



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

O. P. No. 7 of 2018

&

I A No. 2 of 2018

Dated 08.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Divine Solren Private Limited
Mahindra Towers, Dr.G.M.Bhosale Marg,
P.K.Kurme Chowk, Worli, Mumbai – 400 018

... 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 Raghavendar Rao, Advocate along with Sri Ved Bhushan, Advocate representing Sri D.Madhava Rao, Advocate for the petitioner appeared on 05-05-2018 and Sri Raghavendar Rao, Advocate representing Sri D.Madhava Rao, Advocate for the petitioner appeared on 08.06.2018. Sri Y.Rama Rao, standing counsel for the respondent along with Sri M.V.R.Prasad, 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 86(1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 60 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 50 MW capacity to be connected to 220/132 kV Nirmal Sub Station, at Mallapur Village, Dilawarpur Mandal, Nirmal District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 24-02-2016 between the petitioner and the respondent. The petitioner furnished performance Bank guarantee at the rate agreed 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 Date (COD) by 23-05-2017, as the project was connected to the 220/132KV level. The petitioner executed interconnection facilities for power evacuation from the project to the grid sub-station. The project was also synchronised to the respondent / TSTRANSCO network with the interconnection point and complied with the connectivity conditions specified in the Grid code in force. The bills of supply for energy generated and delivered from the 50MW solar power plant from 22.07.2017 to 25.07.2017, 25.07.2017 to 25.08.2017, 25.08.2017 to 26.09.2017, 26.09.2017 to 26.10.2017 & 26.10.2017 to 26.11.2017 clearly shows that the project is operational.

(ii) 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. Initially, these authorities were under the jurisdiction of revenue authorities of Nirmal Mandal, Adilabad Dist and later on changed to Dilawarpur Mandal and Nirmal District which resulted in delay in Acquisition of Acres 324 and conversion procedures for the project for change of user to industrial and other clearances under the single window through the

Commissioner of Industries, which slowed down the pace of mobilisation and delayed handing over the site to the EPC contractor for setting up the project. The other major cause for delay is due to ROW issues and last minute changes in the plans by the TSTRANSCO in reassessing and reworking of the entire work required for the installation of C&R panel at the switch yard leading to 60 days delay in the execution of the project and 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.

(iii) As per Article 6.5(iv) and Article 6.5(v) of the PPA, non-fulfilment of clauses in Article 6 of the PPA can be condoned, including inability to achieve the COD within 15 months from the PPA which expressly provide that the petitioner shall be granted extension of period for fulfilment of SCOD in the event of occurrence of any force majeure event. 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 upto a maximum period of 12 months and therefore, the petitioner has a genuine cause for retrospectively providing extension of the SCOD.

(iv) In spite of the obstacles, the petitioner completed the synchronisation of the entire 50MW solar PV project and commenced the commercial operations on 22.07.2017 as per the solar PV power plant commissioning certificate submitted by the SE/OMC / Adilabad. The CGM (IPC&RAC) through the letter dated 05.08.2017 confirmed the synchronisation of the 50MW capacity solar PV power plant to the respondent/TSTRANSCO network at 132 KV level. As requested by the respondent, the petitioner filed a petition seeking

extension of SCOD of 59 days, the actual delay in achieving the SCOD. The petitioner sought orders extending SCOD for 59 days with retrospective effect.

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

(i) The petitioner has entered into PPA with the respondent on 24.02.2016 to set up 50 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 220 / 132 KV Nirmal 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., 23.05.2017. The actual commercial operation date (COD) of the project is 22.07.2017 i.e., with a delay of 60 days. This delay of 60 days is inviting penalty of Rs.3.25 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 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., 23.08.2016) 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 23.05.2017 and whereas GST effective date is 01.07.2017 which is after the SCOD and therefore GST excuse is not applicable to the present project.

(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, even though non-political events are not limited to any storm, flood, drought, lightning, Earthquake or other calamities and indirect political events such as sabotage, blockades, civil disobedience and direct political events such as discriminatory delay, modifications, refusal to grant or renew or any revocation of any required permit or change in law are mentioned in Article 9 of PPA.

(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 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 upto 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

3. The respondent filed additional counter affidavit through the CGM (IPC & RAC), TSNPDCL, Hanmakonda, Warangal stating that extension of control room was not a hindrance for commissioning of solar power plant as the minimal space available in the control room at 220/132KV SS Nirmal was allocated for erection of C&R panel for the petitioner and M/s. ACME Nizamabad solar Energy Private Limited. There was no space left in the control room for future C&R panels. Extension of control room was necessitated for extending power supply to Hathighat Lift Irrigation project taken up by GOTS on priority basis. The respondent has ensured statutory clearances and technical viability for sharing of towers as per the site conditions. Regarding ROW issue, it is the responsibility of the petitioner for laying, erecting and testing of transmission line from their pooling station to grid substation duly resolving all ROW issues. TSTRANSCO will ensure quality of works executed, equipment/material used for erection of bays and line as per the relevant Indian standards.

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 60 days in achieving SCOD by 22-07-2017 instead of 23-05-2017 as per terms of PPA signed on 24-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 50 MW to be connected to 220 / 132 kV Nirmal SS, Mallapur Village, Dilawarpur Mandal, Nirmal Dist. The petitioner has entered into PPA with the respondent on 24-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from its date. The project work was completed. On the basis of the Solar PV Power Plant commissioning certificate issued by SE / OMC / Adilabad, the 50MW solar power plant was synchronised to the grid on 22.07.2017. The CGM (IPC&RAC) through letter dated 05.08.2017 has confirmed synchronisation to TSNPDCL/TSTRANSCO network at 132 KV level.

7. 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. 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 up to 30-06-2017 without any penalty. Further, in continuation to its letter dated 29-06-2017, the GOTS in its 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 the 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, 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., ROW issues, issues relating to acquisition of Acres 324 for setting up the project, which are beyond his control and which resulted in delay of 59 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. The reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA.

9. The detailed examination of the pleadings and information filed by the applicant would drive home the point that the petitioner faced certain hurdles in terms of sharing of terminal tower by the project developer with the transmission line already laid by another developer M/S ACME Nizamabad Solar Energy Private Limited due to space constraints. The project developer was informed by the TSTRANSCO vide its letter dated 03-02-2017 that there is no space available at the existing control room for providing 132 KV feeder C&R panels for the subject Solar power plant. The developer was forced to seek necessary approval from the TSTRANSCO to carry out the abovementioned changes. Accordingly, permission was granted to carry out necessary changes by the TSTRANSCO vide its letter dated 05-06-2017, which is well beyond the SCOD. This led to the time over run of around 2 months and the project was synchronized with the Grid on 22-07-2017.

10. The incidents 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 the delay of 60 days as events termed as force majeure.

11. 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 in this case 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 apart from the fact that the SCOD finally stood extended up to 31-10-2017, by which date the project was completed in all respects by synchronisation with the grid of the respondent on 22.07.2017, thus fulfilling the terms of the PPÄ. The point is answered accordingly.

13. The delay of 60 days in the petitioner reaching SCOD by 22-07-2017 instead of 23-05-2017 as per PPA is condoned. The petition is allowed on the same tariff as approved by the Commission. The respondent is directed to file a copy of the amended PPA with the revised date of commissioning.

14. Accordingly, I. A. No. 2 of 2018 stands disposed off

This order is corrected and signed on this the 8th day of August, 2018.

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