Petition No 903 of 2013

BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order : 01.09.2014

PRESENT:

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

IN THE MATTER OF: Application in petition no 903 of 2013.
AND

IN THE MATTER OF

Essar Power (Jharkhand) Limited (EPJL),
Prakash Deep Building, 10th Floor
7, Tolstoy Marg, New Delhi -110001

---------------Petitioner

Noida Power Company Limited (NPCL)
Commercial Complex,
H-Block, Alpha-II Sector
Greater Noida - 201308

--------------- Respondent

The following were present:

1. Sri R. C. Agarwala, M.D. & CEO, NPCL
2. Sri Manoj Jain, CFO, NPCL
3. Sri Ashok Singh, Head Commercil EPJL
4. Sri Jijendra Rangwani, Legal Dy. Manager, EPJL
5. Sri Rajiv Goyal , GM-Project & Power Trading, NPCL
6. Sri A.K. Arora, Resident Manager, NPCL

Order
(Date of Hearing 22.8. 2014)

1. The petition was disposed of by the Commission vide order dated 30.5.2014 as follows:

“EPJL has requested for restitution of its bank guarantee amounting to Rs. 72 crores along with the interest which as per them has been received by NPCL in defiance to the Commission’s directions on maintaining the status quo. On contrary, NPCL has claimed further 24 crores with interest as additional bank guarantee as per the terms of PPA.

The Commission considers that the liquidation of bank guarantee has been done by NPCL on 8/9.10.2013 in view of the alleged termination by them as per clause 3.4. of the PPA. The Commission through its orders had allowed the time upto 7.10.2013 for submission of returnable assured additional performance guarantee and till then NPCL was directed to withhold their letters. On 8.10.2013, EPJL requested NPCL not to proceed for invocation of bank guarantee as they had already submitted a request to their bank on 4.10.2013 for providing additional bank guarantee. Ignoring their request, NPCL closed its eyes and proceeded for invocation of bank guarantee through their application to bank dated 8.10.2013. As informed by the parties, only part BG was liquidated on 8.10.2013. The Commission, on 9.10.2013, again directed to maintain status quo till further orders of the Commission but the rest of the BG was encashed on 9.10.2013. NPCL has submitted that through the order, Hon’ble Commission had allowed time upto 7.10.2013 for submission of additional BG and so on laps of that period they preferred to proceed for liquidation of BG on 8.10.2013. They have added that since they were in process for liquidation through the bank, despite the Commission’s direction on 9.10.2013, they could not stop the final liquidation of BG. EPJL has alleged that notwithstanding their request on 8.10.2013 that they were in process of getting the additional BG from their Bank, NPCL proceeded for liquidation which continued even after the Hon’ble Commission’s direction dated 9.10.2013.

The Commission finds from above that somehow the liquidation of BG became the priority for NPCL and in doing so it did not properly consider even to the request of EPJL. It seems that NPCL was considering only the liquidation of BG and therefore, overlooked EPJL’s request. NPCL could not put forth their best efforts in stopping the final encashment of BG despite The Commission’s directions on 9.10.2013.

In view of above, the Commission considers the intentions of EPJL who had proceeded for arrangement of additional performance guarantee as per the directions of the Commission and the provisions of PPA. The Commission also considers that NPCL had an opportunity to proceed for liquidation in the intervening period but it would have been reasonable if they had taken note of EPJL’s request. NPCL also could not establish that they had put their best efforts to comply with the Commission’s directions on 9.10.2013. Therefore, on equitable presumption, the Commission directs NPCL to restore EPJL’s bank guarantee amounting Rs. 72 crores within 15 days from the date this order with no other cost or interest to any of the parties. This would bring EPJL and NPCL to their former position. By bringing them to their earlier status, the Commission allows them an opportunity to rethink over the issues in light of the facts under the provisions of PPA.

Vide order dated 11.3.2014, the Commission directed EPJL to file their commitment of supply from alternative source on an affidavit which must also include the proof of supply commitment from the alternative source which is a separate entity. Through the affidavit dated 2.4.2014, EPJL has submitted their commitment of supply of electricity from their 600 MW, Mahan, Madhya Pradesh Plant for a period of 25 years at the agreed levelized tariff of Rs. 4.068/unit with other terms and conditions of PPA remaining the same. EPJL has also submitted that Mahan Plant is owned by Essar Power M.P. Ltd. (EPMPL). NPCL has stated that the PPA recognizes alternative source of supply only in a limited manner as specified in article 4.6 & 4.8 of PPA and under specific provisions there is no scope for assigning the PPA to other entity as EPMPL is another entity.

The Commission considers that there is limitation for supply from alternative source under the specific provisions of PPA. The alternate source can be considered for a limited period and not for the whole term of PPA. Therefore, the Commission opines that EPJL has to keep themselves with the specific provisions of PPA in their commitments.

The PPA had ensured supply of electricity to the consumers of specified licensed area w.e.f. 30.4.2014 which has been hampered and the shortage of supply is being mitigated through short term purchases of electricity. This can not be a solution for long term as in this manner, the electricity procured may be at a higher price than as envisaged through the long term PPA. The reasons discussed above have been unforeseen. So, in such a situation it becomes mandatory for NPCL, being the distribution licensee of the area, to think the possibilities to ensure the requisite quantum of electricity to the consumers on long term basis. Therefore, the Commission directs NPCL to seriously consider the issue of ensuring long term supply of power to the consumers of their area within the existing provisions and bring that proposal to the Commission, which may be lasting and long term.

The Commission further considers that in view of the shortage of power in the State, the reasonable tariff tied up through the subject PPA and the willingness of the parties for an equitable and reasonable solution, it may also be just and proper for the parties to consider entering into a fresh contract, if the present PPA is not continued, on the same terms conditions and tariff except the change in source of generation. However, in such a situation, the modalities would require to be discussed afresh."

With the observations and conclusions above, the petitions was disposed of.

2. Subsequently, this application has been filed by NPCL on 16.7.2014 praying to issue directions on the aspects of the issues raised by EPJL vide letters dated 27.6.2014 & 7.7.2014. NPCL has also prayed to allow them to procure long term

power from other available alternate sources on immediate basis to ensure supply to its consumers.

3. NPCL has stated that in compliance to the Commission's order dated 30.5.2014 the bank guarantee of Rs. 72 crores has been restored which would expire on 31.8.2014. NPCL has submitted that in the meanwhile EPJL vide letter dated 27.6.2014 and 7.7.2014 informed that:
    i. EPJL would not be able to supply in near foreseeable future.
    ii. Due to transmission constraint, alternate supply from Mahan project would not be feasible in near foreseeable future.
    iii. There is no reason in continuing the PPA dated 9.5.2012 in view of constraints in Ashok Karkatta Coal Block.
    iv. Refund of Rs. 72 crores without any interest or other cost.
    v. NPCL may approach the Commission for procurement of power from other sources.
4. During the hearing, the Commission asked EPJL about their affidavit dated 2.4.2014 for commitment of supply from their 600 MW Mahan project. EPJL could only give the reasons of transmission constraints which was prima facie not accepted by the Commission. The Commission took a view that first of all EPJL has to extend its bank guarantee initially for three months, further extendable by another six months as no one could be allowed to escape from its commitments in a situation when there is shortage of power in the State.
5. The Commission further considered that since the process has taken more than the required period, resulting in the shortage of power for supply to the consumers of the licensed area, it would be prudent and necessary that NPCL should explore other possibilities of getting long term supply contract through the competitive route within these six months.
6. The application is disposed of.

(Indu Bhushan Pandey) Member	(Meenakshi Singh) Member	(Desh Deepak Verma) Chairman

Place : Lucknow
Dated: 01.09.2014