

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

**Petition No. 26 of 2016 &  
I.A. No. 18 of 2016  
Date of Order: 09.08.2017**

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

In the matter of: Petition under section 86(1)(f) of the Electricity Act, 2003 read with regulation 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulations, 2005 and regulation 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 clause 19.1.0 of the Power Purchase Agreement dated 31.03.2015 and article 10 of the Implementation Agreement dated 28.03.2015 and section 94 of the Electricity Act, 2003, for seeking project specific extension of period of commissioning of the project upto 31.08.2016 with applicable tariff of Rs. 7.65 per kWh.

AND

In the matter of: Omega Infraengineers Pvt. Ltd., SCO No. 274, Second Floor, Sector 35-D, Chandigarh through its authorized signatory Shri Vikas Kashyap.

.....Petitioner

Versus

1.Punjab State Power Corporation Limited through its Managing Director, 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**

The petitioner has filed the present petition for seeking project specific extension of period of commissioning of the project up to 31.08.2016 with applicable tariff of ₹ 7.65 per kWh along with an application seeking stay on invocation of Performance Bank Guarantee (PBG) by the respondents.

2. The petition along with the application no.18 of 2016 were admitted by the Commission vide order dated 01.04.2016 directing PSPCL and PEDA to file reply by 26.04.2016 with a copy to the petitioner and each other. The Commission restrained the respondents from invoking the PBG and taking any coercive action against the petitioner till the next date of hearing and stayed the operation of the letters dated 18.01.2016 and 24.02.2016 issued by PEDA.

3. PSPCL vide Memo No.5495 dated 28.04.2016 filed its reply to the petition but PEDA failed to file reply and prayed for some more time for reply during hearing on 03.05.2016. PEDA was directed to file reply by 16.05.2016 with a copy to the petitioner and PSPCL and the petitioner was directed to file rejoinder, if any, by 23.05.2016. The invocation of PBG and stay of operation of the letters dated 18.01.2016 and 24.02.2016 issued by PEDA was further extended by the Commission vide its Orders dated 04.05.2016, 31.05.2016, 27.06.2016 and 04.10.2016.

4. The petitioner filed rejoinder on 23.05.2016 to the reply of PSPCL. PEDDA prayed for grant of extension of two weeks time, i.e. up to 31.05.2016, to file reply. The Commission during hearing on 26.05.2016 allowed the prayer of PEDDA to file reply by 31.05.2016. The petitioner was directed to file the rejoinder to PEDDA's reply by 14.06.2016. PEDDA, vide letter No.1276-78 dated 06.06.2016, filed its reply to the petition and application for interim stay.

5. The petitioner filed rejoinder dated 16.06.2016 to the reply of PEDDA. PSPCL vide Memo No.5922 dated 14.09.2016 filed its final submissions and status report of PSPCL. The petitioner, during hearing on 27.09.2016, filed application for making amendment in the petition due to changed circumstances during the pendency of the petition. The Commission directed PSPCL and PEDDA to file reply by 03.10.2016 to the application with a copy to the petitioner.

6. PSPCL vide Memo No.6315 dated 25.10.2016 submitted its short reply to the application for amendment. The petitioner during hearing on 29.11.2016 requested for withdrawal of the application with a liberty to file a fresh/amended application. PEDDA, vide letter no. 440 dated 19.01.2017, submitted a detailed site visit report of District Manager, PEDDA to the petitioner's project.

7. PSPCL in compliance of the Order of the Commission dated 20.12.2016, submitted vide Memo No.6965 dated 31.01.2017 that 1 MW solar plant of the petitioner has been synchronized on 24.01.2017 with PSPCL 66 kV sub-station Chorwala as per the report received from Sr.Xen/DS, PSPCL, Sirhind vide Memo No.931 dated

25.01.2017. During the hearing on 02.02.2017, the petitioner filed an application (2 of 2017) for amending the petition due to the changed circumstances. A copy of the same was supplied to the respondents for reply, if any, by 23.02.2017.

8. PSPCL vide memo no.5167 dated 01.03.2017 filed its short reply to the said application. The Commission, vide order dated 14.03.2017, allowed the said application directing the respondents to file their respective replies to the amended petition with a copy to each other and the petitioner by 24.03.2017. PSPCL was also directed to release 60% of the payment towards the invoices raised by the petitioner till the final adjudication of the matter. PSPCL vide memo no.5368 dated 27.03.2017 filed its reply/final submissions to the amended petition.

9. PEDA filed an application no.10 of 2017 on 03.04.2017 seeking adjudication of the issue with respect to undue influence of the counsel representing the petitioner before the Commission. The petitioner submitted its reply to this application on 24.04.2017. After hearing the parties on 09.05.2017, the Commission reserved the order in application no. 10 of 2017 vide its order dated 11.05.2017.

10. PEDA filed another application (25 of 2017) received on 19.05.2017 seeking rectification/modification of the Order dated 11.05.2017 stating that application no.10 of 2017 be disposed of first to proceed further in the matter. The Commission disposed of application no.10 of 2017 vide its order dated 22.05.2017 in terms of the order dated 18.05.2017 passed in IA No.07 of 2017 in petition

no.22 of 2016. In view of its order dated 22.05.2017, the Commission held the application no.25 of 2017 filed by PEDDA as infructuous and redundant in its order dated 23.05.2017.

11. During the hearing on 01.06.2017, the learned counsel for the petitioner submitted a copy of letter dated 12.08.2016 issued by State Bank of India to the petitioner and a copy of list of dates and events. The arguments were heard in the petition and the order was reserved. The parties were directed to file written submissions by 12.06.2017 vide interim order dated 02.06.2017.

12. The petitioner and PEDDA filed their respective written arguments/submissions on 12.06.2017. PSPCL vide memo no. 6263 dated 14.06.2017 submitted that replies already filed by PSPCL are comprehensive in nature and treated as its written submissions.

13. Petitioner's submissions, in brief, are as under:

- i) The petitioner was allotted 1 MW rooftop solar PV power project (project) by PEDDA vide Letter of Award (LoA) dated 25.03.2015. The Implementation Agreement (IA) and Power Purchase Agreement (PPA) for setting up the said project were signed with PEDDA and PSPCL on 28.03.2015 and 31.03.2015 respectively. As per the PPA, the project was required to be commissioned within 10 months from the date of signing of PPA i.e. the scheduled date of commercial operation (SCOD) was 30.01.2016.
- ii) The PPA was approved by the Commission on 11.05.2015 i.e. after 41 days of signing the PPA on 31.03.2015. Therefore, the

petitioner was left with 8 and a half months out of total 10 months implementation period.

- iii) In terms of clause 19.4.0 of the PPA, the relevant provisions of the IA with regard to force majeure events occurring during the commissioning period of the project would be applicable. The IA is to be read as part of the PPA and all the clauses and regulatory norms applicable to the IA are unequivocally applicable to the PPA.
- iv) The developers collectively vide letter dated 06.01.2016 informed PEDDA about the force majeure events faced by them. PEDDA, vide letter dated 18.01.2016 informed that no extension in SCOD will be granted and clause 3.23 of the RfP would prevail for any delay beyond SCOD.
- v) The developers were required to submit the complete location/details of the rooftop of the building/shed on which the proposed project was to be set up as per article 4.1(vii) of the IA. The schematic sketches of design using green house rooftop were submitted to PEDDA for approval vide letter dated 20.08.2015. The petitioner identified 4 acre of land on lease basis and same was to be leased after the approval of design by PEDDA. Land papers were submitted vide letter dated 31.08.2015. PEDDA informed vide letter dated 02.09.2015 that the lease papers were to be in favour of the company instead of company's Director. The lease deeds executed in favour of the company were submitted to PEDDA on 05.10.2015 and it was requested to grant concurrence to set up the project on the roof

of green house sheds at village Rurki, District Fatehgarh Sahib. PEDDA granted the same vide letter dated 12.10.2015.

- vi) The petitioner could not approach PSPCL for technical grid feasibility clearance without getting concurrence from PEDDA as PSPCL, vide letter dated 17.09.2015 sought documents including the concurrence obtained from PEDDA.
- vii) PSPCL asked the petitioner vide letter dated 28.10.2015 to submit a copy of the amendment to IA before signing the amendment in the PPA regarding location of the project. Accordingly, PEDDA was requested vide letter dated 03.11.2015 to amend the IA.
- viii) The amendment in the IA was signed by PEDDA on 13.11.2015. Thereafter, PPA was amended by PSPCL on 26.11.2015. PSPCL/PEDDA took 44 days in carrying out the amendment in the IA/PPA.
- ix) PSPCL informed the petitioner vide letter dated 06.01.2016 that the required space for installation of C&R panel and VCB in the control room of 66 kV sub-station, Chorwala was not available as per the report dated 29.12.2015 submitted by CE/DS (Central), PSPCL, Ludhiana. PSPCL further requested the petitioner to suggest any other 66 KV sub-station as alternative at the earliest. PSPCL wasted 58 days in giving information about the technical grid feasibility clearance. Further, a joint meeting was held in the office of PEDDA on 06.01.2016 with Chief Engineer/TS, PSPCL and it was decided that the feasibility was to be granted from the same sub-station.

- x) The petitioner requested CE/TS, PSPCL vide letter dated 09.02.2016 for technical grid feasibility clearance. CE/TS, PSPCL vide letter dated 10.02.2016 informed that the power generated by the project was to be evacuated at 66 kV sub-station at 11 kV voltage level and TS organization deals with the 66 kV voltage level lines & sub-stations and as such this work does not fall in the preview of this organization. EIC/DS (Central), PSPCL, Ludhiana is the authority to take decision regarding this sub-station.
- xi) PEDDA issued letter dated 24.02.2016 asking to intimate the capacity commissioned during the month of February, 2016. Further, PEDDA sought to impose penalty for non-commissioning/shortfall in commissioning of allocated capacity as per clause 3.23 of the RfP.
- xii) The detailed reply dated 29.02.2016 was submitted to PEDDA intimating that the delay was due to force majeure events or the events which occurred due to default of the respondents. The petitioner was awaiting the necessary approval and clearance of grid connectivity from PSPCL. A request was made to PEDDA to look into the matter for an immediate resolution.
- xiii) The petitioner requested CE/Planning, PSPCL vide letters dated 01.03.2016 and 09.03.2016 for grant of technical grid feasibility clearance. PSPCL failed to provide the same.
- xiv) The petitioner vide letter dated 04.03.2016 requested PEDDA for extension of time as there was delay on the part of PSPCL in granting technical grid feasibility clearance. The petitioner

- invested huge money and installed structures of green house. The panels could be installed only if technical grid feasibility clearance was provided by PSPCL.
- xv) PEDA was informed vide letter dated 25.03.2016 that the petitioner visited the office of CE/Planning, PSPCL regarding technical grid feasibility clearance on 23.03.2016 and it was assured to grant the technical grid feasibility clearance soon. Due to this delay the bankers refused project financing. PSPCL again sent a letter dated 28.03.2016 to CE/DS, Central Zone, PSPCL, Ludhiana asking for clear cut recommendations.
- xvi) The lease deeds were executed on 29.09.2015 and were submitted to PEDA on 05.10.2015. PEDA after 7 days gave its concurrence on 12.10.2015. IA and PPA were amended on 13.11.2015 and 26.11.2015 causing a delay of 39 and 52 days respectively. Technical grid feasibility clearance was not granted upto 30.03.2016 causing 177 days delay. In the absence of technical grid feasibility clearance the petitioner could not start the work on the project.
- xvii) PEDA cannot benefit out of the events occurred under the force majeure situation which were beyond the control of the petitioner, solely with an intention to invoke the PBG of the petitioner. As such, the letters dated 18.01.2016 and 24.02.2016 denying the extension of COD and the direction by the respondents to calculate the LD was wrongful and arbitrary.
- xviii) The Commission approved the PPA on 11.05.2015 due to which nothing could be done for 41 days. The delay of 218

days (177+41) was beyond the control of the petitioner. The petitioner is entitled to get extension of 218 days for commissioning the project.

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

xx)It is prayed as under:

- a) set aside and/or quash the letters dated 18.01.2016 and 24.02.2016 of PEDA;
- b) hold and declare that the Commercial Operation Date of the project of the petitioner stands extended till 31.08.2016 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;
- c) hold and declare that the petitioner is entitled to tariff of ₹ 7.65 per kWh (levellised tariff) in terms of the PPA dated 31.03.2015 during the extended COD period;
- d) direct PEDA not to invoke the Performance Bank Guarantee, and to not take any coercive actions whatsoever against the petitioner and

e) stay on letters dated 18.01.2016 and 24.02.2016 issued by PEDDA.

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

- i) PSPCL is a performa respondent and has no major role to play at this stage. All the grounds taken by the petitioner on account of force majeure events does not fall under the clause 19.1.0 of the PPA and are vague, technically incorrect & legally defective as the said clause deals with the natural calamities or events like unrest, epidemics, any court order, change in law or any act of God.
- ii) The petitioner is seeking an illegal and unrealistic Order from the Commission by not disclosing the true facts and concealing the material facts.
- iii) The time schedule for commissioning and synchronization of the project i.e. 10 months from the date of signing of the PPA was mentioned at the time of bid. PSPCL would have to purchase the expensive RECs to comply with the RPO specified by the Commission if the petitioner delays the commissioning of the project, which would affect the public at large. PSPCL may be allowed to carry forward the RPO by saddling the petitioner with heavy cost to be paid to PSPCL.
- iv) The approval of purchase of power and tariff in the PPA by the Commission is not only a practice but is also a legal binding on both the parties. Although the approval of the Commission was required after signing of the PPA but there was no bar that the petitioner cannot initiate other processes and formalities for the

commissioning of the project. PSPCL did not give any assurance to the petitioner that approval of the PPA would be obtained in 5-7 days. In case the petitioner was having problem with clause 35.0.0 of the PPA, the same should have been challenged or the petitioner should have objected to it or should not have bidden.

- v) PSPCL has no role in delay in commissioning of the project. The formalities related to land were completed by the petitioner after more than 5 months from the signing of the PPA i.e. September, 2015. The delay on this account is attributable to the petitioner only.
- vi) IA, being the primary and initial document, should be amended first for making any amendment in the PPA.
- vii) The PPA was signed on 31.03.2015 whereas the application for technical grid feasibility clearance was made on 01.03.2016 i.e. after a huge delay. It was informed to the petitioner that Engineer-in-Chief, Ludhiana was the competent authority to take decision for grant of technical grid feasibility clearance as the power generated from the project was to be evacuated at 66 kV sub-station at 11 kV voltage level.
- viii) The petitioner submitted the bank guarantees in terms of the IA & PPA and agreed that if it would not be in position to commission the project on time, the same can be encashed.
- ix) The lowest tariff of ₹ 5.09 per kWh has been discovered in the bidding process for allocation of projects under phase-III during

FY 2015-16. It is prayed that tariff of ₹ 5.09 per kWh be made applicable to the petitioner project as decided in the case of Bhanuenergy in petition no.15 & 16 of 2015.

15. The petitioner's submissions in the rejoinder to the reply of PSPCL, in brief, are as hereunder. For the sake of brevity, the repetitive points already covered in the petition as brought out in foregoing paras have been excluded:

- i) PSPCL was not a performa respondent for the said reliefs. The delay in commissioning of the project occurred due to the force majeure events and faults of PSPCL which were beyond the control of the petitioner. Reliance is placed on the judgment dated 07.04.2016 of Hon'ble APTEL in the case of Uttar Haryana Bijli Vitaran Nigam Limited Vs. CERC and other in Appeal No. 97 of 2014 and 151 of 2013 and connected matters on the interpretation of force majeure clause.
- ii) The tariff should not be reduced as the delay in COD was solely due to faults on the part of the respondents.

16. PEDDA's reply, in brief, is as under:

- i) The petition is bad de-jure & de-facto. It is based on conjunctures and surmises. The petitioner has not demonstrate the true factual matrix of the matter and in order to evade its bounden obligation of achieving the SCOD well within time, as stipulated in the RfP, LoA and IA. The petition is not maintainable as the matter pertains to contractual obligation and an arbitration clause exists in the IA.

- ii) The petitioner could not achieve the COD in terms of the RfP, LoA and IA on various pretexts, which otherwise are unsustainable. The petitioner while misusing the process of law in order to invoke section 86(1)(f) of the Act purported as if a dispute between the petitioner and PSPCL arisen, despite there been a conceded case of the petitioner that the petitioner could not achieve full COD of allocated capacity of 1 MW of the project by the scheduled date of commissioning i.e. 30.01.2016 (mentioned wrongly by PEDDA as 31.01.2016).
- iii) The IA signed between PEDDA and the petitioner is the main contractual document. The petitioner was to achieve the COD by 30.01.2016 in terms of RfP, LoA and IA, which it failed to achieve.
- iv) The petitioner while misleading the Commission wrongly procured the interim Order dated 22.03.2016 passed by the Commission restraining PEDDA from forfeiture of the PBGs deposited by the petitioner with PEDDA qua the project, which is against the settled canons of law laid down by Hon'ble Supreme Court of India in catena of judgments. The petitioner failed to complete the project up till 30.01.2016 and therefore liable to be levied with penalty and PEDDA is entitled to encash the PBGs.
- v) As per the RfP/IA the petitioner was required to submit lease deed documents for the rooftops of buildings/sheds, technical grid feasibility clearance, financial closure documents and copies of the work order of equipments of the project and

- technology selection certificate from technology provider, within 120 days from the date of signing of the PPA. The petitioner failed to submit the same within 120 days i.e. upto 31.07.2015.
- vi) The petitioner, on 21.08.2015, sought approval of PEDDA for sketches of roof of under construction green house sheds at village Purkhali, Distt. Ropar. The site ownership/lease deeds of the land which were required to be submitted by the petitioner upto 31.07.2015, were not submitted.
- vii) The petitioner, on 31.08.2015, submitted land lease papers of village Bhaddal, District Rupnagar, which were in the name of the Director of the Company and were not for the rooftop lease deed of the building/shed as per the RfP. The petitioner was requested vide letter dated 02.09.2015 to submit the rooftop lease deed in the name of the Company.
- viii) PEDDA issued 30 days notice of termination on 07.09.2015 to the petitioner seeking a reply as to why the LoA, IA and PPA of the project should not be terminated and consequently the performance security be forfeited.
- ix) PSPCL vide its letter dated 17.09.2015 requested PEDDA to provide technical concurrence regarding location of the rooftop plant and PEDDA could not provide the same as the lease deeds in the name of the Company were not submitted by the petitioner.
- x) The petitioner vide letter dated 05.10.2015, in line with the article 4.1(vii) of the IA, submitted the lease deed documents

- dated 29.09.2015 for a changed location i.e. village Rurki, Distt. Fatehgarh Sahib and sought concurrence from PEDDA. The petitioner informed that the location was changed due to lot of trees and 4 brick kilns in the vicinity of the project. The petitioner further informed that for project financing it would use its own internal resources if bankers do not approve the loan.
- xi) PEDDA granted concurrence to the petitioner on 12.10.2015 and requested PSPCL on 23.10.2015 to sign supplementary PPA for the project to be set up at village Rurki, Distt. Fatehgarh Sahib.
- xii) The petitioner requested PEDDA on 03.11.2015 to sign the amendment to IA as it was intimated by PSPCL vide its letter dated 28.10.2015 that before signing the supplementary PPA, amendment to IA was required.
- xiii) Amendment to the IA was signed on 13.11.2015 for inclusion of rooftop location without changing any of the terms and conditions mentioned in the IA and the amendment to the PPA was signed on 26.11.2015
- xiv) The petitioner alongwith other project developers vide letter dated 06.01.2016 collectively requested PEDDA for extension in COD upto 31.03.2016. PEDDA vide its letter dated 18.01.2016 rejected the request and intimated that the project be commissioned by 30.01.2016 otherwise action as per clause 3.23 of the RfP would be initiated.

- xv)PEDA vide letter dated 24.02.2016 sought information about the capacity commissioned. The petitioner informed PEDA vide letter dated 29.02.2016 that due to delay in granting technical grid feasibility clearance by PSPCL, the project was delayed which was beyond their control. PSPCL granted technical grid feasibility clearance on 30.03.2016.
- xvi)The petitioner claimed three events as force majeure viz. approval of the PPA; delay in amendment in the IA & PPA and delay in technical grid feasibility clearance.
- xvii)The affected party is required to give notice within 5 days of the date of the commencement of the force majeure event as provided in the IA. PPA also provides for issuance of notice in the case of occurrence of force majeure events within 7 days. The petitioner failed to issue any such notices. Therefore, no reliance could be placed upon the plain assertions made by the petitioner.
- xviii)The lease deed documents were submitted by the petitioner after the delay of 65 days beyond the scheduled date. PSPCL took lot of time in issuing technical grid feasibility clearance even after signing the amendment in PPA.
- xix)As an arbitration clause exists in the IA, the matter cannot be adjudicated upon by the Commission and the petition deserves to be dismissed.
- xx)In the same phase of allocated rooftop solar PV power projects, one rooftop solar power project with 12 MW capacity was

commissioned by similarly placed developer before the scheduled date i.e. 30.01.2016.

xxi)The Commission in its Order dated 25.04.2016 in petition no. 27 of 2016 in the case of TSPL Vs. PSPCL held that the notices fulfilling the requirement in terms of the clause 6.1.1 of the PPA are mandatory and were required to be issued by TSPL. However, in this case, the petitioner failed to give notice to PEDDA in line with the force majeure article of the IA.

xxii)It is requested to dismiss the petition and PEDDA be allowed to invoke the PBGs deposited by the petitioner on account of levy of penalty due to delay in commissioning of the project and the petitioner be directed to deposit the amount of penalty in line with the contractual documents in the interest of justice, equity and fair play.

17. The petitioner's submissions in the rejoinder to the reply of PEDDA, in brief, are as hereunder. For the sake of brevity, the repetitive points already covered in the petition as brought out in foregoing paras have been excluded:

- i) It is wrong that the petition is not maintainable as there exists an arbitration clause in the contractual document entered between the parties. This issue was decided by Hon'ble Supreme Court of India vide its judgment dated 13.03.2008 in Appeal (Civil) 1940 of 2008 in Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Limited.

- ii) As per recital of the PPA, the IA is the integral part of the PPA. Therefore, it is wrong that the IA entered into between PEDDA and the petitioner is the main contractual document.
- iii) PSPCL gave feasibility clearance on 30.03.2016 due to which the commissioning of the project got delayed.
- iv) PEDDA being nodal agency never informed the petitioner before signing of the PPA that it would be effective only after its approval by the Commission.
- v) The invocation of the PBG is subject to other terms and conditions of the IA. Article 10.5(ix) of the IA shows that article 7 is not absolute and it is qualified by article 10 of the IA. PEDDA has not right to invoke the PBG as the matter is pending before the Commission.
- vi) The petitioner vide its letter dated 21.08.2015 submitted the proposal/designs etc. to PEDDA but it failed to take a decision regarding approval of the same. On 29.09.2015, the petitioner submitted fresh lease deed documents. PEDDA vide its letter dated 12.10.2015 granted the concurrence to set up the project on the roof of green house sheds at village Rurki, Distt. Fatehgarh Sahib, which could have been given in the month of August, 2015.
- vii) As no format of notice was prescribed in the IA or PPA, the letters sent by the petitioner are notices as per the provisions of the IA and PPA. PEDDA participated in the causes of the petitioner and acted to get the permissions etc. and this

effective participation amounts to constructive notice to the respondents.

viii) PEDDA wrongly and illegally rejected the joint representation dated 06.01.2016 by sending the letter dated 18.01.2016 without any reasons. PEDDA wrongly and illegally issued the notice dated 24.02.2016.

ix) The stay can be granted by the Hon'ble Court against the encashment of PBGs. In the present case article 7 of the IA is qualified by article 10 of the IA and as such PEDDA has no absolute right to invoke the PBGs.

x) The facts of the present case are totally different than the project of 12 MW capacity.

xi) The findings of the Commission in petition No. 27 of 2016 are not applicable to the present case as it is having different facts.

18. PSPCL's final submissions dated 14.09.2016, in brief, are as hereunder:

i) The contentions raised by the petitioner are specious, untenable and are contrary to the expressed provisions of law and agreed terms of the IA and the PPA.

ii) The Commission should follow the established principles of law of natural justice by considering the facts before hand and should aid to act "ex-debito justitiae" for doing real and substantial justice to the aggrieved party as the petitioner has not approached the Commission with clean hands.

- iii) According to article 10.4 of the IA and clause 19.2.0 of the PPA, the petitioner did not give the notice regarding the occurrence of force majeure events and the petitioner has failed to submit any documentary proof of the same. The plea taken by the petitioner in this regard is belated and is barred by limitation as per the agreed terms of the IA and the PPA.
- iv) It has been provided in article 14 of the IA and clause 16.0.0 of the PPA that the resolution of disputes is to be handled mutually by discussions and in case such discussions fails, then the same is to be adjudicated by way of arbitration under Arbitration and Conciliation Act 1996. In the present case, the petitioner never opted for the same and instead approached the Commission for adjudication of its grievances. When an alternative remedy was available to the petitioner, approaching the Commission would be out of jurisdiction and accordingly petition deserves to be dismissed.
- v) The petitioner approached PEDDA in November, 2015 for amendment to the IA. PEDDA amended the IA on 13.11.2015 and thereafter PPA was amended on 26.11.2015. The delay of 9 months from 31.03.2015 i.e. date of signing of the PPA upto November, 2015, was caused by the petitioner and is not attributable to the respondents.
- vi) The application dated 30.10.2015 of the petitioner requesting for grant of technical grid feasibility clearance could not be processed in the absence of finalization of the project site. The

amendment to the PPA incorporating the project site was signed on 26.11.2015.

vii) The feasibility clearance was given on 30.03.2016. The delay can not be attributed to PSPCL as the petitioner approached the wrong office for getting technical grid feasibility clearance. The petitioner was informed vide letter dated 06.01.2016 regarding the non-availability of space at the 66 kV grid sub-station, Chorwala. The petitioner was asked to intimate the alternative 66 kV grid sub-station for connecting its project. The petitioner was informed vide CE/TS letter dated 10.02.2016 to apply for feasibility clearance to the appropriate authority. After that the petitioner made a fresh request to CE/Planning on 01.03.2016 for technical grid feasibility clearance from 66 kV grid sub-station, Chorwala. The delay has been caused by the petitioner.

viii) The allegation with regard to non-availability of the connectivity status is false. The status of connectivity was sought from the concerned offices of PSPCL by the office of SE/IPC. The office of SE/Planning vide letter dated 28.06.2016 replied regarding the same. As per the above letter, delay was on the part of the petitioner as it was not submitting the requisite documents on time. The petitioner deposited the processing fee of ₹ 55000/- for construction of the line on 27.04.2016. The notice dated 26.05.2016 was issued to the petitioner for depositing ₹1344033/- for erection of 11 kV line as deposit work to connect

- the 1 MW project to the 66 kV Chorwala sub-station. The petitioner deposited the same on 09.06.2016.
- ix) The process of laying the line was started on 15.06.2016 by the contractor. The charges for installation of ABT meters and CT/PT unit were deposited by the petitioner on 24.08.2016.
  - x) As per clause 5.5.0 & 6.2.0 of the PPA, the petitioner was required to give 30 days notice prior to synchronization to PSPCL, which was not given by the petitioner.
  - xi) The delay in the project is due to lackadaisical attitude of the petitioner.

19. The petitioner filed an application for making amendments in the petition during the hearing held on 27.09.2016 and requested for extension in COD upto 15.11.2016. The petitioner submitted that PSPCL did not complete the work of 11 kV line from the project to 66 kV grid sub-station, Chorwala upto 31.08.2016 i.e the date upto which extension in COD was sought in the petition. The petitioner applied for sanction of loan from State Bank of India. The bank officials visited the project site in August 2016 and refused to sanction the loan on 12.08.2016 due to non-completion of 11 kV line and grid sub-station. The petitioner then arranged its own funds by mortgaging some other property with Punjab National Bank and paid advance money to the suppliers of solar panels, which have been despatched from China and the project would be ready by 15.11.2016.

20. The petitioner filed an application under Regulation 69, 71 and 72 of the PSERC (Conduct of Business) Regulations, 2005 on

29.11.2016 to withdraw the application dated 26.09.2016 filed by it for amendment of the petition with permission to file the same afresh. The petitioner filed another application dated 14.12.2016 requesting to issue necessary directions to PSPCL to complete the grid sub-station and synchronize/commission the project.

21. The petitioner filed an IA No. 2 of 2017 on 23.02.2017 for making amendments in the petition. The petitioner's submissions in the IA, in brief, are as hereunder:

- i) PSPCL did not complete the work of 11 kV line from the project to 66 kV grid sub-station, Chorwala upto 31.08.2016 i.e the date upto which extension in COD was sought in the petition.
- ii) The petitioner applied for sanction of loan from State Bank of India. The bank officials visited the project site in August 2016 and refused to sanction the loan on 12.08.2016 due to non-completion of 11 kV line and grid sub-station.
- iii) The petitioner then arranged its own funds by mortgaging some other property with Punjab National Bank and paid advance money to the suppliers of solar panels.
- iv) The project was completed in the first week of November, 2016 and the Chief Electrical Inspector, Punjab inspected the plant on 07.11.2016. The protection team of PSPCL visited and inspected the project on 09.11.2016. However, the grid sub-station was not ready for synchronization. PSPCL was requested on 15.11.2016 to connect the project to the grid sub-station and grant permission to synchronize the plant.

- v) PSPCL was requested vide letters dated 07.11.2016, 24.11.2016 and 13.12.2016 (through e-mail) to install the 2 ABT bi-directional meters.
- vi) PSPCL vide an email dated 18.01.2017 intimated that the petitioner has not made any provisions for the connectivity of solar power generation data with SLDC, PSTCL. The petitioner then submitted requisite affidavit dated 18.01.2017 as required by PSTCL. PSPCL gave permission for synchronization of the project vide letter dated 23.01.2017. The meter at sub-station was installed and sealed by MMTS on 24.01.2017 and grid sub-station was also completed on 24.01.2017. Thereafter, the plant was synchronized on 24.01.2017.
- vii) The delay in commissioning occurred solely due to delay on the part of PSPCL. Therefore, it is requested to extend the COD of the project upto 24.01.2017.

22. PEDDA filed IA No. 10 of 2017 on 03.04.2017 seeking adjudication of the issue with respect to undue influence of the counsel representing the petitioner in the petition before the Commission who was representing the Commission before other court(s)/forum(s)/tribunal(s), which gravely prejudiced the rights of PEDDA.

The counsel for the petitioner filed reply dated 18.04.2017 to the said IA supported by copies of judgments titled and reported as R. Balakrishna Pillai Vs. State of Kerala, (2000) 7 Supreme Court Cases 129, Reference No.1 of 2003 decided on November 10, 2008, reported in (2009) 1 Supreme Court Cases 337, Abhraham Kuruvila

Vs. S.C.T. Institute of Medical Sciences & Technology and others reported in (2005) 9 Supreme Court Cases 49, Keshab Roy Vs. The State of West Bengal, reported in (1973) 3 Supreme Court Cases 216, Hyderabad Vanaspathi Ltd. Vs. A.P. State Electricity Board and others, reported in (1998) 4 Supreme Court Cases 470 and a judgment of the Punjab & Haryana High Court reported in the Times of India on 10.02.2017.

Detailed arguments were held on the merits of issue involved in all the above cited judgments on 09.05.2017. Vide Order dated 11.05.2017, Order in the IA was reserved. PEDDA filed another IA No. 25 of 2017 seeking rectification/modification in the Order dated 11.05.2017 passed by the Commission. PEDDA prayed to the Commission to decide IA No. 10 of 2017 prior to further proceedings in the petition, in the interest of justice, equity and fair play.

The IA No. 10 of 2017 was disposed of by the Commission vide Order dated 22.05.2017 in terms of the Order dated 18.05.2017 passed in IA No.07 of 2017 filed by PEDDA in petition no. 22 of 2016 in the matter of Solaire Urja Private Limited Vs. PSPCL & PEDDA as the facts and the relief claimed in IA No.10 of 2017 were similar to the facts of IA No.07 of 2017 in petition no. 22 of 2016.

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

- i) The petitioner submitted schematic sketches of its design using green house rooftop for 1 MW solar panels for approval to

PEDA vide its letter dated 20.08.2015. The roof area of 1,00,000 sq. ft. was required for the project which was not available with the petitioner. Having no option, the petitioner started discussing this issue with PEDA and decided to construct a green house and put the solar panels on the same. This was totally a new and unique concept. After many deliberations on this issue, the petitioner got the sketches prepared, which took time.

- ii) There was no need of any land documents for approving the design etc. but PEDA without any reasons delayed the permission of design of the project.
- iii) PSPCL vide its letter dated 06.01.2016 informed that the required space is not available for installation of C&R panel and VCB in the control room of 66 kV grid sub-station, Chorwala for injecting the power from the project. The clause 4.3.0 of RfP provides that the erection and extension of the sub-station bay as well as up gradation of the sub-station capacities for receiving power from the project shall be carried out by PSPCL/PSTCL. So PSPCL could not deny the feasibility clearance. PSPCL wasted 58 days in giving the aforesaid information about the technical feasibility. Thereafter a joint meeting was held with PEDA & PSPCL on 06.01.2016 wherein it was decided that technical grid feasibility clearance shall be given from the same sub-station i.e. Chorwala.

- iv) PEDA was requested vide letter dated 04.03.2016 to allow extension of time as there was delay on the part of PSPCL in grant of technical grid feasibility clearance.
- v) The petitioner requested PSPCL vide letters dated 09.02.2016, 01.03.2016 & 09.03.2016 to grant the technical grid feasibility clearance but PSPCL failed to grant the same.
- vi) The petitioner informed PEDA vide letter dated 25.03.2016 that bankers have refused the financing of the project as technical grid feasibility clearance has not been granted by PSPCL.
- vii) PSPCL granted technical grid feasibility clearance vide letter dated 30.03.2016 which was subject to expansion of 66 kV grid sub-station, Chorwala.
- viii) Due to delay on the part of PEDA & PSPCL, the petitioner suffered a loss of about 263 days upto the grant of feasibility clearance i.e. 41 days for approval of the PPA (31.03.2015 to 11.05.2015), 52 days for issue of concurrence by PEDA (20.08.2015 to 12.10.2015), 32 days for amending the IA (12.10.2015 to 13.11.2015), 13 days for amending the PPA (13.11.2015 to 26.11.2015) and 125 days for granting technical grid feasibility clearance (26.11.2015 to 30.03.2016). Thereafter some delay occurred in completion of project as the Bank refused to finance the project due to delay in grant of technical grid feasibility clearance and completion of grid sub-station. Therefore, the own funds were arranged and the project was completed on 07.11.2016. Thereafter the delay occurred

solely due to the fault of PSPCL as it failed to complete the grid sub-station.

- ix) The cost of the plant has not come down due to its delayed completion. The major share in the total cost of the plant is that of solar PV modules, inverter and transformer. As per the quotation taken in November, 2015 from the supplier for solar PV modules, the cost of the same was \$ 420480. The solar PV modules were purchased from the same supplier in the month of July, 2016 at the same rate as quoted in November, 2015. The supplier quoted the rate of ₹ 28.50 lakh in its quotation dated 26.11.2015 for supply of inverter which was negotiated and settled at ₹ 27.03 lakh. The order for transformer was placed by the petitioner in the month of February, 2016 at a rate of ₹ 9.80 lakh. It is clear from the above facts that the prices did not reduce and the petitioner did not get any benefit on account of the same.
- x) The project was completed on 07.11.2016 and the same was commissioned on 24.01.2017. During this period, the plant could generate electricity but it could not do so in the absence of synchronization with PSPCL's grid sub-station. The petitioner suffered a loss of more than ₹ 25 lakh on this account which is liable to be recovered from PSPCL.
- xi) In view of clause 10.5(ix) of the IA, once delay has happened on account of force majeure, the commercial operation date of the project shall get extended. In the Order dated 11.05.2015 passed in petition no. 23 of 2015, the Commission while

approving the tariff applicable to the petitioner's project also clarified that barring force majeure/ change in law etc., the applicability of the said approved tariff beyond the aforementioned date i.e. 31.03.2016 will not be allowed by the Commission even if punitive clauses in the PPA are made applicable. Therefore, if there are events of force majeure/change in law etc. the approved tariff in such circumstances will be allowed even beyond 31.03.2016. In the present case, the project has been commissioned on 24.01.2017. The petitioner was not responsible in any manner for delay in commissioning of the project.

xii)PEDA and PSPCL did not produce any document or evidence to counter the submissions made by the petitioner. In this context, the Order of the Commission passed in petition no. 17 of 2015 in case of Atma Powers Pvt. Ltd. may be referred to, wherein the commissioning date beyond 31.03.2015 was permitted for purposes of retaining the approved tariff. Further, reference and reliance is also placed on the judgment of Hon'ble APTEL in Appeal No. 170 of 2014 in the case of GUVNL Vs. GERC and others.

xiii)PEDA contended that the petitioner failed to issue notice in line with the article 10.4 of the IA in case of occurrence of force majeure events. PEDA and PSPCL were both aware and were informed about the issues pertaining to force majeure events by the petitioner from time to time.

xiv) A notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. Reference may be made to the judgment passed by Hon'ble Supreme Court of India titled as Special Deputy Collector, Land Acquisition C.M.D.A. Vs. J. Sivaprakasan and Others reported in (2011)1SCC330.

xv) PEDDA and PSPCL cannot impose a penalty under a contract unless the same is in the nature of compensation, which is required to be justified in accordance with the principles in the Indian Contracts Act. In this context, reference is made to the recent judgment of Hon'ble Supreme Court of India in the case of Kailash Nath reported in (2015)4SCC136.

24. PEDDA filed written submissions dated 12.06.2017. While reiterating its earlier submissions, PEDDA further submitted as hereunder:

- i) PEDDA chosen to argue the main matter without prejudice to its rights to challenge the order dated 22.05.2017 passed by the Commission while adjudicating the Application filed by PEDDA with respect to the undue influence of the counsel for the petitioner on the Commission i.e. IA No.10 of 2017.
- ii) The petitioner wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Electricity Act, 2003 which empowers the Commission to adjudicate upon the disputes between the generating company and the distribution licensee. The petitioner while purporting occurrence of force majeure event(s) claimed relief against PEDDA, which is

empowered by the State Govt. to promote renewable energy in the State of Punjab. The Act does not empower the Commission to assume jurisdiction over the disputes between PEDDA and the project developer.

- iii) It was informed by the petitioner vide letter dated 04.03.2016 that technical grid feasibility clearance may be granted to it by PSPCL subject to the extension of the control room of 66 KV grid, which may take 3 to 4 months time.
- iv) The petitioner vide letter dated 25.03.2016 requested that extension be granted in the IA till 30.06.2016, which was declined by PEDDA as the petitioner had delayed in submitting the project site lease documents and moreover extension beyond 31.03.2016 could not be considered due to end of the tariff control period.
- v) The petitioner filed the amended petition twice for extension in the actual date of commissioning of the project. In the main petition, the petitioner had sought extension uptill 31.08.2016. Thereafter, since the petitioner was not even able to meet the timeline so anticipated, it sought amendment of the petition seeking extension in the commissioning of the project uptill 15.11.2016. Since the petitioner was not able to complete the project upto the extended date, it again filed an amended petition seeking further amendment in the actual date of commissioning of the project uptill 24.01.2017. The petitioner has been seeking extensions in the date of commissioning of the project and was not sure of its completion.

- vi) The project was synchronized on 24.01.2017 i.e. much after the control period of the tariff i.e. 31.03.2016. The petitioner was benefitted due to the delay in commissioning as the cost of solar plants is on a declining trend. The tariff of the project should be re-determined as provided in the IA.

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

25. The Commission has carefully gone through the petition and an application for interim stay restraining PEDDA from invoking the performance bank guarantee, replies thereto by PEDDA & PSPCL, rejoinders to the replies by the petitioner and written submissions made by the parties. In the petition and the application for interim stay, the petitioner sought the following reliefs:

- i) set aside and/or quash the letters dated 18.01.2016 and 24.02.2016 of PEDDA;
- ii) hold and declare that the Commercial Operation Date of the project of the petitioner stands extended till 31.08.2016 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;
- iii) hold and declare that the petitioner is entitled to tariff of ₹ 7.65 per kWh (levellised tariff) in terms of the PPA dated 31.03.2015 during the extended COD period;
- iv) direct PEDDA not to invoke the Performance Bank Guarantee, and to not take any coercive actions whatsoever against the petitioner and
- v) stay on letters dated 18.01.2016 and 24.02.2016 issued by PEDDA.

26. The purchase of power from the project and tariff in the PPA was approved by the Commission vide its Order dated 11.05.2015 in petition no.23 of 2015 filed by PSPCL for the purpose. The tariffs approved were applicable upto 31.03.2016 provided the PPAs were signed on or before 31.03.2015 and the entire capacity covered in each PPA was commissioned on or before 31.03.2016. 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. 31.03.2016 will not be allowed by the Commission even if punitive clauses in the PPA were made applicable.

27. The petitioner has sought extension in the date of commercial operation (COD) of the project upto 31.08.2016 in the petition in accordance with clause 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of force majeure events with the same tariff of ₹ 7.65 per kWh as provided in the PPA signed on 31.03.2015. Subsequently, vide application dated 26.09.2016, the petitioner requested for extension in COD upto 15.11.2016 and thereafter vide application dated 02.02.2017, sought further extension upto 24.01.2017, when the project was actually commissioned.

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

28. PEDDA submitted that the petitioner wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Act, which empowers the Commission to adjudicate upon disputes between the generating company and the distribution licensee. The Act does not

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

**In this regard, the Commission notes that in para 14 of its Order dated 11.05.2015 in petition no. 23 of 2015 while granting approval for purchase of power from the petitioner's project by PSPCL and other developers including tariff, the Commission expressed its view as under:**

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

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

**As regards PEDDA's submission that the petition is not maintainable as there exists an arbitration clause in the contractual documents, the Commission notes that the said issue has already been decided by the Commission in its Order dated 12.04.2016 in IA no. 19 of 2016 in petition no. 21 of 2016 & IA no.**

**14 of 2016 wherein it was held that the same was devoid of any merit. The Commission holds the same view in the instant petition as well.**

Approval of PPA by the Commission on 11.05.2015

29. The PPA was signed by the petitioner with PSPCL on 31.03.2015. The petitioner submitted that PSPCL added clause 35.0.0 in the PPA which was not part of the draft PPA annexed with the RfP. The petitioner and other solar developers at the time of signing the PPA objected to the same stating that the PPA including the said clause should have been got approved from the Commission by PSPCL before its date of execution. The petitioner further submitted that PSPCL assured that the approval from the Commission shall be obtained in 5 to 7 days. However, the PPA was approved by the Commission on 11.05.2015. The insertion of clause 35.0.0 in the PPA practically rendered it ineffective and non-bankable until approved by the Commission. The petitioner submitted that the financial closure and other project activities could not progress due to the same.

PSPCL submitted that as per clause 10.1.0 of the PPA, the generating company was under an obligation to synchronize the project with the PSPCL grid and commission it within 10 months from the date of signing the PPA i.e. by 30.01.2016 as also mentioned in the bidding documents. Approval of PPA by the Commission is a legal requirement. The petitioner should have exercised due diligence at the time of bidding and before signing the PPA. PSPCL submitted that it did not assure the petitioner that the PPA would be approved

by the Commission in 5 to 7 days. The petitioner should have objected and challenged the addition of clause 35.0.0 in the PPA or not signed the same.

PEDA submitted that the petitioner failed to produce on record any letter written under Article 10.4 of the IA and/or clause 19.2.0 of the PPA with regard to the occurrence of force majeure event due to delay in signing the PPA.

**The petitioner has not submitted any documentary evidence indicating that the works for execution of the project were hampered for want of approval/acceptance of the PPA by the Commission on 11.05.2015. 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 PEDA on 28.03.2015 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 for approval of purchase of power and tariff in the PPA by the Commission on 11.05.2015, no benefit on this account is admissible to the petitioner.**

Approval of design

30. The petitioner submitted that as per article 4.1(vii) of the IA, the developers were required to submit the complete location/details of the rooftop of the building/shed on which the proposed project was to be set up. The schematic sketches of design using green house rooftop were submitted by the petitioner to PEDDA for approval vide letter dated 20.08.2015. Land measuring 4 acre was identified and same was to be leased after the approval of design by PEDDA. Land papers were submitted to PEDDA vide letter dated 31.08.2015. PEDDA informed vide letter dated 02.09.2015 that the lease papers should be in favour of the company instead of the director of the company. The lease deed of the land executed in favour of the company was submitted to PEDDA on 05.10.2015 and it was requested to grant concurrence to set up the project on the roof of green house sheds at village Rurki, District Fatehgarh Sahib. PEDDA granted the same vide letter dated 12.10.2015. The petitioner submitted that there was no need of any land documents for the purpose of approving the design etc. but PEDDA delayed the permission of design of the rooftops for the project. The petitioner submitted that it suffered a loss of about 52 days (20.08.2015 to 12.10.2015) due to delay by PEDDA in granting the concurrence for setting up the project on the roof of green house sheds.

PEDDA submitted that the petitioner on 21.08.2015 submitted the sketches of roof of under construction green house sheds at village Purkhali, Distt. Ropar seeking approval of the design using green house rooftop. The petitioner did not submit any lease deeds as was required to be submitted upto 31.07.2015. PEDDA further

submitted that the petitioner submitted land lease papers of village Bhaddal, Distt. Rupnagar on 31.08.2015 which were in the name of the director of the company and were not in accordance with the RfP requirement for the rooftop lease deed of the building/shed. The petitioner was requested vide letter dated 02.09.2015 to submit the rooftop lease deed in the name of the company. PEDDA submitted that the petitioner vide letter dated 05.10.2015, in line with the article 4.1(vii) of the IA, submitted the lease deed documents dated 29.09.2015 for a changed location i.e. village Rurki, Distt. Fatehgarh Sahib and sought concurrence from PEDDA. The petitioner informed that the location was changed due to a large number of trees and 4 brick kilns in the vicinity of the project. PEDDA further submitted that the petitioner informed PEDDA that it would use its own internal resources for project financing, if bankers do not approve the loan. PEDDA granted concurrence to the petitioner on 12.10.2015.

**The Commission notes that as per article 4.1(vii) of the IA, the petitioner was required to submit the complete location/details of the rooftop of the building/shed on which the proposed project was to be set up and the land lease documents were required to be submitted within 120 days of signing of the PPA on 31.03.2015 i.e. upto 29.07.2015. On 21.08.2015, the petitioner submitted the sketches of roof of green house sheds at village Purkhali, Distt. Ropar to PEDDA seeking approval of the design. Thereafter, on 31.08.2015, the petitioner submitted land lease papers of village Bhaddal, Distt. Rupnagar to PEDDA i.e. at a different location. The petitioner further changed the location of**

land of its own and submitted the lease deed dated 29.09.2015 to PEDDA on 05.10.2015 for another changed location at village Rurki, Distt. Fatehgarh Sahib. As finally, the petitioner after changing the location of the project thrice submitted the requisite documents of land on 05.10.2015, the Commission is of the view that the period of 68 days from 29.07.2015, the date on which the requisite documents were required to be submitted as per RfP, upto 05.10.2015, the date on which the same were actually submitted, is delay on the part of the petitioner on account of submission of requisite documents by the stipulated date. The Commission further notes that PEDDA vide letter dated 12.10.2015 i.e. after 7 days of submission of lease deed documents finally, granted the concurrence to setup the 1 MW solar PV power project of the petitioner on the roof of the green house sheds at village Rurki, Distt. Fatehgarh Sahib, there was no delay on the part of PEDDA on this account.

#### Technical Grid Feasibility Clearance

31. The petitioner submitted that it could not approach PSPCL for technical grid feasibility clearance without getting concurrence from PEDDA as PSPCL, vide letter dated 17.09.2015 sought documents including the concurrence obtained from PEDDA. As the location of the project was changed, PSPCL vide letter dated 28.10.2015 asked the petitioner to submit a copy of the amendment to IA before signing the amendment in the PPA regarding location of the project. The petitioner submitted that vide letter dated 30.10.2015, it requested PSPCL for grant of technical grid feasibility clearance. The petitioner

further submitted that the amendment in the IA was signed by PEDDA on 13.11.2015 and thereafter PPA was amended by PSPCL on 26.11.2015. The petitioner contended that PEDDA took 32 days for amending the IA (12.10.2015 to 13.11.2015) and PSPCL took 13 days for amending the PPA (13.11.2015 to 26.11.2015). The petitioner further contended that PSPCL informed it vide letter dated 06.01.2016 that as per the report dated 29.12.2015 submitted by CE/DS (Central), PSPCL, Ludhiana, the required space for installation of C&R panel and VCB in the control room of 66 kV sub-station, Chorwala was not available. The petitioner submitted that PSPCL further requested it to suggest any other 66 KV sub-station as alternative. PSPCL wasted 58 days in giving the aforesaid information about the technical grid feasibility clearance. The petitioner submitted that a joint meeting was held in the office of PEDDA on 06.01.2016 with Chief Engineer/TS, PSPCL and it was decided that the feasibility was to be granted from the same sub-station. The petitioner contended that it took up the matter with PSPCL vide letters dated 09.02.2016, 01.03.2016 and 09.03.2016 for grant of technical grid feasibility clearance. The petitioner submitted that vide letter dated 04.03.2016, it requested PEDDA for extension of time as there was delay on the part of PSPCL in granting technical grid feasibility clearance. The petitioner submitted that vide letter dated 25.03.2016, PEDDA was informed that it visited the office of CE/Planning, PSPCL regarding technical grid feasibility clearance on 23.03.2016 and it was assured to grant the technical grid feasibility clearance soon. Due to this delay the bankers refused project financing. The petitioner submitted that the technical grid feasibility

clearance was granted on 30.03.2016 causing 177 days delay. The petitioner further submitted that in the absence of technical grid feasibility clearance, it could not start the work on the project.

PSPCL submitted that it has no role in delay in commissioning of the project. The formalities related to land were completed by the petitioner after more than 5 months from the signing of the PPA i.e. September, 2015. The delay on this account is attributable to the petitioner. PSPCL contended that the PPA was signed on 31.03.2015 whereas the application for technical grid feasibility clearance was made on 01.03.2016. It was informed to the petitioner that Engineer-in-Chief, Ludhiana was the competent authority to take decision for grant of technical grid feasibility clearance as the power generated from the project was to be evacuated at 66 kV sub-station at 11 kV voltage level. The petitioner kept on approaching the wrong offices of PSPCL for the same.

**The Commission notes that the petitioner was required to obtain the technical grid feasibility clearance from PSPCL within 120 days from the date of signing of the PPA in terms of IA/PPA i.e. upto 29.07.2015. However, the petitioner applied for the grant of technical grid feasibility clearance on 30.10.2015 and the same was granted by PSPCL on 30.03.2016. The Commission further notes that there was delay of 93 days (29.07.2015 to 30.10.2015) on the part of the petitioner in applying for technical grid feasibility clearance. Further, the Commission notes that PSPCL granted the technical grid feasibility clearance on 30.03.2016 i.e. 152 days after the same was applied on**

**30.10.2015 by the petitioner. The Commission observes that PSPCL failed to give any cogent reason for delay in granting the technical grid feasibility clearance. Therefore, considering 15 days period as adequate for granting feasibility clearance by PSPCL, the Commission notes that there was a delay of 137 (152-15) days on the part of PSPCL in granting technical grid feasibility clearance. However, considering the delay of 93 days by the petitioner in applying for the technical grid feasibility clearance on 30.10.2015 instead of upto 29.07.2015, the Commission allows net 44 (137- 93) days to the petitioner on this account.**

Commissioning of the project

32. The petitioner submitted that after the issue of technical grid feasibility clearance on 30.03.2016, the completion of the project was further delayed as the bank refused to finance the project due to delay in grant of technical grid feasibility clearance by PSPCL and completion of grid sub-station. Funds were arranged from internal sources by the petitioner and the project was completed on 07.11.2016. The Chief Electrical Inspector, Punjab inspected the plant on 07.11.2016 and the protection team of PSPCL inspected the project on 09.11.2016. However, the grid sub-station was not ready for synchronization. PSPCL was requested on 15.11.2016 to connect the project to the grid sub-station and grant permission to synchronize the plant. The petitioner submitted that PSPCL gave permission for synchronization of the project vide letter dated 23.01.2017. The grid sub-station was completed on 24.01.2017 and

the meter also installed and sealed by MMTS. The plant was synchronized on the same day i.e. on 24.01.2017. As such, the delay occurred solely due to the fault of PSPCL due to delayed completion of the grid sub-station. The petitioner further submitted that due to delayed completion of the project, there was no reduction in the cost of the project on account of falling prices of solar PV modules. The petitioner submitted that the project was completed on 07.11.2016 and the same was commissioned on 24.01.2017 and the petitioner suffered a loss of revenue of more than ₹ 25 lakh as it could not generate electricity which is liable to be recovered from PSPCL.

PEDA submitted that the project was synchronized on 24.01.2017 much after the expiry of the control period on 31.03.2016. The petitioner benefitted due to the delay in commissioning of the project as the cost of solar plants is on a declining trend. The tariff of the project should be re-determined as provided in the IA.

PSPCL submitted that the time schedule for commissioning and synchronization of the project i.e. 10 months from the date of signing of the PPA was mentioned at the time of bid. PSPCL further submitted that it would have to purchase RECs to comply with the RPO specified by the Commission on account of non-availability of solar power due to delay in the commissioning of the project, which would affect the public at large. PSPCL contended that it has no role in delay in commissioning of the project and the delay is attributable to the petitioner. The formalities related to land were completed by the petitioner after more than 5 months from the signing of the PPA i.e. September, 2015.

The Commission notes that the project was completed on 07.11.2016 and the same was inspected by Chief Electrical Inspector on the same date. The protection team of PSPCL visited and inspected the plant on 09.11.2016. The petitioner applied to PSPCL for the grant of permission for synchronization of the project on 15.11.2016. PSPCL granted the permission for synchronization on 23.01.2017 and the meter at sub-station was installed and sealed by MMTS on 24.01.2017. The project was synchronized on 24.01.2017. The petitioner applied for synchronization on 15.11.2016. Considering a period of 7 days as sufficient for granting permission for synchronization by PSPCL i.e. upto 22.11.2016, the period from 22.11.2016 to 23.01.2017 when the synchronization permission was actually given by PSPCL i.e. 62 days is attributable to PSPCL as delay on this account.

In view of the above, the Commission allows benefit of total 106 days to the petitioner i.e. 44 days on account of delay in granting technical grid feasibility clearance and 62 days on account of permission for synchronization by PSPCL. After deducting 68 days on account of delay by the petitioner in submission of requisite land documents to PEDDA, the net benefit of 38 (106-68) days is to the account of the petitioner.

The project was commissioned on 24.01.2017 against the scheduled date of commissioning as 30.01.2016 i.e. 361 days after the due date. After allowing net benefit of 38 days as brought out above in favour of the petitioner, the Commission finds that the project was commissioned with a delay of 323

**(361-38) days. As such, forfeiture and encashment of performance bank guarantees is warranted in terms of IA/PPA. Accordingly, the stay on forfeiture and encashment of PBGs granted by the Commission earlier is hereby vacated.**

**Further, due to the delay in completion of the project, it could not contribute towards procurement of sufficient power from solar projects by PSPCL which remained deficit of the same to the tune of 77.41 MU for meeting solar Renewable Purchase Obligation for FY 2015-16 as per details furnished in petition no. 61 of 2016 filed by PSPCL. This tantamounts to a loss to PSPCL. Accordingly, PSPCL is also entitled to levy liquidated damages. In terms of IA/PPA, the scheduled date of commissioning of the project was 30.01.2016. The project could be commissioned within next two months with forfeiture and encashment of PBGs by PEDDA in terms of IA/PPA. Further, the project could be commissioned within the next 3 months i.e. 15 months from the date of signing the PPA with levy of liquidated damages by PSPCL in terms of IA/PPA i.e. upto 30.06.2016. Thereafter the project was liable to be cancelled. The Commission is of the view that since the project was not cancelled on 30.06.2016 and allowed to be commissioned on 24.01.2017, there is a case for levy of liquidated damages for 263 (323-60) days after accounting for two months time for forfeiture of bank guarantees at the rate provided in the IA/PPA .**

**The tariff of the project was valid till 31.03.2016 in terms of the Order of the Commission dated 11.05.2015 in petition no. 23 of 2015 and the IA/PPA. Therefore, the entitlement of the**

**petitioner to the tariff of ₹ 7.65 per kWh no longer remains valid. The Commission has determined the tariff for the project in the following para.**

**The Commission notes that the tariff of ₹ 7.65 per kWh of the petitioner's project was determined through competitive bidding process undertaken by PEDA on the basis of discount to be offered by the bidders on the generic tariff of ₹ 7.72 per kWh determined by the Commission for FY 2014-15 and the tariff was valid till 31.03.2016. For FY 2015-16 also, PEDA conducted the competitive bidding process on the same basis of discount to be offered by the bidders on the generic tariff of ₹ 7.04 per kWh for FY 2015-16 determined by the Commission wherein the lowest tariff discovered was ₹ 5.09 per kWh and approved by the Commission in its Order dated 10.06.2016 in petition no. 31 of 2016 and the same is valid upto 31.03.2017. Under the circumstances brought out in the foregoing paras, the Commission considers the petitioner's project akin to such projects. PEDA submitted that the developer benefitted due to the falling prices of solar PV modules and the tariff of the project was required to be determined afresh. PSPCL pleaded that the project should be allowed lowest tariff of ₹ 5.09 per kWh determined in the next bidding process carried out by PEDA. Accordingly, the Commission finds it just and fair to fix the tariff for the petitioner's project as ₹ 5.09 per kWh which shall be payable by PSPCL to the petitioner for purchase of electricity from the project.**

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

Sd/-  
(S.S. Sarna)  
Member

Sd/-  
(D.S. Bains)  
Chairman

Chandigarh  
Dated: 09.08.2017