



TELANGANA ELECTRICITY REGULATORY COMMISSION
‘Vidyut Niyantran Bhavan’, G. T. S. Colony, Kalyan Nagar, Hyderabad 500 045

O. P. No. 74 of 2022

Dated 02 .09.2026

Present

Dr. Justice Devaraju Nagarjun, Chairman
Sri. Raghu Kancharla, Member (Technical)

Between:

M/s Dinkar Technologies Private Limited

C-105 Anand Niketan, New Delhi 110021, India.

...Petitioner

AND

1. Southern Power Distribution Company of Telangana
Limited (TGSPDCL), Corporate Office at 6-1-50, Mint Compound,
Hyderabad – 500063

2. The Chief General Manager (IPC & RAC),
TGSPDCL, Corporate Office at 6-1-50, Mint Compound,
Hyderabad – 500063

...Respondents

Counsel for the Petitioner : SRI P. SOMA SHEKAR REDDY
SRI P. PAVAN KUMAR RAO

Counsel for Respondent No. 1 & 2 : SRI MOHAMMED BANDE ALI, Law Attache
& SRI N. SREEDHAR REDDY

ORDER

This petition is filed under sections 86 (1) (f) and (k) of the Electricity Act, 2003 with a prayer to extend the scheduled commercial operation date (SCOD) from 03.05.2017 to actual date of synchronization i.e., 07.09.2017 for 24.94 MW out of 50 MW solar power project. The petitioner has also sought for waiver of penalty for extended period and to refund an amount of Rs. 9,08,60,000/- encashed by the respondent from Performance Bank Guarantee (PBG).

Facts of the case in brief as per the petitioner:-

2. The petitioner is a company incorporated under the provisions of Companies Act, 2013 engaged in the business of generation and sale of solar power. The petitioner company has set up 24.94 MW out of 50 MW of solar power project at Palvanch (V), Tekmal (M) Medak District, Telangana as a special purpose vehicle (SPV) under the solar competitive bidding as per Telangana Solar Power Policy, 2015.
3. The respondent no. 1, Southern Power Distribution Company of Telangana Limited (hereinafter referred as TGSPDCL) incorporated under the provisions of Companies Act, 2013 which supplies power in the southern part of the Telangana as per the conditions of licence.
4. In order to promote the renewable energy Government of Telangana has introduced 'Telangana Solar Power Policy, 2015' and floated tenders for purchase of 2000 MW solar power by way of competitive bidding. The petitioner has become a successful bidder in the competitive bidding process for sale and supply of 50 MW to the respondent no. 1 (TGSPDCL)
5. Respondent No. 2 / The Chief General Manager of TGSPDCL has issued a letter of intent (LOI) bearing no. CGM (Comm & RAC) / SE (IPC) / D. No. 1309 dated 16.12.2015 in favour of the petitioner accepting the quoted tariff of Rs. 5.1729 per kWh. The Power Purchase Agreement (PPA) bearing no. NCE SOLAR PPA No. 2000 MW/02/2016, dated 03.02.2016 was entered into between petitioner and respondent no.1 for a period of 25 years. As per the said PPA, scheduled commercial operation date (SCOD) has to be achieved by 02.05.2017 from which date the petitioner is

required to start injecting the power at the delivery point i.e., 220 / 132 kV Minpur grid substation.

6. That subsequent to the signing of the PPA on 03.02.2016, on account of various unforeseeable events and circumstances which are beyond reasonable control of developer, the development and setting up of the solar power project was materially and adversely affected and attracted the force majeure clause under Article 9 of PPA.
7. The petitioner has cited following events attracts force majeure clause under Article 9 of PPA dated 03.02.2016.
 - (a) **Unprecedented Rains:** Telangana State has experienced incessant rains and massive storms during the period from July 2017 to September 2017. On account of the floods, substantial damage was caused to the roads, which connects the project site. Consequently, the petitioner company had to stop the work at the construction site and labour was kept idle, which adversely affected execution of the project.
 - (b) **Re-organization of the districts of Telangana:** Government of Telangana issued G.O. No. 236 and reorganized the revenue districts in the state with effect from 11.10.2016. On account of which, overhauling of the revenue machinery was taken up and revenue records were moved from one place to the other place and to the newly formed Districts and Mandals. During the process of reorganization of the districts, the concerned websites were also upgraded. On account of these administration changes, the revenue records were not properly available with the revenue offices. The request for providing information about record of rights, encumbrance certificates, copies of registration could not be obtained on time. Similarly, concerned officers were also not available during the reorganization period as most of them were deputed for special duties. These developments have adversely affected in completion of the project on time.
 - (c) **Financial Closure:** The petitioner has approached their lender L&T finance for funding of the project well within time, the acquisition of the land had to be completed before the bankers could process the request for financial support and hence the financial support could not be completed within the planned time frame.

- (d) **Demonetization:** Demonetization led to delays in site execution and implementation of the project timelines, on account of which the cash was not available, which affected the payment of daily wages to the labourers, thereby the contractors and labour suppliers refused to provide the services of labour unless cash was paid. Thereby, the execution of the project was delayed.
- (e) **GST:** Government of India has implemented GST with effect from 15-07-2017. On account of which many sub-vendors were unable to deliver the material in time as many configuration changes like changing the invoices to suit GST requirement, e-way bill requirement had to be made by them, which has become more complicated. Change of GST has affected supply of balance materials to site & installation of same could not be effected in time. Thereby, the execution of the project was delayed.
- (f) **Issue with procurement of contiguous lands:** The petitioner has also submitted that the project was to be commissioned in Minpur substation Medak district. To build the plant approximately 300 acres of land was acquired initially. However effectively only 120 acres of land remained to be contiguous to the plant owing to the fact that many title disputes arose with respect to various land parcels where the land owners filed cases against the petitioners. The Government further claimed certain land parcels within the 300 acres of plant acquired land, which further impeded the execution of the project. Certain land owners filed civil suits against the petitioner, including O S No 54 of 2017, on the file of Junior Civil Judge, Jogipet in respect of Ac 2.13 gts in which injunction order was passed against the petitioner dated 26.11.2017.

8. The petitioner company has from time to time informed the respondent no. 1 the details of events and circumstances which were beyond the reasonable control of the petitioner company which delayed the projects. All the solar power developers have also made representation to the government for extension of SCOD on account of peculiar circumstances in acquiring land for the project etc. The government has addressed a letter to the TGSPDCL and TGNPDCL and TGTRANSCO to extend the SCOD of the projects up to 30.06.2017 without any penalty and directed Discoms to take further action. This Commission has issued proceedings extending the SCOD up to 30.06.2017.

9. That the extension of time given by the government until 30.06.2017 was not much helpful to the solar generators including the petitioner. That Solar Power Generators have again requested the Government to extend the SCOD. Accordingly, the Government of Telangana has addressed a letter dated 23.08.2017 to TGTRANSCO, TGSPDCL and TGNPDCL to extend the SCOD without any penalty from 30.06.2017 up to 31.10.2017.
10. That all the works relating to the petitioner's project were completed by August 2017, which achieved completion in September 2017 and accordingly on 17.08.2017 the Chief Electrical Inspector (CEIG), Telangana has issued the statutory approval to the petitioner for its project. The petitioner was also issued a solar PV power plant commissioning certificate dated 07.09.2017 wherein all the relevant authorities including the officials of Respondent No 1 have certified the commissioning of the power plant.
11. That in the meanwhile, as there was delay on the part of the petitioner company in executing the project, the respondent has invoked an aggregate amount of Rs. 9,08,60,000/- (Rupees Nine Crores Eight Lakhs Sixty Thousand) of which Rs. 5 crores (Rupees Five Crores Only) covered under performance bank guarantee bearing no. 006GM01160110003, another Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakhs Only) covered under performance bank guarantee bearing no. 006GM01160110005 and partial invocation of performance bank guarantee bearing no. 006GM01160110007 for Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only).
12. That the petitioner has submitted a written representation to Respondent No. 1 dated 05.10.2018 through their EPC contractor requesting the respondent to condone the delay in achieving the SCOD by quoting following case laws.
- i) Judgement of Hon'ble Supreme Court in Dhanrajamal Gobindram v. Shamji Kalidas & Co. vide No. AIR/1961/SC/1285:
- "An analysis of rulings on the subject into which it is not necessary in this case to go, shows that where reference is made force majeure, the intention is to save the performing party from the consequences of anything over which he has no control. This is the widest meaning that can be given to force majeure, and even if this be the meaning, it is obvious that the condition about force majeure in the agreement was not vague.*

- ii) Judgement of Hon'ble APTEL in *Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission & Cargo Solar Power Gujarat Pvt. Ltd.* vide Appeal No. 123 of 2012:

"The approvals under Bombay Tenancy and Agricultural Land (Vidharba Region and Kutch Area) Act, 1958 and for water sources under the Environment (Protection) Act, 1986 and CRZ Regulations sought by Cargo Solar are the statutory/legal approvals under the PPA. The delay in obtaining these approvals by the Government instrumentalities by Cargo Solar would fall in the category of Force Majeure Events under Article 8.J(a) (v) of the PPA. As such the period of such delay is required to be suspended or excused and to that extent the period of Commercial Operation Date, Date of Construction default and Scheduled Commercial Operation Date are to be extended in terms of the PPA."

- iii) Judgement of Uttar Pradesh Electricity Regulatory Commission in *M/s. Lanco Anpara Power Limited* vide Petition No. 882 of 2012:

"Hence, in consideration of the fact that the reasons for delay were force majeure in nature and were not in control of any party to the PPA, the Commission opines that the plea for extension of CODs is justified. Therefore, the Commission approves actual dates of commissioning as RCODs i.e., for Unit-I as 10.12.2011 and for Unit-2 as 18.01.2012. Consequently, the "Expiry Date" shall be extended by 258 days (no of days between scheduled and actual RCOD of Unit – I) in the PPA dated 12.11.2006. The requisite amendments in the PPA and SPPA shall be made accordingly. All other terms and conditions shall remain as provided in the PPA and SPPA. The above would not have any financial implication in tariff."

13. That similarly placed PPA holders, who were also successful bidders in the same tender process, this Commission vide its Order in O.P. No. 13 of 2018 dated 13.08.2018 (in the case of *M/s ACME Medak Solar Energy Private Limited*), held as under:

"Petitioner further submits that the delay caused due to events narrated are not specifically contradicted by the Respondent certainly entitles the Petitioner to extension of SCOD. Thus, the extension of the SCOD by the GOTS through letter dated 23.8. 2017 of Energy department is based on reasons and the Commission concurs with the extension of the SCOD. The contention of the Respondent that

the events narrated by the Petitioner have no connection to the plea of force majeure is not tenable.

In view of the aforementioned reasons, the delay as pleaded by the Petitioner is liable to be condoned apart from the fact that the SCOD finally stood extended up to 31.10.2017, by which date the project was completed in all respects by synchronization with the grid of the respondent on 14.07.2017, thus fulfilling the terms of the PPA. The point is answered accordingly".

14. That the delay in achieving the SCOD is on account of the circumstances beyond the control of the petitioner company and therefore sought for relief as prayed for.
 - a. Extend the time for Schedule Commercial Operation Date (SCOD) from 03.05.2017 up to the date of synchronization, i.e. 07.09.2017 without levying any penalty for the extended period of SCOD at the tariff agreed between the Petitioner and the Respondent No. 1 in the Power Purchase Agreement dated 03.02.2016 involving 128 days delay by condoning the same;
 - b. Consequently, direct the Respondent No. 1 to refund the penalty levied and collected from the Petitioner by invoking the performance bank guarantees (PBG No. 006GM01160110003, 006GM01160110005, 006GM01160110007) provided by the Petitioner to the Respondent No. 1, aggregating to Rs. 9,08,60,000 (Rupees Nine Crores Eight Lakhs Sixty Thousand Only).
 - c. Pass such other order or orders as this Hon'ble Commission may deem fit and proper in the interest of justice.

Facts of the case in brief as per the respondent:-

15. That as per the terms of PPA, petitioner has to commission the project within 15 months from the effective date of signing of the PPA i.e., 03.02.2016. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and payment of Liquidated Damages shall be limited to twenty one (21) months from the Effective Date of this Agreement.
16. That the petitioner/developer commissioned 24.94 MW out of 50 MW on 07.09.2017 with a delay of 128 days from SCOD and failed to commission the balance capacity of 25.06 MW within 21 months from the date of executing the PPA and the respondent has issued notice dated 13.11.2018 to the petitioner for termination of balance capacity

of 25.06 MW. As per Clause 10.5 of PPA an amount of Rs. 9,08,60,000/- was levied towards penalty and the same was collected invoking the Performance Bank Guarantees.

17. That the events such as unprecedented incessant rains, Districts Reorganization in State of Telangana, financial closure and demonetization of high value currency in India, GST implementation by the Government of India, procurement of contiguous lands do not fall under the head of force majeure covered by Article 9 of the PPA and hence the contention of the petitioner is untenable and cannot be accepted.
18. That Government of Telangana (GoTG), Energy Department vide letter dated 29.06.2017 has extended SCOD up to 30.06.2017 to the solar power projects in the State which have concluded PPAs with TSDISCOMS without any penalty duly following the technical requirements and guidelines of CEA and TSTRANSCO.
19. That this Commission vide letter dated 18.08.2017 gave its consent in principle for the extension of SCOD up to 30.06.2017 for Solar power projects of Competitive bidding 2015 with a condition to re-fix the tariff.
20. That the Commission has issued the following advisory through letter dated 30.11.2017: -
 - (i) The ratio laid down by the Apex Court in Civil Appeal No. 6399 of 2016; Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Others is binding on the Stakeholders and in view of the Supreme Court decision in the above case, no general order can be issued for extension of time.
 - (ii) For extension of time, each case has to be examined with reference to the terms of PPA by following the principle of natural Justice.
 - (iii) Each developer has to file a petition before the Commission furnishing the reason for extension of time which can be examined within the framework of the PPA.
21. That the respondent company addressed letter vide letter dated 03.02.2018 to the petitioner / M/s Dinkar Technologies Private Limited requiring it to file petition before the Hon'ble Commission and the same was acknowledged by the petitioner and did not

choose to file the required petition before the Hon'ble Commission even after lapse of more than 4 years for the reasons best known to it, which reasons have not seen the light of day till date.

22. That as per clause 10.5 of PPA penalty of Rs.9,08,60,000/- was levied. Consequently, the respondent company invoking of Bank Guarantees for the above amount by raising demand notice before the bank of the petitioner.
23. That the petitioner did not choose to make any representation expressing its grievance about invocation of the Bank Guarantees till filing of this petition.
24. That the petitioner has filed this petition after lapse of more than 4 years from the SCOD and also date of encashment of bank guarantee filed this petition seeking extension of SCOD and refund the penalty levied and collected from the petitioner by invoking the performance bank guarantees (PBGs) without assigning any reason for the delayed action. That the petitioner could have filed the petition before the Commission claiming the sums within 3 years period from the date of cause of action, as the right to sue could accrue to the petitioner on the next day of encashment of PBGs by the respondent.
25. That the Commission observed in the petition in OP No 52 of 2021 filed by M/s Suraj Kiran Solar Technologies Private Limited that
“ The petitioner has synchronised the project on 27.10.2017, where as the licensee has required it to file the petition before the Commission for extension of SCOD on 03.02.2018, yet the petitioner has approached the Commission on 25.10.2021 after a lapse of 3 years 8 months. This shows the laxity on the part of the petitioner and there is no correspondence from 05.10.2018 till filing of the petition which shows its callousness in settling the issue. Further, the petitioner sought to rely on the order dated 23.09.2021_ of the Hon'ble Supreme Court in respect of extension of limitation in filing petitions and applications as originally passed on 23.03.2020 and extended from time to time”
..... The extension of limitation granted by the Hon'ble Supreme Court was in peculiar circumstances arising out of the spread of pandemic Covid-19 and cannot be applied to a case where the petitioner is not diligent in pursuing his grievance in a timely manner and that the action way back in November 2017”.

26. The Commission duly citing the above remarks has dismissed the petition in O.P. NO 52 of 2021 filed by M/s Suraj Kiran Solar Technologies Private Limited. The extract of the order is as follows:
- “Though the Commission had accepted and granted extension of SCOD or refused in the respective cases, each case had its peculiar facts and circumstances. Thus merely because the Commission had considered the issue in the year 2018 and 2021, it does not mean it is stopped from looking at the facts and circumstances in each case. Although the law does not put fetters to extend the SCOD, it is appropriate to state that the aggrieved person should approach the proper forum in timely manner and this is the reason in this case to deny the relief”.*
27. That the facts and circumstances of the case in O.P. NO 52 of 2021 and the present petition are similar and requested to dismiss the petition and may pass any order or orders as the Commission deems fit and proper in circumstances of the case.
28. Heard both sides, perused the records. The petitioner company has apart from filing written submissions has also filed copy of the PPA executed between the petitioner and respondent on 03.02.2016, pictures showing the difficulty faced during the execution of the transmission line due to severe rains during 2017, solar plant commissioning certificate for 24.94 MW, copy of order in I. A. No. 182 of 2017 in O. S. No. 54 of 2017, copy of plaint and written statement in O.S No 54 of 2017, copy of 3 bank guarantees issued by petitioner in favour of R1, copy of letters sent by R2 to the banker seeking invocation of guarantees, copy of letter addressed by petitioner to R1 to condone delay in achievement of SCOD, copy of board resolution of company to authorize Mr. N. Narayan Rao to represent in this behalf.
29. Respondent on the other hand has enclosed a copy of the letter dated 03.02.2018 addressed to the petitioner company advising the petitioner company to file the petition before this Commission for extension of SCOD duly furnishing the reasons.
30. Considering the pleadings of both sides, following issues fall for consideration of this Commission:
- (i) Whether the petitioner has demonstrated the *force majeure* events and circumstances on account of which delay occurred in developing and setting up of 24.94 MW out of 50 MW power project, SCOD could not be achieved as

per PPA dated 03.02.2016.

- (ii) Whether on account of extensions granted by the Government to complete the project, can the SCOD of the petitioner company stand extended from 03.05.2017 up to 07.09.2017.
- (iii) Whether there is delay and laches on the part of the petitioner in approaching this Commission seeking extension of SCOD.
- (iv) Whether the petitioner is entitled to get the refund of penalty levied and collected by invoking the performance bank guarantees of Rs. 5,00,00,000/- (Rupees Five Crores Only), Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakhs Only) and Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) provided by the Petitioner to the Respondent No. 1, invoking amount aggregating to Rs. 9,08,60,000/- (Rupees Nine Crores Eight Lakhs Sixty Thousand).

Analysis and findings of the Commission on the above issues

Issue No. (i) Whether the petitioner has demonstrated the *force majeure* events and circumstances on account of which delay occurred in developing and setting up of 24.94 MW out of 50 MW power project, SCOD could not be achieved as per PPA dated 03.02.2016.

- 31. It is not in dispute that the petitioner has executed PPA on 03.02.2016 with the respondent No. 1 where under the petitioner has agreed to generate and supply 50 MW of power from the solar power plant situated at Minpur connected to delivery point 220/132 kV substation. As per the said PPA, the SCOD was stipulated to be achieved by 02.05.2017. However, the petitioner company has synchronized 24.94 MW out of 50 MW solar power plant to the grid on 07.09.2017 with a delay of 128 days from SCOD.
- 32. The petitioner sought for extension of SCOD from 03.05.2017 until the date of actual commissioning which is 07.09.2017 for 24.94 MW. The petitioner has submitted that on account of some events and circumstances like, unprecedented incessant rains, reorganization of the districts of Telangana, demonetization of high value currency, implementation of GST by the Government of India, financial closure and that issues with regard to procurement of continuous land, the SCOD could not be achieved as agreed in the PPA.

33. For the sake of convenience relevant force Majeure clause in PPA dated 03.02.2016 is extracted here under:

“9.1 Definition of Force Majeure:

- (a) "Force Majeure" shall mean any event or circumstance or combination of events or circumstances that materially and adversely affects the performance by either party (the "Affected Party") of its obligations pursuant to the terms of this Agreement (including by preventing, hindering or delaying such performance), but only if and to the extent that such events and circumstances are not within the Affected Party's reasonable control and were not reasonably foreseeable and the effects of which the Affected Party could not have prevented by Prudent Utility Practices or, in the case of construction activities, by the exercise of reasonable skill and care. Any events or circumstances meeting the description of Force Majeure which have the same effect upon the performance of any of the Solar Power Project setup in accordance with solar policy announced by Govt. of Telangana State (GOTS) under the competitive bidding route and which therefore materially and adversely affect the ability of the Project or, as the case may be, the DISCOM to perform its obligations hereunder shall constitute Force Majeure with respect to the Solar Power Developer or the DISCOM, respectively.
- (b) Force Majeure circumstances and events shall include the following events to the extent, that they or their consequences satisfy the above requirements.
 - (i) Non Political Events such as acts of GOD including but not limited to any storm, flood, Drought, Lightning, Earthquake or other natural calamities, fire, accident, explosion, strikes, labour difficulties, epidemic, plague or quarantine, air crash, shipwreck, train wrecks or failure ("Non Political Events").
 - (ii) Indirect Political Events such as acts of war sabotage, terrorism or act of public enemy, blockades, embargoes, civil disturbance, revolution or radioactive contamination ("Indirect Political Events").

- (iii) Direct Political Events such as any Government Agencies or the DISCOM's unlawful or discriminatory delay, modification, denial or refusal to grant or renew, or any revocation of any required permit or Change in Law (Direct Political Events)

9.2 In the event of a delay in SCOD due to:

- (a) Force Majeure Events affecting the Solar Power Developer

Or

- (b) DISCOM Event of Default as defined in 10.2, the scheduled SCOD shall be deferred for a reasonable period but not less than, day-for-day basis subject to a maximum period, of 12 months, to permit the Solar Power Developer or to overcome the effects of the Force Majeure events affecting the Solar Power Developer or DISCOM, or till such time such event of default is rectified by the Solar Power Developer or the DISCOM, whichever is earlier. Provided further that, the validity of Performance Bank Guarantee shall be extended suitably covering the extended period. "

- 34. **Unprecedented Rains:** According to the petitioner, Telangana State has experienced excessive rains and massive storms during the months of July 2017 to September 2017, on account of which there were heavy floods, thereby substantial damage occurred to the roads connecting to the project site, which ultimately led to stoppage of work at the site and thereby the equipment and material could not be shifted to the site and labour had to be kept idle, which has ultimately impaired the construction activities.
- 35. Insofar as this ground is concerned, the respondents have not disputed that there were unprecedented rains during the period from July 2017 to September 2017. The petitioner has filed certain photographs showing that certain pieces of land were inundated and became inaccessible. It is not clear on what date and in respect of which pieces of land, the photographs were taken. There is no certificate enclosed by the Revenue Department to fact that the land on which the petitioner has intended to install the power plant was affected by heavy rains and thereby it become inaccessible for the petitioner company to continue the work.

36. More importantly as per the PPA, SCOD should have been achieved on or before 02.05.2017. According to the petitioner, the unprecedented rains occurred during the months of July to September 2017. The unprecedented rains occurred beyond the date of SCOD. An event occurring after the contractual SCOD cannot, explain the petitioner's failure to achieve SCOD by 02.05.2017. The petitioner has also not established that the subsequent rains caused any independently excusable period of delay relevant to the relief claimed. This ground therefore does not justify extension of SCOD and accordingly rejected.
37. **Re-organization of the Districts of Telangana:** The Government of Telangana issued a notification vide G.O.Ms. No. 236 and bifurcated the revenue districts with effect from 11.10.2016, on account of which the revenue administration was reorganized. According to the learned counsel for the petitioner, proper revenue records were not available in the Tehsil office and thereby the petitioner company could not get the information with regard to the lands and could not obtain the permits, approvals etc.
38. The respondents in contrary to the above have submitted that the reorganization of districts is nothing to do with not achieving the SCOD by the petitioner. As per Article 6 of the PPA, the developer or petitioner company is required to get the clearances and permits at its own costs and risk. Apart from a general assertion that reorganisation of the districts caused administrative delay, the petitioner has not produced contemporaneous applications, acknowledgements, correspondence or other material showing that any specific request made by it remained pending, or was delayed, because of such reorganisation.
39. Further, if reorganisation of the districts had in fact materially impeded performance, the petitioner was expected to notify the respondent in accordance with the PPA, identify the affected obligation and period of delay, and seek appropriate relief without undue delay. The petitioner has also not approached the Commission seeking extension of SCOD by placing the contemporaneous material. Therefore, the petitioner has failed to establish the requisite causal nexus between district reorganisation and its failure to achieve SCOD.
40. **Financial Closure:** According to the petitioner, they approached their lender L&T finance for funding of the project well within time, the acquisition of the land had to be

completed before the bankers could process the request for financial support and hence the financial support could not be completed within the planned time frame. However, as per Article 6.1 (vii), the solar power developer shall achieve financial closure within six (6) months from the effective date of the Agreement and shall submit a copy of the financing agreements to the discom within 6 months from the effective date of the agreement. Since the same was not complied with, this ground cannot be accepted.

41. **Demonetization:** According to the petitioner, the demonetisation of high value currency by the Government of India on 08-11-2016 has led to delay in site execution and implementation of the project, as there was no availability of cash for payment of daily wages to labourers, contractors and suppliers. The respondent however submits that demonetisation of high-value currency is no way connected with the delay in execution of the project.
42. Demonetisation occurred during the period available for execution of the project and before the contractual SCOD of 02.05.2017. Nevertheless, the mere occurrence of demonetisation does not, by itself, establish a force majeure event under the PPA. The petitioner has not produced contemporaneous records demonstrating the particular activities affected, the duration of such disruption, the steps taken to mitigate its effect, or the extent to which the event actually prevented achievement of SCOD. In the absence of such evidence and nexus, this ground cannot be accepted.
43. Even otherwise Demonetisation is generally not accepted as a valid ground for claiming *force majeure*. Under Indian contract law, a force majeure event must render contractual performance objectively impossible, and not merely harder or more costly. The events like demonetization may cause temporary cash flow issues or commercial hardship, but they do not make the performance of a contract legally or physically impossible. Courts and quasi-judicial authorities have explicitly ruled that project delays caused by demonetization do not excuse developers or parties from legal liabilities.
44. **GST:** According to the petitioner, on account of implementation of GST by the Government of India, many sub-vendors were unable to deliver material on time, thereby delay occurred. Even in respect of this argument, the relief sought for by the petitioner cannot be granted, as GST came into force on 01.07.2017, subsequent to the

date of SCOD, which was 02.05.2017. The petitioner has not established how an event occurring after SCOD caused its prior failure to commission the project by the stipulated date. This ground therefore cannot support the extension sought.

45. **Issue with procurement of contiguous land:** The petitioner has also submitted that unavailability of contiguous land has also adversely affected the project. As per the PPA, procurement of the requisite land within the stipulated period was an obligation undertaken by the petitioner. Though the pleadings, the written statement and the order in I. A. No. 182 of 2017 in O. S. No. 54 of 2017 have been placed on record, the title disputes raised therein by private landowners in respect of parcels which the petitioner had itself chosen to acquire do not fall within Article 9 of the PPA, and the injunction dated 26.11.2017 was in any event passed after the date of synchronisation on 07.09.2017. No material has been produced to show that the alleged difficulty arose from an event falling within Article 9 of the PPA. Having agreed that the project would be commissioned on or before 02.05.2017, the petitioner now cannot contend that the contiguous land parcels were not available and thereby delay occurred. This ground also fails.
46. The petitioner has relied upon the decision of the Hon'ble Supreme Court in *Dhanrajamal Gobindram v. Shamji Kalidas & Co.* vide No. AIR/1961/SC/1285 for the proposition that the object of a force majeure clause is to save the performing party from the consequences of circumstances over which it has no control. There can be no dispute with the said general proposition. However, the said observation cannot be understood to mean that every event beyond the control of a contracting party ipso facto constitutes a force majeure event entitling such party to extension of contractual timelines. The observation was made while considering whether a contractual reference to the 'usual force majeure clause' was vague or uncertain. Whereas in the present case, the PPA itself specifically defines and categorises force majeure events under Article 9, the entitlement of the petitioner must necessarily be tested within the four corners of that Article.
47. Thus, the petitioner's reliance upon the decision of the Hon'ble Supreme Court in *Dhanrajamal Gobindram v. Shamji Kalidas & Co.* vide No. AIR/1961/SC/1285 does not advance its case. The Commission does not dispute that a force majeure event is ordinarily one beyond the reasonable control of the performing party. What the

petitioner has failed to establish is the further and indispensable requirement that the events relied upon satisfy Article 9 of the PPA and bear a direct, demonstrable and contemporaneously supported causal nexus with the delay in achieving SCOD. Certain events relied upon occurred only after the contractual SCOD had already expired; in respect of the events which occurred prior thereto, the petitioner has failed to establish by cogent evidence the particular period of delay caused by them; and difficulties concerning procurement of land were matters contractually allocated to the petitioner's own risk. Consequently, the broad proposition stated in *Dhanrajamal Gobindram v. Shamji Kalidas & Co.* vide No. AIR/1961/SC/1285 cannot, on the facts of the present case, confer an entitlement to extension of SCOD.

48. The petitioner has also relied upon the judgment of the Hon'ble APTEL in *Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission & Cargo Solar Power Gujarat Pvt. Ltd* vide Appeal No. 123 of 2012. In the said case, the PPA expressly included, as a Force Majeure Event, the inability of a party, despite complying with all legal requirements, to obtain the required licences or legal approvals. On the evidence before it, the Tribunal found that Cargo Solar had identified the land, made the requisite applications to the competent statutory authorities, complied with the legal requirements and diligently pursued the applications, but the statutory approvals remained pending with Government instrumentalities. It was in those circumstances that the period demonstrably attributable to governmental delay was held liable to be suspended or excused.
49. In the present case, the petitioner has not identified any particular statutory permission which was duly applied for by it and remained pending before a Government agency on account of the reorganisation of districts. The assertion that reorganisation of the districts resulted in difficulty in obtaining revenue records and consequently affected procurement of land remains a general assertion unsupported by contemporaneous material. Accordingly, the ratio in *Cargo Solar* does not assist the petitioner.
50. The petitioner has also relied upon the order of the Uttar Pradesh Electricity Regulatory Commission in the matter of M/s. Lanco Anpara Power Limited vide Petition No. 882 of 2012. At the outset, an order passed by another State Electricity Regulatory Commission does not constitute a binding precedent upon this Commission, both Commissions being independent statutory authorities exercising coordinate jurisdiction

under the Electricity Act, 2003. Such an order may, at best, has persuasive value depending upon the similarity of the contractual provisions and factual circumstances.

51. Even as a persuasive precedent, the said decision does not advance the petitioner's case. In Lanco Anpara, the concerned Commission had, on the evidence placed before it, arrived at a specific finding that the events relied upon were force majeure events. The extension of SCOD was consequential upon such factual findings.
52. In the present case, the petitioner has failed to establish through contemporaneous evidence the particular period of delay attributable to each alleged event, the activity on the critical path affected thereby, and the measures undertaken to mitigate such delay. Consequently, even on the reasoning adopted in Lanco Anpara, the petitioner has not established a case for extension of SCOD.
53. The petitioner has placed reliance upon the order of this Commission dated 13.08.2018 in O.P. No. 13 of 2018, M/s ACME Medak Solar Energy Private Limited, and has contended that, being a similarly situated successful bidder under the same competitive bidding process, it is entitled to similar treatment. The Commission is conscious that consistency in adjudication requires similarly situated parties governed by similar contractual provisions to be treated alike. At the same time, the earlier order itself makes it clear that the extension granted by the Government up to 31.10.2017 was not accepted as an automatic or general extension applicable irrespective of the facts of individual projects. This Commission specifically required each developer to approach it separately so that the cause and period of delay could be examined on its own merits.
54. Further in ACME Medak, the Commission was satisfied on the material placed before it that identifiable events falling within Article 9 had actually hampered execution of the project. The factual foundation in the present case is materially different. The petitioner has not established through comparable contemporaneous material an event-wise causal connection between the circumstances pleaded and the period of delay sought to be condoned.
55. Thus, the petitioner and ACME Medak may have participated in the same bidding process and may be governed by substantially similar PPAs, but similarity in contractual status does not dispense with the requirement of proving the occurrence,

causal effect and attributable period of force majeure in each individual project. The different conclusion in the present proceedings flows from the materially different evidentiary record and does not amount to departure from the principle adopted in O. P. No. 13 of 2018.

56. Therefore, on an overall consideration of the material, the Commission finds that the petitioner has failed to establish that any of the events relied upon, individually or cumulatively, constituted a force majeure event under Article 9 of the PPA having a demonstrated nexus with the delay in achieving SCOD.

This issue is accordingly settled in favour of Respondent and against the petitioner.

Issue No. (ii) Whether on account of extensions granted by the Government to complete the project, can the SCOD of the petitioner company stand extended from 03.05.2017 up to 07.09.2017?

57. According to the PPA, the petitioner was expected to achieve the SCOD on 02.05.2017. However, the petitioner had commissioned 24.94 MW on 07.09.2017 with a delay of 128 days from the date of SCOD. The Energy Department of the Government of Telangana had issued a letter dated 29.06.2017 directing the respondents and others to extend the SCOD of commissioning solar power projects in respect of which PPAs had already been executed, up to 30.06.2017 without any penalty. This Commission by way of order dated 18.08.2017 has accorded in principle approval for extending SCOD of all solar power projects up to 30.06.2017. The Special Chief Secretary, Energy Department of the Government of Telangana, in its letter dated 23.08.2017, directed the Discoms and Transco to extend the SCOD of solar power projects without any penalty from 30.06.2017 upto 31.10.2017.
58. It is submitted by the learned counsel for the petitioner, that though the petitioner was expected to synchronize the project on or before 02.05.2017, on account of the extension granted by the Government of Telangana, the SCOD stands extended up to 31.10.2017.
59. It is the contention of the learned counsel for the petitioner that 24.94 MW out of the 50 MW project was commissioned on 07.09.2017, much before the Government

extended date of SCOD i.e., 31.10.2017. Therefore, there was no delay at all in achieving SCOD and that invocation of the bank guarantee is not correct.

60. However, it is settled legal position that any clause in the PPA including SCOD can be amended / changed only with the consent of the Commission. In respect of extension of SCOD by the Government of Telangana up to 30.06.2017, this Commission issued proceedings by letter dated 18.08.2017, giving consent for extension of SCOD upto 30.06.2017 for solar power projects who have become successful bidders in the Competitive Bidding, 2015, with a condition to re-fix the tariff. However, in respect of subsequent extension granted by the Government up to 31.10.2017 is concerned, this Commission has not passed any orders.
61. This Commission has issued an advisory by way of letter dated 30.11.2017 to the respondents stating that, as per the law laid down in by Apex Court in Civil Appeal No. 6399 of 2016 in Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Others, no general order can be issued for extension of time of SCOD and that for each extension of time, a separate application has to be filed with reference to the terms of the PPA. It was also mentioned in the said letter that each of the developer has to file separate applications before the Commission seeking extension of SCOD giving reasons.
62. Therefore, the contention of the petitioner that though the petitioner was expected to synchronize the project on or before 02.05.2017, on account of extension granted by the Government up to 30.06.2017 and again from 30.06.2017 to 31.10.2017, SCOD stands extended up to 31.10.2017 cannot be accepted. This issue is accordingly settled against the petitioner.

Issue No. (iii) Whether there is delay and laches on the part of the petitioner in approaching this Commission seeking extension of SCOD.

63. On receipt of letter from the Discom seeking extension of SCOD, this Commission has addressed a letter dated 30.11.2017 to the respondents mentioning that in respect of extension of SCOD each of the solar generators have to file petitions before the Commission seeking extension of SCOD. The respondent in turn has addressed letters to all the solar generators, including the petitioner, on 03.02.2018, asking to file an appropriate application before the Commission seeking extension of SCOD. However,

the petitioner company has not chosen to file any application before this Commission seeking extension of its SCOD. In fact, it is a matter of record that, in response to the letters sent by the respondents to various solar power generators, applications were filed by solar generators before this Commission seeking extension of time.

64. The petitioner company has taken more than 4 years of time to file this application for extension of SCOD. It is submitted by the learned counsel for the petitioner that, considering the circumstances explained by the petitioner, the delay in approaching this Commission be condoned and, basing on the proceedings of the Government of Telangana, the SCOD may be extended. On the other hand, the learned counsel representing the respondents submitted that there is delay and laches on the part of the petitioner in approaching this Commission seeking extension of SCOD and sought for dismissal of the petition.
65. It is not the case of the petitioner that they have not received any communication from the respondent with respect of filing of an application for extension of SCOD. The petitioner was aware of the fact that an application has to be filed before this Commission in case if petitioner wants SCOD to be extended.
66. The petitioner has approached this Commission with a huge delay of more than four years. The petitioner company has not explained any acceptable reason as to why it could not file the petition even within a reasonable time from the date of receipt of communication from the respondent on 03.02.2018 to seek extension of SCOD. The reasons now urged by the petitioner, namely agitation by farmers, differences with the EPC contractor and the Covid-19 pandemic, are not supported by any substantial material to support that these reasons are responsible in delay in achieving the SCOD. Further, the Covid-19 pandemic having arisen long after the cause of action had accrued. Accordingly, this Commission cannot extend any helping hand to people like the petitioner who failed to approach the Commission within a reasonable time and without any reasonable cause for such delay.
67. The law in respect of delays and laches is very well settled. Even if the grounds of force majeure mentioned in the PPA are available to the petitioner, still the petitioner is expected to approach the Commission within a reasonable time from the date of cause of action seeking extension of SCOD. Cause of action arose to the petitioner from

03.05.2017 when the petitioner could not achieve SCOD on account of certain events and circumstances explained by him which according to petitioner attracts force majeure clause of PPA. Cause of action also arose to the petitioner when it has received letter addressed by the Respondent wherein the petitioner was asked to approach the Commission seeking the extension of SCOD. Immediately after arising of cause of action, or within a reasonable time, the petitioner was expected to approach this Commission seeking extension of SCOD basing on the force majeure or any other permissible ground in which he can seek for extension of SCOD.

68. In the case between Basavaraj v. Special Land Acquisition Officer, reported in (2013) 14 SCC 81, it was held that sufficient cause is required and proper explanation showing that the party was not inclined, and without satisfactory explanation, delay cannot be condoned.
69. In the case of M/s. Solaire Surya Urja Private Limited v. CERC in Appeal No. 126 of 2022, in a judgment dated 10.02.2025, the Hon'ble APTEL observed that SCOD is a critical milestone and that the developer must adhere to the SCOD fixed under the PPA, subject only to the specific events provided in the PPA. This means that the petitioner is expected to prove the circumstances and events falling under force majeure clause strictly in order to consider extension of SCOD.
70. Therefore, considering the above discussion, it is clear that in order to extend the SCOD even if the Government issues any extension generically applicable to all solar developers, still each one of the developers is expected to approach this Commission within a reasonable time from the date of cause of action and file an appropriate application explaining the grounds on which the Commission will pass appropriate orders. In the case on hand, the petitioner has approached this Commission more than 4 years after the date of action. Therefore, the petitioner has not explained huge delay of more than 4 years, same cannot be condoned. This issue is settled in favour of Respondent and against the petitioner.

Issue No. (iv) Whether the petitioner is entitled to get the refund of penalty levied and collected by invoking the performance bank guarantees of Rs. 5,00,00,000/- (Rupees Five Crores Only), Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakhs Only) and Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) provided by

the Petitioner to the Respondent No. 1, invoking amount aggregating to Rs. 9,08,60,000/- (Rupees Nine Crores Eight Lakhs Sixty Thousand Only).

71. Respondent has invoked Article 10.5 of the PPA and encashed the performance bank guarantees. Article 10.5 of the PPA is reproduced below:

Penalties in case of Delayed Commissioning: Under normal circumstances the Project has to be commissioned within 15 months from the date of signing of this Agreement. In case of failing to achieve this milestone, the DISCOM shall encash the Performance Bank Guarantee which was submitted by the solar developer to the DISCOM at time of entering this Agreement, in the following manner: Contracted Capacity commissioned but with delay:

(a) Delay up to one (1) month - DISCOM shall encash INR 3 Lakhs per MW on per day basis proportionate to the Capacity not commissioned.

(b) Delay of more than one (1) month and up to three months – DISCOM shall encash INR 7 Lakhs per MW on per day basis proportionate to the Capacity not commissioned, in addition to the amount stated in clause 10.5(a).

(c) Delay of more than three (3) months and up to five (5) months - DISCOM shall encash INR 10 Lakhs per MW on per day basis proportionate to the Capacity not commissioned, in addition to the amount stated in clauses 10.5(a) and 10.5(b).

Note: By the way of illustration, if the COD is delayed by ten (10) days, an amount of INR 1 lakh per MW shall be forfeited from the first tranche of PBG of value of Rs. 3 lakhs per MW.

(d) In case the commissioning of Power Project is delayed beyond five (5) months from the scheduled commissioning date, the SPD shall pay to DISCOM, the Liquidated Damages at the rate of Rs.10,000/- (Ten Thousand) per MW per day of delay for the delay in such remaining Capacity which is not commissioned. The amount of liquidated damages shall be recovered from the SPD from the payments due on account of sale of solar power to the DISCOM.

Provided that the DISCOM shall have the liberty not to invoke this provision in a reasonable case as shown by the SPD for levying liquidated damages.

(e) The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and payment of Liquidated Damages shall be limited to twenty one (21) months from the Effective Date this Agreement. In

case, the commissioning of the Power Project is delayed beyond twenty one (21) months for the projects connected to 132 / 33 kV or 220/132 kV or 400/220 kV substation from the Effective Date of this Agreement, it shall be considered as an SPD Event of Default and provisions of Article 10 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 21 months from the effective date of this Agreement and the Agreement for the balance Capacity shall stand terminated.

(f) For all other cases of solar power developer Event of Default, procedure as provided in Clause 10.3 shall apply.

72. In view of the discussion made in Issue No. 1, 2 & 3, the petitioner is not entitled for extension of scheduled commercial operation date from 03.05.2017 upto date of synchronization, i.e., 07.09.2017. Consequently, the petitioner is not entitled for refund of penalty levied and collected from the petitioner by invoking the performance bank guarantees (PBG No 006GM01160110003 of Rs. 5,00,00,000/- (Rupees Five Crore Only), (PBG NO. 006GM01160110005 of Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakhs Only) and (PBG NO. 006GM01160110007 of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) provided by the Petitioner to the Respondent No. 1, invoking amount aggregating to Rs. 9,08,60,000/- (Rupees Nine Crores Eight Lakhs Sixty Thousand).

73. In the result, the petition is dismissed.

This Order is typed to dictation, corrected and signed on this 2nd day of September 2026.

Sd/-
RAGHU KANCHARLA
MEMBER (TECHNICAL)

Sd/-
Dr. JUSTICE DEVARAJU NAGARJUN
CHAIRMAN

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