

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

**Petition No. 37 of 2017**

**Date of Order: 22.03.2018**

Subject matter: Petition under Section 86(1) (f) of the Electricity Act, 2003 read with Regulation 9(1) and Regulation 69 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

AND

In the matter of: 1. Hindustan Clean energy Limited, 616A (16A, Sixth Floor), Devika Tower, Nehru Place, New Delhi 110019.

2. Magnet Buildtech Private Limited, (A Special Purpose Vehicle and 100% subsidiary Company of Hindustan Cleanenergy Limited), 616A (16A, Sixth Floor), Devika Tower, Nehru Place, New Delhi-110019.

----Petitioners

Versus

1. Punjab Energy Development Agency, (PEDA)  
Plot No.1 & 2, Sector 33-D, Chandigarh.

2. Punjab State Power Corporation Limited, PSEB  
Head Office, The Mall, Patiala-147001.

----Respondents

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

### **ORDER**

Hindustan Clean Energy Limited (**HCEL**) and Magnet Buildtech Private Limited, (**MBPL**) has filed the present petition under Section 86(1)(f) of the Electricity Act, 2003 (**Act**) read with Regulation 69 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, seeking extension of Scheduled Commercial Operation Date (SCOD) of the project till 14.02.2017 due to occurrence of the Force Majeure events which were beyond the control of the Petitioners; and seeking refund of the wrongful / illegal encashment of bank guarantee for Rs. 3.05 crore by PEDDA due to delay in commissioning of the Project beyond SCOD.

Punjab Energy Development Agency (PEDDA) filed caveat application no. 05 of 2017 for granting opportunity of hearing before passing any interim order in the petition. The petition was admitted vide order dated 06.07.2017, directing the respondents to file reply by 20.07.2017, further directing the petitioner to file rejoinder (if required) to the replies of the respondents by 27.07.2017. Punjab State Power Corporation Limited (PSPCL) filed reply to the petition vide memo no.

6578 dated 25.07.2017 and PEDDA filed reply vide letter no. 6624-26 on 31.10.2017. Vide order dated 08.11.2017, the parties were directed to file a summary of delay caused upto the date of commissioning the project as per terms and clauses of RfP, LoA, IA and PPA, pinpointing the party in default for each period of delay and the petitioner was directed to file rejoinder to the reply filed by respondents by 06.12.2017. The Commission in its Order dated 08.11.2017 directed that the petitioner may file the rejoinder to the reply filed by PSPCL and PEDDA by 06.12.2017. In compliance of order dated 08.11.2017, PSPCL filed synopsis vide memo. no. 5504 dated 14.11.2017 and PEDDA filed brief summary of the delay vide email dated 20.11.2017. The petitioner vide email dated 07.12.2017 filed rejoinder dated 06.12.2017 to the replies filed by PEDDA and PSPCL.

After hearing the parties, order was reserved, vide order dated 25.01.2018, directing that the petitioner shall file copy of extension given by PEDDA regarding submitting of land documents, copy of CEI clearance for plant and copy of notice given to PSPCL intimating the date of readiness for synchronization of the project with PSPCL grid. PEDDA was directed to submit the sequence / details of the process of initiation of the project and completion thereof to be followed by the project developers as envisaged in the RfP documents. The parties were directed to submit the said information / details in a week's time with copy to each other through e-mail and hard copy. The petitioner vide letter dated 10.02.2017, in partial compliance to the above order, filed the submissions and submitted the copy of extension given by PEDDA regarding submitting of land documents and copy of CEI clearance for plant. The petitioner has not submitted copy of notice



given to PSPCL intimating the date of readiness for synchronization of the project with PSPCL grid. PEDDA has not submitted any information / details as sought in the aforesaid order.

2. The submissions made in the petition, in brief, are as under:

I. Petitioner No. 1 is the parent company of the petitioner No. 2. Punjab Energy Development Agency (PEDDA) had issued a Letter of Award (**LoA**) dated 19.10.2015 in favour of HCEL for establishing the Project through its Special Purpose Vehicle (**SPV**) / 100% subsidiary i.e., MBPL. MBPL has set up a 50 MW Solar Power Generation Plant (**Project**). The capacity of 25 MW of the Project has been set up in village Sherkha wala, Distt. Mansa and another 25 MW capacity has been set up in village Todarpur and Maghaina, Distt. Mansa.

II. PEDDA issued the Request for Proposal (**RfP**) on 29.06.2015 and invited proposals for selection of bidders for undertaking development of Solar Photo Voltaic power plants through discount on generic tariff based competitive bidding. HCEL submitted its bid for the Project on 24.08.2015. Thereafter, on 19.10.2015, an LOA was issued to HCEL in terms of the RfP. HCEL executed a Performance Bank Guarantee (PBG) for Rs. 5.0 crore in favour of PEDDA on 12.11.2015. Thereafter, MBPL was incorporated as an SPV and 100% subsidiary of HCEL as per the terms of the LOA. An Implementation Agreement (I.A.) was executed between MBPL and PEDDA on 24.11.2015. A PPA was executed between MBPL and PSPCL on 12.01.2016. MBPL was required to

commission the Project within 12 months from the date of signing of the PPA and SCOD of the Project was 12.01.2017. MBPL had obtained land for the project measuring 260 acres (approx.) on long term lease basis for a period of 30 years in the villages Sherkha wala, Todarpur and Maghaina, Tehsil Budhlada, District Mansa, Punjab. MBPL had taken all the relevant approvals and started all the required activities essential for developing the solar power plant as under:

- (a) Engineering Procurement and Construction (**EPC**) contract was awarded to Hindustan EPC Co. Ltd. on 08.04.2016 for developing the Project.
- (b) Hindustan EPC Co. Ltd. gave an order for supply of solar modules to GCL System Integration Technology (Hong Kong) Ltd. (**GCL**) on 11.05.2016 for supplying 50 MW solar modules.
- (c) Technical Feasibility Clearance was granted to MBPL by PSPCL on 16.05.2016, for inter-connection of MBPL's Project with 66 KV Boha substation of PSPCL.
- (d) PSPCL, on 06.09.2016, approved the proposed route plan of 66 kV transmission line from the Project at village Shekha wala and Village Todarpur, to 66 KV Boha substation.
- (e) The work was awarded to Jain Brothers, Ambala on 26.09.2016 and 17.10.2016 for constructing approx. 8 km. of transmission line from both the locations, i.e., village Sherkha wala and village Todarpur & Maghaina to 66 kV Boha substation.

- (f) All major civil and electrical works like boundary wall, HT room, LT Room, Trenching, column post foundation, Module mounting structures, switchyard construction etc. were started on time and completed before SCOD.
- (g) PEDA requested Assistant Excise and Taxation Commissioner, District Mansa, for exemption of Entry tax on material required for setting up solar power plant on 24.10.2016 and 08.11.2016 respectively for 2 x 25 MW solar plant to be set up in village Sherkha wala and village Todarpur & Maghaina, Tehsil Budhlada, District Mansa.

III. PSPCL, on 22.09.2016, notified the schemes / transmission work necessary for the dispersal / distribution of power for improvement of the transmission and distribution system of the PSPCL under Section 164 of the Electricity Act, the Government of Punjab, Department of Power's order no. S/O, 46/C.A. 36/2003/S.164 /2013 dated 19.06.2013 and powers granted under Telegraph Authority under Part III of the Indian Telegraph Act, 1885.

IV. On 18.10.2016, MBPL and PSPCL executed Amendment No. 1 to the PPA dated 12.01.2016 for inclusion of location of plant. The relevant extract of the amended PPA is as follows:-

Article 1.0 Definitions

*“Site in Clause 1.0.0 DEFINITIONS of the PPA may be read as “25 MW (Part-1) solar PV Power Project at Village-Sherkha wala, Tehsil-Budhlada, Distt- Mansa*



*and 25 MW (Part-II) Solar PV Power Project at village-Todarpur and Maghaina, Tehsil-Budlada, Distt-Mansa Punjab using/ThinFilm/Crystalline Technology.”*

- V. PSPCL informed MBPL vide letter dated 11.11.2016 that Technical Feasibility Clearance issued earlier vide letter dated 16.05.2016, shall also include the project at villages Todarpur and Maghaina.
- VI. Due to the demonetization declared on 08.11.2016, various sub-contractors wrote to Hindustan EPC Co. Ltd. (i.e. MBPL's EPC Contractor) requesting for grant of extension to complete the work as under:
- (a) On 11.11.2016, a sub-contractor, namely, Millennium Dream Build Pvt. Ltd. (**MDBPL**) informed that it had mobilized its team for execution and construction of MBPL's Project. The work was being carried out at very fast pace but suddenly due to the declaration of demonetization on 08.11.2016, MDBPL started facing instant crunch of cash flow. Due to this, MDBPL's workers started demobilizing and have gone back to their home state. MDBPL requested to grant extension of time up to 15.03.2017 to complete the work awarded to it.
  - (b) On 11.11.2016, Eastern Bearings Pvt. Ltd. (**EBPL**) informed that, EBPL was awarded the work of supply of structure material to install the solar module for MBPL's Project. However, due to demonetization, EBPL was not able to release daily wages to its labourers. Due to the aforesaid, EBPL's production was suffering and EBPL was not able to deliver the material on time. Hindustan EPC

Co. Ltd. was requested to grant extension of supply of structure material up to 07.03.2017.

(c) On 12.11.2016, Nuevosol Energy Ltd. (**NEL**) informed that as a result of demonetization, NEL was facing trouble in labour payment due to huge cash requirement on daily basis. On 12.11.2016, all of NEL's labourers suddenly left the site and NEL's work has been stopped totally. Hindustan EPC Co. Ltd. was requested to extend the date of completion up to 15.03.2017, before which NEL cannot complete the work.

(d) On 12.11.2016, Addwatt Power Solutions Pvt. Ltd. (**APSP**) informed that, APSP's 45-50 labourers have suddenly left the Project site and the work has completely stopped. ASPSL was facing trouble in daily cash payment due to demonetization since 09.11.2016. Considering the fact that new arrangement of labour and its re-deployment will take time, Hindustan EPC Co. Ltd. was requested to extend the date of work order minimum up to March 2017.

VII. On 20.12.2016, a Civil Suit bearing No. CS/ 403/2016 was filed by four villagers against MBPL before Ld. Civil Judge along with an application under Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 seeking ad-interim *ex parte* injunction restraining MBPL from installing electric poles in the Plaintiffs' property.

VIII. On 04.01.2017, MBPL issued notice of Force Majeure event as per Article 10.4 of the Implementation Agreement to PEDDA and, *inter alia*, stated that:-



- (a) The Project construction activities suffered a sudden and serious blow due to disruption in supply of critical material and labour at Project site on account of demonetization announced by Govt. of India on 08.11.2016.
- (b) Demonetization severely and adversely affected the supply of labourers and critical material at site, as most of the labourers of MBPL's sub-contractors left the site for want of wages in cash during second week of November, 2016.
- (c) MBPL was facing major problem with respect to transportation of solar modules which was the last item to be transported for completion of the Project.
- (d) The aforesaid unprecedented delay in transportation through railways qualifies as Non-Political Force Majeure event in terms of Article 10.1 (i) of the Implementation Agreement which covers Acts of God or events beyond the reasonable control of the affected party which could not reasonably have been expected to occur.
- (e) MBPL was facing Right of Way (**RoW**) issue with owners of the land in course of laying the transmission line.
- (f) Four farmers had filed a Civil Suit (bearing no. CS/403/2016 and titled Raj Kumar and Ors. v. Magnet Buidtech Private Ltd.) before Ld. Civil Judge seeking permanent injunction against erection of the electrical towers on their lands by MBPL which fall under the approved route. The Ld. Civil Judge had granted ad-interim ex-parte injunction by way of its order dated 20.12.2016. The next date of hearing in the matter was fixed on 06.01.2017. In compliance of the said order, MBPL stopped the erection of electric towers.

The ongoing delay may extend, if the issue was not resolved or the Ld. Civil Judge did not vacate the stay on the next date of hearing.

(g) The abovementioned events were beyond the reasonable control of MBPL and MBPL has not been able to prevent the aforesaid events even after exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sum of money. Therefore, the abovementioned events constitute Force Majeure event under the provisions of the Implementation Agreement, and MBPL notified PEDDA about the situation in terms of the PPA.

(h) MBPL further requested PEDDA to treat this letter as notice for Force Majeure under Article 10.4 of the Implementation Agreement, grant waiver to MBPL from the obligation to achieve SCOD on 11.01.2017 and grant MBPL extension for commissioning of the Project by 11.02.2017.

IX. On 10.01.2017, PEDDA sent an email to MBPL, stating that:-

(a) MBPL to ensure to commission its Project before the SCOD (12.01.2017) i.e., 12 months from the date of signing of the PPA in all respects.

(b) After the 12 months period, extension could be given for 30 days in the first go on payment of a fee of Rs. 20000/MW/day and thereafter for another period of 60 days on a payment of a fee of Rs. 40000/MW/day. Thereafter, rights remain with PEDDA for forfeiture of 100% Performance Bank Guarantee.

- (c) MBPL shall be required to intimate at least 15 days in advance to PEDDA that extension is needed in commissioning and MBPL shall pay the extension fee for the period for which extension is sought at least 7 days in advance.
- (d) In case MBPL fails to pay the applicable extension fees to PEDDA, the same shall be recovered by encashment of the Performance Bank Guarantee at the time of grant of extension.

X. On 11.01.2017, PEDDA sent an email to HCEL, stating that:-

- (a) The SCOD of the Project is 12.01.2017, but as per the reports received, no project had been commissioned so far.
- (b) As per Clause 3.23 of the RfP, MBPL was required to intimate at least 15 days in advance to PEDDA that MBPL needed an extension in commissioning of the Project. Further MBPL had to pay the extension fee at least 7 days in advance for the period for which the extension was sought.
- (c) MBPL had not sought any extension and accordingly MBPL was requested to deposit the extension fee as per the RfP.
- (d) In case of failure in depositing the extension fee, the process for cancellation with forfeiture of bank guarantee would be taken as per the RfP and Implementation Agreement.



- XI. On 13.01.2017, RK Consultants (Govt. Registered Valuer and Chartered Engineer) prepared a report informing that the transmission line of 38 towers out of the total 40 towers including laying of conductors had been completed. Unless erection of pending two towers was completed, the power generated from the Project could not be injected in 66 KV Boha substation.
- XII. On 16.01.2017, in reference to MBPL's letter dated 04.01.2017 and PEDAs email dated 10.01.2017, MBPL wrote to PEDAs giving an update on the status of each of the following issues :
- (a) Impact of Demonetization: The situation was improving and slowly returning to normal. While there were still some issues being faced at site pertaining to labour and material, MBPL had now mitigated most of the issues.
  - (b) Court Case for RoW: In the hearing held on 06.01.2017, the Ld. Civil Judge posted the matter for the next hearing on 09.01.2017 asking the parties to arrive at a mutual settlement. However despite the best efforts of MBPL, no settlement had been reached with the land owners. The Ld. Civil Judge found PSPCL's notification under Section 164 of the Electricity Act defective and decided to extend the ex-parte injunction. MBPL was in the process of filing an appeal before the appellate authority to vacate the injunction. As per the report of the independent Chartered Engineer, 38 out of 40 towers had been erected and stringing of 7.576 km out of 7.926 km had been completed. The balance two towers and 350 metre stringing was held up due to RoW issues.

- (c) Solar Module Transportation: All the modules had been received at Ludhiana Inland Container Depot (**ICD**) and were being transported to the Project site.

Pending the commissioning of transmission line, MBPL proposed to get its Unit-1 (25 MW) at Todarpur completed by 20.01.2017 and Unit-2 (25 MW) at Sherkha wala completed by 05.02.2017. Simultaneously MBPL was also trying to find an amicable solution to the RoW issue. PEDDA was requested to grant extension for commissioning of the Project by 30 days.

- XIII. On 16.01.2017, MBPL filed a Civil Appeal bearing No. CMA/5/2017 before District Judge Mansa, challenging the Order dated 10.01.2017 passed by Ld. Civil Judge in Civil Suit No. CS/403/2016.
- XIV. On 22.01.2017, MBPL informed PSPCL that Construction of bays for connecting MBPL's Project was still under progress. As informed by PSPCL substation engineers, ABT meters at both bays and control panels at substation were yet to be installed which was the responsibility of PSPCL. MBPL had purchased 2 ABT meters to be installed at 2 bays at Boha 66 kV substation at MBPL's own cost, which was also the responsibility of PSPCL as per the PPA. Therefore, PSPCL was requested to refund the amount for purchasing the 2 ABT meters. MBPL was in the process of commissioning the plant by end of January, 2017 and hence requested PSPCL to facilitate the readiness of bays for connecting MBPL's 50 MW Project.
- XV. On 06.02.2017, MBPL was allowed by PSPCL to synchronise the 25 MW Solar plant at village Todarpur with 66 kV Boha

substation and it was synchronized on the same day. PEDDA was informed of the same vide email dated 08.02.2017. PEDDA vide letter dated 09.02.2017 refuted the claims of Force Majeure events made by the MBPL in the Force Majeure notice dated 04.01.2017 seeking extension of time to achieve COD.

XVI. MBPL vide email dated 10.02.2017 informed PEDDA as under:

- (a) MBPL had commissioned one unit of 25 MW at Village Todarpur on 06.02.2017 and the second unit at Village Sherkha wala was scheduled to be commissioned on 13.02.2017.
- (b) MBPL had written a letter on 04.01.2017 highlighting the hindrances being faced by it and requested one month extension in SCOD citing Force Majeure. The reasons stated therein constituted Force Majeure. Therefore, MBPL will not incur any liability due to any delay caused in Project SCOD.
- (c) MBPL is depositing the penalty stipulated in PEDDA's communication dated 10.01.2017 on 15.02.2017, despite the fact that its Project was delayed due to Force Majeure reasons. However, the same is without prejudice to MBPL's claim under the contract for Force Majeure which was pending consideration by PEDDA.
- (d) MBPL requested PEDDA not to invoke its bank guarantee and duly consider the effect of Force Majeure events

XVII. PEDDA vide email dated 10.02.2017 informed MBPL as under:

- (a) Since the Project was to be commissioned on 12.01.2017, hence MBPL is liable to pay per day extension fee to PEDDA for the delayed period beyond the



SCOD up till 06.02.2017 for 25 MW capacity commissioned by MBPL and the remaining 25 MW capacity till the same is commissioned as per the terms of RfP and Implementation Agreement.

- (b) After rejecting the extension of SCOD sought by MBPL's letter dated 10.01.2017 by its letter dated 09.02.2017, PEDDA had already made a request for partial encashment of the bank guarantee submitted by HCEL to the issuing Banker. Such partial encashment was to the tune of Rs. 3 crore on account of granting extension of SCOD to MBPL up to 11.02.2017.
- (c) PEDDA was constrained to encash the bank guarantee as MBPL failed to deposit the extension fee payable on account of each day's delay in Project commissioning.
- (d) After receiving the amount of Rs. 3 Crores from the Banker and after calculating the amount of extension fee payable by MBPL for the entire Project of 50 MW, depending on its actual commission date, extra amount, if any, received by PEDDA after strict compliance of Implementation Agreement and RfP, shall be refunded to MBPL. This would be without prejudice to the rights available to PEDDA under the RfP and Implementation Agreement to encash the bank guarantee submitted by MBPL on account of further default by MBPL of the terms and conditions mentioned therein.

XVIII. On 13.02.2017, PSPCL allowed MBPL to synchronize its 25 MW Solar plant at village Sherkha wala with 66 kV Boha substation and the same was synchronized on 14.02.2017.

Subsequently, on 15.02.2017, the certificate of synchronization was issued by PSPCL. MBPL informed PEDDA on 20.02.2017 that both units of MBPL's Project at village Sherkha wala and village Todarpur have been commissioned. MBPL vide letter dated 22.02.2017 informed PEDDA as under:

- (a) MBPL had commissioned both the units at village Todarpur and village Sherkha wala on 06.02.2017 and 14.02.2017 respectively.
- (b) With reference to MBPL's discussion at PEDDA's office considering delay in commissioning of both units, MBPL was required to pay Rs. 3.05 Crores as per Article 7 of the IA. However, PEDDA has already encashed Rs. 3 Crores from MBPL's bank guarantee against delay in commissioning fee.
- (c) MBPL had already deposited Rs. 5 Lakh (remaining extension fee for both plants) to PEDDA through NEFT. This was however without prejudice to MBPL's claim under the contract for Force Majeure.

MBPL requested PEDDA to issue commissioning certificates for both the units and release the remaining bank guarantee.

- XIX. PEDDA issued Commissioning Certificates on 28.02.2017 and informed MBPL vide letter dated 28.02.2017 that MBPL's bank guarantee of total amount Rs. 5 Crores stands partially encashed amounting to Rs. 3 Crore on account of extension fee to be paid for seeking extension in Project SCOD and MBPL's request for extending the commissioning date on the

basis of purported Force Majeure events already stood declined by PEDA's letter dated 09.02.2017.

PEDA returned the original bank guarantee dated 12.11.2015 issued by Axis Bank Ltd.

XX. That there has been a delay in achieving COD of the Project, due to Force Majeure Events i.e. order restraining the petitioner from erecting transmissions towers and constructing transmission line, delay in transportation of solar modules due to congestion in the railway route from Jaipur to Delhi Cantt, disruption in supply of critical material and labour due to demoralization and delay in construction of bays by PSPCL at the Boha sub-station. All the events which delayed the achievement of COD fall within the Force Majeure events as defined in Article 10.1 of the Implementation Agreement. In accordance with Article 10.4 of the Implementation Agreement, MBPL notified the occurrence of Force Majeure to PEDA by the notice dated 04.01.2017. None of these events can be attributed to MBPL.

XXI. MBPL was faced with RoW issues for the Project. The transmission line had to be laid for evacuation of power from the Project to the nearest sub-station through the approved route. It is submitted that as per Article 6.2(x) of the Implementation Agreement, the Petitioner's Project had to be interconnected with the 33/66 kV nearest technically feasible PSPCL / PSTCL sub-station.

PSPCL vide notification dated 22.09.2016, notified the schemes / transmission work necessary for the dispersal /



distribution of power for improvement of the transmission and distribution system of PSPCL. The notification had been issued by virtue of the powers vested and exercised under Section 164 of the Electricity Act and the Government of Punjab, Department of Power vide its order no. S/O, 46/C.A. 36/2003/S.164 /2013 dated 19.06.2013 and powers granted under Telegraph Authority under Part III of the Indian Telegraph Act, 1885 (Central Act no. 13 of 1885). By way of the above notification, due public notice was issued to general public at large to raise objection, if any, and / or to make any representation against the above scheme / transmission work within 60 days from the date of above said notification, after which no objections or representation would be entertained and all the schemes/transmission works will be deemed to be sanctioned with or without modifications as approved by PSPCL. The said notification was published in newspapers Ajeet Samachar and Times of India. Despite having a valid authorization under Section 164 of the Electricity Act, MBPL was not being allowed to lay the transmission lines due to which significant delay was caused to the Project. MBPL had approached the land-owners for paying the compensation in accordance with the guidelines issued by the Central Government from time to time. However, the owners of the property, with mala fide intentions and ulterior motives, declined to accept any compensation and instead filed Civil Suit No. CS/403/2016 before the Civil Court, Budhlada seeking permanent injunction against MBPL from erecting any tower and laying of transmission lines on their property.

Ld. Civil Judge passed an ad-interim ex parte order restraining MBPL from installing electric poles and wires in the suit property. The relevant extract of the order dated 20.12.2016 is provided herein below:-

*“...Perusal of the case file reveals that the very purpose of filing the present suit will be frustrated if defendant succeed in his nefarious design. As such, defendant is refrained from installing electric poles and wires in the suit property fully detailed in the head note of the plaint till further orders Ld. Counsel for the plaintiff is directed to comply with provisions of Order 39 Rule 3 CPC, failing to do so, interim order will vacate automatically...”*

Ld. Civil Judge passed an order on 10.01.2017 in the aforesaid suit and directed that the interim injunction be continued and the defendant to maintain status quo regarding erection of towers in the suit land. The relevant extracts of the order dated 10.01.2017 is provided herein below:-

*“7... This court finds weight in the contentions raised by the Ld. Counsel representing the applicant-plaintiffs that the public notice published by the respondent-defendant company is a mere eye wash and this public notice does not afford any opportunity to the aggrieved persons in the absence of any details from where an aggrieved can construe that his land is to be effected by the proposed erection of tower line. When 04 electric towers are already erected by the PSPCL, further erection of electric towers will leave the suit land useless as it will not be able to be used either for agriculture or commercial purpose. Even in view of the number of towers suit land will also*

*not be able to be used for residential purpose and the entire process will lead the land barren. The citations relied upon by the Ld. Counsel representing the respondent-defendant are not applicable in the present case because herein a private company is constructing the tower line under some agreement with the Pb. State Power Corporation Ltd. and is a profit earning project run by private person. As such, it cannot be said that the said work is done in public interest. Moreover, when the public notice is faulty, applicant-plaintiffs are assumed to be the sufferers and law of natural justice warrants that the applicant-plaintiffs should not suffer loss on account of fault of others. If respondent-defendant succeeds in erecting towers in the suit land illegally and forcibly, the loss so caused to the applicant-plaintiffs will not be compensated later on. As such, it can be easily said that applicant-plaintiffs have cause of action to file the present suit and balance of convenience lies in their favour in view of my above discussion.*

*8. Therefore, in the interest of justice and in a given set of circumstances, when necessary ingredients required for the purpose of interim injunction are complete as discussed above, **respondent-defendant are ordered to maintain status-quo regarding erection of towers in the suit land fully detailed in the head note of the plaint during the pendency of the suit...***

In the above context, the responsibility of issuing public notice under Section 164 of the Electricity Act lies with PSPCL.



All notifications pertaining to transmission line work under Section 164 of the Electricity Act, 2003 have a specific standard, which was maintained by PSPCL while issuing the said public notice in leading newspapers. MBPL was not responsible for issuing the public notice, but was only responsible for construction of transmission line on the route plan approved by PSPCL. Therefore, due to the existing injunction refraining MBPL from laying down any towers on the suit property, MBPL was delayed from undertaking construction work for the Project.

XXII. That on 16.01.2017, MBPL filed a Civil Appeal bearing No. CMA/5/2017 before the Hon'ble District Judge, Mansa challenging the order dated 10.01.2017. The hearing in the Appeal was fixed for 01.02.2017. During the pendency of the said Appeal, due to the persistent efforts of the Petitioner, both the parties reached an amicable settlement and accordingly, Civil Suit No. CS/403/2016 was withdrawn by the land owners. On 25.01.2017, the Ld. Civil Judge passed the order dismissing the suit as withdrawn as under:

*"File taken up today as Ld. Counsel for the parties has moved an application for withdrawing the present suit on the compromised. Plaintiff No. 3 Gora Lal alongwith Ld. Counsel has suffered statement before this court the matter has been compromised with the defendant. Plaintiffs have received the compensation from the defendant. As such, he withdraws the present suit. Plaintiff No. 3 Gora Lal has been duly identified by his Ld. Counsel for plaintiff. In view of the statement of the*

*plaintiff No. 3, the present suit stands dismissed as withdrawn...*”

Thereafter, the transmission line work was completed on 02.02.2017. In terms of Article 10.2.1(v) of the Implementation Agreement, it is clear that the orders dated 20.12.2016 and 10.01.2017 passed by the Ld. Civil Judge in Civil Suit No. CS/403/2016 fall squarely within the description of Non-Political Force Majeure events. Accordingly, the Petitioner is praying for extension of the date of achieving COD for the Project.

XXIII. MBPL had been facing issues regarding the transportation of the solar modules, which were the last item to be transported for completion of the Project. The modules were being manufactured by GCL and were being imported at Mumbai sea port, and were required to be moved from JNPT, Mumbai to Ludhiana ICD by rail. The movement from Mumbai to Ludhiana is under custom bond and the modules are to be custom cleared at Ludhiana. This movement / route plan is decided when the goods are loaded at the origin port (China) and is recorded on the Bill of Lading (**B/L**). Further, it was not possible for MBPL to change the transportation plan once the B/L had been generated. The distance of about 1750 km between JNPT, Mumbai to Ludhiana ICD is normally covered in 5 to 6 days, but due to the unprecedented congestion in the rail line between Mumbai and Ludhiana, more than 15 days were lost. MBPL received letters dated 02.01.2017 and 03.01.2017 from its transporters for solar modules which demonstrates the existence of congestion in the rail corridor. The aforesaid unprecedented delay in transportation by railways qualifies as

Non-Political Force Majeure Event in terms of Article 10.1(i) of the Implementation Agreement. These delays were beyond the control of the Petitioner and resulted in the delay in achieving COD of the Project.

XXIV. The Department of Economic Affairs, Ministry of Finance vide its Gazette Notification (bearing no. 2652) dated 08.11.2016 (**Demonetization Notification**), withdrew the legal tender character of the then existing Rs. 500/- and Rs. 1000/- bank notes with effect from 09.11.2016. Due to demonetization announced by the Govt. of India on 08.11.2016, MBPL has suffered various hardships primarily on account of shortage of cash which was the prime mode of transaction for availing the services of daily wages labourers as well as for procuring regular materials at the site. The Project construction activity of the MBPL suffered a sudden and serious blow due to the disruption in supply of critical material and labour at site. The said policy decision of the Govt. of India qualifies as Force Majeure event under Article 10.3(i) of the Implementation Agreement, i.e., Change in law. Article 10.3(i) of the Implementation Agreement provides as under:-

*“10.3 Political Force Majeure Event*

*Political Events shall mean one or more of the following acts or events by or an account of PEDDA, GoP, Gol or any other Government Agency or Statutory Authority.*

*i)Change in law...”*

In the above context, it is pertinent to note that on 28.12.2016, Govt. of India notified Payment of Wages (Amendment) Ordinance, 2016, which authorized the employers to pay wages



to its employees through cheque or by crediting the same in the employee's bank account. Prior to the passing of the said Ordinance, the employer was allowed to make payments only through current coin or currency. Therefore, MBPL could not have legally made payment of wages by cheque or through bank transfer to the labour employed for the construction of the Project. Demonetization further hampered the transportation of various goods required by MBPL, which too was primarily cash driven. All these factors cumulatively resulted into cascading effect and delay of execution of the Project.

XXV. The delay caused to the MBPL due to the aforesaid Force Majeure events is as under:-

- i) 45 days delay from 20.12.2016 to 02.02.2017 has been caused due to the issue of Right of Way and injunction granted by Ld. Civil Judge (Junior Division) Budhlada.
- ii) 50 days delay from 09.11.2016 to 28.12.2016 has been caused due to disruption in supply of critical material and labour due to demonetization.
- iii) 21 days delay from 15.12.2016 to 04.01.2017 has been caused due to delay in transportation of Solar Modules due to congestion in Railway route.

All of the above events have resulted in delay of around 87 days considering parallel Force Majeure events. However, due to the efforts of MBPL, the delay in commissioning the Project despite the Force Majeure events has been restricted to 25 days for 25 MW Plant at village Todarpur and Maghaina and 33 days for 25 MW Plant at village Sherkha wala.

XXVI. That as per Article 4.3.0 of the PPA, the erection and extension of substation bays was to be carried out by PSPCL. Since, MBPL was commissioning its 50 MW solar plant in two locations, PSPCL was obliged to erect and construct two bays at 66 kV Boha substation. As per Article 9.1.0 of the PPA, it is the responsibility of PSPCL to install ABT compliant meters at the grid substation of PSPCL.

XXVII. That on 06.12.2016, PSPCL sought the latest status of the Project. PSPCL also inquired about the status of bay at PSPCL's own substation. On 09.12.2016, MBPL replied to PSPCL's letter dated 06.12.2016 and informed that the scope of bay construction at 66 KV Boha substation is with PSPCL and the construction of the bay by PSPCL was under progress. On 22.01.2017, MBPL informed PSPCL that Bays construction for connecting MBPL's Project was still under progress. As informed by substation engineers, ABT meters at both bays and control panels at substation were yet to be installed which was the responsibility of PSPCL. MBPL had purchased 2 ABT meters to be installed at 2 bays at Boha 66 kV substation at MBPL's own cost, which was also the responsibility of PSPCL as per the PPA. MBPL was in the process of commissioning the plant by end of January, 2017 and hence requested PSPCL to facilitate the readiness of bays for connecting the Project. The inspection fee for bays at Boha substation was paid only on 24.01.2017 by PSPCL. Therefore, the bays were not ready till 24.01.2017. However, the said bays for evacuation of power from MBPL's Project were ready for connection only on 30.01.2017. Under the PPA, construction of

bay and installation of meters was the obligation of PSPCL. Therefore, even if the Force Majeure events had not hampered the progress of the Project, and had MBPL been ready to commission its project on 12.01.2017, the non-readiness of the substation bays had delayed the commissioning of the Project. This default of PSPCL is covered under Article 13.2.0 of the PPA which stipulates that failure or refusal by PSPCL to perform its material obligations under this agreement shall constitute an event of default.

XXVIII. That in terms of the provisions of the Implementation Agreement, on 12.11.2015, HCEL had furnished a Performance Bank Guarantee for Rs. 5.0 crore to PEDDA. After the occurrence of the Force Majeure events, the Petitioner issued the Force Majeure Notice to PEDDA on 04.01.2017. PEDDA, vide email dated 10.01.2017, without disputing the occurrence of the Force Majeure events and the effects thereof as claimed by MBPL, sought imposition of extension fee for the delay in achieving the COD of the Project. Such imposition was contrary to the provisions of the Implementation Agreement, which clearly entails that in case a Non-Political Force Majeure event necessitates extension of time for the Project implementation, both the parties will duly accept it. MBPL sent a further communication to PEDDA on 16.01.2017 reiterating its request for extension of SCOD for the Project.

XXIX. That PEDDA responded to the Force Majeure Notice dated 04.01.2017 vide its letter dated 09.02.2017 which was received by MBPL on 10.02.2017 i.e. after more than a month from the notice dated 04.01.2017. Therefore, there has been no lack of



diligence on the part of MBPL to keep PEDDA informed regarding the occurrence of these events. PEDDA in its letter dated 09.02.2017 has wrongly dismissed the claim of Force Majeure raised by MBPL on the ground that MBPL had concealed the fact that the Civil Suit had been filed by the Plaintiffs, due to the Plaintiffs not being compensated and illegal entry of MBPL on the land of the Plaintiff for erecting towers and laying the transmission line. The said contention of PEDDA is erroneous and PEDDA has failed to take into consideration that the erection of towers and laying of transmission lines had been undertaken by MBPL only after PSPCL had duly granted route map clearance to MBPL. The work of laying transmission line was done under the direct supervision of PSPCL for which the necessary charges have been paid by MBPL.

XXX. That PEDDA has examined but has not elaborated the reason for rejection of the other two contentions of MBPL i.e. demonetization (change in law) and delay in transportation due to congestion in Railway lines from Jaipur – Delhi Cantt. which were clearly beyond the reasonable control of MBPL. In view of the above, on 09.02.2017, PEDDA partially invoked the bank guarantee issued by Axis Bank on behalf of HCEL. Such an act of PEDDA is malafide and has caused financial hardship to the Petitioners. PEDDA has wrongly rejected the grounds of Force Majeure on the false pretext of delay in notifying the event of Force Majeure and levied extension fees. The interim injunction granted by the Ld. Civil Judge on 20.12.2016 was an ex-parte order and the same came to the knowledge of the

MBPL on or around 26.12.2016. On earlier occasions also, this Commission took cognizance of the wrongful acts of PEDDA and had directed PEDDA to refund the bank guarantee encashed. In this regard, reliance is placed on the order dated 18.08.2016 passed in Petition No. 6 of 2016.

XXXI. It is prayed to the Commission to:

- (a) Hold and declare that PEDDA has illegally encashed the bank guarantee and recovered the extension fee ignoring:-
  - i) Force Majeure events as per Article 10 of the Implementation Agreement;
  - ii) Procurers Event of default;
- (b) Hold and declare that the Scheduled Commercial Operation Date of the Project stands extended to 14.02.2017 on account of the existence of Force Majeure events and procurers event of default;
- (c) Direct PEDDA to refund the extension fee of Rs. 3.05 crores illegally retained by PEDDA by encashing the Performance Bank Guarantee provided by HCEL alongwith applicable interest;
- (d) Award cost of the present proceedings to the Petitioners; and
- (e) Issue such other / further order(s) as the Commission may consider appropriate in the facts and circumstances of the present case.

3. Submissions of PSPCL in reply to the petition, in brief, are as under:

- i) The petition is not maintainable against PSPCL because the petitioners are only aggrieved by the action of PEDDA in encashing the Performance Bank Guarantee.
- ii) PPA was signed between MBPL and PSPCL on 12.01.2016 for installation of 50 MW Capacity Solar Power Plants. The SCOD of the project was 11.01.2017. The 25 MW project at Todarpur was commissioned on 06.02.2017 and the other 25 MW project at Sherkha wala was commissioned on 13.02.2017 well beyond the SCOD because of gross negligence and mismanagement of the petitioners.
- iii) Technical Feasibility Clearance for 25 MW plant at Village Sherkha wala was granted on 16.05.2016. Later on, in view of the amendment no.1 dated 18.10.2016 to the PPA, PSPCL vide letter dated 11.11.2016 conveyed to the petitioners that the Technical Feasibility Clearance granted on 16.05.2016 shall also include Technical Feasibility Clearance for 25 MW plant at Village Todarpur and Maghaina.
- iv) The single line / protection drawings for the 2 projects at Village Sherkha wala and Todarpur were approved on 24.11.2016. The Soil resistivity test of plant side 66 KV Substation was cleared on 10.11.2016. PSPCL had carried out all obligations under the PPA on time and there has never been any negligence on its part.
- v) That the onus of construction of bays is on the PSPCL. It is not an activity which is required to be done by the petitioners and its completion or non-completion does not prevent the petitioners to complete the project and submit the relevant documents / clearances to PSPCL for commissioning within the specified time. It is the last step in connecting the power



generated from the new power plant to the sub-station and assuming that it has not been done, it did not prevent the petitioners from doing the activities that are required to be completed by them and submit the test reports for the same to PSPCL for the commissioning of the Project.

- vi) The petitioners have concealed the fact that as per Clause 5.5.0 and 8.2.0 of the PPA, they were required to get all the relevant tests done and submit the required documents / clearance reports to PSPCL one month before SCOD, which they did not submit. Clause 5.5.0 and 8.2.0 of the PPA read as under:-

*“5.5.0 The details of the following procedures and requirements shall be supplied by the generating company to the PSPCL as soon as possible, but in no event later than 30 (Thirty) days prior to the Scheduled date of synchronization:-*

*Detailed procedure for synchronization of the generating facility with the PSPCL/PSTCL’s Grid under different conditions of operation*

*Shut down and start up procedures”*

*“8.2.0 The generating company shall also inform the date of commencement of delivery of power one month in advance and arrange for testing and commissioning of the protection system before synchronization.”*

PSPCL vide letter dated 14.07.2016 conveyed to the petitioners that documents / clearances as specified in the enclosed annexure therewith are to be submitted 30 days before SCOD of the Project so that PSPCL can carry out the pending work of

bays, if any, requisite testing of bays and clear the project for commissioning on the due date.

- vii) This one month period is utilized by PSPCL to complete the technical and procedural requirements including construction of bays etc. on its side but the petitioners submitted the requisite documents and clearances only by 03.02.2017 and 10.02.2017 for projects at villages Todarpur and Sherkha wala respectively, well beyond the required date i.e.11.12.2016 and even beyond the SCOD i.e. 11.01.2017. The bays were ready on 30.01.2017 much before the petitioner had completed the required work at its end.
- viii) The petitioners have admitted in the petition that even as on 13.01.2017 erection of two towers was pending and they were expecting to erect the same by January end. The transmission line work was completed by 02.02.2017. The petitioners have also admitted in the petition that on account of various reasons mentioned therein, project completion would go beyond SCOD. Non-completion of bays did not prevent the petitioner from erecting the towers or carrying out other pending activities. Therefore no delay at all has been caused to the petitioners because of PSPCL.
- ix) The accusations made by petitioners are just preposterous assumptions when they say that “had they completed the project on time, late construction of bays would have delayed it”. This argument of the petitioners is untenable. Actually the projects were completed on 03.02.2017 and 10.02.2017 whereas the bays were ready by 30.01.2017. Therefore, there has been no impact at all of the late bay construction on the completion of project by the petitioners.

- x) After all the relevant documents / clearance reports were submitted by the petitioners on 03.02.2017 and 10.02.2017 for Todarpur and Sherkha wala projects respectively, approval was granted by PSPCL on 06.02.2017 and 13.02.2017 respectively within a period of 3 days only. PSPCL granted the approval within 3 days only which would have ordinarily required 30 days as per the clause 5.5.0 and 8.2.0 of the PPA.
- xi) The notice regarding transmission line was issued as per the due procedure of PSPCL. The issue arose on account of adequate compensation not having been paid by the petitioners to the land owners.
- xii) No force majeure event has taken place on account of any alleged delay on the part of PSPCL. PSPCL has granted all the permissions / sanctions on time and there has been no delay on its part. The Project is delayed on account of non-planning, bad management, incapability and various other latches committed by the Petitioners.
- xiii) It is prayed that in the light of the legal and factual position brought out by PSPCL, the petition may be dismissed with exemplary costs, in the interests of justice, equity and fair play.

4. Submissions of PEDDA in reply to the petition, in brief, are as under:

- i) The petition is bad both in terms of de-jure and de-facto. The petition is based on conjunctures and surmises and is not maintainable in the eyes of law. The petitioners have not demonstrated the true factual matrix of the matter and in order to evade its bounden obligation, as stipulated therein the RfP, LoA and IA, of achieving the



COD well within time i.e. uptill 12.01.2017, has tried to setup a false and frivolous case. Even otherwise, the petition is not maintainable as there exists an arbitration clause in the I.A. entered between the parties.

- ii) The petitioners while misusing the process of law, in order to invoke Section 86(i)(f) of the Electricity Act, 2003 have purported as if a dispute between the petitioners and PEDDA has arisen, however, Section 86(i)(f) of the Electricity Act provides for adjudication of dispute between distribution licensee and the generating company. The petitioners are allegedly claiming relief against PEDDA which is a nodal agency appointed by the State of Punjab and does not fall under the definition of distribution licensee. Section 86(i)(f) of the Electricity Act, 2003 does not provide for adjudication of dispute between the Solar Developer and the State Govt. Hence, the present petition is not maintainable as the petitioners wrongly invoked the jurisdiction of the Commission seeking adjudication of the present purported dispute raised by them.
- iii) The Implementation Agreement entered into between PEDDA and the petitioner is the main contractual document, which provides that the petitioner(s) was to setup the project and to achieve full capacity COD by 11.01.2017 (wrongly mentioned as 12.01.2017 in PEDDA reply). The Petitioner(s) has failed to achieve COD on the schedule date.
- iv) PEDDA floated RfP inviting various solar power private developers for setting up of an aggregate of 500 MW

capacity of solar projects under Phase-3 in the state of Punjab. As per the terms and conditions of the RfP, the successful bidder was to furnish a PBG of Rs. 10.00 Lakh per MW to PEDDA. Consequently, HCEL came to be successful bidder for allocation of 50 MW solar project and LOA dated 19.10.2015 was issued to it.

- v) In line with the terms and conditions of the RfP, HCEL deposited two un-conditional PBGs amounting to Rs. 5,00,00,000/- with PEDDA. As per the terms and conditions of the RfP/IA, the developer was under a bounden obligation to commission the plant on or before 11.01.2017. In case of delay beyond 11.01.2017, it has been provided that an extension fee of Rs. 20,000/- per MW per day shall be charged uptill delay of 30 days from the COD and for further delay uptill next 30 days, an extension fee of Rs. 40,000/- per MW per day shall be charged from the Project Developer. It has been further provided that the Project Developer shall inform PEDDA for seeking the extension at least 15 days in advance for which project developer shall pay extension fee for the period of extension at least 7 days in advance. In case the solar developer fails to pay the extension fee to PEDDA, the same shall be recovered from the encashment of PBG at the time of grant of extension.
- vi) Although the petitioners are purportedly claiming that delay in commissioning has occurred due to the occurrence of force majeure events, they have failed to follow the mechanism as to the invocation of force majeure clause in the IA, by giving notice to the other

party. Hence, the petitioners are not at all entitled for any relief as prayed for by them.

- vii) It was permissible under the RfP to setup the project in the name of SPV company, an Implementation Agreement dated 24.11.2015 was entered between the MBPL i.e. SPV company of HCEL and PEDDA. The IA inter alia provides for the mechanism as to the occurrence of force majeure events which 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.
- viii) A Power Purchase Agreement dated 12.01.2016 was entered between MBPL and PSPCL. It has been provided under clause 19.4.0 of the PPA that the clause with respect to Force Majeure as provided in the PPA will be operative after the project achieves COD. The provisions of IA will be applicable for the force majeure events occurring during the commissioning period of the project.
- ix) Although there exists a provision in the RfP to split the allocated project subject to the prior approval of PEDDA, MBPL on its own, without seeking any approval of PEDDA, sought technical feasibility clearance from PSPCL for setting up 25 MW unit at Village Sherkha wala, Distt. Mansa, which was granted to the petitioner by PSPCL on 31.03.2016 inter alia subject to submission of land documents. Similarly, MBPL without seeking the prior



approval from PEDDA, on its own applied for technical feasibility clearance from PSPCL for setting up the remaining 25 MW project at Village Maghaina, Distt. Mansa, which was not granted by PSPCL vide its letter dated 01.04.2016.

- x) PSPCL informed PEDDA vide letter dated 16.05.2016 with respect to grant of technical feasibility clearance for 2x25MW Solar PV Project of the petitioner(s), located in Village Sherkha wala, Distt. Mansa from 66KV sub-station Boha. The said technical feasibility clearance was granted by PSPCL subject to submission of land documents on which the project was to be setup and the developer at its own level was to address the issues of Right of Way (ROW). In view of the fresh technical feasibility clearance, the earlier feasibility clearance granted for 1x25MW Solar PV Project vide letter dated 31.03.2016 was cancelled.
- xi) Since the project developer was to inter alia submit the financial closure, technology selection certificate, order copy, agreement copy with technology provider, loan sanction letter and land documents upto 10.06.2016, PEDDA vide letter dated 03.06.2016 requested MBPL for submission of the ibid documents on or before 10.06.2016. PEDDA in its aforesaid letter further informed that in case the petitioner requires extension for submission of the documents, the same can be sought on making a payment of Rs. 5,000/- per day.
- xii) The Petitioner vide its letter dated 10.06.2016 submitted some of the documents i.e. with respect to technology selection, order / agreement with the supplier, Certificate

of successful operation of technology, financial closure. However, it failed to submit the land documents. The petitioner vide its ibid communication requested for waiving of the extension fee while purporting that the delay has occurred due to change of sub-station and strike by patwaris.

- xiii) As per the clauses of LOA and RfP, the project developer was also bound to submit documentary evidence for infusion of balance 80% net worth at the time of financial closure in the shape of bank statement and copy of the allotment of shares filed with Registrar of Companies (ROC). Since MBPL did not comply with the aforesaid condition, PEDDA vide its email dated 10.06.2016 requested the petitioner to submit documents with respect to infusion of balance 80% net worth.
- xiv) PEDDA, on 21.06.2016, received letter dated 17.06.2016 from MBPL whereby the petitioner submitted documents with respect to infusion of balance 80% net worth and sought extension for submitting the land documents. The petitioner(s) submitted a demand draft of Rs. 1.5 Lakh in favour of PEDDA on account of extension fee seeking extension for submitting the land documents subject to final decision by PEDDA.
- xv) PEDDA, on 24.06.2017, informed the petitioner(s) that the documents submitted by it qua financial closure and land vide letter dated 09.06.2016 are incomplete and not in accordance with RfP. Further, PEDDA sought compliance from the petitioner(s) in terms of complete land documents in the shape of records of Revenue rights /

certified copy of title deeds showing ownership rights or leasehold rights for at least 30 years qua the project in question. PEDDA while granting 30 days extension as sought for by the petitioner(s), requested the petitioner(s) to submit the ibid documents on or before 10.07.2016.

xvi) Although the petitioner(s) was required to submit the requisite documents by 10.07.2016, the petitioner vide letter dated 01.09.2016 submitted the remaining documents. The petitioner vide above letter also submitted a sanction letter dated 30.06.2016 issued by IREDA for fulfilling the requirement of submission of the document, qua financial closure and registered land lease documents. Further, the petitioner(s) requested PEDDA to confirm that the IA and PPA are valid as on date as the same is required to fulfill the pre disbursal condition clause-3 of the IREDA part loan sanction terms and conditions. The petitioner(s) submitted the financial closure documents dated 30.06.2016 on 01.09.2016 to PEDDA i.e. after a delay of 3 months, which is attributable to the petitioner(s).

xvii) PEDDA vide letter dated 01.09.2016 confirmed that the petitioner(s) company has submitted all the documents as required under the RfP and IA and further confirmed that the IA and PPA are valid and effective as on date. PEDDA issued this letter keeping in view its obligation to facilitate the loan disbursal for the 50MW Solar Power Project of the petitioner(s).

xviii) PEDDA signed an amendment to the Implementation Agreement on 22.09.2016 thereby including the plant



locations for 2x25MW at village Sherkha Wala Tehsil Budhlada, Distt. Mansa and Village Todarpur and Maghaina, Tehsil Budhlada Distt. Mansa, Punjab.

xix) The petitioner(s) requested PEDDA vide letter dated 04.10.2016 for issue of NOC for assignment of Power Purchase Agreement in favour of the project lender. The petitioner(s) vide Email dated 05.10.2016 again requested PEDDA for issue of NOC for assignment of PPA in favour of lender. The petitioner(s) submitted that they have received part funding for the project from IREDA and subsequently they had applied to Rural Electrification Corporation (REC) for full funding. In response to the same, REC has issued a sanction letter confirming the full funding for the project. In addition, the petitioner(s) submitted that they shall not avail any loan from IREDA post disbursement of loan from REC, thereby requesting PEDDA to issue NOC for assignment of PPA in favour of REC.

xx) The petitioner(s) has time and again been changing its stances with respect to the financial closure, which demonstrates that till seeking NOC in the name of REC i.e. on 05.10.2016, the petitioner did not had financial closure for the project. Initially, the petitioner (s) submitted financial closure document on 10.06.2016 rendered by its parent company Hindustan Clean Energy Limited. Thereafter, the petitioner while changing its stance submitted financial closure rendered by IREDA and submitted it to PEDDA on 01.09.2016. The petitioner while

once again changing its stance submitted financial closure document rendered by REC.

- xxi) PEDA, vide letter dated 07.10.2016, declined the request made by the Petitioner(s) to grant NOC for assignment of PPA in favour of REC, giving a detailed reasoning therein. PEDA in its ibid letter stated that earlier the petitioner had submitted loan agreement dated 02.05.2016 between HCEL and MBPL. Thereafter, vide email dated 05.10.2016 it informed part funding of the project by IREDA and thereafter it applied to REC for full funding of the project and enclosed loan sanction letter from REC dated 22.09.2016. PEDA further informed that the loan sanction letter dated 22.09.2016 submitted vide email dated 05.10.2016 by the petitioner cannot be considered as the same does not meets the RfP time line submission of financial closure i.e. 10.06.2016. PEDA also informed the petitioner that letter dated 01.09.2016 issued to MBPL stands in-operative which was issued to facilitate the loan disbursal from IREDA.
- xxii) The Petitioner(s) represented before the Principle Secretary, New and Renewable Energy, Government of Punjab vide letter dated 11.10.2016 requesting for intervention to advise PEDA to render assignment of PPA in favour of Lender (REC) and also requested that PEDA may allow routing of Revenue through the Trust Retention Account (TRA).
- xxiii) The petitioner vide letter dated 14.10.2016 in response to ibid letter dated 07.10.2016 issued by PEDA, requested to provide the NOC regarding assignment of PPA in

favour of Lender (REC), while purporting the same to be a case of re-arranging finance from REC. It is apparent that the petitioner(s) did not had loan sanctioned for the project till 14.10.2016, as no final loan agreement was submitted by the Petitioner(s) to PEDDA as provided in clause 3.22 of the RfP.

xxiv) The petitioner(s) vide letter dated 18.10.2016, in response to letter dated 07.10.2016 of PEDDA, while mentioning that REC has sanctioned loan amount of Rs. 242.86 crore on 22.09.2016, requested for replacement of the project lender from HCEL to REC and for issuance of NOC for assignment of PPA in favour of REC. The petitioner(s) further requested to submit the loan agreement to PEDDA, entered with REC, shortly. The petitioner(s) did not had a final financial closure document as to the grant of loan till 18.10.2016. The petitioner(s) again requested vide letter dated 24.10.2016 for the grant of NOC regarding assignment of PPA in favour of Lender.

xxv) PEDDA vide letter dated 27.10.2016 informed the petitioner(s) that PSPCL has intimated it that as on 13.10.2016 Departmental Charges have not been deposited by the petitioner(s). Therefore, construction of 66 KV line cannot be started in absence of deposit of charges and thus project will get delayed. PEDDA vide the ibid letter reminded the petitioner(s) about the SCOD as 11.01.2017 and requested the petitioner(s) to comply with the instructions of PSPCL without any further delay.

xxvi) PEDDA vide letter dated 28.10.2016 issued NOC to the petitioner(s) regarding assignment of PPA in favour of



Lender (REC) with the condition that delay in re-arranging the debt funding from HCEL to REC from the scheduled date of financial closure i.e 10.06.2016 is entirely to the account of the company and no extension on this account in COD shall be admissible.

xxvii) PEDA received letter dated 03.11.2016 from PSPCL along with amended Power Purchase Agreement (PPA) signed by PSPCL with the petitioner regarding changed location of the projects i.e. 25 MW (Part-I) solar PV Power Project at Village- Sherkha wala, Tehsil- Budhala, District Mansa and 25 MW (Part- II) Solar PV power Project at Village Todarpur and Maghaina, Tehsil- Budhala, District- Mansa Punjab using Thin Film / Crystalline Technology. PSPCL vide letter dated 11.11.2016 granted technical feasibility for 2x25 MW PV based Solar Power plants in Village Sherkha wala and Village Todarpur & Maghaina.

xxviii) PEDA vide letter dated 06.12.2016, while referring to its earlier letters dated 14.07.2016, 19.08.2016 and 01.11.2016, sought from the petitioner(s) the latest status of the solar power projects and reminded it to adhere to the scheduled date of commissioning which is 11.01.2017. PEDA vide letter dated 21.12.2016 again requested the petitioner(s) for ensuring the commissioning of the 2x25 MW solar projects by SCOD i.e. 11.01.2017.

xxix) On 06.01.2017 i.e. only 6 days prior to SCOD, the Petitioner(s) submitted a notice dated 04.01.2017 of force majeure under clause 10.4 of the Implementation Agreement dated 24.11.2015 with respect to its 2x25 MW

SPV projects seeking extension for the commissioning of the projects by 11.02.2017 on the purported grounds of disruption in supply of critical material and labour due to demonetization, delay in transportation of solar modules due to congestion in the railway route (Jaipur-Delhi cantt.), delay in Right of Way (ROW)- Erection of transmission line towers and laying of transmission line and Ex-parte injunction granted by the Civil judge, Junior Division, Budhlada. Along with the ibid letter, the petitioner(s) had appended the stage of work in progress by way of photographs, without mentioning the concerned site, which also itself demonstrates that drilling work for erection of structures for mounting Solar Power Modules was still going on and some of the SPV Modules were being unloaded and none of the modules were yet erected at site. The High Tension / Low Tension control Room has been depicted to be at a raw stage. The tower erection at site was shown to be still in progress.

xxx) PEDDA vide an e-mail dated 09.01.2017 asked all the project developers including the petitioner(s) to ensure commissioning of the projects before SCOD i.e. 11.01.2017. PEDDA further informed that otherwise, after SCOD, extension can be given for 30 days in the first go on payment of a fee of Rs. 20,000/ MW/Day and thereafter for another period of maximum 60 days on a payment of a fee of Rs. 40,000/MW/Day. Thereafter rights remain with PEDDA for forfeiture of 100% PBG. Solar Project Developers (SPDs) shall be required to intimate at least 15 days in advance to PEDDA that they need

extension in commissioning and they shall pay the extension fee for the period for which extension is sought, at least 7 days in advance. In case, the SPD fails to pay the applicable extension fee to PEDDA, the same shall be recovered by encashment of the PBG at the time of grant of extension.

xxxi) Further, PEDDA vide email dated 11.01.2017 informed the petitioner(s) about the clauses of the RfP/IA regarding seeking further extension in commissioning date by paying Extension fee as the project was not commissioned. Since no extension had been sought by the petitioner(s), PEDDA while informing the same, requested the petitioner(s) to deposit the Extension fee as per the RfP, failing which, PEDDA shall recover the same by forfeiture of PBG.

xxxii) The District Manager of PEDDA vide Email dated 17.01.2017 submitted a Status report of the project as on 14.01.2017 on physical inspection. It was submitted that even the Module structures and Modules had not reached at the site of the project at Sherkha Wala as on 14.01.2017. However, the work on transmission line was near completion. Similarly, vide the ibid report with respect to project at village Todarpur, it was submitted that 80-90% Module structures were erected and only 65-70% Modules were installed. The District Manager further submitted that the work on transmission line was near completion. Hence, no reliance can be placed upon the false and frivolous assertions made by the petitioner(s) in



the ibid communication dated 04.01.2017 as well as in the petition.

xxxiii) Since the petitioner(s) despite various requests / reminders failed to deposit the extension fee, PEDDA was left with no option and partially encashed the PBG to the extent of Rs. 3.0 crore due to failure of the petitioner(s) to commission the project by 11.01.2017. The amount was remitted to the account of PEDDA on 13.02.2017.

xxxiv) PEDDA vide letter dated 09.02.2017 in response to the purported notice dated 04.01.2017 of the petitioner(s) as to the alleged occurrence of force majeure, declined the request of the petitioner(s) for extension in commissioning of the Project upto 11.02.2017, giving detailed reasoning. PEDDA further stated that SCOD was 11.01.2017 and seeking ROW for laying transmission line is an important project milestone which needs to be achieved much earlier. Vide the ibid communication, the petitioner(s) was further informed that PEDDA has sought partial encashment amounting to Rs. 3.00 crore of PBG for recovery of requisite extension fee.

xxxv) The petitioner (s) vide email dated 10.02.2017 informed PEDDA that it has commissioned one plant of capacity 25 MW at Village Todarpur and Maghaina on 06.02.2017 and the second plant of capacity 25 MW at Village Sherkha wala is scheduled for commissioning on 13.02.2017.

xxxvi) PEDDA vide email dated 10.02.2017 informed the petitioner(s) that after receiving the amount of Rs. 3.0 crore from the banker upon encashment of PBG and after

calculating the amount of extension fee payable by the petitioner(s) for the entire project of 50 MW depending upon its actual commissioning date as per terms and conditions of RfP and IA, extra amount, if any, received by PEDDA on account of extension fee after encashing the PBG, shall be refunded to the petitioner(s).

xxxvii) PEDDA, on 20.02.2017, received letters dated 07.02.2017 & 15.02.2017 from PSPCL, wherein it was stated that the plant of capacity 1x25 MW at Village Todarpur & Maghaina and another plant of capacity 1x25 MW at Village Sherkha wala were synchronized on 06.02.2017 and 14.02.2017 respectively with 66 KV substation Boha.

xxxviii) PEDDA on 21.02.2017 received letter dated 20.02.2017 from the petitioner(s) seeking issuance of commissioning certificate for its (2x25MW) Solar Power project at Village Sherkha wala and Village Todarpur & Maghaina, District Mansa. Further, the petitioner(s) vide letter dated 22.02.2017 requested PEDDA for release of remaining Bank Guarantee and issuance of Commissioning Certificate for the project. The petitioner(s) was required to pay Rs. 3.05 crore as per article 7 of the IA on account of extension fee for the delay in commissioning, out of which Rs. 3.0 crore were received by PEDDA by encashment of PBG and petitioner(s) deposited Rs. 5.0 lakh separately with PEDDA. The commissioning certificate was issued to the petitioner(s) vide letter dated 28.02.2017.

xxxix) The petitioner(s) has been under a bounden obligation to deposit the amount of Rs. 3.05 crore on account of the extension fee levied upon the petitioner(s) due to the delay caused in the commissioning of the project. PEDDA has rightly encashed the partial PBG of the petitioner(s), which the petitioner(s) while later on accepting had himself deposited a sum of Rs. 5.0 lakh on account of extension fee with PEDDA at the time of seeking commissioning certificate. Hence, now at this stage the petitioner (s) cannot be allowed to take a contrary stand to the earlier by filing the present petition. Hence, the present petition deserves to be dismissed.

xl) The false assertions of the petitioner(s) as to purported occurrence of Force Majeure events are belied from the fact that in the same phase of allocated projects, solar power projects with total 250 MW capacity have been successfully commissioned by similarly placed developers in the state of Punjab.

xli) The Commission in its Order dated 25.04.2016 in Petition no.27 of 2016 in the matter of Talwandi Sabo Power Ltd. Versus PSPCL has held as under:-

*“..... The Commission is of the view that the notices fulfilling the requirements in terms of Article 6.1.1 of the PPA are mandatory and were required to be issued by TSPL. The same are not forthcoming in the submissions of TSPL. The office of Chief Engineer/Thermal Designs specifically requested TSPL for supplying copies of these notices issued under Article 6.1.1 of*



*the PPA but TSPL failed to do so. The Commission finds that TSPL has not met with the requirements of Article 6.1.1 of the PPA. Hon'ble APTEL in its recent Judgment dated 07.04.2016 in Appeal No. 56 of 2013 and Appeal No. 84 of 2013 filed by TSPL against impugned Orders dated 24.12.2012 and 27.09.2012 passed by the Commission in Petitions No. 46 of 2012 and 11 of 2012, has set aside the said Orders. The Commission interprets that the underlying principle behind the said findings is that provisions of the PPA should be strictly followed in letter and spirit. Accordingly, the Commission holds that TSPL will comply with the requirements of Article 6.1.1 and Article 6.2.2 of the PPA meticulously.....”*

Since the petitioner(s) have failed to give notice to PEDDA in line with the Force Majeure clauses of IA, hence in light of the ibid Order of the Commission, no reliance can be placed upon the false assertions made by the petitioner(s) regarding delay in commissioning of the project due to the purported occurrence of the force majeure events. Hence, the petition needs to be dismissed.

- xlii) The petitioner(s) is not at all entitled for any relief as prayed for. The petitioner(s) by concealing the material truth has wrongly sought to declare PEDDA responsible for encashing the Performance Bank Guarantee. The request of the petitioner(s) for declaring that the Scheduled

Commercial Operation Date of the Project stands extended to 14.02.2017 on account of the existence of Force Majeure events is illegal. Therefore, the petition deserves to be dismissed.

5. The petitioner in its Rejoinder to the reply filed by PEDDA reiterated its earlier submissions and further submitted as under:

i) It is the contention of PEDDA that the petition is not maintainable as the same has been filed invoking Section 86(1) (f) of the Electricity Act, 2003 which only provides for adjudication of disputes between the distribution licensees and generating companies whereas PEDDA is a nodal agency appointed by the state of Punjab and does not fall under the definition of distribution licensee. In the above context, it is submitted that the petition has been filed by invoking:-

a) Section 86(1)(f) of the Electricity Act, which provides for adjudication by the State Commission upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

b) Regulation 9(1) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 ("**Conduct of Business Regulations**") which provides that this Hon'ble Commission may initiate any proceeding *suo moto* or on a petition filed by any affected or interested person; and

c) Regulation 69 of Conduct of Business Regulations, which provides:-

*“1. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.*

*2. Nothing in these Regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient.*

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

In view of the above, the Commission is empowered to deal with any matter or exercise any power under the Electricity Act for which no Regulations have been framed, and the Commission may deal with such matters and exercise powers and functions for meeting the ends of justice. Further, PSPCL, which is a distribution licensee in the state of Punjab has also been made a party to the



petition. Therefore, the present dispute attracts Section 86(1) (f) of the Electricity Act, 2003. Therefore, the petition is maintainable before the Commission.

- ii) The two bays were commissioned by PSPCL only on 30.01.2017. The same has also been admitted by PSPCL in its reply. As such, the petitioner(s) could not have achieved SCOD of the Project till such time the bays were not commissioned by PSPCL. In this context reliance is placed on Hon'ble Supreme Court's judgment in *Arosan Enterprises Ltd. v. Union of India & Anr.* (1999) 9 SCC 449 (Paras 14 and 24-27). The relevant extracts of the judgment are as under:-

*“14. Incidentally the **law is well settled** on this score on which no further dilation is required in this judgment to the effect that **when the contract itself provides for extension of time, the same cannot be termed to be the essence of the contract and default however, in such a case does not make the contract voidable either.....”***

- iii) PEDDA has raised the issue of Financial Closure of the Project, which is not germane for the adjudication of the petition. However, it is submitted that as per clause 3.22 of the RfP dated 29.06.2015 issued by PEDDA, MBPL had to submit documents indicating financial closure of its Project within 150 days from the date of signing of the PPA i.e. upto 10.06.2016. PEDDA has raised misleading contentions with respect to the financial closure of the

Project and has submitted that MBPL did not had the loan for the Project sanctioned till 14.10.2016. In accordance with the said provision of the RfP, MBPL vide letter dated 10.06.2016 submitted details of the financial closure of the Project achieved by the MBPL to PEDA, wherein it was submitted as under:

- (a) MBPL had already infused an equity of Rs. 80.96 crore in the Project, out of the Project cost of Rs. 323.82 crore.
- (b) For the funding of the balance cost of the Project, MBPL had applied to PFC and IREDA for sanction of long term loan for the Project.
- (c) PFC had agreed in principle to process MBPL's case.
- (d) The application for loan sanction was at an advanced stage before IREDA.
- (e) MBPL is a 100% subsidiary of HCEL and HCEL had recently raised Rs. 850 crore from Bank of America Ltd. by issuing debentures in its favour for funding of Solar PV projects to be developed by subsidiaries of HCEL.
- (f) Pending loan sanction / documentation with PFC or IREDA, MBPL had entered into a loan agreement with MBPL's parent company i.e. HCEL on 02.05.2016 for balance funding.

- (g) MBPL would replace the loan from HCEL, once either PFC or IREDA sanctions the long term loan for the Project.

Therefore, as on 10.06.2016, the petitioner(s) had achieved financial closure of the Project. MBPL, on 05.10.2016, informed PEDDA that it had received part funding of the Project from IREDA. Subsequently, MBPL had also applied to REC for full funding of the Project and MBPL had received a sanction letter from REC for full funding. MBPL confirmed that it would not avail any loan from IREDA post disbursement of loan from REC. MBPL requested PEDDA to provide a No Objection Certificate for assignment of the PPA in favour of REC.

- iv) Further, on 17.06.2016, MBPL submitted the documentary evidence with respect to infusion of balance 80% net worth at the time of financial closure in the form of bank statements for the periods April 2015 to May 2016 and copies of return filed with Registrar of Companies for allotment of shares showing total amount of net worth infused as Rs. 81,00,29,000/-.
- v) MBPL clarified vide letters dated 14.10.2016 and 18.10.2016 as under:
  - (a) MBPL had entered into a loan agreement with HCEL on 02.05.2016 and this loan agreement still stood as it is, and HCEL was committed to honor this loan agreement. Hence there was no change in



the financial closure which had already been achieved.

- (b) In order to improve the Project viability, HCEL had approached other financial institutions / banks to consider the debt component of the Project and the same was intimated to PEDDA by MBPL's letter dated 10.06.2016.
- (c) MBPL had received loan sanction from IREDA on 30.06.2016 for only part amount of the total loan requirement. Therefore, MBPL did not avail this sanction.
- (d) Subsequently, MBPL received sanction from REC on 22.09.2016 for full loan amount of Rs. 242.86 crore. This loan was at better terms (longer repayment period and lower rate of interest) than the loan being extended by HCEL. Therefore, in order to improve Project viability, MBPL was desirous of taking funding from REC.

MBPL had achieved financial closure of the Project within the stipulated time under the RfP and it kept PEDDA duly informed about the re-arrangement of its finances by the MBPL. Further, MBPL submitted all the remaining documents with respect to financial closure of the Project. Accordingly, PEDDA vide its letter dated 01.09.2016 had also confirmed that MBPL had submitted all the documents as stated under the RfP and the Implementation Agreement. PEDDA provided its NOC for assignment of the PPA in favour of REC on 07.10.2016. Therefore, the contentions of PEDDA with respect to the

financial closure of the Project are baseless and ought to be rejected by the Commission.

vi) As per Article 6.2(vi) of the Implementation Agreement, MBPL was required to furnish the documents pertaining to the land for construction of the Project within 150 days from the date of signing of the PPA i.e. upto 10.06.2016. PEDAs has submitted in its Reply that MBPL failed to submit land documents for the Project on time. In this context, it is submitted as under:

- (a) Immediately after signing the Implementation Agreement, MBPL entered into a Memorandum of Understanding (MOU) for leasing about 250 acres of land for its 50 MW Project in November 2015 for two locations i.e. village Sherkha wala and village Maghaina with 125 acres for each location. Since it was difficult to get contiguous land in the state of Punjab, having predominantly agricultural land, MBPL had to split the Project into two parts of 25 MW each.
- (b) MBPL submitted an application before PSPCL for the connectivity of the two parts of its Project with the Chak Ali Sher 66 kV Sub-station.
- (c) Simultaneously, in order to avoid any loss of time, MBPL got 113 Acres of land registered by January 2016. However, MBPL had to stop the registration of the rest of the land as PSPCL was non-committal on grid availability. Till 10.06.2016, MBPL had registered about 121 acres of land documents.

- (d) PSPCL, finally on 16.05.2016, provided grid connectivity to MBPL at Boha Sub-station. Therefore, MBPL had to cancel its MOU of 125 acres for Maghaina and search for new land.
- vii) MBPL vide its letter dated 10.06.2016 gave detailed reasons for the delay in acquiring the complete land parcel for the construction of the Project. MBPL in its letter dated 10.06.2016 submitted as under:
- a) Due to difficulty in obtaining a single parcel of 250 acres, and in accordance with the provisions of the RfP and Implementation Agreement, the Project was proposed to be set up at two nearby but separate locations i.e. village Sherkha wala and village Maghaina.
  - b) MBPL simultaneously applied to PSPCL for connectivity of the 2X25 MW Project with 66 kV Chak Ali Sher sub-station on 26.11.2015 and 01.12.2015. MBPL's request was not entertained by PSPCL in the absence of PPA, as the PPA was not approved internally by PSPCL at that time. Finally, the PPA was approved and signed by PSPCL on 12.01.2016. Thereafter, MBPL applied afresh for grid connectivity on 13.01.2016.
  - c) The permissibility of splitting the Project into two parts was not clear to PSPCL. Therefore, PSPCL sought clarifications on the same vide its letter dated 03.02.2016.



- d) PSPCL, on 19.02.2016, conveyed the non-feasibility of Chak Ali Sher sub-station and suggested alternate sub-stations of 132/220 kV, which were situated far away and no land parcel was available in their vicinity.
- e) MBPL, on 25.02.2016, requested PSPCL for giving connectivity at other nearby sub-stations.
- f) Pursuant to a meeting held on 15.03.2016,(attended by Principal Secretary, Department of New and Renewable Energy, Govt. of Punjab, Chairman of PSPCL, company and Chief Operating Officer of PEDDA) connectivity with the Chak Ali Sher sub-station was granted to MBPL. However, the connectivity was only granted for one part of the Project i.e. Village Sherkha wala vide PSPCL's letter dated 31.03.2016. The connectivity to the other part of the Project at village Maghaina was rejected by PSPCL vide its letter dated 01.04.2016.
- g) After constant persuasion and joint visits with PSPCL officials, it was discovered that the connectivity could be granted at Boha Sub-station for both parts of the Project. Accordingly on 18.04.2016, MBPL requested PSPCL to grant connectivity to the Project at the Boha Sub-station.
- h) However, with this change of sub-station, the other land parcel at Village Maghaina had to be abandoned and MBPL had to look for other nearby land. Therefore, MBPL finalized another land at

village Boha, for which MoU for 125 acres was executed on 10.06.2016 with consideration payment of Rs. 10,000 per acre to the land owners. The formal approval for 2X25 MW Project connectivity at Boha Sub-station was received only on 16.05.2016. Further, Budhlalda patwaris were on strike from 23.05.2016 till 08.06.2016 resulting in a halt on the legal due diligence being carried out by MBPL.

In light of the above, it is submitted that the delay in finalization of Sub-station and its last minute change for grid connectivity required MBPL to change land at the very late stage. The ambiguity regarding two locations was prevailing till March 2016. This delay cannot be attributed to MBPL. Further, the change in land due to change in sub-station by PSPCL was outside the control of MBPL.

- viii) MBPL, on 17.06.2016, sought 30 days extension from PEDDA for filing balance registered land documents and deposited Rs. 1.5 lakh towards charges for grant of extension in submitting the land documents. PEDDA vide its letter dated 24.06.2016 granted 30 days extension to MBPL for submitting the required land documents. MBPL submitted all the relevant land documents to PEDDA on 01.09.2016 and PEDDA certified that MBPL has submitted all the documents as stated under the RfP and the Implementation Agreement. Therefore, PEDDA ought not to make such submissions regarding delay on the part of

MBPL in submitting the land documents. It is due to reasons beyond MBPL's control that the location of the Project had to be changed at the last minute. MBPL is not seeking any relief with respect to the delay in finalization of the land parcel as an event of force majeure. Therefore, PEDAs contention with respect to the delay in submitting land documents is of no relevance.

- ix) MBPL vide its Force Majeure Notice dated 04.01.2017, intimated PEDA regarding the difficulties being faced by it in commissioning the Project by SCOD i.e. 11.01.2017. MBPL requested PEDA for an extension in the SCOD, due to the force majeure events, which were beyond the reasonable control of MBPL. PEDA in its Reply has made unfounded claims with respect to the correctness of the Force Majeure Notice and the manner in which it was served. PEDA contended that Force Majeure Notice was not served on it in accordance with the provisions of the Implementation Agreement. The status report submitted by MBPL with the Force Majeure Notice is in consonance with the status report submitted by the District Manager, PEDA. It is submitted that Article 10.4 of the Implementation Agreement provides for notification of force majeure and the same is extracted herein below:-

*“10.4 Notification Obligations*

*If a party is affected by any force Majeure event, the affected party shall give the other parties written notice describing the particulars of the Force Majeure event as soon as reasonably practicable*



*after its occurrence but not later than five days after the date on which such party knew of the commencement of the Force Majeure event or of its effect on such party.”*

In this context, the following is submitted:-

- (a) The Civil Judge had passed the *ex-parte* injunction order restraining MBPL from laying down the transmission line on 20.12.2016. However, the said order being *exparte*, came to the knowledge of MBPL on or about 28.12.2016.
- (b) Thereafter, MBPL started the process of finalizing the Force Majeure Notice to be sent to PEDDA within five days as provided in the Implementation Agreement. However, 31.12.2016 and 01.01.2017 being a Saturday and Sunday respectively, MBPL was ready to send the Force Majeure Notice on 02.01.2017.
- (c) However, on 02.01.2017, MBPL received letters from its transporters for solar modules which intimated regarding the operational hazard with respect to the congestion in the rail corridor and loco crunch being faced by the Railways between Jaipur and Delhi Cantt.
- (d) Accordingly, MBPL decided to include occurrence of the force majeure event due to the congestion in railways and consequent non-delivery of solar modules to the Project site, in its Force Majeure Notice that had been ready to be sent out to PEDDA on 02.01.2017.
- (e) Thereafter, another letter was received on 03.01.2017 from another transporter engaged for solar modules,

regarding the trains running late due to the congestion in the railways.

- (f) Therefore, after incorporating the above proof of force majeure events, MBPL duly submitted its Force Majeure Notice dated 04.01.2017 to PEDA.

In light of the above, the Force Majeure Notice issued by MBPL is in consonance with the provisions of the Implementation Agreement.

- x) PEDA has placed reliance on the Commission's order dated 25.04.2016 in Petition No. 27 of 2016 in case of *Talwandi Sabo Power Ltd. v. Punjab State Power Corporation Ltd.*, wherein the Commission had held that the requirement for notice for synchronization of the generating unit is mandatory, and the provisions of the PPA should be strictly followed. The facts of the present case are different from the facts of the case relied upon by PEDA as under:

- (a) In the present case, MBPL had sent a post-facto notice for notifying occurrence of force majeure event, whereas in Talwandi Sabo's case an advance notice was required to be issued for the synchronization of a generating unit.
- (b) Issuing notice for synchronization assumes importance, as witnessing the synchronization of a generating unit is necessary for the distribution licensee to examine the proper functioning of the generating unit after being connected to the grid. In the present case, Force Majeure Notice was

provided for purpose of notifying the nodal agency, that the completion of the Project is getting delayed due to reasons beyond MBPL's control.

- xi) Without prejudice to the above, it is submitted that the Hon'ble Supreme Court of India has consistently held that contracts have to be interpreted to make business sense and the Courts ought not to take a pedantic approach while interpreting contracts. It is an admitted fact that the petitioner(s) would not stand to benefit by intentionally delaying the Project since the petitioner(s) have to service their debt. On the contrary, PEDDA could have a malafide intention to delay the Project, since PBG could be encashed by PEDDA in case the Project was delayed.
- xii) The petitioner issued the Force Majeure Notice to PEDDA immediately after the occurrence of the force majeure events. PEDDA, vide email dated 10.01.2017, without disputing the occurrence of the force majeure events and the effects thereof as claimed by MBPL, sought imposition of extension fee for the delay in achieving the SCOD of the Project. Such imposition was contrary to the provisions of the Implementation Agreement, which clearly entails that in case a Non-Political Force Majeure event necessitates extension of time for the Project implementation, both the parties will duly accept it. Thereafter, MBPL vide letter dated 16.01.2017 reiterated its request for extension of SCOD for the Project. PEDDA only responded to the Force Majeure Notice dated 04.01.2017 vide its letter dated 09.02.2017 which was



received by MBPL on 10.02.2017 i.e. after more than a month from the notice dated 04.01.2017. PEDDA has arbitrarily rejected the force majeure contentions raised by MBPL with regard to the delay caused due to the injunction order dated 20.12.2016 and 10.01.2017 passed by the Ld. Civil Judge. Further, PEDDA had examined but had not elaborated the reason for rejection of the other two contentions of MBPL i.e. demonetization (change in law) and delay in transportation due to congestion in Railway lines which were beyond the reasonable control of MBPL.

- xiii) PEDDA contended that MBPL specifically conceded that it was required to pay Rs. 3.05 crore as per Article 7 of the Implementation Agreement. In this context, it is submitted that MBPL vide its letter dated 22.02.2017 requested PEDDA to issue commissioning certificates for its two power plants of 25 MW each. In the said letter, the Petitioner never conceded that it is liable to pay extension fee. Further, the said letter clearly states that the Petitioner is making the payment of Rs. 5.0 lakh without prejudice to its claim under the contract for force majeure which was already submitted and stood declined by PEDDA. PEDDA is trying to misinterpret the letter dated 22.02.2017. Apart from the above, it is submitted that the COD certificates for the units can be obtained only after the extension fee was paid to PEDDA. Since the COD certificates were required to get the final disbursement

from the lenders of the Project, the Petitioners needed the COD certificates and accordingly paid the extension fee.

xiv) The wrongful encashment of PBG by PEDDA has a severe impact on MBPL's Project. This Commission took cognizance of the wrongful acts of PEDDA on earlier occasions also and had directed PEDDA to refund the encashed bank guarantees in Order dated 25.01.2017 in Petition No. 9 of 2016, Order dated 14.02.2017 in Petition No. 14 of 2016 and Order dated 14.02.2017 in Petition No. 17 of 2016.

xv) The Commission in its Order dated 06.07.2017 in this petition had directed the Respondents to file their replies by 20.07.2017. However, PEDDA filed its short Reply on 31.10.2017 i.e. with a delay of more than three months, in order to delay the adjudication of the present petition. The Commission has taken note of the delayed filing of the Reply by PEDDA in its Order dated 08.11.2017 and has stated that such practice is deprecated and should not be repeated. It is therefore submitted that the Commission should close the PEDDA's right to file any further submissions, to avoid the dilatory tactics adopted by PEDDA.

6. The petitioner in its Rejoinder to the reply filed by PSPCL reiterated its earlier submissions and further submitted as under:

i) PSPCL has made the following erroneous submissions in its Reply:-

- (a) The present Petition is not maintainable against PSPCL, because the Petitioners are only aggrieved by the action of PEDDA in encashing the Performance Bank Guarantee;
  - (b) Neither any force majeure event has taken place, nor has there been any delay on part of PSPCL in commissioning of the Petitioners' solar power project.
  - (c) The commissioning of the solar power project was delayed due to gross negligence and mismanagement on the part of the Petitioners.
  - (d) MBPL did not submit the required documents / clearance reports 30 days before the commissioning of the solar power project. This 30 day period is required by PSPCL to carry out pending work of bays and testing of bays.
- ii) In respect of the submissions made by PSPCL, it is submitted that petitioner is aggrieved by the act of PSPCL of not making the Sub-station bays ready for connection to MBPL's Project, in addition to wrongful encashment of the Performance bank Guarantee by PEDDA and thereby delaying the SCOD of the Project and regarding the force majeure events and negligence and mismanagement of the part of petitioner submissions have already been made by the petitioner. The petitioner submitted that neither Article 5.5.0 nor Article 8.2.0 of the PPA provide that construction of bays cannot be started before the requisite documents are submitted or that the construction of bays has to necessarily start only 30 days



prior to the SCOD of the Project. The letter dated 14.07.2016 of PSPCL only states that the required documents are to be submitted 30 days prior to the SCOD. However, the said letter does not imply that PSPCL will commence construction of bays only when the documents are submitted. PSPCL has also contended that it had kept 30 days' time for carrying out post submission testing of bays and other formalities but since the Petitioner(s) did not adhere to it and the Project got delayed so much, PSPCL granted the approval within 3 days only which would have ordinarily required 30 days. No provision of the PPA provide that PSPCL shall carry out the testing of bays in a 30 days period. Further, if PSPCL was able to grant the approval within three days, it clearly means that it was possible for PSPCL to grant the approval within three days. Hence, the submission of PSPCL that 30 days period is kept for carrying out post submission testing of bays and other formalities, does not hold good and ought not to be considered by the Commission. PSPCL is raising misleading and factually incorrect contentions, which ought to be rejected by the Commission.

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

7. The Commission has carefully gone through the petition, replies thereto by PEDDA & PSPCL, rejoinders to the replies by the petitioner and other submissions and documents adduced on record. The petitioners have prayed to:

- a) Hold and declare that PEDDA has illegally encashed the bank guarantee and recovered the extension fee ignoring:-
  - i) Force Majeure events as per Article 10 of the Implementation Agreement;
  - ii) Procurers Event of default;
- b) Hold and declare that the Scheduled Commercial Operation Date of the Project stands extended to 14.02.2017 on account of the existence of Force Majeure events and procurers event of default;
- c) Direct PEDDA to refund the extension fee of Rs. 3.05 crores illegally retained by PEDDA by encashing the Performance Bank Guarantee provided by HCEL alongwith applicable interest;
- d) Award cost of the present proceedings to the Petitioners; and
- e) Issue such other/further order(s) as the Commission may consider appropriate in the facts and circumstances of the present case.

**The petitioners have sought the reliefs on the following grounds:**

- a) Orders restraining the Petitioner from erecting transmission towers and constructing transmission line for the Project;
- b) Delay in transportation of Solar Modules due to congestion in the railway route from Jaipur to Delhi Cantt; and
- c) Disruption in supply of critical material and labour due to demonetization.
- d) Delay in construction of bays by PSPCL at the Boha substation.

Considering the submissions of the parties as brought out in the foregoing paras, the findings and decision of the Commission on various issues raised in the petition are as follows:

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

- i) PEDDA submitted that the petitioner wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Act, which empowers the Commission to adjudicate upon disputes between the generating company and the distribution licensee. The Act does not empower the Commission to assume jurisdiction over the disputes between PEDDA and the project developer. The petition is not maintainable as there exists an arbitration clause in the contractual document (IA) signed between the parties. **In this regard, the Commission notes that in the recital on page-2 of the PPA under clause (d), it is clearly mentioned that IA signed by the petitioner with PEDDA shall be treated as an integral part of the PPA and all the clauses and regulatory norms applicable to the IA shall be unequivocally applicable to the PPA in letter and spirit. In view of the above, the Commission holds that the submissions made in this regard are devoid of merit and no cognizance of the same is required to be taken.**

**Further, the Commission notes that the said issue has already been decided by the Commission in its Order dated 12.04.2016 in IA no. 19 of 2016 in petition no. 21 of 2016 & IA no. 14 of 2016 wherein it was held**



**that the same was devoid of any merit. The Commission holds the same view in the instant petition as well.**

**Delay in transportation of Solar Modules due to congestion in the railway route**

ii) MBPL submitted that EPC contract was awarded by it to Hindustan EPC Co. Ltd. on 08.04.2016 which placed an order for supply of solar modules to GCL System Integration Technology (Hong Kong) Ltd. on 11.05.2016 for supplying 50 MW Solar Modules. The Solar Modules manufactured by GCL were imported at Mumbai sea port and were required to be transported from JNPT, Mumbai to Ludhiana ICD by rail. MBPL further submitted that the movement from Mumbai to Ludhiana is under custom bond and the Solar Modules were to be custom cleared at Ludhiana. This movement / route plan is decided when the goods are loaded at the origin port (China) and is recorded on the Bill of Lading. MBPL submitted that it was not possible for it to change the transportation plan once the Bill of Lading had been generated. MBPL further submitted that the distance of about 1750 km between JNPT, Mumbai to Ludhiana ICD is normally covered in 5 to 6 days, but due to the unprecedented congestion in the rail line between Mumbai and Ludhiana, more than 15 days were lost. MBPL submitted that it received letters dated 02.01.2017 and 03.01.2017 from its transporters for Solar Modules which demonstrates the existence of congestion in the rail corridor. MBPL further submitted that the Solar Modules is the last

item to be transported for completion of the Project and unprecedented delay in transportation by railways resulted in the delay in achieving COD of the Project. The petitioner(s) submitted that 21 days delay from 15.12.2016 to 04.01.2017 for transportation of Solar Modules has occurred due to congestion in the railway route, which was beyond its control. The petitioner(s) further submitted that the aforesaid qualifies as Non-Political Force Majeure Event in terms of Article 10.1(i) of the Implementation Agreement.

PEDA submitted that the petitioner(s) on 06.01.2017 i.e. only 6 days prior to the SCOD, submitted a notice dated 04.01.2017 of force majeure under clause 10.4 of the Implementation Agreement dated 24.11.2015 with respect to its 2x25 MW SPV projects seeking extension for the commissioning of the projects by 11.02.2017 on the purported grounds of disruption in supply of critical material and labour due to demonetization, delay in transportation of solar modules due to congestion in the railway route (Jaipur-Delhi cantt), delay in Right of Way for erection of towers and laying of transmission line due to Ad- interim, Ex-parte injunction granted by the Civil judge, Junior Division, Budhlada.

PSPCL in its reply denied the contents of the submissions made by the petitioner(s) in this regard, for want of knowledge.

**The Commission has noticed that the order for supplying 50 MW Solar Modules was placed on GCL System Integration Technology (Hong Kong) Ltd. on 11.05.2016. These should have been transported to site much before the scheduled date of CoD**

**viz. 11.01.2017 keeping the notice of 1 month to PSPCL before SCOD indicating its readiness for synchronization i.e. by 12.12.2016. Further, the petitioner has made the plea that there was congestion from 15.12.2016 to 04.01.2017 on the Railway route and to support this he has given only bill of lading of the transporter. However, this has not been supported by any letter from Railway Authorities indicating congestion on this route during the period. The Commission does not find merit in the plea of the petitioner and holds that the delay of 21 days from 15.12.2016 to 04.01.2017 claimed by the petitioner(s) for transportation of Solar Modules due to congestion in the railway route is not allowable. The Commission is of the view that the petitioner(s) should have made efforts for early supply of Solar Modules keeping in view the SCOD of the project i.e. 11.01.2017. Hence, the Commission disallows the same.**

**Disruption in supply of critical material and labour due to demonetization.**

iii) MBPL submitted that due to demonetization announced by the Govt. of India on 08.11.2016, it suffered various hardships primarily on account of shortage of cash which was the prime mode of transaction for availing the services of daily wages labourers as well as for procuring regular materials at the site. Demonetization further hampered the transportation of various goods required by MBPL, which too was primarily cash driven. MBPL submitted that the said policy decision of the Govt. of India qualifies as Force Majeure event under Article 10.3(i) of the Implementation Agreement, i.e., Change in law. MBPL further submitted that



Govt. of India notified Payment of Wages (Amendment) Ordinance, 2016, on 28.12.2016, which authorized the employers to pay wages to its employees through cheque or by crediting the same in the employee's bank account whereas prior to the passing of the said Ordinance, the employer was allowed to make payments only through currency. MBPL submitted that it could not have legally made payment of wages by cheque or through bank transfer to the labour employed for the construction of the Project. MBPL contended that all these factors cumulatively resulted into cascading effect and delay of 50 days from 09.11.2016 to 28.12.2016 for execution of the Project.

**The Commission does not find any merit in the aforesaid claim of delay of 50 days from 09.11.2016 to 28.12.2016 for disruption in supply of critical material and labour due to demonetization and does not allow the same.**

**Delay in construction of bays by PSPCL at the Boha substation.**

iv) MBPL submitted that as it was commissioning its 50 MW solar plant in two locations, PSPCL, as per Article 4.3.0 of the PPA, was required to construct two bays at 66 kV Boha substation. MBPL further submitted that it informed PSPCL on 22.01.2017 that the bays were still under construction. PSPCL deposited the inspection fee for the bays on 24.01.2017 and the two bays were commissioned by PSPCL only on 30.01.2017. MBPL contended that commissioning of the Project was getting delayed on account of the various force majeure events prevailing at the Project site but the

bays should have been ready before SCOD. MBPL submitted that if the Force Majeure events had not hampered the progress of the Project, and had MBPL been ready to commission its project on 11.01.2017, the non-readiness of the substation bays would have delayed the commissioning of the Project. MBPL further submitted that as per Article 9.1.0 of the PPA, it is the responsibility of PSPCL to install ABT compliant meters at the grid substation of PSPCL but the same were not available for installation till 22.01.2017. MBPL submitted that it had purchased 2 ABT meters to be installed at two bays at Boha 66 kV substation at its own cost, which was the responsibility of PSPCL as per the PPA. MBPL has claimed that delay of 18 days from 12.01.2017 to 30.01.2017 has occurred due to delayed construction of bays by PSPCL, which falls under 'Procurer's Event of Default'.

PSPCL submitted that construction of bays is the last step in connecting the power generated from the new power plant to the sub-station. Its completion or non-completion does not prevent the petitioner(s) to complete the project and submit the relevant documents/clearances to PSPCL for commissioning within the specified time. PSPCL submitted that the petitioner(s) have concealed the fact that as per Clause 5.5.0 and 8.2.0 of the PPA, they were required to get all the relevant tests done and submit the required documents/clearance report to PSPCL one month before SCOD, which they did not submit. PSPCL further submitted that vide letter dated 14.07.2016, it was conveyed to the petitioner(s) that documents / clearances as specified in the

enclosed annexure therewith are to be submitted 30 days before SCOD of the Project so that PSPCL can carry out the pending work of bays, if any, requisite testing of bays and clear the project for commissioning on the due date. PSPCL contended that this one month period is utilized by it to complete the technical and procedural requirements including construction of bays etc. on its side but the petitioner(s) submitted the requisite documents and clearances only by 03.02.2017 and 10.02.2017 for projects at villages Todarpur and Sherkha wala respectively, well beyond the required date i.e.11.12.2016 and even beyond the SCOD i.e. 11.01.2017. PSPCL submitted that synchronization approval was granted by it on 06.02.2017 and 13.02.2017 for projects at villages Todarpur and Sherkha wala respectively within a period of 3 days only, which would have ordinarily required 30 days as per the clause 5.5.0 and 8.2.0 of the PPA. The transmission line work was completed by the petitioners(s) on 02.02.2017. The bays were ready on 30.01.2017 much before the petitioner had completed the required work at its end. MBPL contended that PSPCL had kept 30 days time for carrying out post submission testing of bays and other formalities but since the Petitioners did not adhere to it and the Project got delayed so much, PSPCL granted the approval within 3 days only which would have ordinarily required 30 days. MBPL submitted that no provision of the PPA provide that PSPCL shall carry out the testing of bays in a 30 day period. Further, if PSPCL was able to grant the approval within three days, it clearly means that it was possible for it to grant the approval



within three days. MBPL contended that the submission of PSPCL that 30 days period is kept for carrying out post submission testing of bays and other formalities, does not hold good and ought not to be considered by the Commission.

**After going through the above submissions and contentions of PSPCL and the petitioner(s), the Commission notes that the petitioner(s) submitted the requisite documents and clearances on 03.02.2017 for the project at village Todarpur and 10.02.2017 for the project at village Sherkha wala whereas the petitioner was required to submit the same by 11.12.2016 in terms of the letter dated 14.07.2016 of PSPCL. Further, the petitioner was required to give notice to PSPCL intimating the date of readiness for synchronization of the project with PSPCL grid and fulfil the requirements in terms of clause 5.5.0 and 8.2.0 of the PPA, 30 days prior to the Scheduled Date of Synchronization. The Commission in its Order dated 25.01.2018 directed that the petitioner shall file copy of notice given to PSPCL intimating the date of readiness for synchronization of the project with PSPCL Grid. However, the petitioner has not submitted the same, meaning thereby that the petitioner has not given 30 days prior information / notice to PSPCL in respect of the above. The Commission notes that the 66 KV bays for the project at PSPCL's 66 KV Sub-Station, Boha were commissioned on 30.01.2017 by PSPCL whereas the petitioner submitted the requisite documents / clearances for synchronization of the project at village Todarpur on 03.02.2017 and village Sherkha wala on 10.02.2017. The Commission is of the view that commissioning of 66 KV bays at 66 KV Sub-Station, Boha by**

**PSPCL on 30.01.2017 did not have any impact on delayed commissioning of the Project.**

**Keeping the above in view, the Commission holds that petitioner's claim that delay of 18 days from 12.01.2017 to 30.01.2017 has occurred due to delayed construction of bays by PSPCL does not hold ground. Hence, the same is disallowed.**

**The Commission also notes that ABT meters installed at 66kV substation Boha were required to be procured by PSPCL at its cost in terms of the provisions in the PPA, but the same have been procured by the petitioner(s). Therefore, the Commission directs PSPCL to reimburse the expenses incurred by the petitioner(s) for the same.**

**Order restraining the Petitioner from erecting transmission towers and constructing transmission line**

- v) The Commission notes that the petitioner submitted that the transmission line had to be erected for evacuation of power from the Project to the nearest sub-station through the approved route and PSPCL vide notification dated 22.09.2016 under Section 164 of the Electricity Act, the Government of Punjab Order & Indian Telegraph Act, 1885 notified the schemes / transmission works which included the 66 kV line to Boha sub-station from petitioner's Project. MBPL submitted that the said notification was published in newspapers for the general public at large to raise objection, if any. Despite having a valid authorization under Section 164 of the Electricity Act, MBPL was not being allowed to lay the transmission lines due to which significant delay was

caused to the Project. MBPL further submitted that it approached the land-owners for paying the compensation in accordance with the guidelines issued by the Central Government from time to time but they declined to accept any compensation and instead filed Civil Suit before the Civil Court, Budhlada seeking permanent injunction against the MBPL from erecting any tower and laying of transmission lines on their property. MBPL submitted that Ld. Civil Judge passed an ad-interim ex-parte order dated 20.12.2016 restraining MBPL from installing electric poles and wires in the suit property. MBPL further submitted that said order, being *ex-parte*, came to its knowledge on or about 28.12.2016. Ld. Civil Judge in an order on 10.01.2017 in the aforesaid suit directed that the interim injunction be continued and held that the public notice issued was faulty as the public notice did not provide the name and details of the land owners, the land through which the transmission line will pass. It was also held that the notice does not afford any opportunity to the land owners in absence of any details as to how the proposed erection of tower will affect their land. MBPL submitted that in the above context, the responsibility of issuing notice under Section 164 of the Electricity Act, 2003 lies with PSPCL. MBPL further submitted that on 16.01.2017, it filed a Civil Appeal before the Hon'ble District Judge, Mansa challenging the order dated 10.01.2017 of Civil Court, Budhlada. The hearing in the Appeal was fixed for 01.02.2017. MBPL submitted that during the pendency of the said Appeal, it reached an amicable settlement with the land owners and accordingly,



Civil Suit filed at Budhlada was withdrawn by the land owners. On 25.01.2017, the Ld. Civil Judge, passed the order dismissing the suit as withdrawn. MBPL contended that Right of Way issue was started on the basis of the public notice issued by PSPCL and not due to any lack of compensation to the land owners. MBPL submitted that the transmission line work was completed on 02.02.2017 and CEI granted the clearance vide letter dated 03.02.2017. MBPL further submitted that the orders dated 20.12.2016 and 10.01.2017 passed by the Ld. Civil Judge fall within the Non-Political Force Majeure events and contended that delay of 36 days has been caused on account of Civil Court orders restraining it from installing transmission line towers from 20.12.2016 to 25.01.2017.

PSPCL submitted that the notice under Section 164 of the Electricity Act, 2003 was issued as per the due procedure of PSPCL and the issue arose on account of adequate compensation not having been paid by the petitioners to the land owners.

PEDA submitted that regarding interim injunction granted by the Ld. Civil Judge, Junior Division, Budhlada, it has been observed that the suit referred by MBPL in letter dated 04.01.2017 was withdrawn by the land owners when MBPL had paid the compensation to the complainant and accordingly the suit was dismissed as withdrawn vide order dated 25.01.2017 of the Ld. Civil Judge, Budhlada. PEDA contended that the claim made by MBPL in this regard is false.

After carefully going through the submissions of the parties, the Commission notes that the delay of 36 days from 20.12.2016 to 25.01.2017 has been caused due to Civil Court Orders restraining MBPL from erecting transmission towers and constructing transmission line in the land of various land owners. The Commission further notes that CEI granted its approval for commissioning of the 25 MW Solar Power Plant at village Todarpur & Maghaina on 23.01.2017, 25 MW Solar Power Plant at village Sherkha wala on 30.01.2017 and 66 KV transmission line from village Todarpur & Sherkha wala to 66 KV Sub-Station Boha on 03.02.2017. The Commission notes that the 25 MW Solar Power Plant at village Todarpur & Maghaina and 25 MW Solar Power Plant at village Sherkha wala were synchronized with PSPCL's 66 KV Sub-Station Boha on 06.02.2017 and 14.02.2017 respectively. The SCOD of the project was 11.01.2017 as per the PPA. The Commission observes that the 25 MW Solar Power Plant at village Todarpur & Maghaina was commissioned on 06.02.2017 with a delay of 26 days and the 25 MW Solar Power Plant at village Sherkha wala was commissioned on 14.02.2017 with a delay of 34 days. The Commission further observes that although the delay claimed by the petitioner on account of Civil Court order restraining it from erecting transmission towers is 36 days, the transmission line was completed on 03.02.2017 in all respects including CEI clearance, with a delay of 23 days from SCOD. The Commission notes that the 66 KV transmission line to 66 KV Sub-Station Boha was completed with delay of 11 days from completion of 25 MW Solar Power Plant at village Todarpur & Maghaina and delay of 4 days from completion of 25 MW Solar Power Plant at

village Sherkha wala. The Commission is of the view that if the petitioner was not restrained for 36 days from erecting transmission line towers by the Civil Court order, the line could have been completed by 11.01.2017 or earlier.

In view of the above, the Commission allows to the petitioner the benefit of 11 days from 23.01.2017 to 03.02.2017 for 25 MW Solar Power Plant at village Todarpur & Maghaina and the benefit of 4 days from 30.01.2017 to 03.02.2017 for 25 MW Solar Power Plant at village Sherkha wala. Considering the above, the Commission holds that the delay in commissioning of 25 MW Solar Power Plant at village Todarpur & Maghaina is 15 days (26 days – 11 days) and 25 MW Solar Power Plant at village Sherkha wala is 30 days (34 days – 4 days).

Accordingly, the Commission holds that PEDDA is entitled for encashment of the PBG in respect of delayed commissioning to the above extent in terms of IA/PPA. The PBG for the remaining amount be released to the petitioner within seven working days from the date of this Order, failing which PEDDA will be liable to pay penal interest on the remaining amount to the petitioner at the rate of 1.25% per month payable on pro-rata basis for each day's delay beyond seven working days.

The petition is disposed of in terms of above.

Sd/-  
(Anjuli Chandra)  
Member

Sd/-  
(S.S. Sarna)  
Member

Sd/-  
(Kusumjit Sidhu)  
Chairperson

Chandigarh  
Dated: 22.03.2018