

No.N/384/2017

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

**Dated: 19.08.2020**

**Present**

<b>Shri Shambhu Dayal Meena</b>	<b>: Chairman</b>
<b>Shri H.M. Manjunatha</b>	<b>: Member</b>
<b>Shri M.D. Ravi</b>	<b>: Member</b>

**OP No. 224/2017**

**BETWEEN:**

Messrs Adani Green Energy (UP) Limited,  
A Company registered under the  
provisions of the Companies Act, 1956  
Adani House, Nr. Mithakhali Six Roads,  
Navrangpura  
Ahmedabad-380 009.  
(Represented by its Authorized Signatory)

**... Petitioner**

[Represented by Smt. Poonam Patil, Advocate,]

**AND:**

- 1) Gulbarga Electricity Supply Company Limited (GESCOM), A Company Registered under the provisions of Companies Act, 1956 having its Registered Office at Station Main Road, Kalaburagi.  
(Represented by its Managing Director)
- 2) Karnataka Renewable Energy Development Limited (KREDL), A Company Registered under the provisions of Companies Act, 1956 having its Registered Office at No. 39, 'Shanthi Gruha' Bharat Scouts and Guides Building, Palace Road, Bengaluru-560 001.  
(Represented by its Managing Director)

3) Karnataka Power Transmission Corporation Limited  
(KPTCL) A Company Registered under the  
provisions of Companies Act, 1956 having its  
Registered Corporate Office,  
Cauvery Bhavan, K.G. Road,  
Bengaluru-560 009.  
(Represented by its Managing Director)

4) State of Karnataka (GoK),  
Energy Department,  
Room No. 236, 2<sup>nd</sup> Floor,  
Vikasa Soudha,  
Dr. B.R. Ambedkar Veedi,  
Bengaluru-560 001.  
(Represented by its Additional Chief Secretary)

... Respondents

[Respondent No.1 & 3 Indus Law, Advocates  
Respondent No.2 represented by Sri Rakshit Jois, Y.P. Advocate  
Respondent No.4 represented by Sri G.S. Kannur, Advocate]

### **ORDERS**

1. This is a petition filed under Section 86 (1) (f) of the Electricity Act, 2003

praying for the following reliefs:

- a) To call for records;
- b) To declare that the Petitioner was prevented from performing its obligation under the Power Purchase Agreement (PPA) due to 'Force Majeure' events affecting it; alleged in the petition;
- c) To grant concurrence to the Supplemental Power Purchase Agreement (SPPA) dated 26.12.2016; and
- d) To declare that 'Effective Date' under Article 3.1 of the PPA is the date on which the SPPA receives its concurrence from this Commission;

Alternatively:

- d) To declare that the 'Effective Date' under Article 3.1 of the PPA is the date on which the SPPA is signed by the Petitioner and the 1<sup>st</sup> Respondent on 26.12.2016;

Alternatively:

- d) To declare that the 'Effective Date' under Article 3.1 of the PPA is the date on which the PPA approval letter of the Commission received by the Petitioner on 12.10.2016;
- e) If the Commission were to consider that there is a delay in fulfillment of the Conditions Precedent and commissioning the project, the Commission may condone the inadvertent delay caused for the reasons beyond the control of the Petitioner due to 'Force Majeure' events affecting it in fulfillment of the Conditions Precedent and in achieving the Commercial Operation Date (COD) of the Project.
- f) To direct the Respondents not to levy any liquidated damages and not to take any other or incidental coercive measures under the PPA or under any other law for the time being in force against the Petitioner based on the previous understanding of the parties on the 'Effective Date' and resultant COD;
- g) To direct the Respondents to make payment @ Rs.4.81 per unit, as per Article 12.1 of the PPA dated 29.06.2016;
- h) To pass such other order/s including an order as to costs, to meet the ends of justice and equity.

2. The material facts stated by the petitioner, relevant for the disposal of the controversies involved in this case are as follows:

a) The 2<sup>nd</sup> Respondent Karnataka Renewable Energy Development Limited (KREDL) being the Nodal Agency of the 4<sup>th</sup> Respondent/State of Karnataka (GoK), for facilitating the development of the renewable energy in the State, had called for the Request for Proposal (RfP) for the development of 290 MW Solar Power Projects to be implemented in 17 taluks vide Notification dated 12.02.2016. M/s Adani Green Energy Limited, a Company registered under the Companies Act, 1956 was the selected bidder for development of 20 MW Solar Photo-Voltaic Project in Jevargi taluk of Kalaburagi district. The tariff discovered was Rs.4.81 per unit for the energy to be delivered. KREDL issued Letter of Award (LoA) and Allotment Letter dated 30.05.2016 as per Annexure-P1 to M/s Adani Green Energy Limited with terms and conditions stated therein to be fulfilled by the said selected bidder. Pursuant to the LoA dated 30.05.2016 (Annexure-P1), a Special Purpose Vehicle (SPV) was incorporated i.e., the petitioner, to develop the Solar Power Project and to execute the PPA with the 1<sup>st</sup> Respondent. Accordingly, the petitioner and 1<sup>st</sup> Respondent (GESCOM) entered into PPA dated 29.06.2016 (Annexure-P3). The PPA was approved by the Commission and the approval was communicated vide letter dated 29.09.2016 (Annexure-P4). The approval of the PPA was subject to certain corrections/modifications to be incorporated in the PPA by entering into a suitable SPPA between the parties as mentioned in the said approval letter.

Accordingly, the parties have executed the SPPA dated 26.12.2016 (Annexure-P5).

- b) The PPA provides that 'Effective Date' is the date of approval of the PPA by the Commission. The timeline fixed for achieving the Conditions Precedent is eight months and for achieving the commissioning of the project is twelve months, from the 'Effective Date'. Therefore, the Conditions Precedent was required to be achieved on or before 28.05.2017 and the project was to be commissioned on or before 28.09.2017. Admittedly, the petitioner has not able to fulfil the Conditions Precedent as well as the Scheduled Commissioning Date (SCD) within the time specified as noted above. The Solar Power Project was commissioned on 18.11.2017 as per the Commissioning Certificate Dated 28.11.2017 (Annexure-P16 produced by the petitioner along with Interim Application dated 20.03.2018). It can be seen that the petitioner could not achieve the timeline fixed for fulfilling one of the Conditions Precedent namely; the production of documents evidencing clear title and the possession of the extent of land required for the project in the name of the petitioner as stated in Article 4.2 (e) of the PPA, but has achieved the timeline fixed for fulfilling the other Conditions Precedent stated in Article 4.2.
- c) The Petitioner wrote letter dated 29.05.2017 (Annexure-P7) to the 1st Respondent (GESCOM) intimating the compliance of the Conditions Precedent and narrating the documents produced for meeting the

Conditions Precedent. This letter discloses that in respect of production of documentary evidence of title and possession of the lands required for establishing the Solar project, the petitioner could able to file the application before KREDL as per State Government's guidelines for enabling KREDL to obtain land conversion approval as required under Section 95 of the Karnataka Land Revenue Act, 1964 (KLR Act, 1964 for short), but has not yet obtained the land conversion order from the competent authority permitting to use the lands for non-agricultural purpose. This letter narrates that (i) Acknowledgement of Section 95 application submitted to KREDL; (ii) Consent letters from land owners to lease their lands for Solar Power Project; (iii) Agreement to lease signed with the land owners; and (iv) Sworn Affidavit evidencing possession of lands by the petitioner, were produced before 1<sup>st</sup> Respondent (GESCOM), apart from producing other necessary documents for fulfilling the Conditions Precedent.

- d) The Petitioner wrote the letter dated 30.05.2017 (Annexure-P8) to the Additional Chief Secretary to Government, Energy Department, stating generally the reasons for non-production of land conversion order evidencing clear title and possession of the extent of lands required for the project and requested the Government to direct the ESCOMs to take cognizance of the documents submitted to KREDL, as sufficient compliance of the Conditions Precedent. The petitioner also wrote letter dated 10.06.2017 (Annexure-P9) to the 1<sup>st</sup> Respondent (GESCOM)

requesting to accept the documents submitted to KREDL for obtaining sanctions/ approvals under Section 95 of the Karnataka Land Revenue (Amendment) Act, 2015 [for short KLR (Amendment) Act, 2015] and under Section 109 of the Karnataka Land Reforms Act, 1961 (for short KLR Act, 1961), as sufficient compliance of production of documents regarding clear title and possession of the lands required for the Solar Power Project in the name of the Developer. In any case the 1<sup>st</sup> Respondent (GESCOM) not accepting the above request, to grant three months' time extension for production of the required land conversion order.

- e) The 1<sup>st</sup> Respondent replied vide letter dated 04.08.2017 (Annexure P-10) stating that the developer had not fulfilled all the Conditions Precedent within eight months from the 'Effective Date' and informed to pay damages of Rs.12,00,000 as per Article 4.3 of the PPA within seven days from the date of receipt of this letter, failing which the performance security would be encashed to appropriate this amount. In response to the letter dated 04.08.2017, the petitioner replied as per letter dated 14.08.2017 (Annexure-P11) again requesting for time stating that the application for obtaining land conversion order was still pending which amounted to 'Force Majeure' event. Further intimating that the petitioner would pay the damages demanded for by way of Demand Draft/NEFT and not to invoke the performance security.

- f) The petitioner issued notices of 'Force Majeure' events as per letters dated 06.07.2017 & 31.07.2017 (Annexure-P13 collectively) to the 1<sup>st</sup> Respondent (GESCOM) requesting for extension of time for submission of land conversion order relating to the lands. The petitioner again wrote letter dated 02.08.2017 (Annexue-P15) to the 1<sup>st</sup> Respondent (GESCOM) stating that the Ministry of New and Renewable Energy, Government of India, New Delhi, had issued letter dated 28.07.2017 (Annexure-P14) to the Principal Secretaries of all State Governments in Energy Department, to consider extension of time where there was delay in issuing the connectivity approvals and land conversion approvals by the State Authorities.
- g) The Petitioner has alleged that the 'Effective Date' in the present case should be considered as the date on which the approval of the Commission for SPPA dated 26.12.2016 (Annexure-P5) would take place. According to the petitioner, the SPPA in the present case requires approval of the Commission as the SPPA was entered into between the parties substantially modifying the terms of the PPA. Alternatively, the petitioner has alleged that the date of execution of the SPPA or the date on which the letter issued by this Commission intimating approval of the PPA was received by the petitioner should be treated as the 'Effective Date'. The Petitioner stated that Annexure-P4 dated 29.09.2016, the letter intimating approval of PPA, was received by it on 12.10.2016. Therefore, according to the petitioner, the 'Effective Date' in the present



case cannot be taken as 29.09.2016 as defined in the PPA, but any of the subsequent dates as narrated above.

- h) The Petitioner has contended that there is inordinate delay in granting evacuation scheme approval and in the letter dated 06.07.2017 & 31.07.2017 (in Annexure-P13 collectively) addressed by the petitioner to the 1<sup>st</sup> Respondent, the said delay is stated to be 103 days considering 30 days as a reasonable period to process the application.
- i) That there was delay by this Commission in approving the PPA dated 29.06.2016, which resulted delay in achieving the progress of the project. Further, there was inordinate delay in the progress of the proceedings before the Deputy Commissioner, Kalaburagi district, for conversion of agricultural lands for non-agricultural purpose.
- j) The petitioner has contended that the various delays stated above are 'Force Majeure' events and the petitioner is entitled to extension of time for fulfilling the Conditions Precedent and for commissioning the project beyond the stipulated period stated in the PPA. It has also contended that the PPA in question has come into existence as per the terms of competitive bidding and the tariff stated in the PPA is not subject to any variations as per the Generic Tariff Order passed by this Commission further that the Generic Tariff Order dated 30.07.2015, specifically excludes its applicability to the purchase of power under competitive bidding. The subsequent Generic Tariff Order dated 12.04.2017 is only a

modification of the Generic Tariff Order dated 30.07.2015, thereby this too is not applicable.

k) Therefore, the petitioner has filed the present petition on 29.11.2017 praying for the reliefs noted above.

3. Upon notice, the Respondents appeared through their Counsels and filed Statement of Objections.

4. The 1st Respondent (GESCOM) & 3<sup>rd</sup> Respondent (KPTCL) have filed a common Statement of Objections. The material objections stated in it are as follows:

a) These Respondents have denied the contention of the petitioner that it could not achieve Conditions Precedent within the stipulated time due to delay in approval of PPA and delay in issuance of evacuation scheme approval and have contended that the same cannot be termed as a 'Force Majeure' events.

b) These Respondents have also denied the contention of the petitioner that the 'Effective Date' should be considered as the date on which the SPPA would be approved. They contended that the 'Effective Date' should be considered as defined in the PPA and the petitioner cannot be permitted to alter the terms of the PPA to suit its needs. That there is no need for approval of the SPPA by the Commission and the SPPA by itself mentions that it is only a part of the original PPA and nowhere under the law and in any other documents submitted by the petitioner, is there a

requirement of getting an approval of the SPPA. This fact is also clarified by this Commission vide letter dated 25.10.2016 (Annexure-1).

- c) It is contended that there was delay in achieving the Conditions Precedent of the project. The petitioner had not got the land converted and produced the document of title to and possession of the lands required for establishment of the Solar Power Project, within the stipulated time duration as required under the PPA.
- d) The allegation of the petitioner that the evacuation scheme approval was a must for the finalization of the project site was not true. On the contrary, it was the duty of the petitioner to finalize the project site at least before making an application for issuance of evacuation scheme approvals.
- e) That there was delay in filing the evacuation scheme approval by the Petitioner. Such application was filed on 22.07.2016 though the LoA was issued to the Petitioner on 30.05.2016 itself. The Petitioner was required to furnish certain documents as a pre-requisite to register its application while seeking evacuation scheme approval. The power generation from various sources is experiencing a big revolution in the entire State. Owing to such huge competition in the field of generation, the developers' applications are processed on first come first serve basis, if all other requisite conditions were fulfilled. Any pre-feasibility reports without Government Order cannot have validity for capacity reservation in the power system.

- f) That this Commission informed the 2<sup>nd</sup> Respondent (KREDL) that all the PPAs were returned for want of clarification in inviting the tender for Solar Power Projects for the reasons stated in the letter dated 21.07.2016 (Annexure-2). Thereafter, this Commission accorded in principle approval for the PPAs earlier returned vide letter dated 29.08.2016 (Annexure-3) addressed to the Additional Chief Secretary to Government, Energy Department, after receipt of the clarifications from the 2<sup>nd</sup> Respondent (KREDL). Therefore, it is contended that the 3<sup>rd</sup> Respondent (KPTCL) initiated to process the application for evacuation of the Petitioner, only after intimating the in principle approval to the PPAs by this Commission.
- g) These Respondents have denied all other allegations made in the petition and contended that the petitioner is liable to pay the damages under Article 4.3 of the PPA. It is contended that even if the petitioner was aggrieved by an event of 'Force Majeure', the same had to be notified to the Respondents within a period of seven days as stipulated under PPA. No such notice of an event of 'Force Majeure' has been issued to the Respondents herein. The allegations of the petitioner that there was delay in getting approval of the land conversion on the part of the Government Authorities are highly vexatious.
- h) That the allegations to the effect that there could be no meaningful progress was expected till the PPA was approved by the Commission is baseless and hence denied.

- i) These Respondents have not denied the various correspondences made between the parties as stated by the Petitioner, in its petition.
  - j) Therefore, the 1<sup>st</sup> & 3<sup>rd</sup> Respondents have prayed for passing appropriate orders in this regard.
5. The gist of the Statement of Objections of 4<sup>th</sup> Respondent (GoK) may be stated as follows:
- a) This Respondent has issued Government Order No. EN 66 VSE 2016, Bengaluru, dated 05.10.2016 (Annexure-R1), in order to facilitate the Solar Power Project developers and also to safeguard the interest of the land owners. This Government Order authorizes the KREDL to obtain lease of agricultural lands from agriculturists after obtaining the necessary order under Section 109 of the KLR Act, 1961 and sub-lease the said land to the Solar Power Project developers.
  - b) That the procurement of land required for the Solar Power Project and obtaining of evacuation scheme approval from KPTCL shall be the responsibility of the Solar Power Project developer.
  - c) That the Petitioner as per its application dated 27.04.2017 (Annexure-R3) addressed to the Managing Director, KREDL, on identifying the lands required for establishment of Solar Power Project, requested KREDL to process the application for obtaining necessary orders. This application shows that the Petitioner had identified 114 acres 19 guntas of land and had taken consent letters from the farmers and the copy of evacuation

scheme approval and copy of LoA issued by KREDL were produced along with the said application dated 27.04.2017 (Annexure-R3).

- d) Upon verification of the application dated 27.04.2017 (Annexure-R3) and the other documents produced along with it, the 2<sup>nd</sup> Respondent (KREDL) addressed letter dated 29.05.2017 (Annexure-R4) to the Additional Chief Secretary to Government, Energy Department, requesting to issue necessary orders permitting KREDL to take land on lease from farmers and then to sub-lease the proposed 114 acres 19 guntas of lands in favour of the Petitioner after obtaining land conversion order from the Deputy Commissioner, Kalaburagi district.
- e) As per the request of the KREDL, the Energy Department (GoK) issued Notification No. EN 118 VSC 2017 dated 13.07.2017 (Annexure-R5) permitting the KREDL to take the lands on lease from the farmers and in turn, to sub-lease the same to the Petitioner, after obtaining land conversion order. Thereafter, the 2<sup>nd</sup> Respondent (KREDL) vide letter dated 30.08.2017 (Annexure-R6) addressed to the Deputy Commissioner, Kalaburagi district, requesting for deemed land conversion in the name of farmers at an early date.
- f) The Deputy Commissioner, Kalaburagi district, had issued land conversion order dated 24.11.2018 as per Annexure-R7 in respect of the proposed lands to the extent of 114 acres 19 guntas as requested after collecting the necessary land conversion fees.

- g) This Respondent No.4 (GoK) and Respondent No.2 (KREDL) have undertaken the above said exercise only to facilitate the Petitioner and the delay in commissioning of the project is on the part of the Petitioner and the same cannot be attributed towards this Respondent No.4.
6. a) The 2<sup>nd</sup> Respondent (KREDL) has filed its Statement of Objections stating that it received the application from the Petitioner requesting to obtain the necessary orders from the Additional Chief Secretary to Government, Energy Department and also to obtain land conversion order from the Deputy Commissioner, Kalaburagi district. Accordingly, this Respondent made various correspondences to the Additional Chief Secretary to Government, Energy Department and to the Deputy Commissioner, Kalaburagi district.
- b) This Respondent is not a necessary party and the petition against it may be dismissed.
7. The Petitioner has filed common Rejoinder to the common Statement of Objections filed by the 1<sup>st</sup> & 3<sup>rd</sup> Respondents and has also filed separate Rejoinders to the Statements of Objection filed by the 2<sup>nd</sup> & 4<sup>th</sup> Respondents.
- a) In the common Rejoinder filed to the Statement of Objections of the 1<sup>st</sup> & 3<sup>rd</sup> Respondents, the petitioner has pleaded further grounds, causing delay in commissioning of the project due to (i) Goods & Services Tax (GST) implementation by Government of India (GoI); (ii) Delay due to

introduction of Demonetization by Gol and (iii) Wrong classification of Solar Modules under DTH 8501 by the Customs Authorities at Mumbai and at Chennai Ports. Further, the petitioner contended that the liquidated damages cannot be recovered unless the party claiming the damages establishes the actual loss and the same being adjudicated by the Competent Authority.

b) In the Rejoinders filed to the Statement of Objections of the 2<sup>nd</sup> & 4<sup>th</sup> Respondents, the petitioner has reiterated the contentions raised in the petition.

c) It can be seen that the petitioner has stated so many new facts in the Rejoinders which could not have been stated in the Rejoinder, but which should have been pleaded by way of further pleadings by amending the petition.

8. We have heard the learned counsels for both the parties. The Petitioner and the Respondents have also filed written arguments.

9. From the rival contentions and the relevant pleadings, the following Issues arise for our consideration:

Issue No.1: Whether the Petitioner proves that the 'Effective Date' under the PPA for counting various timeframe for achieving different milestones under the PPA shall be treated as:



- a) The date of approval by the Commission of the SPPA dated 26.12.2016? or
- b) 26.12.2016, the date on which the said SPPA was executed? or
- c) 12.10.2016, the date on which the PPA approval letter dated 29.09.2016, was received by the petitioner?

Issue No.2: Whether the petitioner proves that there was delay in granting approval by the Commission of the PPA dated 29.06.2016 and also there was delay in granting evacuation scheme approval by the 3<sup>rd</sup> Respondent (KPTCL) and whether such delays led to delay in identifying the lands required for the Solar Power Project?

Issue No.3: Whether the petitioner was prevented from performing its obligation of producing documents of title and possession of the lands required for establishing the Solar Power Project on or before 28.05.2017, the date on which the Conditions Precedent should have been fulfilled, due to 'Force Majeure' event?

Issue No.4: Whether the petitioner has proved that the delay in commissioning the Solar Power Project was also due to:

- (a) Implementation of Goods & Services Tax (GST) Act, 2017 by the Government of India (Gol)?
- (b) Introduction of Demonetization by Gol? and
- (c) Wrong classification of Solar Modules under CTH 8501 instead of CTH 8541 by Customs Authorities at Chennai Port and Nahva Sheva Port?

Issue No.5: Whether the claim for liquidated damages is established by the 1<sup>st</sup> Respondent (GESCOM) as required under Section 74 of the Indian Contract Act, 1872?

Issue No.6: Whether the Solar Power Project of the Petitioner was liable for applicable tariff as per Article 12.2 (ii) as on the Commercial Operation Date in the event of delay in commissioning of the project?

Issue No.7: To which reliefs the Petitioner is entitled to?

Issue No.8: What Order?

10. After considering the pleadings and documents of the parties and the submissions made by the learned counsel for parties, our findings on the above Issues are as follows.

11. Issue No.1: Whether the Petitioner proves that the 'Effective Date' under the PPA for counting various timeframe for achieving different milestones under the PPA shall be treated as:

- a) The date of approval by the Commission of the SPPA dated 26.12.2016? or
- b) 26.12.2016, the date on which the said SPPA was executed? or
- c) 12.10.2016, the date on which the PPA approval letter dated 29.09.2016, was received by the petitioner?

a) 'Effective Date' is defined in Article 21.1 of the PPA as the date of the approval of PPA by the KERC. Further, Article 3.1 of the PPA mentions the 'Effective Date' with reference to the PPA as '*this agreement shall come into effect from the date of getting concurrence from KERC on the PPA and such date shall be referred to as the Effective Date*'. In the present case vide letter dated 29.09.2016 (Annexure-P4), the petitioner and the 1<sup>st</sup> Respondent were informed of the approval of the

Commission to the PPA dated 29.06.2016 (Annexure-P3). Therefore, the date 29.09.2016 has to be considered as the 'Effective Date' for the purpose of interpreting the relevant clauses in the PPA. The PPA does not provide that the date of receipt of intimation regarding approval of the Commission to the PPA or the date on which the SPPA is signed by the Petitioner and the 1<sup>st</sup> Respondent, in case the execution of such SPPA is needed, could be considered as the 'Effective Date'. Therefore, the contention of the Petitioner is not acceptable.

- b) The Petitioner has contended that, as the letter dated 29.09.2016 (Annexure-P4) communicating approval of Commission for the PPA in question directed to incorporate certain corrections/modifications in the PPA by entering into a suitable SPPA, the execution of SPPA and also the approval of such SPPA is essential. Further, it is contended that when the execution of such SPPA and its approval by the Commission is required, such dates should be considered as the 'Effective Date'.
- c) The letter dated 29.09.2016 (Annexure-P4) signed by the Secretary of this Commission communicates approval of the Commission to the PPA dated 29.06.2016 executed between the parties in respect of development of 20 MW (AC) Solar Power Project in Jevargi taluk of Kalaburagi district, subject to certain corrections/modifications being incorporated in the said PPA by entering into a suitable SPPA. Therefore, it can be said that the approval of PPA dated 29.06.2016 communicated by letter dated 29.09.2016, is absolute, subject to

incorporating the corrections/modifications. For the purpose of incorporating the corrections/modifications, the execution of SPPA is essential. We note that there is no direction given to the parties that after entering into the SPPA, the same should be again got approved by the Commission. It cannot be contended that the approval of the Commission to the PPA takes effect only after effecting the corrections/modifications suggested, as the said corrections/modifications did not materially alter the rights and liabilities of the parties. Hence, the contention of the petitioner that the SPPA requires approval cannot be accepted. This aspect was clarified by the Commission in a subsequent letter dated 25.10.2016 addressed to the Government as per Annexure-1 to the common objections filed by 1st Respondent (GESCOM) & 3<sup>rd</sup> Respondent (KPTCL).

d) Therefore, Issue No.1 is held in negative.

12. Issue No.2: Whether the petitioner proves that there was delay in granting approval by the Commission of the PPA dated 29.06.2016 and also there was delay in granting evacuation scheme approval by the 3<sup>rd</sup> Respondent (KPTCL) and whether such delays led to delay in identifying the lands required for the Solar Power Project?

i) Regarding delay in granting approval of PPA by this Commission:

a) It is contended by the petitioner that the delay in approval of PPA by KERC has resulted delay in getting other required approvals. This contention cannot be accepted because as per the PPA, the 'Effective

Date' is from the date on which KERC approves the PPA and the petitioner is required to achieve the Conditions Precedent within eight months and Scheduled Commissioning Date within twelve months from the 'Effective Date'. Hence, delay in approving the PPA by KERC if any, will not affect the petitioner for the reason that time begins for achieving different milestones, from the date of approval of PPA by KERC.

- b) Any of the Respondents has not made an attempt to explain the delay of nearly three months in approving the PPA by the Commission. However, the letters dated 21.07.2016 (Annexure-2) addressed to KREDL and dated 29.08.2016 (Annexure-3) addressed to the Additional Chief Secretary to Government, Energy Department by this Commission would explain the reasons for the delay in approving the PPAs. These letters produced by 1<sup>st</sup> Respondent (GESCOM) & 3<sup>rd</sup> Respondent (KPTCL) would make it clear that the KREDL had not furnished the clarifications within time for the irregularities in conducting the bid proceedings, thereby the PPAs were ordered to be returned to ESCOMs and subsequently this Commission accorded in principle approval to PPAs on certain assurance given by GoK to amend the Solar Policy. Hence, there is no delay on the part of this Commission in approving the PPAs.
- c) Therefore, there is no substance in the say of petitioner that there was delay in approval of the PPA by KERC and it has resulted in delay, in getting other required approvals.

ii) Regarding Delay in granting evacuation approval:

- a) In Para 27 & 28 of the petition, the Petitioner has alleged the facts, in support of its contention regarding delay in grant of evacuation approval. The petitioner has stated that it had applied for evacuation approval on 22.07.2016 earlier to 29.09.2016, the date of approval of the PPA before 3<sup>rd</sup> Respondent (KPTCL). However, the KPTCL has granted the tentative evacuation approval on 08.11.2016 and regular evacuation approval on 03.12.2016 (Annexure-P12 collectively).
- b) The Respondents 1&3 in their statement of objections have submitted that the Commission informed the Respondent No.2 i.e. KREDL on 21.7.2016 stating that all the PPAs were returned for want of clarification in inviting the tender for 1200 MW in 60 taluks as KREDL has not furnished the authorization from ESCOMs for procuring Taluk-wise solar power as required under the MNRE Guidelines(Annexure-2). However, the in principle approval of the PPAs were communicated by the Secretary, KERC vide letter dated 29.08.2016 (Annexure-P3) addressed to the Additional Chief Secretary to Government, Energy Department. In the absence of a valid PPA, the application for evacuation scheme could not have been processed by the KPTCL. As already noted, the tentative evacuation scheme approval was granted on 08.11.2016 within seventy (70) days from 29.08.2016. Thereafter, the Petitioner gave its acceptance on 14.11.2016 for the terms & conditions of the tentative evacuation scheme approval. Soon thereafter, on 03.12.2016, the

regulation evacuation scheme approval was issued. The Scheduled Commissioning Date was on 28.09.2017 as per the terms of the PPA. Therefore, the Petitioner had almost ten months' period for constructing the dedicated transmission lines and to fulfill other conditions for commissioning of the Solar Power Project.

c) From the above facts, we hold that there was no delay in issuing evacuation scheme approvals.

iii) Regarding delay in identifying the lands required for the Solar Power Project:

a) The Petitioner has contended that the delay in issuance of approvals of the PPA by this Commission and the evacuation scheme by KPTCL led to delay in identifying the lands required for establishing the Solar Power Project. This contention of the petitioner has no basis. Before applying for issuance of evacuation scheme approvals to any Sub-station, the petitioner has to identify the lands where the project would be established and has to furnish Topo Sheet of the situation of the project site and the Sub-station to which the power would be evacuated. This fact is made clear in the application for grid connectivity dated 22.07.2016 (Annexure-P17 produced by the Petitioner along with IA dated 20.03.2018). In this application, the Petitioner had requested evacuation scheme approval from its project site, to the nearest 110/33 kV Sub-station situated at Mandewal village in Jevargi taluk of Kalaburagi district, which was at a distance of 5.5 kms. The Petitioner

had stated in its application that it had identified the required extent of lands for the project and annexed the Topo Sheet map showing the project site and Sub-station location, to the said application. The evacuation scheme approvals (Annexure-P12 collectively) would show that approvals were granted to the same Mandewal Sub-station at Jevargi taluk of Kalaburagi district, for the same Project site. Therefore, one can say that at the time of filing the application for seeking grid connectivity dated 22.07.2016 (Annexure-P17), the Petitioner had already identified the lands required for establishing the Solar Power Project. If there was change in location of the Project site, the Petitioner was required to file a fresh application with Topo Sheet, showing the Project location and the Sub-station.

b) For the above reasons, we hold that the say of the petitioner that it had to identify the lands required for the Solar Power Project after issue of evacuation scheme approvals or after approval of the PPA appears to be not true.

iv) For the above reasons, we hold Issue No.2 in negative.

13. Issue No.3: Whether the petitioner was prevented from performing its obligation of producing documents of title and possession of the lands required for establishing the Solar Power Project on or before 28.05.2017, the date on which the Conditions Precedent should have been fulfilled, due to 'Force Majeure' event?



- a) In Para 34 & 35 of the petition, the petitioner has stated the cumbersome process to be followed while obtaining an order under Section 109 of the KLR Act, 1961 and under Section 95 of the KLR (Amendment) 2015. The said grievance of the petitioner appears to have force, in view of the preamble stated in Circular No. RD 01 LRM 2016 dated 22.02.2016 issued by Government of Karnataka(GoK) and the G.O. No. EN 66 VSE 2016, Bengaluru dated 05.10.2016. Therefore, the GoK has issued the said Circular and G.O. prescribing the guidelines to be followed in granting permission under Section 109 of the KLR Act, 1961.
- b) Now, the question is whether filing an application before KREDL on 27.04.2017 [Annexure-R3 filed along with the Statement of Objections by 4<sup>th</sup> Respondent (GoK)] by the petitioner for taking further action by KREDL to obtain an order under Section 109 of the KLR Act, 1961 and under Section 95 of the KLR (Amendment) Act, 2015 amounts to sufficient compliance of Condition Precedent in relation to production of documentary evidence of clear title of lands required for the project in the name of the Petitioner.
- c) This Commission has already considered in similar previous cases, the effect of GoK Circular No. RD 01 LRM 2016 dated 22.02.2016 and Government Order dated 05.10.2016. The Commission has come to the conclusion that, had the petitioner applied to KREDL at least sixty days prior to the date on which Conditions Precedent had to be achieved

and there was a delay by the concerned authorities in processing the same or granting the approval beyond sixty days, the filing of such application to KREDL by the developer, could be considered as the fulfilment of the production of the documentary evidence of having clear title and possession of the lands required for the project, within the last date for fulfilment of Conditions Precedent.

d) The Petitioner has not specifically stated in the petition, the date on which it applied before KREDL for obtaining land conversion order, etc., The Statement of Objections of 4<sup>th</sup> Respondent (GoK) shows that the petitioner had filed application dated 27.04.2017 before KREDL as per Annexure-R3 stating that the petitioner had identified 114 acres 19 guntas of land and had taken consent letters from the farmers and had produced certain other documents. Further, it shows that upon verification of the application, the KREDL wrote letter dated 29.05.2017 (Annexure-R4) to Government for obtaining the necessary orders and thereafter, the Government issued Notification dated 13.07.2017 (Anneuxe-R5) permitting the KREDL to obtain the land conversion order and to take the lease from the farmers and in turn, to sub-lease the same to the Petitioner. The KREDL had sent application dated 30.08.2017 (Annexure-R6) to the Deputy Commissioner, Kalaburagi district and subsequently, the Deputy Commissioner issued land conversion order dated 24.11.2018 (Anneuxre-R7). Therefore, one can say that the land conversion order was passed by the Deputy Commissioner, after a long gap of nearly one year seven months from

the date of filing application dated 27.04.2017 (Annexure-R3) before KREDL. We found that in almost all cases there was inordinate delay in obtaining the land conversion order.

e) Hence, in the present case, had the petitioner applied to KREDL at least sixty days prior to 28.05.2017, the date on which the Conditions Precedent should have been fulfilled, we could have considered the filing of such application would amount to fulfilment of the Conditions Precedent within the stipulated time. As already noted, the petitioner has filed such application on 27.04.2017 about 31 days prior to 28.05.2017, but not sixty days prior to the 28.05.2017 as required. Therefore, we hold that the Petitioner had failed to produce the document of title to and possession of lands required for the Solar Power Project.

f) For the above reasons, we hold Issue No.3 in negative.

14. Issue No.4: Whether the petitioner has proved that the delay in commissioning the Solar Power Project was also due to:

(a) Implementation of Goods & Services Tax (GST) Act, 2017 by the Government of India (GoI)?

(b) Introduction of Demonetization by GoI? and

(c) Wrong classification of Solar Modules under CTH 8501 instead of CTH 8541 by Customs Authorities at Chennai Port and Nahva Sheva Port?

15. a) Before dealing each of the above mentioned items in Issue No.4, we may note that the petitioner has not pleaded any of these grounds in

the petition. In the guise of filing Rejoinder to the Statement of Objections filed by the 1<sup>st</sup> & 3<sup>rd</sup> Respondents, the petitioner has stated these grounds in the Rejoinder for the first time. The petitioner has filed the present petition before this Commission on 29.11.2017, just a few days after commissioning of the Solar Power Project on 18.11.2017. The events relating to the above grounds had already occurred well before filing of the petition. If really, these grounds were available for the petitioner at the time of filing the petition, the petitioner would not have omitted to allege these grounds in the petition. There is no explanation by the petitioner for which reason it had not alleged these grounds in the petition. In the absence of a proper explanation for not pleading these grounds in the petition, a subsequent application for amendment of the pleadings for inclusion of these grounds is not maintainable. A new and an entirely unconnected contentions/defence cannot be pleaded in the Rejoinder. Even if such a new ground is alleged in the Rejoinder, the same should be rejected from any consideration. The Petitioner is represented by an Advocate. Therefore, the petitioner cannot contend that it was not acquainted with the rules of pleadings. The non-inclusion of these grounds in the pleadings either initially or by way of amendment, leads to an inference that these grounds were not well founded and thereby the petitioner had not taken the pain to include it either in the petition or by way of amendment of the petition. If the new ground is included in the petition by way of amendment, the other side will have an opportunity to say its version on such ground.

Therefore, these grounds made out in the Rejoinder are to be rejected out rightly. Therefore, we have to accept the contention of 1<sup>st</sup> & 3<sup>rd</sup> Respondents that a party cannot through rejoinder, abuse the process of law and raise new grounds, pleas or facts.

b) However, we will also deal with the merits of these grounds on the basis of the facts pleaded in the Rejoinder.

16. Regarding Implementation of Goods & Services Tax (GST) Act, 2017 by the Government of India (GoI)?

a) The petitioner has stated that there was a slow-down from July, 2017 to September, 2017 in manufacturing and service industry across the country due to introduction of GST. The petitioner has relied on the Official Memorandum (OM) dated 27.06.2018 issued by MNRE stated in the Rejoinder dated 25.06.2019 to the Statement of Objections of 1<sup>st</sup> & 3<sup>rd</sup> Respondents, but has not produced the full text of this OM. This OM was issued on the request of the Solar Power Developers, to SECI/NTPC/other Implementing Agencies, for grant of extension of time on case to case basis. It is made clear in this OM that the extension of time could be given for the Solar Power Project Developers provided they furnish all documentary evidence establishing that they were actually affected due to GST induced disruptions in the period for which extension of time has been claimed.

b) In the present case, the petitioner has not produced any documentary evidence in support of its claim to establish that it was actually affected

due to GST induced disruptions during the period from 01.07.2017 to 31.08.2017.

c) Therefore, we hold that the petitioner has failed to establish that introduction of GST has affected the progress of its project.

17. Regarding Introduction of Demonetization by GoI?

a) The petitioner has stated that Demonetization adversely affected the progress of the project work for 2-3 months from 08.11.2016, as land acquisition and project activities were affected causing delay considerably. Except for the vague averment, no definite instances are mentioned to demonstrate as to how the progress of the project was affected due to demonetization. Therefore, without adequate proof, we cannot accept that demonetization adversely affected the progress of the project of the petitioner from 08.11.2016 to the end of January, 2017.

b) In the present case, the petitioner has not purchased the extent of lands required for the project, but had taken it on lease, that too long after the expiry of period affected by Demonetization. The petitioner has stated that it had placed purchase orders of solar modules, inverters, transformers and mounting structures as stated in the letter dated 29.05.2017 (Annexure-P7). However, the petitioner has not stated the actual dates of the purchase orders of these things. If really, these purchase orders were placed during the affected period

of demonetization, it would have certainly produced the evidence regarding the dates of these purchase orders.

- c) For the above reasons, we hold that the petitioner has failed to establish that demonetization had adversely affected the progress of the project.

18. Regarding Delay due to Wrong Classification of Solar Modules:

- a) The Petitioner in its Rejoinder dated 25.06.2019 filed against the Statement of Objections of 1<sup>st</sup> & 3<sup>rd</sup> Respondents, Paras 37 to 46 has stated certain facts regarding the delay in clearance of imported Solar Modules by Customs Authorities at Chennai Port and Nahva Sheva Port due to Wrong Classification of Solar Modules by the said Authorities. These allegations are not supported by any documentary evidence. The petitioner could not aver in these paragraphs, the period for which there was delay in getting the solar modules due to wrong classification, except saying that there was enormous delay. It was required for the petitioner to say the exact period of delay due to this reason.
- b) The petitioner has mentioned about the dispute with regard to both Chennai Port and Nahva Sheva Port Customs Authorities. It cannot be made out from the pleadings whether the modules which were sought to be released related to this project alone or to some other projects and the date on which these modules were got released. In Paragraph 44 of the Rejoinder, it is stated that the Petitioner once again made a representation dated 31.10.2017 in response to the Show-Cause Notice

dated 19.10.2017 of Customs Authorities for release of the modules on furnishing the Bank Guarantee. Therefore, one can say that these modules being used in commissioning the Solar Power Project in question is highly improbable as the said Project was commissioned on 18.11.2017.

c) Hence, this ground for seeking extension of time is not established by the petitioner and the same is rejected.

19. On perusal of the contents of the provisional Inter-connection approval dated 16.11.2017 (Annexure-P6) and the Commissioning Certificate dated 28.11.2017 (Annexure-P16), it appears that the real reason for the delay in completing the project was the delay in construction of the evacuation line as approved in the regular evacuation scheme. Though the regular evacuation scheme was approved on 03.12.2016, the petitioner could not complete the evacuation line and the other project work belatedly and could obtain the clearance from the Chief Electrical Inspectorate to Government of Karnataka on 07.11.2017 and thereafter, had applied for Inter-connection approval on 09.11.2017. The 3<sup>rd</sup> Respondent (KPTCL) thereafter issued provisional Inter-connection approval on 16.11.2017 (Annexure-P6) and then within two days, the Solar Power Project was commissioned on 18.11.2017. But the Petitioner does not explain the reason for the delay in constructing the evacuation line. The References narrated in the Provisional Inter-connection approval dated 16.11.2017, make out the reasons for the delay in completing the construction of the evacuation



line. As already noted, the reasons stated by the Petitioner for the delay in commissioning the Project are not established.

20. For the reasons stated above, we answer Issue No.4 in negative.

21. Issue No.5: Whether the claim for liquidated damages is established by the 1<sup>st</sup> Respondent (GESCOM) as required under Section 74 of the Indian Contract Act, 1872?

a) The petitioner has contended that without proof of actual damage or loss a party cannot recover liquidated damages stated in the contract. The law on this subject is discussed in detail in the decision cited in (2015) 4 SCC 136 between *Kailash Nath Associates Vs. Delhi Development Authority and Another*. The summary of the principles stated in paragraph 43 of this judgement reads as follows:

“43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1 Where a sum is named in a contract as liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is

the upper limit beyond which the court cannot grant reasonable compensation.

43.2 Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia Section 73 of the Indian Contract Act, 1872.

43.3 Since Section 74 of the Indian Contract Act, 1872 awards reasonable compensation for damage or loss caused by a breach of contract, the damage or loss caused is a sine qua non for the applicability of the section.

43.4 The section applies whether a person is a plaintiff or a defendant in a suit.

43.5 The sum spoken of may already paid or be payable in future.

43.6 The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensing with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7 Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

b) The petitioner has relied upon other judgements of Hon'ble Supreme Court in *Union of India Vs. Rampur Distillery (AIR 1973 SC 1098): (1973) 1*

*SCC 649 and in Fateh Chand Vs. Bal Kishan Dass AIR 1973 SC 1098*. We think it is not necessary to discuss the above decisions, as in *Kailash Nath Associates* the above cases are considered before laying down the law stated in it as noted above.

c) In the case of non-supply of energy by a generator to the distribution licensee, it is not possible to prove the actual damage or loss. Therefore, if the contract provides a genuine pre-estimate of damage or loss, the defaulting party is liable to pay the liquidated damages without proof of actuals loss or damage.

d) The definition clause in Article 21.1 of the PPA defines "Damages" shall have the meaning set forth in sub-clause (w) of Clause 1.2.1. The said sub-clause (w) reads as follows:

"the damages payable by either party to the other of them, as set forth in this agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimate loss and damage likely to be suffered and incurred by the party entitled to receive the same and are not by way of penalty".

e) The petitioner has not led any acceptable evidence to infer that the liquidated damages agreed in the PPA are in the nature of penalty. On the other hand, the agreed term shows that the liquidated damages mentioned in the PPA is the genuine estimate.

f) For the above reasons, we hold the Issue No.5 in affirmative.

22. Issue No.6: Whether the Solar Power Project of the Petitioner was liable for reduced tariff in the event of delay in commissioning of the project?

a) As per Article 8.5 of the PPA the petitioner had to commission the project, within 12 (twelve) months from the 'Effective Date'. Therefore, the petitioner had to commission the project on or before 28.09.2017. The project was commissioned on 18.11.2017 (Annexure-P16) as per Commissioning Certificate. We note that there is delay in commissioning the Solar Power Project of the Petitioner. We have held in the preceding paragraphs that the petitioner was not prevented by any 'Force Majeure' events in commissioning the project. Further, as a consequence of delay in commissioning of the project beyond Scheduled Commissioning Date, the project would be liable for applicable tariff as on the Commercial Operation Date, if any, as provided in Article 12.2 of the PPA. It would be appropriate here to note the relevant parts of Article 12 of the PPA dated 29.06.2016, which are hereunder:

a) Article 12.1 states that "the developer shall be entitled to receive the tariff of Rs.4.81/kWh of energy supplied by it to GESCOM, Kalaburagi, in accordance with terms of PPA during the period between COD and the expiry date."

b) Article 12.2 of PPA envisages that as a consequence of delay in commissioning of the project beyond the Scheduled Commissioning Date, subject to Article 4, if there is change in the KERC applicable tariff, the changed applicable tariff for the project shall be the lower of the following:

- i) Tariff at in clause 12.1 above  
or
  - ii) KERC applicable Tariff as on the commercial Operation Date.
- b) The “Commercial Operation Date” is defined under Article 21.1 of PPA as under:

“COD or Commercial Operation Date” shall mean the actual commissioning date of respective units of the power project where upon the developer starts injecting power from the power project to the delivery point.”

- c) The petitioner contended that the tariff under the PPA in question is discovered through competitive bidding. Hence it is not vulnerable to variations in the generic tariff effected vide different Generic Tariff Orders. The tariff order dated 12.04.2017 is only modification of the 30<sup>th</sup> July,2015 order, which is not applicable to the petitioner’s case. Hence, there is no resultant impact of so called delays in the commissioning of the project. We have perused the contents of the Revised Tariff Order dated 12.4.2017 issued by the KERC, which is applicable to Grid Interactive Megawatt Scale Solar Power Plants for Financial Year 2018. The clause 4 of the revised Tariff Order dated 12.4.2017 inter alia says that:

Clause 4. ii – “This tariff determined shall also be applicable to those grid connected megawatt scale solar power PV Plants for which PPAs were entered into before 1<sup>st</sup> April, 2017, but are

not commissioned within the specified Commercial Operation Date (COD) and achieve COD during the period from 1<sup>st</sup> April, 2017 to 31<sup>st</sup> March, 2018.”

d) In the present case, the petitioner has entered into PPA on 29.06.2016 (Annexure P-3) and Commissioned the project on 18.11.2017 (Annexure-P16) and agreed to the terms of Power Purchase Agreement dated 29.06.2016 wherein Clause 12.2 of PPA specifically provides that as a consequences of delay in Commissioning of the project beyond the Scheduled Commissioning Date, if there is a change in KERC applicable Tariff for the project shall be the lower of the tariff of Rs.4.81/kWh or KERC applicable tariff as on the Commercial Operation Date. The contention of the petitioner that the revised Tariff Order dated 12.4.2017 is not applicable to this case is not tenable as the petitioner is bound by the terms and conditions of the Power Purchase Agreement dated 29.6.2016 mutually agreed by the parties. At the later stage, how can the petitioner justify to say that provisions of Article 12.2(ii) of PPA is not applicable to the instant case.

e) We rely upon the *Civil Appeal No.1220 of 2105 (Gujarat Urja Vikas Nigam Limited Vs. EMCO Limited and an others)* decided on 2.2.2016, where in Hon'ble Supreme Court of India has held, as follows:

“31. Apart from both the Respondent No.2 and the Appellant tribunal failed to notice that the 1<sup>st</sup> Respondent conveniently ignored one crucial condition of the PPA contained in the last sentence of para 5.20 of the PPA: -

*“In case, commissioning of solar power project is delayed beyond 31st December 2011, GUVNL shall pay the tariff as determined by the Hon’ble GERC for solar power project effective on the date of commissioning of solar power project of 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 first tariff order. It also visualised that for the subsequent control period, the tariff payable to the project/power producer (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 the lower of the two tariffs---*

- f) We are of the opinion that the petitioner has failed to establish any ‘Force Majeure’ event to claim extension of time for achieving the Conditions Precedent or SCOD. In the instant case, 20 MW Solar Power Plant of the petitioner at Jevargi taluk in Kalaburagi district, was commissioned on 18.11.2017 (Annexure-P16). This Project should have been commissioned on or before 28.09.2017 as per terms of PPA. Tariff agreed in the PPA dated 29.06.2016 was of Rs.4.81/kWh, but KERC has revised the tariff to Rs.4.36 per unit for grid interactive megawatt scale solar power project by its revised Tariff Order dated 12.04.2017, which is applicable to this project as per provisions of Article 12.2 of the PPA, because this Solar Power Project is commissioned on 18.11.2017, subsequent to the KERC

Tariff Order dated 12.04.2017. Therefore, as per Article 12.2 of the PPA, the petitioner is entitled to get the reduced tariff of Rs.4.36 per kWh.

g) Therefore, Issue No.6, is held accordingly, holding that the petitioner is not entitled to any reliefs.

23. Issue No.7: To which reliefs the Petitioner is entitled to?

In view of the various findings given above, the petitioner is not entitled to any of the reliefs prayed for by it.

24. Issue No.8: What Order?

For the above reasons, we pass the following:

### **ORDER**

- a) The petition is dismissed holding that the petitioner is not entitled to any of the reliefs claimed in the petition;
- b) The Petitioner is entitled to get reduced tariff of Rs.4.36 per kWh as per the terms of Article 12.2 of PPA dated 29.06.2016 and as per revised Tariff Order dated 12.04.2017 issued by KERC for grid connected Megawatt Scale PV Solar Plants and for the energy supplied to the 1<sup>st</sup> Respondent (GESCOM) from the Commercial Operation Date, during the term of PPA; and
- c) The Petitioner is liable to pay damages as provided in Article 4.3 and 5.8 of the PPA.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member



