

COURT-I

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

**IA NO. 1416 OF 2019 IN
DFR NO. 2223 OF 2019**

Dated: 30th July, 2019

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

In the matter of:

**SB Energy Solar Private Limited Petitioner (s)
Versus
Andhra Pradesh Electricity Regulatory
Commission & Ors.. Respondent(s)**

Counsel for the Petitioner(s) : Mr. Hemant Sahai
Ms. Puja Priyadarshini
Mr. Aditya K. Singh
Ms. Molshree Bhatnagar
Mr. Nived V.
Ms. Pragya Ohri

Counsel for the Respondent(s) : Ms. Poorva Saigal
Ms. Tanya Sareen for NTPC

ORDER

**(IA NO. 1416 OF 2019
*(Application for urgent listing)***

For the reasons set out in the application, the IA is allowed.

DFR NO. 2223 OF 2019

Heard learned counsel for the Petitioner.

We have gone through Power Sale Agreement (PSA) as well as Power Purchase Agreement (PPA) placed on record.

The controversy relates to a scheme for procurement of solar power on long term basis, i.e. 750 MW each by NTPC and Solar Energy Corporation India Ltd. – for short “**SECI**” (intermediary agencies).

In response to bids invitation to the above two schemes, successful bidders seems to have invested substantial amounts in crores by paying the said amounts to Solar Park Corporations Ltd. (State implementing agency).

Agreements came into existence between intermediary agencies (NTPC and SECI) and generators (PPA) so also the concerned agreement came into existence between intermediary agencies, i.e. NTPC and SECI on one part and DISCOMS on the other part (PSA).

The terms of Agreements, i.e.PPA and PSA referred to several terms and conditions and for the present, we are concerned with Article 2.1.3 of PPA and II and III of PSA (in relation to termination/cancellation).

The above said relevant Articles read as under:

“2.1.2 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that within two (2) months from the Effective Date, the AP Discom(s) shall duly obtain the order of the Andhra Pradesh Electricity Regulatory Commission adopting the Tariff and the trading margin of NTPC and approving the procurement of the contracted capacity, on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between NTPC and the AP Discom(s).”

2.1.3 The Parties agree that in the event, the order of adoption of Tariff, trading margin and the Agreements for procurement of Power, as mentioned above, is not given by the Andhra Pradesh Electricity Regulatory Commission within the time specified above, this Agreement as well as the Power Sale Agreement shall stand cancelled and terminated with no liability of either party to the other or vis a vis AP Discom(s), unless the parties mutually agree to extend the time for fulfilling the Conditions Precedent.”

In terms of Agreement, DISCOMs concerned should approach the State Commission for adopting tariff, trading margin and approval for procuring contracted capacity.

Apparently, such petition is already pending before the State Commission from 02.02.2018 for consideration and till date the same is not finalized. The next date of hearing seems to be on 03.08.2019.

The Petitioner has approached this Tribunal in the above O.P. apprehending similar treatment to them at the hands of DISCOM concerned, i.e. recent development pertaining to 21 PPAs (wind power) at the behest of DISCOM. They placed on record resolution of Andhra Pradesh Power Coordination Committee so also Memo based on the said resolution filed on behalf of APSPDCL before the State Regulatory Commission. The resolution reads as under:

“In the APPCC meeting held on 19.06.2019, it was decided to file a petition before APERC for withdrawal of 21 Nos. PPAs entered with M/s. Axis Energy Venture India Private Limited for total capacity of 776.9(176.4+585.9+12.6) MW

by APSPDCL. A copy of Resolution of APPCC meeting is herewith enclosed.

As such, it is requested to take further necessary action for withdrawal of 21 Nos. PPAs entered with M/s Axis Energy Venture India Private Limited for total capacity of 776.9(176.4+585.9+12.6) MW by APSPDCL which were submitted to APERC for granting its consent.”

Memo filed on behalf of APSPDCL reads under:

“In the above case, APSPDCL submits that in view of the precarious financial position of APDISCOMs and consequent inability to bear the additional financial burden involved in purchasing power from 21 Nos. wind developers, APDISCOMs have decided to withdraw the PPAs entered with various Wind Power Projects clients of M/s. Suzlon and M/s. Axis Energy Ventures India Private Limited. The APSPDCL further submits that since the PPAs are not yet approved, the same is not enforceable and the APSPDCL is at liberty to withdraw the same. Hence, permission is requested to withdraw the 21 Nos. PPAs entered with various Wind Power Projects clients of M/s. Suzlon and M/s Axis Energy Ventures India Private Limited. Hence this memo on behalf of APSPDCL.”

In the light of the above development pertaining to wind power generators at the hands of DISCOM before the State Commission, the Petitioner who is one of the solar generators referred to the above two

schemes is before us apprehending similar course of action at the behest of Andhra Pradesh DISCOMs before the State Regulatory Commission.

After hearing the submissions of counsel representing the Petitioner and the intermediaries – NTPC and SECI so also going through the relevant Articles of PSA and PPA referred to above, we are of the opinion that there is genuine apprehension so far as the Petitioner is concerned.

In that view of the matter, we issue ex-parte Ad-interim direction against Respondent – DISCOM and State Regulatory Commission not to initiate any precipitative/coercive action against the Petitioner including cancellation or termination or deemed/automatic termination of PPA and PSA till such time the Andhra Pradesh State Regulatory Commission decides/issues order pertaining to adoption of tariff, trading margin and approval of procurement of contracted capacity.

Admit.

Issue notice to Respondents on the original petition as well as on the stay application, returnable on 07-08-2019. Dasti, in addition, is also permitted.

List the matter on **07.08.2019**.

(S.D. Dubey)
Technical Member

vt/mkj

(Justice Manjula Chellur)
Chairperson