



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

O. P. No. 13 of 2018

Dated 13.08.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between

M/s. ACME Medak Solar Energy Private Limited  
Plot.No.152, Sector 44, Gurgaon – 122 002.

... Petitioner.

AND

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, 6<sup>th</sup> Floor, Vidyut Soudha Building,  
Khairatabad, Hyderabad, Telangana 500 004.

...Respondents.

This petition came up for hearing on 17-05-2018 & 20-06-2018. Ms.Puja Priyadarshini, Advocate representing Sri. Hemant 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. Hemant Sahai, Senior Counsel for the petitioner along with Ms. Puja Priyadarshini, Advocate appeared on 20-06-2018. Sri Y.Rama Rao, standing counsel for the respondents along with Ms.Pravalika, Advocate appeared on 17-05-2018 & 20-06-2018. The petition having stood over for consideration to this day, the Commission passed the following:

## ORDER

This petition is filed under Sections 86(1) (f) and 86(1) (k) of the Electricity Act, 2003 seeking extension of SCOD by 57 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 45 MW capacity to be connected to 132/33 kV Medak Sub Station, Medak District, Telangana for sale to DISCOM at a tariff of Rs.5.5949 per unit. Thereafter, a Power Purchase Agreement (PPA) was executed on 19-02-2016 between the petitioner and the respondent. 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) i.e., on or before 18-05-2017, as the project was connected to the 132/33 KV level. The project was synchronised to the Grid on 14-07-2017.

(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 difficulty faced by the petitioner. The shifting of revenue records, change of jurisdictions resulted in re-negotiation/negation of land sale agreements etc. There was upgradation of registration and revenue department, those land owners who were willing to offer land for development of solar power project changed their decisions. There were ROW issues, on account of construction of transmission lines at location Nos.26 and 33-38 in Ghanpur Village and Medak. The Executive Engineer (Construction) addressed a letter dated 05-05-2017 to the Revenue Divisional Officer, Medak for resolution of ROW issues.

(iii) The petitioner alleged unprecedented rains and massive storm from 21.09.2016 to 28.09.2016, which resulted in flooding and substantial damage to the roads connecting the project site resulting in stoppage of work with idle equipment and labour. Added to this problem, the petitioner suffered due to demonetisation of high value currency by the Government hampering sale of lands, payment of charges to the labourers and transporters and vendors/sub-

contractors, rents to the machinery, which further delayed the execution of the project and implementation of project timelines.

(iv) Article 9 of the PPA, expressly provides 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 up to a maximum period of 12 months and therefore, the petitioner has a genuine cause for retrospectively providing extension of the SCOD. The petitioner issued force majeure notices dt. 28-09-2016, 22-02-2017, 28-02-2017, 04-04-2017 and 10-04-2017 to the Respondents which invited response from R1, Dt.23-03-2017.

(v) In spite of the obstacles, the petitioner completed the synchronisation of the entire 45 MW solar PV project and commenced the commercial operations on 15-09-2017. The petitioner came to know that the Energy Department of GoTS through 29-06-2017 extended SCOD of all Solar power projects upto 30-06-2017 without penalties and directed the TSDISCOMs to take further action accordingly. The Commission by way of order dated 18-08-2017 accorded in principal approval for extending SCOD for all solar power projects upto 30-06-2017. The Energy Department, GoTS, through letter dated 23-08-2017 after careful consideration and acceptance of force majeure events, further extended SCOD upto 31-10-2017 and directed the TSDISCOMs to take further action, at the same tariff through letter dated 04-12-2017 addressed to the respondents.

2. The petitioner filed a rejoinder with the following material allegations:

(i) For reasons beyond the control of the petitioner, the actual COD of the project was achieved on 14-07-2017 with a delay of 57 days. The primary contributor for the said delay was ROW issues. During the construction of the transmission line, particularly at location no.26, Ghanpur village and location no. 33 to 38 in Medak which stalled the construction work for about 60 days. The respondent no. 3 had intervened in the matter and requested the RDO on

05.05.2017 to resolve the ROW issues and when the issues could not be solved the petitioner addressed the Energy department, GOTS on 11.05.2017.

(ii) Due to incessant rainfall from 21.09.2016 to 28.09.2016, the construction work was severely hampered. The project land was submerged due to flooding and there was damage to the roads which were connected to the project site which resulted in stoppage of work at the project site. There was delay in supplies, idling of labour and equipment. The petitioner's contractor addressed letters dated 02.10.2016 & 05.10.2016 informing the petitioner about the delay of 15 days due to heavy rains.

(iii) Article 9 of PPA is an exclusive clause which sets out certain examples of force majeure and it is not exhaustive. It amply clarifies that the intention of the parties incorporating this clause is to insulate the affected party from unforeseen incidents which are beyond its control and hinder the performance of obligations under the PPA. As per Article 6.2(iii) of PPA, it is the responsibility of respondent no.1 to coordinate with TSTRANSCO and guide the solar power developer in obtaining the approval for the interconnection facilities where the interconnection is at 33KV or above voltages, for synchronisation, commercial operation, regular operation etc., as required by the solar power developer. It is further stated that the obligations and time lines prescribed are subject to occurrence of any force majeure event, in which case the time lines get extended corresponding to the period of force majeure. There is no time line prescribed under Article 9 of PPA which has the effect of limiting its application to a particular time period.

3. The 1<sup>st</sup> 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 19.02.2016 to set up 45 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 132/33 KV Medak SS, at 132KV 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., 18.05.2017. The actual commercial operation date (COD) of the project is 14-07-2017 i.e., with a delay of 57 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 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., 18-08-2016) 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. The solar power developer is trying to gain time under the garb of force majeure. The reasons given by the petitioner alleging force majeure are not correct. The CGM (Comm & RAC) through letter dated 27.12.2016 addressed the petitioner informing that the heavy rains and flooding are not part of force majeure events as per PPA.

(iv) 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. The same was appraised to the Commission through communication dated 06-09-2017.

(v) The erection of 132KV DC/SC line from the existing 132/33 KV level Medak SS to proposed 45MW solar power project being set up by the petitioner for evacuation of power to 132/33 KV Medak SS and erection bays at both ends were approved by the CE/Transmission/TSTRANSCO on 08.11.2016 which was completed in full shape by 10.07.2017. The SE/OP/Medak has submitted the work completion report dated 29.06.2017 for the proposed 45MW solar power project with the details of erection of solar PV modules and installation of ABT energy meters.

(vi) As per clause 3.8.2 of PPA, synchronisation of the plant has to be done within 15 days after receipt of work completion report. The CGM (IPC&RAC) vide letter dated 13.07.2017 issued instructions to SE/Op/Medak to synchronise 45MW solar power project of the petitioner at Medak SS, Medak District duly following the department procedure in vogue. Consequently, the plant of the petitioner was synchronised to the grid on 14.07.2017.

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 57 days in achieving SCOD by 14-07-2017 instead of 18-05-2017 as per terms of PPA signed on 19-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 45 MW to be connected to 132 /33kV Medak SS, Medak District for sale of entire capacity to TSNPDCL at a tariff of Rs.5.5949 per unit. The petitioner has entered into PPA with the respondent on 19-02-2016. 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 CGM (IPC&RAC), TSNPDCL through letter dated 13-07-2017 issued instructions to SE/OP/Medak to synchronize 45 MW Solar Power Project of the petitioner at 132/33 KV Medak SS, Medak District duly following the department procedure in vogue. The petitioner plant was synchronized to the Grid on 14.07.2017.

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. In continuation to the letter

dated 29-06-2017 on the subject, 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. 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 no.1 has admitted these facts and also the proposal of the GOTS and concurrence of this Commission for the extension of SCOD up to 30-06-2017 without any penalty. 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. However, 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, change of circle rates causing land owners to re-negotiate / renege on land sale agreements, non-availability of revenue records, demonetisation resulting in difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work. The petitioner claimed that unprecedented and incessant rains from 21-09-2016 to 28-09-2016 resulted in flooding of the roads connecting to the project site leading to stoppage of work, idling of equipment and labour hampering the project. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., ROW issues, issues relating to acquisition of land for setting up the project, which are

beyond his control and which resulted in delay of 57 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. Detailed examination of the pleadings of the petitioner reveals that the petitioner faced certain difficulties while carrying out the construction activities including delays in land acquisition for the project, right of way issues for erection of evacuation system etc. 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 57 days as events termed as force majeure. It is clear from the material on record these events were beyond the control of the petitioner and it could not have prevented the incidents from happening. In fact, none could prevent the occurrence of these events which

are found to have hampered the project work of the petitioner which are rightly termed as force majeure events.

10. The delay caused due to the events narrated by the petitioner and not specifically contradicted by the respondent certainly entitles the petitioner to extension of SCOD. Thus, the extension of SCOD by the GOTS through letter dated 23.8.2017 of Energy department is based on reasons and the Commission concurs with the extension of SCOD. The contention of the respondent that the 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 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 14-07-2017, thus fulfilling the terms of the PPÄ. The point is answered accordingly.

12. The delay of 57 days in the petitioner reaching SCOD by 14-07-2017 instead of 18-05-2017 as per PPA is condoned. The petition is allowed 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.

***This order is corrected and signed on this the 13<sup>th</sup> day of August, 2018.***

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