

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

Petition No. 9 of 2016  
IA No. 3 of 2016  
and IA No. 27 of 2016  
Date of Order: 25.01.2017

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 clause 19.1.0 of the Power Purchase Agreement dated 31.03.2015 and Article 10 of the Implementation Agreement dated 31.03.2015 seeking extension of Commercial Operation Date (COD) for actual delay of 220 days, and further seeking stay on invocation of Performance Bank Guarantees by the respondents.

And

In the matter of: ACME Solar Rooftop Systems Private Limited through its Manager Mrs. Shafali Pawar, Plot No. 152, Sector 44, Gurgaon, Haryana.

.....Petitioner

Versus

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

.....Respondents

**ORDER**

1. ACME Solar Rooftop Systems Private Limited (ACME) filed this petition under section 86(1)(f) of the Electricity Act, 2003 (Act)

read with clause 19.1.0 of the Power Purchase Agreement (PPA) dated 31.03.2015 and Article 10 of the Implementation Agreement (IA) dated 31.03.2015 (mentioned wrongly as 24.03.2015 in the petition) seeking extension of Commercial Operation Date (COD) for delay of 220 days and further seeking stay on invocation of Performance Bank Guarantees (PBGs) by respondents. The petitioner also filed an Application for interim relief (IA No. 3 of 2016) to restrain PEDDA from invocation of PBG and not to take any coercive action against the petitioner for delay in achieving COD on account of force majeure events.

2. The Commission admitted the petition & IA and vide Order dated 29.02.2016 directed PEDDA and PSPCL to file reply by 08.03.2016. PEDDA was further directed to maintain status quo in respect of letter dated 24.02.2016 vide which the capacity commissioned was sought from the petitioner by PEDDA for imposing penalty for non-commissioning/shortfall in commissioning of the allocated capacity in terms of clause 3.23 of Request for Proposal (RfP) and refrain from invocation of PBGs till the next date of hearing. The next date of hearing was fixed as 15.03.2016.

3. The petition was taken up for hearing on 15.03.2016. Neither PSPCL nor PEDDA filed reply before 15.03.2016. The Commission vide Order dated 16.03.2016, directed PSPCL and PEDDA to file reply by 01.04.2016 and further directed the petitioner to file rejoinder by 08.04.2016. The stay granted to maintain status quo in respect of letter dated 24.02.2016 and to refrain from invocation of PBGs was extended till the next date of hearing. The next date of hearing was fixed as 12.04.2016.

4. The petition was taken up for hearing on 12.04.2016. PSPCL filed its reply dated 31.03.2016 to the petition. However, PEDDA filed its reply on 12.04.2016. The petitioner filed rejoinder dated 11.04.2016 to the reply of PSPCL and sought time to file rejoinder to the reply of PEDDA. The petitioner was directed to file rejoinder to the reply of PEDDA by 20.04.2016 with copy to the respondents. The next date of hearing was fixed as 26.04.2016. The stay granted earlier for maintaining status quo in respect of PEDDA's letter dated 24.02.2016 and to refrain from invocation of PBGs was extended till next date of hearing fixed for 26.04.2016.

5. The petition was taken up for hearing on 26.04.2016. The petitioner filed rejoinder to the reply of PEDDA on 25.04.2016. PEDDA sought time to examine the rejoinder of the petitioner so as to submit its arguments. The petitioner submitted that it intends to file Written Note of Arguments for consideration of the Commission before next date of hearing. Accordingly, vide Order dated 27.04.2016, the Commission directed the petitioner to file Written Note of Arguments/Submissions by 10.05.2016 with copy to the respondents. The respondents were directed to file Written Note of Arguments/Submissions by 24.05.2016 with copy to the petitioner and each other. Further, the stay granted to maintain status quo in respect of letter dated 24.02.2016 of PEDDA and to refrain from invocation of PBGs was extended till next date of hearing. The petitioner was directed to ensure that validity of the PBGs is extended beyond 31.05.2016, if needed. The next date for arguments was fixed as 31.05.2016 which was further extended to 14.06.2016, 16.06.2016, 21.07.2016 & 30.08.2016.

6. During hearing on 30.08.2016, the petitioner submitted that PSPCL deducted ₹ 93 lakh from the monthly bills of the petitioner on the account of liquidated damages during the pendency of the petition and filed an Application (IA No. 27 of 2016) for refund of the wrongful deduction made by PSPCL.

Vide Order dated 31.08.2016, PSPCL was directed to file reply as well as written submissions by 08.09.2016 without fail, sought earlier also to be filed by 24.05.2016. In default, it was to be presumed that PSPCL has nothing more to say in the petition. The next date for hearing the arguments was fixed as 20.09.2016.

7. During hearing on 20.09.2016, the parties argued the matter at length. The petitioner drew attention of the Commission to numerous judgments and pronouncements of various Courts and Tribunals including Hon'ble Supreme Court of India. He promised to place them on record and also provide copies of the same to the respondents. The petitioner offered to file written submissions alongwith the Judgments/Orders to which reference was made during oral arguments, by 30.09.2016 with an advance copy to the respondents. PSPCL and PEDDA were directed to file their written submissions by 10.10.2016, keeping in view the written submissions filed by the petitioner. PSPCL and PEDDA were also directed to file reply in IA No. 27 of 2016, latest by 10.10.2016. Order was reserved.

8. The petitioner filed an application dated 06.10.2016 seeking extension upto 11.10.2016 for filing written arguments due to non-availability of senior counsel due to his professional commitments. The Commission vide Order dated 12.10.2016 acceded to the request of the petitioner and allowed to file written

arguments/submissions by 11.10.2016. PSPCL and PEDDA were to file their written arguments by 10.10.2016 as directed earlier.

9. Submissions made by the petitioner are summarised hereunder:

- i) PEDDA issued Request for Proposal (RfP) dated 27.01.2015 for selection of bidders for setting up rooftop solar PV power plants in the State of Punjab through competitive bidding based on discount to be offered on the generic tariff for solar PV power projects determined by the Commission for FY 2014-15 as ₹ 7.72 per kWh. The said generic tariff was applicable for both rooftop and ground mounted solar power projects subject to the PPAs to be signed by 31.03.2015. The petitioner submitted its bid for setting up 30 MW rooftop solar PV power project at the net availed tariff of ₹ 7.57 per kWh. After evaluation of bids, PEDDA issued Letter of Award (LoA) on 25.03.2015 to the petitioner for setting up 30 MW rooftop solar PV power project and signed an Implementation Agreement (IA) on 31.03.2015. The petitioner provided two PBGs dated 27.03.2015 of ₹ 8.40 crore and ₹ 3.60 crore totalling ₹ 12 crore in terms of Article 6.2 (iv) of the IA. Pursuant to signing of IA with PEDDA, the PPA was signed between the petitioner and PSPCL on 31.03.2015. As per clause 10.1.0 of the PPA, COD is ten (10) months from date of signing of PPA i.e. 30.01.2016. In order to comply with the obligations of commencing power supply from the COD, the petitioner commenced the project construction activity in time. However, due to occurrence of certain force majeure events, the project was delayed. As

per recital of the PPA, all the clauses and regulatory norms applicable to the IA shall be unequivocally applicable to the PPA in its true letter and spirit. Therefore, IA is to be read as part and parcel of the PPA. Clause 19.4.0 of the PPA provides that for force majeure events occurring during the commissioning period of the project, provisions of IA will be applicable.

- ii) PEDDA was informed vide email dated 19.02.2015 that 100 acre of land was available with multiple roofs within the same boundary, of 70 m<sup>2</sup> (approx.) with a height of 1.5m in front and 2.7m on rear side from the ground. The space beneath the structure is to be used for cultivation of vegetation. Clarification was sought from PEDDA if the said structures comply with the requirement under the rooftop scheme. PEDDA vide email dated 23.02.2015 gave its consent for the same.
- iii) A drawing was submitted to PEDDA vide letter dated 30.03.2015 depicting the structures on which the PV modules were proposed to be installed with height of the structure as 6 feet in front and 10.7 feet at rear and 25° (degree) inclination with average height of structure as 8 feet. The four sides of the structure were to be covered by net and for irrigation of the vegetation and plantation beneath the structure, drip irrigation was to be used.

PEDDA vide letter dated 31.03.2015 directed the petitioner to join the two tables of array modules so as to make it a shed. The petitioner vide letter dated 31.03.2015 submitted various options for placement of solar PV modules

such as container type, joining of two modules tables by Profile sheet etc. stating that the petitioner is still exploring other probable options so as to comply with RfP.

- iv) Technical feasibility clearance was applied to PSPCL on 04.05.2015 to evacuate 30 MW of power at 66 kV Sangha sub-station. PSPCL on 07.05.2015 directed the petitioner to connect to 132/220 kV sub-station. Vide letter dated 12.05.2015 PSPCL was informed that as per RfP, capacity between 2.5 MW and 30 MW can be evacuated at 66 kV level and informed that it is not possible to change the location as huge amount was invested in procuring/leasing of land and also considering strict time schedule for providing land documents, achieving financial closure and commissioning of the project. PSPCL vide letter dated 15.05.2015 requested to furnish the documents including MoU of land leased/registry of the land required for granting feasibility clearance and also directed to provide the location of nearby 132/220 kV sub-station. PSPCL vide Commercial Circular No. 23/2015 dated 08.06.2015 amended instruction no. 125.1(f) of Electricity Supply Instruction Manual to the extent that voltage level for interfacing of NRSE/ CPP projects with State grid will be at 33/66 kV for projects more than 2.5 MW and upto 25 MW and for projects more than 25 MW, the interface voltage level will be 132/220 kV. PSPCL on 11.06.2015 informed that being a 30 MW solar power project, it has to be connected to 132/220 kV sub-station for power injection and requested to provide the details of

nearby 132/220 kV sub-station for granting technical feasibility.

v) In terms of circular dated 08.06.2015 of PSPCL, PEDA allowed the petitioner to set up 2 rooftop solar PV power projects of 15 MW each. The name of the company was changed from Chidakash Power Private Limited to ACME Solar Rooftop Systems Private Limited. Necessary amendments in the IA to the above effect were signed on 16.06.2015 and 02.07.2015. The petitioner vide letter dated 17.06.2015 requested PSPCL to execute an amended PPA based on the amended IA. Further, vide letter dated 02.07.2015, the petitioner informed PSPCL that it will submit land deed documents after execution of supplementary PPA. The amended PPA was a pre-requisite for grant of technical feasibility.

vi) Vide letter dated 16.06.2015, the rooftop structure details were submitted to PEDA based on the concept of net house suggesting two options to optimize the structure of the rooftop system along with detailed drawings of the structure.

Further, vide letter dated 03.07.2015, rooftop structure system and layout details for the two 15 MW projects were submitted and PEDA informed of the proposal for conversion of net houses into poly-sheds wherein the area under the structure roof was to be used for hydroponic agricultural beds for cultivation of vegetation keeping an average structure height as 8.725 feet.

vii) PEDA vide letter dated 08.07.2015 informed the petitioner that the structure details as per the documents submitted for

the rooftop project are not in compliance of the RfP and IA. PEDDA further requested the petitioner to submit the documents for location of land and the lease deed.

viii) Information regarding the ownership of sheds and its details were submitted to PEDDA vide letter dated 09.07.2015 and informed that the land situated in village Mankheda, Tehsil Sardulgarh, District Mansa, Punjab is taken on lease for a period of 30 years. The rooftop solar PV power project was proposed to be set up on the sheds making best utilization of the roofs owned by the petitioner. The height of the shed was intimated as 6.5 feet at front and 12 feet at rear end (average height approx. 8.725 feet) with tilt angle of 24°.

PEDDA vide letter dated 13.07.2015 accepted the concept note and granted concurrence to set up the solar PV power project on the said location and requested the petitioner to comply with the terms & conditions of RfP and IA.

ix) On 30.07.2015, separate lease deeds for 72.31 acre and 72.95 acre of land at village Mankheda, Mansa for both the projects were submitted. The land identified earlier was not provided by the farmers due to the reason that harvesting season was going on and the land was not available now. Further, vide letter dated 03.08.2015, the declaration regarding sole ownership of rooftop sheds and also the undertaking that development of the project shall be in accordance with RfP, LoA, IA and its subsequent amendments were submitted.

- x) In response to letter dated 02.07.2015, PSPCL vide letter dated 21.09.2015 sought clarification as to which of the two amendments to the IA both titled 'Amendment No.2 to Implementation Agreement' is to be considered for signing the amendment to PPA. This delay of 81 days was on the part of PSPCL.
- xi) Vide letter dated 11.09.2015, the land documents for 65.71 acre of land at village Nangla-Jhaurikian, District Bathinda for project-1 were submitted to PSPCL requesting to provide technical feasibility. Further, these documents were submitted to PEDDA on 07.10.2015 for amendment to IA which was carried out on 08.10.2015.

Based on the amendment to the IA, PSPCL signed amendment to the PPA with the petitioner on 12.10.2015. The petitioner requested PSPCL on 12.10.2015 to provide technical feasibility clearance. PSPCL granted technical feasibility clearance for project-1 on 02.11.2015.

PEDDA on 09.11.2015 sought documents from the petitioner required for issue of technical feasibility clearance for project-2. The petitioner informed PEDDA on 16.11.2015 that it has acquired a land of 74.36 acre for setting up of project-2 and requested PSPCL to provide technical feasibility clearance for project-2. PSPCL granted technical feasibility clearance for project-2 on 17.11.2015.

- xii) PEDDA vide letter dated 30.10.2015 granted its concurrence to set up two solar PV power projects of 15 MW each on the roof of sheds at village Nangla-Jhaurikian, Tehsil Talwandi Saboo, District Bathinda (Plant No.1) and at village Khiali

Chahilanwali, Tehsil Jhunir, District Mansa (Plant No.2) and approved the design/concept drawing of the roof sheds submitted by the petitioner vide letter dated 09.07.2015. PEDDA requested the petitioner to comply with the terms & conditions of RfP and IA in respect of the same.

The said approval was granted after delay of 81 days caused solely on account of PEDDA. The petitioner since 19.02.2015 to 30.10.2015 kept requesting PEDDA for granting approval of the design for the rooftop structures. The said event was beyond the control of the petitioner.

xiii) There was unrest in the State 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. The event led to 9 days delay in commissioning of the project.

xiv) Jat agitation in the State of Haryana turned violent around 20.02.2016 and remained so upto 24.02.2016. Most part of the State was put under curfew, which restrained materials from reaching the project. The respondents were informed vide a letter dated 22.02.2016 that an event of force majeure has occurred. The event caused delay of 10 days.

xv) The staff of office of Sub-Registrar remained busy in distribution of compensation suffered by farmers on account of damage to cotton crop by spread of whitefly epidemic for about a month and land lease deeds / registry of land could not be carried out for 35 days.

xvi)The respondents were informed about the occurrence of various force-majeure events on 15.12.2015 and 25.01.2016. In any case respondents were aware of these events as 16 out of 23 developers were affected. PEDDA was specifically informed in terms of Article 10.5 of the IA vide letters dated 15.12.2015 and 25.01.2016. Extension of SCOD was prayed in meeting on 14.01.2016 and vide letter of the same date. However PEDDA vide letter dated 18.01.2016 denied the extension in SCOD informing that clause 3.23 of RfP providing for penalty shall prevail for any delay beyond SCOD. A letter dated 24.02.2016 was issued by PEDDA to developers including the petitioner to inform about the capacity that has been commissioned. PEDDA also sought to impose penalty for non-commissioning/short-commissioning of the allocated capacity under clause 3.23 of RfP by invoking PBGs. PEDDA has abused its dominant position and acted arbitrarily by refusing to grant extension.

xvii)PEDDA can not be allowed to benefit out of events occurred under Force Majeure, which were beyond the control of the petitioner despite the communications and notices that delay is solely attributable to the occurrence of force majeure events.

xviii)PSPCL has failed to give proper and correct interpretation to the terms and conditions of IA/PPA particularly when the petitioner is acting in good faith. Further IA is to be read as part and parcel of PPA and to be interpreted harmoniously. Without prejudice to any other submission/ground, irrespective of the fact that there is clause in IA / PPA /

contract quantifying the liquidated damages, even then as per Section 74 of the Indian Contract Act, 1872, an aggrieved party can only claim actual damages which have resulted upon any default of the other party to fulfill its obligations under the contract. The party alleging breach of contract can not itself decide the same. The question can be decided only by an adjudicatory forum, which in this case is only this Commission under the Act, IA and PPA. PEDDA is acting contrary to the provisions of IA/PPA.

xix) It is prayed to:

- a) set aside and/or quash the letters dated 18.01.2016 and 24.02.2016 of PEDDA;
- b) hold and declare that the COD stands extended till 30.06.2016 in accordance with clause 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of Force Majeure events;
- c) hold and declare that the petitioner is entitled to tariff of ₹ 7.57 per kWh (levellised tariff) in terms of the PPA dated 31.03.2015;
- d) direct PEDDA not to invoke the Performance Bank Guarantees and to not take any coercive actions whatsoever against the petitioner; and
- e) pass such orders as the Commission may deem just and proper in the circumstances of the case.

10. PSPCL filed its reply dated 31.03.2016. The submissions made in the reply are summarized hereunder:

- i) The petitioner is seeking extension of COD for actual delay of 220 days and stay on invocation of PBGs by the respondents. 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 as taken by the petitioner are vague, technically incorrect, legally defective and do not fall under clause 19.1.0 of the PPA. The clause whereby the petitioner is entitled to take shelter of force majeure events deals with natural calamities mostly or events like unrest, epidemics, any court order, change in law event or act of God.

The grounds taken in the petition *inter alia*, deal with the approvals, an incident happened in Faridkot, some agitation in another State and self created alibi of non-availability of staff of Sub-Registrar at District Mansa. These grounds do not fall under the category as mentioned under clause 19.1.0 of the PPA and the present petition is liable to be dismissed with exemplary costs. PSPCL is not a party to the IA signed between the petitioner and PEDDA and what transpired between them is unknown to PSPCL and not relevant. PSPCL and the petitioner are liable to each other in terms of PPA to fulfill their part of the contract.

- iii) Due to delay in commissioning of the project by the petitioner, PSPCL has to purchase RECs to comply with the RPO specified by the Commission. Either PSPCL may be allowed to encash the PBGs or carry forward the RPOs by saddling the petitioner with heavy cost to be paid to PSPCL. The petition deserves to be dismissed on this score also as this will burden PSPCL without any of its fault.

- iv) The petition is not maintainable and does not fall in the category under which it can take benefit of the section 85 (Power to Relax) of the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 adopted by the Commission in Order dated 19.07.2012 in petition No. 35 of 2012. To claim the benefits, the petitioner needs to establish its case on merits failing which the petition needs to be dismissed.
- v) The petitioner has proposed the rooftop structures on 04.06.2015 based on the net house concept. The petitioner took more than three months to submit the drawings after PEDDA approved the container type structure for placement of solar PV modules on 31.03.2015. It is the fault of the petitioner in delaying the submission of the drawings.
- vi) PEDDA vide letter dated 08.07.2015 raised an objection on the drawings submitted by petitioner as the same were not in consonance with the RfP and IA and requested the petitioner to submit the documents with regard to location of land and lease deed. The petitioner vide letter dated 09.07.2015 informed PEDDA (mentioned wrongly as respondent no.1 by PSPCL) that it is the owner of the sheds on which the solar PV modules are to be placed for commissioning the project. The petitioner delayed the submission of rooftop concept drawings by almost 2½ months after PEDDA gave the concurrence on 13.07.2015 to set up the solar PV power plant. This delay is attributable to the petitioner.
- vii) The petitioner made a request for change of name of village and the same was allowed by PSPCL. The delay has been

caused in submission of the drawings. The petitioner taking the plea of force majeure in respect of the same is denied. In fact, the delay has been caused due to the late submissions of the drawings by the petitioner for the approval by PEDDA which has been admitted by the petitioner in the petition.

viii) The petitioner on 12.05.2016 submitted that the project is to be connected at 66 kV level in terms of RfP. Technical due diligence was required by the petitioner for the purpose and issue sorted out at an early stage. PSPCL again informed the petitioner on 11.06.2015 that being a 30 MW solar power plant, it has to be connected to 132/220 kV sub-station of the Punjab State Transmission Corporation Limited (PSTCL) for power injection.

PSPCL on 15.05.2015 requested the petitioner to furnish the documents required for granting of feasibility clearance for setting up of solar plant which speaks for PSPCL's interest in the timely commissioning of the project.

ix) The 30 MW capacity was split due to connectivity issues in technical feasibility clearance. PSPCL was informed of the same on 02.07.2015 after a gap of 15 days from signing amended IA by the petitioner in this regard. The petitioner submitted the land deed documents for execution of supplementary PPA in order to get the technical feasibility from PSPCL but failed to sign the amendment in the PPA.

x) Vide letter dated 13.07.2015, PEDDA accepted the concept as submitted by the petitioner for roof-top structure system. Earlier, on 08.07.2015, PEDDA asked the petitioner to submit the land lease deed documents which were submitted on

30.07.2015 i.e. after a delay of 22 days (mentioned wrongly as 220 days by PSPCL). This delay is unaccounted and the petitioner cannot take defence of the same by making the official respondents liable for the same.

- xi) Petitioner submitted two IAs to PSPCL with the same title without indicating which of the two IAs should be considered for effecting amendment in the PPA. The petitioner is trying to establish the delay on the part of PSPCL though the details of grid connectivity for evacuation were not supplied before signing the amendment in the PPA. Upto 22.12.2015, the petitioner was not clear about the details of the grid sub-station for evacuation/ connectivity.
- xii) The execution of amendment in the IA is the sole duty of PEDDA and PSPCL has no role in it. It is only after the petitioner has submitted the amended IA to PSPCL that the amendment in PPA can be signed by PSPCL. Accordingly, the delay in signing the amendment to the PPA is on the part of the petitioner and not PSPCL.
- xiii) The change in technical feasibility/connectivity clearance from 220/66 kV Jhunir sub-station to 66 kV Danewala sub-station, District Mansa was allowed on the request of the petitioner. It was the duty of the petitioner to confirm the commissioning of 66 kV Danewala sub-station beforehand without which the petitioner could not declare COD of its project.
- xiv) The aforementioned pleas taken by the petitioner are wrong and the delay has been caused due to wrongful conduct of the petitioner.

- xv)The incident of desecration of Holy Sri Guru Granth Sahib took place in District Faridkot, Punjab which is around 110 km away from the project. Therefore, there was no effect in District Mansa of the situation prevailing in District Faridkot. The plea taken by the petitioner on this account is wrong and denied.
- xvi)Jat Agitation initiated in District Rohtak, Haryana is around 220 km away from the project. The agitation was not so violent that it has any effect in State of Punjab. The plea taken by the petitioner is denied.
- xvii)The plea of non-availability of the staff in the office of Sub-Registrar is wrong. No doubt the whitefly epidemic was there but it is not true that the staff was not attending to the normal office duties from past six months.
- xviii)The petitioner has failed to establish the events relied on by it fall under force majeure events as per clause 19.1.0 of the PPA and therefore, the same plea cannot be granted to the petitioner.
- xix)It is the sole duty of the petitioner to commission the project on time. Any delay would amount to non-compliance of the terms & conditions of the PPA and therefore entitles PSPCL to claim damages from the petitioner. ACME failed to commission its projects on time as per the PPA dated 31.03.2015. Non-performance of any of the conditions of terms of the PPA would amount to non-performance of the contract in toto and therefore, entitles PEDDA to invoke the PBGs dated 27.03.2015 and take lawful action against the petitioner.

11. The petitioner filed rejoinder on 11.04.2016 to the PSPCL's reply dated 03.04.2016. The submissions in the rejoinder in addition to reiterating its earlier submissions, in brief, are as hereunder:

- i) It is not correct that PSPCL is only a performa respondent and does not have any major role with regard to the extension of COD. The occurrence of force majeure events is attributable to PSPCL & PEDA and more particularly to PSPCL which delayed the signing of amendment in the PPA due to splitting of 30 MW capacity into 2 x 15 MW, which is a force majeure event and beyond the control of the petitioner. The petitioner proceeded with the bid in terms of clause 3.6D(i) of the RfP which provides that the project should be designed for inter-connection with PSPCL at 66 kV voltage level. PSPCL, for the first time since the issue of the RfP, vide a letter dated 11.06.2015 directed that the petitioner is required to connect at 132/220 kV sub-station of PSTCL for injection of power. This direction was in complete violation of terms of the RfP based upon which the petitioner had placed its bid and executed the PPA. The amended PPA was executed on 12.10.2015 thereby causing a delay of 192 days. The Regulations, if any, were in existence when the bids were invited and the terms referred in the RfP were incorporated without due care. If the project can now be connected to 66 kV sub-station, then the direction to connect it to 132 kV sub-station was wrong.
- ii) The submissions made by PSPCL are devoid of any merits, fundamentally wrong, erroneous alongwith misunderstanding

of law and technically incorrect. In the event a delay is caused on account of any of the events provided under clause 19.1.0 of the PPA, a party shall not be liable for any damage, sanction or loss resulting there from to the other party. The Commission has the power to conduct prudence check with regard to the occurrence of the said force majeure events and subsequently extend the COD. In this context, Hon'ble APTEL in its judgment dated 07.04.2016 in the case of Uttar Haryana Bijli Vitaran Nigam Ltd. Vs Central Electricity Regulatory Commission in Appeal Nos. 97 of 2014 and 151 of 2013 and connected matters on the interpretation of force majeure clause is relevant has held as hereunder:

“ .....

*279. Thus, the term 'Force Majeure' is a term of wider import and the widest meaning that can be given to 'Force Majeure' is that where reference is made to 'Force Majeure', the intention is to save the performing party from the consequences of anything over which he has no control.*

.....

*284. A reading of Articles 12.3, 12.4 and Article 12.7(a) establishes that an event constitutes a Force Majeure Event, if (a) It wholly or partly prevents or unavoidably delays the performance of obligations under the PPA or hinders or delays the performance of obligations of the PPA. (b) Such event is not within the reasonable control of the Affected Party, directly or indirectly. (c) Such events and circumstances could not have been avoided by the Affected Party, even if it had taken reasonable care or complied with Prudent Utility Practices. Full Bench Judgment Page 436 of 486 (d) The events that materially impact the cost of fuel are expressly covered, so long as they are a consequence of an event of Force Majeure.”*

- iii) PSPCL is fundamentally wrong when it uses the expression 'self created alibi of non-availability of staff of sub-registrar at District Mansa'. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum i.e. this Commission.
- iv) The petition is not filed with the intention to hide the incapability and incapacity of the petitioner in commissioning of the project on the fixed date and seeking an illegal and unrealistic order from the Commission as alleged by PSPCL. PSPCL has not brought out the illegality in the petition and its allegation is without any merit and required to be rejected.
- v) The Commission has set the target for RPO compliance for purchase of power from renewable sources of energy and that in compliance of the same the bids were called. The intention of the PSPCL and PEDDA should have been to ensure that the successful bidder including the petitioner are assisted in timely commissioning of the project. On the contrary, it was the PSPCL and PEDDA who resulted in the delay in commissioning of the said power plants. Assuming for the sake of argument but not admitting that the contention of PSPCL and PEDDA is allowed, even then the fact that there are 16 developers (successful bidders) out of 23 developers who have not been able to commission their plants by the SCOD due to the occurrence of force majeure events cannot be overlooked by the Commission. In this regard, PEDDA letter dated 24.02.2016 addressed to 16 developers may be referred.

vi) Any dispute between a generator and a distribution licensee has to be adjudicated under section 86(1)(f) of the Act by the respective State Commission. The present dispute is required to be adjudicated under section 86(1)(f) of the Act read with Regulation 69 (Saving of inherent power of Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgment of time allowed) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005. The scope and effect of section 86(1) (f) has been fully explained in the Hon'ble Supreme Court Judgment in GUVNL Vs Essar Power and said interpretation applies in the present case.

vii) PSPCL while signing the PPA was aware of the IA signed between the petitioner and PEDDA and PSPCL's submission on affidavit that it has no knowledge regarding the IA, amounts to an act of perjury.

viii) Both PEDDA and PSPCL delayed the commissioning of the projects due to delay in providing technical feasibility clearance to evacuate power at 66 kV and delay in signing the amended IA & PPA.

The petitioner had no control on the delay caused due to aforementioned two force majeure events due to which timely commissioning of the power plant was not achieved. It is wrong to say that all the grounds to take the plea of force majeure events are irrelevant and does not fall under the category of force majeure events.

12. PEDDA filed its reply on 12.04.2016. The submissions made in the reply are summarized hereunder:

- i) The petition is bad both in terms of de-jure & de-facto and based on conjunctures and surmises and is not maintainable in the eyes of law. The petitioner has not demonstrated the true factual matrix of the matter and in order to evade its bounden obligation of achieving the COD within time, as stipulated in the RfP, LoA and IA, has tried to setup a false and frivolous case. The petition is not maintainable as there exists an arbitration clause in the IA entered between the parties.
- ii) The petition is also defective in nature as it contains wrong para numbers, annexures not numbered, annexures mentioned therein have been repeated etc. leading to confusion and as such deserves to be dismissed at the very outset without going into the merits of the same, with exemplary costs.
- iii) The petitioner's submission that it could not achieve COD in terms of RfP, LoA and IA on various pretexts is unsustainable. 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, despite there been a conceded case of the petitioner that it could not achieve COD of project. The petitioner could not perform its bounden obligation as provided in terms of RfP and IA and is liable to levy of penalty on delay in commissioning of the project. The petitioner has wrongly invoked section 86(1)(f) of the Act while invoking the jurisdiction of the Commission, as the said section empowers the Commission to adjudicate disputes

between distribution licensee and generating company. The petitioner has filed the petition while purporting that a dispute has arisen between PSPCL and the petitioner, which is otherwise un-sustainable in the eyes of law.

iv) IA is the main contractual document entered between PEDDA and the petitioner and PPA entered between the petitioner and PSPCL is consequential to the IA. The petitioner is bound to comply with the terms and conditions of the IA and thereafter once the project is commissioned and connected to the grid of PSPCL, the PPA comes in to play. Clause 19.4.0 of the PPA categorically provides that the force majeure clause in the PPA shall be operative after the project achieves COD. For force majeure events occurring during the commissioning period of the project, the provisions of IA will be applicable. Since the project has not been commissioned to the full capacity, hence the force majeure clause of the PPA shall not come into play and the force majeure clause of the IA shall be applicable. Force majeure clause provided there under the IA stipulates that the affected party shall give written notice to the other parties describing the particulars of the force majeure event as soon as reasonably practicable after its occurrence but not later than 5 days after the date on which such party knew of the commencement of the force majeure event or of its effect on such party. However, the petitioner has failed to issue any such notice invoking the aforesaid clause as to the occurrence of force majeure event(s) if any, in line with the terms and conditions of the IA. Hence, no reliance can be

placed upon the plain assertions made by the petitioner. Power from only 9 MW rooftop capacity installed out of 30 (2x15) MW projects started evacuating to PSPCL from one project on 31.03.2016. The petitioner could not commission the project within the SCOD i.e. 30.01.2016, as per the agreed terms and conditions.

v) The petitioner while misleading the Commission has wrongly sought interim Order dated 29.02.2016 passed by the Commission, to restrain PEDDA from encashing the unconditional PBGs deposited by the petitioner with PEDDA, which is against the settled cannons of law laid down by the Hon'ble Supreme Court of India in a catena of judgments. Since the petitioner has failed to fulfill its obligation of setting up the project till 30.01.2016 (mentioned wrongly as 31.01.2016 by PEDDA), in line with the provisions of RfP/LoA/IA, the petitioner is liable to be levied with penalty and PEDDA becomes entitled to encash the unconditional PBGs. Hence, the interim Order dated 29.02.2016 deserves to be vacated. The PBGs provided by the petitioner in terms of the IA were un-conditional in nature, to be encashed by the issuing bank on request of PEDDA.

vi) The force majeure events referred to by the petitioner are purported in nature, which can not be relied upon, as the petitioner has failed to issue notice in line with the clauses of the IA in case of occurrence of force majeure events. The petitioner was to setup the project on or before 30.01.2016 (wrongly mentioned as 31.01.2016) i.e. the SCOD 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 setup the project upto the full capacity within the stipulated date, raised false, frivolous and purported plea as to the occurrence of force majeure events, which are unsustainable in the eyes of law. The petitioner, by way of petition has purported the occurrence of the following force majeure events:

- a) concept note approval;
- b) technical feasibility clearance for evacuation on 66 kV (Grid Connectivity);
- c) unrest due to desecration of Holy Sri Guru Granth Sahib;
- d) jat agitation;
- e) non-availability of Registrar's staff due to disbursement of crop compensation.

vii)The purported force majeure event w.r.t concept note approval does not qualify to be force majeure event. As per Article 4.1(vii) of IA, the developer was required to give complete location/details of the rooftop building/shed on which the project was to be set-up and as per Article 6.2 (vi) of the IA these details were required to be submitted within 120 days from the date of issue of LoA. The developer was unable to submit these details in time and was also technically unable to finalize the details and drawings of the sheds of the rooftop on which it proposed to set-up the project. The delay in submitting the required concept note for approval is attributable to the petitioner. The purported force majeure events are an afterthought, as the petitioner in order to run away from its bounden obligation to setup the project in a time bound manner and in order to escape from the

consequential penal action has tried to setup false and frivolous pleas as to the occurrence of the force majeure events. The petitioner has failed to issue notice in line with the conditions of the IA as to the occurrence of force majeure events. However, the petitioner vide letter dated 15.12.2015 has raised three purported events i.e. strike at sub-registrar office, change in staff of PSPCL and structure & concept note approval. In the said letter, the petitioner has never raised any grouse as to the occurrence of force majeure event on account of the other purported events.

Further, the petitioner in order to setup its false case submitted a letter to PEDDA on 25.01.2016, while taking a contrary stand to the stand already taken vide letter dated 15.12.2015 and requested for extension in COD, while purporting that the delay in setting up of the project has occurred on various grounds, as mentioned in the petition. Hence, no reliance can be placed upon the false and frivolous assertions made therein by the petitioner. PEDDA in order to assess the bonafide of the petitioner as to the occurrence of the purported events as mentioned in the letter dated 15.12.2015 sought clarification from the concerned departments i.e. PSPCL and the office of sub-registrar. In response, District Revenue Officer, Mansa clarified that the actual time period of the strike was not more than 4 working days i.e. 04.12.2015 to 06.12.2015 and 08.12.2015 to 10.12.2015. Hence, the purported stand of the petitioner as to the occurrence of force majeure events mentioned are an afterthought, which cannot be relied upon, being false and incorrect.

viii)The petitioner submitted the basic layout only and not the appropriate structure drawings. After discussion on the basic structure layout, PEDDA did not approve the same being technically incomplete. The petitioner informed that they are still exploring other probable options of the structure alongwith the integration of the agriculture/horticulture, meaning thereby that the petitioner was still not clear about the design of the shed and its structure on which the said project was to be set-up. The container type solar structure suggested by the petitioner in its letter dated 31.03.2015 was in deviation to the earlier structure details submitted on 19.02.2015, in response to which PEDDA conveyed through email dated 23.02.2015 that the structure can be used as rooftop for the setting-up of the project. PEDDA never conveyed its concurrence for the use of container type structure. It was a bounden obligation of the petitioner to provide the location/details of the rooftop of the building/shed on which the project was to be setup. The design submitted by the petitioner did not comply to be the rooftop of the building/shed. Hence, the petitioner miserably failed to fulfill its bounden obligation.

ix)PEDDA vide its letter dated 08.07.2015 intimated the petitioner that LoA was issued on 25.03.2015 and accordingly the petitioner was to submit the documents of ownership/leasehold of the rooftop/building/shed before 25.07.2015 and ensure the submission of grid feasibility from PSPCL before 31.07.2015 as the PPA was signed on 31.03.2015.

- x) The petitioner undertook that the project rooftop shed shall be developed in accordance with the clauses of RfP, LoA, IA and its addendums. The petitioner vide letter dated 30.07.2015 declared that the rooftop sheds used for developing the project are solely owned by it.
- xi) The drawings submitted by the petitioner were still at conceptual stage and incomplete in nature and accordingly not approved by PEDA. Being conceptual drawings the petitioner was asked to submit the final drawings with the minor modifications. The petitioner submitted the final drawings with modifications for the changed locations at village Nangla-Jhaurikian, Distt. Bathinda and village Khiali Chahilanwali, Distt. Mansa.
- xii) The petitioner vide letter dated 07.10.2015 changed the location of the project. Consequently, on 08.10.2015 as per its request, PEDA signed an amendment of the IA with the petitioner, in which the amendment to the change in name of the company and the change of location was incorporated. Further, the petitioner on various occasions got the amendments in the IA on various pretexts such as parting of the capacity of the project from 30 MW into 2 projects of 15 MW each and for change of location of the project. The allegations levied by the petitioner as to the delay of 81 days upon PEDA are untenable as PEDA in various communication has undertaken to fulfill all the terms and conditions of the RfP, LoA & IA. Hence, no reliance can be made upon the false and frivolous assertions made by the petitioner.

- xiii)The petitioner is required to take technical pre-feasibility clearance from PSPCL before finalizing the location of the project. A number of technical issues are involved including right of way, technical feasibility of the sub-station for accepting the power etc. The claim of the petitioner therefore that it had finalized the land near the Sangha 66 kV sub-station and incurred huge amount in obtaining the lease of the land is technically erroneous as the petitioner should have finalized the location of the project only after taking the technical pre-feasibility clearance from PSPCL.
- xiv)The petitioner never informed in writing to PEDDA that the said amendment in IA was executed in terms of the circular dated 08.06.2016 of PSPCL. The petitioner in its letter dated 18.05.2015, informed that the project is of capacity 30 MW and it is very difficult to identify a big contiguous chunk of land in a single patch and requested to allow to set up the plant in 2 parts of capacity 15 MW each.
- xv)PEDDA vide letter dated 08.07.2015 called upon the petitioner to submit rooftop lease deed documents and not land lease deed documents.
- xvi)The plea of the petitioner that the land identified by the petitioner for its project was not provided by farmers due to harvesting season is wrong and untenable as the land taken at village Mankhera, District Mansa was diverted and used for setting up of 25 MW capacity solar power project allocated to the petitioner under category-3 of phase-II bidding carried out by PEDDA. The decision for diversion of this land for setting up for another allocated project was

solely taken by the petitioner on its own. The land documents submitted by the petitioner were for a changed location at village Nangla-Jhauriklan, District Bathinda.

xvii) The petitioner vide letter dated 15.12.2015 requested PEDDA for extension of 2 months for commissioning of the project on the purported grounds as to strike in the sub-registrar office during the month of July till October 2015. Secondly due to change in staff of PSPCL purportedly caused a delay of 2½ months and thirdly the issue of structure and concept note led to a purported delay of 45 days. The assertions raised by the petitioner are totally false and frivolous and accordingly no reliance can be placed on the same. PEDDA categorically verified the occurrence of the purported issues of the petitioner from the concerned authorities, upon which it has been clarified by the office of District Revenue Officer, Mansa that the strike of the revenue officers was only the period of 4 days. PSPCL also clarified that the petitioner itself is responsible for the delay caused due to its unprofessional, inefficient and lethargic attitude. Hence no reliance can be placed upon the false and purported assertions of the petitioner. The petitioner is solely responsible for the delay caused in commissioning of the project in question. PEDDA was gathering information from the concerned departments/organizations as to the purported causes of delay raised by the petitioner vide its letter dated 15.12.2015, hence, PEDDA thereafter only responded to the petitioner vide letter dated 29.01.2016, according to which no extension in COD was granted to the petitioner.

xviii)The issue raised by the petitioner as to the hurting of religious sentiments in Punjab due to sacrilege of the Holy Sri Guru Granth Sahib in Faridkot District, is an afterthought, as the petitioner in order to evade its bounden obligation of setting up the project in a time bound manner and to escape from the penalty levied on account of delay in commissioning, has unnecessarily raised the purported issue. As per the conceded case of the petitioner, the incident of sacrilege took place on 12.10.2015, however, the petitioner during the period never reported any such issue with PEDDA. The petitioner, realizing that the project has been delayed and the petitioner would be penalized due to the occurrence of delay in setting up of the project, raised the purported grouse with PEDDA vide its letter dated 25.01.2016 for the first time. Hence, no reliance can be placed upon the false and frivolous assertions made therein by the petitioner. The petitioner does not qualify to invoke the force majeure clause of the IA, as the petitioner has miserably failed to fulfill the pre-requisite stipulated therein, including but not limited to issuance of notice as to the occurrence of Force Majeure clause events.

xix)The petitioner in order to set up its false case has unnecessarily exaggerated the issue relating to strike by revenue staff. In fact, the purported strike referred by the petitioner in the petition never existed for a period of 35 days. The Revenue Authority, in response to the clarification sought by PEDDA, on the issue under consideration, clarified that the strike of the staff existed only for 4 days. Hence, no

reliance can be placed upon the false and frivolous assertions made therein by the petitioner. The petitioner does not qualify to invoke the force majeure article of the IA, as the petitioner has miserably failed to fulfill the pre-requisites stipulated therein, including but not limited to issuance of notice as to the occurrence of force majeure clause events. As per the ibid clause, the petitioner was to serve a notice within 5 days of the occurrence of force majeure events if any, however, in the instant case, the petitioner has failed to serve any such notice upon PEDDA, which happens to be a pre-requisite for invocation of the ibid clause. The purported occurrence of the events is an afterthought of the petitioner in order to evade and escape from its bounden obligations as provided under the contractual documents. Hence, no reliance can be placed upon the false and frivolous assertions.

xx) PEDDA after due diligence and deliberations on the issue issued communication dated 18.01.2016 and informed the petitioner and others that no extension shall be granted in the scheduled date of commissioning as per the RfP.

Further, PEDDA after due diligence and deliberations on the issue issued communication dated 24.02.2016 to the petitioner and similarly placed project developers, to have failed to commission the project(s) within the scheduled date of commissioning. As per the RfP terms and conditions, penalty is levied on the developer for non-commissioning/ short commissioning, hence, in line with the terms and conditions of the RfP, PEDDA rightly issued the letter dated

24.02.2016 to the petitioner and similarly placed developers to levy penalty qua the non-commissioning/short commissioning of the capacity allocated.

xxi)The PBGs are being invoked in order to recover the penalty for delay as clearly stated in Article 7 of the IA. This penalty clause does not relate to liquidated damages. PEDDA acted well within its rights and rightly invoked the provisions of RfP and IA for invocation of the PBGs, on account of non-commissioning/short commissioning of the project. It is denied that the action of PEDDA is contrary to the public interest, rather the petitioner by way of the instant petition has tried to over shadow his sins committed qua the setting up of the project, by falsely attributing the liability of its failure to perform upon PEDDA.

xxii)The petitioner is not entitled for any relief as prayed for i.e. interim or final, as the petitioner had not approached the Commission with clean hand. As per the settled cannon of law laid down by the Hon'ble Supreme Court of India, it has been held that the party which does not touches the fountain of justice with clean hands is not entitled for any relief interim or final. Hence, the instant petition is liable to be dismissed at the threshold. The petitioner has wrongly invoked the jurisdiction of the Commission.

xxiii)The Commission is requested to dismiss the petition with exemplary costs and the petitioner be directed to deposit the amount of the penalty with PEDDA qua the non-commissioned/short commissioned capacity as to the project, in line with the contractual documents entered

between the parties in the interest of justice, equity and fair play.

13. The petitioner filed rejoinder on 25.04.2016 to the PEDAs reply dated 12.04.2016. The submissions in the rejoinder in addition to reiterating earlier submissions, in brief, are as hereunder:

- i) It is wrong that the petitioner has tried to set up a false and frivolous case in order to evade its bounden obligation of achieving the COD well within time as stipulated in RfP, LoA & IA. The petitioner clearly brought out the anomaly in the RfP and the purported direction passed by PSPCL with regards to the issue of connectivity which was in violation of clause no. 3.6(D) of the RfP and delayed the commissioning of the project. The contents of the reply filed by PEDA are baseless and an attempt to mislead the Commission. Also, section 86(1)(e) of the Act provides that generation of electricity from renewable energy is to be promoted by providing suitable measures for connectivity with the grid. The intention and actions of PEDA are contrary to the principles ascribed in the aforesaid section.
- ii) It is wrong that the petition is not maintainable as there exists an arbitration clause in the captioned document entered between the parties. It is also wrong that the IA is the main contractual document. The recital of the PPA clearly stipulates that all the clauses and regulatory norms applicable to the IA shall be unequivocally applicable to the PPA. Accordingly, IA is to be read as a part of the PPA. PEDA and PSPCL are misconstruing and misinterpreting the

terms of the PPA and IA in order to encash the PBGs furnished by the petitioner. The Commission in its Order dated 11.05.2015 in petition no. 23 of 2015 held that various clauses of IA and PPA are to be read together and are complementary. The aforesaid petition was filed by PSPCL seeking approval of the Commission to procure electricity including the tariff from rooftop solar PV power projects to be established in the State and also to the draft PPA. It is wrongly alleged by PSPCL and PEDDA that the petition is not liable in terms of jurisdiction under section 86(1)(f) of the Act. The present dispute is required to be adjudicated under section 86(1)(f) of the Act read with Regulation 69 (Saving of inherent power of Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgment of time allowed) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005. The scope and effect of section 86(1)(f) has been fully explained in the judgment of the Hon'ble Supreme Court of India in GUVNL vs Essar Power reported in (2008)4SCC755 and as such, the said interpretation fully applies in the present fact. It is further submitted that PEDDA was approached vide letters dated 15.12.2015, 06.01.2016 and 25.01.2016 to resolve the issues with regards to the delay in commissioning of power plant due to occurrence of force majeure events which were beyond the control of the petitioner, but PEDDA failed to act and resolve the dispute. The Commission in its Order dated 12.04.2016 in IA No. 19 of 2016 & IA No. 14 of 2016 in petition no. 21 of 2016 held that the submission of PEDDA with regard to the existence of an arbitration clause in the IA

is devoid of merits. The said findings of the Commission squarely apply to the present case.

- iii) It is wrong that the petitioner has started evacuating 9 MW Solar Rooftop Power to PSPCL from one project of 15 MW on 31.03.2016, which is incomplete and not as per the approved drawings. It is submitted that evacuation of 15 MW out of 30 MW (2 x 15 MW) was started from 31.03.2016. The project could not be commissioned upto 30.01.2016 due to the occurrence of force majeure events as illustrated in the petition. Due to rooftop tender being unique in the concept, the petitioner has been approaching PEDDA since initial stage regarding drawings and design. The petitioner submitted the drawings to PEDDA on 31.03.2015 for approval but PEDDA deliberately kept the issue pending and did not approve the drawings as intimated vide PEDDA letter dated 08.07.2015 without attributing any reasons. The drawings were resubmitted on 09.07.2015 which were approved by PEDDA vide letter dated 30.10.2015. The delay in granting the approvals by PEDDA affected the timely commissioning of the power plant.
- iv) It is wrong that the force majeure events referred to in the petition are purported in nature, cannot be relied upon and unsustainable in the eyes of law claiming that the petitioner has failed to issue notice in line with the clauses mentioned in the IA in case of occurrence of force majeure events. The force majeure events which have led to the delay in the commissioning of the project have been solely caused due to the actions and intentions of PSPCL and PEDDA in as much

as the issue with regards to the technical feasibility clearance, evacuation at 66 kV, delay in concept note approval, unrest due to desecration of Holy Sri Guru Granth Sahib, jat agitation and non-availability of Registrar's staff due to disbursement of crop compensation.

- v) As regards the defects in the petition, it is submitted that the same have been rectified with unconditional apology.

14. The petitioner submitted the written note of submissions dated 10.05.2016 wherein it reiterated its earlier submissions and further submitted as under:

- i) Clause 19.4.0 of the PPA provides as follows:

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

In reference to the aforesaid clause, PEDDA argued that it has the ability to invoke/forfeit the PBG when there is a delay in SCOD event even when such commissioning has taken place before 30.03.2016, within the grace period. However, the ability of PEDDA to invoke the PBG will be subject to the provisions of force majeure and section 56 of the Contract Act, 1872. If the project is delayed due to events covered under force majeure, the PBG cannot be forfeited/invoked.

- ii) Clause 35.0.0 of the PPA provides as follows:

*"35.0.0. The PPA shall be effective & binding on the parties only upon approval of the PPA by the Hon'ble PSERC & the PPA shall be subject to such conditions as*

*may be stipulated by the Hon'ble PSERC while granting such approval."*

- iii) The PPA was approved by the Commission in its Order dated 11.05.2015 in petition no. 23 of 2015. Accordingly, the petitioner has to be given 10 months (mentioned wrongly as 12 months by the petitioner) from the date on which the PPA becomes effective as the Commission recognises that a project for which PPA has been signed on 31.03.2015, has to be commissioned on or before 31.03.2016. The petitioner cannot be asked to make investment of several 100 crore in a project for which a contract has not been made effective and binding. It is not possible to raise finance for a project whose principle contract is not effective and binding.

15. PEDDA filed the written submissions dated 26.05.2016 wherein it reiterated its earlier submissions.

16. The petitioner filed an application (IA No.27 of 2016) under section 94(2) of the Act, read with Regulation 69 of the PSERC (Conduct of Business) Regulations, 2005 on 30.08.2016 for refund of wrongful deduction made by PSPCL on account of Liquidated Damages (LD) and restraining the respondents from any future deduction. In the application, the petitioner submitted as hereunder:

- i) The Commission vide its Order dated 29.02.2016 granted an interim stay order wherein it was directed that the PBGs can not be invoked towards LD. The dispute in the petition was with respect to the date of commissioning of the project and that the imposition of LD by the respondents stems from the said dispute.

- ii) The petitioner started supplying power from its 15 MW project on 01.05.2016 at village Khiali Chahilanwali, Tehsil Jhunir, District Mansa. Thereafter, the petitioner started raising bills dated 08.06.2016, 02.07.2016 and 01.08.2016 on PSPCL against the power supplied to it.
- iii) PSPCL was aware of the nature of the dispute which inter-alia relates to the date of commissioning of the project and that the Order dated 29.02.2016 was still operative with respect to the actual date of commissioning of the project. However, PSPCL in contravention of and without deference to the said Order and the pendency of the matter, unilaterally (without notice or show cause) wrongly deducted an amount of ₹ 93 lakh from the monthly bills on account of LD. The petitioner in its application (IA No.3 of 2016) for interim relief has sought that PEDDA be restrained from invocation of PBGs and that no coercive steps to be taken by PSPCL and PEDDA.
- iv) In response to a query on unilateral deduction from the monthly bills, PSPCL vide its letter dated 24.08.2016, informed that it has deducted an amount of ₹ 93 lakh @ ₹ 20,000 per day per MW for 31 days with respect to 15 MW plant alongwith 2% rebate. The petitioner vide letter dated 29.08.2016 informed PSPCL that the wrongful deduction of ₹ 93 lakh alongwith 2% rebate is arbitrary and wrong since the matter is pending adjudication before the Commission. If such practices are permitted, the majesty of the Commission and the regulatory process which was initiated in Feb 2016 and is at the final stage of hearing will stand compromised. Once a matter is pending before the Commission, it is only

appropriate for a party to take leave of the Commission before taking any step in relation to such pending matter particularly when the step so contemplated has the effect of rendering a portion of the proceedings infructuous. The subsequent conduct of PSPCL will have a direct and substantial effect on the manner in which a decision is rendered including the scope of relief that can be granted.

- v) The LD can only be deducted once it is established that the project has been delayed due to the reasons attributable to the petitioner and that too only after the invocation of PBGs as per the PPA. Out of the 3 bills, rebate can only be availed on the payment made against the last bill raised on 01.08.2016 whereas the first bill dated 08.06.2016 will attract surcharges as per the PPA. Hence, there are discrepancies in the rebate amount availed by PSPCL.
- vi) No prejudice can be caused to PSPCL and PEDDA if it awaits the decision of the Commission. In any event, in view of the judgment of Hon'ble Supreme Court of India in Kailash Nath's case reported in (2015)4 SCC 136, the LD amount is only the maximum amount that can be claimed and the claim for compensation has to actually proved to the satisfaction of the court. The balance of convenience is also in favour of the petitioner. In these circumstances, the petitioner deserves an order as prayed otherwise the petitioner will suffer injury and prejudice.
- vii) The application is being made without prejudice to the legal rights and remedies of the petitioner in case any such action

is taken by PSPCL and PEDDA in future or post disposal of the present proceedings.

viii) On 22.07.2016, keeping in view the fact that the payments were not being released, the petitioner gave an undertaking/affidavit stating that pending final resolution of dispute, the petitioner is willing to accept ₹ 7.04 per kWh instead of ₹ 7.57 per kWh, the tariff agreed in the PPA. The said affidavit was filed in good faith. PSPCL in terms of the undertaking has paid the tariff of ₹ 7.04 per kWh for energy sold to PSPCL from 15 MW project located at village Khiali Chahilanwali, Tehsil Jhunir, Mansa for the month of May to July 2016. PSPCL has also agreed to pay ₹ 7.04 per kWh till the disposal of the petition and subject to the final outcome thereof. PSPCL has taken an undertaking for lower tariff and then made a unilateral deduction of LD without notice. As a result, the petitioner has been to extreme hardship and distress. The application is made bonafide and in the interest of justice.

ix) The petitioner prays to:

- a) direct PSPCL to forthwith return ₹ 93 lakh which has been wrongfully deducted by it on account of LD;
- b) restrain PSPCL and PEDDA from deducting any amount in future from the monthly bills of the petitioner and from taking any coercive actions whatsoever against the petitioner for delay in achieving COD on account of force majeure till the pendency of the present proceedings; and
- c) pass such order as the Commission deems appropriate under the facts and circumstances of the present case.

17. PSPCL filed the written submissions dated 08.09.2016 wherein it reiterated its earlier submissions and further submitted is as hereunder:

- i) The petitioner is seeking extension of COD by 220 days whereas the project was commissioned much earlier i.e. by 01.05.2016, which clearly indicates that petitioner is having no idea of the project activities.
- ii) Original name of the petitioner at the time of bidding was Chidakash Power Private Limited and the same changed to ACME Solar Rooftop Systems Private Limited at a later stage. The petitioner also divided its project to two 15 MW projects at a later stage as it did not even have requisite land for setting up the project.
- iii) The petitioner has blamed PSPCL stating that the power evacuation was delayed by PSPCL by changing the connectivity to 132 kV instead of 66 kV for 30 MW project. The petitioner vide letter dated 04.05.2015 had approached PSPCL for grid feasibility for evacuation at 66 kV sub-station Sangha, District Mansa wherein capacity of the project was stated as 30 MW. PSPCL policy before the said application was that power at 20 MW and above is to be evacuated at 132/220 kV. This was amended later vide commercial circular no. 23 of 2015 dated 08.06.2015 that the evacuation of power above 25 MW is to be made at 132/220 kV. Accordingly, power evacuation for 30 MW project was to be made at 132/220 kV according to previous and also the new policy and thus the claim of extension in COD by the petitioner on the ground of new policy is not admissible.

PSPCL intimated the petitioner vide letter dated 07.05.2015 to submit the required documents for synchronization atleast 30 days prior to the date of synchronization and also mention the feasible sub-station so that the evacuation and synchronization can be done at the earliest. The petitioner was again requested vide letter dated 11.06.2015 to intimate location near a 132/220 kV PSTCL sub-station for power injection. PSPCL, from the very beginning was doing everything to facilitate the petitioner so that the project can be set up at the earliest.

- iv) The petitioner requested PEDDA for change of name of the company and splitting up the project in two 15 MW projects which was allowed by PEDDA vide letter dated 17.06.2015. In pursuance to the same, amended IA and PPA were signed on 08.10.2015 and 12.10.2015 respectively. The delay due to change of name, splitting up of the project and non-availability of land was petitioner's fault and PSPCL cannot be held liable for the same.
- v) The petitioner applied for grid technical feasibility of the Plant No. 1 of 15 MW at Nangla-Jhaurikian, Tehsil Talwandi Sabo, District Bathinda and the same was given by PSPCL on 02.11.2015. The application for grid feasibility for the second 15 MW plant at village Khiali Chahilanwali, Tehsil Jhunir, District Mansa was made on 16.11.2015 and the same was granted by PSPCL on 17.11.2015. The process for granting the grid feasibility was finished at the earliest by PSPCL.
- vi) The petitioner has said that PSPCL caused a delay of 81 days, which is not true. The project was delayed due to

petitioner's fault alone. The concept note should have been got approved by the petitioner before bidding. PSPCL vide mail dated 25.06.2015 sought documents to process the change in name of the firm. The reply was received on 13.07.2015 and that too with incomplete details. PSPCL on 27.08.2015 requested the firm to submit the PAN and TAN documents, which were submitted on 09.09.2015. Thus, the delay caused is clearly by the petitioner.

vii) The petitioner again applied for grid feasibility on 22.12.2015 from a different sub-station i.e. 66 kV sub-station Danewala citing the right of way issue, which was granted by PSPCL on 06.01.2016.

viii) Force majeure events are dealt in clause 19.0.0 of the PPA. Clause 19.2.0 of the PPA clearly states that the party invoking this clause shall satisfy the other party of the existence of any force majeure event and give written notice within 7 days of the occurrence of such force majeure event to the other party and also take all reasonable and possible steps to eliminate, mitigate or overcome the effect and consequence of any such force majeure event. Accordingly, petitioner was supposed to send specific notices to the respondents citing such events, but no such mandatory and specific notice was sent to the respondents.

ix) It is wrong that the project was delayed as the feasibility clearance was not given by PSPCL on time. The three important elements and pre-requisites for grant of feasibility clearance are land, transmission line route and sub-station

from where connectivity is to be given which were not available with the petitioner.

- x) The petitioner kept on changing the location of the project multiple times, changed the firm's name, split the capacity into 2 x 15 MW instead of 30 MW and have tried to put this onus on PSPCL. The petitioner was solely responsible for arranging the land and only thereafter the feasibility could have given by PSPCL.
- xi) The grid sub-stations i.e. 66 kV Nangla and 66 kV Danewala were ready to receive power on 30.03.2016 as the bay was test charged on 30.03.2016 as per report of ASE/Grid Construction, Bathinda.
- xii) The petitioner applied for synchronization on 29.03.2016 for plant no. 1 (Nangla sub-station) and 20.04.2016 for plant no. 2 (Danewala sub-station) and the synchronization approval was issued on the same day even though PSPCL vide letter dated 08.05.2015 had intimated the petitioner to supply documents 30 days prior to the date of synchronization. This clearly shows the resolve of PSPCL to facilitate the petitioner to commission the projects at the earliest.
- xiii) The petitioner has not approached the Commission with clean hands and has tried to pass on its responsibility to PSPCL and tried to cover up its incapability by putting the onus of delay on PSPCL & PEDDA by raising non-existing issues of force majeure events, for which no evidence has been provided and no specific notice given.

xiv)PSPCL has recently deducted LD to the tune of ₹ 93 lakh from petitioner. LD have been deducted as no stay has been granted by the Commission. The status quo has been qua PEDA and from invoking the Bank Guarantees. PSPCL has deducted the LD under the provisions of the PPA and there is no order of the commission to the contrary.

xv)Certain clarifications as per provisions of PPA & IA are as under:

- a) As per clause 5.5.0 & 6.2.0 of the PPA, the petitioner was to give 30 days prior notice of synchronization to PSPCL. This time could have been used to sort out issues like readiness of bay, meters at GSS etc, but no such notice was given by the petitioner.
- b) As per clause 6.3.0, all equipments, transmission line upto PSPCL grid sub-station including clearance/NOCs from concerned agencies like Forest department, CEI, Govt. etc. were to be provided by the petitioner at its own cost. The petitioner got CEI clearance for 66 kV line on 21.03.2016 & MMTS test report on 22.03.2016 for plant no. 1. For plant no. 2, the petitioner got CEI clearance for 66 kV line on 30.03.2016 & MMTS test report on 06.04.2016.
- c) Clause 5.5.0 & 8.2.0 clarifies that Generating Company shall inform the date of commencement of delivery of power, one month in advance for testing and commissioning of the protection system before synchronization. No such intimation was given.

xvi)The prayer of the petitioner for extension of COD & for holding the same tariff rate of ₹ 7.57 per kWh beyond 31.03.2016 is not justified in terms of provisions of IA & PPA. Therefore, it is submitted that the petition and the subsequent IA no. 27 of 2016 be dismissed.

18. The petitioner filed written note of submissions dated 10.10.2016 reiterating its earlier submissions and further submitted as hereunder:

- i) The petitioner is seeking condonation of delay in commissioning of the projects on account of force majeure events and/or events not attributable to any negligence on the part of the petitioner. These are broadly covered under two heads:
  - a) Deviation from the RfP in relation to grid connectivity;
  - b) Non-availability or non-finalization of drawings for setting up of rooftop solar plant on agricultural/farm land including delay in approval of drawings.
- ii) The above two points are discussed as hereunder:

a) Deviation from the RfP in relation to grid connectivity

- i) As per the RfP, the projects having capacity upto 30 MW could be connected at 66 kV. The RfP was finalized by PEDDA in consultation with PSPCL.
- ii) The petitioner vide letter dated 04.05.2015 requested PSPCL for issuance of grid feasibility clearance at 66 kV sub-station Sangha, District Mansa which was reiterated vide letter dated 12.05.2015 as the land had been finalized near the said sub-station. Any change in the land would be detrimental to the strict timelines provided in the RfP for land procurement, financial closure and commissioning of the project.
- iii) PSPCL vide letter dated 15.05.2015 informed the petitioner that the plant should be near 132/220 kV sub-station of PSTCL for power injection. This is in clear violation of the RfP clause 3.6(D).

PSPCL issued circular no.23 of 2015 dated 08.06.2015 wherein projects more than 2.5 MW and upto 25 MW

could be connected at 33/66 kV and more than 25 MW at 132/220 kV.

PSPCL vide letter dated 11.06.2015 confirmed that 30 MW solar power plant has to be connected to 132/220 kV sub-station for power injection. This deviation from the RfP was complete and absolute with a direct bearing on the development of the project within the time frame agreed in the contract documents i.e. IA and PPA.

Thereafter, the petitioner was advised to split the project into two parts of 15 MW each to ensure that it falls within the conditions provided in the aforementioned circular. Also it was told that the projects have to be at different locations to be considered as separate projects for connectivity at 66 kV level. Splitting by way of physical demarcation was not permitted by PSPCL.

- iv) PEDDA proposed an amendment in the IA for splitting of the project which was signed on 16.06.2015 indicating that 30 MW will be read as 2 nos. of 15 MW. The said amendment also included the change of name from Chidakash Power Pvt. Ltd. to ACME Solar Rooftop Systems Pvt. Ltd.
- v) Subsequently, another set of two amendments proposed by PEDDA was signed on 02.07.2015 wherein instead of writing 2 nos. of 15 MW capacity the projects were given title as Project no.1 and Project no.2 of 15 MW capacity each. It was also indicated to the petitioner that the said projects were two separate projects and had to be located at different locations.
- vi) The petitioner vide letters dated 02.07.2015 informed Dy Chief Engineer/IPC and Chief Engineer/Planning, PSPCL that amendments have been made in the IA and requested for signing amendments in the PPA. PSPCL sought certain clarifications from PEDDA vide letter dated 21.09.2015. PEDDA proposed another amendment to the IA in line with the clarification sought by PSPCL which

was signed on 08.10.2015. Thereafter, the amendment to the PPA was signed by PSPCL on 12.10.2015.

- vii) PSPCL issued grid feasibility clearance on 02.11.2015 and 17.11.2015 (wrongly mentioned as 12.11.2015) for connecting the two 15 MW projects at 66 kV sub-stations Nangla and Jhunir. The connectivity at Jhunir sub-station was amended vide PSPCL letter dated 06.01.2016 for connectivity at 66 kV sub-station Danewala. This change was required due to non-availability of land for bay at 66 kV sub-station Jhunir as well as right of way issued for getting into Jhunir sub-station as brought out in petitioner's letter dated 22.12.2015.
- viii) The petitioner can not be held liable for the delay caused on account of change/deviation from the RfP and the consequent delay in signing amendment to the PPA on account of splitting the project and change in location. The delay from 04.05.2015 when the petitioner applied for the technical feasibility clearance upto 17.11.2015 can not be attributed to the petitioner.
- ix) The allegations made by the respondents concerning failure to acquire land, land dispute etc. is misconstrued. The petitioner vide letter dated 12.05.2015 indicated that it has finalised its land near 66 kV sub-station Sangha and vide letters dated 30.07.2015 given details of the said land at village Mankhera, District Mansa. The petitioner had arranged 72.95 acre and another 72.31 acre of land and submitted various lease deeds. However, the respondents did not permit the projects to come up on the said land and instructed the petitioner to find land in different villages. As such, land at village Mankhera was abandoned and separate lands at village Nangla-Jhaurikian for Plant No.1 and at village Khiali Chahilanwali for Plant No.2 was acquired. This exercise to acquire land in separate villages was carried out as the petitioner was not allowed to connect its project of 30 MW at Sangha sub-station for which substantial land was acquired by

July 2015 at village Mankhera and this delay can not be attributed to petitioner. In this regard, Page-40 of Commission's Order dated 18.08.2016 passed in the petition nos. 6, 7 and 10 of 2016 filed by Mihit Solar Power Pvt. Ltd. is referred to and relied upon.

b) Non-finalization of drawings for setting up of rooftop solar plant on agricultural/farm land including delay in approval of drawings

- i) The petitioner through email dated 19.02.2015 sought a clarification with regard to the multiple rooftops at height of 1.5m from the ground on the front side and 2.7m on rear side where the space beneath the structures could be used for cultivation. PEDAs vide email dated 23.02.2015 confirmed that the same is possible. Keeping in view the confirmation by PEDAs, the petitioner after issue of LoA, vide letter dated 30.03.2015 i.e. even before signing of IA and PPA sought approval of drawings relating to structure. After discussion with PEDAs, another set of drawings were submitted on 31.03.2015.
- ii) PEDAs while allowing rooftop structures in agricultural land did not have any pre-approved drawing templates, which could be utilized by the petitioner for implementing the project. PEDAs were issuing comments on the drawings submitted without themselves issuing a set of drawings and/or giving the petitioner a clear mandate to execute the project with pre-approved drawings. On the basis of discussion, certain drawings were submitted to PEDAs on 04.06.2015. The same were not accepted by PEDAs and fresh drawings in line with PEDAs's suggestions were again submitted on 16.06.2015. The same were also not approved.
- iii) The petitioner on 03.07.2015 submitted fresh drawings to PEDAs. PEDAs never actively communicated on the technical issues of the drawings rather adopted an ad hoc approach of casual remarks. Vide letter dated 09.07.2015, the details of drawings with poly sheds were submitted

which were not acceptable and the matter went back and forth between the petitioner and PEDDA.

- iv) The petitioner clarified its position and submitted the drawings in response to PEDDA's letter dated 08.07.2015. No steps were taken by PEDDA to approve the drawings so that the petitioner could proceed with placing the orders with its vendors for fabrication of structures. PEDDA finally approved the drawings on 30.10.2015 after the petitioner again submitted the drawings under cover letter dated 05.10.2015. The delay on this account is 214 days from 30.03.2015 to 30.10.2015.
- iii) Apart from the aforementioned reasons, the delay is also on account of Jat agitation i.e. 7 days, which was accepted by the Commission in the Mihit Solar Power Pvt. Ltd. in petition nos. 6, 7 and 10 of 2016.
- iv) On the basis of the aforesaid, there is no impact on tariff as the project was commissioned on 31.03.2016. As such, PEDDA and PSPCL can not invoke the bank guarantee or impose any penalty. As per Article 10.1 'Force Majeure Event' of the IA, if there is delay on account of reasons beyond the reasonable control of and not arising out of fault of the affected party, the same is entitled to the benefit. From the Commission's Order dated 11.05.2015 in petition no.23 of 2015 for tariff approval, it is inferred that the applicability of the tariff can be extended beyond 31.03.2016 in case of force majeure events.
- v) The second project at village Khiali Chahilanwali was commissioned on 01.05.2016, which is beyond the tariff period. PEDDA and PSPCL have not produced any document or evidence to counter the submissions made by the

petitioner with regard to it being not at fault for the delay in the commissioning of the second project. The Commission in its Order dated 12.06.2015 in petition no.17 of 2015 in the case of Atma Powers Pvt. Ltd., had permitted the commissioning date beyond 31.03.2015 and retained the approved tariff.

Hon'ble APTEL in its Judgment dated 11.05.2016 in Appeal no.170 of 2014 in the case of GUVNL vs. GERC & others held that the State Commission has been vested with inherent powers to meet the end of justice and to prevent abuse of the Code and such powers can be exercised by the State Commission to extend the control period of a tariff order when any project developer faces problem due to reasons beyond its control, in completing its project within the control period in the interest of justice after examining each case on its merits.

In this regard, Regulation 69, 71 and 73 of PSERC (Conduct of Business) Regulations, 2005 are relied upon. Regulation 73 gives wide powers to the Commission. The Commission has already in its Order dated 11.05.2015 retained the ability to extend the control period for applicability of the approved tariff on account of force majeure/change in law etc.

- vi) The contention of PEDDA is that the petitioner failed to issue notice in line with Article 10.4 of the IA in case of occurrence of force majeure events. PEDDA and PSPCL were throughout aware about the occurrence of the force majeure events which led to the delay in commissioning of the project

particularly the issue of connectivity at 66 kV voltage level and were informed of the same vide letter dated 15.12.2015 and 22.02.2016. As brought out above, the petitioner vide letter dated 12.05.2015 requested PEDDA to intervene in the issue pertaining to connectivity. A joint meeting was held on 14.05.2015 wherein it was assured that the petitioner would be able to connect at 66 kV voltage level. Based on the discussion held in the meeting, PSPCL on 08.06.2015 amended the circular no.23 of 2015 wherein it was resolved that the power plants upto 25 MW can be connected at 66 kV voltage level. As such, PSPCL and PEDDA were completely aware about the said force majeure event. A notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive and deemed notice.

vii) There is no case for imposing any penalty on the petitioner as wrongly done by PSPCL by deducting (₹ 93 lakh) from monthly bills dated 08.06.2016, 02.07.2016 and 01.08.2016. PSPCL can not impose a penalty under a contract unless the same is in the nature of compensation, which it is required to justify in accordance with the principles in the Indian Contract Act. In this regard, the Judgment of Hon'ble Supreme Court of India in the case of Kailash Nath reported in (2015)4SCC136 may be referred to.

19. PSPCL filed written note of submissions dated 12.10.2016 and submitted as under:

i) The petitioner sought extension of COD of the project by 220 days and stay on invocation of the PBGs by the respondents claiming various force majeure events and also putting onus

of some delay on PSPCL. The petitioner sought extension of 220 days but commissioned the project much earlier i.e. by 01.05.2016, which indicates that the petitioner is having no idea of the project activities.

- ii) The petitioner successfully bid for 30 MW rooftop project and the original name of the company at the time of bidding was Chidakash Power Pvt Ltd. At a later stage the name of the company was changed to ACME Solar Rooftop Systems Private Limited. The Petitioner also divided its project into two 15 MW projects at a later stage as it did not have requisite land for setting up the project.
- iii) The petitioner has cited various events over the duration of past year and has requested the Commission to extend COD on the basis of those events. In addition to these so called force majeure events, the petitioner has also stated that the power evacuation was delayed by PSPCL by changing the connectivity parameters to 132 kV instead of 66 kV for the 30 MW project. The petitioner vide letter dated 04.05.2015 approached PSPCL for grid feasibility for evacuation of 30 MW power at 66 kV sub-station, Sangha, District Mansa. According to PSPCL policy applicable at that time, power from 20 MW and above projects was to be evacuated at 132/220 kV. This was amended later vide commercial circular no. 23 of 2015 dated 08.06.2015 wherein it was provided that the evacuation of power above 25 MW is to be made at 132/220 kV. Therefore, the power evacuation of 30 MW was to be made at 132/220 kV according to previous and also the new policy and thus the claim of extension in

COD by the petitioner on the ground of new policy is not admissible.

- iv) PSPCL intimated the petitioner vide letter dated 07.05.2015 to submit the required documents for synchronisation at least 30 days prior to the date of synchronisation and also mention the feasible sub-station so that the evacuation and synchronisation can be done at the earliest. The petitioner was again requested vide letter dated 11.06.2015 to intimate location near a 132/220 kV PSTCL sub-station for power injection.
- v) The petitioner later on requested PEDDA to change the name of the company to ACME Solar Rooftop Systems Private Limited and also applied for setting up two separate projects of 15 MW each. The same was allowed by PEDDA vide letter dated 17.06.2015 and amended IA & PPA were signed on 08.10.2015 & 12.10.2015 respectively. Delay due to change of name, splitting up of the project and non-availability of land was petitioner's own fault and PSPCL cannot be held liable for the same.
- vi) The petitioner applied for grid technical feasibility of the first plant of 15 MW at village Nangla-Jhaurikian, Tehsil Talwandi Saboo, Distt. Bathinda on 12.10.2015 and the same was given by PSPCL on 02.11.2015. The application for grid feasibility for the second 15 MW plant at village Khiali Chahilanwali, Tehsil Jhunir, Distt. Mansa was made on 16.11.2015 and the same was given on 17.11.2015.
- vii) The petitioner did not have the requisite land but still decided to apply for the bidding process. It is due to petitioner's fault

that the project was delayed. The concept note should have been got approved by the petitioner before bidding. The petitioner's submission that PSPCL caused delay of 81 days is not true. PSPCL sent mail on 25.06.2015 to the petitioner seeking documents to process the change in name of the firm. The reply was received on 13.07.2015 but that too was incomplete. PSPCL, on 27.08.2015, requested the petitioner to submit the PAN and TAN, but the same were submitted on 09.09.2015. This delay caused is clearly by the petitioner.

viii)The petitioner later applied for feasibility from a different sub-station i.e. 66 kV sub-station Danewala on 22.12.2015 citing the right of way issue. The same was again processed at the earliest and the feasibility clearance for the new sub-station was granted vide letter dated 06.01.2016.

ix)Force Majeure events are dealt with by clause 19.0.0 of the PPA. Clause 19.2.0 clearly states that:

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

The petitioner was supposed to send specific notices to the respondents citing such force majeure events, but no such mandatory and specific notices were sent to the respondents. The petitioner kept sending vague letters to the respondents without asserting anything specific about the happening of such events. Also, nothing was mentioned about the project getting delayed.

x) The following details are required in the process of granting a feasibility clearance:

a) Land

b) Transmission line route

c) Sub-station from where connectivity is to be given

The petitioner did not have land and transmission line route for grant of feasibility clearance. The petitioner is raising irrelevant issues and arguments. The definition of 'Project' as per PPA includes land.

xi) The fact that the petitioner did not have the land required for the project is accepted by it in the petition. It changed the location of the project multiple times, changed the firm's name, split the capacity into 2x15MW instead of 30 MW and tried to put the onus on PSPCL.

xii) The 66 kV Nangla & 66 kV Danewala sub-stations were ready to receive power on 30.03.2016 as the bay was test charged on 30.03.2016 as per report of ASE/ Grid Const., Bathinda.

xiii) The petitioner applied for synchronization on 29.03.2016 for Plant No.1 (Nangla sub-station) and 20.04.2016 for Plant No.2 (Danewala sub-station) and the synchronization approval was issued on the same day even though vide letter dated 08.05.2015 the firm was intimated to supply documents 30 days prior to the date of synchronisation.

xiv) The petitioner has tried to cover its incapability by putting the onus of delay on PSPCL and PEDDA by raising non-

existing issues of force majeure events, for which no specific notice has been given and no evidence provided.

xv)PSPCL has deducted liquidated damages of ₹ 93 lakh from the amount payable to the petitioner as no stay has been granted by the Commission against such deduction. The status quo has been qua PEDAs and from invoking the PBGs. PSPCL has deducted the liquidated damages under the provisions of the PPA and there is no Order of the Commission to the contrary. PSPCL vide letter dated 24.08.2016 intimated the petitioner regarding the deduction of liquidated damages and informed that the deduction was subject to adjustments according to final Order of the Commission in the petition.

xvi)For reference of the Commission, the following clarifications are provided:

- a) As per clause 5.5.0 & 6.2.0 of the PPA, the firm was to give 30 days prior notice of synchronization to PSPCL. This time could have been used to sort out minor issues like readiness of bay, meters on GSS etc., but no such notice was given by the firm.
- b) As per clause 6.3.0 of the PPA, all equipments, transmission line upto PSPCL grid sub-station including clearance/NoCs from concerned agencies like forest department, CEI, Govt. etc. are required to be provided by firm at its own cost. However, the firm for Plant No.1 got CEI clearance for 66 kV line on 21.03.2016 & MMTS test report on 22.03.2016 & for Plant No.2 CEI clearance for 66 kV line on 30.03.2016 & MMTS test report on 06.04.2016.
- c) Clause 5.5.0 & 8.2.0 of the PPA clarify that generating company shall inform the date of commencement of

delivery of power, one month in advance for testing and commissioning of the protection system before synchronization. No such intimation was given.

xvii) The prayer of the petitioner for extension of COD & holding the same tariff rate of ₹ 7.57 per kWh beyond 31.03.2016 is not justified in terms of provisions of IA & PPA. Therefore, the petition and IA no 27 of 2016 regarding alleged wrong deduction of liquidated damages by PSPCL, be dismissed.

20. PEDDA filed additional written submissions dated 25.10.2016 and submitted as hereunder:

i) During oral arguments, the petitioner had only pressed the occurrence of force majeure events causing delay in commissioning of the project as under:

- a) Concept note approval;
- b) Technical feasibility clearance for evacuation on 66KV (Grid Connectivity);

However, in the petition, the petitioner had purported the occurrence of the following force majeure events:

- a) Concept note approval;
- b) Technical feasibility clearance for evacuation on 66KV (Grid Connectivity);
- c) Unrest due to desecration of Holy Sri Guru Granth Sahib;
- d) Jat agitation;
- e) Non-availability of Registrar Staff due to disbursement of crop compensation.

The force majeure events referred to by the petitioner for seeking extension in the date of commissioning qua the project were purported and cannot be relied upon.

- ii) The petitioner has confined its case to the occurrence of two ibid purported force majeure events i.e. technical feasibility clearance for evacuation on 66 KV grid sub-station by PSPCL and concept note approval, which are denied being purported, false and incorrect. The purported force majeure events referred to by the petitioner are an afterthought and the petitioner has tried to setup false and frivolous pleas as to the occurrence of the above force majeure events.
- iii) The issue with respect to technical feasibility clearance relates to PSPCL, which has been addressed by PSPCL.
- iv) The issue with respect to the concept note approval has been wrongly alleged upon PEDDA. It is submitted as hereunder:
  - a) The purported force majeure event with respect to concept note approval neither qualifies to be force majeure event nor is covered under the RfP. As per Article 4.1 (vii) of the IA, the developer was required to give complete location/details of the rooftop building/shed on which the project was to be set-up. These details were required to be submitted within 120 days from the date of issue of LoA as per Article 6.2 (vi) of the IA. The developer was unable to submit these details in the said time and was also technically unable to finalize the details and drawings of the sheds on the rooftop of which it proposed to set up the project. As per the definition, project site means relevant rooftop of the building on which the project is proposed to be located. Hence, the delay in submitting the details of the rooftop in the shape of drawings of the rooftop solar plant, location and ownership/lease documents for the rooftop to PEDDA is totally attributable to the petitioner.

- b) The petitioner for the first time submitted the basic layout of a proposed structure stating that the roof will be developed by the solar PV modules and no location of the same was given vide its letter dated 30.03.2015.
- c) The basic layout did not comply to be a rooftop project as the structures proposed did not have any roof, which was a pre-requisite for setting up the project. The developer was informed during discussions to fulfill the requirement of the RfP and IA in this regard. Further, the developer submitted rough sketches on A4 sheets along with the communication dated 16.06.2015 proposing two options to develop 429 nos. net houses for installation of the allocated rooftop project. In the proposed sketch also, the roof of this shed/house was partially formed with solar panels and partially with the net. As this proposed sketch did not comply with the RfP/IA, the same was also not concurred by PEDDA and the developer was asked to submit a complete engineering drawing of the rooftop for setting up the project while fulfilling the terms and conditions of the contractual document.
- d) The developer again submitted revised structure details vide communication dated 03.07.2015 whereby a fresh proposal of solar poly houses for agri-solar activities with an elevated rooftop structure/shed in which the area under the elevated roof structure shall be used for agriculture using hydroponic agriculture beds as advised by their consultant GHE, France. The company proposed that the roof of the poly shed using a polypropylene sheet above which the modules will be placed on a supporting structure. However, the solar poly shed sketch enclosed on A4 sheet did not meet the requirement of a shed/building rooftop in compliance to the RfP/IA. Also no details of location were submitted for this proposed project, neither any ownership/lease hold documentary evidence in the shape of registered ownership/lease deed of the building in the name of the developer were

provided, which was to be provided by the petitioner within 120 days from the date of issuance of LoA.

- e) PEDA vide letter dated 08.07.2015 requested the petitioner to submit the ibid documents qua the rooftop. The petitioner vide letter dated 09.07.2015 submitted an incomplete plan for installation of the proposed rooftop project on the rooftop of the sheds as per the attached purported sketch which were incomplete and unsigned, in which, however, the location of these proposed projects was given at village Mankhera, Distt. Mansa. However, still the solar poly shed sketch enclosed on A4 sheet did not meet the requirement of a shed/building rooftop in compliance to the RfP/IA. The developer also did not give compliance with regard to submission of ownership/lease hold documents for the project.
- f) The matter was deliberated upon between the developer and PEDA as to setting up of the project essentially on rooftops in line with the contractual documents and the design of the structure must be like a building/shed, upon which the developer consented to. Accordingly, PEDA vide letter dated 13.07.2015 gave its concurrence subject to fulfillment of terms and conditions of RfP and IA.
- g) In pursuance to the above, the petitioner vide letter dated 03.08.2015 submitted a declaration stating that the rooftop sheds planned to be used for developing the solar rooftop PV project are solely owned by it. It also gave an undertaking in compliance to the letter dated 13.07.2015 that the project rooftop sheds shall be developed in accordance with the clauses of the RfP and IA. The developer vide letter dated 21.09.2015 submitted fresh sketches on A4 sheets, which were still conceptual sketches and did not provide complete details in line with the requirement of the RfP as well as the concurrence granted to the petitioner.
- h) The developer vide letter dated 05.10.2015 submitted the drawings showing complete plan and elevation view

giving all details of various sections and proposing a rooftop of UV protective sheets over which the solar panels were proposed to be installed, in compliance to RfP & IA.

- i) PEDDA vide letter dated 30.10.2015 gave its final concurrence on the drawings submitted by the petitioner on finding the same in line with the RfP & IA. The petitioner for the first time submitted the correct drawings in line with the RfP/IA on 05.10.2015, which as per the timelines provided therein was to be submitted within 120 days from the date of signing of PPA i.e. 31.07.2015.
- j) As per the RfP, the petitioner was obligated to have complete technical knowhow of the project and also the wherewithal for compliance to the RfP/IA with regard to the setting up of the project on the rooftops, which were never shown in the earlier submitted sketches/drawings.

The petitioner in order to escape its bounden contractual obligations has made an attempt to attribute its failures/inability/ unawareness/ ignorance/ lack of knowledge upon PEDDA as to purported issue of concept note approval.

- v) The communication/GRs/challans submitted in the petition demonstrates that till last week of February 2016, the material for setting up of the project was not available at the project site. Hence, the petitioner is not entitled for the tariff of ₹ 7.57 per kWh, as the tariff qua the solar projects is determined solely upon fixed capital cost and the petitioner has purchased the material i.e. the capital component, after the SCOD i.e. 30.01.2016 (wrongly mentioned as 31.01.2016). The petitioner deserves to be awarded reduced tariff. Moreover, the developer while seeking grant of concessional custom duty and excise duty exemption

certificates has submitted to PEDA an EPC Agreement dated 05.05.2015, entered by the petitioner with Acme Clean Tech Solutions Pvt. Ltd., which provides that the petitioner shall source/supplied with the entire material for the project including but not limited to module mounting structures by Acme Clean Tech Solutions Pvt. Ltd, whereas the petitioner in the petition has mentioned the same to be purchased from some other supplier. Hence, the malafide of the petitioner are per se apparent and no reliance can be placed upon the assertions made by the petitioner.

vi) The petitioner is not entitled for any relief as prayed for i.e. interim or final as it has not approached the Commission with clean hands. As per the settled cannon of law laid down by Hon'ble Supreme Court of India, it has been held that the party which does not touches the fountain of justice with clean hands is not entitled for any relief interim or final. Hence, the petition is liable to be dismissed and PEDA may be permitted to levy the penalty on account of non-commissioning/short commissioning of the project, by encashing the unconditional PBGs submitted by the petitioner or in alternate petitioner be immediately directed to deposit the amount of the penalty with PEDA for not commissioning the project in line with the contractual documents entered between the parties.

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

21. The Commission has carefully gone through the petition, applications, replies thereto by PEDA & PSPCL, rejoinders to the

replies by the petitioner and written submissions made by the parties. The petitioner has made the following prayers:

- a) set aside and/or quash the letters dated 18.01.2016 and 24.02.2016 of PEDDA;
- b) hold and declare that the COD stands extended till 30.06.2016 in accordance with clause 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of Force Majeure events;
- c) hold and declare that the petitioner is entitled to tariff of ₹ 7.57 per kWh (levellised tariff) in terms of the PPA dated 31.03.2015;
- d) direct PEDDA not to invoke the Performance Bank Guarantees and to not take any coercive actions whatsoever against the petitioner;
- e) direct PSPCL to forthwith return ₹ 93 lakh which has been wrongfully deducted by it on account of liquidated damages; and
- f) restrain PSPCL and PEDDA from deducting any amount in future from the monthly bills of the petitioner and from taking any coercive actions whatsoever against the petitioner for delay in achieving COD on account of force majeure till the pendency of the present proceedings.

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. The petitioner in its rejoinder submitted that force majeure events are attributable to both PSPCL & PEDDA and more particularly to PSPCL. 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 submitted that the petition is not maintainable as there exists an arbitration

clause in the contractual documents. PEDA further submitted that the IA signed between PEDA and the petitioner is the main contractual document and PPA signed between PSPCL and the petitioner is consequential to the IA which will come into operation once the project is commissioned and connected to PSPCL grid.

**In this regard, the Commission notes that in para 14 of its Order dated 11.05.2015 in petition no. 23 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 Implementation Agreement signed by the petitioner with PEDA shall be treated as an integral part of the Power Purchase Agreement 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 PEDA in this regard are devoid of any merit and no cognizance of the same is required to be taken.**

**With regard to PEDA's submission that the petition is not maintainable as there exists an arbitration clause in the contractual documents, the petitioner has submitted 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. The Commission notes that in the said petition/IAs, the same issue had been raised and the**

**Commission in its Order dated 12.04.2016 held that it was devoid of merit. The Commission holds the same view in the instant petition as well.**

PEDA issued RfP dated 27.01.2015 inviting bids for setting up rooftop solar PV power projects through competitive bidding based on discount to be offered on the generic tariff of ₹ 7.72 per kWh determined by the Commission for FY 2014-15. PEDA issued LoA on 25.03.2015 to the petitioner for setting up a 30 MW rooftop solar PV power project at the tariff of ₹ 7.57 per kWh and signed the IA on 31.03.2015. Two PBGs dated 27.03.2015 amounting to ₹ 8.40 crore and ₹ 3.60 crore were submitted by the petitioner to PEDA. PSPCL signed the PPA with the petitioner also on 31.03.2015. The project was to be completed within 10 months from the signing of the PPA i.e. by 30.01.2016. There was a provision in the contractual documents for encashment of PBGs by PEDA in case the project is not commissioned within the stipulated period of 10 months i.e. 30% for delay upto the end of 11<sup>th</sup> month and remaining 70% for delay upto the end of 12<sup>th</sup> month proportionate to the capacity not commissioned. Beyond the period of 12 months from the date of signing the PPA, liquidated damages were leviable by PSPCL for a period of 3 months i.e. upto 30.06.2016 at the rate of ₹ 20,000/- per MW per day. As per the PPA, IA 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. The 30 MW project was later converted into two 15 MW projects which were commissioned on 31.03.2016 & 01.05.2016 respectively. The petitioner has alleged the delay in commissioning of the projects due to various force majeure events which has been opposed by

both the respondents. PSPCL has submitted that the prayer of the petitioner for extension of date of commissioning and allowing the tariff of ₹ 7.57 per kWh beyond 31.03.2016 is not justified in terms of IA and PPA. PSPCL further submitted that deduction of ₹ 93 lakh as liquidated damages from the amount payable to the petitioner was subject to adjustment according to final Order of the Commission in the petition as informed to the petitioner vide letter dated 24.08.2016 and the said deduction has been made in terms of the PPA as no stay has been granted by the Commission against such deduction. PEDDA submitted that the petitioner is not entitled for any relief as prayed as it has not approached the Commission with clean hands and the petition is liable to be dismissed. PEDDA further requested that it may be permitted to levy the penalty on account of non commissioning/short commissioning of the project by encashment of the PBGs submitted by the petitioner or in the alternate the petitioner be directed to deposit the amount of penalty with PEDDA.

22. The petitioner has broadly rested its case for extension in the commissioning of the project on the grounds of delay caused due to (i) non-issuance of technical grid feasibility clearance by PSPCL in time (ii) non-approval of the drawings for the project by PEDDA in time and (iii) Jat agitation.

#### Technical Grid Feasibility Clearance

i) As per the RfP, projects having capacity upto 30 MW were to be connected at 66 kV voltage level. The petitioner vide letter dated 04.05.2015 requested PSPCL for issuance of technical grid feasibility clearance at 66 kV sub-station Sangha, District Mansa which was reiterated vide letter dated 12.05.2015. PSPCL vide

letter dated 15.05.2015 informed the petitioner that the project should be connected to 132/220 kV sub-station of PSTCL for power injection. In the meantime, PSPCL issued amended circular no.23 of 2015 on 08.06.2015 wherein projects with capacity more than 2.5 MW and upto 25 MW were to be connected at 33/66 kV voltage level and more than 25 MW capacity at 132/220 kV voltage level. PSPCL vide letter dated 11.06.2015 again informed the petitioner that its 30 MW solar PV power project shall be connected to 132/220 kV sub-station of PSTCL for power injection.

ii) As per the petitioner, this was in violation of the RfP which provided that projects with capacity 2.5 MW to 30 MW were to be connected at 66 kV voltage level. The petitioner was advised by PEDDA to split the 30 MW project into two 15 MW projects in order to comply with PSPCL's aforementioned circular dated 08.06.2015. As brought out by the petitioner, PSPCL further informed that the two projects should be at two different locations/villages and connected to two separate 66 kV sub-stations. Splitting by way of physical demarcation of existing land was not permitted by PSPCL.

iii) PEDDA signed an amendment to the IA with the petitioner on 16.06.2015 for splitting the 30 MW capacity project into two 15 MW capacity projects alongwith the change in the name of the firm from Chidakash Power Pvt. Ltd. to ACME Solar Rooftop Systems Pvt. Ltd. Subsequently, two clarificatory amendments to the IA were signed by PEDDA with the petitioner on 02.07.2015 giving separate status to the two projects as Project no.1 and Project no.2.

iv) The petitioner vide letters dated 02.07.2015 informed Dy Chief Engineer/IPC and Chief Engineer/Planning, PSPCL that necessary amendments to the IA have been signed and requested PSPCL for signing consequential amendments in the PPA. PSPCL sought certain clarifications from PEDDA in this regard vide letter dated 21.09.2015. Consequently, PEDDA signed another amendment to the IA with the petitioner on 08.10.2015 and thereafter, the amendment to the PPA was signed by PSPCL on 12.10.2015.

v) The petitioner submitted that it had finalised the land at village Mankhera near 66 kV sub-station Sangha and informed PEDDA of the same vide letter dated 12.05.2015 and accordingly sought connectivity for the project from PSPCL at the said 66 kV sub-station, Sangha. Vide letters dated 30.07.2015 addressed to PEDDA, the petitioner informed about the details of the said land as 72.95 acre and 72.31 acre and submitted lease deeds for the same. However, PSPCL insisted that the petitioner should arrange land in different villages. As per the petitioner, the land at village Mankhera arranged in July 2015 had to be abandoned and separate lands at village Nangla-Jhaurikian for Plant No.1 and at village Khiali Chahilanwali for Plant No. 2 were arranged. Lease deed(s) for Plant No.1 were submitted to PSPCL on 11.09.2015 and for Plant No.2 later on 16.11.2015 to be respectively connected at 66 kV sub-station Nangla and Jhunir sub-station (later on changed to 66 kV sub-station Danewala). The petitioner has referred and relied upon page-40 of Commission's Order dated 18.08.2016 passed in the petition no. 6 of 2016 filed by Mihit Solar Power Pvt. Ltd. Perusal of the said para reveals that PSPCL

had informed the petitioner to connect the entire 74 MW capacity of 3 projects at 3 bays of 66 kV sub-station, Sardulgarh i.e. the stand taken by PSPCL in that case appears contrary to the stand taken in the instant case where the petitioner was asked to arrange land for the two projects at two different locations/villages for connection with the grid at two different sub-stations.

vi) PSPCL issued technical grid feasibility clearance on 02.11.2015 for Plant No.1 to be connected at 66 kV sub-station Nangla and for Plant No.2, the same was issued on 17.11.2015, to be connected at Jhunir sub-station. Due to non-availability of land for bay and right of way issues at Jhunir sub-station as informed to PSPCL vide letter dated 22.12.2015 by the petitioner, the connectivity at Jhunir sub-station was further amended to 66 kV sub-station Danewala vide PSPCL's letter dated 06.01.2016.

vii) PSPCL submitted that as per prevalent PSPCL policy, power from 20 MW and above projects was to be evacuated at 132/220 kV sub-station(s). The same was amended vide circular no.23 of 2015 dated 08.06.2015 such that projects above 25 MW were to be connected to a 132/220 kV sub-station of PSTCL for evacuation of power and accordingly the petitioner's 30 MW project was still required to be connected to 132/220 kV sub-station. The petitioner was informed vide letters dated 15.05.2015 and 11.06.2015 to intimate the location of the project near a 132/220 kV sub-station of PSTCL. PSPCL further submitted that the petitioner did not have land but decided to bid for the project. It changed the land for the project multiple times and could not finalize the route of the transmission line. Also the concept note for approval of drawings should have been got approved by the petitioner from PEDDA

before bidding. PSPCL vide mail dated 25.06.2015 sought documents from the petitioner for change in name of the firm to which an incomplete reply was received on 13.07.2015. PSPCL vide letter dated 27.08.2015 requested the petitioner to submit details of PAN and TAN which were submitted on 09.09.2015 by the petitioner. PSPCL further submitted that PEDA allowed splitting of petitioner's 30 MW project into two 15 MW projects as also change in name of the firm and signed the final amendment to this effect in the IA on 08.10.2015 in supersession to all the three amendments signed earlier. Consequently, the PPA was amended on 12.10.2015 by PSPCL. Therefore, PSPCL can not be held liable for delay on these accounts. These delays are to petitioner's account.

viii) The petitioner applied for grid technical feasibility of the Plant No.1 of 15 MW at village Nangla-Jhaurikian on 12.10.2015 and the same was granted by PSPCL on 02.11.2015. For Plant No.2 of similar capacity at village Khiali Chahilanwali, the grid feasibility was applied by the petitioner on 16.11.2015 for Jhunir sub-station and the same was granted by PSPCL on 17.11.2015. Later on, the petitioner, citing issues of bay non-availability and right of way, requested PSPCL vide letter dated 22.12.2015 to change the grid feasibility to 66 kV sub-station Danewala, which was granted vide PSPCL letter dated 06.01.2016.

ix) The 66 kV sub-stations Nangla and Danewala were ready to receive power on 30.03.2016. The clearance for the 66 kV lines for Plant No.1 and Plant No.2 was granted by Chief Electrical Inspector on 21.03.2016 and 30.03.2016 respectively. The MMTS test reports of PSPCL for the two projects were issued on

22.03.2016 and 06.04.2016. The petitioner applied for synchronization of Plant No.1 at Nangla sub-station on 29.03.2016 and for Plant No.2 on 20.04.2016 at Danewala sub-station. PSPCL averred that the synchronization approval was issued on the same day although 30 days prior notice was required.

x) PSPCL submitted that although the petitioner was supposed to send specific notices to the respondents citing force majeure events but kept on sending vague letters about happening of such events.

xi) PEDDA submitted that during arguments, the petitioner has confined its case to only two purported force majeure events relating to concept note approval by PEDDA and technical grid feasibility clearance by PSPCL though it had earlier in the petition included other purported events also such as unrest due to desecration of Holy Sri Guru Granth Sahib, Jat agitation and non-availability of Registrar's staff due to disbursement of crop compensation. PEDDA further submitted that the issue of technical grid feasibility relates to PSPCL and is to be addressed by it.

xii) **The Commission notes that in terms of the RfP, the rooftop solar PV power projects upto 30 MW capacity were to be connected at 66 kV level with PSPCL grid. Keeping in view the same, the petitioner submitted its bid and was allotted a 30 MW project by PEDDA. The petitioner applied for technical grid feasibility to PSPCL on 04.05.2015 for the project to be connected at 66 kV sub-station Sangha as it had arranged land for the project at village Mankhera near the said sub-station. However, the then prevalent regulations of PSPCL did not allow 30 MW projects to be connected at 66 kV level and**

projects upto 20 MW capacity only could be connected at 66 kV level. The petitioner was asked by PSPCL vide letter dated 15.05.2015 to connect its project to a 132/220 kV sub-station of PSTCL. In the meanwhile on 08.06.2015, PSPCL issued amended circular no. 23 of 2015 allowing renewable energy projects and captive power plants upto 25 MW capacity to be connected at 33 kV/66 kV level though petitioner's project of 30 MW was still rendered ineligible for being connected at 66 kV level. PSPCL again requested the petitioner vide letter dated 11.06.2015 to connect its project to a 132/220 kV sub-station of PSTCL. The petitioner approached PEDDA for connectivity of its project at 66 kV level in terms of the RfP. PEDDA advised/decided to split the project into two 15 MW projects so that these could be synchronized with PSPCL grid at 66 kV level to comply with PSPCL regulations. Accordingly, vide amendment dated 16.06.2015 to the IA, the 30 MW project of the petitioner was split into two 15 MW projects and vide further two amendments dated 02.07.2015, the two 15 MW projects were termed as Project no.1 and Project no.2. The petitioner approached PSPCL for consequential amendment in the PPA vide letter dated 02.07.2015. The petitioner had arranged 72.95 acre and 72.31 acre of land at village Mankhera and vide letters dated 30.07.2015 provided the land details/lease deeds for the same. However, the respondents did not permit the projects to come up on the said land and asked the petitioner to arrange land in two different villages. Splitting of land by physical demarcation was not permitted by PSPCL. Also it was told that the projects have to be at different locations to be considered as separate projects for

connectivity at 66 kV level. The petitioner was left with no choice other than to abandon the said land at village Mankhera and arrange the land afresh. The petitioner arranged 65.71 acre of land for Plant No.1 at village Nangla-Jhaurikian and submitted lease documents for the same on 11.09.2015. For carrying out consequential amendment in the PPA, PSPCL sought certain clarifications vide letter dated 21.09.2015 from PEDDA with regard to the amendments to the IA carried out by PEDDA. In response, PEDDA signed a single comprehensive amendment dated 08.10.2015 to the IA with the petitioner wherein the two 15 MW projects of the petitioner were termed as Plant No.1 at village Nangla-Jhaurikian and Plant No.2 at village Khiali Chahilanwali. PSPCL signed the consequential amendment to the PPA on 12.10.2015. The technical grid feasibility for Plant No.1 was applied by the petitioner on 12.10.2015 for Nangla sub-station and granted by PSPCL on 02.11.2015. The petitioner arranged another 74.63 acre of land at village Jhunir for Plant No.2 and submitted the land lease documents for the same to PSPCL on 16.11.2015. The technical grid feasibility for Plant No.2 was applied by the petitioner on 16.11.2015 for Jhunir sub-station and granted by PSPCL on 17.11.2015. However, due to non-availability of bay at Jhunir sub-station and right of way issues, the petitioner applied for technical grid feasibility for Plant No.2 at Danewala sub-station on 22.12.2015 which was granted by PSPCL on 06.01.2016. The projects were commissioned on 31.03.2016 (Plant No.1) and 01.05.2016 (Plant No.2).

xiii) Keeping the above in view, the Commission is of the considered opinion that the main reason for delay in grant of technical grid feasibility to the petitioner's project was mismatch between the provisions in the RfP and PSPCL regulations with regard to the voltage level at which the project was to be connected with PSPCL grid. The RfP provided for connectivity of the petitioner's 30 MW project at 66 kV level whereas PSPCL's regulations, even after amendment dated 08.06.2015, did not allow connectivity to the petitioner's project at 66 kV sub-station. Consequently, the project had to be split into two 15 MW projects. However, the petitioner was not permitted to use the land arranged at village Mankhera for utilizing the same for the two projects by physical demarcation. The petitioner was asked to arrange two separate land parcels in two different villages for connecting the projects to 66 kV sub-station(s). The Commission finds the same as unjustified considering that in the case of Mihit Solar Power Pvt. Ltd. cited by the petitioner in support of its arguments, PSPCL had asked the petitioner to connect three projects of total capacity 74 MW at three different bays at the 66 kV sub-station, as brought out in the Commission's Order dated 18.08.2016 in petition no. 6 of 2016. The petitioner's project was required to be commissioned in ten months period from the date of signing the PPA in terms of the RfP/IA/PPA. Consequently, the petitioner had to abandon the land arranged by it at village Mankhera and arrange land afresh at two different places. PSPCL's submission that the petitioner did not have land at bidding stage and did not finalise the route of the

transmission line for evacuation of power does not hold good as the petitioner applied for technical grid feasibility for 66 kV sub-station Sangha near village Mankhera on 04.05.2015. PEDDA has submitted that grid feasibility/connectivity issue relates to PSPCL.

xiv) The Commission finds that the petitioner acted diligently and the time taken for arranging land at two different villages and signing/registering the lease deeds for the same by the petitioner was reasonable. The petitioner arranged the land and submitted the lease deed documents to PSPCL on 11.09.2015 for Plant No.1 even before the final amendment to the IA and PPA were signed on 08.10.2015 and 12.10.2015 respectively. For the second project, the same were submitted on 16.11.2015. The technical grid feasibility for Plant No.1 for Nangla sub-station was applied by the petitioner on 12.10.2015 and granted by PSPCL on 02.11.2015 and for Plant No.2, the same was applied by the petitioner for Jhunir sub-station on 16.11.2015 and granted by PSPCL on 17.11.2015. However, due to the issues pertaining to non-availability of space for additional bay at Jhunir sub-station and right of way, the petitioner again approached PSPCL on 22.12.2015 for revising the connectivity of Plant No.2 from Jhunir sub-station to Danewala sub-station which was granted by PSPCL on 06.01.2016. The Commission finds that PSPCL did not check the availability of space for construction of an additional bay at Jhunir sub-station before granting technical grid feasibility for this sub-station to the petitioner which should have been done by PSPCL in the first instance.

xv) In view of the discussion above, the Commission is of the considered opinion that the petitioner can not be held liable for the delay caused on account of mismatch in the RfP provisions and PSPCL regulations and consequential events brought out above. The Commission feels that the period from 04.05.2015 (i.e when the petitioner applied for technical grid feasibility for its 30 MW project at village Mankhera for connection at 66 kV sub-station Sangha) upto 31.05.2015 was a reasonable time for granting technical grid feasibility by PSPCL. Thus, the Commission holds that the responsibility for the time slippage of the period from 01.06.2015 upto 02.11.2015 (155 days) for Plant No.1 and upto 06.01.2016 (220 days) for Plant No.2 rests with the respondents and allowing the benefit of the same in favour of the petitioner would be just and equitable for extension in date of commissioning of the two projects.

Approval of the drawings for the project

xvi) The petitioner vide email dated 19.02.2015, before the last date of submission of bids on 26.02.2015, sought clarification from PEDDA with regard to suitability of land with multiple rooftops/structures with a height of 1.5 m in front and 2.7 m in rear where the space beneath the said rooftops/structures could be used for cultivation. PEDDA vide email dated 23.02.2015 confirmed that the same is possible. Accordingly, after issue of LoA and before signing of IA & PPA, the petitioner vide letter dated 30.03.2015 sought approval of concept note/drawings relating to the rooftops/structures for installing the solar PV modules. Another

set of drawings was submitted on 31.03.2015 to PEDDA, after discussion.

xvii) The petitioner submitted that although PEDDA allowed rooftops/structures in agricultural land, it did not have any pre-approved drawing templates which could be utilized by the petitioner for implementing the project. PEDDA kept issuing observations on the drawings submitted by the petitioner without having a set of approved drawings/design of the rooftops/structures for such projects and did not issue a clear mandate to execute the project with pre-approved drawings. On the basis of discussion, further drawings were submitted to PEDDA on 04.06.2015 which were not accepted by PEDDA and fresh drawings in line with PEDDA's suggestions were again submitted by the petitioner on 16.06.2015. The same were also not approved. The petitioner again submitted fresh drawings to PEDDA on 03.07.2015. PEDDA did not actively communicate on the technical issues of the drawings rather adopted an adhoc approach and passed casual remarks. In response to PEDDA's observations vide letter dated 08.07.2015, the petitioner vide letter dated 09.07.2015 clarified its position and submitted the rooftop structure drawings with poly sheds. The same were not accepted by PEDDA and the matter went back and forth between the petitioner and PEDDA. No steps were taken by PEDDA to approve the drawings to enable the petitioner to proceed with placing the orders with its vendors for fabrication of rooftop structures. PEDDA gave its concurrence on 13.07.2015 stating that terms and conditions of RfP and IA be complied with. The rooftop structures drawings were finally

approved by PEDA on 30.10.2015 after the petitioner submitted the drawings afresh vide letter dated 05.10.2015.

xviii) PSPCL submitted that the petitioner did not have requisite land for the project but still decided to bid for the projects. The concept note/drawings for the rooftop structures for the project should have been got approved by the petitioner from PEDA before bidding. The delay has been caused due to late submission of the drawings by petitioner to PEDA for approval. The petitioner submitted the rooftop concept drawings 2½ months after PEDA gave concurrence to the same on 13.07.2015. Also, it changed the location of the land multiple times and did not finalize the route for the 66 kV line for evacuation of power.

xix) PEDA submitted that the period for approval of concept note/drawings for the rooftop structures for the project does not qualify to be a force majeure event. As per Article 4.1 (vii) of the IA, the developer was required to give complete location/details of the rooftop of the building/shed on which solar PV modules were to be installed. These details were required to be submitted within 120 days of the date of issue of LoA as per IA. The petitioner was unable to finalize the details/drawings of the rooftop structures/buildings/sheds. The drawings for the basic lay out of the proposed structures without location of the land were submitted by the petitioner on 30.03.2015. The same did not comply to be a rooftop in terms of the RfP as the proposed structures did not have any roof. The developer was informed during discussion to fulfil the requirement of RfP and IA. The petitioner submitted rough sketches on 16.06.2015 proposing two options to develop 429 nos. net houses for installation of the

project. The partial roof proposed in the drawings also did not comply with RfP/IA and therefore not concurred by PEDA. The developer was asked to submit a complete engineering drawing of the rooftop fulfilling the terms & conditions of the contractual documents. The petitioner again revised the drawings on 03.07.2015 with a fresh proposal of solar poly houses for hydroponic cultivation proposing that the roof of the poly shed structures shall be formed using poly propylene sheets and the solar PV modules shall be installed on it. The same also did not comply with the RfP/IA and no details of the location of the project and documentary evidence of ownership/lease of the building in the name of the developer were provided as required to be submitted within 120 days from the date of issue of LoA. PEDA vide letter dated 08.07.2015 requested the petitioner to submit these documents. The petitioner vide letter dated 09.07.2015 submitted incomplete plan for installation of the proposed rooftop project and submitted the location of the project at village Mankhera. The drawings still did not meet the requirement of a shed/building rooftop in terms of the RfP/IA. Also, the ownership/leasehold documents for the project land were not submitted. The matter was deliberated upon by PEDA with the petitioner and PEDA gave its concurrence vide letter dated 13.07.2015 subject to fulfilment of the terms & conditions of RfP and IA. The petitioner vide letter dated 03.08.2015 gave an undertaking that the rooftop sheds shall be developed in accordance with the clauses of the RfP and IA and confirmed that the sheds are owned by it.

xx) The petitioner on 05.10.2015 submitted the detailed drawings with plan, elevation and sectional view of the rooftop structures proposing rooftop of UV protective sheets over which the solar PV modules were proposed to be installed. PEDDA, accordingly, vide letter dated 30.10.2015 gave its final concurrence finding the documents submitted on 05.10.2015 to be in compliance to the RfP and IA. PEDDA submitted that, however, the complete drawings as above were required to be submitted by the petitioner within 120 days of the signing of the PPA i.e. by 31.07.2015.

**xxi) The petitioner has alleged delay of 214 days from 30.03.2015 to 30.10.2015 due to non-approval of drawings by PEDDA. The Commission notes that the petitioner on 19.02.2015, before the last date of submission of bids on 26.02.2015, sought clarification from PEDDA with regard to its proposal for setting up its rooftop solar PV plant on structures/rooftops to be erected in agricultural land on which it proposed to install the solar PV modules and use the land below for cultivation. PEDDA vide email dated 23.02.2015 confirmed the suitability of such an arrangement. After LoA was issued to the petitioner by PEDDA for the 30 MW project on 25.03.2015, the petitioner submitted the concept note/drawings for approval to PEDDA on 30.03.2015. Another set of drawings was submitted on 31.03.2015. The IA and PPA were signed on 31.03.2015. After discussion, another set of drawings/design was submitted by the petitioner to PEDDA on 04.06.2015 which was not accepted and fresh drawings as per PEDDA's suggestions were submitted on 16.06.2015 which**

were again not accepted. The petitioner again submitted the fresh drawings to PEDDA on 03.07.2015 and in response to PEDDA's letter dated 08.07.2015, the petitioner submitted fresh drawings on 09.07.2015 which were again not approved. After discussion with the petitioner, PEDDA gave its concurrence on 13.07.2015 stating that terms and conditions of RfP and IA be complied with. The drawings/design for rooftops/structures for installing the solar PV modules were finally approved by PEDDA on 30.10.2015 based on submissions made by the petitioner on 05.10.2015. PEDDA has alleged that the petitioner did not submit the drawings/design in terms of the RfP/IA till the final submission on 05.10.2015 and also the land details/lease deeds were not submitted in time. PSPCL submitted that the petitioner did not have the requisite land for the project at the time of bidding and it should have got the concept note/drawings approved from PEDDA before bidding. It was also the contention of PSPCL that after the concurrence of the drawings/concept note by PEDDA on 13.07.2015, the petitioner delayed the submission of final drawings by 2½ months as the same were submitted for approval of PEDDA on 05.10.2015.

xxii) In terms of the IA, the petitioner was required to give complete location/details of the rooftop of the building/shed on which the solar PV modules were to be installed and PEDDA was required to grant concurrence to the location and rooftops of building/shed. In the instant case, the Commission notes that before the last date of submission of bids, the petitioner sought approval of PEDDA to its proposal

to install the solar PV modules in agricultural land on rooftop/structures to be set up at a particular height and use the land below for cultivation. PEDDA also gave its approval before the last date of submission of the bids. The Commission opines that the approval of design/drawings of the rooftop structures was required to be dealt diligently. The unique concept of utilizing agricultural land for the twin purpose of setting up a solar PV plant and simultaneously using the same land for agricultural purpose required concerted efforts and focussed attention. PEDDA should have sat with the petitioner, thrashed out an agreeable design and put in motion the process for approval of the concept note/drawings for the rooftops/structures. In fact PEDDA could have worked on the design templates of its own for such a purpose especially when the developer had, at the bidding stage, proposed such a project and the same was allowed by PEDDA before the petitioner submitted its bid.

xxiii) The Commission further notes that PEDDA insisted on submission of land details also alongwith the drawings/design of the rooftops/structures in terms of RfP/IA. The Commission finds that the petitioner could not set up the project on the land arranged by it in village Mankhera due to connectivity issues as brought out above. The petitioner had indicated the availability of the said land at the time of seeking technical grid feasibility as early as 04.05.2015 and for which the petitioner submitted the lease deeds on 30.07.2015. The concurrence granted by PEDDA on 13.07.2015 could not be utilized by the petitioner as the petitioner was

**advised by the respondents to arrange for land in two separate villages. The petitioner could arrange land afresh in September October 2015 and accordingly submitted the final drawings to PEDDA with all the details required in respect of location/land/sheds etc. as per IA/RfP on 05.10.2015, which PEDDA approved on 30.10.2015.**

**xxiv) Keeping in view the above, the Commission is of the considered opinion that there is a case for allowing relief to the petitioner for the period from 30.03.2015 when the petitioner submitted the concept note/drawings to PEDDA for approval to 05.10.2015 (189 days) after considering the period from 05.10.2015 to 30.10.2015 as reasonable for granting approval by PEDDA and accordingly the same is allowed.**

Jat Agitation

xxv) The petitioner submitted that the Jat agitation in the State of Haryana turned violent around 20.02.2016 and remained so upto 24.02.2016. Most parts of the State remained under curfew during the period restraining the movement of material to the project site. The petitioner further submitted that PEDDA was informed of the same vide letter dated 22.02.2016 notifying it as force majeure event resulting in delay of 10 days from 14.02.2016 to 24.02.2016. PSPCL submitted that the Jat agitation initiated in District Rohtak, Haryana was 220 km away from the project and did not have any effect in the State of Punjab. PEDDA submitted that Jat agitation event claimed by the petitioner is a purported force majeure event.

**xxvi) The Commission notes that the petitioner has claimed benefit of 10 days from 14.02.2016 to 24.02.2016 due to alleged force majeure on account of Jat agitation. Both**

**PSPCL and PEDDA have opposed the same. The Commission further notes that the challans/bills of the transporters submitted by the petitioner have been issued in the period from 18.02.2016 to 24.02.2016. As per the said bills, the material for plant and machinery was loaded from Puducherry/Chennai/Kolkata. As the dates of the invoices coincide with the dates of Jat agitation, the Commission is unable to comprehend as to how the material could travel a distance of more than 2000 kms and reach the border of Haryana on the said dates. Moreover, the period has been claimed from 14.02.2016 whereas the material has been despatched on 18.02.2016 onwards. Accordingly, the Commission is not inclined to give any benefit to the petitioner and the claim of the petitioner on this account fails.**

**xxvii)The Commission notes that the petitioner has also claimed benefit of force majeure on account of delay due to (i) unrest in the State of Punjab on account of desecration of Holy Sri Guru Granth Sahib during the period 14.10.2015 to 22.10.2015 and (ii) due to impact of whitefly epidemic due to which staff of the sub registrar remained busy for distributing compensation to farmers. Both PEDDA and PSPCL have opposed the same. The Commission does not find any merit in the ibid claims of the petitioner. No relief on account of the said alleged force majeure events was allowed by the Commission in its Order dated 18.08.2016 in petition no.6 of 2016 filed by Mihit Solar Power Pvt. Ltd. stating that the petitioner had failed to submit the relevant documentary**

proofs to justify the delay which is the case in the present petition also.

xxviii) The petitioner's Plant No.1 and Plant No.2 were commissioned on 31.03.2016 and 01.05.2016. The scheduled date of commissioning as per the PPA was 30.01.2016. The commissioning of Plant No.1 was delayed by 61 days and that of Plant No.2 by 92 days. The Commission finds that the said periods are less than the number of days allowed by the Commission i.e. 155 days for Plant No.1 and 220 days for Plant No.2 for the delay by PSPCL in granting grid connectivity as also 189 days allowed by the Commission for the delay by PEDDA in approval of the drawings for the rooftop structures. Accordingly, the scheduled date of commissioning shall be taken as 31.03.2016 for Plant No.1 and 01.05.2016 for Plant No.2. In view of the above, there is no case for levy of penalty provided in the IA and/or PPA by way of encashment of PBGs by PEDDA and/or deduction of any amount on account of liquidated damages by PSPCL. Also, there shall be no change in the tariff of ₹ 7.57 per kWh as provided in the PPA which is payable to the petitioner by PSPCL for purchase of electricity from the petitioner's projects.

xxix) Consequently, the Commission directs PEDDA to forthwith release the PBGs to the petitioner. PSPCL is directed to refund the amount of ₹ 93 lakh or any other amount deducted by it from the bills of the petitioner on account of levy of liquidated damages forthwith to the petitioner. In case PEDDA and PSPCL fail to comply with the

above directions within seven working days from the date of this Order, they shall 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 beyond seven working days.

xxx) As PSPCL is aware, Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) (2<sup>nd</sup> Amendment) Regulations, 2016 was issued on 05.10.2016 amending the supply voltage for different category of loads/consumers, it would be in the fitness of things if PSPCL follows the same voltage levels for interfacing the renewable energy power projects and captive power plants with the state grid.

Therefore, before parting with this Order, the Commission directs PSPCL to forthwith amend its instructions contained in commercial circular no. 23/2015 issued on 08.06.2015 with regard to the minimum voltage levels for interfacing of new and renewable sources of energy (NRSE) projects/captive power plants (CPP) with the state grid to be aligned with the supply voltage for different category of loads/consumers specified in the *ibid* 2<sup>nd</sup> Amendment to the Supply Code Regulations, except where a higher capacity has already been allowed by PSPCL for interfacing such projects with the state grid in the said commercial circular dated 08.06.2015, as illustrated in the Annexure-1. A copy of the amended circular/instructions shall be filed in the Commission within 30 days of the issue of this Order. A copy of the same shall also be sent to PEDDA. PEDDA is directed to

**meticulously adhere to the same in future.**

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

**Sd/-**

**(S.S. Sarna)  
Member**

**Sd/-**

**(D.S. Bains)  
Chairman**

Chandigarh  
Dated: 25.01.2017

Annexure-1

Minimum voltage level (depending upon nearest grid sub-station) for interfacing of renewable energy projects and captive power plants with the state grid

Sr. No.	Capacity of NRSE/CPP projects	Voltage
(i)	Up to 4 MW	11 kV
(ii)	More than 4 MW & upto 25 MW	33 kV/66 kV
(iii)	More than 25 MW & upto 50 MW	66 kV/132 kV
(iv)	More than 50 MW	132 kV/220 kV