

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

**Petition No. 22 of 2016 &  
I.A. No. 15 of 2016  
Date of Order: 13.03.2018**

In the matter of: Petition under section 86(1)(f) of the Electricity Act, 2003 read with rule 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulations, 2005 and Clause 85 of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 [adopted by the Commission vide its Order dated 19.07.2012 in Petition No. 35 of 2012 (Suo-Motu)] read with clause 19.1.0 of the Power Purchase Agreement dated 31.03.2015, article 10 of the Implementation Agreement dated 24.03.2015 and section 94 of the Electricity Act, 2003, for seeking project specific extension of period of commissioning of the project upto 30.04.2016 with applicable tariff of ₹6.88 per kWh.

AND

In the matter of: Solaire Urja Private Limited, Office No. # 203, Pentagon P-3, 2<sup>nd</sup> Floor, Magarpatta City, Hadapsar, Pune 411013, India, through its authorized signatory Shri P.N.Sood.

.....Petitioner

Versus

1. Punjab State Power Corporation Limited through its Managing Director, The Mall, Patiala.
2. Punjab Energy Development Agency through its Director, Solar Passive Complex, Plot No.1 & 2, Sector 33-D, Chandigarh.

.....Respondents

Present: Ms. Kusumjit Sidhu, Chairperson  
Sh. S.S. Sarna, Member  
Ms. Anjuli Chandra, Member

**ORDER**

Solaire Urja Private Limited, Pune, filed the present petition seeking project specific extension of period of commissioning of the project upto 30.04.2016 with applicable tariff of Rs.6.88 per kWh along with an application for restraining Punjab Energy Development Agency (PEDA) from invoking the Performance Bank Guarantee (PBG). The petition and IA were admitted vide order dated 22.03.2016. 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 04.05.2016, 31.05.2016, 22.08.2016, 05.09.2016, and 27.09.2016.

2. PEDA submitted its reply to the petition vide letter No.614-16 dated 05.05.2016. PSPCL submitted its reply to the petition vide memo no.5486 dated 28.04.2016. The petitioner filed rejoinders dated 23.05.2016 to the reply filed by PSPCL and PEDA.

3. During hearing on 04.08.2016, PSPCL was directed to file the documentary evidence stating the date on which the power evacuation system including 66kV bay, metering, breakers etc. was cleared for commissioning by the P&M testing team and the date on which the same was commissioned. The petitioner was directed to submit documentary evidence stating the date of completion and commissioning of the plant, 66kV line, testing and sealing of metering equipment and commissioning of step up transformer. The petitioner filed affidavit dated 09.09.2016 regarding completion and commissioning of the project. PSPCL

filed the reply/ information with respect to petitioner's affidavit vide letter no.5968 dated 16.09.2016.

4. The counsel for the petitioner sought adjournment in the matter on 14.11.2016 and the Commission, acceding to the prayer, fixed the next date for arguments as 13.12.2016. Thereafter, PEDDA requested for an adjournment and the next date for hearing final arguments was fixed as 24.01.2017.

5. Further, PEDDA filed IA No. 7 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 25.04.2017, the petitioner was directed to file written submissions in the said IA with a copy to PEDDA. The matter was fixed for arguments in the main petition on 19.05.2017 vide order dated 11.05.2017. However, PEDDA filed another IA No. 23 of 2017 on 19.05.2017 seeking rectification/ modification of the order dated 11.05.2017 submitting that an order in IA No. 07 of 2017 be passed first before proceeding further in the matter. The Commission dismissed the IA No. 7 of 2017 vide Order dated 18.05.2017 and accordingly IA No. 23 of 2017 became infructuous.

6. The main petition was fixed for arguments on 02.06.2017 and the same was adjourned 07.06.2017 on the request of counsel for PSPCL.

7. The arguments were heard in the petition and the order was reserved on 07.06.2017 directing the parties to file written submissions by 14.06.2017. The petitioner and PEDDA filed their respective written arguments/submissions on 21.06.2017 and 23.06.2017. PSPCL vide memo no. 6265 dated 14.06.2017

submitted that replies already filed by PSPCL are comprehensive in nature and be treated as its written submissions.

8. The Commission vide Order dated 08.08.2017 held that it will be appropriate to hear all the parties afresh so that final arguments can be addressed in the light of the written submissions and the petition can be disposed of after hearing the parties. The next date for final arguments was fixed as 29.08.2017. The counsel of PSPCL sought adjournment and next date of hearing was fixed as 13.12.2017, which was further adjourned to 17.01.2018 on the request of the parties.

The Commission heard the parties on 17.01.2018. The order was reserved vide Order dated 25.01.2018.

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

- i) The petitioner was allotted 30 MW solar PV power project (project) by Punjab Energy Development Agency (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 24.03.2015 and 31.03.2015 respectively. As per article 6.2 (iv) of the IA, the petitioner submitted the Performance Bank Guarantee (PBG) amounting to ₹ 12 crore at the rate of ₹ 40 lakh per MW to PEDA. 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) The petitioner seeks extension of Commercial Operation Date (COD) for the project upto 30.04.2016 with applicable tariff of ₹ 6.88 per kWh after providing a discount on generic tariff of ₹ 7.72 per kWh as adopted and notified by the Commission in its RE Tariff Order for solar PV power projects for FY 2014-15 and a further direction that no coercive action be taken by the respondents with regard to the PBG. The said generic tariff was applicable for both rooftop and ground mounted solar power projects. The said order further directed that the generic tariff shall be applicable to such solar power projects for which the PPAs were signed in FY 2014-15. The delay in achieving COD was solely attributable to the force majeure events which were beyond the control of the petitioner.
- iii) The time allowed by PEDA for implementation of these projects without any damages and penalties was 10 months as against 13 months for the projects allotted under phase-I and 12 months for the project allotted under phase-III. The Developers took up this challenging timeline based on the exceptional support provided by PEDA and Govt. of Punjab during the execution of phase-I projects.
- iv) PSPCL inserted a new clause 35.0.0 in the PPA which was not a part of the PPA provided in the RfP. 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 PEDDA 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. The Petitioner could not start any work Upto 11.05.2015 because the PPA was yet to be approved by the Commission and the same was practically ineffective and non-bankable. In fact, PSPCL was required to get the draft PPA approved before it is executed by the parties. But the PSPCL filed petition after the PPAs were executed. So out of total 10 months implementation period, the petitioner could not do any work for more than one month and 11 days. This delay of 1.5 months approximately is beyond the reasonable control of the developers and cannot in anyway be attributed to them.

- v) The recital of the PPA clearly stipulates that all the clauses and regulatory norms applicable to the IA shall be unequivocally applicable to the PPA in its true letter and spirit. The IA is to be read as part and parcel of the PPA.
- vi) The petitioner, due to the occurrence of various force majeure events/defaults on the part of PSPCL, was not able to achieve the commissioning of its project upto 30.01.2016. The force majeure events were beyond the control of the petitioner.

vii) The petitioner identified 2 land parcels at village Daulatpura, and Khui Khera, Tehsil Abohar, Distt. Fazilka which could be connected to 132 kV Abohar sub-station. The petitioner vide letters dated 17.08.2015 and 25.08.2015 requested PSPCL to grant grid feasibility clearance for 132 kV Abohar sub-station which falls in West Zone, P&M Circle, Bathinda, in order to connect its 30 MW project. PSPCL vide its letter dated 03.09.2015 informed the petitioner that as per the report given by CE/TS, PSTCL, Patiala, right of way for construction of 132/220 kV line to 220 kV Abohar sub-station was not available. It was also mentioned in the aforesaid letter that whether the petitioner can ensure right of way to construct the above said line. The petitioner vide letter dated 03.09.2015 informed PSPCL regarding its inability to construct 132/220 kV transmission line. PSPCL rejected the petitioner's request to connect at 132 kV level. Thereafter, the petitioner vide letter dated 03.09.2015 requested PEDDA to allow for evacuation at 66 kV level. It was also informed that as per PSPCL's Commercial Circular No. 23/2015, projects having capacity upto 25 MW can evacuate at 66 kV level and beyond 25 MW at 132kV/ 220kV. The petitioner gave its consent for reducing the capacity of the project from 30 MW to 25 MW so that the project could be connected at 66 kV Khuian Sarwar sub-station in West Zone, P&M Circle, Bathinda, Operation Circle, Muktsar. PEDDA agreed for reduction in the capacity from 30 MW to 25 MW and accordingly an amendment was carried out in the IA on 06.11.2015. It

was mentioned in the IA that the capacity of project stands reduced from 30 MW to 25 MW under Category-III. Accordingly the PPA was amended on 26.11.2015. After the amendments the petitioner again applied for technical grid feasibility clearance. The same was granted by PSPCL on 04.12.2015.

- viii) The petitioner vide letter dated 21.01.2016 requested PEDDA for extension of time in commissioning of the project. It was specifically mentioned in the letter that after amendments to IA and PPA, PSPCL provided technical grid feasibility clearance on 04.12.2015. Thereafter, the petitioner acquired the land. After completing the acquisition of the land the petitioner submitted an application to Punjab Bureau of Investment Promotion seeking clearance. The petitioner did not receive estimate on 66 kV transmission line from PSPCL. After receiving the same the petitioner would start construction of the 66 kV transmission line.
- ix) The petitioner completed the construction and was ready to inject the power in the first week of March, 2016 and informed CE/TS, PSPCL vide letter dated 23.02.2016. The request was made to inform the status of civil works at the GSS and target date for readiness for charging the same.
- x) The petitioner vide letter dated 23.02.2016 requested CE/DS, PSPCL, Bathinda to inform whether requisition of GSS side meters is placed or not and when these meters would be installed at GSS. It was further requested that testing of the plant side meters was being carried out on

23.02.2016 and requested to inform when the MMTS team would be deputed for installation of both GSS and project side meters.

- xi) PEDA in complete ignorance of the letters and the joint representation sent by the petitioner along with other developers issued a letter dated 18.01.2016 informing that there will be no extension in the SCOD of the project and that clause 3.23 of the RfP shall prevail for any delay beyond SCOD thereby abusing its dominant position.
- xii) The petitioner and the other solar power generators were surprised on receiving a letter dated 24.02.2016 from PEDA asking them to intimate that what capacity was commissioned by the petitioner during the month of February, 2016. Further, PEDA sought to impose penalty for non-commissioning/ shortfall in commissioning of allocated capacity to be levied as per clause 3.23 of the RfP. PEDA abused its dominant position in issuing the letter dated 24.02.2016 after being aware of the reasons which attributed to the occurrence of the force majeure events. The respondents overlooked and ignored various letters wherein the petitioner kept informing about the occurrence of force majeure events. The letters dated 18.01.2016 and 24.02.2016 denying the extension of SCOD and the direction by the respondents to calculate the LD were wrongful and arbitrary. The Commission is requested to quash/set aside the letters dated 18.01.2016 & 24.02.2016 and restrain PEDA from taking any coercive action i.e. invocation of PBG.

- xiii) PEDDA cannot be permitted to benefit, out of the events occurred under the force majeure situation which were beyond the control of the petitioner, solely with an intention to invoke the PBGs of the petitioner against the levy of LD.
- xiv) The petitioner vide letter dated 25.02.2016 in response to the letter dated 24.02.2016 of PEDDA, stated that PSPCL signed the amendment in PPA on 26.11.2015 and after receiving the said amendment, the petitioner applied for technical grid feasibility clearance and same was received on 04.12.2015. Thereafter, the land was acquired. The petitioner requested CE/TS, PSPCL to complete the GSS side work and informed that it is planning to synchronize the project by second week of March, 2016. The Chief Electrical Inspector (CEI), Govt. of Punjab, vide its letter dated 15.03.2016 granted provisional approval for the commissioning of the project, after inspection of the electrical equipments installed at 25 MW SPV power project.
- xv) Addl. SE/Protection Division, Moga issued a letter dated 15.03.2016 to Addl. SE/Distribution Division, Abohar informing that the testing results are satisfactory and it was recommended for synchronization of the plant of the petitioner with PSPCL System. The project was ready to inject electricity since 15.03.2016 but PSPCL was not ready to take electricity and as such delay is occurring in synchronization of the project.
- xvi) The petitioner setup the project on 96 acre of land at village Daulatpura, Distt. Fazilka. The said project was

supposed to be connected by constructing a 66 kV double circuit transmission line from the project to 66 kV Khuian Sarwar GSS. The route survey of the transmission line was approved by PSPCL as post construction it would be the property of PSPCL. The said transmission line is of 4 km comprising of 19 transmission line towers. The petitioner constructed 16 towers out of the total 19 towers. Some local land owners were not allowing PSPCL's contractor to erect the remaining 3 towers. These land owners belong to village Daulatpura and were creating hindrance for execution of these towers since last 20 days. In this regard, the petitioner met respondents and Secretary Power, GoP and informed District Collector, Fazilka vide letter dated 19.03.2016 for providing administration support in erection of the remaining three towers. This was a force majeure event due to which COD was to be extended.

xvii) PEDDA acted arbitrarily in not granting the extension of COD. As per the PPA, the petitioner is committed to supply 25 MW of power to PSPCL for the entire life i.e. 25 years. As such, special equities were accrued in favour of the petitioner. PEDDA ought to be restrained from invoking PBGs, since otherwise the same would result in causing severe prejudice and cash flow issues to the petitioner resulting in financial inability to supply the said power for the ultimate benefit of the end consumers. No loss is going to be caused to the respondents because PSPCL would get the electricity for complete 25 years at the already approved rate.

xviii) 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 PBGs.

xix) The petitioner and PEDDA are strictly governed by the terms of the IA/PPA, and a party cannot act in a manner de-hors the same. There was no explanation by PEDDA as to why it denied the extension of COD. A contract cannot provide that one party will be the arbiter to decide whether it committed breach or the other party committed breach. The question can only be decided by only an adjudicatory legal forum i.e. by the Commission.

xx) The respondents were acting contrary to the terms of the PPA and IA. The action of PEDDA was contrary to its statutory obligations and terms of its license.

xxi) There were force majeure events due to which project could not be made operational upto 30.01.2016 and requires extension upto 30.04.2016.

xxii) It is prayed to the Commission to:

- a) set aside and/or quash the letters dated 18.01.2016 and 24.02.2016 of PEDDA;

- b) hold and declare that the COD of the project of the petitioner stands extended till 30.04.2016 in accordance with clause 10 of the PPA read with article 7.0 of the IA on account of force majeure events and events which are beyond the control of the petitioner;
  - c) hold and declare that the petitioner is entitled to tariff of ₹ 6.88 per kWh in terms of the PPA dated 31.03.2015 during the extended COD period;
  - d) direct PEDDA not to invoke the PBG, and to not take any coercive actions whatsoever against the petitioner; and
  - e) pass such or further orders as the Commission may deem just and proper in the circumstances of the case.
10. PSPCL's reply dated 28.04.2016 in brief is as hereunder:
- i) PSPCL is a performa respondent and has no major role to play at this stage. All the grounds taken by the petitioner on account of force majeure events do not fall under the clause 19.1.0 of the PPA and are vague, technically incorrect & legally defective. The said clause deals with the natural calamities or events like unrest, epidemics, any court order, change in law or any act of God. None of the grounds find any hold and are liable to be dismissed entitling the petition to be dismissed with exemplary costs to be imposed on the petitioner.
  - ii) PSPCL would have to purchase the expensive RECs to comply with the RPO specified by the Commission if the petitioner delays the commissioning of the project, which would affect the public at large. PSPCL may be allowed to carry forward the RPO by saddling the petitioner with heavy cost to be paid to PSPCL. As per clause 10.1.0 of the PPA the generating company was under an obligation to commission and synchronize the project with PSPCL

grid within 10 months from the effected date i.e. date of signing of PPA which was 31.03.2015. Therefore, as per the PPA, the scheduled date of commissioning for the project was 30.01.2016. The tariff should be reduced so that due to petitioner's own fault, the department and the public at large should not suffer.

iii) The approval for purchase of power and tariff by the Commission is not only a practice but also legally binding on both the parties. Although the approval of the Commission was issued after signing of the PPA but there was no bar that the petitioner cannot initiate other processes and formalities for the commissioning of the project. PSPCL did not give any assurance to the petitioner that approval of the PPA would be obtained in 5-7 days. In case the petitioner was having problem with clause 35.0.0 of the PPA, the same should have been challenged or the petitioner should have objected to it or should not have bidden. The inclusion of the clause 35.0.0 did not bar the petitioner from proceeding with other formalities related to the project

iv) Clause 3.6 D(iv) of the RfP states that:

***"The arrangement of connectivity can be made by the SPD through a dedicated power evacuation line which the SPD may construct himself or get constructed by PSPCL/ PSTCL or any other agency on acceptable terms."***

The petitioner had the option of constructing the line itself. It is due to the lack of technical expertise and confidence that the petitioner did not construct the line on its own and as such blaming PSPCL/PSTCL at this juncture is

unreasonable. The petitioner applied for technical grid feasibility clearance on 17.08.2015 i.e. almost 4.5 months after the signing of PPA. The problem being technical in nature was informed to the petitioner that it was not viable for PSPCL to provide right of way for construction of 132/220 kV line to 220 kV Abohar sub-station. The petitioner was asked that whether it could ensure right of way to construct the said line. The petitioner showed its inability for the same. PSPCL rightly rejected the petitioner's application to connect at 132 level for 30 MW power project.

- v) The erection of towers is the sole duty of the petitioner. Any issue raised by any third party has no effect on the terms and conditions of the agreement as entered into between the petitioner and PSPCL. The petitioner cannot take the benefit or raise any issue with regard to the erection of towers as PSPCL has no role in this.
- vi) The issue pertaining to force majeure events is to be adjudicated by the Commission but the same was to be proved by the petitioner.
- vii) The bank guarantee submitted by the petitioner was against the non-compliance of the terms of IA and PPA. PEDDA would be at liberty to encash the PBG.
- viii) As per provision of the PPA, the IA is an integral part of the PPA. Article 3C of the IA is as under:

*"However, if the project COD crosses beyond 31<sup>st</sup> March 2016 then this tariff shall cease to exist and the developer will be bound to get the tariff re-determined from the PSERC."*

- ix) The lowest tariff discovered in the bidding process for allocation of projects under phase-III during FY 2015-16 is Rs. 5.09 per kWh and the same is required to be made applicable to the said project. Since, the project would achieve commissioning beyond 31.03.2016, the Commission is requested to re-determine the tariff to Rs. 5.09 per kWh as was decided in case of Bhanuenergy in petition nos. 15 & 16 of 2015.
11. PEDA in its reply dated 05.05.2016 submitted in brief as hereunder:
- i) The petition is bad both in terms of de-jure and de-facto and is based on conjectures and surmises, hence is not maintainable in the eyes of law.
  - ii) The petitioner did not demonstrate the true factual matrix of the matter and in order to evade its bounden obligation, as stipulated therein the RfP, LoA and IA, of achieving the COD within time and tried to setup a false case.
  - iii) The petition is not maintainable as there exists an arbitration clause in the IA. The IA is the main contractual document, which provides that the petitioner was to set up the project and to achieve full capacity COD by 30.01.2016. The petitioner could not achieve COD in terms of RfP, LoA and IA, on various pretexts, which otherwise are un-sustainable. The petitioner while misusing the process of law, wrongly invoked section 86(1)(f) of the Act.
  - iv) The petitioner while misleading the Commission wrongly sought interim order dated 22.03.2016 passed by the

Commission, as to restrain PEDDA from encashing the PBG, 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 fulfil its obligation of setting up the complete project up till 30.01.2016, in line with the provisions of RfP, LoA and IA, therefore, the petitioner is liable to be levied with penalty and PEDDA becomes entitled to encash the PBG in line with the contractual terms.

- v) As per the settle canons of law laid down by Hon'ble Supreme Court of India as well as Hon'ble Punjab & Haryana High Court in catena of judgments held that even in case of breach of contract the encashment of the bank guarantee cannot be restrained. Therefore, the interim order dated 22.03.2016 wrongly sought by the petitioner, deserves to be vacated and PEDDA is entitled to seek/charge the amount of penalty on account of delay in commissioning of the project.
- vi) Seven solar power projects with total capacity of 62 MW were commissioned by similarly placed developers in the state of Punjab. Hence, no reliance can be placed upon the false and purported assertions made by the petitioner.
- vii) The Commission in its orders dated 25.04.2016 in petition no. 27 of 2016 in the matter of Talwandi Sabo Power Ltd. Vs. PSPCL held as under:-

*“The Commission does not find favour with TSPL's contentions that the correspondence and record of site visits by PSPCL officers constitute the notices in terms of Article 6.1.1 of the PPA. Also, only tentative dates of*

*synchronization/commissioning were mentioned in these documents. No firm date of synchronization of the Third Unit was mentioned. The Commission is of the view that the notices fulfilling the requirements in terms of Article 6.1.1 of the PPA are mandatory and were required to be issued by TSPL. The same are not forthcoming in the submissions of TSPL. The office of Chief Engineer/Thermal Designs specifically requested TSPL for supplying copies of these notices issued under Article 6.1.1 of the PPA but TSPL failed to do so. The Commission finds that TSPL has not met with the requirements Article 6.1.1 of the PPA. Hon'ble APTEL in its recent judgment dated 07.04.2016 in Appeal No. 56 of 2013 and Appeal No. 84 of 2013 filed by TSPL against impugned Orders dated 24.12.2012 and 27.09.2012 passed by the Commission in Petitions No. 46 of 2012 and 11 of 2012, has set aside the said orders. The Commission interprets that the underlying principle behind the said findings is that provisions of the PPA should be strictly followed in letter and spirit. Accordingly, the Commission holds that TSPL will comply with the requirements of Article 6.1.1 and Article 6.2.2 of the PPA meticulously for synchronization and commissioning of the Third Unit. In view of the above, the prayer(s) in the petition to direct PSPCL to witness/monitor the commissioning tests of the Third Unit (Unit No.1), quash PSPCL's letters dated 29.03.2016 and 30.03.2016 and direct PSPCL to pay capacity charges for the period the Third Unit is prevented from being commissioned due to default on the part of PSPCL, cannot be granted."*

- viii) The petitioner failed to give notice to PEDDA in line with the force majeure clauses of IA. In light of the aforementioned Order, no reliance can be placed upon the false and purported assertions made by the petitioner. The petition be dismissed with exemplary costs.

- ix) The petitioner at the time of participating in the bidding process carried out by PEDDA under the RfP, was aware of the timelines to be achieved in the commissioning of the project. The petitioner was made aware of the timelines at the time of issuing LoA and signing of IA. Hence, the petitioner at this stage cannot be permitted to raise any purported grievance as to setting up of the project within the stipulated timeline i.e. on or before 30.01.2016.
- x) As per para 3(g) of LoA, the petitioner was to achieve the financial closure within 120 days from the date of signing of PPA i.e. by 31.07.2015. However, as per documents submitted by the petitioner, the financial closure was achieved and State Bank of India issued in-principle approval vide letter dated 26.05.2015, but the documents were submitted to PEDDA vide letter dated 06.08.2015.
- xi) The petitioner listed 3 numbers of force majeure events which delayed the commissioning of the project by the schedule date of commissioning. The force majeure clause provided under the IA stipulates that the affected party shall give written notice to the other parties describing the particular of the force majeure event as soon as the reasonably practicable after its occurrence but not later than 5 days after the date on which such party knew of the commencement of the force majeure event or of its effect on such party. Similarly, the PPA also provides issuance of notice as to the occurrence of force majeure event within a period of 7 days. However, the petitioner failed to issue any notice invoking the aforesaid clause as to the occurrence of force majeure event(s) if

any, in line with the terms and conditions of the IA. The petitioner on realizing that the project cannot be commissioned within the stipulated date, has set up a false case as to the delay in commissioning of the project while purporting occurrence of force majeure events, which happen to be an afterthought. Hence, no reliance can be placed upon the plain assertions made by the petitioner.

- xii) The reason for incorporating the clause no. 35 in the PPA, delay in signing the PPA, signing the conditional PPA on 31.03.2015 and finally getting approval of the Commission on 11.05.2015 relates to PSPCL and needs no comments by PEDDA.
- xiii) The in-principle approval of State Bank of India nowhere indicates that the petitioner has faced any such difficulty as purported above and neither the petitioner while submitting these documents has stated any difficulty with regard to financial closure.

There is a Disclaimer clause in the RfP, which states as under:-

**“DISCLAIMER**

1. *This Request for Proposal RfP No. PEDDA/ET/15-16/SP/1103 document is not an agreement or offer by the PEDDA to the prospective Bidders or any other party. The purpose of this RfP is to provide the information to the interested parties and to assist them in formulation of Bid. This RfP is based on material and information available in public domain.*
2. *While this RfP, has been prepared in good faith, neither the PEDDA, or their employees or advisors make any*

*representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, completeness or reliability of information, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this RfP, even if any loss or damage is caused by any act or omissions on their part.*

Thus, the RfP clearly states that the IA and PPA attached with the RfP were indicative in nature and were as available at the time of issue of RfP and could be changed at any time. The respondents were to get the necessary approvals of the competent authorities till a final and binding agreement was signed between the parties. The petitioner failed to produce on record any letter written under article 10.4 of the IA and/or clause 19.2.0 of the PPA for the occurrence of force majeure event due to delay in signing of PPA or due to conditional PPA.

- xiv) The petitioner vide letter dated 10.06.2015 requested PEDDA that it is unable to get required land near 132 kV sub-stations for their project and they have identified land near 66 kV sub-station. The petitioner further requested to allow 30MW project in two parts with evacuation at 66 KV level. In response, PEDDA informed the petitioner that in accordance with the RfP terms and conditions, the request for splitting the project capacity of 30 MW into two parts cannot be considered. The petitioner was aware that for 30 MW project the power evacuation has to be done at 132 kV transmission voltage to a 132 kV sub-station, as per the terms and conditions stipulated in the RfP. Further on the request of

the petitioner to evacuate power from its 30MW project through 66 kV double circuit line to nearby 66 kV Khuhi Khera PSPCL sub-station in Bathinda, PEDDA facilitated the petitioner by sending a letter to PSPCL for considering the request for evacuation of 30 MW power through 66 kV double circuit lines. The request for evacuation of 30 MW power through 66 kV double circuit lines was rejected by PSPCL, while citing PSPCL instructions/regulations in this regard.

xv) On the request of the petitioner, the project capacity was reduced from 30MW to 25MW and an amendment to the IA was signed on 06.11.2015, having a categorical clause mentioning that all other terms and conditions of RfP, LoA & IA shall remain same. Hence, the petitioner while once again confirming as to all the clauses of RfP, LoA & IA including but not limited to the date of commissioning by 30.01.2016, was under a bounden obligation to commission the project by 30.01.2016 in all eventualities. However, it is denied that there occurred any force majeure events as the petitioner has nowhere given any notice under the applicable force majeure clauses in the IA to PEDDA. The entire responsibility for arranging grid feasibility & land for the project is of the petitioner and the petitioner was aware of these facts at the time of submission of its bids and also after allocation of the project.

xvi) The petitioner was fully responsible for timely completion and commissioning of the project and accordingly a letter dated 18.01.2016 was sent by PEDDA to the petitioner including other project developers clearly intimating that as

per RfP terms and conditions, it is not possible to grant any extension in the scheduled commissioning date of allocated solar power project i.e. 30.01.2016. Thereafter, vide letter dated 24.02.2016, the petitioner was asked to intimate that what capacity has been commissioned during February, 2016. It was also intimated that penalty for non-commissioning/ shortfall in commissioning of allocated capacity shall be levied as per clause 3.23 of RfP.

xvii) The claim of the petitioner that the plant shall be ready in the first week of March, 2016 is wrong. The project site was visited by District Manager, PEDDA on 05.03.2016 and as per site photographs, it can be seen that the implementation work of the project was still pending and module installation, control room construction was in progress.

xviii) It is wrong that PEDDA has abused its dominant position by issuance of letter dated 24.02.2016. Since the petitioner has failed to commission its project well within the stipulated time frame i.e. on or before 30.01.2016, PEDDA has rightly issued communication dated 24.02.2016 for levy of penalty as per agreed contractual terms. The Petitioner has purported as if PEDDA is levying L.D. upon it for delay in commissioning of the Project beyond the stipulated date. It is clarified that as per the agreed contractual terms between the parties, PEDDA is entitled to levy penalty upon the Petitioner in case of delay in commissioning of the project beyond the stipulated date i.e. 30.01.2016. It is further denied that the PEDDA was aware as to the occurrence of any of the force majeure events as purported by the Petitioner. In fact, the Petitioner has failed to

demonstrate/place on record the notice, compulsorily to be issued by the Petitioner, for invocation of force majeure clause of the I.A. in case of occurrence of any of the force majeure events. Hence, no reliance can be placed upon the false assertions made by the petitioner.

- xix) No letter dated 25.02.2016 as stated by the petitioner has been received by PEDDA.
- xx) PEDDA had rightfully issued the letters dated 18.01.2016 and 24.01.2016 well within its rights under the RfP.
- xxi) No equities have accrued in favour of the Petitioner and the Petitioner is not at all entitled for any relief as prayed for.
- xxii) As per the agreed contractual terms, PEDDA is entitled to levy penalty upon the Petitioner in case of delay in commissioning of the project beyond 30.01.2016. The Petitioner in the instant matter has intentionally intermingled the imposition of penalty and imposition of liquidated damages. In fact, Penalty and L.D. are two different terminologies having different nature. In case of penalty, no evidence as to the actual loss suffered is required as the imposition of the same has been provided under the contract agreed to by both the parties i.e. the petitioner and PEDDA. Further, PEDDA has an interest in development of NRSE projects in the state of Punjab and any delay in the commissioning of the same results in adding liability of RECs on the state licensee and therefore, there is a loss to the state and resultantly loading on the consumers of the state.
- xxiii) PEDDA has acted in line with the terms and conditions of the IA signed by the petitioner with the PEDDA. However, the

petitioner wants to evade its bounden obligations provided under the IA. The petitioner is not entitled for any relief.

xxiv) The petitioner failed to give any notice for invocation of Force majeure clause. Hence, no reliance can be placed upon the false assertions made by it.

xxv) The Commission is requested to dismiss the petition with exemplary costs and PEDDA be allowed to invoke the PBG(s) deposited by the petitioner on account of levy of penalty due to delay in the commissioning of the project.

12. The petitioner in its rejoinder dated 23.05.2016 to the reply of PSPCL dated 28.04.2016, while reiterating its earlier submissions, further submitted as hereunder:

- i) The Solar Project of the petitioner has been commissioned on 09.04.2016 and PEDDA has issued a letter dated 16.05.2016 in this regard. The Solar Plant was completed on 15.03.2016 and Protection team of PSPCL visited the plant on 15.03.2016 and gave its report. The CEI approval of the entire plant completion was also received by the petitioner on 15.03.2016. The project was completed for synchronization and commissioning on 15.03.2016. PSPCL granted the approval for the synchronization vide letter dated 08.04.2016 and the petitioner commissioned the plant on 09.04.2016. As it is evident from the sequence of events above, the petitioner is at no fault in delayed commissioning of the plant. On the contrary the petitioner was ready with the plant within a very short period of time after the grid feasibility clearance on 04.12.2015 to 15.03.2016 with 100% plant readiness with all approvals in place.

PSPCL is not a Performa respondent for the reliefs claimed in the petition. The delay in commissioning of the project occurred due the faults of PSPCL which were beyond the control of the petitioner and even force majeure occurred due to the default of PSPCL.

- ii) The preliminary objections are correct to the extent that the present matter pertains to PPA dated 31.03.2015. The delay occurred due to the force majeure and faults on the part of PSPCL. Just to conceal its fault, PSPCL has filed a totally vague reply. As per PPA, the IA is an integral part of the PPA. For the pre-commissioned period, the force majeure clauses mentioned in the IA have to be seen and as such the reasons for which delay occurred in commissioning of the project are either force majeure or defaults on the part of PSPCL. PSPCL has not followed the article 19.1.0 of the PPA in true spirit. It is the Commission which has the power to conduct prudence check with regards to the occurrence of the said force majeure events and subsequently extend the SCOD. In this context, reference to the judgment of Hon'ble APTEL in Uttar Haryana Bijli Vitaran Nigam Limited Vs. Central Electricity Regulatory Commission and other in Appeal No. 97 of 2014 and 151 of 2013 and connected matters dated 07.04.2016 on the interpretation of force majeure clause is relevant. Relevant extract of the said judgment is reproduced herein below:

*“...279. Thus, the term 'Force Majeure' is a term of wider import and the widest meaning that can be given to 'Force Majeure' is that where reference is made to 'Force Majeure', the intention is to save the performing Party*

*from the consequences of anything over which he has no control.*

.....  
284. *A reading of Articles 12.3, 12.4 and Article 12.7(a) establishes that an event constitutes a Force Majeure Event,. if (a) It wholly or partly prevents or unavoidably delays the performance of obligations under the PPA or hinders or delays the performance of obligations of the PPA. (b) Such event is not within the reasonable control of the Affected Party, directly or indirectly. (c) Such events and circumstances could not have been avoided by the Affected Party, even if it had taken reasonable care or complied with Prudent Utility Practices. (d) The events that materially impact the cost of fuel are expressly covered, so long as they are a consequence of an event of Force Majeure.”*

Whether or not the other party to a contract committed breach cannot be decided by the party alleging breach. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by the Commission.

- iii) PSPCL while alleging that the petitioner is seeking an illegal order from the Commission by way of the petition has not brought out the illegality in the petition. Therefore, the said allegation is without merit and requires to be rejected.
- iv) While PSPCL was aware that the Commission has set the RPO target and in compliance of the same the bids were called, the intention of PSPCL should have been to ensure that the successful bidders including the petitioner are assisted in timely commissioning of the said power project.

On the contrary, it was the default on the part of the Respondents which resulted in the delay in commissioning of the said power plants. The submission of PSPCL in as much as that the respondent may be allowed to encash the PBG or carry forward the RPO's by saddling the petitioner with heavy cost to be paid to PSPCL is totally wrong and illegal. The petitioner cannot be penalized for the fault of the respondents.

- v) The petition is maintainable before the Commission.
- vi) The time allowed by Respondents for implementation of these projects without any damages and penalties was 10 months as against 13 months for the projects allotted under phase-1 and 12 months for the project allotted under phase-III. This is also the shortest time allowed by any authority for implementing large scale grid connected solar projects in India.
- vii) It is wrong that PSPCL has not assured that the approval of the PPA would be obtained in 5-7 days. It is now very easy for the PSPCL to deny this fact as the petitioner has not taken this assurance in writing because they had come here in Punjab with a view to work and install a plant. The petitioner would have challenged the clause 35 of the PPA in case PSPCL had told that approval would take long time. As the petitioner was assured by the Respondents that the approval from the Commission shall be obtained in 5-7 days time so the petitioner and other similarly situated developer signed the PPA.
- viii) As per the RfP issued by PEDDA, the arrangement of connectivity can be made by the SPD through a dedicated

power evacuation line which the SPD may construct himself or get constructed by PSPCL/PSTCL or any other agency on acceptable terms. According to this clause of RfP, the petitioner decided that the dedicated power evacuation line be constructed by PSPCL. It is wrong that due to sheer lack of technical expertise and confidence the petitioner did not construct the line on its own. It is the clause of the RfP which gives option to the petitioner and the petitioner utilized that option.

- ix) The petitioner applied for grid feasibility on 17.08.2015 because upto 11.05.2015, the date when the PPA was approved by the Commission, the petitioner could not do any work as the PPA was not effective. Thereafter, the petitioner started looking for the land. In case, PSPCL had given the grid feasibility immediately, the petitioner would have completed the Project before 31.01.2016. But PSPCL vide its letter dated 03.09.2015 informed the petitioner that as per the report given by CE/TS, PSTCL right of way for construction of 132/220 kV line to 220 kV Abohar sub-station is not available.
- x) PSPCL rejected the petitioner's request to connect at 132 kV level. The petitioner vide letter dated 03.09.2015 requested PEDA for evacuation at 66 kV level. As per PSPCL's Commercial Circular No. 23/2015 projects having capacity upto 25 MW can evacuate at 66 kV level. The petitioner also gave its consent for reducing the capacity of the project from 30 MW to 25 MW so that the project can be connected at 66 kV. It proves that the petitioner was so keen to get its plant

commissioned within the prescribed time for which it even agreed to suffer a loss of 5 MW capacity.

- xi) It is wrong that the tariff has to be determined on the basis of lowest tariff discovered in the bidding process for allocation of projects under Phase-III. The Order passed in the case of Bhanuenergy in petition no. 15 & 16 of 2015 is not applicable in the present case.
13. The petitioner in its rejoinder dated 23.05.2016 to the reply of PEDDA dated 05.05.2016, while reiterating its earlier submissions, further submitted as hereunder:
- i) It is wrong that the petition is not maintainable as there exists an arbitration clause in the document entered between the parties. This issue already stands decided by Hon'ble Supreme Court of India vide its judgment dated 13.03.2008 in Appeal (Civil) 1940 of 2008 in Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Limited.
  - ii) It is wrong that the IA is the main contractual document. As per recital of the PPA, IA is the integral part of the PPA.
  - iii) The developer was required to commission the plant on or before 30.01.2016 failing which the performance Bank Guarantee submitted by the developer shall be encashed as mentioned in the IA/RfP. The PPA was signed on 31.03.2015 and as per the IA and PPA the total period allowed for commissioning the project was 10 months. As per clause no. 35 of the PPA (which was not earlier the part of the RfP documents) it was only effective after it is approved by the Commission. The PPA was approved by the Commission vide Order dated 11.05.2015. The petitioner got 8½ months instead of 10 months. Requests

were made to PEDA for extension of time of COD but PEDA acting against the mandate of the provisions of NRSE Policy, 2012 invoked the bank guarantee given by the petitioner. PEDA being a nodal agency never informed the petitioner before signing of the PPA that it would be effective only after its approval by the Commission. PEDA did not disclose material facts regarding acceptance of PPA by the Commission.

- iv) The invocation of the PBG is subject to other terms and conditions of the IA. The article 10.5(ix) of the IA shows that the article 7 is not absolute and it is qualified by article 10 of the IA. As such, once the matter is pending before the Commission, PEDA has no right to invoke the PBG. The Commission gave ad-interim stay and in case PEDA has any case on merit then it can file reply to the main case and argue the matter.
- v) PEDA allotted total 250 MW capacity and out of this only 62 MW capacity was successfully commissioned. This fact itself belies the stand of PEDA. There were force majeure events and defaults on the part of the respondents which caused delay in commissioning of the project.
- vi) The facts of the petition no. 27 of 2016 in the matter of Talwandi Sabo Power Ltd. Vs. PSPCL are different than the facts of the present case. Even if for arguments sake it is presumed that the Commission comes to conclusion that there is no force majeure, still the Commission has inherent powers to pass an appropriate order to provide justice to the affected person.

- vii)PEDA failed to act as per the NRSE Policy, 2012, though the petitioner followed all the provisions of the IA.
14. PSPCL submitted its final written submissions dated 22.08.2016 wherein it reiterated its earlier submissions.
15. The petitioner submitted reply dated 9.09.2016 to PSPCL's final written submissions dated 22.08.2016 and submitted as under:
- i) PSPCL submitted that 66 kV bay at 66 kV S/S Khuian Sarwar for the evacuation of solar power of the petitioner was got tested on 31-3-2016 as per email received from ASE Grid Construction, Bathinda. PSPCL is concealing the actual facts.
  - ii) PSPCL provided Grid Feasibility vide letter dated 4-12-2015. The solar power Plant was completed on 15-3-2016 and Protection team of PSPCL visited the plant on 15-3-2016 and gave its report. The CEI approval of the entire plant completion was also received by the petitioner on 15-3-2016. These facts clearly prove that the Plant of the petitioner was complete for synchronization and commissioning on 15-3-2016.
  - iii) The petitioner had earlier sent a letter dated 23-2-2016 to the CE/ DS, West, Bathinda, PSPCL requesting him to inform whether requisition of GSS side meters was placed or not and further when these meters would be installed at GSS. It was also requested that testing of the plant side meters are being carried out on 23-2-2016 and request was also made to inform when the MMTS team will be deputed for installation of both GSS and Plant side meters. PSPCL received the meters on 26-2-2016 and the

testing report of ABT meters was issued by PSPCL on 02-03-2016. The petitioner requested PSPCL many times to complete the GSS.

iv) The plant could not be commissioned on account of Non-preparedness of bay on GSS side by PSPCL and Non readiness of transmission line as PSPCL approved transmission line route plan was not accepted by local farmers on account of which transmission line work had to be halted for more than 25 days for 3 towers out of 19 towers.

16. PSPCL vide letter no. 5968 dated 16.09.2016 submitted the reply to the petitioner's submissions dated 9.09.2016 and submitted as under:

- i) It is wrong that PSPCL did not provide grid feasibility clearance in time. The petitioner approached PSPCL for feasibility clearance only on 17.08.2018 i.e. after a delay of 5 months after signing of the PPA.
- ii) The ABT Meters (main check meters) on plant side were installed and got tested by firm from MMTS on 31.03.2016. so, the plea taken by the petitioner that the plant was ready on 15.03.2016 is false.
- iii) The clearance for 66 kV transmission line from the Solar plant to PSPCL Grid Sub-station was given by CEI vide letter no. 249 dated 07.04.2016.
- iv) As per clause 9.0.0 of the PPA, PSPCL's grid side Meter (Standby meter) are to be arranged, installed and got tested by PSPCL itself whereas the plant side ABT meters main & check meters are to arranged and tested by the firm itself. Therefore, the installation and testing of grid

side meters cannot be linked with plant side ABT meters (main and check meters) because when the permission for the synchronization of plant is granted by PSPCL, the testing report of bay as well as testing of ABT meter (Standby meter) on PSPCL's Grid side is not asked for from the firm. The installation and testing of Meter called standby Meter at PSPCL's grid side has no effect or the same does not act as any hindrance for the completion of the Solar project and for generation of Power.

v) As per clause 5.5.0 and 8.2.0 of the PPA, the petitioner company is bound to give 30 days prior notice of synchronization to the respondent organization. No such prior notice was ever served to the respondent organization by the petitioner. The injection of power is a technical aspect and do requires planning and engineering.

17. PEDDA filed an application (IA No. 07 of 2017) dated 15.03.2017 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 PEDDA. 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 application (IA No. 23 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. 07 of 2017 prior to further proceedings in the petition, in the interest of justice, equity and fair play.

**The IA No. 07 of 2017 was disposed of by the Commission vide Order dated 18.05.2017. The Commission in the said Order held as hereunder:**

***“8. The cases filed by the parties are decided by the Commission on merits keeping in view the pleadings of the parties, documents produced in support of their claims and the relevant law and regulations applicable in this regard. In case any party to the petition feels aggrieved by any order of the Commission, the same can be challenged as per the procedure stipulated under the Electricity Act, 2003 / the Regulations framed there under and the grievance of the concerned party (if any) can be redressed accordingly. The apprehension and submissions made by the Applicant-PEDA are based merely upon conjectures and surmises without adducing any evidence on record.***

***9. Nevertheless, Sh. Tajender Joshi, Advocate has withdrawn from the cases assigned to him by PSERC before the Hon'ble Punjab and Haryana High Court. Further,***

***many of the cases decided by the Commission where in Sh. Tajender Joshi, Advocate was the counsel, have been dismissed. Thus, the allegations made in the I.A. are without any substance and accordingly the same is hereby dismissed.”***

18. 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.
19. The petitioner filed written arguments dated 21.06.2017 and reiterated its earlier submissions. The petitioner further submitted as hereunder:
  - i) The insertion of clause 35 in the PPA rendered it practically ineffective and non bankable, until it is approved by the Commission. PSPCL filed a petition no. 21 of 2015 before the Commission seeking its approval to procure electricity and also to approve the PPA. The Commission vide its order dated 11.05.2015 allowed the petition and approved the PPA. During this period of nearly one and a half month, the project and financial closure activities could not be progressed due to uncertainty/non-bankability of the PPA i.e. for reasons beyond the control of the petitioner. The petitioner was not sure whether the PPA would be approved by the Commission or not and what conditions would be imposed by the Commission. There are many occasions when the respective State Commissions have not approved the PPAs. In the State of Haryana in the case of JBM Solar Power Private Limited the PPA was not approved. Same way in the case of ACME Panipat Solar Power Private Limited the PPA for 140 MW was not

approved though the rate came after competitive biddings. So until the PPA was approved no developer could be expected to start any work or invest any money. The bankers would also not consider it bankable and would not give any financing. After 11.05.2015, the petitioner started activities of taking the land on lease and initiated action for raising funds etc. By inserting clause 35 in the PPA, the PPA was made conditional subject to the approval from the Commission and this was a change in law condition. There was a delay of 41 days on this account.

- ii) PEDDA during arguments relied upon letter dated 26.05.2015 of SBI whereby in-principle approval was given. The in-principle approval was given by the State Bank of India in reference to SBICAPS letter dated 11.05.2015. In the minutes of board meeting dated 12.05.2015 there was a mention of letter of SBICAPS. This exercise could be done earlier in case the PPA was approved earlier.
- iii) PSPCL vide letter dated 03.09.2015 informed the petitioner that as per the report given by CE/TS, PSTCL, right of way for construction of 132/220 kV line to 220 kV Abohar sub-station was not available. It was also mentioned that whether the petitioner can ensure right of way to construct the above said line. PSPCL took 17 days from 17.08.2015 to 03.09.2015 informing the petitioner regarding right of way.
- iv) PEDDA agreed for reduction in the capacity from 30 MW to 25 MW and accordingly an amendment was carried out in the IA on 06.11.2015. It took 63 days in allowing the

reduction of capacity and making amendment in IA. Accordingly necessary amendment was carried out in the PPA on 26.11.2015 after 20 days from the amendment in IA.

- v) After the amendments, the petitioner again applied for grid feasibility and the same was provided by PSPCL on 04.12.2015 after 8 days from 26.11.2015. Only thereafter the petitioner could acquire the land. The petitioner selected the land in the month of July, 2015 and given token money etc. But land could be acquired only after the feasibility clearances are given to the petitioner by the PSPCL. During the period from 17.08.2015 to 04.12.2015 (109 days), the petitioner could not do any work. The delay of 109 days was due to the fault of the PSPCL and the petitioner is entitled to get benefits of the 109 days. Therefore upto 04.12.2015 there was a delay of 150 days which was beyond the control of the petitioner
- vi) As per the final submissions filed by PSPCL 66 kV bay at 66 kV Khuian Sarwar sub-station was completed and got tested on 31.03.2016. The contractors were allowed to complete the line by 01.04.2016 with the help of police protection. The hindrance created by the villagers was force majeure event and for this purpose time of COD was to be extended.
- vii) The petitioner received synchronization approval on 08.04.2016. Accordingly, the plant was charged and synchronized on 09.04.2016. So delay from 15.03.2016 (when the plant was complete) to 08.04.2016 (when the permission for synchronization was granted) is solely on

the part of PSPCL. There was a delay of 45 days from 30.01.2016 (date of COD as given in the PPA) to 15.03.2016 (plant was completed) and 70 days from 30.01.2016 to 09.04.2016. The tariff approved by PSERC was valid upto 31.03.2016 and for the purpose of tariff there is a delay of 9 days in case date of actual synchronization is taken. In case the date when plant was ready i.e. 15.03.2016 then there is no delay for the purpose of tariff.

- viii) As per the PPA, IA is an integral part of the PPA. For the pre-commissioned period the force majeure clauses mentioned in the IA were to be considered and as such the reasons for which delay occurred in commissioning of the project are either force majeure or defaults on the part of the respondents. The Commission has the power to conduct prudence check with regards to the occurrence of the said force majeure events and subsequently extend the SCOD. The petitioner referred judgment of Hon'ble APTEL in Uttar Haryana Bijli Vitaran Nigam Limited Vs. Central Electricity Regulatory Commission and Other in Appeal No. 97 of 2014 and 151 of 2013 and connected matters dated 07.04.2016 on the interpretation of force majeure clause.
- ix) As per article 10.1 of the IA, the petitioner is entitled to the benefit of Force Majeure if there was delay on account of reasons beyond the reasonable control of and/or arising out of the fault of the affected parties. In the present case, certainly there are adequate reasons to demonstrate that in the delay of the commissioning of the project the

petitioner was not in any manner responsible. These events were beyond the control of the petitioner. In any event, to a large extent the delay is attributable to the lackadaisical and casual conduct of the respondents in giving concurrence of drawings, amending PPA/IA, giving grid feasibility and completing GSS.

- x) Keeping in view article 10.5(ix) of the IA, once delay happened on account of force majeure, the commercial operation date of the project shall get extended. In the Order dated 11.05.2015 passed in petition no. 21 of 2015, the Commission while approving the tariff applicable to the project has, *inter alia*, held as follows:

*“...The tariffs approved above would be applicable upto 31.03.2016 provided the PPAs have been signed on or before 31.03.2015 and the entire capacity covered in each PPA is commissioned on or before 31.03.2016, in line with Regulation 8 of the said Regulations. It is further clarified that barring force majeure/ change in law etc., the applicability of the said approved tariff beyond the aforementioned date i.e. 31.03.2016 will not be allowed by the Commission even if punitive clauses in the PPA are made applicable.”*

- xi) The Order dated 11.05.2015 provides for commissioning of the project on or before 31.03.2016, it clarifies that barring force majeure/change in law etc. that the applicability of the approved tariff beyond 31.03.2016 will not be allowed by the Commission. Therefore, if there are events of force majeure/change in law etc. the approved tariff in such circumstances will be allowed even beyond 31.03.2016. In the present case the project was commissioned on

09.04.2016. Neither PEDA nor PSPCL produced any documents or evidence to counter the submissions made by the petitioner. The petitioner referred to the Order of the Commission passed in petition no. 17 of 2015 in case of Atma Powers Pvt. Ltd. wherein the commissioning date beyond 31.03.2015 was permitted for purposes of retaining the approved tariff. Further, reference and reliance was placed on the judgment of Hon'ble APTEL in Appeal No. 170 of 2014 in the case of GUVNL Vs. GERC and others.

xii) The contention of PEDA that the petitioner failed to issue notice in line with the article 10.4 of the IA in case of occurrence of force majeure events PEDA and PSPCL were both aware and were further informed about the issues pertaining to force majeure events by the petitioner from time to time. PEDA delayed in giving concurrence to the design of the project, thereafter delay occurred in amending IA and PPA. Thereafter, delay occurred in giving feasibility clearance by PSPCL and then completion of GSS.

xiii) A notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of its acquisition. Reference was made to the judgment passed by Hon'ble Supreme Court of India titled as Special Deputy Collector, Land Acquisition C.M.D.A. Vs. J. Sivaprakasan and Others.

- xiv) The respondents cannot impose a penalty under a contract unless the same is in the nature of compensation, which it is required to justify in accordance with the principles in the Indian Contracts Act. In this context, reference may be made to the judgment of Hon'ble Supreme Court of India in the case of Kailash Nath reported in (2015) 4SCC136.
- xv) It is prayed that SCOD of the project be extended to 09.04.2016 with applicable tariff of Rs. 6.88 per kWh in terms of the PPA during the extended COD period and further the letters written by PEDDA for invocation of the PBG be set aside and necessary directions be issued to PEDDA to return the PBG, in the interest of justice. Further compensation be awarded to the petitioner for the loss occurred due to non synchronization of the plant due to fault of PSPCL, in the interest of justice.

20. PEDDA filed its written submissions dated 23.06.2017 wherein while reiterating its earlier submissions, PEDDA further submitted as hereunder:

- i) PEDDA decided to argue the main matter without prejudice to its rights to challenge the Order dated 18.05.2017 passed by the Commission while adjudicating the application filed by PEDDA with respect to the undue influence of the counsel for the petitioner before the Commission i.e. IA No. 7 of 2017. PEDDA reserved its right to challenge the ibid order dated 18.05.2017 passed by the Commission, if need so arises.
- ii) The petition is not maintainable as there exist an arbitration clause in the contractual document entered

between the parties. 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 arising, if any, between the Generating Company and the Distribution Licensee. However, the petitioner while purporting as to the occurrence of force majeure event(s) claimed reliefs against PEDA, which, infact empowered by State Government to promote renewable Energy in the State of Punjab. The Act doesn't empower the Commission to assume jurisdiction over the disputes arising, if any, between State Government/its Agency and the project Developer. Hence, the dispute raised by the petitioner against PEDA does not qualify under the provisions of section 86(1)(f) of the Act.

- iii) The petitioner could not achieve COD in terms of RfP, LoA and IA entered between the petitioner and PEDA, on various pretext, which otherwise are un-sustainable, however from the perusal of the petition, it is per-se apparent that the petitioner while misusing the process of law, in order to invoke section 86(1)(f) of the Act purported as if a dispute between the petitioner and PSPCL has arisen, despite there been a conceded case of the petitioner that the petitioner is yet to achieve full COD of allocated capacity of 25MW of the project.
- iv) Since the petitioner could not commission the project well within the stipulated date i.e. 30.01.2016 and did not commission the project even upto 29.02.2016, hence, PEDA, while giving prior intimations as to the timely commissioning of the project, initiated the

invocation/encashment of the bank guarantee by making a request to the issuing bank of the performance bank guarantee in order to recover the penalty amount levied on account of delay.

- v) In the same phase of allocated projects, 7 solar power projects with total 62MW capacity were commissioned by similarly placed developers in the state of Punjab. Hence, no reliance can be placed upon the false and purported assertions made by the petitioner.
- vi) PEDDA did not insert any clause with respect to approval of PPA. As admitted by the petitioner, the PPA was signed on 31.03.2015. As per LoA para 3 (g), the petitioner was to achieve the financial closure within 120 days from the date of signing of PPA i.e. by 31.07.2015. However, it is submitted that as per documents submitted by the petitioner the financial closure was achieved and the State Bank of India issued in-principle approval vide letter dated 26.05.2015. The petitioner submitted a copy of in-principle approval to PEDDA on 06.08.2015. The petitioner failed to place on record any document evidencing that it made an application with the bank immediately after LoA, and the financial institution declined the request/kept it pending for the sake of approval of PPA. Still further, the purported issue raised by the petitioner with respect to the bankability of the PPA on account of the approval rendered by the Commission already stands adjudicated upon by the Commission in number of decisions in similar matters such as petition no. 6, 7 and 10 of 2016.

- vii) The petitioner failed to produce on record any letter written under article 10.4 of the IA and/or clause 19.2.0. of the PPA for the occurrence of force majeure event due to delay in signing the PPA or due to conditional PPA.
- viii) The petitioner vide letter dated 21.09.2015 requested PEDDA to reduce the capacity of the project from 30MW to 25MW and an amendment to the IA was signed on 6.11.2015. The entire responsibility for arranging grid feasibility and land for the project is the responsibility of the petitioner and it was aware of these facts at the time of submission of its bids and also after allocation of the project.
- ix) The claim of the petitioner that the plant would be ready to be synchronized in the first week of March, 2016 is wrong. The plant of the petitioner was visited by District Manager, PEDDA on 05.03.2016. As per the District Manager report, the implementation work of the project was pending and module installation, control room construction were in progress. PEDDA rightly issued letter dated 24.02.2016 for levy of penalty as per agreed contractual terms. PEDDA was not aware as to the occurrence of any of the force majeure events as purported by the petitioner. The petitioner failed to demonstrate/place on record the notice, compulsorily to be issued by the petitioner, for invocation of force majeure clause of the IA, in case of occurrence of any of the force majeure events.
- x) The petitioner intermingled the imposition of penalty and imposition of liquidated damages. In fact, penalty and LD are two different terminologies having different nature. In

case of penalty, no evidence as to the actual loss suffered is required as the imposition of the same was provided under the contract agreed to by both the parties.

- xi) PEDDA acted in line with the terms and conditions of the IA. The plant was commissioned on 09.04.2016 i.e. after the control period of the tariff i.e. 31.03.2016. The Petitioner was benefited due to the delay in commissioning as the rate of the solar plants are on a decreasing trend, as much as, on day to day basis and as such the petitioner does not deserve the tariff allocated to its project under the allotment made to it. The project was commissioned after the control period of the applicable tariff, the tariff of the project needs to be re-determined as provided under the IA.

21. The Commission in its order dated 25.01.2018 held that PSPCL shall submit the details / reasons for delay in construction of the Bay at PSPCL's Sub-station matching with the SCOD of the project on 30.01.2016 although the grid feasibility was granted on 04.12.2015. It was further held that the petitioner shall intimate the date on which the contract for construction of the transmission line from petitioner's plant to PSPCL Sub-station was awarded to PSPCL and the time lines for construction of same as provided therein. Both the parties were directed to file the said information within a week's time.

PSPCL vide memo no. 6254 dated 23.01.2018 filed photocopies of the work orders dated 16.01.2016 and 21.01.2016 placed by the petitioner to the contractors i.e. Jain Brothers, Distt.

Ambala for construction of 66 KV line from Solar Plant to 66 KV Sub-Station, Khuian Sarwar upto 20.02.2016.

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

22. The Commission has carefully gone through the petition and the application for interim stay, 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 application for stay, the petitioner sought the following reliefs:

- a) set aside and/or quash the letters dated 18.01.2016 and 24.02.2016 of PEDA;
- b) hold and declare that the COD of the project of the petitioner stands extended till 30.04.2016 in accordance with clause 10 of the PPA read with article 7.0 of the IA on account of force majeure events and events which were beyond the control of the petitioner;
- c) hold and declare that the petitioner is entitled to tariff of Rs. 6.88 per kWh in terms of the PPA dated 31.03.2015 during the extended COD period;
- d) direct PEDA not to invoke the PBG, and to not take any coercive actions whatsoever against the petitioner.

23. 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**

- i) 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 PEDDA 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 PEDDA 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. PEDDA 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 (this petition) & IA no.**

**14 of 2016 wherein it was held that the same was devoid of any merit. The Commission holds the same view.**

**The submission of the petitioner that the time period of 10 months for completion of the projects from the date of signing the PPA is less, is not understandable as this was a part of the RfP and the petitioner and many others bid for the projects of their own free will. Furthermore, PEDDA has submitted that 7 similarly placed projects were commissioned in time.**

Approval of PPA by the Commission on 11.05.2015

ii) The PPA was signed by the petitioner with PSPCL on 31.03.2015. The petitioner submitted that PSPCL added clause 35.0.0 in the PPA which was not part of the draft PPA annexed with the RfP. The petitioner and other solar developers at the time of signing the PPA objected to the same stating that the PPA including the said clause should have been got approved from the Commission by PSPCL before its date of execution. The petitioner further submitted that PSPCL assured that the approval from the Commission shall be obtained in 5 to 7 days. However, the PPA was approved by the Commission on 11.05.2015. The insertion of clause 35.0.0 in the PPA practically rendered it ineffective and non-bankable until approved by the Commission. The petitioner submitted that the project activities could not progress due to the same. PSPCL submitted that as per clause 10.1.0 of the PPA, the generating company was under an obligation to synchronize the project with the PSPCL grid and commission it within 10 months from the date of signing the PPA i.e. by 30.01.2016 as also mentioned in the

bidding documents. Approval of PPA by the Commission is legally required. The petitioner should have exercised due diligence at the time of bidding and before signing the PPA. PSPCL submitted that it did not assure the petitioner that the PPA would be approved by the Commission in 5 to 7 days. The petitioner should have objected and challenged the addition of clause 35.0.0 in the PPA or not signed the same. PEDDA submitted that the plea of the petitioner with respect to the PPA being non-bankable is wrong, as the financial closure was achieved and State Bank of India issued in-principle approval vide letter dated 26.05.2015 and the same was submitted to PEDDA by the petitioner vide its letter dated 06.08.2015. The in-principle approval of State Bank of India nowhere indicates that the petitioner has faced any difficulty and neither the petitioner while submitting these documents has stated any difficulty with regard to financial closure.

PEDDA further submitted that the disclaimer clause in the RfP clearly states that the IA and PPA annexed with the RfP were indicative in nature and could be changed later. The petitioner failed to produce on record any letter written under article 10.4 of the IA and/or clause 19.2.0 of the PPA with regard to the occurrence of force majeure event due to delay in signing the PPA or that the PPA was conditional.

**The Commission notes that in-principle approval for the petitioner's project was given by State Bank of India vide letter dated 26.05.2015. Accordingly, the financial closure of the project was achieved on 26.05.2015. The financial closure document was submitted by the petitioner to PEDDA vide letter**

dated 06.08.2015 despite having achieved the same on 26.05.2015 as submitted by PEDDA. The petitioner has failed to show on record the activities which it could not initiate/execute during the period 31.03.2015 to 11.05.2015 for execution of the project. This clearly shows that the preliminary / preparatory works for execution of the project were not hampered for want of approval / acceptance of the PPA by the Commission on 11.05.2015, as alleged by the petitioner. The petitioner has also nowhere explained that why the financial closure achieved on 26.05.2015 was only submitted to PEDDA on 07.08.2015 after a gap of 2 months 13 days. The Commission further notes that clause 10.1.0 and clause 35.0.0 are concurrent and co-exist in the PPA. Article 7 of the IA signed by the petitioner with PEDDA on 24.03.2015 stipulated the commissioning period of the project as 10 months from the date of signing the PPA. Further, as per para (d) on page-2 of the PPA, IA shall be treated as an integral part of the PPA. The Commission has carefully considered the matter. The Commission is of the opinion that in the absence of documentary evidence to prove any loss/delay suffered by the petitioner due to the time elapsed between the submission of petition by PSPCL on 30.03.2015 and acceptance of the PPA by the Commission on 11.05.2015, no benefit on this account is admissible to the petitioner.

Grid connectivity, Change in capacity from 30 MW to 25 MW and Right of way for transmission line

iii) (a) Petitioner's submissions are as under:

The petitioner submitted that it identified two land parcels at village Daulatpura, and Khui Khera, Tehsil Abohar, Distt. Fazilka which could be connected to 132 kV sub-station, Abohar. The petitioner further submitted that it requested PEDDA to allow for two plants of 15 MW each near 66 kV sub-station as the land for total 30 MW capacity was not available near 132 kV sub-station. PEDDA denied its request vide letter dated 24.06.2015. PSPCL was requested vide letters dated 17.08.2015 and 25.08.2015 to grant grid feasibility clearance for connecting the 30 MW project at 132 kV sub-station, Abohar. PSPCL vide letter dated 03.09.2015 informed the petitioner that as per the report given by CE/TS, PSTCL, Patiala, right of way for construction of 132/220 kV line to 220 kV sub-station, Abohar was not available. PSPCL took 17 days from 17.08.2015 to 03.09.2015 for informing the petitioner regarding right of way. Thereafter, PEDDA was requested vide letter dated 03.09.2015 followed by letter dated 23.09.2015 to allow for evacuation of 30 MW capacity at 66 kV level. It was informed that as per PSPCL's Commercial Circular No. 23/2015 projects having capacity upto 25 MW can evacuate at 66 kV level. Therefore, the petitioner gave its consent for reducing the capacity of the project from 30 MW to 25 MW so that the project could be connected at 66 kV sub-station, Khuian Sarwar. PEDDA signed the amended IA on 06.11.2015 for reduction in the capacity from 30 MW to 25 MW i.e. after a period of 64 days. Accordingly, the amended PPA was signed by PSPCL on 26.11.2015 after 20 days.

After the amendments, the petitioner again applied for technical grid feasibility clearance and the same was granted by PSPCL on 04.12.2015. Thereafter, the petitioner acquired the land. The petitioner contended that it selected the land in the month of July, 2015 and gave token money etc., but land could be acquired only after the feasibility clearance was given by PSPCL. The petitioner submitted that it could not do any work during the period from 17.08.2015 to 04.12.2015 (109 days).

The petitioner submitted that the Chief Electrical Inspector (CEI), Govt. of Punjab, vide its letter dated 15.03.2016 granted provisional approval for commissioning of the project. Addl. SE/Protection Division, Moga vide letter dated 15.03.2016 recommended for synchronization of the plant with PSPCL System intimating that the testing results were satisfactory.

The project was to be connected to 66 kV Khuian Sarwar GSS by constructing a 66 kV double circuit transmission line from the project. Some local land owners were not allowing PSPCL's contractor to erect the remaining 3 towers out of the 19 towers required to be installed for completion of line. The petitioner vide letter dated 19.03.2016 requested District Collector, Fazilka for providing administration support in erection of the remaining three towers. PSPCL also requested Deputy Commissioner vide letter dated 21.03.2016 to provide police protection for erection of line. The office of District Magistrate, Fazilka vide letter dated 22.03.2016 requested SSP Fazilka for providing police protection. There occurred a delay of more than 30 days due to these protests of the land owners.

The petitioner submitted that as per the final submissions filed by PSPCL, 66 kV bay at 66 kV Khuian Sarwar sub-station was completed and got tested on 31.03.2016. The contractors completed the line by 01.04.2016 with the help of police protection. The petitioner contended that this is a force majeure event and requested for extension in COD.

The petitioner submitted that PSPCL gave the approval for the synchronization vide letter dated 08.04.2016 and the petitioner commissioned the plant on 09.04.2016.

(b) PSPCL's submissions are as under:

PSPCL submitted that as per article 4.1.0 of the RfP, the right of way was to be arranged by the petitioner for construction of the transmission line on its level for evacuation of power from the project. The petitioner was informed that it was not viable for PSPCL to provide Right of Way (ROW) for construction of 132/220 kV line to 220 kV sub-station, Abohar. The petitioner was informed that if it could ensure ROW, it could construct the line. The petitioner showed its inability to do so. PSPCL submitted that it rightly rejected the petitioner's application to connect at 132 kV level for 30 MW power project. The petitioner didn't have the possession of the land and ROW of transmission line route for grant of feasibility clearance. The petitioner applied for technical grid feasibility clearance on 17.08.2015 i.e. almost four & a half months after the signing of PPA. The amendment to the PPA was signed on 26.11.2015. The PPA is signed on the basis of IA and any amendment to PPA can only follow an amendment to the IA. Also, any clarification sought by PSPCL from PEDDA on issues regarding the same cannot be considered

as a waste of time as it is a necessary part of the process. PSPCL, being the purchasing agency, has a right to seek clarification from the implementing agency on technical grounds and legal issues. PSPCL submitted that 66 kV bay at 66 kV Khuian Sarwar sub-station was completed and got tested on 31.03.2016. PSPCL contended that the erection of towers is the sole duty of the petitioner. The petitioner cannot take the benefit or raise any issue with regard to the erection of towers as PSPCL has no role in this. PSPCL is an agency to which the construction of line was outsourced. This should not be clubbed with its role as a purchaser of power as a party to the PPA. PSPCL contended that as CEI granted clearance for the 66kV transmission line on 07.04.2016, the claim of the petitioner that it was ready on 15.03.2016 holds no merit. PSPCL further contended that as the project achieved commissioning beyond 31.03.2016, the lowest tariff discovered in the bidding process for allocation of projects under phase-III during FY 2015-16, which is Rs. 5.09 per kWh is required to be made applicable to the said project.

(c) PEDDA's submissions are as under:

PEDDA submitted that the petitioner approached it with a request letter dated 10.06.2015 stating that it is unable to get required land near 132 kV sub-station and identified land near 66 kV sub-station. Accordingly it was requested by the petitioner that it be allowed to build the 30MW project in two parts with evacuation at 66 kV level. In response, PEDDA informed the petitioner that in accordance with the RfP terms and conditions, the request for splitting the project capacity of 30MW into two

parts cannot be considered. PEDDA submitted that on the request of the petitioner to evacuate power from 30MW project through 66 kV double circuit line to nearby 66 kV Khuhi Khera sub-station, it took up the matter with PSPCL. PSPCL rejected the request of the petitioner in view of its instructions / regulations in this regard.

PEDDA submitted that the petitioner requested it vide letter dated 03.09.2015 for reduction of project capacity from 30 MW to 25 MW, which was allowed by PEDDA. PEDDA contended that although an amendment to the IA was signed on 06.11.2015 reducing the capacity of the project from 30 MW to 25 MW, even then the petitioner was required to commission the project by 30.01.2016 as per the undertaking given by it at the time of signing the amendment to IA.

PEDDA submitted that the petitioner failed to give notice in line with the force majeure clauses of IA and no reliance can be placed upon the false and purported assertions made by the petitioner as to delay in commissioning of the project due to the purported occurrence of the force majeure events.

PEDDA further submitted that the plant was commissioned on 09.04.2016 i.e. after the control period of the tariff which ended on 31.03.2016. PEDDA contended that the petitioner was benefited due to the delay in commissioning as the prices of solar plants are declining on day to day basis and as such the tariff of the project needs to be re-determined under terms of IA.

**The Commission notes that the petitioner was required to submit the grid feasibility clearance to PEDDA within 90 days after signing the PPA. As the PPA was signed on 31.03.2015,**

the grid feasibility clearance was to be submitted to PEDA by 29.06.2015. Accordingly, the grid feasibility clearance should have been applied to PSPCL upto 01.06.2015 by the petitioner. However, the petitioner applied for the grant of grid feasibility clearance on 17.08.2015. Considering the submissions of the parties in this regard, the Commission is of the view that the delay from 01.06.2015 to 17.08.2015 i.e. 77 days on this account is attributable to the petitioner. The Commission notes that PSPCL informed the petitioner on 03.09.2015 in response to the petitioner's request dated 17.08.2015 that right of way for 132 kV line from the proposed location of the project to 132kV/220 kV sub-station, Abohar was not available. The Commission considers the time taken by PSPCL/PSTCL from 17.08.2015 to 03.09.2015 i.e. 17 days as reasonable for surveying the route of transmission line and deciding the issue. The Commission notes that the right of way was to be arranged by the petitioner for construction of the transmission line for evacuation of power from the project as per article 4.1.0 of the RfP, as submitted by PSPCL. The Commission further notes that the regulations / instructions of PSPCL provide that the projects upto 25 MW capacity can be connected at 66 kV level and beyond 25MW capacity at 132 kV/220 kV. The commission notes that the petitioner could not arrange land from where the evacuation of 30 MW capacity to nearby 132kV/220kV was feasible and accordingly it requested PEDA on 03.09.2015 to reduce the project capacity from 30 MW to 25 MW for connectivity at 66 kV. An amendment to the IA was signed on 06.11.2015 by PEDA and the petitioner, reducing the project capacity from 30 MW to 25 MW. The

Commission notes that PEDDA has taken 64 days time from 03.09.2015 to 06.11.2015 for amendment in the IA. The Commission is of the view that considering the three weeks time as reasonable for carrying out the amendment in the IA, the delay of 43 (64-21) days on this account is attributable to PEDDA. The Commission notes that amendment in the PPA was signed by PSPCL and the petitioner on 26.11.2015 i.e. 20 days after the amendment in the IA. The Commission is of the view that three weeks time is reasonable for carrying out the amendment in the PPA by PSPCL and accordingly the period of 20 days from 06.11.2015 to 26.11.2015 taken by PSPCL for amendment in the PPA is reasonable.

The Commission notes that in terms of LoA dated 25.02.2015, the petitioner was required to submit land documents to PEDDA within 90 days i.e. upto 25.05.2015. However, the petitioner acquired the land after 04.12.2015 subsequent to grant of technical feasibility clearance by PSPCL on 26.11.2015, as admitted by it. Since the land could only have been identified and bought after clearance of the project at 66 kV which was done by PEDDA on 06.11.2015, the acquisition of land within 90 days from signing of original I.A. i.e. 25.05.2015 does not hold much meaning in view of the changed circumstances.

The Commission further notes that the bay at 66 kV Khuian Sarwar GSS was completed by PSPCL on 31.03.2016, but the petitioner's project including the 66 kV transmission line was completed on 07.04.2016 on approval of CEI for clearance of 66 kV line. PSPCL granted the permission for synchronization

on 08.04.2016. The project was commissioned and synchronized with PSPCL's system on 09.04.2016. The Commission notes that the petitioner placed the work orders on the contractor M/s. Jain Brothers for construction of 66 kV line from the project to PSPCL's Sub-Station as late as on 16.01.2016 and 21.01.2016 wherein the timeline for the completion of the said line was given as 20.02.2016 i.e. beyond the SCOD of 30.01.2016. The Commission also notes that as per clause 5.5.0 and 8.2.0 of the PPA, the petitioner was required to give 30 days prior notice of synchronization to PSPCL but no such prior notice was given, as submitted by PSPCL. The Commission is of the view that commissioning of the 66kV bay by PSPCL on 31.03.2016 did not have any adverse impact on the commissioning of the project as the same was completed ahead of the completion of the project / 66 KV transmission line.

In view of the above discussion, the Commission notes that although there was a delay of 77 days in applying for the grant of feasibility clearance to PSPCL and delay in acquisition of land for the project due to change of connectivity of project to Grid from 132 kV to 66 kV as also delay in placement of work orders for construction of 66kV transmission line by the petitioner, the actual delay in commissioning of the project was only 70 days from scheduled COD of 30.01.2016 to actual commissioning of the project on 09.04.2016. The Commission holds that the delay of 43 days is attributable to PEDDA on account of excess time taken by it for amendment to IA for reducing the project capacity from 30 MW to 25 MW.

Therefore, the Commission decides that the delay of 27 (70-43) days is attributable to the petitioner. The stay granted by the Commission for forfeiture and encashment of PBGs is hereby vacated. Accordingly, PEDA is directed to take action as per the delay attributable to the petitioner in terms of IA/PPA. The PBGs for the remaining amount be released to the petitioner within seven working days from the date of this Order, failing which PEDA will be liable to pay penal interest on the remaining amount to the petitioner at the rate of 1.25% per month payable on pro-rata basis for each day's delay beyond seven working days. There is no case for levy of liquidated damages by PSPCL. It is further held that there shall be no change in the tariff of the project as provided in the PPA, which is payable to the petitioner by PSPCL for purchase of electricity from the project.

The petition and applications are disposed of in terms of above.

Sd/-

(Anjuli Chandra)  
Member

Sd/-

(S.S. Sarna)  
Member

Sd/-

(Kusumjit Sidhu)  
Chairperson

Chandigarh  
Dated: 13.03.2018