

## **RECORD OF PROCEEDINGS**

HEARING : 31 December, 2012 at 11.00 hrs.  
CASE NO. : 68 of 2012  
PETITIONER : Adani Power Maharashtra Ltd.  
RESPONDENT : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)  
MATTER : In the matter of for adjudication of dispute u/s 86 of the Electricity Act, 2003 and for return of Performance Guarantee pursuant to the termination dated 16.02.2011.  
CORAM : Shri V. P. Raja, Chairman

APML made submissions in response to the directions of the Commission in the last hearing.

### **Pleadings by MSEDCL**

1 Advocate Shri Chirag Balsara for the Respondent stated that after dealing with first argument of the Petitioner during last hearing he is now dealing with second argument of the Petitioner. APML have quoted in their bid non-escalable prices. The Petitioner is well aware of the market and reasons are best known to them for choosing a non-escalable tariff.

2 He stated that bidding was as per competitive guidelines and that as per section 63 of EA 2003, no escalation is possible. In case prices are revised, what is the rationale of the bidding process? The advocate further stated that APML has not pleaded as what shall be the revised rate and the basis for that increase. In support of his pleading, copies of two judgments were submitted.

3 The Petitioner has not sighted any judgment where bidding was involved and hence their claim is not tenable.

4 Advocate for the Respondent made a point that when a valid PPA is available, the Regulator cannot revise tariff as this would be against the consumers' interest. Further, this PPA was to address the load-shedding, and hence the consumers' interest is involved.

### **Pleadings by APML**

1 Adv Sanjay Sen stated that he has come before the Regulator as a utility and not before a civil court. The Regulator has certain statutory responsibility to take care of the interest of the utilities as well as consumers. There is a difference between Courts and Regulators. He submitted copies of judgments in support of his pleadings.

2 Shri Sen further stated that on receipt of termination letter of PPA, MSEDCL has not rejected the termination but as per their letter they desired to ascertain the facts. GoM also stated that due to the cancellation of the coal block on environmental clearances project is no longer viable. He further stated that Long Term Contracts are subjected to Regulatory supervision.

### **Consumer Representative**

1 Consumer Representative from Prayas pointed out that at all times the Petitioner was fully aware that the allotment of the Lohara coal block was not unconditional but subject to various conditions being fulfilled.

2 She pointed out that this was reflected in the Red Herring Prospectus (RHP) filed by the Petitioner's holding company at the time of its IPO as part of the money raised was to fund the equity portion of the Tiroda project. Rejection of the allotment by the concerned ministries has been mentioned as a risk factor in the RHP.

The Prayas Representative pointed out that one important document that was not brought to the Commission's notice was the termination clause in Case 54 of 2008 wherein the Commission accepted MSEDCL's contention that it shall have the sole right to terminate the PPA. In fact, it is the Respondent who should have come to the Commission in the present case rather than the Petitioner, she added.

The Prayas representative also questioned the sanctity of the data in the Respondent's other Petitions such its business plan as these documents still carry references to the quantum of power that stands terminated as per the Petitioner's claim. She added that she would make written submissions subsequently.

### **List of Participants**

1. Shri Sanjay Sen, Advocate, Petitioner
2. Shri Kandarp Patel, VP, Adani Power
3. Shri Kiran Gandhi, Advocate, Respondent
4. Shri Chirag Balsara , Advocate, Respondent
5. Shri Vikram Nanvani, Advocate, Respondent
6. Shri A. S. Chavan, CE (PP), MSEDCL

7. Ms Ashwini Chitnis, Prayas Energy Group

Prafulla Varhade  
Dir (EE)

V P Raja  
Chairman