

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

Dated : 8th February, 2018

Present:

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

OP No.135/2017

BETWEEN:

VCarve Solar LLP,
H No. 2-8, Rajadhani Gardens,
New Maruthi Nagar, Kothapet,
Hyderabad,
Telangana – 500 660

..

PETITIONER

[Represented by Navayana Law Offices, Advocates]

AND:

Bangalore Electricity Supply Company Ltd.,
Corporate Office, K.R. Circle
Bengaluru – 560 001.

..

RESPONDENT

[Respondent represented by Sri Shahbaaz Husain, Advocate]

ORDERS

- 1) This Petition is filed under Section 86(1)(f) of the Electricity Act, 2003 praying in effect to approve the extension of time granted by the Respondent for commissioning the Solar Power Project beyond the scheduled commercial operation date and to direct the Respondent to

make payment for the delivered energy at the tariff of Rs.8.40 per unit, as agreed in the Power Purchase Agreement (PPA) dated 02.07.2015, for the entire term of the PPA.

2) The facts of the case necessary for the disposal of the Petition may be summed up as follows:

(a) Pursuant to the State Government's Solar Policy, the Karnataka Renewable Energy Development Limited (KREDL) invited online applications on 09.10.2014 from the eligible agricultural land owning farmers for development of Solar Power Plants. Out of the participant-applicants, the KREDL accepted the application of Sri Sreenidhi. V. (Solar Power Developer-SPD) for allotment of Solar Project of 1 MW capacity at Thalavatty Village, Imangala Hobli, Hiriyur Taluk, Chitradurga District and issued a Letter of Award dated 17.03.2015 to the SPD, instructing him to execute a PPA with the Respondent.

(b) On 02.07.2015, the PPA was signed between the Respondent and the SPD with the tariff agreed at Rs.8.40 per unit. As per the PPA, the Conditions Precedent had to be achieved before 02.07.2016 and the plant had to be commissioned on or before 01.01.2017 [the Scheduled Commercial Operation Date (SCOD)]. The PPA was approved by the Commission, vide letter dated 25.08.2015.

- (c) The SPD made an application on 29.4.2016 to the Deputy Commissioner (DC), Chitradurga, for conversion of land and the Conversion Order was issued on 05.08.2016. On 08.08.2016, the application for evacuation approval was made to the Karnataka Power Transmission Corporation Limited (KPTCL) and the same was granted on 02.12.2016.
- (d) In the meanwhile, on 27.5.2016 the SPD formed an SPV (the Petitioner) to implement the solar project and the Petitioner executed a SPPA dated 07.06.2016 with the Respondent to this effect. The Commission approved the SPPA vide letter dated 11.7.2016.
- (e) The Project could not be completed within the SCOD and the Petitioner SPV, on 15.12.2016, sought from the Respondent extension of six months' time for achieving the COD, citing reasons such as riots due to the Cauvery water dispute, demonetisation by the Central Government, delay in conversion of land, delay in evacuation approval, delay due to self-funding route, etc. The Respondent, vide letter dated 02.03.2017, communicated extension of the COD by six months, i.e., till 02.07.2017. However, vide letter dated 31.03.2017, the Respondent informed the Petitioner that, the extension of time granted for COD is subject to the condition that 'the tariff applicable and the liquidated damages to be paid, if any, is subject to approval of the KERC'. Further, the Respondent,

vide letter dated 15.04.2017, directed the Petitioner to approach the KERC for seeking approval for extension of the COD. The Solar Power Plant was commissioned on 10.05.2017.

- (f) For the delay in achieving Conditions Precedent, the Petitioner, on 07.09.2016 paid the liquidated damages, as stipulated in Article 2.2.1 of the PPA.
 - (g) The Respondent, in its letter dated 23.06.2017 (Annexure P-14), demanded payment of liquidated damages, as per Articles 2.2.1 and 2.5.7 of the PPA.
 - (h) The present Petition is filed on 17.08.2017.
- 3) Upon issuance of Notice, the Respondent appeared through its Counsel and 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 for commissioning the Project by six months under the *Force Majeure* conditions. 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 ESCOMs to constitute a 3-Member

Committee to consider and to dispose of such requests. The Committee constituted by the Respondent to consider the requests for extension sought for, by the Solar Generators under the land owing farmers' category, considered the Petitioner's request for extension of time, for the following reasons, as per the documents furnished to it:

(i) *Land Conversion:*

Date of Submission (of application): 3.5.2016.

Date of Conversion: 5.8.2016.

Delay in getting approval: 3 months.

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

Date of Submission (of application): 8.8.2016.

Date of approval: 2.12.2016.

Delay in getting approval: nearly 4 months.

- (b) The Committee, opined that approval may be accorded for extension of SCOD upto six months considering Article 2.5 of PPA, as there was a delay in issuance of approvals by various Government entities.
- (c) The Respondent, vide letter dated 02.03.2017 informed the Petitioner about the extension of time by six months, for achieving SCOD.
- d) The subject was placed before the 82nd Meeting of the Board of Directors of the BESCOM held on 11.05.2017, which ratified the actions taken on the extensions issued by the BESCOM, subject to approval of the Commission. The Respondent had sought directions from the

Government regarding the request for extension of the SCOD by SPD's SPV, under farmers' category. The Energy Department, vide letter dated 25.04.2017, recommended to the Commission, to accept the approval accorded by the BESCO for extension of the COD of Solar Power Projects under Articles 2.5 and 8 of the PPA.

- (e) On 16.03.2017, the Commission addressed a letter to all the Electricity Supply Companies (ESCOMs) of the State, informing them not to allow any extension of time beyond the Scheduled Commissioning Date, as per the original PPA without obtaining its prior opinion. Further, vide letter 05.04.2017, the ESCOMs were directed by the Commission to advise all the Solar Developers / SPVs, to approach the Commission and seek approval of the extension of time. In furtherance of the same, the Petitioner has filed this Petition.
- (f) In respect of extension of the Project duration of the already awarded Solar Power Projects, the Ministry of New and Renewable Energy (Govt. of India), in its letter dated 28.07.2017 addressed to the Principal Secretaries (Power / Energy) of the State Governments, has stated 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 any 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."

- (g) The Respondent has prayed for appropriate directions in the present Petition.
- 4) We have heard the Counsel for both parties and perused the 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 the Respondent to the Petitioner for achieving the commercial operation of the Petitioner's Plant can be subjected to legal scrutiny by the Commission?
 - (3) What should be the tariff for the Petitioner's Project for the term of the PPA?
 - (4) What Order?

- 5) After considering the submissions of the learned counsel for the parties and perusal of the material placed on record, our findings on the above issues are as follows:
- 6) As the following 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 to the Petitioner for achieving the commercial operation of the Petitioner's Plant can be subjected to legal scrutiny by the 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 dated 02.07.2015, 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, BESCOM 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:

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 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) As the PPA was signed on 02.07.2015, the Conditions Precedent had to be achieved within 365 days and the Project commissioned within 18 months from that date.

(c) 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 any of the BESCOM Events of Default or Force Majeure Events. The Force Majeure Events and the requirement of

issuing a written Notice on occurrence of a *Force Majeure* Event are mentioned 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 negligent or intentional acts, errors or omissions. We, therefore, need to examine, if the Petitioner or the SPD in any manner was negligent in performing its obligations under the PPA. The Petitioner has alleged that the delay in execution of the Project was due to delay in grant of land conversion order and evacuation approval and due to demonetisation and Cauvery water dispute riots and that these reasons were beyond the control of the Petitioner and have to be treated as *Force Majeure* Events.

- (d) The time line stipulated in Article 2 of the PPA to obtain all approvals is 365 days, from the date of the PPA. The SPD applied for conversion of land on 29.04.2016, as per letter dated 09.01.2017 (ANNEXURE-P8), i.e., after a period of ten months, from the date of PPA. No explanation is given for this delay on the part of the SPD. The claim that, until the issuance of the Circular dated 01.12.2015 by the State Government, regarding the documents necessary for deemed conversion of land for installation of Solar Plants, there was no clarity on this issue, is of no help to the Petitioner to explain the delay caused by the SPD in this regard, as the SPD delayed applying for land conversion even after the issuance of this Circular. The Land Conversion Order was passed by the Deputy

Commissioner, Chitradurga on 5.8.2016, in about three months from the date of the application. It is not revealed as to whether the SPD furnished in time all the information and documents necessary for grant of such approval. Hence, we are unable to accept the claim of the Petitioner that there was a delay in granting the approval for conversion of land and that such delay is a *Force Majeure* Event falling under Article 8 of the PPA. In fact, there is a long delay, on the part of the SPD, in applying for the conversion.

- (e) The SPD/SPV applied for evacuation approval to the KPTCL on 08.08.2016 as per letter dated 09.01.2017 (Annexure P-8), i.e. after 13 months from the date of PPA. No explanation is given for this inordinate delay. The evacuation approval was granted on 02.12.2016, in about 4 months. This period of four months cannot be termed as delay in granting approval, especially, when it is not known whether all the information and documents necessary for grant of evacuation approval was furnished in time by the SPD or the Petitioner and the Petitioner has not furnished the details of any efforts made by the it for the expeditious grant of such approval. Hence, we are unable to accept the Petitioner's claim that the alleged, but unsubstantiated delay in grant of evacuation approval is a *Force Majeure* Event, falling under Article 8 of the PPA.

- (f) We also 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 have been issued by the Petitioner to the Respondent. The grounds relied upon by the Petitioner to justify its claim for extension of time for achieving the COD do not fall under the *Force Majeure* Events mentioned in the PPA, as held in the preceding paragraphs. We note that, the SPD was not diligent in taking steps necessary for implementing the Project and it is only after formation of the SPV, effective steps were taken. Except for formation of the SPV, no significant progress was achieved during the one-year period from the date of signing of the PPA. We note that, the land owning farmer, the SPD chose to form a SPV (the Petitioner) ten months after executing the PPA with the Respondent, and assigned the Project to the SPV. The impact of such belated formation of the SPV and the assignment of the Project to such SPV, on the timely commissioning of the Project has not been explained by the Petitioner. From 27.5.2016, only a period of about seven months remained for the Scheduled Commissioning Date. A major portion of the time stipulated (almost a year) for establishing the Project was lost, as the SPD was not diligent and sincere in implementing the Project and such inaction resulting, ultimately, in delayed implementation of the Project is attributable solely to the SPD.

- (g) We note that the Objections filed by the Respondent do not counter the factual aspects of the Petition. In fact, they highlight the lack of application of mind and non-appreciation of the facts of the case in dealing with the request of the Petitioner for extension of the COD, as per the terms of the PPA. Hence, they are not helpful in the examination of the issues raised in the Petition. We also note that, the Respondent concluded that there is a delay in getting approvals of land conversion and the power evacuation without considering that it is the SPD who delayed in applying for such approvals, and there is no justifiable explanation for such delay.
- (h) It is also the case of the Petitioner that the period between 02.01.2017 (SCOD) and 25.02.2017 (date of the letter of the Respondent to take up the work) should be excluded in the calculation of delay, as the works relating to implementation of the Project could not proceed till the receipt of the letter. We note that, the letter dated 25.02.2017 is not produced and also that the averment, in this regard, is not clear to enable us to consider the same. The Petitioner has not substantiated how the other reasons mentioned (riots due to Cauvery water dispute and demonetisation) have adversely impacted the progress of the Project. Therefore, the said reasons cannot be accepted as being *Force Majeure* Events justifying extension of time for the SCOD. Hence, we are

of the considered opinion that the Petitioner is not entitled to the extension of time as provided in the clauses of the PPA.

- (j) The Petitioner contends that, the Respondent has legitimately extended the SCOD considering the genuineness of the Petitioner's case, as per the PPA and it cannot be interfered with. 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 Respondent, without verifying the truthfulness or otherwise of the Petitioner's grounds for seeking extension of the commissioning date, has granted such extension of time. 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 absence of the Respondent opposing the case 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 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 are unable to accept the grant of extension of time of six months for commissioning of the Petitioner's Plant by the Respondent as not being justified in the facts and circumstances of the case.

- (k) Article 5.1 of the PPA extracted earlier, provides for revision 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, normally longer than a year 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 twelve months to eighteen 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 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 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 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.

- (I) We note that, the Petitioner took the risk of implementation of the Project after almost a year after execution of the PPA, with barely six months left for its commissioning as agreed in the PPA and could not do it for certain reasons and events, which we have held to be not falling under the

Force Majeure clause in the PPA that could have entitled the Petitioner to seek extension of the commissioning date agreed in the PPA. The normative Capital Cost of Solar Plants, when the Petitioner took effective steps to procure equipment for its Project, was lower than the normative cost of Solar Plants assumed in the generic Tariff Orders dated 10.10.2013 and 30.07.2015. The Petitioner, other than making a vague statement that there was delay due to self-financing route, has not disclosed the details of the capital investment in the project. Thus, we hold that the Petitioner is not entitled to the tariff originally agreed in the PPA at Rs.8.40 per unit or the tariff of Rs.6.51 per unit, when admittedly the Plant was not commissioned within the stipulated time and that the Petitioner is entitled only for the revised tariff as on the date of commissioning of the Plant as per Article 5.1 of the PPA. The generic tariff for Solar Power Plants that was agreed in the PPA, was revised much before the SPV was formed to implement the Petitioner's project and also before the Petitioner's Plant was ready for commissioning.

- (m) The Petitioner contends that, the Generic Tariff Orders dated 30.7.2015 and 12.4.2017 do not apply to this case, as the PPA was entered into prior to 01.09.2015 at the tariff of Rs.8.40 per unit. We note that, the project was not commissioned within the time stipulated in the PPA, to be eligible for the tariff of Rs.8.40 per unit and the varied tariff as on the date of

commissioning was Rs.4.36 per unit is applicable to the Petitioner's Project, as per clause 5.1 of the PPA.

(n) We have held that the Petitioner is not entitled to the extension of time to commission the project. The Petitioner, for not complying with the timelines for achieving the Conditions Precedent and commissioning of the Project as specified in the PPA, is required to pay damages for such delay, as per the Articles 2.2.1 and 2.5.7 of the PPA. The Petitioner, admittedly, paid damages for the delay in achieving Conditions Precedent and the demand made by the Respondent for such payment is upheld.

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

7) **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.4.36 (Rupees Four and Paise Thirty Six) 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 12.04.2017, for the term of the PPA, as per Article 5.1 of the PPA; and,

- (c) The Petitioner is also liable for liquidated damages as provided under Articles 2.2.1 and 2.5.7 of the PPA and any amounts already paid by the Petitioner on this account shall be given due credit by the Respondent.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER