

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

Petition No. 14 of 2017

Date of hearing: 04.10.2017

Date of Order: 10.10.2017

In the matter of: Petition under Section 86(1) (f) of the Electricity Act, 2003 in relation to disputes arising under the Implementation Agreement dated 30.11.2015 executed between Photon Suryodaya Private Limited (Petitioner/PSPL) and Punjab Energy Development Agency (Respondent No.2/PEDA) read along with the provisions of the Power Purchase Agreement (PPA) dated 13.01.2016, executed between PSPL and the Punjab State Power Corporation Limited (Respondent No.1/PSPCL) as the successor entity on unbundling of PSEB.

AND

In the matter of: Photon Suryodaya Private Limited, Registered Office : 8th Floor, Statesman House, Barakhamba Road, New Delhi - 110001 through its Authorized Signatory Mr. Vaibhav Sharma.
.... Petitioner

Versus

1. Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala through its Chairman.
2. Punjab Energy Development Agency, Solar Passive Complex, Plot No.1 & 2, Sector 33-D, Chandigarh-160020 through its Chairman.
3. Syndicate Bank Limited, Arunachal Building, 19, Barakhamba Road, New Delhi through its Manager.

....Respondents

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

For petitioner: Sh. Puneet Jindal, Sr. Advocate
Sh. Varun Goyal, Advocate

For PEDA Sh. Aditya Grover, Advocate
Sh. R.K. Gupta, Senior Manager
Sh. Sunil Chaudhary, Executive (T)

For PSPCL: Sh. L.S.Bhullar, Advocate
Sh. A.K. Sharma, SE/TR-2

Sh. V.P.S. Kailay, Addl. SE/ TR-5
Sh. Sachin Verma, AEE/TR-4
Sh. Mohinder Singh, Sr.Xen/IPC

ORDER

The petitioner has filed Petition No.14 of 2017 under section 86(1) (f) of the Electricity Act, 2003 in relation to disputes arising under the Implementation Agreement dated 30.11.2015 executed between petitioner and Punjab Energy Development Agency (PEDA) read along with the provisions of the Power Purchase Agreement (PPA) dated 13.01.2016, executed between petitioner and Punjab State Power Corporation Limited (PSPCL). The petitioner has prayed as under:-

- (a) Issue any order or direction mandating Respondent Nos.1 and 2 to accept the occurrence of Force-Majeure event(s) which has necessitated extension of time for commissioning of the Project and accordingly permit and grant extension of time for commissioning of the project as envisioned under Article 10.5(iii) of the Implementation Agreement and without changing the tariff rate of Rs.5.27 per unit; and
- (b) issue any order or direction mandating Respondent Nos. 1 and 2 to accept the delay occasioned and/or being occasioned by Respondent Nos. 1 and 2, *inter alia*, on account of Force-Majeure event(s); in grant of approval of new sites; in grant of Technical Feasibility Report; and accordingly not amending the Implementation Agreement and PPA in a timely manner, and to consider the said period while computing the period of extension of commissioning of project; and/or
- (c) issue any order or direction mandating Respondent No.2 to refund an amount of Rs.3.00 crore, which has been encashed out of a total sum of Rs.5.0 crore deposited by the Petitioner in the shape of Bank Guarantee towards the performance security, along with interest at the

rate of 18% P.A. from the date of encashment till the date of its realization by the Petitioner; and

- (d) issue any order or direction injuncting the Respondents from invoking and/or encashing the remaining Performance Bank Guarantee to the tune of Rs.2.00 crore dated November 18, 2015; and
- (e) issue any order or direction in the nature of an injunction against Respondent Nos.1 & 2 prohibiting them from cancelling and/or terminating the Letter of Award (LOA) dated October 19, 2015, as also Implementation Agreement dated November 30, 2015 and PPA dated January 13, 2016; and
- (f) for issuance of any order or direction mandating Respondent Nos. 1 & 2 not to levy extension fee in respect of commissioning of the project under reference;
- (g) issue any order or direction in the nature of ad-interim injunction in terms of the prayers above, during the pendency of the present petition; and
- (h) grant such orders, further relief/s in the facts and circumstances of the case as this Commission may deem just and equitable in favour of the Petitioner.

The petitioner filed an I.A. No.27 of 2017 under section 158 of the Electricity Act, 2003, read with Regulation 20 of PSERC (Conduct of Business) Regulations, 2005 seeking reference of disputes to arbitration. The Commission vide its Order dated 21.06.2017, after considering the averments made by the parties, accepted the request of the applicant-petitioner and decided to refer the dispute between the petitioner and the respondents for arbitration. The parties were asked to submit a panel of atleast three names of the arbitrators on or before 30.06.2017. The parties submitted the names of the arbitrators. The Commission, after considering the names of arbitrators, decided not to accept any name from the list of arbitrators

suggested by the parties. During the hearing, the Commission proposed the name of Hon'ble Mr. Justice S.S.Saron retired from High Court of Punjab and Haryana, Chandigarh and resident of H.No:9, Sector-9, Chandigarh (Email: sssaron9@gmail.com), as the Sole Arbitrator to decide the disputes raised in the petition, which was readily consented to by the parties present.

Accordingly, Hon'ble Mr. Justice S.S.Saron (Retd.) is appointed as Sole Arbitrator to decide upon all the clauses of the prayer in the petition except the tariff, which, if required to be re-determined in terms of Article 3 (C) of the Implementation Agreement to be treated as an integral part of the PPA as per sub-clause (d) at page-2 of the PPA, shall be determined by the Commission after considering the relief granted by the Arbitrator. The arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended up to date.

The Commission vide its Order dated 21.06.2017 also held that the interim orders passed by the Commission directing the parties to maintain status-quo and restraining PEDDA from encashing the Performance Bank Guarantee(s) and terminating the LOA, Implementation Agreement and PPA in the petition shall remain in force till any order in this respect is passed by the Arbitrator in the arbitration proceedings.

The parties are directed to appear before the Arbitrator on 24.10.2017 at 10.30 A.M. at the Chandigarh Arbitration Centre in old District Courts Complex, Sector-17, Chandigarh for further proceedings.

Copy of this Order be sent to the Arbitrator along with copies of the relevant pleadings filed by the parties during the course of proceedings of the petition before this Commission.

Sd/-

(Anjali Chandra)
Member

Chandigarh
Dated: 10.10.2017

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson