



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

O. P. No. 20 of 2018  
Dated 13.08.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between

M/s. ACME PV Powertech Private Limited  
Plot No.152, Sector 44, Gurgaon,- 122 002.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,  
Corporate Office: 6-1-50, Mint Compound,  
Hyderabad – 500063.
2. Northern Power Distribution Company of Telangana Limited,  
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,  
Nakkalagutta, Hanamkonda, Warangal-506001.
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 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 88 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 50MW capacity to be connected to 220/132 kV Sadasivpet SS in 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 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 18.05.2017.

(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) The fourth major cause for delay is ROW issue which was encountered by the petitioner at location nos. 16 to 22 in Munipally (M) and location no.42 in

Sadasivpet (M). The Executive Engineer, construction, Sangareddy of TSTRANSCO addressed a letter dated 05.05.2017 to the RDO, Sangareddy seeking intervention of the revenue department in the matter.

(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 upto 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 upto 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.2 issued a response on 23.03.2017.

(vi). In spite of the difficulties beyond his control, the petitioner completed the synchronisation of the entire 50 MW solar PV project and commenced the commercial operations on 14.08.2017 with a delay of 88 days.

2. The respondent no.1, through its Chief General Manager (IPC & RAC) TSSPDCL, Hyderabad, filed counter-affidavit with the following material allegations:

(i) The petitioner has entered into PPA with the respondent no.1 on 19.02.2016 to set up 50 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 220/132 KV Sadasivpet 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

petitioner reached SCOD in phases i.e., 40MW on 07.07.2017 and 10 MW on 14.08.2017 with a delay of 88 days.

(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 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 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 erection of 132KV DC/SC line from the existing 220 / 132 KV of Sadasivpet SS to proposed 50MW solar power project being set up by the petitioner for evacuation of power to 220/132 KV Sadasivpet SS and erection of bays at both ends was approved by Chief Engineer / Transmission / TSTRANSCO on 08.09.2016 and the same was completed in full shape by 21.06.2017. The SE/Op/Medak/TSSPDCL submitted work completion report vide letter dt.21.06.2017 for the 50WM solar power project with details of erection of solar PV modules and installation of ABT energy meters. CE (SLDC & Telecom) vide letter dt.22.06.2017 had confirmed that the real time data of 50WM solar power project of the petitioner connecting 220/132 kV Sadasivpet SS is transmitting to SLDC. The solar power plant of the petitioner was synchronised to the grid on 07.07.2017 and the balance capacity was commissioned to the grid on 14.08.2017.

(v) 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 14.08.2017 (i.e., 40MW on 07.07.2017 & 10 MW on 14.08.2017) resulting in delay of 49 days in respect of 40MW and 88 days in respect of 10MW. On 15.12.2016, while approving the electrical layout, the TSTRANSCO proposed that the petitioner should utilise the vacant cross arms available on the terminal tower and 3 nos. towers of M/s. Karvy Solar power indicating sharing of the towers in order to optimise the line corridor and to reduce the ROW problems near sadasivpet 220kV SS and due to orientation of the 132 kV line of the petitioner which also caused delay in reaching the SCOD. The petitioner faced sever opposition from M/s. Karvy solar who was not willing to share its 3 towers and cooperate as contemplated under the electrical lay out. At that time, the petitioner had starting stringing and wiring for connecting the remainder of transmission line to the 3 towers for evacuation of power from its project. M/s. Karvy solar filed writ petition no. 18468/2017 against the GOTS, the petitioner and both the DISCOMS and the Hon'ble High Court stayed the construction of transmission line by way of interim order dt.08.06.2017 pending writ petition. The matter is amicably resolved by the parties by way of final judgment dated 04.07.2017 by disposal of the writ petition which stalled the progress of the construction of the project

by 26 days. The ROW issue took 41 days from 20.04.2017 to 31.05.2017 for resolution which stalled the construction work. 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, it also affected the 10MW project capacity located at block no. 7 & 8. Copy of the letters dated 02.10.2016 & 04.10.2016 from the supplier seeking extension of time of 15 days is filed. The impact of reorganisation of districts, demonitization, rains stalled 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 up to 30.06.2017 without any penalties and also up to 31-10-2017, the petitioner is entitled to invoke force majeure events. Therefore, the delay of 88 days in getting 50MW 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 49 days in reaching SCOD of 40 MW and 88 days in reaching 10 MW as per the 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 50 MW to be connected to 220 / 132KV Sadasivpet SS, Medak District at 132KV voltage level. The petitioner has entered into PPA with the respondent no.1 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 project work was completed on 21.06.2017. The date of SCOD as per PPA is 18.05.2017 and the actual CoD of the entire project was achieved on 14.08.2017 (40MW on 07.07.2017 & 10 MW on 14.08.2017).

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. 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 upto 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 that on 15.12.2016, while approving the electrical layout, the TSTRANSCO proposed that the petitioner should utilise the vacant cross arms available on the terminal tower and 3 nos. towers of M/s. Karvy Solar power indicating sharing of the towers in order to optimise the line corridor and to reduce the ROW problems near sadasivpet 220kV SS and due to orientation of the 132 kV line of the petitioner which also caused delay in reaching the SCOD. The petitioner faced sever opposition from M/s. Karvy solar who was not willing to share its 3 towers and cooperate as contemplated under the electrical lay out. At that time, the petitioner had starting stringing and wiring for connecting the remainder of transmission line to the 3 towers for evacuation of power from its project. M/s. Karvy solar filed writ petition no. 18468/2017 against the GOTS, the petitioner and both the DISCOMS and the Hon'ble High Court stayed the construction of transmission line by way of interim order dt.08.06.2017 pending writ petition. The matter is amicably resolved by the parties by way of final judgment dated 04.07.2017 by disposal of the

writ petition which stalled the progress of the construction of the project by 26 days. The ROW issue took 41 days from 20.04.2017 to 31.05.2017 for resolution which stalled the construction work. The respondent has not said anything about ROW issue. Thus, the sharing of transmission towers of other developer and ROW issue has contributed to the delay which was not in the hands of the petitioner which requires consideration. 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) of PPA 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 88 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. The mere denial of events claimed by the petitioner as having caused delay in reaching the SCOD as not force majeure events by the respondents is untenable since the petitioner had no control over the events. 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 88 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 by 14.08.2017. The point is answered accordingly.

13. The delay of 88 days in achieving the SCOD up to 14.08.2017 (88 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 13<sup>th</sup> day of August, 2018.***

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