



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

5<sup>th</sup> Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 69 of 2018

Dated 02 .01.2019

**Present**

Sri. Ismail Ali Khan, Chairman

Between

M/s. Rudra Solarfarms Ltd.,  
Regd. Office: Suzlon, 5, Shrimali Society,  
Near Sri Krishna Complex, Navarangpura,  
Ahmedabad – 380009  
Gujarat.

... 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 17.11.2018 and 01.12.2018. Sri. S. Subba Reddy, Advocate for the petitioner appeared on 17.11.2018 and Sri. B. Vijay Kumar, Advocate representing Sri. S. Subba Reddy, Advocate for the petitioner appeared on 01.12.2018. Sri Y. Rama Rao, Standing Counsel for the respondent along with Ms. M. Pravalika, Advocate appeared on 17.11.2018 and 01.12.2018. 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 116 days with the following material allegations:

- (i) The petitioner was a successful bidder in the tender floated for procurement of 2000 MW solar power e-procurement platform through open competitive bidding process 2015 to setup the solar photovoltaic power

project of 15 MW capacity to be connected to 220 / 132 KV Achampet SS, erstwhile Mahabubnagar District, Telangana for sale to DISCOM. Thereafter, a Power Purchase Agreement (PPA) was executed on 29.02.2016 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 i.e., 28.02.2017. The project of the petitioner was synchronised to the grid on 24.06.2017.

(ii) There was delay in land acquisition due to reorganisation of districts. Till the month of October 2016 the construction of the project could not be started. Due to excessive rainfall from June 2016 to September 2016 and demonetisation of high value currency in the month of November 2016 which caused shortage of cash, difficulty in payment to labourers, material suppliers, drought in the project area in the year 2016 with land owners migrating to neighbouring states in search of livelihood, adversely affected the acquisition of land also, there was delay in commissioning of the project. The revenue officials engaged in the reorganisation of districts were unavailable at the offices to support the land acquisition process.

(iii) The petitioner also faced challenges and delays in obtaining statutory approvals for the reasons beyond its control. There was delay in granting permission by the Directorate of Town & Country planning which was issued on 20.01.2017 with a gap of 2 months from TS-iPass application form dated 17.11.2016 leading to delay in commencement of civil construction work at the project site. The petitioner requested CGM (IPC & RAC), TSSPDCL along with necessary documentation seeking extension of SCOD from 28.02.2017 to 28.08.2017. The petitioner addressed a letter dated 05.01.2017 to CGM, TSSPDCL and on such letter received approval of DT & CP dated 20.01.2017.

(iv) The drought followed by unprecedented rains in the project area, delay in getting statutory approvals (DTCP permission), reorganisation of districts, demonetisation were unforeseen and clearly beyond the control of petitioner which qualify force majeure event under Article 9 of PPA.

(v) As per Article 6 of PPA, in the event of force majeure, the petitioner is entitled to extension of SCOD which can be deferred up to a maximum of 12 months to permit the petitioner to overcome the effects of force majeure

events or till such event of default is rectified, whichever is earlier. Thus, the petitioner has a genuine case for retrospective extension of SCOD. Based on the force majeure events causing delays, extension of SCOD may be granted. The petitioner as per the instructions of respondent filed the present petition seeking extension of SCOD as per PPA by condoning the delay of 116 days from 28.02.2017 to 24.06.2017.

2. The respondent 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 with interconnection point at 132 / 33 KV Achampet SS, erstwhile Mahabubnagar District at 33 KV voltage level. 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 24.06.2017 with a delay of 116 days.

(ii) The Districts Reorganisation in the State of Telangana, excessive rainfall and demonetisation of high value currency in the country have occurred and they are beyond the control of the petitioner and they are force majeure events are not tenable and 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. The petitioner being a party to PPA cannot go beyond its terms and conditions and it is not entitled to enlargement of time fixed under Article 9 of PPA for reaching SCOD.

(iv) The SE / Op / Mahabubnagar / TSSPDCL has submitted the work completion report vide letter dated 08.06.2017 for the proposed 15MW solar project with the details of erection of solar PV modules and installation of ABT energy meters. The CE / SLDC & Telecom vide letter dated 16.06.2017 had confirmed the real time data of 15 MW solar project connecting at 132 / 33 KV Achampet SS at 33 KV level is integrated to SLDC on 15.06.2017.

(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

19.06.2017 has issued instructions to SE / OP /Mahabubnagar to take necessary steps to synchronise 15MW project at 132 / 33 KV Achampet SS , Mahabubnagar District duly following department procedure in vogue. The project was synchronised to the grid on 24.06.2017.

(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 116 days in achieving SCOD by 24.06.2017 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 Achampet SS, at 33 KV voltage level. The petitioner had 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, demonetisation, excessive rainfall and other reasons in execution of the project. The project was synchronised to the grid on 24.06.2017.

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 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.

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, demonetisation, excessive rainfall for the project 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 due to shortage of cash 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 some of the reasons given by the petitioner for the delay 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 following is ordered:

(a) The delay as pleaded by the petitioner is liable to be condoned and it is condoned up to 24.06.2017 i.e., the date of synchronisation which is well within the period of first extension of SCOD i.e., 30.06.2017 even without considering further extension of SCOD by GOTS up to 31.10.2017.

(b) The petition is allowed accordingly 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 of the project. No costs.

***This order is corrected and signed on this 2<sup>nd</sup> day of January, 2019.***

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

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