

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 4th July, 2019

Present:

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

RP No.05/2018

BETWEEN:

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

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PETITIONER

AND:

- 1) Bangalore Electricity Supply Company Limited,
Corporate Office, K.R. Circle,
Bengaluru – 560 001.
- 2) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bengaluru – 560 009.
[Respondents represented by Justlaw, Advocates]

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RESPONDENTS

ORDERS

- 1) This Review Petition is filed, seeking review of the Order dated 01.02.2018 passed by this Commission in OP No.107/2017 and consequently, to restore OP No.107/17 to file, for rehearing of the case.

- 2) The material facts, leading to filing of the present Review Petition, may be stated as follows:
- (a) The Petitioner being a land holder, has entered into a Power Purchase Agreement (PPA) dated 29.06.2015 with the 1st Respondent-Bangalore Electricity Supply Company Limited (BESCOM), for sale of Solar energy, in terms of the PPA, pursuant to the allotment made by the Karnataka Renewable Energy Development Limited (KREDL) for establishing a 1 MW capacity Solar Power Project, under the land-owning farmers; category. The situation of the Project was at Thugam Village, Kasaba Hobli, Kanakapura Taluk, Ramanagara District.
- (b) The Petitioner was required to commission the Solar Power Project on or before 28.12.2016, i.e., within 18 months from the date of execution of the PPA and he was required to achieve the Conditions Precedent within one year from the date of execution of the PPA.
- (c) Article 2.5 of the PPA provides for extension of time, for commissioning of the Project, under certain circumstances and it also provides for the consequences of such extension of time. The relevant portions of Article 2.5 of the PPA, for the purpose of this Review Petition, read thus:

“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 shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement."

Article 5.1 of the PPA provides for the tariff payable, which 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/03/01 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."*

(d) As per the request letter dated 15.12.2016 (ANNEXURE-C), the 1st Respondent (BESCOM) granted extension of the Scheduled Commissioning Date up to 28.03.2017, vide its letter dated 03.02.2017 (ANNEXURE-M). The Petitioner commissioned the Solar Power Project on 13.03.2017, well within the extended period of time for commissioning the Project. Therefore, the Petitioner has claimed that he is entitled to a tariff of Rs.8.40 per unit, for the energy supplied, as provided in Article 5.1 of the PPA.

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- (e) The 1st Respondent (BESCOM) issued a letter dated 15.04.2017 (ANNEXURE-V) intimating the Petitioner to file a Petition before this Commission, for seeking extension of the Scheduled Commissioning Date, narrating all relevant grounds and producing all relevant documents, in support of his request for extension of time. Pursuant to it, the Petitioner filed OP No.107/2017 before this Commission on 22.06.2017. The 1st Respondent (BESCOM) submitted the circumstances under which it granted the extension of time and the 2nd Respondent (KPTCL) did not file any Statement of Objections.
- (f) After hearing the learned counsel for the Petitioner and considering the facts on record, this Commission, by its Order dated 01.02.2018, disallowed the request of the Petitioner, for a declaration that the Project in question was commissioned within the due date and that, consequently, the Petitioner was not entitled to a tariff of Rs.8.40 per unit, but was only entitled to a tariff of Rs.6.51 per unit, the varied tariff applicable as on the date of commissioning of the Petitioner's Plant and also directed the Petitioner to pay the Liquidated Damages, as provided under Articles 2.2 and 2.5.7 of the PPA.
- (g) The present Review Petition is filed against the said Order dated 01.02.2018 in OP No.107/2017.
- 3) The grounds urged, both in the pleadings, as well as during the arguments, in support of the Review Petition, may be stated as follows:

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- (a) That, this Commission has no jurisdiction to issue the communications dated 16.03.2017 (ANNEXURE-S), 05.04.2017 (ANNEXURE-T) and 07.07.2017 (ANNEXURE-W), wherein the Electricity Supply Companies (ESCOMs) were directed not to allow any extension of time for commissioning of the Projects, beyond the Scheduled Commissioning Date and to advise the concerned Developer to file a Petition before this Commission, with all the relevant grounds and documents, for seeking approval of any extension of the Commissioning Date.
- (b) That, there was no dispute between the Petitioner and the 1st Respondent (BESCOM) regarding the grant of extension of time, therefore, it was not open for this Commission to examine the validity of the extension of time. That, this Commission has no jurisdiction to re-determine the tariff agreed to in the PPA, executed between the parties. The power of this Commission is restricted to the period, prior to the execution of the PPA, and once the PPA was signed, the Commission cannot re-open the tariff agreed to in the PPA.
- (c) That, there is an error apparent on the face of record, in evaluating the evidence on record, by this Commission. That, the Petitioner had made out proper grounds for proving the *Force Majeure* Events, explaining the delay in commissioning of his Project, beyond the Scheduled Commissioning Date. That, therefore, such delay was a valid excuse under the terms of the PPA and the Petitioner could not have been held to be in breach of any of the terms of the Agreement.

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- (d) Therefore, the Petitioner has prayed for allowing the Review Petition.
- 4) Upon Notice, the 1st Respondent (BESCOM) appeared through its counsel and filed its objections, contending that the Petitioner has failed to make out any grounds for review of the Order in question and that the Petitioner is attempting to re-agitate his case and the same is impermissible in law, and the Petitioner cannot be permitted to re-agitate his case, under the guise of review of the Order in question. Therefore, the 1st Respondent (BESCOM) has prayed for dismissal of the Review Petition. Notice to the 2nd Respondent (KPTCL) was dispensed with, as it was not a necessary party to the Review Petition.
- 5) We have heard the learned counsel for the parties. The learned counsel for the Petitioner has also filed Written Arguments.
- 6) The following Points would arise for our consideration:
- (1) Whether this Commission has no jurisdiction to interfere with the extension of time, beyond the Scheduled Commissioning Date, granted by the 1st Respondent (BESCOM), for commissioning the Solar Power Project of the Petitioner?
 - (2) Whether there is an error apparent on the face of record, in holding that the Petitioner has failed to make out a case for extension of time?
 - (3) What Order?

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- 7) After considering the rival contention and the material on record, our findings on the above Points are as follows:
- 8) **POINT No.(1)**: *Whether this Commission has no jurisdiction to interfere with the extension of time, beyond the Scheduled Commissioning Date, granted by the 1st Respondent (BESCOM), for commissioning the Solar Power Project of the Petitioner?*
- (a) The same controversy, as noted in Point No.(1) above, had arisen in OP No.65/2017, decided by this Commission on 07.08.2018, in the case of *Madamageri Solar Power Project LLP and another –Vs- HESCOM*. The learned counsel, who appeared for the Petitioner in the present Review Petition, had also appeared for the Petitioner-Project Developer in that case, and had put forth the similar contentions in that case, as advanced in the present case. The provisions of the PPA in that case were exactly similar to the provisions of the PPA in the present case. Regarding the controversy, as is involved in the present case, Issue No.(2) was framed in that case, and at Paragraph-7 of the Order dated 07.08.2018, this Commission had given detailed reasons and had come to the conclusion that, this Commission had jurisdiction to satisfy itself, as to the proof of the *Force Majeure* Events alleged by the Petitioner-Project Developer. After hearing the learned counsel for the Petitioner and going through the decisions cited by him, on the controversy involved, we are of the considered view that, the earlier reasons given by this Commission in the above mentioned case, would hold good in the present case also. The

relevant Issue framed in OP No.65/2017 and the findings of this Commission thereon, are as follows:

- “7) ***ISSUE No.(2):*** Whether this Commission has jurisdiction to call upon the Petitioners to prove the Force Majeure Events, relied upon by them, by filing a Petition, urging the relevant grounds and producing proper evidence, for the scrutiny of the Commission, inspite of the Respondent admitting or not denying the occurrence of such Force Majeure Events?
- (a) The learned counsel for the 2nd Petitioner submitted that, this Commission has no jurisdiction to call upon the Petitioners to file a Petition, for proving the Force Majeure Events, in view of the fact that the Respondent (HESCOM) has considered the request of the Petitioners for extension of time, on the ground of the Force Majeure Events, and granted extension of time by six months for commissioning the Solar Power Project, as per the PPA. Therefore, he submitted that, there was no dispute between the parties and hence, the present Petition cannot be treated as a dispute under Section 86(1)(f) of the Electricity Act, 2003. The learned counsel also submitted that, the tariff agreed to between the parties, cannot be altered by this Commission, in view of the extension of time granted by the Respondent (HESCOM) for commissioning of the Solar Power Project.
- (b) We have cautiously considered the arguments put forth by the learned counsel for the 2nd Petitioner and the decisions relied upon by him. In our considered view, his arguments are not tenable, for the following reasons:
- (i) This Commission has come across a number of instances, where the Distribution Licensees, who had entered into the PPAs with the Solar Power Developers (SPDs), had indiscriminately granted the extension of

time for commissioning the Solar Power Projects, relying upon the clause relating to 'extension of time', contained in the PPAs. Therefore, the Commission was compelled to issue the letter dated 05.04.2017, directing all the Distribution Licensees in the State, to advise the concerned SPDs / SPVs to file a Petition before this Commission, with all the relevant grounds / documents, for seeking the approval of the extension of time, granted by the Electricity Supply Companies (ESCOMs), for commissioning the Solar Power Projects. It is true that, the clause relating to the 'extension of time', incorporated in the PPAs, permits the Distribution Licensees to grant the extension of time, on the ground of Force Majeure Events affecting the SPDs. In Article 8 of the PPA, the meaning of the 'Force Majeure Events' and the limitations and restrictions of its applicability, in a given case, are stated.

- (ii) The main contention of the learned counsel for the 2nd Petitioner is that, when the term of the PPA empowers the Respondent (HESCOM) to grant the extension of time for commissioning of the Solar Power Project, on the ground of Force Majeure Events, the Commission cannot interfere with the discretion exercised by the Respondent (HESCOM) in extending the time. It is not in dispute that, if the commissioning of the Solar Power Project does not take place within the specified time, the SPD would be entitled to a lower tariff, applicable as on the date of the commercial operation of the Project. Therefore, the indiscriminate extension of time, on the purported ground of a Force Majeure Event, affects the tariff, payable under the PPA, for the energy supplied. In the present case, as per the term of the PPA, the Project was required to be commissioned, on or before 31.12.2016, however, the Project was commissioned at a later date. It is also not in dispute that, the tariff payable for the Solar Power Projects was reduced during the subsequent Control Periods. Therefore, the Respondent (HESCOM), accepting or consenting the Force Majeure Events,

claimed by the Petitioners on insufficient grounds or otherwise, would affect the tariff payable under the PPA, which in turn, would affect the interest of the consumers. In such an event, the Commission has a duty to intervene and satisfy itself, as to whether the claim of the Petitioners for the extension of time, on the ground of the Force Majeure Events, is properly met or not, irrespective of the satisfaction of the Respondent (HESCOM) on the said fact.

- (iii) The above view that we have taken, is based on the principles stated in the judgment rendered by the Hon'ble Supreme Court, in the case of All India Power Engineer Federation and Others –Vs- Sasan Power Limited and Others, reported in (2017) 1 SCC 487. In the said decision, the Hon'ble Supreme Court has considered the effect of a waiver of a right, by the Distribution Licensee, under the provision of the PPA, which would adversely affect the tariff agreed to under the PPA. The principles are stated thus:

'The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. ...' [Paragraph-22]

'The test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. ...' [Paragraph-23]

Further, it is held that:

'... If there is any element of public interest involved, the court steps in to thwart any waiver which may be contrary to such public interest. ...' [Paragraph-24]

In the said case, the question was, 'whether the waiver of a provision of the PPA by the Distribution Licensee, having an effect to increase the tariff, was valid or not'. It is held that, the increase in the tariff would adversely affect the consumers and thereby, any waiver by the Distribution Licensee, against the terms of the PPA, is invalid. We are of the considered opinion that, the principle stated above would squarely apply to a case, where the Distribution Licensee gives its consent, against the terms of the PPA, in respect of a Force Majeure Event, which has the effect of an increase in the tariff, which in turn, would affect the consumers. Therefore, it becomes the duty of this Commission to scrutinize, as to whether there was a case for the extension of time, for commissioning the Solar Power Project, on the ground of Force Majeure Events.

- (iv) *This Commission has the exclusive jurisdiction to determine the tariff for supply of electricity by a Generating Company to a Distribution Licensee, as per the provisions of Sections 61 to 64 of the Electricity Act, 2003 and the relevant Regulations framed, thereunder. The Generating Company is prohibited from recovering a price or charge exceeding the tariff determined by the Commission. Therefore, wherever the terms of the PPA provide for reduction in tariff, on occurrence of certain events, the Commission alone has the jurisdiction to pronounce a finding regarding the proof or otherwise of the occurrence of such events. The parties concerned being in agreement regarding the occurrence of such events, is irrelevant. Therefore, in the present case, the clause in the PPA authorizing the Respondent (HESCOM) to extend the time for commissioning of the Project by the Petitioners, on the ground of Force Majeure Events, is contrary to the provisions of the Electricity Act, 2003, as it has the effect of taking away the jurisdiction of the Commission, to determine the applicable tariff. The parties cannot confer or take away the jurisdiction of a Court or Adjudicating Authority. It is only this*

Commission that has the exclusive jurisdiction to adjudicate upon the existence or otherwise of such an event which affects the tariff.

- (c) *Now, let us consider the decisions, relied upon by the learned counsel for the 2nd Petitioner, in support of his arguments.*
- (i) *The learned counsel's first contention that, this Commission is not a party to the PPA and being a third party to the PPA and it has no jurisdiction to intervene in the matter and to determine, as to whether the extension of time granted by the Respondent (HESCOM), in terms of the Agreement is valid or not, is not acceptable. As already noted above, this Commission has the jurisdiction to satisfy itself, as to whether the extension of time granted by the Respondent (HESCOM), on the ground of Force Majeure Events is valid or not. For this purpose, the Commission need not be a party to the PPA, but it has got a duty to intervene and determine the applicable tariff in a given case and there need not be a dispute between the parties on it.*
- (ii) *The learned counsel for the 2nd Petitioner has relied upon the decision reported in 2016 (3) SCC 515, in the case of Bangalore Electricity Supply Company Limited –Vs- Konark Power Projects Ltd. and Another, to contend that, the tariff agreed to in a PPA, cannot be altered during the term of such PPA. The principle stated in the said case is not applicable to the case on hand because, in this case, the terms of the PPA, itself provided for a reduced tariff, on proof of certain events. It is also held by the Hon'ble Supreme Court, in the case of Gujarat Urja Vikas Nigam Ltd. –Vs- Tarini Infrastructure Ltd., & Others, reported in AIR 2016 SC 5580, that the decision rendered in the Konark case was confined only to the facts of that case.*
- (iii) *The learned counsel for the 2nd Petitioner next relied upon the decision reported in 2017 SCC Online SC*

1248, in the case of Gujarat Urja Vikas Nigam Limited – Vs- Solar Semiconductor Power Company (India) Private Limited and Others, to contend that, this Commission has no power in its inherent jurisdiction, to alter the tariff or the other terms and conditions, agreed to in a PPA. In the said case, the question that arose for consideration was, 'whether the Commission could extend the Control Period in respect of a Solar Power Project, under its inherent jurisdiction.' This question was answered in the negative. The principle stated in the said decision is not applicable to the case on hand, as this Commission is not exercising its inherent powers, but is exercising its power to determine the tariff, to resolve the question involved in this case.

- (iv) The learned counsel for the 2nd Petitioner has also relied upon the decision reported in 2010 SCC 567, in the case of Suraj Mal Ram Niwas Oil Mills (P) Ltd. –Vs- United India Insurance Company Ltd., and Another, to contend that, a stranger cannot alter the legal obligations of the parties to the contract. The said principle is not relevant in the present case, for the reasons stated above.
- (v) The learned counsel for the 2nd Petitioner has submitted that, the Generic Tariff Order dated 30.07.2015, revising the tariff at Rs.6.51 per unit, and the Generic Tariff Order dated 12.04.2017, revising the tariff to Rs.4.36 per unit, are not applicable to the present case. For contending the non-applicability of the Generic Tariff Order dated 30.07.2015, the learned counsel for the 2nd Petitioner has relied upon a portion of Paragraph-3 of the Tariff Order, which reads thus:

'3. Applicability of the Order:

In view of the above, the Commission, in modification of its Order dated 10th October, 2013, decides that the norms and tariff determined in its Order shall be

applicable to all new grid connected MW scale solar PV and solar thermal power plants, entering into Power Purchase Agreement (PPA) on or after 1st September, 2015 and getting commissioned during the period from 1st September, 2015 to 31st March, 2018 for which PPAs have not been entered into, prior to 1st September, 2015.

In respect of the projects that are commissioned during the period from 1st September, 2015 to 31st March, 2018 for which PPAs have been entered into and submitted to the Commission prior to 1st September, 2015 for approval, the tariff as per the said agreement shall be applicable.

.....'

The learned counsel for the 2nd Petitioner has relied upon the latter portion of Paragraph-3 of the said order, noted above, to contend that, the Solar Power Project of the Petitioners has complied with all the requirements, stated therein, therefore, it is entitled to the tariff of Rs.8.40 per unit, as per the Generic Tariff Order dated 10.10.2013. It is submitted that, the Solar Power Project has been commissioned, long before 31.03.2018 and the PPA dated 30.06.2015 has been approved by this Commission on 20.07.2015, therefore, the tariff, as per the PPA dated 30.06.2015, is applicable to the Petitioners' Project.

The latter part of Paragraph-3 of the Tariff Order, noted above, states that 'the tariff as per the said Agreement shall be applicable'. Article 5.1 of the PPA dated 30.06.2015 provides for the contingencies, in which a lower tariff is applicable for the Project. If the Project is liable for a lower tariff, the same should be considered and the applicability of such lower tariff is

not taken away in the latter part of Paragraph-3 of the Tariff Order, noted above. 'The tariff as per the said Agreement', does not mean that it is only the tariff of Rs.8.40 per unit in all cases, but it could be a lower tariff, in the event of any delay in commissioning of the Solar Power Project, as provided in Article 5.1 of the PPA.

The learned counsel for the 2nd Petitioner has further submitted that, the Generic Tariff Order dated 12.04.2017 cannot be made applicable, retrospectively, from 01.04.2017, as this Commission has no jurisdiction to do so. In this regard, the learned counsel has relied upon the decision, reported in (2011) 6 SCC 570, in the case of J.S. Yadav –Vs- State of UP and Another, to contend that, the vested right of the Petitioners for a tariff of Rs.8.40 per unit, agreed to in the PPA, cannot be taken away. In Paragraph-22 of the said Judgment, it is held that, "Thus, 'vested right' is independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away, only if the law specifically or by necessary implication provides for such a course." In the present case, the term of the PPA itself provides for a lower tariff in certain contingencies. Hence, this decision is not applicable to the case on hand.

- (vi) The learned counsel for the 2nd Petitioner has further submitted that, this Commission has no power, much less, the inherent power, to issue the letters dated 16.03.2017 and 05.04.2017 directing the ESCOMs not to allow any extension of time and directing the ESCOMs to advise the Solar Project Developers to file a Petition, before the Commission, seeking approval of the extension of time, granted by the ESCOMs, if any. This contention of the learned counsel is not tenable, as this Commission has the exclusive jurisdiction, to consider the validity of the extension of time, when it affects the tariff payable.

(d) *For the reasons stated above, we answer issue No.(2), in the affirmative."*

(b) The learned counsel for the Petitioner has also relied upon Paragraph-37 of the Judgment dated 13.03.2019, rendered by the Hon'ble High Court of Karnataka in W.P.Nos.23158 to 23162 of 2018 (*Renew Power Limited and others –Vs- BESCO and others*) and other connected cases, which reads thus:

"37. The Hon'ble Apex Court in Gujarath Urja Vikas Nigam Limited, supra has held that under Regulations 80 to 82, the inherent powers of the State Commission which is akin to Section 151 of CPC, the power of the State Commission to regulate the conduct of the Commission i.e. to regulate its own procedure, the power cannot travel so as to alter the terms and conditions of the agreement entered into between the parties to grant substantive relief to the company by extending the control period of tariff order. In terms of Regulation 80, the inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. Hence inherent powers preserved under Regulation 80 cannot affect a substantive right of the parties. This dictum with all force applies to the proceedings at hand.

It is the contention of the Commission and the State that the Commission has been conferred with the power to determine the tariff from time to time and it cannot be said that the Commission is functus officio once it has determined the price. The phrase 'time to time' emphasised would only mean that the KERC can determine wheeling and banking charges prospectively. Sections 62 and 64 conferred the power on the Commission to determine the tariff and once settled contracts have been entered into, based on the tariff

orders sans any request made by the either of the parties to the PPA, the KERC has not been conferred with the power to determine the tariff from time to time."

As already noted in the Order dated 07.08.2018 in OP No.65/2017, the principles laid down in the *Gujarath Urja Vikas Nigam Limited* case are not applicable in the facts and circumstances of the present case. Therefore, the principles stated in Paragraph-37 of the said Judgment of the Hon'ble High Court of Karnataka are not applicable to the present case.

- (c) From a reading of Article 5.2 of the PPA relating to the tariff payable for the energy supplied, it cannot be disputed that, if the commissioning of the Solar Power Project does not take place within the specified time, the Solar Power Developer (SPD) would be entitled to a lower tariff, applicable as on the date of commercial operation of the Project. The delay can be condoned, only on proof of the *Force Majeure* Events affecting the SPD. This Commission has the exclusive jurisdiction to determine the existence of a *Force Majeure* Event or otherwise and that power cannot be delegated to a party. It is a fundamental principle that, an Authority empowered to decide a dispute, cannot delegate that power to another person. Therefore, for this reason also, the term contained in Article 2.5 of the PPA, conferring power to the 1st Respondent (BESCOM), regarding extension of time for commissioning the Project, beyond the Scheduled Commissioning Date, is invalid.
- (d) For the above reasons, we answer Point No.(1), in the negative.

- 9) **POINT No.(2):** *Whether there is an error apparent on the face of record, in holding that the Petitioner has failed to make out a case for extension of time?*
- (a) It is contended by the Petitioner that, the impugned Order has been passed without properly examining the material on record and the findings arrived at, are suffering from errors apparent on the face of record. The Petitioner has not pointed out, as to how the findings arrived at, are suffering from errors apparent on the face of record.
- (b) This Commission, in the impugned Order dated 01.02.2018, has considered all the grounds urged by the Petitioner in support of his contention, to claim extension of time for commissioning the Project. On appreciation of all the facts and circumstances stated by the Petitioner, this Commission had concluded that, the Petitioner was at fault and he had not taken proper steps to proceed with the Project, within reasonable time, from the date of execution of execution of the PPA. The Petitioner has now contended that the conclusions, arrived at by this Commission, are not proper and the Commission has committed errors, in arriving at the findings against the Petitioner.
- (c) The contention of the Petitioner that, the findings arrived at by this Commission, are erroneous and wrong, cannot be a ground for review of the impugned Order dated 01.02.2018. Such errors, if any, should be challenged only in an Appeal and not in a Review Petition. The Petitioner cannot urge to re-appreciate the evidence and to come to a different finding. The Petitioner

could not point out that, the Commission has not considered any of the material facts on record or the Commission made an erroneous assumption of any material fact or it misread any material fact placed on record by the Petitioner. To Petitioner cannot urge to re-appreciate the evidence on record, in the guise of a review. Therefore, we hold that, the Petitioner has failed to make out any errors apparent on the face of record, in the present case.

(d) For the above reasons, we answer Point No.(2), in the negative.

10) **POINT No.(3)** : *What Order?*

For the foregoing reasons, we pass the following:

ORDER

The Review Petition stands dismissed.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER