

APPELLATE TRIBUNAL FOR ELECTRICITY

SKV Law Offices Successfully Represents Radiance Punjab Renewable Private Limited Before APTEL in Solar Tariff Reduction and Force Majeure Dispute

SKV Law Offices successfully represented Radiance Punjab Renewable Private Limited (“Radiance”) before the Hon’ble Appellate Tribunal for Electricity (“APTEL”) in Appeal No. 200 of 2018, challenging the order dated 04.06.2018 passed by the Punjab State Electricity Regulatory Commission (“PSERC”) in Petition No. 24 of 2016, filed by Radiance’s predecessor-in-interest, M/s Azure Renewable Energy Pvt. Ltd., seeking extension of the Scheduled Commercial Operation Date (“SCOD”) of its 10 MW grid-connected rooftop solar project on account of Force Majeure events, with entitlement to the contracted tariff of Rs. 7.59 per kWh under the PPA dated 31.03.2015 executed with Punjab State Power Corporation Limited (“PSPCL”).

The project was awarded under the competitive bidding process conducted by the Punjab Energy Development Agency (“PEDA”) pursuant to the New and Renewable Sources of Energy Policy, 2012 of the Government of Punjab. By the impugned order, PSERC condoned a delay of only 29 days attributable to PSPCL in granting grid feasibility clearance, rejected the remaining Force Majeure claims, and consequently reduced the tariff applicable to the project from Rs. 7.59 per kWh to Rs. 5.09 per kWh.

SKV Law Offices argued on behalf of Radiance that:

1. Under Section 86(1)(b) of the Electricity Act, 2003 and the PSERC (Conduct of Business) Regulations, 2005, a PPA becomes effective and binding only upon approval by the State Commission; since the PPA dated 31.03.2015 was approved by PSERC only on 11.05.2015, the effective date and consequently the SCOD stood shifted, and the 41 days consumed in obtaining approval could not be counted against the developer;
2. The developer could not have been expected to commence execution of the project or incur expenditure on the basis of an unapproved PPA, and the Commission’s finding that preliminary and preparatory works were not hampered for want of approval was erroneous;
3. Non-issuance of a formal Force Majeure notice could not be held against the developer where the delay was caused by the counterparty itself and was squarely within the knowledge of PSPCL and PEDA, the purpose of such notice being

only to apprise the counterparty of events of which it is otherwise unaware;

4. Substantial delays in approval of project locations, execution of the amended Implementation Agreement and supplementary PPA, technical concurrence and grant of grid connectivity were attributable to PSPCL and PEDA and warranted corresponding extension of the SCOD.

The matter involved important questions concerning the legal effect of regulatory approval on the enforceability of PPAs, the computation of the effective date and SCOD for solar projects, and the purposive interpretation of Force Majeure notice requirements in power purchase contracts.

By its Judgment dated 03.07.2026, APTEL held that a PPA becomes effective only upon approval by the State Commission and that, until such approval, the parties are incapacitated from enforcing any rights or obligations thereunder. The Tribunal accordingly held that the effective date of the PPA was 11.05.2015 and that Radiance was entitled to extension of the SCOD by 41 days on account of the delay in approval of the PPA, terming the Commission’s contrary findings as unwarranted and perverse. Significantly, APTEL held that non-issuance of a formal Force Majeure notice was not fatal to the claim, since the delay in approval of the PPA was an event caused by the distribution licensee itself and was within the knowledge of both PSPCL and PEDA, distinguishing the judgment of the Hon’ble Supreme Court in Chamundeshwari Electricity Supply Company Ltd. v. Sai Sudhir Pvt. Ltd. The matter has been remanded to PSERC to extend the benefit of the 41 days’ delay, undertake a fresh computation of the delay in commissioning of each of the nine solar sites, and re-determine the tariff accordingly.

The ruling is significant for renewable energy developers as it affirms that the timeline for commissioning obligations under a PPA cannot commence before the PPA attains legal effect through regulatory approval, and that Force Majeure notice requirements cannot be invoked by a counterparty to defeat claims arising from delays of its own making.

Team

The matter was led by Mr. Shri Venkatesh, Founding Partner, along with Mr. Ashutosh K. Srivastava, Partner, Mr. Abhishek Nangia, Counsel Mr. Siddharth Nigotia, Senior Associate and Mr. Adarsh Singh, Associate from SKV Law Offices.

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