

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

**Petition No. 12 of 2017
Date of order: 21.12.2018**

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

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 this Commission in its order dated 19.07.2012 in Suo-Motu petition No. 35 of 2012) read with Article 19.1.0 of the Power Purchase Agreement dated 20.1.2016 and Article 10 of the Implementation Agreement dated 4-12-2015 and section 94 of the Electricity Act, 2003, for seeking Project Specific extension of period of commissioning of the project upto 15.5.2017 with applicable tariff of Rs.5.97 per kWh.

AND

In the matter of: M/s Mytrah Aadhya Power Pvt. Ltd., (SPV Company of M/s Mytrah Energy (India) Ltd., having registered office at 8001, Q-City, S.No.109, Nanakramguda Gachibowli, Hyderabad.

.. MAPPL

Versus

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

.. Respondents

ORDER

Mytrah Aadhya Power Pvt. Ltd.(MAPPL) on 27.02.2017 filed the present petition under section 86 (1)(f) of Electricity Act, 2003 read with rule 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulations, 2005, for seeking extension of period of commissioning of their project upto 15.05.2017 with applicable tariff of Rs. 5.97 per KWH. MAPPL has also filed Interim Application (IA) No. 02 of 2017 in Petition No. 12 of 2017 for grant of interim stay. Caveat Petition No. 01 of 2017 in petition no. 12 of 2017 was filed by PEDDA praying for an opportunity of hearing in the event of passing any order in the petition.

2. The matter was taken up for admission on 07.03.2017 and was admitted and the respondents were directed to file their reply by 01.04.2017 and rejoinder, if any was to be filed by MAPPL by 08.04.2017. The petition was fixed for detailed hearing on 20.04.2017 on 09.03.2017. Vide order dated 08.03.2017, the parties were directed to maintain status quo in the mean time. Punjab Energy Development Agency (PEDDA) was directed not to encash the Performance Bank Guarantee and Letter of Authority (LoA). The IA as well as Power Purchase Agreement (PPA) were also not be terminated till the next date of hearing. During the hearing on 09.03.2017, PEDDA submitted a copy of Order dated 01.03.2017 passed by Hon'ble Chief Justice and Shri. Anupinder Singh Grewal, Judge in CWP No. 4148 of 2017 wherein the petitioner alleged that in view of certain force majeure conditions, it was unable to complete the work under the PPA dated 20.01.2016 by the stipulated date i.e. 19.01.2017 for which the Hon'ble High Court conculed –

“...Normally, we would have been reluctant to grant an injunction restraining an invocation of the bank guarantee. However, in view of the above circumstances including the contention that the work could not be completed due to force majeure conditions, we are inclined to grant a limited injunction for a limited period and subject to certain conditions which would safeguard the respondents totally. The respondents shall not invoke the bank guarantee and if already invoked shall not receive money pursuant thereto till 07.03.2017. This limited interim relief is granted in view of the undertaking that in the event of the injunction not being granted by the PSERC, the petitioner shall within one week pay interest on account to the respondents at the adhoc rate of 18% per annum which shall be subject to final accounts from the date of the invocation or the date hereof whichever is earlier till payment...”

3. PEDA filed an IA No. 12 of 2017 on 07.04.2017 seeking adjudication of the issue with respect to undue influence of the counsel representing MAPPL before the Commission as well as before the other courts prejudicing the rights of the PEDA. Vide memo no. 5573 dated 18.04.2017 PSPCL filed its reply to the petition. The I.A. No.12 of 2017 filed by PEDA in this petition was taken up for arguments on 25.04.2017. During the hearing, Counsel for PEDA has submitted a copy of the judgment dated 07.12.2011 passed by the Hon'ble Supreme Court of India in State of Punjab Vs. Davinder Pal Singh Bhullar and Ors. in Criminal Appeal No.753-755 of 2009. Counsel for MAPPL sought time for making the necessary submissions along with supporting case laws, to rebut the contentions of the applicant. Vide Order dated 08.05.2017, MAPPL was directed to file written submissions in the IA. The main petition along with IA was fixed for arguments on 09.05.2017. MAPPL filed reply to the IA No. 12 of 2017, wherein it was submitted by the counsel for MAPPL that since the date on which the said application i.e. IA No. 12 of 2017 was filed, other hearings have been held up for a decision of the present application and the same are not on account of

the petition filed by MAPPL but they are only on account of the application filed by PEDDA and as such they have failed to place on record any rule, regulation to prove how the conduct of MAPPL counsel is unethical, wrong and prejudicial to the rights/ interest of PEDDA. The petition along with IA No. 12 of 2017 was taken up for hearing on 09.05.2017. PEDDA was directed to file reply to the main petition by 23.05.2017. Vide Order dated 22.05.2017, IA No. 12 of 2017 was disposed of by the Commission in terms of the Order dated 18.05.2017 passed in IA No. 07 of 2017 filed by PEDDA in Petition No. 22 of 2016.

4. The petitioner's request to amend the petition due to new force majeure events was allowed. The case was adjourned. The amended petition was finally submitted by MAPPL on 28.02.2018. After reply to the amended petition were filed by PSPCL and PEDDA, MAPPL filed its rejoinder on 30.04.2018. In the process of PSPCL's filing its sur-rejoinder and MAPPL responding to the same, the case was finally taken up for hearing on 05.09.2018.

5. The counsel for PEDDA submitted a copy of the judgment dated 12.04.2018 of the Hon'ble Supreme Court of India in the case titled as State of Gujrat and Ors. Vs. Utility Users' Welfare Association and Ors. and requested the Commission to take the same on record. The counsel submitted that as was brought in para 105 of the said judgment, the absence of member having knowledge of law would make the composition of the State Commission such, as would make it incapable of performing the functions under Section 86 (1) (f) of the Electricity Act, 2003. The Commission noted that in para 114 of the said judgment, the Hon'ble Supreme Court of India concluded as follows:

“114. In view of our observations above, we conclude as under:

- i. Section 84 (2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.*
- ii. it is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.*
- iii. That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.*
- iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission.*
- v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.*
- vi. In case there is no member from law as a member of the Commission as require aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of Clause (ii) above.”*

The judgment was taken on record. The Commission noted that there is no bar for the existing Commissions to entertain the petitions involving matters under Section 86 of the Electricity Act, 2003, and accordingly, the Commission decided to continue with the proceedings in the present matter. The Counsel for MAPPL and PSPCL was heard at length. The counsel for PEDDA did not attend the hearing in the afternoon session. Accordingly, PEDDA was directed to file its written submissions / arguments within 10 days. The counsel for MAPPL also confirmed that written submissions / arguments shall be filed within 10 days along with the information sought by the Commission during the hearing. PSPCL was directed to file the information regarding the units generated month

wise for both the plants separately and the tariff at which the payments have been made, within one week and the Order was reserved vide Order dated 26.09.2018. Vide Memo No. 5697 dated 28.09.2018, PSPCL submitted the information regarding month wise generation of both the plants 25 MW each and payments thereof made to the firm.

MYTRAH AADHYA POWER PVT LTD's Submissions

6. The submissions made by Mytrah Aadhya Power Pvt. Ltd. (MAPPL) in Petition and Amended petition are summarized as under:

i) The present petition pertains to Power Purchase Agreement ('PPA') dated 20-1-2016 executed between MAPPL and Respondent No. 1 viz. Punjab State Power Corporation Limited ('PSPCL'). Through this Petition, MAPPL seeks a declaration for extension of the Commercial Operation Date ('COD') for the Solar Project of 50 MW (2X25 MW), for a period upto 19-6-2017 with applicable tariff of Rs. 5.97 per kWh, and a further direction that no coercive action shall be taken by the Respondent No. 2 viz. PEDDA with regard to the Performance Bank Guarantee deposited by MAPPL and further that no Liquidated Damages/ LD Charges would be recovered by the respondents. MAPPL further asked to set aside or quash the letters dated 13.02.2017 and 27.02.2017 of Respondent No.2 (PEDDA) and to further declare that the respondents are not entitled to get any extension of fees/penalty etc. from MAPPL on account of extension in the commissioning period of the project which is due to Force Majeure events. The said claims are linked to each other as the basis of said claims is that the delay in achieving COD is solely attributable to the Force Majeure events, which were beyond the control of MAPPL.

ii) MAPPL has signed a long term PPA for supply of 50 MW (2 X 25 MW) of power with Respondent No. 1 with an understanding that entire

power generated out of the aforesaid power plants of 25 MW each would be supplied to the Respondent No. 1. Hence, the entire power generated from MAPPL's power projects being developed at District Mansa and Sangrur, Punjab is to be supplied to the Respondent No. 1.

iii) The Government of Punjab issued a notification No. 10/174/2012/STE(3)/4725 dated 26-12-2012 and formulated a 'New and Renewable Sources of Energy (NRSE) Policy – 2012' in the State of Punjab. Respondent No. 2, Punjab Energy Development Agency (PEDA) established under the Department of Science, Technology, Environment and Non-Conventional Energy Sources, Government of Punjab, has been designated as the nodal agency for development of renewable energy projects in the State of Punjab under the said Policy. The Nodal agency is responsible for promotion and development of non-conventional and renewable sources of energy in the State of Punjab, including Solar, Mini hydro, Biomass / Agro-waste based power projects.

iv) The Respondent No.1 (PSPCL) is the distribution licensee in the State of Punjab and is a Power Purchaser under the PPA entered into between MAPPL company and the PSPCL

v) Respondent No.2 (PEDA) invited private developers / companies to set up Solar Photovoltaic power projects for sale of power to the state utility (PSPCL), in the State of Punjab. PEDA initiated competitive bidding process for inviting solar power developers for establishment of an aggregate 500 MW capacity solar projects under phase-III, in the State of Punjab. The Proposals / bids against Request for Proposal (hereinafter to be called 'RfP') were invited by PEDA vide No. PEDA/ET/15-16/SP/1103 issued in June, 2015 and further amended vide amendment dated 24-7-2015, through e-bidding system for the selection of bidders. The selection of bidders was based on net availed tariff after providing discount on generic tariff notified by Hon'ble Punjab State Electricity

Regulatory Commission (hereinafter referred to as 'PSERC' or the 'Commission') for Solar PV Power Projects for FY 2015-16, irrespective of availing Normal Rate of depreciation / Accelerated Rate of depreciation. It was mentioned in the RfP that PEDA will shortlist the bidders based on the net tariff arrived in Rs. Per kWh after reduction of discount offered by the bidder. It is pertinent to mention here that total capacity of 500 MW was to be allotted to newly incorporated/ existing Companies. The minimum capacity allotment of the project was 50 MW and maximum capacity was 150 MW to a single company. As per RfP, bidders could setup minimum plant capacity of 5 MW with maximum 10 locations i.e. 5 MW plant each on ten different locations for minimum allotment capacity of 50 MW. It is further submitted that as per this RfP the project developers were required to submit land documents i.e. registered sale deed, registered lease deed within 150 days of the date of signing of PPA

vi) Pursuant to the amendment brought in by Central Electricity Regulatory Commission 'CERC', vide Notification No L-1/94/CERC/2011 dated 18.03.2014 which amended the CERC (Terms & Conditions for Tariff determination from Renewable Energy Sources) (First Amendment) Regulations, 2014, the Commission determined generic levelled generation tariff for Renewable Energy Power Projects for FY 2015-16 wherein the Generic Tariff for Solar Power Projects was fixed at Rs. 7.04/- kWh. The said order further directed that said generic tariff shall be applicable to such solar power projects for which the PPAs were signed in FY 2015-16.

vii) MAPPL participated in the said bid of Respondent no. 2 and was declared a successful bidder for a capacity of 50 MW solar PV power project to establish a power plant and supply power to Respondent No. 1 for a period of 25 years as per the provisions of the RfP at a Net Tariff of

Rs. 5.97 (Rupees Five and Ninety Seven Paise Only)/ kWh after providing a discount on generic tariff of Rs. 7.04/- per kWh (as adopted and notified by PSERC in its RE Tariff Order for Solar PV Power Projected for FY 2015-2016). PEDDA accordingly issued a Letter of Award (herein after to be called 'LoA') dated 19-10-2015 to MAPPL company. As per this LoA, MAPPL was required to submit Performance Security by way of irrevocable Bank Guarantee at the rate of Rs. 10 Lacs per MW aggregating to Rs. 5.0 Crores as per clause No. 3.20 of the RfP and this BG was to be valid for a period of 20 months from the date of signing of Implementation Agreement (hereinafter to be referred as IA). As per this LoA MAPPL was required to sign the IA with PEDDA within 30 days from the date of issue of LoA and further to sign the Power Purchase Agreement (herein after to be called PPA) with Punjab State Power Corporation Ltd. within 30 days subsequent to signing of I.A with PEDDA. MAPPL was also required to report the tie up of financing arrangements for the project in a time bound manner. It was also mentioned in this LoA that all the other terms and conditions shall be as per the Request for Proposal (RfP) document.

viii) Thereafter an Implementation Agreement was executed between MAPPL and respondent No. 2/ PEDDA on 4-12-2015 and MAPPL company submitted the required performance bank guarantee (PBG) to Respondent no. 2 aggregating to Rs. 5.00 Crores (at the rate of Rs. 10 Lakhs per MW) in terms of Article 6.2(iv) of the Implementation Agreement. As per Article 7 of this IA, the Solar PV Project was to be commissioned within 12 months from the date of signing of PPA.

ix) Pursuant to the IA dated 4-12-2015, MAPPL and the respondent No. 1/ PSPCL executed a PPA dated 20-1-2016. As per clause 10.1.0 of the PPA, the Generating Company was under an obligation to commission the Generating Facility within 10 months viz 18.01.2017

(which shall be scheduled Date of Commercial Operation) and synchronize with the PSPCL's Grid within 12 months from the effective date i.e. date of signing of the PPA which is 20-1-2016. Therefore as per this PPA, the scheduled date of commissioning for the project was 19-1-2017.

x) This PPA was subject to the approval of PSERC. The PSPCL filed a petition No. 31 of 2016 before PSERC seeking its approval to procure electricity and also to approve the PPA. The Commission vide its order dated 10-06-2016 allowed the petition and approved the PPA.

xi) In order to comply with the obligations of commencing power supply from the COD, MAPPL commenced the project construction activity in time. However, due to occurrence of certain Force Majeure events etc. and the fault of respondent No. 1/ PSPCL, MAPPL's power project was delayed. Article 10 of the I.A. and article 19 of the PPA which are reproduced here under:

ARTICLE 10: FORCE MAJEURE

10.1 In this Agreement, Force Majeure means an event occurrence in India of any or all of non-political events described in clause 10.2 and political events described in clause 10.3 respectively hereinafter which prevents the party claiming Force Majeure (The affected party) from performing its obligations under this agreement and which act or event,

i. is beyond the reasonable control of and not arising out of the fault of the affected party.

ii. The affected party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sum of money and

iii. Has a materially adverse effect on the project.

10.2 Non-political force majeure events.

For the purpose of 10.1 non-political force majeure events shall mean one or more of the following acts or events;

i) Acts of God or events beyond the reasonable control of the

affected party which could not reasonably have been expected to occur such as extreme adverse weather or environment conditions, lightning, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic, eruptions or fire (to the extent originating from the source external to the site or not designed for construction works);

ii)Radioactive contamination or ionising radiation ;

iii)An act of war (whether declared or undeclared) invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, embargo, blockade, rebellion, riot, religious strike, bombs or civil commotion, sabotage terrorism;

iv)Strikes or boycotts interrupting operations of the project continuing for at least 7 days;

v)Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Company in any proceedings for the reason other than failure of the Company to comply with any applicable law or clearance or on account of breach thereof, or of any contract or enforcement of this Agreement or exercise of any of its rights under this Agreement by PEDA ; or

vi)Any other event or circumstances of nature analogues to the foregoing.

10.3 Political Force Majeure Event;

Political Events shall mean one or more of the following acts or events by or an account of PEDA, GoP, Gol or any other Government Agency or Statutory Authority.

i) Change in Law.

ii) Expropriation or compulsory confiscation by any Government Agency of any Project Assets or rights of the Company.

iii) The unlawful or un-authorized or without jurisdiction revocation of, or refusal to renew of grant without valid clause any consent or approval required by the Company to perform its obligations under the Agreement (Other than a consent the obtaining of which is a condition precedent) provided that such delay, medication, denial refusal or revocation did not result from the Company's inability of failure to comply with any condition relating to grant, maintenance or renewal or such consent or permits.

10.4 Notification Obligations;

If a party is affected by any force Majeure event, the affected party shall give the other parties written notice describing the particulars of the Force majeure event as soon as reasonable practicable after its occurrence but not later than five days after the date on which such party knew of the commencement of the Force Majeure event or of its effect on such party.

10.5 Obligations on the parties in case of Force Majeure Event:

i) The parties shall cooperate and negotiate in good faith and will develop implementation plan of remedial and reasonable alternative measures to remove/ remedy Force Majeure event to enable the performance of the affected party provided however, that no party shall be required under this provision to settle strike or other labour dispute.

ii) Upon the occurrence and during the subsistence of any Force Majeure event, none of the parties shall be relieved of their liabilities/ obligations including liability for payment as per the Agreement.

iii) In case a Non-political force majeure event necessitates extension of time for the Project implementation both the parties will duly accept it.

iv) The extra cost for completion of project due to a non-political force majeure event including inter alia, additional or extra work required to be done, interest due during the extended period of project completion and escalation shall be duly considered in the project completion cost for all purposes of the agreement.

v) In case of Force Majeure events after completion of the project the parties shall take action as per sub clause (i) above and the additional cost required for remedial and alternative measures to remove/ remedy the force majeure shall be added to the project completion cost for all purpose of the agreement.

vi) In case of any party non willing to implement the plan of remedial and reasonable alternative measures to remove / remedy the force majeure event it shall be construed as a default of such party and then relevant provisions of Article 10 shall apply.

vii) The suspension of performance shall be within the effected scope and duration as required by Force majeure.

viii) When the non performing parties liable to resume performance

of its obligation under this agreement that party shall give the other parties written notice to that affected so as soon as practical.

ix) In case the commissioning of the project is delayed due to force majeure conditions stated above and the same are accepted by the competent authority, the due dates for encashment of performance security and imposition of liquidated damages shall be extended accordingly. In case the delay affects the COD of the project and it gets extended to the next financial year then the tariff payable shall be as determined by the PSERC.

CLAUSE 19 of P. P.A.

19.0.0 FORCE MAJEURE:-

19.1.0 If any party hereto shall be or wholly or partially prevented from performing any of its obligations under this Agreement by reason of or on account of lightning, earthquake, fire, floods, invasion, insurrection, rebellion, mutiny, civil, unrest, riot, epidemics, explosion, the order of any court, judge or civil authority, change in applicable law, war, any act of God or public enemy or any other similar cause or reason reasonably beyond its control and not attributable to any negligent or intentional act, error, or omission, then such party shall be excused of its obligations/ liabilities under this Agreement and shall not be liable for any damage, sanction or loss resulting there from to the other party.

19.2.0 The party invoking this clause shall satisfy the other party of its existence of any Force Majeure event and give written notice within seven (7) days of the occurrence of such Force Majeure event to the other party and also take all reasonable and possible steps to eliminate, mitigate or overcome the effect and consequence of any such Force Majeure event.

19.3.0 In the event of a Force Majeure event or conditions, any payment due under this Agreement shall be made as provided herein and shall not be withheld.

19.4.0 This clause as provided in this PPA will be operative after the project achieves COD. For force majeure events occurring during the commissioning period of the project, provisions of IA will be applicable.”

xii) The petitioner submitted that in terms of Article 19.4.0 of the PPA and the relevant provisions of the IA executed between MAPPL and the Respondent No. 2 with regards to the Force Majeure events occurring during the commissioning period of the project will be applicable. The recital of the PPA clearly stipulates that all the clauses and regulatory norms applicable to the Implementation Agreement dated 04.12.2015 shall be unequivocally applicable to the PPA in its true letter and spirit. Therefore, it was submitted that the Implementation Agreement is to be read as part and parcel of the PPA.

xiii) MAPPL submitted that many force majeure events occurred due to the fault of PSPCL which led to the delay in commissioning of the project. Due to these events, there was a delay in synchronization of the plant and the plant was eventually commissioned on 19-6-2017. These events include-

- a) Delay in granting Technical Feasibility / Ambiguity on the part of the respondent No. 1 regarding splitting of the plant.
- b) Delay Due to strike of Tehsil Staff.
- c). Delay in Loan Disbursement Due to Non Assigning of PPA with Project Lenders.
- d) Delay due to Demonetization.
- e) Delay in amendment in I.A and PPA incorporating site details due to which delay occurred in loan disbursement.
- f) Stay granted by the Civil Court on laying the transmission lines.
- g) Delay in giving permission for synchronization of 25 MW Solar Project-II (at Balran) by PSPCL.

MAPPL due to the occurrence of the said force majeure events / defaults on the part of the respondent No. 1, which were beyond the control of MAPPL, was unable to achieve the commissioning of its plant by 19-1-2017:

a) Delay in granting Technical Feasibility / Ambiguity on the part of the respondent No. 1 regarding splitting of the plant-

The petitioner submitted that as per clause 3.2 of the RfP the minimum capacity allotment of the project was 50 MW and maximum capacity was 150 MW to single company. As per the RfP, bidders could setup a minimum plant capacity of 5 MW with a maximum of 10 locations. The Clause 3.6(D) of the RfP deals with connectivity with the Grid and Pooling Substations. Thus, a bidder of 50 MW capacity could bifurcate the same into 10 small projects of 5 MW capacity. Further, for the projects having capacity upto 25 MW, evacuation could be at voltage level of 33/66 kV and for the project having higher capacity, the evacuation could be at 132/220 kV. MAPPL accordingly, decided to bifurcate its project into two projects of 25 MW capacity each. MAPPL decided to have one plant at village Bareta (25 MW Project Part I) and another at Village Daska (25 MW Project Part II) and accordingly, MAPPL approached the PSPCL for seeking technical feasibility for its two plants. MAPPL sought Technical feasibility clearance for evacuation from 66/11 kV Sub Station Datewas, Mansa District and 66/11 kV Sub Station Sekhuwas, Sangrur District. However, CE/Planning was not clear whether the allotted capacity could be split further and so CE/Planning sent a letter dated 4-2-2016 to CE/PP&R, PSPCL, Patiala and sought clarification in this regard. Copy of this letter was also sent to MAPPL. It was mentioned in this letter that a clarification may be issued to the effect whether the firm is allowed to split the capacity of one no. 50 MW plant into 2 plants of 25 MW each at different locations. It was further mentioned that as per CC No. 23/2015 if the capacity of the plant is 50 MW, then the grid connectivity would be through at 132/220 kV transmission line and load flow studies shall be carried out by PSTCL

and in case the capacity of the plant is upto 25 MW then the connectivity shall be through 66 kV transmission line and the studies would be carried out by the PSPCL. It was further submitted though the PPA was executed on 20-1-2016 but MAPPL had already been given a Letter of Allotment (LoA) on 19-10-2015. After receiving the LoA, MAPPL on 16-11-2015 requested the Chief Engineer/ Planning for grant of technical feasibility specifically mentioning about 25 MW capacity solar projects.

PSPCL in response to the said letter sent a letter dated 1-12-2015 and asked MAPPL to submit certain documents. MAPPL submitted the requisite details and documents vide letter dated 5-1-2016. In letter dated 4-2-2016 sent by the PSPCL, there is a mention of letter dated 5-1-2016 sent by MAPPL. When no reply was forthcoming from PSPCL, the petitioner on 02.03.2016 wrote to the Director, PEDDA requesting PEDDA's intervention with reference to letter dated 4-2-2016 and stated that petitioner had already lost one month as the PSPCL had put the evacuation clearance of the plants of MAPPL on hold. On 08.03.2014, CE/Planning, PSPCL informed MAPPL that it has no objection to the splitting of the project having capacity of the 50 MW project in two parts consisting of 25 MW each. Referring to the letter dated 04.02.2016, CE/Planning stated that clarification from CE/PP&R had been received in this regard on 10.02.2016. The letter also mentioned that there was some confusion regarding evacuation of power and clarified that PSPCL had asked only for evacuation of power at 66kV bus 220kV/132G/Sp. PSPCL explained that our representative had conveyed that load was not available at Daska and the site might be shifted to Sekhuwas. In the end CE/Planning stated that the policy for feasibility clearance for the project still had to be finalized. MAPPL contended that if the CE/Planning had been apprised as early as 10.02.2016, PSPCL could

have informed MAPPL sooner and PSPCL's in finalizing the policy that led to delay.

MAPPL responded on 14-3-2016 to the Chief Engineer/ Planning, PSPCL, Patiala specifically mentioning a meeting was held on 4-3-2016 in the office of CE/Planning and MAPPL has specifically stated therein that it would like to evacuate each of the proposed 25 MW projects on 66 kV bus of 66/11 kV instead of 66 kV bus of 220 kV substation giving detailed reasons. MAPPL, stated its intention to evacuate the power to 66 kV Bus of 66/11 kV Datewas and at 66/11 kV Daska as well as 66/11 kV Sekhuwas sub stations. A meeting was held in the office of Chief Engineer, Planning, PSPCL Patiala on 30-3-2016 and evacuation on 66 kV bus of a 66/11 kV substation was allowed. Various options on evacuating 25 MW project in Bareta area either in the Datewas or Bareta Substation were also discussed. On the basis of those discussions, MAPPL on 02.04.2016 requested the Chief Engineer/ Planning to allow evacuation on 66 kV bus of 66/11 kV Bareta Sub Station. PSPCL, on 04.04.2016 gave the technical feasibility clearance for 1x25 MW Solar PV based plant located in village Bareta District Mansa with 66 kV Grid Sub Station Datewas. Thus the 25 MW Project (I) at Bareta was given technical feasibility clearance by PSPCL after 75 days by which time MAPPL could not purchase the land and this delayed the project without any fault on the part of MAPPL.

The feasibility clearance for the second 25 MW Project which was located at Daska, was sought for the Sub Station Daska. PSPCL gave the said clearance also vide its letter dated 4-4-2016. However, due to delay in giving feasibility clearance, MAPPL could not purchase/ take the land on lease. Therefore, MAPPL decided to shift the site from village Daska to village Balran, District Sangrur. MAPPL, then gave a request

letter dated 18-04-2016 requested the CE/Planning PSPCL for permission to evacuate at 66/11 kV Balran GSS instead of 66/11 kV Daska GSS. This letter was however received in the CE's office only on 23.05.2016. The PSPCL gave feasibility clearance for the plant located in village Balran with 66 kV Grid Substation Balran on 03.06.2016. Due to the initial delay of 75 days in giving feasibility clearance, the project suffered a lot and the land owners refused to give their lands to MAPPL and MAPPL was forced to shift the site of the plant and this delay was solely due to the fault of the PSPCL.

b) Delay due to strike of tehsil staff-

As per the LoA dated 19-10-2015 the land documents were to be submitted within 150 days from the date of signing of PPA. The relevant clause (h) of the LoA reads as follows-

"...h. Land Documents; - Project Developer is required to submit within 150 days from the date of signing of Power Purchase Agreement:-

- Record of Revenue Rights/ certified copy of title deeds showing that ownership rights or lease hold rights for at least 30 years in respect of project land in the name of the Project Company. The title deeds must be only registered as per the provisions of Registration Act.*
- Affidavit from the Authorized Signatory of the Solar Power Developer listing the details of the land and certifying total land required for the project under clear possession of the Project Company.*
- A Certified English translation copy of title deeds from an approved translator, in case above title deeds/ documents are in language other than English/ Punjabi Language.*

It is responsibility of the bidder company to arrange land and submit land documents i.e. Regd. Land sale deed papers/ regd. Lease deed papers of clear title land which can be used for Solar Power Plants without any encumbrance and so that it is eligible for

grant of CLU or to arrange the new land for setting up of the allocated plant capacity.”

Due to the delay of 75 days in giving feasibility clearance, MAPPL could not purchase or take the land on lease during this period for either of the projects. After 4-4-2016, once the feasibility clearance was granted, the petitioner started the process of purchase/leasing the land. However, for second project 25 MW Project (II) which was to be in the village Daskaa the land owners refused to give land to MAPPL due to the delay that had occurred and ultimately MAPPL was forced to arrange other land in village Balran/ Bhakran kalan. MAPPL sent a letter dated 10-5-2016 to the Director, PEDDA regarding Financial Closure, in which MAPPL has specifically mentioned that the land finalization got delayed by two months due to the controversy raised by PSPCL regarding splitting the project and connectivity at 66/11 kV Sub Station. It was also mentioned that any delay in confirmation will push been lease agreements by three months as the owners will plough the land for cultivation. Vide letter dated 23-5-2016, MAPPL submitted lease documents (ATL) for 73 Acres land situated at village Bhakora Kalan, District Sangrur, to the PSPCL.

PEDDA wrote to MAPPL on 03.06.2016 reminding them of the timelines to be achieved. The petitioner responded on 09.06.2016, reiterating that the delay was on account of the PSPCL's delay in giving evacuation approval. Land papers for the Bareta Project had already been submitted. As per LoA the documents regarding Financial Closure and land documents were required to be submitted within 150 days and it could be extended by 30 days on payment of Rs. 5000/- per day. MAPPL on 13.06.2016 sought extension of time from PEDDA for one month for submitting remaining documents and enclosed a DD for Rs.1,50,000. PEDDA responded on 23.06.2016 asking MAPPL to submit

documents by 10-7-2016. MAPPL on 05.07.2016 informed Director PEDDA that due to the strike of the revenue clerical staff and revenue patwaris a Force Majeure event has occurred and it is hampering land acquisition activities. As per clause 10.2 of the I.A. strike is a Non-Political Force Majeure event. Due to strike MAPPL could not get the lease deeds registered and it caused delay of the project for which MAPPL is not liable. The strike of revenue staff continued upto 4-8-2016. PEDDA wrote on 07.11.2016 to the Tehsildar Lehra, District Sangrur (Pb.) in this regard and the Tehsildar on 17.11.2016 confirmed that there was strike from 23 June, 2016 to 4th August 2016 and further that he was approached by the company officials for registries during the period but no work could be completed.

c) Delay in loan disbursement due to non assigning of PPA with project lenders-

MAPPL submitted that it sought financial assistance from Asian Development Bank and the Rural Electrification Corporation and as per the terms of the loan, the PPA was required to be assigned in favour of the Project Lenders and so MAPPL sent a letter dated 28-3-2016 in this regard to the Chief Engineer asking for assigning of the rights accordingly. PSPCL on 27.04.2016 asked for certain documents including NOC from the PEDDA in this regard. MAPPL requested the Joint Director (Projects), PEDDA on 04.08.2016 for issuance of a No Objection Certificate for assignment of PPA with the project lenders. PEDDA, however, gave the NOC on 07.09.2016. However, despite receiving the NOC from PEDDA, PSPCL failed to assign the PPA in favour of the lenders. MAPPL again sent a letter dated 20-1-2017 and in response to the same PSPCL on 6-2-2017 asked for written confirmation from the lenders that they actually need assignment of rights of the company. MAPPL immediately sent the letters of the lenders to PSPCL. Due to this

delay in assignment of the PPA, the lenders refused disbursement and it was only with great efforts of MAPPL that the lenders released part payment on different dates i.e. 9-12-16 and 20-12-2016 for Project Part-I and on 16-2-2017 for Project Part-II. The delay in loan disbursement was solely on the PSPCL's non assignments of PPA.

d) Delay in amendment in I.A and PPA incorporating site details due to which delay occurred in loan disbursement-

MAPPL on 7-9-2016 wrote to the Joint Director, PEDDA requesting signing of the amended IA as the details regarding the actual sites of the projects was to be mentioned in the I.A. Without the amended I.A. and PPA the site on which the project was to be put was not clear and in the absence of same the financial institutions would not have released the funds. MAPPL again wrote on 24-10-2016 and then again on 7-11-2016 to the Joint Director, PEDDA and requested for giving a convenient time and date for signing the amended I.A. Thereafter, PEDDA called MAPPL and the amended I.A. was executed on 23-11-2016. So PEDDA took 78 days in executing the amended I.A.

MAPPL immediately thereafter, on 24-11-2016, requested PSPCL to make necessary amendment in PPA also. The amended PPA was signed by the PSPCL on 16.12.2016. PSPCL took 23 days in executing the amended PPA. In this way the respondents took a total number of 101 days in executing the amended I.A. and PPA. The petitioner submitted that in the absence of the amended I.A. and PPA, the sites of the plants were not available to enable the Financial Institutions to extend the loan and disburse the funds. The petitioner used his own resources but as these were limited, the work could not be taken up with full vigour. The petitioner claimed that he is entitled to the benefit of

these 101 days and for this reason the SCOD has to be extended by 101 days.

e) Delay Due To Demonetization-

The demonetization of Rs. 500/- and Rs. 1000/- currency notes w.e.f. 8th November, 2016 by Government of India caused delay in completion of the project. Labour has to be paid in cash on daily basis by the contractor for project construction activities. Because of unavailability of cash, contractors were issuing force majeure notices to MAPPL, thereby seriously affecting the execution of works and thus delaying the project activities. The whole construction activities were stalled. Accordingly MAPPL wrote on 5-12-2016 to the PEDDA mentioning in the said letter that this is a force majeure situation which is causing a delay in completion of project. In this letter, it was also mentioned that Patwaris and Clerical Staff of various departments, Suvidha Center, Fard Kendra were on strike, which was delaying the project and details of the work delayed due to strikes were also provided with the said letter. MAPPL again wrote on 29-12-2016 to the Director, PEDDA specifically mentioning the details of work hampered due to the strike and demonetization and additionally mentioned that due to demonetization the construction activities were halted and further there was a delay in getting CLU of the land.

f) Delay due to stay granted by the Civil Court at Budhlada on laying down the transmission line for the Bareta Plant-

For the 25 MW Project (I) situated at Bareta the transmission line of 5.8 km was required to be laid down from the plant to PSPCL's Datwas 66/11 kV Grid Sub Station in Budhlada Tehsil in Mansa District. A Right of Way (RoW) issue arose as the land owners of the land in which the pillars were required to be erected, filed civil suits before the court of Ld. Civil Judge at Budhlada and in some cases the Ld. Court granted order

of status quo. The details of the cases (suits for permanent injunction filed by land owners in the civil court at Budhlada for Bareta transmission line) are mentioned as under:-

S. No	Case Name	Stay order	Stay Vacated/ suit withdrawn
		Date	Date
1	Reetu Bala Vs Mytrah Aadhya Power Pvt. Ltd	20-9-2016	2-12-2016
2	Veena Rani Vs Mytrah Aadhya Power Pvt. Ltd	--	5-12-2016
3	Basant SinghVs Mytrah Aadhya Power Pvt. Ltd	--	2-12-2016
4	Lachman Dass Vs Mytrah Aadhya Power Pvt. Ltd	06.10.2016	05.12.2016
5	Bhagwan Singh & Others Vs Mytrah Aadhya Power Pvt. Ltd	20.01.2017	07.03.2017
6	Piara Singh & Others Vs Mytrah Aadhya Power Pvt. Ltd	20.01.2017	22.03.2017 Compromise was done with the plaintiff though actually suit was withdrawn on
7	Balwinder Singh & Others Vs Mytrah Aadhya Power Pvt. Ltd.	--	16-2-2017

Thus from 6-10-2016 to 5-12-2016 for 60 days and thereafter from 20-1-2017 to 22-3-2017 for 42 days, no work on erection of the poles in the lands concerned took place. Seven suits were filed against MAPPL and in three cases stay was granted. MAPPL reached a compromise with the land owners and paid them substantial amounts before the land owners agreed to withdrawal the suits. The work resumed on the transmission line and it was completed on 28-3-2017. Due to the stay granted by the civil court on transmission line MAPPL could not complete the work of plant because there was a risk that the petitioner completed the plant and later on was not able complete the transmission line; and the petitioner would be required to shift the plant and then the whole investment in the plant would have wasted.

g) Delay in giving permission for synchronization of 25 MW Solar Project -II (at Balran) by PSPCL-

MAPPL submitted that despite these adverse conditions, faults of respondents, force majeure events etc. complete installation of 5.2 MW capacity out of total 25 MW capacity at 25 MW Solar Power Plant (I) at Bareta site was done. MAPPL requested PSPCL for seeking permission for synchronization because as per the terms of I.A. and PPA, a minimum of 5 MW capacity could be synchronized with the Grid. PSPCL vide its letter dated 29-3-2017 gave permission of synchronization of the 25 MW Solar Power Plant (I) at Bareta site and accordingly 5.2 MW of the 25 MW plant at Bareta was synchronized on 30-3-2017. A joint inspection team of PEDA and PSPCL inspected the 25 MW Solar Power Plant at Bareta site on 8-4-2017. The report stated that 5.2 MW has been synchronized on 30-3-2017 and the remaining work was also near to completion and the modules of more than 26.10 MW capacity were lying at the spot as on 8-4-2017. MAPPL also completed 5 MW of the 25 MW Solar Project (II) at Balran, Bakhora Kaplan, Lehragaga, Sangrur and on 28-3-2017 wrote to the Executive Engineer, DS Division, PSPCL, Lehragaga and informed him that it was planned to synchronise the plant on 30-3-2017 and sought the permission of the respondent No. 1/ PSPCL. The joint inspection team of PSPCL and PEDA inspected the 25 MW Solar Project (II) at Balran, Bakhora Kaplan on 7-4-2017 and gave a detailed inspection report. the relevant part of the report is reproduced here under:-

“....The following observation were made.

1.Main control room-Ready.

2.Switch Yard at site & Bay at grid-Completed.

3.Inverter control room station -9 out of 10 completed.

4.Inverters- 9 out of 10 installed.

5. Transformers 11 kv-7 out of 10 installed (two are not at site).
6. Ramming of vertical column post- 20 MW capacity completed.
7. MMS structure-8.5 MW capacity completed.
8. Solar Module- 4.1 MW capacity erected.
9. Approx. 1.0 MW capacity laid on ground in unbundled state.
10. Approx. 17.0 MW capacity module at site in bundled state.
11. DC & AC cabling -60-70% completed.
12. Communication tower erected & SCADA OFC cabling in progress.
13. WMS not installed.
14. CEIG clearance taken.
15. MMTS done.
16. Protection clearance taken.
17. Plant is not synchronized yet. ...”.

PSPCL instead of granting permission for synchronization to MAPPL, sent a letter dated 10-4-2017 from the office of Deputy Chief Engineer, IPC, PSPCL, Patiala and mentioned there in that the PSPCL has earlier written to the PEDDA to cancel the 25 MW project of MAPPL at Balran and MAPPL was asked to again get feasibility clearance from the office of Chief Engineer Planning and supply the same to the Deputy Chief Engineer, IPC. Other queries regarding capacity of solar project commissioned and ready for synchronization etc. were also made. MAPPL after receiving the above said letter dated 10-4-2017, sent a detailed reply vide email dated 10-4-2017 and again on 12-4-2017. On 24-4-2017, PSPCL gave permission for synchronisation and the plant was synchronized on 28-4-2017. MAPPL submitted that as the PSPCL was not giving permission for synchronisation though MAPPL had bought and brought the panels etc. for whole capacity of 25 MW capacity therefore MAPPL could not put the solar panels on the structures.

MAPPL completed the plants and full capacity of both plants was commissioned on 19-6-2017 and was informed accordingly the same day. PEDDA thereafter checked both plants of MAPPL and gave commissioning certificate dated 18-10-2017 clearly mentioning therein that MAPPL has commissioned the full capacity of 50 MW on 19-6-2017. The joint Inspection Report of both the plants clearly showed that the maximum work of the plant was later completed and the modules of full capacity were already there on the site. The modules are a major part of the cost of a plant and MAPPL has purchased all the modules before the 31-3-2017 and therefore MAPPL did not get any price benefit or purchase benefit due to late commissioning of the plants.

xiv) DGM, PEDDA on 9-1-2017, wrote to the petitioner that the project had to be commissioned by 12-1-2017 and thereafter the extension can be granted on payment of fees of Rs. 20000/- per MW per day upto 30 days and thereafter for another period of a maximum of 60 days on payment of a fee of Rs. 40,000/- / MW/ Day. On 11-1-2017 DGM, PEDDA wrote again stating that the petitioner has to seek extension, that the extension fees had to be deposited immediately otherwise the PEDDA would start the process for the cancellation of the project with forfeiture of BG. MAPPL responded on 19-1-2017, stating that the request for extension had already been made on 06.12.2016 and 29.12.2016 and the same be considered and acknowledged.

In reply to the letter dated 29.12.2016, PEDDA on 13.02.2017 issued a notice for termination of LoA/ I.A. and PPA for 50 MW Solar Power Plant holding that the strikes by Revenue Department ministerial staff has not caused any delay in completion of project as the land was already in possession of MAPPL and MAPPL has written letter to the PEDDA and submitted un-registered lease deeds earlier and said that no notice for force majeure was given to the PEDDA and held that

demonetization has not affected the construction work because two other companies have completed their projects before the 12-1-2017. The petitioner submitted that the PEDDA lost sight of the fact that until the lease deeds are registered, MAPPL could not start any work and further lenders would not release any funds for the projects, that notice for Force Majeure which is factually incorrect was given to PEDDA and that there was delay on the part of PSPCL in giving Technical clearance to his project and due to the same, the project got delayed and every subsequent activity also got delayed and when lease deeds etc. were to be registered the strikes began, and thereafter demonetization took place. Thus the comparison with the other projects was not appropriate. PEDDA also vide the same letter of 13.02.2017 declined the request of MAPPL for extension of time for completion of project by six months. The PEDDA further held that requests were made to deposit extension fee for seeking 30 days extension for SCOD by payment of Rs. 20,000/- per day per MW as per RfP and the amount comes to Rs. 3 Crore. The PEDDA also mentioned in this letter that it has sought partial encashment of PBG from the banker for recovery of the above said fee amounting to Rs. 3 Crore. Accordingly MAPPL in apprehension met PEDDA on 20-2-2017, and in order to avoid the invocation of its Bank Guarantee, though PEDDA has no right to invoke the Bank Guarantee since the delay is solely attributable to the Force Majeure events, Petitioner handed over a Bank Draft of Rs. 3 Crore dated 17-2-2017 to PEDDA with a request to recall the letter vide which PBG was partially invoked. MAPPL gave this draft of Rs. 3 Crore without admitting its liability and under coercion. MAPPL also made an oral request to the officials of the PEDDA to keep this Bank Draft as Security / deposit in lieu of invocation of Bank Guarantee because invocation of the Bank Guarantee in the currently depressed financial market might have adversely affected financial

credibility of the petitioner. PEDDA deposited the above said bank draft in its bank account and encashed it on 23-2-2017 wrote to the Bankers of MAPPL and withdrew its letter dated 13-2-2017 vide which the PEDDA has sought the encashment of the PBG.

Thereafter PEDDA again on 27-2-2017 wrote to the petitioner stating that the earlier extension was granted upto 11-2-2017 and for further extension petitioner is liable to pay Rs. 40,000/-/ per day/ per MW. In case of the petitioner's failure to pay the extension fees as mentioned, the same would be recovered by encashment of Performance Bank Guarantee. The petitioner submitted that PEDDA abused its dominant position and acted in haste by issuing the letter dated 13-2-2017 and 27-2-17 and by writing to the bank for partially invoking the PBG given by petitioner while being fully aware of the reasons which attributed to the occurrence of the Force Majeure events. MAPPL has requested for extension of time vide its letters dated 6-12-2016 and 29-12-2016 on the basis of force majeure events. PEDDA was required to first address the same and in case it was not convinced by the submissions of MAPPL then it could have asked MAPPL to make payment of extension fees. But the respondent No. 2 first partially invoked the PBG and then vide letter dated 13-2-2017 rejected the prayer of MAPPL for extension of time on the basis of force majeure events and informed MAPPL of the partial invocation of the PBG of the petitioner. The petitioner submitted that the conduct of PEDDA was totally wrong and illegal and not sustainable in the eyes of law. PEDDA cannot be permitted to benefit, out of the events that occurred under the Force Majeure situation which were beyond the control of MAPPL, solely with an intention to invoke the Performance Bank Guarantees of MAPPL.

The petitioner prayed that the denial of the extension of scheduled commissioning date the partial invocation of PBG demand to pay extension fees / penalty at the rate of Rs. 40,000/- per day / per MW was wrong and arbitrary, and requested to quash/ set aside the letters dated 13-2-2017 and 27-2-2017 and further restrain PEDDA from taking any coercive measures, including but not limited to invocation of Performance Bank Guarantee as furnished by MAPPL. PEDDA wrongly and illegally encashed the bank draft given by MAPPL and is liable to refund the said amount with interest. It was also submitted that the PPA dated 20-1-2016 is for a period of 25 years meaning thereby that the power plant of MAPPL is committed to supply 50 MW of power to the Respondent No. 1 for the entire life of the said plant. As such, special equities have accrued in favour of MAPPL, and the Respondent No. 2 ought to be restrained from invoking any Bank Guarantees, since otherwise the same will result in causing severe prejudice and cash flow issues to MAPPL resulting in financial inability to supply the said power for the ultimate benefit of the end consumers. It was further submitted that no loss is going to be caused to the respondents because the respondent No. 1 would get the electricity for complete 25 years at the rates which have been already approved.

xv) The petitioner further submitted that-

a) 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 LD/Penalty amount is only an upper limit to the said actual damages. Hence, without adducing evidence and demonstrating the actual damages suffered, a party cannot unilaterally proceed to

invoke the LD/Penalty amount by way of invocation of the Performance Bank Guarantees.

b) MAPPL and PEDDA are strictly governed by the terms of the IA/PPA, and a party (Respondent) cannot act in a manner de-hors the same. There has been no explanation by the Respondent as to why it has denied the extension of COD, which extension has been prayed for by MAPPL in view of the occurrence of Force Majeure events, which events were beyond the control of MAPPL. That 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 it committed breach or the other party committed breach. That question can be decided by only an adjudicatory legal forum i.e. by PSERC.

c) The petitioner stated that in view of the events as detailed by him the Respondents are acting contrary to the terms of the PPA dated 20-1-2016 and IA dated 4.12.2015. The action of PEDDA is also contrary to its statutory obligations and terms of its license. MAPPL claimed interim relief, for restraining the Respondent No. 2/PEDDA from invoking the Performance Bank Guarantee(s) given by petitioner to PEDDA respondent No. 1 and also that the Respondents shall not take any coercive action whatsoever till the final adjudication of the present petition.

The plants have been commissioned on 19-6-2017. As per the IA and PPA, the petitioner was required to commission the same upto 19-1-2017. So there is a delay of 151 days in commissioning the projects. It was submitted that the tariff as per the PPA approved by PSERC vide its order dated 10-6-2016 was applicable upto 31-3-2017. For the purpose of tariff there is a delay of 80 days. The delay of 151 days in

commissioning of the project occurred only due to force majeure events and faults of the respondents and for the same petitioner cannot be penalized. The minimum delay caused by the respondents and force majeure events can be shown as follows which does not include the delay caused due non-assigning the PPAs with the Project Lenders and also the delay due to the non granting of the permission for synchronization.

Details of Delay for Project-I(Bareta Site)

Sr. No.	Activity	Details	Date	Delay	Total Delay
1.	Delay in granting Technical Feasibility / Ambiguity on the part of the respondent No. 1 regarding splitting of plant.	A. Applied for Grid Feasibility B. Date of PPA C. Date of Grant of feasibility Clearance.	16-11-2015 20-1-2016 4-4-2016	(C-B) 75	
2.	Delay Due to strike of Tehsil Staff.	--	--	--	
3.	Delay in amendment in I.A.	A. Applied to PEDDA for amendment in I.A. B. Amendment in I.A.	7-9-2016 23-11-2016	(B-A) 78	(75+78) 153
4.	Delay in amendment in PPA.	A. Applied to PSPCL for amendment in PPA B. Amendment in PPA	24-11-2016 16-12-2016	(B-A) 21	(153+21) 174
5.	Stay granted by the Civil Court on laying the transmission lines	A. Stay granted in the case filed by Reetu Bala B. Stay in suit of Lachman Dass. C. Stay granted in the case filed by Piara Singh and others.	A. (20-9-16 to 2-12-16) 76 Days. B.(6-10-16 to 5-12-16) 3 days C. (20-1-2017 to 22-3-2017)	(A+B+C) 143	(As there is already delay to amend PPA

			62 Days		and IA upto 16- 12-16. (174+ 62) 236
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Details of Delay for Project-(II) (Balran Site)

Sr. No.	Activity	Details	Date	Delay	Total Delay
1.	Delay in granting Technical Feasibility / Ambiguity on the part of the respondent No. 1 regarding splitting of plant.	A. Applied for Grid Feasibility B. Date of PPA C. Date of Grant of feasibility Clearance.	16-11-2015 20-1-2016 4-4-2016	(C-B) 75	
2.	Delay Due to strike of Tehsil Staff.	Letter dated 17-11-2016 issued by Tehsildar confirming strike .	23-6-2016 to 4-8-2016	43	(75+4 3) 118
3.	Delay in amendment in I.A.	A. Applied to PEDDA for amendment in I.A. B. Amendment in I.A.	7-9-2016 23-11-2016	(B-A) 78	(118+ 78) 196
4.	Delay in amendment in PPA.	A. Applied to PSPCL for amendment in PPA B. Amendment in PPA	24-11-2016 16-12-2016	(B-A) 21	(196+ 21) 217
5.	Stay granted by the Civil Court on laying the transmission lines	---	----	---	----
6.	Delay due to not granting permission for synchronization.	A. Date of Application seeking permission for synchronization. B. Date of giving permission C. Date of synchronization	28-3-2017 24-4-2017 28-4-2017	(C-A) 30	(217+ 30) 247

xvi) In view of the political and other than political force majeure events and events which were due to default on the part of the respondents and which were beyond the control of the petitioner, it was submitted that the project could not be made operational by 19-1-2017 and it required extension of time upto 19-6-2017. For such situations in Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012, itself powers have been given to the Commission to pass necessary orders and relax any of the provisions of the above said regulation vide clause 85 of the above said regulations. Clause 85 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012, is reproduced here under:

“....85. Power to Relax:-

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person....”.

The petitioner quoted the following regulations in order to seek relaxation in the terms meant in the PPA-

69. Saving of inherent power of the Commission:-

1. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

2. Nothing in these Regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for

reasons to be recorded in writing, deems it necessary or expedient.

3. Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters and exercise powers and functions in a manner it thinks fit.

71. Power to remove difficulties:-

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, do anything not being inconsistent with the provisions of the Act or rules framed thereunder which appears to it to be necessary or expedient for the purpose of removing the difficulty.

72. Power to dispense with the requirement of the Regulations:-

The Commission shall have the power, for reasons to be recorded in writing and with notice to the affected parties, to dispense with the requirements of any of the Regulations in a specific case or cases subject to such terms and conditions as may be directed by the Commission.

73. Extension or abridgment of time allowed:-

Subject to the provisions of the Act, the time allowed by these Regulations or by order of the Commission for doing any act may be extended or abridged by order of the Commission.

The petitioner prayed for setting aside or quashing the letters dated 13-2-2017 and 27-2-2017 of PEDDA and hold and declare that the respondents are not entitled to get any extension fees/ penalty etc. from MAPPL on account of extension of commissioning period of the project which is due to Force Majeure events and events which are beyond the control of MAPPL and faults of the respondents and declare that the Commercial Operation Date of the project of MAPPL stands extended till 19-6-2017 in accordance with Article 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of Force Majeure events and events which are beyond the control of MAPPL and faults of the

respondents. Further, the petitioner prayed that he was entitled to tariff of Rs. 5.97/- kWh (levellised tariff) in terms of the PPA dated 20-1-2016 during the extended COD period and that PEDDA be directed not to invoke the Performance Bank Guarantee, and to not take any coercive actions whatsoever against MAPPL; to refund any amount received on account of partial invoking of the Performance Bank Guarantee ; to refund the amount of Rs. 3 Crore deposited by MAPPL by way of bank draft or any amount given by MAPPL to save the PBG from invocation, with interest.

PUNJAB STATE POWER CORPORATION LIMITED'S Submissions

7. The submissions made by PSPCL vide Memo No. 5573 dated 18.04.2017 in their reply to petition and vide Memo No. 6609 dated 19.03.2017 in their reply to the amended petition are summarized as under:

i) After the signing of PPA on 20.01.2016 between MAPPL and PSPCL, the Planning office, which is the Nodal Office for grant of Technical Feasibility clearance, requested CE/TS vide letter dated 27.01.2016 to send the detailed report regarding connectivity for both the projects of MAPPL of 25 MW capacity each to be established at vill. Bareta and vill. Daska as requested by the petitioner firm. The office of CE/TS vide letter dated 02.02.2016 provided technical detailed report for the connectivity of both the above said projects of petitioner firm. The office of CE/Planning requested the office of CE/PP&R vide letter dated 04.02.2016 to provide clarification regarding the splitting of the total project capacity of 50 MW into two sub projects of 25 MW each. A copy of the said letter was also sent to the petitioner firm for the information. Thus, there was no delay on the part of PSPCL rather MAPPL was being lackadaisical in fulfilling its contractual obligations and only trying to shift

the blame on PSPCL. The office of SE/IPC under the office of CE/PP&R vide letter dated 10.02.2016 clarified that there is no objection to the splitting of full project capacity of 50 MW into sub projects of 25 MW each. Chief Engineer/Planning informed MAPPL on 19.02.2016 that the connectivity can be given either at 220 KV grid sub station, Sunam or at 220 KV grid sub station, Chhajli. All sanctions / permission was granted without delay as and when requested by the petitioner. However, on 08.03.2016, a letter addressed to CE/Planning dated 03.03.2016 was received from MAPPL firm wherein MAPPL mentioned that PSPCL has asked them through letter dated 04.02.2016 to evacuate 50 MW projects at one single location either on 220 or 132 KV level. The petitioner also asked for a change in the location of the project from Daska to Sekhuwas. On the very same day i.e. 08.03.2016, office of CE/Planning clarified to the petitioner that the letter under reference dated 04.02.2016 was written to CE/PP&R to clarify the issue of splitting up of project into two 25MW each projects. Their office never asked for evacuation of power at 132KV/220 KV level and had asked only for the evacuation of power at 66KV bus of 220KV/ 132 KV grid sub station nearby.

ii) The planning office on 04.04.2016 intimated MAPPL that the feasibility clearance (hereinafter referred to as "FC") at Datewas has been given whereas the clearance for the Daska project has been withheld due to a change of site of the project. On 02.04.2016, the petitioner requested to change the evacuating grid from 66 KV Datewas to 66 KV Bareta for using the soon to be dismantled Bareta-Budhlada transmission line. That faced with these frequent change of plans by MAPPL firm, the Planning office vide letter dated 05.04.2016 again informed that the feasibility clearance for the project location at vill. Bareta has already been granted for evacuation at 66 KV sub station Datewas. Grid feasibility for the project location at vill. Daskahas was

cleared for evacuation of power at 66 KV sub station Daska but withheld for want of freezing of project site by MAPPL and PSPCL requested MAPPL to confirm the location of the second project of 25 MW alongwith 66KV substation. In the meanwhile the land documents of 94 acres of the project land situated at vill. Bareta for evacuation at 66 KV substation Datewas were received from MAPPL. It was submitted by PSPCL that the requirement of land for a 25 MW project was fixed as 125/150 acres and the land documents so submitted were definitely much below the above said requirement.

iii) A letter dated 18.04.2016 from MAPPL was received on 24.05.2016 in the office of CE/Planning requesting that feasibility clearance be granted for 66 KV at Balran instead of 66 KV Daska for the second project. In pursuance thereto, MAPPL submitted land documents for 73 acres of land situated at vill. Bakhora Kalan vide letter dated 23.05.2016. It was submitted that though the project location for the second project was intimated but the amount of land which was required as per the IA/RFP was not adequate, rather the land was not even half of the specified project requirement of 125/150 acres. A change in location required a fresh feasibility clearance exercise to be undertaken which required time and resources. Thus, PSPCL submitted that petitioner was either incapable of meeting the project requirements or there was mismanagement at its end which was leading to non-finalization of the project location as well as very frequent changes to the finalization of the evacuation grid for both the locations. That seeing the continuous flip-flop of MAPPL, the Answering Respondent proposed for a FCC meeting of the concerned offices to be held on 30.05.2016. During the course of the meeting, it was noted that MAPPL had rejected the evacuation of solar power at 66 KV substation Daska because of its inability to finalize the land and had now requested for evacuation of solar power at 66 KV

substation Balran. After discussions and after registering its displeasure, it was agreed that a conditional FC could be granted to MAPPL for the new site provided that the land should be arranged by 19.06.2016 i.e. the last date as per the IA/RFP for procurement of the land. It was also decided that in the event the land could not be arranged within the specified time, the FC would be treated as cancelled for the 2nd site and PEDDA would be informed. In continuity of the same, Feasibility Clearance was issued for 66 KV Balran project vide letter dated 03.06.2016 subject to the submission of the land documents by 19.06.2016 as decided in the meeting dated 30.05.2016.

iv) PSPCL submitted that as proof of the inability and incapability of MAPPL to fulfill its contractual obligations, despite the grant of the last opportunity to submit land documents for Balran project, a letter dated 18.07.2016 was received on 22/26.07.2016 wherein MAPPL firm again requested to change the evacuation from 66 KV Balran to 66 KV Rama Mandi due to its inability to secure the ROW for Transmission line for the earlier site. MAPPL was consistently violating the timelines as specified in the IA/RFP. In pursuance thereto, PSPCL vide letters dated 27.07.2016 and 01.08.2016 intimated MAPPL and PEDDA respectively that no request for change of evacuation grid would be entertained now because of consistent failures on the part of MAPPL. It was submitted that MAPPL was granted last opportunity to submit the land documents by 19.06.2016 for which FC had been granted earlier but he had failed to avail of even the last opportunity. Therefore, it was recommended to PEDDA that the 25 MW capacity of the allocated quota of 50 MW capacity to be established at the second site should be cancelled. The petitioner requested that the feasibility clearance maybe re-issued at 66KV substation Balran on 30.07.2016 and also submitted land documents for 64.5 acres of land for project site at Balran vide letter dated 02.08.2016.

PSPCL averred said sequence of events, it was clearly proved that no force majeure event has taken place on account of any alleged delay on the part of the PSPCL and the situation of the petitioner is self afflicted on account of non-planning, bad management, incapability and various other latches committed by petitioner. The petitioner was not able to finalize the site for establishing 25 MW project-2 even till the month of July, when more than half the period of the implementation of the project had passed. MAPPL was continuously requesting change of location and evacuation grids for one or the other reason. It was submitted that the FC is granted for a particular project location after studying all the variables and the location can not be changed as per the petitioner's whims and fancies because the same would obviously require a fresh assessment based on a changed parameters. Even when the FC was granted, MAPPL was not able to arrange the specified land requirement of 125/150 acres for a 25 MW project-2 and had only managed to provide land documents for 73 acres at Balran project. PSPCL submitted that it had granted all the permissions / sanctions on time and there has been no delay on its part.

v) The letter dated 08.03.2016 was being misread by the petitioner to cover up the explicit delay on his part. In the letter dated 08.03.2016, the prime question was whether the evacuation should happen at 132/220 KV or 66 KV. PSPCL clarified that it had never sought evacuation of power at 132/220 KV and had only asked for evacuation at 66 KV level voltage. This letter was written in response to the letter dated 03.03.2016 received from the petitioner. Therefore, it is quite clear that MAPPL itself has been making requests from the Answering Respondents to either change the location of the project or to change the evacuation grid and had never had a fixed plan to implement the project. PSPCL stated that the petitioner himself admitted that vide letter dated 14.03.2016 and also

in the meeting held on 04.03.2016, he was constantly changing positions for evacuating the power at 66 KV. Therefore, the blame lies with MAPPL and not with the Answering Respondent. The Feasibility Clearance was granted on 04.04.2016. The delay was on account of delay in finalization of project location and evacuation grid by the petitioner who was constantly making requests for the other location and not on the account of any delay by PSPCL.

vi) The lease documents of 73 acres were much less than the specified 125/150 acres of land that is required for a sub-project capacity of 25 MW at Balran. The PPA was admittedly signed on 20.01.2016 and MAPPL had enough time to start with the process of seeking loans from the interested lenders. The first letter was written by the petitioner as late as 28.03.2016 which was received in the office of PSPCL on 04.04.2016. PSPCL promptly replied to the letter dated 28.03.2016 vide letter dated 27.04.2016 requesting MAPPL to submit No Objection Certificate (NOC) from PEDDA for assignment of PPA as per provisions of IA and a consent letter from the lender on affidavit accepting to be responsible for all obligations. MAPPL did not submit any documents with the answering respondent but a letter dated 20.01.2017 was received informing that the loan has been sanctioned and requesting therein that MAPPL requires consent of the answering respondent to assign the rights in favor of the lender. The letter dated 20.01.2017 was promptly replied to by the answering respondent vide letter dated 06.02.2017 requesting that a written confirmation from the lender REC and ADB may kindly be provided along with a written confirmation from MAPPL that it shall continue to be bound by the terms of the PPA and shall continue to discharge all its obligations under the PPA. MAPPL thereafter sent an affidavit vide letter dated 07.03.2017. The answering respondent processed the case of granting consent after the documents from

MAPPL were received on 07.03.2017. After the approval of competent authority, the consent letter was issued on 29.03.2017. PSPCL stated that there was inordinate delay on the end of the petitioner to provide the relevant documents. MAPPL has failed to meet the contractual obligations. Demonetization was announced by the Govt. of India w.e.f. 08.11.2016 but MAPPL was not able to meet the scheduled deadlines as per the PPA, which occurred even prior to the demonetization.

vii) MAPPL was not able to submit the land documents for 125/150 acres of land for a sub project of 25 MW capacity at Balran site, within 150 days of the execution of the PPA. No force majeure event has taken place rather, the delay has occurred only on account of non-finalization of project sites as well as non-finalization of evacuation grids by MAPPL in time. It was further submitted that MAPPL was also not able to procure the required quantum of land within the specified time of 150 days of the signing of the PPA. The tariff has been fixed assuming that the project would get commissioned on the expected date and the cost would even out over the total period of 25 years but if there was a delay as in the instant case PSPCL would have to purchase the expensive RECs to comply with its the RPO which in turn would cause huge burden on the consumers of PSPCL.

viii) The amount specified in the performance bank guarantee is calculated on the basis of perceived damages over a period of time and therefore, it is true reflection of the losses which PSPCL would suffer. Thus, there is no illegality in the invocation of the performance bank guarantee. As per the terms and conditions of the PPA, the Respondents are entitled to invoke the performance bank guarantee in case MAPPL fails to meet its contractual obligations. MAPPL is bound to pay damages to PSPCL in accordance with the terms and conditions of PPA. MAPPL is not entitled to any relief much less interim relief as he has failed to

meet its contractual obligations. The Answering Respondents are entitled to act as per the terms and conditions of the PPA to seek damages from MAPPL and for that purpose invocation of the performance bank guarantee is legal and valid.

ix) Similarly, the relief sought by MAPPL on account of delay because of the stay granted by Civil Court is also unsustainable because the same had occurred on account of MAPPL's own incompetency to settle the dues of land owners before laying the transmission lines through their land. It is further submitted that there was no delay on account of granting permission to MAPPL for synchronization for the second project at Balran as is being wrongly claimed by MAPPL because as per the PPA/IA the minimum installed capacity has to be 5 MW or above. However, when MAPPL applied vide letter dated 28.03.2017 received on dated 31.03.2017 seeking synchronization and a joint inspection team went to the second plant for inspection on 07.04.2017, it was found that the installed capacity was only 4.1 MW which is much below the minimum requirement of 5 MW. Hence, the part commissioning was not allowed in terms of the PPA/IA signed between the parties. Thereafter, the firm took 12 days from 07.04.2017 to enhance the installed capacity to 5 MW and reported/declared the same to the respondent vide letter dated 19.04.2017 that installed capacity at Solar plant at village Bakhora Kalan is 5 MW and seeking fresh permission for synchronization. In pursuance to the same, permission for synchronization of solar plant was granted on 24.04.2017. On 28.04.2017, the petitioner requested the office of Dy.CE/IPC to grant 10 more days to complete the connectivity of plant with SLDC. Accordingly on 28.04.2017 this was accepted and the plant was synchronized on 28.04.2017. Thus, according to PSPCL, it was evident that no ground was made out even as per Clause (v), (vi) and Clause (vii) on the basis of which MAPPL is seeking the instant relief

as MAPPL himself is liable on account of his own incompetence, incapability of other acts of omission and commission leading to failure in discharge of contractual obligations by MAPPL.

x) MAPPL has admitted that only 4.1 MW capacity was ready for generation as per point No. 8 of the reproduced inspection report. Therefore, the blame lies with MAPPL, who has failed to complete the minimum required generating capacity of 5 MW which is mandatory for part commissioning and synchronization. The actual reason for delay in synchronization was the non-installation of minimum required 5 MW capacity and not that MAPPL was asked to take fresh feasibility clearance. Though, the answering respondent does not deny that such a letter was sent because the permission granted earlier for second project at Balran was revoked as MAPPL was not able to finalize the second location or to submit the required land documents by 19.06.2016. However, it is pertinent to mention that the said letter was never acted upon and the answering respondent did not insist upon fresh feasibility clearance. As already stated herein above the real reason was non-commissioning of minimum required 5 MW generating capacity, which is required for part synchronization as specified under the PPA and IA.

PUNJAB ENERGY DEVELOPMENT AGENCY'S Submission

8. The submissions made by PEDDA vide letter No. 3049 dated 28.03.2018 in their reply to the petition are summarized as under:

i) The case made out by the petitioner was false and that the captioned petition so preferred by the petitioner was not maintainable due to the existence of an arbitration clause in the captioned document entered between the parties. MAPPL while misusing the process of law, in order to invoke Section 86(i)(f) of the Electricity Act-2003 has

purported that a dispute between MAPPL and Respondent no. 1 has arisen, however, Section 86(i)(f) of the Electricity Act provides for adjudication of dispute between distribution licensee and the generating company. In the instant case MAPPL is claiming relief against PSPCL. However, PSPCL is a nodal agency appointed by the State of Punjab and does not fall under the definition of distribution licensee. Section 86(i)(f) of the EA 2003 does not provide for adjudication of disputes between the Solar Developer and the State Govt. Hence, the present petition is not maintainable as MAPPL wrongly invoked the jurisdiction of this Commission.

ii) The Implementation Agreement entered into between the Answering Respondent and MAPPL is the main contractual document, which provides that MAPPL was to setup the project and to achieve full capacity COD by 12.01.2017, however, MAPPL failed to achieve COD qua the project in question as provided by the scheduled date. As per the facts of the case Respondent no. 1 floated a RfP inviting various solar power private developers for setting up of an aggregate of 500MW capacity of solar projects under Phase-3 in the state of Punjab. As per the terms and conditions of the RfP, the successful bidder was to furnish a performance bank guarantee of Rs. 10.00 Lacs per MW to the Applicant. Consequently, MAPPL came to be successful bidder for allocation of 50 MW solar project by the Respondent no.1. In line with the terms and conditions of the RfP, MAPPL deposited two un-conditional performance bank guarantee amounting to Rs. 5,00,00,000/- with the Respondent no. 1. As per the terms and conditions of the RfP/IA, the developer was under a bounden obligation to commission the plant on or before 12.01.2017. In case of delay beyond 12.01.2017, it was provided that an extension fee of Rs. 20,000/- per MW per day shall be charged upto delay of 30 days from the COD and for further delay of next 30 days,

an extension fee of Rs. 40,000/- per MW per day shall be charged from the Project Developer. The IA further provided that the Project Developer seek the extension at least 15 days in advance, and pay extension fee for the period of extension at least 7 days in advance. In case the solar developer fails to pay the extension fee to PEDDA, the same is recovered from the encashment of PBG at the time of grant of extension. If there are still any dues / fee left over even after encashment of PBG, PEDDA shall in the first go recover the same from the energy bill payable to the project developer by PSPCL under PPA. In the instant case, although MAPPL purportedly claimed that the delay in commissioning has occurred due to the occurrence of force majeure events, however, MAPPL failed to follow the mechanism as to the invocation of force majeure clause in the IA, by giving notice to the other party. Hence, MAPPL is not at all entitled for any relief as prayed for on this score also.

iii) Since it was permissible under the RfP to setup the project in the name of SPV company, consequently, as per the terms and conditions of the RfP, an Implementation Agreement dated 04.12.2015 was entered between MAPPL No. 2 i.e. SPV company of MAPPL No. 1 and the answering respondent, whereby, detailed terms and conditions as to the commissioning of the allocated capacity of 50MW were enunciated therein. The IA inter alia provides for the mechanism on the occurrence of force majeure event which stipulates that the effected party shall give written notice to the other parties describing the particulars of the Force Majeure event as soon as is 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. Subsequently, a Power Purchase Agreement dated 20.01.2016 was entered between MAPPL and Respondent no. 2 – PSPCL. The Power Purchase Agreement categorically provides under clause 19.4.0 that the

clause with respect to Force Majeure provided in the PPA will be operative after the project achieves COD, and for the force majeure events occurring during the commissioning period of the project the provisions of the IA will be applicable. Meaning thereby, in the instant case since the project was not commissioned and MAPPL has purported an occurrence of Force Majeure event, hence the clauses of the IA shall only be operative. MAPPL vide its communication dated 02.03.2016 informed that they had requested PSPCL for grant of Technical Feasibility Clearance for evacuation of power by splitting the project in two parts of 25 MW each and power evacuation at 66 KV level. However PSPCL vide their letter dated 04.02.2016 intimated that the power from the 50 MW project has to be evacuated at one single location either on 220 or 132 KV level. MAPPL sought intervention of PEDA for taking up the matter with PSPCL for allowing evacuation at 66 KV in accordance with the provision contained in the RFP document as the feasibility clearance is getting delayed from PSPCL due to this issue.

iv) Although there exists a provision in the RfP to split the allocated project subject to the prior approval of the answering respondent, however, in the instant case MAPPL on its own, without seeking any approval from the answering respondent, sought technical feasibility clearance from respondent no. 2 for setting up 1x25MW plant at Village Bareta, Distt. Mansa, which was granted to MAPPL by respondent no. 2 vide its communication dated 04.04.2016 inter alia subject to submission of land documents. MAPPL vide its communication dated 10.05.2016 intimated that the land finalization got delayed by two months due to the ambiguity raised by PSPCL on splitting of the project and connectivity at 66/11 kV Sub Station availability. It was also mentioned that any delay in confirmation will push lease agreements to three months as the owners will plough the land for cultivation. Similarly, MAPPL without seeking the

prior approval from respondent no. 1, on its own applied for technical feasibility clearance from respondent no. 2 for setting up the remaining 25MW project at Village Balran, Distt. Mansa, which was ultimately granted to MAPPL by Respondent No. 2 vide its communication dated 03.06.2016 inter alia subject to submission of land documents. Since the project developer was to inter alia submit the financial closure, technology selection certificate, order copy, agreement copy with technology provider, loan sanction letter and land documents by 10.06.2016, the answering respondent vide its communication dated 03.06.2016 made a request to MAPPL for inter alia submission of the ibid documents on or before 10.06.2016. In addition, in case MAPPL requires extension for submission of the documents, the same could be sought on making a payment of Rs. 5,000/- per day. MAPPL vide its communication dated 09.06.2016 submitted some of the document i.e. with respect to technology selection, order / agreement with the supplier, Certificate of successful operation of technology, financial closure, Technical Feasibility Clearance from PSPCL for both projects (2x25MW) and registered lease documents for one project of 25MW at Village Bareta , but failed to submit the complete land documents including that for the second 25 MW project. MAPPL also intimated that due to delay in grant of Technical Feasibility Clearance for one project (25MW) which was granted on 03.06.2016, land registered lease deeds could not be entered into for the said project at Village Balran.

v) As per the clauses of LOA and RfP, the project developer was also bound to submit documentary evidence for infusion of the balance 80% net worth at the time of financial closure in the shape of bank statement and copy of the allotment of shares filed with ROC. Since MAPPL did not comply with the aforesaid condition, the Answering Respondent vide its email dated 10.06.2016 inter alia requested MAPPL to submit documents

with respect to infusion of balance 80% net worth. Further the answering respondent on 15.06.2016 came to be in receipt of a communication dated 13.06.2016 from MAPPL, whereby MAPPL sought extension of one month for submitting the balance net worth infusion documents and land documents, for which MAPPL submitted a demand draft of Rs. 1.5 Lakh in favour of answering respondent on account of extension fee subject to final decision by PEDDA. On 23.06.2016, the answering respondent issued a communication to MAPPL stating that the documents submitted by MAPPL qua financial closure and land, vide communication dated 09.06.2016 are incomplete and not in accordance with RFP. Further, the answering respondent sought compliance from MAPPL in terms of complete land documents in the shape of records of Revenue rights/ certified copy of title deeds showing ownership rights or leasehold rights for at least 30 years qua the project in question. Also while granting 30 days extension as sought for by MAPPL, requested for submission of the ibid documents on or before 10.07.2016. MAPPL vide communication dated 05.07.2016 received in this office on 08.07.2016 requested further extension for submission of pending documents for financial closure upto 10.08.2016 citing delay in land acquisition due to PSPCL's confirmation on the power evacuation at 66KV and strikes by Revenue Clerical Staff/ Patwaris, hampering land lease deed registration. MAPPL also intimated that they had achieved considerable progress in achieving sanction for the entire loan and are in the process of signing final loan agreement. MAPPL further informed they have completed acquisition of around 200 acres of land and agreements for the remaining 40 to 50 acres of land were in place.

vi) Although MAPPL was required to submit the requisite documents by 10.07.2016, these were received in PEDDA's office on 12.07.2016 vide letter dated 11.07.2016. It is pertinent here to mention that MAPPL

submitted signed loan agreements dated 08.07.2016 with ADB and REC for fulfilling the requirement of submission of the documents, qua financial closure and registered land lease documents only for 1 project of 25 MW at Bareta and agreement to lease for the other project of 25 MW at Balran. Further, MAPPL submitted the net worth certificate and share holders list but failed to submit the land lease document for 25 MW project at Bakhora Kalan for power evacuation at 66 KV Sub Station Balran. MAPPL vide communication dated 02.08.2016 addressed to Respondent no. 1- PSPCL with copy to Answering Respondent submitted the agreement to lease documents for the balance land of 64.5 acre for village Bakhora Kalan and also intimated that earlier agreement to lease documents of 73 acre for the same project location were submitted on 23.05.2016. PEDDA submitted that the petitioner itself failed to arrange the complete land for the 25 MW project at Bakhora Kalan till 02.08.2016. Therefore, its contention vide its communication dated 05.07.2016 intimating that the strikes by the revenue staff has hampered the registration of land lease deeds with the period of intermittent strikes as intimated from 16.05.2016 to 20.05.2016 (4 days), and 14.06.2016 to 28.06.2016 (14 days) and 02.06.2016 to 05.07.2016 was frivolous and false and had no impact on project delay. The registration of the land lease deeds can only happen after 02.08.2016 once the complete land for the project has been arranged by MAPPL and as such the strike period had no impact/ delay on land registration. The delay in the project was thus fully attributable to MAPPL and due to its incapability in arranging the land for the project in a time bound manner which was its bounden obligation and responsibility as clearly stated in the RFP/IA.

vii) MAPPL vide its communication dated 04.08.2016 requested the Answering Respondent for issue of NOC for assignment of PPA in favour of the project lender enclosing a copy of the letter dated 27.04.2016 of

Respondent no.1- PSPCL as per which NOC from Answering Respondent was required. MAPPL stated that PSPCL consent for assignment of PPA was a pre-disbursal condition for release of the loan. PEDDA submitted that MAPPL took more than three and half months to submit the NOC request to the Answering Respondent after intimation from Respondent no.1- PSPCL. MAPPL submitted copies of the registered land lease deeds dated 10.08.2016 to 06.09.2016 of a total of 80.78 acres(approx) land at Bakhora Kalan on 07.09.2016. The complete registered land lease documents for the 25 MW solar power project at Bakhora Kalan were thus submitted with the delay of approximately 2 months from the extended date of 10.07.2016. The Answering Respondent vide letter dated 07.09.2016 issued the NOC for assignment of PPA to MAPPL with a copy to Respondent no.1-PSPCL only after receipt of complete registered land lease. MAPPL vide its letter dated 07.09.2016 requested the Answering Respondent to sign the amended IA by including the details of the actual project site locations in the IA. MAPPL vide its letter dated 24.10.2016 clarified to the Answering Respondent further to its earlier request that no change in land has been done and the complete agreement to lease the land were submitted before 10.07.2016. MAPPL again on 07.11.2016 requested to expedite the signing of amended IA. In order to verify the claim of MAPPL with regard to delay in land lease deeds registration due to intermittent strikes by revenue staff, a letter dated 07.11.2016 was sent to District Revenue Officer, Sangrur. Vide letter dated 17.11.2016 of Sub Registrar, Tehsil Lehra, District Sangrur received on dated 21.11.2016. it was intimated that the ministerial staff was on a strike which lasted from 23.06.2016 to 04.08.2016. The petitioner had already arranged 73 acres land and its agreements to lease at village Bakhora kalan and submitted the same to the Respondent no.1-PSPCL on 23.05.2016. This land could have been

got registered before 23.06.2016, the date on which the revenue staff strike started in Distt. Sangrur. The strike period accordingly did not affect the lease deeds registration of the said land and thus the delay in submitting registered land lease cannot be attributed to the strike of the Revenue Staff. The remaining 64.5 acres of land agreement to lease were submitted only on 02.08.2016 and the same were got registered between 10.08.2016 to 06.09.2016 and as such the delay in submitting these registered land lease deeds cannot be attributed to the Revenue strike as MAPPL submitted the land agreements to lease only on 02.08.2016, when the strike ended on 04.08.2016. The delay in arranging the balance 64.5 acres land is thus attributable to MAPPL and not due to the strike of the revenue staff. The amendment to the Implementation Agreement was signed by the Answering Respondent on 23.11.2016 thereby incorporating the project locations for 2x25 MW solar power project at Village Bareta Distt. Mansa and village Bakhora Kalan Distt. Sangrur. The IA amendment was signed after receiving the confirmation letter from Sub Registrar, Revenue, Distt. Sangrur verifying the existence of strike by the Revenue Staff in Distt. Sangrur.

viii) PEDDA issued a communication dated 23.11.2016 to PSPCL thereby intimating that the IA amendment has been signed by it and further requested PSPCL to sign the supplementary Power Purchase Agreement. PEDDA received a communication dated 05.12.2016 from MAPPL thereby giving intimation of Force Majeure Events. MAPPL while appreciating single window clearance/ one stop clearance mechanism in the State intimated that the Force Majeure Events which include intermittent revenue staff / Suvidha Centre strike in the State, delayed the lease registration, mortgage of leasehold rights, title search report of the land and mutation process post lease registration and in addition the demonetization of currency affected and delayed their project activities.

PSPCL issued a communication dated 06.12.2016 to MAPPL with a copy to the Answering Respondent thereby seeking the latest status of the project, feasibility clearance provisions compliance, transmission line status, status of bay at PSPCL substation and also sought adherence to the schedule date of the commissioning of the project that is 19.01.2017. PEDDA vide communication dated 21.12.2016 requested MAPPL to ensure the commissioning of the project before the scheduled date of commissioning and also sought a status report of the project before 26.12.2016. MAPPL vide communication dated 28.12.2016 intimated the status of the solar power plant and also informed that the LC for the modules and inverters had been opened and modules were likely to arrive in the last week of January 2017 for the 25 MW Baretta project. Advances for modules and inverters were paid and deliveries of equipment were expected in the early February, 2017 for the 25 MW Bakhora Kalan project. Financial closure for both the projects has been completed and first and second disbursement received.

ix) PEDDA received another communication dated 29.12.2016 from MAPPL thereby giving intimation of Force Majeure Events. MAPPL intimated that vide letter dated 05.12.2016 it had given intimation for occurrence of Force Majeure Events which include intermittent revenue staff / Suvidha Centre/ Patwaris strike in the State which delayed the lease registration, mortgage of leasehold rights, title search report of the land and mutation process post lease registration and demonetization of currency affected and delayed their various projects activities. It was further intimated that due to these Force Majeure Events completion of the project as per schedule has been delayed and MAPPL requested for the grant of extension in the scheduled COD of the project. MAPPL had inter-alia attached copies of news items press clippings of June and October 2016 regarding the strike.

x) Further, PEDDA sent an E-mail dated 09.01.2017 to all the project developers including MAPPL advised complete commissioning of the projects as per the schedule before the scheduled date of commissioning i.e 12.01.2017, 12 (twelve) months from the date of signing of PPA in all respects, failing which, extension can be given for 30 days in the first go on payment of a fee of Rs. 20,000/ MW/ Day and thereafter for another period of maximum 60 days on a payment of a fee of Rs. 40,000/MW/Day. Thereafter the developers were liable to forfeiture of 100% of the performance Guarantee. All SPDs were advised that advance(15 days)intimation to PEDDA was required if they needed extension in commissioning and the extension fee for the period for which extension was sought, which was to be paid at least 7 days in advance. In case the SPD failed to pay the applicable extension fees to PEDDA, the same shall be recovered by encashment of the performance BG at the time of grant of extension.

xi) PEDDA vide email dated 11.01.2017 informed MAPPL that since the scheduled date of commissioning of the project in question was 12.01.2017 and the project in question has not been commissioned accordingly, MAPPL was intimated about the clauses of the RfP/IA regarding seeking further extension in commissioning date by paying Extension fee. Since, no extension had been sought by MAPPL, PEDDA requested MAPPL to deposit the Extension fee as per the RfP.PEDDA mentioned that it had seen the letter addressed by PSPCL to MAPPL asking MAPPL to seek approval of CE/PP&R PSPCL Patiala to the synchronization scheme by submitting the requisite documents and to ensure connectivity of generation data of the project with SLDC within 2 weeks.

xii) PEDDA on 13.02.2017 addressed MAPPL in response to letter dated 29.12.2016 rejecting the plea of Force Majure with respect to the

25 MW Baretta Plant and rejected the request for seeking extension in SCOD. As regard the 25 MW Bakhora Kalan plant, the Force Majeure request was rejected on both the events of strike by revenue staff/ Patwaris and demonetization. MAPPL was informed that extension fee for 30 days extension was to be deposited and since the same had not been submitted till date and accordingly the partial encashment of Performance Bank Guarantee in accordance with terms and conditions of the IA had been sought on 13.02.2017 from MAPPL bankers to recover the requisite extension fee. MAPPL vide letter dated 20.02.2017 deposited the Bank Draft of Rs. 300 Lacs and sought withdrawal of the letter invoking the Performance Bank Guarantee, which was agreed to by the Answering Respondent and the PBG invocation letter was withdrawn. The Answering Respondent on 27.02.2017 sought further extension fee for the period from 12.02.2017 till actual date of commissioning by payment of extension fee @ 40,000/MW/day in accordance with RFP/IA conditions.

xiii) Meanwhile MAPPL filed a petition dated 27.02.2017 along with Interlocutory Application in the Hon'ble PSERC under Section 86(1) of the Electricity Act, 2003 in the present project case for which the Answering respondent was made a respondent and during the hearing dated 07.03.2017 a copy of the said petition was supplied by MAPPL to the Answering Respondent. The Hon'ble Commission vide its order dated 08.03.2017 restrained the Answering respondent as well as the Respondent no.1 PSPCL from encashment of the Performance Bank Guarantees, termination of LOA, IA as well as PPA. Further the Answering Respondent vide e-mail dated 03.04.2017 sought joint inspection of the projects in order to know the project status by a inspection committee comprising of Answering Respondent Distt. officers and Respondent no.1-PSPCL's officers.

xiv) PEDDA received a communication dated 29.03.2017 from the Respondent no.1 PSPCL on 17.04.2017 addressed to SE/DS Circle, PSPCL Bathinda with a copy to Answering Respondent thereby granting synchronizing permission for commissioning of the 25 MW solar plant at Baretta. PEDDA received a communication dated 05.04.2017 from Respondent no.1-PSPCL vide its letter dated 31.03.2017 intimating that the 25 MW solar project at Baretta has been synchronized on 30.03.2017 with 66 KV Sub Station Datewas. The District Manager PEDDA, Mansa, Punjab submitted a joint inspection report (PEDDA & PSPCL) dated 07.04.2017. With respect to 25MW, Bakhora Kalan, District Sangrur. The District Manager, PEDDA, Mansa had inter-alia submitted that, the Main control room-was ready, and the Switch yard at site & Bay at grid was completed, Inverter control room station-9 out of 10 were completed, Inverter-9 out of 10 were installed, Transformers 11 KV-7 out of 10 were installed (Two are not at site), Ramming of vertical column post-App.20 MW capacity was completed, MMS structure-App.8.5 MW capacity was completed, Solar Module, 4.1 MW capacity was erected, Approx. 1.0 MW capacity was laid on the ground in unbundled state, Approx. 17.0 MW capacity module was at site in bundled state, DC & AC cabling-60-70% was completed, the communication tower was erected & SCADA OFC cabling was in progress, WMS was not installed, CEIG clearance had been taken, MMTS was done, Protection clearance was taken, Plant was not synchronized yet. Copies of the actual site photographs were also submitted along with joint inspection report. Further the District Manager, PEDDA Mansa, submitted a joint inspection report dated 08.04.2017 regarding the 25 MW project at Baretta duly signed by the Answering Respondent's officers and Respondent no.1-PSPCL's officers, qua the project, on physical inspection thereof, vide Email dated 09.04.2017. With respect to 25MW, Baretta, District Mansa, the District

Manager, PEDA, Mansa had inter-alia submitted that, Main control room-Ready, Switch yard at site & Bay at Datewas grid-completed, Inverter control room station-8 out of 8 completed, Inverter-8 out of 8 installed, Transformers 11 KV-8 out of 8 installed, Ramming of vertical column post-App.19.5 MW capacity completed, MMS structure-App.10.5 MW capacity completed, Solar Module, 5.2MW capacity installed, App. 2.9 MW capacity laid on ground in unbundled, App. 18 MW capacity module at site in bundled state, AC cabling-100% completed, DC cabling-App.85% completed, SCADA panel in built with HT ICOG panel, Optical Fiber Cable laying is in process, WMS not installed, Plant was synchronized on 30.03.2017 with partial capacity of 5.2 MW. Copies of the actual site photographs were also submitted along with joint inspection report.

xv) PEDA mentioned correspondence between the petitioner and PSPCL regarding synchronization. MAPPL by e-mail dated 17.04.2017 of MAPPL addressed to respondent no. 1-PSPCL requested for permission of synchronization for the 25 MW solar plant at Balran. Respondent no. 1 PSPCL addressed to Dy.CE/DS Circle, PSPCL, Sangrur on 24.04.2017 thereby granting synchronization permission for the 25 MW solar plant at Bakhora Kalan Distt. Sangrur. PSPCL addressed Dy.CE/DS Circle, PSPCL, Sangrur on 03.05.2017 thereby intimating synchronization of the 25 MW solar plant at Bakhora Kalan Distt. Sangrur on 28.04.2017. It was however informed that only partial 7.6 MW capacity of the of the 25 MW capacity project was synchronized. Post partial capacity commissioning of the projects, the project inspection was carried out by the field Engineers of PEDA along with MAPPL Engineers at both the projects sites on 30.05.2017. As per the Joint Inspection Reports dated 30.05.2017, 16 MW modules capacity was installed at Bareta plant and 22 MW modules capacity was installed at Bakhora Kalan plant.

xvi) MAPPL vide its communication dated 19.06.2017 received PEDDA on 27.06.2017 intimated the full capacity installation and commissioning of the 2x25MW solar plants at village Bakhora Kalan and Bareta. In order to verify the full capacity installation of both these projects the field level engineers of the Answering Respondent inspected the projects and gave a report of the same. As per the report both the projects sites were completed and 25MW capacity was installed on 19.06.2017.

xvii) The Commission vide its order dated 25.07.2017 on the request of MAPPL allowed the filing of an amended petition by MAPPL and the case was adjourned to 10.08.2017. PEDDA came to be receipt in communication dated 25.09.2017 from PSPCL requesting joint inspection of MAPPL solar plants at Bareta and Bakhora Kalan. Joint Inspection of MAPPL project was carried out by a joint team of Answering Respondent and Respondent no.1-PSPCL, Engineers on 29.09.2017. The project capacity installed was found to be 25 MW at both the projects sites. MAPPL vide communication dated 06.10.2017 requested PEDDA to issue commissioning certificates for their solar power projects while submitting the Project documentation. PEDDA vide communication dated 18.10.2017 issued a commissioning certificate to MAPPL for both the projects with full capacity 50MW (2x25MW) completion date as 19.06.2017.

xviii) In the instant case that since the developer / MAPPL could not commission the project well within the stipulated date i.e. 12.01.2017 and fully commissioned the projects on 19.06.2017, hence, the Respondent no. 2, 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 extension fee payable by MAPPL in terms of the contractual documents. In fact MAPPL was under a bounden obligation to deposit the amount of Rs. 3.00 crores on account of the extension fee

levied upon MAPPL due to the delay caused in the commissioning of the project in question. MAPPL connected this itself while seeking withdrawal of the Bank Guarantees encashment letter to the bank for partial encashment of Rs. 3 Crores out of total PBG of Rs. 5 Crores and deposited a sum of Rs. 3.00 crores by demand draft as extension fee with the Answering Respondent. PEDA contended that at this stage MAPPL cannot be allowed to take a contrary stand to the earlier by filing the present Petition. Hence, the present Petition deserves to be dismissed at the very outset at this score alone. PEDA stated that it was well within its rights to partially encash the PBG on account extension fee because of failure of MAPPL and Commission the project in time. Since the MAPPL failed to submit the extension fee on account of delayed commissioning of the Project, PEDA had rightly encashed partially the PBG of MAPPL. PEDA termed the instant Petition of MAPPL an afterthought and stated that it deserved to be dismissed at the very outset. The purported occurrence of Force majeure events were belied from the fact that in the same phase of other solar power projects with total 250 MW capacity have been successfully commissioned within the scheduled time by similarly placed developers in the state of Punjab. Hence, no reliance should be placed upon the false and purported assertions made therein by MAPPL. PEDA quoted the Commission's Order in Petition No. 27 of 2017 in the matter of TSPL Versus PSPCL:-

“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 of 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."

Since MAPPL had failed to give notice to the Answering Respondent in line with the Force Majeure clauses of IA, hence in the light of the ibid orders passed by this Hon'ble Commission, no reliance should be placed upon the false and purported assertions made by MAPPL as to delay in commissioning of the project in question due to the purported occurrence of the force majeure events. Hence the petition needs to be dismissed at the very outset with exemplary costs at this score alone.

xix) PEDDA denied the existence of Force Majeure events and contended that in view of the deposit of the Rs. 3 crores as extension fee and the date of commission being 19.06.2016 the petitioner was not entitled to relief on account of the tariff. In fact PEDDA sought deposit of

balance amount of Rs 9.40 crores as extension fees for delay beyond 12.02.2017 up till 31.03.2017 calculated @ Rs 40,000/MW/day.

REJOINDER OF MAPPL TO PEDA's REPLY

9. The submissions made by petitioner vide letter dated 30.04.2018 in rejoinder to the reply filed by PEDA are summarized as under:

i) MAPPL denied that the present petition filed by MAPPL is not maintainable as because of the existence of an arbitration clause in the captioned document entered between the parties. Counsel stated that this issue already stands decided by the Hon'ble Supreme Court vide its judgment dated 13-3-2008 in Appeal (Civil) 1940 of 2008 in Gujarat Urja Vikas Nigam Ltd. V/s Essar Power Limited. The Commission has jurisdiction to decide the present petition as there is a dispute between the parties.. It is settled principle of law that any dispute between a generator and a distribution licensee has to be adjudicated under section 86(1)(f) of the Electricity Act, 2003 by the respective State Commission. The present dispute has arisen due to faults of Respondent Nos. 1 & 2 therefore, requires adjudication by this Hon'ble Commission. It was further submitted that 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 an adjudicatory forum that in this case the Commission. It was totally denied that PEDA was not amenable to jurisdiction of this Hon'ble Commission as dispute is under section 86(1)(f) of the Act. It is submitted here respectfully that the respondent No. 2/ PEDA is a nodal agency but it is calling the bids on the behest of the Distribution Licensee only as the PPA is executed between the

generator and the Distribution Licensee. Therefore, present petition is maintainable before this Hon'ble Commission.

ii) The IA entered into between the PEDDA and MAPPL is the main contractual document. It is submitted that PPA was executed on 20-1-2016 and as such MAPPL was required to achieve COD upto 20-1-2017. But this was subject to other conditions mentioned in the I.A. and PPA. There occurred force majeure events and faults on the part of the respondents and due to these reasons the project could not be commissioned upto 20-1-2017. MAPPL is entitled for extension of CoD for the time wasted due to force majeure events and the faults of the respondents. It was further submitted that the clause of the IA providing for the extension fee is subject to other terms and conditions of the I.A.

“(ix) In case the commissioning of the project is delayed due to force majeure conditions stated above and the same are accepted by the competent authority, the due dates for encashment of performance security and imposition of liquidated damages shall be extended accordingly. In case the delay affects the COD of the project and it gets extended to the next financial year then the tariff payable shall as determined by the PSERC...”

iii) The petitioner in rejoinder stated that there exists a provision in RfP to split the allocated project but denied that it was required to be done with the prior approval of PEDDA. It was stated that the Right to split the project in multiples of 5 mw is inherent in PPA and not conditional hence no permission of PEDDA was required. If for arguments sake, prior permission was required then how did all the projects get commissioned without prior permission before grid feasibility? Grid Feasibility was granted by the PSPCL only on 4-4-2016 and this fact clearly proves delay on the part of the PSPCL. MAPPL has rightly sent the letter dated 10-5-2016 to the PEDDA. MAPPL thereafter applied for

Grid Feasibility for 25MW plant at Village Balran and same was granted by the PSPCL vide letter dated 3-6-2016. MAPPL reiterated that no prior permission from PEDDA was required.

iv) The PPA was signed on 20-1-2016 and as such the documents of financial closure etc. were required to be submitted upto 20-6-2016 and after paying extension fees of Rs. 1,50,000/- the documents of financial closure etc. could be submitted upto 20-7-2016. MAPPL submitted all the documents with the PEDDA except registered land lease papers for Project-II for 25 MW capacity at village Bakhora Kalan as there was strike of the Tehsil staff and so the lease deeds could not be registered.

v) MAPPL had sent letter dated 2-8-2016 to PSPCL with copy to PEDDA regarding PEDDA ignored the fact that there were intermittent strikes by revenue clerical staff from 14.06.2016 to 28.06.2016 and thereafter there was total strike from 23.06.2016 to 04.08.2016. To understand the effect of the strike on getting the land on lease, it is important to understand and appreciate the processes and activities required for getting the land. Initially an agreement to lease (ATL) is executed with the land owners which is only the intent of the land owners to lease the land. Thereafter detailed due diligence of 30 years of revenue records of the said land starts requiring partitions, transfers, debt clearances, encumbrances, bank NOCs etc. This is not possible in case there is strike in the Tehsil office. It is to be appreciated that land in question is a rural land with multiple owners. After this exercise land can be locked in the form of registries by paying financial consideration. Thereafter the developer's name is incorporated in land records. Due to intermittent strikes by the clerical staff of the Revenue department from 14.06.2016 to 28.06.2016 and thereafter a total strike from 23.06.2016 to 04.08.2016. So the land could not be arranged before the strike came to an end.

MAPPL vide letter dated 4-8-2016 requested the PEDDA/ respondent No. 2 for issuance of NOC for assignment of PPA in favour of the project lenders and stated there was no delay on the part of MAPPL in submitting NOC request to the PEDDA. It was further submitted that the PEDDA took more than one month and gave NOC vide its letter dated 7-9-2016 and copy of the same was also sent to Deputy Chief Engineer (IPC), PSPCL, Patiala.

vi) PEDDA was requested to amend the IA vide letter dated 7-9-2016. Though there was no need to verify whether there was any strike or not in the Tehsil office still, in case the respondent No. 2/ PEDDA wanted to confirm the same, it could have immediately written to the Tehsildar. But PEDDA wrongly and illegally sat over the request letter dated 7-9-2016 of MAPPL and thereafter just to justify the delay on its part, sent a letter dated 7-11-2016 to the Tehsildar after wasting about two months. These facts clearly prove that the PEDDA without any reason failed to make the amendments in the IA .

vii) Counsel for MAPPL, therefore contended that MAPPL was entitled to get extension of COD and applicability of the same tariff by this period two and half months. The PPA was executed in the case of MAPPL on 20-1-2016 and as such the COD was 20-1-2017. MAPPL has requested the respondent No. 2/ PEDDA for extension of COD but instead of extending the same the PEDDA issued email dated 9-1-2017. It is further submitted here that the clause No. 7 of the IA which deals with extension fees etc. is subject to other terms and conditions of the IA. The petitioner contended that the clause 7 of the IA providing for extension fee etc. is not absolute and it is qualified by clause 10 of the I.A. and as such the PEDDA had no right to ask for extension fees or to invoke the PBG. PEDDA without any reasons held that the strikes by Revenue Department ministerial staff has not caused any delay in

completion of project as the land was already in possession of MAPPL and MAPPL had written to the PEDDA and submitted un-registered lease deeds earlier. The PEDDA lost sight of the fact that until the lease deeds are registered MAPPL could not start any work and further lenders would not release any funds for the projects. The PEDDA further wrongly said that no notice for force majeure was given to the PEDDA. MAPPL had earlier sent letter dated 5-7-2016 regarding force majeure events to the PEDDA. The PEDDA further wrongly held that demonetization has not affected the construction work because two other companies have completed their projects before the 12-1-2017. There was delay on the part of the respondent No. 1 in giving Technical clearance and due to this the project got late and every succeeding activity got late. So the comparison made by PEDDA between this and other projects was not valid.

viii) The petitioner reiterated that his deposit of Rs.3 crore for extension fees with PEDDA was done under coercion and without accepting any liability, in order to safeguard his banking relationship. PEDDA's demand for further extension fee was also violative of the I.A and PPA. The petitioner's contention that it was not liable to pay any extension fee because clause 7 of the I.A was subject to clause 10 of the I.A. As there were force majeure events and faults of the respondents therefore the petitioner was not liable to pay any extension fees as alleged by PEDDA. Later, at the time of inspection on 7-4-2017 of the project at Bakhora Kalan, District Sangrur, a total capacity of 5 MW Solar Modules were ready for synchronization. In the report it has been mentioned that 4.1 MW capacity was erected and Approx. 1.0 MW capacity was laid on ground in unbundled state. The solar modules of this 1.0 MW capacity were infact connected and generating electricity. MAPPL had requested the respondent No. 1/ PSPCL for giving permission for synchronization

of this plant but the respondent No. 1/ PSPCL instead of granting permission for synchronization to MAPPL sent a letter dated 10-4-2017 from the office of Deputy Chief Engineer, IPC, PSPCL, Patiala and mentioned there in that the PSPCL has earlier written to the PEDDA to cancel the 25 MW project of MAPPL at Balran and MAPPL was asked to again get feasibility clearance from the office of Chief Engineer Planning and supply the same to the Deputy Chief Engineer, IPC. Further, PEDDA has wrongly and illegally initiated the invocation/ encashment of the bank guarantee furnished by MAPPL.

ix) The petitioner repeated his contention that there was delay on the part of the respondent No. 1 in giving Technical feasibility clearance and due to the same project got late and every succeeding activity got delayed and when lease deeds etc. were to be registered the strikes in Tehsil office began and thereafter demonetization came. Further there was delay on the part of the respondents in assigning the PPA in favour of the lenders and amending the I.A. Further stay was granted by the Ld. Civil Court on laying the transmission line. So in these circumstances PEDDA could not compare the project of MAPPL with other projects. The petitioner sought to differentiate between the facts of this case as opposed to TSPLs in petition No.27 of 2016, in that he had informed the respondents about the issues pertaining to Force Majeure events from time to time. A notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. 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 affected by registered instruments till the date of its acquisition. Reference was be made to the judgment passed by the Hon'ble Supreme Court of India titled as Special Deputy Collector, Land

Acquisition C.M.D.A. vs. J. Sivaprakasan and Others reported in (2011)1SCC330, wherein it has been held that:

31. For this purpose, we may refer to the difference between actual, implied and constructive notices.

1. When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice.

2. If from the facts it can be inferred that a party knew about the subject matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. 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 his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the Gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfillment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition.

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It is significant to note that there is no averment in the writ petition that respondents were not aware of the proposed acquisition. It is evident that they were aware of the notification. It is also inconceivable that respondents 5 to 11 who knew about the proposed acquisition would not have informed respondents 1 to 4 about the proposed acquisition. Be that as it may. Therefore even

if the publication in two regional language newspapers is considered to be not in compliance with the requirements of Section 4(1), it cannot affect the validity of the preliminary notification or the consequential proceedings in regard to Sy. Nos. 186/1 and 186/2.”

(underline supplied)

REJOINDER OF MAPPL TO PSPCL's REPLY

10. The submissions made by the petitioner vide letter dated 30.04.2018 in rejoinder to the reply filed by PSPCL reiterating the events that led to delay in the Commissioning of the project are summarized as under:

i) MAPPL had submitted its request for grid feasibility very early on 16.11.2015. PSPCL on it's part delayed the feasibility clearance for two reasons on it's own admission. One, its own policy on granting feasibility clearance had not been finalized upto 08.03.2016. Two, PSPCL while considering the matter of grid clearance of two projects of 25 MW Capacity each, was not clear whether the petitioner could split his project of 50 MW into two smaller projects of 25 MW each. This took time to be clarified internally. Thirdly, the evacuation facility as per PSPCL's on protocol led to some confusion and delay in granting grid feasibility.

Following were issues which should not have hampered the grant of grid feasibility but were infact the cause of delay upto 04.04.2016:-

ii) Due to the delay in grid feasibility, the land that had been identify for the second project could not be leased on time. Therefore, the sight was shifted from Daska to Balran in Sangrur. Thus the entire process of leasing land was delayed.

iii) ROW issues can occur at any time, not just for private Solar project developer but also for PSPCL itself which is a government utility.

Once a Court has granted a stay it becomes a force majeure event and in this case it happen in three difference cases.

iv) The registration of the land also got delayed due to the strike of the revenue staff. The factum o the strike having taken place and hampering registration has been certified by the Tehsildar on the asking of PEDDA.

PEDDA had been informed of this, but waited for the long time before checking with the Tehsildar.

v) The disbursement of the loan was delayed because PSPCL took a long time to assign rights to the lenders as requested by the petitioner. The paper work of the loan could not be submitted in a timely manner because of delay in grid feasibility, delay in getting a land and delay in the registration of the land documents. These delays stemmed from PSPCL's cardiness.

vi) PSPCL also delayed getting the tariff approved by the Commission.

vii) Even when synchronization was to take place, PSPCL reverted to the issue of feasibility and lost time allowing synchronization. The inspection report stated that some no dues were lying on the ground instead of being mounted, but the modules were connected.

Commission's Observations, Findings and Decision

11. The Commission has carefully gone through the petition, replies thereto by PEDDA & PSPCL, rejoinders to the replies by the petitioner and other submissions and documents adduced on record. The petitioner has prayed to:

a) set aside and/ or quash the letters dated 13.02.2017 and 27.02.2017 of the respondent No. 2/PEDDA and hold and declare that the respondents are not entitled to get any extension fees/ penalty etc. from the petitioner on account of extension of commissioning period of the project which is due to Force Majeure events and events which are

beyond the control of the petitioner and faults of the respondents;

b) hold and declare that the Commercial Operation Date of the project of the petitioner stands extended till 15.05.2017 in accordance with Article 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of Force Majeure events and events which are beyond the control of the petitioner and faults of the respondents;

c) hold and declare that the petitioner is entitled to tariff of Rs. 5.97/- kWh (levellised tariff) in terms of the PPA dated 20.01.2016 during the extended COD period;

d) direct PEDDA not to invoke the Performance Bank Guarantee, and to not take any coercive actions whatsoever against the petitioner; and

e) further direct PEDDA to refund any amount received on account of partial invoking of the Performance Bank Guarantee;

f) further direct PEDDA to refund the amount of Rs. 3.0 crore deposited by the petitioner by way of bank draft or any amount given by the petitioner to save the PBG from invocation, with interest.

12. In the IA No. 02 of 2017 filed along with the petition on 28.02.2017, the petitioner submitted that it received a letter from PEDDA on 13.02.2017 rejecting its request for extension of the time for completion of the project further informed that PEDDA has initiated the process for partial invocation of the PBG to the tune of Rs. 3.0 crore on account of extension fees @ Rs. 20,000 per day per MW, for delay in commissioning of the project. In order to avoid invocation of the PBG, the petitioner on 20.02.2017 handed over a bank draft of Rs. 3.0 crore dated 17.02.2017 to PEDDA with a request to recall the aforementioned letter dated 13.02.2017 and requested PEDDA to keep this bank draft as security/ deposit in lieu of invocation of Bank Guarantee. However, PEDDA encashed the aforesaid bank draft of Rs. 3.0 crore and thereafter vide letter dated 23.02.2017 withdrew its letter dated 13.02.2017 vide which it had sought the encashment of PBG.

Further, PEDDA vide letter dated 27.02.2017 intimated MAPPL that the earlier extension was upto 11.02.2017 and for further extension from 12.02.2017 onwards, the petitioner is liable to pay extension fees of Rs. 40,000 per day per MW. It was further informed vide the said letter that in case the petitioner fails to pay the aforesaid extension fees, the same shall be recovered by encashment of PBG.

In the IA the petitioner prayed as under:

- a) That the present application may be allowed and the respondents may be restrained from asking penalty / fees for extension of commissioning period and further for invoking the Performance Bank Guarantee(s) on account of above extension and further be restrained to take any coercive action whatsoever till the final adjudication of the petition against the petitioner, during the pendency of the petition.
- b) That operation of impugned letter dated 27.02.2017 may be stayed during pendency of the petition.
- c) That PEDDA may also be directed to return the amount of the bank draft of Rs. 3.0 crore with interest to the petitioner.

13. PEDDA filed a caveat (01 of 2017) on 06.03.2017 and prayed that the caveator/ respondent may be granted an opportunity of hearing in the event of passing of any Order in the petition with respect to communication bearing no. 1074 dated 13.02.2017, issued by the respondent-caveator.

14. The matter was taken up for admission on 07.03.2017 and the Commission vide Order dated 08.03.2017 directed the parties to maintain status quo and that PEDDA shall not encash the PBG. The LOA, IA as well as PPA shall also not be terminated till the next date of hearing.

During the said hearing, PEDDA submitted a copy of the Order dated 01.03.2017 in CWP No. 4148-2017 (O&M) (M/s Mytrah Aadhya Power Pvt. Ltd. Vs PEDDA and another) passed by Hon'ble High Court of Punjab & Haryana wherein it has been ordered that the respondents shall not invoke the bank guarantee and if already invoked shall not receive money pursuant thereto till 07.03.2017. The Hon'ble High Court held that this limited interim relief is granted in view of the undertaking that in the event of the injunction not being granted by the PSERC, the petitioner shall within one week pay interest on account to the respondents at the adhoc rate of 18% per annum which shall be subject to final accounts from the date of the invocation or the date hereof whichever is earlier till payment. In other words, in the event of the bank guarantee being allowed to be invoked, the respondents shall be entitled to receive the amounts under the guarantee from the bank and also the interest as aforesaid. It was further held that the rate of interest is only adhoc and will be subject to final accounts between the parties. The next date of hearing was fixed for 09.03.2017.

15. **In the hearing on 09.03.2017, the petition was admitted and vide Order dated 14.03.2017, the Commission directed that PEDDA shall not encash the PBG. The LOA, IA as well as PPA shall also not be terminated till the final adjudication of the matter.** The next date of hearing was fixed for 20.04.2017.

16. On 07.04.2017, PEDDA filed an Interlocutory Application No. 12 of 2017 seeking adjudication of the issue with respect to undue influence of the counsel representing the petitioner in the captioned matter before the Commission, as the counsel representing the petitioner has been representing this Commission before other Court(s)/ forum(s)/Tribunal(s) which is gravely prejudicing the rights of PEDDA. The petitioner on

26.04.2017 filed the reply to IA No. 12 of 2017 filed by PEDDA. The order on IA was reserved vide Order dated 11.05.2017.

The Commission in its Order dated 22.05.2017 in IA no. 12 of 2017 in Petition No. 12 of 2017 held that IA No. 07 of 2017 filed by PEDDA in Petition No. 22 of 2016 in the matter of M/s Solaire Urja Private Limited Vs. Punjab State Power Corporation Limited (PSPCL) and Punjab Energy Development Agency (PEDDA), has been decided by the Commission vide Order dated 18.05.2017. The Commission further held that since the facts and the relief claimed in IA No. 12 of 2017 are similar to the facts of IA No. 07 of 2017, hence the IA No. 12 of 2017 is disposed of in terms of the Order dated 18.05.2017 passed in IA No. 07 of 2017.

17. Jurisdiction of the Commission to adjudicate upon disputes between PEDDA and the petitioner

In its reply to the petition, PEDDA submitted that the petitioner has 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 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.

Further, the Commission notes that the said issue has already been decided by the Commission in its Order dated 12.04.2016 in IA no. 19 of 2016 in petition no. 21 of 2016 & IA no. 14 of 2016 wherein it was held that the same was devoid of any merit. The Commission holds the same view in the instant petition as well.

18. The petitioner vide email dated 19.07.2017 intimated that in view of the new Force Majeure events [as detailed at para (e), (f) and (g) below], the petition needs to be amended. However, the petitioner filed the amended petition on 28.02.2018 and amended the prayer (b) as under:

“b) hold and declare that the Commercial Operation Date of the project of the petitioner stands extended till 19.06.2017 in accordance with Article 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of Force Majeure events and events which are beyond the control of the petitioner and faults of the respondents;”

19. The petitioner in the amended petition has sought relief on the following grounds:

- a) Delay in granting Technical Feasibility / Ambiguity on the part of PSPCL regarding splitting of plant.
- b) Delay due to strike of Tehsil staff.
- c) Delay in loan disbursement due to non assigning of PPA with project lenders.
- d) Delay due to demonetization.
- e) Delay in amendment in IA and PPA incorporating site details due to which delay occurred in loan disbursement.
- f) Stay granted by the Civil Court on laying the transmission lines.
- g) Delay in giving permission for synchronization of 25 MW Solar

Project-II (at Balran) by PSPCL.

Considering the submissions of the parties on the issues at (a) to (g) above, the findings and decision of the Commission on each of the issue are as under:

a) Delay in granting Technical Feasibility / Ambiguity on the part of PSPCL regarding splitting of plant.

The Commission notes that as per clause 3.2 of the RfP, the minimum capacity allotment of the project was 50 MW and maximum capacity was 150 MW to a single company. As per the aforesaid clause of the RfP, the bidders could set up minimum plant capacity of 5 MW at maximum 10 locations. The Commission further notes that clause 3.6 (D) of the RfP provides as under:

“

D. Connectivity with the Grid and Pooling substations.

(i) The plant should be designed for inter - connection with PSPCL/ PSTCL at voltage level 33/66 kV (2.5 MW capacity upto 25 MW) or 132KV/220 KV (above 25 MW capacity). The Project Developers should indicate to the PSPCL/ PSTCL the location [Village, Tehsil and District, as applicable] of its proposed projects(s) and the nearest grid substations(s) where the power is proposed to be evacuated. In this regard, the Bidder shall submit a letter from the PSPCL before financial closure confirming technical feasibility of grid connectivity of the plant to substation at the indicated location as per format-6.8.”

As per the above clause of the RfP, Mytrah Aadhya Power Pvt. Ltd. (MAPPL) bifurcated its 50 MW Solar PV Power project into two plants of 25 MW each at two different locations.

a) i) **25 MW Solar PV Power Plant at Village Bareta**

Letter of Award was issued by PEDDA to MAPPL on 19.10.2015. MAPPL vide letter dated 16.11.2015 requested CE/Planning, PSPCL for the grant of technical feasibility for the 25 MW Solar PV Power Plant at Village Bareta, Project I to be evacuated at 66kV. Implementation Agreement for the project was signed between MAPPL and PEDDA on 04.12.2015. Power Purchase Agreement for the project was signed between MAPPL and PSPCL on 20.01.2016. SE/Plg-2 vide letter dated 27.01.2016 requested CE/TS to supply the detailed report regarding grid connectivity etc. for the said project from the nearest 66kV substation Datewas with injection voltage of 66kV. CE/TS vide letter dated 02.02.2016 gave technical concurrence for the same. CE/Planning vide letter dated 04.02.2016 requested CE/PP&R with a copy to MAPPL to clarify whether MAPPL is allowed to split the capacity of 50 MW project into two plants of 25 MW each. SE/IPC vide letter dated 10.02.2016 clarified in affirmative. However, CE/Planning vide letter dated 19.02.2016 intimated MAPPL that connectivity of Plant can be given at 220kV grid substation Chhajli. MAPPL vide letter dated 03.03.2016 intimated CE/Planning that it has already registered the lease deed for about 165 acres of land required for the plant and requested to allow it to evacuate power at 66kV in accordance with provisions of RfP. MAPPL again requested CE/Planning vide letter dated 14.03.2016 for evacuation of power at 66kV bus of 66kV substation Datewas though vide letter dated 02.04.2016 MAPPL requested CE/Planning that instead of evacuation of power at 66kV substation Datewas, the approval for using existing single circuit line to 66kV substation Bareta, which otherwise is to be dismantled by PSPCL, may be granted. PSPCL vide letter no. 434 dated 04.04.2016 granted technical feasibility clearance

for 25 MW Solar PV Power plant at Village Bareta for the interconnection of the plant with 66kV substation Datewas.

The Commission notes that CE/TS conveyed its technical concurrence vide letter dated 02.02.2016 in response to the proposal dated 27.01.2016 of SE/Planning for technical feasibility clearance of the said plant for inter-connection at 66 kV sub-station Datewas. However, on 04.02.2016, CE/Planning brought up the issue with regard to the splitting of the 50 MW project into two 25 MW plants with CE/PP&R, which was clarified by SE/IPC vide letter dated 10.02.2016. Thereafter, CE/Planning vide letter dated 19.02.2016 intimated MAPPL that connectivity for the plant can be given at 220 kV sub-station, Chhajli despite there being instructions to the effect that the inter-connection voltage of the plants upto 25 MW capacity shall be 66 kV. Ultimately, the technical feasibility clearance was granted by PSPCL at 66/11 kV sub-station Datewas vide letter dated 04.04.2016 i.e. 75 days after (20.01.2016 to 04.04.2016) signing of the PPA. Evidently, PSPCL has delayed the grant of technical feasibility clearance. Considering 4 weeks time as reasonable for the grant of feasibility clearance by PSPCL for 25 MW Solar PV Power Plant at Village Bareta, the Commission holds that the delay of 47 (75 - 28) days on this account is attributable to PSPCL and the benefit of the same is allowed to the petitioner.

a) ii) 25 MW Solar PV Power Plant at Village Bakhora Kalan Project II

MAPPL vide letter dated 16.11.2015 requested CE/Planning, PSPCL for the grant of technical feasibility for the 25 MW Solar PV Power Plant at Village Daska to be evacuated at 66kV. SE/Plg-2 vide letter dated 27.01.2016 requested CE/TS to supply the detailed report regarding grid

connectivity etc. for the said project from the nearest 66kV substation Daska with injection voltage of 66kV. CE/TS vide letter dated 02.02.2016 gave technical concurrence for the same. CE/Planning vide letter dated 04.02.2016 requested CE/PP&R with a copy to MAPPL to clarify whether MAPPL is allowed to split the capacity of 50 MW project into two plants of 25 MW each. SE/IPC vide letter dated 10.02.2016 clarified in affirmative. However, CE/Planning vide letter dated 19.02.2016 intimated MAPPL that connectivity of Plant can be given at 220kV grid substation Sunam. MAPPL vide letter dated 03.03.2016 requested CE/Planning to allow it to evacuate power at 66kV in accordance with provisions in RfP. MAPPL again requested CE/Planning vide letter dated 14.03.2016 for evacuation of power at 66kV bus of 66kV substation Daska as well as Sekhuwas and intimated that it is making best efforts to ensure land parcel at village Daska and as an alternative trying at Village Sekhuwas also. SE/Planning-2, PSPCL vide letter no. 441 dated 04.04.2016 intimated MAPPL that Grid feasibility clearance for 25 MW Solar PV Power Plant at Village Daska has been cleared for evacuation at 66kV substation Daska, however, as per the telephonic conversation of MAPPL's representative with CE/Planning regarding change of site of the project located at Village Daska, the feasibility clearance for the same has been with held. PSPCL requested MAPPL to confirm the location of the said plant and 66kV grid substation. MAPPL vide letter dated 18.04.2016, which was however received by PSPCL on 24.05.2016 (vide diary no. 1547), intimated PSPCL that it had planned for the 25 MW Solar PV Power Plant at Village Daska but due to the ambiguity raised by PSPCL on splitting of the project and connectivity at 66/11kV, MAPPL could not commit for the land at Village Daska. MAPPL submitted that it has identified an alternate land at Village Balran, District Sangrur which is around 3 kms from 66/11kV grid substation Balran.

MAPPL requested PSPCL to consider evacuation at 66/11kV grid substation Balran instead of 66/11kV grid substation Daska. Vide letter dated 23.05.2016, MAPPL submitted to CE/Planning, PSPCL, the land documents i.e. copy of Agreements to Lease for 73.1148 acres of land at Village Bakhora Kalan (instead of Village Balran) and also requested to issue evacuation approval for 25 MW Solar PV Plant to be connected to 66/11kV Balran substation at 66kV. PSPCL vide letter dated 03.06.2016 granted technical feasibility clearance for 25 MW Solar PV Power plant at Village Bakhora Kalan for the interconnection of the project with 66kV substation Balran subject to the submission of land documents for the total 125/150 acres of land by 19.06.2016 as per the time line mentioned in the PPA. MAPPL submitted the land documents i.e. copy of 'agreements to lease' for 64.5 acres of land at Village Bakhora Kalan on 02.08.2016.

The Commission notes that grant of technical feasibility clearance for 25 MW solar PV power plant at Village Daska was dealt in the same correspondence as for Bareta Plant by the various offices of PSPCL as brought out above. PSPCL cleared the technical feasibility for 25 MW Solar PV Power Plant at Village Daska also on 04.04.2016 but the same was withheld due to discussion with MAPPL's representative for change of site of the project from Village Daska. The Commission is of the view that MAPPL could not finalise the 'agreements to lease' for land at Village Daska due to reasons attributable to PSPCL as brought out above. As such, the delay of 47 days upto 04.04.2016 is attributable to PSPCL as in case of Bareta Plant for Bakhora Kalan Plant as well. The Commission further notes that MAPPL vide letter dated 18.04.2016 (received by PSPCL vide diary no. 1547 dated 24.05.2016)

requested PSPCL to grant the technical feasibility clearance for 25 MW Solar PV Power Plant at Village Bakhora Kalan at 66kV substation Balran. PSPCL granted the same vide letter dated 03.06.2016 subject to submission of land documents by 19.06.2016. The Commission notes that the aforesaid technical feasibility clearance was granted by PSPCL in 10 days after the receipt of request for the same on 24.05.2016 and therefore holds that there is no delay on this account on part of PSPCL from 04.04.2016 to 03.06.2016. Accordingly, benefit of 47 days is allowed to MAPPL on account of delay in grant of technical feasibility clearance by PSPCL for Bakhora Kalan plant.

b) Delay Due to strike of Tehsil Staff in Project II

As brought out above, MAPPL arranged the land for the Bakhora Kalan Plant and submitted the land documents i.e. copy of the 'agreements to lease' to PSPCL on 23.05.2016 for 73.1148 acres. PEDDA vide letter dated 03.06.2016 asked MAPPL to submit documents for financial closure and also land documents. As per LoA, the submission of financial closure and land documents could be extended beyond 150 days upto 30 days i.e. upto 18.07.2016 on payment of Rs. 5000/- per day. MAPPL vide letter dated 13.06.2016 requested PEDDA for the same along with the deposit of extension fee of Rs. 1,50,000/-. PEDDA vide letter dated 23.06.2016 allowed the submission of financial closure and land documents upto 10.07.2016. MAPPL has submitted that it was not able to get the lease deeds registered due to intermittent strikes by revenue clerical staff and patwaris from 16.05.2016 to 20.05.2016 (4 days), 14.06.2016 to 28.06.2016 (14 days), 02.06.2016 to 05.07.2016 (33 days) and 23.06.2016 to 04.08.2016 (42 days) and claimed the same as a Non-Political Force Majeure event as per clause 10.2 of the

IA which hampered land acquisition activities. It informed PEDDA of the same vide letters dated 05.07.2016, 05.12.2016 and 29.12.2016. PEDDA has contended that it informed MAPPL vide letter dated 13.02.2017 that as per force majeure clauses of the IA, it was supposed to notify the occurrence of force majeure event, if any within a period of 5 days, however, no such notice within the stipulated time has been submitted.

PEDDA submitted that vide letter dated 07.11.2016, it informed District Revenue Office (DRO), Sangrur that MAPPL was to submit the registered land deed papers for 25 MW Solar PV Power Plant at Village Bakhora Kalan, District Sangrur by 10.07.2016 but MAPPL submitted the registered land deed papers on 10.08.2016 citing the reason that the delay in submitting the same was because of the intermittent / sporadic/ flash pen down strikes by the ministerial staff. PEDDA in the aforesaid letter further requested DRO to intimate the period of strike by District Revenue staff after 10.07.2016. The Sub-Registrar, Tehsil Lehra, District Sangrur vide its letter dated 17.11.2016, confirmed that there was a strike from 23.06.2016 to 04.08.2016.

PEDDA submitted that MAPPL had already arranged 73.1148 acres land and its 'agreements to lease' at village Bakhora Kalan and submitted the copy of the same to PSPCL on 23.05.2016. This land could have been got registered before 23.06.2016, the date on which the revenue staff strike started in Distt. Sangrur. The strike period accordingly did not affect the lease deeds registration of the said land and thus the delay in submitting registered land lease deeds cannot be attributed to the revenue staff strike. PEDDA has further submitted that MAPPL vide letter dated 02.08.2016 addressed to PSPCL with copy to PEDDA submitted the copy of 'agreements to lease' documents for balance land of 64.5 acres at village Bakhora Kalan and the same were got registered from

10.08.2016 to 06.09.2016. PEDDA submitted that MAPPL itself failed to arrange the complete land for the 25 MW project at Bakhora Kalan till 02.08.2016 and the registration of the land lease deeds could only happen after 02.08.2016 once the complete land for the project was arranged by MAPPL. As such, the strike period had no impact/ delay on land registration. The delay is thus in arranging the balance 64.5 acres land which is attributable to MAPPL and not due to the revenue staff strike.

MAPPL has contended that initially an 'Agreement to Lease' is executed with the multiple land owners and thereafter detailed due diligence of 30 years of revenue records of the said land starts requiring partitions, transfers, debt clearances, encumbrances, bank NOCs etc., which is not possible in case there is strike in the Tehsil office. Thereafter, the land is registered by paying financial consideration and developer's name is incorporated in land records. MAPPL contended that the land could not be arranged before the strike came to an end.

The Commission notes that 'agreements to lease' for 73.1148 acres of land were available with MAPPL on 23.05.2016 but it failed to get the said land lease deeds registered by 23.06.2016 i.e. the date on which the strike by the Tehsil Staff started as confirmed by the District Revenue Officer vide its letter dated 17.11.2016 on query from PEDDA vide letter dated 07.11.2016. The Commission further notes that the 'agreements to lease' for the balance 64.5 acres of land could only be arranged by MAPPL on 02.08.2016 and the strike by Tehsil staff ended on 04.08.2016 as confirmed by the DRO. Also, there is no statutory notice in terms of IA/PPA from MAPPL to PEDDA/PSPCL for the said revenue staff strike period claimed as force majeure by MAPPL. From the above, the Commission is of the

view that since MAPPL did not give the necessary statutory notices of Force Majeure to PEDA/ PSPCL, no benefit on this account can be allowed in favour of MAPPL for the 25 MW Solar PV Power Plant at Village Bakhora Kalan.

c) Delay in loan disbursement due to non assigning of PPA with project lenders

MAPPL has submitted that it sought financial assistance from Asian Development Bank (ADB) and Rural Electrification Corporation (REC) and as per terms of the loan, the PPA was required to be assigned in favour of the project lenders. MAPPL vide letter dated 28.03.2016 requested PSPCL for assignment of the PPA in favour of the project lenders. PSPCL vide letter dated 27.04.2016 asked MAPPL to submit certain documents including NOC from PEDA for assignment of PPA by PSPCL. MAPPL vide letter dated 04.08.2016 requested PEDA for issue of No Objection Certificate for assignment of PPA to project lenders. PEDA issued NOC vide letter dated 07.09.2016 with copy of the same to PSPCL. MAPPL vide letter 20.01.2017 again requested PSPCL for assignment of PPA but PSPCL vide letter dated 06.02.2017 sought some more information and asked MAPPL to get written confirmation from the lenders (REC and ADB) that they are financing the project and for the purpose require the assignment of rights of the company. MAPPL on the same day vide letter dated 06.02.2017 submitted the information as sought by PSPCL. MAPPL submitted that due to the delay in assignment of PPA, the lenders refused to disburse the loan and with lot of effort on part of petitioner, the lenders released only part payment on 09.12.2016 and 20.12.2016 for the first project of 25 MW and on 16.02.2017 for the second project of 25 MW.

PSPCL has submitted that the PPA was signed on 20.01.2016 and MAPPL had enough time to start with the process of seeking loans from

the interested lenders. The first letter seeking assignment of PPA was written by MAPPL on 28.03.2016 which was received in the office of PSPCL on 04.04.2016. PSPCL vide letter dated 27.04.2016 requested MAPPL to submit No Objection Certificate from PEDDA for assignment of PPA as per provisions of IA and a consent letter from the lender on affidavit accepting to be responsible for all obligations. MAPPL did not submit any documents and informed vide letter dated 20.01.2017 that the loan has been sanctioned and requested that it requires consent of PSPCL to assign the rights in favour of the lender. PSPCL vide letter dated 06.02.2017 requested MAPPL that a written confirmation from the lender REC and ADB may be provided alongwith a written confirmation from the petitioner company that it shall continue to be bound by the terms of the PPA and shall continue to discharge all its obligations under the PPA. MAPPL thereafter sent an affidavit in this regard vide letter dated 07.03.2017. PSPCL processed the case of granting consent after the requisite documents from MAPPL were received on 07.03.2017. PSPCL submitted that the consent letter was issued on 29.03.2017 after the approval of competent authority. PSPCL further submitted that there has been inordinate delay on the part of MAPPL to provide the relevant documents. PSPCL submitted that MAPPL has tried to shift the blame of its own mis-management, lack of planning and latches onto PSPCL.

PEDDA submitted that MAPPL vide its letter dated 04.08.2016 requested for issue of NOC for assignment of PPA in favour of project lender thereby enclosing a copy of the letter dated 27.04.2016 of PSPCL as per which NOC from PEDDA is required. MAPPL took more than three and half months to submit NOC request to PEDDA after intimation from PSPCL.

The Commission notes that PSPCL, on 27.04.2016, requested MAPPL to submit NOC from PEDDA and a consent letter from the lenders on affidavit accepting responsibility for all obligations under the PPA. MAPPL after a lapse of more than 3 months requested PEDDA on 04.08.2016 for the issue of NOC. PEDDA issued the same on 07.09.2016. Thereafter, MAPPL on 07.03.2017, 6 months after getting the NOC from PEDDA, submitted the same to PSPCL alongwith the requisite affidavit i.e. more than 10 months after it was sought by PSPCL on 27.04.2016.

The Commission is of the view that MAPPL had a lackadaisical approach in the matter. The Commission also notes that MAPPL in its submissions dated 30.10.2018 has enclosed a certificate dated 15.10.2018 issued by Chartered Accountants certifying the date and amount of loan disbursement by Asian Development Bank and Rural Electrification Corporation. On perusal of the aforesaid certificate, the Commission further notes that Rural Electrification Corporation disbursed the loan amount of Rs. 16.68 crore, 68.17 crore, 47.20 crore, 25.52 crore and 11.50 crore on 09.12.2016, 20.12.2016, 16.02.2017, 17.02.2017 and 29.09.2017 respectively. Asian Development Bank disbursed the loan amount of Rs. 42.43 crore and 42.14 crore on 22.12.2016 and 10.03.2017 respectively. The Commission notes that most of the loan amount was disbursed by the lenders without the receipt of assignment of PPA in their favour. PSPCL could not have assigned the PPA in favour of the lenders without safeguarding its own interests. MAPPL completed the submission of the requisite documents on 07.03.2017 and PSPCL gave the consent for assignment of PPA on 29.03.2017.

Considering the above, the Commission finds no merit in the plea of the petitioner that delay in commissioning of the project has been caused by PSPCL due to delay in assignment of PPA and consider the same unsustainable. Accordingly, the Commission holds that no benefit is allowable on this account to MAPPL.

d) Delay due to Demonetization

MAPPL has claimed that the demonetization caused delay in completion of the project. The labour has to be paid in cash on daily basis by the contractor for project construction activities and due to unavailability of cash during demonetization, the cash payments could not be made and the contractors started issuing force majeure notices to MAPPL, thereby seriously affecting the execution of works. MAPPL vide letter dated 05.12.2016 informed PEDDA that this is a force majeure situation which is causing delay in completion of project. MAPPL vide letter dated 29.12.2016 again informed PEDDA that due to demonetization, the construction activities have come to a halt. PEDDA has contended that it informed MAPPL vide letter dated 13.02.2017 that as per force majeure clauses of the IA, it was supposed to notify the occurrence of force majeure event, if any, within a period of 5 days, however, no such notice within the stipulated time has been submitted. PSPCL submitted that demonetization was announced by the Govt. of India w.e.f. 08.11.2016 but MAPPL was not able to meet the scheduled deadlines as per the PPA, which occurred prior to the demonetization.

Considering the above submissions and contentions of the parties, the Commission does not find any merit in the aforesaid claim of MAPPL for delay of the project due to demonetization by Government of India. The plea of MAPPL with regard to payment in cash by the contractors to its work force/labour is not sustainable.

Moreover, there is no statutory notice in terms of IA/PPA by MAPPL to PEDA/PSPCL within the stipulated period. As such, the claim of MAPPL with regard to demonetization by Government of India as a force majeure event is not allowed.

e) Delay in amendment in IA and PPA incorporating site details due to which delay occurred in loan disbursement

i) Delay in amendment in IA

The Commission notes that MAPPL vide letter dated 07.09.2016 requested PEDA for signing the amendment in the IA. This request was made by MAPPL after the complete lease deeds for the project were got registered upto 06.09.2016. However, the amended IA was signed by PEDA on 23.11.2016. **The Commission observes that the delay has been caused by PEDA in signing the amended IA as requested by MAPPL on 07.09.2016. The Commission considers 3 weeks time as reasonable for signing the amended IA by PEDA. Accordingly, the delay of 56 (77-21) days on this account is attributable to PEDA and the benefit of the same is allowed to the petitioner.**

ii) Delay in amendment in PPA

MAPPL requested PSPCL for carrying out amendment in PPA on 24.11.2016 and the same was signed on 16.12.2016. **The Commission notes that the said amendment has been signed within 22 days which the Commission considers reasonable. Accordingly, no delay is attributable to PSPCL on this account.**

f) Stay granted by the Civil Court on laying the transmission lines

MAPPL submitted that for the 25 MW Plant situated at Village Bareta, 5.8 km long transmission line was required to be erected from the plant to PSPCL's 66/11 kV Grid Sub Station, Datewas. However, a few of the affected land owners filed civil suits before the court of Ld. Civil Judge at

Budhlada and in some cases the Ld. Court granted order of status quo. Accordingly, the work of transmission line could not progress from 20.09.2016 to 05.12.2016 for 76 days and thereafter from 20.01.2017 to 22.03.2017 for 61 days. Seven civil suits were filed against MAPPL and in four cases stay was granted. MAPPL entered into compromises with the land owners and the civil suits were withdrawn. The three cases where stay was granted pertained to (i) Ms. Reetu Bala, where stay was granted on 20.09.2016 and suit was withdrawn on 02.12.2016, (ii) Sh. Lachman Dass, where stay was granted on 06.10.2016 and stay application disposed of on 05.12.2016 and (iii) Sh. Bhagwan Singh, Sh. Piara Singh and others, where stay was granted on 20.01.2017 and suit withdrawn by the land owners on 07.03.2017 on compromise. However, the compromise deed was signed on 22.03.2017 with Piara Singh and others. Thereafter, MAPPL resumed the work of the transmission line and completed the same on 28.03.2017. MAPPL submitted that due to the stay granted by the civil court on transmission line work, it could not complete the work of plant as there was risk as regards the completion of the work of evacuation facility. In case due to some reason the transmission line could not be completed, MAPPL would have to shift the plant and the entire investment in the plant would have been wasted.

PSPCL contended that the relief sought by MAPPL on account of delay because of the stay granted by Civil Court is unsustainable as the same had occurred due to MAPPL's incompetency to settle the issues with land owners before laying the transmission lines in their lands. Right of way had to be finalized by MAPPL. PSPCL further submitted that MAPPL admitted that it had not carried out the other required work at the project site and was waiting for transmission lines issues to be sorted out. There was no dependency which prevented MAPPL to carry out the

other requisite works which were stopped on account of delay in sorting out the transmission line issues.

The Commission observes that MAPPL has claimed a delay of 137 days in the completion of the work of transmission line due to stay granted by the Court(s).

The Commission notes that the 25 MW Solar PV power plant of the petitioner at Village Bareta was completed on 22.03.2017 as per the approval for commissioning granted by Chief Electrical Inspector vide its memo no. 011181 dated 22.03.2017. As per MAPPL's submissions, the transmission line for the aforesaid 25 MW Solar PV power plant was completed on 28.03.2017. However, it is noted that the Chief Electrical Inspector vide memo no. 011183 dated 22.03.2017 in response to petitioner's letter no. 67 dated 22.02.2017 cleared the installation of 66 kV line from 25 MW Solar PV Power Plant at Village Bareta to 66 kV substation Datewas. As such, the submission of MAPPL that the transmission line was completed on 28.03.2017 is inconsistent with regard to the clearance granted by CEI. It is pertinent to point out that the Commission directed MAPPL vide Interim Order dated 26.09.2018 to file documents regarding approval of transmission line and plant from Chief Electrical Inspector within one week but MAPPL submitted the aforesaid letter of CEI as part of its submissions dated 30.10.2018.

Accordingly, the Commission considers that the transmission line was completed on 22.03.2017. The Commission further notes that MAPPL was not restrained from carrying out the work at the plant site due to stay granted by the Court against laying down the transmission line towers but the same was completed on

22.03.2017 due to the factors attributable to it. Considering the above, the Commission holds that there is no delay in completion of the 25 MW Solar PV Power Plant located at Village Bareta due to stay granted by the court(s) as detailed above and allows no benefit to the petitioner on account of the same.

g) Delay in giving permission for synchronization of 25 MW Solar Project-II (at Balran) by PSPCL (25 MW Solar PV Power Plant at Bakhora Kalan)

MAPPL has submitted that it informed the Executive Engineer, DS Division, PSPCL, Lehragaga vide letter dated 28.03.2017 that it is planning to synchronise 5 MW capacity out of 25 MW capacity of the plant on 30.03.2017 at Village Bakhora Kalan. A joint inspection team of PSPCL and PEDDA inspected the same on 07.04.2017 and mentioned in the report that Solar Modules of 4.1 MW capacity have been erected. MAPPL vide email dated 10.04.2017 intimated PSPCL that 5MW capacity was ready to be commissioned as on 31.03.2017 and all the incomplete jobs mentioned in the report of protection division of PSPCL were also completed. MAPPL vide email dated 12.04.2017 to PSPCL with copy to PEDDA again intimated that as per PPA/IA clauses, multiples of 5 MW plants (minimum 5MW) can be part commissioned. MAPPL further submitted that when joint inspection team of PEDDA and PSPCL visited the plant site on 07.04.2017, the total installed capacity was 5.1 MW and out of this 4.1 MW was installed on the structure and the balance modules for 1 MW were placed on ground but connected with its system. MAPPL again sent an email dated 17.04.2017 to PSPCL & PEDDA and requested for grant of permission for synchronization. PSPCL vide its letter dated 24.04.2017 granted permission for synchronization of 7.6 MW capacity out of 25 MW capacity and the same was

synchronized on 28.04.2017. The balance capacity of 17.4 MW out of 25 MW capacity was commissioned on 19.06.2017.

PSPCL submitted that when a joint inspection by a team of PSPCL and PEDDA was carried out on 07.04.2017 at the 25 MW Solar PV Power Plant at Village Bakhora Kalan, in pursuance to MAPPL's letter dated 28.03.2017 (received on 31.03.2017), it was found that only 4.1 MW capacity was installed for synchronization, which was less than the minimum requirement for part commissioning i.e. 5 MW. PEDDA confirmed that 7.6 MW capacity out of 25 MW was synchronized on 28.04.2017 as per copy of PSPCL's letter dated 03.05.2017 endorsed to PEDDA.

The Commission notes that MAPPL vide letter dated 28.03.2017 requested PSPCL for the synchronization of 5 MW capacity out of 25 MW capacity of Solar PV Power Plant at Village Bakhora Kalan. However, during inspection by joint team of PEDDA and PSPCL on 07.04.2017, only 4.1 MW capacity was found to be installed. The said joint report has been signed by MAPPL also. MAPPL vide email dated 17.04.2017 and 18.04.2017 again requested PSPCL for grant of permission to synchronize 5.1 MW capacity of Bakhora Kalan plant. PSPCL granted permission for synchronization on 24.04.2017 for the 7.6 MW capacity out of 25 MW capacity installed upto that date, which was synchronized / commissioned on 28.04.2017. The Commission notes that the petitioner was required to give notice of 30 days prior to the Scheduled Date of Synchronization to PSPCL intimating the date of readiness for synchronization of the project with PSPCL grid to fulfill the requirements in terms of clause 5.5.0 and 8.2.0 of the PPA. Considering the above, the Commission holds that there is no

delay by PSPCL in grant of synchronization permission for 7.6 MW capacity out of 25 MW capacity of Solar PV Power Plant at Village Bakhora Kalan, which was synchronized at 66 kV substation Balran.

Based upon the above the Commission concludes as under:

Period of Delay

25 MW Solar PV Power Plant at Village Bareta

Considering the discussion in the foregoing paras, the Commission allows the benefit of total 103 days to the petitioner on account of (i) delay in granting technical feasibility by PSPCL (47 days) and (ii) delay in amendment in IA by PEDAs (56 days) as detailed above in paras (a) (i) and (e) (i) for 25 MW Solar PV Power Plant at Village Bareta connected at 66 kV substation Datewas.

The SCOD of the project was 19.01.2017 in terms of IA/ PPA. The 5.2 MW capacity out of the 25 MW capacity of the said plant was commissioned on 30.03.2017 i.e. with a delay of 70 days which is less than 103 days allowed by the Commission. Accordingly, no extension fee is required to be paid by MAPPL to PEDAs on this account for 5.2 MW capacity.

The balance capacity of 19.8 MW was commissioned on 19.06.2017 i.e. with delay of 151 days after the SCOD. Accordingly, there is a net delay of 48 days (151-103) after considering 103 days delay allowed by the Commission in commissioning of 19.8 MW capacity of the solar PV Power Plant at Village Bareta.

Article 7.0 of the IA which is an integral part of the PPA as per recital (d) at page no. 2 of the PPA, provides as under:

“Article 7.0: CONSEQUENCES OF DELAY IN COMMISSIONING BY THE COMPANY

A. Encashment of Performance Security:

The solar PV Project shall be commissioned within 12 (Twelve) months from the date of signing of PPA. After 12 months period, extension can be given for 30 days in the First go on payment of a fee of Rs. 20000/MW/day and thereafter for another period of maximum 60 days on a payment of a fee of Rs. 40000/MW/day. Thereafter, right retained with PEDDA for forfeiture of 100% Performance Guarantee. SPD shall be required to intimate at least 15 days in advance to PEDDA that they need extension in commissioning and they shall pay the extension fee for the period extension is sought at least 7 days in advance. In case the SPD fails to pay the applicable extension fees to PEDDA, the same shall be recovered by encashment of the performance BG at the time of grant of extension. If still there are any dues/fees left over even after PBG encashment, PEDDA shall in first go recover the same from the energy dues payable to the SPD by PSPCL under PPA. PSPCL shall release the same to PEDDA within 15 days under intimation to the company.”

Therefore, the Commission holds that PEDDA is entitled to 48 days extension fee for the 19.8 MW capacity for the Baretta Plant in terms of IA / PPA which MAPPL shall pay to PEDDA forthwith.

25 MW Solar PV Power Plant at Village Bakhora Kalan

As regards the 25 MW Solar PV Power Plant at Village Bakhora Kalan connected at 66 kV substation Balran also, the Commission allows the benefit of total 103 days to the petitioner on account of (i) delay in granting technical feasibility by PSPCL (47 days) and (ii) delay in amendment in IA by PEDDA (56 days) as detailed above in paras (a) (ii) and (e) (i) for 25 MW Solar PV Power Plant at Village Bakhora Kalan connected at 66 kV substation Balran.

The SCOD of the project was 19.01.2017 in terms of IA / PPA. The 7.6 MW capacity out of the 25 MW capacity of the said plant was commissioned on 28.04.2017 i.e. 99 days after the SCOD on

19.01.2017. The balance capacity of 17.4 MW was commissioned on 19.06.2017 i.e. 151 days after the SCOD on 19.01.2017. Accordingly, after considering the benefit of 103 days allowed to the petitioner, there is a net delay of 48 days (151-103) for the commissioning of the 17.4 MW capacity. In terms of Article 7.0 of the IA, the extension fee for 48 days is payable to PEDDA for the 17.4 MW capacity for the Bakhora Kalan Plant in terms of IA / PPA, which MAPPL shall pay to PEDDA forthwith.

The stay granted by the Commission against encashment of Performance Bank Guarantee(s) is hereby vacated. The amount of Rs. 3 crore already paid by MAPPL to PEDDA would be adjusted in the payment of extension fees for both the plants.

Tariff

The Commission in its Order dated 10.06.2016 in petition no. 31 of 2016 filed by PSPCL approved the procurement of power from the petitioner's 50 MW Solar PV Power Project at the tariff of Rs. 5.97 per kWh along with that of other such projects. The Commission in its aforesaid Order also held that the tariff approved above would be applicable upto 31.03.2017 provided the PPA has been signed on or before 31.03.2016 and the entire capacity covered in the PPA is commissioned on or before 31.03.2017. It was further clarified in the aforesaid Order that barring force majeure / change in law etc., the applicability of the said approved tariff beyond the aforementioned date i.e. 31.03.2017 will not be allowed even if punitive clauses in the PPA are made applicable.

25 MW Solar PV Power Plant at Village Bareta

As 5.2 MW capacity out of 25 MW capacity of Solar PV Power Plant at Village Bareta was commissioned on 30.03.2017 i.e. before 31.03.2017, the tariff of Rs. 5.97 per kWh as provided in the PPA shall be applicable.

The remaining 19.8 MW capacity was commissioned on 19.06.2017. The Commission has allowed a delay of 103 days in commissioning of the same. After accounting for the same, the commissioning of the same notionally falls on 08.03.2017 i.e. before 31.03.2017. Accordingly, the same tariff as provided in the PPA i.e. Rs. 5.97 per kWh shall be applicable and payable by PSPCL to MAPPL for the supply of electricity from the 19.8 MW capacity of the said plant. In other words, the tariff for the entire capacity of 25 MW for the Bareta Plant shall be Rs. 5.97 per kWh as provided in the PPA.

25 MW Solar PV Power Plant at Village Bakhora Kalan

The 7.6 MW capacity out of 25 MW capacity of Solar PV Power Plant at Village Bakhora Kalan was commissioned on 28.04.2017 and the balance 17.4 MW capacity was Commissioned on 19.06.2017. The Commission has allowed a delay of 103 days in the foregoing paras. After accounting for the same, the commissioning of the 7.6 MW capacity and the remaining 17.4 MW capacity shall notionally fall on 15.01.2017 and 08.03.2017 respectively i.e. before 31.03.2017. Accordingly, the same tariff as provided in the PPA i.e. Rs. 5.97 per kWh shall be applicable and payable by PSPCL to MAPPL for the supply of electricity from the entire capacity of 25 MW for the Bakhora Kalan Plant.

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

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 21.12.2018

