



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 21 of 2018

Dated 16.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between

M/s. Sun World Solar Power Private Limited
Plot No.152, Sector 44, Gurgaon – 122 002.

... Petitioner.

AND

1. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
3. Transmission Corporation of Telangana Limited
Room No. 628, 6th Floor, Vidyut Soudha Building,
Khairatabad, Hyderabad, Telangana 500 004.

...Respondents.

This petition came up for hearing on 17-05-2018 & 20-06-2018. Ms.Puja Priyadarshini, Advocate representing Sri. Hemant Sahai, Senior Counsel for the petitioner along with Sri Mast Ram Deswal, Assistant General Manager (Legal) of the petitioner appeared on 17-05-2018 and Sri. Hemant Sahai, Senior Counsel for the petitioner along with Ms. Puja Priyadarshini, Advocate appeared on 20-06-2018. Sri. Y.Rama Rao, standing counsel for the respondents along with Ms.Pravalika, Advocate appeared on 17-05-2018 and 20-06-2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86(1) (f) and 86 (1) (k) of the Electricity Act, 2003 seeking extension of SCOD by 175 days with the following material allegations:

(i) The TSSPDCL on behalf of TSDISCOMS floated tender for procurement of 2000 MW solar power through e-procurement platform as per the directions of the Energy Department, GoTS, Hyderabad. In the tender process, the petitioner was a successful bidder through open competitive bidding process to setup the solar photovoltaic power project of 30MW capacity to be connected to 132/33 kV Jagtiyal SS in Jagtiyal District, Telangana for sale to DISCOM at a tariff of Rs.5.459 per unit. Thereafter, a Power Purchase Agreement (PPA) was executed on 26-02-2016 between the petitioner and the respondent no.1. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 15 months from the date of PPA and achieve the Commercial Operation Date (COD) by 25.05.2017.

(ii) During the year, 2016 the Government of the State of Telangana initiated re-organisation of the districts and formation of new districts and there was uncertainty in the offices of the revenue authorities regarding jurisdiction of villages, Mandals etc. It may be noted that petitioner's project is located in Abbapur Village, which was initially part of Karimnagar District and became part of Jagtiyal District after reorganisation of districts. As the project site became part of Jagtiya town (headquarter of new District), farmers started higher compensation (around 12 times the original rates agreed) for the land acquired for the project, sub-station and for RoW for laying transmission line for evacuation of power from project to the sub-station. The issue of disruptions on the site on RoW issue and resistance from farmers was taken up with the State Government and District Revenue officials. Finally, the issue was resolved in September, 2017 with the intervention of RDO, Jagtiyal and the petitioner agreed to land prices 8 times of the price agreed initially. All such interruptions slowed down the pace of site mobilisation and delayed handing over of site to the EPC contractor for setting up the project.

(iii) The second major cause for delay is demonetization of high value currency by the central government, which resulted in shortage of cash and difficulties in bank transactions. The vendors / sub-contractors could not pay rents for machinery and labour charges and faced severe setbacks due to

limited resources which had an adverse impact in the progress of the work. Thus, the delay caused due to various factors narrated above were beyond the control of the petitioner and they could not be regulated or controlled and the petitioner suffered badly in the process.

(iv) The third major cause for delay is unprecedented and incessant rains and massive storm from 21.09.2016 to 28.09.2016 which caused flooding of roads and also at project site which lead to stoppage of work, idling of labour and equipment, hampering the construction work.

(v) Article 9 of PPA deals with various circumstances which constitute non-political events and direct political events under the force majeure clause. The petitioner suffered due to both direct political and non-political events. Article 9.2 of PPA permits delay in the COD owing to force majeure events or till such event of default is rectified whichever is earlier up to a maximum period of 12 months and therefore, the petitioner has a genuine cause for retrospectively providing extension of the SCOD. The GOTS by way of letter dated 29.06.2017, extended the SCOD of all solar power developers without any penalty upto 30.06.2017 and directed the TSDISCOMS to take further action accordingly. Further, the Commission by way of order dated 18.08.2017 after examining the merits of force majeure events narrated by the petitioner accorded in-principle approval for extending SCOD upto 30.06.2017. Further, Energy department, GOTS by way of letter dated 23.08.2017, after careful consideration of the representation of force majeure events extended SCOD of solar power projects upto 31.10.2017 and directed TSDISCOMS to take further action and extend SCOD. The petitioner gave force majeure notices to the respondent no.1 dated 28.09.2016, 22.02.2017, 28.02.2017, 04.04.2017 and 10.04.2017.

(vi) In spite of the difficulties beyond his control, the petitioner completed the synchronisation of the entire 30 MW solar PV project and commenced the commercial operations on 16.11.2017 with a delay of 175 days.

2. The respondent no.1, through its Chief General Manager (IPC & RAC) TSNPDCL, Warangal, filed counter-affidavit with the following material allegations:

(i) The petitioner has entered into PPA with the respondent no.1 on 26.02.2016 to set up 30 MW solar power project under competitive

bidding of 2015 in group II category with interconnection point at 132 /33 KV Jagithyal SS at 132KV voltage level with tariff at Rs.5.5949 per unit. As per the terms of the PPA, the petitioner has to commission the project within 15 months from the effective date of signing of PPA i.e., 25.05.2017. The petitioner reached SCOD on 16.11.2017 with a delay of 175 days and it is liable to pay penalty of Rs.6.73crores as per clause 10.5 of PPA.

- (ii) As per Article 6 of the PPA, the petitioner has to obtain all consent, clearances and permits required for supply of power to the respondent and procure land for setting up the project at least at 4 acres per MW in the name of the petitioner within 6 months at its own cost and risk, from the date of signing of the PPA. In fact, the Districts Reorganisation in the State of Telangana and demonetisation of high value currency in the country have occurred post scheduled date (i.e., 25.08.2016) to obtain necessary approvals and to procure land for the said project and therefore, the contention of the petitioner on this aspect is not tenable.
- (iii) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioner's attempt at arbitrarily declaring an event or circumstance as force majeure event cannot be termed as Force Majeure, even though non-political events are not limited to any storm, flood, drought, lightning, Earthquake or other calamities and indirect political events such as sabotage, blockades, civil disobedience and direct political events such as discriminatory delay, modifications, refusal to grant or renew or any revocation of any required permit or change in law are mentioned in Article 9 of PPA.
- (iv) Regarding ROW issues, it is the responsibility of the petitioner for laying erecting and testing of transmission line from their pooling station to grid substation duly resolving all ROW issues. TSTRANSCO will ensure the quality of works executed, equipment / material used for the erection of Bays and line as per the relevant Indian standards.
- (iv) Based on the request letter dated 10.11.2017 of the petitioner for synchronisation of 30MW, The CGM(IPC&RAC) by letter dated 13.11.2017 issued instructions to SE/OMC/Karimnagar to synchronise 30MW solar power project of the petitioner at 132/33 KV Jagithyal SS, Karimnagar duly following department procedure in vogue. The solar power plant of the

petitioner was synchronised to the grid in phases i.e., 20MW on 15.11.2017 and 10MW on 16.11.2017.

(v) It is further stated that the Government of Telangana State (GoTS), Energy Department, through a letter dated 29-06-2017 gave extension for SCOD on representation up to 30-06-2017 to the solar power projects within the state, who have concluded the PPAs with TS DISCOMS without any penalty duly following the requirement under CEA and TSTRANSCO guidelines. The Commission had approved the extension of SCOD up to 30-06-2017 by its letter dated 18.08.2017 for the solar power projects of competitive bidding of the year 2015 with a condition to re-fix the tariff and also with a direction to the respondent to file a petition for amending the PPAs in respect of penalties and re-fixation of the tariff. The GOTS in its letter dated 23.08.2017 has issued extension of four additional months relating to SCOD up to 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

3. The petitioner filed a rejoinder with the following material allegations:
 - (i) For reasons beyond the control of the petitioner, the actual CoD of the project was achieved on 16.11.2017 (i.e., 20MW on 15.11.2017 & 10 MW on 16.11.2017) resulting in delay of 174/175 days. Further, ROW issues hindered the progress of construction at various stages. In view of reorganisation of the districts in Dharoor village while the project is in Abbapur village, the farmers who are not happy with reorganisation started demanding hefty compensation which was not market aligned. The petitioner by way of letter dated 14.07.2017 requested the DG/police, GOTS to intervene in the matter and render support for completion of transmission line, the petitioner requested for intervention by Spl.Chief Secretary, Energy Dept, and further the petitioner requested the SP/Police, Jagithyal district for extending necessary support for resolving ROW issues clearly show the delay in ROW issue. It took 67 days to the petitioner to resolve ROW issues. The farmers demanded special compensation which is 12 times higher than the proposed unit cost since the towers 82 to 93 come under the Jagithyal city limits within commercial / residential area. Thus, the work was stalled for 67 days. The progress of the construction was stalled due to heavy rainfall from 21-09-2016

to 28-09-2016 hampering construction work, submerging the project land. The impact of reorganisation of districts, demonetization, and rains stalled the construction activity of the project.

(ii) Article 9.2 permits extension of SCOD on a day for day basis subject to a maximum period of 12 months to permit the solar power developers to overcome the effects of the force majeure events. Since the GOTS has extended SCOD up to 30-06-2017 without any penalties and also up to 31-10-2017, the petitioner is entitled to invoke force majeure events. Therefore, the delay of 175 days in getting 30MW project synchronised may be condoned.

4. I heard the arguments of both the counsel for the petitioner and counsel for the respondent.

5. The point for determination is whether the petitioner is entitled to condonation of delay of 174 days in reaching SCOD relating to 20 MW and 175 days in reaching SCOD relating to 10 MW as per the terms of PPA signed on 26-02-2016?

6. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 30 MW to be connected to 132/33KV Jagithyal SS at 132KV voltage level. The petitioner has entered into PPA with the respondent no.1 on 26-02-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from its date by 25.05.2017. The actual CoD of the entire project was achieved for 20MW on 15.11.2017 and for 10 MW on 16.11.2017.

7. The Government of Telangana (GoTS), Energy Department gave extension of SCOD upto 30-06-2017 to the solar power projects in the state, who have concluded PPAs with TSDISCOMs without any penalty by following all the technical requirements under CEA and TSTRANSCO guidelines. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of the State Government for extension of SCOD up to 30-06-2017 without any penalty, after examining the merits of the matter.

8. in continuation to letter dated 29-06-2017 on the same subject, the GOTS in its letter dated 23-08-2017 has issued extension of further four additional months

relating to SCOD up to 31-10-2017 to the solar power projects in the State, who have participated in the bidding 2015. Though the Government extended SCOD up to 31-10-2017, the Commission did not accede to the request of the DISCOM and instead took a view that individual case has to be examined as to why extension is required based on the merits. It was suggested that individual generators will move the Commission with a proper petition for condonation of the extension of SCOD. However, the Licensees were allowed to synchronise the projects completed in all respects by taking an undertaking from individual developer that they will abide by the decision of the Commission on respective projects.

9. Detailed examination of the pleadings of the petitioner and information placed on record reveals that the petitioner face certain difficulties in implementation of the subject project. The petitioner pleaded delay due to re-organisation of districts, the confusion in the offices of the revenue authorities, difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work. Further the petitioner pleaded that demonetization of high value currency impacted the supply of labour etc., issues relating to acquisition of land for setting up the project, which are beyond its control and which resulted in delay of 174/175 days in reaching the SCOD. The petitioner claimed that the ROW issues at locations 49 and 78 to 93 has obstructed the progress of construction at various stages. In view of reorganisation of the districts, severe ROW issues arose in Dharoor village near Jagithyal town. The project is situated in Abbapur village in Karimnagar district. Dharoor village was taken out from Karimnagar district and added to Jagithyal district and as a result, the farmers who are not happy with reorganisation started demanding hefty compensation which was not market aligned. The petitioner by way of letter dated 14.07.2017 requested the DG/police, GOTS to intervene in the matter and render support for completion of transmission line. The petitioner requested for intervention by Special Chief Secretary, Energy Department, and the SP/Police, Jagithyal district for extending necessary support for resolving ROW issues, which clearly show the delay caused due to ROW issue. The petitioner claims that it took 67 days to resolve ROW issue. Further, the petitioner claimed that the farmers demanded special compensation which is 12 times higher than the proposed unit cost since the towers 82 to 93 come under the Jagithyal city limits within commercial / residential area. The respondent, on the other hand contended that the incidents as force majeure

pleaded by the petitioner are not force majeure events and the petitioner is not entitled to such benefit and the reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA.

10. The incidents mentioned by the petitioner have some force to treat them as non-political events, which included labour difficulties mentioned in Article 9.1.(b) (i) as one of the force majeure events. Further, Article 9.1(a) of PPA clearly mentions that if the *“events and circumstances are not within the affected party’s reasonable control and were not reasonably foreseeable and the effects of which the affected party could not have prevented by prudent utility practices or, in the case of construction activities, by the exercise of reasonable skill and care. Any events or circumstances meeting the description of force majeure which have the same effect upon the performance of any of the solar power project set up in accordance with solar policy announced by GOTS under the competitive bidding route and which therefore materially and adversely affect the ability of the project or, as the case may be the DISCOM to perform its obligations hereunder, shall constitute force majeure with respect of the solar power developer or the DISCOM, respectively”* which clearly encompasses the reasons given by the petitioner for the delay of 174/175 days as events termed as force majeure.

11. The delay caused due to the events narrated by the petitioner and not specifically contradicted by the respondent certainly entitles the petitioner to extension of SCOD. The mere denial of events claimed by the petitioner as having caused delay in reaching the SCOD as not force majeure events by the respondents is untenable since the petitioner had no control over the events. Thus, the extension of SCOD by the GOTS through letter dated 23.8.2017 of Energy department is based on reasons and the Commission concurs with the extension of SCOD up to 31.10.2017. The contention of the respondent that the events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

12. In view of the aforementioned reasons, the delay of 159 days as pleaded by the petitioner is liable to be condoned up to 31.10.2017, by which time, the project was completed in all respects and total 30 MW was synchronised with the grid of the respondent no.1 by 15 /16.11.2017. The point is answered accordingly.

13. The delay in reaching the SCOD for 20MW on 15.11.2017 and for 10MW on 16.11.2017 has to be considered in view of the extended SCOD up to 31.10.2017. The petitioner is liable to pay penalty for 15 days for synchronisation of 20MW and 16 days for synchronisation of 10MW as per clause 10.5 of the PPA. The petition is allowed on the same tariff as approved by the Commission. The respondent No. 1 is directed to file a copy of the amended PPA with the revised date of commissioning.

14. The petitioner is directed to pay penalty as per clause 10.5 of PPA.

This order is corrected and signed on this the 16th day of August, 2018.

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