

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in

CASE No. 1 of 2017

Date: 21 March, 2017

**Coram: Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member**

Petition of ASN Power Projects (P) Limited for adjudication of dispute and for return of Performance Guarantee amount pursuant to the withdrawal of proposal for setting up of Biomass Power Project and cancellation of final consent agreement by Maharashtra Energy Development Agency (MEDA)

ASN Power Projects (P) Limited (ASNPPPL) Petitioner

V/s

Maharashtra Energy Development Agency (MEDA) Respondent

Appearance

For Petitioner : Shri. Jagdish Farsinavis (Rep.)
For MEDA : Shri. H.D. Shinde (Rep.)

For Authorized Consumer Representative : Dr. Ashok Pendse, TBIA

DAILY ORDER

Heard the Representatives of the Petitioner and Respondent.

1. ASNPPPL stated that:

- (i) It intended to set up a 10 MW Biomass Based Power Project at Mul, District-Chandrapur. Accordingly, it made an application to MEDA for issuance of Licence. After MEDA's permission, ASNPPPL & MEDA have entered into Consent Agreement on 18 July, 2006. As per Clause No. 14 of this Agreement, ASNPPPL deposited Rs. 50 lakh with MEDA towards refundable commitment fee at Rs 5 lakh per MW in two instalments. (Rs 20 lakh on 6.2.2008 & Rs 30 lakh on 28.02.2008). It has also paid an additional Rs. 5 lakh for infrastructure clearance to MEDA, the totalling amount of Rs. 55 lakh. Subsequently, ASNPPPL also entered an Energy Purchase Agreement(EPA) with MSEDCL.

- (ii) MEDA has issued about 44 Licences to Biomass Power Projects in various Districts of the State. Only ASNPPPL has paid the commitment fee of Rs. 50 Lakhs plus additional Rs. 5 Lakhs for infrastructure clearance to MEDA. There are 18 projects which are under commissioning which have not paid any commitment fee to MEDA. MEDA has given Licence to another promoter, M/s. Greta Power Projects at the same location where ASNPPPL's project was proposed. If MEDA had given ASNPPPL the same time as given to these other 18 Projects, it could have commissioned its Project.
 - (iii) MEDA has unilaterally given notice to ASNPPPL that it has cancelled the final consent as per the provisions of the Consent Agreement dated 18 July, 2006, which is a clear injustice and an error apparent on the face of Clause 21 of the Consent Agreement. Clause 21 states that, in case of any dispute regarding any clause in the Agreement, the matter shall be referred to the Commission whose decision shall be binding.
 - (iv) In the above situation where the Biomass Sector is struggling and no lenders are willing to extend support, ASNPPPL was forced to take a decision to withdraw from the proposed Project, and has written to MEDA to return the Commitment deposit of Rs. 50 Lakh, as MEDA has withdrawn the clearance. In these circumstances, MEDA may be directed to refund Rs.55 Lakhs towards Commitment Fees and Infrastructure clearance charges paid by ASNPPPL. ASNPPPL now does not wish to pursue its claim for interest on these amounts.
2. The Commission asked ASNPPPL why it did not approach the Commission when MEDA canceled the final consent. ASNPPPL stated that MEDA had assured it orally that the Commitment Fees and Infrastructure clearance charges would be refunded.
 3. The Commission asked MEDA for its specific say on the issues of refund of the Commitment Fees (which were deposited for a specific purpose) and Infrastructure clearance charges since the Project itself is not commissioned and is not being pursued. MEDA stated that it has filed its reply dated 18 March, 2017. Considering deemed extension of 24 months for the Project under the Amnesty Scheme (Rs. 20 Lakhs at Rs. 50,000/MW) needs to be deducted from the Commitment fees of Rs. 50 Lakhs.
 4. The Commission asked MEDA about the exact purpose of the Commitment Fees, which MEDA Representative could not clarify satisfactorily. The Commission also asked MEDA regarding;
 - (i) the basis on which such Agreements were formulated, and how many have been entered into by MEDA ,
 - (ii) the basis and criteria for deciding the amount of Commitment Fees, its legal sanctity and
 - (iii) approval and basis of insertion of the dispute resolution clause relating to the Commission in the Consent Agreement.
 5. The Commission directed MEDA to submit its stand and respond to the queries and issues raised within 15 days, with a copy to the Petitioner.

Case is reserved for Orders.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**