

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

**Petition No. 17 of 2016 &  
I.A. No. 9 of 2016  
Date of Order: 14.02.2017**

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

In the matter of: Petition under Section 94 of the Electricity Act, 2003 directing the Respondent No. 2 & 3 (PSPCL/PSTCL) to make the bay ready for synchronization and restraining the Respondent No.1 (PEDA) from forfeiture of Performance Bank Guarantee in terms of clause 10.1.0 of PPA and Article 7A of Implementation Agreement and extension of Agreement of the date of commissioning of Petitioner's project till bay is not ready for synchronization.

And

In the matter of: Oasis Green Energy Private Limited,  
5139/3, Modern Housing Complex, Manimajra,  
Chandigarh.

...Petitioner

Versus

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

...Respondents

**ORDER**

Oasis Green Energy Private Limited filed this petition on 17.03.2016 under Section 94 of the Electricity Act, 2003, read with Regulation 69, 71 and 73 of PSERC (Conduct of Business) Regulations, 2005 and Regulation 85 (Power to Relax) of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 alongwith two Applications with the following prayers:

- i) Early hearing of the petition as there will be irretrievable loss/injury to the petitioner due to delay;
- ii) Extension of the date of commissioning of the project from 30.01.2016 to 30.06.2016;
- iii) Direct PSPCL & PSTCL to make the bay ready for synchronization and extend the date of commissioning till the bay is ready;
- iv) Restrain PEDDA from forfeiture of performance bank guarantees (PBGs) in terms of clause 10.1.0 of the Power Purchase Agreement (PPA) and Article 7A of Implementation Agreement (IA); and
- v) Pass any other Order as deemed appropriate in the interest of justice.

2. The Commission, after hearing the petitioner on 22.03.2016, admitted the petition and the Applications and vide Order dated 22.03.2016 restrained PEDDA from invocation and encashment of PBGs dated 11.03.2015 and 12.03.2015 amounting to ₹ 36 lakh and ₹ 84 lakh respectively submitted by the petitioner till the next date of hearing fixed for 03.05.2016. PEDDA, PSPCL and PSTCL were directed to file their respective replies by 26.04.2016 with a copy to the petitioner and each other.

3. PSTCL and PSPCL filed their respective replies. During hearing on 03.05.2016, PEDDA submitted that reply shall be filed by 10.05.2016. PSTCL in its reply submitted that the 66 kV Bareta sub-station is under the control of PSPCL and therefore, the bay for receiving power from the project at the sub-station is to be constructed by PSPCL. PSTCL requested that its name be deleted from the array of respondents. After hearing the petitioner, PEDDA and PSPCL, the Commission, vide Order dated 04.05.2016, directed PEDDA to file reply to the petition by 10.05.2016 with a copy to the petitioner and PSPCL. The petitioner was directed to file rejoinders, if any, to the replies of the respondents by 13.05.2016 with copies to the respondents.

PEDDA was restrained from invocation and encashment of the PBGs till the next date of hearing. Next date for hearing the arguments was fixed as 17.05.2016.

4. During hearing on 17.05.2016, acceding to the request of the petitioner to extend the date of filing the rejoinder by 15 days, the Commission directed the petitioner to file the rejoinders by 24.05.2016 with a copy to the respondents.

Meanwhile, PEDDA was restrained from invocation and encashment of the PBGs till next date of hearing. Further, the petitioner was directed to ensure that validity of the PBGs is extended upto 30.06.2016. Next date for hearing the final arguments of the parties was fixed as 07.06.2016, which was postponed to 09.06.2016.

5. The petition was taken up for hearing on 09.06.2016. PEDDA vide e-mail dated 07.06.2016 prayed for adjournment of hearing to 16.06.2016. The Commission considered the prayer and fixed the

next date for hearing the arguments of the parties on 28.07.2016. PEDA vide letter dated 03.06.2016 addressed to the petitioner with a copy to the Commission stated that despite repeated requests, the PBGs have not been extended and that the same be extended by a minimum period of 6 months failing which PEDA shall be left with no option other than to encash the same. Vide Order dated 15.06.2016, the Commission restrained PEDA from invocation and encashment of PBGs till next date of hearing. However, PEDA was granted liberty to encash these PBGs two days prior to their expiry dates in case the validity of the same was not extended by the petitioner beyond the final disposal of the petition and the restraining order for invocation and encashment of these PBGs passed in this Order would deem to have been vacated in that eventuality. The next date for hearing the final arguments of the parties was fixed as 28.07.2016.

6. The parties argued the matter at length on 28.07.2016 and concluded their respective arguments. Vide Order dated 01.08.2016, the Commission directed the petitioner to submit copies of the documents vide which the loan was applied with the banks/ financial institutions alongwith the sanction/approval letters and reasons for delay in sanction of loan, if any, by 08.08.2016. The Order was reserved.

7. The petitioner vide letter dated 05.08.2016 submitted the correspondence with the Central Bank of India. Perusal of the same revealed that the bank sought detailed information from the petitioner vide email dated 23.03.2015 and the petitioner furnished part information vide email dated 26.03.2015. The bank again sought revised information from the petitioner vide letter dated

01.05.2015. However, the petitioner submitted that the loan was sanctioned by State Bank of India, Chandigarh vide letter dated 17.12.2015. Perusal of the said letter reveals that the loan was applied by the petitioner on 18.06.2015 with State Bank of India.

8. The submissions in the petition are summarized hereunder:
- i) The petitioner was allotted a solar PV power project of 3 MW capacity by PEDDA vide Letter of Award (LoA) dated 25.02.2015, to be set up in Punjab (village Bahadurpur, District Mansa). The Implementation Agreement was signed by the petitioner with PEDDA on 24.03.2015 followed by signing of Power Purchase Agreement with PSPCL on 31.03.2015.
  - ii) Grid technical feasibility clearance was applied on 13.04.2015 with PSPCL and the same was issued by PSPCL on 11.05.2015 (wrongly mentioned as 15.05.2015) i.e. after one month. PSPCL failed to make available potential transformer and other electrical equipments and their fittings in the 66 kV bay at Bareta sub-station even after 9 months from the date of grant of grid feasibility clearance.
  - iii) The PPA provided that the projects are to be commissioned within 10 months from the date of signing of the PPA. This period of 10 months is less as compared to 13 months and 12 months for the Phase-I and Phase-III projects.
  - iv) Though the PPA was signed on 31.03.2015, the same was made effective by PSPCL subject to the approval of the Commission. This was objected by the developers and a joint letter was written to PSPCL and PEDDA highlighting that this would result in delayed financial closure, disbursements

and affect timely commissioning of the projects. The Commission's approval for the procurement of power from the solar developers was granted on 11.05.2015 in petition no. 21 of 2015 (wrongly mentioned as 15 of 2015) filed by PSPCL which was 1.5 months after signing of the PPA. This delay is apparently and evidently beyond the control of developers and can not be attributed to them.

- v) The process of obtaining change in land use (CLU), clearances from forest, labour & pollution departments etc. took 2 to 3 months after submission of documents as also resolving individual issues of the developers which resulted in delayed disbursement of loan by financial institutions eventually impacting the implementation of the projects.
- vi) The financial institutions insisted for registration of the ownership/lease deeds of the land for the projects which attracts stamp duty of four percent and one percent registration fee. The developers and financial institutions have been raising this issue with Govt. of Punjab (GoP) and PEDDA for a long time and a notification by GoP in this regard was expected which further delayed the sanction of loans etc. by the banks/financial institutions.
- vii) The whitefly epidemic and incidents of desecration of Sri Guru Granth Sahib resulted in disturbances across Punjab impacting the work at site.
- viii) As per Article 7A of IA and clause 10 of PPA, the commissioning period of the project i.e. scheduled date of synchronization which is the scheduled commercial operation date (SCOD), is 10 months from the date of signing of the PPA. PEDDA is entitled to encash thirty percent

(30%) of the PBG for delay upto one month after the SCOD, proportionate to the capacity not commissioned. The remaining seventy percent (70%) PBG proportionate to the capacity not commissioned is encashable by PEDDA for delay of more than one month beyond SCOD and upto the second month beyond SCOD. In case of further delay from start of 13<sup>th</sup> month onwards upto the end of 15<sup>th</sup> month, applicable liquidated damages (₹20,000/MW/day) are payable to PSPCL. In case the project is not commissioned upto the end of the 15<sup>th</sup> month, the allotment is liable for cancellation.

ix) PSPCL introduced clause 35.0.0 in the PPA mentioning that the PPA will be effective and binding from the date of approval by PSERC. The approval was granted by the Commission on 11.05.2015 and therefore the period of 10 months for commissioning of the project should expire on 10.03.2016 (wrongly mentioned as 12.03.2016). Any penal action by PEDDA with regard to forfeiture/encashment of PBG for delay of one month of default i.e. 10.04.2016 (wrongly mentioned as 12.04.2016) would be uncalled for and arbitrary.

x) The farmers obtained stay orders from the judicial courts on the execution of the project work on 09.02.2016 onwards which was continuing on the date of filing of the petition. The respondents were kept informed from time to time.

9. The reply of PSPCL is summarized hereunder:

i) The petition needs to be dismissed outrightly as the same has been filed with intention to delay the matter and buy time for commissioning the project as also to avoid liability under

clause 10.1.1 of the PPA relating to levy of liquidated damages and to avail the benefit of reduced costs of solar PV modules which are falling gradually.

- ii) The petitioner never approached PSPCL for providing a bay for synchronisation of the project. The petitioner is misrepresenting the facts stating that grid technical feasibility clearance was granted by PSPCL on 15.05.2015. The same was granted on 11.05.2015.
- iii) The grid clearance was applied by the petitioner on 13.04.2015 i.e. after a delay of 13 days of signing the PPA on 31.03.2015 which has not been explained and the same is unreasonable.
- iv) PSPCL has to buy expensive RECs for RPO compliance because of non availability of power from the project due to delay in the commissioning.
- v) The plea of the petitioner that commissioning period of 10 months for the projects under Phase-II bidding under which the petitioner's project was allotted is less as compared to 13 months for Phase-I bidding and 12 months for Phase-III bidding, is belated.
- vi) The statutory approval of the PPA by the Commission is taken to authenticate the same.
- vii) There is no bar in law and in customary practice to proceed with the formalities. It is the duty of the project companies to take approvals from the concerned departments which are most important.
- viii) The petitioner company was not the only company going through these procedural formalities. If the work had been completed in time by the petitioner, it would have applied for

synchronisation of the project. PSPCL is well within its rights to initiate action under clause 10.1.1 of the PPA for levy of liquidated damages.

- ix) The petitioner can not take the benefit of any private litigation with a third party and the stay orders on the land do not hold good as PSPCL had no role to play. The petitioner can not take benefit under clause 19.0.0 of the PPA relating to force majeure with regard to the aforementioned stay orders where PSPCL was not a party. It is the sole duty of the petitioner to arrange land for the project after due diligence to avoid any litigation.
  - x) Since the project has not been commissioned upto 31.03.2016, the tariff of the project should be re-determined in terms of Article 3C of the IA and fixed as ₹ 5.09 per kWh which is the lowest tariff allowed under Phase-III in the competitive bidding conducted by PEDDA in FY 2015-16, similarly as in the case of petition nos. 15 of 2015 of Bhanuenergy Infrastructure and Power Ltd. and 16 of 2015 of Bhanuenergy Industrial Development Ltd.
10. The reply of PEDDA is summarized hereunder:
- i) The petitioner has not demonstrated the true factual matrix to evade its bounden obligation, as stipulated in the RfP, LoA and IA of achieving the COD in time and tried to set up a false and frivolous case. The petitioner is not entitled to any relief, petition may be dismissed and the petitioner directed to deposit the amount of the penalty in line with the contractual documents entered into with the parties.

- ii) The petitioner failed to achieve COD by 30.01.2016 (wrongly mentioned as 31.01.2016) and wrongfully sought interim order dated 22.03.2016 passed by the Commission restraining PEDDA from encashing the unconditional bank guarantees deposited by the petitioner.
- iii) The assertion of force majeure events by the petitioner is belied by the fact that 7 solar power projects with total capacity of 62 MW have been successfully commissioned by similarly placed developers.
- iv) The petitioner did not give any notice/intimation to PEDDA pertaining to the issues of whitefly epidemic and incidents of desecration of Sri Guru Granth Sahib impacting the project works. The Commission in its Order dated 25.04.2016 in petition no.27 of 2016 in the matter of Talwandi Sabo Power Limited vs. PSPCL held that the notices fulfilling the requirements of the PPA are mandatory. Thus, the petitioner failed to give mandatory notices to PEDDA in line with force majeure provisions of IA. As such, the assertions made by the petitioner in respect of occurrence of force majeure events can not be relied upon.
- v) The petitioner did not challenge the decision of PEDDA for not granting any extension in setting up of the project and levying penalty for delay in commissioning of the project.
- vi) The petitioner was well aware at the time of participation in the bidding process that implementation of the project is within 10 months from the date of signing of PPA, without levy of any penalty. As such, petitioner's submissions that this implementation period is short compared to 13 months

for projects allocated under Phase-I and 12 months under Phase-III are uncalled for at this stage.

- vii) PEDA submitted that to the best of its knowledge, the petitioner signed the PPA on 31.03.2015 without any resistance after observing that PSPCL has incorporated clause 35.0.0 in the PPA providing that PPA shall be effective and binding on the parties only upon the approval by the Commission.
- viii) As per the provisions of the NRSE Policy 2012, the petitioner was to obtain land, unencumbered in nature, after due diligence with regard to all aspects including the CLU approval. RfP provides specific timelines for the developer to complete each and every obligation provided therein in a time bound manner. The petitioner never approached PEDA to resolve any constraints for setting up the project. The delay in execution of the project is solely attributable to the petitioner.
- ix) As per the IA/RfP, the petitioner was required to furnish the financial closure documents within 120 days of signing the PPA i.e. by 31.07.2015. On non-receipt of the same, PEDA vide letter dated 21.08.2015 demanded the petitioner to submit the same by 31.08.2015. Due to non-compliance, PEDA served a default notice dated 03.09.2015 on the petitioner to submit the financial closure documents within 30 days of issue of the said notice. The petitioner, vide letter dated 18.11.2015, submitted an undertaking stating *“That as per tender document we are in commitment of funds by the company from our internal resources to set up the plant”*. The petitioner has not approached any of the financial

institutions for funding and achieved financial closure through internal resources. Therefore, the plea of the petitioner that the financial institutions delayed disbursement is misleading and false.

- x) Information was sought from the petitioner vide letter dated 24.02.2016 regarding the capacity commissioned upto February 2016 stating that in case of no response, it will be presumed that nil plant capacity has been commissioned and action as per clause 3.23 of the RfP shall be initiated. The petitioner vide reply dated 25.02.2016 intimated that the project is in advanced stage of construction and the entire capacity of 3 MW shall be commissioned by 15.03.2016.

PEDA inspected the site of the plant on 21.03.2016 and observed that work of switchyard, inverter room and transmission line was in progress though the solar PV modules were not available at site. The petitioner has delayed the procurement of these modules to reduce its costs and take advantage of gradually falling prices of solar PV modules. Accordingly, delay in commissioning of the project is primarily attributable to the petitioner.

- xi) A representation dated 06.01.2016 was submitted to PEDA by the petitioner jointly with other developers seeking extension in the commissioning date of the projects upto 31.03.2016 on various pretexts. After due deliberation, vide letter dated 18.01.2016, the developers were informed that as per RfP terms & conditions, it is not possible to grant any extension in the SCOD beyond 31.01.2016.

- xii) The submissions of the petitioner vide letters dated 15.02.2016 and 05.03.2016 intimating stoppage of the work

of 66 kV transmission line due to order passed by Civil Judge Budhlada are not helpful to the petitioner's case as the feasibility clearance was granted by PSPCL on 11.05.2015 and nothing prevented the petitioner to lay down the line timely.

xiii)The project was incomplete as on 21.03.2016 and not commissioned as per the SCOD i.e. 30.01.2016. PEDDA rightly initiated for encashment of performance bank guarantees submitted by the petitioner.

xiv)The time elapsed for approval by the Commission can not be taken as a ground by the petitioner for delay in commissioning its project.

xv)The petitioner has taken the plea that the approval of the Commission was granted on 11.05.2015 and accordingly 10 months commissioning period of the project expires on 10.03.2016, any penal action by PEDDA with regard to forfeiture of PBG for delay of one month of default i.e. upto 10.04.2016 would be uncalled for and arbitrary.

In such an eventuality, the petitioner is not entitled to tariff of ₹ 7.72 per kWh which is valid only till 31.03.2016.

11. The petitioner, in the rejoinders to the replies of PEDDA and PSPCL reiterated its earlier submissions in the petition. While denying the contents in various paras of the replies of PEDDA and PSPCL, the petitioner submitted as hereunder:

i) The IA is an integral part of the PPA and not the main contractual document. Rather, both supplement each other and contain the respective provisions of force majeure.

- ii) The project was ready for commissioning on 30.03.2016. After accounting for the period spent for the approval of the PPA and force majeure events, the petitioner achieved COD in time.
- iii) The petitioner brought to the notice of PEDDA regarding the occurrence of force majeure events vide letters dated 15.02.2016 and 05.03.2016.
- iv) A joint representation was submitted by the developers to PEDDA. In reply to the said representation, PEDDA informed the developers that as per the RfP, it is not possible to grant any extension in the SCOD and timely commissioning of the projects be ensured otherwise RfP clause 3.23 shall prevail for any delay beyond SCOD.
- v) Order dated 25.04.2016 in petition no. 27 of 2016 (TSPL vs PSPCL) passed by the Commission is on its own facts and has no applicability on the facts of this case.
- vi) In the PPAs executed with the developers in the previous year, there was no such condition that PPAs shall be effective and binding **after** the approval of the Commission as the approval of the Commission was obtained prior to the signing of the PPAs. It was for this reason that clause 35.0.0 to this effect was added in the PPA. A representation in this regard from all the successful bidders was submitted to PSPCL at the time of signing the PPA on 31.03.2015 and on 17.04.2015 the petitioner again informed PEDDA and PSPCL that the PPA without the Commission's approval was not acceptable to the financial institutions for sanction of loan.
- vii) PEDDA was informed vide letter dated 26.10.2015 that the petitioner has approached 3 banks for sanction of the term

loan and as soon as the same is received, it shall be forwarded to PEDDA.

- viii) Chief Electrical Inspector vide memo nos. 012312 and 012313 dated 30.03.2016 approved the project installations including the 66 kV transmission line for commissioning, therefore, the petitioner can not be denied the generic tariff rate as stipulated.
- ix) The work of 66 kV transmission line was delayed due to stay orders obtained by the farmers in the period between 09.02.2016 to 29.03.2016 and PEDDA was informed of the same vide letters dated 15.02.2016 and 05.03.2016. PSPCL was also impleaded as a defendant in one of such civil suit. In order to get the matter resolved at the earliest, compromise was reached with the litigating farmers and the work of the 66 kV transmission line completed.
- x) PSPCL was requested vide letter dated 30.03.2016 for synchronization of the project with PSPCL grid and submitted copies of the clearances by CEI alongwith protection clearance report and plant side meter installation & sealing report, both dated 30.03.2016. PSPCL vide letter dated 31.03.2016 replied that the work of 66 kV bay was pending as also the grid protection clearance and the meter was also yet to be installed at the grid.
- xi) PEDDA was informed vide letter dated 01.04.2016 that the project is ready for synchronization and all necessary approvals have been obtained but delay is on the part of PSPCL.
- xii) PSPCL was requested on 09.12.2015 to keep the 66 kV bay at Bareta sub-station ready. The petitioner intimated PSPCL

that the project is ready for synchronization and the requisite clearances from Chief Electrical Inspector, Punjab and the Protection Cell of PSPCL, both for the plant end sub-station and the 66 kV line, as also the meter installation and testing report from PSPCL were submitted alongwith the request. PSPCL vide letter dated 31.03.2016 informed the petitioner that they are unable to synchronize due to non-availability of 66 kV bay at Bareta sub-station.

- xiii)The petitioner did not delay the project to avail the alleged benefit of reduced costs as claimed by PSPCL without any supporting documents. Immediately after the approval by the Commission, the petitioner started negotiating with suppliers and orders were placed by making advance payments and thus delay in commissioning could not result in reduction of costs.
- xiv)Regarding RECs, PSPCL has not furnished any detail as to how many RECs have been purchased by it in a particular year. No document has been produced on record in this regard by PSPCL.
- xv)In Phase-I projects, PSPCL obtained the approval of the Commission prior to the signing of the PPA and accordingly there was no requirement for a clause to the effect that PPA shall be effective and binding between the parties after the approval by the Commission.
- xvi)PSPCL has wrongly suggested that the petitioner can not take advantage of litigation with third party (where PSPCL has not been impleaded as a party). Any order by a court of civil authority is covered in force majeure under clause 19.0.0 of the PPA.

xvii) Non-completion of bay by PSPCL is malafide and intentional as it could pray for reduction of tariff alleging that the project is not commissioned upto 31.03.2016.

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

12. The Commission has carefully gone through the petition and the two Applications, replies thereto by PEDDA & PSPCL, rejoinders to the replies by the petitioner and other submissions made by the parties. In the two Applications and the petition, the petitioner sought the following reliefs:

- i) Early hearing of the petition as there will be irretrievable loss/injury to the petitioner due to delay;
- ii) Extension of the date of commissioning of the project from 30.01.2016 to 30.06.2016;
- iii) Direct PSPCL & PSTCL to make the bay ready for synchronization and extend the date of commissioning till the bay is ready;
- iv) Restrain PEDDA from forfeiture of performance bank guarantees in terms of clause 10.1.0 of the Power Purchase Agreement and Article 7A of Implementation Agreement; and
- v) Pass any other Order as deemed appropriate in the interest of justice.

13. The Commission notes that the petitioner was allotted a solar PV project of capacity 3 MW by PEDDA vide LoA dated 25.02.2015 to be set up at village Bahadurpur, District Mansa. The petitioner signed IA with PEDDA on 24.03.2015 and PPA with PSPCL on 31.03.2015. As per the PPA, the project was required to be commissioned within 10 months from the date of signing the PPA i.e. by 30.01.2016. As per the IA/PPA, PEDDA could forfeit 30% of the PBG for delay upto 1 month in commissioning of the project

beyond 10 months and the remaining 70% if the project is not commissioned by the end of 12<sup>th</sup> month from the date of signing the PPA. Further, the petitioner is liable to pay liquidated damages to PSPCL upto the end of 15<sup>th</sup> month at the rate of ₹20,000/MW/day if the commissioning of the project is delayed beyond 12 months and thereafter the allotment of the project is liable for cancellation. The liability of PBG encashment as well as levy of liquidated damages is limited to the capacity not commissioned. The tariff payable by PSPCL to the petitioner for supply of electricity under the said PPA is ₹ 7.72 per kWh provided the project is commissioned latest by 31.03.2016 and thereafter it is liable for redetermination by the Commission in terms of the PPA. The petitioner applied for grid technical feasibility clearance for the project to PSPCL on 13.04.2015 which was granted by PSPCL on 11.05.2015.

The petitioner submitted that at the time of signing the PPA on 31.03.2015 with the developers, PSPCL introduced clause 35.0.0 in the PPA which was not part of the draft PPA annexed with the RfP document. The said clause provided that the PPA shall be effective and binding after approval by the Commission. This was objected by the developers and a joint letter was written to PSPCL and PEDDA highlighting that this would result in delayed financial closure, disbursement of loans and affect timely commissioning of the projects. The petitioner again informed PSPCL and PEDDA on 17.04.2015 that the PPA was not acceptable to the financial institutions for sanction of loan without approval of the Commission. In the earlier bidding, there was no such condition that PPAs would be effective and binding after approval of the Commission as the same was obtained prior to signing of

the PPAs. The process of obtaining CLU and other clearances took 2 to 3 months as also resolving individual issues of the developers. The financial institutions insisted for registration of the land ownership/lease deed which attract stamp duty of 4% and 1% registration fee. The developers had been raising this issue with GoP and PEDDA for a long time and expecting a notification in this regard. The petitioner submitted that the above factors resulted in delay of sanction of loan by the financial institutions/banks. The petitioner had applied for the loan on 23.03.2015 i.e. before signing the PPA. The bank raised some observations and sought further clarifications/documents. The loan was, however, sanctioned by another bank on 17.12.2015 on an application filed by the petitioner in June 2015. In between on 26.10.2015, PEDDA was informed by the petitioner that it has approached 3 banks for sanction of the term loan and as soon as the same is received, PEDDA would be informed accordingly.

The petitioner submitted that the procurement of power by PSPCL from the solar PV projects and the respective tariffs were approved by the Commission vide Order dated 11.05.2015 in petition no.21 of 2015 filed by PSPCL in this regard. The petitioner contended that this shifted the timelines for commissioning of the project to 10.03.2016 i.e. 10 months from the date of approval by the Commission on 11.05.2015 in place of 30.01.2016 in view of the clause introduced by PSPCL at the time of signing the PPA on 31.03.2015 that the PPAs shall be effective and binding after approval by the Commission. Therefore, any penal action by PEDDA with regard to forfeiture/encashment of PBG for delay of one month i.e. upto 10.04.2016 would be uncalled for and arbitrary.

The petitioner further submitted that the whitefly epidemic and the incidents of desecration of Sri Guru Granth Sahib resulted in disturbances across Punjab impacting the work at site. The petitioner also contended that the period of 10 months allowed for commissioning of the project from the date of signing of the PPA was less and submitted that the period of 13 months and 12 months has been allowed by PEDDA for Phase-I and Phase-III projects. The developers jointly requested PEDDA on 06.01.2016 to extend the commissioning period upto 31.03.2016 which was not acceded to by PEDDA considering the terms of the RfP.

The petitioner submitted that the farmers obtained stay orders from the judicial courts on the execution of the work of 66 kV transmission line for evacuation of power on 09.02.2016 which continued upto 29.03.2016 and the respondents were informed of the same vide letters dated 15.02.2016 and 05.03.2016. PSPCL was also impleaded as a defendant in one of such civil suits. PSPCL has wrongly suggested that the petitioner can not take advantage of litigation with third party where PSPCL is not impleaded as a party. The stay orders constitute force majeure conditions. The petitioner entered into compromise(s) with the farmers to expedite the work of 66 kV transmission line and the suits were dismissed as withdrawn. The work of the 66 kV transmission line was completed and CEI approved the project installations including the line for commissioning vide letters dated 30.03.2016. The petitioner requested PSPCL vide letter dated 30.03.2016 alongwith the clearance reports of CEI, Protection Cell of PSPCL as also plant side meter installation & sealing report for synchronizing the project with PSPCL grid. However, PSPCL vide letter dated 31.03.2016 informed that the work of 66 kV bay was

pending as also the grid protection clearance and the meter was also yet to be installed at the grid. The petitioner informed PEDDA of the same vide letter dated 01.04.2016. The petitioner has contended that PSPCL was requested vide letter dated 09.12.2015 to keep the 66 kV bay ready at the Bareta sub-station for commissioning the project on 30.01.2016. PSPCL granted clearance for synchronizing the project on 06.04.2016. As per information separately furnished by PEDDA, the project was synchronized with PSPCL grid on 08.04.2016.

The petitioner contended that as alleged by PSPCL, it did not delay the project to avail benefit of reduced costs due to gradually falling prices of solar PV modules. The petitioner had firmed up the contracts for supply of equipment and made advance payment for the same. PSPCL has not furnished any detail with regard to purchase of RECs for RPO compliance.

PSPCL submitted that the petition needs to be dismissed outrightly as the same has been filed with intention to delay the matter and buy time for commissioning the project as also to avoid liability under clause 10.1.1 of the PPA relating to levy of liquidated damages and to avail the benefit of reduced costs of solar PV modules which are falling gradually. The petitioner never approached PSPCL for providing a bay for synchronisation of the project. PSPCL contended that the grid clearance was applied by the petitioner on 13.04.2015 i.e. after a delay of 13 days of signing the PPA on 31.03.2015 which is unreasonable. PSPCL has to buy expensive RECs for RPO compliance because of non availability of power from the project due to delay in the commissioning.

PSPCL submitted that the plea of the petitioner that

commissioning period of 10 months for the projects under Phase-II bidding under which the petitioner's project was allotted is less as compared to 13 months for Phase-I bidding and 12 months for Phase-III bidding, is belated. Further, the statutory approval of the PPA by the Commission is taken to authenticate the same. PSPCL further submitted that there is no bar in law and in customary practice to proceed with the formalities. The petitioner company was not the only company going through these procedural formalities. If the work had been completed in time by the petitioner, it would have applied for synchronisation of the project. PSPCL is well within its rights to initiate action under clause 10.1.1 of the PPA for levy of liquidated damages.

PSPCL contended that the petitioner can not take the benefit of any private litigation with a third party and the stay orders on the land do not hold good as PSPCL had no role to play. The petitioner can not take benefit under clause 19.0.0 of the PPA relating to force majeure with regard to the aforementioned stay orders where PSPCL was not a party. It is the sole duty of the petitioner to arrange land for the project after due diligence, to avoid any litigation.

PSPCL has argued that since the project has not been commissioned upto 31.03.2016, the tariff for the project should be re-determined in terms of Article 3C of the IA and fixed as ₹ 5.09 per kWh which is the lowest tariff allowed under Phase-III in the competitive bidding conducted by PEDDA in FY 2015-16, similarly as in the case of petition nos. 15 of 2015 of Bhanuenergy Infrastructure and Power Ltd. and 16 of 2015 of Bhanuenergy Industrial Development Ltd.

PEDA submitted that the petitioner has tried to set up a false and frivolous case and the petition be dismissed. The petitioner failed to achieve COD by 30.01.2016 and wrongfully sought interim order dated 22.03.2016 passed by the Commission restraining PEDA from encashing the unconditional bank guarantees deposited by the petitioner. 7 solar power projects with total capacity of 62 MW have been successfully commissioned by similarly placed developers.

PEDA submitted that the assertions made in respect of occurrence of force majeure events can not be relied upon as the petitioner failed to give the mandatory notices to PEDA in respect of whitefly epidemic and incidents of desecration of Sri Guru Granth Sahib impacting the project works, in terms of the provisions in the IA. Also, the petitioner did not challenge the decision of PEDA for not granting any extension in setting up of the project and levying penalty for delay in commissioning of the project.

PEDA further submitted that the petitioner was aware at the time of participation in the bidding process that implementation of the project is within 10 months from the date of signing the PPA. As such, petitioner's submission that the implementation period is less in comparison to 13 months for projects allocated under Phase-I and 12 months under Phase-III are uncalled for at this stage. The petitioner signed the PPA on 31.03.2015 without any resistance after observing that PSPCL has incorporated clause 35.0.0 in the PPA providing that PPA shall be effective and binding on the parties only upon the approval by the Commission.

PEDA contended that as per the provisions of the NRSE Policy 2012, the petitioner was to obtain unencumbered land after due diligence with regard to all aspects including the CLU approval. The petitioner never approached PEDA to resolve any constraints for setting up the project.

PEDA contended that RfP provides specific timelines for the developer to complete various activities in a time bound manner. As per the IA/RfP, the petitioner was required to furnish the financial closure documents within 120 days of signing the PPA i.e. by 31.07.2015. On non-receipt of the same, PEDA vide letter dated 21.08.2015 demanded the petitioner to submit the same by 31.08.2015. Due to non-compliance, PEDA served a default notice dated 03.09.2015 on the petitioner to submit the financial closure documents within 30 days of issue of the said notice. The petitioner, vide letter dated 18.11.2015, submitted an undertaking stating *“That as per tender document we are in commitment of funds by the company from our internal resources to set up the plant”*. The petitioner has not approached any of the financial institutions for funding and achieved financial closure through internal resources.

PEDA sought information from the petitioner vide letter dated 24.02.2016 regarding the capacity commissioned upto February 2016. The petitioner vide reply dated 25.02.2016 intimated that the project is in advanced stage of construction and the entire capacity of 3 MW shall be commissioned by 15.03.2016. PEDA inspected the site of the plant on 21.03.2016 and observed that work of switchyard, inverter room and transmission line was in progress though the solar PV modules were not available at site. PEDA

asserted that the petitioner has delayed the procurement of these modules to reduce its costs and take advantage of gradually falling prices of solar PV modules.

PEDA submitted that a representation dated 06.01.2016 was submitted to PEDA by the petitioner jointly with other developers seeking extension in the commissioning date of the projects upto 31.03.2016 on various pretexts. After due deliberation, vide letter dated 18.01.2016, the developers were informed that as per RfP terms & conditions, it is not possible to grant any extension in the SCOD beyond 30.01.2016.

PEDA further submitted that the submissions of the petitioner vide letters dated 15.02.2016 and 05.03.2016 intimating stoppage of the work of 66 kV transmission line due to order passed by Civil Judge Budhlada are not helpful to the petitioner's case as the feasibility clearance was granted by PSPCL on 11.05.2015 and nothing prevented the petitioner to lay down the line timely. The project was incomplete as on 21.03.2016 and not commissioned as per the SCOD i.e. 30.01.2016 and therefore PEDA rightly initiated for encashment of performance bank guarantees submitted by the petitioner.

With regard to the plea of the petitioner that the approval of the Commission was granted on 11.05.2015 and accordingly 10 months commissioning period of the project expires on 10.03.2016, any penal action by PEDA with regard to forfeiture of PBG for delay of one month of default i.e. upto 10.04.2016 would be uncalled for and arbitrary, PEDA contended that in such an eventuality, the petitioner is not entitled to tariff of ₹ 7.72 per kWh which is valid only till 31.03.2016.

**Considering the discussion above, the Commission is of the considered opinion that the delay in commissioning of the project is due to a diverse combination of events/factors and is not attributable solely to the petitioner.**

**The Commission notes that the petitioner initiated action with regard to obtaining the loan from Central Bank of India on 23.03.2015 even before signing the PPA. Also, the petitioner applied for the technical grid feasibility clearance on 13.04.2015 which was granted by PSPCL on 11.05.2015. As per the PPA, the land for the project was already available at village Bahadurpur, District Mansa. This clearly shows that the preliminary/preparatory works for execution of the project were not hampered for want of approval/acceptance of the PPA by the Commission on 11.05.2015, as alleged by the petitioner.**

**The petitioner filed another loan application on 18.06.2015 with State Bank of India and the loan was sanctioned by the bank on 17.12.2015.**

**During the arguments, the learned counsel for the petitioner pleaded for a blanket extension for 41 days because PSPCL added a new clause 35.0.0 in the PPA which was not a part of the RfP while submitting the petition on 30.03.2015 for approval by the Commission which was granted on 11.05.2015. The said clause stated that the PPA would become effective and binding on approval by PSERC and subject to such terms and conditions as may be stipulated by the Commission. The clause is reproduced below for ready reference:**

***“35.0.0. The PPA shall be effective & binding on the parties only upon approval of the PPA by the Hon’ble PSERC & the PPA shall be subject to such conditions as may be stipulated by the Hon’ble PSERC while granting such approval.”***

According to the learned counsel for the petitioner, financial closure of a project is not possible when banks do not have a clear approval and the conditional approval itself does not give a hope for clear “go ahead” signal. He stated that

- i) the bidders who had been allotted the projects had objected to the insertion of the clause 35.0.0 which was beyond the RfP and which vitiates the tendering process;
- ii) having spent a lot of time, money and effort, the petitioner could not walk away from the project as that would be a dead loss;
- iii) banks are hesitant to sanction finances for which they do not have a clear mandate and they are not ready to bring their hesitancy on record.
- iv) in the phase-I bidding, IAs were signed with PEDDA in month of November 2013 and PSPCL filed the petition for approval of the Commission in September 2013. The approval was granted by the Commission in November 2013. However, in the instant case of phase-II bidding, due to delayed bidding process by PEDDA, IAs were signed by PEDDA on 24.03.2015. PSPCL signed the PPAs on 31.03.2015 with additions which went beyond the RfP and filed the petition for approval of the Commission on

**30.03.2015. In the petition the aggrieved bidders were not made a party. The approval was granted by the Commission on 11.05.2015, thus, the allottees were left with only 8½ months (approximately) for execution of the projects instead of 10 months stipulated in clause 10.1.0 of the PPA.**

**The Commission notes that clause 10.1.0 and clause 35.0.0 are concurrent and co-exist in the PPA. Article 7 of the IA signed by the petitioner with PEDDA on 24.03.2015 stipulated the commissioning period of the project as 10 months from the date of signing the PPA. Further, as per para (d) on page-2 of the PPA, IA shall be treated as an integral part of the PPA. The Commission has carefully considered the matter. The Commission is of the opinion that in the absence of documentary evidence to prove any loss/delay suffered by the petitioner due to the time elapsed between the submission of petition by PSPCL on 30.03.2015 and acceptance of the PPA by the Commission on 11.05.2015, no benefit on this account is admissible to the petitioner.**

**As far as the whitefly epidemic and incidents of desecration of the holy Shri Guru Granth Sahib are concerned the Commission feels that the petitioner has failed to show what material difference these made to the implementation of the project. Neither did the petitioner bring these issues up before PEDDA/PSPCL at the relevant time. The claim for relief on these grounds is therefore rejected.**

**The submission of the petitioner that the time period of 10 months for completion of the projects from the date of**

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

**The petitioner has submitted documentary proof with regard to stay orders granted by the judicial courts, on the suits filed by farmers with respect to the land for laying the 66 kV transmission line, operating in the period from 09.02.2016 to 29.03.2016. PEDDA was duly informed of the same vide letters dated 15.02.2016 and 05.03.2016. As submitted by the petitioner, the suits were dismissed (as withdrawn) by the judicial courts due to compromise agreements entered into by the petitioner with farmers to expedite the completion of the 66 kV transmission line. The contention of PSPCL that the petitioner can not take advantage of the litigation with third party where PSPCL is not a party is not correct. Even otherwise, as submitted by the petitioner, PSPCL was impleaded as a defendant in one of the suits. This is clearly a force majeure event and the petitioner deserves relief on this score for 49 days from 09.02.2016 to 29.03.2016.**

**The petitioner informed PSPCL on 30.03.2016 of the readiness of the project including the 66 kV transmission line and submitted the requisite clearances from CEI, Protection Cell of PSPCL and meter installation & sealing report requesting for synchronization of the project with the PSPCL grid. However, PSPCL vide letter dated 31.03.2016 informed that the 66 kV bay at Bareta sub-station was not ready. The**

protection clearance report and meter installation at the sub-station end were also pending. The synchronization clearance was given by PSPCL to the petitioner on 06.04.2016 and the project was synchronized with PSPCL grid on 08.04.2016. The assertion of PSPCL that the petitioner did not approach PSPCL for providing a bay for synchronization of the project is not correct as the petitioner (vide letter dated 09.12.2015) had requested PSPCL to make the 66 kV bay at Bareta sub-station ready citing the commissioning date as 30.01.2016. Accordingly, the delay of 9 days from 30.03.2016 to 08.04.2016 is attributable to PSPCL.

In view of the above discussion, the Commission finds that there is a case for according benefit of 58 days for extension in the date of commissioning of the petitioner's project i.e. 49 days on account of stay orders by judicial courts from 09.02.2016 to 29.03.2016 and 9 days from 30.03.2016 to 08.04.2016 due to delay by PSPCL in completing the 66 kV bay at Bareta sub-station.

The scheduled date of commissioning of the project as per the PPA was 30.01.2016 whereas the same was commissioned on 08.04.2016 with a delay of 69 days. The Commission has allowed 58 days of extension in commissioning of the project as brought out above. Accordingly, the Commission allows the scheduled date of commissioning of the project as 08.04.2016 with forfeiture and encashment of PBGs by PEDAs in terms of IA/PPA for the 11 days delay. The stay granted by the Commission for forfeiture and encashment of PBGs is hereby vacated. However, PEDAs

**is directed to forthwith release the PBGs for the remaining amount within seven working days from the date of this Order, failing which PEDDA will be liable to pay penal interest on the remaining amount to the petitioner at the rate of 1.25% per month payable on pro-rata basis for each day's delay beyond seven working days.**

**There is no case for levy of any liquidated damages by PSPCL. In view of the force majeure events as allowed by the Commission above, it is held that there shall be no change in the tariff of ₹ 7.72 per kWh as provided in the PPA for the project which is payable to the petitioner by PSPCL for purchase of electricity from the project.**

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

Sd/-  
**(S.S. Sarna)**  
**Member**

Sd/-  
**(D.S. Bains)**  
**Chairman**

Chandigarh  
Dated: 14.02.2017