

No.N 383/2017

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,**

**No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.**

**Dated: 19.06.2020**

**Present:**

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

**OP No.205/2017**

**BETWEEN:**

Messrs Adani Green Energy (UP) Limited,  
A Company registered under  
the Companies Act, 1956  
Adani House, Near Mithakhali Six Roads,  
Navrangapura,  
Ahmedabad-380 009.  
(Represented by its Authorised Signatory)

**... PETITIONER**

[Represented by Smt. Poonam Patil, Advocate]

**AND:**

- 1) Gulbarga Electricity Supply Company Limited,  
(GESCOM) A Company registered under the  
provisions of the Companies Act, 1956  
having its Registered Office at  
Station Main Road,  
Kalaburagi.  
(Represented by its Managing Director)

- 2) Karnataka Renewable Energy Development Limited,  
(KREDL) A Company registered under the provisions  
of the Companies Act, 1956  
having its Registered Office at  
No.39, 'Shanthi Gruha',  
Bharat Scouts and Guides Building,  
Palace Road,  
Bengaluru-560 001.  
(Represented by its Managing Director)
- 3) Karnataka Power Transmission Corporation Limited,  
(KPTCL) A Company registered under the provisions  
of the Companies Act, 1956  
having its Registered Corporate Office  
Kaveri Bhavan, K.G. Road,  
Bengaluru-560 009.  
(Represented by its Managing Director)
- 4) State of Karnataka,  
Department of Energy,  
Room No.236, 2<sup>nd</sup> Floor,  
Vikasa Soudha,  
Dr. Ambedkar Veedhi,  
Bengaluru-560 001.  
(Represented by its Additional Chief Secretary) ... **RESPONDENTS**

[Respondents-1 & 3 represented by Indus Law, Advocates  
Respondent-2 represented by Sri Rakshit Jois Y.P, Advocate  
Respondent-4 represented by Sri G.S. Kannur, Advocate]

### **ORDERS**

1. The petitioner has filed the present petition under Section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs:
  - a) To call for records;
  - b) To declare that the petitioner was prevented from performing the obligation under the Power Purchase Agreement (PPA) due to 'Force Majeure' events affecting it;
  - c) To grant concurrence to the Supplemental Power Purchase Agreement (SPPA) dated 26.12.2016; and

- d) To declare that 'Effective Date' under Article 3.1 of the PPA is the date on which the SPPA receives its concurrence from this Commission.
- e) If the Commission were to consider that there is a delay in fulfilment of the Conditions Precedent, the Commission may condone the inadvertent delay caused for the reasons beyond the control of the Petitioner due to 'Force Majeure' events affecting it in fulfilment of the Conditions Precedent.
- f) To pass such other order/s including an order as to costs, to meet the ends of justice and equity.

2. The material facts stated by the petitioner, relevant for the disposal of the controversy involved in this case are as follows:

- a) The 2<sup>nd</sup> Respondent Karnataka Renewable Energy Development Limited (KREDL) being the Nodal Agency of the 4<sup>th</sup> Respondent/ State of Karnataka (GoK), for facilitating the development of the renewable energy, had called for the Request for Proposal (RfP) for the development of 290 MW Solar Power Projects to be implemented in 17 taluks vide Notification dated 12.02.2016. M/s Adani Green Energy Limited, a Company registered under the Companies Act, 1956 was the selected bidder for development of 20 MW Solar Photo-Voltaic Project in Periyapatna taluk of Mysuru district. The tariff discovered was Rs.4.93 per unit for the energy to be delivered. KREDL issued Letter of Award (LoA) and Allotment Letter dated 30.05.2016 as per Annexure-P1 to M/s Adani Green Energy Limited with terms and conditions to be fulfilled by the said selected bidder. Pursuant to the

LoA (Annexure-P1), a Special Purpose Vehicle (SPV) was incorporated i.e., the petitioner, to develop the Solar project and to execute the PPA with the 1<sup>st</sup> Respondent. Accordingly, the petitioner and GESCOM entered into PPA dated 29.06.2016 (Annexure-P3). The PPA was approved by the Commission and the approval was communicated vide letter dated 29.09.2016 (Annexure-P4). The approval of the PPA was subject to certain corrections/ modifications to be incorporated in the PPA by entering into a suitable SPPA between the parties as mentioned in the said approval letter. The parties have executed SPPA dated 26.12.2016 (Annexure-P5).

- b) The PPA provides that 'Effective Date' is the date of approval of the PPA by the Commission. The timeline fixed for achieving the Conditions Precedent is eight months and for achieving the commissioning of the project is twelve months, from the 'Effective Date'. Therefore, the Conditions Precedent is required to be achieved on or before 28.05.2017 and the project is to be commissioned on or before 28.09.2017. Admittedly, the project was commissioned on 28.09.2017. However, the petitioner could not achieve the timeline fixed for fulfilling one of the Conditions Precedent namely; the production of documents evidencing clear title and the possession of the extent of land required for the project in the name of the petitioner as stated in Article 4.2 (e) of the PPA.

c) The Petitioner wrote letter dated 29.05.2017 (Annexure-P7) to the 1<sup>st</sup> Respondent intimating the compliance of the Conditions Precedent and narrating the documents produced for meeting the Conditions Precedent. This letter discloses that in respect of production of documentary evidence of title and possession of the lands required for establishing the Solar project, the petitioner could be able to file the application to KREDL as per State Government's guidelines for enabling KREDL to obtain conversion approval as required under Section 95 of the Karnataka Land Revenue Act, 1964 (KLR Act, 1964 for short), but has not yet obtained the land conversion order from the competent authority permitting to use the lands for non-agricultural purpose. This letter narrates that (i) Acknowledgement of Section 95 application submitted to KREDL; (ii) Agreement to lease signed with land owners; (iii) Consent letters from land owners to lease their lands for Solar Power project; and (iv) Sworn Affidavit evidencing possession of lands by the petitioner, were produced before KREDL. The Petitioner wrote a letter dated 30.05.2017 (Annexure-P8) to the Additional Chief Secretary to Government, Energy Department, stating the reasons for non-production of documents evidencing clear title and possession of the extent of lands required for the project and requested the Government to direct the 1<sup>st</sup> Respondent to take cognizance of the documents submitted to KREDL, as sufficient compliance of the Conditions Precedent. The petitioner also wrote letter dated 10.06.2017 (Annexure-P9) to the 1<sup>st</sup> Respondent requesting to accept the

documents submitted to KREDL for obtaining sanctions/approvals under Section 95 of the Karnataka Land Revenue (Amendment) Act, 2015 [for short KLR (Amendment) Act, 2015] and under Section 109 of the Karnataka Land Reforms Act, 1961 (for short KLR Act, 1961), as sufficient compliance of production of documents regarding clear title of the lands required for the Solar Power Project in the name of the Developer and in any case, further requesting to grant three months' time extension for production of the required conversion order.

- d) The 1<sup>st</sup> Respondent replied vide letter dated 12.07.2017 (Annexure P-10) that the developer had not fulfilled the conditions precedent within 8 months and hence damages of Rs.12,00,000/- would be levied as per the terms of the PPA.
- e) The petitioner wrote a letter dated 14.08.2017 (Annexure-P11) to the 1<sup>st</sup> Respondent explaining the reasons for the delay in getting the documents of title of the lands required for the project, stating that these reasons amounted to 'Force Majeure' event as per Article 14 of the PPA and that the petitioner was entitled to condonation of the delay in procuring the documents of title and thereby stating that the 1<sup>st</sup> Respondent was not entitled to impose penalty as per the terms of PPA for non-fulfilment of one of the Conditions Precedent of producing documents of title regarding lands. It was requested to consider the application submitted by the petitioner to KREDL for conversion of land as sufficient compliance of Conditions Precedent under the PPA.

Further, it was requested in any event not to invoke Bank guarantee and the damages imposed would be paid by way of Demand Draft/NEFT.

f) In substance, the petitioner has stated the following grounds to claim extension of time or condonation of delay in producing the documents of title relating to lands required for establishing the Solar project:

i) delay in getting tentative evacuation approval from the 3<sup>rd</sup> Respondent KPTCL;

ii) delay in granting permission/approval under Section 95 of the KLR (Amendment) Act, 2015 and under Section 109 of the KLR Act, 1964; and

iii) the 'Effective Date' of the PPA should be considered as the date on which SPPA dated 26.12.2016 is approved by the Commission.

g) Therefore, the petitioner had filed the present petition on 26.10.2017 praying for the reliefs as noted above.

3. Upon notice, the Respondents appeared through their Counsel and filed separate statement of objections.

4. The gist of the Statement of Objections of 1<sup>st</sup> Respondent/ GESCOM and 3<sup>rd</sup> Respondent/KPTCL is as follows:

a) The petitioner had not produced any documents evidencing clear title and possession of the lands required for the establishment of the Solar

Project in its name, within the time specified in the PPA for fulfilling the Conditions Precedent, hence respondent-1 issued the letter dated 29.05.2017 (Annexure-P7), stating that the petitioner would be liable to pay penalty as per the terms of the PPA.

- b) The respondents have denied the grounds urged by the petitioner to claim the existence of 'Force Majeure' events and stated that the petitioner was not diligent in implementing the project and the delays are attributable to the petitioner and not the respondents.
- c) The allegation that the delay in approval of SPPA dated 26.12.2016 delayed the process of land acquisition is denied. There is no requirement that the SPPA has to be approved by the Commission as it was an addendum to the original PPA and this aspect was clarified by the Commission in the letter dated 25.10.2016 (Annexure-R1). The SPPA did not make any substantial changes to the PPA and hence, the allegation that the Petitioner waited for the approval of the SPPA to undertake the land procurement, is baseless.
- d) Regarding the allegation of delay in grant of evacuation approval, it is stated that the 2<sup>nd</sup> Respondent had invited taluk wise bids for development of Solar Power Projects of 1200 MW and the 2<sup>nd</sup> Respondent had sought feasibility sub-station wise, but after allotment of projects to the bidders, it was observed that the allotments were made taluk/district-wise and not sub-station wise. On 21.07.2016, the Commission informed 2<sup>nd</sup> Respondent that all the PPAs were returned for



want of clarity in inviting tender for 1200 MW capacity (Annexure-R2). On 29.08.2016, the Commission accorded in principal approval to all the PPAs and clarified that KREDL would co-ordinate with KPTCL and ESCOMs for efficient power evacuation and directed that the PPAs should be re-submitted for approval (Annexure-R3). Subsequent to the letter dated 29.08.2016, the 3<sup>rd</sup> Respondent processed the application of the Petitioner on fast track basis and issued tentative evacuation approval.

- e) The Petitioner has failed to procure the land and get conversion order within the prescribed time. The allegation of the petitioner that the evacuation approval was a must for the finalization of the project site is not true. On the contrary, it was the duty of the petitioner to finalize the project site, before making an application requesting to grant power evacuation approval. The terms of the PPA provide that if there is delay in fulfilment Conditions Precedent, the Petitioner is liable to pay damages and the reasons claimed do not fall under the 'Force Majeure' clause under the PPA. If the Petitioner was prevented by any 'Force Majeure' event, the same had to be notified to the Respondent within seven days as per the terms of the PPA and no such notice was issued.
- f) It was the duty of the Petitioner to update the 1<sup>st</sup> Respondent about the progress of the Conditions Precedent on a monthly basis, which has not been done. The delay in making the application for conversion of land has occurred by the acts or omissions of the Petitioner but not on the part of Respondents.

5. The gist of the Statement of Objections by 2<sup>nd</sup> Respondent/KREDL is as follows:

A Government Order (GO) dated 05.10.2016 (Annexure-R2A produced by 2<sup>nd</sup> Respondent) was issued whereby this Respondent was directed to enter into a lease agreement with the land owners and, in turn, to sub-let the lands to SPD/SPV after obtaining the necessary approvals; that the petitioner presented the application dated 28.03.2017 (Annexure-R2B) and other relevant documents to this respondent on 28.03.2017 itself for verification and to obtain necessary orders for execution of lease agreement; that on 03.06.2017, this respondent written a letter to the Energy Department to issue a necessary Notification and accordingly, the Government issued Notification dated 13.07.2017 (Annexure-R2C), permitting this respondent to obtain the lands on lease from the owners and to sub-let the same to the petitioner; that on 30.08.2017 (Annexure-R2D), this respondent issued a letter to the Deputy Commissioner (DC), Mysuru district, requesting to issue a land conversion order in the name of land owners, however, there was no response from the Office of the DC for a considerable period, and for the delay if any, this respondent cannot be blamed.

6. The gist of the Statement of Objections filed by 4<sup>th</sup> Respondent/GoK is as follows:

The procurement of land required for the project and evacuation approval was the responsibility of the petitioner as per RfP. The relevant portion of RfP dated 12.02.2016 is at Annexure-R2 produced by 4<sup>th</sup> Respondent. In order to facilitate, the acquisition of land for Solar Power Projects, the GoK has issued Notification dated 05.10.2016 (Annexure-R1) permitting the KREDL to enter into lease with the land owners and subsequently to sub-let the same to the Developers. This respondent has also produced Annexure-R3 dated 28.03.2017, the copy of the application submitted by the petitioner to KREDL and Annexure-R4 dated 25.04.2017, the letter addressed by the KREDL to the petitioner. It has also produced letters dated 03.06.2017 (Annexure-R5) addressed by KREDL to Additional Chief Secretary to Government, Energy Department and the Government Notification dated 13.07.2017 (Annexure-R6) permitting the MD, KREDL to sub-lease the lands to the petitioner. It has also produced Annexure-R7, letter dated 30.08.2017 addressed by KREDL to the DC, Mysuru, requesting to grant deemed conversion of the lands. Therefore, this respondent has denied any lapse on its part.

7. The petitioner filed common Rejoinder to the Statement of Objections filed by Respondent-1 & 3 and separate rejoinders to the Statement of Objections filed by Respondent-2 & 4, denying the grounds raised by the respondents. The petitioner has filed further documents along with the

Rejoinder filed to the Statement of Objections of Respondent-4. Both parties have filed documents as per the Memos filed on different dates.

8. We have heard the learned counsel for the parties. The petitioner and 4<sup>th</sup> Respondent have also filed the written arguments.

9. From the pleadings and the rival contentions raised by the parties, the following Issues arise for our consideration:

Issue No.1: Whether SPPA dated 26.12.2016 requires any approval by the Commission and such approval date should be considered as the 'Effective Date' under Article 3.1 of the PPA?

Issue No.2: Whether the petitioner was unable to produce the documentary evidence of having the clear title and possession of the lands in its favour, required for the establishment of Solar Power project, due to any 'Force Majeure' event/s alleged by it?

Issue No.3: Whether the petitioner is liable to pay damages for non- fulfilment of the Condition Precedent of producing the documentary evidence of clear title and possession of the land required for the establishment of Solar Power project?

Issue No.4: To which relief the petitioner is entitled to?

Issue No.5: What Order?

10. After considering the pleadings and documents of the parties and the submissions made by the learned counsel for parties our findings on the above Issues are as follows.

11. Issue No.1: Whether SPPA dated 26.12.2016 requires any approval by the Commission and such approval date should be considered as the 'Effective Date' under Article 3.1 of the PPA?

a) 'Effective Date' is defined as the date of the approval of PPA by the KERC. Such definition can be seen in Article 21.1 of the PPA. Article 3.1 of the PPA also explains the Effective Date with reference to the PPA as *'this agreement shall come into effect from the date of getting concurrence from KERC on the PPA and such date shall be referred to as the Effective Date'*. In the present case as per Annexure-P4 letter dated 29.09.2016, the petitioner and the 1<sup>st</sup> Respondent were informed the approval of the Commission to the PPA dated 29.06.2016 (Annexure-P3). Therefore, the date 29.09.2016 is to be considered as the Effective Date for the purpose of interpreting the different clauses in the PPA. The PPA does not provide that the date of approval of the Commission to the SPPA, in case the execution of such SPPA is needed could not be considered as the 'Effective Date'.

b) The petitioner has contended that as the letter dated 29.09.2016 (Annexure-P4) communicating approval of Commission for the PPA in question directed to incorporate certain corrections/modifications in the said PPA by entering into a suitable SPPA, the execution of SPPA and also the approval of such SPPA is essential. Further, it is contended that when the execution of such SPPA and its approval by the

Commission is required, those dates could be considered as the Effective Date.

- c) The letter dated 29.09.2016 (Annexure-P4) signed by the Secretary of this Commission states that "I am directed to communicate approval of the Commission to the PPA executed between GESCO and Adani Green Energy (UP) Limited in respect of development of 20 MW (AC) Solar Power Project in Periyapatna taluk of Mysuru district, subject to the following corrections or modifications being incorporated in the said PPA by entering into a suitable SPPA, with the confirmation of date of execution of PPA". The Commission notes that the corrections or modifications did not materially alter any clause of the PPA, in so far as the implementation of the project was concerned. Therefore, it can be said that the approval dated 29.09.2016 of the PPA is absolute, subject to incorporating the corrections or modifications. For the purpose of incorporating the corrections or modifications the execution of a SPPA is required. There is no direction given to the parties that after entering into this SPPA, the same should be again got approved by the Commission. It cannot be said that the approval of the Commission takes effect only after effecting the corrections or modifications suggested. As stated, the corrections or modifications suggested to be carried are not materially altering the rights and liabilities of the parties. This aspect is clarified by letter dated 25.10.2016 (Annexure-R1) of the Commission produced by the Respondents 1 & 3 along with their

Statement of Objections. The contention of the petitioner that the SPPA requires approval cannot be accepted.

d) For the above reasons, we hold Issue No.1 in negative.

12.IssueNo.2: Whether the petitioner was unable to produce the documentary evidence of having the clear title and possession of the lands in its favour, required for the establishment of Solar Power project, due to any 'Force Majeure' event/s alleged by it?

a) It is not in dispute that for fulfilling one of the Conditions Precedent, the petitioner was required to produce the documentary evidence of having the clear title of possession of the lands required for the establishment of the project in its name, within the stipulated time. The exceptions to comply the said Conditions Precedent are: (i) any 'Force Majeure' event affecting the production of such documents; and (ii) the 1<sup>st</sup> Respondent specifically waiving in writing the production of such documents. It may be noted that GESCOM has not waived the production of such documents.

b) The petitioner had undertaken to develop 20 MW Solar Power Project in Periyapatna taluk of Mysuru district. The LoA was issued on 30.05.2016 (Annexure P-1) and the petitioner acknowledged the acceptance of the terms and conditions of the LoA through letter dated 08.06.2016 (Anexure-P-2).

c) The petitioner was required to search for the lands required for establishment of the Solar Power Project after examining the availability

of evacuation approval to transmit the power from the Solar Power Project to the KPTCL Sub-station. Therefore, for establishing a Solar Power Project, there should be availability of required extent of land as well as a possibility of evacuating the power from the project to the nearest Sub-station. For this purpose, the Developer has to search for suitable lands and confirm its availability to the extent required before applying for evacuation approval. Therefore, the contention of the petitioner that it had to search for the lands only after obtaining the evacuation approval is not correct. The land can be either purchased or taken on lease for the required period.

- d) Now, we shall consider the ground urged regarding delay in processing the Evacuation Approval. The KPTCL in the Statement of Objections has stated that it had furnished Feasibility Study Report Sub-station wise to KREDL and as the projects were allotted taluk wise, there was some ambiguity in processing the applications for Evacuation of power to different Sub-stations. Further, vide letter dated 21.07.2016 (Annexure-R2) for want of clarification, this Commission returned all the PPAs to ESCOMs and later on 29.08.2016, this Commission accorded in principle approval to all the PPAs and clarified that KREDL would co-ordinate with KPTCL and ESCOMs for efficient power evacuation scheme from the Solar Power Projects. This Commission also directed that all the PPAs must be re-submitted for obtaining approval. A copy of the letter dated 29.08.2016 issued by this Commission is produced as Annexure-R3 by KPTCL.



- e) It can be seen that on 14.07.2016/23.07.2016, the petitioner had made an application to KPTCL seeking Evacuation approval.
- f) The chart showing the dates and events relating to evacuation approval and the delay in issuance of the evacuation approval, as narrated by the petitioner in its memo of argument is as hereunder:

Evacuation Application Details	
Date of submission of Evacuation Request	14.07. 2016/ 23.07.2016
Date of Demand Note from KPTCL for processing fees	06.09.2016
Date of Processing Fee submission	14.09.2016
Date of receipt of Tentative Evacuation	27.10.2016
Date of acceptance on Tentative Evacuation	14.11.2016
Date of receipt of Regular Evacuation	05.12.2016
Total time taken for Issuance of Regular Evacuation (Days)	135
Delay in issuance of Regular Evacuation (Days)	105

The applications made by the petitioner to KPTCL dated 14.07.2016/23.07.2016 seeking evacuation approval is not produced by either parties. The KPTCL has not filed detailed Objections, replying to all the allegations made against it. The tentative evacuation scheme dated 27.10.2016 (Annexure P-12), refers to two dates of applications – 14.07.2016 and 23.07.2016 but the reason for submitting the two applications by the petitioner is not forthcoming in the pleadings. From the contents of the tentative evacuation scheme (first document in Annexure-P12), it appears that feasibility study was done in respect of 66/11 kV Ravandur Sub-station (S/s for short) for 10 MW and 66/11 kV Periyapatna S/s for 10 MW. However, as desired by the petitioner, the

evacuation of 20 MW was considered to 66/11 kV Ravandur S/s and the same was provided. These facts are mentioned in the tentative evacuation scheme. After collecting the processing fee, the 3<sup>rd</sup> Respondent has approved the Tentative Evacuation Scheme on 27.10.2016 and subsequently, on acceptance of the terms and conditions of the Tentative Evacuation Scheme by the petitioner on 14.11.2016, granted Regular Evacuation Scheme on 5.12.2016. From the above facts one can say that the KPTCL has proceeded to grant the Tentative Evacuation Scheme as well as Regular Evacuation Scheme approvals within reasonable time.

- g) The petitioner has alleged that after identifying the lands required and obtaining relevant documents pertaining to them, submitted the application to KREDL on 28.03.2017 with a request to obtain an order under Section 95 of the KLR (Amendment) Act, 2015 for conversion of land for non-agricultural purpose and to sub-let the land in its favour. Therefore, it is contended by the petitioner that it has complied with the requirement of production of documents evidencing the clear title of the lands for the project and fulfilled the Conditions Precedent.
- h) Now, the question is whether filing an application before KREDL on 28.03.2017 by the petitioner (produced as Document No.1 by the petitioner on 26.11.2019) for taking further action by KREDL to obtain an order under Section 109 of the KLR Act, 1961 and under Section 95 of the KLR (Amendment) Act, 2015 amounts to sufficient compliance of

Condition Precedent in relation to production of documentary evidence of clear title of lands required for the project in the name of the petitioner.

- i) The lands required for the project could either be purchased or taken on lease by the petitioner. For purchase of lands, the petitioner has to obtain permission under Section 109 of the KLR Act, 1961 and thereafter has to apply for conversion of lands from agricultural purpose to non-agricultural purpose. To avoid the delay and to facilitate the early conversion of the lands, the GoK has issued a Circular bearing No.RD 01 LRM 2016 dated 22.02.2016 facilitating grant of permission under Section 109 of the KLR Act, 1961 and to obtain conversion of such lands under Section 95 of the KLR (Amendment) Act, 2015, for non-agricultural purpose within a timeframe. The GoK has also issued GO dated 05.10.2016 permitting KREDL to enter into lease of lands with the land owners and to obtain conversion of such agricultural land for non-agricultural purpose and thereafter to sub-lease the same to the Developer in order to facilitate development of Solar Project. The petitioner opted to obtain the lands on sub-lease instead of purchasing the lands from the owners. Sub-paras (C) & (D) of the Circular No.RD 01 LRM 2016 dated 22.02.2016 issued by the Principal Secretary to Government, Revenue Department, read as follows:

*“C – For projects cleared under Solar/Industrial projects under Energy Department which have been approved at the State level, where permission to purchase agricultural land under*

*Section 109 of the Karnataka Land Reforms Act, 1961 is required, the same procedure as enunciated above shall be followed. The authorised officers of Karnataka Renewable Energy Development Limited (KREDL) shall play role corresponding to one played by Authorised Officers of Karnataka Udyog Mitra as explained above.”*

*“D – The permission under Section 109 of the Karnataka Land Reforms Act, 1961 shall be brought under SAKALA with time prescribed for its delivery being within 60 days.”*

- j) Under the Notification dated 05.10.2016, KREDL has to follow the procedure stated in Circular No.RD 01 LRM 2016 dated 22.02.2016 for obtaining an order under Section 109 of the KLR Act, 1961 for purchase of agricultural land and its conversion and thereafter has to sub-lease the land to Developer for establishing the Solar Power project. Therefore, one can say that a definite timeframe of sixty days is prescribed for obtaining an order under Section 109 of the KLR Act, 1961. Had the petitioner applied to KREDL at least sixty days before the date on which Conditions Precedent had to be achieved and there was a delay by the concerned authorities in processing the same or granting the approval, the date of filing of application to KREDL by the developer, could be considered as the date of fulfilment of the production of the documentary evidence of having clear title and possession of the lands required for the project. Hence, in the present case, had the petitioner applied to KREDL at least sixty days before 28.05.2017, the date on which the Conditions Precedent should have been fulfilled, we could consider

whether filing of such application would amount to fulfilment of the Conditions Precedent within the stipulated time. As already noted, the petitioner has filed such application sixty days prior to 28.05.2017, the date on which the Conditions Precedent should have been fulfilled. However, it is necessary to verify whether the application dated 28.03.2017 filed by the petitioner before KREDL was substantially complete in all respect or it was a defective application.

- k) For the purpose of verifying whether the application dated 28.03.2017 is substantially complete in all respect or not, the documents produced on 12.03.2020 before this Commission by the 2<sup>nd</sup> Respondent have been perused. We may note from these documents that after filing the application dated 28.03.2017 before KREDL, the petitioner wrote clarification dated 19.04.2017 (Document No.2) to KREDL for correction of extent of lands standing in the names of Mahesh Aras and Harish Aras and also Vijaya Raje Aras as earlier noted in Annexure-A to the application dated 28.03.2017. Thereafter, KREDL wrote letter dated 25.04.2017 (Document No.3) asking for certain queries, for which the petitioner has replied as per letter dated 18.05.2017 (Document No.4) and letter dated 25.05.2017 (Document No.5).
- l) We have perused the queries raised by KREDL and the replies furnished by the petitioner. We are of the considered opinion that the queries raised were not material and the petitioner has given acceptable replies to them. The 1<sup>st</sup> query relates to loans/encumbrances on the lands. It is

stated by the petitioner that it would provide Bank guarantee for clearing the loans/encumbrances before execution of the lease deeds between KREDL and the lands owners and all mortgages would be cleared before taking sub-leases of lands in favour of petitioner from KREDL. The 2<sup>nd</sup> query relates to discrepancy relating to description of some Survey Nos. as shown in RTC and Akarband. It is explained by the petitioner that the entries in RTC and updated Akarband which are produced tally each other. The 3<sup>rd</sup> query relates to uncertainty, as to whether the actual situation of lands lies within the project area. The petitioner replied to this query stating that the survey nos. in question lies within the project site and produced the required documents. The 4<sup>th</sup> query relates to the discrepancy regarding the extent of land held by the two land owners. That query is properly explained by producing the documents to KREDL.

m) The capacity of the Solar Power Project to be established was 20 MW, for which an extent of 100 acres of land is normally required. The petitioner had identified an extent of 107 acres & 18 guntas of land at the time of filing of the application dated 28.03.2017 before KREDL. The petitioner has produced with his application the required land revenue records and consent letters of land owners for leasing the same in favour of KREDL and other details required. Therefore, one can say that the extent of land identified by the petitioner was sufficient to establish the 20 MW capacity Solar Power Project.

n) It is noted that the proceedings before the Deputy Commissioner, Mysuru, started pursuant to the application dated 28.03.2017 filed by the petitioner for conversion of lands and to sub-lease the same to it, has not yet attained finality. The KREDL has admitted this fact. As already noted, the proceedings before Deputy Commissioner, Mysuru, should have been culminated within sixty days from the date of filing proper application by the petitioner. We are of the considered opinion that such enormous delay in not yet taking a final view on the application of the petitioner should be treated as a 'Force Majeure' event under Clause 14.3.1(e) of the PPA. The non-production of documents of title relating to the project lands is due to 'Force Majeure' event and hence, the petitioner is not liable for consequences under Article 4.3 of the PPA. Accordingly, we hold Issue No.2 in affirmative.

13. Issue No.3: Whether the petitioner is liable to pay damages for non-fulfilment of the Conditions Precedent of producing the documentary evidence of clear title and possession of the land required for the establishment of Solar Power project?

As Issue No.2 is held in affirmative, any decision on Issue No.3 does not arise. Hence, Issue No.3 is held accordingly.

14. Issue No.4: To which relief the petitioner is entitled to?

For the foregoing reasons, the petitioner is not liable to pay any damages under Article 4.3 of the PPA. The petitioner is entitled to get

refund of the damages of Rs.12 lakhs in the event the same is paid to or recovered by the 1<sup>st</sup> Respondent.

15. Issue No.5: What Order?

For the above reasons, we pass the following:

**ORDER**

- a) The petition is allowed holding that the petitioner is not liable to pay any damages under Article 4.3 of the PPA;
- b) The 1<sup>st</sup> Respondent is directed to refund to the petitioner Rs.12 lakhs recovered if any, towards damages within eight weeks from the date of this order; and
- c) In the event of default, the said amount shall carry interest at the rate of 8% per annum from the date of default till the date of payment.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member