

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

Dated : 30th January, 2018

Present:

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

OP No. 87/2017

BETWEEN:

Panchakshari Power Projects LLP.,
1B, 12/5, Lalitha Manor,
14th Cross, AECS Layout,
Sanjaynagar,
Bengaluru – 560 094.

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PETITIONER

[Represented by The Lawmen International, Advocates]

AND:

- 1) Bangalore Electricity Supply Company Ltd.,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
- 2) The DGM (F&C) Power Purchase,
BESCOM,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
- 3) The General Manager,
KREDL,
Shanthi Gruha,
No.39, Bharath Scouts and Guides Building,
Opposite the Chief Post Master General Office,
Palace Road,
Bengaluru – 560 001.

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RESPONDENTS

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

ORDERS

- 1) This Petition is filed by the Petitioner under Section 86(1)(f) of the Electricity Act, 2003, praying, in effect, for grant of approval for extension of time for commissioning the Solar Power Project by three months from the Scheduled Commercial Operation Date (SCOD), so as to entitle the Petitioner to the tariff agreed in the Power Purchase Agreement (PPA).

- 2) The submissions made in support of the prayer may be summarised as follows:
 - (a) In compliance of the Government Order dated 26.10.2014, the Karnataka Renewable Energy Development Limited (KREDL), invited applications online on 09.10.2014 for development of Solar Power Projects under the land owning farmers' category. The application received from one Shri Panchakshariah (Solar Project Developer or SPD), for allotment of the Solar Power Project with a capacity of one MW at Kolgunsi Village, Kasaba Hobli, Sorab Taluk, Shivamogga District was accepted after evaluation by the KREDL, which issued a Letter of Award (LoA) dated 17.03.2015 to the SPD, and instructed him to execute a PPA with Respondent No.1 (BESCOM).

 - (c) Accordingly the PPA was executed on 01.07.2015 and the Commission approved the said PPA on 26.08.2015. Shri Panchaksharaiah (SPD) expired on 15.02.2016, and the rights under the PPA were inherited by his

OP No.87/2017

wife (Smt. Prameelamma), son and daughters. Subsequently, the son and daughters of late Shri Panchaksharaiah gave consent / no-objection, for transfer of the PPA dated 01.07.2015 in the name of their mother. Subsequently, Smt. Prameelamma, formed the Petitioner LLP firm to execute the Project and assigned the PPA dated 01.07.2015, in favour of the Petitioner SPV, vide Deed of Assignment dated 01.06.2016. A supplemental PPA was executed between the Petitioner and the Respondent No.1 on 14.06.2016 and the same was approved by the Commission on 11.07.2016.

- (d) The SPD had filed an application on 04.11.2015 before the Karnataka Power Transmission Corporation Limited (KPTCL) seeking Power Evacuation permission, which issued the Power Evacuation permission on 05.08.2016. On 30.12.2015, the SPD had applied to the Revenue Department, seeking an Order for conversion of the land, which was pending till his death on 15.02.2016 and lapsed by operation of law due to his death. A fresh application was filed on 12.04.2016 by Smt. Prameelamma and the conversion Order was passed by the Revenue Department on 21.05.2016.
- (e) In terms of the PPA, the Project had to be commissioned by 31.12.2016 (the SCOD). However, the SPD was prevented from performing its obligations under the PPA, on or before the SCOD, due to the following delays by the authorities:

OP No.87/2017

SL. No.	Description	Period	Duration	Details
1	Procedural delay caused at the Office of BESCO.	29.04.2016 to 14.06.2016	1½ month	Delay in executing SPPA in favour of the Petitioner.
2	Procedural delay caused at the Office of KPTCL.	04.11.2015 to 05.08.2016	10 months	Delay in issuing Power Evacuation Permission
3	Procedural delay caused at the Office of Revenue Department.	30.12.2015 to 21.05.2016	4 months 22 days	Delay in issuing the Order of conversion of land.
4	Procedural delay caused due to death of Shri Panchaksharaiah on 15.02.2016 in a road traffic accident.	15.02.2016 to 12.04.2016	1 month 26 days	Time taken by Smt. Prameelamma to obtain legal heirship certificate and to apply afresh for conversion of land.
		15.02.2016 to 29.04.2016	2 months 14 days	Time taken by Smt. Prameelamma to obtain legal heirship certificate and to comply with the legal formalities and to apply to BESCO to execute SPPA in favour of Petitioner.

- (f) The Petitioner, vide letters dated 20.12.2016 and 18.01.2017, informed the BESCO regarding the completion of the Solar Power Plant and requested the BESCO to consider the case for extension of time as per Articles 2.5 and 4.1 of the PPA and also for an appropriate direction to enable expeditious commissioning of the Solar Power Plant.

OP No.87/2017

- (g) The BESCOM which vide letter dated 03.02.2017 informed the Petitioner its approval for extension of time for SCOD by three months from 01.01.2017 to 31.03.2017, later, vide letter dated 31.03.2017, informed that "*Extension of time for SCOD is approved for 3 months from 1.1.2017 subject to condition that the tariff applicable and the Liquidated damages to be paid, if any, is subject to Hon'ble KERC/GOK approval*". Further, the BESCOM, vide letter dated 15.04.2017 informed the Petitioner, to seek approval of extension of time for achieving the SCOD, from this Commission.
- (h) The Project was commissioned on 15.02.2017.
- 3) Upon issuance of Notice, Respondents appeared through their learned counsel. Respondent No.1 filed its objections, which may be summed up as follows (Respondent No.2 is an officer of the 1st Respondent Company):
- (a) As several requests for extension of Scheduled Commercial Operaton Date (SCOD) were received from the Solar Power developers, the Government of Karnataka (GoK) issued an Order dated 24.11.2016, directing all the Electricity Supply Companies (ESCOMs) to constitute a 3-Member Committee, to consider and dispose of their requests.

OP No.87/2017

(b) A Committee constituted by Respondent No.1 to consider the requests for extension, sought for by Solar Power Generators, under the land-owning farmer category, in its meeting held on 23.01.2017, considered the causes for the delayed achievement of the SCOD by the Petitioner which as per the documents, furnished by the Petitioner were as follows:

(1) Land Conversion:

- i. Date of submission (of application): 30.12.2015
- ii. Date of conversion : 21.05.2016
- iii. Delay in getting approval : Nearly 5 months

(2) KPTCL Evacuation Approval (Regular)

- i. Date of Submission : 4.11.2015
- ii. Date of approval : 5.8.2016
- iii. Delay in getting approval: 9 months.

(c) The Committee, after detailed discussions and scrutiny of all the documents, opined that, approval may be accorded for extension of SCOD upto 6 (six) months, considering Article 2.5 of PPA, as there had been a delay in issuance of approvals by the various Government entities. On 03.02.2017, Respondent No.1 informed the Petitioner, about the extension of time by 3 (three) months for achieving the SCOD.

(d) The subject was placed before 81st Meeting of the Board of Directors of the BESCO, held on 9.2.2017, for evaluation / disposal of the request of Land Owning farmers/SPVs for Extension of time for achieving the SCOD. The Board took on record the facts pertaining to the extensions issued by the BESCO. On 16.03.2017, the Commission addressed a letter to all the ESCOMs, in the matter pertaining to the extension of time granted to

OP No.87/2017

the Solar Power Generators and informed them not to allow any extension of time beyond the scheduled commissioning date, if any, as per the original PPA, without obtaining prior opinion of the Commission. Further, vide letter 5.04.2017, the ESCOMs were directed by the Commission to advise all the land owning Solar Power Developers / SPVs, to approach the Commission and seek approval of the extension of time. In furtherance to the same, the Petitioner has filed this petition.

- (e) In its letter dated 25.04.2017 to the Commission, the Energy Department, GoK, has recommended the approvals accorded by the BESCO in respect of extensions for 6 (six) months from the date of SCOD, as per Articles 2.5 and Article 8 of the PPA. Further, in respect of the extension of the Project duration of the already awarded Solar Power Projects, the Ministry of New and Renewable Energy (Govt. of India) has issued letter no. 30/106/2014-15/ NSM dated 28.07.2017, addressed to the Principal Secretaries (Power/Energy), State Governments, which reads thus:

“Ministry had requested not to give time extension if all the obligations are fulfilled by the concerned State Government Authorities/PSUs etc. in a project. However, if there are delays of any kind on the part of State Government Authorities/PSUs like land allotment, transmission/evacuation facilities, connectivity permission or force majeure, the competent authority in the State/SECI/NTPC etc. may consider providing extension of the time duration strictly as per the Contractual Agreement.

It is also to be clarified that if in a project equipment/materials have been purchased/ordered and substantial advances paid as per original completion date, and there is a delay on part of the state organizations regarding land,

OP No.87/2017

transmission or any such reasons, the extension of the project may be allowed".

- (f) Respondent No.1 has therefore prayed for appropriate directions in the Petition.
- 4) Respondent No.3 (KREDL) has filed its objections, stating that, it had no role to play after issuance of the Letter of Award to the Project Developer, as it was only a Nodal Agency to facilitate the development of the Renewable Energy Projects in the State. Respondent No.3 has, therefore, prayed for dismissal of the petition as against it.
- 5) We have heard the learned counsel for the parties and perused the material on records. The following issues would arise for our consideration:
- (1) Whether the Petitioner has made out a case for deferment / extension of the Scheduled Commissioning Date of its Plant?
 - (2) Whether the extension of time granted by Respondent No.1 to the Petitioner for achieving the commercial operation of the Petitioner's project can be subjected to legal scrutiny by this Commission?
 - (3) What should be the tariff for the Petitioner's Project for the term of the PPA?
 - (4) What Order?

OP No.87/2017

- 6) After considering the submissions made by the learned counsel for the parties and other material produced on record, our findings on the above issues are as follows.
- 7) **ISSUE No.(1):** *Whether the Petitioner has made out a case for deferment/ extension of the Scheduled Commissioning Date of its Plant?*
- ISSUE No.(2):** Whether the extension of time granted by Respondent No.1 to the Petitioner for achieving the commercial operation of the Petitioner's project can be subjected to legal scrutiny by this Commission?
- ISSUE No.(3):** *What should be the tariff for the Petitioner's project for the term of the PPA?*

As the above issues are interconnected we deal with these issues together.

- (a) The following extracts of the relevant articles of the PPA would be useful in examining the issues involved in this case:

"2.1 Conditions Precedent:

The obligations of BESCO and the SPD under this Agreement are conditional upon the occurrence of the following in full within 365 days from the effective date.

2.1.1 (i) *The SPD shall obtain all permits, clearances and approvals (whether statutory or otherwise) as required to execute and operate the Project (hereinafter referred to as "Approvals"):*

OP No.87/2017

(ii) The Conditions Precedent required to be satisfied by the SPD shall be deemed to have been fulfilled when the SPD shall submit:

a. The DPR to BESCO and achieve financial closure and provide a certificate to BESCO from the lead banker to this effect;

b. All Consents, Clearances and Permits required for supply of power to BESCO as per the terms of this Agreement; and

c. Power evacuation approval from Karnataka Power Transmission Company Limited or BESCO, as the case may be.

2.1.2 SPD shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and BESCO shall provide to the SPD all the reasonable cooperation as may be required to the SPD for satisfying the Conditions Precedent.

2.1.3 The SPD shall notify BESCO in writing at least once a month on the progress made in satisfying the Conditions Precedent. The date, on which the SPD fulfills any of the Conditions Precedent pursuant to Clause 2.1.1, it shall promptly notify BESCO of the same.

2.2 Damages for delay by the SPD

2.2.1 In the event that the SPD does not fulfill any or all of the Conditions Precedent set forth in Clause 2.1 within the period of 365 days and the delay has not occurred for any reasons attributable to BESCO or due to Force Majeure, the SPD shall pay to BESCO damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum period of 60 (Sixty) days. On expiry of the said 60 (Sixty) days, BESCO at its discretion may terminate this Agreement.

2.5 Extensions of Time

2.5.1 *In the event that the SPD is prevented from performing its obligations under Clause 4.1 by the Scheduled Commissioning Date due to:*

- a. *Any BESCOM Event of Default; or*
- b. *Force Majeure Events affecting BESCOM; or*
- c. *Force Majeure Events affecting the SPD.*

2.5.2 *The Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the reasons and limits prescribed in Clause 2.5.1 and Clause 2.5.3 for a reasonable period but not less than 'day for day' basis, to permit the SPD or BESCOM through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or BESCOM, or till such time such Event of Default is rectified by BESCOM.*

2.5.3 *In case of extension occurring due to reasons specified in clause 2.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6(six) months.*

2.5.4 *In case of extension due to reasons specified in Article 2.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 3(three) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 9.*

2.5.5 *If the Parties have not agreed, within 30 (thirty) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 10.*

2.5.6 *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."*

"4.1 Obligations of the SPD:

OP No.87/2017

a. The SPD shall construct the Project including the pooling station, the interconnection facilities and metering arrangements at the point of delivery of power as approved by STU / BESCO.

b. The SPD shall undertake by itself or by any other person acting on its behalf, at its own cost, construction/up-gradation of (a) the interconnection Facilities, (b) the transmission lines; and (c) metering arrangements with protective gear as per the specifications and requirements of STU/BESCO, as notified to the SPD.

c. The SPD shall achieve scheduled date of completion and the commercial operation within 18 months from the effective date.”

“5.1 Tariff payable:

The SPD shall be entitled to receive the Tariff of Rs.8.40 per kWh based on the KERC tariff order S/03/1 dated 10.10.2013 in respect of SPD's solar PV projects in terms of this agreement for the period between COD and the Expiry Date. However, subject to Clause 2.5, if there is a delay in commissioning of the project beyond the Scheduled Commissioning Date and during such period there is a variation in the KERC Tariff, then the applicable Tariff for the projects shall be the lower of the following:

- (i) Rs. 8.40 per kWh
- (ii) Varied tariff applicable as on the date of Commercial Operation.”

“8.3 Force Majeure Events:

a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force

OP No.87/2017

Majeure Event") beyond the reasonable control of the Party affected by such delay or failure, including the occurrence of any of the following:

- i. Acts of God;
- ii. Typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;
- iii. Strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this Agreement;
- iv. Acts of war (whether declared or undeclared), invasion or civil unrest;
- v. Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the SPD or BESCO of any Law or any of their respective obligations under this Agreement);
- vi. Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;
- vii. Fire, Earthquakes, explosions, accidents, landslides;
- viii. Expropriation and/or compulsory acquisition of the Project in whole or in part;
- ix. Chemical or radioactive contamination or ionizing radiation; or
- x. Damage to or breakdown of transmission facilities of either Party;

b) The availability of the above item (a) to excuse a Party's obligations under this Agreement due to a Force Majeure Event shall be subject to the following limitations and restrictions:

- i. The non-performing Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as practicable after its occurrence;
- ii. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event.
- iii. The non-performing Party is able to resume performance of its obligations under this Agreement, it shall give the other Party written notice to that effect;

OP No.87/2017

- iv. *The Force Majeure Event was not caused by the non-performing Party's negligent or intentional acts, errors or omissions, or by its negligence/failure to comply with any material Law, or by any material breach or default under this Agreement;*
- v. *In no event shall a Force Majeure Event excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event."*

(b) It is the case of the Petitioner that, major procedural delays were caused by the BESCO, the KPTCL and the Revenue Department in implementing the Project and the same would constitute *Force Majeure* events. The accidental death of the SPD (Late. Shri Panchaksharaiah) in a road accident on 15.02.2016 and the consequential legal compliances, resulted in a short delay in meeting the milestone dates. The death of the Project Proponent in a motor vehicle accident is a *Force Majeure* Event, being an "Act of God" and the same is also included in Article 8.3(vii) of the PPA, which includes "accidents".

(c) The Petitioner has also claimed that the delay in grant of Power Evacuation approval resulted in delay of the following approvals:

Date	Approvals / Sanctions / Documents
05.08.2016	Regular Evacuation Approval
	Bay allotment
28.10.2016	Approval of drawings of MCVB switchgear and metering cubicle by KPTCL, Hassan
03.12.2016	Approval of Single Line Diagram by KPTCL
06.12.2016	Approval for construction of 6.5 km 11 KV Line from Solar Plant to Shikaripura 110/11 KV substation by MESCOM

OP No.87/2017

14.12.2016	CT PT Approval
14.12.2016	Drawing Approval by CEIG
17.12.2016	Drawing approval for double breaker isolator and RCC polls by KPTCL
	Approvals obtained post application for extension dated 20.12.2016
23.12.2016	Material inspection by MESCOM
29.12.2016	Material inspection by KPTCL
29.12.2016	Installation certificate for 11 KV MCVCB breaker
31.12.2016	Interconnection approval by KPTCL, Hassan
05.01.2017	Drawing approval for 11 KV Pot Head, CI Pipe, Earth Electro UG & Copper Control Cable by KPTCL
13.02.2017	CEIG Approval
18.02.2017	Synchronization certificate issued by MESCOM

- (d) We note that these approvals/activities are part of commissioning of the project, for which adequate time of 6 months is provided in the PPA, after achieving Conditions Precedent. Further, to consider the allegation of any delay, the date of making applications, paying fee, etc. are not furnished by the Petitioner.
- (e) We note that, under the Article 2.5 of the PPA, extension of time for commissioning the Project can be granted, if the SPD is prevented from performing its obligations due to the BESCO's 'Events of Default' or *Force Majeure* events. The *Force Majeure* events are defined and the requirement of issuing a written Notice by the non-performing party on occurrence of a *Force Majeure* event is specified in Article 8.3 of the PPA. Under Article 8.3 of the PPA, it is also necessary to prove that, the *Force Majeure* event was not caused by the non-performing party's

OP No.87/2017

negligent or intentional acts, errors or omissions. We need to examine, if the Petitioner or the SPD was, in any manner, negligent in performing its obligations under the PPA, particularly in the light of the timelines fixed in the PPA for fulfilling Conditions Precedent and for commissioning the Project.

- (f) It is submitted by the Petitioner that, the project was delayed due to the death of the SPD in a road accident and the procedural delays by the authorities in granting the necessary approvals. That Respondent No.1 had acknowledged the same and granted extension of time for commissioning the project, treating the same as BESCOM's Events of Default or *Force Majeure* events. It is also the case of the Petitioner that, despite the adverse circumstances faced by it in implementing the project, it had completed the project on 18.01.2017 and the same was commissioned on 15.02.2017, after 45 days from the original SCOD, indicating that it had acted diligently.
- (g) The PPA was signed on 01.07.2015 by the parties. The Conditions Precedent had to be achieved within 365 days from the date of signing of the PPA and the Project had to be commissioned within 18 months from the date of signing of the PPA.
- (h) We note that the SPD applied for conversion of land on 30.12.2015, after a period of six months from the date of the PPA. No explanation is given for this delay on the part of the SPD. Subsequent to the death of the SPD on 15.02.2016, the legal heir again applied for conversion of the land on

OP No.87/2017

24.04.2016. The requisite charges were paid on 21.05.2016. The land conversion Order was passed by the Deputy Commissioner, Shivamogga on 21.05.2016. Even if the date of the first application by the deceased is considered, the conversion Order was passed within five months from the date of the said application. This period is reasonable and cannot be termed as delay. Hence, we are unable to accept the contention of the Petitioner that, there was a delay in granting approval for the conversion of land. In fact, as noted above, there is a delay of six months on the part of the SPD in applying for the conversion. Considering that the time stipulated in Article 2.1, for obtaining all the necessary approvals is 365 days, we hold that, the SPD was not diligent in applying in time for the conversion of land and therefore the Petitioner's claim the time taken for approval of land conversion, delayed the commissioning of the plant cannot be accepted.

- (j) The SPD had applied for Power Evacuation permission to the KPTCL on 04.11.2015, after a delay of five months from the date of signing the PPA. There is no explanation for this delay. From the letter dated 20.12.2016 of the Petitioner and the letter dated 05.08.2016 of the KPTCL, it can be made out that, the temporary evacuation approval was given on 06.06.2016 and the Petitioner had given acceptance to the same on 27.06.2016 and 23.07.2016. However, temporary evacuation approval and the acceptance letters are not produced by the Petitioner. Generally, only after the acceptance is given by the Project Developer to the temporary evacuation scheme, the regular evacuation approval

OP No.87/2017

would be given by the KPTCL. The regular evacuation approval, in this case, was given on 05.08.2016. It can be made out that, after initial confusion between the MESCOM and the KPTCL, as to who should give the approval, resolution of which took about three months, the KPTCL has given the approval. If the period of delay in communication of the SPD's/ Petitioner's acceptance to the temporary evacuation approval granted is deducted, the time taken for giving the regular evacuation approval is about seven months. Further, considering that admittedly during this period, the original SPD expired and the matter could not have been effectively followed up by his legal heir till the formation of the Petitioner LLP, we cannot accept the Petitioner's claim that, there was delay in grant of regular evacuation approval which resulted in delay in obtaining other approvals. During arguments, the learned counsel for the Petitioner submitted that, though no time frame is fixed for granting the evacuation approval, normally, the time taken is 45 to 60 days from the date of application, subject to receipt of all the documents, as mentioned by the KPTCL in the letter dated 03.10.2017 addressed to KREDL, in respect of 1000 MW Solar Power Projects under the VGF Scheme. Even if we were to assume that such time limit is applicable to all solar power projects, which is not the case in the Petitioner's project, we note that such time would apply only where all the necessary documents are furnished to the KPTCL. The Petitioner has not proved that all the necessary documents and information have been promptly furnished in its case to enable KPTCL to expeditiously grant the evacuation approval. In any case, the land conversion and

OP No.87/2017

evacuation approvals were granted within one year from the date of PPA.

- (k) We also note that the unfortunate death of the SPD on 15.02.2016 was a personal loss to the family. The delay caused was a period of 2 months 14 days, as stated by the Petitioner in para 4.7 (page 10 of the petition) as Smt. Prameelamma had to obtain legal heirship certificate and comply with other obligations in the formation of the SPV and execute the SPPA. However, the land conversion order was passed within 10 months from the date of PPA, i.e., well within the time to achieve Conditions Precedent.
- (l) We note that, it is settled law that, the *Force Majeure* clause in the PPA has to be strictly interpreted. No notice, as contemplated under the clause is stated to be issued by the Petitioner to the Respondent No.1. The reasons stated by the Petitioner do not fall under the events of *Force Majeure* mentioned in the PPA, as held by us in the preceding paragraphs. Hence, we are of the considered opinion that the Petitioner is not entitled to extension of time, as provided in the relevant clauses of the PPA.
- (m) Article 5.1 of the PPA, provides for reduction of tariff, as a consequence of delay in commissioning of the Solar Power Project beyond the SCOD, subject to certain terms and conditions stated therein. This is in view of the fact that, this Commission periodically determines the generic tariff

OP No.87/2017

for supply of electricity generated from various sources to the Distribution Licensees, based on among other parameters, mainly Capital Cost of the generating plant. Such generic tariff is made available for a period, called as 'Control Period', during which the generating plants get implemented and commissioned at the normative Capital Cost adopted in the Generic Tariff Order, generally after execution of a PPA with a Distribution Licensee. Such a PPA also has a clause stipulating the time, within which the power supply should commence, so that the Distribution Licensee can plan further supply to its consumers. The time stipulated for completion of the Project takes into account the time ordinarily required to complete various pre-commissioning activities, which, in respect of megawatt scale Solar Power Plants, is taken as between 12 to 18 months. Any delay or failure in commencement of the power supply within the agreed date would disrupt the operation of the Distribution Licensees, like the 1st Respondent, which could also result in their power procurement from alternative expensive sources, leading to higher retail tariff to the consumers or short supply leading to revenue loss to them, and even imposition of penalties for not meeting with the Renewable Purchase Obligation fixed by this Commission.

- (n) The Capital Cost of Solar Power Plants has been coming down very rapidly, in the recent years, because of the advancement in technology and production efficiency, as well as economies of scale in the backdrop of largescale solar capacity addition across the world. Thus, the generic tariff for megawatt Solar Power Plants, which was fixed at

OP No.87/2017

Rs.14.50 per unit in the Commission's Order dated 13.07.2010, has been successively reduced to: (i) Rs.8.40 per unit in the Commission's Order dated 10.10.2013; (ii) Rs.6.51 per unit in the Commission's Order dated 30.07.2015; and (iii) Rs.4.36 in the Commission's Order dated 12.04.2017.

(p) The PPA provides that, the tariff on the date of commercial operation would be applicable for the Project. The Project is commissioned on 15.02.2017. The tariff prevailing as on the date of commissioning is Rs.6.51 per unit.

(q) It is now a settled law that, the Commission has the exclusive jurisdiction to determine the tariff for supply of electricity by a generating company to a Distribution Licensee and to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which electricity shall be procured from different agencies through PPAs. The 1st Respondent does not deny the Petitioner's grounds for seeking extension of the commissioning date. As any such extension of the commissioning date would have an impact on the tariff payable to the Petitioner, we are of the considered opinion that, the Commission is required to examine the correctness of the Petitioner's request for extension of the time for commissioning its plant, even in the event of the 1st Respondent not opposing the request or in the absence of a provision in the PPA for such legal scrutiny by the Commission. It needs to be ensured that, the consumers' interest and, thereby, public interest is not

OP No.87/2017

allowed to be affected by payment of a tariff higher than what is due to the Generating Company, because of any action or inaction of the Respondent-Distribution Licensee. It can be easily inferred that the Petitioner's capital investment in its solar plant is much lower than the normative cost assumed in the Generic Tariff Order dated 10.10.2013 and even the Generic Tariff Order dated 30.07.2015 as it was sanctioned loan only on 29.09.2016. Hence, we hereby set aside the grant of extension of time of six months for commissioning of the Petitioner's plant by the Respondent No.1 as not being justified in the circumstances and facts of the case. Hence, we hold that the Petitioner's plant is entitled to a tariff of Rs.6.51 per unit for the term of the PPA, as per the Generic Tariff Order dated 30.07.2015.

(r) We note that, the evacuation approval was obtained on 05.08.2016 and the sanction of loan from KSFC on 29.09.2016 (as per letter dated 20.12.2016), which are beyond the period specified in Article 2.1 of the PPA. For not complying with the timelines specified for fulfilling the Conditions Precedent and commissioning of the Project as stipulated in the PPA, the Petitioner is required to pay damages for such delay, as per Articles 2.2 and 2.5.7 of the PPA.

(s) Therefore, we answer Issue Nos. (1), (2) and (3) as above.

8) **ISSUE No. (4):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The Petition is dismissed and the Petitioner is not entitled to any of the reliefs sought for in the Petition;
- (b) The Petitioner is entitled to a tariff of Rs.6.51 (Rupees Six and Paise Fifty One) only per unit, the varied tariff as applicable on the date of commissioning of the Petitioner's Solar Power Plant, as fixed by the Commission in the Order dated 30.07.2015, for the term of the PPA, as per Article 5.1 of the PPA; and,
- (c) The Petitioner is also liable to pay Liquidated Damages, as provided under Articles 2.2 and 2.5.7 of the PPA.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER