



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 32 of 2018

Dated: 28.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Mytrah Adarsh 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, Warangal-506001.

3. Special Chief Secretary, Energy Department,

Government of Telangana, Telangana Secretariat,

Khairatabad, 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) & 86 (1) (k) of the Electricity Act, 2003 seeking extension of SCOD by 244 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 in Tunkibollaram, Medak Dist. Thereafter, a Power Purchase Agreement (PPA) was executed on 23.02.2016 between the petitioner and the respondent no.1. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 12 months from the date of PPA and achieve the Commercial Operation Date (COD) by 22.02.2017.

(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. Further, there was change of circle rates, causing land owners to re-negotiate / renege on land sale agreements, shifting of revenue records, non-availability of contiguous land parcels because the land owners were unwilling to sell their lands for development of projects also caused delay. Sada Bainamas caused delay since the owners had these documents without any registered documents which needed regularisation.

(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. Land owners were unwilling to accept demand drafts for payment and wanted

cash, encumbrances could not be cleared by the land owners for want of cash to settle the loans. 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 June 2017 to October 2017 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 the new projects of the government like Mission Bhagiratha, Mission Kakatiya and Project Kaleshwaram impacting land acquisition. Further, the policy of the government not to allot government land for power projects also contributed to the delay relating to acquisition of land.

(vi) The fifth major cause for delay is introduction of GST resulted in uncertainty in the tax regime which slowed down manufacturing and as well as the service industry across the country from July 2017 to September 2017 which further delayed supply of key equipment which further delayed the project.

(vii) Module suppliers reneged on orders because of various factors like increase in internal targets by the State of China for 2017, reduction in anti-dumping duty by the European Union, exponential purchases by US based IPPs which forced the developers to either agree on increased rates and amend the LCs which resulted in increase in Capital cost or to look at alternative suppliers which resulted in further delays. Further, Customs authority in our country have been wrongly classifying SPV modules and charging taxes at 7.5% which also delayed release of SPV modules.

(viii) 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 on representation, 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. The Commission 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.

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 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 Thunkibollaram SS at 33 kV voltage level with tariff at Rs.5.7137 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.

(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. Infact, 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. The events such as land acquisition, equipment suppliers from India and other countries do not fall under force majeure clause and the petitioner is not justified in pleading delay on this ground. The reasons cited by the petitioner are made only to avoid obligations under the PPA and to gain extension of time for SCOD on the pretext of alleged force majeure event.

(iv) The petitioner is responsible for executing the inter connection facilities for power evacuation from the proposed project to grid substation i.e., 132 / 33 kV Thunkibollaram SS at its own cost. As per clause 3.2 of PPA the respondent is not responsible getting permissions for sanction from the government authorities and it would not recommend to any department for the grant of permission / sanction for the solar power project. The petitioner on its own has to obtain permissions or sanctions from the government authorities for setting up the project.

(v) The SE / Op / Mahaboobnagar / TSSPDCL submitted work completion report through letter dated 23.08.2017 for the proposed 15 MW plant with details of erection of solar PV modules and installation of ABT meters. The CE (SLDC & Telecom) vide letter dt.19.09.2017 had confirmed that the real time data of 15 MW solar power project of the petitioner connecting 132 / 33 kV Thunkibollaram SS at 33 kV level as having been integrated to SLDC on 18.09.2017. On the instructions of CGM (IPC&RAC) through letter dated 16.10.2017, the SE / Op / Siddipet synchronised 15 MW project of the petitioner at Thunkibollaram SS, duly following the department procedure in vogue.

(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 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 23.10.2017. The force majeure events narrated by the petitioner were acknowledged by the GoTS and therefore the petitioner is entitled to extension of SCOD of the project commensurate with the delay. There was delay in acquisition of land due to districts reorganisation. Due to this reason, the petitioner could not get the lease / sale deeds to procure Acres 120 of contiguous land parcel for its project during June 2016 – September 2016 which took 111 days. Due to demonetisation, delay in financing, delay in grant of approval for the evacuation scheme all due to force majeure events caused delay in the construction of the project. The petitioner requested respondent no.1 on 02.01.2017 for route survey, scheme approval and estimates for transmission line for evacuation of power from its project to 132/33 Kv Thunkibollaram SS and whereas the CGM (Commercial) accorded evacuation scheme approval for execution of the transmission line by way of letter dated 17.04.2017. These facts clearly show the delay of 96 days in grant of scheme approval and estimates by TSSPDCL and the delay is totally attributable to the TSSPDCL.

(ii) The petitioner faced resistance in the process of erection of transmission line around Thunki Khalsa pond, Poultry farm and Thunkibollaram SS. 37 poles were affected by this ROW issue. In spite of request, the respondent no.1 has not provided any support regarding ROW issue. This ROW issue resulted in 57 days in erecting the transmission line which is not attributable to the petitioner. The delay in attaining SCOD is 244 days with the project being ready for synchronisation on 23.10.2017.

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 244 days in reaching SCOD on 23-10-2017 instead of 22.02.2017 of 15 MW as per the terms of PPA signed on 23-02-2016?

6. 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 132/33KV Thunkibollaram SS, at 33 kV voltage level. The petitioner has entered into

PPA with the respondent no.1 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 project work was completed as is clear from the work completion report issued by SE / Op / Siddipet through letter dated 23.08.2017. The date of SCOD as per PPA is 22.02.2017 and whereas, the actual SCOD achieved is 23.10.2017 with a delay of 244 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 up to 30-06-2017 without any penalty.

8. 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. It is clear from the material on record that the extension of SCOD upto 31.10.2017 is in continuation of extension of SCOD upto 30.06.2017 by GOTS and it has to be applied to the petitioner also.

9. 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 project work. The petitioner further pleaded that Sada Bainamas, land acquisition affected by demonetisation, districts

re-organisation, introduction of GST, difficulty with module suppliers contributing to delay in setting up the project. 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) of PPA 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 244 days as events termed as force majeure. The petitioner had no control or domain over the incidents mentioned causing delay in completing the project and therefore the delay cannot be totally attributable to the petitioner.

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 as pleaded by the petitioner is liable to be condoned up to 31.10.2017. By 31.10.2017, the project was completed in all respects and total 15 MW was synchronised with the grid of the respondent No.1 by 23.10.2017. The point is answered accordingly.

13. The delay of 244 days in achieving the SCOD up to 23.10.2017 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 28th day of August, 2018.

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