

Record of Proceedings dated 22.09.2018

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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the PPA was signed on 23.02.2016, the schedule date of commissioning was 22.02.2017 and the actual commercial operation date was 27.02.2018 resulting in a delay of 371 days. The force majeure conditions affecting the delay in the project are initiation of sada binama, district reorganization and other policies of the government relating to 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 antidumping duty on steel and unprecedented incessant rains.

The specific issues with varying delay attributable to this case according to the counsel for the petitioner are delay in acquisition of land, financing, erection of transmission line, construction of project and synchronization. The counsel for the respondents stated that the delay said to have been occurred is not in conformity with the provisions of the PPA and the same cannot be accepted. He sought to reiterate the submissions in the counter affidavit.

Heard the counsel for the parties. Any additional information required to be filed may be done so by way of written submissions. The matter is reserved for orders.

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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that subsequent to the orders of the Commission, the DISCOM did not synchronize the plant duly complying with the orders passed on 20.08.2018. There is no communication on the part of the DISCOM. Further, the counsel for the respondents had earlier stated that the respondents are preferring an appeal before the Hon'ble ATE, but till date no order is passed by the Hon'ble ATE. In the absence of notice in the appeal or the order thereof from the Hon'ble ATE, the respondent is bound to implement the orders of the Commission.

The counsel for the respondents stated that they are in the process of filing appeal before the Hon'ble ATE as has been decided by them and therefore, the order of the Commission has not been given effect to. The respondents are at liberty to file an appeal or seek review for which there is still time under the Act and Regulations. Thus, the petitioner cannot insist on compliance of the directions of the Commission before the expiry of the time available to the respondents to file appeal or review.

The counsel for the petitioner stated that the attitude of the respondents appears to be to overreach the order of the Commission. As no commitment is coming forth towards implementation of the order of the Commission, the petitioner may invoke the penal provisions of the Act, 2003 for ensuring the compliance of the order of the Commission. The matter may be adjourned and in the meanwhile the

petitioner will prefer the petition towards punishing the respondents invoking the provisions of the Act, 2003.

The counsel for the petitioner sought to rely on the judgment of the Hon'ble Supreme Court in the matter of Hariyana Urban Development Authority Vs. Raj Mehta (Mrs) reported in 2005 (9) SCC 510 and the order passed by the Hon'ble High Court of Delhi in the matter of North Delhi Municipal Corporation Vs. DCM Limited & Anr. Both the judgments state that the respondent or other party cannot interfere or do any act against the petitioner during the subsistence of adjudicatory proceeding pending before any tribunal or court. In this case attempts are being made by the respondent to invoke the bank guarantees and terminate the PPA to the extent of the capacity of the project is not synchronized.

Given these circumstances, as the request is made by the counsel for the respondents for adjournment of hearing, the same is adjourned.

Call on 06.10.2018 at 11.00 A.M.

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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the PPA was signed on 08.03.2016, the schedule date of commissioning was 07.03.2017 and the actual commercial operation date for 5 MW was on 07.12.2017 and for 10 MW on 23.05.2018 resulting in a delay of 443 days. The force majeure conditions affecting the delay in the project are initiation of sada binama, district reorganization and other policies of the government relating to 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 antidumping duty on steel and unprecedented incessant rains.

The specific issues with varying delay attributable to this case according to the counsel for the petitioner are delay in acquisition of land, financing, grant of evacuation approval, construction of project and synchronization. The counsel for the respondents stated that the delay said to have been occurred is not in conformity with the provisions of the PPA and the same cannot be accepted. He sought to reiterate the submissions in the counter affidavit.

Heard the counsel for the parties. Any additional information required to be filed may be done so by way of written submissions. 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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the PPA was signed on 08.03.2016, the schedule date of commissioning was 07.03.2017 and the actual commercial operation date was 05.12.2017 resulting in a delay of 274 days. The force majeure conditions affecting the delay in the project are initiation of sada binama, district reorganization and other policies of the government relating to 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 antidumping duty on steel and unprecedented incessant rains.

The specific issues with varying delay attributable to this case according to the counsel for the petitioner are delay in acquisition of land, financing, grant of evacuation approval, construction of project and issuance of work completion certificate. The counsel for the respondents stated that the delay said to have been occurred is not in conformity with the provisions of the PPA and the same cannot be accepted. He sought to reiterate the submissions in the counter affidavit.

Heard the counsel for the parties. Any additional information required to be filed may be done so by way of written submissions. 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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the PPA was signed on 08.03.2016, the schedule date of commissioning was 07.03.2017 and the actual commercial operation date was 05.12.2017 resulting in a delay of 274 days. The force majeure conditions affecting the delay in the project are initiation of sada binama, district reorganization and other policies of the government relating to 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 antidumping duty on steel and unprecedented incessant rains.

The specific issues with varying delay attributable to this case according to the counsel for the petitioner are delay in acquisition of land, financing, grant of evacuation approval, construction of project and issuance of work completion certificate. The counsel for the respondents stated that the delay said to have been occurred is not in conformity with the provisions of the PPA and the same cannot be accepted. He sought to reiterate the submissions in the counter affidavit.

Heard the counsel for the parties. Any additional information required to be filed may be done so by way of written submissions. The matter is reserved for orders.

Sd/-
Chairman

O. P. No. 37 of 2018
&
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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that subsequent to the orders of the Commission, the DISCOM did not synchronize the plant duly complying with the orders passed on 20.08.2018. There is no communication on the part of the DISCOM. Further, the counsel for the respondents had earlier stated that the respondents are preferring an appeal before the Hon'ble ATE, but till date no order is passed by the Hon'ble ATE. In the absence of notice in the appeal or the order thereof from the Hon'ble ATE, the respondent is bound to implement the orders of the Commission.

The counsel for the respondents stated that they are in the process of filing appeal before the Hon'ble ATE as has been decided by them and therefore, the

order of the Commission has not been given effect to. The respondents are at liberty to file an appeal or seek review for which there is still time under the Act and Regulations. Thus, the petitioner cannot insist on compliance of the directions of the Commission before the expiry of the time available to the respondents to file appeal or review.

The counsel for the petitioner stated that the attitude of the respondents appears to be to overreach the order of the Commission. As no commitment is coming forth towards implementation of the order of the Commission, the petitioner may invoke the penal provisions of the Act, 2003 for ensuring the compliance of the order of the Commission. The matter may be adjourned and in the meanwhile the petitioner will prefer the petition towards punishing the respondents invoking the provisions of the Act, 2003.

The counsel for the petitioner sought to rely on the judgment of the Hon'ble Supreme Court in the matter of Hariyana Urban Development Authority Vs. Raj Mehta (Mrs) reported in 2005 (9) SCC 510 and the order passed by the Hon'ble High Court of Delhi in the matter of North Delhi Municipal Corporation Vs. DCM Limited & Anr. Both the judgments state that the respondent or other party cannot interfere or do any act against the petitioner during the subsistence of adjudicatory proceeding pending before any tribunal or court. In this case attempts are being made by the respondent to invoke the bank guarantees and terminate the PPA to the extent of the capacity of the project is not synchronized.

Given these circumstances, as the request is made by the counsel for the respondents for adjournment of hearing, the same is adjourned.

Call on 06.10.2018 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. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the petitioner has filed two interlocutory applications seeking directions to the respondent. One application is filed towards synchronization of the project and the other is with regard to directions not to take coercive action against the petitioner in respect of bank guarantees. The counsel for the respondents stated that no notice has been received. The Commission pointed out that the applications appear to have been filed only on the previous working day and they are yet to be processed by the office.

The counsel for the petitioner stated that the respondents have issued notice to the petitioner seeking to terminate the PPA and also to invoke the bank guarantees given by the petitioner. Though the petitioner is ready for synchronization of the project, the respondents are not allowing the synchronization of the plant. Therefore, directions are required to be issued as has been done in respect of petitions filed in O. P. No. 27 and 37 of 2018. It has been stated that the appeal is being preferred against the said orders. The Commission may pass similar orders in this case also and the respondents are free to question the said order. The petitioner will respond to the appeals before the appellate court itself.

The counsel for the petitioner stated that the respondents are seeking to overreach the Commission in a pending proceedings by issuing fresh notices and letters, which is not warranted.

The counsel for the petitioner sought to rely on the judgment of the Hon'ble Supreme Court in the matter of Hariyana Urban Development Authority Vs. Raj Mehta (Mrs) reported in 2005 (9) SCC 510 and the order passed by the Hon'ble High Court of Delhi in the matter of North Delhi Municipal Corporation Vs. DCM Limited & Anr. Both the judgments state that the respondent or other party cannot interfere or do any act against the petitioner during the subsistence of adjudicatory proceeding pending before any tribunal or court. In this case attempts are being made by the respondent to invoke the bank guarantees and terminate the PPA to the extent of the

capacity of the project is not synchronized. The action of the respondents more particularly in this case appears to be contrary to the law laid down by the Hon'ble Supreme Court.

The counsel for the respondents would endeavor to submit that the action of the respondents is in consonance with the terms of the PPA and no step is being taken beyond the agreement or contrary to the provisions thereof except invoking the same. Issuance of termination letter or invoking bank guarantees constitutes separate proceedings and the petitioner has to file fresh proceedings insofar as the said issues are concerned. What all the respondents are doing is reading down the provisions of the PPA and exercising authority vested under the provisions of the PPA by invoking Articles 9, 10 and 12 of the PPA. The respondents are well within their right under the said provisions to invoke bank guarantees and terminate the agreement, because of non-performance by the petitioner.

The counsel for the petitioner pointed out that the agreement provides for sufficient safeguards and the same cannot be misinterpreted to their advantage. Moreover, the action of the respondents in the present case appears to be one of overreaching the Commission. During the pendency of the present petition, the respondents are estopped from invoking bank guarantees as also issuing termination notice instead of synchronizing the project. The Commission may pass necessary orders on the interlocutory applications.

Considering the submissions and the filing of fresh interlocutory applications, the petitioner is adjourned.

Call on 06.10.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 58 of 2018
&
I. A. No. 34 of 2018

M/s. Clean Solar Power (Chitradurga) Pvt. Ltd. Vs. TSSPDCL & TSTRANSCO

Petition filed seeking extension of time for SCOD beyond 21.05.2017 until the respondent No. 1 verifies the commissioning of the project, set aside or quash the letter dated 30.05.2018 written by respondent No. 1 to the petitioner and declare

that the events delayed the project are in nature of force majeure and the petitioner is not liable for delay as specified under Article 10.5 of PPA or otherwise for delay in SCOD.

I. A. filed seeking directions to the respondent No. 1 to procure power from the petitioner's project subject to final outcome of the petition.

Sri. Niranjan Reddy, Senior Counsel for the petitioner along with Sri. Avinash Desai, Advocate, Sri. Avijeet Lala, Advocate, Ms. Shreya, Advocate and Sri K. Jashwanth, Advocate and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the DISCOM has invoked the bank guarantees and was about to encash the same. The petitioner received a letter seeking to terminate the agreement. Therefore, it has approached the Hon'ble High Court and obtained orders restraining the respondents therein from taking any coercive steps against the petitioner pending disposal of the petition filed before the Commission.

The counsel for the petitioner explained various dates and the delay with the support of various documents filed in the petition. It is his case that though there are lapses on the part of the respondents, the DISCOM sought to invoke termination conditions and also encash bank guarantees. It is also his case that though the petitioner was ready for synchronization, they have failed to accede to the request of the petitioner. Therefore, similar directions as passed by this Commission in O. P. Nos. 27 of 2018 and 37 of 2018 may be passed in this case also. He stated that interlocutory application is filed for procuring power and making payment thereof by the DISCOM, which may be directed.

The counsel for the respondents sought to state that notice had already been issued for termination of the agreement invoking the provisions of the PPA. He seeks some more time to file counter affidavit and after filing the counter affidavit, he would place all the facts including the delay supposed to have taken place while issuing the approval by the transmission licensee. He stated that no directions may be given by the Commission as the Hon'ble High Court had already passed orders restraining the DISCOM from invoking the bank guarantees furnished under the PPA. Since termination notice is already issued there may not be a direction for synchronization of the project and payment thereof.

As the parties have not completed the pleadings, the Hon'ble High Court had already passed an order protecting the interest of the petitioner, the case is adjourned.

Call on 06.10.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 59 of 2018
&
I. A. No. 35 of 2018

TSDISCOMs Vs. APGENCO, APTRANSCO & APDISCOMs

Petition filed seeking certain directions to APGENCO and APDISCOMs.

I. A. filed seeking interim directions to APGENCO not to proceed with coercive measures before any other forum in respect of the alleged claim to be paid by TSDISCOMs.

Sri. Y. Rama Rao, Standing Counsel for the petitioners along with Ms. M. Pravalika, Advocate and Sri. G.V. Brahmananda Rao, Advocate representing Sri. P. Shiv Rao, Counsel for the respondents are present. The counsel for the respondents filed vakalat in respect of the respondent No.1 and also sought adjournment for four weeks for filing counter affidavit. The counsel for the petitioners has no objection. However, he requested that the respondents may file counter affidavit at least by 12.10.2018 giving time for filing rejoinder if any.

Considering the request of the parties, while making it clear that no further time in respect of filing counter affidavit or rejoinder will be considered, the matter is adjourned.

Call on 27.10.2018 at 11.00 A.M.

Sd/-
Chairman

I. A. No. 38 of 2018
in
RP (SR) No. 113 of 2018

In
O. P. No. 10 of 2018

Application filed seeking inter orders directing the respondent No. 1 to clear the pending invoices of Rs.19,34,91,784/- with interest thereon @ 12% within 7 days.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the original petitioner has filed a review petition seeking review of the order dated 07.07.2018. It also filed an interlocutory application seeking directions for payment of charges for the energy delivered. The application is filed for payment of Rs.19,34,91,784/-, which is due to the petitioner for the energy delivered from the date of synchronization of the project.

The counsel for the petitioner stated that the Commission while passing the order has fixed the SCOD as 18.12.2017 instead of 07.02.2018, which is the actual date of synchronization of the project. The respondent is seeking to levy penalty and requires it to pay the same for the period between 18.12.2017 and 07.02.2018. The petitioner is not liable for the same as the delay occurred in synchronization is due to administrative exercise carried out by the respondent with which the petitioner has no control. The petitioner cannot be penalized for the administrative delays of the respondents.

The counsel for the respondent stated that the review petition is yet to be numbered, hence this interlocutory application cannot be taken up. He also stated that the prayer of the petitioner in the application appears to be far reaching wherein not only the amount due were required to be paid, but it should be done so within 7 days of the order of this Commission. The Commission may not pass any orders until the respondent files its counter affidavit in the interlocutory application as also the review petition is yet to be numbered. It is his case that the review petition has not been listed for hearing as no notice had been given by the Commission in respect of the review petition. He seeks time to file counter affidavit in the said application.

In view of the submissions made by the parties, the matter is adjourned.

Call on 06.10.2018 at 11.00 A.M.

Sd/-
Chairman