

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 191 OF 2019 &
IA NOS. 917, 916, 919, 1046, & 1047 of 2019**

Dated: 22nd May, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

**Pinnacle Renewable Energy Pvt. Ltd.Appellant(s)
Versus
Uttar Pradesh Electricity Regulatory Commission & Ors.Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Ruchir Ranjan Rai
Ms. Aarohi Bhalla
Mr. Harsh Anand

Counsel for the Respondent(s) : Mr. C.K.Rai
Mr. Sachin Dubey for R-1

Md. Altaf Mansoor for R-2

ORDER

IA No. 916 of 2019
(Appln. for exemption from filing certified copy of the impugned order)

We have heard learned counsel for the appellant/applicant. For the reasons stated in the application, the application is allowed.

IA NO. 1047 of 2019
(Appl. for seeking directions)

We have heard learned counsel for the Appellant as well as learned counsel for the Respondents. This matter has come up for admission after notice to the Respondents and service is complete as per note of the Registry. Meanwhile, an application for directions came to be filed by way of IA No. 1047 of 2019 seeking following prayers:

- (A). *Allow the present application directing the Respondents to stop raising any demands of liquidated damages during the adjudication of the present appeal and stay the Preliminary Default Notice dated 13.05.2019; and*
- (B). *Direct the Respondent No. 2 to grant temporary connectivity from 33 Kv Kanduni sub-station to the solar Power Plant immediately, and*
- (C). *Pass such other orders(s) and / or direction(s) as it may deem fit and proper in the facts and circumstances of the case in the interest of justice.*

2. We have gone through the order dated 05.03.2019 and also the Impugned Order dated 30.04.2019 of the Commission. In order to understand the factual situation, it would be proper to reproduce the relevant portions of both the orders:

Impugned Order dated 05.03.2019

- “(1). *This Petition has been filed by Pinnacle Renewable Energy Private Limited the Petitioner under Section 86 (1) (b) and 86 (1) (f) of Indian Electricity Act, 2003 seeking extension of time for setting up of 5 MW Solar PV Power Project under the PPA dated 02.12.2015 and Supplementary PPA dated 19.05.2018.*
- (2). *In the Petition the Petitioner has stated that the Commission had adopted the tariff of the project vide its order dated 12.02.2018 and the original tariff was reduced to Rs. 5.07 per unit and the petitioner was allowed 5 months time to set up the plant. The Commission had asked for signing of Supplementary PPA incorporating the orders of the Commission. Accordingly a SPPA was signed and as per the supplementary PPA, the time for setting up of the plant expired on 18.10.2018 which could be extended on payment of liquidated damages as per PPA. The Petitioner has prayed for extension of time on the ground that the procurer was under obligation to put up the evacuation system at the cost of the petitioner which was not done by the procurer and even the temporary connectivity from 33 Kv sub-station has not been provided. The Petitioner has also mentioned other problems faced by him in setting up of the plant.*

- (3). *UPNEDA and UPPCL which are parties in the Petition have filed their counter affidavit and the Petitioner has filed its rejoinder.*
- (4). *In the hearing Sri Sourav Roy, Advocate appearing on behalf of the Petitioner stated that they had made a request to the procurer to provide them connectivity from Kanduni 33 KV substation temporarily to commission the plant but this connectivity has not been granted to them. He pleaded that construction of evacuation system was the responsibility of the procurer and they had to make the payment for the transmission system but the procurer has not constructed the evacuation system of 132 KV. The Counsel for the Petitioner stated that the PV module of 1MW have arrived on the site and they have already awarded an EPC contract and are fully geared up to set up the plant and commission it by 30th April, 2019.*
- (5). *Sri Arvind Mittal, Chief Engineer appearing on behalf of UPPCL stated that in case Commission grants extension for setting up of the plant the tariff should further be reduced as per the prevailing market rate to which the petitioner objected.”*

Impugned Order dated 30.04.2019

- (i) *“This matter was last heard on 26.02.2019 and an order was passed on 05.03.2019. The Petitioner was allowed to commission their plant by 15.04.2019 subject to imposition of liquidated damages as per PPA. The Commission had also directed UPPCL to provide connectivity to the Petitioner from 33 KV Kanduni substation on payment of cost of Bay within next 15 days from the date of order. The Petitioner was also asked to deposit cost of laying the 132KV transmission line with UPPCL in next 15 days.*
- (2). *The matter was heard again on 16.04.2019 in which the Petitioner’s counsel intimated that their plant is ready for commissioning but they have not been provided the Bay at 33 KV substation to start evacuation of power. On this statement the counsel of UPPCL Sri*

Rajiv Srivastava and Senior Project Officer, NEDA informed the Commission that as per the recent survey of the plant it has been found that only 35% of Solar Module have been erected although the construction of Bay has been started by UPPCL. Further, they have not deposited the LD amount with NEDA. The Commission admonished the Petitioner for making a false statement before this Hon'ble Commission. The owner of the Company was himself present in the hearing and informed the Commission that all the Solar Modules are at the site and they are in a position to evacuate power from the already erected modules. He admitted that all the modules have not been erected.

(3). After hearing both the parties the Commission directed that UPPCL will provide the estimate for 132 KV transmission line within two days and the Petitioner will deposit the amount of liquidated damages with NEDA by 30.04.2019. In the meantime, the entire work will be completed and the project will be commissioned but this dispensation will be available to the petitioner only after he deposits the amount of liquidated damages by 30.04.2019

(4). The case will be heard again on 07.05.2019 at 11.30 AM”.

3. At this stage, we are not considering the merits of the matter so far as main appeals are concerned. We are only concerned with the directions sought by the Appellant as per prayer (B) in the application.

4. We are of the opinion that to ascertain as to whether the plant is complete in all respects, the same cannot be based on whether there are deficiencies in generation of power. Moreover, this is Renewable Power Generation. The case on hand pertains to renewable energy. At this stage we do not know whether RPO is complied with by the concerned discom and the same can be looked into at a later stage. In terms of Section 86 (1) (e), Renewable Energy Sector has to be promoted in all respects. Having regard to that, we direct Respondent No. 2 to grant temporary connectively from 33 Kv Kanduni sub-station to the Solar Power Plant of the Appellant forthwith subject to following conditions:

- a) The tariff for such supply shall be at Rs.5.07 per KWH.
 - b) From the LD amount, one-fourth shall be adjusted out of the remaining Bank Guarantee amounting to Rs. 1.20 crores.
 - c) Another one-fourth shall be deposited within 3 months from to-day.
 - d) Balance 50 % of LD amount shall be adjusted from the monthly bills raised by the Appellant i.e. deducting to an extent of 50% of the monthly bills.
4. The above order is subject to outcome of order in the main appeal. Copy of this order is furnished to NEDA by respective Discom.
5. The connectivity must be done in the presence of responsible person from NEDA and State Chief Electoral Officer by **11 am on 23.05.2019.**

List the matter on **18.07.2019.**

(Ravindra Kumar Verma)
Technical Member

kt/mkj

(Justice Manjula Chellur)
Chairperson