

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

ThiruM.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and	
Thiru.K.Venkatasamy Member (Legal)

D.R.P. No.7 of 2019

Walwhan Renewable Energy Limited
(formerly Welspun Renewables Energy Pvt. Ltd.)
Rep. by its Authorised Representative
C/o. The Tata Power Company Limited
7th Floor, Welspun House, Kamala City
SenapatiBapatMarg, Lower Parel
Mumbai – 400 013, Maharashtra

... Petitioner
(M/s.SKV Law Offices)

Vs

The Chief Engineer / Non-Conventional
Energy Sources
Tamil Nadu Generation and Distribution
Corporation Ltd.
(TANGEDCO)
10th Floor, 144, Anna Salai
Chennai – 600 002.

....Respondent
(ThiruM.Gopinathan
Standing Counsel for the Respondent)

Dates of hearing :17-09-2019and 22-10-2019

Date of order : 25-02-2020

ORDER

The D.R.P.No.7 of 2019 came up for final hearing before the Commission on 22-10-2019 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

ORDER

1. Prayer in D.R.P. No. 7 of 2019:-

The prayer of the petitioner in this D.R.P. No.7 of 2019 is to direct TANGEDCO to refund the Security Deposit amount of Rs.5,37,50,000/-, within a time bound manner as this Commission may be pleased to fix and pass such further or other orders as this Commission may deem fit in the interest of justice.

2. Facts of the Case:-

The petition has been filed to direct the respondent to refund the Security Deposit of Rs.5,37,50,000/-, which has been deposited by the petitioner in furtherance of its expression of interest to set up 100 MW Solar Power Project at Kayathar Village, Tuticorin District, which was abandoned due to efflux of time for the failure of the respondent to sign EPA.

3. Contentions of the Petitioner:-

3.1. The petitioner has set up Solar Power Generators ("SPGs") in the State of Tamil Nadu. The Petitioner, in furtherance to its Expression of Interest, to set up its 100 MW Solar Power Project at Kayathar Village, Tuticorin District, Tamil Nadu deposited Security Deposit in pursuance to Respondent letter dated 06.11.2014.

3.2. Despite all requirements being complied by the Petitioner, the Respondent TANGEDCO failed to sign the Energy Purchase Agreement ("EPA") with the Petitioner leading to the proposed project being abandoned due to efflux of time. Therefore, the Security Deposit which was refundable as per the TANGEDCO letter dated 06.11.2014 submitted by the Petitioner ought to be returned to the Petitioner. The proposed project of the Petitioner could not be set owing actions and omissions on the part of the Respondent and for which Petitioner in no manner can be held responsible.

3.3. The Security Deposit amounts to a substantial sum of money due to the Petitioner, which is still pending recovery, despite repeated attempts to resolve the matter, causing grave prejudice and financial stress to the petitioner. Such Security Deposit had been tendered in bonafide capacity by the petitioner for setting up a SPG, which however, could not culminate into a contract despite repeated requests made by the petitioner.

3.4. In the year 2012, the Tamil Nadu State Government had issued a Solar Energy Policy ("Solar Policy 2012") with a vision to lead the country by generating 3000 MW of Solar Power by 2015 through a policy conducive to promoting solar energy in the State.

3.5. On 12.09.2014, this Commission passed a Solar Tariff Order being Order No.4 of 2014 titled as 'Comprehensive Tariff Order on Solar Power' approving a preferential tariff for purchase of solar power from Solar Power Generators,

including the Petitioner herein. As per the order, the approved tariff rate for Solar Photovoltaic projects was Rs.7.01/kwh. As per the order the 2nd Respondent, i.e. TANGEDCO was to purchase solar power at the approved rate from Solar Power Generators on a 'first come first served basis'.

3.6. In terms of the Tamil Nadu Electricity Regulatory Commission ("TNERC") (Power Procurement from New and Renewable Sources of Energy) Regulations, 2008, the control period of the tariff was fixed as one year from the date of the order, and the format for the Energy Purchase Agreement ("EPA") was to be determined by this Commission after discussions with the generators and the distribution licensees.

3.7. In its letter dated 03.11.2014, the Welspun SolarTech Private Limited ("WSTPL") i.e. the erstwhile Petitioner Company had expressed its interest for establishing a 100 MW Solar Power Plant, at Kathiyar, Kovilpatti Taluk, Tuticorin District ("project"). This Expression of Interest by WSTPL was duly accepted by Respondent, which is evident from letter dated 06.11.2014. Further, as stated above, in the Respondent vide its letter dated 06.11.2014 initially requested the WSTPL to deposit 50% of the Security Deposit which was refundable in nature.

3.8. WSTPL vide its letter dated 06.11.2014 submitted the following:-

- (a) Duly filled Application Format;
- (b) Registration Fee of Rs.10,000/- (Rupees Ten Thousand Only);
- (c) Load Flow Study Charges of Rs.5,00,000/- plus Rs.61,800(ST)

(Rupees Five Lakhs Only plus Rupees Sixty One Thousand Eight Hundred); and

- (d) 50% of the applicable refundable Security Deposit for an amount of Rs.268.75 Lakhs (Rupees Two Crores Sixty Eight Lakhs Seventy Five Thousand Only).

3.9. WSTPL also submitted Demand Draft No.008495 dated 05.11.2014 for an amount of Rs.2,68,75,000/- (Rupees Two Crores Sixty Eight Lakhs Seventy Five Thousand only), against which Receipt No. 205830 dated 07-11-2014 was issued by the Respondent.

3.10. Meanwhile, on 03.07.2015, in terms of the letter of date, the ownership of the Project was transferred from WSTPL to the Petitioner, subsequent to a name change, and submission of fees of Rs.1 Lakh along with the Memorandum of Association and Articles of Association.

3.11. The Respondent sent Letter dated 29.07.2015 to the Petitioner, *inter alia*, stating as under:-

- (a) Load flow study has already been conducted and the result has been communicated for the proposed 100 MW Solar PV Power Plant at Kayathar Village, Kovilpatti Taluk, Tuticorin District, under preferential tariff;

- (b) Payment for an amount of Rs.2,68,75,000/-, towards 50% of the applicable refundable security deposit vide PR No.205830 dated 07.11.2014, has been made;
- (c) Based on the load flow study, in order to further consider WREPL's case, WREPL would have to pay the remaining 50% of the applicable security deposit for an amount of Rs.2,68,75,000/-, by way of a Demand Draft, within 15 days.

3.12. In compliance of the aforesaid letter, the Petitioner submitted Demand Draft No. 012213 dated 04.08.2015 for an amount of Rs.2,68,75,000/- (Rupees Two Crores Sixty Eight Lakhs Seventy Five Thousand Only), against which Receipt No. 211582 dated 06.08.2015 was issued by the Respondent.

3.13. Hence, cumulatively, an amount of Rs.5,37,50,000/- (Rupees Five Crores Thirty Seven Lakhs Fifty Thousand only) had been remitted to the Respondents, being the refundable Security Deposit for the construction and establishment of the Project.

3.14. Despite the Petitioner complying with all prerequisites, the Respondent TANGEDCO did not sign the EPA with the Petitioner. The Petitioner vide its letter dated 18.12.2015 urged the Respondent to sign the EPA and in the said letter, the Petitioner categorically pointed out that the Petitioner has completed all possible activities contemplated by the Respondent. However, till date no EPA was signed with the Petitioner.

3.15. In the year 2015, it was learnt that another Solar Developer M/s Raasi Green Earth Energy Private Limited had filed a Writ Petition before the Hon'ble Madras High Court inter-alia praying for execution of the EPA with the said Solar Developer being Writ Petition No. 31750 of 2015.

3.16. The Hon'ble High Court vide order dated 24.11.2015 restrained the Respondent to sign any further Power Purchase Agreement under the Preferential Tariff Scheme for the year 2015-16.

3.17. Therefore, the Respondent stopped signing any agreements with Solar Developers. Hence, the Petitioner also filed an Impleadment Application before the Hon'ble High Court in the said Writ Petition being WP (MP) No. 225 of 2016 inter-alia seeking vacation of the Interim Order dated 24.11.2015 and a prayer for signing of the EPA.

3.18. However, the Writ Petition as well as the Application of the Petitioner came to be dismissed as withdrawn on 09.07.2017 and by that period no EPA was signed with the Petitioner.

3.19. Hence, as stated above, despite best efforts no EPA could be signed with Respondent. Therefore, on 05.01.2018, the Petitioner wrote to the Respondent specifically requesting for the refund of the Security Deposit of Rs.5,37,50,000/-, at the earliest. However, no response was received from the Respondent to the said letter of the Petitioner.

3.20. Thereafter, the Petitioner proceeded to send several reminders, including the remainders on 25.01.2018, 16.02.2018, 09.04.2018, 21.05.2018, 05.07.2018, and with the latest reminder being sent on 07.01.2019. Notably, along with reminder dated 05.07.2018, the Petitioner had also submitted the original Security Deposit Receipts based on the request by the Respondent to submit the same for further processing. However, till date, neither has any refund been made by the Respondent, nor any response or commitment to refund has been intimated.

3.21. On 29.03.2019, the Petitioner, through its Advocate, sent a Legal Notice seeking refund of the Security Deposit. However, no response or any refund was received by the Petitioner.

3.22. The Respondent / TANGEDCO has failed to refund the Security Deposit amounts which the petitioner is legitimately entitled to due to non-execution of the EPA which admittedly for reasons stated above cannot be attributed to the petitioner.

5. Hearing held on 22-10-2019:-

During the hearing held on 22-10-2019, ThiruM.Gopinathan, Standing Counsel for TANGEDCO appeared. TANGEDCO agreed to refund the Security Deposit to the petitioner and hence the Commission directed to file Memo within two weeks.

5. Memo filed by the Respondent on 07-11-2011:-

In the Memo filed by the respondent on 07-11-2019, the respondent has submitted as follows:-

“It is submitted that the respondent have been directed by the Hon’ble Commission to file a memo with regard to acceptance to refund the Security Deposit for an amount of Rs.5,37,50,000/- to the petitioner, during the hearing on 22-10-2019 in the above Dispute Resolution Petition.

It is submitted that sanction has been accorded on 05-11-2019 to refund the Security Deposit amount of Rs.5,37,50,000/- without interest. Based on the fund allocation, the petitioner is intimated to receive the amount. The order of the Commission is complied.”

6. Findings of the Commission:-

6.1. This petition has been filed to direct the respondent to refund the Security Deposit of Rs.5,37,50,000/- which has been deposited by the petitioner for furtherance of his expression of interest to set up 100 MW solar power project at Kayathar Village, Tuticorin District, which was abandoned due to efflux of time for the failure of the respondent to sign EPA.

6.2. In the hearing held on 22-10-2019, ThiruM.Gopinathan, Standing Counsel for TANGEDCO appeared and agreed to refund the Security Deposit to the petitioner and the Commission has directed to file a Memo in this regard within two

weeks. Accordingly, the Counsel has filed a Memo on behalf of the respondent on 07-11-2019 *inter-alia* stating that sanction has been accorded on 05-11-2019 to refund the Security Deposit amount of Rs.5,37,50,000/- without interest and based on fund allocation, the petitioner will be intimated to receive the amount and thus the order of the Commission is complied. In the circumstances stated above, the petition is closed.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission