

No. N/329/17

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

Dated: 06.04.2022

Shri H.M. Manjunatha : Officiating Chairperson
Shri M.D. Ravi : Member

O.P. No. 163/2017

BETWEEN:

M/s Gavi Ranga Solars Private Limited,
Having its registered office at:
No. 658/8, 2nd Floor, F, 1st 'C' Main Road,
40th Cross, 8th Block, Jayanagar,
Bengaluru-560 082.

...PETITIONER

[Represented by its Director Sri Ishwar Hegde]
[Represented by Sri Ganapathi Bhat Vajralli Advocate
For Kumar & Bhat, Advocates]

AND:

1. Chamundeshwari Electricity Supply Corporation Limited,
No. 29, Vijayanagara 2nd Stage,
Hinkal, Mysore-570017.
[Represented by its Managing Director]
2. Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
[Represented by its Managing Director]
3. Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
K.G. Road,
Bengaluru – 560 009.
[Represented by its Managing Director]
4. Karnataka Renewable Energy Development Limited,
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Opposite the Chief Post Master General Office,
Palace Road, Bengaluru – 560 001.

5. The Deputy Commissioner,
District Administrative Bhavan,
Shidlagatta Road,
Chikkaballapur-56101.

...RESPONDENTS

[Respondent No. 1 represented by Senior Advocate Sri Sriranga S,
For Justlaw Advocates,
Respondent No. 3 represented by Sri Shahbaaz Husain, Advocate,
For Precinct Legal,
Respondent No. 4 represented by Miss Aparna Mahesh Hiremath,
Advocate,
Respondent No. 5 remained absent]

ORDERS

This case is taken up for rehearing and disposal as per directions given by Hon'ble High Court of Karnataka in Writ Petition WP No. 52028/2018 (GM-KEB) C/W WP No. 7675/2020 (GM-KEB) (filed against the orders in OP No. 163/2017) & Others (Annexure-AA to the Amended Petition).

- 1) The Petitioner had filed the Original Petition in OP No. 163/2017 on 22.09.2017 under Section 86(1)(b) of the Electricity Act, 2003. Upon notice, the Respondent No. 1, 3 and 4 have appeared before the Commission through their respective Counsels and contested the Petition by filing written objections separately, the Respondent No. 2 & 5 remained absent and after hearing the parties the Commission has passed orders on 28.08.2018 dismissing the Petition by holding that the Petitioner is not entitled for any reliefs as claimed, further held that, the Petitioner is entitled to a tariff of Rs. 4.36 only per unit as per Article 5.1 of the PPA and he is also liable to pay damages including liquidated damages as provided under Articles 2.2 and 2.5.7 of the PPA.

2) Aggrieved by the Commission order dated 28.08.2018, the Petitioner had approached the Hon'ble High Court of Karnataka, Bengaluru in Writ Petition bearing WP No. 7675/2020 (GM-KEB) challenging the orders of the Commission. After hearing both the parties the Hon'ble High Court of Karnataka has passed orders dated 20.09.2021 as hereunder: -

- (a) All the writ petitions are allowed, the impugned orders passed by the Commission in all these cases stand quashed.*
- (b) These matters are remitted back to the hands of the Commission for appropriate resolution of the dispute bearing in mind the observations made in the course of the order with regard to the controversy brought before it.*
- (c) The Commission shall also consider all subsequent events that have taken place after passage of the impugned orders, while passing orders afresh, in the case now remitted.*
- (d) Parties to the lis are at liberty to place on record all such documents that would advance their cause.*
- (e) The Commission shall consider the claims of the Petitioners and pass appropriate orders within six months from the date of receipt of a copy of this order.*
- (f) Interim orders granted and subsisting, if any, in all these cases shall continue to operate till the Commission takes up the case for consideration of an interim prayer, if sought for by the Petitioners.*
- (g) All the contentions, except the ones decided in this order, of both the parties are kept open.*

3) After the receipt of certified copy of the orders, this Commission has issued notice to the parties. The Petitioner and Respondent No. 1, 3 & 4 they have appeared through their Counsels, Respondent No. 2 & 5 remained absent.

The Petitioner Counsel filed Amended Petition dated 30.11.2021 and Respondent No. 1, 3 & 4 filed objections separately to the Amended Petition. This Commission has also passed an interim order on 18.11.2021 granting the Interim tariff of Rs. 4.36/unit till the disposal of the Petition. Thereafter, this Commission has taken up the case for fresh disposal as per the directions of the Hon'ble High Court of Karnataka, in WP as referred supra.

- 4) The Original Petition No. 163/2017 was filed under Section 86(1)(b) of the Electricity Act, 2003 in effect praying to:
 - a) Direct the Respondent No.1/CESC, Mysore to comply with the original terms of the PPA dated 24.06.2015 and further provide the confirmation for time extension with original tariff under Article 8 i.e., under Force Majeure Event and direct the 1st Respondent to implement the extension time with original tariff in the interest of justice and equity.
 - b) Direct the 1st Respondent/ CESC, Mysore to accept the original tariff agreed in the PPA i.e., an amount of Rs. 8.40 per kWh and remit the same to the petitioner.
 - c) Declare that the Petitioner is entitled for the Force Majeure Condition as per Article 8 and consequently is eligible to seek extension of time as per Article 2 of PPA along with original tariff.
 - d) Restrain the 1st Respondent/ CESC, Mysore (erroneously typed as not to deduct) from deducting any liquidated damages from the petitioner as force majeure events have caused the delay.

- e) Declare that the Petitioner is entitled to extension of time with original tariff as per Article 2 of the PPA dated 24.06.2015 without imposing or changing any conditions as enshrined in the PPA.

The following additional prayer have been made by filing Amended Petition as follows: -

- f) The Respondent No. 1/CESC, Mysore may be directed to pay the Petitioner original tariff of Rs. 8.40 per unit in the terms of the PPA from the date of commissioning i.e., 22.06.2017 till the term of PPA in the interest of justice.
 - g) The Respondent No. 1/ CESC, Mysore may be directed to pay the difference of the tariff paid per unit from the date of commissioning of the plant along with late payment surcharge in terms of PPA and Clause 6.4 within stipulated timeframe in the interest of justice.
 - h) The Respondent No. 1/ CESC, Mysore may be direct to refund the recovered liquidated damages and conditions precedent damages along with late payment surcharge in the terms of PPA and Clause 6.4, within stipulated timeframe in the interest of justice.
 - i) Grant such other reliefs to meet the ends of justice and equity.
- 5) The brief facts set out in this Petition are as under: -
- a) The Petitioner is a company registered under the Companies Act, 2013, carrying on the business of developing executing, managing and running solar energy plant. The Government of Karnataka (GoK) issued the Karnataka Solar Policy 2014-21 vide Notification dated 22.05.2014. Under the said Policy, GoK envisaged Utility Scale Grid

Connected Solar Photo Voltaic and concentrated solar power projects and endeavoured to promote solar energy projects preferable by land owning farmers with a minimum capacity of 1 MW and maximum capacity 3 MW per land owning farmer in the State for sale of power to the Electricity Supply Companies (ESCOMs) at the KERC determined tariff from time to time.

- b) The Gok issued guidelines vide Notification No. EN VSC 2014, Bangalore, dated 26.08.2014 to invite applications from the eligible land owners for awarding 1-3 MW capacity Solar Photo Voltaic Power MW Scale plants and to enter into PPAs with the concerned ESCOMs. Accordingly, Smt. A.R Rekha a land owning farmer had made an application for grant solar power project with capacity of 1 MW to be established in her land at Sy.No.35 situated at Guttahalli Village, Ambajidurga Hobli, Chintamani Taluk, Chikkaballapura District totally measuring 09 Acres 04 1/2 Guntas, accordingly, the 1st Respondent/CESC has accepted the proposal for allotment of Solar Power project of 1 MW capacity. Pursuant thereto the KREDL issued letter of award in favour of the farmers, vide allotment letter dated 16.03.2015 (Annexure-B filed along with Petition).
- c) The original allottee Smt. A.R Rekha has executed Power Purchase Agreement (Annexure-C filed along with Petition) dated 24.06.2015 with CESC for sale of power from 1 MW solar power Guttahalli Village, Ambajidurga Hobli, Chintamani Taluk, Chikkaballapura District as per letter of allotment dated 16.03.2015 to Smt. A.R Rekha and 1st

Respondent /CESC Board has also consented for Power Purchase Agreement for purchase of solar power from this project. Thereafter, a Supplementary Power Purchase Agreement dated 11.08.2016 (Annexure-D filed along with Petition) was entered into between the 1st Respondent/CESC and Petitioner consequent on appointment of Petitioner as developer of the Project.

- d) As per Clause 12.11 of the PPA, the SPD can assign this agreement for a Special Purpose Vehicle at any time, after the date of this Power Purchase Agreement under intimation to the 1st Respondent /CESC and such Special purpose Vehicle shall take over all the rights, responsibilities obligations, liabilities of the SPD and MUTATIS MUTANDIS. In view of the above provision, the SPD Smt. A.R Rekha have appointed M/S Gavi Ranga Solars Private Limited as SPD, the Petitioner herein and Smt. A.R Rekha is one of the shareholders with 26% of the share. Therefore, all acts and deeds done by Smt. A.R Rekha, the land owner has been referred to as act and deeds done by the Petitioner.
- e) Immediately after entering into PPA, the Petitioner has started project implementation work on the site, specifically allotted to the project, which include crucial works like land levelling, fencing, obtaining necessary approvals and sanctions such as conversion of land, Evacuation of power, mobilization funds etc., from the Authorities concerned and for getting the loan sanctioned from Banks for the establishment of a solar power plant. As per the Article 2 of the PPA

dated 24.06.2015 the said project had to be completed on or before Scheduled Commissioning Date i.e., within 18 months from the effective date. Effective Date is defined as the date of signing the PPA which was signed on 24.06.2015. The Petitioner was supposed to achieve COD on or before 24.12.2016.

f) It is stated that for completion of the project, the Petitioner had to obtain numerous approvals as per Clause 2.1.1 of Article 2 of PPA such as: -

- i. Land conversion from agricultural into non-agricultural for setting up of Solar Plant.
- ii. Power evacuation approval from KPTCL.
- iii. 11 KV work order and TAQC approval from 1st Respondent /CESC.
- iv. Substation work order from KPTCL.
- v. CEIG approval.
- vi. Interconnection approval by KPTCL.

g) The PPA signed on 24.06.2015, was approved as 13.07.2015 by the KERC and the 1st Respondent/CESC handed over the same to the Petitioner only on 23.07.2015 after 1 month delay for which the Petitioner cannot be held responsible. The counting of the time for Scheduled Commissioning Date (SCD) starts from 24.06.2015. The Petitioner had lost about 1 month in receiving the PPA, which the Petitioner has requested to be treated as Force Majeure Event under Article 8.3. Therefore, the extension of time has to be granted along with the original tariff agreed as per PPA i.e., Rs. 8.40/ KW.

h) Subsequent to the insertion of Sub-clause 10 of Section 95 of the Karnataka Land Revenue (Amended) Act 2015, the Government of

Karnataka has issued circular RD69/01.12.2015 fixing the timeframe for grant of deemed conversion as 15 days of application. As per the Government circular the Petitioner has submitted all requisite documents like PPA, KREDL letter, RTC, PTCL, NOC and other relevant documents on 11.05.2016 along with application for conversion of land before the Deputy Commissioner (the date 11.05.2016 is shown in Column No. 3 of Annexure-J filed along with Petition). The Deputy Commissioner has passed order of conversion of land (Annexure-J1 filed along with Petition) on 30.11.2016 and there was delay of about 6 months 20 days and requested for treating this delay as Force Majeure event with original tariff.

- i) The Petitioner has also applied for power evacuation approval before the KPTCL on 20.06.2016, the same has been approved by the KPTCL (Annexure-K filed along with Petition) on 13.10.2016. There was a delay of 4 months from the KPTCL/3rd Respondent for power evacuation approval for which the Petitioner is not responsible. Therefore, requested to treat the delay as Force Majeure event under Article 8 of the PPA.
- j) Subsequent to the power evacuation approval, the 3rd Respondent has granted work order to carry out substation work (Annexure-L filed along with Petition) only on 20.12.2016 and there was 6 months delay by KPTCL as this can be obtained only after the approval of regular power evacuation scheme. Therefore, the delay caused by KPTCL is requested to be treated as Force Majeure event. Subsequent to the

regular power evacuation approval the Petitioner could obtain 11 KV work order (Annexure-M filed along with Petition) to construct 11KV line only on 08.12.2016, with a delay of 5 months 19 days. Hence, Petitioner requested the Respondent No. 1 to treat the same as Force Majeure Event.

- k) The 3rd Respondent insisted for using breaker equipment only from State owner Public Sector Company which is Mysore Electrical Industries Limited (MEI). The Petitioner requested on 30.08.2016 for supplying the MEI breaker, the Respondent took 3 months 15 days to deliver the product. The MEI breaker was received on 15.12.2016 just 8 days prior to the Scheduled Commissioning Date. The MEI breaker could not be booked without drawing approval. Only after the drawing approval from 1st Respondent/CESC the Petitioner could book the order of MEI breaker which was delivered on 15.12.2016. The delay caused because of 1st Respondent instruction to use MEI breaker only. For this delay the Petitioner cannot be blamed. Copy of the MEI delivery note dated 15.12.2016 is produced as Annexure-N.
- l) The Petitioner submits that, the 11KV evacuation has to pass through crossing Railway Line at Y. Hunsuenahalli for which the 2nd Respondent has to get approval from the South Western Railway, Divisional Office. The Petitioner cannot approach directly the Railway Authority for getting approval from Railways. However, after approval of 11KV Line work the 2nd Respondent took about 6 months

8 days for approval and final safety certificate from the railways. The petitioner has got approval for commissioning of the 11 KV Line from the above said railway authority through 2nd Respondent only on 15.06.2017. The Petitioner submits that, after approval of 11KV permission dated 08.12.2016, even though the Petitioner is equipped for completing the erection of 11KV Line the Petitioner could only lay the underground cable at railway lane crossing stated above after 2nd Respondent got the approval/permission on 05.05.2017. Immediately after the approval from the railway authority the petitioner did complete the 11KV line within 3 days. However, there was a restriction in the approval dated 05.05.2017 that the approval is only for execution of work and the line should not be charged before obtaining safety certificate from railway. This condition again obstructed the petitioner to commence the commissioning of the plant. The petitioner submits that, thereafter only on 15.06.2017 the South Western Railway Authority has issued safety certificate to the 2nd Respondent. Therefore, after the approval from the railway authority getting safety certificate there is a 1 month 11 days delay. The petitioner has genuinely completed the work of laying the underground cable within 3 days from the date of approval that itself establishes that as on the date of 11KV approval petitioner was equipped to complete the erection of 11KV line and commission the solar plant without requiring for any extension. However, the 2nd and 3rd Respondents together have delayed the approval of 11KV about

one year. The delay caused for 11KV approval and approval from the railway authorities took almost all time which is stipulated in PPA. Therefore, the said delay has to be construed as force-majeure event and extension of time to be granted with original tariff. Copy of the BESCOM Letter to Divisional Railway Engineer, South Western Railway dated 11.01.2017, Copy of the Railway Approval dated 05.05.2017, Copy of the C-Certificate issued dated 15.05.2017, Copy of the Safety Certificate dated 15.06.2017 and Copy of Letter from Railway to BESCOM dated 16.06.2017 are collectively produced as ANNEXURE-P, P1, P2, P3 & P4 respectively.

- m) It is stated by the Petitioner that request for extension of time was sought from 1st Respondent/CESC on 09.12.2016 but same was received on 23.02.2017 (Annexure-Q1 filed along with Petition), after a delay of 2 months 15 days. Since, the above said approvals are valid for 18 months from the date of signing of PPA, the Petitioner could not carry out substation work as extension was not granted immediately on application despite of Government of Karnataka has directed in the circular dated 24.11.2016 (Annexure-Q filed along with Petition) directing the 1st Respondent to extend the time under PPA at Article 2.5 read with Article 8 should be given within 15 days. Hence, there was delay of 2 months 15 days for granting extension of time and requested to treat the same as Force Majeure event.
- n) In the meanwhile, the Government of India on 09.11.2016 has taken extra ordinary step towards demonetization by banning 500 and 1000

notes and restricted for withdrawal of cash for a very small amount. The formal banking system was not available at the peak time and the cash withdrawal was not possible and as the Petitioner's work in the rural areas, unless there is a cash for labour work, tractors and other local men and materials, it was not possible to carry out these works for 3 months. There was a delay of 3 months and requested to treat the same as Force Majeure event.

- o) It is stated that the various sanctions and permissions would reveal that inspite of having applied for the requisite permissions and sanctions, Petitioner had suffered on account of inordinate delay in getting the approvals. These delays were beyond the control of the Petitioner as those were pre-requisite in securing the confidence of the financial institution suffered on account of the Government Authorities or Authorities in power who are required to facilitate the permissions and sanctions without any hitch and delays. In terms of Article 8.3 of the PPA, these delays in executing the project would fall under Force Majeure events when the Petitioner is not responsible for events beyond their control. On account of delay in getting land conversions, delay in getting evacuation approvals, bay extension approvals, CEIG approval etc., delay due to demonetization of the Indian currency, delay in getting MIE switch gears etc., there was delay in execution of the project.
- p) The Petitioner submitted that he is entitled for original tariff with extension of time for COD. Considering all those grounds stated

above, the 1st Respondent/CESC has extended the commission date upto 23.06.2017 as per the letter refer to at Annexure-Q (filed along with Petition) and subsequently GOK has conveyed its consent to the extension under Article 8 of PPA. However, the 1st Respondent/CESC directed the Petitioner to file the Petition before the Commission for extension of time with original tariff under Force Majeure Event by producing all relevant documents and hence the present Petition is filed.

- q) The Petitioner has approached the Commission under the following grounds: -
- i) The Respondents ought to have considered that the delay was not on account of Petitioner but due to the Respondents fault. The Petitioner has made application in time before all the Government Authorities for requisite permissions, but the same was not been granted in time. Hence, the application for extension to be considered by the 1st Respondent/CESC and requested to treat the same as Force Majeure Event and to approve the extension of SCOD.
 - ii) That there was a delay of 1 month in handing over the signed PPA dated 24.06.2015, after approval from the Commission the same was delivered on 23.07.2015. Unless the PPA documents was on hand, the Petitioner could not take any steps for project implementation and therefore, the 18 months time stipulated in the PPA actually commenced from date of delivery of PPA i.e.,

on 23.07.2015. Therefore, extension of time required to be considered by the Commission along with original tariff of Rs. 8.40/KWH.

- iii) As per the Government letter dated 24.11.2016 issued to the 1st Respondent for extension of 6 months time under Article 2.5 of the PPA, 1st Respondent/CESC constituted a committee for verifying the applications including that of the Petitioner application and thereafter the 1st Respondent extended the time by 6 months for achieving the commercial operation and thereafter, the Government also written a letter dated 23.06.2017 to the Commission for granting the extension of time under Force Majeure Event. Therefore, the Petitioner requested the Commission for extension of time along with original tariff as agreed in the PPA.
- iv) The extension of time was sought by the Petitioner from 1st Respondent/CESC on 09.12.2016 but the same was granted on 23.02.2017 after lapse of 2 months 15 days. There was a delay of 2 months 15 days in granting extension of time. Similarly, the power evacuation approval was granted by KPTCL after a delay of 3 months 25 days and approval for substation granted after 6 months 3 days, that the line work was approved after delay of nearly 12 months and hence Petitioner could not do execute the works including 11 KV line and substation works and sought for approval of time extension with original PPA tariff.

- v) The Respondents ought to have noticed that the State Government for promoting solar power generation, has issued solar policy 2014-21 with the object of encouraging Green Power Generation. In furtherance of the solar policy, the Government of Karnataka amended the Karnataka Land Revenue Act by incorporating Section 95(10) providing for deemed conversion of land for the purpose of promoting Solar Power Generation. However, there was inordinate delay in issuance of various permissions and sanctions including conversion order and the Petitioner could not commission within SCOD as per time schedule under the PPA and the Petitioner has sought for extension of time.
- vi) The Petitioner has invested Rs. 6.50 Crores and committed revenue sharing with farmer assuming the original tariff. If any change to the original tariff granted in the PPA the same is in violation of original PPA conditions and also causes heavy losses to the Petitioner and livelihood of the farmers since, he has surrendered entire farmer land for the project.
- vii) The varied tariff stipulated under 5.1 clause is subject to the clause 2.5 of the PPA that provides for extension upto 6 months due to various events of default affecting the Solar Power Developers. The extension was granted by Respondent considering the delays caused in PPA approval, NA approval, Power Evacuation approval, substation work order, 11KV line

work order, delay by various Government agencies and all these events are beyond the control of the Petitioner and requested for treating the same as Force Majeure and for extension of time with original PPA tariff.

- viii) The Petitioner claimed that the delays were due to reasons beyond the control of the Petitioner and the commissioning was achieved within the extended SCOD, the Petitioner is eligible to get the original tariff of Rs. 8.40/unit from the date of commissioning to the entire PPA term. Since, the payment is due as per original tariff from the commissioning date, the Petitioner is also eligible to receive late payment surcharge as per the clause 6.4 of the agreed PPA. That the Petitioner is not liable to pay liquidated damages and the amount deducted in the bills by the 1st Respondent/CESC towards liquidated damages have to be refunded along with the late payment surcharges and in view of the above, the Petitioner prays to allow the Petition as prayed for in the interest of justice and equity.
- 6) Upon notice, the Respondent No. 1, 3 & 4 appeared through their Learned counsel, and filed statement of objections separately to the original Petition, and thereafter, filed additional objections statement to the amended Petition and Respondent No. 2 & 5 remained absent.
- 7) The gist of the objections of the 1st Respondent may be stated, as follows:-
- a) As the Petitioner was unable to execute the Project, in a timely manner, he sought for extension of time, for commissioning the

Project, by six months under the Force Majeure conditions. As several requests for extension of the Scheduled Commissioning Date were received from the Solar developers, the GoK issued an Order dated 24.11.2016, directing all the Electricity Supply Companies (ESCOMs) to constitute a three-member Committee to consider and to dispose of the requests of the farmers/developers. A Committee was constituted by the 1st Respondent to consider the requests for the extension of time, sought for by 1 to 3 MW Solar generators, under the land-owning farmers' category. The said Committee held a meeting on 15.02.2017, wherein the causes for the delayed achievement of scheduled commercial operation were considered in respect of six generators, including the Petitioner, and a decision was taken to accord extension of six months' time to achieve the commercial operation.

- b) The Petitioner furnished the documents to the Committee, constituted for the purpose for consideration of request for extension of time. As per the same, the following information was gathered, pertaining to the various reasons assigned for the delayed execution of the Project.

Land Conversion

Date of Submission of application	:	11.08.2016
Date of conversion	:	30.10.2016
Delay in getting approval	:	3 months

KPTCL evacuation approval (Regular):

Date of submission of application	:	20.06.2016
Date of approval	:	13.10.2016
Delay in getting approval	:	Four months

- c) The Committee, after detailed discussions and scrutiny of all the documents, opined that, approval may be accorded for extension of the SCOD by six months, considering Article 2.5 of the PPA, as there is a delay in the issuance of approvals by the various Government entities.
- d) On 23.02.2017, the 1st Respondent/CESC addressed a letter to the Petitioner, informing about the extension of time by six months for the SCOD, with certain conditions. A SPPA was entered into on 11.08.2016, incorporating the change in COD and sent to the Commission, for approval.
- e) On 16.03.2017, the Commission addressed a letter to all the ESCOMs in the matter, pertaining to extension of time granted to the Solar generators and informed them not to allow any extension of time beyond the scheduled commissioning, if any, as per the original PPA, without obtaining prior opinion of the Commission. Further, vide letter dated 05.04.2017, the ESCOMs were directed by the Commission, to advise all land-owning Solar developers/SPVs to approach the Commission and seek for approval of the extension of time. In furtherance to the same, the Petitioner has filed this petition.
- f) The Additional Chief Secretary to Government, Energy Department, vide the letter dated 25.04.2017 addressed to the Commission, has sought for its approval to the extension of CoD, given by the 1st

Respondent (CESC) for six months from the date of SCOD, as per Articles 2.5 and 8 of the PPA.

- g) The Project was commissioned on 22.06.2017.
- h) In respect of the extension of Project duration of the already awarded Solar Power Projects, the Ministry of New and Renewable Energy has issued letter No. 30/106/2014-15/NSM dated 28.07.2017, addressed to the Principal Secretaries (Power/Energy) of the State Governments, as stated below:

“Ministry has requested not to give time extension if all the obligations are fulfilled by the concerned State Government Authorities/PSUs, etc., in a project. However, if there are delays of any kind on the part of State Government Authorities/PSUs like land allotment, transmission/evacuation facilities, connectivity permission or force majeure, the competent authority in the State/SECI, NTPC, etc., may consider providing extension of the time duration strictly as per the Contractual Agreement.

It is also to be clarified that if a project equipment/material have been purchased/ordered and substantial advances paid as per original completion date, and there is a delay on part of the state organizations regarding land, transmission or any such reasons, the extension of the project may be allowed.”

- i) The 1st Respondent has, therefore, requested the Commission to issue necessary directions in the present Petition, in the interest of justice.
- j) In the objections filed on 10.02.2022 by the 1st Respondent to the amended Petition stated that the Petitioner could not commission its plant within the stipulated period under the PPA due to delay caused by the various Government Authorities including KPTCL in granting

approvals that are necessary to execute the project. In addition, the Petitioner has cited delay in receiving approved PPA from the Commission. It is the specific case of the Petitioner that it has not been able to commission the project as the delays have been caused due to force majeure events which are beyond the control of the Petitioner. Based on the same, the Petitioner has sought for extension of time at the PPA determined tariff, without levy of liquidated damages. At the outset it is submitted that the contentions urged by the Petitioner are untenable and the petition deserves rejection.

- k) It is submitted that except for making vague and bald statements, the Petitioner has failed to substantiate any of the contentions urged by it. The Respondent denies all the allegations levelled against it as false and an attempt to camouflage its inability to execute the project within the stipulated time frame. It is submitted that the Commission had approved the tariff of Rs 8.40 per unit for the Petitioner's plant as per the order of the State Commission dated 10.10.2013. In view of the progressive reduction in cost of equipment and the project cost, the Commission has reduced tariff in its subsequent tariff orders dated 30.07.2015 and 12.04.2017. The Petitioner has commissioned its plant in the control period of tariff order dated 12.04.2017 and is entitled to a tariff of Rs 4.36 It is submitted that the Petitioner has also benefited from reduction in

project cost. Therefore, no prejudice will be caused to the Petitioner by the order of the Commission.

- l) Further, Article 5.1 of the PPA clearly states that in the event of delay in commissioning of the project beyond the SCOD and during such period if there is variation in the KERC Tariff, then applicable tariff for the project would be the lower of the rate mentioned in the PPA, namely Rs 8.40 per kwh and the varied tariff applicable as on the date of commercial operation. In the present case, the Petitioner would only be entitled to a varied tariff applicable as on the date on which energy is injected to the grid i.e., Rs. 4.36/- per kwh and not Rs. 8.40/- per kWh as claimed. Article 5.1 of the PPA clearly specifies the agreed terms, which contemplates payment of the lower of the tariffs applicable at the time of commissioning of the plant. Hence, the averments to the contrary are denied.
- m) It is stated that invocation of Force Majeure Clause under Article 8 of the PPA has to be done strictly in the manner stipulated. Due notice of occurrence of Force Majeure Event had to be given within reasonable time. Admittedly, the Petitioner has not issued Force Majeure notice as required under the PPA. It is submitted that the Petitioner vaguely has stated demonetisation and delay in grant of approval from various agencies has led to delay in commissioning of the plant. The Petitioner has failed to explain any delay with sufficient proof. Factors for seeking extension of time also do not constitute

Force Majeure as delay in obtaining approval from various authorities is not a recognized *Force Majeure Event* under the PPA.

- n) It is submitted that Article 8.3 of the PPA clearly states that an event caused on account of negligent act, intentional omission or errors cannot be considered as a force majeure event. It is submitted that there was a delay of nearly one year on the part of the Petitioner in approaching the Deputy Commissioner for conversion orders and KPTCL for evacuation approval. The PPA was executed on 24.06.2015. The Petitioner approached the DC only on 11.05.2016 and KPTCL for evacuation approval only on 20.06.2016. The Petitioner has failed to explain the reason for the delay in taking timely action. It is submitted that Petitioner was not diligent in executing the project and has failed to explain the delay on its part in approaching the competent authorities for necessary approvals. Therefore, it is submitted that the Petitioner cannot take shelter under force majeure clause.
- o) It is submitted that the Petitioner has failed to substantiate the 11 months delay in filing the application for land conversion, and a delay of 12 months in filing the application for evacuation and a corresponding delay of 1 month in paying the processing fee, thereby failing to achieve the Conditions Precedent under Article 2 of the PPA. On 22.09.2016, KPTCL granted the Petitioner a tentative evacuation approval under self-execution basis. The Petitioner vide letter dated 07.10.2016 communicated its acceptance for the

tentative evacuation scheme. The KPTCL vide letter dated 13.10.2016 granted the Petitioner regular evacuation scheme approval. Therefore, there was no delay in grant of evacuation approval by KPTCL as alleged. It is submitted that any delay in commissioning of the plant can only be attributed to lackadaisical attitude of the Petitioner.

- p) The Petitioner has sought for a direction not to levy liquidated damages. The PPA which provides for levy of liquidated damages in the event of delay in commissioning and Article 2.2 and 2.5.7 which provides for levy of liquidated damages in the event of delay in achieving conditions precedent. In the case on hand the Petitioner has not only delayed the commissioning of the plant but has failed to meet conditions within the stipulated time frame. The PPA specifically provides for levy of damages in the event of such delay. The Petitioner has signed the PPA knowing fully well the consequences of delay. Such being the case, question of refunding the sums withheld towards liquidated damages would not arise.
- q) Insofar as the prayer seeking for levy of interest/late payment surcharge is concerned, it ought to be noted that the Petitioner herein is the defaulting party. The Petitioner herein has not adhered to the mechanism laid down in the PPA and the Respondent has been making timely payments at the rate determined by this Hon'ble Commission. Therefore, the Respondent is not at default and the Petitioner is not entitled to LPS.

- r) Averment that there was delay of four months on the part of KPTCL in granting evacuation approval and same is a force majeure event is untenable and denied. The PPA was signed on 24.06.2015. It is submitted that the Petitioner has failed to substantiate the delay of 12 months (20.06.2016) in filing the application for evacuation approval and delay of 1 month in paying the processing fee. The KPTCL, on 22.09.2016 granted that Petitioner tentative evacuation approval under self-execution basis to which on 07.10.2016, the Petitioner communicated its acceptance. The KPTCL vide letter dated 13.10.2016 granted the Petitioner a regular evacuation scheme approval. It is submitted that KPTCL has granted evacuation approval within the reasonable timeframe. Any delay can only be attributed to the Petitioner and other averments contrary to the above are denied.
- s) It is submitted that all other necessary approval required to commence work at substation like approval of equipment drawings, estimate for 11kv TB at KPTCL Substation and equipment inspections is given before 20.12.2016. Hence, the delay in execution of the project cannot be attributed to the Respondent No. 3. The work order for 11Kv line is to be granted by the Respondent No. 2/BESCOM. As per the KPTCL Order dated 3.02.2011 only MEI switchgears are to be erected for all KPTCL works. The averment that delays in executing the project was caused due to instructions of the Respondent to use MEI Switchgear only is untenable and denied. With regard to

approval of drawings by the Respondent No.3, it is submitted that pursuant to the Petitioner's request on 26.09.2016, the Respondent No.3 has approved the drawings on 24.10.2016. It is submitted that there is no delay on the part of the Respondent No.3 in approving the drawings.

- t) The averments made that the Commission must consider the recommendations of the State Government dated 23.06.2017 and the MNRE as the Electricity act mandates the Commission to promote generation from renewable energy is untenable and denied. The Commission has acted in furtherance to the provisions of the Electricity Act. The State of Karnataka today is a renewable energy rich state proves beyond doubt that this State Commission and the Respondent have taken steps to promote generation of renewable energy in the State. However, if the Commission grants a higher tariff to the Petitioner who has commissioned its plant with delay and in violation of policy who is at fault on par with a generator who has commissioned a plant within the stipulated time, the same will lead to anarchy. This will lead to inequality among the generations and the same is in violation of Article 14 of the Constitution of India. The Respondent being a state utility has acted in a fair and unbiased manner. Therefore, the Respondent has rightly contended that the Petitioner is not entitled to extension of time. In light of the facts and submissions made by the Respondent, it is prayed that the Petition

filed by the Petitioner is to be dismissed with costs in the interest of justice and equity.

8) The gist of the Statement of Objections of the 3rd Respondent/KPTCL may be stated as follows: -

a) The Petitioner's allegation that there is delay on the part of the 3rd Respondent, in approving power evacuation, is denied as false. The chain of events with regard to the approval of power evacuation is, as hereunder: -

- i) Application was received on 20.06.2016;
- ii) On receipt of application the Petitioner was requested on 21.07.2016, to pay processing charges;
- iii) On 23.07.2016, Petitioner paid processing fees;
- iv) On 29.07.2016, the EE (Ele) of Chitamani was directed to submit the feasibility report;
- v) On 03.09.2016 the feasibility report was submitted;
- vi) The tentative evacuation approval was issued to the Petitioner on 22.09.2016;
- vii) On 07.10.2016, the Petitioner submitted the acceptance for the tentative evacuation approval;
- viii) On 13.10.2016, the regular evacuation approval was issued to the Petitioner.

From the above chain of events, it is clear that, the 3rd Respondent has not delayed the process of according evacuation approval to the Petitioner.

The Petitioner has filed the application for evacuation approval after a lapse of one year from the date of execution of the PPA and is responsible for the delay. The Petitioner ought to have achieved the

Conditions Precedent by 23.06.2016, but applied for evacuation approval on 20.06.2016. This indicates that, the Petitioner was not diligent in implementing the Project.

- b) The Petitioner has contended that, there is a delay by the 3rd Respondent in granting the work order, to carry out the substation work. However, all other necessary approvals required to commence the work at the substation, like approval of equipment drawings, estimate for the 11KV TB of KPTCL substation and equipment, were given before 20.12.2016 and hence, the delay in execution of the project cannot be attributed to the 3rd Respondent.
- c) The 3rd Respondent has filed objections dated 28.01.2022 to the Amended Petition stating that, the application for power evacuation approval (Reference 1 in Annexure-K filed along with Petition) was made on 20.06.2016 after about 12 months from the date of signing of the PPA. No explanation is forthcoming by the Petitioner in this regard. The Petitioner has stated in this Petition that immediately after entering into the PPA work pertaining to land levelling, fencing, obtaining necessary approvals and sanctions had commenced. That contrary to this contention of the Petitioner he has stated that, he could not apply for necessary approvals to commence the project because of delay in handing over the PPA. The Petitioner on one hand claims to have started working on the project immediately on signing the PPA, on the other hand it states that the purported delay in handing over the PPA hindered the Petitioner from applying to the

concerned Authorities. Such contrary claims placed by the Petitioner are a clear indication of its attempt to suppress its negligence and such statements ought to be dismissed at very outset.

d) The Respondent No. 3 without any delay intimated the Petitioner to pay the charges on 21.07.2016 (Annexure-A filed along with Statement of objections by the 3rd Respondent dated 28.01.2022). The tentative evacuation approval was granted within 3 days from the date of remittance of processing fee on 22.09.2016 (Annexure-B filed along with Statement of objections by the 3rd Respondent dated 28.01.2022). Any prudent person would not have termed such period as delay. The Petitioner submitted acceptance letter to the Tentative Evacuation approval on 07.10.2016 (Reference No. 8 in Annexure-D filed along with Statement of objections by the 3rd Respondent dated 28.01.2022). The regular evacuation approval was issued on 13.10.2016 to the Petitioner (Annexure-D filed along with Statement of objections by the 3rd Respondent dated 28.01.2022). Therefore, the contention of the Petitioner that the actions of the Respondent No. 3 have caused inordinate delay in commissioning the project is baseless and misleading. Hence, the 3rd Respondent prays to dismiss the Petition in the interest of justice and equity.

9) The 4th Respondent, in its Statement of Objections filed to the Petition as well as in objections filed to Amended Petition, has stated that, it is for the 1st and 3rd Respondents to counter the contentions urged by the Petitioner

and that, it is not a necessary party to this Petition. The 4th Respondent has, therefore, prayed that the Petition against it be dismissed.

10) Heard the arguments on both sides, perused the written submissions of the Petitioner and the records.

11) At this stage the below mentioned issues arise for our consideration.

1. **Issue No. 1:** Whether the Petitioner proves that he is entitled for extension of time on the grounds of Force Majeure events as claimed in the Petition?

2. **Issue No. 2:** For what relief the Petitioner is entitled to?

3. **Issue No. 3:** What Order?

12) **Issue No. 1:** Whether the Petitioner proves that he is entitled for extension of time on the grounds of Force Majeure events as claimed in the Petition?

13) The present Petition is filed seeking for a declaration that the delay in commissioning the project was due to reason outside the control of the Petitioner and therefore amount to Force Majeure as per Article 8.3 of PPA and also to declare that the KERC applicable tariff is as stated in Article 5.1 of the PPA dated 24.06.2015 and with other reliefs. The present Petition arises in the context of the delay of 180 days in commissioning the Petitioner's project at Guttahalli Village, Ambajidurga Hobli, Chitamani Taluk, Chikkaballapura District under 1-3MW Farmers Scheme. The SCOD as per Clause 1.1(xii) of the PPA was 24.12.2016 i.e., 18 months from the effective date i.e., from 24.06.2015 on which both parties have signed the PPA. The actual commissioning of the project was on 22.06.2017.

14) The Petitioner has taken three major grounds under the head of Force Majeure Events for extension of time in commissioning the power project, which are detailed as below: -

- a) Demonetization.
- b) Land conversion from DC.
- c) Delay in issuing Evacuation approval.

a) Demonetization: -

- i) The Government of India by way of notification dated 09.11.2016 withdrew the legal tender status of INR 500/- and INR 1,000/- denominations of Bank notes. This demonetization has had a domino effect from 09.11.2016 to the end of January 2017 on the land acquisition and other project activities thereby, there was a delay in commissioning of the solar project.
- ii) The specific contention taken by the Petitioner, the Government of India has taken extra ordinary steps towards Demonetization by banning 500 and 1000 notes and restricted for withdrawal of cash limited for very small amount and formal Bank system was also not available at the peak time and the cash withdrawal also was not possible. It is true that the Petitioner had to commission the project work in the rural area i.e., Guttahalli Village and unless there was a cash for labour work, tractors and other local men and materials, it was not possible for him to avail their services. In this regard, the Additional Chief Secretary to Government of Karnataka, Energy Department had addressed a letter in letter No. EN67 VSC 2017 dated 23.06.2017

(Annexure-T filed along with Petition) to KERC, wherein it was stated that the Government of Karnataka has observed six main reasons for considering time extension as stated by the 1st Respondent/CESC of which the 'Delay due to demonetization of the Indian Currency' is also one among them. This document clearly supports the contention taken by the Petitioner that some delay was caused in commissioning the project within SCOD due to demonetization.

- iii) During the course of arguments, the Learned Counsel for the Respondent submitted that the Petitioner has failed to produce documents to explain as to how demonetization has caused delay in commissioning of the plant. The Petitioner also has not issued Force Majeure notice as contemplated under Article 8.3(b). The contentions regarding demonetization are only an afterthought which ought not to be considered by the Commission.
- iv) The Respondents though disputed this contention taken by the Petitioner but not denied the contents of the documentary evidence relied by the Petitioner. Hence, there was a delay of 3 months which has to be treated as Force Majeure event which was not in the control of the Petitioner.

b) Land conversion from DC: -

- i) The Learned Counsel for the Petitioner has submitted that Section 95(10) of the Karnataka Land Revenue Act had been

amended (Annexure-G filed along with Petition), according to that amendment if any occupant of any agriculture land assessed or held for the purpose of agriculture wishes to divert such land or part thereof, for the purpose of setting up of solar power generation in accordance with Karnataka Solar Policy 2014-21 issued in Government Order bearing No. G.O. EN 21 VSC 2014 dated 22.05.2014 which has been approved by the State and Central Government and which has been approved by the Competent Authority, the permission applied for conversion of such land shall be deemed to have been granted for that purpose as long as they use for purpose for which permission is granted subject to payment of the conversion fee and all such other fees payable if any, in this regard. Further, stated subsequent to this amendment the Government of Karnataka has issued circular RD69/01.12.2015 (Annexure-H filed along with Petition) fixing the time for grant of deemed conversion as 15 days.

- ii) Further, the Petitioner submitted that as per the Government circular the Petitioner has submitted all requisite documents like PPA, KREDL letter, RTC, PTCL, NOC and other relevant documents as on the date of filing of application (Annexure-J filed along with Petition) i.e., on 11.05.2016. But the Deputy Commissioner has passed conversion order (Annexure-J1 to the Petition) on 30.11.2016. Thereby, there was a delay of 6 months

18 days in getting land conversion order from the Deputy Commissioner and this delay may be construed as Force Majeure Event.

- iii) The Learned Counsel for the Respondents submitted that, the PPA was executed on 24.06.2015, but the Petitioner had made application before the Deputy Commissioner on 11.05.2016 i.e., with a delay of nearly 11 months from the date of signing of the PPA. Thereafter, the Deputy Commissioner has passed orders on 30.11.2016 for conversion of land. Thereby, the Respondents are not responsible in causing delay in obtaining land conversion order, hence this ground cannot be accepted.
- iv) As per PPA Clause 1.1 (xii) of PPA, the 'Effective Date shall mean date of signing of PPA by the parties.' In the present case on hand the Effective Date is the date on which both parties have signed the PPA i.e., on 24.06.2015.
- v) On perusal of the records, it appears that the Government of Karnataka has issued circular on 01.12.2015 fixing the time for grant of deemed conversion as 15 days. After execution of PPA (Annexure-C to the Petition) on 24.06.2015, the Petitioner has applied for evacuation approval before KPTCL on 20.06.2016 (Reference No. 1 Annexure-B filed in objection statement dated 28.01.2022 by Respondent No. 3). The KPTCL has issued Tentative evacuation on 22.09.2016 (Annexure-B filed in objection statement dated 28.01.2022 by Respondent No. 3). Thereafter,

the Petitioner had applied for conversion of land before Deputy Commissioner on 11.05.2016 along with all relevant documents. Though the Petitioner has furnished requisite documents at the time of application for conversion of land, the conversion order was issued on 30.11.2016 after a delay of about 6 months 18 days.

- vi) In this regard we would like to rely upon the judgement (Annexure-V filed along with Petition) in the case of Chennammagathihalli Solar Power Project Vs 1st Respondent /CESC in appeal No. 351/2018 dated 14.09.2020, the Hon'ble APTEL has held as: -

"8.10) Regarding force majeure events, Clause 8.3 of PPA, it is noted that under sub-clause (vi), it is provided that "inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals" will also attribute to force majeure. In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals / clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure under sub-clause (vi) of clause 8.3 which has directly and severely affected the execution of the solar projects. To be more specific, if the approval for land conversion is received on last day of September, 2016, it becomes extremely difficult to achieve COD on 03.01.2017 as envisaged under the PPA. Moreover, the grant of extension of the Scheduled COD was accorded by Govt. of Karnataka and in turn, by first Respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA and not beyond."

"8.15) In view of the above, we are of the considered opinion that considering facts and circumstances of the matter, the 1st Respondent was justified in extending COD up-to 6 months as per the relevant provision (Clause 2.5) of the PPA. Besides, it is also crystal clear that the approvals/clearances from various Government instrumentalities were accorded after considerable delays (of 7-8 months) which in turn attributed to delay in Commissioning of the Solar Projects. As these approvals were beyond the control of the Appellants, the State Government and 1st Respondent have rightly considered them as an event of Force Majeure and accordingly granted approval for COD extension."

- vii) In another case of M/s Panchakshari Power Projects LL.P Vs KERC & Others in Appeal No. 279/2018 dated 12.08.2021 by Hon'ble APTEL, Delhi (Annexure-R to the Amended Petition) has held as:-

"'27) ... In almost all the appeals pertaining to these farmers Solar power plants between 1MW to 3MW, the question came up for our consideration is what would be the effective date for implementation of the PPA? In terms of PPA, the effective date is the day on which the parties execute PPA agreeing to the terms and conditions mentioned there under. It is an admitted fact that mere execution of PPA between the parties the developer cannot establish the power plant unless it has to pass through process ultimately resulting in approval or rejection of PPA.'

'28) Therefore the first and primary requirement is to have approval of the PPA. Approval of PPA is required in order to approach several Authorities to secure permission/consent/ approval from the concerned Authorities for the purpose of establishing solar power plant and commissioning the solar power plant. Even to secure finances for development of solar plant either from the Banks or from any financial institutions, the SPD must have in his hand copy of the approved and

signed PPA, since based on such approvals, these Banks/Financial Institutions can decide to sanction/give financial assistance to the Developer.'

Finally, the Hon'ble APTEL on the basis of the order passed in SEI Aditi Power Private Limited in Appeal No. 360/2019 dated 14.07.2021 and so also in SEI Diamond Private Limited in Appeal No. 374/2019 has held that the date of execution of PPA though envisaged in terms of PPA as effective date, in effect the date on which the PPA is implementable is the effective date which come to the aid of the Appellant as held by the Tribunal.

- viii) As per the observations made by the Hon'ble APTEL and the facts on hand, it is seen that as per the GOK notification the Authorities concerned were required to grant deemed conversion within 15 days. The contention taken by the Petitioner that he had submitted all requisite documents to the Deputy Commissioner on 11.05.2015 is not denied or disputed by the Respondents. The Deputy Commissioner had passed land conversion order on 30.11.2016 taking total period of 6 months 18 days. Hence, the delay for land conversion beyond 15 days is treated as Force Majeure Event.

c) Delay in issuing Evacuation approval: -

- i) It is the case of the Petitioner that, he has applied for power evacuation approval before the KPTCL on 20.06.2016, the same has been approved and issued on 13.10.2016 (Annexure-D filed

in objection statement dated 28.01.2022 by Respondent No. 3). There was a delay of nearly 4 months 7 days from the KPTCL/3rd Respondent. Even though solar policy of 2014-21 assured a speedy approval process, consequent to that the Department of Energy and 4th Respondent has facilitated speedy approval keeping the farmers in mind and who are not familiar with the process and despite the same the 3rd Respondent has delayed by about 4 months 7 days for approval of power evacuation which is basis for remaining approvals such as substation works and 11KV line work. Therefore, the delay caused has to be treated as Force Majeure under Article 8 of PPA.

- ii) The Petitioner further submitted that subsequent to the power evacuation approval the 3rd Respondent has granted work order to carryout substation work only on 20.12.2016 and there is a delay of 6 months by the KPTCL as this work order has to be obtained only after approval of regular power evacuation scheme.
- iii) That the Petitioner submitted subsequent to the regular power evacuation approval the Petitioner could obtain 11KV work order to construct 11KV line only on 11.01.2017. Therefore, there was delay of nearly 2 months.
- iv) Further stated he had made a request for extension of time before the 1st Respondent /CESC on 09.12.2016, but approval for extension of time has been granted on 23.02.2017 and there was

a delay of 2 months 15 days, since the above said approvals are valid for 18 months from the date of signing of PPA, the Petitioner could not carry out pending works as extension was not granted immediately on application. This delay is attributable to 1st Respondent/CESC.

- v) In this regard the Petitioner has furnished table of events in Annexure-AB (filed along with Amended Petition) which reads as hereunder: -

		M/S. GAVI RANGA SOLARS PRIVATE LTD			CHENNAMANAGATHIHALLI SOLAR POWER PROJECT LLP		
	Particulars	Applied/Target Date	Received Date	Delay (in Days)	Applied Date/Target	Received Date	DELAY (in Days)
1.	PPA Delivery	24.06.2015	23.07.2015	29 days	03.07.2015		
2.	Commissioning Date	23.06.2017 SCOD	22.06.2017	Before scheduled	02.07.2015	30.06.2017	3 Days Before
3.	Extension Approval	09.12.2016	23.02.2017	76 Days Delay		03.02.2017	
4.	Extension Period	6 months			6 months		
5.	Land NA (conversion) order	11.05.2016	30.11.2016	203 Days Delay	16.02.2016	29.09.2016	7 months
6.	Power Evacuation Approval	20.03.2016	13.10.2016	115 Days Delay	18.01.2016 / 15.02.2016	22.08.2016	7 months
7.	Bay extension approval/substation work order	20.06.2016	20.12.2016	183 Days Delay	25.05.2016	12.12.2016	7 months
8.	Railway Approval	20.06.2016	15.06.2017	360 Days Delay			

In the above table of events, the Petitioner has relied on the events discussed in the case of Chennammagathihalli Solar

Power Project Vs 1st Respondent/CESC in appeal No. 351/2018 dated 14.09.2020 passed by the Hon'ble APTEL, New Delhi and compared the said events to the present case and prayed for allowing extension of time for commissioning of the project.

- vi) That the Petitioner further submitted that the various sanctions and permissions would reveal that inspite of having applied the requisite permissions and sanctions, the Petitioner suffered on account of inordinate delay in procuring the same. The said delay is beyond the control of the Petitioner. The various sanctions and approvals are pre-requisite in securing the confidence of the financial institutions and Government Authorities. Hence, he prays to treat the delays caused to be treated as Force Majeure Events.
- vii) By way of reply the Learned Counsel for the Respondents have submitted that, the Petitioner has alleged that there was a delay of 4 months on the part of the 3rd Respondent in approving the power evacuation. This allegation is denied as false. He has made application for evacuation on 20.03.2016. The 3rd Respondent had issued Tentative evacuation approval on 22.09.2016 and Regular Evacuation on 13.10.2016. The Deputy Commissioner, Chikkaballapura has issued OM for land conversion on 30.11.2016.
- viii) Further stated all these chains of events makes it clear that the Respondent No. 3 has not denied the delay in according power

evacuation approval to the Petitioner and considering all the above facts and circumstances, the Petitioner requested the Commission to issue directions to the Respondent for repayment/refund of liquidated damages recovered.

15) We have perused the relevant clauses of the PPA such as: -

“2.1 Conditions Precedent:

The obligations of 1st Respondent/CESC and the SPD under this Agreement are conditional upon the occurrence of the following in full within 365 days from the effective date.

2.1.1 (i) *The SPD shall obtain all permits, clearances and approvals (whether statutory or otherwise) as required to execute and operate the Project (hereinafter referred to as “Approvals”):*

(ii) The Conditions Precedent required to be satisfied by the SPD shall be deemed to have been fulfilled when the SPD shall submit:

- (a) The DPR to 1st Respondent/CESC and achieve financial closure and provide a certificate to 1ST RESPONDENT/CESC from the lead banker to this effect;*
- (b) All Consents, Clearances and Permits required for supply of power to 1st Respondent/CESC as per the terms of this Agreement; and*
- (c) Power evacuation approval from Karnataka Power Transmission Company Limited or 1st Respondent/CESC, as the case may be.*

2.1.2 *SPD shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and 1st Respondent/CESC shall provide to the SPD all the reasonable cooperation as may be required to the SPD for satisfying the Conditions Precedent.*

2.1.3 The SPD shall notify 1st Respondent/CESC in writing at least once a month on the progress made in satisfying the Conditions Precedent. The date, on which the SPD fulfils any of the Conditions Precedent pursuant to Clause 2.1.1, it shall promptly notify 1st Respondent/CESC of the same.

2.2 Damages for delay by the SPD

2.2.1 In the event that the SPD does not fulfill any or all of the Conditions Precedent set forth in Clause 2.1 within the period of 365 days and the delay has not occurred for any reasons attributable to 1st Respondent/CESC or due to Force Majeure, the SPD shall pay to 1ST RESPONDENT/CESC damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum period of 60 (Sixty) days. On expiry of the said 60 (Sixty) days, 1st Respondent/CESC at its discretion may terminate this Agreement.”

“2.5 Extensions of Time

2.5.1 In the event that the SPD is prevented from performing its obligations under Clause 4.1 by the Scheduled Commissioning Date due to:

- (a) Any 1st Respondent/CESC Event of Default; or
- (b) Force Majeure Events affecting 1st Respondent /CESC; or
- (c) Force Majeure Events affecting the SPD.

2.5.2 The Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the reasons and limits prescribed in Clause 2.5.1 and Clause 2.5.3 for a reasonable period but not less than ‘day for day’ basis, to permit the SPD or 1st Respondent/CESC through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or 1st Respondent/CESC, or till such time such Event of Default is rectified by 1st Respondent/CESC.

2.5.3 In case of extension occurring due to reasons specified in clause 2.5.1 (a), any of the dates specified

therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6(six) months.

2.5.6 *As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.*

- 16) We have perused the documents furnished by the parties and on that basis, it is clear that the Petitioner and the 1st Respondent have entered into PPA (Annexure-C to the Petition) on 24.06.2015. The Supplementary PPA was executed (Annexure-D to the Original Petition) on 11.08.2016. After approval from KERC the PPA has been handed over to the Petitioner on 23.07.2015. The Revenue Department has issued Circular (Annexure-H to the Original Petition) dated 01.12.2015 regarding deemed conversion as per the Section 95 of Karnataka Land Revenue (Amendment) Act, 2015. Thereafter, OM was issued by the Deputy Commissioner, Chikkaballapur District (Annexure-J1 to the Original Petition) on 30.11.2016 regarding conversion of land bearing Survey No. 35 to an extent of 09 Acres 4 1/2 Guntas for non-agricultural purpose i.e., for establishing Solar Power Project. The Petitioner has written a letter (Reference 1 in Annexure-K to the Original Petition) to the Chief Engineer (Ele), Transmission Zone, KPTCL dated 20.06.2016 with a request to issue evacuation approval for Solar Power Plant under Farmers' Scheme. On 13.10.2016 KPTCL has issued regular evacuation approval to the Petitioner (Annexure-K filed along with Petition). The approval for Railway crossing for laying 11KV UG cable at near Y. Hunasenhalli Railway Station for

proposed solar power project at Guttenahalli in Chitamani Taluk under self-execution scheme (Annexure-P filed along with Petition) was made on 11.01.2017 by 2nd Respondent/BESCOM. The Petitioner has requested for extension of time (As per Reference No. 9 in Annexure-Q1 to the Original Petition) on 15.02.2017 and extension was allowed (Annexure-Q1 Original Petition) on 23.02.2017 allowing extension of SCOD by six months upto 23.06.2017 for completion of Solar power project. Accordingly, the Petitioner has commissioned the project (Annexure-S filed along with Petition) on 22.06.2017.

- 17) The following events would go to show the time taken by the Authorities concerned in granting sanctions, approvals etc., in execution of the project: -

Table 1

Sl. No.	Date	Description of the documents	Annexures
1.	24.06.2015	PPA signed between the Petitioner and the 1 st Respondent	"C" filed along with Amended Petition
2.	20.06.2016	Application given by the Petitioner to KPTCL for evacuation approval at Survey No. 35, Guttahalli Village, Chitamani Taluk, Chikkaballapura District	Reference 1 in "K" filed along with Amended Petition
3.	21.07.2016	Letter written by KPTCL to the Petitioner regarding remittance of processing fee	"A" filed along with Statement of objections by the 3 rd Respondent dated 28.01.2022
4.	22.09.2016	Letter written by KPTCL to the Petitioner regarding Tentative Evacuation Scheme	"B" filed along with Statement of objections by the 3 rd Respondent dated 28.01.2022

5.	13.10.2016	Letter written by KPTCL to the Petitioner regarding approval of Regular Evacuation Scheme	"K" filed along with Petition and "D" filed along with Statement of objections by the 3 rd Respondent dated 28.01.2022
5.	11.11.2016	87 th Committee meeting formed for sparing space in KPTCL substation held on 11.11.2016 vide letter No. CEE(P&C)/SEE(Pig)/EE(PSS)/KCO-94/96/64180/2016-17/11065-70 dated 18.11.2016	"Reference 2" in "L" filed along with Petition
6.	29.06.2017	Commissioning Certificate issued by Executive Engineer (Ele), 220 KV KPTCL, Chintamani certifying that the project was commissioned on 22.06.2017	"S" filed along with Petition

Table 2

Sl. No.	The difference of Period shown from 24.12.2016 (after 18 months period as per Article 1.1 (xii) of the PPA) and Annexure-S (filed along with Amended Petition)	Days
1.	24.12.2016 to 31.12.2016	08 days
2.	January 2017	31 days
3.	February 2017	28 days
4.	March 2017	31 days
5.	April 2017	30 days
6.	May 2017	31 days
7.	01.06.2017 to 21.06.2017	21 days
Total		180 days

The above tables disclose that the time taken for granting sanctions and approvals by the Government Authorities and other Authorities and Demonetization induced delay which were beyond the control of the Petitioner thereby, the prayer of the Petitioner squarely fall within the parameters under Force Majeure events.

18) In support of the arguments, the Learned Counsel for the Petitioner further relied upon the following judgements: -

- i) In the case of Basaragi KM Solar Power Project LL.P & Another Vs HESCOM & Another in Appeal No. 328/2018 dated 12.08.2021 by Hon'ble APTEL, New Delhi (Annexure-X1 to the Amended Petition).
- ii) In the case of Hukkeri Solar Power Project & Another Vs HESCOM & Another in Appeal No. 342/2018 dated 12.08.2021 by Hon'ble APTEL, New Delhi (Annexure-X2 to the Amended Petition)
- iii) In the case of Kurugunda Solar Power Project LL.P & Another Vs HESCOM & Another in Appeal No. 12/2019 dated 12.08.2021 by Hon'ble APTEL, New Delhi (Annexure-X3 to the Amended Petition).
- iv) In the case of Madamageri Solar Power Project LL.P & Another Vs HESCOM & Another in Appeal No. 322/2018 dated 12.08.2021 by Hon'ble APTEL, New Delhi (Annexure-X4 to the Amended Petition).
- v) In the case of Yarganavi Solar Power Project LL.P & Another Vs HESCOM & Another in Appeal No. 10/2019 dated 12.08.2021 by Hon'ble APTEL, New Delhi (Annexure-X5 to the Amended Petition).
- vi) Clearsky Solar Power Limited Vs KERC & others in Appeal No. 160/2020 dated 02.08.2021 by Hon'ble APTEL, New Delhi (Annexure-X6 to the Amended Petition).

vii) Cambria Solar Private Limited Vs GESCOM & Others in OP No. 188/2017 dated 23.03.2021 by KERC, Bengaluru (Annexure-Y to the Amended Petition).

19) We have perused the Judgement passed by the Hon'ble APTEL, NewDelhi, in Appeal No. 328/2018 in the matter of Basaragi KM Solar Power Project LL. P & Sri Channaraj Hattiholi Vs HESCOM & KERC dated 12.08.2021 and the Hon'ble Appellate Tribunal for Electricity has held and observed as follows: -

- I. *"Having regard to the fact that securing these approvals from various instrumentalities of the Government/ Government officer, 18 months period was envisaged to complete the project. Having regard to the fact that there could be circumstances or events which could delay the happening of COD within the original time slot, six months' time for extension of commissioning the project at the level of concerned distribution licensee was envisaged. For events beyond that, they had to approach the Respondent Commission.'*
- II. *'The above procedure was envisaged keeping in mind that possibility of delay happening on account of laches on the part of the offices of Governmental Instrumentalities, though Solar Developer or SPV do not contribute to such delay. Unforeseen happening could possibly delay commissioning of the project, therefore force majeure event clauses were introduced in the terms of PPA as stated above. These force majeure clauses definitely take within its fold, the delay caused by offices of the Government or Governmental Instrumentalities.'*
- III. *'Arguments of the Respondent HESCOM that KPTCL is not a party to the PPA, therefore, the delay on their part cannot come to the aid of the Appellant cannot be accepted. KPTCL is also a public utility and instrumentality of the*

Government. Therefore, even if the project is delayed on account of KPTCL, in not issuing approval for evacuation of power and grid connectivity within a reasonable time, it amounts to event of Force majeure.'

- IV. *'The Respondent HESCOM contends that there was delay in submitting applications to various departments by the Appellant. One has to analyze the circumstances in a holistic approach is whether there was negligence on the part of the Developer to approach and obtain these approvals? It cannot be said that the considerable time lapsed in obtaining these approvals from various instrumentalities of the Government was at the instance of the Appellants.'*
- V. *'Having invested huge amounts taking loans from Banks/financial institutions, one cannot even imagine that the Developer will be negligent in pursuing his project.'*
- VI. *'However, the same set of Force Majeure Events could not convince the Respondent Commission. The Respondent Commission being a neutral body is expected to discharge its functions in a judicious manner. If delay has occurred on account of reasons beyond the control of the Appellant, the Appellant cannot be punished. The intention of the Government to assist to the farmers should not become otherwise a weapon to punish them''*

20) In the case of Hukkeri Solar Power Project & Another Vs HESCOM & Another in Appeal No. 342/2018 dated 12.08.2021 passed by Hon'ble APTEL, New Delhi (Annexure-X2 to the Amended Petition), the relevant paras are as follows: -

“108) It is seen that the Government of Karnataka brought in its special scheme for promoting renewable energy generation to harness the solar sources available in the State. This was meant to create opportunities to land owning famers. In response to

the promotion of the solar development by Government of Karnataka, several farmers including the Appellant came forward to set up solar plants. We judiciously take notice of the facts which were discussed/considered in other Appeals that in terms of guidelines issued by the State Government for developing solar project, there was a mention that the land used for setting up of the solar plant requires land conversion permission, however, the land pertaining to solar development under Farmer's Scheme will have deemed conversion. However, there was lot of confusion is issuance of executive direction/orders to implement the guidelines for deemed conversion which compelled many famers to approach the revenue authorities for regular land conversion route. This regular land conversion route involves hercules task which required several documents from several Department to submit the application for conversion of the land. Most of the cases, the delay seems to be with regard to conversion of the land.'

'109) Apart from conversion of land, there seems to be delay in obtaining evacuation either provisional or final approval, so also in approving the drawing and intimating the estimation of the charges to be paid. Similarly, once application is submitted to CEIG to certify safety of the plant in order to start commissioning of the solar plant, in many cases time is taken to come and inspect the site. Even in this Appeal, we note that the drawings required for the bay terminal and other requirements for connectivity at the bay of the substation of the transmission/distribution system, the authorities took some time. All this could happen only in October 2016. Only after approval of the grid connectivity finally granted the Appellant could approach the Chief Electrical Inspector with drawings pertaining to the electrical installation of the Solar power plant.'

'110) Apparently, the scheme was meant to benefit small land holding farmers, who could establish solar plants between 1 MW to 3 MWs. This also definitely requires business prudence apart from minimum knowledge in the field concerned. As per the policy, the establishment of solar plant was to be in the agricultural land. On account of restrictions to use agricultural land for non-agricultural purpose,

conversion of agricultural land use is a must. In terms of Karnataka Revenue Act, it has laborious process to get conversion of agricultural land into non-agricultural one. To establish solar power plant, it is not just conversion of agricultural land permission, but several other approvals/consent/permissions were required.'

'111) Till SPV was established, it was the individual Appellant i.e., SPD who had to run from office to office to secure required approvals/ consents. Having regard to laborious process to secure these permissions from various Government instrumentalities, it would have been a wise decision to have infrastructure under one roof (like single window agency) to get all these clearances which would have saved lot of time for the establishment of these small solar power plants in question. Since either the SPD or SPV had to run from office to office situated at different places to secure approval and permission which would not have been possible to secure on any one particular day also seems to have caused hardship and delay in procuring the approvals, be it land conversion or power evacuation and grid connectivity of safety certificate from CEIG etc. To apply for conversion of land to non-agriculture purpose itself, more than 13 documents are required, which have to be secured not from single place but various departments of Government. The scheme which was expected to be a boon to the farmers seems to have become a bane.'

'112) Therefore, it is quite evident that there was no fault of the Appellant in approaching various Governmental Instrumentalities for necessary sanctions/approvals. Though all care and caution was duly exercised considerable time was lapsed by the time the Appellant obtained the necessary approvals. Definitely, the fault does not lie with the Appellant One cannot blame the Appellant, since the delay has occurred from the Govt. Instrumentalities in issuing necessary approvals and sanctions.'"

- 21) In the case of Kurugunda Solar Power Project LL.P & Another Vs HESCOM
& Another in Appeal No. 12/2019 dated 12.08.2021 passed by Hon'ble

APTEL, New Delhi (Annexure-X3 to the Amended Petition), it is observed as

under: -

“109) We also note that it is not a simple application for land conversion. This requires several other documents to be collected before applying for land conversion. The set of documents that are required had to be obtained from different departments. All this would take sometimes, therefore, one cannot expect the SPD straight away to apply for conversion of land the moment the PPA was approved by the Commission. Similarly, to get CEIG safety approval, several safety steps have to be completed like submission of drawings, approval of the drawings, intimation for payment of processing fee and final approval followed by safety certificate has to be issued. This safety certificate could be granted only if there is permission for Grid connectivity and final approval for evacuation obtained. In most of the cases, the Developers have sought lease of the land for setting up bay terminal. The land on lease basis also consumer time to secure the final approval of evacuation with so many formalities that have to be complied with by the Solar Developers. It is not just one single window agency where they could secure all these approvals. They had to approach office to office to secure different certificates, documents to secure the approvals that are required.’

‘110) Therefore, the Association of farmers meant for Farmer’s Scheme made presentation to the HESCOM who in turn brought to the notice of the Energy Department of the State explaining the difficulties faced by the Solar Plant Developers in getting the approvals/sanctions to set up the solar plants. A special Committee was formed to look in to the reasons for the delay being caused. On appraisal of the difficulties faced by the farmers, the three members Committee recommended for acceptance of the reasons explained as force majeure event. Based on that the State Government through the Secretary requested KERC to consider the same and grant PPA tariff to the Solar Developers. In this regard, even MNRE also addressed a letter to encourage the Solar Developers.’

'112) According to us, the considerable lapse of time to secure these certificates necessary was not on account of negligence on the part of the Appellants, but on account of the concerned officers who took time to issue these certificates. Therefore, we are of the opinion that none of the delay in securing the approvals was on account of Appellants and in fact they approached and started the process with utmost care and diligence.'

22) We have perused the Judgement passed by the Hon'ble APTEL, NewDelhi, in Appeal No. 322/2018 in the matter of Madamageri Solar Power Project LL. P & Smt. Girija B. Hattiholi Vs HESCOM & KERC dated 12.08.2021, Hon'ble Appellate Tribunal for Electricity has held and observed as follows: -

- I. *"In terms of guidelines issued by State Government to set up solar plants several sanctions/approvals/ clearances had to be obtained by the farmers like land conversion, grid connection and power evacuation approvals, plant safety approval from chief electrical inspector etc. Apparently, right from the date of signing of the PPA, the Appellant was running from office to office to secure these approvals/sanctions as stated above. If time was taken for getting these approvals as stated above, we note that considerable time was lapsed. Definitely it was not on account of the Appellants' negligence or lethargic approach.'*
- II. *'We are of the opinion that the time taken to obtain the above-mentioned approvals would definitely become impossible for the Appellants to achieve COD of the solar plant within SCOD of the PPA.'*
- III. *'In fact, as stated above, the HESCOM taking into consideration all these facts and in line with the terms of PPA extended time for COD within the extended SCOD. This action of the HESCOM has support from the fact that the State Government also, after due diligence and prudence, accorded extension of COD by six months. On*

account of such extension, the SCOD automatically get postponed by six months.'

- IV. *'Apart from that, in terms of Clause 10.5 of PPA, it says despite complying with the legal requirements to obtain, renew or maintain required licensee or legal approval will also amount to Force Majeure Event. Therefore, we are of the opinion that if at all there was delay in receiving various clearances/approvals by the State Government and its instrumentalities which are beyond the control of the Appellants, the same has to be treated as event of force majeure, since the same would directly and seriously affect the implementations of the solar project.'*"

23) In OP No. 188/2017 dated 23.03.2021 between Cambria Solar Private Limited Vs GESCOM, this Commission has held that as under: -

"In view of the principles laid down by the Hon'ble APTEL in a recent judgment cited (in Appeal No. 351/2018 in the matter of Chennamangathihalli Solar Power Project LL. P Vs 1st Respondent/CESC & another case, dated 14.09.2020), above and we are also relying on the above judgement in view of the facts are quite similar to the instant case. In view of the extension of time granted by the 1st Respondent /CESC (Respondent-2), holding that the Petitioner has fulfilled the conditions of PPA and extended time, we are of the opinion that the circumstances and events narrated by the Petitioner in the petition are 'Force Majeure' events and they are not under the reasonable control of the Petitioner. Therefore, the Petitioner has proved that events or circumstances alleged by it amounts to 'Force Majeure' events entitling for extension of time for achieving the Conditions Precedent and Scheduled Commissioning Date."

In this order, the Commission placing reliance on the Hon'ble APTEL's decision in the case of Chennammangathihalli Solar Power Project vs 1st Respondent/CESC, has allowed the extension of time on the ground of

delays by the Governmental agencies which is also the case in the present Petition.

- 24) Under these circumstances, basing on the observations of Hon'ble APTEL in the cases referred supra as well as the reasons assigned by the Petitioner, the grounds urged by the Petitioner under the head of Force Majeure Events has to be accepted.
- 25) During the course of arguments, the Learned Counsel for the Petitioner has submitted that, he has placed all the communications sent to the Respondents intimating them on the Force Majeure Events effecting the timely commissioning of the project. In support of his arguments, he has relied upon the Official Memorandum (Annexure-Q1 filed along with Petition) issued by the 1st Respondent/CESC in favour of the Petitioner and others on 23.02.2017. By way of reply the Learned Counsel for the Respondents submitted that the Petitioner has not followed the Article 8.3(b) of the PPA.
- 26) We have perused the Force Majeure Clause of the PPA: -

“8.3 Force Majeure Events:

(a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party affected by such delay or failure, including the occurrence of any of the following:

(i) Acts of God;

- (ii) Typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;
 - (iii) Strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this Agreement;
 - (iv) Acts of war (whether declared or undeclared), invasion or civil unrest;
 - (v) Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the SPD or 1st Respondent /CESC of any Law or any of their respective obligations under this Agreement);
 - (vi) Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;
 - (vii) Fire, Earthquakes, explosions, accidents, landslides;
 - (viii) Expropriation and/or compulsory acquisition of the Project in whole or in part;
 - (ix) Chemical or radioactive contamination or ionizing radiation; or
 - (x) Damage to or breakdown of transmission facilities of either Party;
- (b) The availability of the above item (a) to excuse a Party's obligations under this Agreement due to a Force Majeure Event shall be subject to the following limitations and restrictions:
- (i) The non-performing Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as practicable after its occurrence;
 - (ii) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event.
 - (iii) The non-performing Party is able to resume performance of its obligations under this Agreement, it shall give the other Party written notice to that effect;
 - (iv) The Force Majeure Event was not caused by the non-performing Party's negligent or intentional acts, errors or omissions, or by its negligence/failure to comply with any material

Law, or by any material breach or default under this Agreement;

- (v) *In no event shall a Force Majeure Event excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event."*

- 27) On perusal of Annexure-Q1 to the Petition it appears that, the 1st Respondent/CESC has accorded approval to commission the project within on or before 23.06.2017 subject to certain conditions. Further it is stated that the approval is issued purely based on the request of Solar Power Developer for the purpose of commissioning of the project. While issuing Official Memorandum by 1st Respondent/CESC it had referred the letter written by Hon'ble Power Minister of GOK vide his note No. ಇಂಸೆ/ಕೆ/0167/2016-17 dated 18.11.2016 (Reference No. 6 in Annexure-Q1 filed along with Petition) and another letter written by Additional Chief Secretary to all Managing Directors of ESCOMS dated 24.11.2016 (Reference No. 7 Annexure-Q1 filed along with Petition) and the Petitioner dated 15.02.2017 (Reference No. 9 in Annexure-Q1 filed along with Petition). On the direction of the 1st Respondent/CESC the Petitioner filed the present Petition challenging the directions issued by the 1st Respondent/CESC to file a Petition before the Commission seeking approval for extension of SCOD. Thereby, the allegations of the Respondents that no Force Majeure notice was given by the Petitioner are baseless and false.
- 28) On perusal of the statement of objections of all the Respondents to original Petition and after remand from the Hon'ble High Court the additional

statement of objections filed are contrary to the facts and circumstances of the case in respect of delay in extending time for completion of the plant.

- 29) Further the Petitioner has also produced Commissioning certificate (Annexure-S to the Amended Petition) dated 29.06.2017 which shows the 1 MW Solar Plant of M/s Gavi Ranga Solars Private Limited, was commissioned on 22.06.2017.
- 30) In view of the discussions made as above and also in Page 45 (Para 17 in Table-2), it is clear that the time taken for each event of delay, there was delay of more than one year in granting various approvals from Government instrumentalities and therefore the prayer of the Petitioner falls within the parameters Force Majeure events as discussed above and in the present case on hand though the Petitioner has suffered delay in issuing evacuation approval, transmission line work and bay approval, Demonetization induced delay and delay in conversion of land, he has commissioned the solar project on 22.06.2017 i.e., within the extended period i.e., upto 23.06.2017 approved by the 1st Respondent as per Annexure-Q1 (filed along with Petition). As per observations made herein above, the judgements relied by the Counsel for the Petitioner and the grounds urged by the Petitioner in the Petition fall under the Clause of Force Majeure as described in the PPA. The extension of time by 180 days for commissioning of the solar plant is approved under Force Majeure conditions as discussed in above paras. Hence Issue No. 1 is answered in affirmative.

- 31) **Issue No. 2:** For what relief the Petitioner is entitled to?
- 32) As per discussions made herein above paragraphs, and also answering issue No. 1 in affirmative by holding that the Petitioner is entitled for extension of time of 180 days from 24.12.2016, he is entitled for the tariff as agreed in PPA. As per the findings given by the Hon'ble APTEL in its judgement dated 28.02.2020 in Appeal No. 340/2016 between Azure Sunrise Private Limited Vs Chamundeshwari Electricity Supply Corporation Limited, that "once extension of Scheduled Commissioning Date is approved by the concerned DISCOM, the question of reduced tariff does not arise". Hence, the Petitioner is entitled for Rs. 8.40/kWh tariff.
- 33) As stated above, once the SCOD is extended by the Respondent the revised SCOD is to be reckoned for determining the Tariff as well as liquidated damages. Since the time extended upto 23.06.2017, the Petitioner is not liable to pay liquidated damages. This Issue No. 2 is answered accordingly.
- 34) **Issue No. 3:** What Order?
- 35) In view of the foregoing reasons, we pass the following: -

ORDER

- a) The Petition is allowed.
- b) The delay is condoned upto 22.06.2017 in commissioning of Solar Power Project in Guttahalli Village, Chitamani Taluk, Chikkaballapura District and the Petitioner is entitled tariff at Rs. 8.40/- as per PPA.

- c) The 1st Respondent/CESC is directed to pay the difference of the Tariff paid per unit from the date of commissioning of the plant along with late payment surcharge in terms of PPA within 2 months.
- d) The 1st Respondent is directed not to levy liquidated damages and if already levied the same shall be refunded to the Petitioner within two months.

Sd/-
(H.M. MANJUNATHA)
Officiating Chairperson

Sd/-
(M.D. RAVI)
Member