

**THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO. 50 OF 2019 &
IA No. 211 OF 2019**

Dated: 11th March, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S. D. Dubey, Technical Member**

In the matter of:-

Adani Power Maharashtra Limited

Through the authorised represented
Adani House Nr. Mithakhali Circle
Navrangpura
Ahmedabad

.... Appellant

Versus

1. Maharashtra Electricity Regulatory Commission

Through the Secretary
World Trade Centre No. 1, 13th Floor
Cuffe Parade, Colaba,
Mumbai-400 001, Maharashtra

2. Sai Wardha Power Company Limited

Through its authorised represented
8-2-293/82/A/431/A
Road No. 22, Jubilee Hills,
Hyderabad- 500 033

3. Maharashtra State Electricity Distribution Co. Limited

Through its authorised represented
Prakashgad, 5th Floor
Bandra (East)
Mumbai-400 051

4.Sinnar Thermal Power Limited

Through its authorised represented
 A-150-151, Ground Floor,
 K.H. No. 407, A Block,
 South West Delhi,
 New Delhi- 110037

5. State Government of Maharashtra

Through its Principal Secretary (Energy)
 Main Building, Mantralaya,
 Mumbai-400 032

... Respondents

Counsel for the Appellant(s) : Mr. Shri Venkatesh
 Mr. Varun Singh
 Mr. Nishtha Kumar
 Mr. Somesh Srivastava
 Mr. Vikas Maini

Counsel for the Respondent(s): Mr. Anand K. Ganesan for
 Res 2

Mr. Udit Gupta
 Mr. Anup Jain for Res 3

Mr. Sitesh Mukherjee
 Mr. Deep Rao Palepu
 Mr. Divyanshu Bhatt
 Mr. Vishal Binod
 Mr. Syed Jafar Alam
 Mr. Arjun Agarwal for Res 4

JUDGMENT

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

1. The brief facts that led to filing of the present appeal are as
 under:

In terms of guidelines issued by Ministry of Power (MoP) for determination of tariff by bidding process for procurement of power by distribution licensees, on 18.05.2009, Respondent No.3-MSEDCL issued a request for proposal for procurement of 2000 MW (+30%-20%) for a period of 25 years on long term basis. In that process, the following bidders were qualified:

- i. Emco Energy Ltd. (200 MW @2.879 Rs/kWh)
- ii. Rattan India Power Ltd. (Amravati) (1200 MW @ 3.260 Rs/kWh)
- iii. Adani Power Maharashtra Ltd (1200 MW @ 3.280 Rs/kWh)
- iv. Rattan India Power Ltd. (Nashik) (950 MW @ 3.450 Rs/kWh)
- v. Wardha Power Company Ltd. (675 MW @ 3.620 Rs/kWh)

2. Accordingly, Respondent No.3-MSEDCL executed Power Purchase Agreements (“**PPA**”) with Emco Energy Limited on 17.03.2010, Appellant-Adani Power Maharashtra Limited on 31.03.2010 and Rattan India Ltd. (Amravati) on 22.04.2010 and 05.06.2010 for purchase of power as mentioned above.

3. Respondent No.3, praying for adoption of tariff qua the Power Purchase Agreements executed pursuant to the bidding

process, filed a Case being Case No. 22 of 2010 before Maharashtra Electricity Regulatory Commission (MERC). MERC by its order dated 28.12.2010 adopted levelised tariff for procurement of power pursuant to the bidding in the following terms:

- i. L1: Emco Energy Limited (200 MW @2.879 Rs/kWh)
- ii. L2: Rattan India Amravati (1200 MW @3.260 Rs/kWh)
- iii. L3: Appellant (1200 MW @ 3.280 Rs/kWh)

4. Again, Respondent No.3 filed a case being Case No. 56 of 2010 before MERC seeking approval for purchase of additional power of 125 MW from the Appellant. By order dated 19.05.2011, MERC approved the same on the terms and conditions that are applicable to the previous purchase provided that, the quantum of additional power was less, and the same should not become a precedent for future procurement.

5. Subsequently, Respondent No.3 submitted a proposal to the Government of Maharashtra seeking approval for purchase of additional quantum of 1090 MW of power. After obtaining approval from the Government of Maharashtra on 01.12.2011 for purchase of additional quantum of 1090 MW of power, Respondent No.3

approached the bidders in ascending order of the quoted tariffs as per the request for proposal dated 18.05.2009.

6. In 2009, Wardha Power Company Limited had not quoted a tariff lower than Rattan India Nashik and the Appellant and stood below them in the list of qualified bidders, whereas Emco Energy Limited (L1) and Rattan India Amravati (L2) expressed their inability, however, Appellant agreed to supply 440 MW @3.28 Rs/kWh and Rattan India Nashik agreed to supply 650 MW @ 3.42 Rs/kWh i.e., 3 paise lesser than what was quoted in 2009 pursuant to a negotiation on price with the Government of Maharashtra.

7. Respondent No. 3 filed Case No. 53 of 2012 before MERC on 15.05.2012 seeking approval of initialled separate PPAs entered with the Appellant for supply of 440 MW power and Rattan India Nashik for supply of 650 MW power pursuant to the request for procurement of additional quantum of 1090 MW (over and above the already executed power purchase agreements). By its order dated 09.07.2012, MERC observed that Respondent No.3 needs to go through a competitive bidding process to procure additional power and granted liberty to withdraw the petition. When Respondent No.3 informed MERC that it did not wish to

withdraw the petition and would like to make additional submissions, MERC constituted a committee to study the submissions in detail. By its order dated 27.11.2012 , MERC directed Respondent No.3 to approach other qualified bidders under the request for proposal dated 18.05.2009 and seek their respective offers for supply of power. However, Respondent No.3 did not approach Wardha Power Company Limited.

8. On 10.12.2012 Wardha Power Company Limited submitted an offer for supply of 100 MW @ 3.28 Rs/kWh of power from a power plant in Warora, Maharashtra, on medium term basis with immediate effect. However, Wardha Power Company Limited further offered to supply an additional 260 MW of power from April 2014.

9. Taking into consideration the recommendations of the Committee MERC passed an order on 27.12.2012 in Case No. 53 of 2012 approving the procurement of additional quantum of 1090 MW from the Appellant and Rattan India Nashik. Thereafter, Respondent No. 3 and the Appellant executed a PPA for purchase/supply of 440 MW of power with COD as 16.02.2017.

10. Wardha Power Company Limited filed an appeal being Appeal No. 70 of 2013 before this Tribunal on 07.03.2013 challenging the order dated 27.12.2012 passed by MERC approving the purchase of additional quantum of power without a competitive bidding process. On 22.03.2013, this Tribunal observed that any action taken by the parties shall be at their own risk and subject to the outcome of the appeal. On 10.02.2015, this Tribunal partly allowed the appeal upholding MERC's decision approving purchase of additional quantum of 1090 MW of power without undertaking separate bidding process. However, this Tribunal held that MERC ought to have been afforded an opportunity of hearing to Wardha Power Company Limited in Case No. 53 of 2012 to enable it to match the tariff of 3.28 Rs/kWh. Consequently, this Tribunal gave a direction that Rattan India Nashik and Wardha Power Company Limited should be called upon to match the tariff of 3.28 Rs/kWh, and in case both the parties match the said tariff, then the additional quantum of 1090 MW of power would be distributed on a pro-rata basis between the Appellant, Rattan India Nashik and Wardha Power Company Limited. Pursuant to the directions of this Tribunal, MERC initiated suo-motu proceedings for complying with the order of this Tribunal dated 10.02.2015.

11. On 10.03.2015, Respondent No.3 sought an unconditional offer from Wardha Power Company Limited for supply of power @3.28 Rs/kWh as part of the demand from additional quantum of 1090 MW. Pursuant thereto, on 18.03.2015, Wardha Power Company Limited submitted its offer for supply of 310 MW @3.28 Rs/kWh, which was subsequently pro-rated at 240 MW. In the meantime, Rattan Indian Nashik filed Review Petition No. 14 of 2015 before this Tribunal seeking review of order dated 10.02.2015 alleging that Wardha Power Company Limited had offered power from Chhattisgarh in 2009 bidding process whereas, now it seeks to offer power from Maharashtra. While disposing of the Review Petition on 18.05.2015, this Tribunal observed that since the MERC has already initiated suo-motu proceedings in the matter, MERC may decide the source of power being offered by Wardha Power Company Limited as per law. This Tribunal further observed that Wardha Power Company Limited is ready to supply power from both Maharashtra as well as Chhattisgarh. Aggrieved by the orders of this Tribunal dated 10.02.2015 and 18.05.2015, Rattan India Nashik filed Civil Appeal Nos. 5478 & 5731 of 2015 before the Hon'ble Supreme Court on 03.07.2015.

12. On 14.08.2015, it was noticed in the Board Meeting of Respondent No.3 that allocation of quantum for procurement on pro-rata basis will amount to reallocation of the quantum, therefore it was decided that the same needs to be re-submitted to the Government of Maharashtra for approval. It was also decided to submit the proposal of Wardha Power Company Limited for supply of 310 MW @ 3.28 Rs/kWh, to the Government of Maharashtra for approval. Accordingly, the matter was referred to the Government of Maharashtra on 01.09.2015. Subsequently, confirmation for procurement of power from Wardha Power Company Limited (310 MW @3.28 Rs/kWh) was obtained. Thereafter, confirmation from the Appellant was also sought for reduction of its quantum from 440 MW to 343 MW i.e, its share in the additional quantum.

13. The Hon'ble Supreme Court by its order dated 24.09.2015 directed the parties in the above stated Civil Appeals to maintain status quo existed as on 24.09.2015. Thereafter, on 10.05.2018, the Hon'ble Supreme Court dismissed the Civil Appeal Nos. 5478 & 5731 of 2015.

14. On 31.05.2018, Wardha Power Company Limited approached MERC by way of an application in Case No. 53 of 2012 praying for certain directions to Respondent No.3 in terms of

this Tribunal's order dated 10.02.2015. Respondent No.3 filed its response to the said application stating that power supply should be demarcated as Appellant - 440 MW; Rattan India Nashik - 440 MW and Respondent No.2 herein - 210 MW. MERC by order dated 19.01.2019 allocated the power as under and held that rate of procurement would be 3.28 Rs./kWh:

- i. Appellant – 343 MW
- ii. Rattan India Nashik – 507 MW
- iii. Respondent No.2 - 240 MW

15. MERC further directed that the PPA with the Appellant for 440 MW needs to be revisited for reduction in contracted capacity to 343 MW and, such reduction should be effectuated once PPAs are executed by Respondent No.3 with Rattan India Nashik and Respondent No.2. Pertaining to fuel supply and location, MERC observed that unlike in Case-II bid where location, fuel, technology is specified, in Case-I bid sellers are free to select location, fuel, technology of power plant.

16. Being aggrieved by the said Order passed by the MERC, the Appellant has filed the present appeal seeking the following reliefs:

- a) Admit and allow the present appeal and set aside the impugned order dated 19.01.2019 in case No. 53 of 2012 passed by MERC to extent challenged before this Hon'ble Tribunal in terms of the grounds raised in Para 9 above;
- b) Pass such further or other orders as this Hon'ble Tribunal may deem fit in the circumstances and nature of the case.

17. During the pendency of this appeal, Respondent No. 3 - Discom filed an Affidavit and made its preliminary submissions on distribution of quantum between Rattan India Power Limited and Wardha Power Company Limited. Paras 21 and 22 of the said Affidavit are relevant, which read as under:

"21. The answering Respondent 3 (MSEDCL) submits that MSEDCL has signed the PPA with M/s APML for the quantum of 440 MW power at the levelised tariff of Rs.3.280/- p.u on 16.02.2013 as per State Commission MERC order dtd 27.12.2012. Accordingly, as per the PPA, from the CoD dtd 16.02.2017, Appellant is supplying the power to MSEDCL.

22. The answering Respondent submits that, the power purchase agreement has reached the finality and the power supply transactions under the PPA is mature hence it is not viable to reduce the contracted quantum of appellant at this

juncture. Hence it is humbly requested to revise the power purchase quantum keeping intact the already signed PPA quantum of 440 MW of APML and allow signing PPA with revised quantum with M/s WPCL for 210 MW and M/s RNPL for 440 MW. The revised PPA quantum suggested is as follows:

<i>Name of generator</i>	<i>Approved quantum by MERC</i>	<i>Proposed quantum (MW) for PPA</i>
<i>APML</i>	<i>343</i>	<i>440</i>
<i>RNPL</i>	<i>507</i>	<i>440</i>
<i>WPCL</i>	<i>240</i>	<i>210</i>
<i>Total</i>	<i>1090</i>	<i>1090”</i>

18. What follows from the facts as stated above and the Affidavit of the 3rd Respondent is that except the Appellant there was no concluded contract so far as other generators i.e, Rattan India Power Limited and Wardha Power Company Limited are concerned. They are still in the process of either approaching the Commission for approval of PPA or for consideration of approval of PPA. So far as the Appellant is concerned, though the quantum is approved by MERC in terms of impugned order, now in the light of Respondent No.3 seeking procurement of additional power of 97 MW, the proposed quantum so far as the Appellant is concerned comes back to 440 MW for which already Power Purchase Agreement (PPA) is in place. Therefore, we set aside the

impugned order so far as it restricts the quantum of power on pro-rata basis vis-a-vis the Appellant Adani Power Maharashtra Limited Thiroda to 343. We approve the request of the 3rd Respondent to procure additional power which restores back quantum of power of 440 MW originally agreed between the parties in terms of approved PPA.

19. So far as other respondent is concerned, it shall proceed to request the MERC to proceed on the request of MSEDCL, which requires procurement of additional power of 97 MW.

20. With the above observations, we allow the appeal so far as the Appellant is concerned permitting/approving additional power requirement of MSEDCL for supply of 440 MWs from APML Tiroda in terms of PPA, which is already in existence.

S.D.Dubey
(Technical Member)

Justice Manjula Chellur
(Chairperson)

Dated: 11th March, 2020

REPORTABLE/~~NON-REPORTABLE~~

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