

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri U. N. Behera, Chairperson
 Shri S. K. Parhi, Member**

Case No. 32/2019

GRIDCO Limited

..... Petitioner

Vrs.

M/s. Aditya Birla Renewables Ltd. and Others

..... Respondents

In the matter of: **Application under Section 86 and Section 63 of the Electricity Act, 2003 read with Section 21 of the OER Act, 1995 along with other enabling provisions seeking approval of the Power Purchase Agreement (PPA) executed between GRIDCO and M/s. Aditya Birla Renewable Ltd. for procurement of 75MW Solar power from their Solar PV power Project to be commissioned in Odisha selected under e-Reverse Auction Bidding Process by GRIDCO in confirmation to the MoP, GoI Resolution dated 03.08.2017.**

For Petitioner: Ms. Sasmita Patajoshi, AGM (RE) and Ms. Shaswati Mohapatra, DM (RE) GRIDCO Limited.

For Respondents: Mr. Surjit Chand, DGM-Business Development on behalf of M/s. Aditya Birla Renewable Limited and Mr. K C Nanda, DGM (Fin), WESCO Utility. Nobody was present on behalf of GEDCOL, CESU, NESCO Utility, SOUTHCO Utility and DoE, GoO.

ORDER

Date of hearing: 23.07.2019

Date of order: 07.11.2019

The present Petition has been filed by GRIDCO for approval of the PPA executed by them with M/s. Aditya Birla Renewables Ltd., Mumbai for procurement of 75 MW of power from the latter's solar PV project at the tariff of Rs.2.79/ kWh which has been discovered through competitive bidding under Section 63 of the Electricity Act, 2003. The validity of the PPA is 25 years.

2. The petitioner stated that the Ministry of Power, GoI Resolution dated 03.08.2017 prescribes Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects. GRIDCO as the 'Intermediary Procurer' planned to buy 200 MW of such power for the state through a competitive procurement process for fulfillment of its Renewable Purchase Obligation. GRIDCO floated the bidding document for purchase of 200 MW Grid-connected Solar Power

through Competitive Bidding Process (followed by e-Reverse Auction) to be commissioned in the State of Odisha.

3. The petitioner stated that in the process the lowest discovered tariff was of Rs. 2.79/- per kwh quoted by M/s. Aditya Birla Renewables Limited, Mumbai for 75 MW solar capacity to be set up in the state of Odisha. M/s Aditya Birla Renewables Ltd accepted the LoI, issued by GRIDCO, subject to the condition that their project is eligible for relief and pass through of safeguard duty as issued by Ministry of Finance dated 30.07.2018.
4. M/s. Aditya Birla Renewables Ltd. has accordingly executed the PPA with GRIDCO on 28.12.2018 for implementation of the 75 MW solar PV project in Odisha for a period of 25 years. The PPA was finalized on mutually agreed terms based on the RfS document dated 29.03.2018 and the amendments thereafter.
5. The salient features of the PPA are as follows:
 - (a) PPA has been executed for 75 MW which can be implemented in multiple locations of the state, subject to minimum 10 MW in a single location and additional in multiples of 5 MW.
 - (b) The developer at its own cost and expense shall acquire all clearances, consent, permits, approvals etc. to meet the obligation under the PPA.
 - (c) Performance Bank Guarantee shall be furnished by the developer @ Rs.20 Lakh / MW for guaranteeing commissioning of the project within Scheduled CoD.
 - (d) GRIDCO in a contract year shall be obliged to purchase energy in the range of 1.340-1.638 MU/MW/Year at CUF of $17\% \pm (10\%)$ at the applicable tariff. Energy generated beyond this range will be purchased by GRIDCO at only 90% of the applicable tariff.
 - (e) Scheduled Commercial operation date (SCOD) for the Solar power project is 18 months from signing of the PPA. However the Solar Project Developer may advance the CoD from 18 months to 15 months in which case GRIDCO shall be obliged to take the power at applicable tariff.
 - (f) In case of delay in commissioning beyond SCOD, Performance Bank Guarantee (PBG) shall be encashed @ Rs.20,000 /- per MW per day up to 3 months and @

Rs.50,000 /- per MW per day beyond 3 months till total PBG is fully encashed and for further delay, the PPA capacity shall be reduced/ amended.

- (g) For shortfall of units in any contract year less than 1.340 MU/MW/Year at CUF of (17% \pm 10%) the solar developer shall be liable to pay proportional penalty if such penalty / compensation is ordered by the Commission towards non-meeting of solar RPO.
 - (h) The applicable tariff for 25 years shall be the discovered tariff of Rs.2.79/kWh. In case of any change in tax provisions including custom / safeguard/ countervailing duty imposed after the due date of submission of the bid, having financial implications on the Solar project developer, the same will be Pass-through subject to approval of OERC.
 - (i) 2% rebate will be availed by GRIDCO for payment within 7 working days and for payment within 8th day to 30th day from presentation of Bill, no rebate shall be allowed to GRIDCO. Similarly, surcharge @ 1.25% (15 % per annum) shall be leviable for late payment beyond 30th day.
 - (j) Under Payment Security Mechanism', irrevocable, divisible, revolving and confirmed Letter of Credit (LC) and Escrow arrangement will be provided by GRIDCO.
 - (k) The Solar Power Developer (SPD) shall construct and maintain the transmission line up to the OPTCL substation which will be handed over to OPTCL after completion of construction and the line loss shall be to the account of GRIDCO.
6. The PPA dated 28.12.2018 has other standard clauses that of a model solar PPA such as Records, Insurance, Force Majeur, Change in Law, Assignments and Transfer, Default & Termination, Confidentiality & Indemnity, Settlement of 'Disputes and Miscellaneous provisions.
7. The petitioner has also annexed two schedules to the PPA. Schedule-I contains the sample calculation of Safe Guard Duty in Rs per kWh as agreed mutually between the parties and Schedule-II contains the calculation of generation losses due to transmission constraint as per MoP, Gol Resolution dated 03.08.2017.
8. The petitioner has submitted that in absence of any guidelines by MNRE / SECI for determination of the Safe Guard Duty impact on tariff both GRIDCO and M/s ABRL have undertaken a sample calculation to assess the impact of Safe Guard Duty (SGD) which enhances the tariff by Rs.0.21/- kWh. The impact of safeguard duty has been

calculated considering levy of notional duty of 20%. The calculation has been made taking into account the same technical and financial parameters as that were taken for determining tariff of Rs.2.79 / kWh. On such calculation the impact of 20% duty results in additional cost of Rs 24.9 crore over the total cost of panels of Rs. 300 crore. Since this is only a sample calculation both GRIDCO and M/s ABRL have agreed that the actual impact of SGD will be calculated basing on the actual cost of panels and actual rate of such duty notified by the GoI.

9. The Petitioner submitted that Generation loss, if any, to the solar developer as a result of off-take constraint and also due to back down, the MoP, GoI resolution dated 03.08.2017 shall be applicable.
10. Petitioner submitted that a Task Force had been formed with members from GRIDCO, OPTCL, IDCOL, GEDCOL and M/s. Aditya Birla Renewables Pvt. Ltd. for early and successful implementation of the 75 MW Solar PV Project in the state. M/s. Aditya Birla Renewables Ltd. has already started construction activities of their proposed 75 MW Solar PV project, to be implemented at 3 different locations of 25 MW capacity each, viz Harabhanga Tehsil of Boudh district, Budapali village in Bijepur Tehsil of Bargarh district and near Dumermunda/ Ghunsar villages in Saintala Tehsil of Bolangir district for which GEDCOL has already issued the STC clearance for implementation of the projects.
11. In view of the above facts, the Petitioner, GRIDCO has prayed for approval of the PPA executed with M/s. Aditya Birla Renewables Ltd., Mumbai at the tariff of Rs.2.79/kWh which may be adopted under section 63 of the Electricity Act, 2003, for setting up of 75 MW solar PV project in Odisha for 25 years. GRIDCO has also sought approval for the deviations made in the RfS document from Odisha perspective from the Standard Bidding Guidelines of MoP, GoI Resolution dated 03.08.2017. GRIDCO has also prayed that the sample calculation for Safe Guard Duty impact in the tariff taking the same technical & financial parameters as that of the tariff of Rs.2.79/kWh may also be approved till the actual SGD impact on actual incremental Capex for SGD is available.
12. We heard the parties in detail. GRIDCO has decided to buy 200 MW solar power through competitive procurement process to fulfill its Renewable Purchase Obligation. The GRIDCO has taken up this role being the Intermediary Procurer as envisaged under the Ministry of Power, Govt. of India resolution dated 03.08.2017. This resolution prescribes guidelines for tariff based competitive bidding process for procurement of power from grid connected solar PV projects. This petition has been

filed by GRIDCO for approval of the PPA already executed by it with M/s. Aditya Birla Renewables Ltd., Mumbai for setting up of 75 MW solar PV project to be established in Odisha for 25 years with a discovered price of Rs.2.79/Kwh.

13. The commission first heard the case on 16.07.2019 and in its interim order directed that Aditya Birla Renewable limited would file its reply stating therein that they agree to the terms and conditions of PPA executed between them and GRIDCO. Aditya Birla Renewable limited in compliance to the said direction of the Commission has filed its reply dated 17.07.2019 and submitted that it agrees to each clause of the PPA dated 28.12.2018 as filed by GRIDCO before the Commission for approval.
14. GRIDCO submitted that in the RFS (Request for Selection) document they made certain deviations from the MoP guidelines of dtd.03.08.2017. The MOP guidelines specify that in case there is any deviation from these guidelines and or the SBDs, the same shall be subject to approval by the appropriate Commission. As per the petition GRIDCO has made following deviations from the Standard Bidding Guidelines of MoP, GoI dtd.03.08.2017 in the RFS:
 1. Land acquisition: Identification of 100% land at the time of bid submission and submission of ownership documents within seven months of the execution of the PPA – Deviation for one month in the RFS.
 2. Payment security fund shall be suitable to support payment for at least 3 months of billing– Deviation as GRIDCO agreed to provide default Escrow arrangement to a developer as the backup payment security mechanism which will support payment of at least 3 billing months.
 3. Financial closure: Seven months from the date of execution of power purchase agreement – Deviation for one month as in RFS.
 4. Commissioning schedule, 13 months from the date of execution of PPA – Deviation has been made upto 15 to 18 months from the execution of PPA in view of the issues in getting suitable land for solar power projects in Odisha and that of financial closure also.
15. The Commission has gone into the details of the deviations and analysed the same. These deviations are mostly minor time extensions except payment security mechanism to make the projects workable. The payment security mechanism envisaging default escrow account of GRIDCO along with LC serve the purpose of adequate security

cover for payment of energy bills of the developers. The deviations made in RFS document are allowed.

16. As regards PPA, since both the parties have agreed to all the points and the PPA which has been signed on mutually agreeable basis, the Commission approves the same. The commission also approves the applicable tariff of Rs. 2.79/ kwh discovered through the bidding process in terms of section 63 of the Electricity Act 2003.
17. As regards the safeguard duty recently imposed by the GoI on the imported solar panels, the original SBG was silent about levy of duties. However in the modified guidelines of MNRE, Government of India dated 02.04.2018, an amendment has been made to clause 5.7.2 of SBG to include 'changes in rates, duties and cess'. The Commission having taken cognizance of such an amendment of GoI directs that the impact of such safeguard duty may be calculated as per the actual percentage of the notified duty on the actual cost of panel at the procurement price. At present the sample calculation showing the impact of Rs.0.21 per Kwh due to duty given by the GRIDCO is taken into account for illustration purpose only. The actual calculation of the impact of the duty shall be based on the same technical and financial parameters which were taken to arrive at the tariff of Rs. 2.79 per kwh.
18. With the above observations, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson