



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 42 of 2018

&

I.A.No. 20 of 2018

Dated 21.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Renew Solar Energy (Telangana) Private Limited
(Dichipalli Project – 143MW)
138, Ansal Chamber – 2, Bikaji Cama Place,
New Delhi – 110 066.

... Petitioner.

AND

Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.

...Respondent.

This petition came up for hearing on 18-06-2018. Ms. Swapna Seshadri, Advocate for the petitioner and Sri Y. Rama Rao, standing counsel for the respondent along with Ms. Pravalika, Advocate appeared on 18-06-2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sections 86(1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 40 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 143 MW project near Dichpally

400/220 kV Sub Station, Nizamabad District, Telangana. Thereafter, a Power Purchase Agreement (PPA) was executed on 03-03-2016 between the petitioner and the respondent. 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) 02.06.2017, as the project was connected to the 400/220KV level.

(ii) During the year, 2016 the Government of the State of Telangana initiated re-organisation of existing 10 into 31 districts for effective administration and governance. The shifting of revenue records, change of jurisdictions resulted in re-negotiation/negation of land sale agreements etc. The formation of new districts created an anticipation of increased economic and commercial activities, thereby establishing a perception among land owners that land prices will move in up-ward direction. Owing to these reasons, the land owners started demanding higher prices contrary to the rates already negotiated. The petitioner was forced to agree to pay higher land prices which ultimately delayed the process of land acquisition.

(iii) The petitioner alleged unprecedented rains in the month of September 2016, which resulted in flooding and substantial damage to the roads connecting the project site resulting in stoppage of work with idle equipment and labour. Added to this problem, the petitioner suffered due to demonetisation of high value currency by the Government hampering sale of lands, payment of charges to the labourers and transporters and vendors/sub-contractors, rents to the machinery, which further delayed execution of the project and implementation of project timelines. Added to these problems, the introduction of GST resulted in further delays due to change in law and uncertainty.

(iv) Article 9 of the PPA, expressly provide that the petitioner shall be granted extension of period for fulfilment of SCOD in the event of occurrence of any force majeure event. 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.

(v) In spite of the obstacles, the petitioner completed the synchronisation of the entire project with a delay of 40 days which may be condoned.

2. The respondent 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 on 03.03.2016 to set up 143 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 400 / 220KV Dichpally SS at 220 KV 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., 02.06.2017. The actual commercial operation date (COD) of the project is 12-07-2017 i.e., with a delay of 40 days. This delay of 40 days is inviting penalty of Rs.2.29 crores as per clause 10.5 of PPA.

(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 the land for setting up of 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., 02-09-2016) 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 introduction of GST is w.e.f. 01.07.2017 and whereas, the project work was completed by 12-04-2017 and the SCOD of the project was 02-06-2017. As such, the contention of the petitioner that the introduction of GST caused delay in the completion of the project is not correct.

(iii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioners' 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 12-04-2017. Based on the request of the petitioner on the same day for synchronisation of 143MW, the CGM (IPC&RAC) vide letter dated 13-04-2017 has issued instructions to SE/OMC/Nizamabad to synchronise the project at 400 / 220KV Dichpally SS, Nizamabad district duly following the department procedure in vogue, the project was synchronised in a phased manner to the grid i.e., 44MW on 28.04.2017, 17.6 MW on 16.05.2017, 44 MW on 22.06.2017, 15.4 MW on 03.07.2017 and balance 22 MW on 12.07.2017. It is further stated that though all works were completed by 12.04.2017 and synchronisation orders were issued on 13.04.2017 for the total capacity which is more than 50 days prior to SCOD, the petitioner could not achieve SCOD for the total capacity. As such the reasons given by the petitioner for the delay are not acceptable.

(v) 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 upto 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015. The same was appraised to the Commission through communication dated 06-09-2017.

3. The petitioner filed a rejoinder with the following material allegations:

(i) The petitioner overall was unable to commission only 81MW capacity out of 143 MW and the project was fully commissioned with a delay of 39 days on 12.07.2017. The petitioner lost 29 days due to unprecedented rainfall from 01-09-2016 to 30-09-2016, on reorganisation of districts - 91days delay, on demonetisation – 60 days delay and on GST implementation – 11 days delay which were caused due to the circumstances beyond the control of the petitioner even though, the petitioner took all prudent measures to reduce the delay which may be condoned.

(ii) Article 9 permits extension of SCOD on force majeure events. The petitioner adversely suffered due to the force majeure events leading to delay. As per Article 9 delay on the ground of force majeure events can be condoned. The delay in view of the facts is not attributable to the petitioner and therefore, it 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 40 days in achieving SCOD by 02-06-2017 as per terms of PPA signed on 03-03-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 143 MW to be connected to 400/220kV Dichpally SS, Nizamabad District for sale of entire capacity to TSNPDCL at a tariff of Rs.5.5949 per unit. The petitioner has entered into PPA with the respondent on 03-03-2016. 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 CGM (IPC&RAC), TSNPDCL through letter dated 13-04-2017 issued instructions to SE/OMC/Nizamabad to synchronize 143 MW Solar Power Project of the petitioner at 400/220kV Dichpally SS, Nizamabad Dist duly following the department procedure in vogue. The petitioner plant was synchronized in phases to the Grid: 44MW on 28.04.2017, 17.6MW on 16.05.2017, 44MW on 22.06.2017, 15.4MW on 03.07.2017 and balance 22MW on 12.07.2017.

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.

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. 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. 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 faced certain difficulties in implementation of the subject project. The petitioner pleaded that delay due to re-organisation of districts, change of circle rates causing land owners to re-negotiate / renege on land sale agreements, non-availability of revenue records, demonetisation resulting in difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work. The petitioner claimed that unprecedented rains from 01-09-2016 to 30-09-2016 resulted in flooding of the roads connecting to the project site leading to stoppage of work at the work site, hampering the project. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., and issues relating to acquisition of land for setting up the project which were beyond his control and which resulted in delay of 40 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 respondent claimed that 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 40 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 up to 31-10-2017 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. 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 apart from the fact that the SCOD finally stood extended upto 31-10-2017, by which date the project was completed in all respects by synchronisation with the grid of the respondent on 12-07-2017, thus fulfilling the terms of the PPÄ. The point is answered accordingly.

13. The delay of 40 days by the petitioner for achieving SCOD in all respect by 12-07-2017 as per PPA is condoned. The petition is allowed on the same tariff as approved by the Commission. The respondent is directed to file a copy of the amended PPA with the revised date of commissioning.

14. I.A. stands disposed of accordingly.

This order is corrected and signed on this the 21st day of August, 2018.

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