

No. N/162/2019

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

**Dated:05.03.2021**

**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. 53/2019**

**BETWEEN:**

Rishabh Buildwell Private Limited,  
A Company Registered under the  
Companies Act, 1956, having its Registered  
Office at No.196, Ground Floor, Ram Vihar,  
New Delhi-110 092.

(Represented by its Authorized Signatory)

**. . . PETITIONER**

[Petitioner represented by Sri Shridhar Prabhu,  
Navayana Law Offices, Advocates]

**AND:**

1. Hubli Electricity Supply Company Limited,  
(Wholly owned Government of Karnataka undertaking)  
A Company Registered under the provisions  
of the Indian Companies Act, 1956 having  
its Registered Office at Navanagar, P B Road,  
Hubballi-580 025.  
(Represented by its Managing Director)

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

3. Karnataka Renewable Energy Development Limited,  
A Company Registered under the provisions  
of the Indian Companies Act, 1956 having  
its Registered Office at No. 39, 'Shanthi Gruha"  
Bharat Scout and Guides Building, Palace Road,  
Bengaluru-560 001.  
(Represented by its Managing Director)

.... **RESPONDENTS**

[Respondent-1 & 2 represented by  
Sri Shabhaaz Hussain, Advocate;  
Respondent-3 represented by  
Sri Murugesh V Charati, Advocate]

### **ORDER**

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

praying for the following reliefs:

- a) To issue directions quashing and setting aside the communication bearing No. HESCOM/GM(T)/PTC/559/19-20/2470-71 dated 20<sup>th</sup> May 2019 (Annexure-P1) issued by the 1<sup>st</sup> Respondent;
- b) To issue directions partially quashing and partially setting aside that portion of the Order/communication bearing No. HESCOM/GM(T)/PTC/559/18-19/130-35 dated 31<sup>st</sup> July 2018 (Annexure-P2) issued by the 1<sup>st</sup> Respondent whereby the 1<sup>st</sup> Respondent has not condoned the delay beyond 120 days and consequently imposed liquidated damages of Rs.84,00,000/- (Rupees Eighty-Four Lakh Only); and consequently.
- c) To issue a direction to 1<sup>st</sup> Respondent to pay a tariff of Rs.4.95 to the Petitioner project under Power Purchase

Agreement dated 23rd May 2016 (Annexure-P3) for every unit of energy delivered by the Petitioner;

- d) To declare the Supplemental Power Purchase Agreement (SPPA) dated 14<sup>th</sup> August 2018 (Annexure-P4), as null, void and consequently, not binding on the Petitioner;
- e) To direct the 1<sup>st</sup> Respondent HESCOM to refund the illegally deducted amount of Rs.84,00,000/- along with the interest as agreed under the Power Purchase Agreement (PPA) dated 23<sup>rd</sup> May, 2016 (Annexure-P3).
- f) To condone the entire period of delay as having been caused due to the acts and omissions of the Respondent and, therefore, restore the Petitioner to the position as though no delay had occurred;
- g) To direct the refund of entire court fee to the Petitioner;  
and
- h) To issue such other order as this Hon'ble Commission may deem fit in the circumstances of the case.

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

- a) Karnataka Renewable Energy Development Limited (KREDL), the Respondent No.3 incorporated under the Companies Act, 1956 is the Nodal Agency of the Government of Karnataka for facilitating the development of Renewable Energy in Karnataka. The Government of Karnataka (GoK) had resolved to undertake

development of 1200 MW of Solar Power in Karnataka to be implemented in 60 Taluks through private Sector participation.

- b) Pursuant thereto, the Respondent No.3 (KREDL) had invited proposals by its Request for Proposal (RfP) dated 20.11.2015 prescribing the technical, commercial terms and conditions for selection of bidders for undertaking development of Solar PV ground mount power plants in Karnataka to be implemented in sixty Taluks. In this regard, the 3<sup>rd</sup> Respondent had received proposals from certain bidders including the Petitioner.
- c) After evaluating the proposals received, the Respondent No.3 (KREDL) had accepted the bid of the Petitioner for development of 14 MW solar power project in Harapanhalli Taluk, Davangere District, Karnataka. Consequently, the 3<sup>rd</sup> Respondent had issued Letter of Award (LoA) dated 23.03.2016 (Annexure-P5) in favour of the Petitioner.
- d) Accordingly, the Petitioner and the 1<sup>st</sup> Respondent (HESCOM) entered into a PPA dated 23.05.2016 (Annexure-P3).
- e) The said PPA dated 23.05.2016 was approved by the Commission by its letter dated 07.10.2016 (Annexure-P6).
- f) Even before the Commission accorded approval to the PPA, the Petitioner, by its letter dated 03.08.2016 (Annexure-P7 collectively)

had requested the KPTCL to check the feasibility from 66 kV Bennihalli Sub-station and grant connectivity approval.

- g) As per clause 3.2 of the PPA, the PPA is valid for a term of 25 years commencing from the effective date. As per the clause 3.1 of the PPA, Effective Date means the date on which the PPA received concurrence from the Commission. Further as per clause 12.1 of the PPA, the Petitioner is entitled to receive tariff of Rs.4.95 per kWh for energy delivered between the Commercial Operation Date (COD) and the expiry date. Provided further that as a consequence of delay in commissioning of the project beyond Scheduled Commissioning Date (SCD), subject to Article-4, if there is a change in KERC applicable tariff, the changed applicable tariff for the project shall be the lower of the tariff at clause 12.1 or KERC applicable tariff as on the COD. As per clause 8.5 of the PPA, the Petitioner shall commission the project within 12 (Twelve) months from the Effective Date (07.10.2016 PPA approval date) i.e., within 06.10.2017.
- h) Even after a month's lapse, the 2<sup>nd</sup> Respondent (KPTCL) did not reply to the Petitioner's request letter dated 03.08.2016. Therefore, the Petitioner, by its letter dated 05.09.2016, once again requested the 2<sup>nd</sup> Respondent to grant/issue Tentative Evacuation Scheme approval.

- i) The Respondent No.2 (KPTCL) did not issue any reply to the second letter of the Petitioner too. Since the project had to be commissioned within 12 (Twelve) months, the Petitioner was constrained to issue Two more letters requesting the KPTCL to provide Tentative Evacuation Scheme approval.
- j) Meanwhile, the Respondent No.1 (HESCOM), by its letter dated 26.10.2016 (Annexure-P8), called upon the Petitioner to sign Supplementary PPA (SPPA) by incorporating the changes suggested by the Commission. Accordingly, SPPA was signed on 09.11.2016 (Annexure-P9) and same was collected by the Petitioner on 20.01.2017 after the HESCOM common seal.
- k) That being the case, the Respondent No.2 (KPTCL), by its letter dated 27.01.2017 (Annexure-P10), granted Tentative Evacuation Scheme to the Petitioner's project. In the said letter KPTCL stated that it had furnished feasibility report as desired by them for Harapanhalli Taluk, Davanagere District, Karnataka. As per the feasibility Report for Harapanahalli Taluk, Davanagere District only two substations available at Uchhangidurga and Halavagalu with 66/11 kV for 10 MW only. Since the Petitioner's project was 14 MW, the Respondent KPTCL stated that for "1200 MW tenders are not invited based on the feasibility report furnished by KPTCL".

- l) As per KPTCL, it is the Respondent No.3 (KREDL) who has stated that the tenders for the 1200 Mw solar scheme were not invited based on feasibility report furnished by KPTCL. Thus, KPTCL Tentative Evacuation Scheme was granted to the Petitioner in a comprehensive manner and the Petitioner was directed to "Construct 66 kV SC line on DC tower using CYOTE ACSR conductor along with necessary Bay as per KPTCL technical specification." Under these circumstances, evacuation of Petitioner project could commence only after conversion of 66 kV SC line to DC line between 220 kV Ittagi and 66 kV Bennihalli Substation.
- m) Thereafter, the KPTCL granted Regular Evacuation Scheme approval by its letter dated 23.03.2017 (Annexure-P11). However, this approval came after a delay of 137 days.
- n) Thus, it was the case of the Respondent No.2 (KPTCL) from its Tentative Evacuation Scheme and Regular Evacuation Scheme, that the Petitioner was to construct 66 kV SC line on DC tower using CYOTE ACSR conductor along with necessary Bay as per KPTCL technical specification. The Double Circuiting work was to be completed by the Respondent No.2 by 30.09.2017 and build its own terminal bay for double circuiting of the transmission line. Further the scheme stated that evacuation of Petitioner's power will commence only after conversion of 66 kV SC line to DC line with

COYOTE ACSR conductor between 22 kV Ittagi and 66 kV Bennihalli Substation. The KPTCL committed that they would complete the DC line work by 30.09.2017.

- o) In letter bearing No. KREDL/07/RPO/GC/ 120MWs-269/2016/2359 dated 05.07.2016 (Annexure-P12), the Respondent No.3 (KREDL) admits that the tenders invited for the 1200 MW solar scheme were not invited based on feasibility report submitted by the Respondent No.2 (KPTCL). Further, the Scheme states that the developers shall not hold claim for any connectivity in future against the KREDL who allotted the project at Harapanhalli Taluk, Davanagere District.
- p) Since clause 5.4 of PPA stipulates that "the Developer shall be responsible for power evacuation from the power project to the nearest delivery point", diligently applied for any approval immediately, that the Petitioner by its letter dated 19.04.2017 (Annexure-P13) requested KPTCL for approval of Single Line Diagram (SLD) for the Additional Bay at 66/11 kV Bennihalli Sub-station. It is submitted that under the regular circumstances the approval for SLD would require only 30 days. Therefore, once again the Petitioner by its letter dated 29.06.2017 (Annexure-P14) requested the KPTCL that since the Regular Evacuation Scheme approval was granted for 14 MW with direction to construct 66 kV DC Line and since there was absence of Double Circuit DC Line, Petitioner requested the KREDL



to construct the Double Circuit DC Line at the earliest. However, for Petitioner's project SLD was approved on 04.09.2017 (Annexure-P15) after a lapse of 137 days.

- q) The Petitioner by its letter dated 29.06.2017 had submitted all the necessary documents intimating complying of conditions precedent clause of the PPA. Thereafter, Petitioner immediately by its letter dated 13.09.2017 (Annexure-P16) requested the KPTCL to provide Bay estimates and Land lease for construction of Terminal Bay.
- r) Under the above circumstances, the Petitioner was not in a position to commission the project within 06.10.2017. Therefore, the Petitioner, by its letter dated 03.10.2017 (Annexure-P17) under 'Force Majeure' clause requested the Commission for extension of time for Scheduled Commercial Operation Date (SCOD).
- s) The Commission by its letter dated 02.11.2017 (Annexure-P18) directed the Respondent (HESCOM) to take appropriate actions in terms of the PPA, on the request letter dated 03.10.2019. Therefore, the Petitioner by its letter dated 16.11.2017 (Annexure-P19) requested the HESCOM for extension of time for SCOD. The HSCOM by its letter dated 18.11.2017 (Annexure-P20), and referring to the Commission's letter dated 16.03.2017, informed the Petitioner to approach the Commission for extension of time by filing individual

petition and further stated since the Petitioner has not commissioned the project within COD 06.10.2017, terms and conditions of the PPA will be strictly applicable.

t) That being the case, the Petitioner by its letter dated 26.11.2017 (Annexure-P21) intimated the HESCOM that the Petitioner intends to synchronize its Plants on 15.12.2017. Meanwhile, the KPTCL approved the estimates for Terminal Bay on 30.12.2017 (Annexure-P22 collectively) and work approval was granted 05.01.2018 (Annexure-P22 collectively). This approval came after a lapse of 78 days.

u) The Petitioner, by its letter dated 02.02.2018 (Annexure-P23), issued Default Notice to the HESCOM under Article 16 of the PPA dated 23.05.2016 praying compensation and extension of time for scheduled Commissioning date under Article 5.7.1 a & 5.7.2 of the Agreement.

v) The KPTCL issued its Work Completion Report on 13.03.2018. The Chief Electrical Inspector to Government (CEIG) vide letter dated 23.03.2018 (Annexure-P24) accorded safety approval for electrical installation to the Petitioner's project.

w) Thereafter, the KPTCL accorded provisional inter-connection approval that by its letter dated 26.03.2018 (AnnexureP-21) with condition that "Petitioner developer has to limit the generation to

safe limits until completion of stringing of 2<sup>nd</sup> Circuit of 66 kV Ittagi-Bennihalli is completed by KPTCL.

- x) It is evident from the said approval that even to the said date the KPTCL had not completed the construction of Double Circuit of 66 kV Ittagi-Bennihalli.
- y) Finally, the Petitioner, with restricted capacity, was constrained to commission the project on 28.03.2018. The Commissioning Certificate (Annexure-P26) issued by Bengaluru Electricity Supply Company Limited (BESCOM) and in the Minutes of the Meeting held on 28.03.2018 it is recorded that "Developer has to limit the generation to safe limits until completion of stringing of 2<sup>nd</sup> Circuit 66 kV Ittagi to Bennehalli is completed by KPTCL".
- z) The commissioning of the project was delayed due to the inactions of the KPTCL in granting Regular Evacuation Scheme approvals, which in turn, led to delay in preparing estimates/SLDs for the Double Circuit Line. The said delay is purely the consequence of the KPTCL's inactions. The Petitioner was forced to commission the project by generating within the safe limits as the KPTCL had not completed the construction of Double Circuit Line. The cumulative delay attributable to the KPTCL is 323 days. The plant commissioning was delayed beyond the SCD by 172 days.

- aa) Therefore, on 10.04.2018 (Annexure-P28), the Petitioner, under Article 5.7.1 read with Article 14.7 & 20.4 of the PPA requested Respondent No.1 (HESCOM) to grant extension of SCOD and issue unconditional waiver of penalty with regard to non-performance of its obligation within stipulated time under PPA dated 23.05.2016 and waiver for non-delivery of contracted capacity.
- bb) Under the above circumstances, the 1<sup>st</sup> Respondent (HESCOM) by its letter dated 22.05.2018 (Annexure-P29) adverting to the Petitioner's letter dated 10.04.2018, requested the opinion of the KPTCL.
- cc) The 2<sup>nd</sup> Respondent (KPTCL) by its letter dated 11.06.2018 (Annexure-P30) admitted to the Regular evacuation scheme issued by it and further admitted as to the construction of DCL between Ittagi and Bennihalli Sub-station as being within the scope of work of the Respondent No.2 (KPTCL), and also admitted that the same was still not completed.
- dd) Under the above circumstances, the Respondent No.1 (HESCOM) passed an Order dated 31.07.2018 (Annexure-P2) waiving the delay of 120 days up to 06.02.2018 and imposed liquidated damages of Rs.84,00,000 (Eighty four lakhs only) for delay beyond 06.02.2018 to 28.03.2018. The said order dated 31.07.2018 (Annexure-P2) was passed without giving any explanation whatsoever as to why the

delay by the KPTCL was not condoned beyond 06.02.2018, and in fact in the said order, the HESCOM further reduced the tariff of the Project from Rs.4.95 to Rs.4.36 without giving any opportunity/show cause notice to the Petitioner in this regard either. The Respondent thereafter directed Petitioner to enter into SPPA for the reduced tariff.

- ee) Consequently, through its actions at such an advanced stage of the project, the Respondent No.1 (HESCOM) coerced the Petitioner into signing agreement dated 14.08.2018 supplementary to the PPA dated 23.05.2016. The HESCOM sent the said SPPA dated 14.08.2018 for the approval of the Commission.
- ff) The Commission by its letter dated 30.10.2018 (Annexure-P32) approved the SPPA dated 14.08.2018 entered into between the Petitioner and HESCOM by partially allowing the Order dated 31.07.2018 passed by the HESCOM subject to the adjudication by the Commission for determining the Liquidated Damages for the delay in commissioning the project, on the petition filed by the Petitioner failed to file the petition within 45 days from the receipt of the letter, "HESCOM shall recover liquidated damages for the entire period of Four (4) months, as provided in the Article 5.8 of the PPA".
- gg) Without prejudice, the Petitioner by its letter dated 07.02.2019 submitted to the Commission stating that they are in compliance

with the Order dated 31.07.2018 passed by the HESCOM and are willing to pay the liquidated damages of Rs.84,00,000 (Eight four lakhs only) and hence do not intend to file any petition before the Respondent No.2 (KPTCL) for reduction of Tariff.

- hh) At this stage, the HESCOM deducted a sum of Rs.84,00,000 (Rupees Eighty four lakhs only) as liquidated damages for beyond 06.02.2018 to 28.03.2018 as per its Order dated 31.07.2018.
- ii) The HESCOM, purportedly based on the Commission's letter dated 30.10.2018, without any adjudication setting aside its own order dated 31.07.2018, directed the Petitioner by its letter dated 20.05.2019 to pay Rs.2,66,00,000 (Rupees Two Crore Sixty-Six Lakhs only) as Liquidated Damages as per Article-5.8 of PPA dated 23.05.2016.
- jj) Aggrieved by the arbitrary and illegal actions of the Respondents the Petitioner having no other efficacious alternative remedy filed a Writ Petition before the Hon'ble High Court of Karnataka in WP No.27737 of 2019 (GM-KEB). The Hon'ble High Court disposed of the said Writ Petition by its Judgement dated 31.07.2019 (Annexure-P34).
- kk) Further, during the pendency of the said Writ Petition, the Petitioner received letter dated 17.07.2019 (Annexure-P35) from its lender, India Renewable Energy Development Authority (IREDA), where the Petitioner has been informed that its account is in danger of being

classified as Non-Performing Asset (NPA). Very pertinently, the payments/amounts being withheld by the HESCOM are admitted owed to the Petitioner. Therefore, the Petitioner issued letter dated 19.07.2019 (Annexure-P36) with 1<sup>st</sup> Respondent requesting for release of payments being illegally withheld. After passing of the Judgement dated 31.07.2019 in W.P. 27737 of 2019, the Petitioner once again wrote on 14.08.2019 (Annexure-P37) to the HESCOM requesting payment under the invoices for the months from April, 2019 to July, 2019. However, till date, the Petitioner has received neither any reply nor any payments from the HESCOM in this regard.

- II) The Hon'ble High Court, in its judgment supra has held inter-alia that there is error in the communication issued by the HESCOM bearing under HESCOM/GM(T)/PTC/559/19-20/2470-71 dated 20.05.2019 (Annexure-P1); and in the Commission's communication bearing No. KERC/F-31/Vol1130/18-19/1082 dated 30.10.2018, with these observations, the Hon'ble High Court remitted the matter to the Commission, and left all issues open to be urged before the Commission.

The Petitioner requested to allow the present Petition.

3. Upon issuance of notice, the Respondents appeared through their counsel and filed their Statement of Objections:

4. The Respondent No.1 (HESCOM) denied the contents of petition para-wise. It further contented as under:

- a) The Petitioner's contention that delay in commissioning of the project is solely due to lapses of concerned Government Authorities in sanctioning the required permissions to commence the project is only a make-believe affair and on a closer scrutiny of facts, it can be seen that the delay is primarily attributable to the negligent acts of the petitioner and not otherwise.
- b) The Respondent No.1 (HESCOM) considered all the relevant details and passed an order on 31.07.2018, whereby out of the 172 days of delay, the delay of 120 days was condoned and the Petitioner was held liable for the delay of 52 days and such order was duly accepted by the Petitioner vide its letter dated 07.02.2019.
- c) The HESCOM in the said order noted that non-construction of DC line only restricts the evacuation of contracted capacity. Nevertheless, the same did not prevent the Petitioner from commissioning the project with restricted generation of power that could be evacuated under the existing lines. Wherefore, such unavailability of DC line has no bearing on the commissioning of the project.
- d) The HESCOM further subjected the said order to final adjudication of the Commission, wherein the Petitioner was duty bound to justify the condoned delay of 120 days with relevant facts and documents and



accordingly, the Petitioner was directed to file necessary application before the Commission within 45 days of the said order. However, the Petitioner did not approach the Commission until 28.08.2019.

e) It is averred by the Petitioner that it is entitled to condonation of delay from 06.02.2018 to 28.03.2018. The Respondent No.1 has merely condoned 120 days of delay on account of delays in procuring Section 109 Land Conversion permission and such condonation was not absolute in nature but was subjected to final adjudication of the Commission. Wherefore, it is incumbent on the Petitioner to substantiate and prove before the Commission that the Petitioner has taken all measures to secure Section 109 approval without any delay or shortcoming on its part and that the delay in awarding Section 109 approval permission was purely attributable to the Government Authorities. However, the Petitioner is absolutely silent on the 4 (Four) months delay in procuring land conversion permission. Furthermore, the Petitioner has not produced any document substantiating the said 4 (Four) months delay. This being the case, the Petitioner has failed to justify provisionally condoned delay of 120 days and is now liable for the delay of 172 days.

f) The Petitioner vide its letter dated 07.02.2019 has agreed to the findings and consequential rulings contained in the Order dated 31.07.2018 and thereby has agreed to a lower tariff of Rs.4.36 per

kWh. The Petitioner having accepted 52 days' delay in commissioning the project without any protest is now estopped from claiming otherwise. The Petitioner shall not approbate and reprobate at its whims to suit its cause. Wherefore, Article-12.1 of the SPPA dated 14.08.2018 provides for application of a lower tariff in the event of delay in commissioning the project even by a day and it is an admitted fact that the Petitioner has delayed the project by at least 52 days, thus attracting the said Article 12.1, which stipulates lower tariff.

g) Nevertheless, on a closer scrutiny of facts it is clear and unequivocal that the Respondent No.2 (KPTCL) has merely not been able to construct DC line in 220 kV Ittagi & 66 kV Bennihalli, which has merely disabled the Petitioner from generating to the contracted capacity. However, such non-construction of DC line does not impede the process of Commissioning the project in any way for such DC line is only for evacuation of power and has no bearing on the generation of power. This submission stands proven by the fact that the Petitioner has commissioned the project, albeit with restricted evacuation, even without the construction of DC line. However, such restricted commissioning has been achieved after an unexplainable delay of 172 days and for such delay the Petitioner is entitled for a tariff of

Rs.4.36 only and Liquidated Damages of Rs.3.05 Crores as per the provisions of the PPA.

- h) It is falsely alleged, without any substantiation that, the HESCOM has withheld payments due under the PPA. The Petitioner has pointed out various delays of the Government Authorities whilst concealing its own defaults, merely as an afterthought to avoid making lawful payments. On a closer scrutiny of the dates mentioned in the petition, it is clear that the delay in achieving the SCD is attributable to the Petitioner's delay in requesting approvals from the Government Authorities. The SLD for additional bay was requested for only on 19.04.2017 after a delay of around 4 (Four) months. The bay estimate and land lease for terminal bay was requested for only on 13.09.2017 with a delay of around 11 (Eleven) months.
- i) The Respondent in its demand letter dated 20.03.2019 has in clear terms justified levy of Liquidated Damages. The technical requirement as per schedule II of the PPA was to be fulfilled within 8 (Eight) months. The Petitioner in its letter dated 07.06.2017 has admitted to the fact that it is still in negotiation with the manufacturers for procurement of solar panel which goes on to prove that the Petitioner has not met the technical requirement within time. Wherefore the Petitioner is bound to pay the Liquidated

Damages as per the calculation provided in the said letter of July 2019.

- j) It is wholly untrue to state that the Respondent No.1 (HESCOM) has been unresponsive to the grievances of the Petitioner. This averment is only a figment of imagination as the HESCOM, has in a timely manner responded to the Petitioner's grievances in all their correspondences. The Petitioner has not heeded to any of the directions of HESCOM or the Commission. On 16.11.2017, the Petitioner wrote to the HESCOM, requesting for extension of time on the ground of delay by Government Authorities for approvals. In accordance to the Commission's letter dated 16.03.2017, the Respondent No.1, directed the Petitioner to file a petition before this Commission. On consistent failure to file the petition, the Petitioner wrote to the Respondent No.1 stating that they would commission the project only on 15.12.2017.
- k) The Petitioner was to file the petition before KERC within 45 days from 30.10.2018, on failure to file the said petition, the Respondent No.2 (KPTCL) would be entitled to claim liquidated damages for 4 (Four) months in accordance with Article 5.8 of PPA. The petitioner after a delay of over 3 (Three) months replied to the letter dated 07.02.2019 stating that they do not intend to file the petition for reduction of tariff by HESCOM and that they were willing to pay Rs.84 lakhs.

- l) The HESCOM has in accordance with Article 5.8.1 and directions of the Commission deducted Rs.2.06 crores from the Petitioners monthly running bills. The Petitioner is not entitled to claim exemption from Liquidated Damages as per the provisions of the PPA. Thus the prayer of the Petitioner to quash the letter dated 20.05.2019 issued by the Respondent is highly erroneous and ought to be rejected by the Commission.
- m) It is reiterated that the Petitioner admittedly has violated the timeline imposed by the Commission twice by not filing a petition. Moreover, after a valid deduction was made by the Respondent No.2 (KPTCL) in accordance with Article 5.8 of the PPA, the Petitioner approached the Hon'ble High Court of Karnataka stating that it had no alternative efficacious remedy to resolve the matter. Although the Commission had directed the Petitioner to file a petition before the Commission, the Petitioner consistently failed in doing so. This failure to file a petition for extension of time can be very clearly attributed to their apprehension of being denied of extension of time as their claim of delay would stand to be a mere cover up of their fault.
- n) However, contrary to their own contention, a higher tariff is sought for in the petition. It is essential that the Petitioners must not be awarded with tariff higher than what is agreed in the PPA as this would explicitly be a violation of Article 12.2 of the PPA. Extension of time has a direct

bearing upon the tariff applicable under the PPA. As the consumers would ultimately bear the burden of higher tariff, the provisions of the PPA must be strictly adhered to. The contrary contentions placed by the Petitioner are wholly untenable and liable to be rejected at the first instance.

o) It is clear that the Petitioner had admitted to a delay of 52 days without any protest and has not justified the delay of further 120 days with documents and facts. The non-construction of DC line has no bearing on the commissioning of the project as it was commissioned even without the DC line.

5. The Respondent No.2 (KPTCL) in its Objections admitted the floating of RfP, execution of the PPA, temporary and regular evacuation, date of the commissioning etc., Further, the Respondent No.2 contended as under:

a) The say of the Petitioner that delay in commissioning of the project is solely due to lapses of the Respondent No.2 (KPTCL) in sanctioning the required permissions to commence the project is only a make-believe affair and on a closer scrutiny of facts, it can be seen that the delay is primarily attributable to the negligent acts of the Petitioner and not otherwise. It is pertinent to note that the Petitioner has concealed facts which enumerating the process of granting the Evacuation Scheme.

b) The KPTCL had issued the pre-feasibility report (Annexure-A) to Respondent No.3 (KREDL) for sub-station wise feasibility on 27.02.2016. However, when the Letter of Award (LoA) was issued by the Respondent No.3 to the SPD, allotment made by KREDL was not Sub-station specific. Several applications by the developers were received by the Respondent No.2 containing requests for sub-stations other than what was specified in the pre-feasibility report. Consequently, the Respondent No.2 was not able to process the applications owing to the lack of clarity in the LoA issued by KREDL. Further, the KREDL issued a clarification on 05.07.2016(Annexure-B) stating that, the requests of the developers may be considered if they seek connectivity elsewhere than what was stated in the pre-feasibility report. Subsequently, to clear the confusion caused due to the tender issued by KREDL, the Commission after seeking clarification from KREDL, informed the Additional Chief Secretary to Government, Energy Department through letter dated 29.08.2016, that the action of the KREDL in inviting tender for 1200 MW in 60 taluk-wises will be ratified and further stated in its letter that the KPTCL must ensure efficient evacuation facilities for evacuation of power from each of the 20 MW Solar Power Plant in respective taluks. The clarification issued by the Commission enabled the Respondent No.2 to process the application on a fast track basis. Thus, the KPTCL

has acted in timely manner in accordance with the clarifications issued by the concerned authorities.

c) After the receipt of the Commission's letter dated 29.08.2016 clarifying the ambiguity as elaborated supra, the Respondent No.2 (KPTCL) requested the Petitioner to remit the process fee vide letter 06.09.2016 (Annexure-C). On 24.09.2016, the Petitioner remitted the fee and also requested for evacuation of power to KPTCL's Sub-station at Bennihalli. Further, the Respondent No.2 requested the Petitioner to submit pre-requisite documents on 22.10.2016 for processing the same. Meanwhile, M/s Growth Street Solar Private Limited vide letter dated 04.10.2016(Annexure-D) requested for comprehensive power evacuation along with 14 MW of Ms Rishab Buildwell Private Limited through 66 kV common transmission line totaling to 18 MW. Subsequently, M/s Growth Street Solar Private Limited remitted the process fee on 02.11.2016 enclosing requisite documents. It is further submitted that the Respondent requested CEE, TZ, Tumakuru on 11.11.2016 to furnish the feasibility report and the report was furnished on 17.12.2016. The Tentative Evacuation Scheme approval was granted on 27.01.2017(Annexure-E) in favour of the Petitioner and M/s Growth Street Solar Private Limited. Therefore, it is submitted that the facts enlisted supra clearly establish the fact that the Respondent No.2 has merely followed the



established procedures and directions issued by the government, and has not caused any delay on its own account.

- d) Once the ambiguity concerning the tender issued was cleared by the Commission vide its letter dated 29.08.2016, the Respondent No.2 has processed the Petitioner's application and replied on 06.09.2016, requesting for remittance of processing fee and furnishing of requisite documents but the Petitioner has falsely stated in Para No.9 of the Petition that due to lack of correspondence from the Respondent No.2, the Petitioner was constrained to issue two additional letters to the Respondent No.2 on 03.08.2016 (Annexure-P7 to the Petition) and 05.09.2016. This is evident from the fact that on receipt of the letter dated 06.09.2016., the Petitioner has remitted the processing fee void letter dated 24.09.2016. (Annexure-F). Only on remittance of such fee and furnishing of documents, the Respondent No.2 could have proceeded to grant the Tentative Evacuation Scheme. The Petitioner cannot be permitted to blatantly misrepresent facts before the Commission.
- e) The Petitioner and the Respondent No.1 entered into a PPA on 23.05.2016. The SCOD as per the PPA is 06.10.2017. However, the COD was achieved only on 28.03.2018, which is after a delay of 172 days. The Petitioner addressed a letter dated 16.11.2017 to the Respondent No.1 seeking extension of time to commission the

project by 180 days. The Petitioner sought extension of time from the Respondent No.1 vide its letter dated 10.04.2018 alleging delays on the part of the Respondent No.2 in building DC lines that enables evacuation of the contracted capacity. The Respondent No.1 vide its letter dated 22.05.2018 requested the Respondent No.2 to furnish its comments on the alleged delay on its part and also sought the probable date on which the DC line is likely to be constructed. The Respondent No.2 replied stating that the process of constructing DC line will take nine-twelve months from the date of award and the details of the construction are being worked out. Non-construction of DC line only restricts the evacuation of contracted capacity. Nevertheless, the same did not prevent the Petitioner from commissioning the project with restricted generation of power that could be evacuated under the existing lines. Wherefore, such unavailability of DC line has no bearing on the commissioning of the project.

- f) The Petitioner was duty bound to justify the condoned delay of 120 days with relevant facts and documents and accordingly, the Petitioner was directed to file necessary application before the Commission within 45 days of the said order. However, the Petitioner did not approach the Commission until 28.08.2019.

g) It is averred by the Petitioner that it is entitle for condonation of delay from 06.02.2018 to 28.03.2018. The Respondent No.1 has merely condoned 120 days of delay on account of delays in procuring Section 109 land conversion permission and such condonation was not absolute in nature but was subjected to final adjudication of the Commission. Wherefore, it is incumbent on the Petitioner to substantiate and prove before the Commission that the Petitioner has taken all measures to secure Section 109 permission without any delay or shortcoming on its part and that the delay in awarding Section 109 permission was purely attributable to the Government Authorities. However, the Petitioner is absolutely silent on the 4 (Four) months delay in procuring land conversion permission. Furthermore, the Petitioner has not produced any document substantiating the said 4 (Four) months delay. This being the case, the Petitioner has failed to justify provisionally condoned delay of 120 days and is liable for the delay of 172 days.

h) The Petitioner vide its letter dated 07.02.2019 has agreed to the findings and consequential rulings contained in the Order dated 31.07.2018 and thereby has agreed to a lower tariff of Rs.4.36 kWh. The Petitioner having accepted 52 days' delay in commissioning the project without any protest is now estopped from claiming otherwise. The Petitioner shall not approbate and reprobate at its

whims to suit its cause. Wherefore, Article 12.1 of the SPPA dated 14.08.2018 provides for application of a lower tariff in the event of delay in commissioning the project even by a day and it is an admitted fact that the Petitioner has delayed the commissioning of the project by at least 52 days, thus attracting the said Article-12.1, which stipulated lower tariff.

- i) It is clear and unequivocal that the Respondent No.2 has not been able to construct DC line in 220 kV Ittagi & 66 kV Bennihalli, which has disabled the Petitioner from generating to the contracted capacity. However, such non-construction of double circuit line does not impede the process of commissioning the project in any way for such DC line is only for evacuation of power and has no bearing on the generation of power. This submission proves the fact that the Petitioner has commissioned the project, albeit with restricted evacuation, even without the construction of DC line. However, such restricted commissioning has been achieved after an unexplainable delay of 172 days and for such delay the Petitioner is entitled for a tariff of Rs.4.36 only and Liquidated Damages of Rs.3.50 crores as per the provisions of the PPA.
- j) The Petitioner vide its letter dated 12.03.2018 has undertaken the responsibility to comply with all statutory requirements, approvals, and for any non-compliance, the Petitioner has stated that they will

not hold the Respondent No.1 responsible. Wherefore, the Petitioner cannot state delay in seeking statutory approvals as a reason and further blame the Respondent No.1 for any purported delay.

k) The Petitioner has pointed out various delays of the government authorities whilst concealing their own defaults, merely as an afterthought to avoid making lawful payments. On a closer scrutiny of the dates mentioned in the petition, it is clear that the delay in achieving the SCD is attributable to the Petitioner's delay in requesting approvals from the government authorities. The SLD for additional bay was requested for only 19.04.2017 after a delay of around 4 (Four) months. The bay estimate and land lease for terminal bay was requested for only on 13.09.2017 with a delay of around 11 (Eleven) months.

l) It is a fact that Liquidated Damages under the provisions of the PPA are levied upon the Conditions Precedent not being fulfilled within 8 (Eight) months from the effective date of the PPA and the same is not relevant to date of commissioning. The Respondent No.1 in its demand letter dated 20.03.2019 has in clear terms justified levy of Liquidated Damages. The technical requirement as per schedule II of the PPA was to be fulfilled within 8 (Eight) months. The Petitioner in its letter dated 07.06.2017 has admitted to the fact that it is still in negotiation with the manufactures for procurement of solar panel

which goes on to prove that the Petitioner has not met the technical requirement within time. Wherefore, the Petitioner is bound to pay the Liquidated Damages as per the calculation provided in the said letter of July 2019.

m) The Respondent No.1 has in accordance with Article 5.8.1 and directions of the Commission deducted Rs.2.66 crores from the Petitioner's monthly running bills. The Petitioner is not entitled to claim exemption from Liquidated Damages as per the provisions of the PPA. Thus the prayer of the Petitioner to quash the letter dated 20.05.2019 issued by the Respondent No.1 is highly erroneous and ought to be rejected by the Commission.

n) The Petitioner admittedly has violated the timeline imposed by the Commission twice by not filing a petition. Moreover, after a valid deduction was made by the Respondent No.1 in accordance with Article 5.8 of the PPA, the Petitioner approached the Hon'ble High Court of Karnataka stating that it had no alternative efficacious remedy to resolve the matter. Although the Commission had directed the Petitioner to file a petition before the Commission, the Petitioner consistently failed in doing so. This failure on the part of Petitioner to file a petition for extension of time can be attributed to their apprehension of being denied extension of time as their claim of delay would stand to be a mere cover up of their own fault.

- o) The Petitioner at para 34 of the petition have clearly stated that they would restrain from filing a petition as they were willing to adhere to the tariff that was applicable.
- p) However, contrary to their own contention, a higher tariff is sought for in the petition. It is essential that the Petitioners must not be awarded with higher tariff and are only entitled to reduced tariff as this would explicitly be a violation of Article 12.2 of the PPA. Extension of time has a direct bearing upon the tariff applicable under the PPA. As the consumers would ultimately bear the burden of higher tariff, the provisions of the PPA must be strictly adhered to. The contrary contentions placed by the Petitioner are wholly untenable and liable to be rejected at the first instance.
- q) Wherefore, from the above submissions it is clear that the Petitioner had admitted to a delay of 52 days without any protest and has not justified the delay of further 120 days with documents and facts. The non-construction the DC line has no bearing on the commissioning of the project as it was commissioned even without the DC line.
6. The gist of the Statement of Objections of the Respondent No.3 is as under:
- a) The Respondent No.3 Karnataka Renewable Energy Development Limited (KREDL) Nodal Agency of the Government of Karnataka for facilitating the development of renewable energy in the State of

Karnataka had called for the Request for Proposal (RfP) to development of 1200 MW Solar Power projects to be implemented in the 60 Taluks vide Notification dated 20.11.2015. The Respondent issued Letter of Allotment to the successful bidders for the implementation of 1200 MW capacity Solar Power Projects on 23.03.2016 including in favour of "Rishabh Buildwell Private Limited" for commissioning of solar plant of 14 MW (AC) in Bennihalli village, Harapanahalli Taluk, Davangere District, Karnataka.

- b) The Petitioner has not achieved the commissioning of the project within SCOD in terms of conditions of the PPA. The PPA does not make a distinction between marginal and other delay. It only contemplates revision of tariff in the event of delay along with liquidated damages. Admittedly, the Petitioner has delayed the execution of the project for reasons which do not fall under the force majeure events as far as HESCOM is concerned. Hence, Liquidated Damages and applicable tariff are as per PPA terms and conditions.
- c) Hence, the petition is liable to be dismissed in so far as Respondent-3 is concerned in as much as there is no prayer against the Respondent-3 and even otherwise there is no role of KREDL after LoA is issued.

7. We have heard the learned counsel for parties.



8. From the above pleadings and rival contentions raised by the parties, the following Issues arise for our consideration:

**Issue No.1:** Whether the Petitioner proves that communication bearing No.HESCOM/GM(T)/PTC/559/19-20/2470-71 date 20.05.2019 (Annexure-P1) is liable to be quashed and set aside?

**Issue No.2:** Whether the Petitioner proves that Liquidated Damages of Rs.84,00,000 imposed by the Respondent is illegal and liable to be set aside?

**Issue No.3:** Whether the Petitioner proves that it is entitled for tariff at Rs.4.95 as per PPA dated 23.05.2016?

**Issue No.4:** Whether the Petitioner proves that SPPA dated 14.08.2018. is null, void and not binding on the Petitioner and the Respondent coerced the Petitioner in to signing the said SPPA?

**Issue No.5:** Whether the delay in commissioning the project was due to the fault of the Petitioner or of the Respondent No.2?

**Issue No.6:** What Order?

9. **Issue No.1:** Whether the Petitioner proves that communication bearing No.HESCOM/GM(T)/PTC/559/19-20/2470-71 date 20.05.2019 (Annexure-P1) is liable to be quashed and set aside?

a) The Petitioner prayed for quashing letter bearing No.HFSC/GM(1)PTC/559/19-20/2470-71 dated 20.05.2019 (Annexure P-1). We have perused the letter dated 20.05.2019, which is a letter addressed to the Secretary, KERC by the 1<sup>st</sup> Respondent (HESCOM).

The HESCOM furnished the information as called for by the Commission void its letter dated 11.04.2019. It contains the detailed information about imposition of Liquidated Damages.

b) The Petitioner has not substantiated how this letter dated 20.05.2019 (Annexure-P1) affects adversely, because prior to issuance of Annexure-P1 the Petitioner has paid Liquidated Damages for delay in not complying the SCOD. Therefore, we are of the opinion that there are no grounds to set aside Annexure-P1 as it is only a letter addressed to the Commission by the Respondent No.1.

c) Hence, we answer Issue No.1 in the negative.

10. **Issue No.2:** Whether the Petitioner proves that Liquidated Damages of Rs.84,00,000 imposed by the Respondent is illegal and liable to be set aside?

a) The Respondent No.1 vide its order dated 31.07.2018 (Annexure-P2) imposed 84.00 lakhs as Liquidated Damages for delay in commencement of supply to HESCOM as per Article 5.8 of the PPA. We have perused the Article 5.8 of PPA, which is reproduced below:

*5.8 "Liquidated Damages for delay in commencement of supply of power to ESCOM.*

*If the Developer is unable to commence supply of power to ESCOM by the Scheduled Commissioning Date other than for the reason specified in Clause 5.7.1, the Developer shall pay to ESCOM, Liquidated Damages for*

*the delay in such commencement of supply of power and making the contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:*

- a) For the delay up to one month an amount equivalent to 20% of the performance Security.*
- b) For the delay of more than one (1) month and up to two months an amount equivalent to 40% of the total Performance Security in addition to the 20% deducted above.*
- c) For the delay of more than two and up to three months an amount equivalent to 40% of the Performance Security in addition to the 20%+40% deducted above.*

*For avoidance of doubt, in the event of failure to pay the above mentioned damages by the Developer entitles the ESCOM to encash the Performance Security."*

- b) In the instant case the Petitioner has admitted that there was delay of 172 days in commissioning the project, but he alleged that it is due to inaction on the part of Respondent No.2, in approving evacuation scheme. The Commission noted that Respondent No.2 approved the Tentative Evacuation Scheme void letter dated 27.01.2017 (AnnexureP-10) with the following conditions:

*"In the context, I am directed to communicate the following Tentative Evacuation scheme in comprehensive manner to be executed by you under self-execution for your proposed (14+4) =18 MW solar*

*plants in Harapanhalli Taluk, Davangere District at your own risk and cost:*

*Construction of 66 kV SC line on DC tower using COYOTE ACSR conductor for a distance of 2.5 kms from your solar plants to 66/11 kV Bennihalli Sub-station along with necessary terminal bay & control equipment installed at both the ends of the line as per KPTCL technical specifications."*

*Further it is to be noted that, evacuation of proposed (14+4)=18 MW power will commence only after conversion of 66 kV SC line to DC line between 220 kV Ittagi & 66 kV Bennihalli Sub-station.*

- c) The learned Advocate for the Petitioner has relied on the Hon'ble High Court order in WP No. 27737/19 and 28097-28099/19 dated 31.07.2019. According to him the letter dated 30.10.2018 of the Commission is bad in law. We have perused the order dated 31.07.2019 of Hon'ble High Court Karnataka which remanded the matter with the directions "to decide disputed issue if any after due opportunity of hearing ....."

The Petitioner voluntarily agreed to comply with the order dated 31.07.2018 (AnnexureP-2) passed by the Respondent No.1. Now he is estopped from contending that deduction of liquidated damages is not in accordance with the law. The Commission note that Petitioner is not only agreed to pay the Liquidated Damages, in pursuance of it executed the SPPA on 14.08.2018. (AnnexureP-4) Therefore, in our opinion Section 115

of the Evidence Act, will be helpful to support our opinion. Section 115 of the Evidence Act reads as under:

*“S.115. Estoppel. –When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representatives, to deny the truth of that thing.*

*Illustration.*

*A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induced B to buy and pay for it*

*The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had not had title. He must not be allowed to prove his want of title.”*

In view of the above we are of the opinion that Petitioner now cannot be allowed to deny the earlier statement/declaration.

d) Since the Petitioner has not implemented the project within SCOD he has to pay Liquidated Damages as per Article 5.8 of the PPA. The Petitioner failed to prove that due to inaction of the Respondents there was delay in implementation of the project. Therefore, we are of the opinion that the Liquidated Damages of Rs.84,00,000 imposed by the 1<sup>st</sup> Respondent is in accordance with the terms of the PPA and there is no illegality. Hence, we hold that the Petitioner failed to prove that Liquidated Damages of

Rs.84,00,000 imposed by the 1<sup>st</sup> Respondent is illegal and liable to set aside and the Petitioner is not entitled to refund of the same.

Hence, we answer Issue No.2 in the negative.

**11. Issue No.3:** Whether the Petitioner proves that it is entitled for tariff at Rs.4.95 as per PPA dated 23.05.2016?

- a) It is contended by the Petitioner that it is entitled for tariff mentioned in the PPA for the reason that tariff for the Petitioners project was evolved through process of competitive bidding resulting in issuance letter of Award. According to the Petitioner once the PPA was approved by the Commission, Commission did not have any role in determining the tariff for the Petitioner's project and more over the tariff was reduced from Rs.4.95 to Rs.4.36 without giving an opportunity/show cause notice to the Petitioner. The learned Advocate for the Petitioner rely on the ruling of Hon'ble Supreme Court of India in Civil Appeal No.5612/2012 dated 28.04.2015 between Bangalore Electricity Supply Company Limited Vs. Konark Power Projects Limited and Another. We have gone through the said judgment. The facts of the aforesaid Judgment is not similar to this case. In the instant case, the Respondent No.1 (HESCOM) in its order dated 31.07.2018 (AnnexureP-2) clearly states about the reduction of tariff and in pursuance of it the Petitioner executed SPPA. Therefore, we are of the opinion that the facts of the ruling

relied on by the learned Advocate for the Petitioner is quite different from the case on hand.

b) The learned Advocate for the Petitioner rely on Section 63 of Electricity Act, 2003 (hereinafter referred to as Act) We have perused section 63, which reads as under:

*“63. Determination of tariff by bidding process Notwithstanding anything contained in Section 62, the Appropriate commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government”.*

c) It is contended that the tariff discovered under Section 63 of the Act, is not subject to any re-determination under Section 62, therefore any of the Generic Tariff Order passed by the Commission cannot be applied. Therefore, it is contended that even in the case of delay in commissioning the project, the tariff determined under the Generic Tariff Order passed by this Commission cannot be made applicable to the present case.

d)The said contention appears to be not correct. Article 12.1 of the PPA provides that the Developer shall be entitled to receive the tariff of Rs.4.95 per unit of the energy supplied. Article 12.2 which is a proviso to Article 12.1 provides that as a consequence of delay in commissioning of the project behind the SCD, if there is any change in KERC applicable tariff, the applicable tariff for the project shall be

the lower of the tariff stated in Article 12.1 or KERC applicable tariff as on the Commercial Operations Date (CoD). In view of this specific provision in the PPA, in case of delay in commissioning the project, there could be reduced tariff as provided in Article 12.2 of the PPA. However, the Developer can claim extension of time for commissioning of the project on the proof of Force Majeure event as provided in Article 14 of the PPA. Therefore, the contention of the Petitioner that in no case, the tariff discovered under competitive bidding process cannot be altered is not acceptable.

e) In this regard we intended to refer Article 12.1 of supplemental PPA dated 14.08.2018. Article 12.1 modified and modified incorporation is as under:

*“The developer shall be entitled to receive the tariff of Rs.4.36 ([Rupees Four and Thirty-six paise per unit] kwh which is KERC applicable tariff as on the commercial operation date as per Article 12.2, as ordered by KERC vide order No. S1/03/01 dated 12/04/2017. In the matter of revision of tariff for Grid interactive Megawatt scale Solar Power Plants for FY18) of the energy supplied by it to HESCOM in accordance with the terms of this agreement during the period between the COD and the expiry date .”*

Therefore, now the Petitioner cannot take such a plea that the Respondent illegality reduced the tariff from Rs.4.95 to Rs.4.36 and it is entitled for the tariff as fixed in the PPA.



- f) It is pertinent to note that the Petitioner has given in writing that it will obey the order dated 31.07.2018. at para 34 of the petition. The Petitioner vide its letter dated 07.02.2019 stated in unequivocal terms that it will comply with the order dated 31.07.2018 (AnnexureP-2) passed by the 1<sup>ST</sup> Respondent. In the order dated 31.07.2018 it is clearly mentioned about reduction of tariff. According to it, "the project is subjected to prevailing KERC tariff of Rs.4.36 per unit as per KERC order dated 12.04.2017, for delayed commissioning of the project on 28.03.2018 for entire term of PPA." The Petitioner understanding the term of SPPA signed by it and now cannot deny it and raise objection. Hence, the say of the Petitioner that the 1<sup>ST</sup> Respondent has not given an opportunity and heard before passing the order, does not hold water. Therefore, in our opinion the Petitioner cannot blow hot and cold simultaneously.
- g) In view of above reasons, execution of SPPA dated 14.08.2018. (Annexure-P4) is an admission by the Petitioner to comply with the order dated 31.07.2018 passed by the 1<sup>ST</sup> Respondent dated 31.07.2018. we are of the opinion that Petitioner is not entitled for tariff at the rate of Rs.4.95 as per PPA dated 23.05.2016.
- h) Hence, we answer Issue No.3 in the negative.

12. **Issue No.4:** Whether the Petitioner proves that SPPA dated 14.08.2018. is null, void and not binding on the Petitioner and the Respondent coerced the Petitioner in to signing of the said SPPA?

a) The Petitioner prayed for a declaration that SPPA dated 14.08.2018(AnnexureP-4) is null, void and not binding on it.

b) The Petitioner has given a letter dated 07.02.2019 understanding that it will comply order dated 31.07.2018 (Annexure P-2). If at all the Petitioner is not agreed for execution of the SPPA dated 14.08.2018 it would have refused to sign the SPPA. There is no force on the Petitioner that he should sign the SPPA. The Petitioner voluntarily signed the SPPA and in pursuance of it, it had further acted in getting various approvals from the Respondents. It is clearly shows that the execution of Annexure-P4 is voluntary. The petitioner in para No.31 of the Petition has stated that the 1<sup>st</sup> Respondent coerced the Petitioner into signing agreement dated 14.08.2018 (Annexure-P4). This line of argument cannot be accepted for the reason that the Petitioner is a registered Private Limited Company and not a lay man. If the Respondent No.1 coerced the Petitioner in to signing the SPPA dated 14.08.2018 it would have filed a complaint before the Competent Authority.

c) The Petitioner has not pleaded how the SPPA dated 14.08.2018 is null, void, and not binding on the Petitioner and no supportive documents were produced. The Petitioner being party to the SPPA now it cannot say that it is not binding on it. It is pertinent to note that after executing the SPPA it was forwarded to the Commission and the Commission approved it. At a later stage, it cannot be held that SPPA is illegal and not binding on the Petitioner. The Petitioner being party to the SPPA is now estopped from denying it. Hence, we are of opinion that the Petitioner has failed to establish that the SPPA dated 14.08.2018 is null, void and not binding on the Petitioner and that the Petitioner was coerced to sign the SPPA.

d) Hence, we answer Issue No.4 in the negative.

**13. Issue No.5:** Whether the delay in commissioning the project was due to the fault of the Petitioner or of the Respondent?

a) The Petitioner at para 44 & 48 averred that 2<sup>nd</sup> Respondent (KPTCL) granted Regular Evacuation Scheme approval on 23.03.2017 after a delay of 172 days and for this reason the commissioning of the project has to be extended, as the KPTCL delay has led to delay in preparing the estimates, and SLD for DC line. The said delay is purely consequence of the 2<sup>nd</sup> Respondent's inactions. In next para the Petitioner further stated that the 2<sup>nd</sup> Respondent approved the

estimates for terminal bay on 30.12.2017 and work approval was granted on 05.01.2018 after a lapse of 78 days.

- b) At the cost of repetition we would like to state here that the evacuation of approval was conditional and the Petitioner has to construct 66 kV SC line on DC tower using COYOTE ACSR conductor for a distance of 2.5 kms from solar plants to 66 /11 kV Bennihalli substation along with necessary terminal bay and control equipment installed at both the ends of the line as per KPTCL technical specifications. Evacuation of proposed (14+4)=18 MW power will commence only after construction of 66 kV SC line to DC line between 220 kV Ittagi and 66 kV Bennihalli Sub-station.
- c) There is no evidence to show that when the Petitioner constructed 66 kV SC line on DC tower using COYOTE ACSR conductor and without this the Petitioner cannot inject the power to the grid.
- d) It is relevant to mention here that the Petitioner has got some obligations to comply with all applicable Laws, connect the power project to the switchyard and responsible for all payments related to any taxes etc. The relevant portion of Article 5 is extracted below.

*"5.1 Obligations of the Developer*

5.1.1 *Subject to and on the terms and conditions of this Agreement, the Developer shall at its own cost and expense:*

- a) .....
- b) *comply with all Applicable Laws and obtain applicable Consents, clearances and Permits (including renewals as required) in the performance of its obligations under this Agreement and maintaining all Applicable Permits in full force and effect during the Term of this Agreement;*
- c) .....
- d) *connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point.*
- e) .....
- f) .....
- g) *be responsible for all payments related to any taxes, cess, duties or levies imposed by the Government Instrumentalities or competent statutory authority on land, equipment, material or works of the project to or on the electricity consumed by the Project or by itself or on the income or assets owned by it."*

Therefore, on perusal of the records produced by the Petitioner and Respondent, the Petitioner has not complied with its obligations as per Article 5 of the PPA.

- e) The Respondent-2 in its statement of objections has contended that the Petitioner void letter dated 12.03.2018 has undertaken their responsibilities to comply with all statutory requirements, approvals

and for any non-compliance, the Petitioner has stated that they will not hold the Respondent-1 responsible. Wherefore, the Petitioner cannot state delay in seeking statutory approval as a reason and further blame the Respondents for any purported delay. We have perused letter dated 12.03.2018, where in the Petitioner clearly undertaken that the Petitioner will not hold KPTCL responsible for the delay. The extract of the relevant portion is as under:

*“we are responsible for compliance of all statutory requirements/approvals and for any non-compliance KPTCL will not be liable for any action whatsoever in this regard.”*

The closer scrutiny of the dates mentioned in the petition, it is clear that the delay in achieving scheduled commissioning date is attributable to the Petitioners delay in requesting the approval from the Government Authorities. The Respondent has contended in its Statement of Objection that the SLD for additional bay was requested for only on 19.04.2017 after a delay of around four months. The Bay estimates and land lease for terminal bay was requested for only on 13.09.2017 with a delay of around 11 months. This averment was not denied by the Petitioner, by filing rejoinder.

- f) No doubt the Petitioner has filed the application for evacuation on 04.10.2016. Tentative Evacuation Scheme approval letter shown that field report was received from the CEE/TZ/Tumakuru by the

Respondent No.2 on 17.12.2016. Before granting approval for Tentative Evacuation Scheme the Respondent No.2 has to get Feasibility Report, Spot Inspection Report, a report from KREDL. Therefore, it cannot be said that Respondent No.2 has delayed in approving Tentative Evacuation Scheme.

g) The Petitioner contended that Regular Evacuation Scheme approval was granted on 23.03.2017 (AnnexureP-11) after a lapse of 137 days. Tentative Evacuation Scheme was approved on 27.01.2017 (AnnexureP-10) where in it is clearly mentioned in the last para, that "only after hearing acceptance/confirmation for above Evacuation Scheme the Tentative Evacuation Scheme will be regularized and detailed approved evacuation scheme along with terms, conditions and clearance for commencing work of evacuation will be conveyed from this end". The Regular Evacuation Scheme was approved on 23.03.2017 (AnnexureP-11). On perusal of it, it can be noted that the Petitioner has given concurrence vide letter dated 03.03.2017. Therefore, it cannot be said that there was delay on the part 2<sup>nd</sup> Respondent KPTCL in approving the Regular Evacuation Scheme.

h) The Petitioner contended that projects SLD was approved on 04.09.2017 Annexure-P15 after lapse of 137 days. Again, on perusal of (Annexure-P15) it appears that the Petitioner has applied for

approval of SLD, layout and sectional lay out drawings vide letter dated 10.08.2017 and therefore, there is no force in the contention of learned Advocate for the Petitioner that projects SLD was approved after a lapse of 137 days. In our opinion this approval was granted well within a reasonable time.

i) Further contended by the Petitioner that the approval of estimates for terminal bay was granted on 30.12.2017 (Annexure-P22 collectively) and work approval was granted on 05.01.2018 i.e., after lapse of 78 days. Ongoing through the letter dated 30.12.2017 (Annexure-P22 collectively) it appears that the estimate for construction of 1 No. of 66 kV terminal bay for evacuation of 14 MW Supplemental Power Project (SPP) of the Petitioner at Bennihalli village, Harappanhalli Taluk, Davangere District was received by the 2<sup>nd</sup> Respondent (KPTCL) on 22.12.2017 and immediately within a week, the work approval was given and asked to pay the amount mentioned in it. Hence, we are unable to accept the say of the Petitioner that there was delay in approving the estimate for terminal bay.

j) The Commission has noted that along with the Petitioner, M/s Growth Street Solar Power Limited had also requested for Comprehensive Evacuation Scheme approval vide its letter dated 04.10.2016 wherein, they had expressed their intention to build a



common pooling station to evacuate a total of 18MW (14+4) power through 66 kV, common transmission line through Bennihalli. After remittance of processing fee and furnishing of documents by M/s Growth Street Solar Private Limited on 02.11.2016 KPTCL on 11.11.2016 requested CEE, TZ, Tumakuru to furnish Feasibility Report. On receipt of field report on 17.12.2016, Tentative Evacuation Scheme approval was communicated on 27.01.2017 to both, the Petitioner and M/s Growth Street Solar Power Limited. The Petitioner has given acceptance to the Scheme on 03.03.2017 i.e., after lapse of 35 days and the Petitioner informed that M/s Growth Street Solar Private Limited was not able to procure the land adjacent to the Petitioner 's project and requested for M/s Growth Solar name to be removed from the evacuation letter and accordingly, the Regular Evacuation Scheme letter was granted on 23.03.2017. Therefore, there is no force in the contention of learned Advocate of the Petitioner that it is Respondent No.2 who delayed in approving Tentative, Regular Evacuation Scheme and SLD for DC line.

- k) Moreover, the Petitioner has not furnished any particulars to ascertain the delay or other-wise in granting the various approvals by the KPTCL. The Petitioner has pleaded bald and vague statement in the petition, from which it is not possible to conclude that there was delay on the part of KPTCL.

l) Hence, we are of the opinion that the Petitioner fail to prove that the Respondent No.2 delayed in approving the Tentative Regular Evacuation Scheme, approval of estimate for Terminal Bay, and SLD.

m) Hence, we answer this Issue accordingly.

**14. Issue No.6:** What Order?

From the above discussion and on perusal of pleadings and records produced by both the parties, we are of opinion that the petitioner has failed to prove any of the Issues.

Hence, we proceed to pass the following:

**ORDER**

The petition is dismissed as Petitioner is not entitled for the any of reliefs prayed for.

sd/-

(SHAMBHU DAYAL MEENA)  
Chairman

sd/-

(H.M. MANJUNATHA)  
Member

sd/-

(M.D. RAVI)  
Member