



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

R. P. (SR) No. 126 of 2018

in

O. P. No. 40 of 2018

Dated: 18.12.2018

Present:

Sri Ismail Ali Khan, Chairman.

Between

Northern Power Distribution Company of Telangana Ltd.,
H. No. 2-5-31 / 2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.

.....Review Petitioner /
Respondent No.3.

AND

M/s. Jilesh Power Private Limited,
Flat No. 6J, Century Plaza,
560-562, Anna Salai, Teynampet,
Chennai - 600 018.

....Respondent / Petitioner.

(Respondents No.1, 2, 4 and 5 in O. P. No. 40 of 2018 are not necessary parties)

This petition came up for hearing on 09.11.2018 and 17.11.2018. Sri. Y. Rama Rao, Standing Counsel for the review petitioner / respondent along with Ms. M. Pravalika, Advocate and Sri. Challa Gunaranjan, Advocate for the respondent / petitioner appeared on 09.11.2018 and Sri. Y. Rama Rao, Standing Counsel for the review petitioner / respondent along with Ms. M. Pravalika, Advocate and Sri. Challa Gunaranjan, Advocate for the respondent / petitioner along with Sri. N. Sai Phanindra Kumar, Advocate appeared on 17.11.2018. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

The respondent No.3 in the original petition being the Northern Power Distribution Company of Telangana Limited (TSNPDCL) (review petitioner) has filed a review petition under sec 94 (1) (f) of the Act, 2003 seeking review of the order dated 24.08.2018 passed in the above said original petition.

2. The review petitioner stated that the present review petition is being filed by the review petitioner / respondent, Northern Power Distribution Company of Telangana Limited (TSNPDCL) under section 94 (1) (f) of the Act, 2003, seeking review of the order dated 24.08.2018 issued by the Commission in O. P. No. 40 of 2018 to revise the date of synchronization of the balance 22 MW out of 45 MW as 23.04.2018 instead of 01.12.2017 in respect of M/s. Jilesh Power Private Limited.

3. The review petitioner stated that original petitioner has entered into PPA on 04.03.2016 to set up the 45 MW solar power project under competitive bidding, 2015 in group – II category with interconnection point at 220 / 132 KV Waddekothapally SS at 132 KV voltage level with tariff Rs. 5.5949 / unit.

4. The review petitioner stated that as per the terms of PPA, the developer has to commission the project within 15 months from the effective date of signing of the PPA that is 03.06.2017. But the original petitioner has commissioned the project in a phased manner that is 13 MW on 28.10.2017, 5 MW on 27.11.2017, 5 MW on 01.12.2017 totalling of 23 MW out of total 45 MW synchronization to the grid within 21 months that is maximum time period as per 10 (e) of PPA that is on or before 03.12.2017 and the balance 22 MW out of total 45 MW synchronization to the grid on 23.04.2018.

5. The review petitioner stated that the original petitioner had entered into PPA on 04.03.2016 but requested TSTRANSCO for scheme approval on 04.02.2017 after lapse of 11 months without submitting the route length of transmission line. The Chief Engineer / Construction, TSTRANSCO has informed vide letter No. 694 / 2018 dated 14.06.2018 that

“i) no delay occurred from TSTRANSCO regarding scheme approvals and erection of 132 KV DC / SC line from existing 220 / 132 KV SS Waddekothapally to proposed 45 MW solar power plant set up by M/s. Jilesh

Power Private Limited (project company of M/s. SunE Solar B.V) and 2 Nos. 132 KV Bays each at 220 / 132 KV Waddekothapally, Mahabubabad District along with metering arrangements and solar power plant.

ii) M/s. Jilesh Power Private Limited has requested TSTRANSCO for scheme approval vide letter dated 04.02.2017 (received at Chief Engineer / Transmission office on 13.02.2017) without submitting the route length of transmission line.

iii) M/s. Jilesh Power Private Limited has requested Superintending Engineer / OMC / Warangal on 08.03.2017 for route approval without enclosing relevant documents i.e., route map done by surveyor.

iii) M/s. Jilesh Power Private Limited vide letter dated 17.04.2017 has requested TSTRANSCO for tentative scheme cost for a line length of 3.5 KM as per preliminary survey as there is some problem to submit exact route for approval.

iv) The scheme approval is issued on 17.05.2017 for tentative transmission line length of 3.5 KM.

v) The Chief Engineer / Zone / Warangal vide Memo No. 12.05.2017 accorded route approval duly informing that the agency has represented that the pooling station site was shifted about 1.5 KM.

vi) On receipt of route approval for 4.26 KMs. revised scheme approval communicated to M/s. Jilesh Power Private Limited on 05.06.2017.”

The delay is due to non-finalization of pooling station site / revision of pooling station site by the original petitioner resulting increase in length of transmission line and revision of scheme. As such the statement of the original petitioner that is bay allocation and cost estimation approvals and contractor approvals were delayed by more than 120 days and since these approvals were received just at onset of monsoon a further delay of more than two months occurred is not true.

6. The review petitioner stated that the following are the necessary to issue synchronization permission to synchronize the plant to the grid.

i) Calibration and testing of 3 Nos. ABT meters of 0.2s class and 2 sets of CTs and PTs carried out on 09.09.2017 and 11.09.2017 (As per NABL accredited lab test reports)

ii) EBC software compatibility report from SE / EBC / TSTRANSCO, Hyderabad dated 12.10.2017.

iii) CEIG approval from Chief Electrical Inspector dated 11.10.2017.

iv) Work completion report from Chief Engineer / Warangal Zone / TSTRANSCO dated 20.10.2017.

v) Clearance certificate required from the Chief Engineer / SLDC dated 21.10.2017.

7. The review petitioner stated that the original petitioner vide letter dated 16.08.2017 has informed that presently the construction works of the project are in final stage and need final inspections from TSNPDCL and TSTRANSCO and requested to forward request letters to concerned officers for arranging the required work completion letters from TSNPDCL and TSTRANSCO only but neither submitted any work completion report for 23 MW and nor requested for synchronization permission. Without the above five necessary documents the original petitioner cannot request for synchronization permission. As such the statement of the developer that they have applied for the issue of work completions certification for 23 MW on 16.08.2017 and 19.08.2017 for balance 22 MW well within extended SCOD of 31.10.2017 is not true without completing the works they have given a letter stating that the works are in final stage. Whereas the works are completed in full shape only on 20.10.2017 which can be ascertained from the work completion letter issued by Chief Engineer / WGL – Zone / Warangal on 20.10.2017.

8. The review petitioner stated that in accordance with the clause 3.8.1 of the PPA, the original petitioner shall give a notice in writing to the SLDC and DISCOM, at least 15 days before the date on which it intends to synchronize the project to the grid systems. Based on the request letter of the original petitioner dated 13.10.2017 and work completion report submitted on 22.10.2017 for 45 MW synchronization, Chief General Manager (IPC & RAC) vide letter dated 24.10.2017 has issued instructions to SE / OMC / Warangal to synchronize 45 MW Solar Power Project of the petitioner at 220 / 132 KV Waddekothapally SS, Mahabubabad District (Erstwhile Warangal District) duly following the department procedure in vogue. Consequently, the original petitioner plant was synchronized to the grid in a phased manner that is 13 MW on 28.10.2017, 5 MW on 27.11.2017, 5 MW on 01.12.2017 totalling of 23

MW within the period of 21 months as per PPA. As such it is clear that though the synchronization permission issued for total 45 MW on 24.10.2017 that is within 2 days of original petitioner's request (work completion report submitted on 22.10.2017) the original petitioner could not commission the plant in total capacity, but it could only commissioned 23 MW in three phases 13 MW on 28.10.2017, 5 MW on 27.11.2017, 5 MW on 01.12.2017 within 21 months period of PPA date.

9. The petitioner stated that the original petitioner has requested vide letter dated 13.03.2018 for synchronization of balance 22 MW duly enclosing undertaking as per the directions of this Commission. As per the Commission letter dated 11.01.2018 and 30.01.2018, letter was addressed to the Commission vide letter dated 21.03.2018 for concurrence of the Commission for synchronization of balance 22 MW thus totalling of 45 MW. In response, the Commission Secretary accorded the concurrence vide letter dated 13.04.2018 to proceed for synchronization of balance 22 MW. The synchronization approval issued vide letter dated 21.04.2018. Accordingly, balance capacity of 22 MW synchronized to the grid on 23.04.2018.

10. The review petition has raised the following grounds in the review petition.

- i) The Commission passing of the order is contrary to the facts, material on record and probabilities of the case.
- ii) It is stated that as per clause 10.5 (e) of the PPA, the maximum time period allowed for commissioning of the full project capacity with encashment of performance bank guarantee and payment of liquidated damages shall be limited to twenty one (21) months from the effective date this agreement that is on or before 03.12.2017. But the original petitioner has synchronized 23 MW in a phased manner that is 13 MW on 28.10.2017, 5 MW on 27.11.2017, 5 MW on 01.12.2017 and not synchronization any capacity on 02.12.2017 and 03.12.2017. There was sufficient time from 24.10.2017 to 01.12.2017 that is 38 days to commission the total 45 MW capacity. Synchronization committee has attended three times i.e., 28.10.2017, 27.11.2017 and 01.12.2017 for synchronization of the plant. This clearly shows due to technical problems in solar plant, they could not synchronize the total capacity, but could only synchronize 23 MW to the grid.

ii) The original petitioner was unable to synchronize the total capacity of 45 MW in the meantime from synchronization approval issued dated 24.10.2017 (for total capacity 45 MW) to 03.12.2017 (maximum period that is 21 months period of PPA) in the 40 days due to the lack of the readiness of the plant in full capacity. Hence, the original petitioner is liable to pay the penalties until the synchronization of the plant that is up to 23.04.2018 instead of 01.12.2017.

iii) It is stated that the Commission vide letter dated 11.01.2018 has accepted the request of the TSSPDCL that TSDISCOMs may allow synchronization of the solar projects, who had completed the project and had filed completion certificate to the TSDISCOMs subject to the conditions mentioned in the undertaking. However, such synchronization of the solar power projects cannot be treated as consent to the extension of the SCOD or approval of the PPA. Further, the Commission Secretary vide letter dated 30.01.2018 has forwarded revised draft affidavit of declaration cum undertaking in favour of DISCOM.

iv) Further, it is stated that on 21.01.2018 the original petitioner has requested for synchronization permission for balance 22 MW. As the 21 months period from the date of PPA is expired by 03.12.2017. Hence, the request of the original petitioner for synchronization of balance capacity is not considered and the office was waiting for orders of the Commission. However, the original petitioner has again requested vide letter dated 13.03.2018 for synchronization of balance 22 MW duly enclosing undertaking as per the directions of the Commission. As per the Commission letter dated 11.01.2018 and 30.01.2018, letter was addressed to the Commission vide letter dated 21.03.2018 for concurrence of the Commission for synchronization of balanced 22 MW thus totalling of 45 MW. In response, the Commission accorded the concurrence vide letter dated 13.04.2018 to proceed for synchronization of balance 22 MW. The synchronization approval issued vide letter dated 21.04.2018. Accordingly, balance capacity of 22 MW synchronization to the grid on 23.04.2018. As such the COD of the plant was 23.04.2018.

11. The review petitioner has sought the following relief in the review petition.

“To pass SCOD as 31.10.2017, as per the SCOD extension orders given by the government and to pay the penalty up to 23.04.2018 for the balance 22 MW.”

12. The respondent / original petitioner filed reply to the review petition filed by the respondent No. 3 in O. P. No. 40 of 2018 is as follows.

i. The respondent / petitioner has gone through the averments and allegations made in the review petition filed by the respondent No. 3 / review petitioner and denies and disputes all averments, contentions and submissions except insofar as specifically admitted herein and respondents are put to strict proof of the same.

ii. It is stated that at the outset, the present review petition filed by the review petitioner seeking such relief is not maintainable at the stage of review without taking that particular ground at the stage of O.P. before the Commission. It is submitted that the review petitioner is arbitrarily using the provision of review to re-agitate the same issue and to re-argue the matter which was correctly decided after giving fair and reasonable opportunity to the review petitioner herein by this Commission. It is submitted that that the order dated 24.08.2018 passed by this Commission does not suffer any error apparent on the face of its record and the review petitioner has exhausted their right to produce any evidence before this Commission at the stage of O.P. and at this stage, the review petitioner is barred from arguing the case on merits. It is submitted that the provision of the review petition is not a forum to reargue the matter on merits and the same should not be entertained at this stage.

iii. It is stated that it is well settled proposition of law established that a review petition under 94 (1) (f) of Electricity Act, 2003 is maintainable only if any one of the following grounds is satisfied:

- i) Discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, or order was made; or
- ii) Mistake or error apparent on the face of record; or
- iii) For any other sufficient reason.

iv. It is stated that the Hon'ble Supreme Court in the Hon'ble Supreme Court in the case of N. Anantha Reddy vs. Anshu Kathuria and Ors. (2013) 15 SCC 534 laid down that:

“The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order / judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.”

v. It is stated that the Hon'ble Supreme Court in Sow Chandra Kante and Anr. V. Sheikh Habib (1975) 1 SCC 674 has held that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided, nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that his case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

vi. It is therefore in the light of the above mentioned judgements of the Hon'ble Supreme Court, the present review petition filed by TSNPDCL / review petitioner is not maintainable as the relief sought grounds taken in the review petition before this Commission seeking review of the order dated

24.08.2018 does not come under the purview of the review under filed under section 94(1) (f) of the Electricity Act, 2003 r/w Regulation No. 32 of Principle Regulation No. 2 of 2015 (Conduct of Business Regulations) and therefore, the respondent / petitioner prays before the Commission to dismiss the present review petition.

vii. It is stated that the para No.1, 2 and 3 require no reply as the same is a matter of record.

viii. In reply to para No. 4 and 5, it is stated that the contents of these paras are misleading and the same are in contradictory to the observations made by this Commission in its order dated 24.08.2018. It is submitted that the letter dated 14.06.2018 was part of the counter affidavit filed by the respondents. It is further submitted that the Commission while passing the order in main O. P. No.40 of 2018, has considered all events causing the delay of the SCOD and has correctly held that the respondent / petitioner has no control over such events and treated the same as force majeure. It is therefore submitted that the review petitioner is barred to argue upon the same by raising such grounds before this Commission at this stage of review.

ix. In reply to para No. 6 and 7, it is submitted that the contents of the paras are vehemently denied. It is further submitted that the contents of para 6 and 7 are again misleading. It is submitted that the Commission in its order dated 24.08.2018 has clearly held that the work completion report was submitted for synchronisation of 45 MW on 22.10.2017. Further, CGM (IPC & RAC) vide letter dated 24.10.2017 issued instructions to CE, OMC, Warangal to synchronize total 45 MW. Thereafter, on 06.11.2017 the respondent – Jilesh Power Private Limited has informed the review petitioner that the entire 45 MW of the solar plant is ready for synchronization on 27.10.2017 i.e. before 31.10.2017 which is the timeline extended by the Government of Telangana vide its letter dated 23.08.2017. Further, the respondent / petitioner vide its letter dated 21.01.2018, reiterated the readiness of the balance quantity of 22 MW also in December, 2017 and sought immediate synchronization. The same was not denied by the review petitioner, but, indicated that they were unable to synchronize the balance capacity in view of the directions of the Commission.

The respondent / petitioner has once again requested to issue synchronization certificate for balance 22 MW vide its letter dated 13.03.2018.

It is submitted that from the above it is clear that the entire capacity of 45 MW was ready for synchronization before the timeline of 31.10.2017 and thereafter, there is no delay on the part of the respondent / petitioner. Therefore, there is no basis whatsoever to the allegation of the review petitioner that the respondent / petitioner was not ready for balance 22 MW. The officials of the review petitioner issued certificate stating that 23 MW was commissioned on 01.12.2017(13 MW on 28.10.2017, 5 MW on 27.11.2017 and 5 MW on 01.12.2017) and did not issue the synchronization certificate for balance 22 MW. As a matter of act, as held in the order dated 24.08.2018 by this Commission, the respondent / petitioner cannot be held liable the delays due to administrative challenges and delays in obtaining approvals by the review petitioner. Therefore, the contentions of the review petitioner contrary to the above factual position and contrary to the findings of the Commission are false and baseless and are liable to be rejected.

x. In reply to para 8, it is submitted that the contents of the para are vehemently denied. It is submitted that the contention in the para that the respondent / petitioner could not commission the plant in total capacity is false and baseless. In fact, as submitted above, the respondent / petitioner vide its letter dated 06.11.2017 reiterated that the entire capacity of 45 MW of its solar plant was ready before 31.10.2017 itself and requested the officials of the review petitioner to witness commissioning and issue the synchronization certificate. Subsequent letters of 21.01.2018 and 13.03.2018 were in continuation of its earlier letters by the respondent / petitioner. As a matter of fact, there was no response from the review petitioner to these letters of the respondent/ petitioner. Therefore, there is no basis whatsoever for the contentions of the review petitioner that the total capacity was not ready for synchronization.

xi. In reply to para No.9, it is submitted that such contents of the para are misleading and are untenable. Since, the total capacity of the solar plant of the respondent / petitioner i.e., 45 MW was ready for synchronization, as certified by the officials of the review petitioners, the respondent / petitioner cannot be penalised for delay in issuing the synchronization certificate for

balance capacity. It is further submitted that at this stage, the review petitioner is barred from raising the same before this Commission, which was already decided.

xii. It is submitted that in the light of the above stated factual position grounds as stated in the review petition are totally untenable and baseless. There is no ground whatsoever for review of the order dated 24.08.2018 passed by this Commission. In this regard, it is submitted that total capacity of 45 MW was ready before 31.10.2017 itself. Therefore, the question of payment of any penalty does not arise as claimed by the review petitioner or otherwise. It is further submitted that even as otherwise, the respondent / petitioner is not liable to pay any penalty / LD's as there is no delay on its part, since the Commission vide its order dated has considered 01.12.2017 as date of synchronization and found that there was delay of 32 days for achieving COD, this respondent did not challenge the same in order to close the issue amicably once for all. It is submitted that the review petitioner after accepting in principle the order dated 24.08.2018, as an afterthought just to delay the payments to the respondent / petitioner has filed the present review petition, which by itself is untenable and is not prima facie maintainable.

14. The respondent / petitioner has filed memo, which is as below.

i) It is submitted that the review petitioner herein i.e., Northern Power Distribution Company of Telangana Limited has filed the present review petition being R.P.SR No. 126 of 2018 against the order dated 24.08.2018 of this Commission inter alia seeking revision of the date of synchronization for the balance of 22 MW as 23.04.2018 instead of 01.12.2017 decided by this Commission in the said order.

ii) It is submitted that this Commission in the hearing held on 09.11.2018, after hearing the parties, directed both review petitioner as well as the respondent No. 1 herein to consider 21.01.2018, the date on which the respondent / petitioner in the O. P. No. 40 / 2018 – Jilesh reconfirmed its readiness for synchronization of the balance 22 MW and which was not contested by the review petitioner, as the date of readiness of the respondent No. 1 – Jilesh for synchronization of the balance 22 MW. Accordingly, the hearing was adjourned to 17.11.2018.

iii) It is submitted that on 17.11.2018, during the hearing the counsel for the respondent No. 1 – Jilesh and counsel for the review petitioner – TSNPDCL submitted to this commission that they are agreeable to 21.01.2018 as a date of synchronization for the balance 22 MW, to put an end to the litigation and further requested the Commission to pass a consent order accordingly. The Commission further directed both the parties to file a Memo to this effect on or before 26.11.2018. Hence, present Memo.

iv) Subject to unconditional written consent of the review petitioner i.e., TSNPDCL to 21.01.2018 as the date of readiness for synchronization of the balance 22 MW capacity of 45 MW solar power plant, the respondent No. 1 i.e., Jilesh hereby gives its consent to 21.01.2018 as the date of readiness for synchronization for the balance 22 MW and further agrees to pay liquidated damages / penalties as per the PPA from 1st November, 2017 till 21st January, 2018.

Therefore, the penalties payable by respondent No. 1 i.e., Jilesh are as follows:

A) for 13 MW commissioned on 28.10.2017: Nil

B) for the 5 MW commissioned on 27.11.2017: delay of 27 days – amounting to Rs.13,50,000.00;

C) for the 5 MW commissioned on 01.12.2017: delay of 31 days – amounting to Rs.15,58,333.00;

D) for the balance 22 MW commissioned on 21.01.2018: delay of 82 days – amounting to Rs.199,46,667.00.

E) Total amount of liquidated damages/ penalties i.e. (A+B+C+D) Rs.228,55,000.00 (Rupees two crores twenty eight lakhs fifty five thousand only).

v) In the light of the consent given by both the parties as stated above paras, this Commission may be pleased to.

a) Clarify and confirm that SCOD of the 45 MW solar power project of the Respondent No. 1 Jilesh is revised to 23.04.2018 and the PPA to be amended accordingly;

b) The project has been commissioned fully with the dates of the following CODs:

a) 13 MW: 28.10.2017;

- b) 5 MW: 27.11.2017;
- c) 5 MW: 01.12.2017;
- d) 22 MW: 23.04.2018.

c) Declare that total liquidated damages / penalties payable by the respondent No. 1 – Jilesh shall be Rs.228,55,000.00 (Rupees two crores twenty eight lakhs fifty five thousand only);

d) Direct the review petitioner i.e., TSNPDCL to recover of the above liquidated damages / penalties amount of Rs.228,55,000.00 from the invoice of Jilesh for the energy supplied from the date of commissioning.

e) Direct the review petitioner – TSNPDCL to return the following performance bank guarantees submitted by the respondent No. 1 Jiles:

Bank	HDFC Bank, Emerging Corporate Branch, Road No.1, Banjara Hills, Near Virinchi Hospital, Hyderabad		
BG No.	004GT02160410005	004GT02160410006	004GT02160410007
Date of BG	10.02.2016	10.02.2016	10.02.2016
Due date	31.03.2019	31.03.2019	31.03.2019
Amount	3,15,00,000/-	4,50,00,000/-	1,35,00,000/-
Applicant	Jilesh Power Pvt.Ltd	Jilesh Power Pvt.Ltd	Jilesh Power Pvt.Ltd
Beneficiary	TSNPDCL	TSNPDCL	TSNPDCL

15. The counsel for the review petitioner also filed memo, which is as follows.

i. The developer has requested letter dated 13.10.2017 for synchronization permission for total capacity of 45 MW. Synchronization approval was issued on 24.10.2017. But the developer has synchronized 23 MW in phased manner due to technical problems of the plant for full capacity.

Details of synchronization of 23 MW

Sl.No.	Date	Capacity in MW
i	28.10.2017	13
ii	27.11.2017	5
lii	01.12.2017	5
Total		23 MW

ii. The Commission letter dated 11.01.2018 has directed to TSDISCOMs may allow synchronization of the solar projects under Competitive Bidding, 2015, who had completed the project and had filed completion certificate to the TSDISCOMs subject to the conditions mentioned in the undertaking.

iii. Further, the developer has requested letter dated 21.01.2018 for synchronization permission for balance 22 MW. As the 21 months period from the date of PPA is expired by 03.12.2017, hence the request of the developer was not considered and waiting for TSERC orders.

iv. The Commission has approved draft affidavit-cum-undertaking and communicated on 30.01.2018.

v. The developer has submitted an undertaking for synchronization of balance capacity 22 MW as per the directions of the Commission on 13.03.2018. Same was submitted to the Commission on 31.03.2018 for according consent for synchronization.

vi. The Commission accorded concurrence on 13.04.2018 to proceed for synchronization of balance 22 MW.

vii. The synchronization approval issued by this office on 21.04.2018. Accordingly balance capacity 22 MW was synchronized to the grid on 23.04.2018. As such accrual COD (physically) happened for 22 MW on 23.04.2018.

viii. However, it is to submit that the developer has requested for synchronization of balance capacity for 22 MW on 21.01.2018 itself on the ground that the 22 MW capacity was ready for synchronization. But as per our verification the actual COD was happened on 23.04.2018. Hence COD is 23.04.2018 only.

ix. It is further submitted that this Commission may be pleased to take the above facts and circumstances into consideration in computing the period up to actual synchronization of 22 MW as per law and dispose of the revision petition on merits.

16. The counsel for the review petitioner filed the memo is as follows.

That the petitioner / TSNPDCL filed R.P. (SR) No. 126 of 2018 seeking review of the final orders dated 24.08.2018 in O. P. No. 40 of 2018 filed by M/s. Jilesh Power Private Limited, regarding date of synchronization. During the

hearings in the O. P. the petitioner therein i.e., M/s. Jilesh Power Private Limited took a stand that the ready date for SCOD for 22 MW was 21.01.2018 and whereas the DISCOM, while admitting that the petitioner was ready for SCOD on 21.01.2018 for 22 MW of the project, claimed that physically the 22 MW project was synchronised to the grid on 23.04.2018. Keeping in view these conflicting claims the Commission directed both parties to arrive at a common date of SCOD to finally end the dispute.

Under these circumstances, the DISCOM also is agreeing that the date of SCOD for 22 MW be taken as 21.01.2018. The consequences under Article 10.5 of the PPA be applied to the delay in reaching the SCOD. The directions relating to the delay regarding 5 MW in reaching the SCOD on 27.11.2017, 5 MW on 01.12.2017 is also subject to Article 10.5 of the PPA.

Under these circumstances, the review petition may be closed.

17. I have heard the review petitioner and the respondent / petitioner in this petition. I have also perused the material on record. During the course of hearing, both the parties had one issue in common in respect of the date upto which the delay can be condoned regarding the completion of the project. Pursuant to the submissions, I have directed the parties to file a proper memo indicating their willingness to the date agreed at the time of the hearing to be reckoned as the actual SCOD. Accordingly, the parties have filed their respective memos, which have been recorded above alongwith the pleadings made in the review petition.

18. After hearing of the present review petition, both the review petitioner and respondent / petitioner filed separate memos mutually agreeing to the SCOD for 22 MW be taken as 21.01.2018. The respondent / petitioner represented that 13 MW of the project, 5 MW of the project, 5 MW of the project and 22 MW of the project were synchronized to the grid in phases on 28.10.2017, 27.11.2017, 01.12.2017 and 23.04.2018 respectively. Since there was ambiguity regarding the date of SCOD for 22 MW, during the hearing on 17.11.2017 both the counsel for the review petitioner / respondent No. 3 and respondent / petitioner have represented that they are agreeable to the date of SCOD for 22 MW as 21.01.2018 to put an end to the litigation. In the light of the development, the review petitioner / respondent No. 3 as

well as the respondent / petitioner filed separate memos agreeing to the date of SCOD for 22 MW of the project as 21.01.2018.

19. Under these circumstances and also in view of the mutual understanding, the date of achieving SCOD in this case for 22 MW shall be treated as 21.01.2018 subject to Article 10.5 of PPA. The rival contentions including the maintainability of the review petition as such are not being considered, in view of the mutual understanding arrived at by the parties.

20. The direction relating to the delay regarding 5 MW in reaching SCOD on 27.11.2017, 5 MW on 01.12.2017 is subject to Article 10.5 of PPA as decided in the O. P.

21. Both parties shall take suitable steps in furtherance of these directions.

The order is corrected and signed on this the 18th day of December, 2018.

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

//CERTIFIED COPY//