

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34 A, CHANDIGARH
email address: registrarpsercchd@gmail.com

Petition No. 15 of 2016
& I.A. No.7 of 2016
Date of Hearing: 20.12.2016

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

Subject matter: Petition for directing PSPCL and PSTCL to make the bay ready for synchronization and restraining PEDDA from forfeiture of Performance Bank Guarantee in terms of the PPA and Implementation Agreement and extension of the date of commissioning of petitioner's project till bay is ready for synchronization.

In the matter of: Radiant Solar Energies Private Limited, Kotkapura
-----Petitioner

Versus

1. Punjab Energy Development Agency (PEDDA)
 2. Punjab State Power Corporation Limited (PSPCL)
 3. Punjab State Transmission Corporation Limited (PSTCL)
- Respondents

For Petitioner: Shri Tajender Kumar Joshi, Advocate
Shri Saurav Singla, Director

For PEDDA: Shri R.K. Gupta, Sr. Manager
Shri Lovkesh Khanna, PA

For PSPCL: Shri Sandeep Singh Josan, Advocate
Shri Mohinder Singh, Sr. Xen/IPC

For PSTCL: None

ORDER

During hearing held on 08.12.2016, the petitioner submitted application dated 08.12.2016 for amendment in the petition alongwith the amended petition which was taken on record. The respondents were directed to file replies to the same by 15.12.2016. PEDDA and PSPCL filed their short replies vide letters dated 16.12.2016 and 15.12.2016 respectively, both received on 19.12.2016.

2. The Commission heard the submissions of the Learned Counsel for the petitioner in respect of the application dated 08.12.2016 as also the submissions of both PSPCL and PEDDA in respect of the application and amended petition.

3. In the amended petition, the petitioner has added paras 11A and 11B as hereunder:

“11A. That it is submitted that the petitioner has made arrangement of funds with SIDBI and as per terms and conditions of the SIDBI, the SIDBI authorities physically visited the plant in the month of January and found that GSS was not ready and raised a concern because in the absence of GSS the electricity could not be evacuated. The SIDBI thereafter released the first installment of the loan in the month of February only and for this amount LC was opened so that modules could be purchased. But remaining amount was not released and due to this reason delay occurred in commissioning of the project. The petitioner spent funds from its own sources and completed the structure for the complete 3 MW capacity and 1 MW capacity was fully ready to inject electricity and Chief Electrical Inspector gave its approval vide its letter dated 31-3-2016 and Protection Team of the PSPCL also inspected the solar plant and found it to be ready for injecting the electricity of 1 MW capacity on 8-4-2016. The MMTS team of the PSPCL also checked the premises of solar plant on 9-4-2016 and sealed the meters vide its report dated 9-4-2016. The petitioner received permission for synchronization but bay was not ready and the PSPCL completed the bay at GSS only on 16-5-2016 and informed the petitioner on 17-5-2016 and thereafter the 1 MW capacity of the Plant was synchronized and commissioned on 18-5-2016.

11B. That due to these reasons the SIDBI also refused to release remaining loan amount. The petitioner/applicant wrote a letter dated 11-7-2016 (Annexure P-12) the SIDBI to disburse the remaining loan amount and the SIDBI vide letter dated 26-8-2016 informed the petitioner/applicant that they are ready to disburse the remaining loan amount subject to certain conditions that further that the competent authority had accepted the date of COD as 31-3-2017. Copy of the letter dated 26-8-2016 is annexed as Annexure P-13. Earlier the loan was sanction on the condition that the COD would not cross 1-4-2016. It is further submitted that in case the SIDBI releases the funds now the applicant would complete its remaining 2 MW capacity by 31-3-2017 and commission the remaining capacity. The delay occurred solely due to the fault of the PSPCL as they failed to complete the GSS within time and this caused delay in releasing of funds by SIDBI. The petitioner still commissioned one MW capacity of the project on 18-5-2016. But as there occurred a delay the SIDBI refused to release the remaining amount and all these circumstances caused

delay in commissioning of the project and the petitioner is entitled to get the extension of COD upto 18-5-2016 for 1 MW commissioned capacity and upto 31-3-2017 for remaining 2 MW capacity.”

Further, the prayer clause has been amended to read as under:

“It is, therefore, respectfully prayed that this Hon’ble Commission may

- (i) direct the Respondents No.2 & 3 (PSPCL/PSTCL) to make the bay ready for synchronization.*
- (ii) declare and extend the Commercial Operation Date of the project of the petitioner to the extent of 1 MW may kindly be extended upto 18-5-2016 (the date on which it was commissioned) and for remaining capacity of 2 MW the COD of the project may kindly be extended upto 31-3-2017 in accordance with Article 10 of the PPA read with Article 7.0 of the Implementation Agreement;*
- (iii) hold and declare that the Petitioner is entitled to tariff of Rs. 7.58/- kWh (levellised tariff) in terms of the PPA dated 31.03.2015 during the extended COD period;*
- (iv) direct the Respondents not to invoke the Performance Bank Guarantee given by the petitioner, and to not take any coercive actions whatsoever against the Petitioner; and*
- (v) pass such or further orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”*

4. PEDA in its reply has requested the Commission to dismiss the application and the petition filed by the petitioner on the following grounds:

- i) The application is not maintainable as the petitioner has sought amendment in the petition seeking extension of commercial date of operation for 1 MW capacity upto 18.05.2016 and for the remaining capacity of 2 MW upto 31.03.2017 for an allocated project of 3 MW.

As per the contractual documents and RfP, the petitioner was to set up the project of 3 MW by 31.01.2016, however, it failed to set up the project by SCOD and in order to evade its bounden obligation and to avoid the levy of penalty by PEDA as per the agreed terms & conditions, the petitioner had filed the petition on the basis of purported force majeure events.

- ii) The petitioner had earlier inter-alia prayed for extension in the SCOD of the project till 31.07.2016. Now the petitioner while taking a different stand has sought different extensions in the SCOD of single project of 3 MW

capacity at single location, while purporting the same as separate project, which is illegal and not permissible in terms of the contractual documents.

- iii) The petitioner can not seek extension in SCOD as per article 7 of IA and clause 10 of PPA after 15 months of signing of PPA i.e. 30.06.2016 and can seek only extension for capacity added/synchronized upto that date and remaining 2 MW capacity which is not commissioned needs to be terminated as per these clauses.

5. PSPCL in its reply has requested the Commission for dismissal of the application as the delay has been caused by the petitioner. PSPCL submitted as hereunder:

- i) The bay at 66 kV sub-station Pathrala for injecting 3 MW power from the petitioner's solar PV plant was completed and test charged by PSPCL on 14.03.2016. However, due to improper right of way of 66 kV line constructed by the petitioner, the newly constructed bay for the petitioner's line had to be interchanged with the existing incoming bay of 66 kV sub-station Pathrala. As such, the bay for evacuating the remaining 2 MW of power is already available.
- ii) The petitioner concealed the fact that the 66 kV line constructed for the project was cleared by CEI on 03.05.2016, which shows that the delay was on the part of the petitioner.
- iv) The petitioner applied for synchronization with the PSPCL grid on 10.05.2016 which was allowed on the same day.
- v) The petitioner is seeking extension upto 31.03.2017 for the remaining 2 MW capacity even though 1 MW capacity was commissioned on 18.05.2016, which shows the lackadaisical attitude of the petitioner.
- vi) Any delay caused by the petitioner in completion of the project creates a burden on PSPCL as it is forced to purchase RECs to comply with RPO.
- vii) PSPCL is in the process of initiating and implementing the clauses 10.1.1 and 10.1.2 of the PPA according to which in case there is delay in commissioning of project beyond 12 months from the effective date, the project developer is liable to pay to PSPCL liquidated damages at the rate of ₹ 20,000/- per MW per day for delay in such capacity which has not been commissioned. The liquidated damages are recoverable without

prejudice to any other penalty imposed for delay in commissioning of the project. Further, in case the commissioning is delayed beyond 15 months from the date of signing the PPA, the contracted capacity shall stand reduced/amended to the project capacity commissioned and the PPA for the balance capacity will stand terminated.

6. The petitioner in the hearing on 20.12.2016 submitted orally that the entire plant & machinery including mounting structures for entire 3 MW capacity except solar PV modules for the remaining 2 MW capacity are in place. The 66 kV sub-station at the plant site, the 66 kV line for evacuating the entire 3 MW capacity and the 66 kV bay at Pathrala sub-station are also in place and 1 MW power is being evacuated. The petitioner fervently appealed to the Commission to allow it to install the solar PV modules for the remaining 2 MW capacity upto 31.03.2017 which would be in the overall interest of the parties, significant investments having already been made.

The petitioner submitted that the Commission is vested with the inherent powers under section 151 of Code of Civil Procedure and Regulation 69 of PSERC (Conduct of Business) Regulations as well as with power to remove difficulty which appears to be necessary or expedient, extension or abridgement of time allowed and power to relax.

7. 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 Pathrala 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.

8. The petition will be taken up for final arguments of the parties on 09.02.2017 at 11.30 A.M.

Sd/-

(S.S. Sarna)
Member

Sd/-

(D.S. Bains)
Chairman

Chandigarh
Dated: 24.12.2016