

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 19 of 2017

Date: 7 February, 2017

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

Petition filed by RattanIndia Power Limited (formerly Indiabulls Power Ltd.) (RIPL) under Section 86 of the Electricity Act, 2003, seeking a declaration for sale of un-availed capacity to third parties in terms of Article 4.5.3 of the PPAs of the Power Purchase Agreements dated 22.04.2010 and 05.06.2010 executed between RIPL and Maharashtra State Electricity Distribution Company Limited.

Petitioner: RattanIndia Power Limited (RIPL) ...Petitioner

V/s.

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) ...Respondent 1

Maharashtra State Load Despatch Centre (MSLDC) ... Respondent 2

Representative for the Petitioner: Shri. Vishrov Mukerjee (Adv.)

Representative for the Respondent: Shri. Harinder Toor (Adv.)

Shri. Paresh Bhagwat (rep.)

Representative for the Consumer Representative: Shri. Ashok Pendse, TBIA

Daily Order

Advocate of the Petitioner submitted that, as MSEDCL has put its all Units at Amravati Power Station under zero schedule, it intended to sell power to third party/ Trader. As a result, Short Term Open Access (STOA) applications were made by intending consumers for capacity aggregating to 15 MW. MSEDCL refused to grant Open Access on the ground that it has a Long Term PPA with RIPL, and communicated this vide email dated 13 January, 2017. RIPL had written a letter dated 22 July, 2016 to MSEDCL stating that, from January to June,

2016, MSEDCL had on an average purchased around 56 % of the Available Capacity. In the letter, it had also informed MSEDCL that it will explore the possibility of selling the Available Capacity not availed by MSEDCL to third parties without affecting MSEDCL's first right over the entire capacity of 1200 MW under the provisions of Article 4.5.3 of the PPA. In January and February, 2017, there is zero schedule of power by MSEDCL. MSEDCL did not bother to respond to RIPL's letter in the last six months. RIPL informed MSEDCL through its letter dated 7 January, 2017 that it has identified a potential buyer for third party sale of unscheduled Available Capacity in order to lessen the Capacity Charge burden of MSEDCL. The excess Energy Charge that could be realized may result in saving of atleast Rs.0.10/kWh through this arrangement for MSEDCL and consumers of Maharashtra as per the PPA provisions applicable in such a case.

RIPL submitted the data of power purchase by MSEDCL from 1 January, 2016 to 31 January, 2017. At 85% PLF, energy drawn will be around 24.50 MU per day, whereas in the last 1 year, MSEDCL had never drawn 24.50 MU in a day and the third party sales of 15 MW would translate to a meager 0.36 MU per day.

Advocate of RIPL submitted that, as per Regulation 32 of MERC (Distribution Open Access) Regulations, 2016, the Commission is the adjudicating authority for any kind of disputes regarding Open Access. The locus standi of RIPL in this case is that RIPL is an affected party as the denial of Open Access by MSEDCL results in revenue loss to RIPL, and in turn to MSEDCL as well. Referring to MSEDCL's reply dated 20 January, 2017, Advocate of RIPL submitted that MSEDCL needs to submit its demand projection and forecasting, of availability for the next three months.

Advocate of MSEDCL referred to paras 3, para 32 and prayer (c) of the Petition, and stated that the Petitioner is also seeking wavier or relaxation in Article 4.5.5 of the PPA for scheduling the power by MSEDCL and trying to rewrite the PPA.

The Commission asked whether Article 4.5.3 of the PPA require's consent to sell the power in case MSEDCL has given zero schedule, and whether denial of Open Access by MSEDCL will result in loss to consumers as MSEDCL would lose the benefit from sharing the revenue earned through extra realization of Energy Charges. The Commission observed that, as per Article 4.6 of the PPA, the Generator is duty bound to supply power from alternate source to MSEDCL in case it is unable to do so.

Representative of MSEDCL submitted that there is an agreement of RIPL with Trader at a certain price, and Trader has an agreement with consumers at a different price. RIPL has not explained the details of revenue realization, which need to be discussed as per Article 14 of the PPA. Advocate of MSEDCL submitted that, since the present matter is not related to

tariff, the resolution of dispute under the PPA has to be by arbitration and not before the Commission.

The Commission observed that the matter is related to Open Access, for which the Commission is the adjudicating Authority as per Regulation 32 of MERC (Distribution Open Access) Regulations, 2016, and the Open Access has been denied by MSEDCL citing the PPA. The Commission asked why, MSEDCL felt that a prior discussion was required to be held between the parties, it has not initiated such discussion.

Shri. Ashok Pendse of TBIA stated that there have been similar instance recently where a Generator having long term PPA with MSEDCL wished to sell available capacity to a third party through Open Access which was denied by MSEDCL on the grounds of its PPA, though the Generator did not pursue the matter. Shri. Pendse submitted that MSEDCL has zero schedule for many Generators and, based on the present MoD, it is unlikely that RIPL power would be required by MSEDCL as there are many Generators above RIPL in MoD Stack.

It was agreed that MSEDCL and RIPL would meet to discuss the issues in granting Open Access vis a vis provisions of PPA as the Generator is under zero scheduling. The Commission directed them to meet on 8 February or 9 February, 2017 in the office of Executive Director (Commercial), MSEDCL and submit the Minutes of Meeting duly signed by both the parties within a week's time. In the meantime, RIPL is at liberty to apply for STOA, which would be decided by MSEDCL on merits in terms of the DOA Regulations.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member