

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

IA NO. 637 OF 2016 IN APPEAL NO. 307 OF 2016

Dated: 13th December, 2016

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

In the matter of:

Subhash Infraengineers Pvt. Ltd.
Plot No. 743-P, Sector-38,
Gurgaon-122001.

...Appellant No.1

Utrecht Solar Private Ltd.
301-A, Unitech Arcadia South City-II,
Sector-49, Gurgaon-122018.

...Appellant No.2

Vs.

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

...Respondent No.1

Haryana Power Purchase Centre
Through Chief Engineer
Shakati Bhawan, Sector-6,
Panchkula-134108.

...Respondent No.2

Counsel for the Appellant : Mr. Anand K. Ganesan
Mr. Sandeep Rajpurohit

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 filed by M/s. Subhash Infraengineers Pvt. Ltd. and M/s. Utrecht Solar Private Ltd.(hereinafter referred to as the “**Appellants**”) under section 111 of the Electricity Act, 2003 against the Order dated 12.09.2016 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 Agreements entered into by the Haryana Power Purchase Centre (hereinafter referred to as the “**Respondent No.2**”) with the Appellants are not in line with the purported competitive bidding guidelines for renewable energy generators under section 63 of the Electricity Act, 2003, the deviations were not approved by the State Commission and hence the power purchases are not valid.
2. The Appellant No.1 is a company incorporated under the provisions of the Companies Act, 1956 having its corporate office at Plot NO. 743-P, Sectopr-38, Gurgaon and has established a 1MW solar generating station

in the state of Haryana, pursuant to it being selected as the successful bidder in the tender process initiated by the Respondent No.2 for solar power projects.

3. The Appellant No. 2 is a company incorporated under the provisions of the Companies Act, 1956 having its corporate office at 301-A, Unitech Arcadia South City-II, Sector 49, Gurgaon and has been incorporated as a Special Purpose Vehicle to establish a 1MW solar generating station in the state of Haryana, pursuant to M/s. Ultimate Sun Systems Private Ltd. being selected as the successful bidder in the tender process initiated by the Respondent No.2 for solar power projects.
4. The Appellants have filed IA No. 637 of 2016 in Appeal No. 307 of 2016 praying that this Tribunal to direct the Respondent No.2 to ensure re-connection to the State Grid and for purchasing power from the Appellants on a provisional tariff, subject to proper adjustment on the outcome of the present Appeal.
5. 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) The Appellants stated that having invested substantial amount towards completion of Solar Power Plants in the State of Haryana and the plants were supplying power to State Power Utility under its

PPA with the Respondent No.2 which are now left stranded on account of the Impugned Order of the State Commission.

- (b) The generating stations were installed and commissioned in terms of the PPA entered into between the parties, pursuant to the reverse bidding conducted by the Respondent No.2 wherein the timelines were specified by the Respondent No. 2. Consequent upon commission, the grid connectivity was granted and the generation supply had started. In the case of the Appellant No. 2, the first invoice has also been raised, pursuant to the joint meter reading conducted by the Appellant No.2 and the distribution licensee. However, at this stage, the State Commission has by the Impugned Order proceeded to reject power purchases, leaving no option to the Appellants but to remain stranded or being saddled with an unviable tariff for the life of the generating station.
- (c) Pursuant to the Impugned Order, on 21.10.2016 without any notice or intimation, the grid connectivity of the Appellants have been disconnected, leaving the power plants as stranded.
- (d) The tariff of Rs. 6.44 per Kwh was the lowest tariff in the competitive bidding process.

- (e) The tariff as determined by the Central Commission for the year 2016-2017 vide its Order dated 29.04.2016 is Rs.5.68 (without accelerated depreciation).
- (f) The Appellant further submitted that in the Impugned Order itself, the State Commission has while disapproving the lowest tariff discovered in the competitive bidding process allowed the generators to supply electricity to the Respondent No.2 with the condition that the project cost as determined by the Central Commission for the year 2016-2017, shall be the ceiling.
6. In the light of the above, the Appellant stated that is in the interest of justice and to balance the rights of the parties that the power starts flowing at the provisional tariff of Rs.5.68 per unit, which shall be without prejudice to the rights of the parties.
7. 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 by the solar generators and the tariff to be paid being disposal of the Appeal.
8. The primary objective for any power plant is to ensure the plant continuously and reliably operates, thereby generating the maximum

economic and energy performance returns. Solar Photovoltaic (PV) power plants are no exception.

9. Solar PV stations are conceived with the premise that they need to operate and generate electricity whenever some minimum sunlight is available. In Renewable Energy Regulations (RER), they are envisaged as “must run” stations. Tariff for such Solar PV plants is designed, formulated and arrived upon considering their “must run” status.
10. Compared to many other power generating stations, 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. An integrated approach to planning, execution and monitoring of the activities leads to an optimal performance of the plant.
11. 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 down time 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 leads to down time from theft etc.
12. In the Impugned Order, the State Commission has held that while the generators are not entitled to the tariff of Rs.6.44 per Kwh being the tariff discovered in the competitive bidding process, the generators should be entitled to supply electricity at a tariff which would not exceed the tariff determined by the Central Commission for the year 2016-2017 which works out to Rs.5.68 per Kwh. During the course of arguments, the Appellants undertook to abide by this tariff, subject to the outcome of the Appeal.
13. It is fact that the solar panels cannot be allowed to be left idle, as it would result in technical degradation which would result in irreparable loss to the generators who have invested in the project.
14. Under the circumstances as discussed above, we direct that as an interim measure, the Appellants' generators shall supply electricity to the Respondent No.2 at the tariff of Rs.5.68 per Kwh, being the tariff determined by the Central Commission for the year 2016-2017. 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.

15. In terms of the above, the IA No. 637 of 2016 is disposed of.
16. Pronounced in the Open Court on this **13th day of December, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~
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