

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

**APPEAL NO. 37 of 2019 &
IA No. 67 of 2019 & IA No. 1299 of 2020**

Dated :12th August, 2021

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member (Electricity)**

AND IN THE MATTER OF:

1. Hunsankodilli Solar Power Project LL.P,
Through its Designated Partner
Sri. SidramKaluti
BC 109, Davidson Road,
Camp: Belgavi. 590 001
Karnataka

2. Smt. Pallavi S,
Represented through GPA holder
Shri. K. Srinivas
201, 68th Cross, 5th Block,
Rajajinagar,
Bangalore – 560010, Karnataka

.....Appellants

Versus

1. Bangalore Electricity Supply Company Limited
Through its Managing Director,
K R Circle,
Bangalore-560 001

2. Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052

.....Respondents

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Prabhulinga Navadegi, Sr. Adv.
Mr. Kush Chaturvedi

Ms. Prerna Priyadarshini
 Ms. Priyashree Sharma
 Mr. Geet Ahuja
 Mr. Shubhranshu Padhi
 Mr. Ashish Yadav
 for App-1 & 2

Counsel for the Respondent(s) : Mr. Balaji Srinivasan
 Mr. S. Sriranga
 Mr. Sriranga Subbanna
 Ms. Medha M. Puranik
 Ms. Sumana Naganand
 Mr. A. Debbarmann
 Mr. Akash Chatterjee
 Ms. Pallavi Sengupta
 Mr. Sidhart Kohli
 Mr. Mayank Kshirsagar
 Ms. Lakshmi Rao
 Ms. Garima Jain for R-1 & R-2

J U D G M E N T

PER HON'BLE MRS. MANJULA CHELLUR, CHAIRPERSON

1. The present appeal has been filed by the Appellant against the Impugned Order dated 18.09.2018 passed by the Karnataka Electricity Regulatory Commission (hereinafter referred to as the '**the State Commission**') in Original Petition (**OP**) No. 71 of 2017. In the impugned order, the State Commission has held that the Appellants are not entitled to extension of time for commissioning of the solar power project in terms of Article 2.5 (Extension of Time) read with Article 8 (Force Majeure) of the Power Purchase Agreement dated 02.07.2015 read with Supplementary PPA dated 08.11.2016 (hereinafter referred to as '**PPA**') without considering several relevant facts pertaining to Force Majeure event.
 - 1.1 By virtue of the impugned order passed by the State Commission holding that the extension of time granted by BESCO is not valid, the Respondent No.1 BESCO is entitled to seek payment of liquidated Damages for the alleged

delay in the commissioning of the power project till 02.07.2017. The issue of payment of Liquidated Damages was not raised by BESCOM at any time in the proceedings before the State Commission. BESCOM has not alleged any loss or damage but in fact has supported the extension of time till 02.07.2017 granted vide letter dated 03.02.2017. The Government of Karnataka had also vide letter dated 23.06.2017 advised the State Commission of such extension to be granted. In these circumstances mentioned above, the impugned order requires to be set aside.

2. FACTS OF THE CASE:-

- 2.1 The Appellant No.1, Hunsankodilli Solar Power Project LL.P (hereinafter referred to as '**Appellant No.1**') is a Limited Liability Partnership incorporated under Limited Liability Partnership Act, 2008 having its registered office at BC 109, Davidson Road, Camp, Belgaum, Karnataka- 590001, India.
- 2.2 The Appellant No.1 was formed as a Special Purpose Vehicle (**SPV**) to undertake the Solar Power project, a Non-Conventional Power project at Hunsankodilli Village, Kanakapura taluka, Ramanagara District, State of Karnataka. The Appellant No.2, Ms. Pallavi S is a farmer owning land in Hunsankodilli village, Kanakapura Taluka, Ramanagara district. The Appellant No.2 is the Solar Power Developer (**SPD**) in the present matter and is represented through a registered GPA holder Shri. K Srinivas.
- 2.3 The Respondent No.1, Bangalore Electricity Supply Company Limited (**BESCOM**), is a distribution company within the meaning of 2(17) of the Electricity Act, 2003 and a Government of Karnataka Company incorporated under the provisions of the Companies Act, 1956 with its registered office at K R Circle Bangalore, Karnataka – 580025.
- 2.4 On 01.07.2011, the Government of Karnataka introduced the first solar policy for the state of Karnataka for the period 2011-2016 in order to harness the potential of solar resources in the state.

- 2.5 On 10.10.2013, the State Commission passed the generic tariff order determining the tariff at Rs. 8.40 for the solar power generators entering into PPA on or after 01.04.2013 and upto 31.03.2018, other than those where the tariff is discovered through the competitive bidding process.
- 2.6 On 22.05.2014, the Government of Karnataka introduced the second Solar Policy for the period 2014-2021. Under the said solar policy, the State Government envisaged the Scheme relating to Utility Scale Grid Connected Solar photo voltaic (**PV**) and concentrated solar power projects. In this Scheme, the State Government endeavoured to promote solar energy projects preferably by land owning farmers with a minimum capacity of 1 MWp and maximum capacity of 3 MWp per land owning farmer in the state for sale of power to State Electricity (Distribution)Supply companies (hereinafter referred to as the '**ESCOMs**') at the tariff determined by the State Commission from time to time.
- 2.7 On 26.08.2014, the Government of Karnataka issued Government Order being GO: EN 62 VSC 2014 providing for the guidelines to be adopted by the ESCOMs and Karnataka Renewable Energy Development Limited (hereinafter referred to as '**KREDL**') for implementation of Clause 8, Segment 1, Category 1 of the Solar Policy 2014-21. The guidelines were issued to promote distributed generation by land owning farmers (small solar power projects under land owners/farmers scheme 1-3 MW) throughout the State of Karnataka.
- 2.8 In pursuance of the above policy of the State Government, on 09.10.2014, the KREDL issued Notification inviting application from the interested parties for facilitating the development of renewable energy in the State of Karnataka. In terms of the above, the Appellant No.2 submitted an application for participation in the Solar Power development. The application of the Appellant No.2 was evaluated and the proposal to set up a Solar Power Project was approved and the Letter of Award (**LOA**) was issued in favour of the Appellant No.2.
- 2.9 In terms of the above, on 02.07.2015, the Appellant No.2 entered into a PPA with BESCO which is the distribution licensee in the area where the 3 MW

Solar Power Project was proposed to be set up, namely, at Hunsankodilli Village, Kanakapura Taluk, Ramanagara district in the State of Karnataka. The PPA executed between the parties was in terms of the standard form of the PPA for execution by the Solar Power Developer in the State, which is in terms of the above Policy of the Government of Karnataka and the Guidelines issued for the said purpose.

- 2.10 The PPA dated 02.07.2015, inter alia, provides for several aspects. The terms and conditions of the PPA will be referred to in the later part of the judgment.
- 2.11 On 25.08.2015, the State Commission approved the PPA dated 03.07.2015 executed between the Appellant No.2 and BESCO.
- 2.12 On 16.06.2015 the Appellant No.2 filed Applications for PT sheet sketch (Land area map) i.e. a pre-condition for filing of the application for conversion of land into non-agriculture in respect of Sy.No. 111 of Hunsankodilli village, Kanakapura Taluka, Ramanagara District and the sketch in respect of Sy. No. 111 was approved on 30.06.2016/06.07.2015.
- 2.13 The Appellants state that the implementation of the 3 MW Solar Power Project, in terms of the PPA dated 02.07.2015 and also the Guidelines issued by the Government of Karnataka, required various approvals, permissions, sanctions etc. from the Government of Karnataka, the other Government Agencies and also the BESCO for connectivity of the Solar Power Project with the Grid for evacuation of power generated at the project. The Appellants were required to fund and finance the project by substantial debt being borrowed from the Banks and Financial Institutions. The financial closure of the project with the Banks and Financial Institutions was dependent upon the Appellants duly securing the approval from various agencies for implementation of the project. These include principally, the following:
- (a) Approval for conversion of the land from agricultural purpose to be used for setting up a Solar Power Project;

- (b) Connectivity of the Solar Power Project with the Grid and power evacuation approval on the 11 KV Power System up to 66 KV Hunsanhalli Substation;
- (c) Providing the Bay estimation for the connectivity at the Bay of the substation of the transmission/distribution system and to provide approval for the break-up and other equipment to be obtained by the Appellants;
- (d) Grant of approval by the Chief Electrical Inspector for charging of the line and for safety and security issues connected with the generating station and line connectivity, installation of metering arrangement, synchronization etc.

2.14 In regard to the approval for conversion of the use of the land from agricultural purpose to the purpose of setting up a Solar Power Project, the Appellants obtained various documents/approval which are required for the Application for conversion and applied to the Deputy Commissioner, Ramanagara vide application on 06.10.2015 duly acknowledged. (which has been mentioned in the final Land Conversion Order as dated 21.05.2016. The demand Notice for payment of the conversion charges (after the Tahsildar's recommendation to the Deputy Commissioner) was issued by the Deputy Commissioner on 24.02.2016 (i.e. after 4months). Thereafter, the payment was made by the Appellants on 13.05.2016. The Order of Conversion of Land into Non-Agriculture was given by the Deputy Commissioner only 21.05.2016. Thus, the approval for conversion of land was received after a lapse of about 8months.

2.15 On 08.01.2016, the Appellant submitted the application for Grid connectivity and power evacuation approval through 11 KV Power System with connectivity to 66KV/11 KV Hunsanhalli Substation. The Letter for payment of processing fees was received only on 18.02.2016 and the same was immediately complied with on 20.02.2016. The tentative approval was received only on 30.06.2016. The Appellant requested for the Final evacuation approval on 02.07.2016. The final

approval for evacuation scheme was issued on 13.10.2016 by BESCO (more than 10 months after submission of the application for grid connectivity).

- 2.16 On 05.12.2016, the Appellant applied to the Chief Electrical Inspector with drawings pertaining to the electrical installation of the 3 MW Solar Power Project. This approval was given by the Chief Electrical Inspector only on 09.02.2017. After the payments of the inspection fees, thereafter the submission of the completion report on 19.05.2017, the plant safety approval for commissioning of the project was on 29.06.2017.
- 2.17 In the circumstances mentioned herein above, there were delays in the implementation of the project for reasons not attributable to the Appellants but attributable to the time taken by the Government Agencies for granting necessary approvals as mentioned herein above.
- 2.18 In the circumstances, the Appellants approached BESCO for extension of time by writing the letter dated 03.12.2016 whereby the appellants had requested for execution of the project beyond the Scheduled Commissioning Date, namely, 18 months from the Effective Date which was expiring on 01.01.2017. The extension of time was sought by the Appellant in terms of Article 2.5 of the PPA on account of the above circumstances which constituted Force Majeure events affecting the Appellant's project and also the time taken by BESCO in providing the necessary approval for connectivity and evacuation of power from the Solar Power Project. In the absence of these approvals, the Appellants were not in a position to achieve the financial closure and firm up the funding and financing arrangement from the Banks and Financial Institutions. Further, the Appellants could not have taken the steps in the absence of the conversion of land from agriculture to Non-agriculture. The Appellants therefore, sought for extension of six months from the Scheduled Commissioning Date.

- 2.19 The Respondent No. 1, BESCO after considering the above stated aspects, vide letter dated 03.02.2017 granted extension of time for completing the 3 MW Solar Power Project for a period of six (6) months.
- 2.20 The Appellants submit that the above letter dated 03.02.2017 was issued by BESCO in terms of Article 2.5 of the PPA, as per the same BESCO is empowered to issue extension without any stipulation as to the approval for such extension to be taken from the State Commission. It is further submitted that, in terms of Article 2.5.6 of the PPA, once such extension is granted, the Scheduled Commissioning Date and the Expiry Date shall be substituted and shall be deemed to be the extended date for the purpose of agreement. In the circumstances mentioned above, upon the issue of the letter dated 03.02.2017, the Scheduled Commissioning Date of the Solar Power Project became 24 months from the Effective Date in place of 18 months and thus, expiring on 01.07.2017. Accordingly, the Appellant became entitled to establish the Solar Power Project by or before 01.07.2017 for the purpose of the PPA dated 02.07.2015 and for tariff provided under the PPA at the rate of Rs 8.40/KwH.
- 2.21 On 16.03.2017, the State Commission for the first time issued a communication informing BESCO that the extension of time should not be considered as a routine exercise except under extraordinary conditions faced by the Project Developer within the scope of the original PPA and directed BESCO not to issue any extension of time beyond the Scheduled Commercial Operation Date without obtaining the prior permission of the State Commission.
- 2.22 On 05.04.2017, the State Commission directed all ESCOMs to advise the Solar Power Developers to file a Petition before the State Commission in regard to extension of the commissioning date.
- 2.23 BESCO issued a communication to the Appellant advising the Appellants to file a petition before the State Commission for seeking approval for extension of the Scheduled Commissioning Date.

- 2.24 Thereafter, on 05.05.2017, the Appellant No. 1 filed a Petition being OP No. 71 of 2017 before the State Commission, inter-alia, challenging the communication dated 31.03.2017, issued by BESCO.
- 2.25 Thereafter, on 23.06.2017, the State Government informed the State Commission that the State Government has accepted the plea of BESCO in the matter of extension of time to achieve the Commercial Operation Date of the Solar Power Project under the farmer scheme invoking the Force Majeure conditions of the PPA and hence called upon the State Commission to approve such extension of time.
- 2.26 On 07.07.2017 the State Commission directed BESCO to permit the Solar Power Developer to commission the project beyond the original Scheduled Commercial Operation Date subject to the State Commission examining the merits of each case with regard to Force Majeure conditions and the applicable tariff. The State Commission directed the BESCO to advise the Developer to file a petition before the State Commission justifying their claim for extension of time under the Force Majeure conditions as provided in the PPA.
- 2.27 On 26.10.2017, the Appellant No.2 was impleaded as the Petitioner No.2 in the Petition being OP No.71 of 2017 filed by the Appellant before the State Commission.
- 2.28 In the meanwhile, the Appellants had completed and commissioned the project on 29.06.2016 as certified by BESCO as per the requirements of the PPA and the electricity generated from the project started flowing into the Grid in terms of the provisions of the PPA dated 02.07.2015 in the month of June 2017.
- 2.29 On 18.09.2018 the State Commission passed the Impugned order and dismissed the Petition No. 71 of 2017 filed by the Appellant.
- 2.30 Aggrieved by the Order dated 18.09.2018, the Appellants are filing the present appeal before this Tribunal.

2.31 The Appellant No.1's Bankers have now issued him letter on 29.10.2018 demanding regular payments in the backdrop of the Appellant not having been able to service his loan account due to reduced tariff of Rs.4.36/unit. The Bank had sanctioned loan to the Appellants based on the tariff stipulated in the PPA signed between the parties viz., Rs.8.40/unit. If the reduced tariff of Rs.4.36/per unit fixed under impugned order were to be continued to operate for the entire term of the PPA, the Appellants would not be in a position to even repay the loan, and the loan account would be declared as Non Performing Asset and the proceedings for auctioning the mortgaged property (farmer's land) will be initiated. The same would cause irreparable loss and injury to the farmer.

3. Mr. Basava Prabhu Patil, Learned Sr. Counsel for the Appellant has filed the following Written Submissions and Additional Written Submissions for our consideration :

3.1 That present Appeal has been filed by the Appellants, Hunsankodihalli Solar Power Project LLP and Smt. Pallavi S represent through GPA Holder Shri K Srinivas, challenging the order dated 18.09.2018 passed by the Karnataka Electricity Regulatory Commission (**KERC**) in Original Petition No. 71 of 2017, whereby the KERC held that the Appellants are not entitled to extension of time for commission of the solar power project which was approved by BESCOM (**Respondent No. 1**), for the reasons explained by Appellants.

3.2 The Appellant and BESCOM entered into a Power Purchase Agreement (PPA) on 02.07.2015 for development of 3 MW solar power plant at Hunsankodihalli village in Kanakpura Taluk, Ramanagar.

NOTE: The PPA in question was based on the standard format PPA in respect of Solar Power Plants of 1 – 3 MW projects for Land Owners and institutions, that had been approved by the KERC. In terms of clause 2.5.3 of the standard format PPA, BESCOM has the authority to approve extension.

NOTE 2: KERC approved the PPA executed between the Appellant and BESCO on 25.08.2015, 25 days after the signing of the PPA

NOTE 3: KPTCL by its order dated 21.12.2015 issued a guideline for grant of evacuation approval to smaller wind and solar generators. It is submitted that para 5 (g) of the said guidelines allows applicants to ask for land on lease for terminal bay instead of acquiring land on their own, provided lease charges are paid. Pertinently, the Appellant had raised a request to KPTCL for setting up of 11 KV Terminal Bay on 08.01.2016, but the KPTCL/BESCO had raised the demand for lease charges on 25.01.2017, which was paid by the Appellant on 01.02.2017.

- 3.3 The Appellant No. 2 wrote a letter dated 03.12.2016 to BESCO requesting for extension of time upto 6 months to commission its project in terms of Article 2.5 and 8 of the PPA. Further, GOK in view of various representations made by similarly placed SPPs, issued a direction to all ESCOMs to constitute a committee and to examine each cases on its own merits. In view of GOK's direction, the Appellant's case for extension of SCOD was considered by a three member Technical Committee under the Chairmanship of the Director (Technical), BESCO on 23.01.2017. BESCO by its letter dated 03.02.2017 allowed the Appellant's request for extension and granted 6 months time to commission its plant in terms of Articles 2.5 and 8 of the PPA, categorically stating that the said extension was without altering any other terms and conditions of the PPA.

NOTE: It may be noted that Article 4.2 of the PPA deals with '*Obligations of BESCO*'.

It is submitted that BESCO under Article 4.2 (d)(iii) had acted in a reasonable manner while granting extension of time to the Appellants after scrutiny by members of the technical committee.

- 3.4 The KERC issued a general communication dated 16.03.2017 to all the ESCOMS, stating that ESCOMS could not allow extension of time beyond the SCOD without obtaining prior approval of the Commission, and that the same could be granted under extraordinary circumstances to be proved by the project developer. Thereafter, BESCO by its letter dated 31.03.2017, informed that the Commission has issued clarification and advised to file a petition before the Commission. Further, KERC issued another communication dated 05.04.2017 to all ESCOMS directing them to advise the concerned SPD/SPV under Land Owners/ Farmer's Scheme to file a petition before the KERC for seeking approval for any extension of COD.
- 3.5 Meanwhile GOK, in response to KERC's letter dated 09.05.2017 wherein the KERC had requested GOK to furnish details of similarly placed solar power projects, issued a letter dated 23.06.2017 to the Secretary, KERC stating that the reason for the extensions issued by ESCOMs were due to Force Majeure and the extensions were done in accordance with the PPAs approved by the KERC, without altering the KERC approved tariff as agreed in the PPA. GOK hence requested the commission to consider approval of the extension of SCOD. In reply to the aforementioned communication, the KERC by its letter dated 07.07.2017 informed GOK that the commission has approved ESCOMs grant of extensions to developers to commission projects beyond original SCODs as per PPA but the tariff applicable in each case shall be examined according to its own merits.
- 3.6 It was in this backdrop, the Original Petition No. 71 of 2017 was filed before the KERC by the Appellant, seeking, *inter alia*, (a) to set aside BESCO's communication dated 31.03.2017 (requiring it to seek KERC's approval to the extension of time already granted by BESCO), (b) to confirm the extension order of BESCO dated 03.02.2017 granting extension of 6 months to the Appellant to commission its project, (c) to restrain BESCO to take any action

against the Appellant on account of communication dated 05.04.2017, (d) to declare that the Appellant is entitled to claim Force Majeure conditions, and (e) to declare that the Appellant is entitled to extension of time as per clause 2 of the PPA dated 03.07.2015 without changing any condition of the PPA.

NOTE: Various Original Petitions seeking similar reliefs were filed before the KERC by other similarly placed and affected parties.

- 3.7 The KERC passed the Impugned order holding that the Appellant was not entitled to extension of time to commission its project and had failed to prove Force Majeure events. Accordingly, the KERC held the Appellant to be entitled to a reduced tariff of Rs. 4.36/ unit under Article 5.1 of the PPA and also liable to pay liquidated damages under Articles 2.2 and 2.5.7 of the PPA.
- 3.8 It is submitted that the Impugned Order is based on assumptions relating to the Appellant not being diligent in implementing the Project. In this regard, it is emphasized that the Appellant had been diligent in implementing the project and had placed all orders for solar modules, power conditioning units, mounting structures, cable and accessories etc. prior to the original scheduled commissioning date (SCOD) of the project as per the PPA. Therefore, it is submitted that but for the force majeure events, the Appellant's project would have been commissioned within the SCOD. Thus, considering the fact that entire investment cumulating into the capital cost of the project was made by the Appellant prior to SCOD, it may be noted that the Appellant does not stand to get any financial benefits of reduced expenditure in any manner by delaying the COD of the project, as has been indicated by KERC in the impugned order.
- 3.9 It may be pertinent to note that the Appellant had started the process of obtaining the required documents in prescribed Form (Annexure – 1) as per Rule 106A under Section 95 of the Karnataka Land Revenue Act, 1964, (**KLRA**) for the PTCL certificate on 08.05.2015 immediately after receiving the LOA and even

before signing of the PPA. But as the PTCL certificate was not received by the Appellant even after 5 months of application for the same, the Appellant was constrained to apply for land conversion without the PTCL certificate. It is submitted that the Appellant received the PTCL certificate only on 21.01.2016, after a lapse of 7 months from the dated of Application. Further, under Section 95 (10) of the KLRA, as amended on 13.08.2015, a land shall be deemed to have been converted upon payment of conversion fine or fees payable, if any. It is submitted that the intimation to pay fees was given to the Appellant only on 24.02.2016 despite the application for conversion having been made on 06.10.2015, i.e. after 140 days of making the application for land conversion.

It is further submitted that though the final evacuation approval was granted by BESCO on 13.10.2016, the bay estimate intimation was issued by KPTCL only on 21.01.2017, more than 3 months after the grant of final evacuation approval, after the original SCOD. It may be pertinent to note that it is only after issuing Evacuation Approval the major works division of ESCOM/KPTCL prepares Bay SLD & Layout drawings with estimation for Bay erection after joint site visit by ESCOM and KPTCL. In this case, the bay intimation notice was received after about 100 days from the date of grant of final evacuation approval which led to delay in further steps to be undertaken by the Appellant for construction of bay.

NOTE: Along with the prescribed Form (Annexure – 1) as per Rule 106A under Section 95 of KLRA, to obtain a conversion order, the following documents are required to be submitted:

- Record of Rights
- Akarband Certificate
- Nil Encumbrance Certificate for 14 years
- Mutation Entries
- 11E Sketch

- PTCL Certificate under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Certain Lands) Act, 1978

3.10 It is submitted that the KERC has erred holding that the Appellants are not entitled to extension of time as granted by BESCO under the PPA and reducing the tariff from Rs. 8.40 per unit to Rs. 4.36 per unit. Therefore, Appellants are entitled to the tariff of Rs. 8.40 per unit in terms of the PPA dated 02.07.2015 and even otherwise, the present Appellant herein has already spent a total cost of Rs. 18,54,26,654 as on the date of commissioning of its project, therefore the reduced tariff is not sufficient to even meet its loan commitments.

NOTE: The Ministry of New and Renewable Energy (**MNRE**) by its letter dated 09.04.2018 has requested GOK to request KERC to restore original tariff of Rs. 8.40 per unit for 1 – 3 MW Solar Power Plants commissioned under the Land Owned farmers Scheme of Karnataka under Section 108 of the Electricity Act, 2003.

3.11 It is submitted that, this Tribunal by its judgment dated 27.02.2020 in Appeal No. 368 of 2019 entitled “*Ayana Ananthapurama Solar Power Private Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors.*” categorically held as under:

“61. Over and above this, it is seen that there were Supplementary PSAs to the original PSAs with intermediary procurer extending the existing timelines up to 31.07.2019. The time is further extended by intermediary procurer. To commission the project within the timeframe when approval of procurement of power and adoption of tariff reach finality, that would be the starting time to reach the completion of project in terms of agreements i.e. PPA between the solar developer and intermediary procurer – NTPC/ SECI, would come into play. Therefore, the contention of the Respondent – AP Discoms that there is delay or going to be delay to achieve SCOD is rejected.”

Therefore, it is submitted that the date of approval of the PPA by the KERC would be the starting time to reach the completion of project in terms of the agreements between the SPD and ESCOM.

- 3.12 It is also submitted that, this Tribunal in “*Chamundeshwari Electricity Supply Company Ltd. v. Saisudhir Energy (Chitradurga) Pvt. Ltd.*” reported in 2018 SCC On Line APTEL 65 had held that no formal issuance of Notice is required in cases of force majeure events.
- 3.13 Further, the issues involved in the present Appeal are covered by this Tribunal’s judgment dated 28.02.2020 in Appeal No. 340 of 2016 entitled “*Azure Sunrise Private Limited v. Chamundeshwari Electricity Supply Corporation Limited*” wherein this Tribunal has held that once extension of Scheduled Commissioning Date is approved by the concerned DISCOM, question of reduced tariff does not arise.
- 3.14 Furthermore, the present Appeal is squarely covered by this Tribunal’s Order dated 14.09.2020 in Appeal No. 351 of 2018 entitled “*Chennamangathihalli Solar Power Project LLP v. Bangalore Electricity Supply Company Limited*”, wherein this Tribunal had held as under:

“9.1. Having regard to the deliberations and our analysis, as stated supra, we are of the opinion that there was nothing wrong on the part of KERC to suo motto interfere in the matter. As being a State Regulator, it has jurisdiction to look into affairs of ESCOMS in purchase and supply of powers in the larger interest of consumers. However, as the COD extension was granted under the signed PPA between the parties and after applying, due diligence in the matter considering all prevailing facts and matrix of events, the State Commission ought to have considered the same and approved so as to meet the ends of the justice. Needless to mention that the PPA’s Terms & Conditions were duly approved by the State Commission which crystallised the rights of the parties.”

- 3.15 Therefore, seek setting aside impugned order since procedural delay by government authority/ intuitional level which were beyond the control of the Appellants.

ADDITIONAL WRITTEN SUBMISSIONS SUBMITTED BY THE APPELLANTS

- 3.16 They pertain only on a limited issue raised during arguments in the matter, and may be read as part and parcel of the Appellant's submissions already filed in the instant matter.
- 3.17 It is submitted that BESCO having approved the extension of time, by 6 months for commissioning of the Appellant's solar power project by its letter dated 03.02.2017, after scrutiny of relevant documents by members of the technical committee constituted by BESCO itself, are estopped from taking a contrary stand, more so, since there has been no justifiable reason put forth by BESCO at any point of time for the change in its stand.
- 3.18 In *Shyam Telelink Ltd. v. Union of India*, reported in (2010) 10 SCC 165, the Hon'ble Supreme Court observed as under:

"23. The maxim qui approbat non reprobate (one who approbates cannot reprobate) is firmly embodied in English common law and often applied by courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument."

- 3.19 Also relevant to note is the Hon'ble Supreme Court's observation in *Suzuki Parasrampuriah Suitings Private Limited v Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation) and Ors*, reported in (2018) 10 SCC 707:

"12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh v. Union of India, observing as follows:

"50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions."

13. A similar view was taken in Joint Action Committee of Air Line Pilots' Assn. of India v DGCA, observing:

"12. The doctrine of election is based on the rule of estoppel ---- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estopples in pais (or equitable estoppel) which is a rule in equity. ... Taking inconsistent pleas by a party

makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

3.20 In the instant case, though BESCO had filed their statement of objections dated 29.08.2017 in OP No. 71 of 2017 before the KERC, the same was later withdrawn by BESCO by filing a memo dated 14.09.2017. In addition thereto, the impugned order dated 18.09.2018 passed by the KERC in OP No. 71 of 2017 also records as under:

‘7) The Petitioners concluded their arguments. Finally, the learned counsel for the Respondent (BESCO) submitted that, it would not specifically object to the pleas raised by the Petitioners and that it would abide by the Orders of this Commission. Therefore, the arguments of the Respondent (BESCO) were taken as ‘concluded’.
...”

In view of the above, it is submitted that the Respondent BESCO cannot on the one hand approve the extension of time on the grounds of force majeure events, and not object to the Appellant’s pleas before the Ld. Commission, but on the other hand, in the appellate proceedings before this Tribunal resile from their own act of granting extension by taking a diametrically opposite view. The Respondents ought not to be permitted to approbate and reprobate in this manner.

3.21 It is also reiterated that the present Appeal is similar on facts and is squarely covered by this Tribunal’s Order dated 14.09.2020 in Appeal No. 351 of 2018 titled “Chennamangathihalli Solar Power Project LLP v. Bangalore Electricity Supply Company Limited”, wherein this Tribunal had held as under:

“9.1. Having regard to the deliberations and our analysis, as stated supra, we are of the opinion that there was nothing wrong on the part of KERC to suo motto interfere in the matter. As being a State Regulator, it has jurisdiction to look into affairs of ESCOMS in purchase and supply of powers in the larger interest of consumers. However, as the COD extension was granted under the signed PPA between the parties and after applying, due diligence in the matter considering all prevailing facts and matrix of events, the State Commission ought to have considered the same and approved so as to meet the ends of the justice. Needless to mention that the PPA’s Terms & Conditions were duly approved by the State Commission which crystallised the rights of the parties.”

3.22 That the Appellant submits that the Article 6 of the PPA dated 02.07.2015 deals with the issue of billing and payment. Article 6.4 of the PPA categorically provides for Late Payment Surcharge, which is being extracted below for ready reference:

“6.4 Late Payment Surcharge: *In the event of delay in payment of a monthly bill being made by BESCO after the due date, a late payment surcharge shall be payable to the SPD at the rate of 1.0% per month on the bill amount (being ‘Late Payment Surcharge’), computed on a pro rata basis on the number of days of the delay in payment. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.”*

3.23 It is further submitted that this Tribunal’s Judgment in *Lanco Amrkantak Power Limited v Haryana Electricity Regulatory Commission* dated 22.05.2019 in Appeal No. 308 of 2017 on payment of interest and the time value of money wherein this Tribunal had held as under:

“93. . . .

iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.

v) The Appellant has placed reliance on several judgments passed by this Tribunal in several similar matters wherein it has been clearly brought out that the developers are entitled to interest on the differential amount due to them as a consequence of redetermination of tariff. It has been clarified in various judgments that the interest is not a penal charge if it is fixed according to commercial principles. It is only compensation for the money denied at the appropriate time.

. . .

vii) The Respondent No. 3 have submitted that interest cannot be paid until the amount is crystallized. It is pertinent to note here that though the amount was crystallized by the State Commission vide their Impugned Order but the most important fact to be kept in mind is that the State Commission redetermined the tariff from the date of commencement of supply which clearly shows that the due date is the date of commencement of supply. In such matters the crucial point for consideration is that interest is not a penalty or punishment at all. But, it is the normal accretion on capital. Equity demands that the paying party should not only pay back the principal amount but also the interest thereon to the recipient and therefore the argument of the Respondent does not hold ground and needs to be rejected. . . .”

Therefore, in terms of Article 6.4 of the PPA read with the abovementioned Judgment of this Tribunal, the interest amount is intended to compensate the

developer, who was paid a lower tariff than what it was entitled to, the Appellant is entitled to Late Payment Surcharge from the date of commissioning of the project, i.e. 29.06.2017 onwards as BESCO has been paying the Appellant at the reduced tariff rate of Rs. 4.36/ kw has against the PPA tariff rate of Rs. 8.40/kwh.

3.24 In light of the above facts and arguments, it is prayed that this Tribunal may allow the Appeal relating to a small solar power project developed under landowners farmers category under the Solar Power Policy of the State of Karnataka, restoring the agreed PPA tariff of Rs.8.40/kwh, and also, grant the consequential relief of interest/ late payment surcharge provided in the PPA on the differential tariff that would be payable to the Appellants for the period commencing from the date of commissioning of the project till date.

4. Mr. Balaji Srinivasan, Learned Counsel for the Respondent No. 1 has filed the following Written Submissions for our consideration:-

4.1 The Appellant herein has filed the present appeal challenging the order of the Karnataka Electricity Regulatory Commission (hereinafter referred as “State Commission”) dated 18.9.2018 in Original Petition No. 71 of 2017, wherein State Commission was pleased to hold that the Appellant is not entitled to extension of time to commission its plant.

4.2 On 5.11.2020, the Tribunal had directed both the parties to file a concise written submission. Pursuant to which, the Respondent is filing the present written submission.

4.3 The submissions made in the Statement of Objections filed by the Respondent herein may be read as a part and parcel of the present written submissions, and the same are not repeated herein for the sake of brevity.

LIST OF DATES

SL. NO.	DATE	PARTICULARS	PAGE NO.	Digital Page
1.	2.7.2005	Circular issued by Revenue Ministry regarding guidelines to be followed before issuance of permission for conversion of agricultural land into non-agricultural land.	Annexure F/page 83 of Appellant's written submission	Page 92 of Appellant's written submissions
2.	10.10.2013	KERC vide its Generic Tariff order determined the tariff of Rs. 8.40 per unit for PPAs entered between 1.4.2013 and 31.3.2018.	Annexure C/Page 72 of Appeal memo	Page 80 of vol 1 of Appeal memo
3.	22.5.2014	Government of Karnataka issued solar policy for the period of 2014-21. The Solar Policy contemplated setting up of 1-3 MW solar plant by land owning farmers.		
4.	16.6.2015	KERC vide its order dated 16.6.2015 approved the standard format of PPA applicable for solar generators.	Annexure B/page 20 of written submissions	Page 29 of Appellant's written submissions
5.	2.7.2015	PPA was executed between Appellant and BESCO for development of 3MW solar plant.	Annexure D/page 92 of Appeal memo	Page 100 of vol 1 of Appeal memo
6.	25.8.2015	KERC approved the PPA dated 2.7.2015.	Annexure E/page 130 of Appeal memo	Page 138 of vol 1 of Appeal memo
7.	6.10.2015	Appellant submitted an application before DC, Ramnagara for conversion of agricultural land into non-agricultural purpose.	Annexure F(colly)page 132 of Appeal memo	Page 141 of vol 1 of Appeal memo
8.	21.12.2015	KPTCL issued guidelines regarding evacuation scheme and interconnection approvals for wind and solar generators seeking connectivity with the grid capacity of 5 M and below.	Annexure C/page 37 of the Appellant's written submission	Page 46 of Appellant's written submissions
9.	8.1.2016	Appellant submitted a letter with Chief Engineer, Transmission Zone, Bengaluru, KPTCL requesting for grid connectivity and power evacuation approval.	Annexure H/page 141 of Appeal memo	Page 1 of vol 2 of Appeal memo
10.	18.2.2016	KPTCL intimated the Appellant for payment of processing fee.		
11.	20.2.2016	Appellant paid the processing fee to KPTCL for grant of evacuation approvals.		
12.	24.02.2016	Office of Deputy Commissioner, Revenue intimated the Appellant to pay fee for conversion of land		
13.	13.5.2016	Appellant paid fee for conversion of land.		
14.	21.5.2016	DC, Ramnagara issued land conversion order.		
15.	30.6.2016	KPTCL accorded tentative evacuation scheme for the Appellants plant.	Page 142 of Appeal memo	Page 2 of vol 2 of Appeal memo
16.	2.7.2016	Deadline to achieve Conditions Precedent		

17.	13.10.2016	KPTCL approved the regular evacuation scheme for the Appellant's plant.	Page 146 of Appeal memo	Page 6 of vol 2 of Appeal memo
18.	8.11.2016	Supplemental PPA executed between Appellant and BESCOM	Page 236 of Appeal memo	Page 98 of vol 2 of Appeal memo
19.	24.11.2016	Government of Karnataka directed all the ESCOM's to constitute a 3 member committee to consider and decide extension of SCOD.		
20.	3.12.2016	Appellant requested BESCOM to grant extension as per Article 2.5 and 8 of the PPA on account of delay in obtaining land conversion orders and evacuation approvals.	Annexure I/page 151 of Appeal memo	Page 11 of vol 2 of Appeal memo
21.	1.1.2017	Scheduled commissioning date		
22.	23.1.2017	BESCOM approved the extension of Appellant's project by 6 months under Article 2.5.1 of PPA i.e., any BESCOM event of default.	Annexure A/page 9 of written submissions	Page 18 of Appellant's written submissions
23.	3.2.2017	BESCOM granted the extension of time as per the Article 2.5 and 8 of the PPA.	Annexure J/page 153 of Appeal memo	Page 13 of vol 2 of Appeal memo
24.	16.3.2017	KERC addressed a letter to all the ESCOM's of Karnataka that extension of scheduled commissioning date should be granted under extraordinary conditions as extension granted will have impact on tariff payable by the ESCOM's	Annexure K/page 155 of Appeal memo	Page 15 of vol 2 of Appeal memo
25.	31.03.2017/ 15.4.2017	The Respondent No.1 communicated to the Appellant that extension of time for Scheduled Commissioning Date is subject to condition that tariff and liquidated damages has to be determined by the State Commission. Further, it was communicated that extension was granted only to facilitate commissioning of the plant.	Page 159 of Appeal memo	Page 19 of vol 2 of Appeal memo
26.	5.04.2017	In response to the request for approval of Supplementary PPAs of Solar Developers incorporating extension of time to achieve commissioning of the plant, KERC communicated to the ESCOMs that extensions were granted by the ESCOMs without considering the necessary documents and independent findings in that regard are inadequate. Therefore, KERC directed the ESCOM to communicate to the solar developers to file petition before it seeking approval of any extension of the commissioning date	Page 157 of Appeal memo	Page 17 of vol 2 of Appeal memo
27.	5.5.2017	Appellant filed the Petition OP 71 of 2019 before the State Commission	Annexure N/page 160 of Appeal memo	Page 20 of vol 1 of Appeal memo

		seeking for an extension as per Article 2.5 of the PPA.Member		
28.	23.6.2017	Additional Secretary, Energy Department addressed a letter to KERC to consider approval of the extension of COD of solar power projects of capacity 1 to 3 MW under land owning farmers category.	Page 257 of Appeal memo	Page 127 of vol 2 of Appeal memo
29.	7.7.2017	KERC addressed a letter to all ESCOMs to direct SPDs to file petitions for extension of time.	Annexure P/page 259 of Appeal memo	Page 130 of vol 2 of Appeal memo
30.	28.7.2017	MNRE addressed a letter to Principal Secretaries directing not to give extension of time for projects wherein the State Governments have fulfilled its obligations in a project.	Page 263 of Appeal memo	Page 134 of vol 2 of Appeal memo
31.	29.6.2017	Appellant commissioned its plant.		
32.	1.7.2017	KPTCL issued the commissioning certificate.	Annexure Q/page 260 of Appeal memo	Page 131 of vol 2 of Appeal memo
33.	29.10.2018	SBI addressed a letter to Appellant to regularise the payment of the instalment and interest.	Annexure Q/page 262 of Appeal memo	Page 133 of vol 2 of Appeal memo
34.	9.4.2018	MNRE letter addressed to the Additional Chief Secretary, Energy Dept. of Karnataka requesting it to restore the original tariff of Rs 8.40 per unit for 1-3 MW solar power plants commissioned under land owned farmers scheme.	Annexure K/page 128 of Appellant's written submission	Page 137 of Appellant's written submissions
	18.9.2018	KERC passed an impugned order and dismissed OP No. 71 of 2017 and denied extension to Appellant's plant.	Annexure A/page 36 of Appeal memo	Page 44 of vol 1 of Appeal memo

4.4. On 2.7.2015, the Appellant herein and Respondent No. 1 had entered into a Power Purchase Agreement (hereinafter referred as "PPA") for development of 3MW solar power plant at Appellant No.2's land at Hunsankodihalli village, Kanakapura Taluk, Ramanagara District. The State Commission approved the PPA on 25.8.2015. The Appellant commissioned its plant on 29.6.2017.

4.5 The PPA executed between the parties set out defined time lines for establishment of the plant. Article 1.1(xii) defined the effective date to be the date of signing of agreement i.e. 2.7.2015. Article 1.1(xxviii) defined Scheduled Commissioning Date to be 18 months from the effective date i.e. 1.1.2017. Further, Article 5.1 of the PPA clearly states that in the event of delay in commissioning of the project beyond the scheduled commissioning date, the

applicable tariff for the project would be the varied tariff applicable as on the date of commissioning of the plant, if during such period there is variation in the tariff fixed by the State Commission.

4.6 In the present case, the Appellant has achieved commercial operation on 29.6.2017, after a delay of 6 months. On the said date, the Generic Tariff order dated 12.4.2017 of the State Commission was in force and the tariff payable was Rs 4.36/-. Therefore, it is submitted that Appellant is entitled to a tariff of Rs. 4.36/- and not Rs 8.40/- as claimed by the Appellant. This has been affirmed by the Hon'ble Supreme Court in the matter of *Gujarat Urja Vikas Nigam Ltd v. EMCO Limited and Another* [reported in (2016) 11 SCC 182] and this Tribunal in its judgment dated in 11.1.2019 in Appeal No. 169 of 2015 *Earth Solar Pvt Ltd v. Punjab State Electricity Regulatory Commission and Another*.

4.7 In the present case, the Appellant has attributed delay to the delay in grant of evacuation approval, delay in conversion of land and delay in supply of MEI breakers. It is submitted that none of these delays can be attributed to the Respondent herein as it was not the responsibility of the answering Respondent i.e. distribution licensee to furnish any of the above. However, the submissions of the answering Respondent to each of the above reasons assigned by the Appellant are as under:

i. Delay in KPTCL Evacuation Approval

The Appellant submitted an application to the Chief Engineer, Transmission Zone, Bengaluru, KPTCL on 8.1.2016 for grid connectivity and power evacuation approval. On 18.2.2016, KPTCL requested the Appellant to pay the requisite processing fee. On 20.2.2016, the Appellant paid the processing fee towards grant of evacuation approval. Further, on 30.6.2016 accorded tentative evacuation scheme for the Appellants plant and the same was accepted by Appellants on 4.7.2016. Thereafter, on

13.10.2016, KPTCL approved the regular evacuation scheme of the Appellant.

It is clear from the above timeline that KPTCL has been prompt in responding to the Appellant and further, Appellant has approached KPTCL only on 8.1.2016 i.e. after a delay of 6 months from the date of execution of PPA. Therefore, the delay in evacuation approval cannot be solely attributed to the governmental agencies.

It ought to be noted that as per Article 2.1 of the PPA pertaining to Conditions Precedent, the Appellant was required to achieve condition precedent within 12 months from date of execution of the PPA i.e. on or before 2.7.2016. Hence, the delay was on the part of the Appellant itself.

ii. Delay in Land Conversion

The PPA was executed on 2.7.2015. Several months after execution of the PPA, on 6.10.2015, Appellant submitted an application before DC, Ramanagara for conversion of agricultural land into non-agricultural purpose. He was requested to pay the requisite fee vide communication dated 24.2.2016. However, after a lapse of 3 months, only on 13.5.2016, Appellant paid fee for conversion of land (as can be found in at page no 137 of the Appeal memo). Immediately thereafter, on 21.5.2016, DC, Ramnagara issued orders with regard to request for conversion of land.

The Appellant has approached the authorities for conversion after 4 months from the execution of PPA and has not provided any explanation for the delay in applying and further, has not produced the copies of applications filed before the concerned authorities for getting the documents for conversion, to prove the dates of filing of the applications. Further, the land conversion order was issued on 21.5.2016, before the conditions precedent date, i.e. 2.7.2016, which is the stipulated time frame

for getting governmental approvals. Therefore, the Appellant cannot contend that there has been delay in land conversion. Hence, the contention that delay has been caused by the answering Respondent herein is untenable.

iii. Delay in CEIG approval

The Appellants have alleged that there is delay in approval of the CEIG. The Appellants claim that they applied for approval on 5.12.2016 and have received the approval only 15.3.2017. It is submitted that the Respondent herein is not aware when the Appellants have submitted the drawings to CEIG. It is submitted that as per the CEIG approval dated 15.3.2017, the Appellants have requested for approval of drawings and paid the fees for scrutiny only on 14.12.2016. On 27.12.2016, CEIG office has intimated Appellants the defects and on 29.12.2016, the Appellants has resubmitted the drawings. Further, on 13.2.2017, CEIG office has intimated the Appellant to furnish valid PPA. The Appellant has on 13.2.2017 submitted the PPA along with the extension letter issued by BESCO. On 15.3.2017, CEIG has accorded approval to drawings pertaining to the electrical installation. From the perusal of the sequence of dates, it is evident that the authorities have been prompt in responding to the Appellant, and therefore, no delay can be made out.

Further, it is submitted that the Appellant has provided no explanation as to why it has submitted the drawings so belatedly, i.e. just a month before the scheduled commissioning date. Therefore, the allegation that there is delay in CEIG approval is false and denied.

iv. State Commission's Power to review extension granted by BESCO

It is submitted that the State Commission is the sole authority to approve the tariff. In the realm of contract, generating companies and distribution

licensees do not have complete freedom in the regulated sector. Any decision of entering into a contract, acting under it, waiver and concession affecting tariff is amenable to the State Commission's regulatory powers as stipulated in Section 61, 62, 63, 64 and 86(1)(a) and 86(1)(b) of the Electricity Act, 2003. In this regard, reliance is placed on the decision of the Supreme Court of India in the matter of *All India Power Engineer Power Federation and Others v. Sasan Power Ltd* [reported in (2017) 1 SCC 487].

The State Commission has approved the tariff for solar units on the date of scheduled commissioning date as Rs. 8.40/- per unit as per the order of State Commission order dated 10.10.2013. It is submitted that, the Appellant having commissioned the plant only on 29.6.2016, tariff of Rs. 4.36 per unit (as per order of the State Commission order dated 12.4.2017), which was prevailing, would have been payable. The downward revision was on account of reduction in the cost of setting up of solar generation plants due to lowering of cost of plant and machinery on account of technological advancements and international pricing. The Appellant having had the benefit of lower project cost is not justified in expecting higher tariff to be applied to them. Even if extension of time for completion of the project had to be granted, such extension would only entitle generating companies to supply power and not to claim higher tariff.

It is submitted that the power of the State Commission to review decisions of the Distribution companies to grant extension of time is traceable in the Section 61, 62, 63, 64 and 86(1)(a) and 86(1)(b) of the Act.

The State Commission having carefully examined the request of the generating companies for extension of time, has come to the conclusion that their request is not justifiable and does not satisfy the provisions of *force majeure* clauses, consequent to which extension was unjustified.

It is submitted that the order of the State Commission is just, equitable, fair and rendered in the interests of the public. The State Commission has exercised its power taking note of all factors. It is submitted that the State Commission has ensured that a generator does not take undue benefit and take advantage of their own wrong by getting higher tariff than others who are similarly placed to them.

The State Commission has approved the tariff of Rs. 8.40/- per unit for the Appellant's plant as per the State Commission order dated 10.10.2013. In view of the progressive reduction in cost of equipment and the project cost, the State Commission reduced the tariff to Rs. 4.36/- per unit with effect from 1.4.2017 in its order dated 12.4.2017. The Appellants have taken benefit of reduced project cost since the equipment orders for the plant were placed by the Appellant on 9.9.2016, as disclosed in the written submission filed by the Appellant. Therefore, no prejudice will be caused to the Appellants by the order of the State Commission.

v. Issuance of *Force Majeure* notice

Invocation of *force majeure* clause under Article 8 of the PPA has to be done strictly in the manner stipulated. Due notice regarding occurrence of *force majeure* must be given with a reasonable time. Admittedly, the Appellant has not issued *force majeure* notice as required under the PPA. It is submitted that *force majeure* cause can be invoked only when the specific requirements under the said clause are strictly complied. In this regard reliance is placed on the Tribunal's judgment in *Himachal Sorang Power Ltd v. CERC and others* [reported in (2015 SCC OnLine APTEL 148)].

It is pertinent to note that Article 8.3(b) clearly states that Appellant cannot take shelter under *force majeure* clause if the delay in

commissioning of the plant was caused on account of Appellant's negligence, omission and non-performance.

4.8 The Appellant has contended in its written submissions that the finding of the State Commission that it is entitled to tariff of Rs 4.36/- in terms of the tariff order dated 12.04.2017 is bad. In order to substantiate the said contention, it has been contended that the Appellant has placed all orders (including, solar modules, power conditioning units, mounting structures etc.) much prior to the Schedule Commissioning Date (namely, 2.1.2017) and but for the event of force majeure, the Appellant would have commissioned the plant within the stipulated time frame.

The Appellant has filed several 'purchase orders' which merely indicate that an order for materials was placed. However, there is absolutely no material on record to show when the cost for such components were incurred. The Appellant has filed several documents which fail to throw any light on the issue at hand, namely, the proof of actual cost incurred. It is submitted that the Appellant has failed to place on record accurate and authentic data pertaining to the actual cost of establishing the plant and the Appellant has not approached this Tribunal with clean hands in view of which it is not entitled to any relief.

Further, as per the purchase orders and invoices produced by Appellant at Annexure D, it is clear that the Appellant has placed the orders only in the month of September or late of 2016 (the Agreement for purchase of solar modules was entered into only on 09.09.2016). The State Commission in the impugned order dated 18.9.2018, has made an observation that when the Appellant took the effective steps to procure the capital equipment for its plant, the normative Capital Cost of the solar power plants was lower than the normative cost of the Solar Power Plants, assumed in the Generic Tariff Order dated 10.10.2013. And therefore, the Appellant is not entitled to the tariff, as per the Generic Tariff Order dated 10.10.2013, originally agreed to in the PPA, when admittedly, the Solar

Power Plant was not commissioned, within the stipulated time and it is entitled only for the revised tariff, as on the date of commissioning of the Plant, as per Article 5.1 of the PPA.

- 4.9 It would be of relevance to note that the Ministry of Finance (MoF), Government of India has vide Circular dated 22nd December, 2018 clarified that 70% of the capital cost of the project is incurred towards the Solar Modules/Panels and 30% of the capital cost of the project towards the EPC contract. Therefore, by adopting the said logic, even in case of the Appellant herein, 70% of the capital cost incurred by the Appellant would be towards procurement of solar modules/panels.

It is submitted that the State Commission has in its order dated 12.4.2017, computed the capital cost by factoring in the very same cost of solar modules i.e. USD 0.35/watt. In addition to the same, the Land cost, Civil & General works, mounting structures, power conditioning, Evacuation Lines & Equipments, Preliminary and preoperative expenses IDC etc. have also been taken into reckoning before deriving the tariff of Rs 4.36/-. However, in the present case, the Appellant herein is a land owning farmer and has executed the PPA in question under the 'farmer category'. Therefore, the Appellant being the owner of the land upon which the plant is to be constructed would not incur any cost for the land. By considering all components considered by the State Commission, namely, the capital cost of Rs.440lakhs/MW and considering debt equity ratio of (70:30), Debt Repayment Tenure in years to be 12 years, Return of Equity to be 16%, Discount Factor to be 12.50%, O & M expenses to be Rs 7.50 lakhs per MW, O & M Escalation to be 5.72% per annum, Working Capital (2 months receivables), Depreciation for first 12 years (5.83%), Depreciation for next 13 years (1.54%) etc., the cost per unit arrived would be Rs.4.36 per unit. However, in the case on hand, as the Appellant has incurred no additional cost for the land, the tariff that the Appellant herein would be entitled to, would

actually be lower (after deducting the land cost) than the tariff of Rs 4.36/- determined by the State Commission. Therefore, if a project specific tariff determination were to be done, the Appellant would still be entitled to less than the generic tariff fixed in the order dated 12.4.2017.

4.10 The Appellant has placed reliance on several judgments in its written submissions. In *Ayana Ananthapurama Solar Power Private Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors*, Tribunal order dated 27.2.2020 in Appeal No. 368 of 2019, the facts of the case are different from the present case and no reliance can be placed on the same. Further, in *Chamundeshwari Electricity Supply Company Ltd. v. Saisudhir Energy (Chitradurga) Pvt. Ltd* [reported in 2018 SCC OnLine APTEL 65] an appeal is pending against this order before the Hon'ble Supreme Court bearing Civil Appeal no. C.A. No. 006888 of 2018 and has not attained finality. Therefore, in the backdrop of the appeal pending, no reliance can be placed on the same.

In the Tribunal's judgment dated 28.02.2020 in Appeal No. 340 of 2016 titled *Azure Sunrise Private Limited v. Chamundeshwari Electricity Supply Corporation Limited*, the extension was sought due to the failure of the distribution licensee to provide an original duly approved PPA without which the generating company could not have taken any steps in the execution of the project. In the present case, there is no dispute regarding the execution or approval of the PPA by the State Commission. Therefore, no reliance can be placed on the same judgment.

Further, this Tribunal's Order dated 14.09.2020 in Appeal No. 351 of 2018, *Chennamangathihalli Solar Power Project LLP v. Bangalore Electricity Supply Company Limited* is based on the facts of the said case and the same cannot be applied as a precedent to the facts of the present case. An appeal against this order is pending before the Hon'ble Supreme Court and therefore has not attained finality.

- 4.11 It is submitted that at every step of the way, the Appellant has failed to act diligently. The contract clearly stipulates that it is the obligation of the generator to obtain all permits and clearances. The Appellant has repeatedly contended that it was unable to furnish applications for land convergence etc. immediately after execution of the PPA as it had to obtain the requisite land related documents such as RTC, mutation etc. In this regard, it is submitted that as per Article 2.1.1 onus of getting all necessary permissions is on the Appellant alone. Failure of the Appellant to do so, cannot be attributed to the Respondent.
- 4.12 The impugned order is a well-reasoned order and conclusions arrived at and finding recorded are plausible interpretation of the contract in the factual matrix. It is a settled law that the Appellate authority will not substitute its view with that of original authority when the view taken by the original authority is a plausible view, even if the appellate authority thinks that the Appeal was the original proceedings, the Appellate authority would have arrived at different conclusion based on same set of facts. In this regard, reliance is placed on *Sutlej Construction Ltd. v. Union Territory of Chhattisgarh*, [reported in (2018) 1 SCC 718] and *Wander Ltd. & Anr v. Antox India Pvt Ltd*, [reported in (1990) Supp SCC 727]. Hence, the question of interference with order of the State Commission in the present proceedings does not arise.
- 4.13 Therefore, in the light of the above submissions, it is submitted that Appellant herein is not entitled to higher tariff as sought for and the present appeal deserves rejection.
5. We have heard learned counsel appearing for the Appellant and learned counsel for the Respondents at considerable length of time and we have gone through carefully their written submissions/ arguments and also taken note of the relevant material available on records during the proceedings.

Our Analysis & Opinion:-

5.1 The point that arise for our consideration is :-

Whether the impugned order warrants interference?

5.2 The admitted facts are as under:-

In response to the solar policy evolved by Govt. of Karnataka to harness the potential of solar resources in the State of Karnataka, guidelines were issued for implementation of solar policy wherein it encouraged small solar power projects under land owners / farmers scheme 1-3 MW by Karnataka Renewable Energy Development Ltd., (KREDL). For implementation of Clause 8, Segment 1, Category 1 of the Solar Policy 2014-21. KREDL was entrusted with the scheme who invited online applications. On 17.03.2015, KREDL (Nodal Agency) issued letters to the Appellants after verification of formalities. In that regard, PPA came to be signed on 02.07.2015 between the parties wherein Rs. 8.40 per unit was guaranteed tariff. The PPA was signed on 02.07.2015. KERC approved the same on 25.08.2015.

5.3 According to the Appellant as envisaged in the terms & conditions of PPA, 18 months time was given for completion of the solar projects i.e. commissioning of the plant by or before 02.01.2017.

5.4 According to the Appellants for implementation of the solar project, number of approvals had to be obtained i.e. approval for evacuation of power, land conversion approval, approval for setting Bay and payment of lease charges and approval for line changing. So far as formation of SPV it was within the control of Appellants. The other approvals had to be given by various agencies of State Govt. which were beyond the control of the Appellants. The stand of the Appellants is that there was considerable delay on the part of Govt. instrumentalities to give approvals, therefore, COD of the project got delayed. In this regard, we contend that the Appellants got extension of time for

commissioning the solar power project by six months in terms of Article 2.5 of the PPA. The first Respondent/BESCOM on 03.02.2017 gave extension for completing 3 MW solar power project. BESCOM again issued letter on 31.03.2017 intimating the Appellant that approval of extension dated 03.02.2017 is subject to approval by KERC, Govt. of Karnataka.

- 5.5 This communication dated 31.03.2017 was contrary to the earlier extension dated 03.02.2017 by virtue of this letter dated 03.02.2017, the new COD was 03.07.2017. According to Appellants, having approved the extension of COD by Govt. of Karnataka, there was no justification for the Respondent/BESCOM to issue another letter dated 31.03.2017.
- 5.6 It is seen from the record that BESCOM issued a communication to the Appellant on 01.08.2017 to file a petition before the State Commission seeking approval for extension of scheduled commissioning date. Accordingly, the Appellant approached the State Commission in Petition No.71 of 2017.
- 5.7 According to the Appellant, extension was sought on the basis of force majeure event which was complained by the Appellants before the first Respondent/BESCOM. Appellant's counsel further submits same ground of force majeure was agreed and accepted by the State Govt.. Therefore, according to Appellant, there is no justification for the Respondent/Commission to hold that Appellants are not entitled for extension of COD apart from reducing the tariff per unit. It also opined that Appellant is liable to pay liquidated damages.
- 5.8 As against this, the stand of the Respondent is that the Regulatory Commission being an adjudicating authority was justified to interfere with the extension of COD to regulate the process of fixation of tariff. This argument of the Respondent is against the argument of the Appellant that in the absence of dispute being raised between the parties, the KERC without jurisdiction interfered with the process much to the disadvantage of the Appellant generator.

They also referred to *Gujarat Urja Vikas Nigam Ltd. Vs. Solar Semi Conductor Power Company Ltd. & Ors.* wherein it was held that extension of control period was outside the purview of the powers of the Commission.

- 5.9 The Respondents further contended that the various provisions of Electricity Act and other statute entrust KERC to regulate Electricity purchase and procurement process of the discom including the price at which power shall be procured from the generation company or other source within the State. Therefore, they contend that State Commission has absolute jurisdiction to determine the tariff payable for purchase of energy by distribution licensee. According to the Respondent, in this process the Commission can scrutinize the agreement or contract in order to ascertain the reasonability and validity of the tariff including terms & conditions. For this proposition, they rely upon the judgment of the Apex Court in *AIR 2016 SC Page 5580 in the case of Tarini Infrastructure*. In this case, the State Commission held that it is empowered to regulate the tariff of a concluded PPA, if it is required in the public interest. According to the Respondents, in terms of PPA, generic tariff can be granted, if it is lower than the tariff agreed between the parties in the PPA. According to them, on account of delay in commissioning the project by the Appellant, the Commission was justified to reduce the tariff to Rs. 4.26 per unit as against Rs. 8.40 per unit.
- 5.10 It is argument of the Respondents, in *All India Power Engineers Federation & Ors. Vs. Sasan Power Ltd. In Civil Appeal 5881-82 of 2016*, the Hon'ble Supreme Court opined that Regulatory Commission is the only body that can adjudicate tariff matters to uphold the public interest. According to Respondents, the down trend of solar tariff is being on account of advancement of technology and reduction of capital cost in establishing solar projects.
- 5.11 According to Appellant, there was no dispute between the parties to be adjudicated upon by the State Commission. According to the Respondent that

by letter dated 03.02.2017, the BESCO informed the Appellants that commissioning of the project is subject to the liquidated damages as envisaged in the Article 5.1 of the PPA. Therefore, Respondent contended that the Respondent/BESCO had merely allowed the commissioning of the delayed project instead of terminating the agreement on the ground of delay. Therefore, the extension is subject to payment of liquidated damages. Hence, this emerges as a dispute between the parties. Therefore the State Commission could interfere.

5.12 According to the Appellants that Committee of the Govt. of Karnataka had recommended that Appellant was entitled to extension of time for commissioning the project, therefore, SCOD time was extended. But, according to Respondents, this argument is against the basic structure of Electricity Act because under the Act, Govt. has no jurisdiction to decide the issues pertaining to tariff. According to Appellants, they faced various problems in executing the project on account of inordinate delay in obtaining approvals from the State Govt. and its instrumentalities including the approval of land conversion and approval for evacuation lines etc.. According to Respondents, the onus of obtaining these approvals in terms of PPA was on the Appellants, therefore, the Appellant is entitled for varied tariff applicable on the date of commercial operation of the plant on account of delay in execution of the project. Therefore, according to the Respondent's Counsel, delay, if any, caused by instrumentalities of the State, cannot be termed as event of force majeure.

5.13 According to Respondent, in terms of PPA, requisite notice of force majeure has to be issued by the Appellant to the BESCO which is absent in the present case. They also contended that so far as different activities to be carried out by the Appellant, at every stage, it was the Appellant who had acted in a belated manner. Therefore, the Respondent Commission was justified in opining that Appellants were responsible for the delay caused in commissioning the project.

Our Opinion

- 5.14 After analysing the arguments addressed by learned counsel for both the parties, we note that extension of COD was in terms of mutually agreed terms & conditions between the parties as per the PPA. On perusal of the factual matrix of the dates in the submission of the applications by the Appellations for various approvals required the commissioning of the project, we note that there has been considerable delay on the part of the instrumentalities of the State Govt in processing the above said applications for grant of respective approval. As a matter of fact, the State Govt. on the report of Three Member Committee which consist of responsible officer from the BESCOM which also includes responsible person from BESCOM, only after taking into consideration the delay in respect of approval issued by various instrumentalities of the State, accepted the reasons put forth by the Appellant and they granted six months extension in COD. Unfortunately, the State Commission rejected the said extension and also imposed liquidated damages for the relevant period on the ground that it was a matter of dispute between the Appellant and first Respondent.
- 5.15 We have already opined in the case of Chennamangathihalli in Appeal No. 351 of 2018 that Respondent Commission has prima facie acted in accordance with law and statute. The said opinion of the Tribunal dated 14.09.2020 was affirmed by the Hon'ble Apex Court i.e. the State Commission acted in accordance with law and statute is not disturbed.
- 5.16 But, however, we notice that the Respondent Commission failed to appreciate so far as the issues judiciously. Time and again on more than one occasion, we have pointed out that the Commission being a neutral body as a regulator has to discharge its functions in accordance with law by balancing the interest of the stakeholders including the interest of the consumers.
- 5.17 Then, coming the second point – Whether Respondent Commission was justified in interfering with the grant of extension of COD by six months. We

note that in terms of PPA dated 02.07.2015, the commissioning of the solar plant has to be on or before 02.01.2017. However, the Appellants were not able to commission the plant within a period of 18 months in terms of PPA. The Appellant could complete the entire exercise and commissioned the project only on 29.06.2016 within the extended period of six months.

5.18 The relevant articles of the PPA are Article 2.5 - extension of time, Article 5 - rates & charges, Article 8.3 - force majeure event. The relevant extract are reproduced as under:-

“2.5 Extensions of Time

2.5.1 In the event that the SPD is prevented from performing its obligations under Clause 4.1 by the Scheduled Commissioning Date due to:

- (a) Any BESCO Event of Default; or*
- (b) Force Majeure Events affecting BESCO; or*
- (c) Force Majeure Events affecting the SPD.*

2.5.3 In case of extension occurring due to reasons specified in clause 2.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6 (six) months.

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

ARTICLE 5

Rates and Charges

5.1 Tariff Payable.

The SPD shall be entitled to receive the Tariff of Rs. 8.40 per Kwh based on the KERC tariff order S/0Three/1 dated 10.10.2013 in respect of SPD’s Solar PV projects in terms of this agreement for the period between COD and the Expiry Date. However, subject to Clause 2.5, if there is a delay in commissioning of the Project beyond the Scheduled Commissioning Date and during such period there is a variation in the KERC Tariff, then the applicable Tariff for the projects shall be the lower of the following:

- (i) Rs. 8.40 per kwh*
- (ii) Varied tariff applicable as on the date of Commercial Operation.*

“8.3 Force Majeure Events”:

(a) *Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party affected by such delay or failure, including the occurrence of any of the following:*

(i) *Acts of God;*

(ii) *Typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;*

(iii) *Strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this Agreement;*

(iv) *Acts of war (whether declared or undeclared), invasion or civil unrest;*

(v) *Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the SPD or CESCO of any Law or any of their respective obligations under this Agreement);*

(vi) Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals; (emphasis supplied)

(vii) *Fire, Earthquakes, explosions, accidents, landslides;*

(viii) *Expropriation and/or compulsory acquisition of the Project in whole or in part;*

(ix) *Chemical or radioactive contamination or ionizing radiation; or*

(x) *Damage to or breakdown of transmission facilities of either Party;*

5.19 It is the stand of the Appellant in terms of provision for the extension of time under the PPA, the first Respondent/BESCOM granted extension of six months to commission the solar plant. Several approvals from various instrumentalities of the States were required such as conversion of land, grid connectivity, Bay Activity approval, CEIG Report for charging the line. According to Appellant's counsel, having regard to the dates on which these various approvals were received, it would be clear that Appellants solar plants would not have been completed within the scheduled COD. In the present case, the Appellant got land conversion on 21.05.2016 and received provisional evacuation approval on 30.06.2016. Supplementary PPA was executed between Appellant & BESCOM

on 08.11.2016. Final approval for evacuation was granted on 13.10.2016. The approval from CEIG was granted on 09.02.2017 and ultimately the solar plant / project was commissioned on 29.06.2016.

5.20 It is the stand of the Appellants that they have acted with utmost care in terms of any negligence on their part by using the stipulated time with utmost care and caution, therefore, they could commission the project within the extended period of six months. Therefore, there was no justification for the reduction of the tariff or imposition of liquidated damages. According to learned counsel for the Appellants, the delay in implementation of the project was for the reasons beyond the control of the Appellant and the same cannot be attributed to the Appellants. Therefore, the Appellants cannot be penalised since they are not responsible for any of the delay to secure the approvals. According to Respondents, the State Commission has ample power to revise the tariff of the concluded contract in furtherance of public interest in terms of judgment of Hon'ble Supreme Court in Tarini Infrastructure Ltd. On the varied tariff, the Respondent Commission has considered all aspects in right perspective and provided varied KERC tariff on account of delay in the commission of the project. According to them, the delay in commissioning of the project has an impact on the tariff applicable so far as supply of power is concerned. Therefore, the State Commission after examining the entire details pertaining to extension of time has rightly opined that Appellants are responsible for the delay and not the agencies of the State Govt.

5.21 We have already referred to the Article of PPA which refers to force majeure clause. We have gone through the written submissions so also the oral arguments. The State Govt. of Karnataka under the special programme for promoting the renewable energy generation intended to provide opportunities for individual agricultural land owning farmers to become solar energy developers. In response to the promotion of the State govt, several farmers came forward to set up solar plants in their respective lands. PPA came into

existence as stated above, which provided a guaranteed tariff of 8.40 per unit on completion of the project within 18 months from signing the PPA. Apparently, this PPA had a seal of the approval of Karnataka State Government on 25.08.2015. It is not in dispute that in terms of guidelines issued by the State Govts., several sanctions / approvals / clearances / consents were required for setting up a solar plant. To name a few are land conversion approvals, grid connectivity approval, bay extension approval facing closures, approval from Chief Electrical Inspector and evacuation approval etc. If the time taken for getting these approvals, as stated above, it is seen these approvals could be secured by the Appellant after lapse of considerable time which seems to have created obstacles in implementation of the project on time. Therefore, we are of the opinion that taking into consideration the above facts, the delay, if any, obtaining in above-mentioned approval, certainly, it becomes impossible for the Appellant to achieve COD of the Solar Plant within SCOD of the PPA.

5.22 In fact, considering all these facts and probable delay in COD, extension of COD by six months was sought which is permissible in terms of PPA. Not only the Appellant several smaller farmers in the State approached the Govt. of Karnataka as well as first Respondent seeking extension of COD. Apparently, after due diligence and prudence, the State Govt./first Respondent accorded extension of COD by six months. Clause 2.5 of PPA which is already referred to above, evidences that on account of reasons in terms of Clause 2.5.1 scheduled commissioning date could be extended upto a period of six months. On account of such extension, the scheduled COD date automatically gets postponed by six months.

5.23 In terms of Clause 8.3(sub-clause iv) of PPA, the inability despite complying legal requirements to obtain, renew or maintain required licenses or legal approvals will also constitute as force majeure events. Therefore, we are of the opinion that the delay in receiving tariff clearances/approvals by the State Govt. and its instrumentalities which are beyond the control of the Appellants has to

be treated as element of force majeure, since the same would directly and seriously affect the implementation of the solar projects. The land conversion was on 21.05.2016, the final evacuation approval was on 13.10.2016. Therefore, in that situation, it would be extremely difficult to achieve COD on 02.01.2017 in terms of PPA.

- 5.24 In the present case, there is neither increase in the tariff nor there exists any exercise of power beyond the contours of PPA. Therefore, the judgment in All India Power Industries Federation Vs. Sasan Power Ltd. is a distinguishable on facts from the present case. With small differential facts, it may lead to huge difference in the precedential value of the decision.
- 5.25 In terms of PPA, the first Respondent/BESCOM could grant extension of COD by six months (maximum period). This clause of PPA had the approval of the State Commission. Further, Govt. of Karnataka on the recommendation of the Three Member Committee opined that extension of six months time was justified. Accordingly, the first respondent/BESCOM granted extension of six months time. However, State Commission subsequently directed all the ESCOMs not to grant extension of time to any solar power developer without obtaining prior approval of KERC. In response to the directions of the Commission, solar power developers had to approach the Commission by filing a petition seeking approval of extension of time. Having approved the said clause empowering first respondent to extend SCOD by six months period, whether the Respondent Commission was justified in opining that the grant of extension of six months was not on account of force majeure event, as pleaded by the Appellants? Whether the Respondent Commission discharged its functions in a judicious manner? Whether the Respondent Commission was justified in opining differently on the same set of facts upon which recommendations of the Three Member Committee constituted by the State Govt was given. As already stated above, one of the Committee Member was from the BESCOM itself.

- 5.26 We have already opined that there was considerable delay in obtaining various approvals/clearances from various instrumentalities of the State Govt. These approvals definitely are beyond the control of the Appellant, therefore, first Respondent and State Govt. have rightly considered them as event of force majeure and agreed extension of COD. According to us, the Commission has not analysed all the facts in issues in a just and proper manner. Hence, we are of the opinion that the impugned order cannot be sustained. Therefore, it warrants interference.
- 5.27 Apparently, the scheme was meant to benefit small land holding farmers, who could establish solar plants between 1 MW to 3 MWs. This also definitely requires business prudence apart from minimum knowledge in the field concerned. As per the policy, the establishment of solar plant was to be in the agricultural land. On account of restrictions to use agricultural land for non-agricultural purpose, conversion of agricultural land use is a must. In terms of Karnataka Revenue Act, it has laborious process to get conversion of agricultural land into non-agricultural one. To establish solar power plant, it is not just conversion of agricultural land permission, but several other approvals/consent/permissions were required.
- 5.28 Till SPV was established, it was the individual Appellant i.e., SPD who had to run from office to office to secure required approvals/consents. Having regard to laborious process to secure these permissions from various Government instrumentalities, it would have been a wise decision to have infrastructure under one roof (like single window agency) to get all these clearances which would have saved lot of time for the establishment of these small solar power plants in question. Since either the SPD or SPV had to run from office to office situated at different places to secure approval and permission which would not have been possible to secure on any one particular day also seems to have caused hardship and delay in procuring the approvals, be it land conversion or power evacuation and grid connectivity or safety certificate from CEIG etc. To

apply for conversion of land to non-agriculture purpose itself, more than 13 documents are required, which have to be secured not from single place but various departments of Government. The scheme which was expected to be a boon to the farmers seems to have become a bane.

5.29 The Appellants in terms of Article 5 of the PPA is entitled to receive 8.40 per unit based on KERC tariff under KERC tariff order dated 10.10.2013. We are also of the opinion that the Appellants are not liable to pay any liquidated damages.

ORDER

In the light of above discussion and reasoning, we are of the opinion that Appeal deserves to be allowed and accordingly allowed.

The impugned order dated 18.09.2018 passed by KERC is set aside. The Appellant is entitled for Rs.8.40 per unit in terms of PPA.

We direct the first Respondent / BESCO to pay the difference of the tariffs paid per unit from the date of commissioning of the plant along with late payment surcharge in terms of PPA.

Appellants are not liable to pay any liquidated damages.

Pending IAs, if any, shall stand disposed of. No Order as to costs.

Pronounced in the Virtual Court on this the **12th day of August, 2021.**

(Ravindra Kumar Verma)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

Pr /ts