

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 23rd October, 2018

Present:

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

OP No.18/2018

BETWEEN:

- 1) ES Sun Power Private Limited,
#55, Solar Tower,
6th Main, 11th Corss,
Lakshmaiah Block,
Ganganagar,
Bengaluru – 560 024.
- 2) Emvee Photovoltaic Power Private Limited,
#55, Solar Tower,
6th Main, 11th Corss,
Lakshmaiah Block,
Ganganagar,
Bengaluru – 560 024.

.. **PETITIONERS**

[Petitioners represented by Dua Associates, Advocates]

AND:

The Managing Director,
Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.

.. **RESPONDENT**

[Represented by Justlaw, Advocates]

OP No.19/2018**BETWEEN:**

- 1) ES Solar Private Limited,
#55, Solar Tower,
6th Main, 11th Corss,
Lakshmaiah Block,
Ganganagar,
Bengaluru – 560 024.
- 2) Emvee Photovoltaic Power Private Limited,
#55, Solar Tower,
6th Main, 11th Corss,
Lakshmaiah Block,
Ganganagar,
Bengaluru – 560 024. .. **PETITIONERS**

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AND:

The Managing Director,
Bangalore Electricity Supply Company Limited,
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K.R. Circle,
Bengaluru – 560 001. .. **RESPONDENT**

[Represented by Justlaw, Advocates]

COMMON ORDER

- 1) In the above cases, this common Order is being passed, as the questions of facts and law involved, are similar.
- 2) In essence, in these two cases, the material prayer is for declaration that the Solar Power Projects, involved in the respective cases, have been duly

commissioned and they have started injecting power into the Grid, well within the period stipulated under the respective Power Purchase Agreements (PPAs) dated 23.05.2016, and for the consequential reliefs flowing from such declaration.

- 3) The material facts relevant for pinpointing the controversies involved in these cases, may be stated, as follows:
 - (a) The Emvee Photovoltaic Power Private Limited (the 2nd Petitioner in both the cases) was the successful bidder in a bidding proceedings conducted by the Karnataka Renewable Energy Development Limited (KREDL), for development of 20 MW and 10 MW Solar Power Projects, at Debbavaripalli Village, Bagepalli Taluk, Chikkaballapura District and Nagora Village, Bidar Rural Taluk, Bidar District, respectively. The Emvee Photovoltaic Power Private Limited being the sole single business entity, promoted and incorporated the ES Sun Power Private Limited (the 1st Petitioner in OP No.18/2018) and ES Solar Private Limited (the 1st Petitioner in OP No.19/2018), as the Special Purpose Vehicles (SPVs) for developing the two Solar Projects in the above-said places. Thereafter, both the SPVs have executed the PPAs dated 23.05.2016 with the Respondent (BESCOM), as per the terms and conditions of the Request for Proposal (RFP), published in the bid proceedings. The PPAs have been approved by this Commission on 17.10.2016, subject to incorporation of certain corrections in the PPAs.

(b) The terms and conditions in both the PPAs are similar. The definitions in the PPAs provide that:

- (i) **'Effective Date'** shall mean the date of the approval of PPA by KERC;
- (ii) **'Scheduled Commissioning Date'** shall mean 12 (twelve) months from the Effective Date;
- (iii) **'COD' of 'Commercial Operation Date'** shall mean the actual commissioning date of respective units of the Power Project, whereupon the Developer starts injecting power from the Power Project to the Delivery Point.

(d) Article 12.2 of the PPA provides for the consequences of delay in commissioning of the Project beyond the Scheduled Commissioning Date (SCD), which reads thus:

"Provided further that as a consequence of delay in commissioning of the Project beyond the Scheduled Commissioning Date, subject to Article 4, if there is a change in KERC applicable Tariff, the changed applicable Tariff for the Project shall be the lower of the following:

- i. *Tariff, as in Clause 12.1 above*
- or*
- ii. *KERC applicable Tariff as on the Commercial Operation Date."*

Article 12.1 of the PPA provides that, the Developer shall be entitled to receive a tariff of Rs.6.10 per kWh of the energy supplied by it to the Respondent (BESCOM). The applicable tariff, as on the Commercial Operation Date (COD), was Rs.4.36 per kWh. Therefore, the consequence of delay, in commissioning of the Project beyond the SCD, would be payment of the reduced tariff of Rs.4.36 per kWh, to the Developer, for the energy supplied to the Respondent (BESCOM).

- (e) The consequence of delay, in commencement of supply of power to the Respondent (BESCOM) beyond the SCD, would be the liability to make payment of the Liquidated Damages by the Developer to the Respondent (BESCOM), as provided in Article 5.8 of the PPA.
- (f) The Developers in these cases have stated that, the SCD would fall on 17.10.2017, relying on the different definitions and interpretation clauses and other relevant terms of the PPA, as the PPAs have been approved by the Commission on 17.10.2016. However, the Respondent (BESCOM) has denied such interpretation and conclusion and has contended that, the SCD would fall on 16.10.2017 or some other earlier dates, but would not fall on 17.10.2017.
- (g) The other material fact in controversy is that, according to the Petitioners, both the Solar Power Projects have been commissioned and started injecting power into the Grid from 16.10.2017 itself. On the other hand, the

Respondent (BESCOM) has contended that, the synchronization of both the Projects had happened on 17.10.2017 and only thereafter, the power has been injected into the Grid from the Projects. The pleadings of the parties do not show any conflict on the meaning of the 'Commercial Operation Date' (COD), which means the actual commissioning date of the Solar Power Project, whereupon the Developer starts injecting power from the Solar Power Project to the 'Delivery Point' (Grid). Therefore, both the parties have agreed that, the commissioning of the Project, would imply injecting of power from the Solar Power Project to the Grid.

- (h) The Developers have contended that, the revision of tariff, as stipulated in Article 12.2 of the PPA, is applicable only in the event of the Developer failing to achieve the commissioning of the Project by the SCD, and it is not linked to the achievement of the COD or the injection of power into the Grid. Therefore, by this alternative pleading, the Developers seem to have contended that the commissioning of the Solar Power Projects need not follow the injection of power into the Grid. The Respondent (BESCOM) has contended that the Solar Power Project could be said to have been commissioned, only when there is injection of energy into the Grid from the Project.
- (j) The Developers have further contended that, the Respondent (BESCOM) has unilaterally reduced the tariff from Rs.6.10 per kWh to Rs.4.36 per kWh and has

failed to pay the bill / invoice amounts raised by the Developers and as per Article 13.7 of the PPA, the Respondent (BESCOM) should have deposited 95% of the bill / invoice amount, before raising any dispute. The Respondent (BESCOM) contended that, it was not a billing dispute, therefore the applicability of Article 13.7 of the PPA did not arise, and there was no question of depositing 95% of the bill / invoice amount. The Commission is of the considered opinion that, this is not a dispute regarding the invoices raised by the Developers, therefore, there is no question of applicability of Article 13.7 of the PPA, to make payment of 95% of the disputed amount of the monthly bill.

- (k) The consequential reliefs, prayed for by the Developers, are for: (i) declaration that the levy of Liquidated Damages for the alleged delayed commencement of supply of power to the Respondent (BESCOM) is illegal; and (ii) direction to the Respondent (BESCOM) to pay for the differential amount for the energy already supplied to the Respondent (BESCOM) at the rate of Rs.6.10 per kWh, instead of Rs.4.36 per kWh, already paid by the Respondent (BESCOM). The effect of the consequential reliefs would depend on the success or otherwise of the main relief, stated above.
- 4) We have heard the learned counsel for the parties in the above cases. From the pleadings and the submissions by the parties, the following issues would arise, for our consideration:

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- (1) Whether the 'Scheduled Commissioning Date' of the Solar Power Projects in question, would fall on 16.10.2017 or 17.10.2017?
 - (2) On what date the Solar Power Projects, in OP No.18/2018 and OP No.19/2018, have started injection of power into the Grid?
 - (3) Whether injection of power into the State Grid, from a Solar Power Project is essential, in order to declare that a Project is commissioned?
 - (4) Whether 'Commissioning of the Project' and 'Commercial Operation of the Project' are one and the same or different concepts, in a Solar Power Project?
 - (5) What Order?
- 5) After hearing the learned counsel for the parties and considering the material placed on record, our findings on the above issues are, as follows:
- 6) **ISSUE No.(1):** *Whether the 'Scheduled Commissioning Date' of the Solar Power Projects in question, would fall on 16.10.2017 or 17.10.2017?*
- (a) The PPAs in question have been approved by this Commission on 17.10.2016. Therefore, the SCD of both the Solar Power Projects, would be 12 (twelve) months from 17.10.2016. The learned counsel for the Developers contended that, for calculating the period of 12 (twelve) months from 17.10.2016, the day of the event (i.e., the date of approval of the PPAs) is to be excluded. Therefore, according to the learned counsel for the Developers, 12 (twelve)

months from 17.10.2016 would end on 17.10.2017. In support of his arguments, the learned counsel for the Developers pointed out that, Article 1.2.1(k) of the PPA refers to a 'month', which shall mean a reference to a Calendar Month, as per the Gregorian Calendar and further that, the term 'Month' is defined in Article 21.1 of the PPA to mean either: (i) a period of 30 (thirty) days from (and excluding) the date of the event, where applicable; or (ii) a Calendar Month. The learned counsel for the Developers also relied upon the principle generally accepted that, ordinarily, in computing the time, the rule observed is to exclude the first day and to include the last day.

- (b) The reliance of the learned counsel for the Developers on the definition of 'Month', as defined in Article 21.1 of the PPA, to exclude the 'day of event' for the purpose of calculating the period of 12 (twelve) months from 17.10.2016, appears to be not correct. The definition of the 'Month', stated in the PPA, would apply, where the time period provided in the PPA is one month from the date of any event. In such a case, the 'day of event' is to be excluded, as stated in the definition of the 'Month'. Whenever a period of two months or more is being calculated, for excluding the 'day of event', one cannot take the help of the definition of the 'Month' in the PPA. The other contention of the learned counsel for the Developers that, the principle, generally accepted, in computing any period or time, to exclude the first day and include the last day, is subject to any specific term contained in a

contract for calculating such period or arriving at such time. In the present cases, Article 1.2.1 (m) of the PPAs provides as follows:

*“any reference to any period commencing **‘from’** a specified day or date and **‘till’** or **‘until’** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;”*

In view of the above-said clause, we are of the considered opinion that, for calculating the period of 12 (twelve) months from 17.10.2016, the first day and the last day of the said period have to be included. We have found that, 16.10.2017 happens to be a Monday and also a business day, but not a holiday. Therefore, the 12 (twelve) month period from 17.10.2016 expires on 16.10.2017. For the above reasons, we are unable to accept the contention of the learned counsel for the Developers that the 12 (twelve) month period from 17.10.2016 would expire on 17.10.2017. The learned counsel for the Respondent, relying on the definition of the 'Month', as defined in the PPA, has given three different dates, as the dates that would end the 12 (twelve) month period from 17.10.2016. According to the learned counsel for the Respondent, these three dates would be 16.10.2017, 12.10.2017 and 30.09.2017. We are of the considered opinion that, based on the definition of the 'Month' in the PPA, the inferences, as drawn by the learned counsel for the Respondent, while arriving at the three different dates for calculating the period of 12 (twelve) months from 17.10.2016, cannot be accepted. In view

of the above findings, it is not necessary to refer to the various decisions, cited by the learned counsel for the parties, in this regard.

(c) For the above reasons, we hold that the SCD for the Solar Power Projects of the Developers would fall on 16.10.2017, but not on 17.10.2017.

(d) Therefore, we answer Issue No.(1), accordingly.

7) **ISSUE No.(2):** *On what date the Solar Power Projects, in OP No.18/2018 and OP No.19/2018, have started injection of power into the Grid?*

ISSUE No.(3): *Whether injection of power into the State Grid, from a Solar Power Project is essential, in order to declare that a Project is commissioned?*

ISSUE No.(4): *Whether 'Commissioning of the Project' and 'Commercial Operation of the Project' are one and the same or different concepts, in a Solar Power Project?*

(a) As these three Issues are interconnected, they are considered together, hereunder.

(b) The pleadings of the Developers and the Respondent in the present cases would indicate that, the meaning of the 'Commissioning of the Project' and the 'Commercial Operation of the Project' is one and the same and the 'Commissioning of the Project' is certified upon the injection of power into the Grid. But, at one place in their pleadings, the Developers have contended

that, the revision of tariff, as stipulated in Article 12.2 of the PPA, is applicable only in the event, if the Developer fails to achieve the commissioning of the Project by the SCD, and it is not linked to the achievement of the COD or the injection of power into the Grid. By such contention, the Developers appear to have contended that the injection of power into the Grid is not essential for achieving the 'Scheduled Commissioning Date'. Therefore, we are examining this point.

- (c) The 'Commercial Operation Date', 'Scheduled Commissioning Date' and 'Delivery Point', as defined in Article 21.1 of the PPA, read thus:

*“‘**COD**’ or ‘**Commercial Operation Date**’ shall mean the actual commissioning date of respective units of the Power Project, whereupon the Developer starts injecting power from the Power Project to the Delivery Point.”*

*“‘**Scheduled Commissioning Date**’ shall mean 12 (twelve) months from the Effective Date.”*

*“‘**Delivery Point**’ shall mean point or points at which power is supplied into the Grid System.”*

The definitions of 'Commissioning of the Project' or 'Commercial Operation of the Project' are not provided in the PPAs. However, it is clear from the definition of the 'Commercial Operation Date', as given in the PPA, that the Power Project is said to be commissioned, only when it starts injecting power into the Grid. The definition of the 'Commercial Operation Date' itself would imply the meaning of the 'Commissioning of the Project', which pre-supposes

injection of power from the Power Project into the Grid. In other words, if there is no injection of power from the Power Project into the Grid, there cannot be any 'Commissioning' or 'Commercial Operation' of the Power Project. The PPA defines the 'Scheduled Commissioning Date' to mean, '12 (twelve) months from the Effective Date'. This definition does not describe the meaning of 'Commissioning of the Project', but only states regarding the period specified for 'Commissioning of the Project'. Therefore, we are of the considered opinion that, the 'Commissioning of the Project' and the 'Commercial Operation of the Project' are one and the same, and they are not having different concepts in the Solar Power Projects governed, as per the terms of the PPAs in question. The definition of the 'Commercial Operation' requires the 'Commissioning of the Project', whereupon, the Developer starts injecting power from the Project to the Grid. The said definition does not stipulate the amount of power to be injected into the Grid, to qualify as 'Commercial Operation'. Had there been a stipulation of the quantity of power or energy to be injected into the Grid, in a specified time, for declaration of 'Commercial Operation', one could have accepted that the 'Commissioning of the Project' is different from the 'Commercial Operation of the Project'. There is no separate provision in the PPA for declaring the achievement of the 'Commercial Operation' of the Solar Power Project, prescribing any performance tests. The PPA provides that, the Project Developer is liable for payment of the Liquidated Damages for not achieving supply of power by the Scheduled Commissioning Date. It can as also be seen

that, in Article 5.8.2 of the PPA, the phrases 'Commercial Operation Date' and 'Scheduled Commissioning Date', are used as interchangeable phrases. The provisions in the PPA would show that supply of power to the Respondent was essential by the 'Scheduled Commissioning Date'. From the above analysis, we hold that the contention of the Developers that, the provision for revision in tariff, contained in Article 12.2 of the PPA, is not linked to the achievement of the 'Commercial Operate Date' or supply of electricity to the Grid, cannot be accepted, as per the conclusions arrived at below,

- (d) The real question is, whether without verifying the injection of power into the State Grid from a Solar Power Project, can such a Project be declared as commissioned. In this regard, we hold that, the verification of the injection of power into the State Grid is very much essential, in order to declare the commissioning of the Project. Any new Solar Power Plant, entering into commercial agreements with a Distribution Licensee or an Open Access consumer, requires Grid connection. The different utilities, managing the Grid, such as KPTCL, SLDC, Distribution Licensee, have to accept and certify the safe operation and compliance of the other requirements by the Solar Power Plant. before effecting the Grid connection. Therefore, the Solar Power Plant commissioning, explicitly and invariably requires performance verification of all the electrical plants and apparatus. Such performance verification is not possible, unless the Solar Power Plant is in generation mode and injects sufficient energy into the Grid. The commissioning party should not merely

depend upon the results of the pre-commissioning tests, assuming a guarantee positive outcome. It could also be seen that, the Developer has to provide the necessary facilities for voice and data communication and transfer of online operational data, such as voltage, frequency, etc., and other parameters prescribed by the SLDC. The compliance of this requirement cannot be tested and certified, unless sufficient power is injected into the Grid, so as to get the data from the SCADA Centre. Therefore, we are of the considered opinion that, injection of power into the Grid from a Solar Power Project is essential, in order to declare that such Project is commissioned.

- (e) The other material controversy between the parties is regarding the date, on which the Solar Power Projects, involved in these cases, started injecting power into the Grid. According to the Developers, both the Solar Power Projects started injecting power into the Grid on 16.10.2017 itself. They have relied upon the issuance of the Commissioning Certificates by the authorities concerned, certifying the commissioning of the Projects on 16.10.2017, in support of their contention. On the other hand, the Respondent has contended that, though the commissioning of the Projects was shown to have been on 16.10.2017, it is specifically mentioned in the Commissioning Certificates that the synchronization of the Solar Power Projects had taken place on the next day i.e., on 17.10.2017, thereby, the injection of power into the Grid has taken place only on 17.10.2017. Thereby, the Respondent

contends that the actual commissioning or the commercial operation of the Solar Power Projects has taken place only on 17.10.2017.

(f) The learned counsel for the Developers relied upon the following facts and circumstances, to contend that there was injection of power from both the Solar Power Projects into the Grid on 16.10.2017:

(i) The Commissioning Certificates, produced in both the cases, declare that, the Solar Power Projects have been commissioned on 16.10.2017. These Commissioning Certificates would lead to the presumption that the power has been injected into the Grid on 16.10.2017 itself. The Respondent cannot go against the contents of the Commissioning Certificates.

(ii) In OP No.18/2018, the Developer has produced the generation data of 16.10.2017, of the four Inverters, at the generation end, and has also produced the downloaded data of the Main Meter and the Check Meter, at the Sub-station end, pertaining to 16.10.2017 and 17.10.2017. On the basis of these records, the EE (Ele.), MT BRAZ, BESCO has confirmed that, the Solar Power Project in OP No,18/2018 was electrically interconnected to the 66 kV line of Chelur Sub-station and the electrical parameters existed between 17:45 hours and 18:15 hours interval, on 16.10.2017. Further, the said EE (Ele.) has confirmed that,

the synchronization of the Power Project had taken place on 16.10.2017 at 17:45 hours. The said Officer has further confirmed that, a small amount of electricity was generated by this Power Plant on 16.10.2017 at 18:00 hours. On the basis of the analysis of the EE (Ele.), MT BRAZ, BESCO, the Commissioning Certificate dated 22.12.2017 was issued, stating that the Solar Power Project was commissioned on 16.10.2017 and the electricity was generated by this Power Plant at 18:00 hours on 16.10.2017.

- (g) The learned counsel for the Respondent has contended that, none of the above-mentioned documents would establish the injection of power from the Solar Power Project into the Grid. On the other hand, in respect of the Solar Power Project in OP No.18/2018, the learned counsel for the Respondent has contended that, the downloaded data of the Main Meter and the Check Meter would establish that the energy was injected into the Grid from 9.00 A.M., onwards, on 17.10.2017.
- (h) Now, we may consider the documentary evidence produced in OP No.18/2018, to decide whether there was injection of power into the Grid from the Solar Power Project on 16.10.2017, between 17:45 hours and 18:00 hours. On the basis of the minutes of the meeting held on 16.10.2017 (ANNEXURE - P10) between the Project Developer and the Utility officials, the Commercial Operation Date was declared, as per the Certificate dated

23.11.2017 (ANNEXURE – P11). This Certificate shows that the Solar Power Project was interconnected to the Grid on 16.10.2017 and the Commercial Operation Date of the Project was 17.10.2017 at 09.03 A.M., as per the SCADA Integration information received. Paragraph-10 of the minutes of the meeting (ANNEXURE-P10), states that the Commercial Operation Date was to be declared, after receiving the information from the SCADA Control Centre, the State Load Despatch Centre, Bengaluru, regarding the synchronization of the Solar Power Project to the Grid. This would clearly indicate that, only after getting the confirmation of the injection of the power into the Grid, the Commercial Operation Date is to be declared. After issuance of the Certificate regarding the commercial operation (ANNEXURE-P11), the Developer requested the EE (Ele.), MT Division, BRAZ, BESCO, Bengaluru, through its letter dated 20.12.2017 (ANNEXURE-P12), to declare the revised Commercial Operation Date as 16.10.2017, for the reason that, the downloaded data at the inverters' end showed the generation of power on 16.10.2017 at 17:45 hours. This letter, ANNEXURE-P12, shows that, there were four inverters and they recorded 1.4 kWh, 1.5 kWh, 1.5 kWh and 1.3 kWh, respectively. On the basis of the downloaded data at the inverters' end and also the downloaded data of the Main Meter and the Check Meter relating to 16.10.2017 and 17.10.2017, the EE (Ele.), MT BRAZ, BESCO, Bengaluru, in his Analysis Report dated 21.12.2017 (ANNEXURE-P13), has stated that, the Solar Power Plant was electrically connected to the 66 kV line of Chelur Sub-station and the electrical parameters existed on 16.10.2017, between 17:45 hours and

18:00 hours. Further, he has stated that a small amount of electricity was generated from the Solar Power Plant on 16.10.2017 at 18:00 hours. This Analysis Report (ANNEXURE-P13) does not show that any quantity of power was injected into the Grid. The downloaded data of the main Meter and the Check Meter show that energy was injected into the Grid only on 17.10.2017 from 09.00 A.M. onwards. The Main Meter or the Check Meter does not show any injection of power from the Solar Power Project on 16.10.2017. The commissioning Certificate dated 22.12.2017 issued by the EE (Ele.), TL & SS Division, Karnataka Power Transmission Corporation Limited (KPTCL), Gowribidanur (ANNEXURE-P14), states that the Solar Power Project was interconnected to the Chelur Sub-station on 16.10.2017 and electricity was generated by this Power Plant on 16.10.2017 at 18:00 hours, as confirmed by the EE (Ele.), MT Division, BESCOM, Bengaluru. The perusal of ANNEXURE-P14 would show that this Commissioning Certificate was issued based on the Analysis Report, as per ANNEXURE-P13. This Commissioning Certificate also merely states that, electricity was generated by the Solar Power Plant on 16.10.2017 at 18:00 hours, as confirmed in ANNEXURE-P13. The Developer has mainly relied on this Commissioning Certificate (ANNEXURE-P14), to contend that electricity was generated by this Solar Power Plant on 16.10.2017 at 18:00 hours and the same must have been injected into the Grid.

- (j) From the above documents, at best, it can be said that, there was a small quantity of power generation of 5.7 kWh from the Solar Power Plant at the

output of the four inverters. However, there is no evidence to show that, at least this small quantity of energy had been injected into the Grid. It is contended by the Developer that the injection of such small quantity of power would not be recorded in the Main Meter or the Check Meter, therefore, it would not be possible to prove the injection of the energy into the Grid, by producing the downloaded data of the Main Meter or the Check Meter. Therefore, it was assumed by the Developer that, even such small quantity of energy generated at the inverters' end should have reached the Grid. It may be true that, the Main Meter may not record the injection of such small quantity of energy from the Developer's Project. We note that, such assumption could have been accepted, had there not been consumption of any quantity of energy, before it could reach the Grid. We may note that, there would be transformer loss and line loss, in between the inverters and the Grid. In this case, the capacity of the Solar Power Project is 20 MW. Each inverter might have been connected to 5 MW capacity Solar Power Unit. The DC current fed to the inverter would be converted to 400 Volts AC current, and thereafter, it would be stepped up to 11 kV and again to 66 kV, with the help of the Step-up Transformers. The dedicated transmission line, from the inverters to the KPTCL Sub-station is said to be about 3 KM in length. Therefore, the transformer loss and the line loss must have been considerable. The downloaded data of the Main Meter and the Check Meter would show that these meters could record a minimum of 10 kWh. It is for the Developer to establish the injection of power, from the Solar Power Project to the Grid, to

claim the commissioning of the Project, at a particular time and date. Therefore, the Developer should take precaution to synchronize the Solar Power Project with the Grid, when there is sufficient generation of Solar Power. Article 8 of the PPA provides that, the Developer shall issue 40 (forty) days' advance preliminary written Notice and at least 20 (twenty) days' advance final written Notice, to the Respondent, of the date on which it is intended to synchronize the Solar Power Project with the Grid system. From the facts of the case, it appears, the Developer was not ready, well in advance, to synchronize the Solar Power Project with the Grid, as it is not shown that such Notices were issued by the Developer to the Respondent. Therefore, we are of the considered opinion that the Developer, in OP No.18/2018, has failed to prove the commissioning operation of the Solar Power Project on 16.10.2017. The evidence on record would show that, the injection of power from this Solar Power Project, into the Grid started from 17.10.2017.

- (k) The evidence on record, in OP No.19/2018, would clearly show that, there was no injection of power from the Solar Power Project, into the Grid on 16.10.2017. The minutes of the meeting held on 16.10.2017 (ANNEXURE-P9) would show that, the Solar Power Project was commissioned on 16.10.2017 at 18:05 hours and the synchronization has taken place on 17.10.2017. The Commissioning Certificate dated 25,10.2017 (ANNEXURE-P10), would show that, the electrical equipment of the Solar Power Project has been interconnected to the 33 kV / 11 KV GESCOM Sub-station, Mannahalli. The Respondent, in its

Statement of Objections, has contended that, the Project was commissioned on 16.10.2017 at 18:45 hours and it was synchronized on 17.10.2017 and has produced the Certificate dated 26.10.2017 (ANNEXURE-R1), issued by the EE (Ele.), MRT-LDC, Corporate Office. GESCOM, Kalaburagi. Therefore, it is clear that, the injection of power into the Grid ,has taken place only on 17.10.2017. It is contended on behalf of the Developer that, in the minutes of meeting (ANNEXURE-P9), there was an unauthorized insertion regarding the time of commissioning as 18:05 hours and synchronization as 17.10.2017. It is also contended that, such insertions of time of commissioning and the date of synchronization, are not mentioned in the Commissioning Certificate (ANNEXURE-P10). It is contended that, the Commissioning Certificate shows that the interconnection has taken place on 16.10.2017 and it would establish the injection of power into the Grid on that day itself. The Developer could have produced the downloaded data of the Main Meter and the Check Meter pertaining to 16.10.2017, to establish that there was injection of power into the Grid on 16.10.2017 itself. In the absence of it, it is difficult to hold that the Project was interconnected and synchronized, sufficiently well in advance, when there was sufficient solar irradiance to produce the Solar power and inject the same into the Grid. Therefore, we hold that, the injection of power from the Solar Power Project involved in this case, started only on 17.10.2017.

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- (l) The contention that, the Commissioning Certificate showing the date of commissioning, would lead to a presumption that power was injected into the Grid on the said date, can be rebutted, from the other available contra-evidence on record. It is also pointed out that, in the payment invoices, the Respondent has described the Commercial Operation Date as 16.10.2017, in respect of both the Solar Power Projects, and it amounted to an admission on the part of the Respondent. We note that, an admission, if properly explained, can be ignored. In the present cases, as the injection of power into the Grid is not proved to be on 16.10.2017, such admission is properly explained and, therefore, the mentioning of the Commercial Operation Date as 16.10.2017 in the payment vouchers cannot be given any importance.
- (m) For the above reasons, on Issue No.(2) we hold that, both the Solar Power Projects started injection of power into the Grid on 17.10.2017; on Issue No.(3) we hold that, injection of power into the State Grid from a Solar Power Project is essential, in order to declare that the Project is commissioned; and on Issue No.(4) we hold that, the meaning of 'Commissioning of the Project' and 'Commercial Operation of the Project' is one and the same in a Solar Power Project, where injection of power into the Grid from the said Project is essential, to certify the commissioning of the Project. In the result, the Commissioning Certificates issued in these cases, certifying or declaring the commissioning of the Solar Power Projects, are not legally valid. Consequently, these Solar Power Projects are entitled to the reduced tariff and liable for

payment of the Liquidated Damages, for the delay in supply of power to the Respondent.

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

For the foregoing reasons, we pass the following:

ORDER

- (a) Both the Petitions are hereby dismissed. The Petitioners are not entitled to any of the reliefs claimed by them.
- (b) The original Order shall be kept in OP No.18/2018 and a copy, thereof, in OP No.19/2018.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER