

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO. 169 of 2015**

**Dated : 11<sup>th</sup> January, 2019**

**PRESENT:HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER  
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

**IN THE MATTER OF:**

Earth Solar Private Limited,  
1018, Sector 36,  
Chandigarh, Punjab -160036

**.....Appellant**

**VERSUS**

1. Punjab State Electricity Regulatory Commission  
SCO: 220-221,  
Sector 34-A, Chandigarh
2. Punjab State Power Corporation Limited,  
The Mall, Patiala.
3. Punjab Energy Development Agency,  
through its Chief Executive,  
Plot No. 1 & 2, Sector 33, Chandigarh

**..... Respondent(s)**

**Counsel for the Appellant(s) : Mr. Parinay Deep Shah**

Ms. Mandakini Ghosh

Ms. Aradhna Tandon

Ms. Swagatika Sahoo

**Counsel for the Respondent(s)** : Mr. Sakesh Kumar for R-1

Mr. Anand K. Ganesan

Ms. Parichita Chowdhury

Ms. Neha Garg for R-2

Mr. Aadil Singh Boparai

Mr. Gurlabh Singh

Mr. Sunil Chaudhary (Rep)

for R-3

## **J U D G M E N T**

### **PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The Appellant, Earth Solar Private Ltd. has filed the instant Appeal under Section 111 of the Electricity Act, 2003 against the impugned Order dated 22.6.2015 passed by the Punjab State Electricity Regulatory Commission ('**State Commission**') in Petition No. 20/2015 whereby the State Commission has rejected the Appellant's prayer for extension of time and applicable Tariff for commissioning of its' 4 MW solar PV

project, and has arbitrarily reduced the tariff applicable to the Appellant's solar PV project from Rs. 8.70/unit to Rs. 7.29/unit (**Impugned Order**).

- 1.1 The Appellant had filed a petition before the State Commission under Rule 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulations, 2005 and Clause 85 of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 read with Section 94 of the EA 2003, for seeking extension of period of commissioning of the project by two months with applicable tariff of Rs. 8.70/unit. The State Commission failed to appreciate that the Appellant had been unduly delayed not for any reasons attributable to the Appellant but due to failure on part of the Respondent No. 3 to take timely actions and provide the conditions assured in the Bid Conditions. The State Commission has by the Impugned Order also reduced the tariff applicable to the Appellant, which was discovered through a process of competitive bidding. Such reduction is unreasonable and untenable in law.

**1.2** The Appellant is aggrieved by the Impugned Order as stated above and has preferred the present Appeal.

**2. Brief Facts of the Case:-**

**2.1** The Appellant, Earth Solar Private Limited is a private limited company duly registered under the Companies Act, 1956 on 22.04.2013. The Appellant has set up a 4 MW Solar PV Plant in Village Behbalpur near Bhadson, District Patiala, Punjab, which was commissioned on 28.05.2014. The Appellant is supplying the entire quantum of power from the Project to Respondent No. 2 after emerging successful in a competitive bidding process conducted by the Respondent No. 3, against the Request For Proposal (**RfP**) issued and pursuant to execution of the Implementation Agreement (**IA**) between Appellant and Respondent No.3 on 17.09.2013, and the execution of a Power Purchase Agreement (**PPA**) between Appellant and Respondent No. 2 on 27.12.2013.

**2.2** The Respondent No. 1, the State Commission is the Regulatory Commission in the State of Punjab, exercising powers and discharging functions under Sections 62, 86 and other applicable provisions of the

- EA, 2003.
- 2.3** The Respondent No. 2 is a distribution licensee under Section 14 of the EA 2003 supplying electricity to the consumers in the State of Punjab, and Power Purchaser as per the PPA executed by the Appellant and Respondent No. 2.
- 2.4** Respondent No. 3, Punjab Energy Development Agency (**PEDA**) is the nodal agency responsible for promotion and development of non-conventional and renewable sources of energy (NRSE) in the State of Punjab, including solar, mini hydro, biomass/agro-waste based power projects.
- 2.5** On 26.12.2012, the Government of Punjab (**GoP**) issued the New and Renewable Sources of Energy Policy, 2012(**NRSE Policy**) with an objective to develop and promote new and renewable sources of energy based technologies and energy conservation measures as well as providing financial and fiscal assistance. PEDA was appointed as the nodal agency under the NRSE Policy to act as a single window facility for implementation of the NRSE Policy. PEDA is responsible for laying down

the procedure for inviting of proposals from NRSE project developers i.e. preparing bid documents, managing the bid process, evaluation of project proposals and its award to successful bidder, project approvals and scrutiny of DPR, project implementation and monitoring. The NRSE Policy sought to provide specific support to the renewable energy developers and incentivized the developers by offering them various benefits i.e. – (i)100% exemption of stamp duty and (ii) registration fee; exemption of change of land use (CLU) (iii) external development charges & (iv) other charges for NRSE projects. Clause 4.3 of the NRSE Policy provides that the government agencies/departments and the GoP shall provide clearances within a period of 60 days after submission of complete applications along with necessary enclosures, fees/charges and DPR.As per Clause 3, Annexure II, which specified the detailed procedure for according approvals/clearances, CLU was to be provided to the renewable energy developer within 60 days of submission of complete application by the developer.

- 2.6** On 11.03.13, the PEDDA, invited proposals/bids against Request for Proposal (**RfP**) through e-bidding system for selection of bidders for

setting up solar photovoltaic power projects for sale of power to Respondent No. 2. The bidders were required to submit their bids based on net availed tariff after providing discount on the generic tariff of Rs.8.75/unit as notified by the Central Electricity Regulatory Commission (**CERC**) order for Solar PV Power Projects for FY 2013-14 dated 28.02.2013 in Petition 243/SM/2012 (Suo Moto). This generic tariff has been adopted by the State Commission on 25.06.2013 in Petition no. 37/2013 (Suo Moto). The selection of successful bidders by PEDDA was based on the net tariff arrived in Rs./Kwh after reduction of discount offered by the bidders. The RfP was based on the NRSE Policy and as per Clause 1.3 of the RfP, it assured various assistance/fiscal benefits to the bidders which were identical to that offered under Clause 4.4 read with Annexure III of the NRSE Policy.

**2.7** The RfP provided the bidders with the option of acquiring either panchayat land, agricultural land or/and private land for setting up the solar PV project. There was no restriction regarding the type of land required for the project nor was there any obligation on the bidder to acquire any particular type of land. The RfP clearly specified that irrespective of type of land, the

developer would be exempted from payment of stamp duty for registration of sale deed or lease deed as applicable. Further, the RfP, mirroring the provisions of the NRSE Policy specified that the developer would be allowed to set up the solar PV project on agricultural land and no change of land use (CLU), external development charges (EDC)/or any other charges/fees would be payable by the developer. The RfP also contained the draft implementation agreement and draft power purchase agreement to be executed between the successful bidder, PEDDA and the Respondent No. 2. The aforementioned documents contained details regarding the obligations and rights of PEDDA, the Appellant and Respondent No. 2.

**2.8** In response to the RfP and in consideration of the fiscal assistance/benefits being offered by the PEDDA, the Appellant submitted its bid dated 25.04.2013 for development of a 4 MW Solar PV Power Project. The Appellant had quoted a net tariff of Rs. 8.70/unit by quoting a discount of Rs. 0.05 on the CERC generic tariff of Rs. 8.75/unit. The Appellant emerged as a successful bidder by being selected for setting up the 4 MW solar PV project at a net tariff of Rs. 8.70/unit (**the Project**).



**2.9** Subsequently, PEDDA issued a Letter of Award (**LoA**) on 22.07.2013. The Appellant was required to sign Implementation Agreement (**IA**) with PEDDA within 30 days from the date of issue of LoA and further sign the Power Purchase Agreement (**PPA**) with Respondent No. 2. The Appellant was also required to submit tie up of financing arrangements for the project. It is provided in the LOA that all other terms and conditions shall be as per the RfP document. The Appellant executed the IA with PEDDA on 17.09.2013. Article 3 sets out the provisions for the Tariff for the Sale of Power to Respondent no. 2 at Rs. 8.70 per kWh. As per Article 5 of the IA, GoP was to provide fiscal and technical assistance to the Appellant as specified under the NRSE Policy, 2012.

**2.10** Certain obligations were also cast upon PEDDA and the Appellant as per Article 6 of the IA. Article 6 obligated PEDDA to provide necessary support including single window clearance to the Appellant to facilitate the development of the project. PEDDA was obligated to facilitate in assisting and advising in respect of obtaining various approvals from the various departments, GoP. The Project was required to be commissioned within 13

months from the date of signing the PPA. Article 7 of the IA, listed the consequences of delay in commissioning the Project. Article 7 of the IA does not envisage variance in tariff to be a consequence of delay in commissioning of the Project. Further, Article 8 of the IA recognized that occurrence and continuation of a political force majeure event shall constitute a default on the part of PEDDA. Article 10 of the IA provided for abeyance of obligations in event of occurrence of political and non-political force majeure events.

**2.11** Pursuant to the IA, the Appellant and Respondent No. 2 executed the PPA on 27.12.2013. As per clause 10.1.0 of the PPA, the Appellant's solar plant was to be synchronized with the state grid within 13 months from the date of PPA, i.e. 27.01.2015. Accordingly, the scheduled date of commissioning (SCOD) for the project was 26.01.2015, which was subsequently extended to 15.03.2015 by PEDDA in letter dated 18.12.2014 providing blanket extension to all the successful bidders' SCOD, by which the Appellant was also included within the generic extension. Therefore, effectively under Article 10 of the PPA, the SCOD was 15.03.2015. For any delay beyond 15 months, or beyond 15.5.2015, liquidated damages

provided under Article 10.1.1 of the PPA would be applicable. Forfeiture of performance BG and imposition of liquidated damages were also the consequences for delay in commissioning of the Project that would be applicable in the event of **unauthorized** delay by the Project developer. Article 19 of the PPA provides for force majeure, which kept in abeyance obligations of the Appellant during the tenure of occurrence of such events. Article 19.4 of the PPA provides that for all force majeure events during the commissioning period of the Project, provisions of the IA will be applicable and force majeure clauses under Article 19.0-19.3 of the PPA will be operative after the Project achieves commissioning.

**2.12** In the interim period, on 19.08.2013, the Appellant acquired land measuring 72 Kanal vide registered sale deed for setting up the Project. As per Clause 1.3 of the RfP and Clause 4.4 r/w Annexure III, NRSE Policy, the registration of sale deed for the purpose of the Project was exempted from stamp duty and accordingly the Appellant had not paid any stamp duty. However, after registration, **the sale deed was impounded by Sub Registrar, Bhadson** and it was sent to ADC(D)

Patiala (**the Collector**) under section 47-A of the Stamp Act. The GoP failed to take any requisite measures, and had further acted contrary to its own assurances under the NRSE Policy and the RfP in failing to recognize that the Project was not liable for any stamp duty, and further had impounded the instrument in effect detaining the Appellant from utilizing the Land for all practical purposes., rendering all actions related to the project that is tied up with the completed registration of the Land and the documentation thereof as suspended. The Collector, Patiala instituted a case for which non-consequential hearings were scheduled on a monthly basis where, the Collector, Patiala did not hold any proceedings, and continued to keep the registered Sale Deed as impounded, in absence of Notification and official communication.

**2.13** The Respondent No. 2 filed Petition No. 52 of 2013 before the State Commission seeking approval to procure electricity including the tariff from solar energy generators to be established in the State of Punjab. The State Commission vide its orders dated 14.11.2013 and 3.12.2013 observed that the tariff has been discovered through a process of competitive bidding and approved the tariff for the various projects

including that of the Appellant. The Appellant was allowed tariff of Rs. 8.70/unit.

**2.14** The Appellant failed to obtain the original sale deed as it was required, inter alia, to comply with obligations to PEDDA in furtherance of the Project and in order to obtain financing for the Project from banks/financial institutions and essential for completion of all formalities in order to commence work on the Project. Accordingly, the Appellant informed PEDDA of the impounding, making requests for action from the government and also wrote to PEDDA on 18.02.2014 and 5.03.2014. The Appellant intimated PEDDA that it's sale deed was impounded by the Sub-registrar, and thus continued to be held by the Collector, Patiala with requests that PEDDA may issue a clarification to the former that as per the assurances provided by GoP and contractually offered by PEDDA, the Appellant was not required to pay any charges for registration of sale deed. The Appellant informed PEDDA that as per the PPA, the Appellant was obligated to obtain financial closure within six months of signing the PPA, i.e. 27.6.2014. However, a period of four months lapsed due to confusion in various departments of the GoP regarding the NRSE Policy

and the GoP assurance of fiscal and technical assistance that was considered as the conditions precedent to the bids submitted for development of the Project. The Appellant urged PEDDA to issue a clarification at the earliest stating that the RfP pursuant to the NRSE Policy does not envisage any payment of stamp duty for registration of sale deed by the renewable energy developers. The GoP notified the exemptions in respect of Stamp Duty registration and CLU and EDC, in May 2014 and August 2014 respectively.

**2.15** After the May Notification, on 21.05.2014, the Collector, Patiala finally closed the proceedings under section 47-A of the Stamp Act, making reference to the May Notification and thereafter issuing the official order on 26.05.2014, wherein the Registered Sale Deed was received by the Appellant on 26.05.2014. There was a delay of 9 months in processing the Appellant's application for registration of sale deed.

**2.16** Only on 27.05 2014, after the release of the sale deed by the Collector, Patiala, PEDDA wrote to the Collector Patiala requesting release of the Appellant's land registry. PEDDA has acknowledged notice of the impounded documents, the delay and the Appellants requests for

support and has finally responded to repeated requests, in directing the release of documents so that the Appellant may proceed further for set up of the 4 MW Solar Projects. However, this support has been extended belatedly, in fact the PEDDA letter has been sent after the Collector Patiala finally ordered release on 26.05.2015 only on the basis of the May Notification.

**2.17** After release of the sale deed on 26.05.2014, the Appellant deposited the original sale deed with the bank to obtain financial closure for its Project. The total project cost of the project was Rs. 36.65 crore and the Appellant approached State Bank of India (the Bank) for financing. The Bank vide letter dated 21.06.2014 accorded in-principle approval subject to sanction of the proposal by the competent authority and completion of all formalities including documentation and security creation in favour of the bank. The Appellant could not obtain financing for its Project without producing the original sale deeds of the land for the Project and thereupon further procuring the CLU for the same. Accordingly, the Appellant could obtain financial closure only after the original sale deed was released by the GoP in May, 2014 and further actions could be

proceeded with in respect of the Land for the Project. The GoP failed to facilitate its assurances related to Land acquisition and provide the assured fiscal and technical support as per the RfP and the NRSE Policy that provided for exemption to the Appellant from paying any registration fee on the sale deed and this failure to perform by GoP caused a delay of 9 months in starting the Project.

**2.18** It is pertinent to note that NRSE Policy, 2012 and clause 1.3 of RfP specified that agricultural land is allowed to be used for setting up of renewable energy power projects in the State and no CLU, EDC or any other charges/fees for the same is payable. Additionally, Clause 4.3, Annexure II of the NRSE Policy obligated the PEDDA/state government departments to provide CLU within 60 days of the developer's application (in situations CLU would be applicable). However, the relevant state government department kept delaying grant of CLU. On 29.08.2014, the GoP, Department of Town and Country Planning belatedly issued Notification exempting renewable energy projects being set up in the State of Punjab from Change of Land Use (CLU) and External Development Charged (**August Notification**). This notification finally



gave teeth to the status/fiscal benefits of/available to, renewable energy projects under the RfP and the NRSE Policy.

**2.19** On 30.09.2014, the Appellant wrote to PEDDA informing the authority of delay in financial closure owing to the delay in facilitating the conditions promised by the GoP by timely issuing the appropriate notifications. The Appellant also intimated PEDDA regarding the wrongful impounding of the land registry and its subsequent release after a lapse of 9 months thereby delaying both the financial closure as well as construction of the Project. Appellant has kept PEDDA informed of the delay caused by the actions of the competent authorities as well as the resultant delays impacting the project requesting its support and facilitation as promised.

**2.20** On 06.10. 2014, the Appellant made an additional CLU application for the additional Land measuring 7 acres, while original application for CLU dated 4.05.2010 was still pending before the GoP. Despite the August Notification, the GoP failed to take any action and process the Appellant's CLU applications in a timely manner.

**2.21** On 13.12.2014, the SBI vide email of the same date informed the

Appellant that approval of the loan for construction of the Appellant's Project would be subject to Statutory Clearances and CLU of the Land.

**2.22** The Appellant could not install the Project without access to the Land documents that were impounded for 9 months and the related CLU. Further, the banks/financial institutions were also not ready to release the funds without reviewing the original land documents and CLU. The SBI had earlier accorded in-principle approval subject to documentation and creation of security and CLU was required before the loan could be sanctioned finally. However, the Appellant was unable to obtain CLU as the GoP was continuously delaying grant of CLU in contravention to its obligation and promise under the NRSE Policy and RfP, and PEDDA did not respond with any support or facilitation in this matter, pursuant to its obligations under the IA and the RfP. On repeated requests, SBI issued the conditional sanction letter dated 31.01.2015 for a loan amount of Rs. 19 crore and specifically mentioned therein that the funds would be disbursed only after the CLU of land at village Bhadson is obtained and equitable mortgage of land created in favour of SBI.

**2.23** Subsequently, the GoP vide its letter dated 06.02.2015 allowed

provisional CLU to the Appellant. The Department of Town Planning and Country Planning, GoP granted provisional CLU to the Appellant after a lapse of 9 months from the date of the Appellant's application in May, 2014 and four months from the date of the Appellant's application in October, 2014. This was contrary to the NRSE Policy for setting up renewable energy project on agricultural land and CLU if at all required, would be granted within 60 days of the developer's application for the same. Even after the GoP, Department of Planning by the August Notification provided that no CLU charges are applicable for renewable energy projects, the Appellant's CLU was not processed for another five months. The Appellant's Project was accordingly delayed by a further period of 7 months effectively as it accounted for an outer limit of 60 day period for approvals.

**2.24** On 11.01.2015, 11.01.2015 and 5.03.2015, the Appellant by letters of those dates addressed to PEDDA, requested for an extension of the SCOD to 30.06.2015 in light of the fact that PEDDA failed to meet the terms of the RFP and the requisite support was never met. The Appellant also intimated that at the outset, the LoA was issued 2 months late by

PEDA and thereafter delay caused by reason of failure of the GoP to notify and facilitate the underlying promise of exemption of stamp duty, CLU and External Development Charges which caused the impounding of the land and subsequent delays in grant of CLU respectively.

**2.25** On 24.03.2015, the Appellant wrote to Respondent No. 2 communicating near completion of the Project. The Appellant enquired regarding completion date of the bay extension at the Bhadson Sub-Station to receive power from the Project. The Respondent No. 2 had failed to complete bay extension work and as on the revised SCOD of 15.03.2015, was not prepared and unable to receive power from the Appellant's Project. Appellant proceeded to comply with all obligations for synchronization and interconnection prior to commissioning. Therefore, on the SCOD of 15.03.2015, the Respondent No. 2 had not even complied with its responsibilities under the PPA and was not ready to receive power from the Project. It begs consideration that despite requiring the Appellant to meet its timelines and suffer an unanticipated extraneous penalty for delay on account of Government's failure to uphold its promises, the Respondent No. 2 has failed to facilitate

synchronisation even on the SCOD of the Project.

**2.26** On 18.05.2015, the Appellant once again wrote to the Respondent No. 2 communicating near completion of its Project and requesting for clarification on synchronization as the bay extension had still not been completed by the Respondent No. 2 due to issues with crossing of 66 KVA lines and problem with a relay. Therefore, even well past the original SCOD, Respondent No. 2 was not ready to receive power from the Project. The Appellant also intimated that it is awaiting inspection/approval by Respondent No. 2 on 20.05.2015, for synchronization of the Project after which the Project would be ready for commissioning. The Respondent No. 2 contributed to the delay for delay in its responsibilities under the PPA and was not ready to receive power from the Project.

**2.27** Immediately after receipt of provisional CLU on 6.02.2015, the Appellant acted with alacrity and proceeded with construction of the Project. PEDDA was informed about the progress of work from time to time. The Appellant acted efficiently and achieved COD on 28.05.2015. in effect, the Appellant commissioned the Project 13 days after the two month

grace period granted under the PPA, i.e. 15.05.2015. As PEDDA providing blanket extension to all bidders, extended the Appellant's SCOD to 15.03.2015, the effective SCOD, for purposes of Article 10 of the PPA was 15.03.2015 and consequently the provision in the aforementioned article extended the two-month grace period concomitant with the SCOD to 15.5.2015.

**2.28** The Appellant filed Petition No. 20 of 2015 seeking project specific extension of the period of commissioning by two months i.e. upto 31.05.2015 with the tariff of Rs 8.70 per/unit. The Appellant further prayed that during the pendency of the aforementioned petition before the State Commission, Respondent No. 2 may be restrained from invoking performance guarantee in the interest of justice. The State Commission passed the Impugned Order in Petition No. 20 of 2015 on 22.06.2015.

**2.29** The Appellant is aggrieved with the Impugned Order due to the following reasons:

- (i) The PEDDA has failed to fulfill its obligations in terms of the assurances, fiscal and technical benefits promised to all the

renewable energy developers under the RfP&to the Appellant in the IA;

- (ii) The PEDDA has failed in its duties as a nodal agency by failing to coordinate with the various departments of the GoP and ensure timely clearances/approvals to the Appellant by instituting an Empowered Committee;
- (iii) The PEDDA and the GoP have delayed issuance of notifications to implement the bid conditions assured to the renewable energy developers under the NRSE Policy, RfP and the IA resulting in causing huge & unavoidable delays to the Appellant in commissioning of its Project;
- (iv) The impounding of the sale deed by the sub registrar and institution of proceedings before the Collector, Patiala for a period of nine months till the issuance of May Notification disabled the Appellant from proceeding with construction of the Project, applying for the CLU and achieving financial closure;
- (v) The further delay in grant of CLU to the Appellant by the Department of Town Planning and Country Planning, GoP due to delay in issuance of the August Notification impeded the Appellant from achieving financial closure and proceeding with the Project;
- (vi) The State Commission failed to recognise that failure of the GoP to provide notification and of PEDDA to provide support, the impounding of sale deed, the continued appropriation by the Collector and further

delays in granting CLU were justified as force-majeure events under the IA & the PPA;

- (vii) The State Commission failed to realize that the consequences of delay in commissioning of the Project as envisaged under the RfP, IA and the PPA does not include or result in reduction of tariff;
- (viii) The State Commission does not have the power under the EA 2003 to re-open a competitively bid tariff for renewable energy projects; The State Commission cannot vary tariff discovered through competitive bidding process to the detriment of the Appellant;
- (ix) The State Commission has discriminated against the Appellant by adopting different stands vis-à-vis similarly placed renewable energy developers. The State Commission has allowed extension in commissioning with applicable tariff to various other renewable energy developers while denying the same to the Appellant.

**2.30** Aggrieved as above by the Impugned Order, the Appellant has filed the present appeal before the Tribunal.

### **3. FACTS IN ISSUE**

**3.1** Whether the State Commission was correct in not appreciating the delay in commissioning the Project was due to defaults on the part of PEDDA and the GoP?



- 3.2** Whether the State Commission was correct in not appreciating the delays by the various departments of the GoP to issue timely notifications to implement the benefits conferred on renewable energy developers under the NRSE Policy and the RfP?
- 3.3** Whether the State Commission has correctly determined the obligations of PEDDA under the NRSE Policy and the RfP, as being conditions precedent to the obligations of the energy developers?
- 3.4** Whether the State Commission was correct in holding that the impounding in the sale deed did not cause any delay in commissioning the Project?
- 3.5** Whether the State Commission was correct in holding that the impounding of sale deed was not an impediment in submission of application for grant of CLU?
- 3.6** Whether the State Commission correctly determined the impact of the delayed notifications dated 7.5.2014 and 29.8.2014?
- 3.7** Whether the State Commission was correct in failing to appreciate that the actions of the sub registrar in impounding the sale deed and

consequently the matter pending before the Collector, Patiala, for 9 months without suitable Orders or release of the registered Land documents in the absence of the Government's Notification and/or instructions to facilitate amounted to an Order of a statutory authority that is beyond the reasonable control of the Appellant and has had a material adverse effect on the Project.

- 3.8** Whether the State Commission was correct to cause the Appellant to suffer a loss of Rs. 25 crores for a 13 day delay in commissioning the Project, which delay is in any event is not attributable to the Appellant?
- 3.9** Whether the State Commission has been passing completely inconsistent orders and is taking contrary views in pari material matters?
- 3.10** Whether the State Commission has overreached its jurisdiction by changing the tariff for a delay in commissioning, without prejudice and for cause attributable to the government, where the tariff has been determined by a competitive bidding process and has been adopted pursuant to section 63 of the EA, 2003?

**4. QUESTIONS OF LAW**

The questions of law arise that for consideration in the present appeal are as follows:

- 4.1** What were the assurances made and benefits available to the Appellant under the NRSE Policy and RfP, and whether these amount to Bid conditions as conditions precedent to the both the IA and the PPA?
- 4.2** Whether the State Commission has correctly evaluated the obligations of PEDDA as the nodal agency under the NRSE Policy and the RfP, and the failure to meet these obligations is a breach affecting the performance of the appellant?
- 4.3** Whether there was a force majeure event under the IA or/and the PPA?
- 4.4** What were the consequences of delay by the GoP in releasing the sale deed and the grant of CLU?
- 4.5** What were the consequences of GoP's delay in issuing timely notification for implementation of the fiscal benefits assured to renewable energy generators under the NRSE Policy and the RfP:
- 4.6** What were the consequences of delay in commissioning of the Project?
- 4.7** Whether the delay in commissioning of the Project could be attributable

to the Appellant?

- 4.8** Whether the IA & the PPA envisaged a situation wherein tariff could be reduced due to delay in commissioning of the Project?
- 4.9** What were the consequences of extension of SCOD under the PPA by the PEDDA letter dated 18.12.2014?
- 4.10** Whether the State Commission could re-open competitively bid tariff and reduce the same?
- 4.11** Whether the State Commission can take contradictory views in pari material cases ?

**5. Learned counsel, Mr. Prinay Deep Shah, appearing for the Appellant has filed written submissions as under:-**

- 5.1** Implementation agreement and PPA provide COD to be 26.01.2015 i.e. 13 months from 27.12.2013 SCOD was extended for all projects by PEDDA letter dated 18.12.2014, to 15.03.2015 . All projects had a period of 14 months 16 days to complete the project. NRSE policy dated 26.12.2012, Annex III Article 4 (ix) provides for 100% exemption from payment of fee and stamp duty. Despite taking note of NRSE Policy and

the exemption from stamp duty within it, vide Order dated 20.08.2013, Jt. Sub Registrar Bhadson wrongly impounded Sale Deed of Appellant, on the ground that the stamp duty was not paid. Vide notification dated 07.05.2014, Punjab Government clarified that no registration fees is payable for setting up project under NRSE policy 2012. Based on Notification dated 07.05.2014, Collector ADC Patiala vide Order dated 21.05.2014 held that sale deed is wrongly impounded by Jt. Sub Registrar Bhadson and appellant is exempted from payment of stamp duty. On 29.08.2014 Punjab Government released notification exempting Projects under NRSE policy 2012 from CLU charges.

**5.1** From 27.12.2013 i.e. the date from which the time period of 14 months 16 days began to run for COD, the delay beyond control of the Appellant was as follows:

- *months 11 days later Govt. of Punjab issued notification exempting from Stamp Duty on sale deeds.*
- *months 25 days later the Sale Deed of Appellant was released.*
- *8 months 3 days later Punjab Government released notification exempting from CLU charges.*

**5.2** This period of 4 months 25 days from 27.12.2013, until release of sale deed on 21.05.2014, qualifies as Political Force Majeure under Art. 10.3 of the IA i.e. unlawful refusal to grant Approval required by Appellant to perform its obligations under the IA. 'Approval' is defined in the IA to include registration by any Government agency or any other authority as may be necessary for setting up and operating the Solar PV Power Project . Art. 10.5 (ix) of the IA provides that in case Commissioning is delayed due to Force Majeure extending to next FY, PSERC shall re-determine the tariff. This redetermination ought to be an increase in tariff, so as to reconstitute the Appellant to the same economic position that he would have been, if the Force Majeure event had not occurred. Similarly, the period of 8 months 3 days also qualifies under Political Force Majeure since CLU charges were exempted on 29.08.2014, until which CLU could not be granted.

**5.3** Without a registered Sale Deed, neither could the Appellant get a CLU certificate nor could Appellant have used the land as a security to get a loan. Appellant applied for CLU on 04.05.2014 but with a copy of the unregistered Sale deed sent with the application. This application was

naturally not allowed since Sale Deed was wrongly impounded. Vide application-dated 06.10.2014, Appellant again applied for CLU of 7 acres of land, this time along with Registered sale deed sent with application. After registered sale deed was released by the registrar, the Appellant was able to get the term loan sanctioned on 13.12.2014, disbursal subject to getting CLU, and the registered sale deed being the security for loan and the CLU was given on 06.02.2015.

- 5.4** It is germane to distinguish the decision of *Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Ors.* (25.10.2017 - SC): MANU/SC/1336/2017 The Respondent places reliance on the aforesaid decision of the Supreme Court, to state that the Commission cannot extend the control period. In the aforesaid matter the Supreme Court held that the Commission cannot extend the control period since the power to extend the control period of tariff is limited in the Regulations and there is no clause in the PPA providing for extension of Control Period. The Supreme Court also relied on *Gujarat Urja Vikas Nigam Limited v. EMCO Limited and Anr.*, (2016) 11 SCC

182, the question of law raised was whether by passing the terms and conditions of PPA, Respondent can assail the sanctity of PPA. The Supreme Court had in Emco judgment held that Power Producer cannot go against the terms of the PPA and that as per the terms of the PPA, in case, the first Respondent is not able to commence the generation of electricity within the 'control period' the first Respondent will be entitled only for lower of the tariffs.

**5.5** In neither of the two cases was the Supreme Court dealing with consequences of Force Majeure. The relief being sought in the present matter is in terms of the Implementation Agreement and the PPA i.e. restoration of the Appellant to the same economic position it would be in, had the FM event not occurred. This relief can be granted either by extension of SCOD (in terms of the FM Clause in the IA) or by redetermination of tariff to restore economic position (again in terms of the FM Clause in the IA).

**5.6** The case of the Appellant is distinguishable from EMCO and GUVNL matter, in as much as the Appellant in the present case is a



competitively bid project and has prayed for relief under the Force Majeure Clause under the Implementation Agreement read with the PPA. Since the Force Majeure event became effective prior to the COD, in terms of Article Art 19.4.0 of the PPA, only the Force Majeure Clause of the IA will be applicable and the Commission should have re-determined the tariff in terms of Art. 10.5 (ix) of the IA, which provides that in case Commissioning is delayed due to Force Majeure extending to next FY, PSERC shall re-determine the tariff. This re-determined tariff should restore the Appellant in the same economic position as it would have been in, if the Force Majeure event had not occurred at all.

**5.7** Paragraph 35, 36, 37, 38 and 67 of the judgment of the Hon'ble Supreme Court in the GUVNL matter should be read to understand how it is completely inapplicable to the present matter. Without prejudice to the assertion that the GUVNL judgment is not applicable to the present matter, the Learned Commission was not required to extend the Control period, but could simply exercise its power under the FM clause to restore the Appellant in the same economic position as if the FM event

had not occurred at all. There is no bar to enforcement of FM Clause. However, that question never arose because the Learned Commission completely failed to even assess the applicability of the FM clause to the facts of the Appellant.

**5.8** Without prejudice to the assertion that GUVNL judgment is inapplicable, the Judgment was passed on 25.10.2017 and the Petition before the Commission was filed on 27.03.2015, the Order of the Commission was passed on 22.06.2015 and the Appeal before APTEL was filed on 29.07.2015. Thus, even if assumed though not admitted that the law changed by the GUVNL Judgment, during the Court proceedings in this matter, the Appellant can be given relief of redetermination of tariff under the FM Clause to reinstate the Appellant to economic position preceding the FM event, instead of extension of SCOD. This would be the fairest solution and relief to the Appellant who should not be made to suffer by order of a Court i.e. wrongful impounding by sub-registrar.

- 5.9** The Appellant places reliance on the judgment of this Hon'ble Tribunal in the matter of *Chamundeshwari Electricity Supply Company Ltd. (CESC) v. Saisudhir Energy (Chitradurga) Pvt. Ltd. and Ors.* (21.03.2018) : MANU/ET/0028/2018, which judgment has come after the Supreme Court Order in GUVNL. The Hon'ble Tribunal has held that even where Force Majeure was not argued before the Learned Commission let alone service of FM notice, the State Commission can extend the SCOD and expiry date in terms of PPA and FM clause.
- 5.10** Without prejudice to the assertion that the Appellant is praying for relief under the Force Majeure Clause of the Implementation Agreement, it is submitted that the Respondents have extended the COD period for several other developers who had not even pleaded Force Majeure and yet were given the extension in COD on account of delay in possession of land and despite the exact same objections being taken by PEDA and PSPCL before the Commission:.
- 5.11** Therefore, the Commission has singled out the Appellant and discriminated against it reducing the tariff for 25 years for a delay of merely 2 months in achieving COD on account of over 8 months and 3

days of Force Majeure event. Despite the Appellant being the most efficient project, having completed the project in less than 4 months from end of FM event i.e. issuance of CLU and thus loan funds, the Learned Commission has unreasonably punished the Appellant while rewarding the other Project developers who too had delayed the SCOD but were given the indulgence of a late SCOD and Expiry Date.

**5.12** Without prejudice to the fact that the Appellant served Force Majeure notice to the Respondent as soon as it became aware of the occurrence of the Force Majeure event vide letter dated 18.02.2014 (pg 159) and 05.03.2014 (pg 160), the reliance placed by the Respondents on the Order of the Hon'ble tribunal in *Talwandi Sabo Power Limited vs. Punjab State Power Corporation Limited and Ors.* (03.06.2016 - APTEL), Appeal No. 97 of 2016, is erroneous. The Hon'ble Tribunal in the aforementioned matter has not held that Force Majeure notice is mandatory but held that the notice under Article 6.1.1 i.e. notification of "intention" to synchronize is mandatory. That Order has no relevance whatsoever to the present case.

**5.13** The Appellant has the best case of Force Majeure. The **impounding of the Sale Deed has been held to be wrongful** by Collector Patiala by order dated 21.05.2015, thus establishing beyond any doubt that the delay on account **impounding was not the fault of the Appellant**. The Appellant has **diligently written to PED A asking for help** and informing them of the Force Majeure event **as soon as it came to the notice of the Appellant** that the impounding of the sale deed was continuing for an unreasonably long period, which could lead to delay in SCOD. The Appellant has pursued the Respondents consistently and diligently requesting help in resolving the impounding situation and extension of SCOD i.e. vide letters dated 18.02.2014, 05.03.2014, 30.09.2014, 11.01.2015 and 05.03.2015.

**5.14** The Commission has absolutely failed to even note that PED A completely failed in its functions, the one window clearance scheme failed for the Appellant. The registration document were impounded on 19.08.2013, the Appellant informed PED A immediately, but sent them FM Notice on 18.02.2014. Whereas PED A 27.05.2014, NINE months

after impounding of the registration and after release of sale deed on 21.05.2014, wrote to ADC vide letter dated 27.05.2014 informing it that no stamp duty is required to be paid. Thus, PEDDA showed total disinterest and lack of efficiency in assisting the Appellant in setting up the Project. The Learned Commission has not even considered this aspect. Further the Learned Commission has simply picked and chosen a different tariff from a tariff Order dated 14.11.2013 without redetermining a specific remedial tariff for the Appellant.

**5.15** The Commission cannot pick and chose tariff for the Appellant and has to redetermine it in terms of the FM clause. There is no other clause in the IA or the PPA under which the Commission can redetermine a competitively bid tariff. The complete investment, loan rates, costs etc in the Project were incurred in the FY 2014-15 with competitively bid tariff of INR 8.70/kWh and the Commission has ignored this aspect and simply picked tariff of Rs. 7.29 (Not redetermined but lazily picked), which tariff is based on investment in the Projects in the year FY 2015-16, which projects were to be completed by 31.03.2016, whereas the

Appellant had completed the Project on 28.05.2015 within 2 months of the SCOD i.e. 15.03.2015, despite 4 months 25 days of delay due to impounding of registration documents. The Appellant had approached the State Commission for relief as prescribed under the Implementation Agreement read with the PPA and thus matter ought to be remanded to the State Commission to re-determine the tariff in a manner to reconstitute the Appellant to the same economic position as if the FM event had never occurred and as if the Appellant had achieved the COD prior to 15.03.2015 or alternatively the SCOD can be extended under the FM clause to achieve the same objective of restoring the Appellant to the same economic position.

**5.16** The Learned Commission has not even considered the Force Majeure Clause and appears to have to have disqualified the Appellant from benefits of FM clause on the ground that it had not served FM notice. The Commission did not even appreciate that letter dated 18.02.2014 amounted to FM notice and did not even analyze as to when the Appellant came to know that the impounding of sale deed will continue

for substantial period becoming a FM event. If such erroneous reasoning is allowed to sustain, it would become a precedent in terms of which every case in which FM notice is not given instantly, despite the aggrieved not knowing of its occurrence, the claim of FM will be rejected. The wording of the FM clause 10.4 i.e. "*after the date on which such party knew of the commencement of the FM event **or of its effect on such party***" have been rendered redundant by the Order of the State Commission.

**5.17** The Appellant knew of effects of the impounding of the Sale Deed only in February, when 2 months had passed post the effective date (PPA execution date from which completion timeline began to run) and the Appellant realized that the COD may get delayed if the same was not remedied at the earliest. The Appellant immediately wrote to PEDDA on 18.02.2014 for help to remedy the situation and then on 05.03.2014 informing it of occurrence of the FM and the hurdle it posed to achieving the COD.



**5.18** It is humbly pleaded that this Tribunal may focus on the substance of the letter i.e. information of occurrence of the FM event rather than the form. The Implementation Agreement does not prescribe any format of the FM notice. In view of the lack of application of mind and complete omission to appreciate the assertion of the Appellant with respect to occurrence of FM, the State Commission ought to be directed to re-determine the tariff of the Appellant to restore it to the same economic position as if the FM event did not occur.

**6 Learned counsel, Mr. Anand K. Ganesan, appearing for the Respondent No.2 has filed written submissions as under:-**

**6.1** The Appellant is only seeking to take undue benefit of its own actions by claiming a by a project specific time extension by two months with the same tariff of Rs. 8.70/kWh. The Appellant is seeking to misconstrue the provisions of the NSRE policy 2010, the Power Purchase Agreement, the Implementation Agreement and the Electricity Act by favouring himself in seeking the extension when already an extension of 45 days

has been granted to all such projects. The claim of the Appellant of a force majeure condition is misconceived and liable to be rejected.

- 6.2** The State Government has in exercise of its powers formulated the 'New and Renewable Sources of Energy (NSRE) Policy-2012 to develop and promote new and renewable sources of energy based technologies. In terms of the NRSE Policy, 2012 various benefits and concessions were granted to the project developers by the State Government.
- 6.3** The Punjab Energy Development Agency (PEDA) was notified as the nodal agency under the NRSE Policy, 2012 to undertake various activities including allocation of projects etc. One major step taken under the NRSE Policy, 2012 is to enable the selection of project developers by means of a competitive bidding process by reverse bidding, namely, specifying the discount to be provided by the project developers on the generic tariff determined by the State Commission.
- 6.4** During the year 2013, PEDA had undertaken a competitive bidding process for selection of solar project developers for development of

projects in the State of Punjab. The total capacity allocated at the said stage was 250 MW. Under the said bidding process, it was the sole discretion of the project developers to choose the land for establishing the project and other aspects with regard to the project, without any restriction placed on the project developers. There was also no restriction on the location of the project to be established in the State of Punjab.

**6.5** The Appellant had participated in the bidding process and was successful to supply 4 MW at the tariff of Rs. 8.70/- per unit. This was based on the discounted price as against the generic tariff of Rs. 8.75/- per unit which was determined by the State Commission for the projects to be established during the year 2013-14. The Letter of Award was issued in favour of the Appellant on 22/07/2013, which was subject to the approval by the State Commission.

**6.6** The Respondent No. 2, Punjab State Power Corporation Limited (PSPCL) had filed a petition being Petition No. 52 of 2013 seeking approval of the power purchase and also the PPA to be entered into with the project developers. In the said petition, the State Commission

by order dated 14/11/2013 approved the tariff discovered in the competitive bidding process, with the specific condition that the tariff would be applicable if the projects are established by 31/03/2015. The order dated 14/11/2013, inter-alia, reads as under:

.....

*“11. Keeping in view the above, the Commission approves the procurement of electricity by PSPCL from the solar energy generators at the tariff discovered in the competitive bidding process conducted by PEDDA as per details in the attached Annexure-1. The cost of power purchase from the projects enlisted in Annexure-1 would be considered as pass through in the ARR of PSPCL. **The tariff period for the said projects would be twenty five (25) years as per Regulation 6(c) of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 adopted by the Commission in its Order dated 19.07.2012 in Petition No. 35 of 2012 (Sou-motu) with State specific modifications. Further, the tariffs approved above would be applicable upto 31.03.2015 provided that (i) the PPAs are signed on or before 31.03.2014 and the entire capacity covered in each PPA is commissioned on or before 31.03.2015, in line with Regulations 9 of the said Regulations.”***

**6.7** The Appellant’s project was specifically included in the above order. In terms of the above, the tariff approved by the State Commission was

- applicable only for the control period up to 31.03.2015 and not for the period thereafter.
- 6.8** Therefore, the contention of the Appellant that the tariff has been reduced by the State Commission than the applicable tariff is not correct. The applicable tariff of Rs. 8.70 per unit was only till 31/03/2015 and there was no tariff after 31/03/2015. The State Commission has determined the tariff for the subsequent period rather than terminating the PPA for want of any tariff.
- 6.9** Subsequent to the LoA the Appellant was to sign Implementation Agreement with PEDDA within 30days from the issue of LoA and further sign the Power Purchase Agreement (PPA) with PSPCL. The Implementation Agreement was signed by the Appellant with PEDDA on 17/09/2013.
- 6.10** The Implementation Agreement, inter-alia, provided for the terms and conditions based on which the project was to be established. The Implementation Agreement provided for the obligation of obtaining all clearances, approvals etc. on the Appellant with PEDDA to provide a facilitatory role. The Implementation Agreement further provided for

force majeure conditions under specified circumstances, and the consequence for the force majeure clause being that in case the project commissioning gets postponed to the next financial year the tariff would be as determined by the State Commission.

- 6.11** It is further relevant to mention that in terms of Clause 10.4 of the IA, the obligation of notification of the force majeure is on the petitioner and has to be done within not later than 5 days after the commencement of the alleged force majeure event.
- 6.12** Pursuant to the Implementation Agreement, the Appellant and PSPCL signed the PPA on 27/12/2013. Clause 10.1.0 of the PPA, provides that the Solar Project has to be synchronized with the state grid within 13 months, accordingly the scheduled commercial date of operation was 26/01/2015. The PPA further provides that any force majeure during the commissioning phase shall be as per the terms of the Implementation Agreement.
- 6.13** Further, inter terms of Article 19 of the PPA for the period prior to commissioning of the generating station, the Force Majeure shall be the same as per the provisions of the Implementation Agreement.

**6.14** There were some proceedings in the Hon'ble High Court in which certain interim directions were given by the Hon'ble High Court with regard to the land for projects to be established. The interim order was in existence for a period of one year. Though there are no pleadings or claims of the Appellant being affected by such interim orders, the PEDDA had granted an extension across the board to all the projects in the State of 45 days. Consequently, the Scheduled Commercial Operation Date of the Appellant's project was extended from 26/01/2015 to 15/03/2015. This was however within the period of 31/03/2015 which was the control period in terms of the tariff order dated 14/11/2013 of the State Commission.

**6.15** The Appellant has only sought for extension of the control period expiring on 31/03/2015 till the date the project was actually commissioned by the Appellant. This is erroneous and has been held by the Hon'ble Supreme Court to be beyond the powers of the State Commission. In this regard, the Hon'ble Supreme Court in the judgment in the case of Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor

Power Company Pvt. Ltd, (2017) 16 SCC 498 while dealing with the precise issue of extension of control period and claim for higher charges in terms of the earlier tariff order has held as under:

*“39. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.*

*40. Extension of control period has been specifically held to be outside the purview of the power of the Commission as per EMCO [Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd., (2016) 11 SCC 182 : (2016) 4 SCC (Civ) 624] . This appeal is hence, allowed. The impugned orders are set aside. However, we make it clear that this judgment or orders of the Appellate Tribunal or Commission shall not stand in the way of Respondent 1 taking recourse to the liberty available to them for redetermining of tariff if otherwise permissible under law and in which case it will be open to the parties to take all available contentions before the Commission.”*

**6.16** Even otherwise, there is no case for the Appellant. As stated hereinabove, the project developer were not given any assurance on acquisition of land by PEDDA or PSPCL, but only a facilitation role was



assured by PEDDA in case developer decide to acquire land belonging to Panchayat. There was no representation, assurance or promise that the land would be made available by the Government of Punjab or its agencies or that any delay in land acquisition by the project developers would be considered as reason sufficient for extension of time beyond the scheduled date of commissioning. It was the sole decision of the project developer where the project was to be located. In terms of Article 6.2(vi) of IA, the acquisition of land for the project was the responsibility of the project developer.

**6.17** In the present case, the Appellant had chosen to use the land of the promoters of the Appellant itself, rather than purchase land from a third party. This was the sole decision of the Appellant. The Appellant has claimed force majeure in relation to the land purchase and registration. Firstly, the responsibility for land being the obligation of the Appellant, there can be no case for the Appellant to claim force majeure in the present case.

**6.18** It is also relevant to mention that even assuming there was force majeure in the present case, the tariff has to be re-determined by the State Commission (**Clause 10.5(ix)**). Therefore, the claim for force majeure does not help the case of the Appellant to claim that the existing tariff of Rs. 8.70 per unit should be continued. It is further relevant to mention that the Appellant has not provided the notice within 5 days of the alleged force majeure event. This requirement of notice is in Clause 10.4.

**6.19** The notice is required to be issued for a specific purpose, namely, to enable the other party to factually verify the claims of the Appellant and see whether there is factually a force majeure event, whether steps can be taken to mitigate it etc. It would have been possible for PSPCL to see whether the applications for CLU have been properly submitted, what is the follow up action taken etc.

**6.20** The mandatory requirement of notice as per the Agreement between the parties has been upheld by the Hon'ble Tribunal in the case of

Talwandi Sabo Power Limited v. Punjab State Power Corporation Limited, Appeal No. 97 of 2016 dated 03/06/2016.

- 6.21** It is not the case that the other parties were made aware of the alleged force majeure events of the Appellant otherwise. As submitted hereinabove, the very purpose of providing the notice is to make the other party aware of the factual position to enable verification and see whether all mitigating steps are taken or not. In the circumstances, the Appellant's case falls squarely contrary to the above decision of the Hon'ble Tribunal and is therefore unsustainable.
- 6.22** Even on merits, there is no case for the Appellant. The Appellant has claimed to have purchased 72 kanals of land by sale deed dated 19/08/2013 and no stamp duty was paid as there was an exemption in terms of the NRSE Policy, 2012. However, on 20/08/2013 the Sale Deed was impounded by the Sub-Registrar for non-payment of stamp duty. Firstly, it is relevant to mention that the above was even prior to the execution of the Implementation Agreement or the PPA.

**6.23** The land sought to be purchased by the Appellant was from its promoters only and not from any third party. In other words, the owners of the land and the owners of the Appellant were one and the same person. It is not that the land was being purchased from a third party and unless and until the sale deed is registered, no further action could be taken.

**6.24** The sale deed was released on 21/05/2014 without payment of any stamp duty. However, even prior to that on 04/05/2014, the Appellant had applied for Change in Land Use (CLU) for a part of the land for the purposes of establishing the project. This communication of 04/05/2014 states that the copy of the land registration papers are enclosed with the letter. It is not understood that if the sale deed was released only on 21/05/2014, how the papers could be sent on 04/05/2014. This shows that the alleged delay up to 21/05/2014 was non-existent and is claimed without bona fide.

**6.25** In any event, it is not the case that any action to be taken by the Appellant was affected by the non-release of the sale deed or that such release of sale deed was a condition precedent for other action to be taken including for applying for CLU. It is also relevant to mention that the Appellant chose to apply for the CLU only on 04/05/2014 and that too only for one part of the land of 9 acres. No explanation whatsoever was given by the Appellant for not applying earlier, even though the land always belonged to the Appellant/promoters. Further, the CLU application for the balance land of about 7 acres was made only on 06/10/2014 .

**6.26** There was also no details given by the Appellant regarding the deficiencies etc. in the application filed, the action taken etc. from time to time to comply with the necessary procedures and requirements for the CLU. The Appellant was required to establish it's bona fide in pursuing the application for CLU and fulfilling all the criteria and requirements, which the Appellant has failed to establish.

**6.27** The Change in Land Use was granted to the land of the Appellant on 06/02/2015. It is interesting to note that the approval for CLU granted on 06/02/2015 was not in relation to either the application dated 04/05/2014 or 06/10/2014, but to another application which is not dated. This clearly shows that the Appellant has not put across its case bona fide and has only suppressed documents and details.

**6.28** It is the claim of the Appellant that work on the project started on and after 06/02/2015 and the project was fully ready on 28/5/2015. Thus, even as per the case of the Appellant it took less than 4 months for the project to start construction and to be commissioned. As against the above, the Appellant had 13 months from the PPA which was further extended by 45 days for establishing and commissioning the project. In addition to the above, the land was always in the possession of the Appellant.

**6.29** The claim of the Appellant is on the face of it contradictory and lacks bona fide. The Appellant claims to have begun construction of the plant only in February, 2015 and had claimed it could not begin work towards

the project due to various issues over the land use etc. In the same breath, the Appellant is also claiming to have spent over 90% of the project estimate before the construction work even begins. No proof thereof was also produced by the Appellant. This contention is ex-facie incorrect.

**6.30** Even in terms of the generic order, which provides for the maximum/ceiling tariff, the tariff is much lower. In terms of the order dated 05.09.2014 of the State Commission for the projects to be established in the year 2014-15, the maximum/ceiling tariff was only Rs. 6.95/- per unit taking into account accelerated depreciation and Rs. 7.72/- per unit for projects not taking the accelerated depreciation. The Appellant's project was commissioned on 28/05/2015, which is in the year 2015-16 and not even 2014-15.

**6.31** The State Commission by order dated 24/07/2015 has determined the maximum/ceiling tariff for the projects to be established in the year 2015-16. The State Commission has determined the tariff for the Solar PV projects at Rs. 6.35/- per unit taking into account accelerated

depreciation and Rs. 7.04/- per unit for projects not taking the accelerated depreciation. The Appellant's project has also been commissioned in the year 2015-16 and is getting a much higher tariff of Rs. 7.29/- per unit.

**6.32** In the circumstances, there is no merit for the Appellant to claim any tariff higher than as allowed by the State Commission, much less the tariff of Rs. 8.70/- per unit as being claimed.

**6.33** The Appellant had participated in a competitive bidding process and had also unconditionally accepted the order of the State Commission approving the tariff. It is a well settled law that once a party participates in a bidding process accepting the terms of the tender, it is not open to the party to then claim exemption or variation of the tender terms and conditions or otherwise contend that the terms and conditions are not applicable etc.

**6.34** In the facts and circumstances mentioned above, it is respectfully submitted that there is no merit in the present appeal and the same is liable to be dismissed with costs.



7. **Learned counsel, Mr. Aadil Singh Boparai, appearing for the Respondent No.3 has filed written submissions as under:-**

7.1 ***The Punjab State Electricity Regulatory Commission has no power/jurisdiction to extend the control period in exercise of its powers under the Electricity Act, 2003.***

- a. It is necessary to highlight that the tariff of Rs.8.70/KWH granted to the Appellant was valid for a period up till 31.03.2015. The control period is the period during which the tariff as determined by the PSERC i.e. Respondent shall operate.
- b. In the event of a delay in the commissioning of the project beyond control period i.e. 31.03.2015, the tariff shall be re-determined by Respondent No.1 i.e. PSERC in consonance with the provisions of the Electricity Act.
- c. The tariff order dated 14.11.2013 passed by Respondent No.1, which incidentally attained finality and was never challenged by the Appellant clearly records that the tariff approved by the Commission i.e. Rs.8,70/KWH would be applicable only up till 31.03.2015.

- d. Article 3C of the Implementation Agreement dated 17.09.2013 executed between the Appellant and Respondent No.3 unequivocally records that if as a consequence of delay, the project/part capacity is commissioned beyond the scheduled date, the tariff payable shall be re-determined in terms of the PPA, IA and the tariff order.
- e. Moreover as per Article 10.5 (ix) of the Implementation Agreement between the parties, the agreement between the parties clearly envisages that in the event of a delay in the commissioning of the project and resultantly affecting the COD, the tariff shall determined afresh by Respondent No.1 i.e. PSERC.
- f. The Hon'ble Supreme Court in the case of *Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Anr. reported as (2017) 16 SCC 498*, had held that, “*The Commission being a creature of the statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed*”

*above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act’.*

- g.** The Hon’ble Supreme Court laid down in the aforementioned case (supra) that, “*Extension of control period has been specifically held to be outside the purview of the power of the Commission as per EMCO*”.

**7.2 *Failure to adhere to the notification obligations mandatorily stipulated in terms of article 10.4 of the Implementation Agreement executed between the parties in the event of a force majeure event.***

- a.** The implementation agreement clearly envisages the procedure to be adopted in terms of Article 10 of the Implementation Agreement in the event of a force majeure event.
- b.** Article 10.4 of the IA states that the party affected by any force majeure event shall give the other parties written notice describing the particulars of the force majeure event as soon as practicable after its occurrence but not later than five days after date on which such party knew of the commencement of the force majeure event.

- c. In the present matter, going by the case of the Appellant, the sale deed was impounded on 20.09.2013 for non-payment of stamp duty and a letter was sent to the Appellant's promoter in this regard. In other words, this came to the knowledge of the Appellant on 20.09.2013, hence the time period for intimating the other parties in terms of the notification obligations of the IA commended then.
- d. It is an admitted case of the Appellant, that Respondent No.3, for the first time was intimated about this purported force majeure event vide lettered 18.02.2014 after 5 months from the purported force majeure event.
- e. The delayed intimation to Respondent No.3 constitutes a clear breach of Article 10.4 of the IA and it is respectfully submitted that non-compliance with this mandatory condition in terms of the agreement, negates the Appellant's argument to seek any benefit in terms of Article 10 (Force majeure) of the IA.

**7.3 *The Appellant had procured/owned private land for the project as on 20.09.2013 and was not entitled to avail any benefit under the***

***fiscal assistance policy of the Government of Punjab as on 20.09.2013.***

- a. It is important to indicate that the Government of Punjab's fiscal assistance policy entailing exemption from payment of stamp duty was only applicable to those projects the land was procured from Panchayats/Local bodies.
  - b. It is an admitted case of the Appellant that as on 20.09.2013, the Appellant owned private land which was neither Panchayat land nor land purchased from the Local Bodies. This disentitled the Appellant from obtaining any benefit from this policy as on 20.09.2013.
8. **We have heard learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents at consideration length of time and considered the written submissions carefully and evaluated the entire relevant material available on record. The following main two issues emerge out of Appeal for our consideration:**

**Issue No.1:** Whether the State Commission was correct in holding the Appellant responsible for delay in commissioning of the

solar project without considering defaults on the part of PEDDA and the Govt. of Punjab?

**Issue No.2:** Whether the State Commission has acted beyond jurisdiction by changing the tariff for delay in commissioning, without prejudice and for cause attributable to the nodal agency / Government when the tariff has been determined by a competitive bidding process under Section 63 of the Electricity Act, 2003?

**Our Findings & Analysis:-**

**9. Issue No.1:-**

**9.1** The learned counsel, Mr. Parinay Deep Shah, appearing for the Appellant submitted that the Appellant has the best case of Force Majeure (FM) as the impounding of the sale deed has been held to be wrongful by Collector, Patiala by order dated 21.05.2014. He contended that it has been established beyond doubt that the delay on account of impounding was not at the fault of the Appellant and it had diligently written to PEDDA requesting for help and informing them of the FM event

as soon as it came to the notice of the Appellant. The learned counsel contended that the Appellant has pursued the Respondents consistently and diligently requesting adequate help in resolving the impounding situation and extension of scheduled commissioning date vide its various letters and also in person. Learned counsel submitted that the State Commission has absolutely failed to even note that the nodal agency PEDDA could not provide the desired single window clearance for various statutory approvals/clearances required by the Appellant in implementation of the project. It was a total disinterest and lack of promptness on the part of the PEA in assisting the Appellant in setting up the project. He was quick to point out that the State Commission has simply picked and chosen the reasons on the part of the Appellant and has not even considered the FM clause and disqualified the Appellant from benefits of FM clause on the ground that it had not served requisite notice for the FM event.

- 9.2** Learned counsel further contended that whatsoever delay has occurred in the commissioning of its solar project, it was beyond the control of the Appellant as under:-

- i) 4 months 11 days later Govt. of Punjab issued notification exempting from Stamp Duty on sale deeds.
- ii) 4 months 25 days later the Sale Deed of Appellant was released.
- iii) 8 months 3 days later Punjab Government released notification exempting from CLU charges

To substantiate his arguments, learned counsel placed reliance on the judgment of this Tribunal in the matter of *Chamundeshwari Electricity Supply Company Ltd. (CESC) v. Saisudhir Energy (Chitradurga) Pvt. Ltd. and Ors.* (21.03.2018) : MANU/ET/0028/2018, wherein this Tribunal held that even where Force Majeure was not argued before the Commission let alone service of FM notice, the State Commission can extend the SCOD and expiry date in terms of PPA and FM clause.

**9.3** Learned counsel for the Appellant submitted that, the Respondents have extended the COD period for several other developers even without pleading for Force Majeure and the Commission has singled out the Appellant and discriminated against it reducing the tariff for 25 years for a delay of merely 2 months in achieving COD whereas the Force Majeure itself has accounted for more than 8 months. Learned counsel further contended that despite the Appellant being the most diligent to



complete the project, having completed the project in less than 4 months from end of FM event, it has been penalized for the reasons beyond its control. He vehemently submitted that the Appellant served Force Majeure notice to the Respondent as soon as it became aware of the occurrence of the Force Majeure event vide letter dated 18.02.2014 and 05.03.2014. The learned counsel contended that the reliance placed by the Respondents on the Order of this Tribunal in *Talwandi Sabo Power Limited vs. Punjab State Power Corporation Limited and Ors.* dated 03.06.2016 in Appeal No. 97 of 2016, is erroneous as this order has no relevance whatsoever to the present case. Summing up his arguments, the learned counsel reiterated that the reasons for delay in COD has been beyond the control of the Appellant and are attributable to the nodal agency/ Govt. of Punjab who have failed to provide requisite assistance in obtaining / giving approvals at different levels as prescribed in the NRSE policy.

**9.4 *Per contra*,** learned Counsel, Mr. Anand K Ganesan, appearing for Respondent No.2 submitted that subsequent to the LoA the Appellant signed Implementation Agreement (IA) with PEDDA on 17/09/2013. The

IA, inter-alia, provided for the terms and conditions based on which the project was to be established which provided for the obligation of obtaining all clearances, approvals etc. on the Appellant with PEDDA to provide only a facilitatory role. The IA further provided for force majeure conditions under specified circumstances, and the consequence for the force majeure clause being that in case the project commissioning gets postponed to the next financial year, the tariff would be as determined by the State Commission. The learned counsel further contended that pursuant to the Implementation Agreement, the Appellant and PSPCL signed the PPA on 27/12/2013, which among others, provided that the reference Solar Project has to be synchronized with the state grid within 13 months i.e. by 26/01/2015. The PPA provided that any force majeure during the construction and commissioning phase shall be as per the terms of the Implementation Agreement. Based on some proceedings in the Hon'ble High Court and consequential interim directions given by the Hon'ble Court, the scheduled COD of the project was extended from 26.01.2015 to 15.03.2015 which was well within the control period ending 31.03.2015.

**9.5** Learned counsel for Respondent No.2 further submitted that the Appellant has only sought for extension of the control period expiring on 31.03.2015 till the date of actual commissioning which is beyond the powers of the State Commission in view of the judgment of the Hon'ble Supreme Court in case of Gujarat Urja Vikas Nigam Limited Vs. Solar Semi Conductor Company Pvt. Ltd. (2017) 16 SCC 498. Learned counsel was quick to point out that the project developers were not given any assurance on acquisition of land by PEDDA or PSPCL, but only a facilitation role was assured by PEDDA in case developer decides to acquire land belonging to Panchayat. In fact, it was the sole decision of the Appellant where the project was to be located. In terms of Article 6.2(vi) of IA, the acquisition of land for the project was the exclusive responsibility of the project developer alone.

**9.6** The learned counsel further submitted that in the present case, the Appellant had chosen to use the land of its promoters rather than purchase land from a third party. The Appellant has claimed force majeure in relation to the land purchase and registration. Firstly, the

responsibility for land being the obligation of the Appellant, and as such, such claim for force majeure on this aspect cannot be considered. He vehemently submitted that even assuming there was force majeure as per **Clause 10.5(ix)**, the tariff has to be re-determined by the State Commission and, therefore, the claim for force majeure does not help in any way the case of the Appellant's claim for the original tariff of Rs. 8.70 per unit. Further, it is relevant to mention that the Appellant has not provided the notice within 5 days of the alleged force majeure event. This requirement of notice is stipulated in Clause 10.4. The learned counsel placed reliance on the judgment of this Tribunal in the case of Talwandi Sabo Power Limited v. Punjab State Power Corporation Limited, Appeal No. 97 of 2016 dated 03/06/2016 as per which mandatory requirement of notice as per the Agreement between the parties has been upheld.

- 9.7** Learned counsel further pointed out that the sale deed was released on 21/05/2014 without payment of any stamp duty. However, even prior to that on 04/05/2014, the Appellant had applied for Change in Land Use (CLU) for a part of the land for the purpose of establishing the project.

This communication submitted by the Appellant of 04/05/2014 states that the copy of the land registration papers are enclosed with the letter then the question arises how the registration paper could be sent when that was impounded and as such, the alleged delay up to 21/05/2014 was non-existent . Continuing his argument further the learned counsel contended that the Appellant chose to apply for the CLU only on 04/05/2014 and that too only for one part of the land of 9 acres and for balance 7 acres, the CLU application was made only on 06/10/2014. It is rather interesting to note that the approval for CLU granted on 06/02/2015 was not in relation to either the application dated 04/05/2014 or 06/10/2014, but to another application which is not dated. The learned counsel has alleged that the Appellant has not put across its case bona fide and has only suppressed documents and details. Learned counsel further pointed out that as per the Appellant, the work on the project started on and after 06/02/2015 and the project was fully ready on 28/5/2015 which works out less than 4 months against the total construction period granted to the Appellant as 13 months from the PPA and further extension by 45 days besides the land was always in the

possession of the Appellant. Thus, the claim of the Appellant for extension of COD on the face of it is contradictory and lacks bona fide.

- 9.8** Learned counsel for Respondent No.3, PEDDA, Mr. Aadil Singh Boparai submitted that the tariff order dated 14.11.2013 passed by the State Commission attained finality and was never challenged by the Appellant which clearly stipulated that the approved tariff of Rs.8.7/per unit would be applicable only up to 31.03.2015. He further referred Article 3C of the Implementation Agreement dated 17.09.2013 executed between the Appellant and Respondent No.3 which unequivocally records that if as a consequence of delay, the project or its part capacity is commissioned beyond the scheduled date, the tariff payable shall be re-determined by the State Commission. Learned counsel, to strengthen his submission placed reliance on the judgment of Hon'ble Supreme Court in case of *Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company (India) Private Limited and Anr. Reported as (2017) 16 SCC 498*, which held as under :-

*“The Commission being a creature of the statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act”.*

*(Emphasis supplied)*

**9.9** Learned counsel appearing for the third Respondent further submitted that, in terms of article 10.4 of the Implementation Agreement executed between the parties, it is obligatory to notify the event of a force majeure to be adopted in case of such an event. He vehemently submitted that though the sale deed was impounded on 20.09.2013, admittedly the Respondent No.3 for the first time was intimated about this purported force majeure event vide letter 18.02.2014 i.e. after 5 months of the occurrence of force majeure event. As such, the Appellant cannot seek any benefit for extension of scheduled COD on its own default and slackness in follow up of the case at different fora. Further, the Appellant had procured / owned private land for the profit and was not entitled to avail any benefit under the fiscal assistance policy of the Government of Punjab. Learned counsel reiterated that the Appellant has made excuses on one or the other ground and simply asked for

COD extension claiming to be inefficiency at the part of the Respondents whereas the fact is otherwise.

**Our Findings:-**

**9.10** Having regard to the submissions of the learned counsel for the Appellant and the Respondents, it is relevant to note that subject procurement of power from solar projects was piloted by nodal agency PEDDA under NRSE Policy, 2012 of the Govt. of Punjab. The bids were invited from the developers and the Appellant was awarded 4 MW solar project with a commissioning period of 13 months from the LOA which was subsequently extended by 45 days. The Generic tariff along with PPA was approved by the State Commission which among others stipulated that the said generic tariff order shall be applicable up to 31.03.2015. As per the PPA, executed between the parties, it was further envisaged that in case the commissioning period of the project gets delayed, the tariff shall be re-determined by the State Commission. It is not in dispute that the Appellant has constructed the solar project in a short time of about four months from the date of its



final clearance for land use pattern but the project got delayed beyond the control period ending 31.03.2015 due to one or the other reason, primarily in obtaining various statutory clearances / approvals. It is the claim of the Appellant that the clearances/approvals have been received after delay of about 8 months on account of slackness and inefficiency on the part of nodal agency/Govt. of Punjab. On the other hand, the Respondents have contended that the role of Respondents specially PEDDA was of a facilitating one and the sole responsibility for getting final conclusion in respect of approvals was that of the Appellant. The Respondents have categorically submitted that the Appellant adopted a causal approach and did not pursue the case at different fora in a time bound / bona fide manner which in turn resulted into delay in receiving the clearances and accordingly delay in construction and the commissioning of the project.

**9.11** After careful consideration of the rival contentions of both the learned counsel appearing for the Appellant and the Respondents, we note that the actual construction time was about 4 months whereas the time allotted for completion of the project was 13 +1 ½ months. As such,

sufficient time was accorded to the Appellant for achieving scheduled COD but it could not avail the benefit of the fact that it had its own private land and the Respondents have taken immediate action for resolving the impediments as and when reported by the Appellant. In view of these facts, we are of the considered view that the claim of the Appellant for extension of COD of the project lacks in bona fide and the State Commission had passed the impugned order after due consideration of the submissions and pleadings of the parties and after assigning cogent reasoning thereon. Thus, the interference of this Tribunal does not call for.

**10. Issue No. 2:-**

**10.1** The learned counsel for the Appellant submitted that the major chunk of delay in commissioning the project has been on account of delay for granting various statutory clearances by the Govt. agencies which were essential for setting up and operating the solar PV Power Project. It is admitted that the Article 10.5 (ix) of the IA provides that in case Commissioning is delayed due to Force Majeure extending to next FY, the State Commission shall re-determine the tariff. He was quick to

point out that this redetermination ought to have an increase in tariff, so as to reconstitute the Appellant to the same economic position that he would have been, if the Force Majeure event had not occurred. He further submitted that the period of 8 months qualifies under Political Force Majeure since CLU could not be granted. Learned counsel contended that the case of the Appellant is distinguishable from EMCO & GUVNL cases in as much as the Appellant in the present case is a competitive bid project and has prayed for any relief under the FM clause of the IA read with PPA. He further contended that for a delay of merely two months in achieving extended COD, the State Commission has singled out the Appellant and discriminated against it reducing the tariff for 25 years.

**10.2** Learned counsel vehemently submitted that the State Commission cannot pick and choose tariff for the Appellant based on the recovered tariff of the subsequent control periods and instead, it as to re-determine in terms of the FM clause. Learned counsel further advanced his arguments to submit that the complete investment, loan rates, costs etc. of the project were incurred in the FY 2014-15 with Competitively Bid

Tariff of Rs.8.70 per unit and the State Commission has ignored this aspect and simply picked tariff of Rs.7.29 which is applicable to the FY 2015-16. The State Commission has not even considered the force majeure clause and has disqualified the Appellant from benefits of the same on the ground that it has not served FM notice. Learned counsel for the Appellant reiterated that the State Commission has gone beyond the ambit of its jurisdiction and has proceeded to drastically reduce the tariff which will cause huge financial loss in the entire operation period of 25 years without assigning any cogent reason in the impugned order. Hence the impugned order is liable to be quashed on this ground..

**10.3 *Per contra*,** learned counsel for Respondent No.2, PSPCL submitted that it filed a petition being Petition No. 52 of 2013 seeking approval of the power purchase and also the PPA to be entered into with the project developers against which the State Commission by its order dated 14/11/2013 approved the tariff under Section 63 of the Act. The order dated 14/11/2013, inter-alia, reads as under:

*“11. Keeping in view the above, the Commission approves the procurement of electricity by PSPCL from the solar energy generators at the tariff discovered in the competitive bidding process conducted by PEDDA as per details in the attached Annexure-1. The cost of power purchase from the projects enlisted in Annexure-1 would be considered as pass through in the ARR of PSPCL. **The tariff period for the said projects would be twenty five (25) years as per Regulation 6(c) of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 adopted by the Commission in its Order dated 19.07.2012 in Petition No. 35 of 2012 (Sou-motu) with State specific modifications. Further, the tariffs approved above would be applicable upto 31.03.2015 provided that (i) the PPAs are signed on or before 31.03.2014 and the entire capacity covered in each PPA is commissioned on or before 31.03.2015, in line with Regulations 9 of the said Regulations.”***

*(Emphasis supplied)*

**10.4** He further submitted that the Appellant’s project was specifically included in the above order of the Commission and the tariff approved as such was applicable only for the control period up to 31.03.2015. Therefore, the contention of the Appellant that the tariff has been reduced by the State Commission than the applicable tariff is not tenable and the State Commission has determined the tariff for the subsequent period rather than terminating the PPA for want of any tariff.

Learned counsel further submitted that the Appellant has only sought the extension of the control period expiring on 31/03/2015 till the date the project was actually commissioned by the Appellant which is beyond the powers of the State Commission in the light of the judgment of the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company Pvt Ltd, (2017) 16 SCC 498. It is further contended by the learned counsel that even assuming, there was a force majeure in the present case, the tariff has to be re-determined by the State Commission as per the Clause 10.5 (ix) of the agreement. Thus, the claim of the Appellant for the FM with a view to extend the control period or otherwise, demand for the original tariff applicable for the control period ending 31.03.2015 is beyond comprehension and cannot be considered in anyway. Learned counsel contends that the order passed by the State Commission does not suffer any error nor legal infirmity. Therefore, interference of this Tribunal does not call for.

**10.5** Learned counsel for Respondent No.3 vehemently submitted that it was made amply clear by the order of the State Commission to all the project developers that the tariff of Rs.8.70/KWH could be valid for a period up till 31.03.2015 and beyond that the tariff would be re-determined by the Commission. He contended that the tariff order dated 14.11.2013 passed by the State Commission has attained finality and was never challenged by the Appellant and as of now the State Commission has no power/jurisdiction to extend the control period in exercise of its powers under the relevant provision of the Act. Learned counsel further submitted that in a catena of judgments, the Hon'ble apex court has laid down the well settled principles of law that extension of control period is outside the purview of the power of the State Commission and terms and conditions provided in the agreements shall prevail in relation to the applicable tariff and the control period. He vehemently submitted that the Appellant has failed in implementation of the solar project and could not commission the same despite being granted extension of 45 days over and above the stipulated period of 13 months. Neither the claim of the Appellant for extension of COD in lieu of the force majeure event

deserves to be considered nor any bona fide ground or reasoning has been made to accept the delay as the FM event itself. As such, the decision of the State Commission for grant of the tariff applicable for the next control period is just and right and does not call for intervention of this Tribunal on the ground that impugned passed by the State Commission is well founded and well reasoned.

**Our Findings:-**

**10.6** We have carefully considered the submissions of the counsel appearing for both the parties and also gone through the findings of the State Commission in the impugned order. What thus emerges therefrom that in the order dated 14.11.2013, it had been clearly stipulated that the tariff so agreed would be applicable only when the projects are commissioned before 31.03.2015. It is also relevant to note that the Appellant has miserably failed in notifying the force majeure event particularly as per procedures laid down in the IA read with PPA and rather adopted a very liberal approach in pursuing statutory approvals as well as soliciting the intervention of the Respondents in resolving the



issues pending with various Govt. agencies. The active construction period has actually been to the tune of 4 months whereas the time provided for commissioning of the project was 13 + 1 ½ months. We have also taken note from the documents placed before us that it was a clear indication to all the project developers that in case their projects are not commissioned within the control period ending 31.03.2015, the tariff shall be re-determined by the State Commission in line with the terms and conditions of the IA/PPA. It is not a dispute that the tariff for the subsequent control period of Rs.7.19 has been considered by the State Commission based on the prevailing tariff discovered through competitive bidding process. We are of the considered opinion that having regard to its own order dated 14.11.2013 and terms and conditions provided in the IA/PPA, the State Commission has passed the impugned order in accordance with law and considering all the aspects associated therein. We thus, do not find any error, muchless material irregularity or any legal infirmity in the impugned order. Hence, interference of this Tribunal is not called for.

**ORDER**

For the forgoing reasons, as stated supra, we are of the considered view that the issues raised in the present appeal being Appeal No. 169of 2015 are devoid of merits. Hence the Appeal filed by the Appellant is dismissed.

The impugned order passed by the Punjab State Electricity Regulatory Commission dated 22.06.2015 in Petition No. 20 of 2015 is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this 11<sup>th</sup> day of January, 2019.

**(S.D. Dubey)**  
**Technical Member**

**(Justice N.K. Patil)**  
**Judicial Member**

**REPORTABLE / ~~NON-REPORTABLE~~**

Pr