

Nos.: N/151/17

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

Dated : 16th January, 2018

Present:

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

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BETWEEN

MEPGEN Solar Private Limited,
No.356, 395, II E main, 11th Block,
Nagarabhavi, 2nd Stage,
Bengaluru-560 072.

.. **PETITIONER**

[Represented by Navayana Law Offices, Advocates]

AND

Bangalore Electricity Supply Company Limited,
K. R. Circle,
Bengaluru - 560001.

..

RESPONDENT

[Represented by Justlaw, Advocates]

- 1) The Petitioner has filed this Petition under Section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs:

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- a) Declare that the Petitioner has commissioned the Project within the time provided under the PPA by approving the extension of the Scheduled Commissioning upto 4th January, 2017;
 - b) Direct the Respondent to apply the tariff of Rs.8.40 per unit, as per the terms of the PPA, for the term of the PPA;
 - c) Condone the genuine delay caused in the delivery of power pursuant to the commissioning of the project;
 - d) Direct the Respondent not to levy any penalty for non-delivery of the power pursuant to the commissioning for the delay caused in the delivery of power is genuine and due to Force Majeure Events; and,
 - e) Pass such other incidental orders including the costs to meet the ends of justice and equity.
- 2) The submissions made by the Petitioner in support of its prayers may be summarised as follows:
- a) Karnataka Renewable Energy Development Limited (KREDL), the Nodal Agency of the Government of Karnataka for implementation of Solar Power Projects in the State, issued a letter dated 16th May, 2015 in favour of Sri A.V. Nagaraj Reddy (Solar Project Developer – SPD) of Chitradurga District and allotted 2 MW capacity of the Solar Power Project to be commissioned at Sy.No.420/4, in Dyamavanahali Village of Chitradurga Taluk and District under 1 - 3 MW Farmers' Scheme, subject to certain terms and conditions. Based on this allocation letter, the SPD executed a Power Purchase Agreement (PPA) dated 04th July, 2015 with the

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Respondent. As per the said PPA, the Effective Date was defined as the date of signing of the PPA and the scheduled Commissioning Date (SCOD) was defined as 18 months from the Effective Date. Thus, the Project Proponent was supposed to commission the Project by 03rd January, 2017.

- b) On 04.11.2015 the SPD approached the Karnataka Power Transmission Corporation Ltd.(KPTCL) for grant of Evacuation Approval for its Project. The KPTCL accorded tentative Evacuation approval on 18th May, 2016, and Regular Evacuation approval on 7th November, 2016.
- c) On 06.11.2015 the SPD initiated steps to get conversion of agricultural land for setting up the Project, which was granted by the Deputy Commissioner, Chitradurga, on 07.06.2016.
- d) Subsequently, the Petitioner, Special Purpose Vehicle (SPV) was formed under the provisions of Companies Act 1956 and all the rights and obligations of the Project Proponent (SPD) were transferred to the SPV (the Petitioner herein). Consequently, a Supplemental Power Purchase Agreement (SPPA) dated 07th June, 2016 was executed, which was approved by the Commission vide letter dated 13th July, 2016.
- e) The Chief Electrical Inspector, Government of Karnataka (CEIG), issued the required Electrical Safety Approval on 30.12.2016, after the Work Completion Report was given by the Petitioner on 26.12.2016.

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- f) Although, the work of the Project was complete as on 26th December, 2016 and the Electrical Safety Approval was given on 30th December, 2016, the Respondent delayed the grant of Work Completion Certificate. The Respondent, after issuing the Pre-Commissioning Test approval on 2nd January 2017, was ready to grant the Work Completion Certificate on 3rd January, 2017, but could not do so because of the death of the then Minister for Co-operation on that day, and consequent declaration of holiday by the State Government. Hence, the Work Completion Certificate was granted on 4th January, 2017.
- g) The Respondent, considering the genuine delay caused, extended the SCOD from 3rd January, 2017 by one week i.e. up to 10th January, 2017, vide letter dated 2nd March, 2017. The project was commissioned on 04th January, 2017.
- h) Soon after the commissioning of the Project on 4th January, 2017, some miscreants damaged and dismantled the transmission line inter-connecting the Petitioner's Project with the KPTCL sub-station. The Petitioner lodged a complaint with the Deputy Commissioner, Chitradurga District, on 10th January, 2017, after the jurisdictional police had refused to receive the complaint lodged.
- i) Thereafter, the Petitioner, on 17th April, 2017, sought Line Clearance (LC) for one week from the Respondent, to resolve the issue near the sub-station and the KPTCL granted the LC to the Petitioner. [We note that the LC Register produced by the Petitioner, as ANNEXURE-12, is

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dated 18th January 2017 and has no relevance to the Petitioner's averment.]

- j) Despite lodging a complaint with the Deputy Commissioner, the miscreants had continued to obstruct the laying of the dedicated Transmission Line. Hence, the Petitioner gave two more representations, dated 17th January, 2017 and 8th February, 2017 requesting the intervention of the Deputy Commissioner to resolve the issue, who, vide letter dated 10th February, 2017, instructed the jurisdictional Tahsildar and the Superintendent of Police to take necessary action as per law.
- k) The Petitioner received a Notice dated 21st February, 2017 from an Advocate of Chitradurga, informing of an *ex-parte* temporary injunction Order granted in O.S.No.56/2017 against the Petitioner on 20th February, 2017, by the Civil Court, Chitradurga, in the matter of erection of electric poles and wire in the suit property.
- l) The Tahsildar, Chitradurga Taluk, had submitted a report dated 22nd February, 2017 to the Deputy Commissioner, Chitradurga, about the work undertaken by the Petitioner with regard to the Transmission Line for the project. Based on this report, the Deputy Commissioner, Chitradurga issued an Order dated 7th March 2017 under Section 10(d) of the Indian Telegraph Act, 1885, permitting the Petitioner to re-lay the damaged Transmission Line subject to the payment of the specified compensation.
- m) The Petitioner, in its representation dated 17th April, 2017, requested the Respondent to consider the delay due to the disruption in Transmission

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Line by the miscreants and the consequent delay in delivery of the power. The Petitioner submitted another representation dated 28th April, 2017, requesting the Respondent not to make any demands or levy penalties for the genuine delay caused in supplying power due to *force majeure* events. The Petitioner also requested the Respondent to process the bills for payment at Rs.8.40 per unit as per the terms of the PPA.

- n) Thereafter, the Respondent handed over a copy of the letter dated 15th April, 2017 to the Petitioner, who visited the Respondent's office, informing the Petitioner to approach this Commission for extension of the commissioning date.
- o) The Respondent has neither made any payment nor assigned any reason for not making payments.
- p) The delay in commissioning of the Project by one day was due to an unexpected public holiday, which is a *force majeure* event beyond the control of the Petitioner. Section 10 of the Karnataka General Clauses Act, 1899 provides that, any act allowed to be done in any Court or Office on a certain day or within a prescribed period and, if the Court or Office is closed on that day or the last day of the prescribed period, the act shall be considered as done in due time, if it is done on the next day, on which the Court or Office is open. The delay of one day is due to the holiday declared on the scheduled date of commissioning and since the

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commissioning of the Project is done on the next day, it is deemed to have been done within time as per said provisions of the law and the PPA.

- q) The inability of the Petitioner to supply power pursuant to the commissioning of the Project is due to the act of the miscreants, who damaged the transmission line. Further, an *ex-parte* injunction Order was also obtained against the Petitioner. Despite all these obstructions, the Petitioner had reconstructed the transmission line by approaching the jurisdictional authorities. The inability to reconstruct the transmission line and consequent non-delivery of power is not due to the fault of the Petitioner.
- 3) On issuance of Notice, the Respondent entered appearance through its learned counsel and filed the Statement of Objections, which may be summed up as follows:
 - a) As per the terms of the PPA 04.07.2015, the generator was required to commission the Plant within 18 months from the date of execution of the PPA and accordingly, the Petitioner was required to commission the unit by 03.01.2017.
 - b) As the Petitioner was unable to execute the Project within time, the Petitioner sought from the Respondent extension of time by one week to commission the Project under the *force majeure* conditions.

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- c) In the meanwhile, as several requests for extension of scheduled commissioning date were received from solar developers, the Government of Karnataka issued an Order dated 24.11.2016 directing all the Electricity Supply Companies (ESCOMs) to constitute a three-member Committee to consider and dispose of the requests of farmers / developers. In furtherance to the said direction, a Committee was constituted by the Respondent to consider such requests. The said Committee, in its meeting held on 15.02.2017, decided to accord extension of 6 months' time to achieve the Scheduled Commissioning Date to the Petitioner's Project considering the causes for the delay and the documents furnished by the Petitioner. The following were reasons assigned for the delayed execution of the Project:

Land Conversion:

Date of Submission	:	06.11.2015
Date of Conversion	:	07.06.2016
Delay in getting approval	:	7 months

KPTCL Evacuation Approval (Regular):

Date of Submission	:	04.11.2015.
Date of Approval	:	07.11.2016.
Delay in getting approval	:	1 year

The Committee accorded approval for extension of SCOD upto one week under Article 2.5 of PPA as there was delay in issue of approvals by the various Government entities and the same was informed by the Respondent to the Petitioner on 02.03.2017.

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- d) The Commission vide its letter dated 16.03.2017 informed, all the ESCOMs of the State, not to allow any extension of time beyond the Scheduled Commissioning Date to the solar generators, as per the PPA without obtaining prior opinion of the Commission. Further, vide Commission's letter 05.04.2017, the ESCOMs were directed to advise all land owning Solar 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) Furthermore, the Energy Department, Government of Karnataka, vide letter No. EN 67 VSC 2017 dated 25.04.2017, has informed the Commission that it has recommended the approvals accorded in respect of extensions of Commercial Operation Date (COD) by the BESCOM (Respondent) for 6 (six) months from the date of SCOD as per Article 2.5 and Article 8 of the PPA. The subject was also placed before the 82nd Meeting of the Board of Directors of the BESCOM held on 11.05.2017 and the Board has ratified the actions taken on the extensions of time for the COD issued by the BESCOM to Solar Plants, under Farmers' category, subject to approval of the Commission.
- f) The Petitioner's Plant was commissioned on 04.01.2017. The Petitioner had exported 1,57,500 units of energy in March, 2017, as per the Form-B submitted by the Petitioner on 03.04.2017. The Petitioner had exported 2,99,750 units of energy in April, 2017, as per the Form B submitted on 03.05.2017. The Petitioner, vide letters dated 17.04.2017 and 28.04.2017,

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had requested the Respondents to pay the Petitioner at the rate of Rs.8.40 per unit, as the delay in delivering the energy was caused due to disruptions caused by farmers, which are force majeure events as per the PPA.

- g) In respect of extensions of the Project duration of already awarded Solar Power Projects, the Ministry of New and Renewable Energy (Government of India), in its letter dated 28.07.2017, has addressed to the Principal Secretaries (Power/Energy), State Government stating that:

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

- h) The Respondent has, therefore, prayed for issue of appropriate directions in the matter.

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- 4) The Petitioner filed a Memo on 05.12.2017, producing the Copy of Work Completion Certificate issued by the Respondent on 04.01.2017 and the bills submitted to the Respondent, to evidence payment made for the injected energy at Rs.6.51 per unit.
- 5) We have heard the learned counsel for the Petitioner and perused the material placed on record.
- 6) The following Issues arise for our consideration:
 - (1) Whether the Petitioner has proved that the Project was commissioned on 04.01.2017 and the project is eligible for the tariff of Rs.8.40 per unit, as agreed in the PPA?
 - (2) If not, whether the Petitioner has made out a case for grant of extension of time for commissioning of the Plant?
 - (3) Whether the Petitioner is liable for payment of any damages for the delay in supply of power to the Respondent?
 - (4) What Order?

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7) After considering the submissions of the parties and their pleadings and other material placed on record, our findings on the above issues are as follows:

8) **ISSUE No.(1):** *Whether the Petitioner has proved that the Project was commissioned on 04.01.2017 and the project is eligible for the tariff of Rs.8.40 per unit, as agreed in the PPA?*

ISSUE NO. (2): *If not, Whether the Petitioner has made out a case for grant of extension of time for commissioning of the Plant?*

ISSUE No. (3): *Whether the Petitioner is liable for payment of any damages for the delay in supply of power to the Respondent?*

As Issue Nos.(1), (2) and (3) are interconnected, we decide to deal with them together.

a) It is the case of the Petitioner that the Plant was ready for commissioning on 03.01.2017 (the SCOD), which was declared as a holiday due to the demise of a Minister and that on the very next day on 04.01.2017, the Plant was commissioned. The Petitioner has relied on Section 10 of the General Clauses Act, 1899, to submit that when the time prescribed to perform an act ends on a holiday and if it is done on the immediate next working day, it is treated as done within the time due. It is also the case of the Petitioner that immediately after commissioning, some miscreants damaged and dismantled the transmission line interconnecting the Project with the KPTCL sub-station and hence, the injection of energy was delayed till the problems relating to the line were resolved.

- b) The Petitioner claims that the Project was ready for commissioning on 03.01.2017. Article 4.1 of the PPA provides for Obligations of the SPD. The provisions of Article 4.1(a) to 4.1(d) are relevant and the same read as follows:

“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 schedule date of completion and commercial operation within 18 months from the effective date.

d. The SPD shall by itself or by any other person acting on its behalf undertake as its own cost maintenance of the interconnection facilities and the metering arrangements, including the dedicated transmission line up to the delivery points as per the specifications and requirements of STU/ BESCO, as notified to the SPD, in accordance with prudent utility practices. The transmission / distribution line so constructed shall remain as dedicated transmission / distribution line without provision for any tapping.”

- c) As per the above clauses, the Petitioner had to construct the dedicated transmission line upto the delivery point. The Work Completion Report

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dated 04.01.2017 produced by the Petitioner along with the Memo dated 5.12.2017 reads as follows:

"No. EE(E)/AEE(O)/AE(T)/16-17/7619-22
4/1/17

Dated:

WORK COMPLETION CERTIFICATE

Sub: Evacuation scheme for the proposed 2 MW Solar plant of Sri A V Nagaraj Reddy from project site at SY. No. 420/1 in Dyamavvanahalli Village, Chitradurga Taluk & District sanctioned under Land Owned Farmer Scheme_ Reg

Ref: 1. Letter No. SEE/DVG/EE(O)/AEE (E)/2016-17/12727-31 dated 03.01.2017 by Superintending Engineer (Ele), O&M Circle, BESCO, Davanagere.

2. Letter dated 04.01.2017 of the Assistant Executive Engineer, O&M Urban Sub-Division, Chitradurga.

Approval is accorded by the Superintending Engineer (Ele), O&M Circle, BESCO, Davanagere to run 500 Mtrs AB Cable along with the existing 11 KV feeder F-4 Kasavarahatty for commissioning of 2 MW Solar plant of Sri A.V.Nagaraj Reddy from project site at Sy No. 420/1 in Dyamavvanahalli Village Chitradurga District sanctioned under Land Owned Farmer Scheme vide letter cited under ref (1).

Accordingly, the 11 KV line is completed on temporary basis for commissioning of 2MW solar plant of Sri A.V.Nagaraj Reddy, Chitradurga Taluk & District sanctioned under Land Owned Farmer Scheme as per the Assistant Executive Engineer, O&M urban sub division, Chitradurga vide letter cited under ref-(2).

Sd/-

(B Mallikarjuna Swamy)
Executive Engineer (Ele)

O&M Division, BESCO
Chitradurga"

- d) The above document reveals that 500 meters AB Cable was arranged to be run along with the existing 11 kV feeder of the BESCO for commissioning of the Project. We note that, if it was true that the dedicated transmission line was laid by the Petitioner, as required within the SCOD, then there was no necessity for the Superintending Engineer (Ele), O&M Circle, Davanagere to issue instructions to run AB cable for 500 meters, on temporary basis, to commission the project. Apparently a special *ad hoc* arrangement, not contemplated under the provisions of Section 10 of the Electricity Act, 2003 or the terms of the PPA was made in the Petitioner's case by the concerned authorities to ensure that the Plant is somehow shown as commissioned within the SCOD and thus it proves that the dedicated transmission line for a distance of 500 meters was not ready as required under the PPA. This fact is further supported from the Electrical safety approval of CEIG dated 30.12.2016, where it is mentioned that the dedicated transmission line was completed for a distance of 5.5 KMs, whereas the Regular evacuation approval of the KPTCL dated 07.11.2016, shows the length of the dedicated transmission line required as 6.5 KMs from generation plant to KPTCL Substation, Chitradurga. However, the concerned authorities, in the minutes of the meeting held on 04.01.2017 for certifying commissioning of the Project, had not disclosed about the incomplete construction of the dedicated

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transmission line and on the other hand certified that the entire length of the line for 6.5 KMs was ready.

- e) We can also note that the claim of the concerned officers in the 'Work Completion Certificate' dated 04.01.2017 that 500 m AB Cable was allowed to be run alongwith the existing feeder of the BESCO for commissioning of the Solar Plant appears to be not true, as it is not the case of any party that this AB Cable laid along with the existing feeder was damaged or destroyed by anyone. If such AB Cable was there connecting the Substation, energy would have been injected from 05.01.2017. Admittedly, the power was injected into the grid sometime in March 2017, after laying of the dedicated transmission line, subsequent to the Order of Deputy Commissioner dated 07.03.2017 permitting laying of the dedicated transmission line on the lands of farmers. Therefore, we are unable to accept the claim of the Petitioner that the Project was 'ready for commissioning', in all respects, as on the SCOD, i.e., 03.01.2017. In the absence of a dedicated transmission line, the project cannot be said to be 'ready for commissioning'.
- f) We note that, Article 2.1.1 of the PPA provides that the SPD shall obtain all permits, clearances and approvals, statutory or otherwise, as required to execute and operate the Project within 365 days from the date of signing of the PPA. The Petitioner was aware that the Plant had to be commissioned within 03.01.2017, i. e., within 18 months from the date of execution of the PPA. The Petitioner has claimed that the Project was

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ready for commissioning on 03.01.2017, but commissioning could not be done, as it was a holiday. We note that, when sufficient time is provided for each event in the PPA, a prudent developer is expected to take timely action to complete the project and could not have waited till the last moment.

- g) The Petitioner's claim that on 04.01.2017, soon after the commissioning the Project, some miscreants damaged and dismantled the transmission line interconnecting the Petitioner's Project with the KPTCL sub-station (Paragraph-11 of the Petition) runs contrary to the documents produced. It is stated by the SPD, in the letters dated 10.1.2017 and 17.1.2017 (Annexure P-10 and P-13), that the 0.5 KM line is not being allowed to be laid by the farmers. In the letter dated 8.2.2017 (ANNEXURE-P13), it is stated by the SPD that the farmers are obstructing laying of the line for 0.5 KM and all efforts made to resolve the issue with them since 40-45 days have failed and that the Project has stopped since 40-45 days. In the Plaint in O.S.No.56/2017 dated 15.02.2017 (ANNEXURE-P16), filed by the farmers against the Petitioner and others, challenging the laying of the line, it is stated in Paragraph-7 that the cause of action arose in the third week of February 2017, when the defendants started making arrangements for erecting electric poles and wires in the suit schedule properties. In the Order dated 07.03.2017 of the Deputy Commissioner, Chitradurga (ANNEXURE-P17), it is mentioned in the Preamble that the applicant (SPD) has, in his letters dated 17.01.2017 and 08.02.2017, stated that the farmers are not allowing laying of the line for a distance of 0.5

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KM. All these documents indicate that the line was not ready on the scheduled date of the commissioning of the project and only a temporary arrangement was made by the authorities of the respondent to somehow facilitate the commissioning of the project on 04.01.2017. Therefore, we are unable to accept the Petitioner's claim that the dedicated transmission line was dismantled soon after commissioning of the Project.

h) The definition of "Commercial Operation Date" in Article 1 of the PPA with respect to the Project, shall mean the date on which the Project is **available for commercial operation**, as certified by BESCO /KPTCL as the case may be (*emphasis supplied by us*). The words 'available for commercial operation' would mean the date on which the Project is **ready to sell energy** to the Respondent (*emphasis supplied by us*). In the case on hand, although the KPTCL has issued a Commissioning Certificate to the effect that the Project is commissioned on 04.01.2017, we note that without a dedicated transmission line in place for 0.5 KM, the Project could not have injected energy into the grid. Admittedly, the sale or supply of energy from the Project commenced only in March, 2017. Hence, we are unable to accept the commissioning date of the Petitioner's Plant as 04.01.2017. We hold that the Project is commissioned sometime in March, 2017, when the energy has been injected.

i) The next point for consideration is, whether the Petitioner was prevented from injecting the energy due to *any force majeure* event. The Petitioner states that soon after the commissioning of the Project on 04.01.2017,

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some miscreants had damaged the dedicated transmission line. We have held in the preceding paragraphs that the line was not ready as on 04.01.2017. It is the further case of the Petitioner that the farmers disrupted the laying of the line and the Petitioner made two representations dated 17.01.2017 and 08.02.2017 to the Deputy Commissioner, Chitradurga in the matter. On considering the representations, the Deputy Commissioner, in his Order dated 07.03.2017, has awarded compensation to be paid to the farmers and permitted laying of the line. As can be made out from the plaint in O.S.No.56/2017, the grievance of the farmers was that the arrangements were made to cut the trees on the land to draw the line without paying compensation to them, as per law. Pursuant to the Order dated 07.03.2017 of the Deputy Commissioner, the dispute was resolved and in March, 2017, energy was injected from the Petitioner's Plant. These events reveal that the Petitioner had not taken any effective measures to resolve the issue before the SCOD. It is only in mid-January and February, 2017, representations were given to the authorities and action taken for laying of the line. The *force majeure* events mentioned in Article 8 of the PPA include strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this agreement. Article 8 also provides that neither party to the PPA shall be responsible for breach of the PPA because of any delay or failure in the performance of its obligation or failure to meet milestone dates due to a *Force Majeure* event, subject to the condition that the *Force Majeure* event was not caused by the non-performing party's negligent or intentional acts, errors

or omissions. We note that the farmers had resisted the work of laying the line in their lands 40-45 days prior to 08.02.2017 (as mentioned in the letter dated 8.2.2017- ANNEXURE- P13). It is stated in the plaint in O.S.No.56/2017 that in the third week of February, 2017, the Petitioner had made all arrangements to erect the poles and draw wires. It can be stated that the Petitioner had failed to obtain the consent of the land owners/farmers for laying the line. Had the Petitioner taken timely action to resolve the issue through negotiations or through legal recourse on failure of negotiations, there would not have been any reason for disruptions and litigations and the Plant could have started injecting power within the SCOD. Therefore, we hold that the Petitioner alone was responsible for the delayed injection of power by the Project and such delay does not fall under the *Force Majeure* clause of the PPA. Such delay adversely affects the interest of the Respondent-Distribution Licensee and, thereby, the consumers.

- j) We note that the Objections filed by the Respondent do not counter the factual aspects of the Petition. Hence, we hold them to be not relevant in disposal of the issues raised in the Petition. We also note that the Respondent is of the view that there is delay in getting approval of land conversion and power evacuation without considering that it is the SPD who delayed applying for such approvals. The details of efforts, if any, made by the SPD or the Petitioner, to expedite the process of grant/sanction of the approvals have not been sought or recorded. We do not find the grant of extension of Scheduled Commissioning Date by

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the Respondent, as justified. In any case, such extension is of no avail to the Petitioner as it has not commissioned the Project, as held by us within the extended period also.

- k) In the PPA, a tariff of Rs.8.40 per unit was agreed to be paid for the power injected by the Petitioner's Plant, subject to commissioning of the Project within the prescribed time. We note that no energy was injected by the Petitioner's plant from 04.01.2017, when the Petitioner claims to have commissioned the Plant. As per the bills raised by the Petitioner, the Plant began injecting power into the grid in March, 2017. As per Article 5.1 of the PPA, 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 Commission's tariff, then the project is entitled for the varied tariff. The Commission in its Order dated 30.07.2015, has revised the tariff applicable to Solar plants to Rs.6.51 per unit.
- l) We are, therefore, of the considered opinion that the Petitioner is not entitled for the tariff of Rs.8.40 per unit in respect of its plant, but is entitled for the reduced tariff of Rs.6.51 per unit.
- m) The next point of consideration is whether the Petitioner is liable for payment of damages. Clause 2.5.7 of the PPA reads as follows:

“Liquidated damages for delay in commencement of supply of power to BESCOs. Subject to the other provisions of this agreement, if the SPD is unable to commence supply of power to BESCO by the scheduled commissioning date, the SPD shall pay to

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BESCOM, liquidated damages for the delay in such commencement of supply of power as follows:

- a. *For the delay up to one month- amount equivalent to 20% of the performance security.*
- b. *For the delay of more than one month up to three months- amount equivalent to 40% of the performance security.*
- c. *For the delay of more than three month up to six months- amount equivalent to 100% of the performance security.*

For avoidance of doubt, in the event of failure to pay the above mentioned damages by the SPD, the BESCOM entitled to encash the performance Security."

n) The Clause states that, if there is delay in commencement of supply of power by the SPD, damages as mentioned above are liable to be paid. We have held that, there is delay in commencement of supply of power and the same is attributable to the Petitioner. Therefore, the Petitioner is liable to pay the damages as mentioned in the Clause 2.5.7 of the PPA.

(o) Thus, we answer Issues No, (1), (2) and (3) as above.

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

For the foregoing reasons, we pass the following:

ORDER

(a) The Petition is dismissed. The Petitioner is entitled to the reduced tariff of Rs.6.51 (Rupees Six and Paise Fifty One) only per unit for the term of the PPA; and,

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(b) The Petitioner is liable to pay damages, as per Article 2.5.7 of the PPA.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER