

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

**IA No. 1329 OF 2019 IN APL No. 275 OF 2019 &
IA No. 1949 OF 2019**

Dated : 12th August, 2021

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

IN THE MATTER OF :

**M/s Sahasradhara Energy Private Ltd
New No. 25, Old No. 10, Sir Madhavan Nair
Road, Mahalingapuram, Nungambakkam,
Chennai – 600034**

...Appellant (s)

VERSUS

**1. Uttar Pradesh Electricity Regulatory
Commission
Through its Secretary
2nd floor, Kisan Mandi Bhawan,
Vibhuti Khand, Gomti Nagar,
Lucknow – 226001**

...Respondents No. 1

**2. Uttar Pradesh Power Corporation Ltd.
Through its Chairman and Managing
Director
Shakti Bhawan 14 – Ashok Marg
Lucknow - 226001**

...Respondents No. 2

**3. Uttar Pradesh New & Renewable
Energy Development Agency
Through its Chairman and Managing
Director
Vibhuti Khand, Gomti Nagar,
Lucknow – 226001**

...Respondents No. 3

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Utkarsh Singh
Mr. Aditya Singh

Counsel for the Respondent(s) : Mr. C.K. Rai for R-1

Mr. Raghvendra Singh, Sr. Adv.
Mr. Aashish Gupta
Mr. Varun Byreddy
Mr. Arjun Pall
Ms. Rakshit Jha
Mr. Aashish Gupta for R-2

Mr. Sitesh Mukherjee
Mr. Abhishek Kumar
Mr. Arjun Agarwal
Mr. Karan Arora
Mr. Harneet Kaur for R-3

ORDER

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. This application being IA No. 1329 of 2019 has been filed by M/s. Sahasradhara Energy Private Limited in appeal No. 275 of 2019 filed against the Impugned Order dated 12.06.2019 passed by the Uttar Pradesh Electricity Regulatory Commission in Petition No. 1110/2016 whereby the State Commission even after the matter being remanded back in terms of the order passed by this Tribunal

on 07/03/2019 to consider the specific case of the Appellant, has reiterated the tariff fixed in its previous order i.e. Rs. 5.07/unit for the Appellant's solar project.

2. The learned counsel appearing for the Appellant submitted that by way of the Impugned Order, the Appellant has once again been subjected to the tariff of Rs. 5.07/ per unit as against the project specific tariff which has been sought by the Appellant and in the alternative a tariff of Rs.7.02 at least should have been given to the Appellant.
3. The State Commission has failed to comply with the remand judgment of this Tribunal which was to consider the specific case of the Appellant. Further, the State Commission having given three opportunities to the Respondents to file their replies, however did not wait for the rejoinder of the Appellant and simply went on to pass the Impugned Order on 12/06/2019 which was the date for filing of the rejoinder.
4. The Appellant reiterates the contents of the appeal and states that the same may be read as a part of the present application, the contents whereof are not repeated for the sake of brevity.

5. The counsel representing the applicant/Appellant has submitted that in year 2015 Respondent No.3, Uttar Pradesh New and Renewable Energy Development Agency (UPNREDA) initiated a process of competitive bidding for procurement of electricity from solar project developers in the state of Uttar Pradesh. On the basis of this bidding Letter of Intent was issued to Appellant for a levelized tariff of Rs. 8.37/unit for a capacity of 5 MW. Accordingly, Appellant and Respondent No.2 (UPPCL) entered into a PPA for procurement of power and supply to the Distribution Licensee within the State of Uttar Pradesh. Subsequently on 04.05.2016, Respondent No.2 and 3 filed a petition before the State Commission for adoption of tariff i.e. at Rs. 8.37/ unit discovered in the bidding process. The State Commission/Respondent No. 1 passed an order on 22.02.2017 in petition no. 1110/2016 holding that the tariff in the bidding process is high and held that Respondent No.2 and 3 should take steps for negotiation of the tariff. Subsequently, the State Commission/ Respondent No.1 adopted the tariff of Rs. 7.02/unit for those 9 bidders who had completed the projects on 13.09.2017. However, the State Commission proposed to adopt the tariff of Rs. 5.21/unit before the Appellant and after the public hearing the State Commission vide their order dated 12.02.2018 reduced the tariff to Rs. 5.07/unit. It is

the case of the Appellant that in the absence of any choice, the only option left with was to execute the Supplementary PPA at Rs. 5.07/unit, as the Applicant/Appellant were paying additional IDC since January 2017 and would have otherwise become NPA.

6. It is the case of the Applicant/Appellant that because of the reduced tariff they are struggling with the financial viability of the project and the threat of getting converted into NPA is looming writ large on their face. In view of this grave financial crisis the Applicant/Appellant has moved this application with a prayer to this Tribunal to allow a tariff of Rs. 7.02/unit as an interim arrangement only for a period of three months to help them tide over the immediate threat of getting converted into NPA. The Applicant/Appellant have also filed an affidavit in this regard and have also placed the copy of the letter issued by the Bank. The Applicant/Appellant has further submitted that in case the appeal No. 275 of 2019 filed by Applicant/Appellant is not allowed by this Tribunal then in that case the Applicant/Appellant undertakes to refund the differential amount of Rs. 5.07/unit and Rs. 7.02/unit paid to the Applicant/Appellant as an interim arrangement during this period of three months would be paid back by the Applicant/Appellant with interest.

7. **Per contra**, the learned counsel representing all the Respondents vehemently opposed the interim relief sought by the Applicant/Appellant by way of paying enhanced tariff of Rs. 7.02/unit as against the existing tariff of Rs. 5.07/unit for a period of three months. Their main arguments being that the so called grim financial condition as presented by the Applicant/Appellant is not true. It is not the first time that the Applicant/Appellant has sought such relief from this Tribunal but the fact is that the Applicant/Appellant had earlier also sought as an interim arrangement the tariff of Rs, 7.02/unit, which was not allowed by this Tribunal. The Respondents are also concerned that in case the interim relief as sought by the Applicant/Appellant is allowed by this Tribunal and subsequently if the appeal No. 275 of 2019 filed by the Applicant/Appellant is rejected by the Tribunal then in that scenario it would not be possible for the Respondent to recover this differential amount paid as an interim relief.
8. Having heard the learned counsel on all sides, we are of the considered opinion that the fact that the Applicant/Appellant is struggling with the financial crises arising out of the financial viability of the project and there being an imminent threat of getting converted into NPA needs to be considered by this Tribunal. We have also noted

the submission wherein the Applicant/Appellant has undertaken to refund this differential amount paid as an interim relief along with interest in case the appeal no. 275 of 2019 filed by him is not allowed by this Tribunal. We also note that the Applicant/Appellant is generating electricity and supplying the same to Respondent No.2 as per long term PPA.

9. In view of the above, we are of the opinion that Applicant/Appellant has a fit case for being granted interim relief as sought by them. This would help them to tide over the immediate imminent threat of getting converted into NPA. We are not convinced with the arguments of the Respondents that it would not be possible to recover the differential amount, paid as interim relief, in the event of rejection of the appeal, filed by the Applicant/Appellant for reason that the Applicant/Appellant is generating electricity and supplying power to Respondent No.2 as per the PPA between them. We are also of the view that in any case the appeal will be decided after hearing, on the basis of merits and the payments to the Applicant/Appellant would be as per the outcome of this appeal.

10. In view of the above, we are of the considered opinion that the interim relief as sought by the Applicant/Appellant needs to be allowed and

accordingly the IA No. 1329 of 2019 is allowed and stands disposed of. Order accordingly.

Be listed on 16.08.2021.

PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 12th DAY OF AUGUST, 2021.

(Ravindra Kumar Verma)
Technical Member

(Justice Smt. Manjula Chellur)
Chairperson

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REPORTABLE/NON-REPORTABLE
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