



BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

**Petition No.1212/2017, 1000/2015 & 1177/2017 (Lanco Anpara) &
Petition No.1213/2017, 999/2015 & 1172/2017 (Himavat Power)**

PRESENT:

Hon'ble Shri Suresh Kumar Agarwal, Chairman

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

Petitioner:

1. M/s Lanco Anpara Power Limited
(Bhognipur Thermal Project-Phase-III)
Registered Office:
411/9, Riverside Apartments,
New Hyderabad, Lucknow
Uttar Pradesh-226 007.
2. Himavat Power Pvt. Ltd.
(Bhognipur Thermal Project-Phase-I)
Lanco House, Plot No.4,
Software Units Layout,
Hightech City,
Madhapur,
Hyderabad.

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.

Following were present in the hearing:-

1. Shri Narasimha Murthy, V.P. (Commercial), Himavat Power
2. Shri V.P. Srivastava, CE (PPA), UPPCL
3. Shri Naeem Khan, EE (PPA), UPPCL
4. Shri G.P. Mishra, Manager, Himavat Power
5. Shri Rajiv Srivastava, Advocate, UPPCL

ORDER
(Date of hearing 10.11.2017)

The abovementioned petitions were heard on 13.10.2017. The Commission had passed an order on 17.10.2017 asking the Petitioners to show that how they will get the linkage coal and how can they get the project financed on the rates given by them in their rejoinder. It was also clarified that if the Petitioners are not able to demonstrate their ability to supply the power at the rates mentioned by them and arrange finances for the project, the Commission will not have any option but to concur the termination of PPAs. The Petitioners were given an option that they could submit an unconditional undertaking in the prescribed format of UPPCL and withdraw their petitions against termination of PPAs in order to get their Bank Guarantees back.

2. The matter was heard again on 25.10.2017 and the Petitioners had requested for adjournment of the hearing as they could not prepare the desired information asked by the Commission vide its order dated 17.10.2017. The Commission granted time and fixed the hearing on 10.11.2017.

3. In the hearing on 10.11.2017, the Petitioner again submitted a rejoinder in which they have again submitted the details of expected Variable Charges and Fixed Charges if the project is allowed to be established. Regarding Coal Linkage for both the projects, they have mentioned that as per clause 5(1) of the "THE COAL MINES (SPECIAL PROVISIONS) ACT, 2015 NO.11 OF 2015 Central Government shall allot a Schedule I Coal Mine to a Government Company (UPPCL) and the Government Company shall be permitted to carry



out coal mining for any purpose either for its own use or sale. They have further stated that under the SHAKTI Policy and Para 5.2 of the Tariff Policy, coal linkage for upto 35% of the Installed Capacity can be recommended by UPPCL to Ministry of Coal to accord coal linkage to the project. Regarding balance 65% of the requirement of coal, they have mentioned that this can be provided by GoUP from the coal blocks allotted to it under clause 5(1) of the "THE COAL MINES (SPECIAL PROVISIONS) ACT, 2015 NO.11 OF 2015.

4. The Commission is not satisfied with the reply of the Petitioner regarding the availability of coal and the expected tariff. The Petitioners have not stated anything about the financial closure of the project. In the hearing on 10.11.2017, the Petitioners were clearly told that the termination of the PPAs could not be withdrawn unless the Commission is satisfied that coal linkage is available and financial closure on proposed tariff could be achieved. It was again reiterated that in the present circumstances if the Petitioners are willing to save the invocation of their bank guarantees, they may agree to withdraw their petitions and give an undertaking to UPPCL that they will not lay any claim at present or in future regarding these PPAs. The Petitioners were granted one week time to make their submissions on this issue.

5. The Petitioners have submitted their Affidavit/Undertaking on 14.11.2017 before the Commission. In this affidavit/undertaking, the Petitioners have mentioned that they have acquired the land for the project and have obtained the statutory clearances and spent Rs.564 Crores in case of M/s Himavat Power Ltd. and Rs.353 Crores in case of M/s Lanco Anpara Power Ltd. They also mentioned that they tried to get coal linkage from Govt. of India but the Govt. did not grant the linkage. In their affidavit/undertaking M/s Himavat Power Ltd. and M/s Lanco Anpara Power Ltd. have stated that they shall not lay any claim related to these projects in future and agree to withdraw their petitions filed against termination of PPAs and invocation of bank guarantees.

6. UPPCL had filed an affidavit dated 7.9.2017 in which in the similar circumstances they have stated that the issue of return of bank guarantee given by the respondents/developers is to be decided by this Commission, in the eventuality of this Hon'ble Commission deciding that the bank guarantees furnished by the respondents/developers may be returned to them, in that case the Hon'ble Commission may kindly consider directing the respondents/developers to file an affidavit before this Hon'ble Commission stating therein in unambiguous terms that their bank guarantees may be returned to them on the specific terms and condition that respondents will not



make any claim of any kind on UPPCL, once the bank guarantees are discharged by UPPCL in present as well as in future. They had further stated that the commission may decide the course of action to be taken by UPPCL so that UPPCL is not saddled with any kind of claim of the developers in present or in future.

7. In the present case both M/s Himavat Power Ltd. and M/s Lanco Anpara Power Ltd. have acquired land and obtained necessary clearances for setting up of the project but could not get the coal linkage due to change in the policy of Govt. of India regarding grant of long term coal linkage. The developers could not set up the project for want of coal linkage which is something beyond the control of the petitioner and there is no willful default on the part of the petitioners. Both Petitioners have given an affidavit/undertaking that they withdraw their petitions filed against termination of the PPA and invocation of Bank Guarantee and also an undertaking that the petitioners shall not lay any claim related to this project in future. In such a situation as the decision taken by the Commission in other similar cases, the Commission allows the petitioners to withdraw their petitions against the termination of the PPAs and invocation of Bank Guarantees and directs the petitioners to submit the desired undertaking to UPPCL also in their prescribed format. UPPCL is directed to return the bank guarantee after obtaining the undertaking in their prescribed format.

8. The Petition Nos. 999/2015, 1000/2015, 1175/2017, 1177/2017 regarding time extensions and Petition nos. 1212/2017 & 1213/2017 regarding termination of PPA and invocation of BG stand disposed of and the PPAs stand terminated.

(Suresh Kumar Agarwal)
Chairman

Place : Lucknow
Dated : 23.11.2017