



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

O. P. No. 67 of 2018

Dated: 5.11.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Shalaka Infra-Tech (I) Private Limited,
Regd. Office at Shalaka House,
Gajanan Housing Society,
Next to LIC Housing Finance, Ganeshkind Road,
Shivaji Nagar, Pune – 411 016.

... Petitioner.

AND

1. Special Chief Secretary, Energy Department,
Government of Telangana, Telangana Secretariat,
Khairatabad, Hyderabad.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
3. The Chief General Manager (IPC &RAC)
TSSPDCL, Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063
4. Transmission Corporation of Telangana,
Vidyut Soudha, Somajiguda, Hyderabad – 500 082. ... Respondents.

This petition came up for hearing on 06.10.2018 and 03.11.2018. Sri. Sai Phanindra Kumar, Advocate along with Sri. M. Tharun, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 06.10.2018. Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 03.11.2018. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravallika, Advocate appeared on 06-10-2018 and 03-11-2018. 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 and 40 of TSERC (Conduct of Business) Regulations, 2015 seeking extension of SCOD by 256 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 near Alair SS, Nalgonda District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 29-02-2016 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.

(ii) After signing PPA, the petitioner faced difficulties while executing the project which were beyond the control of the petitioner. There were heavy rains affecting normal life flooding the villages from July 2016 to September 2016. The administration was totally engaged in attending to natural calamities affecting land sale transactions and commercial activities. The procurement of land was delayed thereby. There was district reorganisation in August 2016. The officials were busy in implementing the notification published for reorganisation in October 2016. This led to delay of about 75 days in procuring land. The reorganisation of districts started in June / July 2016 and ended in October 2016 affecting transactions till first quarter of 2017.

(iii) GOI demonetised high value currency in the month of November 2016 to root out counterfeit currency, fix tax evasion, curb inflation, eliminate black money and terror funding and to promote cashless economy which resulted in cash shortage affecting payment to the contract workers at the project site. There was heat wave in the state, floods, reorganisation of districts and finally demonetisation which had adversely affected the petitioner in completing the

project which are beyond the control of the petitioner and force majeure events as defined in the PPA.

(iv) The procurement of solar plant materials was delayed due to implementation of GST by GOI. The shipments containing solar modules were stopped by the customs department in Chennai for inspection on 12.09.2017. There was investigation regarding custom duties and charges. There was a request by the petitioner for waiver of detention and demurrage charges u/s 49 of Customs Act, 1962 which also resulted in delay. Further, Gram Panchayat approvals for setting up solar power plant took about 60 days time after payment of fee on 02.05.2017. Acquisition of land for the project also delayed the project. The land was purchased from small and marginal farmers due to non-availability of large parcels of land in the area surrounding Aler Grid substation. Majority of land owners did not have title documents with them since they borrowed money by mortgaging title deeds with banks which also delayed acquisition of land for the project.

(v) The petitioner is seeking extension of SCOD in view of force majeure events as mentioned in Article 9.1 and 9.2 of PPA.

(vi) The petitioner addressed letter dt. 27.02.2017 to R-3 seeking approval for providing estimate of cost towards engineering charges, spares, supervision charges etc., in respect of transmission lines and bay extension. The approval was granted through letter dated 03.04.2017. The petitioner addressed a letter dated 27.04.2017 requesting R-4 for providing an estimation of 15MW project and R-4 by letter dated 06.04.2017 granted approval. The petitioner vide letter dated 21.08.2017 informed R-3 about work completion report and about the project being ready for synchronisation requesting for consent / approval. R-3 issued permission for synchronisation vide memo dated 30.10.2017 and requested SE / Op / Yadadri-Bhongiri, (Nalgonda) to issue commissioning certificate to the petitioner's project the SE / Op / Yadadri-Bhongiri, (Nalgonda) has issued commissioning certificate and test reports through letter dated 21.11.2017. R-3 issued letter dated 28.11.2017 declaring the SCOD of the project as 11.11.2017.

(vii) GOTS on representation extended SCOD of solar power projects initially up to 30.06.2017 and later up to 31.10.2017. The SCOD as per PPA is 29.02.2017, CEIG approval and work completion report was received on

17.08.2018 which was submitted to R-3 on 21.08.2017 requesting synchronisation.

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 29.02.2016 to set up 15 MW solar power project under competitive bidding of 2015 in group I category with interconnection point at 132/33 KV near Alair 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., 28.02.2017. The project of the petitioner was synchronised to the grid on 11.11.2017 with a delay of 256 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 demonetisation of high value currency in the country have occurred post scheduled date (i.e., 28.08.2016) 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) The SE / Op / Yadadri / TSSPDCL has submitted the work completion report dated 17.08.2017 for the proposed 15MW solar project with the details of erection of solar PV modules and installation of ABT energy meters. The CE / SLDC and Telecom vide letter dated 18.10.2017 had confirmed the real time data of 15MW solar project connecting at 132 / 33 KV Alair SS at 33 KV level is integrated to SLDC on 17.10.2017.

(v) 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. The CGM (IPC & RAC), vide letter dated 30.10.2017 issued instructions to SE / OP / Yadadri to take necessary steps to

synchronise 15MW project at 132 / 33 KV Alair SS , Yadadri (Nalgonda District) duly following department procedure in vogue. The project was synchronised to the grid on 11.11.2017.

(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 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.

(vii) Appropriate orders may please be passed.

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

4. The point for determination is whether the petitioner is entitled to condonation of delay of 256 days in achieving SCOD by 11-11-2017 instead of 28-02-2017 as per terms of PPA signed on 29-02-2016?

5. 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 Alair SS, at 33KV voltage level. The petitioner has entered into PPA with the respondent on 29-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 12 months from its date. The petitioner claimed delay in acquisition of land pursuant to the districts reorganisation

and other reasons in execution of the project. The project was ultimately synchronised to the grid on 11.11.2017.

6. 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 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.

7. A 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, demonetisation, floods, reorganisation of districts, etc., in achieving SCOD which has to be examined in the light of extension of SCOD granted by GOTS and concurred by the Commission.

8. Few incidents / facts 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 delay of certain days as events etc., termed as force majeure.

9. 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 too. The contention of the respondent that some of the events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

10. In view of the aforementioned reasons, the delay as pleaded by the petitioner is liable to be condoned only up to 31.10.2017 for the reasons stated supra. However, the project was complete in all respects and it was synchronised with the

grid of the respondent on 11.11.2017 with a delay of 11 days. The material on record shows that the SE / Op / Yadadri submitted work completion report dated 17.08.2017 for the project with details of erection of solar PV modules and erection ABT energy meters. CE (SLDC & Telecom) vide letter dated 18.10.2017 had confirmed the real data of 15MW solar project connecting at 132/33 KV Alair SS at 33 KV level is integrated to SLDC on 17.10.2017. Though the work completion report was submitted on 17-08-2017, the synchronisation of plant was done on 11-11-2017. In view of the concurrence of the Commission with the SCOD extension up to 31-10-2017 for all similarly placed projects, the petitioner is entitled to condonation of delay of 245 days up to 31-10-2017. Thus, there is a delay of 11 days in achieving SCOD beyond the agreed and extended timeline of 31.10.2017, for which the petitioner is liable to pay the penalty as per clause 10.5 of PPA. The point is answered accordingly.

11. In the result, the delay of 245 days up to 31-10-2017 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 of the project. No costs.

12. The petitioner is directed to pay penalty as per clause 10.5 of PPA for the period beyond the agreed extended date of 31-10-2017.

This order is corrected and signed on 15th day of November, 2018.

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

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