

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

IA No. 18 of 2022

In the matter of

Case No. HERC/PRO 54 of 2019

Date of Hearing : 21.09.2022

Date of Order : 21.09.2022

In the Matter of

Interlocutory Application under Section 86(1)(b) of the Electricity Act, 2003 read with Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 on behalf of the Applicant seeking cancellation of power source of M/s GMR Bajoli (60 MW) on account of their refusal to execute PPA

Petitioner/Applicant

Haryana Power Purchase Centre, Panchkula (HPPC)

Respondent

M/s GMR Bajoli

Present on behalf of the Petitioner

Ms. Sonia Madan, Advocate for HPPC

Present on behalf of the Respondent

Nil

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

1. The present application has been filed by HPPC, seeking revocation / cancellation of the source approval granted to M/s GMR Bajoli in case no. HERC/PRO-54 of 2019, on account of their refusal to execute PPA.
2. Brief submissions of HPPC are as under:-
 - 2.1 That the Hon'ble Commission, vide its order dated 24.09.2020, had approved the power source of M/s GMR Bajoli (60 MW) and M/s JSW Kutehr (240 MW). Further, procurement of power from M/s Sneha Kinetic was also approved by the Commission vide order dated 29.04.2021 in the same petition.
 - 2.2 It has been submitted that the applicant is before this Hon'ble Commission in view of refusal of M/s GMR Bajoli to come forward to sign the PPA in accordance with the Order of the Hon'ble Commission dated 24.09.2020. The sequence of events leading to the present application are as under:-

- a. HPPC wrote emails dated 10.02.2021, 12.04.2021 and 20.05.2021 to M/s GMR asking for intimation regarding the status and expected COD of the Project.
 - b. M/s GMR vide email dated 24.05.2021 informed that project progress has got significantly affected due to spate of Force Majeure events including Covid-19 pandemic situation, which has delayed the works at site and it is difficult to ascertain the expected date of COD at this stage.
 - c. HPPC vide email dated 01.06.2021 sought certain explanation regarding offers made by M/s GMR to other purchasers which made HPPC apprehensive of the intention of M/s GMR to execute PPA with State of Haryana. However, the requisite clarifications were given by M/s GMR vide their letter dated 01.06.2021.
 - d. On 02.06.2021, HPPC sent an email forwarding draft PPA, formulated in line with the EOI and source approval order, to M/s GMR for initialing the same. M/s GMR, vide letter dated 10.06.2021 raised preliminary objections i.e. that the draft PPA, shared by HPPC, is not in line with the terms and conditions of EOI submitted by them. It was further mentioned that their partners, lenders and legal counsel are reviewing the draft PPA and detailed observations on the same will be sent in due course of time.
 - e. Subsequent to the letter of M/s GMR dated 10.06.2021, HPPC wrote emails dated 08.07.2021 and 29.07.2021, requesting revert on the draft PPA.
 - f. In response, M/s GMR vide letter dated 30.07.2021, submitted that since there was an inordinate delay in the tender process due to various unforeseen events which are not attributable to either of the party(s) and the draft PPA is not in line with the terms and conditions of EOI, they may not be able to continue with the execution of PPA and intimated discontinuation contending that the bid validity has already expired as per the EOI.
- 2.3 That in view of the events referred to above, it is evident that respondent M/s GMR is not willing to supply power from their 60 MW Bajoli project and has refused to execute the PPA with the applicant.
- 2.4 Following prayers have been made:-
- a. Revoke/ Cancel the source approval granted to Respondent no. 1 i.e. M/s GMR Bajoli on account of their refusal to execute PPA;
 - b. Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
3. The Commission heard Ms. Sonia Madan, the learned counsel appearing for the applicant i.e. Haryana Power Purchase Centre (HPPC). Upon perusal of the submissions of the parties and the documents referred to and placed on record, the Commission at the outset

observes that the applicant herein ought to have approached this Commission in July, 2021 when M/s. GMR (Bajoli) made its intentions clear. The Commission notes from the submissions of the learned counsel that there is no performance guarantee/payment security mechanism in the present case.

4. Upon hearing the learned counsel, the Commission observes that in such bidding process, the Discoms should ensure that provision for liquidated damages/performance security mechanism is incorporated to dissuade the bidders to pull-out at an advanced stage i.e. after approval of power purchase source by the Commission.
5. Accordingly, the Commission allows the prayer of HPPC to revoke/cancel the source approval granted to M/s. GMR, Bajoli.
6. In terms of the above, the present IA is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 21.09.2022.

Date: 21.09.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman