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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 19<sup>th</sup> May, 2017**

**Present:**

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

**RP No.1/ 2017**

**BETWEEN:**

Tata Power Solar Systems Limited,  
Plot No.78, Electronic City,  
Hosur Road,  
Bengaluru – 560 100.

..

**PETITIONER**

*[Petitioner is represented by Kapil Sapra & Associates, Advocates]*

**AND:**

- 1) Bangalore Supply Company Limited,  
K.R. Circle,  
Bangaluru - 560 001.
- 2) Karnataka Renewable Energy Development Limited,  
No.39, "SHANTHIGRUHA"  
Bharath Scouts & Guides Building,  
Palace Road,  
Bengaluru – 560 001.
- 3) The Secretary,  
Karnataka Electricity Regulatory Commission,  
9/2, Mahaaxmi Chambers,  
M.G. Road,  
Bengaluru – 560 001.

*[Respondents-1 & 2 are represented by Shri G.S. Kannur, Advocate]*

**RP No.2/ 2017****BETWEEN:**

Tata Power Solar Systems Limited,  
Plot No.78, Electronic City,  
Hosur Road,  
Bengaluru – 560 100.

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**PETITIONER**

*[Petitioner is represented by Kapil Sapra & Associates, Advocates]*

**AND:**

- 1) Hubli Electricity Supply Company Limited,  
P.B. Road, Navanagar,  
Hubballi – 580 025.
- 2) Karnataka Renewable Energy Development Limited,  
No.39, "SHANTHIGRUHA"  
Bharath Scouts & Guides Building,  
Palace Road,  
Bengaluru – 560 001.
- 3) The Secretary,  
Karnataka Electricity Regulatory Commission,  
9/2, Mahaaxmi Chambers,  
M.G. Road,  
Bengaluru – 560 001.

*[Respondent-1 is represented by Indus Law, Advocates and  
Respondent-2 is represented by Shri G.S. Kannur, Advocate]*

**RP No.3/ 2017****BETWEEN:**

Tata Power Solar Systems Limited,  
Plot No.78, Electronic City,  
Hosur Road,  
Bengaluru – 560 100.

..

**PETITIONER**

*[Petitioner is represented by Kapil Sapra & Associates, Advocates]*

**AND:**

- 1) Bangalore Supply Company Limited,  
K.R. Circle,  
Bangaluru - 560 001.

- 2) Karnataka Renewable Energy Development Limited,  
No.39, "SHANTHIGRUHA"  
Bharath Scouts & Guides Building,  
Palace Road,  
Bengaluru – 560 001.
- 3) The Secretary,  
Karnataka Electricity Regulatory Commission,  
9/2, Mahaaxmi Chambers,  
M.G. Road,  
Bengaluru – 560 001.

*[Respondents-1 & 2 are represented by Shri G.S. Kannur, Advocate]*

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### **COMMON ORDERS**

- 1) This Common Order is being passed in the above-mentioned Petitions, as common questions of law and facts are involved.
- 2) In the above Petitions, the point that would arise for our consideration is:  
  
Whether the Petitioner has, or has not, availed the extension of time (from 25.5.2016 to 3.6.2016) granted under the Official Memorandum dated 27.5.2016 issued by the 2<sup>nd</sup> Respondent-Karnataka Renewable Energy Development Limited (KREDL), for executing the Power Purchase Agreements (PPAs) involved in these cases?
- 3) The learned counsel for the parties admitted that, the disputes on different issues involved in these Petitions are substantially identical with the disputes involved in RP No.14/2016 and the two other connected cases decided by this Commission on 27.4.2017.

- 4) The learned counsel for the Petitioner submitted that, the facts of the present cases stand on a better footing and contended that, the Petitioner in these cases has executed the PPAs in question, within the time allowed as per the Addendum dated 11.4.2016 and therefore the Petitioner had not availed the extended time allowed under the Official Memorandum dated 27.5.2016. Therefore, the learned counsel for the Petitioner submitted that, the Petitioner in these cases is not bound by the condition imposed in the said Official Memorandum to the effect that, for the developers who were signing the PPAs by availing of the time extension allowed in the said Official Memorandum, the Commercial Operation Date (COD) for the said Projects should be achieved within twelve months from 25.5.2016. Further, the learned counsel for the Petitioner submitted that, in respect of the PPAs involved in these cases, the COD was to be achieved within twelve months from the date of approval of the PPAs, as originally understood.
- 5) In RP 14/2016 and the two other connected cases, this Commission has taken the view that, if the real grievance of the Developer was regarding the condition contained in the Official Memorandum dated 27.5.2016 curtailing the period for commissioning the Solar Power Projects, the Developer should have filed an Original Petition for setting aside the said condition in the Official Memorandum dated 27.5.2016 instead of filing the Review Petition against the communication issued by this Commission approving the PPA, with a direction to modify the

Effective Date as '25.5.2016' instead of, the date of approval of the PPA, as envisaged in the RFP and the PPA. Had the Petitioner in the present cases not availed the extended time allowed under the Official Memorandum dated 27.5.2016, it would have been entitled to seek review of the impugned communications dated 7.10.2016 issued by this Commission and not otherwise.

- 6) After considering the relevant facts of these cases, we are of the considered view that, the Petitioner in these cases has availed of the extension of time granted under the Official Memorandum dated 27.5.2016, for executing the PPAs involved in these cases for the following reasons :
  - (a) The Petitioner was declared as a successful bidder, in respect of the Solar Power Projects involved in these cases, and in respect of these Projects, Letters of Award (LOAs) dated 31.3.2016 were issued, *inter alia*, requiring the Petitioner to execute the PPAs with the ESCOMs concerned within sixty days from the date of receipt of the LoAs, as per Clause 3.4.7 of the Request for Proposal (RFP).
  - (b) The effect of Clauses 3.4.6 and 3.4.7 of the RFP, insofar as it relates to the period within which the selected bidder has to execute the PPA, is that the selected bidder should acknowledge the receipt of the LoA, within seven calendar days of the receipt of the LoA, and should execute the PPA within thirty days of such acknowledgment of receipt

of the LoA. These clauses also say regarding the consequences of not complying with the said provisions, with which we are not very much concerned. Therefore, it was required for the Petitioner to plead specifically the dates of receipt of the LoAs issued in its favour. Admittedly, the time was extended up to sixty days from the date of receipt of the LoAs by Addendum dated 11.4.2016, issued by the 2<sup>nd</sup> Respondent (KREDL), instead of the period of thirty days originally allowed in the said LoAs. Therefore, as per the LoAs dated 31.3.2016, the PPAs should have been executed on or before 30.5.2016, if these LoAs were received by the Petitioner on the same day of their issuance. The execution of the PPAs on 3.6.2016 would have been within sixty days from the date of receipt of the LoAs, had the LoAs been received by the Petitioner on or after 4.4.2016. As already noted above, the Petitioner has not stated, either in the pleadings or any of the documents, the date on which the LoAs were received by it.

- (d) The offices of both the Petitioner and the 2<sup>nd</sup> Respondent (KREDL) are located in Bengaluru City. Therefore, one cannot rule out the receipt of the LoAs on the same day or within one or two days from the date of their issuance. The burden of proving the date on which the LoAs were received, lies on the Petitioner. The letter dated 4.7.2016 (ANNEXURE-P10) and the letter dated 25.7.2016 (ANNEXURE-P11), produced in all these cases, addressed by the Petitioner to the 2<sup>nd</sup> Respondent (KREDL) would make it clear that, the Petitioner had availed of the extension of time allowed under the Official

Memorandum dated 27.5.2016. This would amount to an admission of the said fact by the Petitioner. Therefore, the above point raised for our consideration is held, accordingly.

- (e) The learned counsel for the Petitioner submitted that, the execution of the PPAs was within sixty days from the date of acknowledgment of the receipt of the LoAs, i.e., from 7.4.2016.
  
- (f) The above submission of the learned counsel for the Petitioner cannot be accepted, as the LoAs apparently stipulated that, the PPAs should be executed within sixty days from the date of receipt of the LoAs and not within sixty days from the date of receipt of the acknowledgment of the LoAs, as contended by the learned counsel for the Petitioner. The further contention of the learned counsel for the Petitioner is that, there is an inconsistency in this regard, inasmuch as, the LoAs stated that the PPAs should be executed within sixty days from the date of receipt of the LoAs, as per *Clause 3.4.7 of the RFP*. As already noted in our Order dated 27.4.2017 in RP No.14/2016 and the two other connected cases, such inconsistency did exist and this itself could be a ground for extending the time. However, this inconsistency does not amount to compliance with the apparent meaning of the LoA directing the Developer to execute the PPA within sixty days from the date of receipt of the LoA. It can be said that, the Petitioner was clear in its mind that, it executed the PPAs by availing of the extension of time allowed in the Official Memorandum dated 27.5.2016. Therefore,

the contention of the learned counsel for the Petitioner cannot be accepted.

- 7) In view of our above finding, we are of the considered view that, the Petitioner should have filed an Original Petition in each of the above cases, seeking for a declaration that, the Official Memorandum dated 27.5.2016 was invalid, instead of filing the present Review Petitions seeking review of the Commission's communications, dated 7.10.2016. The Petitioner has pleaded all the required facts to treat the present Review Petitions as the Original Petitions. Therefore, we hold that, the reasons given by us for granting the reliefs, as ordered in RP No.14/2016, and the two other connected cases would equally apply in the present cases also.
- 8) For the foregoing reasons, we pass the following :

### **ORDER**

- (a) It is declared that, the latter part of the Official Memorandum dated 27.5.2016 issued by the 2<sup>nd</sup> Respondent (KREDL) to the effect that:

*“(ii) For the developers who are signing the PPA availing this time extension, the commercial operation date ('Commercial Operation Date'/'COD') for the Project shall be achieved by the Developer within 12 (twelve) months from 25.05.2016”*

is invalid and not binding on the Petitioner in these Petitions;



- (b) Consequently, the direction given by this Commission in its communications dated 7.10.2016, insofar as it relates to altering the 'Effective Date' as '25.5.2016' in Articles 3.1, 8.5 and 21.1 of the PPAs, stands withdrawn;
- (c) Consequently, the changes effected in the Supplemental PPAs pertaining to the 'Effective Date', in Articles 3.1, 8.5 and 21.1 of the PPAs, pursuant to this Commission's communication dated 7.10.2016, stand cancelled and the said terms shall remain as they were in the PPAs;
- (d) The Petitioner shall pay the deficit Fee of `10,000/- (Rupees Ten Thousand) only in each of these Petitions, within 3 (three) weeks from the date of this Order. If the Petitioner fails to pay the said deficit Fee, the Petitions shall stand rejected; and
- (e) The original Order be kept in RP No.1/2017 and copies, thereof, be kept in the other connected cases.

Sd/-

(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER