

No.N/54/2022

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.

Dated: 28.12.2023

Present

Shri P. Ravi Kumar	.. Chairman
Shri H.M. Manjunatha	.. Member (Legal)
Shri M.D. Ravi	.. Member

OP No.06/2022

BETWEEN:

M/s Clean Solar Power (Gulbarga) Pvt. Ltd.,
Represented through the Authorized Representative
201, Third Floor,
Okhla Industrial Estate, phase-III,
New Delhi – 110020.

... PETITIONER

(Represented by its Ms./ Mr. Aniket Prasoon,
Archisman Chaudhury, Akash Deep,
Shweta Vashist, Akanksha Tanvi,
Priya Dhankhar, Md.Aman Sheikh,
Shubham Mudgil, Md. Munis Siddique
& Rishabh Bhardwaj Advocates,
for PLA Associates)

AND

1. Karnataka Power Transmission Corporation Limited
Represented through its Chairman & Managing Director
2nd Floor, KPTCL, Kaveri Bhavan,
Kempegowda Road,
Bangaluru-560 009.
(Represented by Sri. Shabhaaz Husain, Advocate
for Precinct Legal)

2. Solar Energy Corporation of India Ltd.,
Represented through its Managing Director,
6th Floor, Plate –B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi – 110023.
(Respondent No.2 remained absent)

... RESPONDENTS

ORDERS

1) The petitioner has filed this petition under Section 86(1) (e) and 86(1)(f) r/w Sections 39(2)(a) and 40(a) of the Electricity Act, 2003 and Regulation 21 of the Karnataka Electricity Regulatory Commission (General and Conduct of Proceedings) Regulations, 2000, praying for the following reliefs to:

- a) Issue directions to respondent No. 1 to compensate the petitioner at the PPA tariff of Rs. 4.43/kWh for the generation loss to the extent for which the generation from the petitioner's Solar Project could not be evacuated between 18.04.2018 till 31.12.2021, which is Rs. 39,50,00,000/- (Rupees Thirty - Nine Crores and Fifty Lakhs Only) along with interest @ 18% per annum.
- b) Issue directions to respondent No. 1 to compensate the petitioner at the PPA tariff of Rs. 4.43/kWh for the generation loss to the extent for which the generation from the petitioner's Solar Project could not be evacuated for the period after December 2021 till the transmission congestion/ constraint subsists.
- c) Direct the respondents to pay costs of this petition to the petitioner.
- d) Grant such order, further relief(s) in the facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the petitioner.

2) The relevant facts for the disposal of present case made out by the petitioner may be stated as follow: -

- a) M/s Hero Solar Energy Private Limited (HSEPL) has been declared as a successful bidder by Solar Energy Corporation of India Ltd., (SECI) for

selection of SPDs for development of 'Solar Power Project' in the State of Karnataka. M/s HSEPL has incorporated M/s Clean Solar Power (Gulbarga) Pvt., Ltd., (petitioner) company as Special Purpose Vehicle (SPV) on 14.07.2016 for development of Solar Project located in Beejihalli village, Tumkuru district, Karnataka connected to the 66/11kV PD Kote S/s at parashuramdevrakote village, Hiriyur Taluk, Chitradurga District. The KPTCL undertaken to provide connectivity with the grid within 13 months from the date of signing the 'PPA dated 02.08.2016' between petitioner and SECI. It has failed to construct the required transmission infrastructure for evacuation of the entire contracted capacity of 30 MW.

- b) The details of the Solar Power generators connected to the PD Kote S/s is given in the tabular form: -

Table No.1

Sl. No.	Name	Installed capacity (MW)
01	Petitioners Solar Project	30 MW
02	Solitaire Powertech. Pvt. Ltd,	30 MW
03	Azure Powers	10 MW

1st Respondent KPTCL is a transmission licensee in the State of Karnataka in terms of Electricity Act.

Respondent No. 2 "SECI" is an inter-State trading agency of Government of India Enterprise assisting Ministry of New and Renewable Energy (MNRE) in implementing Jawaharlal Nehru National Solar Mission

(JNNSM). That has been designated as a nodal agency for implementing the MNRE scheme for development of grid connected Solar power capacity through 'Viability Gap Funding' (VGF) mode across India.

- c) It is submitted by the petitioner that in view of the incessant delay on behalf of KPTCL to construct the associated transmission system, the petitioner has been unable to evacuate more than 4 MW - 12 MW power out of its contracted capacity of 30 MW, despite achieving COD on 18.04.2018. The KPTCL was obligated to construct the following lines shown in the table below: -

Table No. 2

a	66kV 2 nd Circuit line between PD Kote & Hariyabbe S/s with coyote conductor.
b	66kV 2 nd Circuit line between 220/66kV Hiriya & upto Hariyabbe Tap point with Coyote ACSR conductor.

- d) The KPTCL caused inordinate delay in construction of the requisite transmission infrastructure for evacuation of entire contracted capacity from the petitioners Solar Project. There is dereliction and negligence on part of KPTCL to discharge the statutory duty. In terms of section 39 (2)(c) and section 40(a) of the Electricity Act, KPTCL, being the State Transmission Utility (STU) has to do the following functions:

“Section 39. (State Transmission Utility and Functions): -

(2) (c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres.

Section 40 (Duties of transmission licensees): -

(a) To build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be."

e) The KPTCL failed to develop requisite transmission infrastructure which resulted in a situation where only "4 MW to 12 MW" power is evacuated out of total contractual capacity of 30 MW from the Petitioner Solar Project.

f) In this context, the petitioner relied upon the order in OP 20/2019 dated 14.09.2021 M/s Solitaire Powertech Pvt. Ltd (SPPL) V/s KPTCL & Anr., wherein the commission granted compensation/damages to (M/s SPPL) at the rate of PPA agreed tariff of Rs.4.43/kWh for the generation loss suffered by it to the extent to which the generation from its power project could not be evacuated till the transmission congestion/constraint subsists. It is submitted that the petitioner is entitle for the similar relief prayed in the petition.

g) The petitioner preferred Writ Petition No.51296/2019 on 14.10.2019 before Hon'ble High Court of Karnataka, inter alia seeking a writ of mandamus to enforce the duties and obligations of KPTCL. The interim protection was sought by the petitioner due to threat posed by SECI to impose penalty on account of petitioner's inability to supply required power/minimum generation as per PPA. The Hon'ble High Court pleased to pass interim order on 27.11.2019 and directed SECI, to not take any precipitative action regarding recovery of penalty from the

petitioner under the terms of PPA. The Petitioner is facing difficulties on account of the transmission constraints being suffered by it due to failure and inaction on part of KPTCL. Copy of the W.P. is Annexure-A.

h) On 04.08.2015 MNRE issued the guideline for implementing of scheme for setting up of 2000 MW Grid-connected Solar PV Power Projects under batch-III "State Specific VGF Scheme" (JNNSM Guidelines). The JNNSM Guideline 4.2 and RfS clause 5.2 provides similar provision – as follows: -

"Role of State Transmission Utility"

"State Transmission Utility will provide transmission system to facilitate the evacuation of power from the Projects, which may include the following:

- (i) Provide connectivity to the Solar projects with the grid
- (ii) Support during commissioning of Projects
- (iii) Coordination among various State and Central agencies for evacuation of power."

Copy of guidelines of JNNSM and RfS is Annexure – B & C (Colly).

The relevant and important correspondence placed by the petitioner in this case are encapsulated in the following - Table No.3: -

SL No.	Date	Correspondence Letters	Particulars	Annexures
1	--	List of Sub-stations	List of sub-stations for injection of Solar Power under VGF scheme. PD Kote 66 kV - available capacity 30 MW.	Annexure - D
2	17.05.2016	HSEPLs letter	HSEPL – being holding company of the petitioner approached KPTCL for pre-feasibility clearance to connect 30 MW Solar Power Project at PD Kote S/s.	Annexure - E
3	20.05.2016	KPTCL letter to SECI (Technical Feasibility Approval)	KPTCL confirming the technical feasibility of the connectivity of the PD Kote solar project with the state grid within 13 months from signing PPA.	Annexure -F
4	02.07.2016	Letter of intent given to M/s HSEPL by SECI	M/s HSEPL being successful bidder against RfS, formed petitioner as project company (SPD).	Annexure - G
5	02.08.2016	PPA	PPA between petitioner (CSPGPL) with SECI.	Annexure – H (colly)
5(a)	28.06.2019	Amended PPA (Amendment - 1)	Amended the location of the project – from P.D Kote village, Chitradurga District to Beejihalli, Thadakalur, Sira Taluk Tumkur District, Karnataka State.	
6	02.08.2016	VGF - securitization agreement	Between petitioner and SECI.	

6(a)	28.06.2019	Amended VGF - securitization agreement	Amended location of the project - village Beejehalli, Thadakalur, Sira Taluk Tumkur District, Karnataka State.	Annexure - I (colly)
7	11.08.2016	Petitioner's letter to KPTCL	Request for Power evacuation from Beejehalli village Solar Power Project.	Annexure - J
8	15.02.2017	Tentative evacuation scheme (KPTCL)	KPTCL informed the petitioner about tentative evacuation scheme for PD Kote Solar Project.	Annexure - K
9	06.03.2017	Petitioner's letter to KPTCL	Acceptance of tentative evacuation scheme for PD Kote Solar Project.	Annexure - L
10	20.03.2017	Regular evacuation scheme (KPTCL)	KPTCL informed the petitioner about Regular evacuation scheme for PD Kote Solar Project.	Annexure - M (Colly)
11	28.08.2017	Modification to regular evacuation scheme	KPTCL informed petitioner about modification to regular evacuation scheme.	
12	08.05.2017	Evacuation approval	KPTCL informed Solitaire Powertech Pvt Ltd., about regular evacuation scheme for Kanjanahalli village Solar Power Project.	Annexure - N
13	13.10.2017	Petitioner's letter to KPTCL	Undertaking given by petitioner in the event of system constraints / outages / grid constraints etc. KPTCL not liable for loss in generation at Beejehalli village Project connected to S/s PD Kote.	Annexure - O
14	13.10.2017	Petitioner's letter to KPTCL	Submitting document for issuing synchronization/interconnection approval for Beejehalli village Solar Plant.	Annexure - P & Q (same)
15	04.12.2017	Petitioner's letter to KPTCL	Submission of balance documents for synchronization /interconnection approval for Beejehalli village Solar Plant.	Annexure - Q (colly)
16	12.12.2017	KPTCL Letter to Petitioner	Provisional interconnection approval for PD Kote village Solar project executed for 30 MW at Beejehalli village without changing connectivity S/s.	Annexure - R
17	19.12.2017	Commissioning Certificate	Certifying that Solar Energy Inverter of petitioner near Beejehalli village, with equipment's interconnecting to KPTCL grid at 66/11kV S/s PD Kote commissioned on 18.12.2017.	Annexure - S
18	01.02.2018	Petitioners letter to KPTCL	Load restriction from KPTCL for 30 MW Solar Project connected to PD Kote 66/11kV S/s.	Annexure - T
19	20.02.2018, 26.07.2018, 17.09.2018, 28.11.2018, 21.02.2019, 24.05.2019, 08.07.2019, 14.08.2019, 25.10.2019, 31.01.2020, 25.06.2020, 10.08.2020, 27.10.2020, 04.02.2021.	Petitioners letter to KPTCL for time extension.	Requesting time extension for interconnection / for provisional interconnection approval/ Regular interconnection approval at Beejehalli village Solar Plant.	Annexure - U (colly)

20	13.03.2018, 28.05.2018, 23.08.2018, 29.01.2019, 12.03.2019, 05.07.2019, 07.09.2019, 19.11.2019, 02.09.2020.	KPTCL letters to petitioners - granting time extension.	Time extension for provisional interconnection approval for PD Kote Solar Project executed for 30MW at Beejehalli village without changing connectivity S/s.	Annexure – V (Colly)
21	26.07.2018	KREDEL letters to Petitioner	Provisional Commissioning Certificate issued to Petitioner certifying that it has successfully commissioned full 30MW AC capacity on 19.03.2018 at Solar PV generation project Beejehalli village.	Annexure - W
22	28.09.2018	SECI letter to Petitioner	Declaration of Provisional COD on 18.04.2018 with provisionally applicable tariff Rs. 4.43 /kWh	Annexure - X
23	23.08.2018	Petitioners letter to SECI	Seeking intervention for resolution of generation backdown issue faced at PD Kote 30 MW Solar Power Plant.	Annexure - Y
24	11.09.2018, 01.10.2018, 11.10.2018, 23.10.2018, 15.11.2018, 22.11.2018, 29.11.2018, 07.12.2018, 19.12.2018, 15.01.2019, 25.01.2019, 19.03.2021.	Petitioners letter to SECI	Seeking intervention for resolution of generation backdown issue faced at PD Kote 30 MW Solar Power Plant.	Annexure – Z (colly)
25	04.01.2019 & 13.02.2019	Meeting notice and MoM	Notice issued by KPTCL for joint meeting between the developer and KPTCL convened on 08.01.2019. It was informed that 3 rd 100 MVA 220/66kV Power transformer at Hiriur is likely to be completed by March 2019.	Annexure - AA
26	08.07.2019	Petitioners letter to KPTCL	Requesting for the issue of interconnection approval for Beejehalli Plant.	Annexure - AB
	25.07.2019	KPTCL letter to petitioner	Request to furnish balance documents / information.	
27	21.08.2019	Petitioners letter to KERC	Regarding curtailment backdown of generation faced by petitioner.	Annexure - AC
28	--	Syst Simulation report	PVsyst – simulation report - Grid-connection system - new project PD Kote.	Annexure - AD
29	--	Detailed computation Gen-loss prepared by the petitioner.	Gen-loss for financial year 2018 to 2022 and PPA loss in Cr.	Annexure - AE

- i) The Karnataka Electricity Grid Code, 2015 (Grid Code) clearly states that it is the obligation of KPTCL (being a STU) to plan and construct adequate transmission system for the evacuation of power. The STU shall carry out planning process from time to time as per the requirement for identification of intra-state transmission system including transmission system associated with generation projects. The conduct of KPTCL by indefinitely delaying the construction of evacuation infrastructure associated with petitioner solar project is in contravention of the mandate under JNN SM guidelines, which makes it clear that KPTCL has been entrusted with responsibility of providing connectivity to the Solar Projects with the grid.
- j) The reduction in generation on account of curtailment of evacuation beyond delivery point by KPTCL is having a direct impact on the Solar PV Modules, as Solar Panels when left idle tend to degrade, thereby reducing the life of the modules, and thus causing irreparable loss to the petitioner who has invested heavily in the Solar Project. The petitioner submitted its bid based on terminal feasibility approval by KPTCL and the representations made therein, i.e., the connectivity to the state grid will be provided within a period of 13 months from the date of signing of the PPA. The petitioner acted on these promises / representations, invested heavily in constructing the solar project. The promises / representations are thus, enforceable on the principles of *"promissory estoppel and legitimate expectation."*

k) The petitioner relied upon the following decisions: -

- i) Motilal Padampat Sugar Mills Co. Ltd., V/s State of Uttar Pradesh & Ors., (1979) 2 SCC 409.
- ii) GUVNL V/s GERC & Ors., Appeal No. 279 of 2013.
- iii) Delhi Cloth and General Mills Ltd., V/s Union of India (1988) 1 SCC 86.
- iv) Monnet Ispat and Energy Ltd., V/s Union of India (2012) 11 SCC.
- v) Gujarat State Financial Corporation V/s M/s. Lotus Hotel Private Ltd., (1983) 3 SCC 379.
- iv) Tata Power Company Ltd, V/s MERC & Ors., Appeal No. 175 of 2012.

The principles envisaged in the dictum is very clear that where misfeasance is established on behalf of the statutory authority, the party suffering losses on account of misfeasance is entitled to claim compensation. Hence sought for allowing the petition for the reliefs prayed in the petition.

3) The 1st respondent filed statement of objection and contended that the petition is devoid of any merits and the same needs to be dismissed.

- a) The petitioner has entered into a PPA with respondent No. 2 (SECI) under the Jawaharlal Nehru National Solar Mission (JNNSM). Subsequently, the petitioner commissioned the plant on 18.12.2017 the commission certificate is annexure – S. Thereafter, the petitioner sought for connectivity to the state grid by applying to the respondent No.1 (KPTCL). The petitioner alleged that the KPTCL has not constructed the following lines (upstream work) shown in the table, which has hindered the petitioner in evacuating its entire capacity.

Table No.4

a	66kV 2 nd Circuit line between PD Kote & Hariyabbe S/s with coyote conductor.
b	66kV 2 nd Circuit line between 220/66kV Hiriure & upot Hariyabbe Tap point with Coyote ACSR conductor .

b) The Petitioner has sought for compensation for generational loss on account of non-commissioning of the upstream works by the respondent No.1. The petitioners claim for compensation does not emerge as a statutory right; in fact, the entire petition is based on the ground of 'promissory estoppel'. The 1st respondent vide its letter dated 20.05.2016, responded to the request for selection (RfS) issued by SECI, confirming the technical feasibility of the connectivity of the petitioner's plant to the 66/11kV, PD Kote S/s in Chitraduraga District. It is the petitioners claim that upon the assurance of technical feasibility given by the 1st respondent, the petitioner has proceeded with the project. In defence the relevant documents placed by the 1st respondent for adjudication of the instant dispute are encapsulated in table below: -

Table-5

SL No.	Date	Correspondence Letters	Particulars	Annexures
01	11.08.2016	Application for Power Evacuation	Petitioners request to KPTCL (R-1) for power evacuation approval for 30 MW Solar Project near Beejehalli village.	Annexure – R1
02	19.09.2016	Letter issued by 1 st respondent	KPTCL directed the petitioner to remit processing fee.	Annexure – R2
03	04.01.2017	Feasibility Report	KPTCL Chief Engineer given 'feasibility Report' indicating that evacuation of proposed 30MW is not feasible with the present transmission network.	Annexure – R3

04	15.02.2017	Tentative Evacuation Scheme	KPTCL accorded tentative evacuation scheme by disclosing the fact that stringing of 2 nd circuit 66kV line with Coyote Conductor between 66kV PD Kote and 66kV Hariyabbe S/s is yet to be completed and petitioner made aware of the constraints in evacuation of power.	Annexure – R4
05	06.03.2017	Petitioners letter to KPTCL	Petitioner's acceptance of tentative evacuation scheme for 30 MW Solar Project at PD Kote village.	Annexure – R5
06	20.03.2017	Regular Evacuation Scheme	KPTCL intimated to petitioner regarding regular evacuation scheme for 30 MW Solar Project at PD Kote village.	Annexure – R6
07	13.06.2017	Petitioners Letter to KPTCL	Petitioners request for single circuit line on DC Towers at PD Kote project.	Annexure – R7
08	24.07.2017	Petitioners letter to KPTCL	Petitioner seeking KPTCL to continue the initial evacuation scheme dated 20.03.2017.	Annexure – R8
09	16.10.2017	Petitioners Letter for submission of document to KPTCL.	Petitioner submitted document for issuing synchronization/ interconnection approval for Solar Plant at Beejhalli village.	Annexure – R9 (colly)
10	13.10.2017	Petitioners undertaking letter.	Petitioners undertaking for system constraints of their generation, undertake that KPTCL will not hold responsible for loss of generation from 30 MW SPP at Beejhalli village.	
11	29.08.2018	Petitioners letter to Director KPTCL	Proposal for construction of 66kV SC line using AL59 conductor from PD Kote S/s to Hiriyr S/s in existing DC tower by self - execution Scheme under KPTCL supervision for evacuation of 30 MW Solar Generation.	Annexure – R10

c) No contractual obligation on KPTCL to construct the upstream work. The petitioner's claim for compensation for generation loss is on account of non-construction of the upstream work is founded on the ground of 'promissory estoppel and legitimate expectation'. It does not arise out of any 'contractual obligation' between the petitioner and 1st respondent,

as the PPA dated 02.08.2016 was entered into between petitioner and the 2nd respondent only. The petitioner has claimed the generation loss on the ground of 'promissory estoppel' owing to the KPTCL letter dated 20.05.2016 (Annexure – F) addressed to 2nd respondent (SECI). Wherein, 1st respondent (KPTCL) has committed to provide connectivity to the grid within 13 months from the date of signing of the PPA. The petitioner failed to observe that letter is addressed to 2nd respondent (SECI) and not to the petitioner. The letter cannot be relied for invoking promissory estoppel in favour of the petitioner.

- d) The tentative evacuation scheme clearly states that the upstream works are pending completion. The petitioner has given undertaking letter dated 13.10.2017 stating "to not to hold the KPTCL (R-1) liable for the loss in generation" on account of any grid constraints. The Commission already held in O.P No. 20/2019 that "if the generator has accepted the conditions of the tentative evacuation approval, the same acts as an estoppel from claiming generation losses".
- e) The 'force majeure' events are an exception to the rule of 'promissory estoppel and legitimate expectation'. That several hindrances outside the control of 1st respondent prevented the completion of the upstream works. Right of way (RoW) issues, obstructions by civilians, and COVID - 19 has a direct impact on the completion of the upstream works. The 1st respondent has tried to mitigate and explore alternate means of performance. Reliance is placed on clause 16.4 of Transmission License of the respondent No.1 "The licensee shall not be in breach of its

obligations if it has failed to meet the Transmission Planning and security and Transmission operating standards due to force majeure events".

- f) The ROW and COVID-19 issues and the Measures adopted by the 1st respondent are produced in tabular form: -

Table-6

Sl.no.	Date	Subject	Particulars
01	1994	66kV Hariyabbe line was constructed on single circuit towers with coyote conductor.	Line is overloaded due to renewable energy generation by 3 generators (including petitioner)
02	15.02.2017	Petitioner was granted tentative evacuation scheme.	The petitioner was notified of the Transmission infrastructure was pending completion.
03	04.11.2017	75 th TCC meeting held.	Respondent approved the replacement and construction of 66 kV Hariyabbe line.
04	13.09.2019	DPR was submitted for Rs. 1965 lakhs.	DPR was approved on 05.02.2020.
05	11.03.2020	Tender were invited.	No bids were received, outbreak of COVID-19 – respondent not able to locate bidders.
06	13.11.2020	Short term tender for DPR – Single bidder participated.	Letter of intent was issued to the bidder on 05.02.2021 with target date for completion of work by 04.11.2021.
07	--	The work was impacted on account of COVID – 19.	Which affected the contractor and the workers.

The respondent No.1 has taken steps to ensure the strengthening of the transmission system in a timely manner. There was protest by farmers and to face the protest of the farmers 1st respondent had sought for police assistance to complete the upstream work. It shows the reasonable efforts made by 1st respondent (KPTCL) to comply with the Upstream Works.

- g) The respondent cannot be held liable for the commercial decision of the petitioner. The petitioner was aware of conditions and transmission constraints in the tentative evacuation scheme. The petitioner could have opted for change in sub-station. It is further made clear in regular evacuation approval that for any back down of generation, on account of transmission / grid constraints the respondents cannot be held liable. The petitioner cannot 'approbate and reprobate' to suit its cause.
- h) KPTCL is one among the best transmission utilities in the country, consistently reducing transmission losses and achieving transmission losses less than 3% during FY – 2022. It proves that KPTCL is acting diligently to facilitate evacuation of IPPs in the State. The respondent has not restricted the petitioner from changing the location / changing the sub-station. The 1st respondent to the best of its ability enabled the petitioner to Commission its project providing tentative / regular evacuation approval and interconnection approval in a timely manner. It is the commercial decision of the petitioner to opt for the PD Kote S/s after being aware of the transmission constraints for which the 1st respondent cannot be held liable. Hence, sought for dismissal of the petition.
- 4) The respondent No. 2 so far not appeared despite issue of notices.
- 5) The petitioner filed rejoinder to the objection filed by 1st respondent. The gist of it may be stated as follows: -
- a) The failure on part of KPTCL to fulfil statutory obligation to provide infrastructure of upstream work required for evacuation of power lead to generation loss. As per grid code KPTCL, being the STU is obligated to

plan and construct transmission system for the evacuation of power. The contention of KPTCL regarding 'force majeure' events (i.e., Right of way issue and COVID-19 Pandemic) are false. The KPTCL has miserably failed to provide supportive documents seeking police intervention and details of meeting regarding the alleged right of way issue.

b) First Lockdown due to COVID – 19 was announced on 25.03.2020. The regular evacuation scheme approval issued by KPTCL on 20.03.2017 and the provisional interconnectional approval provided on 12.12.2017. The KPTCL if conducted in diligent manner and fulfilled its statutory obligations, it would not have been impacted by 'force majeure' events of COVID-19. The KPTCL did not issue any force majeure notice to the petitioner for claiming excuse from fulfilment of its obligation to develop the requisite infrastructure at K D Kote S/s. Therefore, KPTCL cannot be permitted to take advantage of 'force majeure' events of COVID-19 to justify its failure.

c) The petitioner's claim is not only based on 'promissory estoppel and legitimate expectation' but also founded on KPTCL failure to fulfil its 'statutory obligations' under the Electricity Act, 2003 r/w Grid Code. Further, the petitioner's claim is also based on 'tortious liability' on account of negligence of KPTCL in completion of evacuation facility within a reasonable time. The KPTCL being well equipped to determine the constraints of the existing transmission network, negligently granted a regular evacuation approval to the petitioner, which attract liability to pay compensation.

- d) The contention in defence, that there is no contractual relationship between KPTCL and petitioner is erroneous and untenable in law. The KPTCL has an undeniable and inevitable obligation to undertake advance planning so as to timely execute the requisite transmission infrastructure facility in the light of approval granted to the petitioner. There is a legal and formal relationship inter-alia between the parties and the KPTCL failed to discharge its 'statutory obligations' and caused negligence in completing the evacuation facility within a reasonable time which attracts tortious liability.
- e) The petitioner relies upon section 73 of the Indian Contract Act, 1872 which provides: -

“When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

In this case, KPTCL incurred an obligation resembling those created by contract by virtue of its letter dated 20.05.2016 and the minutes dated 13.02.2019 of meeting held on 08.01.2019 and failed to discharge the same entitling the petitioner to receive the compensation.

- f) The contention of the KPTCL that it was the petitioner's commercial decision to opt for P D Kote S/s and not changed the location in the absence of requisite transmission infrastructure is entirely ill-founded and untenable. It is a 'Settled Principle' that a party in default cannot take

advantage of its own wrong. The KPTCL cannot be permitted to claim discharge from its liability towards the petitioner by alleging that the petitioner took a commercial decision to develop the Solar Project at the agreed site and not changed the site of the Solar Project.

g) In the present case the PPA was signed on 02.08.2016 and KPTCL ought to have provided connectivity with the grid by 02.09.2017, KPTCL fail to highlight any 'Force Majeure Events' up to that period. Even in TCC meeting held on 04.11.2017 the KPTCL has not provided any details or reasons to explain the delay in approval of replacement and construction of the 66 KV Hariyabbe line. The KPTCL has not taken any steps to ensure the strengthening of the transmission system in timely manner. The present case is an example of manufactured grid constraint on account of not developing requisite transmission infrastructure, despite having issued relevant approvals to generators. Hence, sought for rejecting the contentions raised in the objection filed by the 1st respondent and to allow the petition and pass such other order as the commission may deem fit under the facts and circumstance of the case.

6) On the pleadings of the parties and the documents produced in this case and on the submissions of the learned counsel, the following issues arises: -

Issue No.1: Whether the petitioner proves that there is negligence on part of the 1st respondent (KPTCL) to construct the "upstream work" for evacuation of power generated by the petitioner?

Issue No.2: Whether the principles of "Promissory Estoppel and Legitimate Expectation" could be relied by the petitioner on the basis of the representation made by the 1st respondent (KPTCL) to 2nd respondent (SECI) in the Technical Feasibility Report dated 20.05.2016 (Annexure-F)?

Issue No.3: whether the 1st respondent (KPTCL) proves that it has taken diligent steps to ensure the strengthening of the transmission system to facilitate evacuation of power from the Solar Project of the petitioner, but due to "Force Majeure" events the KPTCL was prevented from completion of the upstream work?

Issue No.4: Whether the petitioner is entitled to any compensation/ damages for the "Generation Loss", and if so from which date?

Issue No.5: Whether the petitioner is entitled to interest on the claim of generation loss?

Issue No.6: To which reliefs the petitioner is entitled to?

Issue No.7: What Order?

7) After considering the material on record and the pleadings and the submissions of the learned counsels for the parties, our findings on the above issues are as follows.

8) Issue No.1: Whether the petitioner proves that there is negligence on part of the 1st respondent (KPTCL) to construct the "upstream work" for evacuation of power generated by the petitioner?

a) The 1st respondent (KPTCL) is the State Transmission Utility (STU) as stated in Section 39 of the Electricity Act, 2003. The relevant portion of Section 39 (2) describing the functions of the STU is as follows:

"39 (2) The functions of the State Transmission Utility shall be –

(a) To undertake transmission of electricity through intra State transmission system;

(b) To discharge all functions of planning and coordination relating to intra-State transmission system with –

(i) Central Transmission Utility;

(ii) State Governments;

(iii) Generating Companies;

(iv) Regional Power Committees;

(v) Authority;

(vi) Licensees;

(vii) Any other person notified by the State

Government in this behalf;

(c) To ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres.

b) The 1st respondent (KPTCL) has issued tentative evacuation scheme approval dated 15.02.2017 (Annexure-K) and regular evacuation scheme approval dated 20.03.2017 and modified regular evacuation scheme dated 28.08.2017 (Annexure – M Colly.) and the petitioner proceeded with the Project work and the Project was commissioned on 18.04.2018. At the time of commissioning of the Project, the evacuation of the power from the Project was limited to 4-5 MW, subsequently it was increased. But the petitioner was unable to evacuate more than 4 MW to 12 MW Power out of its contracted capacity of 30 MW despite of achieving COD on 18.04.2018.

c) The KPTCL has not completed the upstream strengthening work of transmission lines stated in the evacuation scheme approvals, so as to enable evacuation of entire 30 MW power from the project. The KPTCL was obligated to construct the transmission line mentioned in the table – 2 that is: a) 66kV 2nd Circuit line between PD Kote & Hariyabbe S/s with coyote conductor. b) 66kV 2nd Circuit line between 220/66kV Hiriya & upto Hariyabbe Tap point with Coyote ACSR conductor. The KPTCL failed to develop requisite transmission infrastructure which resulted in

a situation where only "4 MW to 12 MW" power is evacuated out of total contractual capacity of 30 MW from the petitioner Solar Project.

d) The petitioner has made repeated reminders requesting for completion of the Project. Even after 3 years 8 months from the date of commissioning of the project, the upstream work are not yet completed. It is an established principle of law laid down by the Hon'ble Supreme Court of India, that "In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently."

e) We are of the considered view that there is a duty cast on the 1st respondent (KPTCL) to complete the upstream work stated in the evacuation scheme approvals, within a reasonable time. The KPTCL had expressed the "force majeure events" affected the construction of upstream work. But it cannot claim an indefinite period for completion of the said work at its whims and fancy. In case of inordinate delay in completing the evacuation system, which amounts to negligence on the part of the 1st respondent (KPTCL) attracting "tortious liability". It cannot rely on the undertaking given by the petitioner in 'Annexure – O' and 'Annexure – R9' dated 13.10.2017 not to claim generation loss for delay in completing the evacuation system. In this regard, the learned counsel for the petitioner relied upon the following decision: -

i) Hon'ble ATE Appeal No. 187/2015 dated 12.09.2016 TANGEDCO
V/s B&G Solar Pvt., Ltd., & Ors.,

- ii) Hon'ble ATE Appeal No. 307/2016 dated 13.12.2016 Subhash Infraengineers Pvt., Ltd., and Utrecht Solar Pvt., Ltd., V/s Haryana Electricity Regulatory Commission and Anr.

It is held that under section 38, 39, 40 and 42 of the Electricity Act, it is the duty of the transmission licensee to establish and operate an efficient, coordinated and economical system for flow of electricity from the generating stations.

The Karnataka Electricity Grid Code, 2015 (Grid Code) states that it is the obligation of KPTCL (being a STU) to plan and construct adequate transmission system for the evacuation of power. Pertinently, as per the provisions of the Electricity Act, and the statutory regime in place, the Grid Code is binding on KPTCL.

The KPTCL is bound to complete lines (upstream work) within a reasonable time and it cannot claim indefinite time period for completing the said work. Thus, there is negligence on part of KPTCL. For the foregoing reasons we hold issue No. 1 in the affirmative.

- 9) Issue No.2: Whether the principles of "Promissory Estoppel and Legitimate Expectation" could be relied by the petitioner on the basis of the representation made by the 1st respondent (KPTCL) to 2nd respondent (SECI) in the Technical Feasibility Report dated 20.05.2016 (Annexure-F)?

- a) The petitioner's holding company M/s HSEPL on 17.05.2016 approached 1st respondent (KPTCL) for pre-feasibility clearance to connect 30 MW Solar Power project at P.D Kote S/s. In response thereto, 1st respondent (KPTCL) issued Technical Feasibility Approval letter dated 20.05.2016 to SECI (Annexure-F), wherein it is confirmed the

technical feasibility of the connectivity of the proposed 30 MW solar PV project with the State Grid from 66/11 kV, P.D. Kote S/s in Chitradurga district. The material part of Annexure-F reads as follows:

- “1. M/s Hero Solar Energy Private Limited, New Delhi has approached us for providing connectivity for a Solar PV Project having a cumulative capacity of 30 MW; proposed to be located at Hiriyur Taluk, Chitradurga District, with the state grid at a voltage level of 66 kV.
 2. We confirm the technical feasibility of the connectivity of the plant with the State grid from 66/11 kV, P.D. Kote S/s in Chitradurga district.
 3. We further undertake that the connectivity with the grid will be provided with in a period of 13 (Thirteen) months from signing of PPA between M/s Hero Solar Energy Private Limited, New Delhi and Solar Energy Corporation of India Limited (SECI) or any further period as intimated by M/s M/s Hero Solar Energy Private Limited, New Delhi along with confirmation from SECI for such extended period.
- b) Annexure-F dated 20.05.2016 is signed by the Chief Engineer (Electy), (Planning & Coordination), an Authorised Signatory of the KPTCL. The promise and commitment made in this letter is that the connectivity with the grid would be provided within a period of 13 months from signing of the PPA between the petitioner and the SECI or any further period as intimated by the petitioner along with confirmation from SECI. Such extended period is very clear and unambiguous. Such promise and commitment amounted to promissory estoppel as against the 1st respondent (KPTCL), had there not been subsequent retraction of such promise and commitment.

- c) On 02.07.2016 letter of intent was given to M/s HSEPL by SECI to develop 30 MW Solar projects at P.D Kote S/s. M/s HSEPL created petitioner company as SPV. "On 02.08.2016 the PPA was executed between petitioner with SECI". On 28.06.2019 amended PPA was executed with amended location of the project from P.D Kote, Hiriyuru Taluk, Chitradurga District to Beejihalli village, Thadakalur, Sira Taluk, Tumkuru District, Karnataka State. On 02.08.2016 VGF securitization agreement was executed between petitioner and SECI. Amended VGF securitization agreement was executed on 28.06.2019 regarding the change of location of the project. On 11.08.2016 the petitioner requested for power evacuation from Beejihalli Solar Power Project.
- d) The tentative evacuation scheme dated 15.02.2017 (Annexure-K) as well as the regular evacuation scheme dated 20.03.2017 (Annexure-M) states that evacuation of power from the project would commence only after completion and commissioning of strengthening work of upstream transmission lines stated in the said approvals. The petitioner accepted the said condition stated in tentative evacuation scheme as per letter of acceptance dated 06.03.2017 (Annexure-L) and requested to issue the regular evacuation scheme.
- e) On 20.03.2017 KPTCL informed the petitioner about regular evacuation for P.D Kote Solar Project (Annexure – M). On 28.08.2017 KPTCL informed petitioner about modification to regular evacuation

scheme for the proposed 30 MW Solar Power Project at P.D Kote Village, Chitradurga district. Further, on 13.10.2017 the petitioner while modification to regular evacuation scheme gave an "undertaking" that, they will backdown the generation as per the instruction from KPTCL in the event of Line outages / Grid constraints etc., and KPTCL is not liable for the generation loss from the 30 MW SPP at Beejihalvi village, Tumkur District, connected to 66/11KV SSP P.D Kote, Hiriyur Taluk, Chitradurga District."

- f) The petitioner on 13.10.2017 submitted documents for synchronization/ inter-connection approval for Beejihalvi Solar Power Plant. On 12.12.2017, the KPTCL informed the petitioner regarding provisional inter-connection as per Annexure-R. It is clear from the proceedings that the respondent (KPTCL) undertaken to complete the upstream work as informed to SECI. Even though there is no direct contract between the petitioner and the KPTCL, there is a statutory duty under Section 38, 39, 40 & 42 to establish and operate an efficient, coordinated and economical system for flow of electricity from the generating stations. There is promissory estoppel as KPTCL made promise to SECI to give connectivity with the Grid within a period of 13 months from the date of signing of the PPA. It has also confirmed the technical feasibility of the connectivity of the plant with the State Grid from 66/11 kV, PD Kote S/s in Chitradurga district. The doctrine of 'legitimate expectation' is a synthesis of

principles of administrative fairness and the rule of estoppel, thus comes to the aid of petitioner.

- g) The petitioner has relied upon the decision in Motilal Padampat Sugar Mills Company Limited Vs. State of Uttar Pradesh & Others, (1979) 2 SCC 409. It is observed by the Hon'ble Apex Court that "where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not".
- h) Here in this case, the representation made by KPTCL to SECI is that the connectivity with the Grid will be provided within a period of 13 months from signing of the PPA or in such further period as intimated to the petitioner along with the confirmation from SECI for such extended period, pre-supposes the promissory estoppel under Section 115 of the Indian Evidence Act, 1872, as the petitioner acted upon such representation. Hence, KPTCL cannot go back and say that the undertaking given by the petitioner relieves it from liability for loss of generation due to system constraints. Here in this case, the

system itself is not provided or built by the KPTCL to transmit the power of 30 MW generated by the project. If transmission line "upstream works" are built and thereafter if the system constraints/outages/grid constraint etc., arises then only the KPTCL can be absolved by its liability. The undertaking of the petitioner to relieve the KPTCL from its liability for generation loss extends on completion of upstream works. Therefore, the representation, declaration, act or omission intentionally caused by KPTCL to SECI, made to believe the petitioner that such promise to do the work or carry out those things to be true and the petitioner has acted upon such belief and supposition and ventured in to the project. Therefore, there is promissory estoppel in this regard to complete the upstream works.

- i) The petitioner relies upon Section 73 of Indian Contract Act, 1872, which provides that a person injured by the failure to discharge an 'obligation resembling' those created by contract is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. In this case, the KPTCL incurred an obligation resembling those created by contract by virtue of its letter dated 20.05.2016 and minutes dated 13.02.2019 of the meeting held on 08.01.2019 and failed to discharge the obligation to construct upstream works.
- j) The petitioner has also relied on GUVNL Vs. GERC & Others in Appeal No.279 of 2013. It is observed by the Hon'ble ATE that the doctrine

of promissory estoppel and legitimate expectation is applicable when:

- "(i) A party makes an unequivocal promise or representation to the other party, which in effect create legal relations or affect the legal relationship to arise in the future.
 - (ii) The other party believing it is induced to act on the faith of it to act to its detriment/to invest. In other words, the party invoking the doctrine has altered its position relying on the promise.
 - (iii) Private parties in dealing with the Government have legitimate expectation to be dealt with regularity, predictability and certainty.
 - (iv) Legitimate Expectation is capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis.
 - (v) Denial of legitimate expectation amounts to denial of rights guaranteed to a party by the Government."
- k) The petitioner invested in the Solar Project relying on the promise and representation made by the KPTCL. The KPTCL cannot go back and deny the adequate grid connectivity to the petitioner's solar project. KPTCL is liable to make good the losses incurred by the petitioner to certain extent due to non-evacuation of the total generating capacity of 30 MW. The liability of KPTCL for generation loss arose due to the statutory obligation to provide connectivity to the State Grid from the generating station by constructing transmission system for evacuation of power. That apart the KPTCL can claim exemption of time on accounts of "force majeure events" which prevented it from completion of transmission system.

l) Therefore, the principles of promissory estoppel and legitimate expectation coupled with statutory obligation may be enforced even in the absence of direct contractual relationship between the petitioner and the KPTCL. The KPTCL, SECI and State Transmission Utilities are all functioning under the statute as statutory body and duty bound to provide certain transmission system to evacuate the power from the project as per Electricity Act and Rules. For the foregoing reasons, Issue No.2 is answered in affirmative.

10. Issue No.3: whether the 1st respondent (KPTCL) proves that it has taken diligent steps to ensure the strengthening of the transmission system to facilitate evacuation of power from the Solar Project of the petitioner, but due to "Force Majeure" events the KPTCL was prevented from completion of the upstream work?

a) It is relevant to take note of the defence taken by KPTCL to determine, whether there is negligence to construct the upstream work or it has taken diligent steps to ensure the strengthening of the transmission system to facilitate the evacuation of power from the petitioner's solar power project. Clause 16.4 of Transmission, Planning & Security Standards, provides that "the licensee shall not be in breach of its obligations under its license if it has failed to meet the transmission planning and security standards or the transmission operating standards due to 'Force Majeure' events. Provided that, the licensee has used its reasonable efforts, to comply with the transmission planning and security standards or the transmission operating standards as the case may be."

b) According to the Karnataka Electricity Grid Code, 2015, Article 2.36

'Force Majeure' means any event which is beyond the control of the persons involved, they could not foresee or with a reasonable amount of diligence could not have foreseen or which could not be prevented and which substantially affects the performance by a person. The 1st respondent (KPTCL) could not able to take up the work due to outbreak of COVID-19 and Right of Way issues (RoW). In spite of it, the diligent measures adopted by the respondents are depicted in the following table: -

Table - 7

Date	Subject	Particulars
15.02.2017	Petitioner was granted tentative evacuation scheme.	The petitioner was notified of the Transmission infrastructure was pending completion.
04.11.2017	75 th TCC meeting held.	Respondent approved the replacement and construction of 66 kV Hariyabbe line.
13.09.2019	DPR was submitted for Rs. 1965 lakhs.	DPR was approved on 05.02.2020.
11.03.2020	Tender was invited.	No bids were received, outbreak of COVID-19 – respondent not able to locate bidders.
13.11.2020	Short term tender for DPR – Single bidder participated.	Letter of intent was issued to the bidder on 05.02.2021 with target date for completion of work by 04.11.2021.
-	The work was impacted on account of COVID – 19.	Which affected the contractor and the workers.

c) The above facts reveal that the 1st respondent has taken certain steps to ensure the strengthening of the transmission system in a timely manner. The 1st respondent has faced protest from farmers and

inevitably filed complaint with the concerned police on 05.02.2022 and 11.02.2022 and taken police assistance while attempting to complete the upstream work.

- d) In defence the respondent stated that, the petitioner was knowing the transmission constraints in the tentative evacuation scheme. The petitioner could have opted for change in sub-station but that is not done. The petitioner ought to have chosen a distinct sub-station after being informed of the transmission constraints at P.D Kote S/s. The petitioner was aware of generation curtailment backdown issue faced at PD kote for 30 MW Solar Power Plant and requested intervention of SECI to resolve the same. Even the location of the petitioner's project was changed and amended PPA was executed on 28.06.2019. Therefore, the respondent contended that it is not liable for the generation loss for the commercial decision of the petitioner.
- e) On perusal of the facts and circumstance of the case and documentary evidence it is clear that the 1st respondent has not provided power transmission facility as per the representation made to SECI in Annexure -F. The time stipulated for connectivity with the grid is within a period of 13 months from signing the PPA between M/s Hero Solar Energy Private Limited (HSEPL) and Solar Energy Corporation of India Ltd., (SECI). The PPA was executed on 02.08.2016 and 13 months expires on 02.09.2017. But the strengthening of transmission line is not completed till now. The respondent cannot claim indefinite period for

completion of the said work. The inordinate delay on part of 1st respondent (KPTCL) attracts tortious liability.

- f) Even though the respondent has pleaded that the Covid – 19 period and RoW issue and other genuine factors impaired the construction of upstream work, the respondent ought to have taken the work on priority basis so as to avoid any generation loss. The petitioner even obliged to take up the construction of upstream work on self-execution basis. But the 1st respondent has neither accorded permission nor responded to the letter of request given on 29.08.2018 by the petitioner to the director KPTCL (Annexure-10).
- g) Therefore, the intent of 1st respondent is very clear that it has determined to take up the upstream work of transmission line by itself. The 1st respondent had statutory obligation as well as having responsibility on principles of "promissory estoppel and legitimate expectation" to complete the upstream work or to provide alternative transmission line to evacuate 30 MW power generated by the petitioner's project. Therefore, there is some extent of negligence on part of 1st respondent in non-evacuating the power generated in the petitioner's project.
- h) The Technical Feasibility Report dated 20.05.2016 given by KPTCL to SECI also confirms that the connectivity of the petitioner's P.D Kote Solar Project will be connected to the State Grid within 13 months from the date of signing the PPA. The PPA was signed on 02.08.2016 if we consider 13 months from the signing of PPA for completion of

upstream work for transmission of power generated by the petitioner's Solar project at P.D Kote to Hiriyr the construction would have been completed within 02.09.2017. The tentative evacuation approval was given on 15.02.2017 as per Annexure – K and regular evacuation approval was given on 20.03.2017 as per Annexure – M in spite of it there is an inordinate delay of 7 to 8 months in calling TCC meeting for approving the replacement and construction of 66 kV Hariyabbe line. Further, the DPR was prepared on 13.09.2019 with the delay of almost two years from TCC meeting. Further delay of 06 months was caused to invite tender on 11.03.2020. All these aspects and events shows that there are laches on part of KPTCL in completing the upstream work within stipulated time.

- i) Under the facts and circumstances of the case we are constrained to observe that in addition to Force Majeure circumstance “on account of lackadaisical approach and attitude and ineffectiveness in executing the work” caused delay which led to the generation loss.
- j) However, the KPTCL inadvertently omitted to plead some important aspects and relevant facts and subsequent events in OP 20/2019. But in this case the KPTCL has diligently covered those facts in defence and pleaded and placed material facts and “force majeure events” such as COVID -19, RoW issues subsisting, complaint lodged, the detailed project report prepared, the tender called but no bidders applied for accepting the tender due to Covid-19. The Short-term tender for DPR was called and single bidder participated in the bid

and letter of intent was issued to the bidder with target date for completion of work by 04.11.2021. Those factors being subsequent events of that case in OP No. 20/2019 hampered the upstream work which are relevant to determine the date from which generation loss has to be assessed in this case.

- k) Apart from the period of 13 months' time provided from the date of signing the PPA dated 02.08.2016, there are 'force majeure events' like RoW, Covid-19 affected the upstream work. On 04.11.2017 TCC meeting held and respondent approved the replacement and construction of 66 kV Hariyabbe line. There was change of location of the project as per amended PPA dated 28.06.2019 from P.D Kote, Chitradurga District to B.G halli Tumakuru District. On 13.09.2019 Detailed Project Report (DPR) was submitted for Rs. 1965 lakhs and the same was approved on 05.02.2020. On 11.03.2020 tender was invited but no bids were received due to outbreak of Covid – 19. The 1st respondent could not able to locate bidders. On 13.11.2020 short term tender for DPR was called and single bidder participated. On 05.02.2021 letter of intent was issued to the bidder with target date for completion of the work by 04.11.2021. The work of the contractor was impacted on account of Covid-19. All these factors reveal that the 1st respondent (KPTCL) has subsequently taken diligent steps in its attempt to complete the transmission line. But there is an inordinate delay in providing the transmission facility and the stage of work is not forthcoming from the 1st respondent. Therefore, the period of

negligence has to be computed on considering cumulative effect of all these facts. The negligence on part of the 1st respondent could be attributed to the period after Covid-19. The negligence is to be reckoned from 05.11.2021, as the letter of intent issued to the bidder set the date 04.11.2021 for completion of the upstream work. In view of RoW issue prevailing right from the beginning of the project and surge in COVID-19 in regular intervening periods and change in location of the project, we are of the considered view that subsequent events of tender and no bidder participated due to COVID-19 and short-term tender for DPR was called and single bidder participated and the time for completion of the work was given by 04.11.2021 are the factors to be considered for awarding compensation for generation loss. The additional evidence of subsequent facts in support of the defence placed by KPTCL ought to be considered in this case to determine the period of generation loss. Therefore, there is some variance and modification as to the date of awarding the compensation for generation loss in this case. Hence, issue no. 3 is answered accordingly.

11. Issue No.4: Whether the petitioner is entitled to any compensation/ damages for the "Generation Loss", and if so from which date?

a) In view of the findings on issue No. 3 in partly affirmative, it is to be held that the petitioner is entitled to compensation / damages at the PPA rate of tariff of Rs. 4.43/kWh for the generation loss to the extent to

which the generation from the power project of the petitioner could not be evacuated between 05.11.2021 till the transmission congestion/ constraint subsist.

- b) The petitioner sought for the relief to issue directions to 1st respondent to compensate the petitioner at the PPA tariff of Rs 4.43/kWh for the generation loss to the extent for which the generation from the petitioner's Solar Project could not be evacuated from 18.04.2018 till 31.12.2021 which is Rs. 39,50,00,000/- (Rupees Thirty - Nine Crores and Fifty Lakhs Only) along with interest @ 18% per annum, as per the statement of actual generation loss (Annexure- AE). The petitioner has pleaded and explained how it arrived at actual generation achieved for different billing months stated in the tabular columns. The 1st respondent (KPTCL) has not replied on this aspect in its statement of objections or in any further proceeding with technical expert's report. The petitioner has been aware of all these practical difficulties and also the responsibilities and difficulties of the KPTCL, has kept quiet for long period without demanding for any kind of generation loss or damages from 2018 till the date of decision of Solitaire case in OP No 20/2019. This is clearly showing that the petition is filed only with an afterthought. In this regard it is noted that the petitioner has not produced any satisfactory material to establish the generation deemed to have been achieved and quantified by it, we are not in a position to arrive at a quantum of generation loss pleaded by the petitioner. Actually, the quantum of generation loss from 05.11.2021 till

the date of this order and generation loss from the date of this order till the date of transmission congestion/constraint subsists has to be ascertained for determination of compensation to be awarded in favour of petitioner. For the above reasons we hold issue No. 4 accordingly.

12. Issue No.5: Whether the petitioner is entitled to interest on the claim of generation loss?

- a) We found that the petitioner is entitled to compensation/damages for the generation loss to the extent to which the generation from the power project of the petitioner could not be evacuated from 05.11.2021 till the transmission congestion/constraint subsists. Therefore, we think it is just and proper to allow the relief for the compensation/damages from 05.11.2021 up to the date of the transmission congestion/constraint remains. The said claim is in the nature of future mesne profits.
- b) The award of interest from the date of suit till the date of realisation of the amount ordered to be paid, is governed by the principles stated in Section 34 of the CPC. The Court has the discretion to award interest taking into consideration the relevant facts of the case. This principle is also applicable for awarding interest by this Commission. Due to non-evacuation of entire generation, the 1st respondent (KPTCL) has also not derived any benefit. The liability to pay the compensation was fixed against the 1st respondent (KPTCL) on the

basis of tortious liability arising out of negligence in completing the evacuation facility within reasonable time.

c) Therefore, we are of the considered view that the interest may be awarded at 6% per annum from the date of default till the date of payment, but not at 18% per annum as claimed by the petitioner in the petition.

d) For the above reasons, we hold Issue No.5 accordingly.

13. Issue No.6: To which reliefs the petitioner is entitled to?

a) The 1st respondent (KPTCL) has already undertaken to complete the evacuation infrastructure. The Commission cannot fix the date for completing the said upstream work/providing evacuation infrastructure. However, the Commission can allow compensation for not having completed the required work within the reasonable time as determined while answering issues. Therefore, we are awarding the compensation as per the final order.

14. Issue No.7: What Order?

a) In the facts and circumstances of the case noted above, the Commission is constrained to observe that in-spite of specific direction issued by the Commission to the KPTCL to complete the upstream work for evacuation of power within the time specified and also as per the undertaking given by the 1st respondent KPTCL in the form of affidavit in the Solitaire case the work is yet to be completed. In this regard the Commission is of the view that the Energy Department and KPTCL to

hold proper enquiry and should take appropriate action on the concerned officials of the KPTCL involved in this regard and fix the responsibility and make them accountable for the loss caused to the KPTCL.

- b) For the forgoing reasons we have come to the conclusion that the petitioner is entitled to the relief as per the following:

O R D E R

The petition is partly allowed holding that:

- (i) The petitioner is entitled to compensation/damages at the PPA rate of tariff of Rs.4.43 per unit for the generation loss to the extent for which the generation from the Power Project of the petitioner could not be evacuated between 05.11.2021 till the transmission congestion/constraint subsists;
- (ii) The petitioner shall submit to the Commission, the calculation showing the monthly generation losses from 05.11.2021 to the date of this Order within eight weeks from the date of this order, marking a copy of the same to the 1st respondent (KPTCL);
- (iii) The generation loss so claimed in sub-para (ii) of this Order would be verified and determined by the Commission after hearing the petitioner and 1st respondent (KPTCL), and the generation loss and the compensation amount so determined and found due shall be paid in lump-sum by the 1st respondent (KPTCL) to the petitioner within 8 (eight) weeks from the date of that order of verifying and determining the calculations. In default of payment of compensation by

the 1st respondent (KPTCL), it shall pay interest at 6% per annum on the said amount so found due from the date of default till the date of payment;

- (iv) The petitioner shall submit its claims for compensation/ damages at the rate of agreed tariff of Rs.4.43 per unit for the generation loss to the extent for which the generation from the Power Project of the petitioner could not be evacuated between the date of this Order and the dates up to which the transmission congestion/constraint subsists on quarterly basis to the 1st respondent(KPTCL), and the compensation/ damages so claimed is subject to verification and scrutiny of this commission and shall be paid within one week from the date of such order, in default the 1st respondent (KPTCL) shall pay interest at 6% per annum on the amount so determined from the date of default till the date of payment;
- (v) The Energy Department and KPTCL shall have to enquire into the lapses on part of the concerned officials and to take action as observed in para 10(h) and para 14(a).
- (vi) Except to the extent stated above, the petitioner is not entitled to any other reliefs as prayed for in the petition.
- (vii) The copy of the order be circulated to Additional Chief Secretary to the Energy Department for needful action.

sd/-
(P. RAVI KUMAR)
Chairman

sd/-
(H.M. MANJUNATHA)
Member (Legal)

sd/-
(M.D. RAVI)
Member