



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

O. P. No. 17 of 2018
Dated 13.08.2018

Present
Sri. Ismail Ali Khan, Chairman

Between
M/s. ACME Ranga Reddy Solar Power Private Limited
Plot No.152, Sector 44, Gurgaon, Haryana – 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, 6th 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 86(1)(f) & 86 (1)(k) of the Electricity Act, 2003 seeking extension of SCOD by 42 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 30MW capacity to be connected to 132 / 33 kV Siricilla SS in Karimnagar District, Telangana for sale to DISCOM at a tariff of Rs.5.5949 per unit. 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 15 months from the date of PPA and achieve the Commercial Operation Date (COD) by 25.05.2017.

(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 uncertainty in the offices of the revenue authorities regarding jurisdiction of villages, mandals etc. This has slowed down the pace of site mobilisation and delayed handing over of site to the EPC contractor for setting up the project.

(iii) The second major cause for delay is 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. 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.

(iv) The third major cause for delay is unprecedented and incessant rains and massive storm from 21.09.2016 to 28.09.2016 which caused flooding of roads and also at project site which lead to stoppage of work, idling of labour and equipment, hampering the construction work.

(v) 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 GOTS by way of letter dated 29.06.2017, extended the SCOD of all solar power developers without any penalty upto 30.06.2017 and directed the TSDISCOMS to take further action accordingly. Further, the Commission by way of order dated 18.08.2017 after examining the merits of force majeure events narrated by the petitioner accorded in-principle approval for extending SCOD up to 30.06.2017. Further, Energy department, GOTS by way of letter dated 23.08.2017, after careful consideration of the representation of force majeure events extended SCOD of solar power projects upto 31.10.2017 and directed TSDISCOMS to take further action and extend SCOD. The petitioner gave force majeure notices to the respondent dated 28.09.2016, 22.02.2017, 28.02.2017, 04.04.2017 and 10.04.2017. The respondent no.1 issued a response on 23.03.2017.

(vi) In spite of the difficulties beyond his control, the petitioner completed the synchronisation of the entire 30 MW solar PV project and commenced the commercial operations on 06.07.2017 with a delay of 42 days.

2. The respondent no.1, 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 no.1 on 26.02.2016 to set up 30 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 132/33 KV Siricilla 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., 25.05.2017. The actual commercial operation date (COD) of the project is 06.07.2017 i.e., with a delay of 42 days. This delay of 42 days is inviting penalty of Rs.51.50 lakhs as per clause 10.5 of PPA.

- (ii) As per Article 6 of the PPA, the petitioner has to obtain all consent, clearances and permits required for supply of power to the respondent and procure land for setting up the project atleast 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. Infact, 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.
- (iii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioner's 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) The project work was completed on 27.05.2017. On the petitioner's request through letters dated 31.05.2017 and 28.06.2017 for synchronisation of 25MW and 5MW, the CGM(IPC&RAC) through letters dated 01.06.2017 and 30.06.2017 issued instructions to SE/OMC/Karimnagar to synchronise 25MW & 5MW solar power project of the petitioner at 132/33 KV Siricilla SS, Karimnagar district duly following the department procedure in vogue. The project was synchronised to the grid 10MW on 02.06.2017, 5MW on 03.06.2017, 5MW on 06.06.2017, 5MW on 16.06.2017 and balance 5MW on 06.07.2017.
- (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 of 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 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 02-06-2017 (10 MW with a delay of 7 days), 03-06-2017 (5MW with a delay of 8 days), 06-06-2017 (5MW with a delay of 10 days), 16-06-2017 (5 MW with a delay of 21 days) and 06-07-2017 (balance 5 MW with a delay of 42 days). The progress of the construction was stalled due to heavy rainfall from 21-09-2016 to 28-09-2016 hampering construction work, submerging the project line. Copy of the letter dated 02.10.2016 from the supplier informing about the impact of incessant rain on the project is filed. The impact of demonetization was also on the construction activity of the project.
 - (ii) Article 9.2 permits extension of SCOD on a day for day basis subject to a maximum period of 12 months to permit the solar power developers to overcome the effects of the force majeure events. Since the GOTS has extended SCOD upto 30-06-2017 without any penalties and also upto 31-10-2017, the petitioner is entitled to invoke force majeure events. Therefore, the delay of 42 days in getting 5MW project synchronised may be condoned.
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 7 days in reaching 10MW, 8 days in reaching 5MW, 10 days in reaching 5MW, 21 days in reaching 5MW and 42 days in reaching SCOD to the extent of 5MW on 06-07-2017 as per the terms of PPA signed on 26-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 30 MW to be connected to 132/33KV 132 kV Siricilla SS, Karimnagar District at 132KV voltage level. 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 15 months from its date. The project work was completed on 27.05.2017. The date of SCOD is 25.05.2017, the actual CoD of the project achieved on 02-06-2017 (10 MW with a delay of 7 days), 03-06-2017 (5MW with a delay of 8 days), 06-06-2017 (5MW with a delay of 10 days), 16-06-2017 (5 MW with a delay of 21 days) and 06-07-2017 (balance 5 MW with a delay of 42 days).

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 and the proposal of the GOTS and concurrence of this Commission for the extension of SCOD upto 30-06-2017 without any penalty.

8. In continuation to letter dated 29-06-2017 on the same subject, 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. 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.

9. Detailed examination of the pleadings of the petitioner and information placed on record reveals that the petitioner face certain difficulties in implementation of the

subject project. 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 25 MW out of the total 30 MW was synchronised to the Sircilla Sub-station grid by 30-06-2017 time lines concurred by the Hon'ble Commission with the Government decision to extend the SCOD up to 30-06-2017. However, synchronisation of the remaining 5 MW got delayed and could be achieved by 06-07-2017. This delay is attributed to the reorganisation of Sircilla as a separate District, due to which owners of land started demanding higher prices. The project developer was forced to acquire land at a village 5 Km away from the 25 MW project site and build a separate evacuation system for the distance of 5 Km. The petitioner pleaded that all such issues are beyond its control and which resulted in delay of 42 days in reaching the SCOD. The respondent, on the other hand, contended that the incidents as force majeure pleaded by the petitioner are not force majeure events and the petitioner is not entitled to such benefit and the reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA.

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 42 days as events termed as force majeure.

11. 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 up to 31.10.2017. 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 of 42 days 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 06-07-2017, thus fulfilling the terms of the PPA. The point is answered accordingly.

13. The delay in reaching the SCOD by 06.07.2017 (42 days) is condoned. The petition is allowed on the same tariff as approved by the Commission. The respondent No. 1 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 13th day of August, 2018.

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