



# ASSAM ELECTRICITY REGULATORY COMMISSION

## ORDER SHEET

FILE NO. AERC 763/2020/Pt-I

PETITION NO: 28/2020

I.A. No. 01/2020 & I.A No. 01/2021

**CORAM: HON'BLE SHRI K.S. KRISHNA, CHAIRPERSON  
HON'BLE SHRI S. N. KALITA, MEMBER  
HON'BLE SMTI B. BORTHAKUR, MEMBER**

### In the matter of

Petition under Section 86(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 seeking extension of the scheduled commercial operation date of the Petitioner's project due to occurrence of force majeure events in accordance with Article 7 of the Power Purchase Agreements dated 25.06.2018 between Azure Power Forty Private Limited and Assam Power Distribution Company Limited.

AND

### In the matter of

Azure Power Forty Private limited ..... Petitioner

AND

### In the matter of

Assam Power Distribution Company Limited (APDCL) ..... Respondent

### Present

Shri Shashwat Kumar, Advocate ..... Petitioner

### ORDER 04.03.2021

1. This Petition is filed under Section 86(1)(f) read with 86(1)(k) of the Electricity Act, 2003 seeking extension of the scheduled commercial operation date of Azure Power Forty Private Limited citing occurrence of force majeure events in accordance with Article 7 of the Power Purchase Agreements dated 25.06.2018 between Azure Power Forty Private Limited and APDCL, along with two Interlocutory Applications.
2. Through the Interlocutory Application No. 01/2020 Petitioner prayed before the Commission to issue direction to the Respondent not to take any coercive actions against the applicant including invocation of the Performance Bank Guarantees submitted by the Petitioner, until further adjudication of the said Petition and also to declare that the Petitioner is not liable to pay any monies towards liquidated damages/ penalties by way of encashment of Performance Bank Guarantees or reduction in project tariff under the PPA dated 25.06.2018 and also to declare that the Petitioner would not bear any liability due to non commencement of supply from the existing Scheduled Commercial Operation Date (SCOD) of the project.
3. The Interlocutory Application No. 01/2021 was filed by the Petitioner seeking urgent listing of the Petition No. 28/2020.
4. The Petition No. 28/2020 along with the I.A No. 01/2020 and I.A. No. 01/2021 was listed for hearing on 04.03.2021.

## 5. Submission of Petitioner

5.1. The Petitioner submitted that Azure power came up as a successful bidder for setting up of solar power plants and executed four Power Purchase Agreements (PPA's) with the Respondent on 25.06.2018 as stated below:

<b>Region</b>	<b>Covering Districts</b>	<b>Capacity</b>	<b>Rates Per Unit (Rs.)</b>	<b>SCOD</b>
Region 1	Dhubri, Kokrajhar, Chirang, Baksa, Udalguri, Darrang	25 MW	3.70	24.06.2020
Region 2	Goalpara, Bongaigaon, Barpeta, Nalbari, Kamrup	25 MW	3.24	24.06.2020
Region 3	Sonitpur, Nagaon, Morigaon, Karbi Anglong, Dima Hasso, Lakhimpur, Dhemaji	15 MW	3.20	24.06.2020
Region 4	Cachar, Hailakandi, Karimganj	25 MW	3.17	24.06.2020

However, the Projects couldn't be commissioned as per the SCOD due to various reasons as stated by the Petitioner in the Petition.

5.2. The Petitioner submitted that in order to extend the date of SCOD, the Petitioner approached the Respondent and the same was accepted by the Respondent as under:

<b>Region</b>	<b>Covering Districts</b>	<b>Present SCOD</b>	<b>Extended SCOD</b>
Region 1	Dhubri, Kokrajhar, Chirang, Baksa, Udalguri, Darrang	24.06.2020	31.07.2020
Region 2	Goalpara, Bongaigaon, Barpeta, Nalbari, Kamrup	24.06.2020	30.11.2020
Region 3	Sonitpur, Nagaon, Morigaon, Karbi Anglong, Dima Hasso, Lakhimpur, Dhemaji	24.06.2020	31.12.2020
Region 4	Cachar, Hailakandi, Karimganj	24.06.2020	31.12.2020

5.3. The Petitioner stated that the extensions of SCOD given by the Respondent for the four regions were not as per the request made by the Petitioner. Further, the Petitioner also stated that it wouldn't be possible to commission the Projects within the SCOD as extended, on account of Force Majeure Events.

5.4. The Petitioner further submitted that despite of request for extension of SCOD for the Projects of all the four regions several times, the Respondent didn't provide a favorable decision in this regard.

5.7 Now Petitioner vide their Petition has prayed before this Commission to extend the Scheduled Commercial Operation Date of all the four Regions under Article 7.2 of the Power Purchase Agreement as under:

- (i) For Project located in Region 1 till 21.09.2020
- (ii) For Project located in Region 2 till 30.06.2021
- (iii) For Project located in Region 3 till 30.06.2021
- (iv) For Project located in Region 4 till 31.12.2021

- 5.7 The Petitioner also submitted, that subsequent to the filing of the Petition before the Commission, the Respondent vide letter dated 29.11.2020 has granted the extension of SCOD of Region1 project as sought by them and also asked the Petitioner to submit a detailed progress report of Region 2, Region 3 and Region 4 Projects. In compliance of the Respondents letter the Petitioner vide letter dated 31.12.2020, provided the project wise progress report, setting out the specific reasons for delay in completion of works.
- 5.7 During the course of hearing the Petitioner produced a letter dated 18.01.2021 received from Respondent wherein the Respondent directed the Petitioner to give appropriate response to the show cause notice why penal action should not be taken on failure to commission the project within significant extended time.

**6. Commission's analysis and Observation.**

- 6.1 On scrutiny of the Petitions and the submission made by the Petitioner during hearing the Commission noted that APDCL has extended the time of Commissioning of the project from the original date of COD on respect made by the Petitioner as stated in para 5.2 above.
- 6.2 It is also on record that the date in case of Region 1 has been subsequently extended by the Respondent upto the date of actual commissioning i.e. 21.09.2020.
- 6.3 The Petitioner insisted to accord extension of SCOD of the other three (03) Regions as stated in para 5.5 (ii) (iii) (iv) and made correspondence with APDCL for the same.
- 6.4 In response APDCL sought some clarification from the Petitioner including status of the Projects and was replied by the Petitioner.
- 6.5 Being not satisfied with the reply, APDCL again writes to the Petitioner to provide appropriate response and to show cause for inordinate delay in commissioning of the projects.
- 6.6 The Petitioner has not produced any records to show that they have responded to the show cause notice.
- 6.7 It is obvious that APDCL will take necessary action on the prayer of the Petitioner for extension of timeline of COD only after receipt of satisfactory reply from the Petitioner.
- 6.8 The Commission is of the view that the settlement of the matter is in process between the parties i.e. the Petitioner and the Respondent.
- 6.9 The Commission doesn't want to go into the merit of the matter and is not inclined to admit the Petition.

**ORDER**

In view of the foregoing discussion the Petition No. 28/2020 is rejected. Accordingly, I.A. No. 01/2020 and I.A. No. 01/2021 also stand dismissed.

s/d  
**(B. Borthakur)**  
Member, AERC

s/d  
**(S. N. Kalita)**  
Member, AERC

s/d  
**(K. S. Krishna)**  
Chairperson, AERC