



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

O. P. No. 5 of 2018

Dated 18.07.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Transform Sun Energy Private Ltd.,
Shapoorji Pallonji Centre, 41/44, Minoo Desai,
Colaba, Mumbai – 400 005

... Petitioner.

AND

Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.

...Respondent.

This petition came up for hearing on 05-05-2018 & 08-06-2018. Ms. Rachana Reddy K, Advocate for the petitioner along with Sri Ashish Indarapu, Senior Manager of the petitioner appeared on 05-05-2018 and Ms. Sangeetha Bhaskar, Advocate for the petitioner along with Sri Ashish Indarapu, Senior Manager of the petitioner appeared on 08-06-2018. Sri Y. Rama Rao, Standing Counsel for the respondent along M.V.R. Prasad, Advocate appeared on 05.05.2018. Sri Y. Rama Rao, Standing Counsel for the respondent along Ms. Pravalika, Advocate appeared on 08-06-2018. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sec.86 (1) (f) of the Electricity Act, 2003 seeking extension of SCOD by 1 month with the following allegations:

(i) The respondent floated tender for procurement of 2000 MW solar power through e-procurement platform on behalf of Telangana State Electricity Distribution Companies 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 100 MW capacity to be connected to 400 / 220 kV Veltoor Grid SS at Veltoor, Mahaboobnagar District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 25-02-2016 between the petitioner and the respondent. The petitioner furnished performance bank guarantee at the rate of Rs.20 Lakhs per MW as a guarantee for the contracted capacity. As per the PPA, the petitioner was to commission solar photovoltaic power project within 15 months from the date effective of PPA and achieve the Commercial Operation by 24.05.2017. The project was proposed to be connected to 400/220 kV Grid Sub-station at Veltoor. As per the terms of the PPA, the petitioner executed interconnection facilities for power evacuation from the project to the grid SS. The project was also synchronised to the respondent company/Transmission Corporation of Telangana Limited (TSTRANSCO) network with the interconnection point in compliance with the connectivity conditions specified in the Grid Code.

(ii) The learned counsel for the petitioner submitted that during the year, 2016, the Government of the State of Telangana State initiated re-organisation of the districts and there was confusion in the revenue offices regarding the jurisdiction of villages, mandals, which resulted in delay in processing conversion permission of the project lands for industrial use and for other clearances under the single window clearance through the commissioner of industries, which slowed down the pace of the site mobilisation and delayed handing over of the site to the EPC contractor for setting up the project. Further, introduction of demonetization by the central government caused crunch in the cash flow and difficulties in the bank

transactions. The project is comprised of Acres 500 of land and it was extremely difficult to transact and deal with agriculturist and land owners who are not bank account holders. The sub-contractor who supplied the labour faced several setbacks due to limited resources, which had adverse impact in the progress of the project. Owing to these reasons, the petitioner, expecting that it may not reach the dead-line for COD as per the PPA, requested the respondent for extension of time by 2 months for scheduled COD as per the PPA from 24-05-2017 to 24-07-2017 through letter dated 28-12-2016.

(iii). The petitioner stated that, as per the PPA, the petitioner was scheduled to setup a dedicated transmission line upto the grid sub-station. Subsequently, it was decided that a multi circuit line has to be setup and the route approval proposal was cleared by TSTRANSCO on 12-11-2016. The line erection was approved on 20-03-2017 with a condition to re-route the 220 kV Veltoor-Jurala DC line. TSTRANSCO through letter dated 30-03-2017, approved the profile role and tower schedule from the Veltoor SS to petitioner's plant with a condition to construct a narrow base multi circuit D type Tower (NMD) in order to re-route the 220 kV Veltoor-Jurala DC line. During this period, the local transport association staged a nationwide protest restricting the movement of transport outside and within the state, which almost blocked the supply of construction material for 2 towers at the project site. The petitioner, through letter dated 23-05-2017, requested TSTRANSCO to shut-down the existing Veltoor – Jurala DC line to enable re-routing. The stringing for the 220 kV solar power plant was completed on 27-05-2017 and consequently, the power plant was synchronised with the grid and SCOD was achieved on 23-06-2017 which was confirmed by the respondent through letter dated 20-07-2017. The major reason for delay occurred in re-routing the transmission line to setup 2 towers. The delay occurred due to technical lapse in the line estimation by TSTRANSCO. Thus the delay is only due to a force majeure event.

2. The petitioner is seeking condonation of the delay in achieving SCOD within 15 months from the date of PPA and is relying on Article 6.5 (iv) and (v) of the PPA, which expressly provides for extension of period of SCOD in the event of Force Majeure events. The Petitioner is also relying on Article 9 of the PPA, which deals

with non-political events and direct events under the Force Majeure clause, which also includes labour problems and change in the law etc. Under Article 9.2 of the PPA, Force Majeure events may permit extension of time up to a maximum period of 12 months' to rectify the defaults. The petitioner is thus seeking extension of time for 1 month (actual delay) in achieving SCOD as per the terms of the PPA.

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

- (i). The petitioner was a successful bidder in the bidding process and entered into PPA with the respondent on 25-02-2016 for setting up 100 MW solar power project near Veltor SS in Mahaboobnagar District. As per the terms of the PPA, the petitioner has to commission the project within 15 months from the date of signing of the PPA (w.e.f 24-05-2017). As per clause 3.2 of the PPA, the petitioner shall be responsible for executing the interconnection facilities for power evacuation from the proposed solar power project to the grid SS of 400 / 220 kV Veltor SS. As per Article 6 (xvi) of PPA, the petitioner has agreed to obtain all consent, clearance and permits required for supply of power to the respondent and to procure the land at least 4 acres in its name within 6 months at own cost and risk from the date of signing of PPA. If not so, the petitioner has to address the respondent giving the reasons for delay and this requirement has not been complied with. The district re-organisation and demonetization of high value currency occurred post scheduled date (i.e., 24-08-2016) and the claim regarding the delay in obtaining necessary approvals and in procuring land is untenable and the contention is not tenable.
- (ii) The counsel for respondent stated that route proposal for erection of 220 KV DC/SC from the existing 400/220 KV Veltor SS to proposed 100 MW Solar Power Project being setup by the petitioner was approved by the C E/ Transmission/TS Transco on 12.11.2016 and the same was completed in full shape by 03.06.2017. The SE/OP/Mahabubnagar submitted the Work Completion Report along with details and on its basis the CGM (IPC & RAC) vide letter dated 20-06-2017 has issued instructions to SE (OP), Mahaboobnagar to synchronize 100 MW solar power project of the Petitioner

at Veltoor SS, Mahaboobnagar District following the procedure in vogue. Thus, the plant was synchronized to the grid on 23-06-2017.

- (iii). The power evacuation line proposed by the petitioner was crossing underneath the Structures of 220 kV Veltoor – Jurala DC line and the petitioner was well aware of this fact from the date of approval. Also it may be noted that TSTRANSCO authorities in their approval have not insisted upon re-routing. Therefore, the plea of the petitioner that the delay in SCOD occurred on account of re-routing of line is not tenable.
- (iv). The reasons given by the petitioner does not satisfy the requirement of Article 9 of PPA and petitioners attempt for arbitrarily declaring an event or circumstance as force majeure event cannot be termed as Force Majeure.
- (v). It was 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 technical requirement specified by CEA and under TSTRANSCO guidelines. The Commission had approved the extension of SCOD up to 30.06.2017 for the solar power projects of competitive bidding in the year 2015 with a direction to the respondent to file a petition for amending the penalties and re-fixation of the tariff. As directed, the respondent filed a petition in the Commission for amending the PPA duly incorporating the SCOD i.e., 30.06.2017, at the same tariff for the solar power projects commissioned beyond the SCOD who have entered into PPAs with the respondents under competitive bidding 2015.

4. I heard the arguments of both the counsel for petitioner and counsel for respondent.

5. The point for determination is whether the petitioner is entitled to condonation of delay of 1 month in achieving SCOD by 23.06.2017 instead of 24.05.2017 initially agreed as per the terms of PPA signed on 25.02.2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 100 MW to be connected to 400 / 220 kV Grid SS at Veltoor Village, Mahaboobnagar District. The petitioner has

entered into PPA with the respondent on 25-02-2016 and furnished performance bank guarantee at the rate of Rs.20 Lakhs per MW for the contracted capacity. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from the date of PPA. The entire project was ready by 03-06-2017 and the SE (OP), Mahaboobnagar through report dated 12-06-2017 gave work completion report with details of erection of solar PV modules and installation of ABT energy meters. The CGM (IPC & RAC) vide letter dated 20.06.2017 has issued instructions and the plant was synchronized to the grid on 23-06-2017.

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, which has been endorsed in principle by this Commission vide letter dated 18.08.2017 after considering the relevant facts.

8. The detailed examination of the pleadings and information filed by the applicant would drive home the point that the petitioner faced certain hurdles in terms of change to multi-circuit design instead of single dedicated circuit from the petitioner's plant to grid sub-station and setting up of D type towers and consequent delays in getting approval from TSTRANSCO. This led to the time over run of around a month and the project was synchronized with the Grid on 23.06.2017. 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 in its petition. Considering the proposal of the Government of Telangana and concurrence of this Commission for the extension of SCOD up to 30-06-2017 without any penalty, delay of about one month in the present case has to be condoned.

9. Thus, the delay as pleaded by the petitioner is no longer an issue in this case since the SCOD stood extended upto 30.06.2017 by which date, the project was completed in all respects by synchronisation with the grid of the respondent on 23.06.2017, thus fulfilling the terms of the PPA. The point is answered accordingly.

10. The delay of one (1) month in the petitioner reaching SCOD by 23.06.2017 as per PPA is condoned on the same tariff as approved by the Commission. The petition is allowed. 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 the 18th day of July, 2018.

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

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