

**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](http://www.mercindia.org.in) / [www.merc.gov.in](http://www.merc.gov.in)**

**CASE Nos. 164 of 2016**

**Date: 16 March, 2017**

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

Petition of Brihanmumbai Electric Supply & Transport Undertaking for approval of EPA dated 1.10.2009 for procurement of Biomass based Power between Mumbai Municipal Corporation through BEST Undertaking and M/s. Spark Green Energy (Ahmednagar) Pvt. Ltd., and M/s. Spark Green Energy (Satara) Ltd.

Brihanmumbai Electric Supply & Transport Undertaking (BEST) ..... Petitioner

1. M/s. Spark Green Energy (Ahmednagar) Pvt. Ltd.(SGEPL-A)
2. M/s. Spark Green Energy (Satara) Ltd.(SPEL-S) .....Impleaded Respondents

**Appearance**

For BEST : Shri. H. Toor (Adv.)

For SGEPL-A : Shri. Sanjay Chawala (Rep.)

For SPEL-S : Shri. Sanjay Chawala (Rep.)

For Authorized Consumer Representative : Dr. Ashok Pendse, TBIA

**DAILY ORDER**

Heard the Advocate/Representatives of the Petitioner and Impleaded Parties.

1. BEST stated that:

i) In order to meet their stipulated Renewable Purchase Specification (RPS) obligation in line with the regulatory framework for long term development of Renewable Energy (RE), it had published an Expression of Interest (EOI) on 3 September, 2007 for the purchase of 300 MUs RE Power from all eligible sources per year from September 2007 to March 2010. In response to the EOI, only one offer was received from M/s Spark Green Energy Pvt. Ltd., for its two biomass based projects with capacity of 25 MW each at Ahmednagar and Satara. The price offered was Rs. 5.00 per unit with compounded escalation of 5% per annum from second year of operation.

ii) BEST had filed a Petition on 30 April and 30 May, 2008 seeking approval for the EOI and allowing it to enter into an Energy Purchase Agreement (EPA) for a minimum of

5 years @ Rs. 5.00 per unit with escalation of 5% per annum. Due to infirmities in the Petition, the Commission rejected the Petition vide its Order dated 21 .11.2008 (Case No.45 of 2008).

iii) Meanwhile, an Investment Agreement (IA) was signed with M/s. Spark Green Energy Ltd. on 23.12.2008. As per the IA BEST has invested Rs.60 crore in the Company as an interest-free deposit to be kept with the Company till the end of 5th operational year of the proposed 50 MW project. Spark Green Energy was to supply 300 MUs or more per annum at Rs.5/kWh for the first year, with 5 % escalation per annum and a discount of Rs.0.50 per unit for the first 5 years on all power generated by it and sold to BEST.

iv) EPA was signed on 1 October, 2009 for 13 years from the date of commercial operation. As per clause 10.2, the project was to be completed within 24 months, i.e. by 30 September, 2011. As per Exhibit A of EPA, Commercial Operation Date was mentioned as 31 December, 2010. As per EPA, for the first term of 5 years, the tariff was to be the lowest of (i) stipulated tariff by the Commission (ii) Rs.5.00 per unit with escalation of 5% per annum.

v) M/s. Spark Green Energy Ltd. delayed the project by more than four years, and commissioned only 25% of the total project. Due to such delay from FY 2011-12 to FY 2015-16, the Commission's preferential tariff has increased from Rs 4.98 per unit to Rs 7.50 per unit. As the EPA was signed prior to the RE Tariff Regulations, 2010, the Commission may approve the EPA and the Tariff rate as per the EPA by relaxing the RPO Regulations. Spark Green Energy Pvt. Ltd. is taking advantage of its own delay in execution of the Project, and now insisting that preferential tariff rate should be given.

2. To a query of the Commission about the sanctity of the EPA, BEST stated that the EPA has been executed which is valid and subsisting and has not been terminated and hence BEST is seeking approval of the EPA. The Commission asked BEST, as to the substantive reasons for the Commission not approving the EPA in 2008 and 2010. BEST could not reply satisfactorily but stated that, as per clause 10.2 of the EPA, the project was to be completed within 24 months from the date of signing, i.e. on 30 September 2011.
3. The Commission asked BEST as to whether it had taken recourse to the remedies provided under the terms of the EPA for delay in the execution of the Project. BEST stated that the interest-free deposit of Rs. 60 crore was invested as per the IA, which provides certain penalties and discounts, but the Respondent is seeking that no penalty be deducted. Moreover, BEST has also issued various Legal Notices to both the Spark Green Energy Companies.
4. The Respondents submitted that the Commission had rejected the Petition of BEST for approval of EOI as the stipulation to buy the power at the preferential tariff existed even before signing of the EPA, and referred the ruling of the Commission in Case No. 45 of 2008. However, BEST stated that the said Petition was rejected because infirmities in the Petition regarding deviation in the bidding document, whereas the context which the Respondents are referring to the Commission's ruling is different.

5. The Respondents submitted that the Project has taken a long time as it is located in very backward rural area, where no electricity and water pipeline was available. MSETCL took a long time to execute the required 45 km. transmission line and 132 kV substation for the Ahmednagar Project, which started in 2009 and was completed in December, 2016. Similarly there were RoW issues in the Satara Project. Also, financing was one of the problem causing delay. In reply to a query the Respondents stated that the Ahmednagar project was ongoing and used the latest modern plant & machinery. The Satara Plant is 90% completed and grid connected, and will start within three months. Further, as there is no penalty clause in the EPA, no penalty should be charged.
6. On Petitioner's request for the approval of rate as per EPA, the Commission asked why BEST has not terminated or backed out from the EPA. BEST responded that it had invested Rs. 60 crore in the projects. The Commission asked whether BEST has invested some amount in the Projects, adjustments ought to be considered in the tariff, and that the RE Tariff Regulations also provide for such adjustments of grants/subsidies in the tariff. The Respondents stated that, because of the investment made by BEST, they are giving Rs. 0.50 per unit discount in the tariff rate.
7. Dr Ashok Pendse, on behalf of Thane Belapur Industries Association (TBIA), an Authorised Consumer Representative, stated that this is a case in which the Distribution Licensees has invested in the Projects and the Developer is seeking the benefits of preferential tariff. In the past, project Developers (specifically Wind Generators) were getting Sales Tax and accelerated depreciation benefits so two different tariffs were determined, with and without these benefits. Over time, RE tariff has come down and the scenario of fulfillment of RPO has also changed considerably. BEST could have fulfilled its RPO by purchasing RE power at a cheaper rate from market had it not invested in the Project. He further stated that the Commission may take into account and consider this specific case. Otherwise, both parties may sit together and find a solution acceptable to both.
8. The Commission observed that there are standard principles of EPA issued through relevant Orders, and that it did not approve the EPA of each and every RE project. Moreover, the Commission also determines the RE tariff rate in its Generic Orders. The Commission asked BEST whether it has followed these standard principles of EPAs. In reply BEST stated that under some peculiar circumstance the case has been dealt with differently.

**Case is reserved for Orders.**

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

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