

No.N/389/2017

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

**Dated: 26.06.2020**

**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. 209/2017**

**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) Mangalore Electricity Supply Company Limited  
(MESCOM), A Company Registered under the  
provisions of Companies Act, 1956 having its  
Registered Office at Paradigm Plaza,  
A.D. Shetty Circle,  
Mangaluru-575 001.  
(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, 'Shanthy Gruha"  
Bharat scout and Guides Building,  
Palace Road,  
Bengaluru-560 00.1  
(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 represented by Sri Shabaaz Hussain.  
Respondent No.2 represented by Sri Y.P. Rakshit Jois  
Respondent No.3 represented by M/s Indus Law and  
Respondent No.4 represented by Smt. Latha, Advocates]

## **ORDERS**

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

Petitioner prays that this Commission may be pleased to:

- a) Call for records;
- b) Declare that the Petitioner was prevented from performing its obligation under the PPA due to alleged 'Force Majeure' events affecting it;
- c) Grant concurrence to the Supplemental Power Purchase Agreement (SPPA for short) dated 09.12.2016; and
- d) Declare that Effective Date under Article 3.1 of the PPA is the date on which the SPPA receives its concurrence from this Hon'ble Commission;

Alternatively

- e) Declare that 'Effective Date' under Article 3.1 of the PPA is the date on which the SPPA signed by the Petitioner and Respondent No.1 on 09.12.2016;

Alternatively,

- e) Declare that 'Effective Date' under Article 3.1 of the PPA is the date on the PPA approval letter of this Hon'ble Commission received by the Petitioner on 26.10.2016;
- f) If the Hon'ble Commission were to consider that there is delay in fulfillment of the Conditions Precedent, the Hon'ble Commission may be pleased to 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.
- g) Pass such other order/s including an order as to costs, to meet the ends of justice and equity.

2. The brief facts, set out in the petition are as under:

- a) The State of Karnataka, Energy Department resolved to undertake development of 1,200 MW of Solar Power Projects in Karnataka to be implemented in sixty taluks, through Private Sector Participation and authorized KREDL to issue Request for Proposals (RfP) for the development of 290 MW Solar Power Projects in the State of Karnataka to be implemented in 17 taluks and accordingly KREDL has issued RfP on 12.02.2016. Pursuant to the RfP, M/s Adani Green Energy Limited submitted its proposal for development of 20 MW capacity Solar PV Ground Mount Project in Malur taluk of Kolar district. After evaluation, the KREDL accepted the proposal of M/s Adani Green Energy Limited and issued the Letter of Allotment (LoA) and Allotment Letter dated 30.05.2016

(Annexure-P1), with such terms and conditions stated therein and to acknowledge this LoA within seven days of the receipt of the same. M/s Adani Green Energy Limited acknowledged the receipt of LoA through its letter dated 08.06.2016 (Annexure-P2) and intimating that the project would be established through Special Purpose Vehicle (SPV) namely; 'M/s Adani Green Energy (UP) Limited, and the said SPV would execute PPA within 30 days from the date of acknowledgement of LoA with 1<sup>st</sup> Respondent (MESCOM).

b) Pursuance to it, the petitioner executed PPA dated 29.06.2016 (Annexure-P3) with MESCOM. As per Article 3.1 of the PPA the 'Effective Date' would be on 19.10.2016, the date of approval by the Commission. As per 4.1 of the PPA, the Petitioner was required to achieve the Conditions Precedent within eight months from 'Effective Date' and as per the Definition of Scheduled Commissioning Date (SCD) provided in the PPA, the project was to be commissioned within twelve months from 'Effective Date'.

c) Admittedly, the petitioner has commissioned the project within the SCD. However, the petitioner could not produce the documentary evidence of having the clear title and possession of the land required for the project in its name within the due date for compliance of Conditions Precedent. The petitioner has produced all other documents required for the fulfilment of the Conditions Precedent to the 1<sup>st</sup> Respondent (MESCOM) as per letter dated 19.06.2017 (Annexure-P7). In the same letter dated 19.06.2017

regarding land related documents, the petitioner has produced the following (i) Acknowledgement of Section 95 application submitted to KREDL; (ii) Consent letters from land owners to lease their lands for Solar Power project; and (iii) Sworn Affidavit evidencing possession of lands by the petitioner, were produced before 1<sup>st</sup> Respondent (MESCOM). The pleadings of the petitioner do not disclose the date on which the petitioner presented the application before KREDL. However, the Document No.1 produced by the petitioner on 26.11.2019 before this Commission shows that the petitioner presented on 11.04.2017 to KREDL, the application dated 10.04.2017 requesting to process the application so as to obtain a Government Order under Section 95 (2) (10) of the Karnataka Land Revenue Act, 1964 (KLR Act, 1964 for short).

d) The petitioner wrote a letter dated 30.05.2017 (Annexure-P8) to the Additional Chief Secretary to Government, Energy Department, stating the reasons for non-production of documents evidencing clear title and possession of the extent of lands required for the project and requesting the Government to direct the 1<sup>st</sup> Respondent (MESCOM) 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 (MESCOM) 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 of the lands required for the Solar Power Project in the name of the Developer and in case of extreme view of MESCOM of not accepting the plea, further requesting to grant three months' time extension for production of the required conversion order. The petitioner contended that obtaining a conversion order is a tedious and time-consuming fact and the petitioner had taken all precaution and was diligent in getting the documents of title of the lands required for the project. In spite of it, he could not able to get the conversion order.

e) The Petitioner further contended that, he had approached the KPTCL on 22/23.07.2016 for grant of evacuation approval and KPTCL had granted tentative evacuation scheme dated 23.02.2017 and the regular evacuation scheme dated 20.03.2017 (both marked at Annexure-P10). Therefore, the petitioner has contended that there was enormous delay on the part of 3<sup>rd</sup> Respondent (KPTCL) in granting the evacuation approval which resulted delay in identifying the lands required for the Solar Power Project.

f) The Petitioner further contended that the 'Effective Date' as defined in Article 3.1 of the PPA, may be reckoned from the date of SPPA or from the date of approval of the SPPA by the Commission as such approval of SPPA is necessary. Further, the petitioner contended that at least the date on which the letter of approval of the PPA was received by the petitioner i.e.,

26.10.2016 may be considered as the 'Effective Date'. The SPPA is not approved by KERC and the petitioner waited for long period for approval of the SPPA. That the KERC in similarly placed matter, vide its letter No.KERC/S/F-31/Vol.1187/17-18/1110 dated 10.10.2017 communicated KERC approval to SPPA on 06.09.2017 executed between BESCOM & Kodangal Solar Parks Private Limited in respect of 20 MW Solar Power Project to be developed under 1,200 MW located at Basavana Bagewadi taluk of Vijayapura district. Hence, the petitioner contended that the KERC approval of its SPPA is necessary. According to the petitioner delay in approval of PPA by the Commission delayed the progress of the various activities of the Solar Power Project. The delay in grant of PPA approval and the connectivity approval was beyond the reasonable control of the petitioner and therefore, it is a 'Force Majeure' event under Article 14 of PPA and accordingly the petitioner issued notices to 1<sup>st</sup> Respondent on 06.07.2017 and 31.07.2017 (Annexure P-11.)

g) For the above reasons, the petitioner has prayed for allowing the petition.

3. In response to the notice, Respondents appeared through their Advocate and filed objections.

4. 1<sup>st</sup> Respondent (MESCOM) contended as follows:

a) The petitioner admits the 'Effective Date' to be on 19.10.2016, the date on which PPA was approved by this Commission and stated that the project has been commissioned within twelve months from that date. However, the petitioner elsewhere in the petition contradicts its own

stand and claims the 'Effective Date' to be the date of the execution of SPPA. This shows the lack of credentials in the submissions of the petitioner as it approbates and reprobates its stand. The PPA approved by the commission was not kept in abeyance till the time, changes have been carried out. The contention that SPPA ought to have been approved is erroneous one and becomes redundant exercise with no purpose. The Commission has neither directed to submit SPPA for approval nor directed to get approval of the same. Approval of SPPA is not a necessity under the law in the light of the above averments. The time taken by the Commission to approve the PPA has no bearing on the SCOD, as the 'Effective Date' starts there after only. The Petitioner has made out the make believe affair, alleging the lapses on the part of the concerned Government Authorities in sanctioning the required permissions to commence the project and in meeting the Conditions Precedent, taking the refuge under the alleged 'Force Majeure' Clause of the PPA. The Petitioner has not explained the proper grounds except arguing on the Effective Date of PPA. The Petitioner has not substantiated as to how the proceedings under Section 95 and 109 of KLR Act, 1964 becomes delayed proceedings to come under the Force Majeure Clause. The period of eight months was specifically given to procure such approvals from the Effective date of PPA and now on the ground of complexity of the proceedings the Petitioner cannot seek to consider as Event of Force Majeure or to condone the delay. The Petitioner has not disclosed on which dates it filed applications to seek



such approvals nor disclosed the reason for purported delay by Government Authorities and also not produced the supporting documentary evidence. In the absence of cogent evidence, the presumption has to be drawn for noncompliance of relevant procedures by the Petitioner, who was well aware about the procedure before executing the PPA. Having consented to the said time period now estopped from claiming extension of time. Clause 4.3 provides for damages if the Conditions Precedent within eight months are not fulfilled and the delay is not covered under Force Majeure which can be attributed against the Respondents. The Petitioner becomes liable to pay damages. The Petition is liable to be dismissed.

b) The 1<sup>st</sup> Respondent (MESCOM) has denied the other allegations made by the petitioner.

5. The Respondent No.2 (KREDL) contended as follows:

Being the nodal agency of the Government of Karnataka for facilitating the development of 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 and issued the letter of allotment dated 30.05.2016 in favour of M/s Adani Green Energy Limited for development of Solar Power Project in Maluru taluk of Kolar district. As per Government Order dated 05.10.2016 (Annexure-R2A), KREDL was empowered and was directed to enter to lease agreement with the land owners of the proposed solar parks, after

the SPD obtaining necessary approvals and thereafter to sub-lease the lands to SPD. The Petitioner presented on 17.05.2017 (Annexure-R2B) the documents for verification and to get the lease deed. The KREDL then issued the letter dated 29.05.2017 to Respondent No.4 for issue of Notification and thereafter, the State Government, has issued the Notification dated 13.07.2017 (Annexure-R2C), according permission to KREDL to obtain the land on lease in its favour and thereafter to sub-lease the same to the petitioner. The KREDL later issued the letter dated 30.08.2017 (Annexure-R2D) to the Deputy Commissioner, Kolar, requesting for issue of deemed conversion in the name of owners. However, there was no response from the Deputy Commissioner, Kolar, till date. KREDL is not necessary party in this case. Hence, the 2<sup>nd</sup> Respondent requested to dismiss the petition as against it.

6. The Respondent No.3 (KPTCL) contended as follows:

a) On 27.02.2016 the KPTCL issued the Sub-station wise feasibility study to KREDL. This Commission by letter dated 25.10.2016 (Annexure-R1) has clearly clarified that the SPPA is nothing but an Addendum to the original PPA and there is no necessity for the same to be approved again and specifically stated that original PPA defines the 'Effective Date' as the date on which the PPA is approved by the Commission. This Commission in its letter dated 21.07.2016 (Annexure-R2) had returned all PPAs to the respective ESCOMs. Subsequently, this Commission issued letter dated 29.08.2016 (Annexure-R3) according in

principle approval for all such PPAs returned, and directed all ESCOMs to re-submit the PPAs for the approval of the Commission. Thereafter, the KPTCL started to process the evacuation applications including that of the Petitioner on fast track basis and issued the tentative evacuation scheme approval on 23.02.2017 and regular evacuation scheme on 20.03.2017. It is contended by this Respondent, that in the meanwhile, the Petitioner had requested it on 31.08.2016 not to process its evacuation application dated 22/23.07.2016 as the petitioner was intending to change the land location of the Solar Power Project. Further, the demand for processing fee made on 06.09.2016 was complied with by the Petitioner after months together. Therefore, the petitioner itself is to be blamed for its laches and there was no delay on the part of this Respondent in processing the evacuation scheme approval.

- b) The contention of the petitioner that the evacuation approval was a must for finalization of the project sites, is not true but on the contrary the Petitioner is duty bound to finalize the project site at-least before making an application for the power evacuation. The petitioner has not issued any notice intimating the occurrence of 'Force Majeure' event and in that event the petitioner cannot seek refuge under the 'Force Majeure' event under the PPA.
- c) Therefore, the 3<sup>rd</sup> Respondent (KPTCL) has requested to dismiss the petition against it.

7. The Respondent No.4, the State of Karnataka contended as follows:

a) The Petitioner has to produce the documentary evidence for the title and possession of the lands required for establishment of the Solar Power Project as prescribed in Clause 3.6 of the RfP. (The relevant part of RfP is produced at Annexure-R2). At the request of the Solar Power Project developers and also in order to safeguard the interest of the land owners, the Government issued a Government Order No.EN 66 VSE 2016 dated 05.10.2016 (Annexure-R1) directing the KREDL to enter into lease with the lander owners.

b) That the petitioner filed an application dated 10.04.2017 (Annexure-R4) before KREDL identifying 118 acres 08 guntas of lands in different survey numbers of Malur taluk in Kolar district, for establishment of Solar Power Project and requesting the KREDL to process the same so as to obtain order under Section 95 (2) (10) of the KLR Act, 1964. Thereafter, the petitioner wrote letter dated 05.05.2017 (Annexure-R5) to KREDL furnishing some more particulars regarding lands. In response to the letter dated 10.04.2017 (Document No.1 produced by the petitioner on 26.11.2019) written by the petitioner to KREDL, the KREDL intimated the petitioner through its letter dated 12.05.2017 (Annexure-R3) to re-submit the documents duly attending the observations noted in the said letter dated 12.05.2017. The petitioner submitted its explanations and responses as per letters dated 17.05.2016 (Annexure-R6) and dated 20.05.2017 (Annexure-R7). Subsequently, KREDL wrote letter dated

29.05.2017 (Annexure-R8) to Additional Chief Secretary to Government, Energy Department, requesting to issue Notification authorizing KREDL to get the lease deeds from land owners in favour of it and to sub-lease the same to the petitioner for development Solar Power Project. Thereafter, the GoK issued Notification dated 13.07.2017 (Annexure-R9) accorded the approval as requested by KREDL. Further, KREDL wrote letter dated 30.08.2017 (Annexure-R10) to the Deputy Commissioner, Kolar, requesting to issue the necessary orders under Section 109 of the KLR Act, 1961 and under Section 95 (2) & (10) of the KLR Act, 1964.

c) The KREDL or the GoK were never under the obligations to get the required approvals from the Deputy Commissioner, Kolar and it was the duty of the developer to seek for the approvals from the concerned departments. Therefore, the KREDL or the GoK cannot be made responsible for the delay in granting the approvals by the Deputy Commissioner, Kolar. Therefore, the 4<sup>th</sup> Respondent (GoK) requested to dismiss the petition as against it.

d) The Petitioner is seeking the relief under the head 'Force Majeure' and inadvertent delay, without producing the supporting documents. There is no provision under the PPA and the RfP to time extension and retention of the tariff under the head of inadvertent delay. Hence, the petition may be dismissed in the interest of justice and equity.

8. The petitioner filed Rejoinders to each of the Statement of Objections filed by the Respondents reiterating the contentions taken in the petition and produced some more documents in support of its contentions.
9. We have heard the learned counsel for the parties. They also filed written arguments.
10. From the pleadings and documents produced by the parties and also the submission made by them, the following Issues arise for our consideration:

Issue No.1: Whether the petitioner proves that the 'Effective Date' under Article 3.1 of the PPA should be treated as:

- a) The date on which the SPPA dated 09.12.2016 would be approved by the Commission, as the approval of the said SPPA was essential? or
- b) 09.12.2016, the date on which the said SPPA was executed? or
- c) 26.10.2016, the date on which the PPA approval letter dated 19.10.2016 was received by the petitioner?

Issue No.2: Whether the petitioner proves that delay in granting approval of the PPA dated 29.06.2016 by the Commission and delay in granting evacuation approval by the 3<sup>rd</sup> Respondent (KPTCL), caused delay in identifying the lands required for the Solar Power Project?

Issue No.3: Whether the petitioner was unable to produce the documentary evidence of having the clear title and possession of the lands in its favour, required for the establishment of Solar Power project, due to undue delay in granting approval under Section 109 of the KLR Act, 1961, without valid reason by the Deputy Commissioner, Kolar?

Issue No.4: Whether the petitioner is liable to pay damages for non-fulfilment of the Condition Precedent of producing the documentary evidence of clear title and possession of the land required for the establishment of Solar Power project?

Issue No.5: What order?

11. After considering the submissions of the parties and the material on record, our findings on the above Issues are as follows:

12. Issue No.1: Whether the petitioner proves that the 'Effective Date' under Article 3.1 of the PPA should be treated as:

a) The date on which the SPPA dated 09.12.2016 would be approved by the Commission, as the approval of the said SPPA was essential? or

b) 09.12.2016, the date on which the said SPPA was executed? or

c) 26.10.2016, the date on which the PPA approval letter dated 19.10.2016 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 19.10.2016 (Annexure-P4), the petitioner and the 1<sup>st</sup> Respondent were informed the approval of the Commission to the PPA dated 29.06.2016 (Annexure-P3). Therefore, the date 19.10.2016 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 Respondent No.1 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 19.10.2016 (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 19.10.2016 (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 Malur taluk of Kolar 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 19.10.2016, is absolute subject to incorporating the corrections/modifications. For the purpose of incorporating the corrections/modifications, the execution of a SPPA is required. 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 said that the approval of the Commission to the PPA takes effect only after effecting the corrections/modifications suggested, as the corrections/modifications suggested to be carried 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-R1 to the Objections filed by 3<sup>rd</sup> Respondent (KPTCL).

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

13. Issue No.2: Whether the petitioner proves that delay in granting approval of the PPA dated 29.06.2016 by the Commission and delay in granting evacuation approval by the 3<sup>rd</sup> Respondent (KPTCL), caused delay in identifying the lands required for the Solar Power Project?

Issue No.3: Whether the petitioner was unable to produce the documentary evidence of having the clear title and possession of the lands in its favour, required for the establishment of Solar Power project, due to undue delay in granting approval under Section 109 of the KLR Act, 1961, without valid reason by the Deputy Commissioner, Kolar?

a) The facts relating to Issue No.2 & 3 are interconnected, therefore, we consider Issue No.2 & 3 at one place.

b) The petitioner contended that the delay in granting of approval of PPA dated 29.06.2016 by the Commission and delay in granting evacuation approval by the KPTCL were beyond its control and such delays were enormous. Therefore, it amounted to 'Force Majeure' events. The relevant portion of 'Force Majeure' event under the Article 14 of PPA reads as under:

*"14.3.1 A 'Force Majeure' means any event or circumstance or combination of events including those stated below which wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:*

*a).....*

*b).....*

*c).....*

*d).....*

*e) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the*

*Developer or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit.*

c) The petitioner has relied upon the following events or circumstances for claiming the benefit of 'Force Majeure' events.

- (i) Delay in getting KERC approval to PPA;
- (ii) Delay in getting evacuation approval;
- (iii) Delay in getting approvals u/s 109 of the KLR Act, 1961 & 95 of the KLR Act 1964.

14. Regarding Delay in getting KERC approval to PPA:

It is contended by the petitioner that the delay in approval of PPA by KERC has resulted delay in getting other required approvals. However, 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 Condition Precedent within eight months from the 'Effective Date'. Hence, delay in approving the PPA by KERC will not affect the petitioner for the reason that time begins from the date of approval of PPA by KERC. Therefore, there is no

substance in the say of petitioner that delay in PPA approval by KERC has resulted delay in getting other required approvals.

15. Regarding Delay in granting evacuation approval:

- a) It is alleged by the petitioner that it filed application for granting evacuation scheme approval on 22.07.2016 but the regular evacuation scheme approval was granted on 20.03.2017, therefore, there was inordinate delay in granting the regular evacuation scheme. We note that the 3<sup>rd</sup> Respondent (KPTCL) in its Statement of Objection, has stated that the petitioner wrote letter dated 31.08.2016 (Document No.2 produced by the 3<sup>rd</sup> Respondent vide Memo dated 25.02.2020) requesting not to process its application dated 22.07.2016 due to technical constrains and change in land location of the project. This fact is not denied by the petitioner in its Rejoinder. It is pertinent to note that even though the petitioner itself has wrote such letter on 31.08.2016, nowhere in the petition, the petitioner whispered about it. It shows that the petitioner concealed the material facts to achieve its goal. It is clearly mentioned in the application dated 31.08.2016 that a fresh application with relevant documents will be filed. However, the records do not disclose when a fresh application was filed.
- b) According to Respondent No.3, the petitioner has not remitted the process fee immediately after intimation and took months' together to pay the process fee. This averment has not been denied by the petitioner in the Rejoinder. The documentary evidence such as letter dated 31.08.2016 by the petitioner goes to show that at the request of

the petitioner, the application dated 22.07.2016 is not processed. It is pertinent to note that the petitioner changed the land location of the project and requested to consider its request to Masti Sub-station in Malur taluk of Kolar district. Therefore, the said delay about evacuation can be attributed to the petitioner and not against the KPTCL.

- c) The tentative evacuation scheme approval dated 23.02.2017 states that the feasibility report was called for on 14.12.2016 and the same was submitted on 27.01.2017. Therefore, it can be said that a fresh application for evacuation approval was filed and the payment of process fee was paid prior to 14.12.2016. It may be noted that tentative evacuation scheme was issued on 23.02.2017 and regular evacuation scheme was issued on 20.03.2017. Therefore, there is no delay on the part of KPTCL in issuing the evacuation approvals. The delay if any caused for issue of these evacuation approvals can be attributed against the petitioner alone but not the KPTCL. Therefore, Issue No.2 is held in negative.

16. Delay in getting approval under Section 109 of KLR Act, 1961 and under Section 95 of KLR Act, 1964:

- a) The petitioner contended that delay in issuance of regular evacuation approval dated 20.03.2017, caused delay in identifying the lands required for the establishment of the Solar Power Project. According to the petitioner, the identification of lands required had to take place only after obtaining the regular evacuation scheme approval. The 3<sup>rd</sup> Respondent (KPTCL) has denied this fact and contended that before

applying for evacuation approval, the project developer would identify the lands for the project. In this regard, the contention of the 3<sup>rd</sup> Respondent appears to be correct.

- b) According to the petitioner, land acquisition process is tedious and cumbersome one especially for non-agriculturist like the petitioner and this process would cause undue delay without valid reason. 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 GoK and the G.O. No.EN 66 VSE 2016, Bengaluru dated 05.10.2016 produced as per Annexure-R2A by the 2<sup>nd</sup> Respondent (KREDL). 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.
- c) Now, the question is whether filing an application before KREDL on 10.04.2017 by the petitioner (produced as Document No.1 by the petitioner on 26.11.2019) 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.
- d) The lands required for the project could either be purchased or taken on lease by the petitioner. For purchase of lands, the petitioner has to

obtain permission under Section 109 of the KLR Act, 1961 and thereafter has to apply for conversion of lands from agricultural purpose to non-agricultural purpose. To avoid the delay and to facilitate the early conversion of the lands, the GoK has issued a Circular bearing No.RD 01 LRM 2016 dated 22.02.2016 facilitating grant of permission under Section 109 of the KLR Act, 1961 and to obtain conversion of such lands under Section 95 of the KLR (Amendment) Act, 2015, for non-agricultural purpose within a timeframe. The GoK has also issued G.O. No.EN 66 VSE 2016 dated 05.10.2016 permitting KREDL to enter into lease of lands with the land owners and to obtain conversion of such agricultural land for non-agricultural purpose and thereafter to sub-lease the same to the Developer in order to facilitate development of Solar Power Project. The petitioner opted to obtain the lands on sub-lease instead of purchasing the lands from the owners. Sub-paras (C) & (D) of the Circular No.RD 01 LRM 2016 dated 22.02.2016 issued by the Principal Secretary to Government, Revenue Department, read as follows:

*“C – For projects cleared under Solar/Industrial projects under Energy Department which have been approved at the State level, where permission to purchase agricultural land under Section 109 of the Karnataka Land Reforms Act, 1961 is required, the same procedure as enunciated above shall be followed. The authorised officers of Karnataka Renewable Energy Development Limited (KREDL) shall play role corresponding to one played by Authorised Officers of Karnataka Udyog Mitra as explained above.”*

*“D – The permission under Section 109 of the Karnataka Land Reforms Act, 1961 shall be brought under SAKALA with time prescribed for its delivery being within 60 days.”*

- e) Under the G.O. No.EN 66 VSE 2016 dated 05.10.2016, KREDL has to follow the procedure stated in Circular No.RD 01 LRM 2016 dated 22.02.2016 for obtaining an order under Section 109 of the KLR Act, 1961 for purchase of agricultural land and its conversion and thereafter has to sub-lease the land to Developer for establishing the Solar Power project. Therefore, one can say that a definite timeframe of sixty days is prescribed for obtaining an order under Section 109 of the KLR Act, 1961. Had the petitioner applied to KREDL at least sixty days before 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 date of filing of application to KREDL by the developer, could be considered as the date of fulfilment of the production of the documentary evidence of having clear title and possession of the lands required for the project. Hence, in the present case, had the petitioner applied to KREDL at least sixty days before 18.06.2017, the date on which the Conditions Precedent should have been fulfilled, we could consider whether 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 sixty days prior to 18.06.2017, the date on which the Conditions Precedent should have been fulfilled. However, it is



necessary to verify whether the application dated 10.04.2017 filed by the petitioner before KREDL was substantially complete in all respect or it was a defective application.

f) For the purpose of verifying whether the application dated 10.04.2017 is substantially complete in all respect or not, the documents produced along with Statement of Objection on 30.05.2019 before this Commission by the 4<sup>th</sup> Respondent can be perused. After filing the application dated 10.04.2017 (Annexure-R4) with all required particulars in respect of 118 acres 08 guntas of land in different villages of Malur taluk in Kolar district, the petitioner wrote letter dated 05.05.2017 (Annexure-R5) to KREDL explaining the reasons in general for the delay in processing the applications for obtaining further orders. Thereafter, KREDL in its letter dated 12.05.2017 (Annexure-R3) asked the petitioner to res-submit the documents duly attending the observations noted in this letter for taking further needful action. In this letter the following observations are stated:

- 1) RTCs of land proposed have encumbrances, the RTCs should be free from all encumbrances;
- 2) The ownership entries and land extent details in RTC and consent letters (applicants) are not matching in Sy. No.3/1 & Sy. No.7.
- 3) The column No.11 of the Sy. No.94 RTC contains an entry "Kolar court case No.171/200-01 pending".
- 4) The non-alienation clause for 15 years is entered in the RTC of Sy. No.49.
- 5) 'Suspicion of Karnataka Land Reforms Act violation' is mentioned in the RTC of Sy. No.3/4.

- 6) The land details of Akarband RTC column 3 & 9 are not matching and the total extent of 0-12 G is a 'B'-Karab land in Sy. No.4/1.
  - 7) The total land extent of the Sy.No.14 is a B-Karab.
- g) In response to the letter dated 12.05.2017 (Annexure-R3) of the KREDL, the petitioner furnished the replies in its letters dated 17.05.2017 (Annexure-R6) and dated 20.05.2017 (Annexure-R7).

Regarding Query No.1: Relating to encumbrances on certain lands, the petitioner stated that existence of encumbrance is no bar for processing the request for conversion of land and further undertook to offer Bank Guarantee to the extent of encumbrances before execution of sub-lease deed between KREDL and the petitioner for discharge of the encumbrances. The reply given by the petitioner on Query No.1 can be accepted.

Regarding Query No.2: Relating to the mismatch of the name of the owner in RTC of Sy. No.3/1 & Sy. No.7 and the name of the person who has issued consent letters in respect of these Sy. Nos., the petitioner stated that the owner T.S. Krishnamurthy of these lands has expired and the consent letter is given by one K. Subbanarasaiah, the son of deceased T.S. Krishnamurthy and the said legal-heir has applied to the Tahsildar, Malur taluk, on 13.03.2017 for change of Khata in his favour. Further, it is stated that the Tahsildar, Malur taluk, has not yet changed the khata updation and the copy of the application filed for change of

khata is already submitted along with records. In this regard also, the reply furnished by the petitioner is to be accepted.

Regarding Query No.3: Relating to an entry into column No.11 of the RTC of Sy. No.94 containing an entry regarding pendency of a case relating to Kolar Court. The petitioner in reply states that Sy.No.94 totally measures 7 acres 36 guntas belonging to five khatedars. The petitioner has taken the consent letter for lease of one Smt. Muniyamma w/o Krishnappa, one of the khatedars who owns 2 acres 20 guntas out of the total extent in this survey number and the civil case of Kolar Court does not relate to the extent owned by Smt. Muniyamma. Further, it stated that a document in this regard from Civil Court, Kolar, would be produced before execution of lease deed.

Regarding Query No.4: Relating to non-alienation clause for 15 years entered in RTC of Sy. No.49. The petitioner has stated in this regard that the land has been granted on 03.04.2003 and the 15 years' non-alienation clause would expire on 02.04.2018 and the party would apply to the concerned Deputy Commissioner, Kolar, to give permission to lease the land and the necessary document would be filed. It can be seen that this Sy.No.49 measures 2 acres 20 guntas as shown in Schedule-II Government Notification dated 13.03.2017 (Annexure-R9). The KREDL as well as the Government accepted the explanation of the petitioner and included this Sy. No. in the Schedule of lands.

Regarding Query No.5 & 6: Regarding these two Queries, the petitioner has stated that the extent of lands in Sy.No.3/4 and in Sy.No.4/1 may be deleted for the present from its application and in case the petitioner gets proper document it would include at a later stage. The petitioner has stated that the total extent of land to be deleted may come to 3 acres 8 guntas and there would be sufficient extent of lands available for processing its application. The petitioner has further stated that the relevant documents are awaited from the land owners and if possible, it would take steps to include these survey numbers in its application. The replies furnished by the petitioner in this regard can also be accepted.

Regarding Query No.7: Relating to the nature of land being B-Karab in Sy. No.14. The petitioner has replied in this regard that Sy. No.14 totally measures 38 acres 8 guntas of B-Karab. One Smt. Sarojamma was granted 2 acres 20 guntas of land on 05.04.2003 with Mutation Register (MR) No.4/2003-04 and the 15 years' non-alienation condition would expire on 04.04.2018 and the party would be applying to the Deputy Commissioner for permission to lease the land. It appears this reply is not accepted by KREDL and the reason appears to be valid as the extent of land in B-Karab is kept for public purpose. It can be seen that the Schedule in Annexure-R9 does not contain this land.

- h) We have perused the queries raised by KREDL and the replies furnished by the petitioner as noted above. We are of the considered opinion

that the queries raised were not material and the petitioner has given acceptable replies to them except in respect of B-Karab in Sy.No.14.

- i) In the present case, the capacity of the Solar Power Project to be established was 20 MW, for which an extent of 100 acres of land is normally required. After scrutiny of the land records the KREDL has recommended an extent of 118 acres 18 guntas of land for taking further action for conversion and lease. The GoK has issued Notification dated 13.07.2017 (Annexure-R9) to the extent of 118 acres 18 guntas. Therefore, one can say that the extent of land identified by the petitioner was sufficient to establish the 20 MW capacity Solar Power Project.
- j) It is noted that the proceedings before the Deputy Commissioner, Kolar started pursuant to the application dated 10.04.2017 filed by the petitioner for conversion of lands, ended on 18.06.2018 by issuing conversion order by the Deputy Commissioner, Kolar, after fulfilling all the conditions. As already noted, the proceedings before Deputy Commissioner, Kolar, should have been culminated within sixty days from the date of filing proper application by the petitioner. We are of the considered opinion that such enormous delay in not yet taking a final view on the application of the petitioner should be treated as a 'Force Majeure' event under Clause 14.3.1(e) of the PPA. The non-production of documents of title relating to the project lands is due to 'Force Majeure' event and hence, the petitioner is not liable for

consequences under Article 4.3 of the PPA. Accordingly, we hold Issue No.3 in affirmative.

17. Issue No.4: Whether the petitioner is liable to pay damages for non-fulfilment of the Condition Precedent of producing the documentary evidence of clear title and possession of the land required for the establishment of Solar Power project?

In view of the findings on Issue No.1, 2 & 3 as noted above, any decision on this Issue No.4 does not arise. Hence, Issue No.4 is held accordingly.

18. Issue No.5: What order?

For the above reasons, we pass the following:

**ORDER**

- a) The petition is allowed holding that the petitioner is not liable to pay any damages under Article 4.3 of the PPA;
- b) The 1<sup>st</sup> Respondent (MESCOM) is directed to refund to the petitioner Rs.12 lakhs recovered if any, towards damages within eight weeks from the date of this order; and
- c) In the event of default, the said amount shall carry interest at the rate of 8% per annum from the date of default till the date of payment.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member









