

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

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member**

Case No. 08/2023

M/s. Shalivahana Green Energy Limited	Petitioner
Vrs.		
M/s. Jagannath Power and Infra Private Ltd. & Others	Respondents

In the matter of: **An application under section 86(1)(f) of the Electricity Act, 2003 and other enabling provisions for issuance of direction to GRIDCO to amend the Power Purchase Agreement (PPA) i.e. to change of name from M/s. Shalivahana Green Energy Limited to M/s. Jagannath Power and Infra Private Ltd. in the Power Purchase Agreement dated 30th December 2010 made between M/s. Shalivahana Green Energy Ltd and GRIDCO and release of payment against monthly power sale to GRIDCO in favour of M/s. Shalivahana Green Energy Limited till change of name in the PPA.**

For Petitioner: Shri Bibhu Charan Swain, Authorised Representative.

For Respondents: Shri Supratik Acharya, Advocate on behalf of M/s. Jagannath Power and Infra Pvt. Ltd., Shri B. K. Das, Sr.GM, Shaswati Mohapatra, Manager (Elect.) and Rutupurna Mansigh DGM (Elect.) on behalf of GRIDCO, Sasmita Patajoshi, Joint Director, OREDA.

ORDER

Date of Hearing: 21.02.2023

Date of Order: 23.02.2023

The petitioner - M/s. Shalivahana Green Energy Ltd. (SGEL) has filed the instant application under Section 86 (1) (f) of the Electricity Act, 2003 and other enabling provisions for issuance of direction to GRIDCO to amend the PPA i.e. to change of name of M/s. SGEL to M/s. Jagannath Power and Infra Private Ltd. (M/s. JPIPL) in the PPA dated 30.12.2010 made between M/s. SGEL and GRIDCO and release of payment against monthly power sale to GRIDCO in favour of M/s. SGEL till change of name in the PPA is effected.

2. The petitioner has prayed the Commission to direct GRIDCO:

- (a) To release the pending payments to M/s. SGEL on urgent basis for survival of the industry & manpower otherwise the operation of the plant may be halted due to insufficient capital.

- (b) To amend the PPA i.e. to change the name from M/s. Shalivahana Green Energy Ltd. to M/s. Jagannath Power and Infra Private Ltd.

3. The Petitioner-M/s. SGEL has submitted the following:

- a) M/s. SGEL, a company incorporated under the provisions of Companies Act, 1956, has obtained approval in the 20th meeting of State Level Single Window Clearance Authority (SLSWCA) held on 02.02.2008, for establishing a 20 MW Biomass based power plant project in Dhenkanal district. The project has been allotted by OREDA, the then State Nodal Agency. The Implementation Agreement (IA) was made between OREDA and M/s. SGEL on 12.10.2009 for establishment the said 20 MW capacity Biomass Power Project. GRIDCO entered into a PPA with M/s. SGEL on 30.12.2010 to purchase the power generated from the said biomass plant. The project was commissioned in December, 2011 with a capital cost of Rs.90 Crore, out of which Rs.63 Crore was financed by IDBI (Rs.43 Cr.) and UCO Bank (Rs.20 Cr.) and working capital assistance of Rs.10 Crore was also provided by IDBI. The project suffered a time overrun of about 20 months due to local problems which resulted in cost overrun of about Rs.15 Crore which was met by Promoters/PE Investors.
- b) Subsequently, due to various operational losses and other financial/commercial issues, the company could not meet its repayment obligations to the lenders due to which the loan account became Non-Performing Account (NPA) 30.09.2013. Then, in 2017 liabilities were taken over by JM financial ARC from UCO Bank and IDBI assigned its portion of project debt to Asset Reconstruction Company India Limited (ARCIL). Subsequently, the said liabilities had been taken over by M/s. Rajratna Energy Holdings Pvt. Ltd (REHPL) from JM Financial ARC.
- c) Consequently, ARCIL and REHPL had become the lenders of the Project who were holding 72% and 28% of the debt respectively and they decided to sell the said 20 MW Biomass based Power Plant in order to liquidate the project and its movable and immovable assets to any prospective buyer. ARCIL on behalf of the company's various lenders published the expression of interest for sale of the said 20 MW Biomass Plant. In the process M/s. Jagannath Power & Infra Pvt. Ltd. (JPIPL) was the successful bidder and ARCIL (the major lender) issued Letter of Intent (LOI) and No Objection Certificate (NoC) in favour of M/s. JPIPL. The other lender M/s. REHPL entered into an Agreement deed with M/s. JPIPL on 23.06.2021 to take over all the Assets & Liabilities from M/s.

REHPL. Accordingly, M/s. JPIPL made the payments to both the lenders as per the terms and conditions of the bid.

- d) In the meantime, M/s. SGEL has entered into a Business Transfer Agreement (BTA) with M/s. JPIPL dated 11.06.2022 to transfer the project and its assets through slump sale and to transfer all the licenses and permissions in its favour. Accordingly, the transfer of all the licenses and permissions along with all assets pertaining to the said 20 MW Biomass Power Project to M/s. JPIPL was initiated and M/s. SGEL has submitted applications for the change of name of the project from M/s. Shalivahana Green Energy Ltd to M/s. Jagannath Power and Infra Pvt. Ltd. to:
- The EIC, Department of Water Resources, vide letter dtd. 17.06.2022
 - The Chief Executive, OREDA vide letter dated 17.06.2022
 - The Member Secretary, SPCB, Odisha, vide letter dtd. 18.06.2022
 - The Director, Factory and Boilers, Bhubaneswar, vide letter dated 18.06.2022
 - The Dy. Director of Mines, Talcher Circle, Angul, vide letter dated 28.06.2022
 - The Managing Director, OPTCL, vide letter dated 23.06.2022
 - The Managing Director, IPICOL, vide letter dated 10.10.2022
 - The Managing Director, GRIDCO, vide letter dated 17.06.2022
- e) The deed of sale of land & buildings of the said 20 MW Biomass Power Plant was executed between M/s. SGEL (Vendor) and M/s. JPIPL (Purchaser) on 16.08.2022. Accordingly, the land & buildings were transferred from M/s. SGEL to M/s. JPIPL.
- f) The Directorate of Factories & Boilers, Odisha has issued the Registration and grant of factory licence of the Biomass power project in favour of M/s. JPIPL on 30.11.2022.
- g) During the process of transferring of projects, the 20 MW Biomass Power Plant continued to supply energy to GRIDCO and based on the EBC data sheet as submitted by GRIDCO. As per the provisions of PPA, M/s. SGEL has been raising monthly bills to GRIDCO for export of energy from the said biomass

plant. However, GRIDCO has held payment against the monthly energy bills from the month of September, 2022 to December, 2022 amounting to Rs.18,15,97,852/- in total, as amendment of PPA relating to ownership of the plant was not done.

- h) M/s. JPIPL, vide its letter dated 30.11.2022, has also requested GRIDCO for release of payment in favour of M/s. SGEL as the power plant is suffering heavy economic crisis and the payments to labour, staff salary, suppliers are at stake. Further, M/s. SGEL and M/s. JPIPL have also submitted a joint affidavit and declaration to GRIDCO that the monthly payment of monthly energy bill may be made to M/s. SGEL for which M/s. JPIPL will not have any objection and shall not raise any dispute or claim in any manner before GRIDCO in future. Further, both M/s. SGEL and M/s. JPIPL have signed an agreement and MoU dated 22.07.2022 in which it was agreed that M/s. SGEL shall be responsible to transfer of all the licenses and permissions including the PPA with GRIDCO in favour of M/s. JPIPL. It is also agreed that M/s. SGEL will raise the monthly energy bill for realization of power sale proceeds till execution a fresh PPA between GRIDCO and M/s. JPIPL and upon realization of the same the total amount shall be transferred to M/s. JPIPL account.
- i) M/s. SGEL has requested GRIDCO to release the payments till PPA is amended. But GRIDCO did not release any payment till date which causes lots of financial difficulty to M/s. SGEL and the plant is in verge of closure. After discussions among GRIDCO, M/s. SGEL and M/s. JPIPL, GRIDCO advised to seek the approval of the Commission in the matter so that payment issue can be sorted mutually by obtaining necessary direction from the Commission till PPA is amended.
- j) The transfer of the project is in line with the Regulatory Guidelines of the RBI/Bank's policy on transfer of stressed loan and hence the change of name is required to meet the legal and regulatory requirements. Change of name should be made basing on the provision under Clause 12 (Change in Law) of the PPA. Further, as per Clause 17.2 of the PPA under heading "approvals/amendments", the Agreement shall be subject to approval of OERC and the terms and conditions of PPA can be amended as and when required by the parties.
- k) As per Clause 16.1 of the PPA under the heading "Settlement of Disputes", if the dispute is not resolved by mutual consent, then such dispute shall be

submitted for adjudication by the OERC as provided under Section 86 of the Electricity Act, 2003.

- 1) The Petitioner-M/s. SGEL has filed an interim application in the instant case for conducting early hearing of the original petition and for issuance of an interim order for early release of payment against the monthly energy bills raised by it.
4. The Respondent-M/s. JPIPL, apart from the issues raised by the Petitioner, has submitted the followings:
- a) M/s. JPIPL has entered into an agreement with M/s. Rajratna Energy Holdings Pvt. Ltd. (REHPL) on 23.06.2021 for taking over all the assets and liabilities of the said biomass plant from M/s. REHPL and accordingly it has cleared all the payments to all the lenders as per the terms and conditions of the bid. M/s. SGEL has also entered into a Business Transfer Agreement with M/s. JPIPL on 11.06.2022 for transfer of the project and its assets including all the license and permissions. The land and building of the 20 MW biomass power plant was also transferred from M/s. SGEL to M/s. JPIPL by way of deed of sale.
 - b) GRIDCO has not released payment of the monthly energy bills from the month of September, 2022 as amendment of the name has not been carried out in the PPA. Currently, 5 nos. of monthly energy bills are pending with GRIDCO which amounts to Rs.23,81,02,390/-. GRIDCO is neither releasing the money nor expediting the process of amending the name in the PPA.
 - c) In the preamble of the PPA dated 30.12.2010 executed between M/s. SGEL and GRIDCO, it is mentioned that M/s. Shalivahana Green Energy Limited is referred to as SGEL which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns as party of the first part i.e. SGEL. Further, as per Clause 17.2 of the PPA, the terms and conditions of the PPA can be amended as and when required by the parties.
 - d) M/s. JIPIL is now suffering from immense financial and operational losses due to non-payment of the legitimate dues by GRIDCO. M/s. JIPIL has prayed the Commission to direct GRIDCO to release all the pending payments of energy bills in favour of M/s. SGEL and to amend the name from M/s. SGEL to M/s. JPIPL in the PPA to avoid any future disputes. No prejudice would be caused to any of the parties if the present petition is allowed for the aforesaid matter. This

commission is the competent authority to allow the said matter as per the provisions of Section 11 under the Orissa Electricity Reform Act, 1995.

5. The Respondent-OREDA has submitted the followings:

- a) M/s. SGEL has signed Implementation Agreement with OREDA on 12.10.2009, after which, OREDA forwarded the same to GRIDCO for signing of the PPA.
- b) Clause 21 of the Implementation Agreement dated 12.10.2009 stipulates that, *“The license or no objection certificate what so ever accorded to the company/developer in shape of clearance of Government in consideration of their application shall not be transferred by the applicant to any other party as entrepreneur without prior approval of the Government in appropriate Department.”*
- c) M/s. SGEL vide its letter dated 17.06.2022 requested OREDA regarding change of name in the Implementation Agreement from M/s. SGEL to M/s. JPIPL. But M/s. SGEL has entered into a Business Transfer Agreement (BTA) with M/s. JPIPL on 11.06.2022 on transfer of management without prior intimation to OREDA.
- d) GRIDCO vide its letter dated 18.07.2022 asked the views of OREDA on the request of M/s. SGEL regarding change in name in the PPA. OREDA vide its letter dated 27.07.2022 requested Department of Energy, GoO for a clarification on the matter and necessary approval for changing of ownership of the said project as per the prevailing Implementation Agreement.
- e) As per the meeting held between GRIDCO & M/s. SGEL on 09.12.2013, OREDA will closely monitor the compliance of fuel usage by M/s. SGEL so as to avoid complication and GRIDCO shall release the payment of monthly bills only after receiving due advice from OREDA on the monthly fuel usage. Since OREDA has not yet received any reply from Department of Energy, Government of Odisha on its letter dated 27.07.2022, it has not issued the monthly fuel usage statement of M/s. SGEL to GRIDCO since July 2022 for payment of energy bills.
- f) After necessary clarification from the Department of Energy, Government of Odisha, or after necessary direction from the Commission, OREDA would be able to issue recommendation to GRIDCO on the monthly fuel usage of the said Bio-mass plant.

6. The Respondent-GRIDCO has submitted the following:
- a) GRIDCO has executed PPA with M/s. SGEL on 30.12.2010 towards procurement of power from its 20 MW Biomass power project located at Nimidha, Dhenkanal and has been availing power since the CoD i.e. 19.12.2011.
 - b) GRIDCO, in Case No.29/2011, had filed an application before the Commission seeking for approval of the said PPA dated 30.12.2010 along with other 8 nos. of similar PPAs with the Biomass Developers. The Commission vide its Order dated 04.04.2012 in Case No. 29 of 2011 had advised the parties that in each PPA project specific provisions are to be defined clearly with regard to elements such as capital cost, inter connection point, delivery point, inter-connection facilities, delivery voltage, energy accounting, billing procedure etc. M/s. SGEL has not submitted the project specific PPA pursuant to the aforesaid Order dated 04.04.2012 in Case No. 29/2011.
 - c) The Commission, vide its orders in Case Nos. 16/2013, 11/2016 & 12/2019, has determined the tariff of the subject 20 MW Biomass Plant M/s. SGEL up to FY 2023-24 in line with generic tariff and the cost of power purchase from this plant is being approved by the Commission in the respective ARR of GRIDCO. The generation from the biomass unit is being treated as 'Must Run' for RPO target.
 - d) M/s. SGEL vide letter dated 30.05.2022 & 10.06.2022, had requested for GRIDCO's consent on extended tariff from April, 2024 till the tenure of PPA i.e. 18th December, 2024 and for extension of PPA tenure beyond 7 years from the date of expiry i.e. 18.12.2024
 - e) Further, M/s. SGEL vide letter dated 17.06.2022 intimated GRIDCO about the sale of its 20 MW Biomass Project at Dhenkanal to M/s. Jagannath Power and Infra Pvt. Ltd. (M/s. JPIPL) and mentioned that the Company has entered into a Business Transfer Agreement dated 11.06.2022 with M/s. JPIPL. Before sale of its 20 MW Biomass project, M/s. SGEL has neither furnished any prior notice / intimation to GRIDCO nor obtained any approval / permission from the Govt. of Odisha as mentioned in the Implementation Agreement executed between M/s. SGEL and OREDA. Hence, GRIDCO vide its letter dated 18.07.2022 requested OREDA for necessary views/comments on the sale of the said biomass project

and change of name in the PPA, since there is no Clause in the PPA dated 30.12.2010 related to Assignment and Transfer of Assets.

- f) The said 20 MW Biomass plant was under shut down from July, 2022 to September, 2022. The plant resumed the generation since 29th September, 2022 as intimated by M/s. SGEL, for which it has raised a monthly energy bill amounting to Rs.26,91,634/- for the month of September, 2022. As per the meter data from October, 2022 to January, 2023, GRIDCO has availed 32.120158 MU energy from the said Biomass plant at the total cost of Rs.23,54,40,758/- at the applicable tariff of Rs.7.33/kWh.
- g) Odisha Gramya Bank, Talcher, one of the lenders for M/s. JPIPL, vide letter dated 20.08.2022 requested GRIDCO to transfer the funds to M/s JPIPL w.e.f. 30.07.2022. As there is no contractual agreement between GRIDCO & M/s. JPIPL, GRIDCO denied the above request of Odisha Gramya Bank, Talcher.
- h) When M/s. SGEL presented the monthly energy bills, it has already been reconstructed and its assets had been taken over by M/s. JPIPL. Hence, the very existence of M/s. SGEL is questionable and also, there is no contractual relationship between GRIDCO & M/s. JPIPL. Hence, due to the dispute in the ownership of the subject 20 MW biomass power plant, GRIDCO is in a dilemma to release the payment against the energy availed from the said plant.
- i) Considering the disputes in the ownership of the subject 20 MW Biomass plant, the invoices raised by M/s. SGEL were declared disputed by GRIDCO and returned to M/s. SGEL in original.
- j) The Clause 16 (Settlement of Disputes) of the PPA dated 30.12.2010 provides that,

“Except where expressly provided to the contrary in this PPA, any matter or dispute or difference of whatsoever nature, howsoever arising under, out of or in connection with the PPA between the parties herein shall be resolved by mutual consent and if the matter is not resolved within 30 days or such extended period as mutually agreed upon, then such Dispute shall be submitted to adjudication by the OERC as provided under Section 86 of EA,2003 and OERC may either adjudicate itself or refer the matter for Arbitration.”
- k) In view of the above, GRIDCO has prayed the Commission for issuing necessary guidance/directions to resolve the matter.

7. Heard the Petitioner and Respondents through hybrid mode (both virtual and physical mode) and considered their arguments and written submissions. On consideration of the same, the Commission observes as follows:
- a) The petitioner M/s. SGEL has established the Biomass based Power Plant of 20 MW capacity near village Nimidha in Dhenkanal District of Odisha by utilizing the available surplus biomass in the State. It is the only biomass power plant operating in the State since 19th December, 2011. M/s. SGEL has signed Implementation Agreement (IA) with OREDA (the State Nodal agency) on 12.10.2009 and PPA with GRIDCO on 30.12.2010 for sale of power from its Biomass plant. The power project was established with capital cost of Rs.90 Crore and the COD of the project is 19.12.2011.
 - b) The Commission, vide Case Nos. 16/2013, 11/2016 and 12/2019 has determined the tariff for the said 20 MW Biomass Power Project upto FY 2023-24 basing on the financial parameters fixed by the Commission in its generic tariff orders issued from time to time and considering some of the specific operational parameters of such biomass plant. As submitted, GRIDCO has been availing power from this plant since the COD i.e. 19.12.2011 and the tenure of the existing PPA is going to end on 18.12.2024. After availing power for about 11 years and paying for the same at the tariff determined by the Commission, GRIDCO is estopped at this stage from raising the issue that M/s. SGEL has not submitted project specific PPA for approval.
 - c) It is admitted by the Parties that the plant was under shutdown from January, 2013 to 29.05.2015 and from July 2022 to September 2022. M/s. SGEL has submitted that due to operational losses and other financial/commercial issues, it could not meet its repayment obligations, due to which its account became Non-Performing Account (NPA) on 30.09.2013. Subsequently, the shareholders of the company decided to sell the 20 MW Biomass based Power Plant to any prospective buyer for recovery of the repayment obligations. After due process, M/s. JPIPL, being the successful bidder, Letter of Intent (LoI) and No Objection Certificate (NOC) were issued and accordingly M/s. JPIPL cleared up all payments of the lenders. Then M/s. SGEL entered into a Business Transfer Agreement with M/s. JPIPL on 11.06.2022 and all assets & liabilities were transferred to M/s. JPIPL including all the licenses & permissions. Further, land & building of plant were also transferred to M/s. JPIPL through deed of sale.

- d) M/s. SGEL has also entered into the Business Transfer Agreement with M/s. JPIPL on 11.06.2022 and has intimated the OREDA and GRIDCO regarding transferred assets vide its letter dated 17.06.2022. The Clause 21 of Implementation Agreement between M/s. SGEL and OREDA states as follows:
- “The license or no objection certificate whatsoever accorded to the company/developer in shape of clearance of Government in consideration of their application shall not be transferred by the applicant to any other party as entrepreneur without prior approval of the Government in appropriate Department.”*
- e) Both OREDA and GRIDCO have submitted that as per the above Clause, M/s. SGEL should not have transferred the power plant to any other party without prior approval of the Government in appropriate department. But M/s. SGEL has transferred the power plant without prior intimation to them as well as to the Government. The views of the Government on this matter is still awaited by OREDA. In view of such contention of the matter, GRIDCO should have agitated this matter before the Commission or should not have drawn power from M/s. SGEL. But this has not happened and GRIDCO has continued to draw power from the said biomass power plant on ‘must run’ basis for meeting its RPO.
- f) Further, the above contention of OREDA and GRIDCO does not hold good, when the Directorate of Factories & Boilers, Govt. of Odisha has issued the Registration and grant of factory licence of the Biomass power project in favour of M/s. JPIPL on 30.11.2022.
- g) As per the understanding between GRIDCO and M/s. SGEL on 09.12.2013, OREDA will monitor the compliance of fuel usage of the power plant and GRIDCO shall release the payment of monthly bills only after receiving due advice from OREDA on the monthly fuel usage.
- h) As per the Petitioner, an amount of about Rs.23.81 crore is outstanding with GRIDCO towards supply of energy from the subject biomass plant for the period from September, 2022 to January, 2023 for which economic condition and operation of power plant have been impacted resulting in non-payment to the suppliers of Raw materials & biomass fuels, inability to carry out O&M work and making payment to employees & contractual labourers etc.
- i) As per the preamble of the PPA dated 30.12.2010 executed between M/s. SGEL and GRIDCO, M/s. Shalivahana Green Energy Limited is referred to as SGEL

in short which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assignee as party of the first part i.e. SGEL. Further, as per Clause 17.2 of the PPA, the terms and conditions of the PPA can be amended as and when required by the parties. Hence, there is no bar in the PPA regarding change of name of the ownership of the plant in favour of M/s. JPIPL as the successor of M/s. SGEL through amendment.

8. In view of the above observations and in consideration of the financial & operation constraints of the only 20 MW Biomass based Power Plant in Odisha owing to non-payment of outstanding dues by GRIDCO against monthly energy bills from September, 2022 to January, 2023, the Commission directs as follows:

- a) OREDA, the Nodal Agency for development of RE projects in the State is directed to take up the matter with Department of Energy, Government of Odisha to obtain necessary approval for change of ownership of the subject biomass power plant from M/s. Shalivahana Green Energy Ltd. (SGEL) to M/s. Jagannath Power and Infra Private Ltd. (JPIPL) at the earliest. Accordingly, GRIDCO is also directed to amend the PPA regarding change of name/ownership of the project developer within a period of one month.
- b) However, M/s. JPIPL is directed to raise revised monthly energy bills for the post taken over period of the bio-mass power plant to GRIDCO. At the same time, OREDA is directed to recommend the monthly fuel usage statement of the power plant to GRIDCO for payment of energy bills and GRIDCO is directed to make payment against the said monthly energy bills to M/s. JPIPL within seven days of the receipt of the bills after due scrutiny and considering the monthly fuel usage statement issued by OREDA.

9. With the above observations and directions, the case is disposed of.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson