

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-21, SECTOR 34-A, CHANDIGARH**

Petition No. 25 of 2016
& IA No. 17 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 86(1)(f) of the Electricity Act, 2003, read with Regulation 69 (Saving of inherent power of the Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgment of time allowed) of the PSERC (Conduct of Business) Regulations, 2005 and Regulation 85 (Power to Relax) of CERC (Terms and Conditions of Tariff determination from Renewable Energy Sources) Regulations, 2012 [as adopted by Commission in its Order dated 19.07.2012 in petition no. 35 of 2012 (Suo-Motu)] read with clause 19.1.0 of the Power Purchase Agreement dated 31.03.2015 for extending the date of commissioning of petitioner's project from 31.01.2016 to 31.08.2016 by maintaining status quo in terms of the applicability of tariff granted to the project of the petitioner i.e. ₹ 7.68 per kWh and for other relief as prayed for

And

In the matter of: Abundant Energy Private Ltd., # 74-A, Taylor Road, Amritsar, District Amritsar, through its authorized signatory Shri Parv Arora S/o Shri Ashok Arora, resident of House No. 633, Sector 4, Panchkula (Haryana).

---Petitioner

Versus

1. Punjab State Power Corporation Limited (PSPCL), The Mall, Patiala through its Chairman cum Managing Director.
2. Punjab Energy Development Agency (PEDA), Plot No.1 & 2, Sector 33, Chandigarh through its Director.

.....Respondents

ORDER

Abundant Energy Private Limited (AEPL) filed this petition on 30.03.2016 under section 86(1)(f) of the Electricity Act, 2003 (Act) read with Regulation 69, 71 and 73 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and Regulation 85 of Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 as adopted by Commission vide its Order dated 19.07.2012 in petition no. 35 of 2012 (Suo-Motu), further read with clause 19.1.0 of the Power Purchase Agreement (PPA) dated 31.03.2015 executed between the petitioner and Punjab State Power Corporation Limited (PSPCL). The petitioner has prayed to the Commission for extending the date of commissioning of the project from 31.01.2016 to 31.08.2016 by maintaining status quo in terms of the applicability of tariff granted to the project i.e. ₹ 7.68 per kWh.

The petitioner also filed an application for issuance of direction to the respondents not to take any coercive measures such as termination of Implementation Agreement (IA) and PPA and encashment of Performance Bank Guarantee(s) (PBGs) etc. during the pendency of the petition.

2. After carefully considering the matter, the Commission admitted the petition and the application vide Order dated 01.04.2016. PSPCL and Punjab Energy Development Agency (PEDA) were directed to file their replies by 08.04.2016 with a copy to the petitioner and to each other. PSPCL and PEDA were further directed not to take any coercive measure such as termination of IA and/or PPA and not to invoke/encash PBGs given by the petitioner till next date of hearing i.e. 12.04.2016.

PSPCL vide letter dated 06.04.2016 requested for grant of six weeks time for the submission of reply and postponement of the date of hearing accordingly. PEDA neither submitted reply nor filed any request for grant of extension to file the reply. The Commission in its Order dated 18.04.2016 again directed PSPCL and PEDA to file their replies by 03.05.2016 with copy to the petitioner and to each other. The petitioner was directed that it may file rejoinders to the reply of PSPCL and PEDA by 07.05.2016 after supplying copies to PSPCL and PEDA directly. Meanwhile, PEDA and PSPCL were directed not to take any coercive action such as termination of IA and/or PPA and were restrained from invocation/encashment of PBGs given by the petitioner till next date of hearing on 10.05.2016.

The petition was taken up for hearing on 10.05.2016. PSPCL and PEDA filed the reply on 28.04.2016 and 06.05.2016 respectively. During the hearing, the petitioner sought a longer date so as to enable it to obtain finance/loan from IREDA for import of machinery from China. After due consideration, the Commission fixed the next date of hearing as 14.07.2016. The Commission in its Order dated 12.05.2016 noted that as the reply

of both the respondents have been received, in case the petitioner wishes to file a rejoinder, it may do so by 24.05.2016 with a copy to the respondents. The Commission held that allowing a longer date will not be construed as an extension of the scheduled date of commercial operation (SCOD) and the same will not prejudice the PPA in any way. Meanwhile, PEDDA and PSPCL were directed not to take any coercive action such as termination of IA and/or PPA and were restrained from invocation/encashment of PBGs given by the petitioner till next date of hearing.

The hearing on 14.07.2016 was postponed to 18.08.2016 on the request of the petitioner and PEDDA due to their counsels' pre-scheduled engagements in Hon'ble APTEL. The hearing was further adjourned to 13.09.2016 on the request of PSPCL and with the consent of PEDDA and the petitioner. Due to the declaration of holiday by Government on 13.09.2016, the next date of hearing was fixed as 27.09.2016 with the consent of all the parties.

During hearing on 27.09.2016, the petitioner prayed for adjournment. The Commission acceded to the request of the petitioner and held that no further request for adjournment shall be granted. The next date of hearing was fixed for 04.10.2016. Meanwhile, PEDDA and PSPCL were directed not to take any coercive action such as termination of IA and/or PPA and were restrained from invocation/encashment of PBGs given by the petitioner till the next date of hearing. The Commission directed that the petitioner shall ensure that the validity of the PBGs, if needed, is extended upto 30.10.2016.

During hearing on 04.10.2016, the petitioner filed another Application for bringing on record some additional facts and

grounds. A copy of the application was given to PEDA and PSPCL to file their replies by 18.10.2016 with a copy to each other and to the petitioner. PEDA and PSPCL were directed not to take any coercive action till next date of hearing. The petitioner was directed to ensure that the PBGs are extended beyond 31.10.2016. The next date for hearing the arguments was fixed as 25.10.2016 vide Order dated 07.10.2016.

PSPCL vide letter dated 19.10.2016 filed a short reply to the application dated 04.10.2016 filed by the petitioner. The petition was taken up for hearing of the arguments on 25.10.2016. Arguments by the parties were heard and the order was reserved.

3. Submissions made by the petitioner are summarised hereunder:

- i) The period of commissioning of 1 MW solar PV power project is sought to be extended from 31.03.2016 to 31.08.2016 for the applicability of the tariff of ₹ 7.68 per kWh due to reasons beyond the control of the petitioner.
- ii) PEDA, the nodal agency for the State of Punjab for promotion and facilitating the development of renewable energy under NRSE Policy, 2012, issued a Request for Proposal (RfP) on 24.12.2014 for development of grid connected Solar PV power projects (Phase-II) of total capacity 250 MW in the State of Punjab. After due process PEDA allotted a 1 MW solar PV power project to the petitioner vide its Letter of Award (LoA) dated 25.02.2015. PBGs amounting to ₹ 40 lakh and facilitation charges of ₹ 3.25 lakh were deposited with PEDA in line with conditions of

the LoA. An IA for execution of the project was signed with PEDDA on 19.03.2015 as per the terms and conditions of RfP and LoA. Thereafter, the PPA was signed with PSPCL on 31.03.2015 for setting up the project. Land for the project was arranged at village Chinna Bidhi Chand, District Tarn Taran and the sale deed registered on 03.06.2015. The technical grid feasibility clearance was granted by PSPCL on 22.07.2015.

- iii) Financial closure for the project was achieved in November, 2015. IREDA sanctioned the loan, however, till the date of filing the petition, the loan amount was not released. IREDA verbally kept informing that IA and PPA are going to expire, therefore, the loan cannot be disbursed until and unless the petitioner produces the extension letter or status-quo with regard to the IA and PPA. All the formalities as required under the RfP/LoA/IA were completed. An amount of ₹ 2.44 crore was invested in the project as certified by the Chartered Accountant in the certificate issued on 15.03.2016.
- iv) PEDDA was requested on 19.01.2016 to extend the time for setting up the project. However, PEDDA on 08.02.2016 informed the petitioner that as per the RfP terms and conditions, it is not possible to grant any extension in the scheduled commissioning date of the project.
- v) The commissioning of the project has been delayed due to the occurrence of following force majeure events:

- a) There was an unrest in the State of Punjab on account of desecration of Holy Sri Guru Granth Sahib at various places and section 144 was imposed in almost whole of the State from 14.10.2015 to 22.10.2015. The occurrence of this event is an event of force majeure since the same was out of control of the petitioner.
- b) Jat agitation in the State of Haryana started in mid-February. The same turned violent around 20.02.2016 and ended on 24.02.2016. Due to the said agitation, the entry and exit points of the State were put under curfew, which restrained the petitioner from receiving the materials for structure and balance of system to reach the site of the power plant to enable its construction.
- c) The Staff of Revenue Department went on pen down strike in different spans of time due to which the petitioner was not able to complete formalities with regard to the lease of land. Therefore, land documents could not be submitted to the respondents in time, which caused delay in commissioning of the project.
- d) The Commission approved the tariff of ₹ 7.68 per kWh for FY 2015-16 for the petitioner's project vide its Order dated 11.05.2015 in petition no. 21 of 2015 (wrongly mentioned as 15 of 2015) filed by PSPCL, due to which the petitioner could not represent itself to the financial institution(s) and investor(s) for arranging the funds. The said incident was beyond the control of the petitioner and the same has occurred under force majeure.
- vi) The representative of PEDDA inspected the project site on 28.03.2016 and mentioned in the report that the project was on the verge of commissioning. The petitioner has already invested ₹ 2.44 crore in the project and if more time is granted, the project would be commissioned on or before 31.08.2016.

- vii) The solar equipments in the market are in short supply since December, 2015 and prices for these equipments are on higher side due to the currency fluctuations. The petitioner has already invested its share of investment and IREDA is not disbursing the loan amount for the reason that the agreements with PSPCL and PEDDA need extension.
- viii) The marriage of daughter of the director of the company was fixed for 27.02.2016 and since January, 2016 he was busy and under financial burden, due to which it failed to fulfill the commitments for the project in time.
- ix) PEDDA instead of granting extension to the petitioner to complete the project, is in process of encashing the bank guarantee deposited by the petitioner and an amount of ₹ 12 lakh has already been encashed by PEDDA.
- x) It was only due to the force majeure events which were beyond the control of the petitioner that the project could not be commissioned within the stipulated date of commissioning.
- xi) A project specific relaxation/extension is sought in the commissioning period for 5 months from 31.03.2016 to 31.08.2016 for applicability of the approved tariff of ₹ 7.68 per kWh by the Commission, in exercise of its inherent powers and in the interest of justice due to genuine difficulties faced by the petitioner which were beyond petitioner's control. In this regard, in a similar matter Hon'ble APTEL in its Judgment dated 02.01.2013 in Appeal Nos. 96 and 130 of 2012 has held that:

“25.....

Again extension of control period cannot by any stretch of imagination would amount to amendment of the Tariff Order. Amendment of the Tariff Order by virtue of section 62 (4) of the Electricity Act, 2003 was not prayed for. Since in every venture there is allocation of risk, it cannot be said that even if a certain developer experience hurdles beyond his control, he has to abide by such hurdles. When fact in each case is hotly contested by a counter fact or denial, justice demands that each fact has to be separately dealt with and decided. It is commission which is alone competent to scrutinize the merits and demerits of each fact in each of the two appeals. It is the Commission that has the infrastructure and capability to examine and find as to whether expenditures were made and committed ahead of the date of commissioning of the project so that no unfair advantages is claimed by any developer on the ground of prospective reduction of the capital cost. If the particulars of expenditure if already made or committed during the control period are scrutinized and the grounds are scrutinized in the perspective of each individual case then possibly it would be clear to the Commission as to whether and in which case a developer comes with clean hands or not.

26. in the result, it is of absolute necessity that the commission needs to examine the case of each of the two appellants in their respective merits and decide afresh. The basic premise that extension of control period is possible only when there are wide scale ramifications is pregnant with flaws.”

xii) Post the above decision, GERC in its Order dated 05.04.2014 in petition no. 1188 of 2012 extended the control period for applicability of tariff of ₹ 15 per kWh for solar PV

power project of Solar Semiconductor Power Company (India) Private Limited.

xiii)The execution of the project has been delayed due to reasons beyond the petitioner's control and fall under force majeure. The petitioner would require six months time to commission the project. It is prayed to the Commission to grant extension of time from 31.03.2016 to 31.08.2016 for commissioning of the project and for applicability of the approved tariff of ₹ 7.68 per kWh and further non-encashment of bank guarantees till such period. The petitioner undertakes to commission the project by 31.08.2016.

xiv)The Commission is vested with the inherent power under section 151 of Code of Civil Procedure and Regulation 69 of PSERC (Conduct of Business) Regulations, 2005 as well as with power to remove difficulty which appears to be necessary or expedient, extension or abridgment of time allowed and power to relax. The petition has been filed under these provisions. The relevant extracts of the said Regulations, read as under:

“69, Saving of inherent power of the Commission:

- 1. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.*
- 2. Nothing in these Regulations shall bar the Commission from adopting a procedure, which is at variance with*

any of the provisions of these Regulations, if the commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient.

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

.....

71. Power to remove difficulties:

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

.....

73. Extension or abridgment of time allowed:

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

Regulation 85 of CERC (Terms and conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (adopted by the Commission in its Order dated 19.07.2012 in Petition No. 35 of 2012 (Suo-Motu) provide as under:

“85. Power to Relax:-

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

xv) Given the already done ground work and with the vast experience of the EPC Contractor engaged for executing the project, the petitioner's bonafide and commitment, the petitioner is confident to commission the project within 5 months from date of receipt of the said approvals/amendments.

xvi) The petitioner cannot be unnecessarily punished for no fault on its part and the other party causing delay cannot be allowed to take benefit of its dominant position. PSPCL and PEDDA have unduly caused delay in making the necessary amendment in the contractual documents for assigning the same in the name of the petitioner, due to which the financial closure etc. of the project were stalled. Hence, for the mistake of PSPCL and PEDDA, the petitioner cannot be made to suffer unnecessarily.

xvii) With regard to encashment of PBGs, the Commission passed an interim-order dated 29.02.2016 in petition no. 10 of 2016 filed by Mihit Solar Power Private Limited. A relevant portion of the said Order is reproduced hereunder:

“The Commission has carefully considered the matter. The Petition and IA are admitted. Notice be issued to the Respondents to file reply by 08.03.2016 with copy to the Petitioner. The PEDDA, Respondent No. 2 is directed to

maintain status quo in respect of their letter dated 24.02.2016 and refrain from invocation of Performance Bank Guarantees till the date of hearing.

The petition and IA shall be taken up for hearing on 15.03.2016 at 11:30 A.M.”

xviii) It is prayed to the Commission to:

- a) extend the date of commissioning of the petitioner's project from 31.03.2016 to 31.08.2016 by maintaining status quo in terms of the applicability of tariff granted to the project of the petitioner i.e. ₹ 7.68 per kWh and further non-encashment of PBGs.
- b) direct PEDDA to release an amount of ₹ 12 lakh against the partial bank guarantee encashed by it.
- c) pass any other order or grant any other relief in favour of the petitioner as deemed appropriate in the interest of justice.
- d) direct the respondents not to take any sort of coercive measure such as termination of IA and PPA and further encashment of PBGs etc. against the petitioner during the pendency of the petition.

4. PSPCL in its reply dated 28.04.2016 submitted as hereunder:

- i) The petitioner is beseeching extension of COD upto 31.08.2016 with applicable tariff of ₹ 7.68 per kWh and is also seeking for stay on invocation of PBG by PSPCL. As far as the extension of COD and the present dispute is concerned, PSPCL is only a Performa respondent and has no major role to play at this stage.
- ii) The grounds of delay in commercial operation of the project are vague, technically incorrect, legally defective and are concocted ones. All the grounds taken by the petitioner to

cover itself under force majeure events do not fall under Clause 19 of the PPA. This clause whereby the petitioner is entitled to take shelter on force majeure event deals with the natural calamities or events like unrest, epidemics, any court order, change in law or any act of God. The grounds taken in the petition inter alia, deals with the approvals, an incident which happened in faraway Faridkot, some agitation in another State and self created alibi of non-availability of staff of sub-registrar. None of these grounds find any hold on ground and are thus liable to be dismissed.

- iii) The petition has been filed only with the intention to hide the incapability and incapacity of the petitioner in commissioning of the project on the date fixed. All the alibis taken by the petitioner are vague and concocted. The petition has been filed purblindly with the only intention to delay the commissioning of the project by seeking an illegal and unrealistic order from the Commission by not disclosing the true facts and concealing the material facts which are relevant for the just disposal of the petition.
- iv) The Commission has set the Renewable Purchase Obligation (RPO) target for procurement of power from renewable sources of energy and for compliance to the same, the tenders were called. If the petitioner delays the commissioning of the project, it would defeat the purpose of tendering to comply with the Commission's Order regarding RPO of the year. PSPCL will have to purchase expensive REC's to comply with the RPO target without any fault on its

part. Due to delay in commissioning of the project by the petitioner, either PSPCL may be allowed to encash the Bank Guarantee (wrongly mentioned, as Bank Guarantee is with PEDDA and not PSPCL) or carry forward the RPO by saddling the petitioner with heavy cost to be paid to PSPCL. The petition deserves dismissal on this score as this will burden PSPCL heavily without any of its fault.

- v) The tariff was approved by the Commission taking into consideration that the petitioner would commission the project by 31.01.2016. If any extension is granted, the tariff should be decreased as giving the extension would mean extra burden on PSPCL and public at large.
- vi) The petitioner took more than 2 months to decide on the land as the lease deed was finalized on 03.06.2015. This huge delay has not been explained by the petitioner.
- vii) It is the duty of the petitioner to arrange the finances for its project from any banking or non-banking institution. PSPCL has already signed the PPA and has granted grid feasibility clearance. PSPCL has no role to play for arrangement of finances for the petitioner. The PPA was signed on 31.03.2015 whereas the petitioner applied for the sanctioning of the loan at a belated stage.
- viii) The incident of desecration of Holy Sri Guru Granth Sahib took place in State of Punjab in District Faridkot which is around more than 100 km from the petitioner's project. It was not the condition of civil unrest in the State of Punjab as the disturbances were confined to District Faridkot only and did

not have any effect in District Tarn Taran. The plea taken by the petitioner is wrong and vague.

- ix) The Jat agitation initiated in District Rohtak in the State of Haryana and the project of the petitioner is around more than 450 kms away from that place. The agitation did not have any effect in State of Punjab.
- x) There was no strike by Tehsil staff as mentioned by the petitioner.
- xi) PSPCL has no liability or responsibility to provide with the solar equipments. It is the sole duty of the petitioner to arrange such equipments of their own. The non-availability or incapacity of the petitioner to purchase the same does not give him any benefit to claim under force majeure events. The shortage as alleged by the petitioner does not seem to be true as many projects of bigger capacities have been commissioned on time.
- xii) PSPCL has nothing to do with the marriage of the daughter of the Director. The petitioner is taking the shelter of the marriage and this shows, the seriousness of the petitioner and it raises a doubt on its capability or capacity.
- xiii) The delay has been caused by the petitioner itself and the plea of force majeure events does not hold and therefore is liable to be dismissed. The bank guarantee and the cheque submitted by the petitioner is against the non-compliance of the terms of IA and PPA. It is a self-attested document of the petitioner wherein it has agreed that if the petitioner would

not be in a position to commission the project on time, PSPCL and PEDDA would be at liberty to encash the Bank Guarantee and the cheque kept with them.

xiv)The petitioner is asking for extension in COD and if the same is granted then the tariff applicable to the project should be reduced so that due to the fault of the petitioner, PSPCL and the public at large should not suffer.

xv)The petitioner has reproduced certain section explaining the inherent power of the Commission. PSPCL does not deny the same and would always comply with all the directions and orders passed by the Commission.

xvi)As per provision of the PPA signed with the petitioner, the Implementation Agreement signed by the petitioner with PEDDA forms an integral part of the PPA. Article 3C of the IA reads as under:

“However, if the project COD crosses beyond 31.03.2016 then this tariff shall cease to exist and the developer will be bound to get the tariff re-determined from the PSERC.”

The lowest tariff discovered in the bidding process for allocation of projects under Phase-III during FY 2015-16, which is ₹ 5.09 per kWh is required to be made applicable to the said project. Since, this project will achieve commissioning beyond 31.03.2016, it is prayed that the Commission may re-determine the tariff to ₹ 5.09 per kWh as was decided in case of Bhanuenergy Infrastructure and Power Limited in petition no. 15 of 2015 & Bhanuenergy Industrial Development Limited in petition no. 16 of 2015.

xvii) The petition may be dismissed with exemplary costs on the petitioner as it has filed the petition without disclosing the clear facts.

5. PEDA filed its reply dated 06.05.2016 and submitted as hereunder:

- i) The petitioner in its petition has not demonstrated the true factual matrix of the matter and in order to evade its bounden obligation, as stipulated in the RfP, LoA & IA, of achieving the COD well within time, has tried to setup a false and frivolous case. Even otherwise, the petition is not maintainable as there exists an arbitration clause in the captioned document entered between the parties i.e. IA. It is apparent that the petitioner while misusing the process of law, in order to invoke section 86 (1)(f) of the Act has purported as if a dispute between the petitioner and PSPCL has arisen, despite there been a conceded case of the petitioner that it could not achieve COD of the project. The petitioner could not perform its bounden obligation as provided in terms of the RfP and IA. Hence, the petitioner is liable to levy of penalty on delay in commissioning of the project.
- ii) IA signed between the petitioner and PEDA is the main contractual document which provides that the petitioner was to setup the project and to achieve full capacity COD by 31.01.2016, which the petitioner has failed to achieve.
- iii) The petitioner while misleading the Commission has wrongly sought interim order dated 01.04.2016 as to restraining

PEDA from encashing the unconditional Bank Guarantee deposited by the petitioner with PEDA, which is against the settled cannons of law laid down by the Hon'ble Supreme Court of India in catena of judgments. Hence, the interim order dated 01.04.2016 restraining PEDA deserves to be vacated as the petitioner has failed to fulfill its obligation of setting up the complete project up till 31.01.2016 in line with the provisions of RfP/LoA/IA and is liable to be levied with penalty. Therefore, PEDA is entitled to encash the unconditional Bank Guarantee deposited by the petitioner in line with the contractual terms agreed between the parties.

- iv) Seven Solar Power Projects with total 62 MW capacity have been successfully commissioned by the similarly placed developers who were allocated the projects in the same phase as that of the petitioner. Therefore, the assertions of the petitioner with regard to purported occurrence of force majeure events are false. Since the petitioner has failed to give notice to PEDA in line with force majeure Article of IA, the purported assertions made in the petition as to delay in commissioning of the project due to the purported occurrence of the force majeure events cannot be relied upon and the petition needs to be dismissed.
- v) The petitioner has sought extension in scheduled date of commissioning upto 31.08.2016 i.e. 7 months, on the grounds which are purported and not real in nature.
- vi) It is the responsibility of the petitioner to obtain the timely financial closure of the project within 120 days from the date

of signing of PPA i.e. upto 31.07.2015. The petitioner was requested vide email dated 04.08.2015 and later by letter dated 21.08.2015 to submit the financial closure documents by 31.08.2015 but the petitioner failed to submit the same. Default notice dated 03.09.2015 was sent to the petitioner stating that in accordance with RfP clause 3.22, the financial closure documents were to be submitted within 120 days from the date of signing of PPA along with other documents as per RfP, but the petitioner failed to submit these documents and thereby a 30 days notice was given in accordance with the terms and conditions of the IA to submit the financial closure documents. However, the petitioner submitted the IREDA loan sanction documents dated 06.11.2015 to PEDDA vide email dated 09.11.2015 after a delay of more than 3 months from the scheduled date of submission of financial closure. The delay in obtaining financial closure for the said project is solely attributable to the petitioner.

vii) The petitioner is required to have the financial capability for arranging and investing the required equity in the project. The petitioner has already agreed and given a statement to this effect as per Article 12.2 (iv) of IA which is reproduced as under:

“i. It has the financial standing and capacity to undertake the project.”

viii) The petitioner's request dated 19.01.2016 to extend the time in setting up of the project was rejected by PEDDA in view of

the fact that the project was required to be completed and commissioned by the scheduled date of commissioning i.e. 31.01.2016. Prior to this, PEDA issued a letter dated 18.01.2016 to the petitioner including other project developers intimating that it is not possible to grant any extension in scheduled date of commissioning of the allocated solar PV power projects and it was informed that timely commissioning of the projects must be ensured otherwise action shall be taken in accordance with clause 3.23 of RfP for delays beyond scheduled commissioning date.

- ix) The force majeure events referred to by the petitioner in the petition are purported in nature, which cannot be relied upon, as the petitioner has failed to issue notice in line with the clauses mentioned in the IA in case of occurrence of force majeure events. Hence, no reliance can be placed upon the false frivolous assertions made therein by the petitioner. In fact the petitioner was to setup the project in complete respect on or before 31.01.2016 i.e. the scheduled date of commissioning as per the contractual document. However, the petitioner in order to evade its bounden obligation and to cover up its misdeeds as to the failure to set-up the project within the stipulated date, has raised false, frivolous and purported plea as to the occurrence of force majeure events, which are un-sustainable in the eyes of law. The petitioner has purported the occurrence of the following force majeure event:

- a) Delay due to desecration of Holy Guru Granth Sahib;
- b) Delay due to Jat agitation in State of Haryana;
- c) Delay due to strike by tehsil staff;
- d) Delay due to determination of tariff in the month of May, 2015;
- e) Bonafide of the petitioner;
- f) Shortage of solar equipment;
- g) Marriage of the daughter of the director of the petitioner;

The purported force majeure events referred by the petitioner are an afterthought, as the petitioner just in order to run away from its bounden obligation to set-up the project in a time bound manner as provided thereunder the IA and in order to escape from the consequential penal action stipulated thereunder the RfP and IA, has tried to setup false and frivolous pleas as to the occurrence to the force majeure events as stated above. The petitioner has not even submitted any communication to PEDDA as to the occurrence of the aforesaid purported force majeure events. On realizing that the petitioner has failed to achieve the scheduled date of commissioning of the project, it has set-up a false/purported plea of occurrence of the force majeure events and has made frivolous attempts to attribute the delay on to the aforesaid false/purported force majeure events.

- x) The desecration of Holy Sri Guru Granth Sahib took place at District Faridkot, Village Bargari whereas the project of the petitioner is located at Village Chhina Bidhi Chand, District Tarn Taran, which is at a far away distance from District

Faridkot. Hence, the occurrence of the aforesaid event has no relevance with the project of the petitioner. Further, it is the conceded case of the petitioner that the incidents of violence had taken place in October, 2015, however the petitioner has failed to issue notice to PEDDA as to the occurrence of the purported event, in line with the contractual document. Further, the petitioner in the instant matter has failed to demonstrate by way of any cogent evidence that the occurrence of the aforesaid incidents in District Faridkot has lead to delay in commissioning of the project. The petitioner has only made plain assertions without there being any cogent reasoning to the same. The petitioner has even failed to demonstrate as to what pre-project activities/works got delayed due to the occurrence of the aforesaid incidents at District Faridkot. Hence, no reliance can be placed upon the false and purported assertion of the petitioner.

- xi) The petitioner failed to issue notice to PEDDA as to the occurrence of Jat agitation in State of Haryana, in line with the contractual document. Further, the petitioner in the instant matter has failed to demonstrate by way of any cogent evidence that the occurrence of the purported aforesaid incident has led to delay in commissioning of the project. The petitioner has even failed to demonstrate as to which pre-commissioning activity has been affected due to the occurrence of the purported aforesaid event. The petitioner has only made plain assertions without there being any cogent reasoning to the same. Hence, no reliance can

be placed upon the false and purported assertion of the petitioner.

xii)The petitioner has failed to issue notice to PEDDA as to the occurrence of delay due to strike by Tehsil Staff, in line with the contractual document. Further, the petitioner in the instant matter has failed to demonstrate by way of any cogent evidence that the occurrence of the purported aforesaid incident has led to delay in commissioning of the project. The petitioner has only made plain assertions without there being any cogent reasoning to the same. The petitioner has even failed to demonstrate the date of occurrence of the purported incident. Infact the petitioner has purchased the land from its promoter/director for the project on 03.06.2015 by way of registered sale deed, which the petitioner submitted with PEDDA on 17.02.2016 as part of the documents submitted for issue of concessional custom and excise duty exemptions. The petitioner purchased the land for setting up the project way back on 03.06.2015. However, the documents were submitted to PEDDA at a belated stage. Hence, no reliance can be placed upon the false and purported assertion of the petitioner.

xiii)The petitioner has only made plain assertions without there being any cogent reasoning to the delay caused due to determination of tariff in the month of May, 2015. Infact, the delay in commissioning of the project is attributable solely to the petitioner which is apparent from the fact that the loan to the petitioner was sanctioned by IREDA on 06.11.2015

however, the petitioner has signed the loan agreement with IREDA on 03.02.2016, which happens to be a pre-requisite for disbursement of the loan. As informed to PEDDA, the loan as of today has not yet been disbursed to the petitioner, for the reasons best known to it. It is further submitted that the petitioner has placed the order for complete EPC contract for the project in question on 05.01.2016 with Optimistic Green Energy Pvt. Ltd., Amritsar. As per time schedule mentioned in the terms and conditions of the said order the project was to be commissioned by 31.03.2016. As per the payment terms schedule the company was to take an advance of ₹ 50 lakh for buying material and arranging labour for the project. LCs were to be opened on pro-rata basis in the month of March, 2016 linked with IREDA loan disbursal, which clearly shows that the delay is solely attributable to the petitioner itself. Hence, no reliance can be placed upon the false and purported assertion of the petitioner.

xiv)The petitioner has failed to give notice to PEDDA as to the occurrence of the force majeure events, as provided under the contractual documents. The petitioner was required to invest the said equity in the project due to the very fact that it had given a clear undertaking as part of the clause 12.2 (iv) of IA stating that it has the financial standing and capacity to undertake the project, which clearly implies that the petitioner has the financial resources to setup the project. Further, in the instant case the petitioner itself has acted upon the commissioning of the project in a belated manner which is

apparent from the fact that the petitioner has entered into the loan agreement with IREDA seeking financial assistance on 03.02.2016 and has placed order with the contractor on 05.01.2016 subject to the disbursement of loan by IREDA. Further, it is denied that the petitioner be granted more time for commissioning of the project i.e. uptill 31.08.2016, as from the conduct of the petitioner it is apparent that the petitioner is not serious in setting up the project. Further, it is denied that inspection report submitted by PEDDA demonstrates that the project is on the verge of commissioning as in the report dated 28.03.2016, the District Manager has stated that modules & inverter are not lying at site, cabling work not started and other works are also pending. Solar PV modules and inverters have still not reached the project site. Thus, no reliance can be placed upon the false and purported pleas of the petitioner and the delay in commissioning of the project is solely attributable to the petitioner.

xv)The shortage of solar equipments does not fall under the definition of force majeure events as provided under the contractual documents. Further, in the instant case it is apparent that the petitioner has itself placed the order for purchase of material with the contractor in January, 2016 for setting up the project. Hence, no reliance can be placed upon the false and frivolous assertions made therein by the petitioner.

xvi)The marriage of the daughter of the Director does not fall under the definition of force majeure events as provided under the contractual documents. Further, the marriage of the daughter of the director of the petitioner happens to be a purely personal affair of the director. Setting up of the project is a commercial decision of the petitioner. The director of the company and the petitioner are two separate and distinct entities in the eyes of law. Hence, the petitioner cannot be permitted to take benefit of the same.

xvii)The petitioner has failed to achieve COD within the stipulated date i.e. 31.01.2016, hence PEDDA, while acting in line with the contractual document i.e. IA has encashed 30% of the Bank Guarantee submitted by the petitioner on account of a month's delay in commissioning of the project. As per the agreed terms in case of delay beyond one month, PEDDA has right to encash the remaining 70% of the Bank Guarantee submitted by the petitioner. From the facts of the matter it is apparent that the delay in commissioning of the project is solely attributable to the petitioner.

xviii)The judgment dated 02.01.2013 rendered by Hon'ble APTEL in Appeal No. 96 and 130 of 2012, relied upon the petitioner, renders no benefit to the petitioner, as the same does not apply to the facts and circumstances of the petition.

xix)The petitioner has wrongly invoked Section 86(i)(f) of the Act, while invoking the jurisdiction of the Commission, as Section 86 (i)(f) of the ibid Act empowers the Commission to adjudicate disputes between distribution licensee and

generating company, however, in the instant matter the petitioner has failed to demonstrate the dispute arisen between the distribution licensee and the petitioner. From the contents of the petition, it is apparent that the dispute raised by the petitioner is purely contractual in nature, hence the petition preferred by the petitioner is not maintainable and is liable to be dismissed.

xx)The petitioner has never requested PEDDA for any assignment of the contractual document viz. IA for any purpose even with regard to the financial closure.

6. PSPCL filed final submissions dated 14.09.2016 wherein while reiterating its earlier submissions it further submitted as hereunder:

- i) The contentions raised by the petitioner are specious, untenable and contrary to the expressed provisions of law and agreed terms of the IA and PPA. 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.
- ii) PEDDA in its reply mentioned that even by 28.03.2016, the cabling in the plant was not initiated by the petitioner. The initiation of the cabling work and other civil works is the responsibility of the petitioner. The petitioner is responsible for the delay and should be saddled with exemplary cost.

- iii) According to Article 10.4 of IA and Clause 19.2.0 of PPA, which specifically deals with force majeure events, it is mandatory for the petitioner to give prior notice within 7 days of occurrence of such events to PSPCL/PEDA. In the present case, no such notice was ever served by the petitioner as per the agreed terms and conditions of force majeure Events to PSPCL. The plea taken by the petitioner is belated and is barred by limitation as per the agreed terms of the IA and the PPA.
- iv) As per Article 14 of the IA and Clause 16.0.0 of the PPA, the resolution of disputes is to be adjudicated by way of arbitration under the Arbitration and Conciliation Act, 1996. 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 petition should be dismissed on this score alone. The conduct of the petitioner is unwarranted and demands for exemplary cost to be imposed on it for misleading the Commission by concealing material facts as enshrined in the PPA and the IA.
- v) The plea taken by the petitioner that although the PPA was signed on 31.03.2015 but the same was accepted by the Commission on 11.05.2015 whereby causing a delay of more than 40 days in the same is false and concocted. No doubt, that the approval of the Commission is required after signing of the PPA but there is no bar that the petitioner

cannot initiate other processes and formalities for the commissioning of the project. The condition of approval of PPA is a condition precedent and has not been invoked for the very first time. Non-initiation of the project by the petitioner is its own fault and by filing the petition, the petitioner is trying to impose the liability on PSPCL illegally.

- vi) The grid feasibility clearance was given by PSPCL on 22.07.2015. The petitioner completed the formalities related to land in September, 2015 i.e. after more than 5 months of signing of the PPA. This delay is attributable to the petitioner only.
- vii) There was no endeavour or intention to cause any delay for granting the grid feasibility by PSPCL. It is the delay caused by the petitioner itself as it failed to identify and locate the location for installing the plant up to the end of August, 2015 after signing the PPA. Documents pertaining to land were submitted to PEDDA only on 31.08.2015. PSPCL has not caused delay in the commissioning of the project as the delay in the same would mean non-compliance of the RPO and PSPCL in that eventuality would be bound to purchase the expensive RECs.
- viii) The petitioner started the procedure for erection of 11 kV line on 15.08.2016. After the issue of feasibility clearance on 22.07.2015, the petitioner approached PSPCL only on 15.08.2016, i.e. after a period of 13 months. This delay is solely on part of the petitioner for which PSPCL is not responsible.

ix) PSPCL had decided that evacuation of power from 1 MW project be done on the existing 11 kV line of 2 MW project of the firm as a stop gap arrangement after deposit of cost of erection of new 11 kV line for its 1 MW project. Accordingly, the petitioner deposited ₹ 25,00,000 (Rupees Twenty Five Lakh) vide BA 16 No. 314/87632 dated 15.08.2016 with PSPCL for erection of 11 kV line by PSPCL. So, despite having applied late for erection of line, PSPCL has allowed the developer to evacuate power from the existing line as a stop gap arrangement so that the firm starts generating power. The 1 MW project at Chhina Bidhi Chand was synchronized with PSPCL system on 24.08.2016.

7. The petitioner filed Affidavit dated 04.10.2016 for bringing on record the additional facts and grounds and submitted as under:
- i) The 1 MW solar PV power project was allotted to the petitioner and thereafter it started investment in the plant and till 15.03.2016 invested ₹ 244.06 Lakh without financial assistance from IREDA, which sanctioned the loan for the project but did not release the amount of sanctioned loan till 31.05.2016 for the reason that the IREDA officials insisted that the petitioner should invest more than 60% of the project cost by installing solar modules etc. The petitioner tried its level best to install the solar modules and other materials, but due to the reasons mentioned in the main petition the same could not be brought for installation. During the pendency of the petition, IREDA disbursed the loan amounting to ₹ 338.24 lakh on 31.05.2016 & ₹ 120.80 lakh

on 08.06.2016, sum total of ₹ 459.04 lakh out of ₹ 483.70 lakh sanctioned to the petitioner.

- ii) The petitioner requested PEDDA on 31.05.2016 that it may be allowed to evacuate the power through existing transmission line of another 2 MW solar project situated at same location. Thereafter, the petitioner also made the same request to the Chief Engineer/DS (Border), PSPCL, Amritsar on 06.06.2016 wherein it was intimated that as the plant site is situated on international border with Pakistan and under control of defence establishments, it is almost impossible in these days to construct new line. Moreover, as per studies conducted by PSPCL and petitioner, existing conductor is capable of carrying the additional load of 1 MW and is technically feasible and under the ambit of policies and governing law of PSPCL, Punjab Govt. and CERC. PEDDA vide letter dated 15.06.2016 requested the Chief Engineer/DS (Border), PSPCL for consideration of the request of the petitioner and permission to evacuate the power through earlier existing 2 MW solar power plant sub-station.
- iii) The petitioner commissioned the plant on 30.06.2016 and the meter was installed and sealed by the concerned authority. Testing of various equipments like step-up transformer, HT panels etc. was done on 30.06.2016 by Additional SE/Protection Division No. 2, PSPCL, Amritsar. All the equipments like Solar Modules, Invertors were installed and ready to be synchronized with grid. Dy. Chief Engineer/Operation, PSPCL, Tarn Taran vide letter dated

29.06.2016 sought approval from CE/Planning, PSPCL with recommendations after proper studies and surveys that existing line is capable of carrying additional current of 1 MW plant.

- iv) The petitioner invested the amount of ₹ 243.57 lakh upto 10.03.2016 and thereafter also invested ₹ 4,59,04,000 which is 95% of the amount of loan sanctioned by IREDA. Plant was ready for commissioning on 30.06.2016, which is under the time frame given under clause 7 of the PPA, which comes out to 13.5 months (wrongly mentioned as 12.5 months) after the approval of the PPA by the Commission. The petitioner availed loan from IREDA, which has started EMI for repayment and interest is added from 30.06.2016. Due to delay in commissioning of plant solely due to PSPCL till 24.08.2016, the petitioner has suffered loss of generation for 54 days which comes out to be monetary loss of ₹ 18,00,000 as per historical data & simulations available.
- v) The petitioner visited office of CE/Planning, PSPCL, Patiala on 11.07.2016 and submitted its request to allow evacuation of power from existing line with copy of the same to Dy. Chief Engineer/Operation, Tarn Taran and PEDDA. Deputy Chief Engineer/Operation vide letter dated 22.07.2016, replied to CE/Planning email dated 21.07.2016 with recommendation that the power from newly erected 1 MW plant can be evacuated through existing transmission line, specifically mentioning that due to recent Pathankot incident and the project being near the border range, defence authorities are

stopping the entry of civilians/construction. It was also submitted that the request of the petitioner for evacuation of power through existing transmission line would also benefit PSPCL for the reason that till date PSPCL has not installed the sub-station for synchronizing the plant with the PSPCL grid.

PSPCL is misleading and misrepresenting the Commission by misstating and concealing the facts. PSPCL in its final submissions stated that the petitioner did not approach it after 22.07.2015 till 15.08.2016, which is totally false and incorrect and same is averred by PSPCL in order to mislead the Commission and intentionally concealed this fact. By making such false and incorrect statement on oath, PSPCL made itself liable for prosecution.

- vi) PSPCL on 24.08.2016, allowed the petitioner to evacuate the power through existing transmission line. The petitioner made numerous requests, personally visited PSPCL & PEDDA head offices more than 20 times in short duration of one & half month upto top management of both respondents explaining the situation and difficulties in erection of new line. In the mean time, PSPCL got the survey conducted from XEN Operation, Tarn Taran for laying of new line, who mentioned in his report that it is almost impossible to lay down new line. But PSPCL still refused to allow evacuation from the existing line. Despite many requests by the petitioner, PSPCL insisted that the petitioner should deposit ₹ 25,00,000 for erection of new line by PSPCL. As the

petitioner was suffering huge loss of generation, it immediately paid the said amount of ₹ 25,00,000 for operation of 1 MW plant. After receiving the amount, PSPCL gave immediate approval of evacuation of power from the existing line, which was against the policies of PSPCL before. Till date, PSPCL has not installed a single pole for laying of new line after getting the cost deposited on 15.08.2016. As per PSPCL's letter, if line is not erected within 4 months by PSPCL, supply will be barred to the petitioner. PSPCL is contractor for line erection and if PSPCL is not able to complete the work within stipulated time, how owner (petitioner) can be held responsible. It is requested to the Commission to restrain PSPCL from such unprofessional activities. It is submitted that plant is operating successfully till date and power is evacuating through existing transmission line without any problem. It is requested that the petitioner may be allowed permanent evacuation from the same line to save national resources and time. Even PSPCL failed to lay down the line despite the fact that the petitioner has deposited ₹ 25 lakh as required by PSPCL. PSPCL received ₹ 25 lakh from the petitioner for laying down the new line despite the fact that the construction of new parallel line is not possible. Thus, the petitioner requests the Commission to direct PSPCL for permanent evacuation through existing line and also direct to refund ₹ 25,00,000 to the petitioner with immediate effect.

It is submitted that while passing resolution regarding permission for evacuation of power from the existing line to

the petitioner, PSPCL put rider upon the petitioner that incremental percentage transmission losses on account of injection of additional power on the same line be adjusted in the monthly bills. In this regard, it is submitted that PSPCL failed to lay the line despite receiving money for the same and moreover, 9% voltage regulation is permitted through the same line, whereas the figures reflected in PSPCL documents show that Voltage Regulation of earlier line would reach upto 7.96%.

vii) The plant site is situated exactly on LoC with Pakistan and Govt. of India has ordered to vacate 10 kms area of border on 29.09.2016, which is also huge set back after investing crores of rupees and becoming debtor of crores of rupees on both existing 2 MW & 1 MW plant to fulfill the promise with own villagers, Govt. of Punjab who invited promoters of petitioner company from USA to invest in home town/village and serve the nation. After analyzing the reply of PSPCL, promoters of the petitioner are feeling demoralized and totally upset and considering the facts since 2013 Invest Punjab Meeting where Govt. made lots of promises for facilitating investors. Earlier, before bidding of this 1 MW project, PEDDA assured that there is no need of laying new line as existing line is sufficient enough for evacuation of power. Desecration of Holy Sri Guru Granth Sahib and Jat agitation was not due to the petitioner. It was failure of Govt. Machinery. It is not possible to get land documents & CLU cleared from the revenue department in few days, with 15-18

working days in a month and pen down strikes for long weeks.

viii) PSPCL being Govt. instrumentality, instead of promoting the projects is trying to create obstacles at every stage. It is submitted that since 06.06.2016 to 15.08.2016, the petitioner made so many efforts to get the plant synchronized. However, as the Narli sub-station was not ready for evacuating of power from new transmission line, therefore, PSPCL officials played delay tactics and deliberately put the burden on the petitioner. The petitioner's plant synchronized on 24.08.2016 and commissioned on 05.09.2016.

ix) It is submitted that in the month of May 2016, the petitioner requested the commission that it is unable to commission the project as the IREDA was not providing financial assistance. However, as IREDA disbursed the loan, the petitioner completed the plant for commissioning before 30.06.2016. It is despite the fact the plant of the petitioner situated at such a location on border, where the defence people are not allowing the civilians to work after 5:00 pm.

8. PSPCL filed short reply to the affidavit dated 19.10.2016 and submitted as hereunder:

- i) The petitioner has concealed certain material facts while filing this petition and subsequent affidavit.
- ii) PEDDA in its reply submitted that even by 28.03.2016 the cabling in the plant was not initiated by the petitioner and PEDDA's status report clearly states that work was still left at

the site. The initiation of cabling work and other civil works were the responsibility of the petitioner. The petitioner has delayed in initiating the project and should be saddled with costs due to the same.

- iii) It is pertinent to take the Commission's attention to its interim order dated 12.05.2016 whereby the petitioner firm had sought a longer date to obtain finance from IREDA and to import the machinery from China. The petitioner was not in a condition to build the project.
- iv) It has already been accepted by the petitioner that the delay was due to funding issue from IREDA whereas in the petition it has misled the Commission by stating that the delay caused is due to PSPCL. The financial issue of the petitioner is not under the purview of PSPCL and has to be dealt with by the petitioner itself. PSPCL has been accommodating the petitioner time and again to allow it to complete the project as it will have direct implication on the RPO compliance by PSPCL. The delay caused in the project will not be of any benefit to PSPCL and will be in fact a burden due to non compliance of RPO.
- v) Even though the line was not erected by the petitioner, PSPCL has done all it could to help petitioner and make sure that the project is completed as soon as possible. The petitioner started the procedure of connectivity after 15.08.2016. The petitioner deposited ₹ 25,00,000 (Rupees twenty five lakh) vide BA 16 No. 314/87632 dated 15.08.2016 for erection of its 11 kV line by PSPCL. In this

regard, deposit estimate has been prepared by the concerned section of PSPCL and sent to Chief Engineer/Border Zone, Amritsar vide Memo. No. 17440 dated 19.08.2016. The space is available at 66 kV sub-station Narli for erection of 11 kV breaker/allied equipment etc. for evacuation of solar power. In the W.T.D. meeting held on 15.08.2016, it was decided to evacuate power from 1 MW project on the existing 11 kV line of 2 MW project as a stop gap arrangement after deposit of cost of erecting line and other charges subject to the condition that independent 11 kV line will be made operational by PSPCL within a period of 4 month otherwise the connection will be disconnected. PSPCL is functioning in two rules i.e. as a DISCOM and as a contractor to erect poles and transmission lines as the petitioner was not able to do the same on time and has finally engaged PSPCL to do the same.

vi) With respect to the claim by the petitioner regarding completion of project on 30.06.2016 as well as various correspondences made with SE/Operation, Tarn Taran and SE/Planning, Patiala, it is submitted that vide email dated 04.07.2016, SE/Planning replied to SE/Operation, Tarn Taran query regarding the 11 kV line. The email read as under:

“.....Now the developer vide his request dated 06.06.2016 addressed to CE/DS Border Zone, Amritsar has asked for evacuation of power of both projects through the same 11 kV transmission line which has

been forwarded to this office for approval. It is brought to your notice that this is against the instruction issued by the Commercial Organization which State that for a project of 2.5 MW and above, the developer will have to evacuate the power by erecting 66 kV transmission line so the developer may be asked to erect 66 kV transmission line if the developer wants to evacuate the power for 2 MW + 1 MW = 3 MW on the same transmission line.....”

This shows that the demand of the petitioner was against the rules and so the demand of the petitioner was considered in a W.T.D. meeting and a permission was given to facilitate the evacuation of power from the project on the existing 11 kV transmission line of 2 MW project as a stop gap arrangement after deposit of cost of erection of line and other charges subject to the condition that the independent 11 kV line will be made operational by PSPCL within a period of 4 months. PSPCL has not delayed the project and has made special provisions to facilitate the petitioner.

vii) The delays as mentioned by the petitioner are the result of its own lackadaisical attitude. By granting the extension of COD, a huge loss would not only be caused to PSPCL only but would also be caused to public at large as the delay in commissioning of the project would mean that the RPO compliance as directed by the Commission would not be fulfilled and PSPCL would be bound to purchase the expensive RECs for the compliances of the same, which

would burden the consumers in the State. The delay in commissioning of the project is due to the petitioner and PSPCL has no responsibility in the same.

It is the responsibility of the petitioner to fulfill the terms and conditions of the PPA. The delay has been caused by the petitioner itself and the plea of force majeure events does not stand hold and therefore petition is liable to be dismissed. The bank guarantee submitted by the petitioner is against the non-compliance of the terms of IA and PPA. It is a self-attested document of the petitioner wherein it has agreed that if the petitioner would not be in a position to Commission the project on time, PSPCL and PEDDA would be at liberty to encash the Bank Guarantee kept with them.

viii)As per provision of the PPA signed with the petitioner, the IA signed by the petitioner with PEDDA forms an integral part of the PPA. Article 3C of the IA is as under:

“However if the project COD crosses beyond 31st March 2016 then this tariff shall cease to exist and the developer will be bound to get the tariff re-determined from the PSERC.”

Therefore, the petition may be adjudicated upon on the basis of the above mentioned facts.

ix) The petitioner has failed to comply with the terms and conditions as mentioned in PPA dated 31.03.2015. The allowing of the petition would mean burdening PSPCL as it would be bound to purchase the expensive RECs so as to comply with RPO target fixed by the Commission. The

petition may be dismissed with exemplary cost to the petitioner as it has not disclosed the facts.

Commission's Observations, Findings and Decision

9. The Commission has carefully gone through the petition, application, additional submissions, replies thereto by PEDA and PSPCL and rejoinders by the petitioner. The observations, findings and decision of the Commission are as hereunder:

I. The submissions in the petition in brief are as hereunder:

- i) The petitioner sought extension in the date of the commissioning of the project from 31.03.2016 to 31.08.2016 for applicability of the tariff of ₹ 7.68 per kWh due to reasons beyond its control in commissioning of its 1 MW solar PV power project.
- ii) PEDA issued RfP on 24.12.2014 for development of grid connected solar PV power projects of total capacity 250 MW in the State of Punjab (Phase-II).
- iii) The petitioner was allotted 1 MW solar PV power project by PEDA vide LoA dated 25.02.2015. The petitioner deposited PBG of ₹ 40 lakh with PEDA. An IA was signed between PEDA and the petitioner on 19.03.2015 and the PPA was signed between the petitioner and PSPCL on 31.03.2015.
- iv) The petitioner finalized the land at village Chinna Bidhi Chand, Tehsil & District Tarn Taran to set up the project and the sale deed for the land was registered on 03.06.2015.
- v) The petitioner got technical grid feasibility clearance for the project from PSPCL on 22.07.2015.

vi) IREDA sanctioned the loan for the petitioner's project on 06.11.2015. The petitioner submitted the loan sanction documents to PEDDA vide email dated 09.11.2015.

IREDA verbally refused to disburse the loan on the pretext that the petitioner submits the extension letter of the date of commissioning which is expiring on 30.01.2016 at the same tariff i.e. ₹ 7.68 per kWh. All the formalities as required under the RfP/LoA/IA were completed and the petitioner had invested an amount of ₹ 244.57 lakh upto 10.03.2016, as certified by the Chartered Accountant vide certificate dated 15.03.2016.

vii) PEDDA was requested on 19.01.2016 to extend the time in setting up of the project. However, PEDDA on 08.02.2016 informed the petitioner that as per the RfP terms and conditions, it is not possible to grant any extension in the scheduled commissioning date of the project. PEDDA encashed an amount of ₹ 12 lakh in partial encashment of the PBG amount of ₹ 40 lakh.

viii) The commissioning of the project was delayed due to the occurrence of following force majeure events which were not in control of the petitioner:

a) Unrest in the State of Punjab on account of desecration of Holy Sri Guru Granth Sahib at various places and imposition of section 144 from 14.10.2015 to 22.10.2015.

b) Jat Agitation in the State of Haryana turned violent around 20.02.2016 which ended around 24.02.2016. Due to the said agitation, the entry and exit points of the State were

put under curfew restraining the petitioner from receiving the material for the project at site.

- c) Pen down strike by the staff of revenue department during different spans of time due to which the petitioner was not able to complete formalities with regard to lease of land. Therefore, land documents could not be submitted to respondents in time, which caused delay in commissioning of the project.
- d) The Commission approved the tariff for the petitioner's project vide Order dated 11.05.2015 in petition no. 21 of 2015 filed by PSPCL, due to which the petitioner could not approach the financial institution(s) and investor(s) for arranging the funds.
- ix) As per the site inspection report of PEDDA dated 28.03.2016, the work of installation of structures for the modules, inverter room, trenches, levelling of land and fencing was completed. The civil work for the 11 kV bay was in progress. Modules and inverter were not available at site, the cabling work had not been started and other works were pending.
- x) The solar equipment was under short supply since December, 2015 and prices for these equipments are on higher side due to currency fluctuation.
- xi) The director of the company was busy since January, 2016 due to the marriage of his daughter and also under the financial burden due to which it failed to fulfill the commitments for project in time.

xii) PSPCL and PEDDA have unduly caused delay in carrying out the necessary amendment in the contractual documents for assigning the same in the name of the petitioner due to which the financial closure etc. of the project were stalled. The petitioner cannot be made to suffer for the actions of PSPCL and PEDDA.

xiii) Due to the work already completed and considering the experience of the EPC contractor, the petitioner was confident to commission the project within 5 months from date of receipt of the said approvals/amendments.

xiv) GERC in its Order dated 05.04.2014 in petition no. 1188 of 2012 extended the control period of a project for applicability of tariff in view of Hon'ble APTEL's Judgment dated 02.01.2013 in Appeal Nos. 96 and 130 of 2012.

xv) It is prayed to extend the date of commissioning of the project from 31.03.2016 to 31.08.2016 without impacting the tariff of ₹ 7.68 per kWh and direction to PEDDA to release the amount of ₹ 12 lakh encashed in partial encashment of PBG(s).

II. PSPCL's reply dated 28.04.2016 in brief is as hereunder:

i) As far as the extension of COD and the present dispute is concerned, PSPCL is only a perfunctory respondent and no major role to play at this stage.

ii) The grounds of delay in commercial operation of the project are vague, technically incorrect, legally defective and concocted. The force majeure events claimed by the

petitioner do not fall under clause 19 of the PPA, which deals with natural calamities in majority or events like unrest, epidemics, court order, change in law event or any act of God whereas the grounds taken in the petition inter alia, deal with the approvals, an incident in Faridkot, agitation in another State and self created alibi of non-availability of staff of sub-registrar. The facts have not been disclosed and certain material facts have been concealed by the petitioner. The petition is, thus, liable to be dismissed.

- iii) Due to delayed commissioning of the project, compliance of RPO by PSPCL shall be adversely affected and PSPCL will have to purchase expensive RECs for the purpose.
- iv) The lease deed for the land of the project was finalized on 03.06.2015 i.e. the petitioner took more than two months to decide about the location of the land for the project. This delay has not been explained by the petitioner.
- v) The petitioner is required to arrange the finances for its project and PSPCL has no role in the same. Though the PPA was signed on 31.03.2015, the petitioner applied for loan at a belated stage.
- vi) The incident of desecration of Holy Sri Guru Granth Sahib took place in State of Punjab in District Faridkot which is at a distance of more than 100 kms from the project site in District Tarn Taran which was not affected. The plea taken by the petitioner is wrong.

- vii) The Jat agitation was initiated in District Rohtak in the State of Haryana which is at a distance of more than 450 kms from the project site. The agitation did not have any effect in the State of Punjab where the project is located.
- viii) There was no strike by the Tehsil staff as claimed by the petitioner.
- ix) Solar equipment was required to be arranged by the petitioner and non-availability of the same can not be construed as a force majeure event. The shortage of material as alleged by the petitioner does not seem to be true as other projects with larger capacities were commissioned in time during the same period.
- x) One of the pleas taken by the petitioner for justifying the delay in completion of the project was the marriage of the daughter of the director of the company. This only reflects poorly on the seriousness, capability and capacity of the petitioner to complete the project in time.
- xi) As per the PPA, the project was required to be commissioned by 30.01.2016 and the tariff for the same was ₹ 7.68 per kWh. It is provided in the PPA that the IA signed by the petitioner with PEDDA forms an integral part of the PPA. Article 3C of the IA provides that if the project is commissioned after 31.03.2016, the aforementioned tariff shall cease to exist and the same shall be re-determined by the Commission.

As the project will achieve commissioning after 31.03.2016, the lowest tariff of ₹ 5.09 per kWh discovered in

the bidding process for allocation of projects under Phase-III during FY 2015-16 is prayed to be made applicable as similarly decided by the Commission in case of Bhanuenergy Infrastructure and Power Limited in petition no. 15 of 2015 & Bhanuenergy Industrial Development Limited in petition no. 16 of 2015.

- xii) No notice was served of the alleged force majeure events to PSPCL in terms of clause 19.2.0 of the PPA and article 10.4 of the IA. Accordingly, the plea taken by the petitioner is belated and barred by limitation.
- xiii) In terms of clause 16.0.0 of the PPA and article 14 of the IA, resolution of disputes is to be adjudicated by arbitration. An alternative remedy being available, the conduct of the petitioner in approaching the Commission is unwarranted and would render the action to be out of jurisdiction.
- xiv) The petitioner has alleged delay on account of acceptance of the PPA by the Commission on 11.05.2015 which was signed on 31.03.2015. However, the petitioner was not barred from initiating processes/formalities for the project upto 11.05.2015 when PPA was accepted by the Commission.
- xv) The technical grid feasibility was granted by PSPCL on 22.07.2015. The petitioner approached PSPCL on 15.08.2016 after a period of 13 months and deposited ₹ 25 lakh for erecting 11 kV line for evacuation of power from the project. Despite the same, PSPCL allowed the petitioner as a stop gap arrangement to evacuate power from the existing

11 kV line. The 1 MW project of the petitioner was synchronized with the PSPCL grid on 24.08.2016.

III. The reply of PEDDA dated 06.05.2016 in brief is as hereunder:

- i) The petitioner has not demonstrated the true factual matrix of the matter and has tried to setup a false and frivolous case in order to evade its bounden obligation of achieving the COD well within time, as stipulated in the RfP, LoA & IA. The petition is not maintainable as there exists an arbitration clause in IA. The petitioner while misusing the process of law, in order to invoke section 86 (1)(f) of the Act has purported as if a dispute has arisen between the petitioner and PSPCL. Hence, the petitioner is liable to levy of penalty on delay in commissioning of the project.
- ii) The petitioner has failed to achieve the COD by 30.01.2016 as provided in the IA which is the main contractual document.
- iii) The petitioner while misleading the Commission has wrongly sought interim order dated 01.04.2016 restraining PEDDA from encashing the unconditional PBG deposited by the petitioner with PEDDA, which is against the settled canons of law laid down by the Hon'ble Supreme Court of India in a catena of judgments. Hence, the said interim order dated 01.04.2016 deserves to be vacated and PEDDA is entitled to encash the PBG.
- iv) The petitioner has sought extension in scheduled date of commissioning for a period of 7 months upto 31.08.2016, whereas seven solar power projects with total 62 MW

capacity have been successfully commissioned by similarly placed developers. Therefore, the assertions made by the petitioner with regard to purported occurrence of force majeure events are false.

- v) The petitioner was required to achieve financial closure of the project within 120 days from the date of signing of PPA i.e. upto 31.07.2015. The petitioner was requested vide email dated 04.08.2015 and later by letter dated 21.08.2015 to submit the financial closure documents by 31.08.2015 but the petitioner failed to do so. Default notice dated 03.09.2015 was issued to the petitioner in terms of clause 3.22 of the RfP as also terms & conditions of IA. However, the petitioner submitted the loan sanction documents dated 06.11.2015 from IREDA vide email dated 09.11.2015 after a delay of more than 3 months from the scheduled date of submission of financial closure. The delay in obtaining financial closure for the said project is solely attributable to the petitioner. The petitioner did not request PEDDA for assigning the IA for any purpose including the financial closure.
- vi) PEDDA vide letter dated 18.01.2016 informed the project developers including the petitioner that it is not possible to grant any extension in scheduled date of commissioning of the allocated solar PV power projects and timely commissioning of the projects must be ensured. Otherwise, action shall be taken in accordance with clause 3.23 of RfP for delay beyond scheduled commissioning date. The

petitioner's request dated 19.01.2016 in this regard was rejected by PEDDA in terms of above.

vii)The petitioner has purported the occurrence of the following force majeure events:

- a) desecration of Holy Sri Guru Granth Sahib;
- b) Jat agitation in State of Haryana;
- c) strike by tehsil staff;
- d) determination of tariff in the month of May, 2015;
- e) shortage of solar equipment;
- f) marriage of the daughter of the director of the company.

The purported force majeure events referred by the petitioner are an afterthought. The petitioner failed to give notice of the same to PEDDA in line with relevant article of IA. The assertions made in the petition can not be relied upon and the petition needs to be dismissed.

viii)The desecration of Holy Sri Guru Granth Sahib took place in village Bargari, District Faridkot whereas the project of the petitioner is located at village Chhina Bidhi Chand, District Tarn Taran, which is far away and therefore the said event has no relevance. No notice of the said event which occurred in October 2015 was given by the petitioner. The petitioner failed to produce any cogent evidence that the occurrence of the said incident led to delay in commissioning of the project.

ix) Similarly, no notice was given as to the occurrence of the events of Jat agitation in Haryana and Tehsil staff strike. Also, no cogent evidence was provided how the occurrence of the said events delayed the completion of the project. In fact, the petitioner purchased the land for the project from its

promoter/director by way of registered sale deed on 03.06.2015.

However, the same was submitted by the petitioner to PEDDA on 17.02.2016 alongwith the documents for the purpose of availing concessional custom and excise duty exemptions.

- x) The petitioner has only made plain assertions without any cogent reasons that delay was caused due to approval of the PPA in the month of May, 2015. Although the loan for the project of the petitioner was sanctioned by IREDA on 06.11.2015, the petitioner did not sign the loan agreement with IREDA upto 03.02.2016 which happened to be a pre-requisite for disbursement of the loan.
- xi) The petitioner signed the EPC contract for the project on 05.01.2016 with Optimistic Green Energy Pvt. Ltd., Amritsar. As per the said contract, the project was to be commissioned by 31.03.2016. Further, an advance of ₹ 50 lakh for purchase of material and arranging labour etc. was to be made to the EPC contractor and LCs were to be opened on pro-rata basis in the month of March, 2016 linked with disbursal of loan by IREDA. The petitioner was required to make the equity contribution to the project as per undertaking submitted to PEDDA in terms of article 12.2 (iv) of IA that it has the financial standing and capacity to undertake the project.
- xii) The petitioner itself has acted upon the completion/ commissioning of the project in a belated manner which is

apparent from the fact that it entered into the loan agreement with IREDA on 03.02.2016 although the loan was sanctioned on 06.11.2015. Further, the EPC contract was also signed belatedly on 05.01.2016.

xiii) In the inspection report dated 28.03.2016 of the project site by the representative of PEDDA, it was clearly brought that solar modules & inverter were not available at site, cabling work not started and other works were pending.

xiv) The alleged shortage of solar equipment does not fall under the definition of force majeure events as provided under the contractual documents. Moreover, the EPC contract was signed belatedly in January, 2016.

xv) The marriage of the daughter of the director, which is a personal matter, does not fall under the definition of force majeure events as provided under the contractual documents. The same has no relation with the setting up of the project of the petitioner who happens to be a separate and distinct entity in the eyes of law from its director.

xvi) PEDDA rightly encashed the 30% PBG in terms of the IA on account of a month's delay in commissioning of the project and may be allowed to enforce its similar right in respect of the remaining 70% of the PBG.

xvii) The judgment dated 02.01.2013 rendered by Hon'ble APTEL in Appeal No. 96 and 130 of 2012, relied upon by the petitioner, renders no benefit to the petitioner, as the same does not apply to the facts and circumstances of the petition.

IV. The additional submissions submitted by the petitioner vide letter dated 04.10.2016 in brief are as hereunder:

- i) IREDA did not release the loan till 31.05.2016 and insisted that the petitioner invest more than 60% of the project cost by installing the solar modules, which however could not be installed due to reasons brought out above. The petitioner invested ₹ 244.06 lakh upto 15.03.2016. IREDA released the loan amount of ₹ 338.24 lakh on 31.05.2016 and ₹ 120.80 lakh on 08.06.2016 i.e. ₹ 459.04 lakh out of ₹ 483.70 lakh sanctioned to the petitioner for the project.
- ii) PEDA and CE/DS (Border), PSPCL were requested vide letters dated 31.05.2016 and 06.06.2016 that the project be allowed to evacuate the power through the existing transmission line of another solar power project of 2 MW capacity of the petitioner as the plant was located on the international border which was under the control of defence establishment and it was difficult to construct the new transmission line for the project during this period. As per the concerned PSPCL field office, it was technically feasible as also conductor size was adequate to transmit the power generated from the new 1 MW project through the existing line of the petitioner's 2 MW project. Dy CE/Op, PSPCL, Tarn Taran vide letter dated 29.06.2016 sought approval from CE/Planning, PSPCL with recommendations after proper studies and survey that existing line was capable of carrying additional power generated from the new 1 MW plant.

- iii) Testing of various equipments like step-up transformer, HT panels etc. was completed on 30.06.2016 by PSPCL team and the meter was installed and sealed by the concerned authority. As such the plant was completed on 30.06.2016. Considering that the approval of the PPA was granted by the Commission on 11.05.2015, the plant was completed in 13.5 months which is within the time frame as per the PPA.
- iv) The petitioner availed loan from IREDA, which has started EMI for repayment and interest is added from 30.06.2016. Due to delay in commissioning of plant solely due to PSPCL till 24.08.2016, the petitioner has suffered loss of generation for 54 days which comes out to be monetary loss of ₹ 18,00,000 as per historical data & simulations available.
- v) The petitioner visited office of CE/Planning, PSPCL, Patiala on 11.07.2016 and submitted its request to allow evacuation of power from the existing line. Deputy CE/Op, Tarn Taran vide letter dated 22.07.2016, replied to the email of CE/Planning dated 21.07.2016 with his recommendation that the power from newly erected 1 MW plant can be evacuated through the existing transmission line for the 2 MW project, mentioning that the defence authorities are objecting to its construction. Also PSPCL infrastructure at the receiving end sub-station was not ready till date. PSPCL's contention that the petitioner did not approach it after 22.07.2015 till 15.08.2016 is incorrect. After a decision of the whole time directors of PSPCL on 15.08.2016 to allow the petitioner to evacuate the power from the newly erected 1 MW plant

through existing transmission line as a stop gap arrangement, the plant was synchronized on 24.08.2016 as per PEDDA's letter dated 05.09.2016.

- vi) After a discussion with the petitioner, it was decided that PSPCL would construct the 11 kV evacuation line for the project at the cost of the project developer and ₹ 25 lakh was deposited by the developer after the route of the line was surveyed by PSPCL. Till the date of filing the additional submissions on 04.10.2016, the work of the line was not started by PSPCL.

PSPCL's approval for construction of line was conditional stating that the line shall be constructed by it within 4 months otherwise the connection will be disconnected, which is not justifiable. Also, as per the resolution of PSPCL while passing the resolution dated 22.08.2016 regarding permission to the petitioner, for evacuation of power from the existing line imposed the condition that the incremental percentage transmission losses on account of injection of additional power on the same line be adjusted in the payment for monthly bills to the petitioner. PSPCL failed to construct the line despite getting the cost deposited. Also 9% voltage regulation is permitted as against 7.96% calculated by PSPCL field staff.

It is requested that PSPCL be directed to allow evacuation of power from the 1 MW project on the existing line for the 2 MW project on permanent basis and refund the amount of ₹ 25 lakh to the petitioner.

vii) PSPCL being Govt. instrumentality, instead of promoting the projects is trying to create obstacles at every stage. It is submitted that since 06.06.2016 to 15.08.2016, the petitioner made many efforts to get the plant synchronized. However, as the Narli sub-station was not ready for evacuating of power from the new transmission line, therefore, PSPCL officials played delay tactics and deliberately put the burden on the petitioner. The petitioner's plant was synchronized on 24.08.2016.

V. PSPCL's reply dated 19.10.2016 to the additional submissions dated 04.10.2016 filed by the petitioner, in brief, is as hereunder:

- i) The petitioner was not ready with the project till the hearing in the petition held on 10.05.2016 wherein, as brought out in the interim order dated 12.05.2016, the petitioner sought a longer date for the next hearing so that it falls after the petitioner had arranged the loan from IREDA and imported the machinery from China.
- ii) The petitioner initiated the process for granting connectivity for the plant by PSPCL on 15.08.2016 as the amount of ₹ 25 lakh for construction of line was deposited on the said date. The condition by PSPCL to disconnect the connection in case the line is not constructed by PSPCL in 4 months is justified as PSPCL has a twin role of the distribution licensee and the contractor engaged by the petitioner for construction of the evacuation line on behalf of the petitioner.

iii) The claim of the petitioner regarding completion of project on 30.06.2016 is incorrect. Vide email dated 04.07.2016, SE/Planning replied to SE/Op, Tarn Taran as follows:

“.....Now the developer vide his request dated 06.06.2016 addressed to CE/DS Border Zone, Amritsar has asked for evacuation of power of both projects through the same 11 kV transmission line which has been forwarded to this office for approval. It is brought to your notice that this is against the instruction issued by the Commercial Organization which State that for a project of 2.5 MW and above, the developer will have to evacuate the power by erecting 66 kV transmission line so the developer may be asked to erect 66 kV transmission line if the developer wants to evacuate the power for 2 MW + 1 MW = 3 MW on the same transmission line.....”

As such, the request of the petitioner was not as per the rules. The whole time directors of PSPCL considered the issue and facilitated the evacuation of power from the project on the existing 11 kV transmission line of 2 MW project as a stop gap arrangement after deposit of cost of erection of line and other charges subject to the condition that the independent 11 kV line will be made operational by PSPCL within a period of 4 months. PSPCL did not delay the project rather facilitated the petitioner by allowing to evacuate the power through the existing line.

VI. PSPCL in its reply to the petition submitted that in so far as the present dispute is concerned, PSPCL is only a performa

respondent and has no major role to play at this stage. PEDDA submitted that the petitioner has wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Act which empowers the Commission to adjudicate disputes between distribution licensee and the generating company. PEDDA also submitted that the petitioner failed to commission the project by 30.01.2016, as provided in the IA, which is the main contractual document. **In this regard, the Commission notes that in para 14 of its Order dated 11.05.2015 in petition no. 21 of 2015, 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 by PSPCL and PEDDA in this regard are devoid of merit and no cognizance of the same is required to be taken.

PEDDA further submitted that the petition is not maintainable as there exists an arbitration clause in the contractual documents. The Commission notes that the said issue has already been decided by the Commission in its Order dated 12.04.2016 in IA

no. 19 of 2016 in petition no. 21 of 2016 & 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.

VII. The Commission notes that the petitioner's project was scheduled to be synchronized with the PSPCL grid on 30.01.2016. However, in the prayer the petitioner has sought extension in the date of commissioning of the project from 31.03.2016 to 31.08.2016. The project was synchronized/commissioned on 24.08.2016 i.e. 187 days beyond the scheduled date of commissioning i.e. 30.01.2016. The petitioner has alleged this delay on account of various force majeure events which have been strongly refuted by both PEDDA and PSPCL. **The petitioner arranged the land for the project in the month of May, 2015 and the sale deed was registered on 03.06.2015. The technical grid feasibility clearance was granted by PSPCL on 22.07.2015. However, the loan for the project was sanctioned by IREDA on 06.11.2015 as intimated to PEDDA on 09.11.2015. Thus, the financial closure for the project got delayed by 100 days as the same was required to be achieved within 120 days of signing the PPA i.e. by 29.07.2015, the PPA having been signed on 31.03.2015. The petitioner failed to provide any cogent reason for the said delay. The plea of the petitioner that IREDA verbally refused to disburse the loan till the agreements with PEDDA and PSPCL were extended, does not find favour with the Commission due to lack of evidence. As per the sanction letter of IREDA, the loan agreement & other**

documents were scheduled for execution by the petitioner on 04.12.2015 or earlier. However, the same were executed by the petitioner on 03.02.2016 i.e. after delay of 61 days and even after the expiry of the scheduled date of commercial operation i.e. 30.01.2016 which reflects poorly towards the commitment of the petitioner in respect of completion of the project in time.

The EPC contract for execution of the project was awarded by the petitioner on 05.01.2016. Despite arranging the land for the project as well as grid technical feasibility clearance well in time as brought out above, the award of EPC contract was delayed especially when the financial closure was also achieved on 06.11.2015. The Commission considers that the EPC contract was delayed by atleast 60 days if calculated from the date of sanction of loan otherwise the delay is more considering that the land and grid feasibility clearance for the project were available as on 22.07.2015. PEDDA submitted that in the EPC contract, the date of commissioning of the project was indicated as 31.03.2016. This further substantiates that the project was slated for delay at the instance of the petitioner as the scheduled date of commissioning was 30.01.2016.

As per the site inspection report of PEDDA dated 28.03.2016, the project was nowhere near completion. On the said date, the civil work for the 11 kV bay was in progress, solar PV modules and inverter were not available at site, cabling work had not started and other works were pending. Under the circumstances, the Commission is of the

considered opinion that the project could not in any way be completed by 31.03.2016, the date upto which the tariff of ₹ 7.68 per kWh was valid. The plea of the petitioner that solar PV modules were not available also does not cut much ice as many similarly placed projects were successfully completed during the period. The plea of the marriage of the daughter of the director of the company and financial constraint due to the same is a personal affair and unrelated to the development of the project and hence can not be pleaded as a reason for the delay. The Commission feels that no one else other than the petitioner was at fault for the same. It is quite apparent that the alleged delay in disbursement of loan by IREDA on 31.05.2016 (₹ 3.38 crore) and 08.06.2016 (additional ₹ 1.2 crore) was due to the lackadaisical approach of the petitioner towards the execution of the project. The loan agreement was executed by the petitioner on 03.02.2016 after almost 3 months of sanction of loan on 06.11.2015, EPC contract was awarded on 05.01.2016 i.e. after 2 months of the sanction of the loan and 5 months after getting grid feasibility clearance on 22.07.2015. The arrangement of the material especially the solar PV modules and inverter was much delayed as the same had not reached the project site upto end March, 2016.

The claims of the petitioner with regard to alleged force majeure events i.e. unrest in the State of Punjab due to desecration of Holy Sri Guru Granth Sahib, Jat Agitation in the State of Haryana and strike by the staff of the revenue department have been strongly opposed by both PEDDA and

PSPCL. The Commission finds that the petitioner has failed to substantiate with cogent documentary evidence to justify that these events affected/delayed the execution of the project. Similarly, the plea of the petitioner that it was barred from initiating processes/formalities for the project upto 11.05.2015 when the PPA was accepted by the Commission is unsubstantiated and no benefit on account of the same is admissible.

The petitioner mentioned that PSPCL and PEDDA caused undue delay in carrying out the necessary amendment in the contractual documents for assigning the same in the name of the petitioner due to which financial closure etc. of the project was stalled. PEDDA and PSPCL have denied the same. The Commission finds the same as vague since no contractual documents viz. IA and PPA, which were signed by PEDDA and PSPCL respectively with the petitioner, were required to be assigned in the name of the petitioner.

The testing of various equipments was completed on 30.06.2016. The meter was installed and sealed on the same day by the PSPCL team. The petitioner requested PEDDA and Chief Engineer/DS (Border), PSPCL vide letters dated 31.05.2016 and 06.06.2016 respectively requesting them to allow evacuation of the electricity to be generated from the project through the existing 11 kV line evacuating power from the adjoining generating station of 2 MW stating that the security agencies were not allowing civilians to enter/carry out the work near the line of control where the project is located. As per Dy CE/Op, PSPCL, Tarn Taran report dated 29.06.2016 to Chief Engineer/Planning, it was technically feasible

to evacuate the power from the project (1 MW) through the existing line. The petitioner approached Chief Engineer/Planning on 11.07.2016 and submitted its request to allow evacuation through the existing line. Dy CE/Op, Tarn Taran through his letter dated 22.07.2016 replied to the mail of Chief Engineer/Planning dated 21.07.2016 and recommended evacuation of power through the existing line. PSPCL management took a decision on 15.08.2016 to allow the petitioner to evacuate the power through the existing line as a stop gap arrangement after a deposit of ₹ 25 lakh by the petitioner for the construction of an independent 11 kV line by PSPCL subject to the condition that said line shall be made operational by PSPCL within 4 months, otherwise the connection will be disconnected. PSPCL further imposed the condition that the incremental percentage transmission losses on account of injection of additional power on the same line shall be adjusted in the payment for monthly bills to the petitioner.

VIII. The project was synchronized with the grid on 24.08.2016. Though the plant was ready on 30.06.2016, the 11 kV line for evacuation of power was not in position. The technical grid feasibility to the project was granted by PSPCL on 22.07.2015. The petitioner did not approach PSPCL until June/July 2016 with regard to the difficulty in construction of the evacuation line due to restrictions imposed by the defence authorities consequent to the attack by the ultras on Pathankot air base, which happened on 03.01.2016. It again shows the callousness on the part of the petitioner. The petitioner alleged that the infrastructure at the receiving end

sub-station of PSPCL was also not ready. However, the petitioner did not put PSPCL to notice with regard to readiness of the plant and line.

The Commission is of the considered opinion that the delay in the execution of the project is to the account of the petitioner. The petitioner did not award the EPC contract till 05.01.2016 and did not execute the loan agreement till 03.02.2016 with IREDA though the loan was sanctioned on 06.11.2015 and the petitioner was invited to execute the same by 04.12.2015 or earlier. The project was incomplete as per PEDDA's report dated 28.03.2016 and important equipment like solar PV modules & inverter etc. had not reached the site and other important works including cabling were pending. The petitioner did not approach PSPCL for allowing it to evacuate power through the existing line till June 2016. The disturbances took place in January 2016 and the independent 11 kV line could have been constructed earlier since the land for the project had been purchased by the petitioner in June 2015 and grid feasibility clearance granted by PSPCL in July 2015.

As the project was not completed till 30.06.2016, forfeiture and encashment of performance bank guarantees amounting to ₹ 40 lakh is warranted in terms of IA/PPA for delay upto 31.03.2016, out of which ₹ 12 lakh has already been encashed by PEDDA. 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 entitled to levy liquidated damages for 3 months delay from 01.04.2016 to 30.06.2016 in terms of IA/PPA.

The Commission further notes that the project was commissioned on 24.08.2016 and the tariff was valid till 31.03.2016 in terms of the Order of the Commission dated 11.05.2015 in petition no. 21 of 2015 and the IA/PPA. Therefore, the entitlement of the petitioner to the tariff of ₹ 7.68 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 ₹ 7.68 per kWh of the petitioner's project was determined through competitive bidding process undertaken by PEDDA 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, PEDDA 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. However, the Commission notes that the capacity of such projects allotted in FY 2015-16 was 50 MW whereas the capacity of the petitioner's project is 1 MW. The Commission notes that the bidding for FY 2014-15 was carried out by PEDDA for 3 categories of projects i.e. 1-4 MW, 5-24 MW and 25-50 MW. The lowest tariff discovered in the 3 categories was ₹ 7.29 per kWh, ₹ 6.88 per kWh and ₹ 6.88 per kWh respectively i.e. the tariff for 1-4 MW capacity projects was 5.96% (approx.) higher than 25-50 MW capacity projects. Accordingly, applying the same percentage to the tariff of ₹ 5.09 per kWh for FY 2015-16 determined in the competitive bidding process for 50 MW capacity projects, the same works out to ₹ 5.39 per kWh. As brought out in the previous paras, the solar PV modules and inverter did not reach the site even upto 28.03.2016. Evidently, the petitioner gained significant advantage due to delayed purchase of solar PV modules and equipment as the trend of falling prices in solar PV power projects is clearly reflected in the gradually falling tariffs from ₹ 18.44 per kWh in FY 2009-10 to ₹ 8.75 per kWh in FY 2013-14, ₹ 7.72 per kWh in FY 2014-15, ₹ 7.04 per kWh in FY 2015-16 and ₹ 5.68 per kWh in FY 2016-17. That the equipment was actually purchased at a belated stage is corroborated by the fact that the petitioner approached PEDDA on 17.02.2016 for availing concession/exemption in custom/excise duty. Accordingly, the Commission finds it just and fair to fix the tariff for the

petitioner's project as ₹ 5.39 per kWh which shall be payable by PSPCL to the petitioner for purchase of electricity from the project.

The Commission further directs that PSPCL shall not disconnect the petitioner's project from the grid till the work of 11 kV line undertaken by it is completed. Further, in case the voltage regulation of the existing line with additional injection of power from the project remains within the permissible limit as claimed by the petitioner, no adjustment of transmission losses shall be made by PSPCL.

In case the work of construction of 11 kV line has not been taken in hand by PSPCL so far, PSPCL shall allow the evacuation of power through the existing line in terms of Commission's directions for revising the minimum voltage levels for interfacing of renewable energy projects and captive power plants with the state grid in Order dated 25.01.2017 in petition no.9 of 2016 wherein the specified capacity for evacuation through 11 kV lines shall be upto 4 MW. In the eventuality, the amount of ₹ 25 lakh deposited by the petitioner for construction of 11 kV line by PSPCL for evacuation of power from the project shall be refunded to the petitioner within 30 days of the issue of this Order failing which PSPCL will be liable to pay penal interest to the petitioner at the rate of 1.25% per month payable on pro-rata basis for each day's delay.

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

Sd/-
(S.S. Sarna)
Member

Sd/-
(D.S. Bains)
Chairman

Chandigarh
Dated:14.02.2017