

Record of Proceedings dated 03.08.2018

O. P. No. 22 of 2018

M/s. Mytrah Adarsh Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (216) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate alongwith Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 25.09.2017 resulting in a delay of 216 days. The petitioner suffered the following delays, namely, delay in land acquisition, due to demonetization, financing, approval evacuation scheme and synchronization of the project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, sada bainama, district reorganization, other government polices i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 23 of 2018

M/s. Mytrah Abhinav Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (148) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate alongwith Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 19.07.2017 resulting in a delay of 148 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing and erection of transmission line. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, sada bainama, district reorganization, other government polices i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, introduction of GST, module suppliers renegeing on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 24 of 2018

M/s. Mytrah Adarsh Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (270) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate alongwith Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocatefor the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents alongwith Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 18.11.2017 resulting in a delay of 270 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing and erection of transmission line. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, FM affecting land, funding, equipment supplies and site execution, sada bainamas, district reorganization, other government polices i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, demonetization, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated

therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 25 of 2018

M/s. Mytrah Abhinav Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (374) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 02.03.2018 resulting in a delay of 374 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing, erection of transmission line and synchronization of the project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, FM affecting land, funding, equipment supplies and site execution, sada bainamas, district reorganization, other government policies i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, demonetization, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission

fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 26 of 2018

M/s. Mytrah Abhinav Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (371) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for

the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has sought adjournment on the ground that certain details are required to be ascertained from the party as also to assist the Commission necessary table explaining the factual details has to be prepared on the lines it has been filed in other original petitions. The counsel for the respondents has no objection as in certain cases the respondents have also to collect information from other sources other than the respondents. Considering the above submissions of the counsel for the parties, the matter is adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 27 of 2018
&
I. A. No. 30 of 2018

M/s. Mytrah Aakash Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (426) days

I. A. filed seeking amendment in the prayer at paragraph 20 of the original petition.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 23.05.2017, however, the actual COD for 12.5 MW is on 16.03.2018 resulting in delay of 212 days, 17.5 MW on 12.04.2018 resulting in delay of 288 days and remaining 20 MW COD is yet to be commissioned and thereby resulting in a delay of 342 days by the time of first hearing. The petitioner suffered the following delays, namely, delay in land acquisition, financing, erection of transmission line and construction of project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, FM affecting land, funding, equipment supplies and site execution, sada bainamas, district reorganization, other government policies i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, demonetization, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government

intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions. As stated earlier, as the petitioner's project is required to be synchronized pending the decision of the extension of SCOD by this Commission, it is necessary to protect the interest of the petitioner in safeguarding the investment made. The absence of synchronization of the project after completion denudes the benefit of installation of equipment and the equipment itself may get deteriorated having been kept idle. There is no loss to the respondents in synchronizing the project as also it will be in terms of the orders of the Hon'ble ATE.

The counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court insofar as granting of interim order by assessing the balance of convenience. It is the case of the petitioner that no prejudice will be caused to the respondents, if interim directions are given for synchronization of the project, as it would avoid the necessity of taking protective steps of the machinery and equipment from deterioration as they are put in use. It is just and necessary that the project be directed to be synchronized pending disposal of the petition. Though no specific prayer is made in the petition or by way of application such an order can be passed by the Commission. The I. A. filed by the petitioner is with reference to the amendment of a prayer, which is not being argued now and the Commission may hear the same alongwith the main petition.

The counsel for the respondents, at this stage, sought to oppose the grant of any order in favour of the petitioner including the synchronization of the project pending disposal of the petition as the Commission is in any case, will be hearing the main petition and dispose it off in a short period. It is also pointed out that the project has been delayed hopelessly and the respondent DISCOM was in the process of

issuing notice of termination of the agreement. It is his case that at any rate without considering the merits and demerits of the reasons offered by the petitioner for delay in synchronization of the project are required to be examined finally. Absence of such examination does not cause balance of convenience in favour of the petitioner and a direction to the respondents to synchronize the project.

In view of the elaborate argument insofar as the request for the interim order, the petition is reserved for considering granting of or otherwise interim orders with regard to synchronization of the plant. The main petition alongwith the I.A. stands adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 28 of 2018

M/s. Mytrah Abhinav Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (179) days.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 19.08.2017 resulting in a delay of 179 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing, approval evacuation scheme and construction of the project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, sada bainama, district reorganization, other government policies i.e., mission

bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, introduction of GST, module suppliers renegeing on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is

before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 29 of 2018

M/s. Mytrah Abhinav Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (181) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 21.08.2017 resulting in a delay of 181 days. The petitioner suffered the following delays, namely, delay in land acquisition and erection of transmission line. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, sada bainama, district reorganization, other government polices i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, introduction of GST, module suppliers reneging on orders, module

re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 30 of 2018

M/s. Mytrah Adarsh Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (488) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has sought adjournment on the ground that certain details are required to be ascertained from the party as also to assist the Commission necessary table explaining the factual details has to be prepared on the lines it has been filed in other original petitions. The counsel for the respondents has no objection as in certain cases the respondents have also to collect information from other sources other than the respondents. Considering the above submissions of the counsel for the parties, the matter is adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 31 of 2018

M/s. Mytrah Adarsh Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (274) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 22.11.2017 resulting in a delay of 274 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing and erection of transmission line. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, FM affecting land, funding, equipment supplies and site execution, sada bainamas, district reorganization, other government policies i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, demonetization, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission

fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 32 of 2018

M/s. Mytrah Adarsh Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (244) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for

the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 23.10.2017 resulting in a delay of 244 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing, erection of transmission line, construction of the project and synchronization of the project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, sada bainama, district reorganization, other government policies i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction

since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 33 of 2018

M/s. Mytrah Adarsh Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (274) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has sought adjournment on the ground that certain details are required to be ascertained from the party as also to assist the Commission necessary table explaining the factual details has to be prepared on the lines it has been filed in other original petitions. The counsel for the respondents has no objection as in certain cases the respondents have also to collect information from other sources other than the respondents. Considering the above submissions of the counsel for the parties, the matter is adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 34 of 2018

M/s. Mytrah Abhinav Power Pvt. Ltd. Vs. TSDISCOMs & Spl. Chief Secretary

Petition filed seeking orders for granting extension of time for SCOD for (129) days Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 23.02.2016, the SCOD should be 22.02.2017, however, the actual COD is on 30.06.2017 resulting in a delay of 129 days. The petitioner suffered the following delays, namely, delay in erection of transmission line and construction of the project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, sada bainama, district reorganization, other government polices i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner commenced operation before 31.10.2017. The petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions.

Having heard the arguments of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 35 of 2018

M/s. Mytrah Abhinav Power Pvt. Ltd. Vs. TSDISCOMs & Spl. Chief Secretary

Petition filed seeking orders for granting extension of time for SCOD for (274) days

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has sought adjournment on the ground that certain details are required to be ascertained from the party as also to assist the Commission necessary table explaining the factual details has to be prepared on the lines it has been filed in other original petitions. The counsel for the respondents has no objection as in certain cases the respondents have also to collect information from other sources other than the respondents. Considering the above submissions of the counsel for the parties, the matter is adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 37 of 2018

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I. A. No. 31 of 2018

M/s. Mytrah Agriya Power Pvt. Ltd. Vs. TSDISCOMs & Spl. Chief Secretary

Petition filed seeking orders for granting extension of time for SCOD for (420) days

I. A. filed seeking amendment in the prayer at paragraph 20 of the original petition.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has stated that the PPA is signed on 08.03.2016, the SCOD should be 07.06.2017, however, the actual COD is on 16.05.2018 resulting in a delay of 344 days. The petitioner suffered the following delays, namely, delay in land acquisition, financing, erection of transmission line and construction of the project. The period of delay on each issue was varying days and varying factors.

It is the case of the counsel for the petitioner that force majeure conditions affecting land funding, equipment supplies and site execution on the following lines, namely, FM affecting land, funding, equipment supplies and site execution, sada bainamas, district reorganization, other government policies i.e., mission bhagiratha, mission kakatiya and project Kaleshwaram, land scheme for schedule cast family / household, non-allotment of government owned land for the setting up of power projects, demonetization, introduction of GST, module suppliers reneging on orders, module re-classification issue, imposition of anti-dumping duty on steel and unprecedented incessant rains.

The counsel for the petitioner, while reiterating the arguments made on the earlier date of hearing, stated that the petitioner had difficulty in achieving financial closure and thereby there were technical delays resulting in overall delay in SCOD. The financing part of loan component was dependent on draw down schedule, which is again connected to work completion.

The counsel for the petitioner stated that the RBI issued strict guidelines in respect of loan disbursement as also recovery of the same.

The counsel for the respondents stated that the petitioner has to comply with the terms of the agreement and cannot deviate from the time schedules stipulated therein. In order to avoid penalty under the PPA the petitioner ought to have sought permission and consent well in time for execution of the project. The Commission

fairly extended and agreed to accept the directions of the government to the respondents herein. As such the petitioner did not take advantage of such direction since the direction itself came at the end of the period. The project which has been completed within the period accepted by the Commission has avoided payment of penalty.

The counsel for the respondents stated that the petitioner cannot take advantage or claim benefit merely because, the respondents did not issue or initiate any action towards termination of the agreement. Infact, in some of the cases, the respondents were ready to issue notices as the project by this time has completed the mandatory period of 17 or 21 months allowed under the PPA that is the SCOD period and the penalty period respectively. In the meantime the government intervened and directed the respondents to extend the period of completion of the project. Nevertheless, the petitioner ought to have pursued and completed the formalities as expeditiously as possible in terms of the PPA. Now as the petitioner is before the Commission, the force majeure conditions are not satisfying the provision in the PPA. The same may be considered by the Commission. The Commission may assess the need for extending the SCOD.

The counsel for the petitioner stated that by implied action the government allowed extension of SCOD till 30.06.2017 and later upto 31.10.2017, thereby accepting that there existed force majeure conditions. As stated earlier, as the petitioner's project is required to be synchronized pending the decision of the extension of SCOD by this Commission, it is necessary to protect the interest of the petitioner in safeguarding the investment made. The absence of synchronization of the project after completion denudes the benefit of installation of equipment and the equipment itself may get deteriorated having been kept idle. There is no loss to the respondents in synchronizing the project as also it will be in terms of the orders of the Hon'ble ATE.

The counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court insofar as granting of interim order by assessing the balance of convenience. It is the case of the petitioner that no prejudice will be caused to the respondents, if interim directions are given for synchronization of the project, as it would avoid the necessity of taking protective steps of the machinery and equipment

from deterioration as they are put in use. It is just and necessary that the project be directed to be synchronized pending disposal of the petition. Though no specific prayer is made in the petition or by way of application such an order can be passed by the Commission. The I. A. filed by the petitioner is with reference to the amendment of a prayer, which is not being argued now and the Commission may hear the same alongwith the main petition.

The counsel for the respondents, at this stage, sought to oppose the grant of any order in favour of the petitioner including the synchronization of the project pending disposal of the petition as the Commission is in any case, will be hearing the main petition and dispose it off in a short period. It is also pointed out that the project has been delayed hopelessly and the respondent DISCOM was in the process of issuing notice of termination of the agreement. It is his case that at any rate without considering the merits and demerits of the reasons offered by the petitioner for delay in synchronization of the project are required to be examined finally. Absence of such examination does not cause balance of convenience in favour of the petitioner and a direction to the respondents to synchronize the project.

In view of the elaborate argument insofar as the request for the interim order, the petition is reserved for considering granting of or otherwise interim orders with regard to synchronization of the plant. The main petition alongwith the I.A. stands adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 38 of 2018

M/s. Mytrah Agriya Power Pvt. Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
Petition filed seeking orders for granting extension of time for SCOD for (436) days
Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate along with Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present.

The counsel for the petitioner has sought adjournment on the ground that certain details are required to be ascertained from the party as also to assist the Commission necessary table explaining the factual details has to be prepared on the lines it has been filed in other original petitions. The counsel for the respondents has no objection as in certain cases the respondents have also to collect information from other sources other than the respondents. Considering the above submissions of the counsel for the parties, the matter is adjourned.

Call on 25.08.2018 at 11.00 A.M.

Sd/-
Chairman