



Petition No. 1029 of 2015

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order: 09.11.2015

PRESENT:

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Sri Indu Bhushan Pandey, Member

IN THE MATTER OF: To seek stay of operation of UPNEDA letter dated 26.05.2015 issued to petitioner for failing to commission 20 MW Solar Plant by 26.01.2015.

1. M/s Spinel Energy & Infrastructure Ltd.,
239, Okhla Industrial Estate Phase - III,
New Delhi – 110019
2. M/s Hindustan Cleanenergy Ltd.,
239, Okhla Industrial Estate Phase - III,
New Delhi – 110019

----- **Petitioner**

AND

1. Director,
Uttar Pradesh New and Renewable Energy Development Agency,
Vibhuti Khand, Gomti Nagar,
Lucknow.
2. Managing Director, UPPCL
Shakti Bhawan,
14 Ashok Marg,
Lucknow – 226001
3. Indusind Bhank,
New Delhi Branch,
Dr. Gopal Das Bhavan,
28, Barakhamba Road,
New Delhi.

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Following were presents

1. Shri V.P. Srivastava, CE (PPA), UPPCL
2. Shri S.K. Sinha, SE, (PPA), UPPCL
3. Smt. N. Kalra, UPNEDA
4. Shri Nishant Shukla, Advocate UPNEDA,
5. Shri Pankaj Prakash, Spinel Energy & Infrastructure Ltd
6. Shri Pragya Ohri, Advocate Spinel Energy & Infrastructure Ltd.

ORDER

(Date of Hearing 05.10.2015)

1. M/s Moser Baer energy & Infrastructure Ltd. signed PPA for 20 MW solar power on 27.12.2013, which has provision that plant shall be commissioned within 13 months from the date of signing of PPA i.e. 26.01.2015.
2. UPNEDA initiated encashment of BG as measure of penal action against the petitioner for failing to meet time line envisaged in the PPA. However, the petitioner obtained stay order from Hon'ble High Court against invocation of BG by UPNEDA.
3. In the last hearing It was submitted by the petitioner M/s Spinel Energy & Infrastructure Ltd. that it was earlier known as M/s Moser Baer energy & Infrastructure Ltd. and thus holds full rights and liabilities of above PPA. Further, it was also submitted that petitioner no. 2 M/s Hindustan Cleanenergy Ltd. was formerly known as Moser Baer Clean Energy Ltd. and that it is the holding company of M/s Spinel Energy & Infrastructure Ltd.`
4. As directed by the Commission in last hearing, the petitioner submitted details regarding change of name of petitioner issued by the Registrar of Companies (RoC). It was also brought on record by the petitioner that certificates of incorporations had been furnished to UPNEDA vide letter dated 01.09.2014 and to UPPCL with copy to UPPTCL vide letter dated 05.11.2014.

5. Further, the petitioner submitted that they issued LOA for EPC contract to Hindustan EPC Ltd. on 04.08.2014 and had achieved a conditional financial closure on 02.09.2014 with Matrix Group Ltd. But the said financial closure became invalid since UPNEDA did not respond to their request for extension. Thereafter, the petitioner approached IREDA for financing the project and IREDA informed vide letter dated 24.04.2015 that to move forward on the proposal the extension of SCOD must be obtained.
6. The petitioner also submitted through affidavit that they have executed MoU to lease for about 106 acres of land at Village : Supa, Tehsil : Charkhari in Maho-ba district.
7. UPPCL maintained through written submission that change of name of juristic person like a company brings about change in the identity of that juristic person. Therefore, so long as M/s Spinel Energy & Infrastructure Ltd. has not entered into an amended PPA and the same has been approved by the Commission, the petitioner has no right to invoke provisions of that PPA.
8. UPNEDA in their written submission argued that the petitioner did not fulfill any of their obligations regarding procurement of land, financial closure or grid connectivity within 240 days from the signing of PPA. The first financial closure by petitioner was achieved on 02.09.2014, which was beyond the stipulated period of 240 days and that too became invalid because land deal was never finalized. Further, till date of hearing i.e. 05.10.2015 the petitioner never submitted any registered agreement to sell, sale deed or registered lease deed to the land allegedly procured by them.
9. UPNEDA reasserted that petitioner have not fulfilled any of their obligation under PPA. UPNEDA also maintained that as per provisions of PPA extension beyond 6 months cannot be granted for achieving commercial operation and even that has elapsed on 26.07.2015.



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10. UPNEDA submitted that it is incumbent upon UPNEDA to maintain sanctity of the PPA to protect interest of the State Solar sector and exerted that in case of default it is absolutely warranted under the agreed and approved terms and conditions of PPA to initiate penal action.
11. In view of above, the Commission feels that it needs to be established by the petitioner that they have taken enough concrete measures to implement the project, For this purpose, they should submit up to date details of financial investments done in respect of land acquisition and land acquired, with a copy of their submission to UPNEDA and UPPCL each. For this purpose specific mutation of the land or registration of the land transferred in favour of petitioner only will be considered. UPNEDA and UPPCL to give their comments on these submissions within 10 days of receipt of submissions from the petitioner.
12. The Commission fixed date for next hearing on 17.11.2015 at 11.30 am.

(Indu Bhushan Pandey)
Member

(Desh Deepak Verma)
Chairman

Place: Lucknow
Dated: 09.11.2015