

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 244 OF 2023 & IA NO. 2101 OF 2021**

**Dated: 30.05.2024**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**IN THE MATTER OF:**

**Photon Suryakiran Private Limited**

Through the Consultant Legal,

Mr. Vaibhav Sharma

A company incorporated under the provisions of Companies Act, 2013,

Having its office at:

Statesman House, 8<sup>th</sup> Floor, Barakhamba Road,

New Delhi-110001.

..... Appellant

Vs.

- 1. Bangalore Electricity Supply Company Limited (BESCOM),**  
A company incorporated under the provisions of Companies Act, 2013,  
Having its Registered Office at:  
Corporate Office, K.R. Circle,  
Bengaluru-560001, India.
- 2. Karnataka Electricity Regulatory Commission,  
Through the Secretary,**  
Constituted under the provisions of Karnataka  
Electricity Reforms Act, 1999 having its office at  
No.16, C-1, Millers Tank Bed Area,  
Vasanth Nagar, Bengaluru – 560052, India .....Respondent(s)

Counsel for the Appellant(s) : Ms. Anuradha Mukherjee  
Ms. Pallavi Singh Rao  
Mr. Shree Sinha  
Mr. Shivam Tiwari  
Ms. Meghna Bhaskar  
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Mr. Vivek Kumar Karn

Ms. Jivika Jolly  
Mr. Ravinder Gaur  
Mr. Buddy A. Ranganadhan

Counsel for the Respondent(s) :

Ms. Sumana Naganand  
Ms. Garima Jain  
Mr. Tushar Kanti Mohindroo  
Ms. Nidhi K.  
Ms. Nidhi Gupta  
Mr. Abhijeet Kr. Pandey  
Ms. Medha M. Puranik  
Ms. Gayatri Sriram  
Ms. Samiksha Jain for R-1

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

**PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

### **JUDGMENT**

1. The captioned appeal has been filed by the Appellant namely Photon Suryakiran Pvt. Ltd. challenging the order dated 13.07.2021 (in short "Impugned order") passed by the Karnataka Electricity Regulatory Commission (in short "KERC" or "State Commission") in OP No. 34 of 2018.
2. The Appellant is aggrieved by the declaration that the extension granted by Respondent No.1 (in short "BESCOM") vide letter dated 22.09.2016 and 07.12.2016 under Article 5.7 of the Power Purchase Agreement (in short "PPA") is illegal thereby holding that the Scheduled Commissioning Date (in short "SCOD") shall be the original effective date and the Appellant is liable to pay Liquidate Damages in addition to reduction in the tariff under the PPA.
3. The Appellant contended that the factual matrix of the case is identical to Appeal No.89 of 2018 titled ***Azure Photovoltaic Pvt. Ltd. Vs. GESCOM & Anr.***

which has been decided by this Tribunal *inter-alia* granting relief in favour of the Appellant, directing that the Appellant is not liable to pay any liquidated damages, the tariff shall remain the bid tariff and also the extension granted by the distribution company is valid and as such consequential extension in the SCOD.

4. It is, therefore, important to note the comparative facts of the two cases.

5. The comparative chart of the instant case (*Appeal no. 244 of 2023 – Photon Suryakiran Pvt Ltd vs. BESCO & Anr.*) (in short “244/2023”) with the facts of Appeal No.89 of 2018 (*Appeal no. 89 of 2018 – Azure Photovoltaic Pvt Ltd vs. GESCOM & Anr.*)(in short “89/2018”), as placed on record during the hearing is as follows: -

**FACTS of the two Cases**

EVENT	Appeal No.244 of 2023	Appeal No.89 of 2018
Date of Execution of PPA	13.01.2015 Effective date as per Article 3.1 of the PPA is the date of its execution by both the Parties, i.e., 13.01.2015.	23.01.2015 Effective date of the PPA is the date of signing of the PPA, i.e., 23.01.2015.
Tariff determined through bidding	Rs.7.05 per unit	Rs. 6.96 per unit
SCOD	13.07.2016	23.07.2016
Date of sending the PPA for approval to the	16.01.2015 BESCO sent the PPA for approval on 16.01.2015.	Silent GESCOM did not send the PPA for

KERC by BESCO/ GESCO		approval and remained silent.
Steps taken by the Appellant(s)	Requests were made on 09.04.2015 & 27.04.2015 by the Appellant.	Appellant approached the KERC vide letter dated 12.03.2015 to provide an executable and a valid PPA.
Delay in approval by -	The delay in approval of the PPA had taken place as the KREDL had not followed some of the procedures before issuing RfP and it had also not submitted the required documents for adopting the tariff discovered in the bid proceedings.	Delay was solely attributable on account of GESCO
Copy of the approved PPA was provided on	06.06.2015 (Delay of 144 days)	25.05.2015 (Delay of 121 days)
Appellant(s) sought for extension of SCOD on the grounds -	Appellant requested BESCO for extension of 6 months, vide letter dated 24.06.2016 and 17.09.2016, Letter dated 24.06.2016 - a) delay caused in handing over the approved PPA, b) delay caused in finalising land for the erection of the project (Appellant changed the land three times)  Letter dated 17.09.2016 – Under Article 14 (Force Majeure) on the ground of Cauvery River water dispute and grant additional 1 month	Appellant requested GESCO through various letters to grant extensions in achieving COD and fulfilling Conditions Precedent, because the addendum to the SPPA did not grant extension to the Appellant.

	extension in addition to 6 months extension requested.	
		Appellant filed a petition bearing OP No.8 of 2016 before KERC, seeking extension for achieving Conditions Precedent and COD. On assurances given by GESCOM for grant of extension, the Appellant withdrew the petition.
Grant of extension by BESCO / GESCOM	<p style="text-align: center;"><b>On 22.09.2015</b></p> <p>BESCO granted 4 months of extension for the reason being general in nature with subject to payment of LD under clause 5.8 of the PPA and revision of tariff under article 12.2 of the PPA [KERC applicable tariff as on date of revised SCOD].</p>	<p style="text-align: center;"><b>On 05.05.2016</b></p> <p>GESCOM granted extension, and revised the – Date of Completion of Conditions Precedent to be 23.05.2016. Completion of COD to be 23.01.2017.</p>
Extension sought on the ground of Cauvery River Water Dispute	<p style="text-align: center;"><b>On 04.10.2015</b></p> <p>The Appellant sought another request for extension of 1 month on the ground Cauvery River water dispute under Article 14 (Force Majeure) of the PPA.</p>	The Appellant sought request for extension of 2 months on the grounds of Cauvery River Water dispute.

Grant of extension by BESCO/GESCOM	<p>On 07.12.2016</p> <p>BESCO granted 2 months extension to the appellant, i.e., by 13.01.2017, for the reason being general in nature with subject to payment of LD under clause 5.8, 5.8.2 of the PPA and revision of tariff under article 12.2 of the PPA.</p>	GESCOM granted extension of one month.
Date of Commissioning the Plant	13.12.2016	26.03.2017
	<p>On 24.03.2017</p> <p>The Appellant wrote a letter to BESCO stating to deduct the LD as per Clause 5.8 of the PPA from their monthly Energy bills.</p>	
SPPA executed on	<p>12.04.2017</p> <p>Amending change in location of the project by the appellant, deemed to be approved by the KERC.</p>	<p>10.03.2017</p> <p>Amending the date of completion of COD.</p>
Reduction of tariff	<p>On 26.04.2017</p> <p>BESCO issued a letter to the Appellant, for the deduction of LD and revised the tariff to Rs.6.51 per unit as per article 12.2 of the PPA [as per the tariff order prevailing at the time of commissioning of the plant], which was the condition of the extensions granted.</p>	GESCOM reduced the tariff to Rs. 6.51 per unit as a pre-condition to grant extension.

	<p>On 28.06.2017                  BESCO issued a letter to the Appellant, informing the Appellant that KERC has returned the SPPA for clarification / modifications and corrections.</p> <p>Reminder letters were sent to the Appellant to sign the approved version of the SPPA.</p>	<p>Appellant approached KERC vide OP No.73 of 2016, wherein the Appellant sought interference of the KERC with regard to the issue of reduced tariff by GESCOM.</p>
	<p><u>Addendum to the SPPA</u></p> <p>As per the KERC's letter dated 26.05.2017, an addendum was made to the SPPA vide letter dated 17.10.2017 by BESCO, reducing the tariff to Rs.6.51 per unit based on the generic tariff order dated 30.07.2015.</p>	

6. We find the facts in the two appeals as similar.

7. It was also mentioned by the Respondent Discom that:

- There is no delay on part of BESCO as the PPA was sent for approval on 16.01.2015, i.e., 2 days after the PPA was signed by both the parties. whereas in Azure's appeal, the delay was solely attributable only to GESCOM, who remained silent for 4 months with regard to the approval of the PPA.

- The delay in commissioning the project in the present appeal was majorly on account of delay in procuring land by the Appellant, the Appellant was only able to finalise the land vide a Sub-Lease dated 07.01.2016, which is a pre-condition that is to be fulfilled by the Appellant as per the Request for Proposal guidelines.
- And in Lieu of the delay in procuring the land, the financial institution IREDA and PFC did not sanction the loan. The loan was sanctioned on 16.12.2016, this clearly shows that the non-procurement of the land was the sole ground on which the Appellant was not able to get the financial aid for setting up the project.

8. On the contrary, it was the submission of the Appellant that the present case is completely covered by the decision in the afore-quoted appeal and also many similar cases wherein this Tribunal has passed identical orders.

9. However, Respondent No.1 has opposed and submitted that the two cases including the present case are not identical due to certain facts including that the Appellant has accepted payment of the liquidated damages due to delay in the commissioning of the project.

10. However, the factual matrix, as submitted by the Appellant was not disputed by the Respondent No.1 as far as the dates are concerned, it was also not disputed that the PPA was executed on 13.01.2015 and the same was submitted to the State Commission for approval on 16.01.2015.

11. Thereafter, the State Commission approved the PPA only on 04.05.2015 and the Appellant was informed by furnishing the copy of the approved PPA only on 06.06.2015 by the Respondent No.1, thus, there is a delay of 144 days



on the part of the State Commission/ Discom, *inter-alia*, the delay was beyond the control of the Appellant

12. The Discom, however, submitted that the delay in approval of the PPA is not attributable to the Respondent No.1 however claimed that the delay is only due to Karnataka Renewable Energy Development Limited (in short "KREDL") due to its failure to comply with stipulated procedures before issuing the Request For Proposal (RFP), additionally, submitted that KREDL failed to furnish requisite documents to the State Commission before adopting the tariff arrived at in the bid proceedings thereby causing an inordinate delay in the approval of the PPA.

13. Thereafter, the Appellant sought for an extension for the first time on 24.06.2016 i.e. almost after completion of one year from the date of approval of the PPA on the ground that there were issues in procuring the land, delay in getting the approved PPA and also the financial aid, subsequently the location of the power plant was also changed thrice and finally the sub-lease agreement was signed on 07.01.2016.

14. It was also pointed out that Power Finance Corporation (PFC) issued the additional sanction letter for the grant of loan on 08.01.2016 and the regular loan was sanctioned on 15.02.2016, it was the contention of the Respondent no.1 that the Appellant took four months to make a request for extension on the above-mentioned grounds.

15. The Respondent No.1 also submitted that invoking of Article 5.7.1 (c) of the PPA cannot be negated by *force majeure* events and submitted that the frequent change in location by the Appellant also caused a second delay in commissioning of plant which is not attributable to Respondent No.1, further, added that it was the obligation of the Appellant to procure land in time and

also not to bypass its obligations, further countered the claim that the delay was only on the ground of receiving the PPA with a delay affecting the commissioning of power plant, therefore, the same cannot be claimed as a *force majeure* event as per the PPA.

16. The Respondents also argued that the delay in commissioning the plant if it is considered was due to delay in receipt of the PPA, the same may not be clarified as *force majeure* event, as held by the State Commission vide its order dated 17.10.2017 in OP No.02 of 2017, in addition the Appellant has also failed to follow the procedure stipulated in the invocation of the *force majeure* clause as per Article 14.5 of the PPA which requires issue of a notice to the Respondent No.1, reliance was placed on this Tribunal judgment in *Himachal Sorang Power Ltd. Vs. CERC & Others in Appeal No. 54 of 2014* and the order of the Supreme Court of India in *Energy Watchdog Vs. CERC & Others 2017 (14) SCC 80*.

17. It was the contention of the Respondent No.1 that it has acted reasonably while exercising its power vested under the PPA and accordingly extension was granted on two occasions to enable the Appellant to commission its plant, at the same time claimed that the extension was granted under Article 5.8 of PPA and also informing the Appellant about the applicability of Article 12.2, it was not disputed that as per Article 5.8.3, as granted by the Respondent No.1 was valid and as per the provision contained therein, however, such an extension requires imposition of liquidated damages.

18. Further, the Respondent No.1 claimed that the project was commissioned on 13.12.2016 which was beyond the SCOD as per the original PPA wherein the SCOD was supposed to be 13.07.2016, therefore, Article 12.2 will get automatically invoked due to inordinate delay in commissioning the

project, also the Appellant was informed that the grant of extension would be subject to the payment of lower tariff, as per Article 12.2 and payment of Liquidated Damages, accordingly, the Liquidated Damages were levied vide letter dated 26.04.2017 and the tariff was reduced to Rs.6.51 per unit claiming that the applicable tariff on that date was 6.51 per unit.

19. It is, therefore, important to note down the contentions raised in Appeal No.89 of 2018 and also the decision therein by this Tribunal which has since achieved finality.

20. The grievance raised in appeal 89/2018 is as under:

*“The present appeal is being filed challenging the decision of the Karnataka Electricity Regulatory Commission dated 24.08.2017 bearing reference no. KERC/S/F-31/Vol-45, 46 & 47/17-18 (hereinafter referred to as “**Impugned Order**”) addressed to Gulbarga Electricity Supply Company Limited (“**GESCOM/Respondent No. 1**”), wherein the State Commission has arbitrarily and unjustifiably set aside the extensions granted by Respondent No. 1, and directed it to enforce reduced tariff and recover liquidated damages due to delay in achieving the Commercial Operation Date (“**COD**”) by Appellant. Consequent to the Impugned Order, the Appellant has received from GESCOM, a letter dated 22.09.2017 bearing reference no. GESCOM/CEE(CP)/EE/AEE(PTC)/ 2017-18/30431-38 (hereinafter referred to as “**Impugned Letter**”) raising a demand of Rs. 35,04,00,000/- upon the Appellant as liquidated damages. The Appellant also challenges the said letter in this appeal.”*

21. The grievance in the present appeal is also identical, therefore, the judgment in appeal no. 89/2018 shall be applicable in the instant case considering the facts are similar.

“ **ANALYSIS & DISCUSSION**”

33. From reading of the pleadings and elaborate arguments, what we gather from the arguments is that the **Appellant has grievance with regard to computation of Liquidated Damages payable by the Appellant due to delay in achieving the Commercial Operation Date (COD).**

34. **The other argument seems to be with regard to revision of tariff.** According to PPA, the bid tariff rate was Rs. 6.96 per unit which was reduced to Rs. 6.51 per unit on the ground that Clause 12.1 of the PPA applies. Since admittedly there is delay in achieving commissioning of the project, the lower of the tariff should be applicable in terms of Clause 12.1, according to Respondents. This is contested by the Appellant.

35. **Relevant facts which need to be taken into consideration are as under**

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37. In terms of PPA, the Scheduled Date of Commissioning of the project is 23.07.2016. However, the PPA was approved on 04.05.2015. It is no more *res integra* that date of approval of the PPA by the appropriate Commission i.e. KERC has to be taken as effective date, since the PPA cannot be implemented till this approval by the statutory authority i.e., KERC. Therefore, if the PPA was approved on 04.05.2015, the Scheduled Date of Commissioning would be 04.11.2016 instead of 23.07.2016. The

fact remains, it was not commenced even within this scheduled date of 04.11.2016.

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**40. Apparently, if the effective date has to be approval of the PPA by the Commission, then the effective date would be 04.11.2016 and if the commissioning of the project was on 26.03.2017, it would be delay of 143 days on the part of the Appellant in commissioning of the project.**

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43. Subsequent to this, it is seen that the Appellant again approached GESCOM for extension of time by two months from 23.01.2017 to 26.03.2017 on account of agitation which was going on in the State of Karnataka pertaining to Cauvery river dispute. This, according to Appellant, delayed the commissioning of project. Therefore, the COD could be achieved only on 26.03.2017. The revised COD was granted up to 23.02.2017 because of Cauvery river agitation. The GESCOM imposed Liquidated Damages of Rs. 2,40,00,000/- in terms of Article 5.8.1 of the PPA considering the delay of 31 days in achieving COD.

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**45. It is seen that without an interim arrangement without prejudice to the rights of the parties, the Appellant started supplying power and raised invoices of release of payment at the rate of Rs. 6.51 per unit. In spite of this, the GESCOM seems to have not honoured any payment though supply of electricity was distributed to its consumers. At that point of time, during the proceedings before this Tribunal, by letters dated 24.05.2018 and 31.05.2018, GESCOM was directed to release payments in terms of affidavit of undertaking. According to**

*Appellant, the Respondent GESCO failed to comply with the directions of the Tribunal and did not release full payment raised in invoices.*

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*47. It is seen that in accordance with the directions of KERC, the Appellant approached GESCO for extension of time in terms of Article 5.7 wherein no penalty of Liquidated Damages was envisaged. The Supplemental PPA with revised date as 23.01.2017 was signed between the parties on 10.03.2017. This did not contemplate any particular rate of tariff though it states that the extension of time was as per Article 12 of PPA. Article 12 of PPA reads as under:*

*ARTICLE 12: APPLICABLE TARIFF AND SHARING OF CDM BENEFITS*

*12.1 The Developer shall be entitled to receive the Tariff of Rs.6.96/kWh of energy applied by it to GESCO in accordance with the terms of this Agreement during the period between COD and the Expiry Date.*

*12.2 Provided further that as a consequence of delay in Commissioning of the Project beyond the Scheduled Commissioning Date, subject to Article 4, if there is a change In KERC applicable Tariff, the changed applicable Tariff for the Project shall be the lower of the following:*

- i. Tariff at in Clause 12.1 above*
- ii. KERC applicable Tariff as on the Commercial Operation Date.*
- iii. Import billing : the company shall be permitted to use 10% of installed capacity of startup after inspection by the concerned officer of GESCO and 115% of such energy provided by GESCO for startup power shall be deducted from the energy pumped in to*

*the grid by the company for determining the amount payable by GESCOM to the company. If energy over and above the requirement is drawn from the grid, the same shall be billed under the tariff applicable to HT industries demand charges.*

*iv. Reactive energy billing. The company shall pay at the rate of 40 paise for each KVARH drawn.”*

*48. Article 12.1 provides, if there is delay in achieving the commissioning of the project, the lower of the tariff should be applicable. It would mean that PPA rate at Rs. 6.96 per unit or the State Commission’s applicable tariff as on the date of achieving COD (whichever is lower).*

*49. The Supplemental PPA which was executed between the parties indicated revised COD as 23.01.2017, but the Appellant could achieve COD only on 26.03.2017. Though the Appellant asked for two months’ extension on account of Cauvery river agitation, the request for extension was accorded for a month i.e., up to 23.02.2017. Even with this extension of time, still there is delay of 31 days in achieving the COD.*

*50. In terms of Supplemental PPA, it was not an absolute extension of time, but it said the extension is subject to Article 12 of PPA which refers to tariff applicable.*

*51. Then coming to Liquidated Damages, Clause 5.8 provides for the same which reads as under:*

*“Article 5.8.1 (c)*

*For the delay of more than two and up to three months an amount equivalent to 40% of the performance security.”*

*“Article 5.8.2*

*In case the Developer delays the achievement of Commercial Operation Date beyond 3 (three) months, the Developer shall pay to GESCOM the Liquidated Damages at the rate of Rs. 50,000/- (Rupees Fifty Thousand only) per MW per day of delay for the delay in such commissioning.”*

*“Article 5.8.3*

*Maximum time period allowed for achievement of Commercial Operation Date with payment of Liquidated Damages shall be limited to 22 (twenty two) months from the Effective Date. In case. . .*  
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54. *The first delay prior to Supplemental PPA, as seen, was delay for approval of the PPA for which Appellant was not responsible, but for reasons entirely attributable to GESCOM and also other reasons beyond the control of Appellant. Since the Appellant was not in a position to take any effective steps for execution of the project without original duly approved PPA, and since the Appellant was unable to initiate any activity for fulfilling conditions precedent in terms of PPA including finance of the project, land procurement, and MNRE exemption for want of original duly approved PPA, the delay seems to have happened. By the time the approved PPA came to the hand of the Developer to comply with conditions precedent out of 365 days, only 164 days was available. Therefore, we are of the opinion that the Appellant was not responsible for the delay and up to the date of signing of Supplemental PPA, it was on account of delay beyond the control of the Appellant which is attributable to GESCOM.*

55. ***Having agreed to extend the COD though with a condition, GESCOM now cannot take a different stand that the Appellant***



**was not entitled for extension of COD. If there was no justification for extension of time for the initial extension of time, GESCOM instead of conditional extension, ought to have refused extension, but however, it not only extended, but signed the Supplemental PPA where time was extended up to 23.01.2017.**

56. Subsequent extension sought by the Appellant was for two months, GESCOM granted one month i.e., on account of Cauvery river agitation, whereby the extension was up to 23.02.2017. With all these, the delay was for a period of 31 days in achieving COD. We are of the opinion that in terms of Article 5.8.1 of the PPA, the Appellant is liable to pay Liquidated Damages for 31 days.

57. **Coming to reduction of tariff from Rs.6.96 to Rs.6.51 per unit, it is seen that this rate of Rs.6.96 was arrived at in a Competitive Bidding process. According to Appellant, in the facts and circumstances, there is no scope for reduction/revision from the bid tariff either in the provisions of PPA or the Supplemental PPA. As already referred to above, tariff as per Article 12.1 i.e., Rs.6.96 per unit, and if there is delay in achieving commissioning of the project, lower of the two i.e., Rs.6.96 per unit or the State Commission's applicable tariff as on the date of COD is applicable. For this, we refer to the Tariff Orders as directed by the State Commission from time to time.**

58. Admittedly, the COD was achieved on 26.03.2017. As already stated above, there was delay of 31 days. The tariff of 2013 was in existence so far as the PPA is concerned i.e., Rs.8.40 per unit. This Tariff Order is dated 10.10.2013. The October 2013 Tariff Order reads as under:

“5. *Tariff for grid connected Solar PV, Solar Thermal power plants and Roof top Solar Photovoltaic plants:*

*On the basis of the approved parameters, the following is the approved tariff:*

<i>Type of Solar Plant</i>	<i>Approved Tariff in Rs/Unit</i>
<i>Solar PV Power Plants</i>	<i>8.40</i>
<i>Solar Thermal Power Plants</i>	<i>10.92</i>
<i>Rooftop and Small Solar PV Plants</i>	<i>9.56</i>
<i>Rooftop and Small Solar PV Plants with 30% capital subsidy</i>	<i>7.20</i>

*The above approved tariff is applicable to solar power generators entering into power purchase agreements (PPA) on or after 01.04.2013 and up to 31.03.2018 other than those where the tariff is discovered through bidding process.”*

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63. *As stated above, if the PPA was entered into on or after 01.04.2013 to 31.03.2018 for solar PV power plants, the approved rate was Rs.8.40. However, the tariff in terms of PPA was adopted by the GESCOM at Rs. 6.96 per unit. If there is delay in commissioning of the project, the lower tariff would be applicable. Since the PPA approved tariff is at Rs. 6.96 per unit, this tariff would be applicable.*

64. *In light of the discussion pertaining to 2013 Tariff Order and 2015 Tariff Order, it is established that the case of the Appellant is not covered under these two Tariff Orders and the Appellant is entitled for Rs. 6.96 per unit. **Hence, we are of the opinion that***

**there was no justification for the Respondent Commission to apply Rs. 6.51 per unit tariff to the case of the Appellant. Accordingly, we allow the Appeal in part to the extent as discussed above. We pass the following Order:**

**ORDER**

- a. The Appeal is allowed partly.**
- b. The Appellant is liable to pay damages in terms of PPA to the GESCO for delay of 31 days in commissioning the solar plant of the Appellant**
- c. The Appellant is entitled for Rs. 6.96 per unit for the supply of energy to the Respondent GESCO from the date of COD.**
- d. The GESCO shall pay the Appellant differential tariff between Rs. 6.96 and Rs. 6.51 from the date of COD till they start paying Rs. 6.96 per unit towards the supply of energy.**
- e. The Appellant shall pay differential Liquidated Damages if any, after calculating damages in accordance with the PPA for delay of 31 days. If the differential amount towards Liquidated Damages after calculating the same for 31 days delay still remains with the Respondent GESCO, the same shall be adjusted towards differential tariff payable by GESCO to Appellant.**
- f. After the above said adjustment, the balance differential tariff amount shall be paid to the Appellant**

**by the Respondent GESCOM within eight weeks from today.**

**g. The Respondent Commission shall approve the Supplemental PPA dated 10.03.2017 executed between the Appellant and GESCOM.”**

22. In the captioned Appeal, the copy of the approved PPA was provided to the Appellant on 06.06.2015 with a delay of 144 days, however, the delay was not attributable to the Appellant, further, the Respondent Discom submitted that delay is due to failure on the part of KREDL to submit the documents in time before the State Commission.

23. It cannot be disputed that KREDL is another government organisation, the Nodal Agency of the Government of Karnataka for facilitating the development of renewable energy in Karnataka and bidding process was carried out by it, further, the Appellant cannot be considered on default, therefore as ruled in aforequoted judgment in Appeal No. 89/2018, the effective date shall be taken as 06.06.2014 and the SCOD shall also stand extended by 144 days. i.e. 03.12.2016.

24. Further, extension was granted to the Appellant for two months due to Cauvery River water dispute, as also granted to the Appellant in Appeal 89/2018, as force majeure and thus SCOD further deemed to be extended by two months.

25. Even the Respondent Discom extended the COD twice, first for 4 months and then for two months, effectively for six months, the project was commissioned on 13.12.2016, much before the expiry of the extension time granted to Appellant.

26. As observed in Appeal 89/2018, that there is still a delay of 31 days beyond the extended time, therefore, Appellant is liable to pay liquidated damages only, however, in the instant matter there is no delay, whatsoever, beyond the extended time.

**27. Therefore, the Appellant is not liable to pay any liquidated damages.**

**28. Further, the Appellant shall be paid at the rate of Rs. 7.05 per unit in terms of Article 12 of the PPA.**

29. Secondly, the judgment in Appeal 89/2023 has categorically dealt the issue of application of Article 5.7, 5.8 and 12., inter-alia, ruled in favour of the Appellant.

30. The facts in the captioned Appeal are identical to the Appeal no. 89 of 2018, the judgment as rendered in 89/2018 stands good *inter-alia* applicable in the present case, therefore the issue is settled in favour of the Appellant as in the case of 89/2018.

31. We are satisfied, the submission of the Appellant claiming parity with Appeal No. 89/2018, the appeal has to be allowed in terms of said Appeal.

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the present appeal being Appeal No. 244 of 2023 filed by the Appellant has merit and therefore, is allowed.

The Impugned Order dated 13.07.2021 passed by the Karnataka Electricity Regulatory Commission in OP No. 34 of 2018 is set aside.

The Respondent Discom i.e. BESCO shall make the following payment within three months from the date of this judgment:

1. Liquidated damages, if adjusted or recovered, along with carrying cost in terms of PPA
2. Tariff at the rate of Rs. 7.05 per unit, and also, the differential amount from the date of SCOD, in case lower tariff is paid alongwith carrying cost in terms of PPA.

Pending IA, if any, also disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 30<sup>th</sup> DAY OF MAY, 2024.**

**(Sandesh Kumar Sharma)**  
**Technical Member**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

*pr/mkj*