

No.N/92/2020

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 29.12.2020

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

Complaint No.05/2020

BETWEEN:

Messrs Emmvee Solar Systems Private Limited,
A Company incorporated under the Companies
Act, 1956/2013 having its registered office at:
55, Solar Tower, 6th Main 11th Cross,
Lakshmaiah Block, Ganganagar,
BENGALURU-560 032.

(Represented by Authorized Signatory
Mr. Mahabaleshwar Bhat)
(Represented by M/s Dua Associates)

.... **Petitioner/
Complainant**

AND:

1) Bangalore Electricity Supply
Company Limited (BESCOM)
Corporate Office, K.R. Circle,
BENGALURU-560 001.
(Represented by its Managing Director)

.... **Respondent No.1/
Accused No.1**

2) The Managing Director,
Bangalore Electricity Supply
Company Limited (BESCOM)
Corporate Office, K.R. Circle,
BENGALURU-560 001.

.... **Respondent No.2/
Accused No.2**

(Represented by Sri H. Shanthi Bhushan, Advocate)

ORDERS

1. The Complainant has filed the present complaint under Section 142, 146 and 149 of the Electricity Act, 2003 and Regulation 11 of KERC (General & Conduct of Proceedings) Regulations, 2000 read along with other applicable provisions praying for the following

Main reliefs to:

- (a) Direct the Respondent No.1 to clear the dues of INR 32,25,283 (Rupees Thirty-two lakhs twenty-five thousand two hundred and eighty-three) due since January, 2020 and calculated up to July, 2020 in accordance with the order dated 14.01.2020 passed by this Hon'ble Commission in OP No.25/2019 (Annexure P-18);
- (b) Direct the Respondent No.1 to continue to make payments at the admitted rate of Rs.5.20 per kWh during the pendency of the Appeal before the Hon'ble APTEL in DFR No.116/2020;
- (c) Pass appropriate order for securing compliance of the Order dated 14.01.2020 and consequential result of releasing payment to the Petitioner at the tariff of Rs.5.20 per kWh;
- (d) Initiating appropriate action against the Respondents No.1 in accordance with law for having willfully breached Order dated 14.01.2020 of this Hon'ble Commission in OP No.25/2019;
- (e) Initiating appropriate action against the Respondents No.2 in accordance with law for not discharging their statutory functions, in directing Respondent-1 to comply with the order dated 14.01.2020 and releasing the dues owed to the Petitioner and;

(f) Pass any such further order as may be deemed just and proper by this Hon'ble Commission.

Interim reliefs:

(a) Direct the Respondent No.1 to deposit INR 32,25,283 ((Rupees Thirty-two lakhs twenty-five thousand two hundred and eighty-three) with this Hon'ble Commission during the pendency of the instant petition or in the alternative;

(b) Pass an order attaching the bank accounts of the Respondent No.1 to secure payment due from the Respondent No.1 to the Petitioner for the net energy exported by the Petitioner to the Respondent No.1 from January 2020 to July 2020.

(c) Direct the Respondent No.1 to make all future payments to the petitioner at Rs.5.20 per unit during the pendency of the instant complaint.

2. It may be noted that Section 146 & Section 149 of the Electricity Act, 2003 have no bearings to the present complaint. Therefore, the 2nd Respondent cannot be made as a party to the present complaint. For this reason alone, the complaint against the 2nd Respondent is to be dismissed.

3. The relevant facts of the case required for the purpose of disposing the controversy involved in this case may be stated as follows:

a) The Complainant, a company registered under the Companies Act, 1956, entered into a Power Purchase Agreement (PPA) dated 27.02.2016 with the 1st Respondent (BESCOM) for sale of power on net-metering basis at the tariff of Rs.9.56 per unit, from the 1,000 kW SRTPV System to be installed on the Roof-top of the premises of the

Complainant located at 66/70/3, Pemmanahalli village, Somapura hobli, Dobbospet, Nelamanagala, Bengalure-562111. The 1st Respondent contended that the Complainant was entitled to a tariff of Rs.5.20 per unit alone but not for the tariff of Rs.9.56 per unit as agreed in the PPA. The Complainant commissioned the SRTPV System in question on 22.02.2017.

- b) The dispute regarding entitlement of the tariff for the SRTPV System of the Complainant was decided in OP No.25/2019 of this Commission on 14.01.2020, holding that the tariff applicable was Rs.5.20 per unit for the term of the PPA but not Rs.9.56 per unit as mentioned in the PPA. The Complainant has preferred the Appeal before the Hon'ble APTEL against the order dated 14.01.2020 passed in OP No.25/2019 and it is submitted that the Appeal is still pending.
- c) The 1st Respondent has not made payment for the energy delivered even at the rate of Rs.5.20 per unit and according to the Complainant there remained a sum of Rs.32,25,283 due since January 2020 up to July 2020. Therefore, the Complainant assuming that the non-payment of the amount due towards supply of energy amounted to violation/contravention of the order dated 14.01.2020 passed in OP No.25/2019 fixing the tariff at Rs.5.20 per unit, filed the present complaint.

d) At the time of admitting the complaint, this Commission on 22.10.2020 passed the following Interim Order:

“Case is called for hearing on 22.10.2020 through Video Conferencing. Advocate for Petitioner Sri Gaurav Mandappa for Dua Associates present and made oral submissions. Case is admitted. Issue notice to the Respondents. As prayed by the Advocate for Petitioner the Commission directed the Respondents to pay the arrears from January 2020 to till date at a tariff rate of Rs.5.20/- per unit as observed in the APTEL order dated 17th July 2020. Case is posted for hearing on 19.11.2020.”

4. The Respondents appeared through their Counsel Sri H. Shanthi Bhushan and requested this Commission for granting time to file the objections. On the next date of hearing the 1st Respondent undertook to pay the arrears at Rs.5.20 per unit on submission of the monthly tariff invoices by the Complainant. Accordingly, the case was posted for reporting compliance by 11.12.2020. On 11.12.2020, the Advocate for the Complainant Sri Gaurav Mandappa for Dua Associates made submission that the order of the Commission was complied with and the Complainant received the payment of Rs.26,57,914 from the 1st Respondent through RTGS on 10.12.2020. The learned Advocate for the Respondents requested to drop the present proceedings.
5. The Commission has heard the learned Counsel for the parties. The learned Counsel for the Complainant did not oppose the request of the Respondents to drop the present proceedings as the amounts due were

paid. Therefore, irrespective of the merits on the question of maintainability of the complaint, we proceed to pass the following:

ORDER

The Complaint is dismissed as the Respondent has complied with the Order of KERC.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member