

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

Petition No.16 of 2015
Date of Order: 12.06.2015

Present: Smt. Romila Dubey, Chairperson
Shri Gurinder Jit Singh, Member

In the matter of: Petition for seeking Project specific Extension of
Period of Commissioning in the PPA for
applicability of the tariff of ₹ 8.52/unit.

And

In the matter of: Bhanuenergy Industrial Development Limited
(wholly owned subsidiary of Hindustan
Cleanenergy Limited), 239, Okhla Industrial
Estate, Phase – III, New Delhi – 110020,
Phone: 011-47624100, Fax : 011-47624229
.....Petitioner

And

Hindustan Cleanenergy Limited, 239, Okhla
Industrial Estate, Phase – III, New Delhi –
110020,
Phone: 011-47624100, Fax : 011-47624229
.....Co-Petitioner

Versus

- 1.Punjab State Power Corporation Limited, O/o
SE/(Investment Promotion Cell),T-8, Thermal
Design Complex, PSPCL, Patiala – 147001,
Phone:0175-2220784,Tele-Fax: 0175-2220784
- 2.Punjab Energy Development Agency, Plot No.
1-2, Sector 33-D, Chandigarh – 160034,
Phone: 0172-2663328, Fax : 0172-2662865
.....Respondents

1. The present petition has been filed by Bhanuenergy Industrial Development Limited (petitioner) and Hindustan Cleanenergy Limited (co-petitioner) before Punjab State Electricity Regulatory Commission (Commission) under section 94 of the Electricity Act, 2003 (Act) read with Regulation 69 (Saving of inherent power of the Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgment of time allowed) of the PSERC (Conduct of Business) Regulations, 2005 and Regulation 85 (Power to Relax) of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (as adopted by the Commission in its Order dated 19.07.2012 in Suo-Motu Petition No. 35 of 2012). The petitioner is seeking project specific extension of the period of commissioning from 31.03.2015 to 30.09.2015 due to reasons beyond the control of the petitioner in commissioning of its 15 MW Solar PV Project.

2. The petitioner company is registered under the Companies Act, 1956 and is a wholly owned subsidiary of Hindustan Cleanenergy Limited. Hindustan Cleanenergy Limited is a wholly owned subsidiary of Hindustan Powerprojects Private Limited (formerly known as Moser Baer Projects Private Limited). The petitioner's parent company (Hindustan Cleanenergy Limited) was incorporated in September 2008 to undertake development of solar power projects. The petitioner company (Bhanuenergy Industrial Development Limited) was earlier known as Moser Baer Industrial Development Limited and its parent company (Hindustan Cleanenergy Limited) was formerly known as Moser Baer Clean Energy Limited.

3. The petitioners have submitted as hereunder:
- i) Punjab Energy Development Agency (PEDA), invited e-tender (RfP) for allocation of a total capacity of 300 MW of Solar PV Power Projects. After completion of the process, PEDA issued Letter of Award (LoA) for development of 15 MW Solar PV Project (project) to the petitioner on 22.07.2013. Subsequent to LoA, an Implementation Agreement (IA) was signed with PEDA on 30.11.2013 and the Power Purchase Agreement (PPA) was signed with Punjab State Power Corporation Limited (PSPCL) on 01.01.2014.
 - ii) The RfP, besides providing for setting up the project on private land also provided an option to set up the project on Panchayat land and provided a list of available lands in different Panchayat areas. Initially the petitioners were banking on the Panchayat land to set up their project and initiated the process of procurement of contiguous land parcel for their project. The petitioners could not procure land due to absence of Punjab Gram Panchayat Lands Lease Policy and stay of Hon'ble High Court of Punjab and Haryana on lease of public land. On the notification of the said policy on 09.05.2014, the petitioners identified a Panchayat land and approached PEDA on 30.06.2014 for taking grid feasibility approval from PSPCL. Pending response, the petitioners evaluated the Panchayat land procurement under the new policy and found it to be commercially unviable.
 - iii) The petitioners procured land for the project on long lease in village Mirpur Kalan, Tehsil Sardulgarh, District Mansa

and submitted the documents for the said location of land to PEDDA on 30.08.2014 and lease deed for the same was registered subsequently. The uncertainty delayed the land procurement by 5/6 months.

- iv) The grid feasibility/connectivity approval for nearest 66 kV grid s/s i.e Alike, at a distance of one kilometre was obtained by petitioners on 28.08.2014 and the fee of ₹ 7.5 lac towards grid connectivity paid on 26.09.2014. PSPCL granted route map clearance for the 66 kV transmission line upto the project and issued notice to undertake necessary transmission work vide notification dated 24.12.2014.
- v) The petitioners received sanction for financing the project from L&T Infrastructure Finance Co. Ltd. on 14.11.2014 and copy of the same was submitted to PEDDA vide letter dated 22.12.2014. As per the terms of sanction, petitioners requested for permission for assignment of PPA to lender and signing of supplementary PPA. The petitioners engaged L&T Limited as the EPC contractor vide Letter of Award dated 15.12.2014.
- vi) In the meantime, there was a change in the name of the petitioner company i.e Bhanuenergy Industrial Development Limited earlier known as Moser Baer Industrial Development Limited. The change of name was communicated to PEDDA on 21.07.2014 which was acknowledged on 28.11.2014 and incorporated in supplementary IA on 25.02.2015. Incorporation of the same in supplementary PPA by PSPCL is awaited. Incorporation of new name and location in contractual

documents is mandatory for any further approval/action and is also necessary for the funding agency to release funds for the project. The approval for assignment is yet to be received from PSPCL. This has resulted in further delay of almost 9 months for no fault of the petitioners. Coupled with land related delay, the total delay for reasons beyond the control of the petitioners is about 14/15 months.

vii) Considering delay in procurement of land due to stay by Hon'ble High Court, PEDDA extended the date of commissioning for few solar developers including the petitioners from 31.01.2015 to 15.03.2015. However, the same is not enough as the land procurement itself delayed the project by 5/6 months. While vacating the stay on 30.01.2014, Hon'ble High Court directed to amend the Rules and to grant corresponding extension to all affected solar developers. The relevant extract of the Judgment dated 31.01.2014 in CWP-16421-2008 (O&M) and batch is reproduced below:

*“We clarify that in so far as such persons are concerned, there is no impediment now standing in their way and the parties are free to proceed in pursuance to the prior arrangements with a caveat that the **government authorities should extend their time periods by the period for which the interim orders were in operation.**”*

.....
“CONCLUSION:

*The result of the aforesaid discussion is that all the three petitions stand dismissed and all interim orders stand vacated. **The State Government to***

take steps to amend the Rules as per the assurance given to the Court.”

- viii) Although the stay was vacated on 30.01.2014, the delay actually continued till notification of amended policy till 09.05.2014. Thus, the period of 5 months from signing of the PPA on 01.01.2014 to 09.05.2014 falls under force majeure for procurement of land. Similarly, the period of 9 months for delay in granting approvals/signing amended contracts shall also qualify as force majeure being beyond the control of the petitioner. The petitioner's performance has been adversely affected for a period of 14 months.
- ix) Due to the aforementioned delay, absence of approvals/documents and short time available, the lender did not disburse funds and petitioners could not progress in execution of the project. PEDDA was requested on 25.02.2015 to extend the scheduled date of commissioning (SCOD) for the project to 31.07.2015 i.e. by 6 months beyond original SCOD of 31.01.2015, considering the above mentioned constraints being beyond the control of petitioners.
- x) Post the decision of Hon'ble APTEL in Judgment dated 02.01.2013 in Appeal Nos. 96 and 130 of 2012, GERC, vide its Order dated 05.04.2014 in petition no. 1188 of 2012 extended the control period for applicability of tariff of ₹ 15/unit for Solar PV Power Project of Solar Semiconductor Power Company (India) Private Limited.
- xi) Petitioners are seeking a project specific relaxation/extension of the period of commissioning for 6 months i.e from 31.03.2015 to 30.09.2015 in applicability of the

approved tariff of ₹ 8.52/unit by the Commission in exercise of its inherent powers and in the interest of justice due to genuine difficulties faced by it which were beyond its control.

xii)The Commission is vested with the inherent power under section 151 of Code of Civil Procedure and Regulation 69 of Commission's Conduct of Business Regulations, 2005 as well as Regulation 71 relating to power to remove difficulty which appears to be necessary or expedient, Regulation 73 for extension or abridgment of time allowed and Regulation 85 of CERC (Terms & Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 for power to relax. Present petition has been filed under these provisions.

xiii)Despite best efforts, the execution of the project has been delayed due to reasons beyond petitioner's control and fall under force majeure.

It is prayed to the Commission to extend the date of commissioning of the project from 31.03.2015 to 30.09.2015 for applicability of tariff approved by the Commission i.e ₹ 8.52/unit in its Orders dated 14.11.2013 and 03.12.2013 in petition no. 52 of 2013.

4. The petition was admitted by the Commission and the respondents were directed to file reply by 20.03.2015 with advance copy to the petitioner, co-petitioner and each other vide Commission's Order dated 17.03.2015. The petitioner/co-petitioner were directed to file detail of expenditure incurred, order placed for

EPC etc. with documentary proof by 20.03.2015. The next date of hearing was fixed as 24.03.2015.

5. The petitioners vide their submissions dated 20.03.2015 submitted that L&T Infrastructure Finance Co. Ltd. sanctioned the loan on 14.11.2014 and Letter of Award (LoA) for EPC was issued on 15.12.2014 to Larsen & Toubro Ltd. followed by a binding contract on 15.01.2015. The work of supply of modules has been entrusted to Hindustan EPC Company Limited who has further placed the order on the module manufacturer on 29.12.2014. The petitioners have entered into binding EPC contracts with EPC contractor and it is not possible to retract from the committed costs in these contracts. The petitioners have made payments worth ₹ 57.87 crore for execution of the project in FY 2014-15. Due to delay by PEDDA and PSPCL in signing the necessary amendment to the IA and PPA for change of name and also for incorporating site details, the finalization of the financial documents was stalled leading to delay in disbursement of finances from lenders.

6. PEDDA filed its reply on 31.03.2015 (amended on 08.04.2015), which is as under:

- i) The petitioners' project was to be completed within a period of 13 months from the date of signing of PPA i.e. by 31.01.2015. However, in the interest of the project, the date of completion of the project was extended up to 15.03.2015.
- ii) The petitioners were to arrange the land for the project. In case the petitioners wanted to set up the project on Panchayat land, PEDDA was only to facilitate the same.

However, the petitioners chose to go for private land lease.

- iii) Change of name of the company and its parent company is the internal matter of the petitioners' companies and the petitioners approached PEDDA at belated stage with a request for change of name in the record of PEDDA. The necessary amendments were carried out in the records of PEDDA and their request with regard to the same forwarded to PSPCL without any delay. No delay of any sort can be attributed to PEDDA on this account.
- iv) Approvals pending, if any, is a matter with PSPCL which has no concern with PEDDA and there is no delay in any manner which is attributable to PEDDA.
- v) Subject to verification, the petitioners incurred an expenditure of ₹ 57.87 crore till date against the project cost of ₹ 117.76 crore as per the detailed project report submitted by the petitioner.
- vi) It was the responsibility of the petitioners to arrange the funds for the project. The petitioners were required to submit financial closure documents to PEDDA within a stipulated period as specified in the RfP, LoA and IA. However, the petitioners failed to submit the same within the stipulated time. The petitioners on account of financial closure submitted a certificate dated 28.08.2014 issued by Matrix Group Limited, Dubai. Another financial assistance letter from PTC India Financial Services Ltd. was submitted on 18.09.2014. Later on, the petitioners submitted a term loan sanction letter from L&T Infra Finance on 22.12.2014.

- vii)The contents of the contracts entered into by the petitioners are their internal documents and do not bear any endorsement of PEDDA and the confirmation of the same is subject to verification. Even otherwise, the petitioners were to commission the project within the stipulated time frame as provided in the RfP, LoA and IA.
- viii)The petitioners are seeking extension of time for commissioning the project on the ground that it has entered into the contracts with EPC contractors within the period of commissioning as stipulated under the PPA. The petitioners have misconceived the provisions of the RfP, IA and PPA which provide that the petitioners were to commission the project by 15.03.2015. The petitioners failed to commission the project by 15.03.2015. Even the sanctity of the purported contracts entered into by the petitioners are subject to verification.
- ix)The petitioners, in order to shift their liabilities, are unnecessarily levying false accusations upon PEDDA and no such delay is attributable to PEDDA. The petitioners failed to perform their bounded obligations as stipulated under the contract and have not commissioned the project by the scheduled date of commissioning. The RfP/IA empowers PEDDA to invoke bank guarantee in case the developer fails to set up the project within the scheduled date of commissioning.
- x) The reasons specified by the petitioners causing delay in setting up of the project are bonafide or not, are subject matter of determination by the Commission.

xi) In response to additional submissions of the petitioners dated 20.03.2015, PEDDA reiterated its earlier submissions and submitted that the Commission may take appropriate decision in the matter.

7. The petitioners in rejoinder submitted on 22.04.2015 to PEDDA's reply reiterated earlier submissions made in the petition. Further, while quoting clause 10.5(ix) of IA as herein below:

*“In case the commissioning of the project is delayed due to force majeure conditions stated above and the same are accepted by the competent authority, **the due dates for encashment of performance security and imposition of liquidated damages shall be extended accordingly.** In case the delay affects the COD of the project and it gets extended to the next financial year then the tariff payable shall be determined by PSERC.”*

the petitioners stated that there is no requirement under the IA to necessarily adopt the generic tariff applicable to similar projects for the next financial year. Rather, the above clause of IA requires the Commission to examine whether the original tariff would continue to apply (along with the quoted discount) for the extended period into the next financial year given the nature of impediments faced and the financial commitments already made towards the cost of the project or to apply generic tariff for the next financial year as if applicable to a new project that is yet to tie up its finances.

8. On request of PSPCL in the hearing on 22.04.2015, the Commission vide its Order dated 23.04.2015, extended the time for filing reply by PSPCL upto 30.04.2015. The next date of

hearing was fixed as 05.05.2015. On 24.04.2015, the petitioners filed list of dates/records.

9. PSPCL filed its reply on 05.05.2015 during the hearing, which, however was formally submitted on 11.05.2015. The same is as under:

- i) Petitioners have only sought to invoke Section 94 of the Electricity Act, 2003 which deals with the power to review by the Commission. This power can be exercised only when there are errors apparent on the face of the record or when there is a new evidence which could not be produced during the passing of the main Order. The petitioners have not claimed any of the grounds for review while seeking the modification of the Orders dated 14.11.2013 and 03.12.2013 in petition no. 52 of 2013.
- ii) The project is being established by the petitioners pursuant to a competitive bidding process. There was no representation, assurance or promise that the land would be made available by Govt. of Punjab or its agencies and any delay in land acquisition by the project developer would be considered as sufficient reason for extension of time beyond the scheduled date of commissioning, except facilitation role of PEDDA in case the project developer decides to acquire Panchayat land. The petitioners have admitted that they made the commercial decision to procure private land to protect their commercial interest. The consequences of such decision cannot be passed on as force majeure for seeking extension of time while maintaining the same tariff. The allotment is liable to be

cancelled and the bank guarantee forfeited, in case the project developer fails to make the necessary compliances.

- iii) Pursuant to the competitive bidding process, the Commission approved the power procurement vide Order dated 14.11.2013 in petition no. 52 of 2013, wherein it was specifically mentioned that the tariff approved would be applicable upto 31.03.2015, provided that the PPAs are signed on or before 31.03.2014 and the entire capacity covered in each of the PPAs is commissioned on or before 31.03.2015. The above Order has attained finality and petitioners' contention, that a special dispensation be given for delayed commissioning of the project at the higher tariff of ₹ 8.52 per kWh discovered in the competitive bidding process with its applicability upto 31.03.2015, would, if accepted, vitiate the entire bidding process by changing the terms thereof after the process is over.
- iv) The petitioners' claim that the project cost should be considered and that higher costs actually incurred, is irrelevant as the petitioner was selected pursuant to a competitive bidding process without going into individual cost elements. The date of investment, whether the petitioners have invested amounts etc. are irrelevant for consideration as the tariff is not based on a cost plus tariff determination under section 62 of the Act.
- v) Against the petitioners' submission that now the documentation is complete, therefore, they will establish the project in 5-6 months, it is submitted that against 5-6

months required for implementation of the project, the time of 13 months was given to the petitioners to complete all other activities which are the sole obligation of the petitioners. The primary case of the petitioners is that the funding arrangement could not be completed.

vi)The funding arrangement is the sole obligation of the petitioners and they not being in a position to fulfil their obligations cannot be a reason for extension of applicability of tariff, particularly when number of other projects have been established in the State of Punjab on the same conditions in which the petitioners were required to establish their project.

vii)If the change in name is being undertaken as a benefit to the petitioners, they cannot seek any advantage from the same and claim delay in the project development. There is no obligation or mandate from the respondents for the petitioners to change the name.

viii)The petitioners are seeking to rely on contracts entered into to justify the continuation of the tariff of ₹ 8.52 per kWh, but they are unwilling to produce the details thereof and have merely produced a CA certificate which shows a substantial amount as advance to EPC contractor, without any details. The petition is liable to be dismissed for this reason alone.

ix) The reliance of the petitioners on the decision of the Hon'ble APTEL in Appeal No. 96 and 130 of 2012 is misconceived. The Hon'ble Supreme Court, in the appeal filed against the said Order of Hon'ble APTEL, has

specifically stated that the said decision should not influence the State Commission.

x) The reliance of the petitioners on the Conduct of Business Regulations of the Commission to claim jurisdiction for changing the terms and conditions of the bidding documents is misconceived as these Regulations deal with the procedural aspects to be considered by the Commission and not to invalidate the powers of the Commission as available otherwise.

xi) There is no merit in the petition and the same is liable to be dismissed.

10. On the next date of hearing i.e 12.05.2015, the Commission heard the arguments on behalf of petitioners. PEDDA submitted that its reply may be considered as final and made no further arguments. PSPCL also reiterated its reply. Petitioners prayed for time upto 15.05.2015 to file rejoinder to PSPCL's reply, which had earlier not been filed by them and for filing written Note of Arguments keeping in view the replies of PSPCL and PEDDA. The Commission vide Order dated 13.05.2015 granted the same, closed the hearing and reserved the Order.

11. The petitioners filed the rejoinder to the reply of PSPCL on 14.05.2015. While reiterating their earlier submissions, they submitted as hereunder:

i) It is denied that petitioners are seeking review or modification of the Orders dated 14.11.2013 and 03.12.2013. Rather, the petitioners have invoked the inherent powers of the Commission to extend the date of

commissioning of the project having regard to the specific facts and circumstances. The tariff applicable to the petitioners' project upto 31.03.2015 can be extended for genuine reasons not attributable to the petitioners.

- ii) Despite reminders from PEDDA, PSPCL delayed signing of the amended agreement for change in name of petitioner company, which was signed on 26.02.2015.
- iii) PSPCL despite repeated directions of the Commission delayed filing of reply in the present proceedings. The date of applicability of tariff prayed as 30.09.2015 be further extended to 15.11.2015 on this account.
- iv) The petitioners are entitled to insist for postponement of SCOD of the project for the period between the signing of the PPA and date on which policy for acquisition of panchayat/government land was published by the State Govt. PSPCL incorporated the land details in the PPA on 16.03.2015. Also the petitioners are entitled to change the name of company and it is obligatory for PSPCL to amend the PPA within reasonable time.

12. The petitioners filed written submissions on 15.05.2015. While reiterating their earlier submissions, they cited a few case laws pertaining to decisions of Hon'ble Supreme Court of India with regard to the word 'regulate' stating that the word has broad import and has different shades of meaning with regard to the context in which it is used and also that the regulatory bodies exercise wide jurisdiction.

13. Observations of the Commission:

- i) PEDA allotted a Solar PV Project of 15 MW capacity to Moserbaer Clean Energy Limited (now Hindustan Cleanenergy Limited), New Delhi. The petitioner, Bhanuenergy Industrial Development Limited (formerly Moserbaer Industrial Development Limited, a wholly owned subsidiary of Moserbaer Clean Energy Limited), is a wholly owned subsidiary of Hindustan Cleanenergy Limited (co-petitioner). The Commission in its Order dated 14.11.2013 in petition no. 52 of 2013 filed by PSPCL had approved the procurement of electricity by PSPCL from the petitioner's project at the tariff discovered in the competitive bidding process conducted by PEDA further holding that the approved tariff would be applicable upto 31.03.2015 provided that the PPA is signed on or before 31.03.2014 and the entire capacity covered in PPA is commissioned on or before 31.03.2015.
- ii) The petitioner, while known as Moserbaer Industrial Development Limited, signed the Power Purchase Agreement (PPA) with PSPCL on 01.01.2014 for supply of power from its project at a tariff of ₹8.52 per kWh.
- iii) The petitioners initially envisaged procurement of Panchayat land for setting up of the project exercising one of the options available for land procurement in the RfP which also provided a list of different Panchayat land areas. As stated by the petitioners, they could neither purchase nor take on lease Panchayat land due to stay order of Hon'ble High Court of Punjab and Haryana. The stay was vacated on 30.01.2014. The relevant extract of

the Judgment of Hon'ble High Court of Punjab & Haryana dated 31.01.2014 in CWP-16421-2008 (O&M) and batch is reproduced below:

*“We clarify that in so far as such persons are concerned, there is no impediment now standing in their way and the parties are free to proceed in pursuance to the prior arrangements with a caveat that the **government authorities should extend their time periods by the period for which the interim orders were in operation.**”*

.....
“CONCLUSION:

*The result of the aforesaid discussion is that all the three petitions stand dismissed and all interim orders stand vacated. **The State Government to take steps to amend the Rules as per the assurance given to the Court.**”*

- iv)The Gram Panchayat Lands Lease Policy was notified by Govt. of Punjab on 09.05.2014. The petitioners did not find it commercially viable and selected private land for lease in village Mirpur Kalan, Tehsil Sardulgarh, District Mansa and entered into MoU on 15.07.2014 followed by a long term lease agreement. The financial closure was achieved by the petitioner with a foreign lender on 28.08.2014. The petitioners obtained another financial assistance letter from PTC India Financial Services Ltd. on 17.09.2014 and submitted the same to PEDDA on 18.09.2014.
- v) In the meanwhile, the grid feasibility / connectivity approval for evacuation of power was obtained by the petitioner from PSPCL on 28.08.2014. The notification to undertake the transmission work for grid connectivity of

the petitioner's project was issued by PSPCL on 24.12.2014.

- vi) On 21.07.2014, a request was made for change in name of the petitioner company and its parent company to PEDDA, which was granted / acknowledged by PEDDA on 28.11.2014 and was incorporated in supplementary IA on 25.02.2015. PSPCL signed the amended agreement in this regard on 26.02.2015 and incorporated the land details in the PPA on 16.03.2015.
- vii) The petitioners obtained sanction for financing the project from L&T Infrastructure Finance Co. Ltd. on 14.11.2014 and intimated the same to PEDDA vide letter dated 22.12.2014. As per terms of the same, the petitioners requested for permission for assignment of PPA to lender.
- viii) The Engineering, Procurement and Construction (EPC) contract (except supply of modules) was awarded by the petitioners to L&T Ltd. on 15.12.2014 and signed the contract on 15.01.2015. The petitioner entrusted the work of supply of modules to Hindustan EPC Company Limited who, in turn, has placed an order for the same on module manufacturer on 29.12.2014. As submitted by the petitioners, payment of ₹ 57.87 crore has been made for execution of the project in FY 2014-15 against the project cost of ₹117.76 crore as per detailed project report submitted to PEDDA.
- ix) PEDDA granted extension in the date of commissioning of a few solar projects including that of petitioners from 31.01.2015 to 15.03.2015. As contended by the petitioners, the same is not sufficient as the land issue

delayed the project by 5/6 months since after the stay was vacated on 30.01.2014, the delay continued till notification of Gram Panchayat Lands Lease Policy on 09.05.2014. The petitioners have stated that the total delay of about 14 months including 9 months for granting approvals / signing amended contracts due to change in name etc. falls under force majeure, being on account of reasons beyond its control.

- x) In the prayer, the petitioners have sought to extend the date of commissioning of the project from 31.03.2015 to 30.09.2015 for applicability of tariff approved by the Commission i.e ₹ 8.52 per kWh. However, in its submissions dated 14.05.2015, the prayer for date of applicability of tariff has been revised to 15.11.2015.
- xi) PEDDA has submitted that the delay is on the part of petitioners as the decision with regard to use of Panchayat/private land rested with them. It was only in case that the petitioners decided to use Panchayat land, PEDDA was to act as facilitator. Also, the funding was to be arranged by the petitioners and the decision for change in name of the petitioner company and its parent company was its internal matter. PEDDA has further submitted that the petitioners have failed to commission the project by SCOD i.e 31.01.2015 and requested the Commission to take appropriate action in the matter.
- xii) PSPCL has submitted that there was no representation, assurance or promise that the land would be made available by the Govt. of Punjab or its agencies except for the facilitation role of PEDDA in case the project developer

decided to acquire Panchayat land. The petitioners decided on commercial principles to procure private land. The allotment is liable to be cancelled in case the project developer fails to make necessary compliances, along with forfeiture of bank guarantee. Allowing extension in the applicability of bidded tariff of ₹ 8.52 per kWh beyond 31.03.2015 would vitiate the entire bidding process. The higher cost actually incurred vis-à-vis projects to come up in the following year is irrelevant as the petitioners were selected pursuant to a competitive bidding process without going into individual cost elements. As the change in name undertaken by petitioners is beneficial to them, they can not seek any advantage from same and claim delay in project development. There was no obligation or mandate from the respondents for the petitioners to change the name of their company. PSPCL has submitted that there is no merit in the petition and the same is liable to be dismissed.

14. Findings & Decision of the Commission:

On perusal of the submissions made by the petitioners, PEDDA and PSPCL, the Commission observes that the petitioners have contended non-completion of the project by the stipulated date due to (i) stay by Hon'ble High Court of Punjab & Haryana on leasing of Panchayat land & purported late notification of the Gram Panchayat Lands Lease Policy by Govt. of Punjab and (ii) delay in incorporating change in name of the petitioners in the contract documents by PEDDA/PSPCL and consequential delay in disbursement of funds by the lender on this account. The petitioners have sought

extension in applicability of tariff of ₹ 8.52 per kWh beyond 31.03.2015 upto 30.09.2015 in the prayer and further upto 15.11.2015 in their submissions dated 15.05.2015. The findings and decision of the Commission are as hereunder:

- i) The RfP provided for two options for procuring land for setting up the project i.e Panchayat land or private land. A list of different Panchayat land areas was available in the RfP. As submitted by the petitioners, they initially envisaged procurement of Panchayat land for setting up of the project. However, they could neither purchase nor take on lease such land due to stay order of Hon'ble High Court of Punjab and Haryana. The said stay order was vacated on 30.01.2014. The relevant extract of the Judgment of Hon'ble High Court of Punjab & Haryana dated 31.01.2014 in CWP-16421-2008 (O&M) and batch is reproduced below:

*“We clarify that in so far as such persons are concerned, there is no impediment now standing in their way and the parties are free to proceed in pursuance to the prior arrangements with a caveat that the **government authorities should extend their time periods by the period for which the interim orders were in operation.**”*

.....

“CONCLUSION:

*The result of the aforesaid discussion is that all the three petitions stand dismissed and all interim orders stand vacated. **The State Government to take steps to amend the Rules as per the assurance given to the Court.**”*

It has been submitted by the petitioners that the Govt. of Punjab notified The Gram Panchayat Lands Lease Policy on 09.05.2014. The petitioners did not find it commercially viable and selected private land for lease in village Mirpur Kalan, Tehsil Sardulgarh, District Mansa and entered into MoU on 15.07.2014 followed by a long term lease agreement. The petitioners have thus claimed that the project was delayed for the period 01.01.2014 (the day PPA was signed) to 09.05.2014 on this account.

The Commission notes that PSPCL submitted that the petitioners were required to procure and produce the proof of acquisition of land within 90 days of signing the PPA. The petitioners were under no assurance either from PEDDA or PSPCL with regard to acquisition of land. PEDDA had only a facilitation role in case the petitioners decided to acquire Panchayat land for setting up the project. There was no representation, assurance or promise that the land would be made available by the Govt. of Punjab or its agencies or that any delay in land acquisition by the petitioners would be considered as reason sufficient for extension of time beyond the scheduled date of commissioning. PEDDA, in its response submitted that the petitioners were to arrange the land for the project and in case it wanted to set up the project on Panchayat land, PEDDA was only to facilitate the same. However, the petitioner chose to take private land on lease.

The Commission notes that the petitioners had the option of procuring Panchayat or private land for setting up the project. In case of any impediment in procuring Panchayat land, the option of procuring private land was

always available to the petitioners. The petitioners were required to take appropriate decision/action for procurement of land for setting up the project in order to maintain the sanctity of the time lines for completion of the project, especially with regard to the applicability of tariff i.e 31.03.2015 allowed by the Commission in its Order dated 14.11.2013 in petition no. 52 of 2013. In fact, the Commission notes that out of 250 MW capacity approved by the Commission in the said Order, 171 MW capacity stands commissioned by various developers upto 31.03.2015 as informed by PEDDA in its report submitted separately to the Commission with regard to the solar capacity commissioned in the State during FY 2014-15. It is not out of place to mention that this capacity has come up under similar circumstances as alleged by the petitioners. Therefore, the Commission finds no merit in the contention of the petitioners to allow extension in the date of applicability of tariff for the petitioners' project on this account. However, considering that Hon'ble High Court of Punjab & Haryana vacated the stay on procurement of Panchayat land and in its Judgment dated 31.01.2014 in CWP-16421-2008 (O&M) and batch ruled that '*.....government authorities should extend their time periods by the period for which the interim orders were in operation....*', the Commission allows the extension in the applicability of tariff for 30 days considering that the PPA was signed on 01.01.2014 and the stay was vacated by Hon'ble High Court of Punjab & Haryana on 30.01.2014. **Accordingly, with regard to delay in procuring land for the project, the approved tariff for the petitioners'**

project i.e. ₹ 8.52 per kWh will remain applicable till 30.04.2015 in place of 31.03.2015 allowed by the Commission earlier.

- ii) With regard to change in name, the Commission tends to agree with PEDA and PSPCL that it was the internal matter of the petitioners to go in for change in name at a belated stage in July 2014 when a period of almost seven months had already expired. It has been rightly pointed out that there was no obligation or mandate from the respondents for undertaking change in name of their companies by the petitioners. It has been submitted that change in name of the companies was for benefit of the petitioners and cannot be termed as force majeure to compensate for the alleged delay. As regards consequential delay in disbursement of funds by the lender, the Commission notes that the petitioners have changed their lender three times i.e firstly a foreign lender was arranged in August 2014, then another Indian lender in September 2014 and finally the current lender in January 2015. Accordingly, the Commission finds no reason to give benefit to the petitioners on this account as well.

The petitioners have contended that the delays on account of land procurement, change in name and disbursement of funds etc. fall under force majeure. The Commission is of the view that in the IAs/PPAs, there are stipulated procedures to be followed by the parties with regard to written notices etc. to be given on the occurrence of alleged force majeure events and in case of non-agreement between the other parties, a dispute can be raised. The Commission

notes that there is no mention in the petition with regard to the petitioners having undertaken the stipulated procedure. The petitioners have come to the Commission for seeking project specific extension of period of commissioning for applicability of tariff of ₹ 8.52 per kWh beyond 31.03.2015. Accordingly, the Commission does not find any merit in this contention.

The petitioners have further contended that payment of ₹ 57.87 crore has been made and EPC/supply contracts signed with the contractors/suppliers cannot be reneged/retracted. PSPCL has submitted that in the case of projects allotted through competitive bidding process, the costs incurred by the bidder/allottee are of no consequence. The date of investment, investment of funds etc. are irrelevant for consideration as tariff determination is not based on cost plus basis under section 62 of the Act.

The Commission is of the view that all actions of the petitioners, whether to wait for the land lease policy to be notified for procuring Panchayat land though ultimately deciding to procure private land, decision to undertake change in name at a belated stage without bringing out any compulsion(s) to do so, as also the decision to change their lender thrice, the last lender having been selected as late as January 2015, appear to have been taken unilaterally favouring their own business interest. Unfortunately, the petitioners appear to have been inconsiderate to the time lines set by the Commission for commissioning the project by 31.03.2015 for applicability of the tariff. The Commission cannot ignore the fact that many other developers, who were

allotted similar projects even with lesser tariffs and which were also approved by the Commission in the same Order dated 14.11.2013 in petition no.52 of 2013, have completed their projects in time as is evident from the report submitted by PEDDA with regard to 171 MW capacity commissioned by 31.03.2015 in respect of projects of various categories allotted in the same bidding process. In light of the above, the Commission holds that the petitioners are not entitled to any benefit in extension of applicability of tariff on these accounts.

The Commission, in order to determine the tariff for the petitioners' project beyond 31.03.2015 extended to 30.04.2015 in sub-para (i) above relies upon the competitive bidding process undertaken by PEDDA for allotment of Solar PV Projects in the year FY 2014-15. The Commission has, in its Order dated 11.05.2015 in petition no.21 of 2015 filed by PSPCL for approval of tariff determined through the said competitive bidding process carried out by PEDDA, approved tariffs for Solar PV Power Projects of various capacities whose PPAs were required to be signed by 31.03.2015 and the projects are to be commissioned by 31.03.2016. The minimum tariff approved by the Commission for the 5-24 MW category projects is ₹ 6.88 per kWh in the said Order. The Commission notes that in petition no.52 of 2013, the petitioners' project was similarly covered under 5-30 MW category projects. **Accordingly, the Commission, in order to be just and fair to all, finds it appropriate to fix the tariff of the petitioners' project beyond 30.04.2015 as ₹ 6.88 per kWh provided the project is commissioned by**

31.03.2016 without in any way impinging upon the other contractual terms and conditions between the parties.

The petition is disposed of in terms of the above.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh

Dated: 12.06.2015