

No. N/416 & 415/2017

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.

Dated:19.12.2023

Present

Shri P. Ravi Kumar	..	Chairman
Shri H.M. Manjunatha	..	Member (Legal)
Shri M.D. Ravi	..	Member

COMMON ORDER
IN OP No.228 & 229/2017

OP No.228/2017

BETWEEN:

Jigajinagi Jagtap Solar Energy Private Limited,
A Company registered under the provisions
of Indian Companies Act, 1956
having its Registered Office at
Heritage Wine Road, Bhutnal,
Bijapur-586 101.

(Represented by its Authorized Signatory)

(Represented by its Mr. Shridhar prabhu,
Advocate for M/s Navayana Law Offices)

... PETITIONER

AND:

- 1) Hubli Electricity Supply Company Limited (HESCOM),
A Company registered under the provisions
of Companies Act, 1956
having its Registered Office at
PB Road, Navanagar, Hubballi,
Karnataka-580 025.
(Represented by its Ms./Mr. Shahbaaz Husain,
Stephania pinto, Aanshika Bhushan and K Sumanth Gowda
Advocate for M/s Precinct Legal)
- 2) State of Karnataka,
Department of Energy,
Vikasa Soudha,
Dr. B.R. Ambedkar Street,
Bengaluru-560 001.
(Represented by its
(Notice served, no representation)

3. Karnataka Renewable Energy Development Limited (KREDL)
 A Company registered under the provisions of Companies Act, 1956
 having its Registered Office at
 # 39, "Shanthigruha"
 Bharath Scouts & Guides Building,
 Palace Road, Gandhi Nagar,
 Bengaluru-560 001.
 (Notice served, no representation)

4. Karnataka Power Transmission Corporation Limited (KPTCL),
 A Company registered under the provisions of Companies Act, 1956
 having its Registered Office at
 Kaveri Bhavan, K.G. Road, Bengaluru-560 009.
 (Represented by its Managing Director)

... **RESPONDENTS**

(Represented by its Ms./Mr. Shahbaaz Husain,
 Stephania pinto, Aanshika Bhushan and K Sumanth Gowda
 Advocate for M/s Precinct Legal)

OP No.229/2017

BETWEEN:

Jigajinagi Jagtap Solar Power Private Limited,
 A Company registered under the provisions of Indian Companies Act, 1956
 having its Registered Office at
 Vinod Farm, Post Bhutnal,
 Bijapur-586 101.
 (Represented by its Authorized Signatory)

... **PETITIONER**

(Represented by its Mr. Shridhar prabhu
 Advocate, for M/s Navayana Law Offices)

AND:

1) Hubli Electricity Supply Company Limited (HESCOM),
 A Company registered under the provisions of Indian Companies Act, 1956
 having its Registered Office at
 PB Road, Navanagar, Hubballi,
 Karnataka-580 025.
 (Represented by its Managing Director)
 (Represented by its Ms./Mr. Shahbaaz Husain,
 Stephania pinto, Aanshika Bhushan and K Sumanth Gowda
 Advocate for M/s Precinct Legal)

- 2) State of Karnataka,
Department of Energy,
Vikasa Soudha,
Dr. B.R. Ambedkar Street,
Bengaluru-560 001.
(Represented by its
(Notice served, no representation)
3. Karnataka Renewable Energy
Development Limited (KREDL)
A Company registered under the provisions
of Companies Act, 1956
having its Registered Office at
39, "Shanthigruha"
Bharath Scouts & Guides Building,
Palace Road, Gandhi Nagar,
Bengaluru-560 001.
(Notice served, no representation)
4. Karnataka Power Transmission Corporation Limited (KPTCL),
A Company registered under the
provisions of Companies Act, 1956
having its Registered Office at
Kaveri Bhavan, K.G. Road,
Bengaluru-560 009.
(Represented by its Managing Director)
- (Represented by its Ms./Mr. Shahbaaz Husain,
Stephania pinto, Aanshika Bhushan and K Sumanth Gowda
Advocate for M/s Precinct Legal)

... **RESPONDENTS**

ORDERS ON REMAND BY HON'BLE ATE

- 1) The petitioners filed both petitions under section 86 (1)(f) of the Electricity Act, 2003 praying for the following common reliefs:
- (i) Approve the Supplemental Agreement dated 21.04.2017 produced herein as Annexure-P1;
 - (ii) Direct the respondent HESCOM to make payment for the delivery of energy at the rate of Rs 8.40 per unit from the Commercial Operation Date of the Petitioner's project for the entire term of the PPA under the Power purchase Agreement (PPAs) dated 14th July 2015 in (OP No.

228/2017) and dated 13th July, 2015 in (OP No. 229/2017) in both cases Annexure – P2.

- (iii) Pass such other and incidental orders, including an order as to costs, as may be deemed appropriate under the facts and circumstances of the present case.

2) The relevant common facts for the disposal of present case made out by the petitioners may be stated as follows: -

- a) The petitioners stated that the petitioners are Solar Power Project Developers (SPPDs) who have covered by the guidelines under the “farmers scheme” for developing of infrastructure for Solar Energy. The respondents are distribution licensees operating in the State of Karnataka. The State Government, with an intention to increase generation of Solar Power and to encourage the State’s farmers, issued a Notification dated 26.08.2014, in terms of its Solar Policy 2014-21. Pursuant to the said Notification, the KREDL invited applications from eligible land-owning farmers. After evaluation of the applications, the SPPDs were allotted to take up Solar Projects as referred in OP Nos.228 & 229/2017. The SPPDs planned to develop, design engineer, procure, finance, construct, own, operate and maintain solar power projects of approved capacities proposed to be promoted in the allotted places as stated in the original petitions and given in tabular form below:

TABLE 1

Sl. No.	OP No.	Name of the petitioners	Project Location and jurisdiction of ESCOM	Installed capacity (MW)	Date of KERC Orders	Appeal Nos./Date
1	228/2017	Jigajinagi Jagtap Solar Energy Pvt Ltd., (1)	Sy. No. 218/1, 218/3, 232/A, 232/B Bhutnal Village, Bijapur Taluk, Bijapur District, Karnataka State. (HESCOM)	3-0	22.11.2018	(No. 140/2021) 23.01.2023
2	229/2017	Jigajinagi Jagtap Solar Power Pvt Ltd., (2)	Sy. No. 320, 617/2 Arakeri Village, Bijapur Taluk, Bijapur District, Karnataka State. (HESCOM)	3-0	22.11.2018	(No. 139/2021) 23.01.2023

b) The PPAs came to be signed on 13.07.2015 & 14.07.2015 respectively between the petitioner's assignors Mr. Ramesh C Jigajinagi and Mr. Ananda R Jigajinagi (SPPDs) and the HESCOM and the same was approved by this Commission on 31.07.2015 as per Annexure – P4. On 21.04.2017 the Supplemental PPAs (Annexure – P1) were entered in to by the petitioner's being Special purpose Vehicle (SPV) with HESCOM and the same were also got approved by this Commission. In view of various difficulties faced in the execution of the projects which are beyond the control of the petitioners, there was delay in commissioning of the Solar plants within SCOD. The petitioners submitted an application for permission under section 109 of Karnataka Land Reforms Act, 1961 and Deputy Commissioner Vijayapura District forwarded the application to the jurisdictional Tahasildar for land inspection. After receipt of report and other necessary details and documents Deputy Commissioner granted the permission on 25.07.2016. Then the petitioners requested the HESCOM to extend the Scheduled Commercial Operation Date (SCOD). The

Respondent (HESCOM) extended the time for 6 months to the respective SPDs with certain conditions. On 13.04.2017 the respondent informed the petitioners to get the approval of this Commission for the extension of time for the commissioning of the project (Annexure – P8). The SPDs have filed these petitions in O.P No. 228/2017 and 229/2017 seeking approval of SPPA dated 21.04.2017 (Annexure – P1) and for a direction to the respondent to make payment of tariff at the rate of Rs.8.40 per unit in terms of the PPA (Annexure – P2). It is also reported by the petitioners that they have successfully commissioned the project on 03.07.2017 within the extended time given by the respondent (HESCOM) (Annexure–P9). The copy of the Commissioning Certificate dated 04.07.2017 is (Annexure–P10). For the foregoing reasons petitioners sought for allowing the petitions.

- 3) The respondent 1 and 4 have filed memo dated 28.08.2018 and 25.09.2018 to the effect that they have no objection to the reliefs claimed by the petitioners and would abide by the orders of this Commission. The 3rd Respondent has filed separate Statement of Objection and contended that 3rd respondent is not a necessary party to this petition. The 3rd respondent acts as liaison office between independent power producer and Government in the State and Centre. It is co-ordinating various activities sponsored by the Bureau of Energy Efficiency (BEE) and other renewable energy agencies and organizations. The contention raised by the petitioner is specifically against the 1st respondent and the 1st

- respondent has to counter the same. The 3rd respondent is not a necessary party to these petitions. Hence, sought for the dismissal of these petitions.
- 4) After due proceedings, this Commission passed the order in OP No.228/2017 and 229/2017 dated 22.11.2018 and held that the petitioners are entitled to varied tariff of Rs 4.36 per unit applicable on the date of commissioning of the petitioner's project as per Article 5.1 for the term of the PPA. The Petitioners are directed to pay damages & liquidated damages as provided under Article 2.2 & 2.5.7 of the PPA.
 - 5) The petitioners being aggrieved by the orders of this Commission in OP No.228/2017 & OP No.229/2017 have preferred Appeals in No.140/2021 & 139/2021. The learned counsels appearing for the appellants (SPPDs) and distribution licensees, jointly submitted before the Hon'ble ATE that these cases are similar to those in Appeal No.128/2018 & other connected cases and may be remanded to this Commission for disposal in accordance with law. Accordingly, the Appeals were disposed by Hon'ble ATE on 23.01.2023 and these cases were remitted to this State Commission for revisit, in the light of the settled law on the subject.
 - 6) The prime question that arises for consideration is whether the appellant SPPDs are entitled to extension of time for commissioning of the respective generating plants against the backdrop of the distribution licensees having agreed to, or consented for, extension of time as was sought.
 - 7) After remitting the case, heard the arguments and submissions of both the sides and perused the records, since the common question arose for determination, these cases are clubbed together for disposal. At this stage

the following point arises for determination as per the observation made in Appeal before the Hon'ble ATE.

8) In view of the above facts placed on record, the following Points arise for our consideration:

Point No.1: Whether the petitioners (SPPDs) are entitled to extension of time for commissioning of the respective generating plants and entitled to PPA tariff at the rate of Rs. 8.40 per unit?

Point No. 2: To which reliefs the petitioners are entitled to and for what order?

9) After considering the material on record and the pleadings and Oral and written submissions of the learned counsels for the parties and the observation made in the Appeal order, our findings on the points raised after remittance of the case are as follows:

10) Point No.1: Whether the petitioners (SPPDs) are entitled to extension of time for commissioning of the respective generating plants and entitled to PPA tariff at the rate of Rs. 8.40 per unit?

a) The settled principles of law laid down regarding extension of time on force majeure events are extensively dealt by Hon'ble ATE and Hon'ble Apex Court in umpteen number of cases. Further, the same principles are observed by the Hon'ble ATE in its Order passed in Appeal No. 128/2018 and other connected cases while remitting the case for revisit to appreciate the facts for extension of time in achieving COD. The reliance is placed on the following cases:

(i) M/s Panchakshari Power Projects LLP Vs. Karnataka Electricity Regulatory Commission & Others (Appeal No. 279 of 2018).

The tribunal has held, inter alia, that it is the bounden duty of all stakeholders to promote the growth and sustenance of renewable energy:

“... 35. We tend to add that it is the policy of Government of India that as much as possible, renewable energy sources must be tapped and must be encouraged since the usage of coal in thermal plants in the long run would leave an impact on the environment which would not be congenial atmosphere for the future generation. Therefore, though the cost of energy from renewable sources is much higher than thermal plants, the policy of the Government in the larger interest of health of the public is to safeguard the environment and create a proper environment. Hence, renewable energy sources as much as possible must be encouraged. In fact, the promotion of renewable energy very much indicated in the Statute itself i.e., Section 86(1)(e) where the obligation is placed on the concerned authorities that is the Commission and all the stakeholders to promote renewable energy sources.

- (ii) Bangalore Electricity Supply Company Limited v. M/s Panchakshari Power Projects LLP

In Bangalore Electricity Supply Company Limited v. M/s Panchakshari Power Projects LLP (Civil Appeal no. 897 of 2022), the Hon'ble Supreme Court was, inter alia, pleased to uphold the aforesaid Judgment of the Hon'ble Tribunal.

- (iii) **In Chennamangathihalli Solar Power Project LL.P. v. Bangalore Electricity Supply Company Limited** (Appeal no. 351 of 2018) decided on 14.09.2020, the Hon'ble Tribunal took the view, inter alia, that (i) delays due to the approval process on account of the Government or Governmental departments would constitute force majeure under the

PPA's; (ii) the DISCOMs had agreed to and/or granted extension of time and (iii) there could not have been any reduction in the bid tariff, inter alia, in the following words:

"..7.10 ...However, what thus transpires that there has been considerable delays on the part of the Respondents/Govt. agencies in processing of applications and granting the respective approvals. Thus, Respondents cannot absolve itself from the burden of such delays in execution/completion of the solar projects of the Appellants. In fact, it is pertinent to note that the Govt. as well as State/DISCOM considering above eventualities granted an extension of six months in COD. Contrary to this, the State Commission rejected the extension with imposition of liquidated damages to corresponding period only on the premise that it is a matter of dispute between the Appellants and the first Respondent. (Pg 69-70) ...

8.9 In view of these facts and anticipated slippage in the COD, the Appellants apprised the first Respondent of the same and requested for extension of COD by six months as admissible under the PPA. It is not in dispute that the total completion period of 18 months from the effective date was provided considering all the activities including various approvals, procurement of equipment, installation and commissioning and final safety clearance from Chief Electrical Inspector for charging the line etc. However, in receiving approvals from Govt. instrumentalities for land conversion, evacuation arrangement, safety clearances etc., the Appellants not only faced severe difficulties but also considerable delay of 7-8 months. The Appellants accordingly put forward the case to Govt. of Karnataka as well as first Respondent for COD extension by six months which after due diligence and prudence, the Govt./first Respondent acceded to. Before further evaluation of the rival contentions of the parties regarding the extension of time, we take note of various clauses of PPA.

Extensions of Time:

In the event that the SPD is prevented from performing obligations as per Scheduled Commissioning Date due to:

- (a) Any BESCO Event of Default; or
- (b) Force Majeure Events affecting BESCO; or
- (c) Force Majeure Events affecting the SPD.

In case of extension occurring due to the above reasons

therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6 (six) months.

As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement."

In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals/clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure. Which has directly and severely affected the execution of the solar projects. Moreover, the grant of extension of the scheduled COD was accorded by Government of Karnataka and in turn, by first respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA.

..... However, as the COD extension was granted under the signed PPA between the parties and after applying, due diligence in the matter considering all prevailing facts and matrix of events, the State Commission ought to have considered the same and approved so as to meet the ends of justice. Needless to mention that the PPA' Terms & Conditions were duly approved by the State Commission which crystallised the rights of the parties. (Pg 84-85)

The findings of the State Commission in the impugned order clearly reflect that it has ignored the vital material placed before it such as statement of objections filed by first Respondent, recommendations of State Govt. dated 23.06.2017 and communication of MNRE, Govt. of India dated 28.07.2017 regarding grant of COD extension to the solar power developers. Further, it is mandate upon the State Commission to promote co-generation and generation of power from renewable sources of energy, however, in the present case, the State Commission has suo motto interfered for the ultimate loss to RE developers who are land owning farmers and had participated in the programme of the Govt. for solar power development. In fact, the entire solar project is structured on the basis of assured tariff as per Article 5.1 of the PPA being an incentivised tariff and financial institutions

have advanced loans on the basis of the assured tariff as per PPA....”

It is not disputed that the provisions of the Power Purchase Agreement (PPA) in Chenamangathihalli (supra) and the PPA's in the present cases are in '*pari materia*'.

- (iv) **In Yarganavi Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors. (Appeal no. 10 of 2019) dated 12.08.2021**, the rule in Chenamangathihalli (supra) was reiterated by this tribunal.
- (v) **Similarly, in the matter of Kurugunda Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors. (Appeal no. 12 of 2019) dated 12.08.2021** it is held by judgment that, on appraisal of the difficulties faced by the farmers, the three-member committee recommended for acceptance of the reasons explained as force majeure event. Based on that the State Government through the secretary requested KERC to consider the same and granted PPA tariff to the Solar Developers. In this regard, even MNRE also addressed a letter to encourage the Solar Developers. It is also observed that, since there was no deficit on the part of the Appellants in any manner, they are not liable to pay Liquidated Damages or any other damages.
- (vi) Another proposition that has repeatedly found acceptance by this Tribunal is that the effective date of the PPA is not when it is executed but when it is approved by the Commission. Therefore, it cannot be said that the contractual obligations would kick-in, till such approval. This has been so held in several decisions of the tribunal including **Sirwar Renewable Energy Private Limited V. Karnataka Electricity Regulatory Commission & Ors. (Appeal no. 245 of 2019) decided on 12.08.2021**.
- (vii) The heart of the matter as has been explained by the Tribunal is that once the DISCOM's have agreed to and/or consented to the extension of time, it does not lie in their mouth thereafter to turn their back on such agreement or consent. Having once agreed and acted upon the grant of such extension of time, the DISCOMs cannot approbate and reprobate to the prejudice of the generators. This has been held, inter alia, in **Madamageri Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors. (Appeal no. 322 of 2018) decided on 12.08.2021**
- (viii) In similar verdict is rendered in **Basaragi KM Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors. (Appeal no. 328 of 2018) by judgment dated 12.08.2021**.

- (ix) The case of **Solar Power Project LLP V. Hubli Electricity Supply Company Limited & Ors. (Appeal no. 342 of 2018) decided on 12.08.2020** it is observed in relevant para as follows:

109. Apart from conversion of land, there seems to be delay in obtaining evacuation either provisional or final approval, so also in approving the drawings and intimating the estimation of the charges to be paid. Similarly, once application is submitted to CEIG to certify safety of the plant in order to start commissioning of the solar plant, in many cases time is taken to come and inspect the site. Even in this Appeal, we note that the drawings required for the bay terminal and other requirements for connectivity at the bay of the substation of the transmission/distribution system, the authorities took some time. All this could happen only in October 2016. Only after approval of the grid connectivity finally granted, the Appellant could approach the Chief Electrical Inspector with drawings pertaining to the electrical installation of the solar power plant.

115. It is relevant to point out the conduct of the HESCOM. During the entire process of securing these approvals by the Appellant, the Solar Developer has brought to the notice of the HESCOM the obstacles faced and pertinently at no point of time, there was any note of caution or objection finding fault with the pace at which the Solar Developer was pursuing the execution of the solar plant. In fact, after accepting the reasons for the delay being force majeure event in terms of PPA, the HESCOM did extend time for commissioning of the plant by six months. Subsequently, the conduct of the HESCOM is bit surprising. It started finding fault with the Appellant contesting the matter seriously questioning the reasons for delay as force majeure event. We are of the opinion that the Respondent HESCOM cannot approbate and reprobate.

- (x) **In Solantra Pvt. Ltd. V. Karnataka Electricity Regulatory Commission & Ors. (and connected matters) (Appeal no. 29 of 2021 & batch) decided by judgment dated 31.03.2022 the same principles were observed.**
- (xi) **The case of Azure Sunrise Private Limited v. Chamundeshwari Electricity Supply Corporation Limited & Anr. (Appeal no. 340 of 2016) decided on 28.02.2020 it was observed that:**

11.7 In view of the above facts, we are of the opinion that the decision of State Commission to reduce the extended time and tariff along with imposition of liquidated damages is not

sustainable in the eyes of law and hence the Impugned Order deserves to be set aside..."

(xii) On almost identical lines, the tribunal decided appeal no. 66 of 2020 presented by similarly placed SPPD in the matter of **Vatsala Ballary Solar Projects Private Limited v. Karnataka Electricity Regulatory Commission & Anr. by judgment dated 06.01.2022**

15. In the above facts and circumstances, we find merit in the appeal. The State Commission has fallen into error by embarking on an inquiry into the reasons for delay so as to deny the benefit of extension agreed upon by the parties in accordance with contractual provisions and also the contractual rate of purchase of electricity by BESCO. The decision rendered by the Commission is neither just nor fair and, therefore, set aside. For clarity, we add that the delay stands condoned post the communication of the decision by the BESCO by letter dated 02.03.2017, and in that view, BESCO is bound to honour its obligation as to the agreed financial terms under the PPA.

- 11) In view of extension of time granted by the concerned HESCO in these cases and considering the delay in COD due to force majeure events affecting the SPDs which prevented them from performing their obligations needs to be considered as per the observation made in the Appeal. The scheduled commissioning date and the expiry date shall be deferred, subject to the reasons and limits prescribed in the PPA. It is clearly pleaded by the petitioner that in spite of due diligence they could not Commission the project within schedule date due to force majeure events which are beyond the control of the petitioners.
- 12) The petitioners in original petitions have contended that the request and representations made by the petitioners with HESCO for extension of time of SCOD were placed on record and relied as per Annexures. In view of the schedule commissioning date and expiry date is deferred, subject to reasons and limits prescribed in PPAs, it is just and proper to consider the

delay occurred and explained by the petitioner is on account of force majeure events affecting SPD. The concerned HESCOM inclined to extend the time as per PPA, which in turn ratified and renewed the SCOD dates. As a result of such extension, the Schedule Commissioning Date is extended. Further, HESCOM advised the petitioners to file petition before the Commission for approval of extension of time.

- 13) The SPPDs executed PPA and Supplemental PPA (SPPA) and furnished date of approval of PPA and sought for extension of time for SCOD and reported commissioning of the project (COD) as Depicted in tabular form:

TABLE- 2

Sl. No.	Case No.	Appeal No.	Parties Name	PPA Date / Effective date as per PPA	Effective date as per APTEL Order * / Date of Approval of PPA	Date of SCOD as per PPA	Time extended by Respondent on Force majeure events	Date of actual CoD
1	OP 228/17	(A No. 140/2021)	Jigajinagi Jagtap Solar Energy Pvt Ltd., (1)	14.07.2015 SPPA 21.04.2017	31.08.2015	14.01.2017	UP to 14.07.17 (Annexure – P7)	03.07.2017
2	OP 229/17	(A No. 139/2021)	Jigajinagi Jagtap Solar Power Pvt Ltd., (2)	13.07.2015 SPPA 21.04.2017	31.07.2015	13.01.2017	Up to 13.07.2017 (Annexure-P7)	03.07.2017

*Note: Effective date is considered from the date of approval of PPA as per the observation in the decision of the Hon'ble APTEL in Appeal No.89/2018 dated 12.08.2021 (Azure photovoltaic Private Limited vs GESCOM and KERC)

- 14) After remand of the case, the respondents No. 1 and 4 filed written arguments and contended that there was delay in commissioning the project. It is a settled Law that, unless the PPAs are approved by this Commission, they are not enforceable. A combined reading of the terms of the PPA, it would indicate the intention of the parties, as per which, the petitioners were required to commission the plant, not later than 18 months

from the date of PPA. Since the petitioner could not commission the plant within the SCOD, sought for extension of time for COD. Accordingly, the respondent (HESCOM) had extended the time for six months. As per the terms of contract between the parties, in the event of delay in commissioning the project, the tariff payable to the petitioners would be the varied tariff as on the date of COD. The extension of time is subject to approval of this Commission. The respondent (HESCOM) made payment on the basis of varied tariff on account of the delay in COD which is in terms of the PPA. The petitioner has not made out any ground for invoking 'Force Majeure Events'. The projects were delayed for 171 days and the same is the basis for reduction of tariff and imposition of liquidated damages. The respondents relied on the following verdicts: -

- i) All India Power Engineer Federation V/s Sasan Power Limited.
- ii) Himachal Sorang Power Ltd V/s Central Electricity Regulatory Commission (2015 SCC OnLine APTEL 148)
- iii) Maruthi Clean Coal and Power Ltd V/s Power Grid Corporation of India (APL No. 212 of 2016)
- iv) Energy Watchdog V/s Central Electricity Regulatory Commission [(2017) 14 SCC 80]
- v) Ebix Singapore Private Limited V/s Committee of Creditors of Educomp Solutions Limited and Another [(2022) 2 SCC 401]

The respondent contended that as per the above dictums the "force majeure clauses" have to be strictly and narrowly interpreted and consumer interest and public interest to be safeguarded at the time of determination of tariff.

- 15) On considering the contentions of both the parties under the facts and circumstance of this case and the reasons assigned in these cases and considering the observation on force majeure events in appeal No. 128/2018 by Hon'ble ATE, it is just and proper to appreciate this case on available evidence. It is evident that the SPPDs were unable to perform and implement the project within the SCOD. The forced circumstances which are beyond the control of SPPDs are explained as follows: the delay in grant of permission, the delay in approval of PPA and SPPA, demonetization, delay in power evacuation approvals, Safety approvals, NA conversion etc. Therefore, the delay in commissioning the projects needs to be extended on force majeure events as stipulated in the terms of PPA. Even the respondents made it clear by communicating the extension of time as per Annexures. That the extension of time is in accordance with the terms of PPA which was duly approved by the Commission.
- 16) As per the Article 5.1 of the PPAs, the petitioners asserted that they are entitled to the tariff at Rs. 8.40 per unit as stipulated under the approved PPA, since they have commissioned the plants within the extended time by the respondents. It is more so when the time is extended from time to time by the concern HESCOM for the reasons set out in the petitions. That the delay is due to delay in permissions, sanctions, and approvals and it is due to force majeure events as explained. It is a fact that as per the Generic Tariff Order of 2013 issued by KERC for Solar Power Generation dated 10.10.2013 for the period of financial year 2014-18, the tariff prevailing at

that time was INR 8.40 per unit in respect of Solar PV Plants. As per this 2013 tariff order, the approved tariff would be applicable to solar power generators entering into power purchase agreements on or after 01.04.2013 and up to 31.03.2018 (Control Period).

- 17) The petitioner relied upon the order of Hon'ble APTEL in appeal No. 123 of 2012, wherein it is observed that the State Commission has extended the time considering the events during the time period lapsed in obtaining Statutory / Government Clearances from the Government instrumentalities towards land and water source are force majeure events. Further, the findings of the State Commission and consequential relief granted are upheld. It is also observed in Appeal No. 340 of 2016 that the decision of State Commission to reduce the extension of time and tariff along with imposition of liquidity damages is not sustainable in the eyes of law.
- 18) Therefore, in these cases also the events explained by the petitioner i.e., the delay in grant of permission for the project, demonetization, delay in approval of PPA and SPPA, delay in power evacuation approvals, safety approvals, land acquisition, and NA conversion needs to be considered for extension of time as force majeure events. In view of the observation in appeal and settled proposition of law and cause shown for the delay on the ground of force majeure events the petitioner is entitled to the PPA tariff for the supply of energy to HESCOM from the date of COD. Hence, directions have to be given to the HESCOM to pay the differential tariff from the date COD. The extension of time by the respondent HESCOM is amounts to waiver of the petitioner's obligation to commission the project

with in a particular time frame as provided in PPA and such extension of time does not affect the tariff and therefore, does not affect the consumer interest.

19) The revised COD on the ground that events responsible for delay in completion of the project are analogous to force majeure events and the petitioners are entitled for retaining the tariff as per PPA and the benefit of unaltered tariff is to be conferred in favour of the petitioner. The tariff policy also stipulates that the adequate promotional measures have to be taken for development of technologies and sustainable growth of non-conventional energy sources / renewable sources. Therefore, the SPDs promoting project under the Farmer's Facility Scheme (new concept) are to be promoted with supportive tariff for their capital investments in the interest of Electricity Sector as per National Electricity Policy.

20) The respondent 1 and 4 have filed memo dated 28.08.2018 and 25.09.2018 to the effect that they have no objection to the reliefs claimed by the petitioners and would abide by the orders of this Commission. On considering the extension of time, the petitioners are entitled to the PPA tariff at the rate of Rs. 8.40 per unit from Commercial Operation date as prayed in the Petition. Hence, the petitions are deserved to be allowed. Hence, point No. 1 is answered in affirmative.

21) Point No. 2: To which reliefs the petitioners are entitled to and for what order?

For the foregoing reasons and as per the observation of Hon'ble ATE in Appeal No. 128/2018 clubbed with other connected cases and also considering the settled proposition of Law, we pass the following order:

ORDER

- a) The petitions are allowed.
- b) The delay is condoned in commissioning of Solar Power Projects by the petitioners. The SCOD is extended till the date of COD as per Table-2 supra, Consequently, tariff of Rs. 8.40 per unit is allowed as agreed in PPA.
- c) The respondent HESCOM is directed not to levy liquidated damages and if already levied the same shall be refunded to the Petitioner within two months.
- d) The respondent HESCOM shall pay the differential tariff from commercial operation date till the date of this order.
- e) The Respondent HESCOM is directed to make payment of differential tariff within 90 days from the date of this order, failing which the Petitioner is entitled for interest at 10% p.a from the date of default till realisation.
- f) The Original Order be kept in OP No. 228/2017 and the copy of it, be kept in OP No. 229/2017.

sd/-
(P. RAVI KUMAR)
Chairman

sd/-
(H.M. MANJUNATHA)
Member (Legal)

sd/-
(M.D. RAVI)
Member