



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

O. P. No. 33 of 2018

Dated 22.10.2018

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 26.05.2018, 21.07.2018, 03.08.2018, 05.09.2018 and 22.09.2018. Ms. Mazag Andrabi, Advocate and Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 26.05.2018, Sri Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi and Sri Varun Kapur, Advocates representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 21.07.2018, 03.08.2018 and 05.09.2018. Sri. Hemanth Sahai, Senior Counsel along with Ms. Puja Priyadarshini, Advocate and Sri. Varun

Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 22.09.2018. Ms. Pravalika, Advocate representing Sri. Y. Rama Rao, standing counsel for the respondents appeared on 26.05.2018 and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravallika appeared on 21.07.2018, 03.08.2018, 05.09.2018 and 22.09.2018. 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 (k) of the Electricity Act, 2003 r/w Article 9.2 of PPA seeking extension of SCOD by 274 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 Reddypet, Nizamabad Dist. Thereafter, a Power Purchase Agreement (PPA) was executed on 08-03-2016 between the petitioner and the respondent no.2. 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 07.03.2017.
- (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 9.2 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 on representation, by way of letter dated 29.06.2017, extended the SCOD of all

solar power developers without any penalty up to 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 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 up to 31.10.2017 and directed TSDISCOMS to take further action and extend SCOD. Further, the Commission by way of letter dated 11.01.2018 directed the respondents to allow synchronisation of all solar power projects which have filed completion certificates subject to giving an undertaking in the format given.

(ix) The solar power projects affected by force majeure events are being set up pursuant to a competitive bidding process and the tariff so discovered through the said competitive bidding process has been adopted by this Commission and therefore it is not open to this Commission to re-determine the tariff of the solar power projects.

(x) The petitioner is seeking acceptance of the force majeure events and extension of SCOD by 274 days.

2. The respondent No.2, through its Chief General Manager (IPC & RAC) TSNPDCL, Warangal, filed counter-affidavit with the following material allegations:

(i) The petitioner has entered into PPA with the respondent no.2 on 08.03.2016 to set up 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV Reddypet SS at 33 kV voltage level with 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., 07.03.2017.

(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. 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., 07.09.2016) 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. The petitioner cannot arbitrarily declare an event or circumstance a force majeure. Introduction of GST was w.e.f 01.07.2017 and whereas the SCOD was 07.03.2017 and thus the contention in respect of GST as a ground for delay is untenable.

(iii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA. 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 as per Article 3.8.1 of PPA should give 15 days notice in advance to SLDC and DISCOM about its intention to synchronise to the grid. Based on the request letter of the petitioner dated 27.11.2017 and CEIG copy submitted on 29.11.2017 for synchronisation of 15MW project, CGM(IPC & RAC), NPDCL vide letter dated 04.12.2017 instructed SE/OMC/Nizamabad to synchronise 15MW solar power project at 132/33 KV Reddypet SS, Nizamabad district duly following the department procedure in vogue and consequently the 15 MW project was synchronised to the grid on 05.12.2017.

(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 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.

(vii) Appropriate orders may be passed.

3. The petitioner filed a rejoinder with the following material allegations:
 - (i) For reason of force majeure events beyond the control of the petitioner, the actual CoD of the project was achieved on 05.12.2017. 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 suffered difficulties in procuring Acres 67 of contiguous land parcel for its project during the period 30.08.2016 to 11.10.2016 which took 42 days in acquiring the land. 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.
 - (ii) The petitioner attributed delay of 50 days in procurement of records from the village revenue office, 111 days due to pass book circular, 42 days due to DR circular, for evacuation scheme approval 180 days, due to introduction of GST 45 days, due to unprecedented rainfall 16 days, due to module reclassification by customs 30 days and delay in issue of work completion report 22 days totalling to 496 days including overlapping events. The net delay is 428 days.
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 274 days in reaching SCOD i.e., 05.12.2017 of 15 MW project as per the terms of PPA signed on 08-03-2016?
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 Reddypet SS, at 33 kV voltage level. The petitioner has entered into PPA with the respondent no.2 on 08-03-2016. 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 petitioner vide letter dated 13.11.2017 informed the DE/O&M, 220 KV, Dichpally, TSTRANSCO, Nizamabad under respondent no.2 to issue work completion report as it had completed the erection of 33 KV bay at 132/33 KV Reddypet SS. The

petitioner further stated that TSTRANSCO did not conduct statutory inspection and issue work completion report. Still permission for synchronisation was issued on 04.12.2017 and the petitioner was directed to commission the project by 07.12.2017. There is a delay of 22 days which is not attributable to the petitioner. The petitioner commissioned SCOD on 05.12.2017.

7. 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. The respondent has admitted these facts and the proposal of the GOTS and the concurrence of this Commission for the extension of SCOD up to 30-06-2017 without any penalty.

8. Further, it is to be noted that 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. It is clear from the material on record that the extension of SCOD up to 31.10.2017 is in continuation of extension of SCOD up to 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 of 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. 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 delay of 274 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 complete according to the petitioner. Even the request for work completion report from the petitioner addressed to DE / O&M / TSTRANSCO Nizamabad dated 13.11.2017 is beyond 31.10.2017. The CGM (IPC & RAC) / NPDCL/Warangal through letter dated 04.12.2017 mentioned about the submission of work completion report for the proposed 15 MW power project with interconnection point at 132/33 KV Reddypet SS and also the permission accorded by the CE/SLDC /Telecom for synchronisation of 15MW solar project vide letter dated 17.10.2017 is on record. The petitioner

claimed that it requested for work completion report vide letter dated 13.11.2017 and whereas the order for synchronisation was passed vide letter dated 17.10.2017 of the CE/SLDC /Telecom (from the letter dated 04.12.2017 of CGM (IPC & RAC), Warangal). The project was synchronised to the grid on 05.12.2017. The TNSPDCL in its counter affidavit mentions that on the request of the petitioner dated 27.11.2017 and CEIG copy submitted on 29.11.2017 for synchronisation of 15 MW project, CGM (IPC) & RAC) vide letter dated 04.12.2017 has issued instructions to SE/OMC/Nizamabad to synchronise the project. It is not understandable how order for synchronisation was passed vide letter dated 17.10.2017 and whereas the petitioner vide letter dated 13.11.2017 addressed DE / O&M / 220 KV / Dichpally / TSTRANSCO / Nizamabad seeking work completion report. This apart the plea of the respondent no.2 about letter of the petitioner dated 27.11.2017 and CEIG copy submitted on 29.11.2017 is totally not tallying with the letter of CGM (IPC & RAC) dated 04.12.2017. The stand of both the petitioner and respondent No.2 in the correspondence relating to work completion and synchronisation is not consistent.

13. In view of the aforementioned reasons, facts and the contradictions mentioned in the pleas of the parties in the preceding paragraph, it is clear that the permission for synchronisation of the project was given on 17.10.2017 by the CE/SLDC and the synchronisation of the project was carried out on 05.12.2017. The delay from 17.10.2017 to 05.12.2017 is not explained by both the parties. The delay up to 31.10.2017 as stated supra in achieving SCOD is condoned. The period covered by 01.11.2017 to 05.12.2017 is in question now. The respondent is entitled to 15 days advance notice as per Article 3.8.1 of PPA before the date on which it intends to synchronise the project to the grid system. The petitioner claimed that it gave work completion report vide letter dated 13.11.2017 which is mentioned in the letter dated 04.12.2017 of CGM (IPC & RAC). In the same letter CGM (IPC & RAC) mentioned that CE / SLDC & Telecom accorded permission vide letter dated 17.10.2017 for synchronisation of the project. The synchronisation took place on 05.12.2017. The permission for synchronisation granted in this case was within 31.10.2017. For the reasons best known and also the delay in the process of administrative decision taking and for unexplained reasons, synchronisation took place with a delay of more than 49 days, for which the petitioner had no control.

Therefore, for the reasons aforementioned, the entire delay in achieving SCOD up to 05.12.2017 is liable to be condoned and it is condoned.

14. The delay of 274 days in achieving the SCOD up to 05.12.2017 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 22nd day of October, 2018.

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

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