

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

Dated : 31st August, 2017

Present:

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

OP No.86/ 2017

BETWEEN:

Mighty Avengers Solar Private Limited,
SPV of M/s. Rays Power Experts Private Limited,
R-1, Shreesheel Mohar Plaza,
Yudister Marg, C Scheme,
Near Yojana Bhawan,
Jaipur
Rajasthan – 302 005.

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PETITIONER

[Petitioner is represented by Smt. Poonam Patil, Advocate]

AND:

- 1) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 029.
- 2) Karnataka Renewable Energy Development Limited (KREDL),
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Palace Road,
Bengaluru – 560 001.

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RESPONDENTS

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

OP No.102/ 2017**BETWEEN:**

Asian Fab Tech Limited,
No.15, II Phase,
Peenya Industrial Area,
Bengaluru – 560 058 .

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PETITIONER

[Petitioner is represented by Shri Reuben Jacob, Advocate]

AND:

- 1) Bangalore Electricity Supply Company Limited (BESCOM),
K.R. Circle,
Bengaluru - 560 001 .
- 2) Karnataka Renewable Energy Development Limited (KREDL),
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Palace Road,
Bengaluru – 560 001 .
- 3) The Secretary,
Karnataka Electricity Regulatory Commission,
6th & 7th Floor, Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bengaluru – 560 001 .

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RESPONDENTS

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

OP No.103/ 2017**BETWEEN:**

Asian Fab Tech Limited,
No.15, II Phase,
Peenya Industrial Area,
Bengaluru – 560 058 .

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PETITIONER

[Petitioner is represented by Shri Reuben Jacob, Advocate]

AND:

- 1) Bangalore Electricity Supply Company Limited (BESCOM),
K.R. Circle,
Bengaluru - 560 001 .

OP Nos.86/2017, 102/2017 and 103/2017.

- 2) Karnataka Renewable Energy Development Limited (KREDL),
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Palace Road,
Bengaluru – 560 001.
- 3) The Secretary,
Karnataka Electricity Regulatory Commission,
6th & 7th Floor, Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bengaluru – 560 001.

.. **RESPONDENTS**

*[Respondent-1 is represented by Justlaw, Advocates,
Respondent-2 is 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 latter part of the Official Memoranda dated 27.5.2016 and 22.6.2016 issued by the 2nd Respondent- Karnataka Renewable Energy Development Limited (KREDL), is valid or not?’
- 3) The points involved for our consideration in OP Nos.102/2017 and 103/2017 are similar to those involved in RP No.14/2016 and the connected cases, which have been decided by this Commission by granting the reliefs, by holding that, the latter part of the Official Memorandum dated 27.5.2016 restricting the period for achieving the Scheduled Date of Commissioning is invalid and directing the parties

to amend the definition of the 'Effective Date' in the PPA concerned as 'the date of approval of the PPA by this Commission'.

4) In OP No.86/2017, the Official Memorandum / Letter dated 22.6.2016 was issued by the 2nd Respondent (KREDL) enabling the Petitioner therein to execute the PPA within 10 (ten) days from 16.6.2016, subject to the condition that, the Commercial Operation of the Project should be achieved within 12 (twelve) months from 25.5.2016. For the reasons already stated in RP No.14/2016 and the connected cases, the restriction imposed curtailing the period for achieving the Scheduled Date of Commissioning is held to be invalid and in this Petition also, the parties are to be directed to amend the definition of the 'Effective Date' in the PPA concerned as 'the date of approval of the PPA by the Commission'.

5) In RP No.14/2016 and the connected cases, after considering the different clauses of the Request for Proposal (RFP), this Commission has held that, the 2nd Respondent (KREDL) could extend the time for execution of the PPA as provided in the RFP, but could not restrict the period for achieving the Scheduled Date of Commissioning. The reason stated in RP No.14/2016 and the connected cases, in this regard, read thus:

"None of the provisions in the RFP provides for imposing any condition while extending the time for acknowledging the receipt of the LoA beyond seven days of the receipt of the LoA or while extending the time for execution of the PPA. When there is no such power for imposing any condition while extending the time for execution of the PPA, we are

of the considered view that, the 2nd Respondent (KREDL) cannot unilaterally impose a condition altering the meaning of the 'Effective Date' to the disadvantage of the Solar Project Developer. The power conferred on the 2nd Respondent (KREDL) for extension of time under the RFP cannot be construed to include the power to impose any disadvantageous conditions on the Solar Project Developers. There should be a specific provision in the RFP itself, for this purpose. It cannot be disputed that, the time can be extended only for valid reasons made out by the Developers. Therefore, it was within the discretion of the 2nd Respondent (KREDL) to extend or not to extend the time, depending on the facts and circumstances of each case. However, the 2nd Respondent (KREDL) is not legally authorized to impose any condition unilaterally to the disadvantage of the Solar Project Developer."

- 6) In OP No.86/2017, the PPA should have been executed within 10 (ten) days from 16.6.2016, i.e., on or before 26.6.2016, as per the Official Memorandum/Letter dated 22.6.2016. However, it is noticed that, the PPA has been actually executed by the parties on 28.6.2016. The Commission has noted that, 26.6.2016 happens to be a Sunday. Therefore, there has been a delay of one day in executing the PPA.
- 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 OP Nos.102/2017 and 103/2017;

- (b) Further, it is declared that, the latter part of the Official Memorandum / Letter dated 22.6.2016 issued by the 2nd Respondent (KREDL), to the effect that, 'subject to the condition that the Commercial Date of Operation (COD) of the Project shall be 12 months from 25.5.2016' is invalid and not binding on the Petitioner in OP No.86/2017;
- (c) Consequently, the direction given by this Commission in its communication dated 6.10.2016 in OP No.86/2017, insofar as it relates to altering / modifying the 'Effective Date' as '25.5.2016' in Articles 3.1, 8.5 and 21.1 of the PPA dated 28.6.2016, stands withdrawn;
- (d) Consequently, the directions given by this Commission in its communication dated 7.10.2016 in OP Nos.102/2017 and 103/2017, insofar as it relates to altering / modifying the 'Effective Date' as '25.5.2016' in Articles 3.1, 8.5 and 21.1 of the PPAs dated 3.6.2016, stand withdrawn;
- (e) Consequently, in all the above Petitions, the parties shall execute the Supplemental PPAs, accordingly; and,
- (e) The original Order be kept in OP No.86/2017 and copies, thereof, be kept in the other two connected cases.

Sd/-	Sd/-	Sd/-
(M.K. SHANKARALINGE GOWDA)	(H.D. ARUN KUMAR)	(D.B. MANIVAL RAJU)
CHAIRMAN	MEMBER	MEMBER