



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.No.20 of 2016 & I.A.Nos.7 & 8 of 2016
Dated: 15-10-2016

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

M/s. ACME Jaisalmer Solar Power Private Limited ... Petitioner/Applicant

A N D

Southern Power Distribution Company of
Andhra Pradesh Limited ... Respondent/Respondent

The petition and the interlocutory applications have come up for hearing finally on 03-09-2016 in the presence of Sri Buddy A. Ranganadhan, Sri Anurag Sharma and Sri P. Vikram, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondent assisted by Sri G.V. Brahmananda Rao, learned counsel. After carefully considering the material available on record and after hearing the arguments of both learned counsel, the Commission passed the following:

ORDER

A petition to set aside a letter dated 02-03-2016 issued by the respondent, to declare that the scheduled Commercial Operation Date stands extended till 30-06-2016 as per Article 9 of the Power Purchase Agreement dated 05-12-2014 due to the occurrence of the *Force Majeure* event, to declare the entitlement of the petitioner to tariff in terms of the said Power Purchase Agreement and to restrain the

respondent from invoking the three bank guarantees dated 05-10-2016 totalling to ₹5 crores and from taking any coercive action against the petitioner in relation to the said Power Purchase Agreement and other just and proper orders.

2. The petition was filed under section 86 (1) (f) of the Electricity Act, 2003 and Regulations 55, 57 and 59 of the APERC (Conduct of Business) Regulations, 1999 and Regulation 85 of CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2012.

3. The petitioner's case is that the respondent issued a request for selection for setting up of grid connected solar PV projects in the State of Andhra Pradesh on "Build Own Operate" basis, for an aggregate capacity of 500 MW on 06-09-2014. The petitioner, a generating company submitted its bid on 07-10-2014 and was declared as a successful bidder for supplying 160 MW power for 25 years at the tariff arrived after competitive bidding. Land and capacity were allocated to the petitioner on 30-10-2014 and the respondent issued a Letter of Intent on 07-11-2014 for supply of 20 MW from Dharmavaram location project and required the petitioner to execute a Power Purchase Agreement and furnish the Performance Bank Guarantees. The petitioner furnished the Performance Bank Guarantee to a tune of ₹5 crores and submitted the remaining required documents. The Guarantees were replaced with equal Guarantees from AXIS Bank on 14-12-2015. A Power Purchase Agreement was executed between the petitioner and the respondent on 05-12-2014, making the petitioner liable to supply 20 MW to the respondent by 03-03-2016 as the Commercial Operation Date as per Article 10.5 of the Agreement. To comply with its obligations, the petitioner commenced the project construction activity in time, but was not able

to achieve the commissioning by the Scheduled Commercial Operation Date due to change of location from Dharmavaram Village, Anantapur District to Rayachoti, Kadapa District, which was beyond the control of the petitioner. The Power Purchase Agreement had amendments dated 06-04-2015 and 22-06-2015 and after the petitioner started the construction work at Dharmavaram Village, Anantapur District, local groups and local politicians caused stiff resistance and disturbances in spite of best efforts of the petitioner and after taking up the matter with the higher authorities of the State, the petitioner had to shift to some other site as the contractor for supply works engaged by the petitioner could not perform its work. The petitioner informed the respondent about the Force Majeure event by a letter dated 24-09-2015 requesting for change of location to Rayachoti, Kadapa District and the respondent accepted the request by a letter dated 26-09-2015, subject to field feasibility and amended Performance Bank Guarantees as per the original Power Purchase Agreement timelines. The respondent received the feasibility report on 13-11-2015 and a further amendment was executed between the petitioner and the respondent to the Power Purchase Agreement on 23-12-2015 acknowledging the change of location due to compelling circumstances beyond the control of the solar power developer for carrying out construction work at Dharmavaram. The petitioner was able to keep the entire land of 107.33 acres ready after much efforts and it addressed a letter dated 25-01-2016 for extension of the Scheduled Commercial Operation Date. The respondent by its letter dated 02-03-2016 denied any extension and the petitioner again requested on 02-03-2016 the Transmission Corporation of Andhra Pradesh Limited for such extension, which was solely on account of Force Majeure event beyond the control of the petitioner. The respondent was also similarly

requested on 21-03-2016 and the commissioning certificate was issued by the respondent by letter dated 16-05-2016. Thus, there was a delay of 70 days which occurred solely on account of change of location for reasons beyond the control of the petitioner and the petitioner is entitled to special equities under the circumstances. The letter dated 02-03-2016 is in violation of the provisions of the Power Purchase Agreement as amended thrice and having agreed for change of capacity and change of location within the timelines provided in the Power Purchase Agreement, the respondent could not have acted against the *doctrine of election*. The respondent which was aware of the situation developing beyond the control of the petitioner could not have resiled from its admissions and the respondent did not act fairly and reasonably. A commercial document must be given its ordinary meaning and a business interpretation. Without evidence of any actual damage suffered, the Performance Bank Guarantees cannot be invoked. Subsequent to 02-03-2016, the respondent partially allowed the extension of Commercial Operation Date till 31-03-2016, threatened to invoke the Bank Guarantees. Therefore, the petition.

4. The respondent in its counter claimed that the object of the respondent in initiating the bidding process for procuring solar power in the State of Andhra Pradesh in August, 2014 was to overcome the power shortage and meet the Renewable Power Purchase Obligation. The petitioner had to complete 20 MW solar project at Dharmavaram by 04-03-2016 i.e., within 15 months from 05-12-2014, the date of the Power Purchase Agreement, failing which penalties shall be imposed as per the clause 10.5 of the agreement. The Power Purchase Agreement was first amended on 06-04-2015 incorporating change in law clause and a second amendment was made on 22-06-2015 incorporating change of delivery voltage. The request of the petitioner by

a letter dated 24-09-2015 for change of location was considered even after 10 months after the Power Purchase Agreement and even originally as against the normal period of 12 months for completion of the project of 33 kV voltage level, 15 months was allowed to the petitioner by a letter dated 13-10-2015. The respondent clearly communicated that change of location was considered based on the petitioner's request only and the power project should be completed as per the timelines stipulated in the Power Purchase Agreement. The petitioner had in fact in its reply dated 11-12-2015 after nearly 2 months communicated its concurrence. The third amendment to the Power Purchase Agreement was executed regarding the change of location only on 23-12-2015 and the petitioner accepted all other terms and conditions of the original Agreement in the Amendment Agreement, which was approved by the State Commission on 25-02-2016. The petitioner delayed acquisition of land by about 3 ½ months after approval by the respondent and still concerning the practical problems explained by the petitioner, the Commercial Operation Date was revised to 31-03-2016 without imposing any penalties. Still the petitioner failed to complete the project due to their internal reasons, inefficiency and bad planning. Delay cannot be treated as political Force Majeure and the petitioner was similarly situated as M/s. Rain Cements Limited which was also allocated 22 MW project at Dharmavaram which completed the same and never raised any political issues. The tariff of the grid connected solar projects drastically came down in the country to ₹4.34 ps., to ₹4.63 ps., whereas the levelized tariff of the petitioner is ₹6.62/kWh which is very high. Solar power developers commissioned the projects to an extent of 404 MW out of 619 MW as on 31-03-2016, due to which Andhra Pradesh Power Coordination Committee and Andhra Pradesh Distribution Companies took a decision

not to accept the request of any other solar power developers for postponement of Scheduled Commercial Operation Date. The respondent had in fact suffered financial loss by purchasing additional power through exchange/short-term, due to the petitioner's delay. The respondent, hence, enforced clause 10.5 of the Power Purchase Agreement and it en-cashed 20% Performance Bank Guarantee for the delay by one month in respect of not only the petitioner but six other solar power developers. Except in respect of the petitioner which obtained interim orders from this Commission, 40% encashment of Performance Bank Guarantee was being implemented for the subsequent delay of one month in May, 2016. The respondent adopted uniform procedure in implementation of penalties against all the solar power developers without any discrimination and hence the petitioner has no *prima facie* case or balance of convenience in its favour. Hence, the petition be dismissed with exemplary costs.

5. The petitioner in its rejoinder to the reply by the respondent claimed that after change in location was allowed on 13-10-2015 and availability of connectivity was intimated on 13-11-2015, the respondent sought for a Technical Feasibility Report only after 17 days and informed the petitioner on 13-11-2015 only after which the petitioner could start acquiring the land. It acquired 58 acres of land in 29 days as informed on 11-12-2015, another 11.80 acres of land as informed on 16-12-2015 and by 25-01-2016, it acquired total land of 100 acres and started the ground work for leveling the land and taking other steps. The reschedule after the Commercial Operation Date from 04-03-2016 to 31-03-2016 was done on a general basis for all the solar power developers, but not considered the Force Majeure suffered by the petitioner. The approval for connectivity was obtained by 04-07-2016 and the Force

Majeure circumstances beyond the control of the petitioner due to obstruction by unidentified local miscreants compelled it to seek a shift of location on 24-09-2015 as specified in the third amendment to the Power Purchase Agreement. The respondent cannot take a contrary stand and the Hon'ble Appellate Tribunal for Electricity condoned the delay under such circumstances in Appeal No.117 of 2014 dated 16-09-2016. The petitioner denied all the other allegations of the respondent and Article 10.5 cannot be relied on by the respondent. It is true that the petitioner gave a Demand Draft for ₹1 crore on 31-05-2016, but it was not out of its free will. Hence, it desired the main petition to be allowed.

6. Interlocutory Applications 7 & 8 of 2016 have similar pleadings and on 04-06-2016, this Commission taking note of the bank guarantee being alive upto October, 2016 as represented by the learned counsel for the petitioner and that the generating plant was already commissioned on 12-05-2016 restrained the respondent from invoking the subject guarantee or taking any other coercive action which interim direction was continued from time to time.

7. Sri Buddy A. Ranganadhan, Sri Anurag Sharma and Sri P. Vikram, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondent assisted by Sri G.V. Brahmananda Rao, learned counsel were heard at length. Both parties have also filed their Written Submissions.

8. The point for consideration is whether the petitioner is entitled to have the Scheduled Commercial Operation Date declared extended till 30-06-2016 and avoid the consequences of the delay including invoking the Performance Bank Guarantees?

9. The respondent's letter to the petitioner dated 30-10-2014 intimated the finalization of the location and maximum allowable capacity on evaluation of the financial bids in respect of 132/33 kV SS of 20 MW allocated capacity at Dharmavaram, Anantapur District and it was specifically stated that the selected location was allotted with the concurrence of the bidder and that under no circumstances change of location will be allowed till the signing of the Power Purchase Agreement. The change of location was stated to be subject to clause 4.1.3.B of the request for selection document dated 06-09-2014 which details the process for allocation or change. The petitioner does not claim to have sought for any change in location for any reason before signing of the Power Purchase Agreement on 05-12-2014 or even before the amendments dated 06-04-2015 and 22-06-2015. The Letter of Intent issued on 07-11-2014 reiterated the allocated location, among other things and the prohibition against change of location was stated in identical terms as in the earlier letter dated 30-10-2014. It was also specified that the company shall execute the project within the stipulated time as per the provisions of the request for selection and the Power Purchase Agreement. Performance Guarantees were furnished by the petitioner on 14-12-2015 obviously for complying with the stipulations of the request for selection, the Letter of Intent and the Power Purchase Agreement.

10. The Power Purchase Agreement dated 05-12-2014 between the petitioner and the respondent refers to the location of solar power project of 20 MW and even in the preamble, the solar power developer was obligated to achieve Commercial Operation Date as per the timelines stipulated in the Agreement, in default of which the Performance Bank Guarantee will be liable for forfeiture and the Agreement is liable

for termination. Article 3.10.5 of the Agreement records that the Solar Power Developer shall commission the Project within timelines defined for Scheduled Commercial Operation Date as per this Agreement, and any delay of the same was subject to the penalties stated in Clause 10.5 of the Agreement. Article 6.4 (i) stipulates the Performance Bank Guarantee to be furnished under that Agreement to be for guaranteeing the commencement of the supply of power upto the Contracted Capacity within the time specified in the Agreement and under Article 6.4 (iii) if the solar power developer fails to commence supply of power from the Scheduled Commissioning Date specified in the Agreement, subject to conditions mentioned in Article 9.2, Discom shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights under the Agreement. Article 9 of the Agreement deals with Force Majeure and under Article 9.2, the Commercial Operation Date shall be deferred, for a reasonable period upto a maximum period of 6 months to permit the Solar Power Developer or Discom through the use of due diligence, to overcome the effects of the Force Majeure events or till such time such event of default is rectified by either party whichever is earlier, in the event of any delay due to Force Majeure events. What is Force Majeure was defined in Article 9.1 which includes indirect political events like blockades or embargoes or civil disturbance also. Any such event or circumstance, if not within the reasonable control of the affected party and reasonably foreseeable or preventable but materially or adversely affects the performance of such party, constitutes a Force Majeure event or circumstance. Article 10 of the Agreement deals with Events of Default and Termination and Article 10.1 covers the Solar Power Developer Event of Default due to delay in commissioning of the project by more than 6 months from the Scheduled

Commercial Operation Date in which case, the procedures of clause 10.5 shall be followed. Article 10.1 does not apply only if the event was as a result of a Force Majeure event or a breach of obligation by Discom. While the Procedure for cases of Solar Power Developer Event of Default was specified in Article 10.3, Penalties in case of Delayed Commissioning were specified in Article 10.5. In case of failure to achieve commissioning within 12/15 months, the Discoms shall encash the Performance Bank Guarantee in the specified manner.

11. This Power Purchase Agreement was amended on 06-04-2015 incorporating the change in law clause and on 22-06-2015 incorporating the change in delivery voltage clause and but for these amendments, it is not in dispute that both parties agreed that the other terms and conditions of the Power Purchase Agreement dated 05-12-2014 remain unaltered, more particularly the commitment on the Scheduled Commercial Operation Date under the Agreement dated 05-12-2014 was not subject to any change by the parties.

12. The contractor engaged by the petitioner was speaking about stopping of the work at the site due to local problems since the letter dated 20-08-2015, but there was no elaboration of the said local problems or what they were and due to whom. Even in the letter from the petitioner dated 24-09-2015 referring to the stiff resistance and disturbance from the local politicians with vested interests backed by the politicians, the politicians or vested interests were not identified or named. Whom the petitioner tried to convince in this regard was not stated. There is no material on record to corroborate that the matter was taken to the highest level of the State Government or that there was intervention of the State Government to

which the obstructors did not agree. While making request for change of location from Dharmavaram to Rayachoti with different connectivity, the petitioner did not claim to have ever reported the resistance, obstruction and disturbance to the police or criminal courts at any time nor did it claim to have taken recourse to any injunctive relief against such interference in any civil proceeding. No material is placed on record to show any mention of such circumstances or events in any manner prior to 24-09-2015 or about reporting of any such events or circumstances by any print or audio or visual media. From 05-12-2014 when the Power Purchase Agreement was entered into till 20-08-2015 when the contractor engaged by the petitioner addressed by it, there appeared no mention about intervention of any local problems and till 24-09-2015, the respondent was not communicated in writing about the circumstances involving local politicians and vested interests.

13. In the letter dated 13-10-2015, Chief Engineer, Andhra Pradesh Power Coordination Committee considered the request for change of location subject to field feasibility and amended bank guarantees and it was specifically informed that change of location was considered based on the request of the petitioner only and that the petitioner shall complete the project as per the timelines stipulated in the Power Purchase Agreement. It is true that there is a gap of 17 days between this letter and seeking a technical feasibility report which was furnished on 13-11-2015, but the third amendment entered into between the parties was further delayed till 23-12-2015. The preamble to the third amendment referred to the request of the petitioner in para 3 of the preamble and a reference to compelling circumstances beyond the control of the solar power developer, for carrying out construction work at Dharmavaram was part of a reference made to the contents of that request and

does not appear on the plain and unambiguous language of the said paras to be an admission by the respondent of the acceptance of any such compelling circumstances. The substitution of Rayachoti for Dharmavaram in the Power Purchase Agreement dated 05-12-2015 and its amendments dated 06-04-2015 and 22-06-2015 was only limited to that extent as seen from the appendix to the third amendment agreement which was agreed by both parties and executed in token of their acceptance on 23-12-2015. The Appendix had absolutely no reference to the Scheduled Commercial Operation Date and para 7 of the amendment agreement clearly stated that the other terms and conditions of the Power Purchase Agreement dated 05-12-2014 and its amendments dated 06-04-2015 and 22-06-2015 between the parties remain unaltered. Therefore, the third amendment agreement made no difference to the stipulations in the Agreement dated 05-12-2014 in so far as the Scheduled Commercial Operation Date is concerned which shall be calculated from the effective date which was defined by the said Agreement as the date of signing of that Power Purchase Agreement by both the parties. When the third amendment agreement was so executed keeping the original agreement intact except for the amendment shown in the Appendix thereto and when entering into of the third amendment by the parties was voluntary and lawful, any interpretative exercise to read the Power Purchase Agreement dated 05-12-2014 as amended by the subsequent agreements dated 06-04-2015, 22-06-2015 and 23-12-2015 in any manner opposed to and inconsistent with the plain and unambiguous language of the documents' and their grammatical meaning will not be permissible. Therefore, the period of 12/15 months stipulated by Article 10.5 and the period of 6 months from the Scheduled Commercial Operation Date stipulated by Article 10.1 (v) has to be calculated with reference to the

effective date mentioned in Article 10.5 i.e., 05-12-2014. The definition of Scheduled Commercial Operation Date under the Agreement was also to mean 12/15 months respectively from the effective date.

14. Assuming that the petitioner was not lax since the shift of location was permitted, the parties are bound by their written word voluntarily and lawfully expressed in pursuing any legal remedies on the strength of contractual obligations and equitable considerations may not play any role in such contingencies.

15. In the letter dated 21-03-2016, the extension requested was upto 30-06-2016 and the Andhra Pradesh Power Coordination Committee did not consider the request and asked the petitioner to make their best efforts to commission the project before 31-03-2016, the petitioner reiterated its request in the subsequent letters which was not considered and is of course not disputed that the petitioner achieved the object of commissioning by 12-05-2016.

16. It may also be true that the extension of the Scheduled Commercial Operation Date till 31-03-2016 by the Andhra Pradesh Power Coordination Committee was to all solar power developers selected under the competitive bidding route in 2014 but it only conferred an advantage on the petitioner and cannot be a ground by itself for further extension.

17. While it is true that there is no material on record to assess any financial loss or damage suffered by the respondent by purchasing additional power due to the delay in commissioning of the project of the petitioner, its claim that it treated all

the solar power developers without any discrimination is not contradicted by any material on record.

18. In the rejoinder, the Force Majeure event was solely stated to be the change of location which was at the instance of the petitioner itself and while there is no material to presume that the petitioner was not serious about this project or to show that any internal reasons or inefficiency or bad planning of the petitioner resulted in the present situation, still, as already stated, the contractual obligations between the parties prevail over any pious intentions or considerations of equity. Any reference to the judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No.117 of 2014 is of no help, as that was a case where the documents made available by the petitioner therein showed that problems were triggered by the agitations by the villagers during the relevant period which led to the repeated suspension of works but there was no such material herein. In the absence of such material, the petitioner cannot take advantage of its own request for shifting of location to be the basis for any direction for extension of time limits. The claim of the respondent that another solar power developer could proceed with his work at Dharmavaram itself is not disputed as a fact and if so, it can be an improbablising circumstance against any claim of insurmountable obstructions by local politicians or vested interests driving away the petitioner out of Dharmavaram.

19. The petitioner cited two decisions of the Hon'ble Supreme Court and the former in General Assurance Society Ltd., Vs. Chandumull Jain and another AIR 1966 SC 1644 laid down that any interpreting documents relating to a contract, the duty of the Court is to interpret the words in which the contract is expressed by the parties,

because it is not for the Court to make a new contract however reasonable, if the parties have not made it themselves. The other decision in *United India Insurance Co. Ltd., Vs. Pushpalaya Printers* (2004) 3 SCC 694 also the Hon'ble Supreme Court decided that where the words of a document are ambiguous, they shall be construed against the parties who prepared the document. The intention of the parties was directed to be gathered from the words used in the document. Application of these principles in the present case would reveal un-sustainability of the reliefs claimed by the petitioner on the plain language of the Power Purchase Agreement amended thrice.

20. The fact that the petitioner was not claiming any additional cost on account of delayed commissioning or on account of the events and circumstances leading to the shift in location confers no rights on the petitioner and imposes no liability on the respondent. The projected act of grace or concession is no creator of any rights and obligations unspecified or uncovered by the contract reduced into writing. The Written Arguments of the petitioner admitted that the third amendment left intact the clauses about the Commercial Operation Date, while the alleged Force Majeure event or circumstance which was not proved even otherwise, being after the Force Majeure event. The retention of the contractual obligations about the Commercial Operation Date by the parties voluntarily has to be given its due effect. As the word "Scheduled Commercial Operation Date" was defined in the Agreement dated 05-12-2014 to be 12/15 months from the effective date which was again defined as the date of signing of that Power Purchase Agreement by both parties without reference to anything else, Article 10.1.1 (v) shall have to be understood with reference to these definitions only without importing any effect of any extraneous events into such

interpretation and if the minutes of the meeting of the Andhra Pradesh Power Coordination Committee dated 21-04-2016 revising the Scheduled Commercial Operation Date as 31-03-2016 were to be given effect to modifying the rights and obligations under the contract between the parties, the Power Purchase Agreement dated 05-12-2014 has to be duly amended. The Agreement as it now stands cannot stand in the way of invocation of the Performance Bank Guarantees by the respondent in law or in fact, if it is otherwise entitled to the same. As there is no ambiguity in the language of the contract dated 05-12-2014, no benefit of any favourable interpretation arises for consideration in favour of the petitioner. Whether Article 10.5 and Article 10.1.1. (v) of the Agreement dated 05-12-2014 should be read together or independently given effect to is therefore of no consequence.

21. The petition was titled to have been filed not only under section 86 (1) (f) of the Electricity Act, 2003 for adjudicating upon the disputes between the licensees and generating companies and to refer any dispute for arbitration but also under Regulations 55, 57 and 59 of the APERC (Conduct of Business) Regulations, 1999 and Regulation 85 of the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2012. Section 178 of the Electricity Act, 2003 provides that the Central Commission regulates the tariff only in respect of generating companies owned or controlled by the Central Government or other generating companies entering into or having a composite scheme for generation and sale of electricity in more than one State. Therefore, the petitioner not falling under either description of a generating company cannot be regulated by any such CERC Regulations. Regulation 55 of the State Regulations saving the inherent power of the Commission, Regulation 57 conferring the power on the Commission to remove

difficulties and Regulation 59 providing for extension or abridgement of time prescribed are absolutely irrelevant to the questions in controversy sought to be raised by the petitioner in this petition. Regulation 59 refers to the time prescribed by the APERC (Conduct of Business) Regulations, 1999 or by an order of the Commission for doing any act, which alone can be extended or abridged by the order of the Commission. Here, the time fixed for the Scheduled Commercial Operation Date was fixed by the contract of the parties and neither by a Regulation nor an Order of the Commission. Similarly, Regulation 57 is for removing any difficulty in giving effect to any provision of the Conduct of Business Regulations, 1999 and in asking to modify the contract, the petitioner can be considered to be neither referring to any difficulty in giving effect to any provision of such Regulations nor was any such difficulty either pleaded or proved. Regulation 55 read as a whole shows that what was saved was the inherent power of the Commission to take liberties with the prescribed procedure under the Regulations or prescribed powers and functions under the Act in dealing with any matter so as to advance the ends of justice or prevent the abuse of its process. It is well settled that there can be no inherent power against express provision of law and contractual obligations of the parties regulated by the law of contracts cannot be violated under the guise of any inherent powers of the Commission. No Regulation can empower the Commission in the absence of any such power or function conferred by the Act to substitute its own discretion in the place of the discretion of the parties in entering into a contract with specific terms and conditions. When even a Court of Law cannot do it under exercise of its jurisdiction or any inherent powers, a quasi judicial Commission can never do the same. What

remains is adjudication of the dispute under section 86 (1) (f) which should lead to the failure of the petitioner on merits.

22. For the various reasons stated above, it has to be concluded that the petitioner is not entitled to have the Scheduled Commercial Operation Date declared extended till 30-06-2016 and avoid the consequences of the delay including invoking the Performance Bank Guarantees. The petitioner is consequently not entitled to any of the reliefs prayed for and the interim order granted earlier on 04-06-2016 has to be vacated. It will be open to the respondent to take any action in accordance with law for enforcement of its rights under the Power Purchase Agreement dated 05-12-2014 as amended thrice on 06-04-2015, 22-06-2015 and 23-12-2015. The adjudication by this order is no bar against the respondent and/or the petitioner entering into any fresh contractual obligations between themselves as permitted by law.

23. Accordingly, the petition and the Interlocutory Applications 7 & 8 of 2016 are dismissed. The interim order granted on 04-06-2016 stands vacated and the parties shall bear their own costs.

This order is corrected and signed on this the 15th day of October, 2016.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman