



BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW
Petition No.1213/2017

PRESENT:

Hon'ble Sri Suresh Kumar Agarwal, Chairman

IN THE MATTER OF : Adjudication of termination of Power Purchase Agreement
Dated 14.12.2010

Petitioner:

M/s Himawat Power Pvt. Ltd.
(Bhognipur Thermal Project-Phase-I)
Lanco House, Plot No.4
Software Units Layout
Hightech City
Madhapur
Hyderabad-500 0081

Respondents:

1. U.P. Power Corporation Ltd.
Shakti Bhawan,
14, Ashok Marg,
Lucknow-226 001 (U.P.)
Through its Managing Director

2. Pashchimanchal Vidyut Vitran Nigam Ltd.
Hydle Inspection House, Hydle Colony
Victoria Park, Meerut

ORDER
(Date of hearing 08.09.2017)

M/s Himawat Power Pvt. Ltd. has filed a Petition no.1213 of 2017 challenging termination of PPA dated 14.12.2010 regarding setting up of coal based power plant at Tehsil Bhognipur, Distt. Ramabai Nagar, Kanpur Dehat, Uttar Pradesh

2. The Power Purchase Agreement has been terminated vide notice dated 27.05.2017 of UP Power Corporation Ltd (UPPCL) on the ground that the petitioner could not fulfill the condition subsequent as mentioned in Article 3.1.2(ii) which relates to obtaining coal linkage from Standing Linkage Committee (Long Term), Govt of India even after the lapse of extended time provided to the Petitioner.

3. The Petitioner has stated about all the efforts made for obtaining the coal linkage. They have stated non-availability of coal linkage is a force majeure condition as per section 23 and 24 of the Indian Contract Act 1982 and the PPA does not contain any clause to permit the termination of PPA in case of a force majeure condition. They further stated that they have been granted three time extensions earlier and in this contract, the time is not the essence of the contract, therefore, termination of PPA is not valid. The Petitioner has filed an application dated 16.08.2017 in which they have stated that Government of India has issued a SHAKTI Policy making it mandatory for independent power producers to obtain a certificate from the Distribution Companies verifying the validity and enforceability of the concluded long term power purchase agreement. The Petitioner approached Hon'ble Delhi High Court by way of W.P.(C) No.6995/2017 seeking relief against the requirement of verification certificate to be issued by Discom as per the format given under Appendix-II of the Expression of Interest (EoI) regarding existence of long term PPA. They have submitted a copy of the order dated 14.08.2017 passed by Hon'ble Delhi High Court.



4. The counsel for the UPPCL stated that they have filed their counter affidavit on Petition No.1213/2017. The Counsel further stated that considerable time has elapsed since the signing of the PPA and now as per the National Tariff Policy of 2016 they are bound to procure power through competitive bidding process and during the intervening period after signing of the said PPA they have procured sufficient power on long term basis. Therefore, they do not want to continue with the PPA signed with M/s Himawat Power Pvt. Ltd. and in the wake of new developments they have terminated the said PPA.

5. The counsel of the Petitioner stated that he will take necessary instruction from his client that whether they are willing to settle the issue with UPPCL in the manner in which some other developers have settled the issue of termination of PPA.

6. the Commission granted two weeks time to file the submissions if M/s Himawat Power Pvt Ltd. decides to settle the issue amicably with UPPCL. The Petitioner will also file the rejoinder on the counter affidavit filed by UPPCL within one week after the submissions of the petitioner.

5. List on 12 October 2017.

(Suresh Kumar Agarwal)
Chairman

Place: Lucknow

Dated: 14.09.2017