



**BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 963/2014 & 1219/2017

PRESENT:

Hon'ble Sri Suresh Kumar Agarwal, Chairman

IN THE MATTER OF : Dispute resolution under article 17.3.1 of the PPA dated
01.01.2011

Petitioner:

M/s Trishakti Power Pvt. Ltd.
2/496, Vijay Khand
Gomti Nagar,
Lucknow-226010

Respondents:

1. U.P. Power Corporation Ltd.
Shakti Bhawan,
14, Ashok Marg,
Lucknow-226 001 (U.P.)
Through its Managing Director
2. State of Uttar Pradesh
Through its Principal Secretary,
Department of Energy, Civil Secretariate
Lucknow

In the Presence of :

1. Shri V.P. Srivastava, C.E., UPPCL
2. Shri Rajiv Srivastava, Advocate, UPPCL
3. Shri Naeem Khan, E.E, UPPCL
4. Shri Dharm Ratna Bandhu, A.E., UPPCL
5. Shri Sanjay Verma, S.E., UPPCL,
6. Shri Santosh K. Singh, Sr. Manager, Trishakti Power Ltd.

ORDER
(Date of hearing 13.10.2017)

The Commission heard this matter on 8.9.2017 and the following order was passed :

“ M/s Trishakti Power Pvt. Ltd. has filed a Petition no.1219 of 2017 for resolution of dispute under article 17.3.1 of the PPA dated 01.01.2011 for setting up of a coal based power plant in Basantpur, District Barabanki.

In the petition, the petitioner has stated that UP Power Corporation Limited (UPCCL) has invoked the additional Bank Guarantee submitted by them. They have challenged the invocation of Bank Guarantee before the Hon’ble High Court. In this particular petition they have claimed the liquidated damages of Rs.248.07 crore for the alleged wrongful acts and contractual breach by respondent No.1 and 2. UPPCL’s counsel informed that the additional Bank Guarantee of Rs.6.25 crore was expiring on 6.6.617 and the petitioner did not extend the validity of this guarantee, therefore, they have encashed the BG of Rs.6.25 core.

The respondent no.1 stated that they have filed their counter affidavit in the matter. The Commission asked the petitioner’s representative that whether they are willing to resolve the issue of termination of PPA like other developers who have signed PPA for setting up of Power Plants under MoU route, but the petitioner’s representative informed that they want to contest the claim for liquidated damages.

The Commission granted 15 days time to Petitioner to file their rejoinder on the counter affidavit submitted by UPPCL.”

1. The matter was enlisted on 12th October, 2017 but was postponed for 13th October, 2017. On 13.10.2017 the matter was heard again and the Representative of M/s Trishakti Power informed the Commission that they have



filed additional submission on 3.10.2017. As per this submission Petitioner would like to resolve the issue by pursuing the similar route adopted by other Developers. The Petitioner has informed that they would like to withdraw the present petition against the termination of PPA if the respondents are willing to return the guarantee money, 6.25 crores which they have received against the encashment of bank guarantee. They have also informed the Commission that they are giving the undertaking in the prescribed format to UPPCL today.

2. In the similar matters the Commission has allowed the withdrawal of the Petition against the termination of PPAs for setting up of plants under MOU route and UPPCL has agreed to return the Bank Guarantees provided by the Developers. In this particular case the guarantee of Rs. 6.25 Crores was encashed by UPPCL as the Guarantee was expiring and the Petitioner had not extended the validity of Guarantee. But now the Petitioner has agreed to withdraw its petition against the termination of PPA and has also provided the undertaking in the prescribed format of the UPPCL. Therefore, in all fairness the Guarantee money received by the UPPCL against the encashment of Guarantee should be refunded back to the Petitioner.

3. The Commission directs that M/s Trishakti Power should also be treated at par with other such Petitioners. The Commission permits the withdrawal of Petition No. 1219 of 2017 on the request of the Petitioner. UPPCL should examine the undertaking provided by the Petitioner and should refund the amount received against the encashment of Bank Guarantee to the Petitioner. The Petition Nos. 963 of 2014 and 1219 of 2017 stand disposed off and PPA dated 1.1.2011 would stand terminated.

(Suresh Kumar Agarwal)
Chairman

Place: Lucknow
Dated:17.09.2017