

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

Petition No. 14 of 2017
& I.A. No.06 of 2018
Date of Order: 11.02.2019

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

In the matter of: Petition under Section 86(1) (f) of the Electricity Act, 2003 in relation to disputes arising under the Implementation Agreement dated 30.11. 2015 executed between Photon Suryodaya Private Limited and Punjab Energy Development Agency read along with the provisions of the Power Purchase Agreement dated 13.01.2016, executed between petitioner and the Punjab State Power Corporation Limited as the successor entity on unbundling of PSEB.

AND

In the matter of: Photon Suryodaya Pvt. Limited having its Registered Office at 8th Floor, Statesman House, Barakhamba Road, New Delhi-110001 through its Authorized Signatory Mr. Vaibhav Sharma.
...Petitioner

Versus

1. Punjab State Power Corporation Limited, PSEB head office, The Mall, Patiala through its Chairman.
2. Punjab Energy Development Agency, Solar Passive Complex, Plot No.1 & 2, Sector 33-D, Chandigarh 160020 through its Chairman.
3. Syndicate Bank Limited, Arunachal Building, 19, Barakhamba Road, New Delhi through its Manager.

...Respondents

ORDER

The petitioner filed petition no. 14 of 2017 under section 86(1) (f) of the Electricity Act, 2003 for adjudication of the disputes arising under the Implementation Agreement dated 30.11.2015 executed between the petitioner and Punjab Energy Development Agency (PEDA) read along with the provisions of the Power Purchase Agreement (PPA) dated 13.01.2016, executed between the petitioner and Punjab State Power Corporation Limited (PSPCL). The Petitioner submitted that the delay in achieving the Scheduled Commercial Operation Date of the project occasioned on account of force- majeure events, PEDA's delay in approving/ incorporating new sites and on account of PEDA/ PSPCL's delay in grant of technical feasibility in respect of the said sites and prayed to :-

- I. Issue an order or direction mandating Respondent Nos.1 and 2 to accept the occurrence of Force-Majeure event(s) which has necessitated extension of time for commissioning of the Project and accordingly permit and grant extension of time for commissioning of the project as envisioned under Article 10.5(iii) of the Implementation Agreement and without changing the tariff rate of Rs.5.27 per unit; and
- II. issue any order or direction mandating Respondent Nos. 1 and 2 to accept the delay occasioned and/or being occasioned by Respondent Nos. 1 and 2, *inter alia*, on account of Force-Majeure event(s); in grant of approval of new sites; in grant of Technical Feasibility Clearance; and accordingly not amending the Implementation Agreement and PPA in a timely manner, and to consider the said period while computing the period of extension of commissioning of project; and/or
- III. issue any order or direction mandating Respondent No.2 to refund an amount of Rs.3.00 crore, which has been encashed out of a total sum of Rs.5.0 crore deposited by the Petitioner in the shape of Bank Guarantee towards the performance security,

along with interest at the rate of 18% P.A. from the date of encashment till the date of its realization by the Petitioner; and

- IV. issue any order or direction injuncting the Respondents from invoking and/or encashing the remaining Performance Bank Guarantee to the tune of Rs.2.00 crore dated November 18, 2015; and
 - V. issue any order or direction in the nature of an injunction against Respondent Nos.1 & 2 prohibiting them from cancelling and/or terminating the Letter of Award (LOA) dated October 19, 2015, as also Implementation Agreement dated November 30, 2015 and PPA dated January 13, 2016; and
 - VI. for issuance of any order or direction mandating Respondent Nos. 1 & 2 not to levy extension fee in respect of implementing the project under reference;
 - VII. issue any order or direction in the nature of ad-interim injunction in terms of the prayers above, during the pendency of the present petition; and
 - VIII. grant such orders, further relief/s in the facts and circumstances of the case as the Commission may deem just and equitable in favour of the Petitioner.
2. The Commission vide order dated 21.06.2017, after considering the averments made by the parties decided to refer the disputes between the parties for arbitration and vide order dated 10.10.2017 appointed Mr. Justice S.S.Saron (Retd.) as Sole Arbitrator to decide upon all the clauses of the prayer in the petition except the tariff, which, if required, shall be determined by the Commission after considering the relief granted by the Arbitrator. The Arbitrator passed the award vide award dated 05.04.2018 as follows:-

“

In the circumstances, for the foregoing reasons, the reference made to the arbitrator is disposed of by holding that the Petitioner shall not be entitled for refund of the amount of Rs.3.00 crores, which has been withdrawn by PEDA (respondent No.2) by invoking the Performance Bank Guarantee as the petitioner had abandoned the said claim before the learned Additional District Judge, Chandigarh by withdrawing the case on 04.03.2017 and is, therefore, precluded from re-agitating it in the present proceedings. The petitioner, however, would be entitled for the other reliefs of restraining PEDA (respondent No.2) from encashing the balance amount of Rs.2.00 crores by way of Performance Bank Guarantee; besides, PEDA (respondent No.2) shall re-fix the date for completion of the Solar Power Projects at village Maisar Khana and at village Swaitch and Sandhoa by taking into consideration the date when Technical Feasibility Clearance was granted for the Solar Power Project at village Swaitch and Sandhoa on 07.02.2017 and the 'no objection' was granted by PSPCL (Respondent No -1) to the assignment of rights of the petitioner under the IA/PPA (PPA signed on 13.01.2016 for 50 MW project to be established at village Malsar Khana 25 MW and at village Swaitch and Sandhoa for 25 MW) to its lender Power Finance Corporation Ltd. vide its letter dated 02.03.2017 (Annexure P73).

The counter claim filed by PEDA (respondent No-2) is declined..... ”

3. The petitioner filed I.A 06 of 2018 in petition no. 14 of 2018, which was taken for hearing on admission on 20.06.2018. Vide order dated 22.06.2018, the Commission directed PSPCL and PEDA to file reply to the petition further directing the petitioner to file rejoinder, if any. PSPCL filed reply vide memo no. 5215 dated 06.07.2018 and the petitioner filed rejoinder to the reply filed by PSPCL vide letter dated 24.07.2018. The I.A was admitted vide order dated 27.07.2018 directing the petitioner to intimate the date of purchase order(s) issued by it for major equipment (s). PSPCL and PEDA were directed to visit the site of the project and submit report. The petitioner submitted the information vide letter dated 13.08.2018 and in continuation

of the letter dated 13.08.2018 further submitted the documents vide letter dated 27.08.2018. After visiting the sites by PSPCL and PEDDA on 23.08.2018, PSPCL vide memo no. 5581 dated 06.09.2018 furnished its submissions. Vide order dated 26.09.2018 the petitioner was directed to submit certain information. The petitioner filed affidavit vide letter dated 30.09.2018, and PSPCL filed its submissions vide memo no. 5781 dated 05.10.2018, in compliance of the order dated 26.09.2018. The Commission vide order dated 17.10.2018, directed PEDDA to submit its proposal on tariff for the petitioner's project alongwith methodology for the same. PEDDA submitted the information on 05.12.2018 and PSPCL vide memo no. 5427 dated 15.01.2019 filed its reply/submissions thereto.

4. The petitioner has submitted in IA No. 6 of 2018 that the Id. Arbitrator vide award dated 05.04.2018 directed PEDDA to refix the date for completion of the Solar Power Projects at village Maisar Khana and at village Swaitch and Sandhoa by taking into consideration the date when technical feasibility clearance was granted for the solar power project at Swaitch and Sandhoa on 07.02.2017 and 'no objection' was granted by PSPCL to the assignment of rights of the petitioner, for the project to be established at village Maisar Khana for the 25MW and village Swaitch and Sandhoa for 25MW, to its lender Power Finance Corporation Ltd vide letter dated 03.07.2017.

4.1 According to the petitioner, the delay has occurred due to Force Majeure events in respect of grant of Technical Feasibility Clearance and also in granting 'no objection' for assignment of the rights of the company to its lender under the PPA. Request for grant of Technical Feasibility Clearance had been made on 07.07.2016 which was granted on 07.02.2017. The company had sought assignment of rights on 27.08.2016 and the same was granted on 02.03.2016.

Even if, the number of days which overlapped are not considered the total number of days of delay comes to 233.

4.2 In pursuance to the award dated 05.04.2018, the petitioner represented to PEDDA vide letter dated 19.04.2018 requesting to amend Article 6.2 (VIII), Article 7, Article 9.1(a),(ii) and Article 3(c) of the implementation agreement so as to give effect to extension of seven months from the date of such amendment to the PPA by PSPCL. A reminder was also sent vide letter dated 27.04.2018. PEDDA through its letter no. 3906 dated 01.05.2018 had allowed the time period of seven months for completion and commissioning of the project from the date of signing of amended PPA by PSPCL, further intimating that PEDDA shall sign the amended I.A only after the deposit of fresh Performance Bank Guarantee of Rs.5 crore by the petitioner company. The petitioner submitted the fresh Performance Bank Guarantee on 17.05.2018 and PEDDA signed the amended implementation agreement with the petitioner on 22.05.2018.

4.3 PSPCL filed petition no. 31 of 2016 under section 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 before the Punjab State Electricity Commission and the Commission vide its order dated 10.06.2016 ordered /clarified that the applicability of the approved tariff beyond March 31, 2017 will not be allowed, even if, punitive clauses in the PPA are made applicable except /barring force majeure/ change in law etc. Therefore, according to the petitioner, the petition may be disposed off by the Commission holding that the tariff would remain the same till 31.03.2019, further directing PSPCL to amend clause 10.1.0, 10.1.1 and 10.1.2 of the PPA in terms of the amended Implementation Agreement dated 22.05.2018.

5. PSPCL in reply to the I.A no 06 of 2018 submitted as under:-

- 5.1 That the award dated 05.04.2018 has not explicitly specified as to the exact time period for which the extension is to be allowed to the applicant. The award only states that PEDDA would keep in view the Technical Feasibility Clearance granted for solar power project at village Swaitch and Sandhoa on 07.02.2017 and the No Objection granted by the PSPCL to the assignment of rights on 02.03.2017. Therefore according to PSPCL, it is beyond comprehension as to how extension of seven months has been granted by PEDDA without even consulting the PSPCL. PSPCL would be severally impacted by any such extension granted to the applicant petitioner and it was obligatory on PEDDA to consult PSPCL before signing the I.A. and allowing extension of seven months time for completion of projects. The extension has been granted by PEDDA for both the projects at village Maisar Khana and Village Swaitch and Sandhoa, which is contrary to the factual position on record as well as the intention of the award dated 05.04.2018.
- 5.2 The Revised Technical Feasibility Clearance for the first solar project at village Maisar Khana was granted on 26.08.2016. Therefore, this project could not be compared with the second project at village Swaitch and Sandhoa for which the revised Technical Feasibility Clearance was granted on 07.02.2017. In view of the huge time difference between the two dates of grant of Technical Feasibility Clearance, a blanket extension of seven months could not be granted for both the projects in a similar fashion.
- 5.3 That despite grant of revised Technical Feasibility Clearance on 26.08.2016 for the first solar project at village Maisar Khana, the petitioner did not undertake any further work even at this site though there was no hindrance in the same.
- 5.4 The consent for assignment of rights by PSPCL on 02.03.2017 did not in any manner stop the applicant petitioner from undertaking the work at the sites. It was a

pure financial adjustment that the applicant petitioner had to make and thus could not have stopped the petitioner from carrying out the work especially when the revised Technical Feasibility Clearance for first solar project stood granted on 26.08.2016 and for second solar project at village Swaich and Sandhoa on 07.02.2017.

- 5.5 In case the Commission decides the instant application, then the tariff has to be re-determined in accordance with Article No.3 (c) and Article No.10.5 (ix) of the Implementation Agreement.
- 5.6 In the instant case, initial tariff rate as per PPA was 5.27 per unit according to the prevailing rates at the time. Therefore, while granting a particular period of extension as deemed fit by the Commission, tariff has to be re-determined according to the prevailing rates keeping in view the financial implications for PSPCL and the huge impact it would have on the end consumer.
- 5.7 The Commission in order dated 31.10.2017 passed in Petition No.50 of 2017 (Suo-motu) has mentioned that for other RE technologies such as Solar PV, Solar Thermal, Wind, MSW and RDF based projects, project specific tariff shall be determined as provided in the CERC RE Regulations, 2017. As per CERC RE Regulations, 2017, Project specific tariff, on case to case basis, shall be determined by the Commission. Therefore, applicant-petitioner cannot place reliance on other projects and seek parity as demanded by the petitioner, as case to case decision has to be made to arrive at just and proper tariff.
- 5.8 As per Article 6.2 (ix) of I.A., Technical Feasibility Clearance was to be granted by 12.06.2016 i.e. within 150 days from the date of assigning of PPA i.e. 13.01.2016. Since the petitioner had failed to get the Technical Feasibility Clearance by 12.06.2016 for the new locations, an extension of one month was granted by PEDDA, which would mean that the cutoff date stood extended to 12.07.2016. Accordingly,

the revised Technical Feasibility Clearance granted on 26.08.2016 could not be said to be delayed considering the administrative time required to undertake the exercise of granting Technical Feasibility Clearance and the fact that the applicant/petitioner has approached PSPCL for the change of location only in the month of July.

- 5.9 The reliance by the petitioner on Petition no. 31 of 2016 is absolutely misplaced and misconstrued. It is pertinent to mention that the order dated 10.06.2016 passed in the said petition is in favor of the PSPCL, and profoundly endorses the stand of the PSPCL that the tariff has to be re-determined when the COD is delayed beyond the financial year even on account of force majeure condition and its acceptance by the Competent Authority. The Order dated 10.06.2016 read with Article no. 3 (c) and Article No. 10.5 (ix) of the Implementation Agreement make the position absolutely clear that in case the Commission does finally agree to the request of the applicant/petitioner, even then the tariff has to be re-determined in accordance with the prevailing rates. The relevant data/tariff rates as collected from the websites of various Regulatory Commissions of other states has been attached for consideration of the Commission.
6. The petition filed rejoinder to the reply filed by PSPCL, as under :
- 6.1 That there is no reason for PSPCL to oppose the claim of the petitioner. That the Award, though may not have *explicitly* specified as to the exact time period, does provide for re-framing of the time schedule by PEDDA, by taking into account the dates mentioned in the Award, in light of the findings rendered. There being no ambiguity in the Award extension of 7 months has been granted by PEDDA keeping in view the findings and the directions issued by the Ld. Arbitrator in the award.

- 6.2 The submission of PSPCL that PSPCL was required to be consulted for grant of extension, is not only against the letter and spirit of the Award and the direction issued, but even erroneous and misconceived, keeping in view the terms of the IA and the PPA. The plea that the extension granted by PEDA for both the Projects at village Maisar Khana and village Swaich and Sandhoa, is contrary to the factual position on record as well the intention of the Award, is misconceived, erroneous and misplaced.
- 6.3 The Ld. Arbitrator has directed to reframe the time schedule, not only by taking into account the date of grant of Technical Feasibility Clearance, but also by taking into account the date when the 'No Objection' was granted for the assignment of rights under the IA/PPA for both the Projects, which concededly was granted on March 2, 2017. It is, *inter alia*, in this view of the matter that 7 month's extension, from the date of signing of the amended PPA, has been granted in case of both the Projects.
- 6.4 It would be wrong to even suggest that there has been no hindrance in undertaking the work in respect of the Solar Project at village Maisar Khana, even though the Technical Feasibility Clearance had been granted on August 26, 2016. It is a conceded position and as has been even held by the Ld. Arbitrator that the assignment of rights itself was granted on March 2, 2017, which in submission of the Applicant, is, *inter alia*, a pre-requisite for disbursement of loan by the lender of the Petitioner i.e. Power Finance Corporation (a Govt. of India Undertaking). That apart, PSPCL has also conveniently glossed over the fact that there has not been any disbursement of the sanctioned loan amount in respect of the Project, by the lender of the Petitioner, keeping in view the pendency of the present litigation. Infact, the Petitioner has carried out some works on the project expending amounts from its pocket running into several crores. The plea, as raised by PSPCL,

falls out of the realm of jurisdiction of the Commission, as the matter has been adjudicated by the Ld. Arbitrator.

6.5 It is wrong and vehemently denied that the assignments of rights by PSPCL on March 2, 2017, did not in any manner stop the Applicant/Petitioner from undertaking the work at the sites.

6.6 The plea that the tariff has to be re-determined, is illegal erroneous and misconceived in light of the peculiar facts and circumstances of the present case. The reference was made by the Commission to the Arbitral Tribunal to ascertain the legitimacy of the Petitioner's claim *vis-à-vis* occurrence of force majeure events, amongst other claims. Once the same stood determined by the Ld. Arbitrator, the natural concomitant of the same would be that the tariff is not required to be re-determined and shall remain as already determined keeping in view order dated June 10, 2016, passed by the Commission in *Petition No.31 of 2016; Punjab State Power Corporation Limited (PSPCL) Versus Punjab Energy Development Agency (PEDA) Chandigarh*, wherein, the Commission had, *inter alia*, observed as follows:-

'It is further clarified that barring force majeure/change in law etc., the applicability of the said approved tariff beyond the aforementioned date i.e. 31.03.2017 will not be allowed even if punitive clauses in the PPA are made applicable.'

6.7 The Commission, while referring the disputes to the Arbitrator vide Order *October 10, 2017*, held that the tariff, *which if required* to be re-determined shall be determined by the Commission after considering the relief granted by the Arbitrator. Thus, the plea that the tariff is bound to be re-determined is not only illegal, but even contrary to the intent and spirit of the order dated June 10, 2016 passed by the

Commission in Petition no. 31 of 2016. It is submitted that if the projects were commissioned in time, the rates, as determined, were to remain same/static for a period of 25 years from the date of commissioning of the project(s). In the present case, *inter alia*, the contention of the Petitioner is that owing to existence of force majeure events, as has now even been judicially determined, the Project(s) could not be commissioned within the slated time line and such, extension has been directed to be granted in the form of direction by the Ld. Arbitrator to the PEDDA to re-frame the time-lines under the Agreement(s), keeping the respective dates of grant of Technical Feasibility Clearance, as also, the 'assignment of rights', which was in respect of both the Projects. In this view of the matter, the rates are not to be changed to the detriment of the Petitioner.

6.8 In view of the peculiar facts and circumstances of the present case, wherein existence of force majeure events has been so determined by the Ld. Arbitrator, PSPCL cannot now contend the tariff, which was even otherwise to remain valid for a period of 25 years, to be purportedly on a very high side,.

7. The Commission vide order dated 27.07.2018 directed the petitioner to intimate the date of purchase order(s) issued by it for major equipment(s) including solar panels alongwith expenditure incurred for the project and the date when the equipment was actually received at site. The petitioner submitted the information vide letter dated 13.08.2018 and 27.08.2018 and further filed an affidavit dated 06.09.2018 reiterating the averments made in the above letters.

7.1 The petitioner submitted the charts depicting the purchase orders issued for the equipments including the Solar panel reflecting the EPC order(s) that had been placed upon Sarkun Solar Pvt. Ltd for service as well as supply and reflecting the date of purchase orders further placed by EPC Contractor. In support of the aforementioned two agreements

entered for supply and service in favour of EPC Contractor and purchase orders further issued by the EPC Contractor. Chart regarding expenditure as well as chart depicting the date when the equipment/material has been actually received at the site has also been enclosed. It has been further submitted that on July 30, 2018 the notification has been issued by the Govt. of India, Ministry of Finance, Department of Revenue imposing a safe guard duty on the import of "Solar Cells whether or not assembled in modules or panels" which is an apparent change in law amounting to political force majeure event and intimation in this respect has been given by the petitioner to PEDDA vide letter dated 03.08.2018. With such change in law there has been an increase in Solar panel's cost which has resulted in consequential increase in the total cost of the project. The cost of the project may get further increased in the light of increase in rate of GST from 5% to 18%.

- 7.2 That the petitioner has issued agreement dated 18.05.2016 for work of installation/ construction of Solar Power - Equipments, Plant & Machinery (for service) to M/s Sarkun Solar Pvt. Ltd. having contract value Rs. 6 crore. The Total contract price is inclusive of all applicable taxes, duties, levies etc. The Contract price shall remain firm throughout the execution of this agreement.
8. PSPCL in reply to the information filed by the petitioner submitted vide memo no. 5581 dated 06.09.2018 that the petitioner has averred as under:
- 8.1 That it has issued another agreement dated 18.05.2016 for supply of Modules, Inverters, Transformers, Transmission material & Plant Machinery to M/s Sarkun Solar Pvt. Ltd. having contract value Rs. 262 crore. Total Contract price for the scope of supply is inclusive of all taxes and duties. Imposition/Withdrawal of any taxes/duties/levies or any statutory increase/decrease in taxes during the pendency of contract shall be to the buyers account.

8.2 That M/s Sarkun Solar Pvt. Ltd. has further issued purchase order of Modules to M/s Waaree Energies Limited on 22.10.2016 for Rs. 73,75,00,000/-(Rs. 73.75 crore) and second order placed for Imported Chinese Modules vide Quotation dated 14.06.2016 for Rs. 77,38,50,000/-(Rs. 77.385 Crore) i.e. for total modules' order value= Rs.151.135 crore alongwith orders to other venders for other material.

8.3 That apart from this, firm has also submitted the details/summery sheets of expenditure incurred/ to be incurred by them on both the projects on the basis of project cost of Rs.280 crore as assessed by lender PFC, extra cost incurred over& above cost approved by lender PFC. The EPC contractor M/s Sarkun Solar Pvt. Ltd. has worked out the project cost after considering the cost of module @ 28.5 cents per watt and impact of GST & 25% Safe guard Duty etc.

9. In view of above, PSPCL submitted as under:-

9.1 That the sites of both the solar projects to be established by firm at Vill. Maisar Khana and vill. Swaich & Sandoha were visited by the officers of PEDDA and PSPCL on dated 23.08.2018.

9.2 That regarding Tariff, Article no. 3(c) and Article no. 10.5 (ix) of Implementation Agreement states as under:

Article no. 3 (c) "however, if the project COD crossed beyond 31st March 2017 then this tariff shall cease to exist and the developer will be bound to get the tariff re-determined from the PSERC"

Article no. 10.5 (ix) "In case the commissioning of the project is delayed due to force majeure conditions stated above and the same are accepted by the competent authority, the due dates for encashment of performance security and imposition of liquidated damages shall be extended

accordingly. In case the delay affects the COD of the project and it gets extended to the next financial year then the tariff payable shall be as determined by PSERC”.

- 9.3 That as per both site reports, No Modules were available at site. Hence, the firm has not purchased the Modules for both the projects of 25 MW each. As per details submitted by the firm, only payment of 14 crore has been made by the firm to M/s Waaree Energies Limited, the supplier of modules. Moreover, M/s Photon Suryodaya Pvt. Ltd. has incurred total expenditure of Rs.89.02 crore .

Therefore, in view of the facts and circumstances, Commission may determine the most appropriate tariff for the above said project of 50 MW (2x25 MW), in the interest of justice, equity and fair play.

- 10 The Commission vide order dated 26.09.2018 directed the petitioner to submit the information as under:-

- i) *“The item-wise break-up of original cost estimated by the Petitioner at the time of bidding for the project and the year wise expenditure against each item.*
- ii) *The audited accounts for the expenditure incurred.*
- iii) *The present rate of Solar PV Modules available in India and directly imported Solar PV modules.*
- iv) *Letter from Waaree Energies Limited confirming the supply of Solar PV modules against the advance payment of Rs. 14 crore made to it by the Petitioner at the time of ordering the same for the project.*
- v) *Letter from PFC regarding status of disbursement of sanctioned loan.*
- vi) *A column depicting actual expenditure be added in Enclosure – G (Page 313) of the affidavit filed vide letter dated 06.09.2018.”*

11 In compliance of the order dated 26.09.2018 the petitioner submitted that:

11.1 In respect of the item wise break up of estimated cost, the Petitioner appended the item-wise break up of original cost estimated at the time of bidding and also the year-wise expenditure against each of the items, further reflecting the estimated present cost of the project when the modules are procured from within the country and also the estimated present cost of the project when the modules are imported.

11.2 The Petitioner enclosed the audited accounts of the company for the financial year 2016-17, as also the financial year 2017-18 showing that in respect of item number 2.8 therein, namely 'other current assets', the audited accounts of the Petitioner company reflect an expenditure to the tune of Rs. 90,42,27,956/- for the financial year 2016-17 whereas, for the financial year 2017-18 a sum of Rs.93,73,40,773/ has been incurred by the Petitioner company.

11.3 The Petitioner submitted the communications made by different suppliers, quoting the present rates of solar PV modules available in India and also the communications, quoting the rates of those modules, which could be procured internationally further submitting that for the purposes of calculation given at Enclosure 'I', the lowest rate as made available to the Petitioner Company has been quoted therein.

11.4 In respect of letter from Waaree Energies Ltd. it is stated that no separate letter/missive was received from Waaree Energies Limited in terms of order dated September 26, 2018. However, negotiations are ongoing between the Petitioner Company and the said supplier, whereby the advance of Rs. 14 crores paid by the former would be adjusted towards the proportionate cost which would be incurred for supply of the modules which would be equivalent to 4.75 Megawatts. However, the rate for the same would be 44 cents per watt.

11.5 With regard to letter from PFC relating to status of disbursement of sanctioned loan, the Petitioner submitted, letter dated April 13, 2017, issued by the Petitioner's Lender namely, Power Finance Corporation, stating that the request of the Petitioner/Project Developer regarding initial drawdown of funds would be processed after resolution of disputes *inter se* the parties and with regard to extension of date of commissioning and re-determination of tariff by the Commission. It is stated that till date, no amount has been disbursed by the Petitioner's lender, much less, that which was sanctioned to it.

11.6 That in respect of the column depicting the actual expenditure, the Petitioner submitted the expenditure incurred by it up to the period of June 30, 2018 in a tabulated format.

12 In compliance of the order dated 26.09.2018 PEDAs filed reply and additional submissions that PEDAs in line with the award dated 05.04.2018 has extended the date of commissioning of the project i.e. 2x25 MW allocated to the Petitioner as 7 months from the date of signing the amended PPA by PSPCL and in this regard, an amended IA dated 22.05.2018 has been duly signed by PEDAs with the petitioner.

13.1 The petitioner has approached the Commission by way of present application while primarily seeking tariff for the project in question as the project has crossed the control period of the applicable tariff i.e. upto 31.03.2017

13.2 PEDAs as per the directions issued by the Commission vide order dated 27.07.2018 had conducted a joint visit along with PSPCL and the petitioner on 23.08.2018 at the 2x25 MW solar project sites of the petitioner i.e. one at Village Maiser khana site and another at village. Swaitch and sandoha Distt. Bhatinda. A project status report with respect to both the sites was prepared by the committee after site visits.

13.3 The petitioner has submitted various documents to PEDDA on 14.08.2018 and 29.08.2018 as per the orders of Commission for establishing the expenses made by the Petitioner qua the project sites in question for seeking tariff thereof' in this regard. Since the issue with respect to determination of tariff concerns the petitioner and PSPCL thus, scrutiny thereof required, if any, is to be done totally by PSPCL The power to determine tariff based on investment by the petitioner in the project rests with the Commission.

13.4 In compliance of direction of the Commission during the hearing on 20.09.2018, PEDDA had enquired telephonically from Govt. organization, Solar Energy Corporation of India, and it has been informed to PEDDA that the average module cost manufactured in India ranges from Rs. 2.20cr to Rs. 2.50 crore for 1 mega watt capacity SPV power project depending upon the make.

14 PSPCL submitted its submissions/comments to the information filed by petitioner in compliance of the order dated 26.09.2018 that vide Annexure-1 the petitioner. has so far incurred expenditure of Rs. 88,74,38,824 including the expenditure incurred by EPC contractor M/s Sarkun Solar Pvt. Ltd. Rs" 60,39,26,5181- (including Rs. 14,00,00,000/- paid to Waaree Energies Limited for solar modules)

14.1 The petitioner has calculated total project cost by taking 32 cents per MW as the cost of solar panels in case of domestic purchase. This calculation has been made on the basis of the rate offered by one supplier namely Vikram solar. However, as per the documents attached by the firm, Adani Solar has offered rate of 28 cents per watt.

14.2 The petitioner has also calculated total project cost taking 25.75 cents per MW as the cost of solar panels in case of imported modules.

14.3 As per the details available on website pvinsights.com, the average module cost for imported modules as on date

26.09.2018 for Poly Solar Module, Poly Module in China, Thin film Solar Module etc. is about 0.239,0.233,0.260 USD per watt respectively.

14.4 In the last bidding done by PEDA for Canal Top Solar Projects (FY 2016-2017), the lowest rate was Rs. 4.73 per unit and PPA at this rate was signed with M/s. Vijay Printing Press Pvt. Ltd. on 13.02.2017 with scheduled date of commissioning as 29.03.2018.

15 The Commission vide order dated 17.10.2018 and 21.11.2018 directed PEDA to submit its proposal on tariff for the petitioner's project along with the methodology for the same keeping in view the fact that the tariff was discovered through reverse bidding carried out by PEDA on the generic tariff determined by the Commission. PEDA submitted the proposal on tariff alongwith the methodology based on the :-

i) Premise to discover the current year (2018-19) normative capital cost for Solar PV power projects. Once the capital cost is finalized thereafter tariff can be determined as per CERC parameters.

ii) Based on the capital cost submitted by the Company under affidavit to PSERC after verification of the same from the books of accounts for costs already incurred and contracts/work orders issued by the Company or quotations received for the balance works, as under: -

a) PV module cost:-

The company has shown total present cost considering domestic modules prices for which Rs 14 Cr has already been incurred for payment to Waaree Energy before 31/3/2017 which is verified as per balance sheets and CA certificate and an offer from Vikram Solar for supply of balance modules of 47.5 MW at a total cost of Rs 113 Cr. The company has produced audited balance sheet showing the expenditure already incurred and a certified copy of the Offer from Vikram Solar. The price on

calculation works out to Rs 24/watt. This price is very close to the earlier derived normative avg. price of Rs 23/watt and keeping in view that there is also impact of Safe guard duty on imported solar cells as module manufacturers mostly import the solar cells. In addition, there is a slight increased impact due to sunk cost of Rs 14 Cr for modules already paid to Warree.

Therefore, the price of Rs 24.00 /watt approx. i.e. Rs 240 lacs/MW and a total cost of Rs. 127 Crore for Solar PV Modules works out as per the contracts / quoted prices.

b) Inverters and Other electrical- Schneider Electric contract: -

The separate breakup of inverter's prices was not given by the company as the same is clubbed with other electrical equipment as part of the contract for supply of complete electrical system including DC, AC equipment comprising of array junction box, fuse box, inverters, inverter transformers, HT/LT switchgear, 66KV switchyards, solar DC cables, HT & LT cables, earthing material etc. for a total cost of Rs. 31.00 Crores as per documents submitted by the company. An expenditure of Rs 15.50 Crore has already been incurred under this contract uptill 31.03.2017 by the company, which is verified as per balance sheets and CA certificate. Thus, as per the price break-up submitted, the per MW cost for these electrical systems including inverters comes to Rs 59.04 Lakhs.

Therefore, at the price of Rs. 31.00 Crore for electrical systems including inverters, the per MW cost is Rs 59.04 lacs as per the contracts / quoted prices.

c) Module Mounting Structure :-

As per price breakup submitted, the company has given a sub-contract for supply and installation of module mounting structures at a total contract value of Rs. 18.75 Crore. As per detail submitted, out of this an expenditure of Rs. 8.50 Crore has already been incurred upto 31.03.2017 which is verified as per balance sheets and CA certificate. The per MW cost for these module mounting structures comes to 35.71 Lakh.

Therefore, the price of Rs. 18.75 Crore for module mounting structures with Rs 35.71 lacs/MW cost is there as per the contracts / quoted prices.

d) Civil, General Works and Transformers / Transmission lines :

As per price breakup submitted, the company has given a sub-contract for complete evacuation system including technical feasibility for evacuation and erection and commissioning of 66KV transmission lines for 52.5 MW, supply of power transformers and identification and procurement of suitable land, contour survey, soil investigation, site levelling and grading, chain link fencing, plant civil works including pilling, installation and testing of MMS, Modules and other equipment, supply and installation of solar tracking systems etc. at a total contract value of Rs. 47.60 Crore. As per detail submitted, out of this an expenditure of Rs. 36.89 Crore has already been incurred upto 31.03.2017 which is verified as per balance sheets and CA certificate. The per MW cost for these Civil, General Works and Transformers / Transmission lines comes to Rs. 90.66 Lakh. Evacuation cost is higher due to laying of 66 KV transmission lines also in the scope of the company.

Therefore, at the price of Rs. 47.60 Crore for Civil, General Works and Transformers / Transmission lines, the per MW cost is Rs 90.66 Lacs as per the contracts / quoted prices.

e) HT, LT Power Cables, DC Cables:-

As per price breakup submitted, the company has given a sub-contract for supply and installation of HT, LT Power Cables, DC Cables at a total contract value of Rs. 5.00 Crore. As per detail submitted, out of this an expenditure of Rs. 2.90 Crore has already been incurred upto 31.03.2017 which is verified as per balance sheets and CA certificate. The per MW cost for these HT, LT Power Cables, DC Cables comes to 9.52 Lakh.

Therefore, the price of Rs. 5.00 Crore for HT, LT Power Cables, DC Cables with Rs 9.52 Lakh/MW is as per the contracts / quoted prices.

f) Engineering and Commissioning Services :-

As per price breakup submitted, the company has given a sub-contract for Engineering and Commissioning Services at a total contract value of Rs. 6.00 Crore. The per MW cost for these Engineering and Commissioning Services comes to 11.42 Lakh. There is no expenditure incurred under this contract.

Therefore, the cost of Rs. 6.00 Crore with 11.42 lakh/MW as per the contracts / quoted prices is for these Engg and Commissioning services.

g) Land lease cost: -

For land lease cost, Rs 1,25,00,000 has been shown as lease rent, which after calculating works out to Rs 55,000/acre, with 5% escalation every year already considered. This has been taken as per actual lease deeds submitted by the company for which Company has submitted copies of the Land Lease Agreements along with abstract as per which the total land taken on lease is 230 Acres . The land lease rent payable during the operation period will be part of annual expenditure as additional O & M costs and does not become part of Capital Cost. However, the expenditure incurred during gestation period for setting up the project up to COD has to be capitalized and it will be part of capital cost.

Therefore, the land lease rent paid up the Company up to 31.3.2017 (1,26,76,375/-) plus land lease rent payable up to Mar'2018 aggregating as Rs 2,60,65,766/- certified by CA is to be capitalised and yearly lease rent of Rs 55,000/acre, with 5% escalation every year can be considered as land lease charges along with Op & Mtc expenses.

h) Pre-operative and Preliminary/Financing costs including IDC:-

For the remaining lot of expenditure components shown by the company as part of the price breakup which is as under:

S.No.	Particular	Expenditure incurred upto	Project cost breakup submitted by the

		31.03.2018 (Rs.)	company (Rs.)
1.	Lease Rent for 1.4.2016 to 31.3.2017	1,26,76,375/-	1,25,00,000/-
2.	Employee benefit expenses	31,24,044/-	32,00,000/-
3.	Admin expenses, professional and other operational expenses	1,91,91,453/-	2,00,00,000/-
4.	Upfront fee – PFC	1,37,56,875/-	1,38,00,000/-
5.	BG Margin	1,00,00,000/-	1,00,00,000/-
6.	Interest during construction	Yet to be incurred	4,50,00,000/-
7.	Margin money for working capital	Yet to be incurred	1,55,00,000/-
8.	Extension fee paid to PEDA	3,00,00,000/-	3,00,00,000/-
9.	Extra admin, salary, lease and other expenses due to delay in project in SPV from 1.4.17 to 31.3.18	Partially incurred, balance yet to be incurred	2,35,60,161/-
a	Employee Benefit	43,25,329/-	
b	Lease rent	1,33,89,391/-	
c	Admin, Professional and other expenses	30,16,357/-	
10.	Extra expenses to be incurred due to delay in project in SPV	Yet to be incurred	2,20,58,866/-
	TOTAL	10,94,79,824/-	19,56,19,027/-

Clubbing them under the Pre-operative, Preliminary/Financing costs, it is calculated as Rs 19,56,19,027/- for the project out of which Rs. 10,94,79,824/- is expenditure already incurred up till 31/03/2018 which is verified as per balance sheets and CA certificate and comes to Rs 37.29 lakh/MW which also includes costs taken into account for IDC, working capital margin and expenses due to project delay.

Therefore, the cost of Rs 37.29 Lakh/MW is calculated by the company as Pre-operative, Preliminary/Financing costs and documents. The total expenditure of Rs 88.74 Cr incurred by

the company is shown in balance sheet of FY 2016-17 and CA certificate.

i) GST @5% to be charged on Solar Projects :-

As per price breakup submitted, the company has stated that for the balance billing by EPC company, GST shall be charged as the same is now applicable @5% of Solar Projects for which an amount of Rs. 9,80,66,875/- has been shown as committed expenditure for tax outflow. The per MW cost for GST impact comes to 18.66 Lakh.

Therefore, the estimated cost of Rs. 9.80 Crore has been taken as committed expenditure on account of GST impact.

Total Project Cost:-

j) The Total Project cost as per documents submitted by the company is as under:-

S. No	Particulars	Estimated Project cost (Rs in Crores)	Expenditure incurred (Rs in Crores)	Balance Committed Expenditure (Rs in Crores)
1.	PV module cost	127.00	14.00	113.00
2.	Inverters and Other electricals	31.00	15.50	15.50
3.	Module Mounting Structure	18.75	8.50	10.25
4.	Civil, General Works and Transformers / Transmission lines	47.60	36.89	10.71
5.	HT, LT Power Cables, DC Cables	5.00	2.90	2.10
6.	Engineering and Commissioning Services	6.00		6.00
7.	Land lease cost (Rsin lacs)/acre	0.55		
8.	Contingency	4.02		4.02
9.	EPC extra expenditure due to delay	3.72		3.72

	SUB- TOTAL	243	77.79	165.30
10.	GST	9.80		9.80
	EPC TOTAL	253		
11.	Pre-operative and Preliminary/Financing costs	19.56	10.94	8.62
	TOTAL PROJECT COST	272.56	88.74	182.82

After analyzing the above costs, the extra expenditure and margin money for working capital of Rs 3.75 Crore under Prelim/pre-operative expenditure cannot be allowed as admin and other operational expenditure is already provided for.

Project EPC Cost - Rs 243.17 Crore

Prelim and Pre-operative expenses – Rs 15.81 Crore (Rs19.56 Cr – 3.75 Cr)

GST provision - Rs 9.80 Crore

Total Project Cost - Rs 268.78 Crore

- a) On per MW basis, the estimated project cost is Rs 512 Lac/MW including GST provision which can be considered on the basis of documents/contracts furnished by the company provided the same contracts which are partially executed with partial sunk capex and are fully executed.
- b) Applying CERC parameters of 2018-19 and capital cost of Rs 512 lacs, the project specific tariff is calculated as Rs 5.10/KWh.
- c) CERC RE Regulations 2017 Orders for determining project specific tariff for Solar PV power projects on case to case basis have been duly adopted by PSERC in its RE tariff order for 2018-19.

Also, as per CERC Regulations 2012-17 for solar PV power projects the tariff derived for the year in which the PPA is signed (in this case PPA and tariff being amended/re-determined in FY 2018-19) remains valid for the next year in which the project gets commissioned, the same tariff so re-determined by the commission shall be applicable for the project to be commissioned in FY 2019-20.

As brought out above, and in view of the costs already sunk in the project and contracts partially executed and balance costs to be incurred, the Commission may determine the tariff as deemed fit.

- 16 PSPCL submitted its submissions on the proposal submitted by PEDDA that PPA for the purchase of 50MW Solar Power was signed on 13.01.2016 with the Petitioner firm @Rs.5.27/- Kwh, tariff valid up to 31.03.2017. As per clause no.10.1.0 of PPA, SCOD of the Project was up to 12.01.2017.
- 16.1 In pursuance of the order dated 27.07.2018, passed by the Commission, the sites of both the solar projects to be established by firm at Vill. Maisar Khana and vill. Swaitch & Sandoha were visited by the officers of PEDDA and PSPCL on 23.08.2018. Both the reports have already been enclosed with earlier reply submitted to the Commission. As per both site reports, no Modules were available at site. As per details submitted by the firm, only payment of Rs.14 crore has been made by the firm to M/s Waaree Energies Limited the supplier of modules. Moreover, M/s Photon Suryodaya Pvt. Ltd. has incurred a total expenditure of Rs.88.74 crore.
- 16.2 The average Rupee Dollar rate has been considered as Rs.70.073 per dollar by PEDDA keeping in view the dollar rate as on 1st day of June 2018 to 1st day of November 2018.
- 16.3 That as per the details available on website pvinsights.com, the average module cost as on 12.12.2018 for Poly Solar Module and Thin film Solar Module is 0.219 and 0.246 USD per watt respectively.
- 16.4 The petitioner firm has taken land on lease basis for setting up of this project. The land lease rent payable during the operation period will be the part of annual expenditure as O&M costs and does not become part of capital cost. However, expenditure incurred during gestation period for setting up the project upto COD can be capitalized. PEDDA has itself suggested that only lease rent paid till COD has to be

included in capital cost as thereafter the yearly lease rent can be considered as part of O&M costs of the petitioner firm.

16.5 That however, PEDA in its reply has given the breakup of capital cost on the basis of expenditure incurred/ to be incurred by firm/ Petitioner on this project. They have worked out total capital cost of Rs. 512 Lakh per MW by considering the impact of safe guard duty and GST and worked out tariff Rs. 5.10 per unit by taking the module cost Rs. 24 per watt.

16.6 PPA was signed on 13.01.2016 & the firm has made investment of Rs. 88.74 crore. The Commission may determine the most appropriate project specific tariff for the above said project of 50 MW (2x25 MW), in the interest of justice, equity and fair play.

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

The Commission has carefully gone through all the pleadings, documents and submissions made by the parties.

It is observed that subsequent to the award dated 05.04.2018 passed by the Learned Arbitrator, the petitioner requested PEDA to grant an extension of 7 months for completion/commissioning of the project from the date of signing amendment of the PPA by PSPCL. PEDA allowed the same and the Implementation Agreement was amended on 22.05.2018 to this effect as under:

“(j) Clause no. 6.2 (viii) is amended as under:-

‘The solar PV Project shall be commissioned within 7 (seven) months from the date of signing of amended PPA.’

.....”

In the IA No. 06 of 2018 filed before the Commission, the petitioner requested for an early hearing and passing of appropriate

Orders and to dispose of the petition holding the tariff of Rs. 5.27 per kWh to remain the same till 31.03.2019. In response PSPCL submitted the tariff rates allowed by other State Electricity Regulatory Commissions for comparison by the Commission while deciding the tariff for the petitioner's project i.e. Rs. 2.79 per kWh in the discussion paper issued by KERC on 06.02.2018, Rs. 3.0 per kWh in MERC Order dated 09.01.2018 for EESL's 200 MW solar PV power project, Rs. 3.11 per kWh in TNERC Order dated 28.03.2018 and Rs. 3.93 per kWh in RERC Order dated 09.10.2017 for generic tariff for solar PV power plants to be commissioned by 31.03.2019. PSPCL further submitted the following solar tariffs for consideration of the Commission:

- i) Rs. 2.44 per kWh for SECI Bhadla 500 MW (ILFS Solar Park);
- ii) Rs. 2.47 per kWh for Hero Solar 200 MW & Rs. 2.48 per kWh for ACME 200 MW in Uttar Pradesh;
- iii) Rs. 2.62 per kWh for SECI Bhadla 250 MW (Adani Solar Park);
- iv) Rs. 2.65 per kWh for 500 MW solar power plant in Gujarat Urja Vikas Nigam (GUVNL);
- v) Rs. 2.97 per kWh with 5 paise escalation for 750 MW MP Rewa Solar Park and
- vi) Rs. 3.15 per kWh for 250 MW NTPC Kadapa Solar Park.

The Commission in its interim Order dated 17.10.2018 directed PEDA to submit its proposal on tariff for the petitioner's project along with the methodology for the same keeping in view the fact that the tariff was discovered through reverse bidding carried out by PEDA on the generic tariff determined by the Commission. However, PEDA did not keep in view the fact that the tariff for the petitioner's project was

discovered through reverse bidding and worked out the tariff for the same as Rs. 5.10 per kWh on the basis of the capital cost of the project as Rs. 272.56 crore submitted by the petitioner and further considering that the petitioner has already spent Rs. 88.74 crore. PEDDA further submitted that in view of the costs already incurred in the project and contracts partially executed, the Commission may determine the tariff as deemed fit. The Commission finds this exercise/proposal of PEDDA as unfruitful as allowing a cost plus tariff for the project which was allotted by PEDDA on the basis of competitive bidding would render the other bidders who participated in the bidding process, prejudiced.

The Commission notes that the amendment to the PPA has not been signed between PSPCL and the petitioner consequent upon the amendment in IA signed by PEDDA after the award of the Arbitrator. During the hearing on 11.10.2018, PSPCL expressed its willingness to sign the amendment to the PPA with the provision that the tariff for the project would be as determined by the Commission. However, the petitioner expressed its apprehension that the lender(s) may not agree to disburse the loan in the absence of a firm tariff in the PPA. The Commission expressed that it was not convinced of the same.

Tariff

As per the submissions made by the petitioner with regard to the audited accounts of the petitioner's company, an expenditure of Rs. 90,42,27,956/- is reflected for FY 2016-17 (as at 31.03.2017) whereas a sum of Rs. 93,73,40,773/- has been

incurred for FY 2017-18 (as at 31.03.2018). The petitioner has also submitted the original project cost estimated at the time of bidding as Rs. 280 crore. The original tariff of Rs. 5.27 per kWh was valid upto 31.03.2017. As such, the Commission finds it prudent to allow this tariff of Rs. 5.27 per kWh on the already incurred expenditure of Rs. 90.42 crore as at 31.03.2017, prayed to be allowed for the petitioner's project. This expenditure of Rs. 90.42 crore works out as 32.29% of the aforesaid estimated project cost of Rs. 280 crore.

The petitioner's project was slated to be commissioned in FY 2016-17 whereas the same would now be commissioned in FY 2019-20 at the earliest. During the interregnum of 3 years, the tariffs for solar PV power projects have witnessed a significant decline. The Commission adopted the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 after due process, according to which annual generic tariff for solar PV power projects is not to be determined. Therefore, the Commission intends to rely upon the latest generic tariffs determined by other SERCs for the remaining 67.71% expenditure yet to be incurred by the petitioner. KERC and MERC have determined the tariffs of Rs. 3.05 per kWh (for projects upto 5 MW capacity) and Rs. 3.02 per kWh respectively for solar PV power projects for FY 2018-19. The average of these tariffs works out to Rs. 3.035 per kWh. It is pertinent to mention that the petitioner's project would have the additional advantage of declining prices of the solar PV modules as also that of economies of scale, being a 50 MW project. Further, the Commission notes that the petitioner had

discounted the generic tariff of Rs. 7.04 per kWh by 25.14% while bidding the tariff of Rs. 5.27 per kWh for the project. The Commission feels that the aforesaid margins may now have been considerably reduced. As such, the Commission finds it just and fair to allow the aforementioned average tariff of Rs. 3.035 per kWh for the remaining 67.71% expenditure. Based upon the discussion above, the weighted average tariff for the petitioner's solar PV power project works out to Rs.3.75 (5.27x0.3229+3.035x0.6771) per kWh.

Accordingly, the Commission allows the tariff of Rs. 3.75 per kWh which shall be payable by PSPCL for purchase of electricity from the petitioner's project for the entire term of the PPA. As per amendment to the IA signed between PEDDA and the petitioner, the project is to be commissioned within seven (7) months from the date of signing of the amendment to the PPA, which is yet to be signed by the petitioner with PSPCL. The Commission expects that the amendment to the PPA shall be signed promptly and accordingly this tariff of Rs. 3.75 per kWh shall remain valid upto 30.09.2019. Other terms and conditions of the PPA shall remain the same.

The petition and IA no. 06 of 2018 are disposed of in terms of above

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 11.02.2019