

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition (Dy No.) 448/2022**

Subject : Petition under Section 79, including Section 79 (1) (b) and Section 79 (f) of the Electricity Act, 2003 seeking setting aside of the notices dated 4.10.2022 and 19.10.2022 issued by Respondent No. 1/Haryana Power Purchase Centre purportedly to terminate the Power Purchase Agreement dated 18.5.2022 executed between the Petitioner and the Respondent No. 1, being unlawful and inconsistent with Article 19 (2) and Article 19 (1) of the PPA.

Petitioner : RKM Powergen Pvt. Ltd.

Respondents : Haryana Power Purchase Centre & Ors.

Date of Hearing : 27.10.2022

Coram : Shri I.S Jha, Member  
Shri Arun Goyal, Member

Parties present : Shri Sitesh Mukherjee, Advocate for the Petitioner  
Shri Biju Mattam, Advocate for the Petitioner  
Ms. Ankita Bafna, Advocate for the Petitioner

**Record of Proceedings**

The Petition was mentioned by learned counsel appearing on behalf of the Petitioner, RKM Powergen Private Limited.

2. Learned counsel for the Petitioner submitted that the Petitioner has filed the Petition seeking setting aside of the notices dated 4.10.2022 and 19.10.2022 issued by Respondent No. 1/HPPC purportedly to terminate the PPA dated 18.5.2022 alleging failure to commence the power supply by 16.8.2022 and threatened of encashment of Performance Bank Guarantee. Learned counsel mainly submitted as under:

- (a) The supply of power under the PPA could not be commenced due to omission of Respondent No. 2, South Eastern Coalfields Limited (SECL) in as much as it failed to carry out the necessary amendment in the Fuel Supply Agreements dated 3.9.2013 and 23.9.2013.
- (b) Clause 4.4. of PPA govern the termination of the agreement for non-compliance of Condition Precedent and in such case, the termination shall be deemed to be

mutual. Therefore, the Petitioner cannot be penalised for such mutual termination. As per Clause 4.4. of the PPA, the Performance Bank Guarantee can be encashed only in case the delay in occurrence of appointed date is for the reason attributable to the supplier/Petitioner and that in the present case, the delay was caused due to the reasons beyond the control of the Petitioner despite the Petitioner had been taking all earnest efforts in securing the amended PPA.

- (c) In case of default in supply of power, the termination of PPA can be affected only in the manner provided in Clause 19, which provides for mandatory timelines and cure period for termination. However, the Notices dated 4.10.2022 and 19.10.2022 are not in compliance of Clause 19.1.1, 19.1.1(j) and Clause 19.1.2 of the PPA as the mandatory time line for termination has not been adhered to by the Respondent No. 1.
- (d) The reason for delay in securing the amended FSA is beyond the control of the Petitioner is very well known to the Respondent No. 1. In support, learned counsel refer to the communication dated 27.5.2022 issued by Respondent No. 1 to Respondent No. 2 wherein the Respondent No. 1 recommended for carrying out the amendment of FSA.
- (e) Central Electricity Authority vide its letter dated 25.10.2022 informed the Respondent No.2, SECL that the request of the Petitioner for amending the FSA for additional coal supply against the PPA dated 18.5.2022 may be considered.
- (f) Direct the Respondent No. 1 not to take any coercive action in particular against the likely invocation of Performance Security Bank Guarantee till the next date of hearing.

3. After hearing the learned counsel for the Petitioner, the Commission ordered as follows:

- (a) Issue notice to the Respondents;
- (b) The Petitioner to serve copy of the Petition on the Respondents and Respondents to file their reply to the Petition within two weeks after serving copy of the same to the Petitioner, who may file its rejoinder, within two thereafter;
- (c) The Respondent No. 1 shall not take any coercive action against the Petitioner till the next date of hearing; and
- (d) Parties to comply with the above directions within specified timeline and no extension of time shall be granted.

4. The Petition shall be listed for hearing on 15.12.2022.

**By order of the Commission**

**Sd/-  
(T.D Pant)  
Joint Chief (Law)**