



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

O. P. No. 64 of 2018

&

I. A. No. 39 of 2018

Dated 19.12.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Kranthi Ediffice Private Limited,  
H.No. 3-5-784/8/A, Sri Sai Sri Heights,  
King Koti, Opp: Pardha Gate, Hyderabad.

... Petitioner.

AND

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

2. The Chief General Manager (IPC &RAC)  
TSSPDCL, Corporate Office: 6-1-50, Mint Compound,  
Hyderabad – 500063.

... Respondents.

This petition came up for hearing on 06.10.2018, 03.11.2018, 17.11.2018 and 24.11.2018. Sri. D. Rahavender Rao, Advocate for the petitioner along with Ms. Smriti Jaswal, Advocate appeared on 06.10.2018, Sri. D. Rahavender Rao, Advocate for the petitioner appeared on 03.11.2018, 17.11.2018 and 24.11.2018. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravallika, Advocate appeared on all dates of hearing. The petition having stood over for consideration to this day, the Commission passed the following:

**ORDER**

This petition is filed under 86(1) (f) of the Electricity Act, 2003 seeking extension of SCOD beyond the time stipulated under the Agreement dated

08.01.2015 and also supplemental agreement dated 03.12.2016 and permit a period of six months from the date of the order of Commission for completing the project (SCOD) with the following material allegations:

(i) The petitioner was a successful bidder through open competitive bidding 2012 and open offer route 2013 to setup the solar photovoltaic power project of 10 MW capacity at Rs.6.49 per unit near Tadoor village and Mandal, Mahabubnagar Dist (presently Nagarkurnool District) Telangana for sale to DISCOM. The petitioner acquired Ac 48.39 land in Tandoor village. A Power Purchase Agreement (PPA) was executed on 08-01-2015 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. For various reasons, a supplemental agreement dated 03.12.2016 was executed with final date of SCOD by 31.12.2016. As per this supplemental PPA, there shall not be any further extension of SCOD.

(ii) After signing PPA, the petitioner faced difficulties while executing the project which were beyond its control. The government had demonetised high value currency, which affected the petitioner adversely. The petitioner suffered liquidity crunch to meet the expenditure. The petitioner engaged about 200 workmen for the project and it could not pay for the services, due to severe liquidity crunch. The petitioner tried to secure finance unsuccessfully.

(iii) The petitioner had incurred about Rs.30,47,91,627/- towards capital expenditure and if an opportunity is not given to complete the project commercialisation, the petitioner would suffer irreparable loss and closure of the company. The petitioner furnished bank guarantee for 1crore dated 24.09.2014 and it was extended till 27.09.2018 on request.

(iv) The petitioner could not complete the project due to the reasons beyond its control and submitted a representation dated 31.12.2016 to the respondent seeking extension of two months time to complete the project and meet the SCOD. There was no response from the respondents on the representation of the petitioner and therefore, the petitioner was compelled to file WP No. 54 of 2017 and the Hon'ble High Court at Hyderabad by orders dated 03.01.2017 passed the following order.

*'I have perused the reasons stated in the representation dated 31.12.2016. the grievance stated by the petitioner is not singular.*

*Therefore, the representation requires objective consideration by respondents 2 and 3. Hence, I am satisfied the WP can be disposed of by this order.*

- a) Petitioner is given liberty to resubmit representation dated 31.12.2016 by enclosing copy of this order within one week from today.*
- b) Respondents 2 and 3 are directed to examine the request of petitioner for extension of time for commissioning of project in its right perspective and a decision is expeditiously taken.*
- c) Since direction is issued to respondents 2 and 3 to consider the representation dated 31.12.2016, it is expected that the respondents do not, pending consideration of representation, initiate coercive steps in this behalf.*

*The writ petition is disposed of. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.”*

(v) As directed by the Hon'ble High Court, the petitioner submitted a representation dated 07.01.2017 to the respondent seeking extension of SCOD. The respondent passed an order dated 19.01.2017 refusing to extend the SCOD on the ground that the reasons assigned do not attract the definition of force majeure.

(vi) On the basis of legal advice, the petitioner filed another WP No. 2490 of 2017 challenging the order of the respondent dated 19.01.2017 on the ground of absence of reasons and non-consideration of force majeure condition. Since it is the Commission alone which is empowered to extend SCOD, the present petition is being filed.

(vii) WP No. 2490/2017 has been withdrawn in view of the filing of present O.P. The Hon'ble High Court while granting permission to withdraw the said WP, directed the respondents 2 and 3 not to take coercive action for a period of three weeks within which time, the Commission shall pass appropriate order on the interim application filed by petitioner in the O.P.

(viii) The petitioner had, on its own, completed one power plant as per the agreed terms which shows the bonafides of the petitioner. Whatever delay has occurred, it is due to the petitioner approaching the Hon'ble High Court.

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

(i) The petitioner has entered into PPA with the respondent on 08.01.2015 to set up 10 MW solar power project at Nagarkurnool village in Mahabubnagar District under competitive bidding of 2012, open offer route 2013 and the competitive bidding 2014 at a tariff at Rs.6.49 per unit. As per the terms of the PPA, the petitioner has to commission the project by 07.01.2016 and with penalties up to May 2016. GOTS by letters dated 08.05.2015 and 04.12.2015 had extended SCOD from time to time up to 31.03.2016 on the agreed tariff of Rs.6.45 per unit. Further, GOTS by letter dated 26.07.2016 had extended SCOD up to 31.12.2016 as last chance who have concluded PPAs under competitive bidding, 2012 and open offer route, 2013 on the agreed price of Rs.6.45 and under competitive bidding, 2014 as a last chance. The decision of GOTS was informed to the Commission for its consent vide letter dated 08.08.2016. the Commission by letter dated 14.10.2016 concurred with the extension granted by GOTS on the following conditions

(a) Tariff of Rs.6.45 per unit is applicable to the solar power projects to be commissioned under competitive bidding route 2012 and open offer route 2013

(b) the tariff is also applicable to the projects under competitive bidding route 2014.

(c) The solar projects which are now qualified for extension of SCOD up to 31.12.2016 shall not be eligible for the incentives for early commissioning of the projects.

(d) The relevant PPAs have to be amended accordingly and filed before the Commission for approval.

(e) Extension of SCOD is a last chance.

(ii) These solar developers have not commissioned the projects within the extended SCOD causing loss to the DISCOMs incurred in procuring the short fall of power from the market at higher cost.

(iii) The reasons given by the petitioner claiming force majeure do not satisfy the requirement of Article 9 of PPA. The respondents have right under Article 10.5 of PPA to recover penalties for delay in commissioning of the project. The petitioner is liable to compensate the respondents for breach of the agreement. Other solar developers have commissioned the projects in time and the petitioner cannot be treated differently.

(iv) Under Article 6 of PPA, the petitioner has agreed to obtain all consents, clearances and permits required for supply of power to the respondent and to procure land for setting up the project at least 4 Acres per MW within 6

months at its own cost and risk from the date of signing of PPA. The petitioner cannot arbitrarily declare an event or circumstance as force majeure. The petitioner is trying to gain time under the guise of force majeure to which it is not entitled to.

(v) DE / Op / Nagarkurnool had personally inspected the premises of solar plant and found the status of work as follows:

- is
- a) solar panels were erected for 2MW capacity only and balance work under progress.
  - b) Reactors are not provided
  - c) Power transformer was not provided
  - d) Structure is erected partially and balance work is under progress.
  - e) Cable work is not yet started.

(vi) The respondent had not issued termination notice in view of direction of Hon'ble High Court while dismissing WP No.2490 / 2017, which was withdrawn.

(vii) Under these circumstances, the respondent pleaded for dismissal of O.P.

3. The petitioner filed rejoinder to the counter affidavit of the respondent with the following allegations:

(i) The petitioner submits that even amended PPA dated 03.12.2016 does not prohibit extension of SCOD under force majeure clauses. Due to the crisis created by introduction of demonetisation by the GOI on 08.11.2016, the project was badly affected. The respondent ought to have considered the request for extension of SCOD due to special and exigent circumstances faced by the petitioner. The district reorganisation and introduction of GST attracted force majeure events. The petitioner has invested more than Rs.30crs in the project and has suffered due to delay and wrongful rejection of request of SCOD.

(ii) The petitioner has completely procured the land and fenced it after levelling it. At the project site, 33KV outdoor type 25KA/3Sec, 1250Amps porcelain clad vacuum circuit breaker with control voltage, 24VDC including all accessories were completed. Laying of transmission line 33KV from solar plant to substation was completed. Under 132/33KV SS, 33KV bay

extension work, erection of VCB, erection of metering equipment and current transformer were completed. Under DC works, solar power plant, solar module mounting structure, erection of 2000KW completed with balance materials POs released, for solar central inverters POs placed and advance payment released. Under AC combiner box, earthing and other works POs already placed and advance payment released.

(iii) For the balance works, 30 days' time for arranging necessary finance from PFC, 45 days for procuring solar PV modules for erection, 45 days for completion of balance AC works and 30 days for installation modules and other related work from the date of receipt of material may be granted effective from the date of amended PPA.

(iv) The PPA has not been terminated. It is not correct to state that the petitioner approached the Commission beyond time granted by the Hon'ble High Court in WP No. 2490/2017. The petitioner is seeking extension of time for SCOD.

4. I heard the arguments of both the counsel for the petitioner and counsel for the respondent. Additionally, on behalf of the petitioner, written submissions have been filed.

5. The points for determination are

(a) Whether the petitioner is entitled to condonation of delay to achieve SCOD (beyond 31.12.2016) and six months from the date of this order?

(b) Whether there is any delay in the petitioner approaching Commission beyond the time granted by Hon'ble High Court in WP No. 2490 / 2017?

**Point (b):**

6. The Hon'ble High Court in WP No. 2490 / 2017, permitted the petitioner to withdraw the writ petition by orders dated 27.08.2018 while directing the respondents not to take coercive action for three weeks. The petitioner appears to have filed the present OP on 10.09.2018 in the Commission. The delay in filing the present petition after withdrawing WP on 27.08.2018 is 11 days. Thus, the petitioner filed the present OP within reasonable time on 10.09.2018 from the time of withdrawal of the petition. There is found to be no delay in the petitioner filing the present petition from the date of withdrawal of the writ petition. The issue is answered accordingly.

**Point (a):**

7. The petitioner was a successful bidder for setting up solar project of 10 MW capacity at Nagarkurnool village in Mahabubnagar District under competitive bidding 2012 at a tariff of Rs.6.49 per unit with SCOD by 07.01.2016 and with penalties up to May 2016. GOTS / Energy Dept., vide letters dated 08.05.2015 and 04.12.2015 had extended SCOD up to 31.03.2016 on the agreed tariff Rs.6.45 per unit. GOTS at the request of the solar power developers, vide letter dated 26.07.2016 has extended SCOD up to 31.12.2016 to the solar projects in the State with PPAs under competitive bidding, 2012 and open offer route during, 2013 with agreed tariff Rs.6.45 per unit and under competitive bidding, 2014. This extension of SCOD was to be final and as a last chance. This decision has the consent of the Commission vide letter dated 14.10.2016. The TSDISCOMS have extended the SCOD up to 31.12.2016 by amending the PPA as per the directions of the Commission.

8. The petitioner claimed that pursuant to signing of PPA, it acquired the land of Ac 48.39 Gts at Tadoor village, Nagarkurnool, levelled the site and built rooms, erected module mounting structures, completed laying of evacuation line and extension of bay facilities connecting substation, procured all material for setting up the power project. The SCOD of the project got delayed. The petitioner took a plea that the Union of India took a policy decision to demonetise high value currency which impacted many commercial establishments due to the drastic action. Because of the demonetisation, cash could not be withdrawn from savings / current accounts. The petitioner suffered severe liquidity crunch, because it could not meet the expenses for the project because of demonetisation. The petitioner claimed to have engaged 200 workmen, who could not be paid their wages for the services rendered. At that time, the petitioner claimed to have approached PFC Green Energy Ltd, for financing which agreed to provide the financial assistance. Since the project was required to be commercialised by 31.12.2016, even the PFCGEL went back on its commitment, perhaps due to few days left for achieving SCOD.

9. The petitioner further claimed that in spite of demonetisation, the petitioner could make online payments except to the workmen to whom cash had to be paid for

completion of the work and had the demonetisation not been imposed, the petitioner would have certainly completed the project within time by 31.12.2016.

10. The respondent pleaded that the defence of demonetisation of high value currency taken by the petitioner for not reaching SCOD even by 31.12.2016 is not correct and it does not amount to force majeure clause in the agreement dated 08.01.2015. Therefore, the respondent claimed that it has every right to proceed under Article 10.5 of PPA.

11. The petitioner contended that the respondent had supported the plea of various other solar power developers seeking extension of SCOD on the ground of demonetisation, district reorganisation etc., and now in the present case, opposing the plea of demonetisation as force majeure, amounts to violation of equality and equal treatment. The earlier extensions granted to the solar power developers under open offer 2012-13 was for different considerations and the same cannot be equated now with the present plea of demonetisation as force majeure. The respondent pleaded that the petitioner failed to adhere to the SCOD even after extension of SCOD by 31.12.2016 with a stiff condition that the extension was granted as a last chance and no request for extension shall be entertained. It is surprising how after the final extension of SCOD, the petitioner could seek further time in the following manner:

*“the Commission may direct M/s. TSSPDCL to extend the SCOD beyond the time stipulated under the agreement dated 08.01.2015 and also the supplemental agreement dated 03.12.2016 and permit a period of six months from the date of order of this Hon’ble Commission for completing the power plant and consequential commercialisation.”*

12. It is significant to note that even now the petitioner is not ready to meet with SCOD. The petitioner’s prayer itself shows that the petitioner is not ready with SCOD even by the time of filing of the OP on 10.09.2018. Even the written submissions filed on 04.12.2018 shows the request of the petitioner viz. to direct the respondent to amend the PPA dated 03.12.2016 extending SCOD granting five months time from such date of amendment to enable the petitioner to complete the commissioning of the project. Even now, the petitioner is not ready with the material and equipment to achieve SCOD. The sole plea of demonetisation for delay is found to be not a ground of force majeure. In spite of extension of SCOD by GOTS vide letters dated 08.05.2015 and 04.12.2015 and extension of SCOD from time to time

up to 31.12.2016 on agreed tariff of Rs.6.45 per unit and the decision of GOTS vide letter dated 26.07.2016 extending SCOD up to 31.12.2016 has not made the petitioner to get ready with SCOD even by 31.12.2016 or even up to the date of filing of present petition on 10.09.2018.

13. The next plea of the petitioner is that had the respondent granted two months' time for completing the commissioning of the project at its request made before 31.12.2016, the petitioner would have reached the SCOD. The respondent however has not responded to the request. The petitioner filed WP No. 54/2017 on the file of Hon'ble High Court and by orders dated 03.01.2017, the Hon'ble High Court directed the respondent to objectively consider and pass orders on the representation filed by the petitioner. The respondent vide orders dated 19.01.2017 rejected the request for extension of SCOD. Then the petitioner filed WP No. 2490/2017 on 22.01.2017 challenging the order of refusal for extension of SCOD in the Hon'ble High Court and by orders dated 25.01.2017, the Hon'ble High Court directed that there shall be no coercive action pursuant to the letter dated 19.01.2017 of the respondent. The interim orders were extended from time to time. The Hon'ble High Court by order dated 27.08.2018 dismissed the writ petition as withdrawn further directing respondents 2 and 3 not to take coercive steps for a period of 3 weeks within which time the Commission shall take appropriate decision on the interim application filed in this OP. The period from 19.01.2017 to 27.08.2018 can be treated when the petitioner approached the Hon'ble High Court without invoking section 86(1) (f) of the EA,2003. This period qualifies for exemption for calculating the period of delay relating to SCOD.

14. The petitioner could not achieve SCOD even by 31.12.2016. The petitioner is not ready with SCOD even on the date of filing of OP on 10.09.2018. Even if the delay from 31.12.2016 up to the present date minus the period from 19.01.2017 to 27.08.2018 is deducted, there would still be 18 days (01.01.2017 to 18.01.2017) and 107days ( from 27.08.2018 to 11.12.2018) delay for not achieving SCOD (125 days). But in the prayer which takes the cake to the effect that beyond the date of this order, time is sought by 5 months more after the order and amendment of PPA, would make the entire delay as 125 days and 5 months which would up to certain days attract penalties under Article 10.5 of PPA.

15. The Hon'ble High Court of Hyderabad vide its interim order dated 25-01-2017 directed the DISCOM that "there shall be no coercive action pursuant to the impugned letter bearing No. CGM (Comml & RAC) / SE / IPC-I / F - Kranthi / D.No.1860 / 16 dated 19.01.2017". In view of the above interim order, the TSSPDCL vide its letter dated 05.03.2018 directed the petitioner to extend the PBGs up to 31.03.2019 and furnish the extended PBGs at an early date, failing which action would be initiated as per the terms of the PPA. There is no material on record to show that the petitioner has been able to extend the PBGs as desired, however, the Respondent has not taken any steps to terminate the PPA based on the disposal of the writ petition No. 2490 of 2017 on 27<sup>th</sup> August 2018. While disposing the WP, the Hon'ble High Court of Hyderabad observed that " the Writ Petition is dismissed as withdrawn, further restraining the respondent No.2 and 3 from taking any coercive action ".

16. The petitioner failed to achieve SCOD within 31.12.2016. The DE / Op / Nagarkurnool inspected the project and found the status of work mentioned at para 2(v) supra by 31.10.2018, the date of filing counter affidavit. Under these circumstances, the conclusion that can be arrived at is that the project is not completed and material on record to show that only a part of the project is completed even by the date of filing of OP on 10.09.2018.

17. Apparently, the petitioner is not entitled to any relief in this OP. However, the State Government vide its letter dated 05-09-2018 has given relief to another similarly placed project (M/S Oberon Power Corporation Pvt Ltd) as a one time measure. The State Government in its letter says that

"Government after careful consideration of the grievance of Solar Developer and report of the TSNPDCL 4th cited, hereby extend the SCOD to two units (2x5 MW) of M/S Oberon Power Corporation Pvt Ltd for 90 for completion of their project with reduced PPA tariff of Rs. 5.72 as per 2015-16 bidding as requested by the Company as one time measure and last chance".

18. The M/S. Oberon Power Corporation Pvt Ltd has entered into PPA dated 31-01-2014 with TSNPDCL under competitive bidding at a tariff of Rs. 6.45 per unit. The SCOD as per the terms of the PPA was 30-01-2015. The State Government

gave extensions of SCOD three times and the final extension was valid until 31.12.2016. However, the project developer could not complete the project even as on 31.12.2016. Thus, the State Government granted relief as stated above.

19. The petitioner of subject project of O.P. 64 (M/S Kranthi Edifice Pvt Ltd) has also participated in the bidding process of 2012 and the bid for 10 MW at the tariff rate of Rs. 6.45. The petitioner could not complete the project even in the extended timelines up to 31-12-2016 for the reasons stated in his petition. But approached the High Court for resolving the dispute with the DISCOM regarding further extension of SCOD. After the grant of relief by the State Government to other similarly placed project, the petitioner withdrew its writ petition and filed the petition in this Commission for similar relief.

20. Principles of justice are supposed to ensure procedures that generate unbiased, consistent, and reliable decisions. Thus, interest of justice would be met by treating the similarly placed projects on equal footing. The material on record indicates that the status of progress of implementation of the petitioner's project is in the similar status as compared to the projected granted relief by the State Government. Applying the principle of natural justice, the petitioner's project is also entitled to similar relief granted by the State Government. The issue is answered accordingly.

21. In view of the findings, the following directions shall issue:

- (a) The petitioner is entitled to the relief granted by the State Government vide its letter dated 05.09.2018 as petitioner's project is in the similarly placed position as compared to M/S Oberon Power Corporation Pvt Ltd.
- (b) The respondent is directed to amend the PPA with 90 days for achieving SCOD from the date of signing the PPA with fixed tariff of Rs. 5.52 per unit as decided by the Commission in case of the above similarly placed project from the date of entering into amended PPA
- (c) The parties are directed to enter into an amended PPA for 25 years period within 15 days from the date of this order.
- (d) No costs.

***This order is corrected and signed on this 19<sup>th</sup> day of December, 2018.***

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

**//CERTIFIED COPY//**