

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

O. P. No. 45 of 2018

Dated: 23.10.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. TATA Power Renewable Energy Limited,
Flat No.3, Building No.1, Prakash CHS Relief Road,
Daulat Nagar, Santacruz, Mumbai – 400 054.

... Petitioner.

AND

1. The Special Chief Secretary, Energy Department
Government of Telangana, Telangana Secretariat,
Hyderabad
2. Northern Power Distribution Company of Telangana Limited,
H.No.2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal – 506 001.
3. The Chief General Manager (IPC & RAC)
Northern Power Distribution Company of Telangana Limited,
H.No.2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Waranal – 506 001.
4. The Chairman & Managing Director,
Transmission Corporation of Telangana,
Vidyut Soudha, Somajiguda, Hyderabad – 500 082.

...Respondents.

This petition came up for hearing on 06.09.2018 & 29.09.2018. Sri. Challa Gunaranjan, Advocate for the petitioner along with Sri N.Sai Phani Kumar, Advocate and Sri M.Sridhar, Advocate appeared on 06-09-2018 and Sri N.Sai Phani Kumar, Advocate representing Sri Challa Gunaranjan, Advocate for the petitioner appeared on 29.09.2018. Sri Y.Rama Rao, standing counsel for the respondents along with Ms.Pravalika, Advocate appeared on 06.09.2018 & 29.09.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86(1)(e) & (f) of the Electricity Act, 2003 r/w Regulations 38 & 40 of the TSERC (Conduct of Business) Regulations, 2015 seeking extension of SCOD by 5 days with the following material allegations:

1(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 Nennel village & Mandal, Adilabad District, 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., which resulted in the normal activities like purchase and sale of land and other commercial activities were inordinately delayed. This prevented the petitioner from procuring the land required for the project in time.

(iii) The second major cause for delay is demonetization of high value currency of Rs.500 and Rs.1000 notes by the central government, with a view to root out counterfeit currency, fight tax evasion, curb inflation, eliminate black money and terror-funding and to promote a cashless economy, which resulted in shortage of cash and difficulties in bank transactions. Due to shortage of cash, the payment to labour became difficult at the site of the project. Apart from this, the chain of events, starting from the intense heat wave in the state, floods, reorganisation of districts in the state and subsequent demonetisation had adversely impacted the petitioner in commencement of its activities for setting up of project. All these events are clearly beyond the control of petitioner and constitute force majeure events as defined in the PPA.

(iv) The petitioner faced problem of ROW issue. One of the towers at Bellampally SS, which is the interconnection point for the project was required to be shifted from

the route earlier planned and approved due to ROW issue. The approval process for erection of new tower resulted in a delay of 10 days.

(v) The Chief Engineer / Transmission / TSTRANSCO issued a letter dated 17.12.2016 to the CE/Warangal Zone, TSTRANSCO to the effect that the 33 KV twin feeder panels that were being installed in the project, as per the specification given in the estimate were of conventional type and that substation automation system (SAS) panels were mandatory at the pooling station and accordingly requested the addressee to issue appropriate instructions to the petitioner. Accordingly, the petitioner procured new SAS panels which took 3-4 months delay. Thus, the petitioner suffered delay of 20 days on this score.

(vi) The petitioner could get the project synchronised with 33KV transmission line on 22.02.2017. Due to low radiation and heavy dust which gathered on some of the PV modules, around 10MW could not be commissioned as the injected energy that was recorded was less than expected. Upon cleaning of the modules on 27.02.2017 the remaining 10MW was synchronised. The petitioner was issued a demand notice dated 17.04.2017 invoking bank guarantee to the extent of Rs.5 lakhs in lieu of the delayed commissioning of the project by 4 days.

(vii). Article 9 of PPA deals with various circumstances which constitute non-political events and direct political events under the force majeure clause. 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 cause for extension of the SCOD.

(viii) 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 5 days.

3. The respondent no.3 filed counter-affidavit with the following material allegations:

(i). The petitioner has entered into PPA with the respondent no.3 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 Bellampally 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 27.02.2017 with a delay of 5 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 demonitisation 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). It is the responsibility of the SPD for laying, erection and testing of transmission line from their pooling station to grid substation duly resolving all ROW issues. TSTRANSCO will ensure the quality of works executed, equipment / material used for the erection of bays and line as per the relevant Indian Standards. Further, regarding control and relay panels, the CE/Transmission/TSTRANSCO by letter dated 30.01.2017 gave four months time for installing new SAS panels. The petitioner's claim that the delay occurred due to ROW issue and Control and Relay panel issues are force majeure events is not correct.

(v) The petitioner through letter dated 02.11.2016 submitted land registration documents for Acres 67.41 made during September 2016 and the district reorganisation was notified on 11.10.2016 which is post procurement of land therefore, the petitioner's claim about the delay on this point is not correct.

(vi) As per Article 3.8.1 of PPA, the SPD shall give a notice in writing to the SLDC and Discom at least 15 days before the date on which it intends to synchronise the project to the grid. Based on the request of the petitioner dated 16.02.2017 and SLDC clearance for synchronisation submitted on 20.02.2017 for 15MW synchronisation, the CGM (IPC & RAC), vide letter dated 20.02.2017 issued instructions to SE/OMC /Adilabad to synchronise 15MW project at 132/33 KV Bellampally SS , Adilabad duly following department procedure in vogue. The

project was synchronised to the grid in a phased manner i.e., 5MW on 22.02.2017 and the balance 10MW on 27.02.2017. Thus, it is clear that the petitioner failed to synchronise the total capacity within the SCOD i.e., 22.02.2017.

(vii) 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.

(viii) Under the circumstances, appropriate orders may be passed.

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 5 days in achieving SCOD by 27-02-2017 instead of 22-02-2017 as per 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 132/33 kV Bellampally 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.

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. 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.

8. The petitioner pleaded delay due to re-organisation of districts, delay in purchase of land, ROW issues, difficulties in payment to labour to carry out project work due to demonetization of high value currency which impacted the supply of labour etc., which are beyond its control and which resulted in delay of 5 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.

9. 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 on payment to the labour at the project, ROW issues, installation of new SAS panels some of which of course cannot be termed as force majeure events.

10. Few incidents / facts mentioned by the petitioner have some force to treat them as non-political events, which included payment to labour mentioned in Article 9.1.(b) (i) as one of the force majeure events. Directions to install new SAS panels in the place of agree panels is also a cause for delay which can be considered for condonation. 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 5 days as events termed as force majeure.

11. 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.

12. In view of the aforementioned reasons, the delay as pleaded by the petitioner is liable to be condoned even up to 31.10.2017. It is to be noted that the project was complete in all respects and it was synchronised with the grid of the respondent on in phases: 5 MW on 22-02-2017 and balance 10 MW on 27.02.2017 with a delay of only 5 days which is covered by the extension of SCOD generally ordered for the solar power projects in the State up to 31.10.2017. Thus, the petitioner is entitled to condonation of delay of 5 days in reaching SCOD for the balance 10MW by 27.02.2017. The point is answered accordingly.

13. 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.

This order is corrected and signed on this 23rd day of October, 2018.

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