

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)

OP No 11/2021 (Part-II)

In the matter of : Petition for formal approval for the initialed Power Purchase agreements (PPAs) with M/s NTPC Ltd and M/s. Tata Power Company Limited for procurement of 90 MW of Solar power from M/s. NTPC Ltd. and 110 MW of Solar power from M/s. Tata Power Company Ltd. at the adopted tariff of ₹ 2.97 per unit and to permit execution of PPA with M/s. T P Saurya Ltd., a wholly owned subsidiary of the successful bidder M/s Tata Power Company Ltd.

Petitioner : Kerala State Electricity Board Ltd.

KSEB Ltd represented by : Sri. K.G.P. Nampoothiri, EE,TRAC
Sri Edward P Boniface, AEE, TRAC
Sri. Manu Senan, AEE TRAC

Respondents : 1. M/s. The TATA Power Company Ltd (TPCL)
2. M/s. T P Saurya Ltd.,

TPCL represented by : Sri. Rakesh Singh, Head, Business Development
Sri. Gaurav Soni, Specialist, Business Development
Sri. Rahul Ranade, Regulatory Department
Sri Amey Naik, CFO, Tata Power Renewable Energy Limited

First Hearing on : 10.03.2021
Second hearing on : 08.06.2021

Order (Part-II) dated 23.06.2021

1. M/s KSEB Ltd filed a petition on 08.02.2021, before the Commission with the following payers.
 - (1) To grant formal approval for the initialed Power Purchase agreements (PPAs) with M/s NTPC Ltd and M/s. Tata Power Company Limited under Section 86(1)(b) of the Electricity Act, 2003, for the procurement of 90MW of Solar power from M/s. NTPC Ltd. and 110 MW of Solar power from M/s. Tata Power Company Ltd. at the adopted tariff of ₹ 2.97 per unit.

- (2) Permit the execution of PPA with M/s.T P Saurya Ltd., a wholly owned subsidiary of the successful bidder M/s Tata Power Company Ltd.
2. The petition filed by KSEB Ltd is for approval of two separate Power Purchase Agreements (PPAs) with two different entities; (1) first one for procurement of 90MW Solar Power from NTPC Ltd @Rs 2.97/unit, and (2) second one for procurement of 110MW Solar Power from M/s Tata Power Company Limited @Rs 2.97/unit and to sign PPA with its subsidiary M/s T P Saurya Ltd.

The Commission vide the order dated 21.06.2021 in Petition OP No. 11/2021, separately approved the initialed Power Purchase Agreement with NTPC Ltd for the procurement of 90MW Solar Power @Rs 2.97/unit.

In this order, the detailed appraisal of the draft initialed PPA between M/s Tata Power Company Limited and also the request of the M/s Tata Power Company Limited to sign the PPA with KSEB Ltd through its subsidiary M/s TP Saurya Ltd are discussed and deliberated in the subsequent paragraphs.

3. Background of the subject matter.

- (1) The Commission vide Order dated 25.08.2020 on Petition No. OP 09/2020, granted approval to KSEB Ltd for inviting bids on reverse e-bidding for procuring 200 MW solar power from solar PV plants through competitive bidding route on all India basis.
- (2) KSEB Ltd floated an e-tender on 18.09.2020, through 'National e-bidding portal for long term solar power procurement under DEEP portal of MSTC.
- (3) M/s NTPC Ltd and M/s TATA Power Company Ltd are the successful bidders. After completing all the procedure formalities including L1 matching as per the tender documents, 90MW was allotted to M/s NTPC Ltd @Rs 2.97/unit and 110MW allotted to M/s TATA Power Company Ltd @Rs 2.97/unit.
- (4) The Commission, vide Order dated 18.12.2020 in petition OP No. 39/2020, adopted the tariff as per the Section 63 of the Electricity Act, 2003. The relevant portion of the Order is extracted below.
- (i) *The Tariff of ₹. 2.97 per unit (kWh) for the procurement of 90 MW of solar power from M/s NTPC Ltd. and 110 MW of solar power from M/s Tata Power Company Ltd.; discovered by KSEB Ltd. through the competitive bidding process as per the bidding guidelines notified by the Central Government is adopted under Section 63 of the Electricity Act, 2003.*
- (ii) *KSEB Ltd shall finalize and initial the PPAs with the two successful bidders for their respective quantum of power and file them before this Commission for its formal approval under Section 86 (1) (b) of the Electricity Act, 2003. The formal approval of the PPAs by this Commission is a condition precedent and the PPAs shall come into effect only after this.*

(5) KSEB Ltd, issued LOA on 06.01.2021, to M/s NTPC Ltd for procurement of 90 MW of Solar power and to M/s The Tata Power Company Ltd for procurement of 110 MW of Solar power @ ₹ 2.97 per unit. Both the parties accepted the LOA.

(6) KSEB Ltd, initialed draft PPA with M/s Tata Power Company Ltd for the procurement of 110MW Solar power @ Rs 2.97/unit, for submitting before the Commission for getting the approval of the PPA as per Section 86(1)(b) of the Electricity Act, 2003.

KSEB Ltd further submitted that, M/s. TPCL has intimated that, with reference to Clause 3.1 (a) of RfS, TPCL intend to execute the Power Purchase Agreement (PPA) through M/s. TP Saurya Limited, a 100 % wholly owned subsidiary of the Tata Power Company Limited. As per Clause 3.1 (a) of RFS, 'Where a Bidder is a Company and is declared as the Successful Bidder, it may at its option to form an SPV/project company to execute the Power Purchase Agreement'. As per the Certificate of Incorporation of M/s TP Saurya Limited, the new company was formed on 2nd Aug 2020 i.e. prior to bid floating date of 18.09.2020. However, as per the instruction of KSEB Ltd., M/s. TPCL initialed the PPA for submission before KSERC for approval.

M/s TATA Power Company Ltd, requested KSEB Ltd to seek permission of Hon'ble Commission to execute the PPA through M/s TP Saurya Ltd, a 100% wholly owned subsidiary of M/s TATA Power Company Ltd. Hence KSEB Ltd requested that, Commission may kindly consider the request of M/s TPCL and issue orders on executing the PPA through M/s TP Saurya Limited for procurement.

4. The Commission admitted the petition as OP No. 11/2021. Hearing on the petition was held on 10.03.2021 through video conference. Sri. K.G.P Nampoothiri, presented the petition on behalf of the petitioner KSEB Ltd. Sri Rakesh Singh and Gourav Soni represented Tata Power are made submission before the Commission. Summary of the deliberations during the hearing with respect to the purchase of 110MW power from M/s TPCL is given below.

(1) KSEB Ltd submitted that, the Commission vide Order dated 18.12.2020 in Petition OP No. 39/2020 adopted the tariff of Rs 2.97/unit, for the procurement of 90MW Solar Power from M/s NTPC Ltd and 110 MW from M/s TATA Power Company Ltd. Commission in the said order has directed KSEB Ltd to finalise and initial the PPA with the two successful bidders and file the initialed PPA before the Commission for approval as per Section 86(1)(b) of the Electricity Act, 2002.

In compliance of the direction of the Commission, KSEB Ltd initialed the draft PPA and submitted herewith for the approval of the Commission. The articles and clauses of the initialed PPA is as per the bidding documents including the model PPA approved by the Commission vide Order dated 25.08.2020. In the meantime M/s TATA Power Company Ltd intimated

that, they intended to sign the PPA with their 100 % subsidiary company M/s TP Saurya Ltd.

- (2) M/s Rakesh Singh, on behalf of the M/s TATA Power Company Ltd submitted that, M/s TP Saurya Ltd is a 100% subsidiary company of M/s TATA Power Company Ltd. The Board of Directors of M/s TATA Power Company Ltd, had approved the signing of the PPA with KSEB Ltd by M/s TP Saurya Ltd instead of the successful bidder TATA Power Company Ltd. The Board of Directors of the M/s TP Saurya Ltd has accepted the same.
5. Based on the deliberations during the hearing, the Commission issued the following directions to the petitioner KSEB Ltd and to the respondent M/s TATA Power Ltd and its subsidiary M/s TP Saurya Ltd.
- (1) M/s TATA Power Company Ltd shall submit the copies of the Articles of Association, Memorandum of Association of their 100 % subsidiary company M/s TP Saurya Ltd.
 - (2) Minutes of the Director Board meetings of M/s TATA Power Company Ltd, authorizing M/s TP Sourya Ltd to implement and sign the PPA for 110MW Solar Power with KSEB Ltd.
 - (3) A formal agreement between M/s TATA Power Company Ltd and M/s TP Saurya Ltd regarding the implementation and signing of the 110 MW Solar PV plant with KSEB Ltd.
 - (4) Any other relevant documents on the subject petition.
6. M/s TATA Power Company Ltd, vide their letter dated 23.03.2021 submitted the following documents before the Commission.
- (1) Board Resolution by the Tata Power Company Ltd dated 4th February 2021.
 - (2) Board Resolution issued by TP Saurya Ltd dated 12.01.2021.
 - (3) Agreement executed between Tata Power Company Ltd and TP Saurya Ltd for transfer of rights /duties obligation under LoA/PPA

The important provisions in the Agreement dated 23.03.2021, executed between the Tata Power Company Ltd and TP Saurya Ltd is given below.

- (i) It is stated in the Agreement that, pursuant to the issuance of the LoA dated 06.01.2021, it was decided by M/s TPCL and TP Saurya Ltd that TP Saurya Ltd would undertake and discharge the role and responsibilities as a successful bidder in terms of the LoA to the fullest without any reservations.
- (ii) TPCL informed KSEB Ltd that, the project as well as the PPA is to be executed through TP Saurya Ltd which is a 100% owned subsidiary of TPCL . KSEB Ltd accepted the proposal in principle, subject to approval of KSERC.
- (iii) It is stated in the clause-7 of the Agreement as follows.

“7. After the signing of the present agreement TPCL shall be absolved of its rights/ duties/ obligation under the PPA and the same shall be assumed by TP Saurya and any dispute or claim shall be contested or pursued by or against TP Saurya to the exclusion of TPCL”.

The Commission noted that, as per the clause-7 of the Agreement dated 23.03.2021 entered into between M/s TPCL and M/s TP Saurya Ltd, the bidder M/s TPCL is completely absolved from its rights/duties /obligation as a bidder from the date of signing this Agreement. The commission noted that it was M/s TPCL who had participated in the bid and was declared successful. However, as per the present Agreement, TPCL is now intending to transfer all rights//obligations under the PPA to TP Saurya Ltd, which was not even a participant at the bid stage. Further, the documents made available by TPCL, does not reveal as to whether TP Saurya Ltd would even qualify to be considered as a participant under the two-part bid process. The financial capacity of TP Saurya Ltd to successfully undertake the obligations under the PPA vis-à-vis its financial capability has also not been established. Under such circumstances, the commission opined that though the tender documents permit the formation of a SPV/ Project Company, in the current situation, TPCL is completely absolving itself of its entire responsibility and entrusting it to a subsidiary company whose financial strength or implementation capability has not established. Hence, the Commission is not in a position to accept the agreement entered into between TPCL and TP Saurya Ltd.

7. In the meantime, M/s TPCL vide the letter dated 04.06.2021 submitted the following.
- (1) **Land.** M/s TPCL have identified a suitable land parcel in Bikaner District, Rajasthan State for setting up of 110 MW Solar capacity awarded by KSEB Ltd and are in advance stage of contract finalization for land acquisition.
 - (2) **Connectivity.** M/s TPCL have proposed to connect the 110MW solar capacity with Bikaner-I CTU sub-station at 220kV level. Stage-II connectivity has been awarded by CTU on 13th April 2021 at Bikaner substation for power evacuation. Accordingly, the Transmission Agreement with CTU has been signed. Subsequently, M/s TPCL have also been awarded Long Term Open Access by the CTU on 19.05.2021 for supplying 110MW Solar Power on long term basis from the proposed solar project. As per the LTOA granted, M/s TPCL is required to sign the Long-Term Open Access Agreement on or before 19th June 2021.

M/s TPCL therefore requested the Commission to accord the necessary approval and issue directions for signing the PPA with KSEB Ltd on immediate basis as signing of the Long-Term Open Access Agreement without the PPA in place what attract inherent risk to developer by way of financial implication in case of delay/relinquishment in operationalization of the Connectivity and Long Term Open Access.

8. Thereafter, the second hearing on the petition was held on 08.06.2021 through videoconference. Sri. Edward P Boniface, AEE, KSEB presented the status on the petition on behalf of KSEB Ltd. Sri. Gaurav Soni and Rahul Ranade represented the respondent M/s TPCL and TP Saurya Ltd. The summary of the deliberations during the hearing is given below:

- (1) The Commission, during the hearing had affirmatively clarified that, the Commission cannot approve the PPA with the above clauses since such a PPA may in the long run have a negative impact as far as the electricity consumers of the State. Further, M/s TPCL is one of the selected bidder, selected on the basis of their fulfilling the technical and financial criteria specified in the Notice Inviting Tender. As per their bid, they have offered to supply 110MW of Solar power to KSEB Ltd @ 2.97/unit, for 25 years from the date of commissioning of the project. The Commission also noted that as per the RfS, the selected bidder has the option to execute the PPA through an SPV/ Project Company.

M/s TP Saurya is a subsidiary company of TPCL, established less than a year back, on 2nd August 2020. Apart from other business possibilities, M/s TP Saurya is also being made responsible for fulfilling the 110MW Solar Power for KSEB Ltd. The commission also noted that as per the details available, while the authorized capital of M/s TP Saurya is Rs 500.00 crore, its paid up capital is only Rs 5.00 lakh. M/s TP Saurya is also not a listed company. Since the company is less than a year old, its profit & loss account and audited balance sheet are not available for ascertaining its financial position. Hence, the Commission is of the considered view that, such a new company may not be able to fulfill all the obligations, duties and risks associated with the PPA during the execution as well as operation and maintenance of the project for a period of 25 years. Hence, the Commission concluded that, the original bidder M/s TPCL cannot be absolved from its duties and obligations under the PPA in case of any default or breach on the part of the TP Saurya Ltd.

- (2) The representative of M/s TPCL and TP Saurya Ltd submitted that, M/s TPCL has no intention to run away from its responsibilities, in case of breach or failure from the part of the TP Saurya Ltd. M/s TPCL further submitted that, it shall delete the clause-7 of the Agreement dated 23.03.2021 and amend it to the satisfaction of the Commission.

Once the amendment to the agreement dated 23.03.2021 comes to effect, M/s TPCL prayed for the early approval of the PPA, so as to proceed with the implementation of the project and to apply for long term open access for transmission of electricity from the Power Plant to KSEB Ltd.

- (3) KSEB Ltd during the hearing submitted that, it shall fully comply with the Order and directions of the Commission regarding the approval of the PPA with M/s TPCL/TP Saurya Ltd for procurement of 110 MW Solar power @Rs 2.97/unit. KSEB Ltd further submitted that, it may take upto a maximum period of 10 days to execute the PPA, once the Commission grant final approval of the PPA.

9. As agreed during the deliberations of the hearing held on 08.06.2021, the bidder M/s TPCL vide its letter dated 11.06.2021 submitted the following documents before the Commission for its perusal.

- (1) Amendment to Agreement signed on dated 23.03.2021 between M/s TPCL and T Saurya Ltd.
- (2) Relevant Resolutions.

The Amended Agreement is seen to have been signed on 09.06.2021 between M/s TPCL and M/s TP Saurya Ltd. As per this amended agreement, the following clause-7 of the existing agreement dated 23.03.2021 stand removed and deleted for all purpose and intent.

“7. After the signing of the present agreement TPCL shall be absolved of its rights/ duties/ obligation under the PPA and the same shall be assumed by TP Saurya and any dispute or claim shall be contested or pursued by or against TP Saurya to the exclusion of TPCL”.

Further, as per the Amended Agreement dated 09.06.2021, the following clause shall stand inserted and in the place of the existing clause-7 of the agreement dated 23.03.2021.

“In case of any default or breach on the part of TP Saurya, and failure on the part of TP Saurya to cure/remedy such breach or default even after due notice of the same then in such an eventuality TPCL shall discharge the obligations of TP Saurya to the satisfaction of KSEB to the extent and as envisaged under the PPA/bid conditions”.

It is also stated in the amended agreement dated 09.06.2021 that, ‘rest of the contents of the existing agreement shall continue to be in force and intact.

Analysis and Decision of the Commission

10. The Commission has examined in detail, the petition filed by KSEB Ltd for the approval of the draft initialed PPA between KSEB Ltd and M/s Tata Power Company Ltd and also its prayer to permit execution of PPA with M/s TP Saurya Ltd, a wholly owned subsidiary of M/s Tata Power Company Limited, as per the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions) of the Tariff Regulations, 2018 and in compliance to the bid documents approved by the Commission dated 25.08.2020 on petition No. OP 09/2020.
11. The commission noted that Section 63 of the Electricity Act 2003 permits the Distribution licensees to procure power through the transparent process of bidding in accordance with the guidelines issued by the Central Government and the Commission has to adopt such tariff determined through transparent process of bidding. The Section 63 of the Electricity Act 2003 is extracted below for ready reference.

“63. Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

As per the Section 86(1)(b) of the Electricity Act, 2003, the Distribution licensee can procure power from the generating companies or licensees only with the approval of the State Commissions. The relevant Section is extracted below.

86. Functions of State Commission (1) The State Commission shall discharge the following functions, namely: -

.....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

12. Further, as per the Regulation 76 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, prior approval of the Commission is mandatory for procurement of power by the distribution licensees, and agreement entered into for power purchase shall come into force only with the approval of this Commission. The relevant Regulation is extracted below.

“76. Approval of power purchase agreement. –(1) Every agreement for procurement of power by the distribution business/licensee from the generating business/company or licensee or from other sources of supply entered into after the date of commencement of these Regulations shall come into effect only with the approval of the Commission:

Provided that the approval of the Commission shall also be required in accordance with this Regulation for any change to an existing agreement for power procurement, whether or not such existing agreement was approved by the Commission.

(2) The Commission shall examine a petition for approval of Power Purchase Agreement having regard to the approved Power Procurement Plan of the distribution business/licensee and the following factors:-

- (a) requirement of power under the approved Power Procurement Plan;*
- (b) adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government under Section 63 of the Act;*
- (c) adherence to the terms and conditions for determination of tariff specified under Chapter VI of these Regulations where the process specified in clause (b) above has not been adopted;*
- (d) availability (or expected availability) of capacity in the intra-State transmission system for evacuation and supply of power procured under the agreement; and*
- (e) need to promote co-generation and generation of electricity from renewable sources of energy.*

(3) Where the terms and conditions specified under chapter VI of these Regulations are proposed to be adopted, the approval of the power purchase agreement between the generating business/company and the distribution business/licensee for supply of electricity from a new generating station may comprise of the following two steps, at the discretion of the applicant:-

- (a) approval of a provisional tariff, on the basis of a petition made to the Commission at any time prior to the petition made under clause (b) below; and*
- (b) approval of the final tariff, on the basis of a petition made not later than three months from the cut-off date.*

13. The Commission vide Order dated 25.08.2020 in Petition OP No. 09/2020, had granted approval to KSEB Ltd for inviting bids on reverse e-bidding for procuring 200MW Solar Power through competitive bidding route on all India basis, and also approved the bidding documents RfS and draft PPA for inviting bids.

After getting the approval from the Commission, KSEB Ltd had floated an e-tender on 18.09.2020, through 'National e-bidding portal for long term solar power procurement under DEEP portal of MSTC. M/s NTPC Ltd and M/s TATA Power Company Ltd are the successful bidders. After completing all the procedure formalities including L1 matching as per the tender documents, 90MW was allotted to M/s NTPC Ltd @Rs 2.97/unit and 110MW allotted to M/s TATA Power Company Ltd @Rs 2.97/unit.

The Commission, vide Order dated 18.12.2020 in petition OP No. 39/2020, adopted the tariff of Rs 2.97/unit for the procurement of 90MW of Solar power from M/s NTPC Ltd and 110MW of Solar power from M/s Tata Power Company Ltd, discovered by KSEB Ltd through the competitive bidding process under Section 63 of the Electricity Act, 2003.

In the said Order, the Commission also directed KSEB Ltd to finalise and initial the PPA with the two successful bidders and file petition before the Commission for formal approval of the PPA under Section 86(1)(b) of the Electricity Act, 2003. The relevant portion of the Order is extracted below.

- “
- (i) *The Tariff of ₹. 2.97 per unit (kWh) for the procurement of 90 MW of solar power from M/s NTPC Ltd. and 110 MW of solar power from M/s Tata Power Company Ltd.; discovered by KSEB Ltd. through the competitive bidding process as per the bidding guidelines notified by the Central Government is adopted under Section 63 of the Electricity Act, 2003.*
 - (ii) *KSEB Ltd shall finalize and initial the PPAs with the two successful bidders for their respective quantum of power and file them before this Commission for its formal approval under Section 86 (1) (b) of the Electricity Act, 2003. The formal approval of the PPAs by this Commission is a condition precedent and the PPAs shall come into effect only after this.”*

14. In compliance of the direction of the Commission, KSEB Ltd initialed the draft PPA with M/s Tata Power Company Limited on 5th February 2021 for procurement of 110MW Solar Power @Rs 2.97/unit. KSEB Ltd vide the petition dated 08.02.2021 submitted the copy of the initialed PPA before Commission to grant formal approval for the initialed PPA with M/s Tata Power Company Ltd.

15. As per the petition filed by KSEB Ltd dated 08.02.2021, the following are the prayers with respect to the procurement of 110MW of Solar Power from the successful bidder M/s Tata Power Company Limited (TPCL).

- (1) To grant formal approval for the initialed PPA with M/s Tata Power Company Limited for the procurement of 110 MW Solar Power @2.97/unit for 25 years, and,

- (2) Permit KSEB Ltd to execute the PPA with M/s TP Saurya Ltd, a wholly owned subsidiary of the successful bidder M/s Tata Power Company Limited.

The Commission examined both the prayers of the KSEB Ltd in detail and decided as follows.

16. The first prayer of KSEB Ltd is to grant approval for the initialed PPA with M/s Tata Power Company Limited (TPCL) for the procurement of 110 MW Solar Power.

The Commission examined in detail the initialed PPA with the model PPA approved by the commission along with bidding documents issued vide Order dated 25.08.2020, in petition OP No. 09/2020, and noted that, the articles, clauses and other conditions in the initialed PPA between KSEB Ltd and M/s TPCL is as per the model PPA approved by the Commission along with the bidding documents dated 25.08.2020 in petition OP No. 09/2020. Hence, the Commission decided to grant approval for the initialed Power Purchase Agreement (PPA) dated 05.02.2021 between KSEB Ltd and M/s TPCL.

17. The second prayer of the KSEB Ltd is to permit KSEB Ltd to execute the PPA with M/s TP Saurya Ltd, a wholly owned subsidiary of the successful bidder, M/s TPCL as requested by the bidder.

The Commission has examined in detail the second prayer of KSEB Ltd and noted the following.

- (1) M/s TPCL is one of the successful bidder in the bid invited by KSEB Ltd for the procurement of 200 MW Solar Power. M/s TPCL offered 110 MW Solar Power to KSEB Ltd @Rs 2.97/unit.
- (2) The clause 3.1(a) of the RfS permit the successful bidder to execute the PPA through an SPV/ project company, which is extracted below.

“Where a Bidder is a Company and is declared as a Successful Bidder, it may at its option form an SPV/ Project Company to execute the PPA.....”

In the RfS, the Project Company is defined as **“42. Project Company. The Company, incorporated by the Bidder as per Indian laws, in accordance with the terms and conditions of RfS”**.

- (3) KSEB Ltd submitted that, the successful bidder M/s TPCL intimated their intention to execute the PPA through its 100% subsidiary company M/s TP Saurya as permitted under Clause 3.1(a) of the RfS.
- (4) As per the details available in the public domain, M/s TP Saurya, the subsidiary company of TPCL, was established as recently on 2nd August 2020 for among others developing the 110MW Solar Power for supplying power to KSEB Ltd. As per the details available, its authorized capital is Rs 500.00 crore and its paid-up capital is only Rs 5.00 lakh. Further, it is not a listed company. Since the age of the company is less than one year, its profit & loss account and audited balance sheet is not available for ascertaining its financial position.

- (5) The Commission, during the second hearing held on 08.06.2021, clarified that, M/s TPCL as the successful bidder had agreed to supply 110MW Solar Power to KSEB Ltd as per the bid and therefore cannot be absolved from its rights/rights/obligations under the PPA, which is to be signed by TP Saurya Ltd on behalf of M/s TPCL.

Hence, the Commission is of the considered view that, such a new Company may not be able to fulfill all the obligations, duties and risks associated with the PPA during the execution as well as operation and maintenance of the project. It was after considering these reasons in the first hearing held on 10.03.2021 that the commission directed the bidder M/s TPCL to amend the Agreement between the bidder M/s TPCL and its subsidiary M/s TP Saurya Ltd, deleting/modify the clause regarding M/s TPCL for going their duties, obligations and responsibilities for the execution of the PPA conditions and by making their subsidiary company TP Sourya Ltd takeover all duties and obligations and responsibilities of this PPA on behalf of the bidder M/s TPCL with the buyer, KSEB Ltd.

- (6) Based on the deliberations during the second hearing on 08.06.2021 as detailed under Paragrah-8 above, M/s TPCL signed an amendment agreement on 09.06.2021, amending the clause-7 of the original agreement dated 23.03.2021 with TP Saurya Ltd. As per the amended agreement dated 09.06.2021, clause-7 of the existing agreement dated 23.03.2021 stand removed and deleted for all purpose and intent, and the following clause shall stand inserted and in the place of the existing clause-7 of the agreement dated 23.03.2021.

“In case of any default or breach on the part of TP Saurya, and failure on the part of TP Saurya to cure/remedy such breach or default even after due notice of the same then in such an eventuality TPCL shall discharge the obligations of TP Saurya to the satisfaction of KSEB to the extent and as envisaged under the PPA/bid conditions”.

It is also stated in the amended agreement dated 09.06.2021 that, ‘rest of the contents of the existing agreement shall continue to be in force and intact.

- (7) The Commission examined the entire aspects of the issue, the request of the successful bidder M/s TPCL to sign the PPA with KSEB Ltd through its 100% subsidiary M/s TP Saurya Ltd, the agreement signed on 23.03.2021 between M/s TPCL and TP Saurya Ltd regarding the fulfillment of the terms & conditions and perform the obligations under the initialed PPA dated 05.02.2021 by TP Saurya Ltd on behalf of the bidder M/s TPCL, and also the amended agreement dated 09.06.2021 between M/s TPCL and TP Saurya Ltd.

As per the amended agreement dated 09.06.2021 signed between M/s TPCL and TP Saurya Ltd, the bidder M/s TPCL is committed to and have agreed to discharge the obligations of TP Saurya Limited to the satisfaction of KSEB Ltd to the extent as envisaged in the PPA/ bid conditions, in case of any default or breach from the part of the TP Saurya

Ltd so as to fulfill the PPA/ bid conditions. Hence, the Commission decided to grant permission to KSEB Ltd to sign the PPA with TP Saurya Ltd, the 100% subsidiary company of the successful bidder M/s TPCL for supplying 110MW Solar Power @ Rs 2.97/unit. The agreement dated 23.03.2021 and its amendment dated 09.06.2021 signed between M/s TPCL and its 100% subsidiary TP Saurya Ltd shall form integral part of the PPA to be signed between KSEB Ltd and TP Saurya Ltd.

Order of the Commission

18. The Commission after examining in detail the petition filed by KSEB Ltd for the approval of the draft initialed PPA between KSEB Ltd and M/s Tata Power Company Ltd and also its prayer to permit execution of PPA with M/s TP Saurya Ltd a wholly owned subsidiary of M/s Tata Power Company Limited, as per the provisions of the Electricity Act, 2003, and other relevant documents and records, hereby orders the following.
- (1) Approve the initialed Power Purchase Agreement (PPA) between KSEB Ltd and M/s Tata Power Company Limited for the procurement of 110 MW Solar Power at the rate of Rs.2.97/unit.
 - (2) Grant permission to KSEB Ltd to sign the PPA with M/s TP Saurya Limited, the 100% subsidiary of the successful bidder M/s Tata Power Company Limited. The agreement dated 23.03.2021 and its amendment dated 09.06.2021 signed between M/s TPCL and its 100% subsidiary TP Saurya Ltd shall form integral part of the PPA to be signed between KSEB Ltd and TP Saurya Ltd.
 - (3) KSEB Ltd shall submit a copy of the PPA signed with M/s TP Saurya Ltd to the Commission for information and record.

The petition disposed off. Ordered accordingly.

Sd/-
Adv. A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman
Approved for issue

C R Satheeshchandran
Secretary(i/c)