



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 8 of 2018

&

I A No. 3 of 2018

Dated 28.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Neo Solren Private Limited
Mahindra Towers, Dr.G.M.Bhosale Marg,
P.K.Kurane Chowk, Worli, Mumbai – 400 018.

... 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 05-05-2018, 08-06-2018 & 21.07.2018. Sri. D. Raghavendar Rao, Advocate along with Sri. Ved Bhushan, Advocate appeared on 05-05-2018 and 21-06-2018 and Sri D. Raghavendar Rao, Advocate for the petitioner appeared on 08.06.2018. Sri. Y. Rama Rao, Standing Counsel for the respondent along with Sri. M. V. R. Prasad, Advocate appeared on 05.05.2018 and Sri. Y. Rama Rao, standing counsel for the respondent along with Ms. Pravalika, Advocate appeared on 08.06.2018 and 21.07.2018. 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 by 167 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 42 MW capacity to be connected to 220/132 kV Waddekothapally SS at Kodakandla Village, Waddekothapally Mandal, Mahabubabad District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 24-02-2016 between the petitioner and the respondent. The petitioner furnished performance Bank guarantee at the rate agreed as a guarantee for the contracted capacity. The petitioner extended performance bank guarantee through his letter dated 27.11.2017. 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) by 23-05-2017, as the project was connected to the 220/132KV level. The petitioner executed interconnection facilities for power evacuation from the project to the grid sub-station. The project was also synchronised to the respondent / TSTRANSCO network with the interconnection point and complied with the connectivity conditions specified in the Grid code in force. The bills of supply for energy generated and delivered from the 42 MW solar power plant from 05.10.2017 to 27.11.2017 & 27.11.2017 to 26.12.2017 clearly shows that the project is operational.

(ii) 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. Initially, these authorities were under the jurisdiction of revenue authorities of Warangal Mandal & Dist which later on changed to (Mahabubabad, Warangal, Suryapet and Nalgonda Districts) which resulted in delay in Acquisition of land and further processing of conversion procedures for the project lands. This has slowed down the pace of site mobilisation and delayed handing over of site to the EPC contractor for setting up of the project. (iii) The second major cause for delay is demonetization of high value currency by the central government, which resulted in shortage of cash and difficulties in bank transactions. The vendors / sub-contractors could not pay rents for machinery and labour charges and faced severe setbacks due to limited resources which had an adverse impact in the progress of the work.

The introduction of GST from 01.07.2017 by the Central Government created ambiguities in the tax rates, delay in supply of material and services at the project site. Thus, the delay caused due to various factors narrated above were beyond the control of the petitioner and they could not be regulated or controlled and the petitioner suffered badly in the process.

(iv) As per Article 6.5(iv) and Article 6.5(v) of the PPA, non-fulfilment of clauses in Article 6 of the PPA can be condoned, including inability to achieve the COD within 15 months from the PPA which 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 42 MW solar PV project and commenced the commercial operations on 06.11.2017 as per the solar PV power plant commissioning certificate submitted by the SE/OMC/Nizamabad. The CGM (IPC&RAC) through the letter dated 14.12.2017 confirmed the synchronisation of the 42 MW capacity solar PV power plant to the respondent/TSTRANSCO network at 132 KV level. As requested by the respondent, the petitioner filed the present petition seeking extension of SCOD of 167 days, the actual delay in achieving the SCOD.

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 24.02.2016 to set up 42 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 220/132 KV Waddekothapally SS at 132KV 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., 23.05.2017. The actual commercial operation date (COD) of the project is 06.11.2017 i.e., with a delay of 167 days. This delay of 167 days is inviting penalty of Rs.8.11 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 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., 23.08.2016) 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. The SCOD as per PPA is 23.05.2017 and whereas GST effective date is 01.07.2017 which is after the SCOD and therefore GST excuse is not applicable to the present project.

(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) 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 upto 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

3. The petitioner filed rejoinder stating as follows:
 - (i) As per the PPA the SCOD of 42 MW solar power plant near 220/132KV Waddekothapally SS at 132 kV voltage is 23.05.2017. The actual COD of the project was achieved on 13.10.2017 (33 MW with a delay of 143 days), 26.10.2017 (5 MW with a delay of 156 days) & 06.11.2017 (4 MW with a delay of 167 days).
 - (ii) The petitioner suffered delays due to reorganisation of the districts in the State, there was a delay in the route approval, transmission line laying and bay extension work. The petitioner had received the transmission line profile and tower schedule approval from TSTRANSCO on 10.03.2017, but due to serious ROW issues, the petitioner had to lay 4 nos. narrow based towers in agriculture lands to resolve ROW issues. Profile and tower schedule approval for narrow base towers were received on 20.05.2017. Thus, the petitioner suffered nearly 120 days of its project execution time which contributed to the delay in meeting the SCOD.
 - (iii) The petitioner commissioned the project in phases: 33MW on 13.10.2017 (delay of 106 days), 5 MW on 26.10.2017 (delay of 119 days) and 4 MW on 06.11.2017 (delay of 130 days). The GOTS has extended the SCOD upto 31.10.2017 by letter dated 23.08.2017 and directed the TSDISCOMS to take further action accordingly on the same tariff. If the extended SCOD is applied, the position of delay would be as follows:
 - 33 MW was commissioned on 13.10.2017 which is within the extended SCOD period.
 - 5 MW was commissioned on 26.10.2017 which is within the extended SCOD period.
 - 4 MW was commissioned on 06.11.2017 which is with a delay of 6 days beyond the extended SCOD period.
 - (iv) Article 9.2 permits the extension of SCOD on a day to day basis subject to a maximum period of 12 months to permit the solar power developer to overcome the effects of the force majeure events affecting it. In the present

case, the delay occurred due to force majeure events and therefore no penalty is payable.

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 167 days in achieving SCOD by 06-11-2017 as per terms of PPA signed on 24-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 42 MW to be connected to 220 / 132 kV Waddekothapally SS, at 132 KV voltage level. The petitioner has entered into PPA with the respondent on 24-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from its date. On the basis of the Solar PV Power Plant commissioning certificate issued by SE/OMC/Nizamabad, the 42 MW solar power plant was synchronised to the grid in phases: 33 MW on 13.10.2017, 5 MW on 26.10.2017 and 4 MW on 06.11.2017.

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 upto 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 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. 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. 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, the confusion in the offices of the revenue authorities, difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., ROW issues, issues relating to acquisition of land, which are beyond his control and which resulted in delay of 167 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 cannot be termed as force majeure events covered by Article 9.2 of PPA.

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 various approvals by the TSTRANSCO and it continued till 20-05-2017. The petitioner was able to obtain CEIG Safety Certificate for Charging on 19-07-2017 and the petitioner requested for synchronisation of the entire 42 MW on 25-09-2017. However, synchronisation was achieved in three phases: 33 MW capacity on 13-10-2017; 5 MW on 26-10-2017 and; 4 MW on 06-11-2017.

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 167 days as events termed as force majeure.

11. Thus, it is clear from the material on record that extension of SCOD by the GOTS through 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 in this case 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 only up to 31.10.2017. By 31.10.2017, the project was complete in all respects to the extent of 33MW + 5MW = 38MW and it was synchronised with the grid of the respondent by 26.10.2017. Only the remaining 4MW was completed and was synchronised to the grid on 06.11.2017, with a delay of 06 days beyond the permitted and extended SCOD, which invites penalty as per clause 10.5 of the PPÄ. The point is answered accordingly.

13. The delay in reaching the SCOD relating to 38 MW only up to 31.10.2017 (161 days) is condoned. The remaining 4 MW was synchronised to the grid on 06.11.2017. Thus, there is a delay of six days in reaching the extended SCOD i.e., 31.10.2017, for which the petitioner is liable to pay the penalty for six days as per clause 10.5 of PPA. 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. The petitioner is directed to pay penalty as per clause 10.5 of PPA.

15. The I.A. stands disposed off accordingly.

This order is corrected and signed on this 28th day of August, 2018.

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