

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No.49 of 2016

Date: 10 November, 2016

CORAM: Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member

Petition of Khodashi Power Private Limited under Section 142 read with Section 23 of the Electricity Act, 2003 challenging the illegal tariff imposed under Power Purchase Agreement dated 18.03.2014 entered between Petitioner and Maharashtra State Electricity Distribution Co.Ltd.

M/s. Khodashi Power Private Limited Petitioner
v/s
Maharashtra State Electricity Distribution Co.Ltd. Respondent

Present During the hearing

For the Petitioner : Shri.Budhaditya Bhattacharya , Adv.
Shri. Subir Kumar, Adv
For the MSEDCL : Shri. Ashish Singh, Adv.
Shri. D.H. Kulkarni
For the Consumer Representative : Dr. Ashok Pendse, TBIA

Daily Order

Heard the Advocates of the Petitioner and Respondent.

- 1) Petitioner stated that it has developed a Small Hydro Plant (SHP) of 4.9 MW located at Satara, and has signed a Power Purchase Agreement (PPA) with MSEDCL on 23.09.2010 at a rate of Rs.4.26 per unit. As per original plan, its commercial operation date (CoD) was scheduled from April 2012 which was delayed by 22 months and the plant was commissioned and synchronized on 18.12.2013 with CoD declared as 24.12.2013. The delay in commissioning of the plant was due to natural calamities (flood) and Force Majeure, which was condoned by the State Government vide letters dated 29.05.2014 and 10.08.2015.
- 2) Referring to MSEDCL's letter dated 13 November, 2013, the Petitioner states that the earlier PPA ceased to exist and a fresh PPA was executed between Petitioner and MSEDCL on 18.3.2014 at a rate of Rs.4.51 per unit. The tariff of Rs.4.51 per unit was applicable for the SHP's commissioned during the year 2011-12, but the rate of Rs.4.92 per unit (as per the Commission's Generic RE tariff Order dated 22.3.2013 for FY 2013-14 in Case No 6 of 2013) was applicable to the Petitioner's Plant. MSEDCL made the Petitioner sign the PPA at a much lower tariff by virtue of its dominant position. The Petitioner, in support of its contention; has cited various provisions of the Indian Contract Act, 1872.

- 3) MSEDCL stated that the Petition ought to be dismissed on grounds of delay and laches on the part of the Petitioner. The PPA was signed on 18.3.2014, and the rate mentioned as Rs.4.51 per unit was specifically agreed by the Petitioner without any protest vide its own letter dated 12.12.2013. Since the RE Tariff Order dated 22.3.2013 for FY 2013-14 in Case No 6 of 2013 was in public domain, the Petitioner was aware of the rate of Rs.4.92 per unit. The Petitioner has agreed and consented to supply power to MSEDCL at Rs.4.51 per unit. Now, at this stage, Petitioner cannot go back on its irrevocable promise considering the doctrine of Promissory Estoppel.
- 4) The Commission asked MSEDCL for the basis of the rate of Rs.4.51 per unit considered for the PPA dated 18.3.2014. MSEDCL stated that the Petitioner, vide letter dated 29.7.2013, informed its financial closure date as 28.2.2011, and hence the tariff rate of Rs. Rs.4.51 per unit, applicable for FY 2011-12, was considered for signing of the revised PPA dated 18.3.2014.

The Commission granted two weeks to the Petitioner for filing its Rejoinder on the submissions made by MSEDCL.

Case is reserved for Order.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member