



Presents:

1. Sh. Neeraj Kr. Bhatt, Advocate for RVPN
2. Sh. Anand K Ganesan, Advocate for Discoms
3. Sh. Ravi Chirania, Advocate for D. B. Power Ltd.
4. Sh. Atul S. Mathur, Advocate for SKS Power Generation
5. Sh. Pankaj Singh, Advocate for Athena Power Ltd.

**Date of Order:**

**29.05.2018**

**ORDER**

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RVPN) had filed a petition on behalf of Discoms for adoption of tariff and approval of deviation regarding procurement of 1000 MW power through case-I bidding process.
2. RVPN in its petition submitted that:
  - (i) It has been authorized by the Discoms of the State (the "Procurers") to undertake the bidding process for selection of Seller(s) for procurement of 1000 MW  $\pm$  10%) base load power under 'Case 1' of the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees" issued by Ministry of Power to meet their load requirements.
  - (ii) Global invitation for Request for Proposal (RFP) for selection of Seller(s), in line with the Standard Bid Documents (SBD) issued by MoP, was invited in leading National Newspapers and International Newspaper.
  - (iii) As per evaluation of financial bid by the order from lowest to highest levelized tariff evaluated Bid Evaluation Committee (BEC) was as follows:

| Rank | Qualified Bidder Name                       | Levelized Tariff (Rs/kWh) | Capacity Offered | Cumulative Capacity Offered | Average Cumulative Tariff (Rs/kWh) |
|------|---|---------------------------|------------------|-----------------------------|------------------------------------|
| L-1  | PTC – Maruti Clean Coal and Power Limited   | 4.517                     | 195              | 195                         | 4.517                              |
| L-2  | PTC – DB Power Limited                      | 4.811                     | 311              | 506                         | 4.698                              |
| L-3  | LPL – Lanco Babandh Power Limited           | 4.943                     | 100              | 606                         | 4.738                              |
| L-4  | PTC – Athena Chhattisgarh Power Limited     | 5.143                     | 200              | 806                         | 4.839                              |
| L-5  | SKS Power Generation (Chhattisgarh) Limited | 5.300                     | 100              | 906                         | 4.890                              |
| L-6  | LPL – Lanco Vidarbha Thermal Power Limited  | 5.490                     | 100              | 1006                        | 4.949                              |
| L-7  | PTC – MB Power (Madhya Pradesh) Limited     | 5.517                     | 200              | 1206                        | 5.043                              |
| L-8  | KSK Mahanadi Power Company Limited          | 5.572                     | 475              | 1681                        | 5.193                              |
| L-9  | Jindal Power Limited                        | 6.038                     | 300              | 1981                        | 5.321                              |
| L-10 | LPL – Lanco Amarkantak Power Limited        | 7.110                     | 100              | 2081                        | 5.407                              |

(iv) Thereafter Petitioner decided to call the bidders for negotiation starting from the lowest L-1 & L-2 namely 'M/s Maruti Clean Coal Ltd.' and 'M/s D.B. Power', who had bid through PTC India. Bidders did not reduce the price but agreed to give enhanced quantum of power of 55 MW and 99 MW respectively in addition to the original quantity offered by them. Third lowest bidder namely 'M/s Lanco Power' during negotiation voluntarily agreed to reduce the price offered and also offered additional quantity of power of 250 MW in addition to 100 MW originally offered. Since the additional quantity offered by the lowest bidders came-up to the required bid quantity of power of 1000 MW, Lols were issued and PPAs were signed with L-1, L-2 and L-3 bidders subject to approval and adoption of tariff by the Commission.

(v) On 27.11.2014 RVPN filed an application under regulation 7 of RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations, 2004 praying for allowing it to purchase only 500 MW of power as against 1000 MW for which adoption petition is filed.

(vi) In the application RVPN had submitted that the Energy Assessment Committee constituted by the Govt. of Rajasthan under Regulation 3 (3) of the RERC (Power Purchase & Procurement Process of Distribution Licencee) Regulations, 2004 vide its 4th meeting held on 29.1.2014 has come to the conclusion that there is no requirement for long term procurement of 1000 MW  $\pm$  10% power under Case-1 for which PPAs have been executed and tariff adoption petition has been filed before RERC. Subsequently, the EAC in its 5<sup>th</sup> meeting held on 21.05.2014, observed that there is a need to review the decision taken in 4<sup>th</sup> EAC meeting held on 29.01.2014. The EAC thus decided to consider demand of 600 MW on long term procurement of power under Case-I for which PPAs have been executed and tariff adoption petition has been filed against the bidding process conducted for 1000 MW. RVPN further submitted that considering EAC's recommendation and power requirements of the state in future, Government of Rajasthan vide its letter dt. 25.7.2014 has approved to purchase only 500 MW power as against 1000 MW for which bidding process was conducted. Therefore, the Commission may pass orders for adoption of tariff in the light of the above submissions.

- (vii) In view of the facts and circumstances mentioned above, it was prayed:
- (a) to approve the extended time line of 523 days for the bid process, i.e., 328 days beyond the maximum period of 195 days allowed under clause 5.19 of the Guidelines.
  - (b) to issue order in terms of Section 63 of the Electricity Act 2003 for adoption of tariff obtained through the bidding process from
    - 1) M/s PTC India Ltd (through developer M/s Maruti Clean Coal & Power Limited)
    - 2) M/s PTC India Ltd (through their developer M/s DB Power Limited)

- 3) M/s Lanco Power Limited (Generation Source- M/s Lanco Babandh Power Limited).
- (c) Approve procurement of additional quantum of power from the successful bidders at their quoted tariff on the same terms & conditions.
3. The Commission after considering the averments made on behalf of Petitioner and the Respondents and material produced before it, accepted the Petitioner's prayer and allowed the application of Petitioner seeking reduction in power purchase quantity to 500 MW from 1000 MW.
4. Commission also adopted the tariff arrived at in the bid process for purchase of 500 MW power vide its order dated 22.07.2015 which was as follows:
- (a) M/s PTC India Ltd. (through Developer M/s Maruti Clean Coal & Power Ltd.) for 250 MW (195 MW +55 MW) at the levelized tariff of Rs. 4.51 and subject to the other terms of PPA.
- (b) M/s PTC India Ltd. (through Developer M/s DB Power Ltd.) for 250 MW at the levelized tariff of Rs. 4.81 and subject to the other terms of PPA.
5. This order of the Commission was challenged before the Hon'ble APTEL vide Appeal No. 235 of 2015 filed by M/s D.B. Power Ltd. and through Appeal No. 191 of 2015 filed by M/s Lanco Power Ltd.
6. Hon'ble APTEL in the said Appeal vide Judgment dated 02.02.2018 set aside the Commission's order dated and passed the following directions:

"ORDER

*Hence, the Appeal Nos. 235 of 2015 and 191 of 2015 are allowed and the State Commission's order dated 22.07.2015 is set aside. The State Commission is directed to pass consequential order in accordance with the law keeping in view our observations made above as well as the judgments of this Tribunal rendered earlier on the aspects of the scope of Section 63 of the Act as expeditiously as possible, preferably, within 2 months from today. No order as to costs."*

7. In view of Hon'ble APTEL judgment dated 02.02.2018, M/s D.B. Power Ltd. filed an Interlocutory Application on 09.02.2018 before the Commission and written submissions on 08.03.2018 and prayed to
  - (i) Forthwith pass consequential orders in terms of the judgement of the APTEL.
  - (ii) Direct the Respondent Nos. 1 to 3 forthwith to start procuring power from the Applicant/DB power Ltd. to the extent of 410 MW as per the PPAs dated 01.11.2013.
8. The matter was heard on 08.03.2018. It was brought to the notice of the Commission that an appeal against the order of the Hon'ble APTEL had been filed before the Hon'ble Supreme Court in Civil Appeal Nos. 2502-2503 of 2018, 2784-2785 of 2018 and 3481-3482 of 2018.
9. Hon'ble Supreme Court disposed of the said Appeals vide judgement dated 25.04.2018 recording as under:

*"Thereafter, the Rajasthan Electricity Regulatory Commission ("State Commission", for short) was moved for reduction of the capacity from 1000 mw to 500 mw. Letters of Intent (LOIs) were allotted for different quantity i.e. higher quantities than were bid for, in the case of L-1 to L-3. The State Commission approved the reduction of capacity from 1000 mw to 500 mw.*

*The Appellate Tribunal for Electricity (APTEL) held as follows :*

*"The contention of the Respondents as well as State Commission that even after the bidding process is completed and PPA signed, the stipulated power capacity of 1000 MW for procurement can be reduced is contrary to the provisions of the Act as well as bidding guidelines. Once the petition has been filed on the recommendation of the Evaluation Committee seeking for the adoption of tariff after it is discovered, it is not open for the Respondents(Procurer) and the State Commission to reduce procurement of power stipulated in the bidding documents and PPA(s) already executed between the parties."*

*In view of above, the APTEL held that reduction of capacity was not permissible after the bidding process was complete. The APTEL further directed as follows:*

*"Hence, the impugned order dated 22.07.2015 is liable to be set aside. The State Commission shall be required to pass appropriate/revised order*

*enabling the Appellants namely DB Power Ltd. and Lanco Power Ltd. to supply the contracted power under the respected PPA (dated 01.11.2013) viz. 410 MW & 350 MW, respectively expeditiously in the interest of justice and equity."*

*We are in agreement with the earlier conclusion of the APTEL. We are of the view that the direction of reduction of capacity from 1000 mw to 500 mw by the State Commission was correctly set aside. Since L-1 to L-5 were represented before this Court, we direct that they shall be entitled to supply of power in terms of the originally offered amount, mentioned above, in accordance with para 3.5 of the Request for Proposal. The power supply will now be reduced to a total of 906 mw. The State Commission may now go into the issue of approval for adoption of tariff with regard to L-4 and L-5. All Letters of Intent (LOIs) shall stand modified in terms of the above. All the appeals shall stand disposed of in terms of the above order."*

10. In view of Hon'ble Supreme Court Judgment M/s SKS Power Generation (Chhattisgarh) Ltd. filed an application on 16.05.2018 and submitted that being the L-5, it is entitled to supply of power in terms of the originally offered amount. The LOI's issued by RVPN to L-1, L-2 and L-3 and the PPAs executed between L-1, L-2, L-3 and RVPN now stand modified in terms of order dated 25.04.2018 of the Hon'ble Supreme Court. M/s SKS Power Generation (Chhattisgarh) Ltd. prayed for appropriate directions and consequential orders in view of the above mentioned order dated 25.04.2018 passed by the Hon'ble Supreme Court.
11. M/s D.B. Power Ltd. on 18.05.2018 filed an affidavit submitting that in compliance of the order dated 25.04.2018 of the Hon'ble Supreme Court, RVPN has issued modified LOI dated 02.05.2018 in favour of PTC India Ltd. Consequently PTC India Ltd. issued modified LOI dated 03.05.2018 in favour of M/s DB Power Ltd. Subsequent to the above modified LOIs, DB Power Ltd. also executed the amended PPA with PTC on 15.05.2018 based on the amended PPA signed between Discoms and PTC India Ltd. dated 15.05.2018. In view of above it is stated that D.B. Power Ltd., PTC India Ltd. and Discoms have complied with the order dated 25.05.2018 passed by the Hon'ble Supreme Court.

12. The matter was heard on 28.05.2018, Sh. Anand K Ganesan, Advocate appeared for Discoms. Sh. N.K. Bhatt, Advocate appeared for RVPN. Sh. Atul S. Mathur, Advocate appeared for M/s SKS Power Ltd. and Sh. Ravi Chirania, Advocate appeared for M/s D.B. Power Ltd. Sh. Ganesan, Advocate on behalf of Discoms submitted that Discoms have signed the modified PPA with L1 and L2 and the same shall be filed during the course of the day. Sh. N.K. Bhatt, Advocate on behalf of RVPN submitted that they are in the process for filing the petition for adoption of tariff and need one month time for the same.
13. Rajasthan Urja Vikas Nigam Ltd. (RUVNL) on behalf of Discoms on 28.05.2018 filed an affidavit for placing on record the copies of PPAs signed on 15.05.2018 with L1 and L2 i.e. M/s Maruti Clean Coal & Power Ltd. and M/s D.B. Power Ltd. respectively. RUVNL also submitted that they have complied with the order dated 25.05.2018 passed by the Hon'ble Supreme Court for L1 & L2 and are in process for L3, L4 and L5 in accordance to the directions of the order.
14. Commission notes the above compliance of the Hon'ble Supreme Court order and modified PPAs submitted by Discoms as per order dated 25.04.2018 passed by the Hon'ble Supreme Court.
15. Commission directs RVPN/Discoms to file appropriate application/petition in relation to L3, L4 and L5 as per orders of the Hon'ble Supreme Court expeditiously and implement the order.
16. The Interlocutory Application No. 01 of 2018 dated 09.02.2018 filed by M/s D.B. Power Ltd. and Interlocutory Application of M/s SKS Power Generation (Chhatisgarh) Ltd. (L5) stands disposed of accordingly.

(S.C. Dinkar)  
Member

(R.P. Barwar)  
Member

(Vishvanath Hiremath)  
Chairman