

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

Dated : 1st February, 2018

Present:

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

OP No.107/2017

BETWEEN:

Mr. Basavarajaiah,
S/o Late Choodaiah,
336, 1-D Cross, 6th Block,
2nd Phase, Banashankari 3rd Stage,
Bengaluru – 560 085
[Represented by Navayana Law Offices, Advocates]

.. **PETITIONER**

AND:

- 1) Bangalore Electricity Supply Company Ltd.,
Corporate Office, K.R. Circle,
Bengaluru – 560 001.
- 2) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bengaluru – 560 001.
[Respondents represented by Justlaw, Advocates]

.. **RESPONDENTS**

ORDERS

- 1) This Petition is filed by the Petitioner under Section 86(1)(f) of the Electricity Act, 2003, in effect, praying for:
 - (i) a declaration that, the Petitioner is entitled to the grant of extension of the Commercial Operation Date (COD) upto 28th March, 2017 and as the Petitioner's Project was commissioned before 31.03.2017, it is entitled to the tariff of Rs.8.40 per unit, as per the PPA dated 29.06.2015; and,
 - (ii) to direct the Respondent – Bangalore Electricity Supply Company Limited (BESCOM) to make payment at Rs.8.40 per unit for the term of the PPA.

- 2) The submissions by the Petitioner in support of his prayers may be summed up as follows:
 - (a) The Petitioner was allotted by the Karnataka Renewable Energy Development Limited, a 1 Mega Watt (MW) capacity Solar Power Project under the land owning farmers' category at Thugani Village, Kasaba Hobli, Kanakapura Taluk, Ramanagara District, under the State Government's Solar Policy. The Petitioner executed a Power Purchase Agreement (PPA) with the 1st Respondent (BESCOM) on 29.06.2015. The Commission, by letter dated 25.08.2015, approved the said PPA. As per the PPA, the Petitioner,

subject to *Force Majeure* Events and other exceptions mentioned therein, was required to commission the project on or before 28.12.2016. As the Sub-Station of the 2nd Respondent-Karnataka Power Transmission Corporation Limited (KPTCL) at Chatra, to which the Petitioner had been given approval for evacuation, was yet to be energized by the 2nd Respondent (KPTCL), the Work Order for drawing the transmission line from the Petitioner's Project up to Chatra Sub-Station was yet to be issued, as on 15.12.2016, the Petitioner in his letter dated 15.12.2016 to the 1st Respondent sought extension of time to commission the project by three months.

(b) Subsequently, the Petitioner, feeling that the existing evacuation would not materialize due to non-commissioning of the Chatra Sub-Station by the 2nd Respondent (KPTCL), vide his letter dated 19.12.2016, sought permission from the 1st Respondent, to connect the Power Plant to a 11 kV NJY line running in the Project site. After certain internal correspondences, approval for the alternative line was given on 31.12.2016 by the 1st Respondent by which time the COD as per the PPA had elapsed.

(c) The alternative evacuation / interconnection scheme via NJY line was proposed by the Petitioner, hoping that the Project could be commissioned within the original deadline of 28.12.2016. However, once this deadline could not be met, the Petitioner went ahead with the erection of a 11 kV

transmission line from his Solar Power Project upto Chatra Sub-Station, as per the approved regular evacuation scheme. The Petitioner completed all the project works and submitted a Work Completion Report to the Chief Electrical Inspector (CEIG) on 27.12.2016.

- (d) The CEIG after a detailed inspection on 28.12.2016 issued electrical safety approval on 31.12.2016.
- (e) The Petitioner vide his letter dated 09.01.2017 to the 1st Respondent (BESCOM), while furnishing the details of project implementation, along with documents, sought for extension of time to commission the project. The 1st Respondent having considered such request, granted extension of time for the Scheduled Commissioning Date upto 28.03.2017, as per Article 2.5 and Article 8 of the PPA.
- (f) On 06.03.2017 the 2nd Respondent granted the provisional interconnection approval to the Petitioner, and issued the Commissioning Certificate dated 28.03.2017 certifying that the Petitioner had successfully commissioned the Project on 13.03.2017. The Petitioner received a letter dated 15.04.2017 from the 1st Respondent to file a Petition before this Commission, seeking approval for extension of the commissioning date. Hence the Petitioner has filed this Petition.

3) Upon issuance of Notice, the Respondents appeared through their Counsel. The 1st Respondent filed its Objections, which may be summed up as follows:

(a) As the Petitioner was unable to execute the Project in a timely manner, the Petitioner sought extension of time by three months, under the *force majeure* conditions for commissioning the Project. As several requests for extension of Scheduled Commissioning Date were received from the Solar Projects Developers under the farmers' category, the Government of Karnataka (GoK) issued an Order dated 24.11.2016, directing all the Electricity Supply Companies (ESCOs) to constitute a 3-Member Committee, to consider and to dispose of such requests. Accordingly, a Committee was constituted by the 1st Respondent, which in its meeting held on 23.01.2017, found the following to be the reasons for the delayed execution of the Project from the documents furnished by the Petitioner:

(1) *Land Conversion:*

- i. Date of Submission(application): 16.10.2015.
- ii. Date of conversion : 21.05.2016.
- iii. Delay in getting approval : 7 months.

(2) *KPTCL Evacuation Approval (Regular):*

- i. Date of Submission(application): 13.01.2016 / 05.10.2016
(revised application for Sub-Station at Chatra)
- ii. Date of Approval : 08.11.2016.
- iii. Delay in getting approval : Nearly 10 months.

- (3) *MEI Switch Gear approval:*
- i. Date of Purchase Order : 08.11.2016
 - ii. Date of receipt at the site : 24.12.2016.
 - iii. Delay in getting at site : About one month.
- (b) The Committee, opined that approval may be accorded for extension of SCOD upto three months, considering Article 2.5 of the PPA, as there was a delay in issuance of approvals by the various Government entities. The subject was placed before the 81st Meeting of the Board of Directors of the 1st Respondent held on 09.02.2017, which took on record the facts of the extension issued by the 1st Respondent (BESCOM).
- (c) On 16.03.2017, this Commission addressed a letter to all the ESCOMs in the State, in the matter of extension of time granted to the Solar 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 05.04.2017, the ESCOMs were directed by the Commission to advise all the land owning Solar Developers / SPVs to approach the Commission and seek for approval of the extension of time. In furtherance to the same, the Petitioner has filed this Petition.

- (d) The Energy Department in its letter dated 25.04.2017 to the Commission, has recommended for acceptance of the approvals accorded in respect of the extensions of the Commercial Operation Date (COD) by the 1st Respondent for 6 (six) Months from the SCOD, as per Articles 2.5 and 8 of the PPA.
- (e) The project was commissioned on 13.03.2017.
- (f) In respect of extension of the Project duration of already awarded Solar Power Projects, the Ministry of New and Renewable Energy (Govt. of India) has issued a letter dated 28.07.2017, addressed to the Principal Secretaries (Power / Energy) of the State Governments, stating as below:
- “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 organisations regarding land, transmission or any such reasons, the extension of the project may be allowed”.*
- (g) The 1st Respondent has, therefore, prayed for appropriate directions in the present Petition.

- 4) The 2nd Respondent, though represented by its Counsel, has not filed any objections.
- 5) We have perused the records and heard the learned counsel for both parties. 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 the Respondent No.1, 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?
- 6) After considering the submissions of the learned Counsel for the parties and other material placed on record, our findings on the above issues are as follows:
- 7) As the above issues are interconnected, we deal with them together.

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 the Respondent No.1, 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?*

- (a) It would be useful to extract the various clauses of the PPA that are necessary for answering the issues raised in the 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"):*

(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 BESCO Event of Default; or
- b. Force Majeure Events affecting BESCO; 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 BESCO through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or BESCO, or till such time such Event of Default is rectified by BESCO.

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:

- 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/BESCOM, 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 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;*
 - 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, the slight delay in commissioning of the Project was caused due to the fact that, the 2nd Respondent (KPTCL)'s 66/11 kV Sub-Station at Chatra got commissioned only on 01.03.2017, due to agitation by the farmers demanding higher compensation and also the delay in supply of switchgear to the Sub-Station. That the farmers also did not permit the Petitioner to complete the transmission line, from the Petitioner's Power Project to the Chatra Sub-Station.
- (c) The Petitioner submits that, he had given the Status Report of the Project execution, periodically, to the 1st Respondent and recognizing the genuineness of the Petitioner's claims, the 1st Respondent granted extension of time upto 28.03.2017 and therefore, the Petitioner is entitled to the relief sought.
- (d) We note that, under Article 2.5 of the PPA, the extension of time for commissioning the Project can be granted, if the SPD is prevented from performing its obligations due to the 1st Respondent (BESCOM)'s Events of Default or *Force Majeure* Events. For availing of the benefit of the *Force*

Majeure events, the requirements to be fulfilled are mentioned in Article 8.3(b) of the PPA. Under Article 8.3(b) of the PPA, it is also necessary to prove that, the *Force Majeure* Event was not caused by the non-performing party's negligent or intentional acts, errors or omissions and he had issued the Notice to the other party. In this backdrop, we need to examine, if the Petitioner was in any manner negligent in performing its obligations under the PPA particularly in the light of the timeline fixed in the PPA for fulfilling Conditions Precedent and for commissioning the project.

- (e) The Petitioner claims that, the commissioning of the Project was delayed due to the delay in establishing the Sub-Station at Chatra by the 2nd Respondent (KPTCL) and the laying of the dedicated transmission line, from the Project to the Sub-Station, due to the agitation by the farmers for higher compensation.
- (f) According to the terms of the PPA dated 29.06.2015, the Conditions Precedent had to be achieved within 365 days of 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.
- (g) The fulfilment of Conditions Precedent, as per Article 2.1 of the PPA, includes obtaining all necessary approvals and achieving the financial closure by the Project Developer (SPD, the Petitioner). Some of the approvals

necessary for implementing the Project are the conversion of land and evacuation approval. The Petitioner SPD applied for conversion of the land on 16.10.2015, after a period of four months from the date of the PPA. No explanation is given for this delay on the part of the Petitioner SPD. The land conversion Order was passed by the Deputy Commissioner, Ramanagara, on 21.05.2016, i.e., after about seven months from the date of application. No details or documents are furnished by the Petitioner about the steps taken to get the land conversion Order expeditiously. In any case, it is the Petitioner who failed to file the application immediately after signing the PPA. When the time stipulated in Article 2.1 for obtaining all the necessary approvals is 365 days, we feel that, the Petitioner SPD was not diligent in applying for conversion of the land. This aspect has not been considered by the 1st Respondent (BESCOM), while granting extension of time to commission the Project.

- (h) The Petitioner applied for Power evacuation permission to the 2nd Respondent (KPTCL) on 13.01.2016, that is after more than six months from the date of signing the PPA. There is no explanation for this delay. In this application dated 13.01.2016, the Petitioner had requested for evacuation facilities from Hanumanthanagara Sub-Station. The PPA (Schedule-1) also mentions the nearest Receiving Station as Hanumanthanagar Sub-Station. The intimation to pay the processing fee was sent to the Petitioner, vide letter dated 5.2.2016. The fee was paid by the Petitioner on 21.05.2016.

Thereafter, on 20.9.2016, the tentative evacuation approval was granted and the same was revised on 24.09.2016. Subsequent to the tentative evacuation approval granted by the 2nd Respondent (KPTCL), the Petitioner made a revised application dated 05.10.2016 for evacuation of power from Chatra Sub-Station, knowing that it was under construction, as it was near the Project site and the crossing of the line over the National Highway could be avoided, as in the case of evacuation to the Hanumanthanagara Sub-Station. These facts could be made out from the Table at Page-75 of the Petition (ANNEXURE-P10), the Regular evacuation approval letter dated 08.11.2016 of the 2nd Respondent (KPTCL) (ANNEXURE-P10) and Paragraph-4 of the letter dated 05.09.2017 of the 2nd Respondent (KPTCL) produced by the Petitioner along with the Memo dated 19.12.2017. The Chatra Sub-Station was under construction and this was communicated to the Petitioner in the Regular Evacuation Approval letter dated 08.11.2016 of the Respondent (KPTCL). It is stated in the letter dated 05.09.2017 of the 2nd Respondent (KPTCL) that, the work of establishing the Chatra Sub-Station was awarded on 25.01.2016, with the target date of completion as 24.01.2017. Ultimately, the Sub-Station was commissioned on 01.03.2017. These facts reveal that, knowing that the Chatra Sub-Station would not be ready within the SCOD (28.12.2016), as the target date for completion of the Sub-Station was 24.01.2017, the Petitioner opted for a change of Sub-Station, from Hanumanthanagara to Chatra. In the circumstances, the allegation that, the delay in granting evacuation approval attributed to the

2nd Respondent (KPTCL), cannot be accepted, as the revision of evacuation approval was at the behest of the Petitioner and the same was granted on 08.11.2016, about one month from the date of application for revision (05.10.2016). These aspects were not looked into by the 1st Respondent (BESCOM), while granting the extension of time to commission the Project.

(j) We note that, under Articles 4.1(a) to 4.1(d) of the PPA, the SPD is required to construct a dedicated transmission line upto the Delivery Point. We note from the letter dated 31.12.2016 of the 1st Respondent (BESCOM) (ANNEXURE-P8) that, the dedicated transmission line was not ready as on 31.12.2016. In the letter dated 19.12.2016 (ANNEXURE-P4) also, it is stated by the Petitioner that, the running of the 11 kV line to the Sub-Station has met with the right of way issues. In the letter dated 09.01.2017 of the Petitioner addressed to the 1st Respondent (BESCOM) (ANNEXURE-P10), it is stated that the 11 kV line has been completed and only 11 kV Bus Coupling and integration is awaited. It can be inferred from these events that, the 11 kV line was not completed within the SCOD and the Project cannot be accepted to be ready for commissioning, as on 28.12.2016, without a dedicated transmission line being in place.

(k) We also note from the letter dated 29.11.2016 (ANNEXURE-P10 collectively) of the 2nd Respondent (KPTCL) that, pursuant to the regular evacuation approval dated 08.11.2016, a request was made by the Petitioner to spare

the land belonging to the 2nd Respondent (KPTCL) at the proposed Chatra Sub-Station for construction of a 11 kV TB (Switchgear and DP Structure) with metering arrangement at Chatra Sub-Station. Considering this request, the 2nd Respondent (KPTCL) has requested the Petitioner to pay Rs.2,29,900/- for sparing the land, on lease basis, for 30 years. It cannot be made out as to when this amount was paid and whether delay in payment of this caused any further delay in the progress of the Project.

- (l) The other reasons attributed by the Petitioner for the cause of delay in commissioning the Project are that, the bay extension application was given on 14.11.2016 and approval was granted on 29.11.2016, after fifteen days and there was delay in supply of MEI switch gear on 24.12.2016 pursuant to purchase order dated 8.11.2016. We note that, out of the 18-month period available for commissioning the Project, the additional time of fifteen days or one month in grant of any approval or supply of any vital materials will not have a major impact, unless as in the Petitioner's case there has been delay in initiating action for getting them.

- (m) We note that, it is a 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 1st Respondent. The reasons quoted by the Petitioner do not fall under the events of *Force Majeure* mentioned in the PPA, as held 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 clauses of the PPA.

- (n) It is the submission of the Petitioner that, the tariff mentioned in the Generic Tariff Order dated 30.07.2015 is applicable to all new grid connected Megawatt Scale Solar PV Power Projects, entering into PPA on or after 01.09.2015 and getting commissioned during the period from 01.09.2015 to 31.03.2018, for which PPAs have been entered into prior to 01.09.2015. That since the PPA of the Petitioner was signed on 29.06.2015, much prior to 01.09.2015 and the Project was commissioned on 13.03.2017, the Petitioner is entitled to the tariff of Rs.8.40 per unit, agreed in the PPA, for the term of the PPA and the Generic Tariff Order dated 30.07.2015 is not applicable to his case. The Petitioner also submits that, the Apex Court in the case of *BESCOM Vs Konark Power* has categorically held that, once PPA is approved, there cannot be variance in the tariff.
- (p) Article 5.1 of the PPA provides for reduction of the tariff, as a consequence of delay in commissioning of the Solar Power Project beyond the Scheduled Commissioning Date, subject to certain terms and conditions stated therein. This is in view of the fact that, this Commission periodically determines the generic tariff 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 months to 18 months. Any delay or failure in the commencement of power supply within the agreed date would disrupt the operation of the Distribution Licensees, like the 1st Respondent (BESCOM) herein, 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 to imposition of penalties for not meeting the Renewable Purchase Obligation fixed by this Commission. 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 globe. Thus, the generic tariff for the Megawatt Scale Solar Power Plants, which was fixed at 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.

- (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 regulate the purchase of electricity 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 (BESCOM) 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 Solar Power Plant, even in the event of the 1st Respondent (BESCOM) 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 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 his 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 the Petitioner availed

loan from the Karnataka State Finance Corporation Limited (KSFC) only in August, 2016, as per letter dated 10.8.2016 produced by the Petitioner along with the Memo dated 19.12.2017. We also note that the loan sanctioned to the Petitioner attracts interest at a very low rate of 4% per annum as against the normative rate of 12.3% and 12.5% per annum assumed in the Generic Tariff Orders dated 10.10.2013 and 30.07.2015, respectively. Hence, we do not approve the grant of extension of three months' time for commissioning the project by the 1st Respondent, as it is not justified in the facts and circumstances of the case.

- (r) The PPA provides that, the tariff as on the date of commercial operation will be applicable for the Project when it is not commissioned by the scheduled date. The Project was commissioned on 13.03.2017. The tariff prevailing as on the date of commissioning was Rs.6.51 per unit, as per the Generic Tariff Order dated 30.07.2015. We note that, although the PPA is entered into before the date of the said generic Tariff Order, the Project was commissioned beyond the scheduled commercial operation date and during the control period of the Order dated 30.07.2015 and therefore, the varied tariff as per that Order is applicable to the Petitioner's project for failing to perform its obligation as per the PPA signed by the Petitioner. The clause specifying 'applicability of varied tariff' is a part of the PPA executed by the Petitioner and does not amount to variance of approved tariff as contended by the Petitioner. 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 30.7.2015 under Article 5.1 of the PPA.

(s) We have held that, the Petitioner is not entitled to the extension of time to commission the Project. We note that, the evacuation approval was obtained on 08.11.2016 and the loan sanction from the KSFC was on 10.08.2016, beyond the period mentioned in Article 2.1 of the PPA. For not complying with the timelines 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 the Articles 2.2 and 2.5.7 of the PPA.

(t) 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;

(b) The Petitioner is entitled to a tariff of Rs.6.51 (Rupees Six and Paise Fifty One) only per unit, the varied tariff applicable as on the date of commissioning of the Petitioner's Plant, as fixed by the Commission in

the Order dated 30.7.2015, 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