



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

O. P. No. 19 of 2018

Dated 25.07.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. ACME Fazilka Power Private Limited
Plot No. 152, Sector 44, Gurgaon – 122 002.
AND

... Petitioner.

1. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
3. Transmission Corporation of Telangana Limited
Room No. 628, 6th Floor, Vidyut Soudha Building,
Khairatabad Road, Khairatabad,
Hyderabad, Telangana 500 004.

...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 Deswal, Assistant General Manager (Legal) of the petitioner appeared on 17.05.2018 and Sri Hemanth Sahai, Senior counsel of the petitioner along with Ms. Puja Priyadarshini, Advocate appeared on 20.06.2018. Sri. Y. Rama Rao, Standing Counsel for the respondent along Ms. Pravalika, Advocate appeared on 17.05.2018 and 20.06.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sec.86 (1) (k) and 86(1)(f) of the Electricity Act, 2003 seeking extension of SCOD by 28 days with the following allegations:

(i) The respondent floated tender on behalf of TSDISCOMS 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 15 MW capacity to be connected to 132/33 kV Nandipet Sub Station, Nizamabad District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 26-02-2016 between the petitioner and the respondent no.1. 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) i.e., by 25.02.2017. The project was synchronised to the grid on 25.03.2017 with a delay of 28 days.

(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 leading to land owners to re-negotiate / renege on land sale agreements, shifting of revenue records, upgradation of registrations and revenue department registrations which adversely affected the execution of all solar power projects and commissioning of the projects within the time stipulated becoming not possible. Further, introduction of demonetization by the central government caused a domino effect and land acquisition, etc. Transportation became difficult due to shortage of cash and difficulties in bank transactions. The vendors / sub-contractors could not pay rents for machinery and labour charges. There were unprecedented rains. Owing to these reasons, the petitioner, expecting that it may not reach the dead-line for COD as per the PPA, requested the respondent no.1&2 for extension of time from 25-02-2017 to 25-03-2017 through letters dated 28.09.2016, 22.02.2017, 28.02.2017, 04.04.2017 and 10.04.2017.

(iii) The petitioner stated that as per the terms of PPA, the petitioner was to make the project operational within 12 months from the date of PPA (Commercial Operation Date) as the project was connected to 132/33 KV level of Nandipet SS, Nizamabad dist. The project was synchronised to the Telangana State Northern Power Distribution Company Ltd on 25.03.2017 with a delay of 28 days with date of SCOD being 25.02.2017.

2. The petitioner is seeking condonation of the delay in achieving SCOD within 12 months from the date of PPA and is relying on Article 9.2 of PPA, which expressly provides for extension of period of SCOD in the event of Force Majeure events. 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 28 days (actual delay) 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 no.1 on 26.02.2016 to set up 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV Nandipet SS at 33 KV voltage level with 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 25.03.2017 i.e., with a delay of 28 days in commissioning the SCOD. The total delay is 28 days inviting penalty of Rs.0.36 crores is 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 demonitisation 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. The SCOD as per PPA is 25.02.2017 and the petitioner made a request to the respondent for synchronisation of 15MW power plant vide letter dated 28.02.2017. The petitioner has synchronised the plant in a phased manner i.e, 5 MW on 13.03.2017 and 10 MW on 25.03.2017 to the grid. The CGM (IPC & RAC), vide letter dt.28.02.2017 issued instructions to SE/OMC/Nizamabad to synchronise 15MW solar power project of the petitioner at 132/33 KV Nandipet SS, Nizamabad District duly following the department procedure in vogue. Therefore, the claim of the petitioner that the delay occurred due to unprecedented rains, re-organisation of districts and demonetization is not tenable.

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

4. The petitioner filed a rejoinder stating that for the reasons beyond the control of the petitioner, the delay of 28 days occurred in reaching the SCOD and the project was synchronised in two phases finally on 25.03.2017. Due to heavy rainfall coupled with other factors there was delay in the construction of the project from 21.09.2016 to 28.09.2016. The project was submerged due to flooding. The roads were damaged. The GoTS by letter dated 29.06.2017 had extended the SCOD without any penalty upto 30.06.2017. The Commission by way of order dated 18.08.2017 accorded in principle approval for extending SCOD of all solar power projects to 30.06.2017.

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

6. The point for determination is whether the petitioner is entitled to condonation of delay of 28 days in achieving SCOD by 25-02-2017 as per terms of PPA signed on 26-02-2016?

7. 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 Nandipet SS, Nizamabad Dist. 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 project work was completed on 27.02.2017 and on the basis of the request of the petitioner for synchronisation by letter dated 28.02.2017, the CGM (IPC&RAC) has issued instructions to SE / OMC / Nizamabad to synchronise 15 MW solar Power Plant of the petitioner at 132 / 33 KV Nandipet SS, Nizamabad district duly following the department procedure in vogue. Consequently, the project was synchronised to the grid finally on 25.03.2017.

8. 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.

9. 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. Considering the proposal of the GOTS and concurrence of this Commission for the extension of SCOD upto 30-06-2017 without any penalty, the delay of 28 days in the present case has to be condoned.

10. Thus, the delay 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 finally on 25.03.2017, thus fulfilling the terms of the PPA. The point is answered accordingly.

11. The delay of 28 days in the petitioner reaching SCOD by 25.03.2017 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 25th day of July, 2018.

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