



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1955)/DERC/2021-22/7307

Petition No. 11/2022

In the matter of: Petition seeking approval of PPA dated 11.03.2015 between NDMC and Rays Power Experts Private Limited under Section 86(1)(b), 86(1)(e), 61(h) of the Electricity Act 2003 read with Clause 4 and 9 of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 along with the Govt. of India's Resolution dated 03.08.2017 bearing No. 23/27/2017-R&R---1, as amended.

New Delhi Municipal Council

.....Petitioner

Vs.

M/s Rays Power Experts Private Limited
.....Respondent

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson
Hon'ble Dr. A. K. Ambasht, Member

ORDER

(Date of Order: 28.04.2022)

1. The instant Petition has been filed by NDMC seeking approval for Power Purchase Agreement dated 11.03.2015 executed between NDMC and Rays Power Experts Pvt. Ltd.
2. At the outset, the question before the Commission is whether the instant Petition filed by M/s NDMC under Section 86(1)(b), 86(1)(e), 61(h) of the Electricity Act, 2003 read with clause 4 and 9 at (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2021 seeking approval of PPA dated 11.03.2015 between the Petitioner and the Respondent is a Regulatory matter and the Commission can decide in the Commission meeting or an Adjudicatory where the Commission has to decide the matter in open Court.
3. The Section 86(1)(b) of the Electricity Act, 2003 stipulates as under:

9. Thereafter, 23 nos. PPAs were extended for 25 years between the Petitioner and Respondent on 11.03.2015 as a result of a bidding process against the proposal dated 17.10.2014 issued by Petitioner inviting bid for roof top Solar Energy Project.
10. The Petitioner/NDMC vide letter dated 11.11.2016 bearing No. D-165/Dir (power)/16 had submitted an application before the Commission seeking Grant of approval regarding the Power Purchase Agreement dated 11.03.2015 between New Delhi Municipal Council/NDMC/Petitioner and M/s Rays Power Experts Pvt. Ltd./ Respondent.
11. The Respondent herein vide its letter dated 18.05.2017 bearing No. RPEPL/NDMC/Chairman/16-17/04 referring to a joint meeting dated 18.05.2017 between Petitioner/NDMC, Respondent herein & the Commission, suggested to convert the project under Net Metering thereby meaning there would be no requirement for approval of Power Purchase Agreement by the Commission.
12. The above said possibility i.e. converting Roof Top Solar Power Plant into Net Metering arrangement was deliberated in a meeting dated 26.02.2018 by the Petitioner/NDMC. Further, it was decided that the said possibility of above said conversion issued by the Commission was in the nature of advice (said observation was advisory in nature) and not a direction from the Commission. Therefore, the Petitioner/NDMC decided to go ahead with a signed agreement/PPA.
13. As per Clause 3.2 of the Power Purchase Agreement, the Petitioner herein was obligated to obtain all statutory approvals including approval of the Power Purchase Agreements from the Commission.
14. The Respondent had filed a Writ Petition(Civil) No. 10579 of 2019 before Hon'ble High Court of Delhi and on 26.02.2021 at the time of hearing of Writ Petition, it was objected by the NDMC counsel that the Petitioner (herein Respondent) has to first approach the DERC for their claim and approval of rates and vide order dated 26.02.2021 Hon'ble High Court of Delhi has granted liberty/permission to petitioner to approach the DERC without prejudice.
15. Thereafter, in year 2021, the Respondent herein filed a Petition bearing Petition No. 29/2021 under Section 86 read with Section 63 of the Electricity Act, 2003 for seeking approval of the Power Sale Agreement dated 26th March, 2015 for approval of tariff of Rs 6.35/Kwh as per clause 8 of PPA in terms of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework

Implementation) Regulations, 2001. The said Petition No. 29/2021 is still pending adjudication before the Commission.

16. The Commission vide its Order dated 07.10.2021 in above Petition No. 29/2021, directed the Petitioner/NDMC to file a fresh petition for approval of Power Purchase Agreement between the parties before the Commission, as it was obligated on the Petitioner to obtain approval from the Commission.
17. In compliance and furtherance of Order dated 07.10.2021, the Petitioner herein/NDMC has preferred present Petition. Respondent was granted an extension of time of 366 days for completion upon levy of penalty/liquidated damages of Rs. 1,03,93,825/- from the bills payable to the Respondent for Solar Power Generation in accordance with terms of Agreement.
18. Petitioner in its Petition sought to re-fix the tariff of Rs. 6.35/kWh on the basis of market rates of solar power prevailing on the date that the commercial operation of the project began i.e. Period of 2016-17, as there has been substantial delay in adhering to the scheduled completion date for completion of the project, which has resulted in depreciation of the solar power market rates.
19. The Petitioner has made the following prayers in its Petition:
 - i. **Para - b** : Approve the Power Purchase Agreement (PPA) dated 11.03.2015 between NDMC & Rays Power Experts Private Limited;
 - ii. **Para - e** : Pass Order(s) to fix the solar power tariff on the basis of prevailing market rates for solar power that existed at the time that the actual commercial operation of the project, in order to enable NDMC/Petitioner to provide consequential relief to the consumers of electricity served by NDMC/Petitioner in its jurisdiction.

COMMISSION ANALYSIS:

20. NDMC, in pursuance of the "off-Grid and Decentralized Solar Application Scheme" of MNRE, issued Request for Proposal (RfP) dated 29.09.2014 for Long Term Procurement of Power from Solar. The respondent was selected as L1 bidder for quoting Tariff of Rs. 6.35/kWh for installation of grid connected rooftop solar PV projects and was issued LOI (Letter of Intent) No. D/212/Dir (project) 2014 dated 12.12.2014 by NDMC.
21. An Application dated 11.11.2016 regarding grant of approval to the Power Purchase Agreements dated 11.03.2015 between NDMC and Rays Power Experts

Pvt. Ltd. was filed before the Commission, by the Petitioner herein. The Petitioner sought retrospective approval to the 23 Nos. of PPAs dated 11.03.2015 at Tariff of Rs. 6.35/kWh. A meeting was conducted in the Commission on 18.05.2017 and it was agreed by both the parties i.e., NDMC and Rays Power that NDMC may explore the possibility to bring such Solar Installations under Net-Metering arrangement which could not fructify.

22. The Respondent had filed a Writ Petition(Civil) No. 10579 of 2019 before Hon'ble High Court of Delhi and on 26.02.2021 at the time of hearing of Writ Petition, it was objected by the NDMC counsel that the Petitioner (herein Respondent) has to first approach the DERC for their claim and approval of rates. Hon'ble High Court of Delhi has granted liberty/permission to petitioner to approach the DERC without prejudice vide Order dated 26.02.2021.
23. Thereafter, on 01.04.2021, Rays Power Experts Private Limited filed a Petition bearing No. 29 of 2021 regarding approval of the PPA dated 11.03.2015 and approval of Tariff of Rs. 6.35/kWh as per clause 8 of the PPA, which is pending adjudication before the Commission.
24. The Commission was of the view that the NDMC has tried to shift its responsibility of taking approval of the PPA upon the private generator by virtue of a clause in the PPA this responsibility could not have been shifted in view of the express obligation of the Petitioner, NDMC as per Regulation 27(3) and Regulation 45 of the Conduct of Business Regulations, 2001. The relevant extract of the Regulation 47 is reproduced below:

“45. Regulation of licensee’s purchase of power

(i) The licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by the licensee.

(ii) The Commission shall be entitled to direct that the licensees shall establish to the satisfaction of the Commission that the purchase of power by the licensees is under a transparent power purchase procurement process and is economical and the power is necessary for the licensee to meet its service obligation.

(iii) The licensee shall apply to the Commission to approve the Draft Power Purchase Agreement that the Licensee proposes to enter into. The Commission may pass orders:

- (a) approving the agreement; or*
- (b) approving the agreement with modifications proposed to the terms of the agreement; or*
- (c) rejecting the agreement.*

(iv) The provision of Clauses (ii) and (iii) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and

powers of the Commission under any of the other provisions of the Act, the Regulations and orders to be issued from time to time."

25. The Regulations being Subordinate Legislation are superior to the provisions of the Contract and the Regulations will override. It was the sole responsibility of the Petitioner to file a Petition seeking approval of the Long Term Power Purchase Agreement. The delay in filing Petition for approval of the PPA has caused grave financial constraints to the Respondent. The Commission hence vide its Order dated 07.10.2021 in Petition No. 29 of 2021, directed the Respondent, herein Petitioner, NDMC to file a fresh application for approval of the PPA already entered into with the generator.
26. Accordingly, as far as prayer at para – e of the Petition is concerned, the Commission is of the view that it was the responsibility of Petitioner to obtain approval and the delay in obtaining approval is attributable to the Petitioner.
27. While perusing the submissions of the Respondent and PPA dated 11.03.2015 executed between NDMC and Rays Power Experts Pvt. Ltd, it is observed that the Respondent have commissioned total 1134 kWp capacity during 2015-2016.
28. In view of above, the Commission after deliberation approves the following:
- a) Grants approval to the 23 nos. of PPAs dated 11.03.2015 executed between the Petitioner and the Respondent.
 - b) Adopts the tariff discovered by bidding process, i.e., Rs. 6.35/kWh from the date of actual commercial operation of the project
29. Ordered accordingly.

Sd/-
(Dr. A.K. Ambasth)
Member

Sd/-
(Justice Shabihul Hasnain 'Shastri')
Chairperson