Sub: Creation of a SPV under Article 12.11 of the PPA executed by the farmers, relating to the Development of Solar Power Plants - reg.


In our above-referred letter dated 08.12.2015, clarification was issued in respect of formation of a SPV under Article 12.11 of the PPA. It is found that, even after clarification, the Memorandum of Association and the Articles of Association of the SPV were not properly drafted, and the document evidencing the transfer of the rights and liabilities of the SPD under the PPA to the SPV was not properly executed between the parties concerned.

Therefore, I am directed by the Commission to circulate herewith the specimen Formats of the Memorandum of Association and the Articles of Association and also the Supplemental PPA to be executed by the parties concerned. The above specimen Formats of the documents may be used by you while drafting and executing the same, with suitable modifications, if required, on a case-to-case basis.

It may also be noted that, a document evidencing the transfer of the rights and liabilities of the SPD under the PPA to the SPV, in respect of the Solar Power Project, is to be executed, after incorporation of the SPV.

Yours faithfully,
For Karnataka Electricity Regulatory Commis

Secretary

Office Copy/MF
(g) The SPD and ___ ESCOM have executed the Power Purchase Agreement (PPA) dated_______.

(h) The Hon'ble KERC has communicated its approval for the PPA executed between the SPD and ___ ESCOM, vide letter No.__________ dated ________.

(i) Pursuant to the second proviso to Article 12.11(i) of the PPA, the SPD shall have an irrevocable right to form a Special Purpose Vehicle (SPV) at any time, after the date of execution of the PPA, under intimation to [the ___ ESCOM, and as such, ___ Company, incorporated under the 'Indian Companies Act, 1956/ 2013' / ___ Limited Liability Partnership (LLP), registered under 'The Limited Liability Partnership Act, 2008']*, a legal entity, has been created with the object of constructing, maintaining and operating the Solar Power Project allotted to the SPD;

(j) [The Memorandum of Association (MoA) and the Articles of Association (AoA) of the SPV provide that the ownership interest of the SPD in the voting capital of the Company shall not be reduced / transferred to less than 26% (twenty six percent) on or before 12 (Twelve) months from the Commercial Operation Date (CoD) of the Project, without the consent of the ___ ESCOM / the Limited Liability Partnership Agreement provides that the ownership interest of the SPD in the capital of the LLP shall not be reduced / transferred to less than 26% (twenty six percent) on or
before 12 (twelve) months from the Commercial Operation Date (CoD) of the Project, without the consent of the ___ ESCOM["; 

(k) The said SPV has taken over all the rights, responsibilities, obligations, liabilities, etc., of the SPD, for valid consideration, as per the document dated _______ executed between the SPD and the SPV.

NOW, THEREFORE, IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS, THIS SUPPLEMENTAL PPA IS EXECUTED AS FOLLOWS:

1) The ___ Company / ___ LLP has become the assignee of the said Solar Power Project of the SPD and all the rights, responsibilities, obligations and liabilities of the SPD under the PPA dated _______ shall be binding on the [___ Company / ___ LLP]*;

2) On execution of this Supplemental PPA between the parties, the PPA dated _______ shall stand modified accordingly, subject to the approval by the Hon’ble KERC, and all other terms and conditions of the PPA dated _______ shall remain unaltered.

[Note: * Strike out whichever is not applicable.]
SCHEDULE 1

[See Sections 4 and 5]

MEMORANDUM OF ASSOCIATION

OF

PRIVATE LIMITED

(Company Limited by shares)

(Registered under the Companies Act, 2013)

1. The name of the Company is: "___________ Private Limited".

2. The Registered Office of the Company is situated at _______ in the State of Karnataka.

3. (A) THE OBJECT TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION IS:

1. To develop, execute, manage and run ___ MW (___ Mega Watt) Solar Power Generation Plant (Project) at Survey No.______ at ______ Village, ______ Hobli, ______ Taluk, ______ District in accordance with the Power Purchase Agreement (PPA) dated ______, signed BETWEEN Mr. _________, the Developer of the Solar Project (SPD) and being one of the promoters of this Company AND _________ Electricity Supply Company Limited, a wholly owned subsidiary of the Government of Karnataka, and thereby to act as a Special Purpose Vehicle (SPV) formed for the limited purpose of execution of the above-said Project.
(B) MATTERS WHICH ARE NECESSARY FOR FURTHERANCE OF
THE ABOVE OBJECT SPECIFIED IN CLAUSE 3(A) ARE:

1. To carry on the business of planning, promoting,
developing, establishing, setting up, commissioning,
operating and maintaining the Solar Energy Plants and
sale of electricity generated therefrom;

2. To enter into agreements, franchise agreements and
contracts with Indian or Foreign individuals, firms or
companies for technical, financial or other assistance or
Collaboration for carrying on the Object of the
Company;

3. To purchase, take on lease or in exchange, hire,
construct or otherwise acquire any movable or
immovable properties or any rights or privileges, which
the Company may think necessary or convenient for the
purpose of its business;

4. To pay out of the Company’s funds the costs and
expenses incurred in connection with all matters
preliminary and incidental to the formation, promotion
and incorporation of this Company and the costs and
expenses incurred in connection with all matters
preliminary and incidental to the formation, promotion
and incorporation of any Company which may be
promoted by this Company and to remunerate any
person, firm or Company for services rendered in the
promotion of the Company or the conduct of its business;
5. To provide for the welfare of the employees (including Directors) or ex-employees of the Company and wives and families or the dependents or relations of such persons by building or contributing to the building of houses, dwellings or quarters or by grant of money, gratuities, pensions, allowances, incentives, bonus or any other payments or by creating and subscribing or contributing to provident or other funds, associations, institutions, profit-sharing or other schemes or trusts and by providing or subscribing or contributing towards places of instructions and recreations, hospitals and dispensaries and medical assistance;

6. To open account or accounts with any bank or banks in the name of the Company and to operate upon the same;

7. To create any depreciation fund, sinking fund, insurance fund, reserve fund or any special or other funds, whether for depreciation or for repairing, improving, extending or maintaining of any of the property of the Company or for any purposes, whatsoever to the interests of the Company;

8. To make, draw, accept, endorse, execute, discount, negotiate and issue cheques, promissory notes, hundies, bills of exchange, bills of lading, railway receipts, debentures and other negotiable or transferable instruments subject to the Banking Regulation Act, 1949;

9. To borrow or raise moneys, from commercial banks / financial institutions and/or other companies, or to
receive it on deposit at interest or otherwise, and to secure the payment of such money in such manner as the Company may think fit and in particular by the issue of debentures or debenture stock, perpetual or otherwise, stocks, bonds, obligations, notes and securities of all kinds, to mortgage, pledge, guarantee, hypothecate or charge the whole or any part of the property, assets, or revenue of the Company, present or future; including its uncalled paid capital, by special assignment or otherwise, or to transfer or convert the same absolutely or any interest therein and to give the lenders power of sale and other powers as may seem expedient and to purchase, redeem or pay off such securities, provided the Company shall not carry on banking business as defined in the Banking Regulation Act, 1949;

10. To advance, deposit or lend with or without security money, securities, assets and property to or with such person, companies or corporations and sell and deal in bills, notes, warrants, coupons and other negotiable or transferable security or documents;

11. To enter into any arrangements with the Government of India or with any states, with any authorities, municipal, local or otherwise or with any other persons, that may seem conducive to the Company's Object or any other and to apply for and obtain and to purchase or otherwise acquire from any such Government, State, authorities or persons, any rights, powers, privileges,
decrees, licenses, sanctions, grants and concessions whatsoever (whether statutory or otherwise) which the Company may think it desirable to obtain and acquire and to carry out exercise and comply with any such arrangements, rights, powers, privileges, licenses, decrees, sanctions, grants and concessions;

12. To institute, conduct and defend all actions and legal proceedings, against the Company and its officers and to refer any claim or demand by or against the Company and its officers to arbitration and to perform or challenge the awards if necessary;

13. To insure the whole or any part of the Company, either fully or partially, to protect and indemnify the Company from liability or loss in any respect, either fully or partially and also to insure and to protect and indemnify any part or portion thereof, either on mutual principle or otherwise.

4. The liability of the members is limited and this liability is limited to the amount unpaid, if any, on the shares held by them;

5. The Authorized Share Capital of the Company is Rs.____ (Rupees _______________ only) divided into ______ [ in words ___] Equity Shares of Rs.____ (Rupees ______ only) each;
We, the several persons, whose names and addresses are subscribed hereunder, are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the Capital of the company as set opposite to our respective names:

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<tr>
<th>Sl. No.</th>
<th>Names and Addresses Description of Subscribers with their signatures</th>
<th>Number of Equity Shares Taken by each Subscriber</th>
<th>Signature of the Subscriber</th>
<th>Signature, Name, Address, Description and occupation of the witness</th>
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SCHEDULE F

The Companies Act, 2013

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

(Name of Company) ______________ PRIVATE LIMITED

Interpretation

I. (1) In these regulations-
   (a) "the Act" means the Companies Act, 2013.
   (b) "the seal" means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Sharer capital and variation of rights

II. 1. Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and ether at a premium or at par and at such time as they may from time to time think fit.
Provided that the Solar Power Developer's (SPD) ownership interest in the voting capital of the Company shall not be reduced / transferred to less than 26% (twenty six percent) on or before 12 (twelve) months from the Commercial Operation Date of the Project, without the consent of the ___ Electricity Supply Company.

[Note: The remaining regulations in respect of the Articles of Association of the Company Limited by Shares as shown in Table-I of the Companies Act, 2013, may be adopted, with the required alterations, if any.]