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

Dated : 13th July, 2017

Present:

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

RP No.5/ 2017

BETWEEN:

Kodangal Solar Parks Private Limited,
No.504/2, 5th Floor,
White House Block I,
66-3-1192/1/1, Kundanbagh,
Begumpet,
Hyderabad
Telangana – 500 016

..

PETITIONER

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

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru - 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, Mahalaxmi Chambers,
M.G. Road,
Bengaluru – 560 001.

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

RP No.6/ 2017**BETWEEN:**

Anantapur Solar Parks Private Limited,
 No.504/2, 5th Floor,
 White House Block I,
 66-3-1192/1/1, Kundanbagh,
 Begumpet,
 Hyderabad
 Telangana – 500 016

..

PETITIONER

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

AND:

- 1) Chamundershwari Electricity Supply Corporation Limited,
 No.29, Kaveri Grameena Bank Road,
 Vijayanagar, 2nd Stage,
 Mysuru – 570 019.
- 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, Mahalaxmi Chambers,
 M.G. Road,
 Bengaluru – 560 001.

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

RP No.7/ 2017**BETWEEN:**

Tungabhadra Solar Parks Private Limited,
 Flat No.808-811, 8th Floor,
 Narain Manzil,
 23, Barakhamba Road,
 NEW DELHI 110 001

..

PETITIONER

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

AND:

- 1) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 102.
- 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, Mahalaxmi Chambers,
M.G. Road,
Bengaluru – 560 001.

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

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 2nd 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 have admitted that, the disputes on various 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 relevant facts in these cases may be stated as follows :

(a) Relevant Dates :

Sl. No.	Relevant Dates	RP No.5/2017	RP No.6/2017	RP No.7/2017
1	Letter of Award	23.3.2016	23.3.2016	23.3.2016
2	Acknowledgment of Letter of Award	31.3.2016	31.3.2016	31.3.2016
3	Execution of PPA	02.6.2016	02.6.2016	03.6.2016

b) The Petitioners are Special Purpose Vehicles of M/s. Marikal Solar Parks Private Limited, a Solar Power Project Developer, who was allotted three Solar Power Projects at different places, as mentioned in the Letters of Award (LoAs) dated 23.3.2016 issued by the 2nd Respondent (KREDL). The Power Purchase Agreements (PPAs) were required to be executed within a certain period, as per the terms and conditions stated in the Request for Proposal (RFP) floated by the 2nd Respondent (KREDL). There was some confusion between the parties as to within which time they were required to execute the PPAs, as the terms mentioned in the LoAs were not in accordance with the terms of stated in the RFP, insofar as it relates to the time within which the PPAs had to be executed.

- (c) Therefore, the 2nd Respondent (KREDL) issued an Addendum dated 11.4.2016 clarifying that, the PPA should be executed within 60 (sixty) days from the date of receipt of the LoA.
- (d) Some of the Solar Power Developers, who could not execute the PPAs within the time stipulated in the Addendum dated 11.4.2016, made a request for further extension of time for execution of the PPAs. On the said request, the 2nd Respondent (KREDL) had issued an Official Memorandum (OM) dated 27.5.2016, with the following terms :
- “(i) Based on the Developers request approval is accorded to extend the time for 8 working days from 25.05.2016, i.e. upto 03.06.2016 to execute the Power Purchase Agreement (PPA) with concerned Electricity Supply Company Limited (ESCOM).
- (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.”
- (e) In the present cases, the LoAs dated 23.3.2016 must have been received by the Solar Power Developer on or before 31.3.2016. Therefore the PPAs executed on 2.6.2016 and 3.6.2016 should be held to have availed of the extension of time granted under the OM dated 27.5.2016. As per Term No.(ii) of the OM dated 27.5.2016 mentioned above, the Solar Power Developers signing the PPAs by availing of the extension of time granted in the said OM, should achieve the Commercial Operation Date (COD) within 12 (twelve) months from 25.5.2016.

- (f) In the case of all other Developers, who execute the PPAs by not availing of the extension of time granted under the OM dated 27.5.2016, the COD would be one year from the date of approval of the PPAs by this Commission. For one or the other reason, approval of the PPAs used to consume three or four months' time from the date of the PPA, as the 2nd Respondent (KREDL) had not strictly followed the procedure stipulated while conducting the bidding process.
- (g) Therefore, the PPA holders, who executed the PPAs by availing of the extension of time under the OM dated 27/5/2016, made a grievance before this Commission in the earlier Petitions that, the Term No.(ii) of the OM dated 27.5.2016 restricting the COD to 12 (twelve) months from 25.5.2016 is invalid and beyond the powers of the 2nd Respondent (KREDL) to impose such restriction.
- (h) After considering the contentions of the rival parties, this Commission had held, by its Order dated 27.4.2017 in RP No.14/2016 and two other connected cases, that the Term No(ii) of the OM dated 27.5.2016 is invalid and not binding on the Solar Power Developers who executed the PPAs by availing of the extension of time granted in the said OM.
- 5) We have considered the facts of the present cases in detail and also the facts in RP No.14/2016 and two other connected cases. The facts of the present cases would make out that, the PPAs were executed by

availing of the extension of time granted under the OM dated 27.5.2016, therefore the Petitioners are entitled to the reliefs prayed for in these Petitions.

- 6) Further, we are of the considered view that, the Petitioners 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, 28.9.2016 and 7.10.2016, respectively, issued in the above cases. The Petitioners have pleaded all the required facts to treat the present Review Petitions as the Original Petitions. It is also found that, all the Petitioners in these cases have paid the deficit Fee of Rs.10,000/- (Rupees Ten Thousand) only, each, during the pendency of these proceedings.

- 7) 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 2nd 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 Petitioners in these Petitions;

- (b) Consequently, the direction given by this Commission in its communication dated 7.10.2016 in RP No.5/2017, insofar as it relates to altering the 'Effective Date' as '25.5.2016' in Articles 3.1, 8.5 and 21.1 of the PPA, stands withdrawn;
- (c)(i) Consequently, the direction given by this Commission in its communication dated 28.9.2016 in RP No.6/2017, insofar as it relates to altering the 'Effective Date' as '25.5.2016' in Articles 3.1 and 21.1 of the PPA, stands withdrawn; and further,
- (ii) Article 8.5 of the PPA in RP No.6/2017, which directs the Developer to commission the Project 'within 12 (twelve) months from the 25.5.2016', shall be altered, so as to read as 'within 12 (twelve) months from the 'Effective Date''";
- (d) Consequently, in the PPA dated 3.6.2016 in RP No.7/2017, the date mentioned as '25.5.2016' in Articles 3.1 and 21.1 (while defining the 'Effective Date'), shall be suitably modified to reflect the 'Effective Date' as 'the date of approval of the PPA by this Commission'; and,
- (e) The original Order be kept in RP No.5/2017 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