

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

**IA No. 371 of 2017
IN
Appeal No. 343 of 2016 & IA No. 752 of 2016**

Dated: 10th October, 2017

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

In the matter of :-

**Balarch Renewable Energy Pvt. Ltd.
House No. 528, Sector 10,
Chandigarh**

... Appellant

Versus

- 1. Haryana Electricity Regulatory Commission (HERC)
Bays No.33-26, Sector-4,
Panchkula-134109. ...Respondent No.1**
- 2. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6,
Panchkula- 134108. ...Respondent No.2**

**Counsel for the Appellant: Mr. Anand K Ganeshan
Ms. Swapna Seshadri
Ms. Neha Garg
Mr. Siddhant Kant**

Counsel for the Respondent(s): Mr. Nishant Ahlawat for R – 1

**Mr. Aditya Singh
Mr. Aamir Z Khan for R – 2**

ORDER

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

1. The present Appeal is being filed by M/s. Balarch Renewable Energy Pvt. Ltd. (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 (“**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 as a Special Purpose Vehicle to establish a 1 MW Solar Power Plant (Project) in the State of Haryana, pursuant to Appellant 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 Electricity Regulatory Commission 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 for its onward supply to the Distribution Licensees and 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 Project 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 Power Purchase Agreements (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. Letter of Intent (LoI) was issued to the Appellant by the Respondent No. 2 on 27.3.2015 for procurement of 1 MW solar power. PPA was entered into between the Appellant and Respondent No. 2 on 15.6.2015. The Appellant vide letter dated

8.1.2016 intimated Respondent No. 2 about the sanction of the grid connectivity.

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

“36.....

*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.**”*

As per above order the plants which were more than 80% complete, it was open to the Respondent No. 2 to procure the electricity at a tariff subject to the ceiling of the project cost determined by CERC for the year 2016-17. The ceiling tariff works out to Rs. 5.68 per unit which has been applied by the State Commission to other projects where the evacuation line was complete.

9. The Appellant has submitted that the solar panels have been installed and the solar plant has also been tested and ready for

commissioning. The Appellant also made a case that if the solar panels are left unused they undergo degradation over a period of time. The Appellant further submitted that though the obligation of construction of the transmission line is that of licensee it has without prejudice to its rights deposited the entire amount of the transmission line. The said evacuation line is ready and the project is in a position to get physically connected and start generation immediately.

10. With the above background during hearing before this Tribunal on 25.5.2017 on the request of the Appellant this Tribunal granted permission to inject the electricity in the grid and commence supply to the Respondent No. 2 without claiming any payment for such electricity supply. This interim arrangement was allowed till the time final order in this IA is passed. The Appellant for the purpose of the interim relief is now seeking to start supplying electricity at provisional tariff in line with the Impugned Order.
11. 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.

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;

- a. In view of the huge investment, this Project being left stranded on account of the Impugned Order of the State Commission and is causing severe financial impact to the Appellant.
- b. The Project 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.
- c. Pursuant to the issuance of the Impugned Order by the State Commission, the construction of the evacuation line has been delayed by DHVBNL which was to be carried out on behalf of the Respondent No.2 from delivery point to the Appellant's switchyard and that too without appreciating that its plant was virtually ready to generate.
- d. The tariff as determined by the Central Commission for the year 2016-17 is Rs. 5.68 per kWh (without accelerated depreciation).
- e. The Appellant purchased the land for the project way back in October, 2015. The Appellant has submitted that there was delay in connectivity to the project by the distribution licensee i.e. Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) in the area of the project. As per the PPA, DHBVNL who was to construct transmission line for the project took initial steps towards construction of the transmission line in October

2015. Thereafter there was no action by DHBVNL towards construction of the said transmission line. The Appellant followed up the matter vide various letters dated 1.6.2016, 16.6.2016, 12.7.2016, 22.7.2016. The Appellant awarded EPC contract to M/s Sunsure Energy Pvt. Ltd. on 23.12.2015 and the orders for solar panels, transformer, inverter etc. were placed by February, 2016 with intention for completion by June, 2016. The solar panels were received at site in January, 2017 and the Project was complete in all aspects by about 7.3.2017 but could not be commissioned due to unavailability of transmission line/ evacuation facility. In response to the letter dated 15.2.2017 of DHBVNL, the Appellant under letter dated 22.2.2017 deposited actual cost of line demanded by the licensee. Evacuation line being less than 1 km takes about 10 days to construct. The actual construction began around 5.5.2017 and was completed around 18.5.2017.

- f. The Appellant while placing some documents on record has submitted that it has progressively carried out various works at the project site. The Appellant further submitted that despite inverter and solar panels ready for dispatch has to delay their dispatch due to issues related to transmission line. Had the solar panels/ inverters received at site it would have resulted in their degradation and deterioration in absence of evacuation line to generate and supply electricity. The Appellant vide letter dated 7.11.2016 also informed the Respondent No. 2 that the project was 95% complete and was only waiting for evacuation line to be completed. The

Appellant had undertaken all activities and had irretrievably invested in the project at the time of passing of the Impugned Order. The delay in commissioning of the project is only due to delay in construction of evacuation line by DHBVNL on behalf of the Respondent No. 2.

- g. The Respondent No. 2 has submitted that the Appellant is not meeting the condition of 80% completion of the project and it cannot claim the benefit as envisaged in the Impugned Order. The Appellant has received the solar panels at site only on 14.1.2017 and 18.1.2017 and as per the orders of the CERC the cost of solar PV modules is more than 50%, hence the Appellant cannot contend that it has reached 80% project completion mark at the time of passing of the Impugned Order. The Appellant has also not placed on record when it has placed the orders for purchase of the solar panels.
- h. The Appellant in response to the letters dated 15.6.2016 & 15.2.2017 of the Respondent No. 2 deposited the cost of new 33 kV lines only on 21.2.2017. The Respondent No. 2 has further submitted that it was the responsibility of the Appellant to pay the amount for the construction of the transmission line and the Respondent No. 2 cannot be called into question to construct such transmission line at its own cost. The Respondent No. 2 on this issue has relied on terms of NIT, third amendment to the HERC (Terms and conditions for determination of tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2010 passed on 14.7.2014 and date

of signing of PPA in June, 2015 before the fourth amendment to the said regulations which came on 12.8.2015. Accordingly, the Respondent No. 2 has submitted that the contention of the Appellant that the completion of its solar project is delayed due to delay in construction of transmission line is unjustified and incorrect. There is no relationship between construction of transmission line and construction of solar power project which could be taken up independently without depending of construction of transmission line. Further, they also submitted that it was the responsibility of the Appellant to pay for the transmission line in time so that it could be constructed in time. The delay was only attributable to the Appellant and not to Respondent No.2.

- i. The learned counsel for the Respondents further 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 for the parties, 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 have also gone through the communications between the Appellant and Respondent No. 2 regarding delay in construction of evacuation line and dispute regarding associated costs related to its execution, the Appellant and its EPC Contractor regarding keeping on hold the despatch of solar panels and inverters etc., provisions of the PPA & other documents placed on record. We have also noticed that the cost of land is substantial i.e. about 50% of the cost of the Project as submitted by the Appellant. Respondent No. 2 quoted that cost of solar panels as per CERC orders is more than 50% to substantiate that the work of the Project was not completed to the extent of more than 80% as per the requirement of the Impugned Order. After going through the Impugned Order we find that the State Commission has not specified any parameter i.e. either financial or physical regarding more than 80% completion of works. This Tribunal earlier vide order dated 25.5.2017 has also allowed the Appellant to inject power into the grid without raising any bill on the Respondent No. 2.
19. We are of the considered opinion that the solar panels could not have been 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.

20. Under the circumstances of the present case and the fact that such a relief has already been granted to the similarly placed generators vide our Orders dated 13.12.2016 & 29.3.2017, we direct that as an interim measure, the Appellant shall be entitled 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.

21. 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.

22. In terms of the above, IA No. 371 of 2017 in Appeal No. 343 of 2016 is disposed of. List the main Appeal on 04.12.2017.

23. Pronounced in the Open Court on this 10th day of October, 2017.

(I.J. Kapoor)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Mrs. Justice Ranjana P. Desai)
Chairperson