA, the petitioner was to make the project operational within 12 months from the date of PPA and achieve Commercial Operation by 28-02-2017, as the project was connected to 132/220 KV level. However, the project was synchronized on 30-06-2017 to the Telangana State Northern Power Distribution Company Ltd.

2. As per Article 9.2 of the PPA, in the event of delay in the COD owing to force majeure events can be deferred up to a maximum period of 12 months to overcome the effects. The petitioner has a genuine case for condonation of delay in meeting the COD. The petitioner is thus seeking extension of time for 122 days in achieving SCOD 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 29.02.2016 to set up 15MW solar power project under competitive bidding 2015 in group I category with interconnection point at 132 /33KV Bhainsa SS at 33 KV voltage level with tariff at Rs.5.5171 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., 28.02.2017. The actual commercial operation date (COD) of the project is 30.06.2017 i.e., there is delay of 122 days in commissioning the SCOD. The total delay is 122 days and inviting penalty of Rs.1.59 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 demonetisation of high value currency in the country have occurred post scheduled date (i.e., 28.08.2016) 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 allegation of unprecedented rainfall mentioned is in different months but not in a single month. Therefore, the contention of the petitioner that all these events amount to force majeure and therefore they resulted in delay is not correct. The SCOD as per PPA is 29.02.2016 and the actual COD is on 30.06.2017.

(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.

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 122 days in reaching SCOD on 30-06-2017 instead of scheduled date of 28-02-2017 as per the terms of the PPA?
6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 15 MW to be connected to 132 /33 kV Bhainsa SS at 33KV voltage level. The petitioner has entered into PPA with the respondent on 29-02-2016 and furnished performance bank guarantee of Rs.3crores for the contracted capacity. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 12 months from the date of PPA by 28-02-2017. However, the project was synchronised on 30.06.2017.

7. The respondent admitted the claim of the petitioner that the Government of Telangana (GoTS), Energy Department through letter dated 29.06.2017 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. 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 dated 23.08.2017 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 counsel for the respondent rejected this contention stating that the Government did not consider the Force Majeure events while extending SCOD.
8. The detailed examination of the pleadings and information filed by the applicant demonstrates that the petitioner faced certain hurdles in terms of land acquisition and in tying up other inputs. This led to the time over run of around 122 days and the project was synchronized with the Grid on 30-06-2017. Considering the reasons stated by the executing agency which could not be anticipated and beyond the control of the executing agency to meet the contractual obligations specified in the PPA which are covered by Article 9 of the PPA, the delay has to be condoned and SCOD extended up to 30-06-2017.
9. The present project was totally synchronized with the Grid in this case on 30.06.2017 as admitted by the respondent company. 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. Thus, the delay as pleaded by the petitioner is no longer an issue in this case since the SCOD stood extended upto 30.06.2017 by which date, the project was completed in all respects by synchronisation with the

grid of the respondent on 30.06.2017, thus fulfilling the terms of the PPA. The point is answered accordingly.

10. Thus the delay of 122 days in achieving SCOD by the petitioner on 30-06-2017 instead of 28-02-2017 as per the terms of the 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 24th day of July, 2018.

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