

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 9th October, 2018

Present:

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

O P No. 222/2017

BETWEEN:

Shri T. Gowranna,
S/o T. Talkerappa,
Kondalahalli village,
Kasaba Hobli,
Molakalmur Taluk,
Chitradurga District.

.. **PETITIONER**

[Represented by Shri Narasimha Reddy A.V. and Shri Annappa K.R, Advocates]

AND:

- 1) The Government of Karnataka,
Department of Energy,
Represented by:
The Additional Chief Secretary to Government,
Vikasa Soudha,
Bengaluru – 560 001.
- 2) The Managing Director,
Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.

.. **RESPONDENTS**

[Respondent-2 represented by Shri Shahbaaz Husain, Advocate]

ORDERS

- 1) The Petitioner has filed this Petition, under Section 86 (1)(f) of the Electricity Act, 2003, in effect praying to, direct the 2nd Respondent approve the extension of time (to commission the Solar Power Project) and to pay the dues to the Petitioner at Rs.8.40 per unit, along with the interest, as per the Power Purchase Agreement.

- 2) The facts of the case, as mentioned by the Petitioner and the grounds urged, in support of his prayers, may be summed up, as follows:
 - (a) The Petitioner, an agriculturist was desirous of developing Solar Power Plant under the Government of Karnataka Solar Policy 2014-21, in respect of segment 1, category 1 and in compliance of Government Order, bearing No.EN 62 VSC 2014, Bangalore, dated 26.8.2014, relating to land owning farmers' scheme. Accordingly, having participated in the bids called by the KREDL, the Petitioner was allotted to develop 1 MW capacity Solar Power Project at Sy.No.42 in Molakalmur Taluk, Chitradurga District, vide KREDL's letter dated 17th March, 2015. As per the terms of the allotment letter, the Petitioner was obligated to complete the 1 MW solar project within 18 months from the date of signing the PPA.

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- (b) The Petitioner [Solar Project Developer (SPD)] entered into a PPA dated 27th June, 2015 with the 2nd Respondent. The Petitioner obtained permission for conversion of the land from the Deputy Commissioner, Chitradurga District vide Order dated 23.8.2016. The Petitioner entered into EPC Agreement with an EPC Contractor. As there was delay in granting of the EPC Order, issuance of the land conversion Order and granting of loan, the Petitioner could not complete the Project in time. Therefore, the Petitioner, on 16.12.2016, requested the 2nd Respondent to extend the date for completion of the project by six months.
- (c) Though, as per Article 1 of the PPA, the Effective Date means, the date of signing of the agreement by the parties, as the Commission has conferred its approval to the PPA vide letter dated 26.08.2015 and as mentioned in the PPA the 2nd Respondent's Board having consented for purchase of power from his Plant on 25.7.2015, the Effective Date of the PPA has to be considered as, a date subsequent to 28.08.2015, and not 27.06.2015.
- (d) When the Petitioner started drawing the 11 kV line to B.G. Kere Sub-station, he faced farmers' agitations and also obstructions due to the presence of railway line, due to which the Karnataka Power Transmission Corporation Limited's (KPTCL) proposed evacuation line was not feasible. Hence, the Petitioner sought an alternative line through the Gowra Samudra MUSS, vide letter dated 26.04.2016. The KPTCL, after a lapse of more than six months,

vide letter dated 22.11.2016, informed the Petitioner to pay certain charges. This delay is attributable to the KPTCL.

- (e) As per Article 2.5.1 of the PPA, if the SPD is prevented from performing its obligations under Article 4.1 of the PPA, due to any BESCO's Event of Default, the Scheduled Commissioning Date (SCD) and the Expiry Date shall be deferred, subject to the reasons and limits prescribed in Article 2.5.1. The farmers' agitations, the change of evacuation line due to the Railway crossing and the delay caused due to the communication from the 2nd Respondent and the KPTCL are the *Force Majeure* Events, which affected the Petitioner.
- (f) As per Article 5.1 of the PPA, the 2nd Respondent had, undertaken to observe, comply with and perform, in accordance with the provisions of the PPA and the applicable laws and also to support, co-operate with and facilitate the Petitioner, in the implementation and operation of the Project and act reasonably, while exercising its discretionary power with respect to the terms of the PPA.
- (g) The 2nd Respondent started accounting the power generated by the Petitioner, from May, 2017, but has not paid for the energy supplied.

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- 3) Upon issuance of notice, the 2nd Respondent appeared through its counsel and filed the Statement of Objections. The 1st Respondent remained unrepresented.
- 4) The objections of the 2nd Respondent may be stated, as follows:
- (a) The Petitioner was unable to execute the Project within the prescribed time and sought extension of time, by 6 months, under the *Force Majeure* conditions. As several requests for extension of SCD were received from the Solar Developers, the Government of Karnataka issued an Order dated 24.11.2016, directing all the Electricity Supply Companies (ESCOMs) to constitute a 3-member Committee to consider and to dispose of the requests of the farmers/developers. Accordingly, a Committee was constituted by the 2nd Respondent, to consider the requests for the extension of time, sought for by the 1 to 3 MW Solar Generators, under the land owning farmers' category. The Committee held a meeting on 15.02.2017, wherein causes for the delayed achievement of SCOD were considered in respect of 17 generators including the Petitioner and decision was taken to accord extension of six months to achieve SCD.
- (b) The Petitioner furnished documents to the said Committee for consideration of the request for extension of time. As per the same, the following information was gathered pertaining to the various reasons assigned for the delayed execution of the Project:

Land conversion:

Date of submission of application	:	30.03.2016
Date of conversion	:	23.08.2016
Delay in getting approval	:	nearly five months

KPTCL Evacuation Approval(Regular):

Date of submission of application	:	27.01.2016
Date of approval	:	08.11.2016
Delay in getting approval	:	More than nine months

- (c) The Committee, after detailed discussions and scrutiny of the documents opined that approval may be accorded for extension of SCOD, upto six months, considering Article 2.5 of the PPA, as there is a delay in issue of approvals by the various Government entities. On 02.03.2017 the Respondent, in its letter to the Petitioner, informed about the extension of time, by six months, for achieving the SCOD.
- (d) Thereafter, on 16.03.2017 the Commission addressed a letter to all the ESCOMs of the State in the matter of extension of time granted to Solar Generators and informed them not to allow any extension of time beyond the SCOD, as per the original PPA, without obtaining prior opinion of the Commission. Further, vide letter dated 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 approval of the extension of time. In furtherance to the same, the Petitioner has filed this Petition.

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- (e) The Government in its letter dated 25.04.2017, addressed to the Commission, has recommended six months' extension of Commercial Operation Date (COD), given by the Respondent, as per Articles 2.5 and 8 of the PPA for the Commission's approval.
- (f) The subject was placed before the 82nd Board Meeting of the 2nd Respondent, held on 11.05.2017, for evaluation/disposal of the requests of land owning farmers/SPVs, for extension of time for the COD, in respect of the 1 to 3 MW Solar Power Plants, in Karnataka, under the farmers' category. The Board has ratified the action taken on the extensions, issued by the 2nd Respondent, subject to approval of the Commission.
- (g) The Project was commissioned on 24.6.2017.
- (h) In respect of extension of Project duration of the already awarded Solar Power Projects, the Ministry of New and Renewable Energy has issued letter No.30/106/2014-15/NSM dated 28.7.2017, addressed to the Principal Secretaries (Power/Energy) of the State Governments, as stated below:

"Ministry has 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 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."

- (j) Therefore, the 2nd Respondent has prayed to accord directions in the present Petition, in the interest of justice.
- 5) We have heard the learned counsel for the parties and perused the material placed on record. The following Issues would arise, for our consideration:
- (1) Whether the extension of time, granted by the 2nd Respondent to the Petitioner, for achieving commercial operation of the Petitioner's Plant, can be subjected to legal scrutiny by the Commission?
 - (2) Whether the Petitioner has made out a case for deferment or extension of the Scheduled Commissioning Date of its Plant?
 - (3) What should be the tariff for the Project, for the term of the PPA?
 - (4) What Order?
- 6) After considering the submissions made by the learned counsel for the parties and the pleadings and other materials placed on record, our findings on the above issues are, as follows:

- 7) **ISSUE No.(1):** *Whether the extension of time, granted by the 2nd Respondent to the Petitioner, for achieving commercial operation of the Petitioner's Plant, can be subjected to legal scrutiny by the Commission?*
- (a) Article 2.5 of the PPA does not specifically stipulate that, any extension of time, granted by the 2nd Respondent (BESCOM), should be got approved by the Commission. However, it stipulates the grounds, on which alone, the time could be extended, for achieving the commercial operation. Article 5.1 of the PPA provides for reduction of the tariff, as a consequence of the delay in the commissioning of the Project, beyond the Scheduled Commissioning Date, subject to certain terms and conditions stated, therein. Whenever an event affects the quantum of tariff applicable for supply of energy to the Distribution Licensees, we are of the considered opinion that the same should be scrutinized and approved by the Commission. It is a settled law that this Commission has the exclusive jurisdiction, to determine the tariff for supply of electricity, by a generating company to a Distribution Licensee and it has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which the electricity shall be procured, from different agencies, through PPAs. Therefore, we hold that, even in the absence of a specific term in the PPA, an event affecting or altering the tariff, already approved in the PPA, should also be got approved by this Commission.

(b) We further note that, the tariff determination/fixation of price for electricity, is not an adversarial proceedings. The consumer, though, not a formal party, ultimately pays for the supply of electricity and is the most affected party. The Commission is required to safeguard such consumers' interest. While upholding the role of the Commission, as a regulator and custodian of the interest of consumers, the Hon'ble Supreme Court, in the case of *All India Power Engineers Federation Ltd. vs. Sasan Power Ltd.*, reported in (2017) 1 SCC 487, has held that, even if parties to a contract (generating company – seller of energy and distribution licensee – buyer of energy) waive off a certain term affecting the tariff, the Commission, as a custodian of consumers' interest, has to intervene and exercise its regulatory powers. Accordingly, we hold that the Commission has the mandate and powers to scrutinize the correctness and the legality of the extension of time, granted by the 2nd Respondent.

(c) Therefore, we answer Issue No.(1), in the affirmative.

8) **ISSUE No.(2):** *Whether the Petitioner has made out a case for deferment or extension of the Scheduled Commissioning Date of its Plant?*

(a) We note that, under the 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 BESCO's 'Event of Default' or the *Force Majeure* Events. It is the case of the Petitioner that, the Project was delayed due to factors beyond its control and hence, the same have to be

treated as the *Force Majeure* Events. The *Force Majeure* Events and the requirement of issuing a written Notice are specified in Article 8.3 of the PPA. Under the said clause, it is also necessary to prove that, the *Force Majeure* Events were not caused by the non-performing party's negligent or intentional acts, errors or omissions. Keeping these clauses in mind, we need to examine, if the Petitioner, in any manner, was negligent in performing its obligations under the PPA and has complied with the provisions of Article 8.3 of the PPA.

- (b) The PPA is signed by the parties on 27.06.2015. As per Article 2.1 of the said PPA, the Conditions Precedent had to be achieved within 365 days from the date of signing the PPA and as per Article 4.1, the Project had to be commissioned within 18 months from the date of signing the PPA. The achievement of the Conditions Precedent would include, obtaining of all the approvals by the SPD.
- (c) The Petitioner has submitted that, there was a delay in granting of the EPC Order for the project to the contractor due to delay in grant of approval for conversion of the land and grant of loan. It is also stated that, the drawing of the 11 kV line to the B.G. Kere Sub-station, was not feasible due to farmers' agitations and the presence of a railway line, forcing the Petitioner to seek an alternative line to the Gowrasamudra MUSS.

- (d) The Petitioner has also urged that, the date of approval of the PPA by the Commission (26.08.2015), should be taken as the 'Effective Date', instead of the date of signing of the PPA (27.06.2015). The recitals in the PPA would reveal that, the parties have signed the PPA and copies of the same were delivered on the date of the PPA. A signed copy of the PPA would be sufficient to proceed with the preliminary works for implementation of the Project. The approval of the PPA has no bearing on the initial obligations of the developer such as, applying for approvals, loans, etc. The Petitioner has not produced any document to show that any of its application for approval, loans etc. was rejected or delayed on this count. Therefore, we are unable to accept that, the time taken for approval of the PPA is a *Force Majeure* Event, causing delay in the commissioning of the Project. The provisions of the PPA do not provide for exclusion of the time taken for approval of the PPA, in counting the period available for commissioning the Project. Hence, the time taken in the regulatory process, for approval of the PPA, which is only about 2 months, cannot be termed as 'delay'. In any case, as noted earlier, it is not shown that the absence of approved PPA, prevented the SPD from taking any step/action to implement the project.
- (e) Now, we need to examine, if the SPD was diligent in implementing the project or the Project was delayed, due to any negligent act/omission of the SPD. The SPD applied for conversion of the land on 30.03.2016, after a lapse of more than 9 months from the Effective Date. No explanation is given for this delay. The land conversion fee was paid on 22.08.2016 and the

conversion Order was passed by the Deputy Commissioner, Chitradurga, on 23.08.2016, within 5 months from the date of application. Hence, we are unable to accept the contention of the Petitioner that, there was a delay in granting of the approval for conversion of the land, which affected the Project implementation. In fact, there is an inordinate delay on the part of the SPD in applying for the conversion of land.

- (f) It is stated by the Petitioner that, the delay in sanction of loan, has caused delay in implementing the Project. This allegation is not substantiated and we note that, in any case, this event does not qualify as a *Force Majeure* vent.
- (g) The Petitioner has alleged that, the due to the agitations by the farmers and the railway crossing, the 11 kV line from the Plant to B.G. Kere Sub-station was not feasible and hence, a request was made on 26.04.2016 to the 2nd Respondent, for drawing an alternative evacuation line through the Gowrasamudra MUSS. It is alleged by the Petitioner that, the KPTCL caused delay in approving the alternative evacuation approval, communicated vide letter dated 22.11.2016. In the copy of letter dated 22.11.2016, produced at ANNEXURE G-1, the KPTCL has referred to the letter of the Petitioner dated 16.11.2016 and the letters of the CEE and the EE of November, 2016, but not to the letter dated 26.04.2016, addressed to 2nd Respondent (BESCOM). It would appear that, the Petitioner delayed approaching the KPTCL on the issue of alternative evacuation scheme. It can be taken that the KPTCL has promptly acted on the letter of the

Petitioner dated 16.11.2016, wherein a request was made for earth mat drawing for the Sub-station, for construction of the 11 kV terminal bay. Therefore, it can be inferred that, there were certain correspondences in the interregnum, which have not been produced, that would have explained the reasons for the time taken in finalization of the alternative evacuation scheme. Even otherwise, as per the PPA, it was the obligation of the Petitioner to obtain all clearances and approvals. The application for alternative evacuation was made to the 2nd Respondent (BESCOM) on 26.04.2016, after a lapse of more than 10 months from the Effective Date and further, the date of application by the Petitioner to the KPTCL or reference from 2nd Respondent (BESCOM) to KPTCL, are not furnished. The KPTCL has not been arrayed as a Respondent and, therefore, we are unable to accept the Petitioner's claim that, there was a delay on the part of the KPTCL, which prevented the commissioning of the Project within the stipulated time. When a time line of 365 days is provided in the PPA for getting all approvals, the delay by the Petitioner, in applying for such approvals and thereafter attributing the delay to the authorities, cannot be accepted. It is noted that the KPTCL has consented to the alternative evacuation facility, at the behest of the Petitioner and has, in fact, facilitated the process of implementation of the Project. In the letter dated 16.12.2016 of the Petitioner to the 2nd Respondent (BESCOM), seeking extension of time to commission the Project, the reasons given by the Petitioner are that, the term loan had not been sanctioned, due to non-placement of all statutory clearances; and the estimation for the civil and electrical installations at the Sub-station, had not

been received yet, without which the bay extension at the Sub-station could not be done. Therefore, it can be concluded that, the Petitioner failed to take prompt action to get the approvals, within the time prescribed in the PPA.

- (h) 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 describing the particulars of any *Force Majeure* event as soon as possible after its occurrence. Further, none of the reasons or events, cited by the Petitioner for the delay in commissioning of its Project, would fall under the *Force Majeure* Events, mentioned in the PPA, as held in the preceding paragraphs. Hence, we consider that, the Petitioner is not entitled to extension of time, for commissioning his plant beyond the SCOD, as provided in the clauses of the PPA. Consequently, the Petitioner would be liable for payment of the Liquidated Damages, as per Article 2.5.7 of the PPA.
- (j) We have held that, the Petitioner is not entitled to the extension of time to commission the Project. Admittedly, the SPD/Petitioner has not achieved the Conditions Precedent within the specified time, as required under Article 2.1 of the PPA. The actual dates, on which they were achieved, have not been furnished. For the same reason, as applicable to rejection of the Petitioner's claim for extension of time for achieving SCOD, any claim of the Petitioner for extension of time for achieving Conditions Precedent, is liable

to be rejected. Thus, we hold that, for not complying with the timelines, as mentioned in the PPA, for Conditions Precedent and commissioning of the Project, the Petitioner is required to pay damages for such delay, as per Articles 2.2 and 2.5.7 of the PPA.

(k) The Hon'ble Supreme Court of India, in Civil Appeal No.3600 of 2018 (*M.P.Power Management Company Ltd. Vs Renew Clean Energy Pvt. Ltd., and another*), decided on 05.04.2018 has held that, for the delay in achieving the Conditions Precedent and commissioning the Project, the generating company is liable to pay damages, stipulated in the PPA.

(l) Therefore, we answer Issue No.(2), in the negative.

9) **ISSUE No.(3):** *What should be the tariff for the Project, for the term of the PPA?*

(a) Article 5.1 of the PPA reads thus:

"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."

(b) The above Article 5.1 of the PPA, provides for reduction of 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 generic tariff for supply of electricity generated from various sources, to the Distribution Licensees, based on, among other parameters, mainly the 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 PPA also has a clause, stipulating the time within which the power supply should commence, so that the Distribution licensee can plan further supply of energy to its consumers. The time ordinarily required to complete the various pre-commissioning activities which, in respect of megawatt scale Solar Power Plants is taken as, 12 months to 18 months. Any delay or failure in the commencement of the 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 the alternative expensive sources, leading to a higher retail tariff to the consumers or short supply of power, leading to revenue loss to them and even to imposition of penalties for not meeting the Renewable Purchase Obligation (RPO), fixed by this Commission. The Capital Cost of the 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 the economies of scale, because 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 Rs.8.40 per unit in the Order dated 10.10.2013, Rs.6.51 per unit in the Order dated 30.07.2015, then to Rs.4.36 per unit in the Order dated 12.04.2017 and now to Rs.3.05 per unit in the Order dated 18.05.2018.

- (c) The Petitioner could not commission the Project, 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 to, in the PPA.
- (d) Article 5.1 of the PPA provides that, the tariff on the date of commercial operation would be applicable for the Project. Article 2.5.7 of the PPA provides for payment of damages, if the commencement of supply of power is not made by the Scheduled Commercial Operation Date (SCOD). The Project is commissioned on 24.06.2017. The Petitioner has not furnished any material particulars of the cost incurred in implementing the Project and the period when investments were actually made. From the Petitioner's letter dated 16.12.2016 (ANNEXURE-E) in which it is submitted that the EPC contractor has ordered for inverters, etc., and certain approvals are pending, we may safely infer that, the major part of investments have been

made after the receipt of the pending approvals, in the year 2017. In any case, as noted earlier, as per the terms and conditions of the PPA, the tariff payable to the Petitioner is not based on the Capital Cost incurred by the SPD/Petitioner in project implementation, but the tariff as per the relevant clauses of the PPA.

- (e) The Hon'ble Supreme Court of India in Civil Appeal No.1220 of 2015 (*Gujarat Urja Vikas Nigam Limited VS EMCO Limited and another*), decided on 02.02.2016, has held, as follows:

“31. Apart from that both the respondent No.2 and the appellate tribunal failed to notice and the 1st Respondent conveniently ignored one crucial condition of the PPA contained in the last sentence of para 5.2 of the PPA: -

*‘In case, commissioning of solar Power Project is delayed beyond 31st December 2011, GUVNL shall pay the tariff as determined by Hon'ble GERC for Solar Projects effective on the date of commissioning of solar power project or above mentioned tariff, **whichever is lower.**’*

The said stipulation clearly envisaged a situation where notwithstanding the contract between the parties (the PPA), there is a possibility of the first Respondent not being able to commence the generation of electricity within the “control period” stipulated in the 1st tariff order. It is also visualised that for the subsequent control period, the tariffs payable to PROJECTS/ power producers (similarly situated as the first Respondent) could be different. In recognition of the said two factors, the PPA clearly stipulated that in such a situation, the 1st Respondent would be entitled only for lower of the two tariffs....”

- (f) In the decision of the Hon'ble Appellate Tribunal for Electricity, in Appeal No.221/2016 and others dated 07.05.2018 (*Savitha Oil Technologies Ltd vs KERC & another*), it has been held that, the tariff, as on the COD, is applicable for a Project and the tariff should not be linked to the date of signing or approval of the PPA. The relevant portions of the judgment are extracted below:

"xi. Further, it is a settled practice under the Section 62 of the Act that tariff determination process under various regulations for a new project begins from the COD of the said project as per extant regulations of the control period where COD of the project takes place. Subsequently, the tariff of such project is adjusted based on regulations/orders of the subsequent control period and it is not linked to the date of signing/approval of the PPA. If the PPA is approved at a later date or in other control period the tariff is applicable from the COD date as per prevalent regulation at that time.

.....

xiv. In the present case too after carefully considering the provisions of the Act, 2004 Regulations, 2005 Order, 2009 Order, earlier judgement of this Tribunal and keeping in view the interest of the consumers it would be correct to draw a conclusion that the tariff applicable to the Appellants' WPPs would be as per the 2005 Order during which COD of the WPP has happened. The same corollary is applicable to other WPPs having COD is in some other control period."

- (g) The ratio of the above judgments of the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal for Electricity, is applicable to the Petitioner's case. Hence, we hold that, the Petitioner's Plant is entitled to a tariff of Rs.4.36 per unit for the term of the PPA, as per the Generic Tariff Order dated 21.04.2017, prevalent on the date of commissioning of the Project.

(h) The Petitioner has also alleged that, the 2nd Respondent has not paid for the energy delivered from the date of commissioning of the Plant, despite his submitting the invoices. The Petitioner has also claimed interest for belated payments, as provided in Article 6.4 of the PPA and alleged that the 2nd Respondent has violated Article 6.7 of the PPA. It is stated in the Petitioner's Interlocutory Application (IA) dated 06.03.2018 that, a sum of Rs.21,18,158/- has been paid, after filing of the Petition, but the full payment is not made. The Commission, after noting the oral submissions of the learned counsel for the Petitioner and also the averments made in the petition and the IA dated 06.03.2018, had directed the Petitioner to file an application for the interim tariff, which has not been done. Be that as it may, if the 2nd Respondent has not paid for the energy from the COD of the Plant, within the stipulated time, it is liable to pay late payment surcharges, as provided in the PPA.

(j) Accordingly, we answer Issue No.(3), as above.

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

For the foregoing reasons, we pass the following:

ORDER

(a) It is declared that the Petitioner is not entitled, to the extension of time for commissioning his Project, beyond the Scheduled Commissioning Date and thereby, to the tariff agreed to in the PPA, as sought for, in the Petition;

- (b) The Petitioner is entitled to a tariff of Rs.4.36 (Rupees Four and Paise-Thirty-Six) only per unit, the varied tariff, as applicable on the date of commissioning of the Petitioners' 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;
- (c) The Petitioner is liable to damages, as provided under Articles 2.2 and 2.5.7 of the PPA; and,
- (d) The Petitioner is entitled for late payment surcharge under clause 6.4 of the PPA, for any delay in payment of monthly bills by the 2nd Respondent.

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

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

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