

**In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)**

**IA No. 226 of 2017 in
Appeal No. 278 of 2016**

Dated: 29th March, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of :-

**JBM Solar Power Private Limited
Plot No.9, Institutional Area
Sector – 44, Gurgaon – 122 003**

... Appellant

Versus

**Haryana Electricity Regulatory Commission
Bays No.33-36, Sector-4,
Panchkula-134109.**

...Respondent No.1

**Haryana Power Purchase Centre
Shakati Bhawan, Sector-6,
Panchkula-134108.**

...Respondent No.2

**Counsel for the Appellant : Mr. Anand K. Ganesan
Mr. Sandeep Rajpurohit
Ms. Neha Garg**

**Counsel for the Respondent : Mr. Nishant Ahlawat for R-1
Mr. Aditya Singh for R-2**

ORDER

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed by M/s. JBM Solar Power Private Limited (hereinafter referred to as the “**Appellant**”) under section 111 of the Electricity Act, 2003 against the Impugned Order dated 12.09.2016/04.10.2016 passed by the Haryana Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) passed in Petition No. HERC/PRO-6 of 2016 whereby the Chairman of the State Commission has in exercise of casting vote held that the competitive bidding process and the Power Purchase Agreement entered into by the Haryana Power Purchase Centre (hereinafter referred to as the “**Respondent No.2**”) with the Appellant is not in line with the purported competitive bidding guidelines for renewable energy generators under Section 63 of the Electricity Act, 2003 and the deviations were not approved by the State Commission and hence the power purchases are not valid.
2. The Appellant is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at M/s. Neel House, Lado Sarai, New Delhi and has been incorporated as a

Special Purpose Vehicle to establish a 20 MW solar generating station in the state of Haryana, pursuant to Neel Metal Products Limited being selected as the successful bidder in the tender process initiated by the Respondent No.2 for solar power projects in state of Haryana.

3. The Respondent No.1 is the Haryana Electricity Regulatory Commission constituted and functioning as the State Regulator for the state of Haryana, exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
4. The Respondent No. 2 is the power procurement agency established for the purpose of procuring electricity from various sources and its onward supply to the Distribution Licensees of the consumers at large in the state of Haryana.
5. The Appellant submitted that the Impugned Order passed by the State Commission is perverse and has the effect of the entire 20 MW solar plant established by the Appellant pursuant to being selected under a competitive bidding process becoming stranded asset wherein the Appellant has invested a huge amount and the

Appellant is also incurring monthly losses which are getting accumulated.

6. Since the Impugned Order dated 12.09.2016 was signed by the Chairman of the State Commission, Member of the State Commission expressed his difference of opinion as per his dissenting note vide its Order dated 04.10.2016 and approved the draft PPAs submitted by the Appellant, pursuant to being selected through the competitive bidding.

Though the Member vide its dissenting note dated 04.10.2016 passed order with difference of opinion but the Chairman of the State Commission had by casting vote proceeded to reject the Power Purchase Agreement pursuant to the said competitive bidding process.

7. The Appellant being aggrieved by the Impugned Order filed IA No. 573 of 2016 in Appeal No. 278 of 2016 before this Tribunal praying that the Respondent No.2 be directed to construct the transmission line at the earliest and allow the injection of power generated by the Appellant into the grid and the monthly bills be raised for a

provisional tariff based on the Average Power Purchase Cost as the final tariff is being subject to the outcome of the present Appeal.

8. The State Commission vide its Impugned Order has provided the following provisions;

*“ii. However, in the case of the successful bidders who have already commissioned their plants or are nearing completion (more than 80% complete) under the PPA executed by HPPC, and are willing, may explore the possibilities for arriving at an equitable and reasonable solution to arrive at a tariff aligned to the prevailing market conditions subject to the ceiling of the project cost determined by CERC for the FY 2016-17 in accordance with the 6.4 (3) of the National Tariff Policy, 2016 and HERC RE Regulations in vogue as the projects are likely to be commissioned during FY 2016-17 only. **In such an event HPPC, shall submit the outcome arrived at for the consideration and Order of the Commission, before 30th September, 2016.”***

9. In the light of the submissions of the Appellant that though the power plant is virtually ready but the evacuation of the power could not take place due to the non-availability of the transmission line, this Tribunal did not consider the prayer of the Appellant at that point of time. However, vide IA No. 226 of 2017 in Appeal No. 278 of 2016 filed by the Appellant, the Appellant informed this Tribunal that the evacuation line has since been constructed for evacuation of the electricity to be generated from the plant of the Appellant and the said evacuation line has been ready for operation. The solar

plant has also been retested and fully ready for commissioning. On approaching the Distribution Licensee for connectivity to the grid by the Appellant, it was informed that as per the instructions of Respondent No.2, connectivity to the plant is not be granted without prior consent of the Respondent No. 2 as the Appeal is pending before this Tribunal. The Appellant further stated that the connectivity was approved as far back as on 04.05.2016 and this Tribunal already directed that no coercive steps be taken against the Appellant and the fact that the connectivity to the grid is a right even as per the Impugned Order wherein the supply of electricity could be done only at a lower tariff.

10. The Appellant reiterated that in the Impugned Order, while the State Commission has rejected the competitive bidding process and the tariff discovered therein, it has been held by the State Commission that in the cases wherein the plants were more than 80% complete, it was open to the licensee to procure the electricity at a tariff subject to the ceiling of the project cost determined by the Central Commission in the year 2016-17 and based on this ceiling, the tariff works out to Rs. 5.68 per unit which has been applied by the State Commission to other projects.

11. The Appellant further submitted that the solar panels have been installed and are lying on the project site since May, 2016. But such panels undergo degradation over a period of time if left unused. While the issue before this Tribunal is whether the tariff discovered in the bidding process is to be adopted, the Appellant for the purpose of the interim relief is seeking to start supplying electricity at provisional tariff in line with the Impugned Order.
12. We have heard at length the learned counsel for the parties and noted the submissions made by them. Gist of the same is discussed hereunder;
- i) In view of the huge investment, 20 MW solar plant left stranded on account of the Impugned Order of the State Commission is causing severe financial impact to the Appellant.
 - ii) The solar plant 20 MW solar plant was installed and commissioned in terms of the PPA entered into between the parties, pursuant to reverse bidding process conducted by the Respondent No.2 wherein the time lines were specified by the Respondent No.2.

- iii) Pursuant to the issuance of the Impugned Order by the State Commission, the grid connectivity has been denied by the Respondent No.2 to the Appellant that too, without appreciating that its plant is virtually ready to generate by rejecting the Power Purchase Agreement and the tariff derived through the competitive bidding process undertaken by the Respondent No. 2 itself. Vide the Impugned Order of the State Commission, the situation has been created for the Appellant to remain stranded or being saddled for available tariff for the life of the generating station.
 - iv) The tariff as determined by the Central Commission for the year 2016-17 is Rs. 5.68 per kWh (without accelerated depreciation).
 - v) The learned counsel for the Respondents reiterated their stand that in the light of solar tariff getting lower, they would find it commercially unviable to procure power from the said generating station at the tariff derived through the competitive process.
13. After having carefully perused the submissions made by the learned counsel, we observe that the only issue to be decided at this interim stage is on the supply of electricity at a provisional tariff of Rs. 5.68

per unit by the solar generators till the time the main Appeal is disposed of by this Tribunal.

14. The primary objective of the power plant is to ensure that the plant continuously and reliably operates, thereby generating the maximum economic and energy performance returns. Solar Photovoltaic (PV) power plants are no exception which are conceived with the premise that they need to operate and generate electricity whenever some minimum sunlight is available and are envisaged as “must run” stations and as such the tariff was for Solar PV plants is designed, formulated and arrived upon considering their “must run” status.

15. Compared to many other power generating stations, Solar PV plants have minimal maintenance and service requirements. The Operation and Maintenance (O&M) of Solar PV plants is based on integrated management system that is implemented throughout the lifecycle. Needless to say that such integrated approach to planning, execution and monitoring of the activities leads to an optimal performance of the plant.

16. A prolonged outage may disrupt the normal operation & maintenance of Solar PV plant as generation is reduced to zero due to no schedule and as such, all auxiliaries and systems of solar PV stations are switched off. As a result, large number of technical challenges crop in such as:

- (i) Moisture ingress in transformers may cause failure of transformer. Moreover, such failure may further increase downtime if such faults are detected at the time of revival from long shut down.
- (ii) Failure of UPS batteries due to lack of charging hence loss of control, protection and communication system.
- (iii) Theft of un-energized solar panels may additionally lead to downtime from theft etc.

17. We have observed that as per the Impugned Order of the State Commission, while the generators are claiming higher tariff derived through the competitive bidding, the State Commission has made a provision for the generators which are in the advanced stage of commissioning by making them to supply electricity at a tariff which

would not exceed the tariff determined by the Central Commission for the year 2016-17.

18. We are of the considered opinion that the solar penals could not be allowed to be left idling as it would result in technical degradation which would result in irreparable loss to the generators who have invested huge sum in the projects.
19. Under the circumstances of the present case and the fact that such a relief has already been granted to the similarly placed generator vide our Order dated 13.12.2016, we direct that as an interim measure, the Appellant shall be entitled to get physically connected to the grid and to inject electricity in the grid for supplying to Respondent No. 2 at the tariff approved by the Central Commission for such plants for the year 2016-17.
20. This interim arrangement shall be without prejudice to the rights and obligations of the parties and subject to the outcome of this Appeal. We make it clear that we have not expressed any opinion on the merits of the case.

21. In terms of the above, IA No. 226 of 2017 in Appeal No. 278 of 2016 is disposed of.

22. Pronounced in the Open Court on this **29th day of March, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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