

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 172 of 2019

Dated : 24th September, 2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Arjun Green Power Pvt. Ltd.

A-1, Skylark Apartment,
Satellite Road, Ahmadabad
Gujarat - 380015

...Appellant

Versus

- 1. Rajasthan Electricity Regulatory Commission**
Through Joint Director
Vidhyut Viniyamak Bhawan,
Shankar Marg, Near State Motor Garage,
Jaipur – 302006, Rajasthan
- 2. Rajasthan Renewable Energy Corporation Ltd.**
Through Managing Director
E-166, Yudhisthir Marg, C-Scheme,
Jaipur – 302006, Rajasthan
- 3. Jodhpur Vidyut Vitaran Nigam Limited**
Through Managing Director
New Power House,
Jodhpur – 342003, Rajasthan
- 4. Rajasthan Vidyut Prasaran Nigam Limited**
Through Managing Director
Vidyut Bhawan,
Janpath, Jyoti Nagar,

Jaipur – 302005, Rajasthan

5. Rajasthan Urja Vikas Nigam Limited

Through Managing Director
Vidyut Bhawan, Janpath,
Jyoti Nagar,
Jaipur – 302005, Rajasthan

...Respondents

Counsel for the Appellant(s) : Salman Khurshid Ld. Sr. Adv.
Malak Manish Bhatt
Tanvi Dubey for App. 1

Counsel for the Respondent(s) : Raj Kumar Mehta for Res. 1

Susan Mathew
Mohan Lal Goyal for Res. 2

Ranjitha Ramachandran
Poorva Saigal
Anushree Bardhan
Shubham Arya
Tanya Sareen for Res. 3

Ranjitha Ramachandran
Poorva Saigal
Anushree Bardhan
Shubham Arya
Tanya Sareen for Res. 5

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, a Solar Power Developer in the State of Rajasthan, has assailed the order dated 23rd April, 2019 of the 1st Respondent – Rajasthan Electricity Regulatory Commission (hereinafter referred as “the Commission”) in this Appeal.

2. Respondent No. 2, Rajasthan Renewable Energy Corporation Ltd. (hereinafter referred to as “RREC”) is a company formed by the Government of Rajasthan for promotion and development on non-conventional sources of energy in the State. As a Nodal Agency, it is the duty of RREC to coordinate with the transmission licensee, distribution licensee and other entities and to facilitate commissioning of renewable energy project.

3. Respondent No. 3, Jodhpur Vidyut Vitaran Nigam Limited (in short “JVVNL”) is one of the distribution companies created after unbundling of erstwhile Rajasthan State Electricity Board.

4. Respondent No. 4, Rajasthan Vidyut Prasaran Nigam Limited (in short “RVPNL”) is the transmission licensee created after unbundling of erstwhile Rajasthan State Electricity Board.

5. Respondent No. 5 Rajasthan Urja Vikas Nigam Limited (in short “RUVNL”) is Government of Rajasthan Company formed to carry out power trading business of the state power sector distribution companies.

6. The brief facts and circumstances of the case, giving rise to this appeal are merited herein below :-

(i) In terms of Rajasthan Solar Energy Policy, 2011, the 2nd Respondent - RREC initiated a competitive bidding process for selecting

Solar Power Producer for setting up of Solar PV Projects for total aggregate capacity of 100 MW for supply of solar energy for 25 years to the RREC. The Appellant also submitted its bid and was declared successful bidder for construction, operation and maintenance of 5 MW solar PV project (hereinafter referred to as “the project”) for supply of power to RREC for a continuous period of 25 years.

(ii) In pursuance to the said selection, the Appellant executed a Power Purchase Agreement (PPA) dated 28th March, 2013 with RREC for supply of 5 MW Solar Power on long-term basis. As per the terms of the PPA, the Scheduled Commercial Operation Date (SCOD) for the project was 12 months from the date of signing of the PPA i.e. 28th March, 2014. It appears that due to various Force Majeure conditions/events, the project could not be commissioned on SCOD. Accordingly, the SCOD of the project was extended by 2nd Respondent – RREC several times at the request of the Appellant. Firstly, the SCOD was extended till 20th September, 2014, then upto 30th September, 2015, then upto 31st March, 2016, then upto September, 2016 and then upto 31st March, 2017. While extending the SCOD upto 31st March, 2017 vide letter dated 15th December, 2016, RREC had imposed liquidated damages upon the Appellant and also reduced applicable

tariff from 6.45 KWH to Rs.4.85 per KWH. Feeling aggrieved, the Appellant approached the Commission by way of Petition No. 1031 of 2017 which was partly allowed vide order dated 9th November, 2017 thereby directing RREC to grant three months further extension in SCOD within 15 days from the date of order. The Commission also ruled that change in tariff from 6.45 per KWH to 4.85 per KWH is valid and legal subject to the observation that if Appellant is not availing AD benefit and satisfies the Commission with documentary proof then the tariff of Rs.5.40 per KWH (i.e. without AD benefit) shall apply.

(iii) Accordingly, the RREC granted further extension of three months in SCOD to the Appellant on 22nd November, 2017. Thus SCOD got extended till 22nd February, 2018.

(iv) Vide letter dated 20th January, 2018, the Appellant requested RREC for constitution of connectivity/commissioning committee in reference to the project. Accordingly, the RREC issued letter dated 6th February, 2018 to the Managing Director of 5th Respondent – RUVNL requesting him to arrange to constitute the committee for connectivity/commissioning of the project of the Appellant.

(v) Appellant is stated to have completed the work of entire project by 21st February, 2018. Vide letter dated 22nd February, 2018, it

requested RREC to expedite the formation of Committee for commissioning of the project. As contended by the Appellant, the officers of RREC verbally told that since the extended period of three months in SCOD has expired, the Appellant should obtain further extension from the Commission. Accordingly, the Appellant again approached the Commission by way of petition No. 1323 of 2018 and vide interim order dated 26th April, 2018, the Commission directed RUVNL to constitute a Committee for commissioning of the project and carrying out the tests etc. required for its commissioning.

(vi) Subsequently, the Committee was constituted on 14th May, 2018 and the project was ultimately commissioned on 26th May, 2018.

(vii) After commissioning of the project, the Appellant commenced supply of power to RREC and raised bills for the months of May and June, 2018 @Rs.5.40 per KWH in consonance with the Commission's order dated 9th November, 2017 passed in Petition No. 1031 of 2017. However, the RREC, vide its letter dated 25th July, 2018 returned the invoices stating that the invoices should be submitted as per the applicable generic tariff of Rs.3.93 per KWH(without AD benefit) as the project has been commissioned during financial year 2018-19. Protests

raised by the Appellant in this regard vide letter dated 30th July, 2018 did not find favour with the RREC.

(viii) It is in these circumstances that the Appellant approached the Commission again by way of Petition No. 1374 of 2018 under Section 86(1)(f) of the Electricity Act, 2003 seeking extension of SCOD of the project upto 26th May, 2018 in view of the alleged defaults on part of the respondents and to direct RREC to release the payment of energy bills considering the SCOD of the project as 22nd February, 2018 for the purposes of applicability of the tariff.

(ix) In the impugned order dated 23rd April, 2019, the Commission has held that the delay in commissioning of the project is solely attributable to the Appellant and as per clause 4.5 of the PPA, SCOD cannot be deferred in the event of Appellant's default. Accordingly, it refused to extend SCOD of the project beyond 22nd February, 2018. The Commission also held RREC entitled to liquidated damage of 0.5% per day of the total performance Bank Guarantee submitted by the Appellant on account of delay in commissioning of the project. Relying upon the Article 9.1.2 of the PPA, the Commission also held that the tariff applicable to the Appellant's power project would be the tariff

determined by the Commission for the projects commissioned during financial year 2018-19.

7. Learned Senior Counsel appearing on behalf of the Appellant vehemently argued that the Commission has failed to consider that the delay in commissioning of the project was totally attributable to the respondents. He further pointed out that the Commission has ignored its own order dated 9th November, 2017 passed in Petition No. 1031 of 2017 filed by the Appellant whereby it had directed the 2nd Respondent-RREC to grant three months extension in SCOD and further observed that the liquidated damages cannot be enforced upon the Appellant for the reason that the delay was not attributable to the Appellant but on account of 3rd and 4th Respondent. He argued that had the 2nd Respondent constituted the Commissioning Committee as required under Article 4.7 of the PPA immediately after Appellant requested for it on 20th January, 2018, the Appellant's project would have been commissioned on time. He further submitted that on account of the conduct of the 2nd Respondent, the Appellant was constrained to approach the Commission again by way of Petition No. 1323 of 2018 in which interim order dated 26th April, 2018 was passed directing the 5th Respondent to constitute the Committee but the 5th Respondent again

took 20 days to constitute a Committee. He pointed out that thereafter the power cables laid by 3rd Respondent failed due to which the commissioning of the project was further delayed.

8. According to the Learned Senior Counsel if the interpretation of the relevant clauses of the PPA, as given by the Commission in the impugned order, is permitted to stand, then it would lead to an anomalous situation where respondents would deliberately delay the Commissioning of a project so as to reduce the applicable tariff to purchase solar power at a reduced prices. It is his submission that the relevant clauses of the PPA need to be read harmoniously so as to interpret them in a manner which is fair to both the parties. He would argue that the Commission while dealing with the issue of down-ward revision of tariff, has completely overlooked the conduct of 3rd Respondent - JUVNL and 4th Respondent- RVPNL due to which the delay in commissioning of the project had occurred.

9. He argued that the narrow interpretation of Article 9 of the PPA given by the Commission cannot be sustained.

10. On behalf of the 2nd Respondent, it is submitted that the Appellant was selected through competitive bidding process initiated under Rajasthan Solar Energy Policy, 2011 and executed the PPA

dated 28th March, 2013 on the tariff of Rs. 6.45 per KWH which was discovered in the competitive bidding process and which was much below the generic tariff of Rs.9.63 per KWH for the projects commissioned by 31st March, 2014. He further submitted that the purpose of inviting competitive bidding was to discover tariff which is much below the generic tariff as land etc. was allotted to the successful bidders including the Appellant at concessional rates. According to the Learned Counsel, all other successful bidders except the Appellant have commissioned their respective projects within time. He argued that the issue of tariff has been adjudicated upon in Petition No. 1031 of 2017 vide order dated 9th November, 2017 which has attained penalty as none of the parties assailed it. He would further argue that there had been no delay at all on the part of the 2nd Respondent in taking any step in the entire process and the delay is solely attributable to the Appellant.

11. On behalf of Respondent Nos. 3 to 5, it is argued that the SCOD of the Appellant's project was extended from time to time and the final extension was granted in terms of order dated 9th November, 2017 passed by the Commission in Petition No. 1031 of 2017 till 21st February, 2018. Learned Counsel appearing for these three

respondents argued that the project of the Appellant was not ready at all till 19th February, 2018 i.e. 2 days prior to the final SCOD i.e. 21st February, 2018. In this regard, he referred to progress report submitted by Appellant to RREC on 19th February, 2018 wherein Appellant has itself stated that 3.5 MW solar panels out of 5 MW are erected, 90% of electric work is complete and finishing work of MCR+ICR room is going on. She also referred to the permission granted by the Electrical Inspector vide letter dated 19th February, 2018. Thus, according to the Learned Counsel, these facts clearly indicate that the electric work as well as finishing of the project was still in progress. She argued that in its communication dated 22nd February, 2018, the Appellant for the first time indicated its willingness to commission the project without giving the preliminary written notice of at least 60 days in advance and final written notice of at least 30 days in advance, as required under Article 5.1 of the PPA. She cited the judgement of this Tribunal in Appeal No. 97 of 2016 Talwandi Sabo Power Limited vs. Punjab State Power Corporation Limited and ors. to canvass that timelines prescribed under various provisions of the PPA are mandatory and cannot be by-passed.

12. Learned Counsel further argued that in the absence of the requisite preliminary as well as final written notices from the Appellant

as per Article 5.1 of the PPA, the Discoms cannot be expected to arrange for the inter-connection and transmission facilities for synchronizing the Appellant's project with the grid and to evacuate the power. Thus, according to the Learned Counsel, the Appellant has been rightly held responsible for delay in commissioning of the project, liable for payment of liquidated damages and entitled to generic tariff prevalent for the financial year 2018-19.

13. We have considered rival submissions made by Learned Counsels and have perused the impugned order as well as the record. We have also gone through the written submissions filed by the parties and the judgements cited at the bar.

14. Before analyzing the rival submissions made on behalf of the above parties, we find it pertinent to extract the material provisions of the PPA hereunder :-

“4.5 Extension of Time

4.5.1 In the event that the SPP is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- a) any STU/Discom(s)/Procurement Event of Default; or*
- b) Force Majeure Events affecting STU/Discom (s)/Procurement, or*
- c) Force Majeure Events affecting the SPP,*

The Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.2, for a

reasonable period but not less than 'day for day' basis, to permit the SPP or STU/Discom(s)/Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPP or Procurer, or till such time such Event of Default is rectified by STU/Discom(s)/Procurer.

4.5.2 Subject to article 4.5.6, in case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended by RREC/State Level Screening Committee, subject to the condition laid down in RfP.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days, then any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.5 As a result of such extension, the Scheduled Commissioning Date and the Expiry, Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.6 Notwithstanding anything to the contrary contained in this Agreement, subject to force majeure, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall be governed by clause 4.6.

4.6 Liquidated Damages for delay in commencement of supply of power to Procurer

*4.6.1 If the SPP is unable to commence supply of power to **Procurer** by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPP shall pay to **Procurer**, Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per following:*

a. Delay up to 200 days – CMD, RREC will encash 0.5% per day of the total Performance Bank Guarantee.

- b. *Delay beyond 200 days from schedule commissioning PPA may be terminated. However, in exceptional cases, SLSC may consider to grant extension in the Scheduled Commissioning of project with a penalty @ 1% per day of the total Performance Bank Guarantee.*
- c. *If the SPP fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.6.1, RREC shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Bank Guarantee. If the then existing Total Performance Bank Guarantee is for an amount which is less than the amount of the liquidated damages payable by the SPP to RREC under this Article 4.6, then the SPP shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Total Performance Bank Guarantee by RREC.*

5.1 Synchronisation, Commissioning and Commercial Operation

- 5.1.1 *The SPP shall give the concerned/SLDC/RVPN/Discom(s) and RREC at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronise the Power Project to the State Grid System.*
- 5.1.2 *Subject to Article 5.1.1, the Power Project may be synchronized by the SPP to the State Grid System when it meets all the connection conditions prescribed in Rajasthan Electricity Grid Code (REGC) and it meets all other Indian/State Legal requirements for synchronization to the State Grid System.*
- 5.1.3 *The synchronization equipment shall be installed by the SPP at its generation facility of the Power Project at its own cost. The SPP shall synchronize its system with the Grid System only after checking/verification is made by the concerned RVPN and Discoms Authorities of the Grid System.*
- 5.1.4 *The SPP shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with State Grid Code.*
- 5.1.5 *The SPP shall commission the project within 12 months for the contracted capacity power plant from the date of signing of PPA.*

9 ARTICLE 9 : APPLICABLE TARIFF

9.1.1 The SPP shall be entitled to receive a Tariff of Rs 6.45/kWh for the energy supplied at the Delivery Point during a Contract Year pertaining to the Contracted Capacity throughout the term of PPA.

9.1.2 If as a consequence of delay in commissioning, the applicable RERC tariff changes, that part of the capacity of the project for which the commissioning has been delayed shall be paid the agreed tariff as per PPA or the applicable RERC tariff, whichever is lower.

Note – In case there is any change in tariff for that part of the capacity for which the commissioning has been delayed, the overall tariff for the project would be worked out on the basis of weighted average method.”

15. As per Article 5.1.5, the Appellant was obligated to commission the project within 12 months from the date of signing of PPA. The Appellant had executed PPA dated 28th March, 2013 with the 2nd Respondent. Therefore, it was required to commission the project or on before 28th March, 2014. However, it appears that on account of various Force Majeure conditions/events, the Appellant was unable to commission the project on the said SCOD i.e. 28th March, 2014. At the request of the Appellant, the SCOD was extended several times. Lastly, it was extended till 28th February, 2018 in pursuance to the order dated 9th November, 2017 passed by the Commission in Petition No. 1031 of 2017 filed by the Appellant.

16. It is the case of the Appellant that its project was ready for commissioning on 20th January, 2018 when it wrote letter to the 2nd

Respondent for constitution of Commissioning Committee as required under Article 4.7 of the PPA but the 2nd Respondent did not constitute such Committee and accordingly, Appellant was constrained to file Petition No. 1323 of 2018 before the Commission in this regard and it was in pursuance to the interim order dated 26th April, 2018 passed by the Commission in the said petition that the Commissioning Committee was constituted. It is argued on behalf of the Appellant that had the 2nd Respondent constituted the Commissioning Committee immediately after receipt of said letter dated 20th January, 2018 from the Appellant, Appellant's project would have commissioned on time. Thus, the case of the Appellant, in short, is that the commissioning of the project got delayed only due to in-action and malafide conduct of the 2nd Respondent.

17. We have perused the said letter dated 20th January, 2018 addressed by the Appellant to 2nd Respondent. The contents of the letter no where indicate that the project of the Appellant was ready for commissioning on that day. The Appellant has itself mentioned in the letter that only 40% of the civil and erection work has been completed and the solar modules were likely to be dispatched within next 7 to 8 days. Therefore, even if the Commissioning Committee would have

been constituted immediately after receipt of the said letter from the Appellant, we fail to understand as to what the Committee would have done. The project was still only half way and the Committee could have done nothing except to wait for its completion.

18. We find force in the submissions made on behalf of the Respondents that the Appellant's project was not complete even on 19th February, 2018 i.e. just 3 days before the SCOD on 22nd February, 2018. This is evident from the letter dated 19th February, 2018 written by the Appellant to the 2nd Respondent wherein it is stated that only 3.5 MW solar panels out of 5 MW have been erected and only 90% of the electric work is complete. The letter further states that the finishing work of MCR+ICR room is still going on. Therefore, the Appellant's project was yet to achieve completion even on 19th February, 2018.

19. In these circumstances, we are unable to comprehend as to how and in what manner has the commissioning of the project got delayed by any inaction on the part of the respondents, as contended on behalf of the Appellant. Certainly, non-constitution of the Commissioning Committee by the 2nd Respondent immediately after the receipt of letter dated 20th January, 2018 from the Appellant cannot be said to have contributed to delay in commissioning of the Appellant's project. It is

manifest from the contents of letters dated 20th January, 2018 & 19th February, 2018 addressed by the Appellant to the 2nd Respondent that there was no possibility of completion of the Appellant's project by the SCOD i.e. 22nd February, 2018, not to speak of its commissioning. Therefore, the Commission has rightly refused to extend the SCOD of the project beyond 22nd February, 2018 as prayed by the Appellant. In this regard, we need to note the provisions of Article 4.5 of the PPA, which have already been extracted herein above. As per Article 4.5.1, the scheduled commissioning date as well as expiry date could be deferred only in case the commissioning of the project is delayed due to any default on the part of the STU/Discom/Procurement or any Force Majeure event affecting STU/Discom/Procurement or Force Majeure event affecting the power developer. It is due to these provisions in the PPA that the SCOD for the Appellant's project was extended several times from 28th March, 2014 upto 20th February, 2018 as on finding that the completion of the project was affected by various Force Majeure events. However, as we have already noted herein above, nothing except the default/in-action on the part of the Appellant itself prevented it from completing/commissioning the project on 22nd February, 2018. Therefore, the Appellant is not entitled to any further extension of time

in commissioning of the project beyond 22nd February, 2018 and the SCOD of the project would remain 22nd February, 2018 as held by the Commission in the impugned order.

20. At this stage, the provisions of Article 5.1 related to synchronization/commissioning and commercial operation need to be discussed. As per Article 5.1.1, the solar power producer i.e. the Appellant was required to give at least 60 days advance preliminary written notice and at least 30 days advance final written notice to the 2nd Respondent – RERC about the date on which it intended to synchronize its power project to the State Grid System. Concededly, the Appellant has not issued any of these two notices to the 2nd Respondent.

21. It is no longer *res integra* and has been held by the Hon'ble Supreme Court in its various judgements that PPA is a sacrosanct document and binding upon the parties. All the rights and obligations of the parties flow from the provisions of the PPA and the timelines given therein are to be adhered to. We need to emphasize that the timelines given in a PPA have a purpose and are not a mere empty formality. Therefore, the parties cannot be given any liberty to by pass such mandatory provisions relating to various timelines in the PPA.

22. As we have already noted that Article 5.1.1 of the PPA required the Appellant to serve advance written notices upon the 2nd Respondent about its intention to synchronize the power project with the State Grid System. The requirement for giving such advance notices is to enable the respondents to arrange for the inter-connection and transmission facilities for evacuating power from the Appellant's project and also to make arrangements for receiving the contracted capacity of power from the Appellant's project. It would not be possible for any Distribution Licensee to synchronize a power project with the grid system in the absence of these mandatory advance notices from the power developer. The previous judgement of this Tribunal dated 3rd June, 2016 in Appeal No. 97 of 2016 Talwandi Sabo Power Limited vs. Punjab State Power Corporation Limited and ors. fortifies our view on this aspect.

23. Hence, in the absence of the requisite mandatory notices under Article 5.1.1 of the PPA, it cannot be said that the Appellant's power project was ready for commissioning before 22nd February, 2018 and that the Appellant had expressed its intention in advance to the respondents for synchronization of the project with the grid system.

24. Learned Senior Counsel appearing for the Appellant harped upon the order dated 9th November, 2017 whereby the 2nd Respondent was directed to grant further three months extension for achieving SCOD to the Appellant. According to the Learned Senior Counsel, the Commission acknowledged in the said order that the delay in completion/commission of the Appellant's project was not attributable to the Appellant and was occasioned only due to the conduct of the respondent. The Submission of the Learned Senior Counsel are related and hold good only till 31st March, 2017. At best, it can be said that the Commission excused the delay in commission of the project till 31.03.2017 and accordingly, directed the 2nd Respondent to grant further extension of three months to the Appellant to achieve the SCOD. But, evidently, the delay in commissioning of the project by the fresh SCOD i.e. 22nd February, 2018 is totally attributable to the Appellant only as discussed herein above. The Appellant's project was still incomplete in various respects even on 19th February, 2018 and the Appellant has failed to issue the requisite notices under Article 5.1.1 to the 2nd Respondent. It was the responsibility of the Appellant to complete the project and get it commissioned by 22nd February, 2018 but it has failed to do so.

25. Article 9 of the PPA, which has already been quoted herein above related to the applicable tariff for the Appellant's project. Article 9.1.2 provides that delay in commissioning of the project would result in change of tariff also and the tariff applicable at the time of commissioning date shall apply. To put it exactly, the provision says that where the commissioning of the project gets delayed, the tariff applicable shall be either as per the PPA or the applicable tariff as on date of commissioning, whichever is lower. Therefore, clearly, in the instant case, since the Appellant has failed to get its project commissioned on the SCOD i.e. 22nd February, 2018 and the project has actually achieved commercial operation on 26th May, 2018, the tariff applicable during the financial year 2018-19, which is lower than the tariff agreed to in the PPA, would apply.

26. Article 4.6.1 of the PPA provides that in case the Appellant is unable to commence supply of power by the scheduled commissioning date other than for the default of Discoms/STU/Procurer, it shall be liable to pay liquidated damages for such delay to the procurer i.e. 2nd Respondent. Since we have held that the delay in commissioning of the project beyond 22nd February, 2018 is solely attributable to the

Appellant, the Appellant cannot escape liability from paying the liquidated damages to the 2nd Respondent as per said Article 4.6.1.

27. Hence, in view of the foregoing discussion, we do not find any error or infirmity in the impugned order of the Commission. The Appeal is devoid of any merit and hereby dismissed.

Pronounced in the open court on this 24th day of September, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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