

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION  
SCO NO. 220-221, SECTOR 34 A, CHANDIGARH**

**Petition No. 15 of 2016 &  
I.A. No. 7 of 2016  
Date of Order: 09.08.2017**

Present: Shri D.S. Bains, Chairman  
Shri S.S. Sarna, Member

In the matter of: Petition under Section 94 of the Electricity Act, 2003 directing the respondent No. 2 & 3 (PSPCL/ PSTCL) to make the bay ready for synchronization and restraining the respondent No.1 (PEDA) from forfeiture of performance Bank Guarantee in terms of Clause 10.1.0 of PPA and Article 7A of Implementation and extension of Agreement of the date of commissioning of Petitioner's project till bay is ready for synchronization.

AND

In the matter of: Radiant Solar Energies Private Limited, Muktsar-Faridkot Bye pass, Kotkapura-151204.

.....Petitioner  
Versus

1. Punjab Energy Development Agency, Plot No.1-2, Sector 33-D, Chandigarh-160034.
2. Punjab State Power Corporation Limited O/o SE/Investment Promotion Cell, T-8, Thermal Design Complex, PSPCL, Patiala-147001.
3. Punjab State Transmission Corporation Limited, PSEB Head Office, The Mall, Patiala.

.....Respondents

**ORDER**

The petitioner filed the present petition for directions to PSPCL and PSTCL to make the bay ready for synchronization, to extend the date of commissioning of the projects till the bay is

ready for synchronization along with an application for restraining Punjab Energy Development Agency (PEDA) from forfeiting the Performance Bank Guarantee (PBG). The petition was admitted vide order dated 16.03.2016. In the meantime, PEDA was restrained from invocation/encashment of PBG till the next date of hearing. The stay order restraining PEDA from invocation/encashment of PBG was further extended by the Commission vide orders dated 18.04.2016, 12.05.2016, 18.05.2016, 15.06.2016, 01.08.2016 and 04.10.2016.

2. PEDA submitted its reply to the petition vide letter No.327-29 dated 21.04.2016. PSPCL submitted its reply to the petition vide memo No.5462 dated 28.04.2016. PSTCL vide memo No.1146 dated 08.04.2016 submitted that the 66 kV sub-station, Pathrala is not under the jurisdiction of PSTCL and hence PSTCL may be deleted from the array of respondents in the petition.

3. The petitioner was directed to file rejoinder by 24.05.2016, however, the petitioner filed rejoinders to the reply filed by PSPCL and PEDA on 09.06.2016. During the hearing on 28.07.2016, the counsel for the petitioner filed an application for issuance of necessary directions to PSPCL for producing on record the documents to show when was the construction work of sub-station started, completed and ready for receiving power from the solar plant of the petitioner.

4. The Commission vide its order dated 01.08.2016 directed PSPCL to place on record the said documents by way of an affidavit by 12.08.2016. In response, PSPCL submitted its reply vide memo No.5679 dated 10.08.2016. During the hearing on

27.09.2016, counsel for the petitioner requested to file amended petition and prayed for adjournment of the hearing. The Commission allowed the petitioner to file amended petition by 30.09.2016 and held that no further adjournment would be allowed.

5. The petitioner filed the application for amendment of the petition along with the amended petition during the hearing on 08.12.2016. The counsel for the respondents sought time to file reply to the said application for amendment of the petition. PEDA filed its short reply vide letter dated 16.12.2016 and PSPCL filed its reply to the said application for amendment vide memo No.6664 dated 15.12.2016. Vide its order dated 24.12.2016, the Commission allowed the said application for amendment of the petition in terms of the details given in the order. PEDA submitted its reply to the amended petition vide letter no. 869-71 dated 07.02.2017.

6. Further, PEDA filed IA No.5A of 2017 dated 15.03.2017 seeking adjudication of the issue with respect to undue influence of the counsel representing the petitioner. In the hearing on 25.04.2016, the petitioner was directed to file written submissions in the said IA with a copy to PEDA. After hearing the arguments on 09.05.2017, the Commission reserved the order in IA No. 5A of 2017 vide order dated 11.05.2017. However, PEDA filed another IA No. 21 of 2017 on 19.05.2017 seeking rectification/ modification of the order dated 11.05.2017 submitting that an order in IA No. 5A of 2017 be passed first for proceeding further in the matter.

7. The Commission disposed of the IA No. 5A of 2017 vide order dated 22.05.2017 in terms of the order dated 18.05.2017 passed in IA No. 7 of 2017 in petition no. 22 of 2016. The petitioner submitted additional submissions on 18.05.2017 in view of the order dated 24.12.2016.

8. The arguments were heard in the petition and the order was reserved on 01.06.2017 directing the parties to file written submissions by 12.06.2017. The petitioner and PEDA filed their respective written arguments/submissions on 12.06.2017. PSPCL vide memo no. 6262 dated 14.06.2017 submitted that replies already filed by PSPCL are comprehensive in nature and treated as its written submissions.

9. Petitioner's submissions in the petition, in brief, are as under:

- i) The petitioner was allotted 3 MW solar PV power project (project) by PEDA vide Letter of Award (LoA) dated 25.02.2015. The Implementation Agreement (IA) and Power Purchase Agreement (PPA) for setting up of the said project were signed with PEDA and PSPCL on 19.03.2015 and 31.03.2015 respectively. As per the PPA, the project was required to be commissioned within 10 months from the date of signing of the PPA i.e. the scheduled date of commercial operation (SCOD) was 30.01.2016.
- ii) As per clause 35.0.0 of the PPA, the PPA was effective and binding on the parties upon approval by the Commission. This was objected by the developers and a letter was submitted to PSPCL and PEDA in this regard. It was conveyed that this will delay the financial closure &

disbursement of loan and shall affect timely commissioning of the projects. The developers were informed that the PPA is expected to be approved by the Commission within 7 days from the signing of the PPA. However, the Commission approved the procurement of power from the solar developers and tariff vide its Order dated 11.05.2015 in petition no. 21 of 2015 filed by PSPCL. This delay of 1.5 months approximately is beyond the reasonable control of the developers and cannot in anyway be attributed to them.

- iii) The approval for change of land use took nearly 2-3 months after submission of complete documentation. Also resolving certain other issues including with PSPCL took longer time which resulted in delayed disbursements by the lending institutions and eventually had an adverse impact on timely commissioning of the projects.

The financial institutions insisted for registered mortgage of leasehold/ownership rights on the project land as most of the projects are being implemented on private leased land. This attracts a stamp duty of 4% and registration fee of 1% in Punjab and thus adversely affects the viability of the solar projects in the State. The issue of capping the same to a nominal amount was pending before Govt. of Punjab (GoP) and PEDA for a long time which could not be resolved resulting in further delay.

- iv) The whitefly epidemic as well as incidents of desecration of holy Sri Guru Granth Sahib resulted in disturbances across Punjab which also impacted the work at site.

- v) The petitioner applied for grid technical feasibility clearance on 23.04.2015, which was granted by PSPCL on 27.05.2015.
- vi) The project developers vide letter dated 06.01.2016 collectively requested PEDA to extend the date of commissioning of the projects from 30.01.2016 to 31.03.2016. Earlier, the petitioner vide letter dated 16.04.2015, informed PSPCL and PEDA that the present PPA is not acceptable to the financial institutions for sanction of loan. The financial closure required to be achieved within 120 days of signing the PPA would not be possible without approval of the PPA by the Commission.
- vii) Almost 9 months after grant of grid feasibility clearance, PSPCL could not complete the 66 kV bay at Pathrala substation and failed to install potential transformer and other electrical equipments. Till the filing of the petition on 17.03.2016, PSPCL did not complete the requisite civil/electrical work of the bay for synchronization of the project with the grid.
- viii) It is apprehended that PSPCL will initiate action in terms of clause 10.1.0 of PPA and article 7.0 A of IA i.e. forfeiture of performance bank guarantees (PBGs). There is no delay on the part of petitioner.

As the PPA was approved by the Commission on 11.05.2015, the effective date would be 11.05.2015 and period of 10 months completes on 10.03.2016. As such, penalty for delay of one month can start only after that date. Any action on the part of respondents, even issuance of any

notice for forfeiting/encashment of PBGs before this date is illegal, arbitrary and against the provisions of IA/PPA.

ix) It is prayed to the Commission to:

- a) direct PSPCL and PSTCL to make the bay ready for synchronization;
- b) restrain respondents from forfeiture of performance bank guarantees in terms of clause 10.1.0 of PPA and article 7.0 A of IA till bay is ready for synchronization;
- c) extend the date of commissioning of the project till bay is ready for synchronization.

In the Application for early hearing, the extension in the date of commissioning has been sought from 30.01.2016 to 30.06.2016.

10. PSTCL in its reply dated 08.04.2016 requested that its name be deleted from the array of respondents in the petition as 66 kV sub-station, Pathrala falls under the jurisdiction of PSPCL.

11. PEDAs reply, in brief, is as under:

- i) The petition is bad de-jure and de-facto. It is based on conjunctures and surmises. The petitioner has not demonstrated the true factual matrix and tried to setup a false and frivolous case. The petition is not maintainable as the matter pertains to contractual obligation and an arbitration clause exists in the IA.
- ii) IA signed between PEDAs and the petitioner is the main contractual document. The petitioner was to achieve the COD by 30.01.2016 in terms of RfP, LoA and IA, which it failed to achieve.

- iii) The petitioner while misleading the Commission wrongly procured the interim Order dated 16.03.2016 passed by the Commission restraining PEDA from forfeiture of the PBGs deposited by the petitioner with PEDA qua the project, which is against the settled cannons of law laid down by Hon'ble Supreme Court of India in catena of judgments. The petitioner failed to complete the project upto 30.01.2016 and therefore liable to be levied with penalty to which PEDA is entitled.
- iv) Feasibility clearance was issued on 27.05.2015 and the time taken by PSPCL for issuance of the same is in order and cannot be construed as a delayed action.
- v) The petitioner at the time of applying for allocation of the project was in the knowledge that the project is to be commissioned in 10 months and can not evade the same by setting up a false plea.
- vi) PEDA has no role in the financial arrangement to be made by the petitioner. The project was allocated on build, own and operate basis. Without any obligation cast upon PEDA, it took up the matter regarding reduction in stamp duty charges for creating registered mortgage on land lease hold rights with the lending institutions. It is pertinent to mention that the petitioner was well aware of all the aspects related to the project at the time of applying for the allocation of the same.
- vii) As per the RfP, LoA and IA, the petitioner was to arrange the funds for the project and categorically undertook in the IA that it has the financial standing and capacity to undertake the project.

viii) The petitioner failed to submit the financial closure documents by the due date i.e. 31.07.2015 as required in accordance with terms & conditions of RfP. PEDA sought the same from the petitioner alongwith other requisite documents by 31.08.2015 vide communication dated 21.08.2015. The petitioner failed to submit the same and accordingly a notice was issued by PEDA to the petitioner on 03.09.2015 to submit the requisite documents within 30 days, failing which it was informed that further action to terminate LoA, IA & PPA shall be taken.

In response, the petitioner vide its communication dated 31.08.2015 received on 04.09.2015 submitted the financial closure documents etc. on the basis of loan sanctioned by Small Industries Development Bank of India, Chandigarh (SIDBI), without raising any issues with regard to the belated approval of the PPA by the Commission. The petitioner never informed PEDA regarding delay in commissioning of the project due to belated approval of the PPA. As such, the petitioner cannot plead the same as the cause of delay in setting up the project.

- ix) The petitioner vide its communication dated 01.10.2015, intimated that the company is not arranging finance/loan from any bank or financial institution. It has its own capital of 9.00 crore and the parent companies have sufficient reserves to give unsecured loan as required for timely commissioning of the project.
- x) With regard to pleading that delay in commissioning of the project was due to white fly epidemic and desecration of holy

Sri Guru Granth Sahib, it is submitted that the petitioner during the course of occurrence of such incidents never notified PEDA as to the delay caused in setting up of the project due to the same. Infact, the incident of desecration of holy Sri Guru Granth Sahib took place during second week of October, 2015. However, the petitioner placed the order for solar modules with the supplier on 25.09.2015 to be supplied to the petitioner on 10.12.2015. Also, the petitioner signed the EPC contract on 21.09.2015 for the supply of balance of equipment and project erection & commissioning. The petitioner was required to do so before 31.07.2015 as per the scheduled time lines. Therefore, the petitioner can not attribute the delay in commissioning of the project on the happening of the aforesaid events.

- xi) In response to the representation dated 06.01.2016 requesting for extension in COD from 30.01.2016 to 31.03.2016 without levy of any penalty, PEDA vide its communication dated 18.01.2016 categorically informed the petitioner and others that no extension can be granted in the scheduled date of commissioning. The letter dated 16.04.2015 of the petitioner is denied being incorrect.
- xii) In response to PEDA's letter dated 24.02.2016 for informing the project capacity commissioned, the petitioner vide its communication dated 29.02.2016, informed PEDA that the project is in advance stage of construction and 100% capacity was expected to be commissioned by 25.03.2016.

District Manager, PEDA in its report dated 03.03.2016 informed that fencing and foundation work for the project

substation has just started and no other work has been done. In the next report by the officer dated 31.03.2016, it was informed that 'nil' capacity has been synchronized with the grid. As such, the delay in commissioning of the project is attributable to the petitioner.

xiii)PEDA initiated action for encashment of PBGs vide communication dated 11.03.2016 on account of delay in commissioning of the project by the petitioner. PEDA informed the project developers that although the date of commissioning of the projects was 30.01.2016, however, the tariff is applicable till 31.03.2016 and accordingly the project(s) be commissioned by 31.03.2016, failing which the approved tariff will not be applicable.

xiv)As the project was not commissioned by 31.03.2016, the petitioner is not entitled for tariff of ₹7.58/kWh which was allowed to the petitioner on the basis of discount offered by it in the competitive bidding process carried out by PEDA on the generic tariff of ₹ 7.72/kWh determined by the Commission, which was valid upto 31.03.2016.

xv)The petitioner is not entitled to any relief as prayed for and the petition is liable to be dismissed in light of submissions made. The petitioner be directed to deposit the amount of the penalty with PEDA in respect of the capacity not commissioned in line with the contractual documents.

12. PSPCL's reply, in brief, is as under:

i) The petition is liable to be dismissed as the same has been filed with intention to cause delay to buy time for

commissioning of the project and avoid liability under clause 10.1.1 of the PPA. The petitioner has not approached the Commission with clean hands and concealed material facts. The petitioner's dispute is with PEDA only and PSPCL has no role to play in it.

- ii) There is no delay on the part of PSPCL for providing the bay for synchronization as the petitioner never requested for the same. The issue of synchronization was raised when the petitioner felt that it would not be able to commission the project in time. The petitioner has to take various approvals/technicalities for completion/synchronization of the project in time.
- iii) The petition has been filed to cover the delay for commissioning the project caused by the petitioner to take benefit of reduction in cost of the project as prices are falling every year. The applicable tariff for the project is high. While dismissing the petition, the Commission should reduce the tariff so that the consumers are not burdened due to non-fulfilment of its commitment by the petitioner. In case the extension in commissioning of the project is allowed, PSPCL would be saddled with the cost of RECs for its RPO compliance.
- iv) The PPA was signed on 31.03.2015 and grid technical feasibility clearance was applied by the petitioner on 23.04.2015. The delay has not been explained by the petitioner. There is no bar with regard to the time period for granting of grid technical feasibility clearance.

- v) It is a statutory practice to obtain approval of the Commission after signing of the PPA. There is no bar for the petitioner to proceed with completion of various formalities.
- vi) The representation dated 06.01.2016 for extension was filed at a belated stage. Out of 16 developers who signed the said representation, 13 have already received permission for synchronization.
- vii) The petitioner vide letter dated 11.02.2016 informed PSPCL that CT/PTs would be ready for inspection on 25.03.2016 which was beyond the scheduled date of commissioning. The inspection was carried out by PSPCL on 27.03.2016. Accordingly, the petitioner cannot make PSPCL liable for delay in providing the bay for synchronization of the project.
- viii) PSPCL is well within its rights under clause 10.1.1 of the PPA to initiate action against the petitioner for non-compliance of the terms & conditions of PPA.
- ix) IA, which is an integral part of the PPA, provides that in case the project COD crosses beyond 31.03.2016, the applicable tariff as per PPA shall cease to exist and the developer will be bound to get the tariff re-determined from the Commission. As the minimum tariff determined in the competitive bidding process for FY 2015-16 for Phase-III projects is ₹ 5.09 per kWh, the same is required to be made applicable to the petitioner's project as the project would get commissioned after 31.03.2016, on the lines of the decision of the Commission in petition nos. 15 & 16 of 2015.

13. In the rejoinder to the reply of PSPCL, the petitioner, while reiterating the contents of the petition, denied that the petition has been filed with the intention to cause delay and buy time so as to evade the penal clauses in the IA/PPA. The petitioner's submissions in the said rejoinder, in brief, are as hereunder:

- i) On 31.03.2015, PSPCL invited the solar developers, including the petitioner, to sign the PPA. PSPCL inserted clause 35.0.0 in the PPA, which was not part of the PPA provided in the RfP document. The said clause provided that the PPA shall be effective & binding on the parties only upon approval of the PPA by the Commission and shall be subject to such conditions as may be stipulated by the Commission. It was told that the PPA has to be signed in this format only and that the approval of the Commission would be obtained in 5-7 days. The Commission approved the purchase of power and the tariff vide its Order dated 11.05.2015 in petition no.21 of 2015 filed by PSPCL.
- ii) PEDA was informed vide letter dated 31.08.2015 that SIDBI has agreed for sanctioning ₹ 1800 lakh as term loan vide its letter dated 27.08.2015 but disbursement of the same was subject to certain terms & conditions. The SIDBI authorities visited the plant in January and raised the concern about the grid sub-station for evacuation of power being not ready. Considering the same, only the first instalment of the loan was released in February, 2016 for purchasing solar modules. However, the balance amount was not released which caused delay in commissioning of the project.

- iii) The petitioner arranged funds from its own sources and completed the structures for entire 3 MW capacity. 1 MW solar capacity of the project was completed and approval of Chief Electrical Inspector was granted vide its letter dated 31.03.2016. The protection team of PSPCL inspected the project on 08.04.2016 and found installation of 1 MW capacity in order for injecting the electricity in the grid. Also, the MMTS team of PSPCL checked the premises and sealed the meters vide its report dated 09.04.2016.
- iv) The permission for synchronization was granted by PSPCL on 10.05.2016. However, PSPCL completed the work of 66 kV bay on 16.05.2016 and notified the petitioner on 17.05.2016. The 1 MW capacity was synchronized and commissioned on 18.05.2016.
- v) Since a period of 42 days elapsed initially due to clause 35.0.0 introduced in the PPA by PSPCL such that PPA shall be effective and binding after approval by the Commission, the date of 31.03.2016 needs to be extended by this period as the financial closure could not be achieved due to uncertainty/non-bankability of the PPA i.e. for reasons beyond the control of the petitioner.
- vi) SIDBI did not release all the funds due to the delay in the readiness of the 66 kV bay by PSPCL. Therefore, the solar modules for entire capacity could not be purchased. Although the petitioner installed the structures for entire 3 MW capacity, solar modules of only 1 MW capacity could be procured.

vii) It is denied that the project was delayed to reduce the capital cost and that the tariff determined on the basis of competitive bidding is higher.

viii) As per section 72 of The Contract Act, 1872, irrespective of a clause in a contract/PPA for quantifying the liquidated damages, an aggrieved party can only claim actual damages sustained by it as a result of any default by the other party in fulfilling its obligations under the contract. The LD/penalty amount is only an upper limit to the said actual damages. Hence, without adducing evidence and demonstrating the actual damages suffered, a party can not unilaterally proceed to invoke the LD/penalty amount by way of invocation of the PBGs.

ix) Presuming that the Commission would not extend the control period, the project would be entitled to a tariff of ₹ 7.04 per kWh determined by the Commission for FY 2015-16. The tariff of the project can not be reduced to ₹ 5.09 per kWh on the lines of decisions in petition nos.15 & 16 of 2015 as the facts of the present case are totally different. The petitioner despite default on part of PSPCL, installed structures for the entire 3 MW capacity and commissioned 1 MW capacity of the project.

14. The rejoinder filed by the petitioner to the reply of PEDA, in brief, is as hereunder. For the sake of brevity, the repetitive points already covered in the rejoinder to PSPCL's reply as brought out in the foregoing para have been excluded:

i) It is reiterated that the petitioner vide letter dated 16.04.2015 sent vide registered post dated 17.04.2015 to PSPCL and

PEDA specifically informed that as provided in the PPA, it would be effective and binding only after approval and that this PPA is not acceptable to financial institutions. PSPCL in reply dated 28.04.2015 stated that it has filed petition no. 21 of 2015 in this regard and next date of hearing is 05.05.2015. As such, there was no need to raise this issue with PEDA and PSPCL again.

- ii) As per clause 4.3 of the NRSE Policy, 2012, all necessary and applicable clearances to be granted by State Govt. viz. change of land use, pollution control, water, use of NRSE resources, factories/labour clearances etc. required for a project are to be considered in a time bound manner within a period of 60 days from the date of submission of the application(s) to the respective departments.
- iii) The petitioner informed PEDA vide letter dated 31.08.2015 that SIDBI has agreed for sanctioning ₹ 1800 lakh as term loan vide its letter dated 27.08.2015 but disbursement was subject to certain terms & conditions. As per sanction letter of the SIDBI, the petitioner was required to arrange ₹ 780.75 lakh as promoter's margin. PEDA pressurized the developers by sending letters for early financial closure. Consequently, the petitioner informed vide letter dated 01.10.2015 that the company is not arranging finance/loan from any bank/financial institution. It has its own capital of ₹ 9 crore and its parent companies will provide the unsecured loans for the balance amount for completion of the project.
- iv) PEDA vide letter dated 18.01.2016 stated that extension cannot be granted without assigning any reasons. PEDA has

sent the said letter in a mechanical manner without appreciating the difficulties faced by the developers. It is denied that PEDA conducted any physical verification of the project. The inspection reports dated 03.03.2016 & 31.03.2016 on the basis of inspections carried out by officer of PEDA are not binding since the inspections were not carried out in the presence of the petitioner.

- v) The submissions made by the petitioner may be allowed and the commissioning period of the project be extended upto 31.07.2016 in the interest of justice.

15. In the hearing of the petition held on 28.07.2016, the petitioner sought directions to PSPCL to place on record the documents pertaining to the start and completion of construction work of the grid sub-station and its readiness for injection of power from the project.

In its reply dated 10.08.2016, PSPCL submitted that the grid sub-station was completed and test charged initially on 14.03.2016. However, due to improper right of way of 66 kV line constructed for the project, it was not possible to connect the same with the 66 kV bay constructed for the project. To avoid crossover of the 66 kV lines, the bays were interchanged and the bay for the project was test charged on 17.05.2016.

PSPCL further submitted that the delay caused is due to slow progress of the work by the petitioner i.e. improper right of way of 66 kV line, not getting solar panels timely, CEI approval for 66 kV line obtained on 03.05.2016 etc. These were required to be completed prior to the scheduled date of commissioning i.e. 30.01.2016.

16. The petitioner filed an application for amendment of the petition on 08.12.2016 seeking addition of paras 11A and 11B after para 11 of the petition. In para 11A, the petitioner submitted that SIDBI authorities visited the project in the month of January and found that Pathrala sub-station was not ready and raised a concern that in the absence of sub-station, the electricity could not be evacuated. Thereafter, SIDBI released the first instalment of the loan in the month of February but remaining amount was not released due to which the commissioning of the project was delayed. The petitioner invested funds from its own sources and completed the structure for the complete 3 MW capacity and 1 MW capacity was ready for commissioning by 31.03.2016. The 1 MW capacity of the project was commissioned on 18.05.2016. In para 11B, the petitioner brought out that in response to petitioner's letter dated 11.07.2016 requesting SIDBI to disburse the remaining amount of loan, SIDBI vide letter dated 26.08.2016 expressed its readiness to release the remaining amount of loan subject to certain conditions and stating further that the competent authority accepted the date of COD as 31.03.2017. The petitioner requested for extension in COD upto 18.05.2016 for 1 MW capacity already commissioned on the said date and upto 31.03.2017 for the remaining 2 MW capacity. The prayer clause was amended accordingly.

17. In response, PEDA vide reply dated 16.12.2016 reiterating its earlier submissions further submitted that the application filed by the petitioner is based on conjunctures and surmises and not maintainable and deserves to be dismissed. The petitioner has sought amendment in the petition seeking extension of commercial

date of operation qua 1 MW capacity upto 18.05.2016 and for the remaining capacity of 2 MW, upto 31.03.2017. The prayer in the application is defective as the petitioner was allocated one single project of 3 MW in terms of the contractual documents and the RfP to be set up by 30.01.2016, which the petitioner failed to set up by the due date. The petitioner in the ibid petition had earlier prayed for extension in the scheduled date of commissioning of the project till 31.07.2016.

PEDA further submitted that there is no provision in the IA/PPA for extension in SCOD beyond 30.06.2016 in terms of article 7.0 of IA and clause 10.0 of PPA i.e. 15 months after signing of PPA on 31.03.2015 and that too for the capacity synchronized upto that date. The remaining capacity i.e. 2.0 MW not commissioned/synchronized upto that date would need to be terminated.

18. PSPCL in its reply dated 15.12.2016 to the aforesaid application filed by the petitioner for amendment of the petition submitted that the petitioner applied for synchronization on 10.05.2016 to PSPCL and the same was granted on the same date. The petitioner is seeking extension upto 31.03.2017 for the remaining 2 MW capacity even though the 1 MW capacity was commissioned on 18.05.2016, which shows the lackadaisical attitude of the petitioner. The timeline for setting up the project was clear in the IA/ PPA and any delay caused by the petitioner creates a burden on the consumers of PSPCL as it is forced to purchase RECs to comply with the RPO. PSPCL is in process of initiating action as per the clause 10.1.1 and 10.1.2 of the PPA for levy of liquidated damages and revising the capacity of the project to that

commissioned within 15 months from the date of signing of the PPA. The application for amendment needs to be dismissed.

19. The Commission in its interim Order dated 24.12.2016 held as under:

*“.....The Commission has carefully gone through the submissions in the application dated 08.12.2016 filed by the petitioner, replies thereto by the respondents and the arguments put forth in the hearing on 20.12.2016. The Commission notes that full investment in the project has been made by the petitioner except for solar PV modules of 2 MW capacity, including the 66 kV infrastructure comprising the 66 kV sub-station at the project site and the 66 kV evacuating line. Further, PSPCL has also invested significant amount by constructing the 66 kV bay at Pathala sub-station for receiving power from the petitioner’s project. In case the request of the petitioner to add the remaining 2 MW solar capacity is not acceded to, a significant loss would occur to both the petitioner and PSPCL in as much as the 66 kV infrastructure would not be utilized to its optimum capacity, notwithstanding the fact that the 66 kV infrastructure would not have been required at all for a 1 MW capacity project which is to be connected at 11 kV as per RfP.*

*In view of the above, the Commission is inclined to allow the prayer of the petitioner in the application dated 08.12.2016 to the extent that it may add the solar PV modules for the remaining 2 MW capacity and commission the same by 31.03.2017 without prejudice to the rights of the respondents accruing due to the aforesaid extension being granted with regard to, encashment of Performance Bank Guarantee by PEDDA, levy of liquidated damages by PSPCL upto 31.03.2017 and reduction in tariff of the petitioner’s project (₹ 7.58 per kWh valid upto 31.03.2016), which could be the minimum tariff discovered in the subsequent bidding process and adopted by the Commission in its Order dated 10.06.2016 in petition no. 31 of 2016 i.e. ₹ 5.09 per kWh,*

*which shall be decided by the Commission on merits in the final Order in the petition. The application dated 08.12.2016 filed by the petitioner is disposed of in terms of above.”*

20. PEDA in its submissions dated 07.02.2017 reiterated its earlier submissions. PEDA further submitted that the Commission in its Order dated 25.04.2016 in petition no. 27 of 2016 in the matter of Talwandi Sabo Power Ltd. Vs. PSPCL held that the Commission is of the view that the notice(s) fulfilling the requirements in terms of the PPA were mandatory and required to be issued. As the petitioner failed to issue notice to PEDA in line with the force majeure clauses of IA, no reliance can be placed on assertions made by the petitioner regarding delay in commissioning of the project due to such events.

21. PEDA filed IA No. 5A of 2017 on 16.03.2017 seeking adjudication of the issue with respect to undue influence of the counsel representing the petitioner in the petition before the Commission who was representing the Commission before other court(s)/forum(s)/tribunal(s), which gravely prejudiced the rights of PEDA.

The counsel for the petitioner filed reply dated 18.04.2017 to the said IA supported by copies of judgments titled and reported as R. Balakrishna Pillai Vs. State of Kerala, (2000) 7 Supreme Court Cases 129, Reference No.1 of 2003 decided on November 10, 2008, reported in (2009) 1 Supreme Court Cases 337, Abhraham Kuruvila Vs. S.C.T. Institute of Medical Sciences & Technology and others reported in (2005) 9 Supreme Court Cases 49, Keshab Roy Vs. The State of West Bengal, reported in (1973) 3 Supreme Court Cases 216, Hyderabad Vanaspathi Ltd. Vs. A.P. State

Electricity Board and others, reported in (1998) 4 Supreme Court Cases 470 and a judgment of the Punjab & Haryana High Court reported in the Times of India on 10.02.2017.

Detailed arguments were held on the merits of issue involved in all the above cited judgments on 09.05.2017. Vide Order dated 11.05.2017, Order in the IA was reserved. PEDA filed another IA No. 21 of 2017 seeking rectification/modification in the Order dated 11.05.2017 passed by the Commission. PEDA prayed to the Commission to decide IA No. 5A of 2017 prior to further proceedings in the petition, in the interest of justice, equity and fair play.

The IA No. 5A of 2017 was disposed of by the Commission vide Order dated 22.05.2017 in terms of the Order dated 18.05.2017 passed in IA No.07 of 2017 filed by PEDA in petition no. 22 of 2016 in the matter of Solaire Urja Private Limited Vs. PSPCL & PEDA as the facts and the relief claimed in IA No.5A of 2017 were similar to the facts of IA No.07 of 2017.

22. The petitioner filed written arguments dated 12.06.2017 and reiterated its earlier submissions. The petitioner further submitted as hereunder:

- i) It approached State Bank of Patiala, Kotkapura for seeking loan for the project. The bank vide letter dated 09.04.2015 sought documents relating to the approval of the PPA by the competent authority for processing sanction of loan.
- ii) Vide letter dated 16.04.2015 sent vide registered post dated 17.04.2015, PSPCL and PEDA were specifically informed of the same. It was informed that the PPA without the approval

was not acceptable to financial institutions for sanction of loan.

- iii) Accordingly, financial closure within 120 days from the date of signing the PPA would not be possible until PPA was approved. The period of 120 days for submitting financial closure to PEDa should start from the date of approval of PPA by the Commission. The petitioner would get only 8.5 months instead of 10 months for completion of the project.
- iv) After the approval of PPA on 11.05.2015, the petitioner approached Small Industries Development Bank of India (SIDBI) on 19.05.2015 and referring to an earlier discussion submitted various documents including the PPA for sanction of loan. SIDBI issued in principle approval of the term loan of ₹ 18 crore on 27.08.2015.
- v) In response to PEDa's notice dated 21.08.2015, copy of the approval was forwarded to PEDa on 01.09.2015. PEDa informed that the said letter granting in principle approval to the loan application would not serve the purpose.
- vi) The petitioner vide letter dated 01.10.2015 informed PEDa that it would arrange the funds for the project through unsecured loans from its parent company.
- vii) The petitioner submitted that it had every right to avail the funds from SIDBI at any stage of the project as it had made arrangement for the same.
- viii) SIDBI vide letter dated 06.06.2017 has clarified that during visit to the plant in February, 2016, it was observed that 66 kV bay at 66 kV sub-station, Pathrala for evacuation of

power was not completed by PSPCL as per schedule and was a matter of serious concern.

- ix) The petitioner had to arrange additional collateral to get the disbursement of funds. SIDBI released the first instalment of loan amounting to ₹ 7.76 crore.
- x) Thereafter, the modules for 1 MW capacity arrived and 1 MW capacity of the project was completed on 27.03.2016. The petitioner spent funds from its own sources and completed the structures, transformers, switchyard, inverters and cables for the entire 3 MW capacity. The Chief Electrical Inspector (CEI) gave its approval for commissioning of 1 MW capacity of the project vide letter dated 31.03.2016.
- xi) The petitioner deposited testing fees of ₹ 1,37,624/- for the protection clearance with PSPCL on 28.03.2016. The protection team of PSPCL inspected the plant on 08.04.2016 due to their pre-occupancy and found the project ready for 1 MW capacity. MMTS team of PSPCL checked the premises of the project and sealed the meters on 09.04.2016.
- xii) The 1 MW capacity of the project was ready for synchronization before 31.03.2016 but it could not be synchronized as the 66 kV bay at Pathrala sub-station was not ready. The petitioner vide letter dated 12.04.2016 approached PEDA and submitted copies of all approvals for synchronization of the project requesting intervention in the matter of delay in construction of 66 kV bay at Pathrala sub-station by PSPCL. PEDA did not respond to the letter and failed to perform its duty as coordinator.

- xiii)The petitioner applied for permission for synchronization on 10.05.2016, which was given by PSPCL on the same day. However, the 66 kV bay at Pathrala sub-station was not ready. The bay was completed by PSPCL on 16.05.2016 and test charged on 17.05.2016. Thereafter the 1 MW capacity of the project was synchronized and commissioned on 18.05.2016.
- xiv)The contention of PSPCL is not correct that the 66 kV bay was completed and test charged initially on 14.03.2016 and due to improper right of way of 66 kV line constructed for the project, the newly constructed 66 kV line could not be connected to the 66 kV bay. To avoid crossing of existing Sangat-Pathrala 66 kV line and the 66 kV line constructed for the project, the bay was shifted and test charged on 17.05.2016.
- xv)PSPCL tried to put onus upon the petitioner by submitting that new bay could not be connected to the newly constructed 66 kV line for the project due to improper right of way. The route survey of the line was conducted by PSPCL and the route for laying the transmission line was approved on 15.09.2015 by the competent authority of PSPCL. As per the lay out plan, it was evident that two 66 kV bays were to be constructed at the 66 kV Pathrala sub-station. The 66 kV Sangat-Pathrala SC line was already existing and the bay for the same was to be upgraded by installing breaker, CTs, PTs, Meters and Control Panel for the project and a new bay was to be constructed on which Sangat-Pathrala line was to be shifted. The bay which was constructed on 14.03.2016

was actually meant for shifting of Sangat-Pathrala 66 kV line. The bay which was required to be constructed for the transmission line of the petitioner was test charged on 17.05.2016. There was no issue of right of way and the line was laid down as per plan approved on 15.09.2015.

xvi) SIDBI curtailed release of funds due to non completion of 66 KV bay work at Pathrala sub-station. Therefore, developer could complete only 1 MW capacity despite other infrastructure being ready for 3 MW. This was communicated to PSPCL also while making request for synchronization.

xvii) The petitioner wrote a letter dated 11.07.2016 to SIDBI to disburse the remaining loan amount. After lot of persuasion SIDBI vide letter dated 26.08.2016 approved the disbursement of the remaining loan amount subject to certain conditions. It was also mentioned by SIDBI that the bank authorities have agreed to extend project execution time till 31.03.2017. SIDBI released the funds and the remaining 2 MW capacity was commissioned on 15.03.2017.

xviii) The Commission vide Order dated 24.12.2016 allowed the prayer of the petitioner to the extent that it may add the solar PV modules for the remaining 2 MW capacity and commission the same by 31.03.2017 without prejudice to the rights of the respondents accruing due to the aforesaid extension being granted with regard to encashment of PBGs by PEDA and levy of liquidated damages by PSPCL upto 31.03.2017. The Commission in its Order dated 24.12.2016 allowed the extension of commissioning period subject to

condition that it would decide about the issue of tariff at the time of final decision in this petition.

- xix)The petitioner suffered financial loss of ₹ 2,59,95,786/- (interest paid to SIDBI; ₹ 31,38,850, fees paid to PSERC; ₹ 13,40,000, lease rent paid; ₹ 4,75,000, generation loss; ₹ 1,97,01,936, amount forfeited by Jinko Solar due to delay in purchase of 2 MW modules) on account of delay in project execution.
- xx)Due to decreased cost of 2 MW modules purchased on 01.02.2017 for ₹ 6,51,61,629 as compared to the cost of 1 MW modules purchased on 24.02.2016 for ₹ 3,76,83,000, there was net reduction of ₹ 1,02,04,371 in project cost.

- xxi)As per section 72 of The Indian Contract Act, 1872 irrespective of a clause in a contract/PPA for quantifying the liquidated damages, an aggrieved party can only claim actual damages sustained by it as a result of any default by the other party in fulfilling its obligations under the contract. The liquidated damages/penalty amount is only an upper limit to the said actual damages. Hence, without adducing evidence and demonstrating the actual damages suffered, a party cannot unilaterally proceed to invoke the liquidated damages/penalty amount by way of invocation of the performance bank guarantees. As such, PEDA wrongly and illegally issued letter invoking the PBGs given by the petitioner. The respondents can not impose a penalty under a contract unless the same is in the nature of compensation and they are required to justify it in accordance with the principles of the Indian Contract Act. In this context, the

petitioner has made reference to the judgment of Hon'ble Supreme Court of India in the case of Kailash Nath reported at (2015) 4 SCC 136.

xxii)The delay in commissioning of the project was due to fault of the respondents & force majeure events and it is entitled to get the extension in COD. The Commission has power to conduct prudent check with regards to the occurrence of force majeure events and subsequently extend the SCOD. Relevant extract of the judgment dated 07.04.2016 of Hon'ble APTEL in Uttar Haryana Bijli Vitran Nigam Limited vs. CERC and others in Appeal no.97 of 2014 and 151 of 2013 is enclosed in this context.

xxiii)Clause 10.5(9) of the IA provides that if delay has happened on account of force majeure conditions, the COD of the project shall get extended. The Commission's Order dated 11.05.2015 in petition no.21 of 2015 provided for commissioning of the project on or before 31.03.2016 and further clarified that barring force majeure/change in law etc., the applicability of the approved tariff beyond 31.03.2016 will not be allowed by the Commission. The project has been commissioned on 15.03.2017 and the petitioner was not responsible for delay. Neither PEDA nor PSPCL produced any documents or evidence to counter the submissions made by the petitioner.

xxiv)In the Order of the Commission in petition no.17 of 2015 in case of Atma Power Private Limited, commissioning date beyond 31.03.2015 was permitted for purposes of retaining the approved tariff. Further, reliance is placed on the

judgment of Hon'ble APTEL in Appeal No.170 of 2014 in the case of GUVNL vs. GERC and others.

xxv)With regard to PEDA's contention that petitioner has failed to issue notice in line with article 10.4 of the IA in case of occurrence of force majeure event, it is submitted that PEDA and PSPCL were aware and were informed about the issue pertaining to force majeure events from time to time. A notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. The judgment of Hon'ble Supreme Court of India is cited in the case titled as Special Deputy Collector, Land Acquisition C.M.D.A vs. J. Sivaprakasan and others reported at (2011) 1 SCC 330.

xxvi)It is prayed that the COD of the project to the extent of 1 MW capacity may be extended upto 18.05.2016 and for remaining capacity of 2 MW, the COD of the project may be extended upto 15.03.2017 in accordance with clause 10.0.0 of the PPA read with article 7.0 of the IA, with applicable tariff of ₹ 7.58 per kWh.

23. PEDA filed its written submissions dated 12.06.2017. While reiterating its earlier submissions, PEDA submitted as hereunder:

i) The petitioner wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Act, which empowers the Commission to adjudicate upon disputes between the generating company and the distribution licensee. The petitioner while purporting occurrence of force majeure events claimed relief against PEDA, which is

empowered by the State Govt. to promote renewable energy in the State of Punjab. The Act does not empower the Commission to assume jurisdiction over the disputes between PEDA and the project developer. As such, the petition is not maintainable as there exists an arbitration clause in the contractual document entered between the parties.

- ii) PSPCL granted technical grid feasibility clearance on 27.05.2015 which was within the stipulated timeline and cannot be construed as a delayed action in any manner.
- iii) SIDBI issued in principle approval for granting loan for the project on 27.08.2015. However, the petitioner did not bother to submit the same to PEDA despite there being a categorical obligation in this regard. The petitioner failed to submit any document evidencing that it made an application with the bank immediately after LoA and that the financial institution declined the request/kept it pending for the sake of approval of PPA.
- iv) The project was synchronized on 18.05.2016 for 1 MW capacity and the remaining 2 MW capacity was commissioned on 15.03.2017 as against the validity of tariff upto 31.03.2016. The petitioner was benefited due to delay in commissioning as the cost of solar plants is on a declining trend. The tariff of the project should be re-determined as provided in the IA in the interest of justice, equity and fair play.

24. PSPCL vide its letter dated 14.06.2017 submitted that the replies already filed by it are comprehensive and be treated as written submissions as well.

### **Commission's Observations, Findings and Decision**

25. The Commission has carefully gone through the petition and the Applications, replies thereto by PEDA & PSPCL, rejoinders to the replies by the petitioner, other submissions and written arguments filed by the parties. In the petition and the Applications for early hearing and stay, the petitioner sought the following reliefs:

- i) direct PSPCL and PSTCL to make the bay ready for synchronization;
- ii) restrain respondents from forfeiture of performance bank guarantees in terms of clause 10.1.0 of PPA and article 7.0 A of IA till bay is ready for synchronization;
- iii) extend the date of commissioning of the project till bay is ready for synchronization.

In the Application for early hearing, the extension in the date of commissioning has been sought from 30.01.2016 to 30.06.2016.

26. Considering the submissions of the parties as brought out in the foregoing paras, the findings and decision of the Commission on various issues raised in the petition are as follows:

#### Jurisdiction of the Commission to adjudicate upon disputes between PEDA and the petitioner

27. PEDA submitted that the petitioner wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Act, which empowers the Commission to adjudicate upon disputes between the generating company and the distribution licensee.

The Act does not empower the Commission to assume jurisdiction over the disputes between PEDA and the project developer. The petition is not maintainable as there exists an arbitration clause in the contractual document (IA) signed between the parties.

**In this regard, the Commission notes that in para 14 of its Order dated 11.05.2015 in petition no. 21 of 2015 while granting approval for purchase of power from the petitioner's project by PSPCL and other developers including tariff, the Commission expressed its view as under:**

***“.....Also, since IA is a part of the PPA as submitted by PSPCL during the hearing on 05.05.2015, the Commission is of the view that various clauses of IA and PPA are to be read together and are complimentary.”***

**In the recital on page-2 of the PPA under clause (d), it is clearly mentioned that IA signed by the petitioner with PEDA shall be treated as an integral part of the PPA and all the clauses and regulatory norms applicable to the IA shall be unequivocally applicable to the PPA in letter and spirit. In view of the above, the Commission holds that the submissions made in this regard are devoid of merit and no cognizance of the same is required to be taken.**

PEDA further submitted that the petition is not maintainable as there exists an arbitration clause in the contractual documents. **The Commission notes that the said issue has already been decided by the Commission in its Order dated 12.04.2016 in IA no. 19 of 2016 in petition no. 21 of 2016 & IA no. 14 of 2016 wherein it was held that the same was devoid of any merit.**

**The Commission holds the same view in the instant petition as well.**

28. The petitioner submitted in the petition that the whitefly epidemic and the incidents of desecration of holy Sri Guru Granth Sahib resulted in disturbances across Punjab which also impacted the work. PEDA has refuted the same. PEDA submitted that the latter incidents happened in 2<sup>nd</sup> week of October 2015 whereas the order for solar PV modules was placed on 25.09.2015 to be delivered on or about 10.12.2015. No documentary evidence as to the execution of the project having been delayed on account of these incidents was submitted. As such, no relief on this account is admissible to the petitioner.

**Effective Date of the PPA**

29. PSPCL introduced clause 35.0.0 in the PPA at the time of signing of the PPA with the petitioner which stated that the PPA shall be effective & binding on the parties only upon approval by the Commission and subject to such conditions as may be stipulated by the Commission. The PPA was signed on 31.03.2015. The purchase of power from the project and tariff in the PPA was approved by the Commission vide its Order dated 11.05.2015 in petition no.21 of 2015 filed by PSPCL for the purpose. The period of 41 days from 31.03.2015 to 11.05.2015 has been claimed by the petitioner for the purpose of seeking extension in the SCOD of the project.

The developers objected to the introduction of the said clause in the PPA which was not part of the draft PPA forming part of the RfP bid documents. It was conveyed to PSPCL & PEDA that this will delay the financial closure and disbursement of loan which

will affect timely commissioning of the projects. PSPCL submitted that it is a statutory practice to obtain approval of the Commission after signing of the PPA. There was no bar on the petitioner to proceed with the completion of various formalities.

The State Bank of Patiala, Kotkapura Branch, to which the petitioner initially applied loan for the project vide its letter dated 09.04.2015 sought documents relating to the approval of the PPA by the competent authority for processing the sanction of loan for the project. The petitioner vide letter dated 16.04.2015 sent vide registered post on 17.04.2015 specifically informed PSPCL and PEDA of the same stating that the PPA is not acceptable to the financial institutions (without approval of the competent authority). As such, the period of 120 days for submission of financial closure etc. to PEDA from the date of signing of the PPA should start from the date of approval of PPA by the Commission. After approval of the PPA on 11.05.2015, the petitioner on 19.05.2015, in reference to earlier discussions, approached SIDBI for sanction of term loan and submitted various documents including the PPA.

**Considering that the bank specifically sought documents on 09.04.2015 pertaining to the approval granted by the Commission to the PPA in respect of power purchase and tariff for processing the sanction of loan for the project, the petitioner having notified the same to PSPCL and PEDA on 16/17.04.2015 and the petitioner having approached SIDBI for grant of term loan on 19.05.2015 after the approval of the Commission on 11.05.2015, the Commission finds it reasonable enough in the instant case to consider and allow the period of 41 days from the date of signing of the PPA on 31.03.2015 upto the date of approval granted by the**

**Commission on 11.05.2015, for extension in the SCOD of the project.**Completion of 66 kV Bay at Pathrala Sub-Station

30. The petitioner applied for grid technical feasibility clearance on 23.04.2015 which was granted by PSPCL on 27.05.2015. The 1 MW capacity (out of total 3 MW capacity) of the project was completed on 31.03.2016. The Chief Electrical Inspector granted its approval on the same date. The protection testing fee was deposited by the petitioner with PSPCL on 28.03.2016. The petitioner is required to inform the date of commencement of delivery of power to PSPCL one month in advance and arrange for testing & commissioning of protection system before synchronization and a notice of 7 days is also required to be given to PSPCL for the testing and calibration of meters, in terms of the PPA. The PSPCL team checked the protection system of the installation on 08.04.2016 and found the same in order. Further, the MMTS of PSPCL checked the premises and sealed the meters on 09.04.2016. The petitioner approached PEDA vide letter dated 12.04.2016 regarding status of the 3 MW project. The petitioner submitted documents/approvals of testing carried out by CEI and PSPCL and requested for intervention in the matter due to non-readiness of the 66 kV bay at Pathrala sub-station by PSPCL. PSPCL submitted that the petitioner obtained the clearance of the 66 kV line from Chief Electrical Inspector on 03.05.2016 and request of the petitioner for synchronization of the project with the grid was received by PSPCL on 10.05.2016. The approval of synchronization was granted by PSPCL on the same date. PSPCL completed the work of 66 kV bay on 16.05.2016 and test charged

the same on 17.05.2016. The project was synchronized with the grid on 18.05.2016. The petitioner has sought extension in SCOD for the 1 MW capacity of the project from 30.01.2016 to 18.05.2016.

The petitioner submitted that completion of the project was delayed on account of non-release of funds by SIDBI. The SIDBI team who visited the site in February 2016 observed that work of 66 kV bay at Pathrala sub-station was incomplete and thus withheld the release of funds. On furnishing additional collateral, SIDBI released the first instalment of loan amounting to ₹ 7.76 crore. Thereafter, the solar PV modules for 1 MW capacity were installed. The petitioner stated that it spent funds from its own resources and completed the work of the project for entire 3 MW capacity except the solar PV modules for the remaining 2 MW capacity by 31.03.2016. As per the contractual documents, the financial closure of the project was required to be submitted by the petitioner to PEDA within 120 days of signing the PPA i.e. by 29.07.2015. The same having not been submitted by the due date by the petitioner, PEDA sought compliance vide letter dated 21.08.2015. The petitioner informed PEDA vide letter dated 01.09.2015 that SIDBI had approved the term loan of ₹ 18 crore in principle vide letter dated 27.08.2015. However, in response to PEDA's default notice dated 03.09.2015 informing that in principle approval would not serve the purpose, the petitioner vide its letter dated 01.10.2015 informed PEDA that it would arrange the funds for the project from its own resources through unsecured loan from its parent company. In view of this commitment by the petitioner, PEDA opposed the contentions of the petitioner that the project was delayed due to non-release of funds by SIDBI. PSPCL alleged

that the 66 kV bay at Pathrala sub-station was completed on 14.03.2016. However, in order to avoid cross-over of the newly constructed 66 kV line for evacuation of power from the project with the existing 66 kV Sangat-Pathrala single circuit transmission line near the boundary of the 66 kV Pathrala sub-station, the newly constructed 66 kV bay was required to be interchanged with the 66 kV existing bay as per the approved route plan submitted by the petitioner annexed with the written arguments filed on 12.06.2017. This work of interchanging the two bays was completed by PSPCL on 16.05.2016 and the 66 kV bay for the project was test charged on 17.05.2016. The 1 MW capacity of the project was commissioned on 18.05.2016.

**The Commission notes that as per the PPA, the SCOD of the project was 30.01.2016. The 1 MW capacity of the project was commissioned on 18.05.2016 after a delay of 109 days. However, though the said capacity of the project at site was ready for synchronization on 09.04.2016, the work of 66 kV line was completed by the petitioner on 03.05.2016. The petitioner applied for synchronization clearance on 10.05.2016 and the same was granted by PSPCL on the same date. However, the 1 MW capacity of the project was commissioned on 18.05.2016 as the work of the 66 kV bay at Pathrala sub-station was completed by PSPCL on 17.05.2016. As such, the delay in commissioning of the 1 MW capacity of the project from 30.01.2016 to 10.05.2016 (101 days) is attributable to the petitioner and from 10.05.2016 to 18.05.2016 (8 days) is attributable to PSPCL. The Commission has already allowed above the period of 41 days in favour of the petitioner. Thus, a total period of 49 (41+8) days is allowable to the benefit of the**

**petitioner. Therefore, the commissioning of 1 MW capacity of the project is considered to be delayed by the petitioner by 60 (109-49) days and the same is deemed to have been commissioned on 30.03.2016 which is within the validity of the applicable tariff i.e. 31.03.2016.**

**Thus, the petitioner is liable for forfeiture of the PBGs for the said delay in terms of article 7.0 A (i) of the IA and clause 10.1.0 of the PPA. It is clarified that there is neither any case for levy of liquidated damages by PSPCL nor any adverse impact on the tariff mentioned in the PPA with regard to the 1 MW capacity of the project commissioned on 18.05.2016.**

**Commissioning of the remaining 2 MW capacity of the project**

31. The petitioner sought extension in the date of commissioning for the remaining 2 MW capacity of the project upto 31.03.2017. PEDA submitted that there is no provision in the IA/PPA for extension in SCOD beyond 30.06.2016 in terms of article 7.0 of IA and clause 10.0 of PPA i.e. 15 months after signing of PPA on 31.03.2015 and that too for the capacity synchronized upto that date. The remaining capacity of 2 MW not commissioned/synchronized upto that date would need to be terminated. PSPCL submitted that the petitioner is seeking extension upto 31.03.2017 for the remaining 2 MW capacity even though the 1 MW capacity was commissioned on 18.05.2016, which shows the lackadaisical attitude of the petitioner. PSPCL further submitted that the timeline for setting up the project was clear in the IA/ PPA and any delay caused by the petitioner would burden the consumers as PSPCL will have to purchase RECs to comply with the RPO. PSPCL

submitted that it is in the process of initiating action as per clause 10.1.1 and 10.1.2 of the PPA for levy of liquidated damages and revising the capacity of the project to that commissioned within 15 months from the date of signing of the PPA.

The Commission vide interim Order dated 24.12.2016 allowed the petitioner to add the solar PV modules for the remaining 2 MW capacity by 31.03.2017 without prejudice to the rights of the respondents accruing due to the aforesaid extension, with regard to encashment of PBGs by PEDA, levy of liquidated damages by PSPCL upto 31.03.2017 and reduction in tariff of ₹ 7.58 per kWh of the project which was valid upto 31.03.2016. It was further indicated that the tariff would be re-determined by the Commission in terms of the PPA and on merits in the final Order in the petition and the same could be the minimum tariff discovered in the subsequent bidding process and adopted by the Commission in its Order dated 10.06.2016 in petition no. 31 of 2016 i.e. ₹ 5.09 per kWh.

**The said 2 MW capacity was commissioned on 15.03.2017. The petitioner justified the delay stating that SIDBI curtailed funds due to non completion of 66 KV bay work at Pathrala sub-station. The petitioner wrote a letter dated 11.07.2016 to SIDBI to disburse the remaining loan amount. SIDBI vide letter dated 26.08.2016 informed that it is ready to disburse the remaining loan amount subject to certain conditions. The petitioner procured the solar PV modules for the remaining 2 MW capacity on 01.02.2017 and commissioned the same on 15.03.2017. The Commission is not convinced of the submissions made by the petitioner with regard to delay in completion of the remaining 2 MW capacity**

due to delayed disbursement of loan by SIDBI. The petitioner appears to have not followed up diligently with SIDBI for releasing the remaining funds. After commissioning of 1 MW capacity on 18.05.2016, the petitioner approached SIDBI on 11.07.2016 for the purpose who reverted back on 26.08.2016 and confirmed that it is ready to disburse the remaining loan and accepted the revised date of commissioning as 31.03.2017. However, the petitioner did not take any concrete action to complete the remaining work. Even otherwise, the petitioner had earlier categorically made the submissions that the project will be funded through internal resources/unsecured loans from the parent company. As such, it is felt that the petitioner had the financial capability to commission the remaining 2 MW capacity much earlier. PSPCL's submissions that it was the lackadaisical attitude of the petitioner which delayed the project appear more convincing and the Commission tends to agree.

The remaining 2 MW capacity was commissioned on 15.03.2017 i.e. 410 days after the due date of commissioning on 30.01.2016. Considering the benefit of 49 (41+8) days allowed by the Commission in favour of the petitioner in the paras above while working out the delay in commissioning of 1 MW capacity, the net delay attributable to the petitioner in commissioning of the remaining 2 MW capacity works out to 361 (410-49) days.

Thus, the petitioner is liable for forfeiture of the PBGs by PEDA in terms of the provisions in article 7.0 of the IA and clause 10.1.0 of the PPA in respect of 2 MW capacity of the project as well.

As regards the levy of liquidated damages (LD charges) by PSPCL and payment whereof by the petitioner, it is seen that the petitioner proceeded with the commissioning of the remaining 2 MW capacity despite the adverse implications with regard to levy of liquidated damages upto the date of commissioning as also adverse impact on the tariff having been clearly brought out in the Commission's interim Order dated 24.12.2016 while allowing the petitioner to install the remaining 2 MW capacity. The Commission had allowed the same citing circumstances mentioned therein in the interest of all the stakeholders, even though the same was liable for cancellation in terms of the contractual documents. As the remaining 2 MW capacity has been commissioned with a delay of 361 days, PSPCL is entitled to levy and claim liquidated damages for the said period at the rate provided in clause 10.1.1 of the PPA.

The petitioner pleaded that an aggrieved party can claim penalty by way of invocation of PBGs/liquidated damages only in terms of actual loss suffered. PSPCL submitted that in case extension in commissioning of the project is allowed, PSPCL and consequently consumers would be saddled with the cost of purchasing RECs for its RPO compliance. Considering the view of PSPCL and the fact that levy of such charges/invocation of PBGs is specifically provided for in the contractual documents on default by the petitioner, the plea of the petitioner does not hold good. The Commission's interim Order dated 24.12.2016 had clearly brought out the likely implications in this regard. Subsequent to the said Order and in full knowledge of the same, the petitioner

proceeded to complete the project in respect of installing the solar PV modules for the remaining 2 MW capacity. The modules for the remaining 2 MW capacity of the project were received from 01.02.2017 onwards and commissioned on 15.03.2017.

The tariff was valid till 31.03.2016 in terms of the Order of the Commission dated 11.05.2015 in petition no. 21 of 2015 and the IA/PPA. As the remaining 2 MW capacity of the project has been commissioned with a delay of 361 days beyond the SCOD on 30.01.2016, the tariff of ₹ 7.58 per kWh for the said capacity would no longer hold good. The Commission has determined the tariff for the remaining 2 MW capacity of the project in the following para.

The tariff of ₹ 7.58 per kWh for the petitioner's project was determined through competitive bidding process undertaken by PEDA on the basis of discount to be offered by the bidders on the generic tariff of ₹ 7.72 per kWh determined by the Commission for FY 2014-15 and the tariff was valid till 31.03.2016. For FY 2015-16 also, PEDA conducted the competitive bidding process on the same basis of discount to be offered by the bidders on the generic tariff of ₹ 7.04 per kWh for FY 2015-16 determined by the Commission wherein the lowest tariff discovered was ₹ 5.09 per kWh and approved by the Commission in its Order dated 10.06.2016 in petition no.31 of 2016 and the same was valid upto 31.03.2017. Under the circumstances, the Commission considers the petitioner's project akin to such projects. The Commission notes that in interim order dated 24.12.2016, it allowed the prayer of the petitioner in the application dated 08.12.2016 to the extent that

it may add the solar PV modules for the remaining 2 MW capacity and commission the same by 31.03.2017 without prejudice to the rights of the respondents accruing due to the aforesaid extension being granted with regard to, encashment of Performance Bank Guarantee by PEDA, levy of liquidated damages by PSPCL upto 31.03.2017 and reduction in tariff of the petitioner's project, which could be the minimum tariff discovered in the subsequent bidding process and adopted by the Commission in its Order dated 10.06.2016 in petition no. 31 of 2016 i.e. ₹ 5.09 per kWh, which shall be decided by the Commission on merits in the final Order in the petition.

Accordingly, the Commission finds it just and fair to fix the tariff for the 2 MW capacity out of 3 MW total capacity of the project as ₹ 5.09 per kWh. As such, the tariff for the project payable by PSPCL w.e.f. 15.03.2017 would be worked out on the basis of the weighted average tariff considering the tariff of ₹ 7.58 per kWh for 1 MW capacity and ₹5.09 per kWh for the remaining 2 MW capacity. It is clarified that the tariff for the period 18.05.2016 to 14.03.2017 for the 1 MW capacity would be ₹ 7.58 per kWh.

The petition and the Applications are disposed of in terms of above.

Sd/-

(S.S. Sarna)  
Member

Sd/-

(D. S. Bains)  
Chairman

Chandigarh  
Dated: 09.08.2017