



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 25 of 2018

Dated: 22.09.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Mythrah Abhinav Power Private Limited,
Regd. Office: 8001, 8th floor, Q-city, S.No.109,
Nanakramguda, Gachibowli, Hyderabad – 500 032.

... 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, Waranal – 506 001.
3. The Special Chief Secretary, Energy Department
Government of Telangana, Telangana Secretariat,
Hyderabad.

... Respondents.

This petition came up for hearing on 21-07-2018 & 03-08-2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 21-07-2018 and 03-08-2018. Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate appeared on 21.07.2018 and 03.08.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86(1) (f) and 86 (1) (k) of the Electricity Act, 2003 seeking extension of SCOD by 374 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 15 MW capacity at Tandur, Ranga Reddy, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 23-02-2016 between the petitioner and the respondent. 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) by 22-02-2017.

(ii) After signing PPA, certain unforeseen events and circumstances delayed the development and setting up of all solar power projects across the state of Telangana. These events are force majeure in terms of Article 9 of PPA. 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. The authorities took time to reorganise the records and related documents in the new Mandal headquarter, which resulted in delay in Acquisition of land and further processing of conversion procedures for the project lands. Further, Sada bainamas prevented expeditious acquisition of land because before being transferred, the sada bainamas needed regularisation which took time.

(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. Due to shortage of cash, the requirement of paying labour in cash on a daily basis, the contractors /suppliers refused to provide any services pending cash payment 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. There was slow down during the period of

July 2017 to September 2017 in the manufacturing as well as service industry. 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 Government policy of non-allotment of government land for setting up of power projects, further the projects of government like Mission Bhagiratha, Mission Kakatiya and Project Kaleshwaram caused the farmers not to part with their lands which also affected acquisition of land for the solar power project.

(v) The petitioner and others faced issues on the supply front from the module manufacturers like increase in internal targets fixed by the Government of China for the year 2017, reduction in anti-dumping duty by the European Union and exponential purchases by the United States based IPPs lead to delay in supply of modules which also resulted in increase in capital cost due to sourcing of the modules from alternate suppliers. Further, there was an issue regarding module reclassification by the Government of India relating to variable GST. Imposition of anti-dumping duty on steel by the GOI against imports from China, Japan, Korea, Ukraine etc., not only imposed heavy burden on the petitioner but also additional cost.

(vi) Incessant rains in the months of June 2017 till October 2017 resulted in flooding of the project site, idling of labour and equipment hampering the construction work. Added to this, demonetisation lead to shortage of cash and requirement of paying labour in cash on daily basis affected the progress of the work.

(vii) 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 extension of the SCOD.

(viii) The GOTS on representation of the solar power producers regarding force majeure events extended SCOD up to 30.06.2017 by letter dated 29.06.2017 and directed the TSDISCOMS to take further action. Further, by

letter dated 23.08.2017, GOTS after careful consideration of force majeure events, extended SCOD up to 31.10.2017. The Commission by way of letter dated 11.01.2018 directed the TSDISCOMS to allow synchronisation of all solar power projects which have set up their projects and file completion certificates by taking undertakings under the format provided by the Commission.

(ix) The SCOD shall be deferred in case of delay on account of force majeure events as per Article 9.2 of PPA and the petitioner is entitled to extension of SCOD by condoning the delay of 374 days.

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

(i) The petitioner has entered into PPA with the respondent on 23.02.2016 to set up 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV Tandur SS at 33KV voltage level at a 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., 22.02.2017 and the project of the petitioner was synchronised to the grid on 02.03.2018 with a delay of 374 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 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., 22.08.2016) 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.

(iv) As per Article 3.2 of PPA, it is the petitioner alone is responsible for executing inter connection facilities for power evacuation from the proposed solar power project to the grid SS at its own cost. The respondent is not

responsible for getting permissions or sanctions from the government authorities and the government would not recommend to any department for the grant of permission / sanction for the solar power project as per para 4 of PPA and the petitioner on its own should obtain these permissions and sanctions from the government.

(v) The CGM/TSSPDCL sanctioned evacuation arrangement of solar power from the proposed 15 MW project of the petitioner on 10.11.2017 and the SE / OP / Vikarabad / TSSPDCL submitted the work completion report vide letter dated 16.11.2017 for the 15MW project with details of erection of solar PV modules and installation of ABT energy meters. CE(SLDC & Telecom) vide letter dated 22.09.2017 had confirmed the real time data of 15 MW project connecting at 132/33KV Tandur SS at 33 KV level which is integrated to SLDC on 21.09.2017.

(vi) 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 up to 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

3. The petitioner filed rejoinder with the following additional material averments:
 - (i) The petitioner attributed delays to financing agreements which depended on demonstration of ownership of land which was delayed due to issues relating to acquisition and as a result, there was a delay in processing of loans by the banks. There was delay in construction of the transmission line due to delay in grant of approval for evacuation scheme. The Company approached the TSSPDCL for approval of route survey and approval for estimated cost of

the evacuation system vide letters dated 19 Sept. 2016, 21-10-2016 and 08-12-2016, however, the proposals were approved by TSSPDCL vide their letter dated 07-02-2017, resulting in delay of more than 5 months.

(ii) Due to introduction of GST which brought fundamental structural changes, there was a slowdown in the manufacturing and service industry across the country from July 2017 to September 2017. The suppliers/contractors delayed their contracts due to lack of clarity on tax structure and have to reissue purchase orders to align with GST regime. There was a confusion in the certificate for concessional customs duty which was kept on hold from June 2017 relating to import of solar modules. The petitioner notified work completion on 16.11.2017 and bay completion on 20.12.2017 requesting respondent to allow synchronisation of the project with the grid. The project was synchronised on 02.03.2018 with a delay of 66 days which is attributable to the respondent only. The petitioner is able to establish delay of 111 days due to pass book circular, 42 days due to DR circular, 254 days in evacuation scheme approval and 66 days delay in ordering synchronisation which are force majeure events. The petitioner is entitled to extension of SCOD of 374 days as per Article 9 of PPA.

4. I heard the arguments of both the counsel for the petitioner and counsel for the respondent. The point for determination is whether the petitioner is entitled to condonation of delay of 374 days in achieving SCOD by 02-03-2018 instead of 22-02-2017 as per terms of PPA signed on 23-02-2016?

5. 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 Tandur SS, at 33KV voltage level. The petitioner has entered into PPA with the respondent on 23-02-2016. 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 TSTRANSCO gave permission to set up for extension of bay at 220/33 KV Tandur sub-station vide its letter dated 09-06-2017 and further CGM/TSSPDCL sanctioned evacuation arrangement of solar power from the proposed 15MW plant on 07.02.2017. The SE/Op/Vikarabad/TSSPDCL has submitted the work completion report through letter dated 16.11.2017 with the details of erection of solar PV

modules and installation of ABT energy meters. SE/OMC/ YSTRANSCO also gave work completion report of bay extension vide letter dated 20-12-2017. The CE (SLDC&Telecom) vide letter dated 22.09.2017 had confirmed the real time data of the project connecting at 132/33 KV Tandur SS at 33 KV level integrated to SLDC on 21.09.2017.

6. The Government of Telangana (GoTS), Energy Department gave extension of SCOD up to 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 up to 30-06-2017 without any penalty, after examining the merits of the matter. Further, in continuation to its letter dated 29-06-2017, the GOTS by 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 delay and 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.

7. 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 and difficulties in procuring labour to carry out project work. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., Issues relating to acquisition of land, which are beyond its control and which resulted in delay of 374 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 on certain allegations cannot be termed as force majeure events covered by Article 9.2 of PPA, a perusal of it makes it clear.

8. The detailed examination of the pleadings and information filed by the applicant would drive home the point that the petitioner faced certain hurdles like delays in land acquisition for the project, impact of demonetization, labour mobilization for execution of site works and delay in estimates approval from the TSTRANSCO on 07.02.2017 though the petitioner requested for such approval in September 2016.

9. After the issue of the work completion report by the respondent, the petitioner approached the respondent vide its letter dated 23rd December, 2017 and subsequently vide letter dated 2nd January, 2018 for synchronisation of its plant. However, there is no material evidence to suggest that the respondent has taken any steps to synchronise the plant. This might be due to administrative challenges and regulatory issues faced by both the petitioner and respondent, as the Commission did not accept the en-block extension of SCOD to all solar plants up to 31-10-2017. Instead, the Commission directed the individual generators to file petitions for condonation of delay in each case. Based on this directive, consent of the Commission was needed for synchronisation of each plant. Accordingly, the petitioner gave an undertaking required for synchronisation vide its letter dated 01-02-2018. With the delays in processing of the application at respondent level and subsequently at the Commission, the 15 MW plant was synchronised to the grid on 02-03-2018.

10. The information submitted on record by both the petitioner and respondent makes it clear that SE / OP / Medak issued work completion report on 16-11-2017 and SE/OMC/TSTRANSCO issued work completion report of the Bay extension vide its letter dated 20-12-2017. Based on these completion reports, the petitioner approached the respondent for synchronisation of the plant vide its letters dated 23.12.2017 and 02.01.2018 respectively pending formalisation of SCOD extension by the competent authority. However, the SCOD of the subject project was declared as 02-03-2018. The Principle of natural justice apart from fairness also implies reasonableness, equality and equity. Following this principle, the petitioner shall not be penalised for the delays due to the administrative and regulatory challenges in taking a final decision on the synchronisation and SCOD. Thus, the Commission considers the date of second application of the petitioner on 02-01-2018 as the

synchronisation date instead of 02-03-2018 afflicted with delay in the decision-making process.

11. The above facts 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 a part of the delay of 374 days as events termed as force majeure.

12. Thus, it is clear from the material on record that extension of SCOD by the GOTS by 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 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.

13. In view of the aforementioned reasons, the delay of 252 days as pleaded by the petitioner is liable to be condoned up to 31.10.2017 for the reasons stated supra. As reported by the respondent, the project was complete in all respects and it was synchronised with the grid of the respondent which is *fait accompli* on 02.03.2018. However, as mentioned in Para 11, the Commission considers the date of second application of the petitioner for synchronisation on 02-01-2018 as the synchronisation date instead of 02-03-2018 due to delay in the decision-making process. It resulted in a delay of 63 days (from 1-11-2017 to 02-01-2018) beyond the permitted and extended SCOD, which invites penalty as per clause 10.5 of the PPÄ.

Though the petitioner requested for synchronisation on 02-01-2018, the respondent synchronised the plant on 02-03-2018 taking time to complete the formalities of obtaining undertaking from the petitioner and obtain the concurrence of the Commission for synchronisation. The petitioner should not be penalised for such delays due to administrative and regulatory issues. Thus, delay of 59 days (from 03-01-2018 to 02-03-2018) due to such reasons has to be condoned as the petitioner does not have any control on such issues. The point is answered accordingly.

14. The delay of 252 days in reaching the SCOD of 15 MW up to 31-10-2017 as concurred by the Commission is condoned. The delay of 59 days due to administrative and regulatory issues during the period 03-01-2018 to 02-03-2018 is also condoned. Thus, the total period of delay condoned works out to 311 days. As the Commission considers the date of synchronisation with the grid as 02-01-2018 with a delay of 63 days (from 1-11-2017 to 02-01-2018) for which the petitioner is liable to pay the penalty as per clause 10.5 of PPA. 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.

15. The petitioner is directed to pay penalty as per clause 10.5 of PPA.

This order is corrected and signed on this 22nd day of September, 2018.

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