

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 25th April, 2019

Present:

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

OP No.170/2017

BETWEEN:

M/s. Megasun Solar Tech Pvt. Ltd.,
No.74/2-A, 74/2-B,
B. Krishnappa Industrial Estate.
Srigandhanagar,
Hegganahalli,
Bengaluru – 560 091.

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PETITIONER

[Represented by Shri Shivaprasad Shantanagoudar, Advocate]

AND:

- 1) Gulbarga Electricity Supply Company Limited,
Station Main Road,
Kalaburagi – 585 101.
- 2) Karnataka Renewable Energy Development Limited,
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Palace Road,
Bengaluru – 560 001.

- 3) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
K.G. Road,
Bengaluru – 560 009. ..

RESPONDENTS

*[Respondents-1 and 3 represented by Indus Law, Advocates,
Respondent-2 represented by Shri G.S. Kannur, Advocate]*

ORDERS

- 1) The Petitioner has filed the present Petition, praying for a declaration that the Scheduled Commissioning Date (SCD) has stood extended for a period of 274 days, corresponding to the time taken for issuance of the evacuation approval, and for other consequential reliefs, to restrain the 1st Respondent- Gulbarga Electricity Supply Company Limited (GESCOM) from recovering the damages and reducing the tariff for the supply of energy.
- 2) The Petitioner-Megasun Solar Tech Pvt. Ltd., a Special Purpose Vehicle (SPV) created by the selected Bidder, viz., M/s. Microsun Solar Tech Pvt. Ltd., for development of a 3 MW Solar Power Project in Gangavathi Taluk of Koppal District, has executed the Power Purchase Agreement (PPA) dated 30.05.2016 with the 1st Respondent (GESCOM).
- 3) The PPA dated 30.05.2016 was approved by this Commission on 29.09.2016. As per the terms of the PPA, the Solar Power Project of the Petitioner should have achieved the SCD on or before 29.09.2017, i.e., 12 months from the date of approval of the PPA by the Commission. The Petitioner was entitled to receive the tariff of Rs.5.94 per unit, for the energy supplied by it to the

1st Respondent (GESCOM), in accordance with Article 12.1 of the PPA, during the period of 25 years from the Commercial Operation Date (COD). If there was delay in the commissioning of the Solar Power Project beyond the SCD, the Petitioner was entitled to the tariff of Rs.5.94 per unit or the tariff applicable as on the date of COD, as determined by the Commission, whichever is lower. The PPA also provided for payment of Liquidated Damages for the delay in the commencement of supply of power to the 1st Respondent (GESCOM).

- 4) Upon Notice, the 1st Respondent (GESCOM) has appeared through its counsel and has opposed the claim of the Petitioner. The Respondents 2 and 3 are only formal parties and no relief is claimed against them.
- 5) The Petitioner could not achieve the COD of the Solar Power Project as on 13.06.2018, i.e., the date of filing of the application for amendment of the Prayer, requesting that the SCD be extended upto 26.03.2019, as against the extension of the SCD, sought for in the Petition.
- 6) The Petitioner could not achieve the SCD even as on 26.03.2019. Finally, the Petitioner came forward, with a request to extend the SCD by six months from 04.04.2019, the date on which it filed the Affidavit in this case, agreeing to accept the tariff of Rs.3.05 per unit, prevailing for the Financial Year 2018-19, instead of the tariff of Rs.5.94 per unit, as originally agreed to in the PPA, and also agreeing to pay the Liquidated Damages.

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- 7) The 1st Respondent (GESCOM) has agreed for the proposal made by the Petitioner for extension of the SCD, subject to the further condition that, in the event, the Petitioner fails to achieve the SCD on or before 04.10.2019, the 1st Respondent (GESCOM) shall have the option to terminate the PPA. The Petitioner has agreed to abide by such further condition.
- 8) The learned counsel for the Petitioner made it clear that, the request for extension of the SCD was not on the ground of *Force Majeure* Event, but it was only to facilitate the Petitioner to synchronize its Solar Power Project with the Grid, as the same was being insisted on the Petitioner by the Karnataka Power Transmission Corporation Limited (KPTCL).
- 9) After going through the records and considering the submissions of the learned counsel for the parties, it is seen that there has already been delay in achieving the SCD by the Petitioner. Therefore, the Commission deems it appropriate that, the Petitioner is liable for the reduced rate of tariff for its Solar Power Project, as agreed to in its Affidavit dated 04.04.2019, and is also liable to pay the Liquidated Damages, to the extent of the Security Deposit furnished by the Petitioner, i.e., to the extent of Rs.30,00,000/- (Rupees Thirty Lakhs only).

10) For the foregoing reasons, we pass the following:

ORDER

- (a) The Petitioner is permitted to achieve the Scheduled Commissioning Date, on or before 04.10.2019, subject to:
- (i) The Petitioner receiving the tariff of Rs.3.05 (Rupees Three and Paise Five only) per unit, for the energy supplied by it to the 1st Respondent (GESCOM), in accordance with the terms of the PPA dated 30.05.2016, for a period of 25 (twenty five) years from the Commercial Operation Date;
- (ii) The Petitioner paying the Liquidated Damages to the 1st Respondent (GESCOM), in an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only), within 4 (four) weeks from the date of this Order, failing which the 1st Respondent (GESCOM) is entitled to encash the Security Deposit;
- (b) In the event, the Petitioner fails to achieve the Scheduled Commissioning Date, on or before 04.10.2019, the 1st Respondent (GESCOM) is at liberty to terminate the PPA dated 30.05.2016, subject to issuance of a Default Notice, calling upon the Petitioner to cure the defect within 60 (sixty) days from the date of service of the Default Notice, failing which, by issuing a Termination Notice to the Petitioner, terminating the PPA dated 30.05.2016, forthwith; and,
- (c) The Petitioner and the 1st Respondent (GESCOM) shall execute a Supplemental Power Purchase Agreement, incorporating the above terms, within 4 (four) weeks from the date of this Order.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER