

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 183 of 2020

Case filed by Laxmipati Balaji Supply Chain Management Limited seeking consent to continue the selection process with single bidder and Adoption of Tariff determined through transparent bidding process for Short-Term procurement of power for one year starting from 1 October, 2020 to 30 September, 2021 up to 1 MW for its Sector Specific SEZ and IT SEZ at Village Sai, Taluka Panvel, Dist. Raigad, Maharashtra

Coram

I.M.Bohari, Member
Mukesh Khullar, Member

Laxmipati Balaji Supply Chain Management LimitedPetitioner

Kreate Energy (I) Pvt Ltd Impleaded Respondent

Appearance

For Petitioner: - Shri Suhas Ambade (Rep)

For Impleaded Respondent: - Shri. Rahul Jain (Rep)

ORDER

Date: 26 September, 2020

1. Laxmipati Balaji Supply Chain Management Limited (**LBSCML**) has filed this Petition on 8 September 2020 under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003 (**EA**) seeking consent to continue the selection process with single bidder and adoption of Tariff determined through transparent bidding process for a Short-Term procurement of power for one year starting from 1 October 2020 to 30 September 2021 up to 1MW Round the clock (**RTC**) supply for its Sector Specific SEZ and IT SEZ at Village Sai, Taluka Panvel, Dist. Raigad, Maharashtra
2. **LBSCML's main prayers are as under:**
 - a) *Condone delay in processing for Power Purchase arrangement and admit this petition for early hearing and disposal;*

- b) *Grant consent to continue with the selection process of single bidder i.e., Kreate Energy (I) Pvt Ltd for executing Power Purchase Agreement for the period of one year from 01st Oct, 2020 to 30th Sep, 2021;*
- c) *Adopt the tariff of INR 5.29 per unit at LBSCML Licensee Periphery discovered thorough competitive and transparent bidding process for procurement of power up to 1MW for the period of one year from 1st Oct, 2020 to 30th Sep, 2021, under section 63 of Electricity Act 2003*

3. LBSCML in its Petition has stated as follows:

- 3.1 Arshiya Limited, a company registered under the Companies Act, 1956 having its registered office at 302, Level 3, Ceejay House, Shivsagar Estate, Dr. Annie Besant Road, Worli, Mumbai 400018 has been notified as the Developer of the SEZ by the Ministry of Commerce & Industry (Department of Commerce) vide Notification No. S.O.1158 (E) dated 4 May 2009 for SEZ specific activities and vide notifications dated SO 757(E) dated 5 April, 2010; S.O 1800 dated 22 July, 2010 and S.O 2439 dated 27 July, 2011 additionally for developing Information Technology and Information Technology Enabled Services (IT & ITES SEZ) at Village Sai, Taluka Panvel, District Raigad, Maharashtra.
- 3.2 LBSCML, a company registered under the Companies Act 2013, having its registered office at the same premise as Ashriya Limited at 302, 3rd Floor, F-block ,Ceejay House, Shivsagar Estate, Dr. Annie Besant Road, Worli, Mumbai 400018, has executed a Co-Developer agreement with Arshiya Limited on 31 August, 2018 .
- 3.3 Ministry of Commerce and Industry, GoI vide its minutes of meeting of Board of Approval held on 24 September, 2018 has granted approval to LBSCML as Co-Developer of the said SEZ for installation, operation, and maintenance of utility services including distribution of electricity within the said Sector Specific SEZ and IT SEZ at Village Sai, Taluka Panvel, Dist. Raigad, Maharashtra
- 3.4 The Commission, vide its Order dated 17 December, 2018 in Case No 275 of 2018 declared LBSCML as a deemed Distribution Licensee and directed as under:

“17 The Commission notes that LBSCML while making the above request has not provided any specific timeframe for submission of Petition of PPA and/or ARR approval. LBSCML has envisaged completion of first phase of SEZ in FY 2019-20 with estimated demand of 20 to 50 MW and projected sale of 105 to 263 MU. Considering such projection, the Commission directs LBSCML to file its Petition for Power Purchase Agreement approval by 31 December, 2019.

- 3.5 The Commission has notified (Specific Conditions of Distribution Licence applicable to Laxmipati Balaji Supply Chain Management Ltd. for FTWZ and IT/ITES SEZ at Village Sai, Taluka Panvel, Dist. Raigad) Regulations, 2019 dated 27 February 2019.

- 3.6 State Transmission Utility (**STU**) vide letter dated 5 July 2019 granted grid connectivity to license area on 220 kV level for the load of 148.3 MW. The scope involved in the grid connectivity is 220 kV DC line and 220/22 kV Substation. The proposed 220 kV line route is through forest land. The joint survey of the 220 kV line along with MSETCL is completed and the proposal is forwarded to forest department for their clearance.
- 3.7 Till such time the 220 kV line is erected and commissioned with the desired load of IT industries comes in the license area, LBSCML intends to start the operation of distribution licensee with existing load on existing 22 kV Express Feeder from 100/22 kV Jite Substation which is provided by Arshiya Limited at its own cost. Presently Arshiya limited is availing power supply from MSEDCL as a consumer.
- 3.8 Thus, LBSCML applied to STU for additional grid connectivity of 1MW (existing load) on 22 kV feeder as an interim arrangement till 220 kV infrastructure is created. STU granted additional grid connectivity vide its letter dated 03 August 2020.
- 3.9 The Commission in its Order in Case 275 of 2018 directed LBSCML to file its Petition for Power Purchase Agreement approval by 31 December 2019. But due to the procedural delay in getting grid connectivity, Power Purchase Agreement was not executed within time limits. LBSCML has updated the Commission about this delay vide its letter dated 10 December 2019. In view of the above circumstances LBSCML prays to the Commission to condone the delay caused to file its petition for power purchase agreement approval.
- 3.10 The anticipated IT & ITES load has not come due to poor market condition and also due to the current pandemic, thus the proposed load 20 to 50 MW in the first phase is not built up. To start with, LBSCML wishes to operationalise its distribution licensee with the existing load of up to 0.5MW RTC as base and additional up to 0.5MW during 8AM to 11PM as peak load, totalling 1MW power requirement. The present load is of 13 clients (consumers) along with the common load such as substation, administrative office, custom office, streetlight, water pumping, etc.
- 3.11 LBSCML floated a tender on 17 August 2020 for Short Term Power Procurement up to 1MW at LBSCML Licensee periphery for the period starting from 1 October 2020 to 30 September 2021 on national e-bidding (**DEEP**) web-portal through its authorized representative, PFC Consulting Limited.
- 3.12 LBSCML has followed the guidelines for short-term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process (Standard Bidding Guidelines) issued by Ministry of Power (**MoP**), GoI dated 30 March, 2016 in the entire bid process. There are no deviations from the guidelines.
- 3.13 In accordance with Para 6.2 of the Standard Bidding Guidelines, tender notice was published in two national daily newspapers namely Times of India and Business

Standards in the edition of 17 August 2020. The tender notice was also published on company website for wide publicity.

- 3.14 Last date of submission of bid was 21 August 2020, however since LBSCML has not received any EMD from the bidders, anticipating no response to the tender, the bid schedule was revised and the bid submission date was extended to 27 August, 2020 in order to encourage and obtain more number of bids.
- 3.15 On 27 August 2020 PFCCL informed LBSCML that only single bidder i.e., Kreate Energy (I) Private Limited (**Kreate Energy**) has filed the bid in response to the tender. LBSCML has updated about the single bid response to the Commission vide its letter dated 28 August 2020. The technical bid received from PFCCL was evaluated by the Standing Committee formed for the purpose of evaluation of bid as mandated in para 7.2 of Standard Bidding Guidelines. The evaluation report was forwarded to PFCCL to open the Initial Price Offer (**IPO**) and conduct E- Reverse Auction (**E-RA**).
- 3.16 The IPO was opened, and e-RA was conducted by PFCCL on DEEP web portal on 4 September 2020. The initial price offered by Kreate Energy in IPO was Rs 5.89/ kWh and after E-RA the final price offered is Rs 5.64 / kWh. The rate offered by Kreate Energy is at LBSCML Licensee Periphery which includes Point of Connection (**POC**) injection & drawl charges and losses, state transmission charges & losses, Maharashtra State Load Despatch Centre (**MSLDC**) / Regional Load Despatch Centre (**RLDC**) operating and processing charges.
- 3.17 LBSCML requested Kreate Energy vide its letter dated 04 September 2019 to reduce the offer further as it will be affecting the retail supply tariff of the consumers in license area. In response to the request of LBSCML, Kreate Energy has submitted its final offer as Rs 5.29/kWh vide its letter dated 5 September 2020.
- 3.18 The Standing Committee formed for bid evaluation, held a meeting on 5 September 2020 and recommended to accept the final offer of Rs 5.29/kWh subject to the consent of the Commission.
- 3.19 Para 7.1 of the Standard Bidding Guidelines read as under:

“...If the number of Bidders responding to the RfP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.”

In case where single bid is received and licensee want to continue with the single bid, the Commission has jurisdiction to give its consent and allow selection of single bidder. The Commission in its Order dated 20 August 2018 has granted similar remedy to Maharashtra Airport Development Company Limited (**MADC**) in Case No 238 of 2018.

- 3.20 Therefore it is requested to give consent to continue with the selection process and select the single bidder i.e. Kreate Energy for procurement of the Short-Term power and execute PPA for the period of one year commencing from 1 October 2020 to 30 September 2021.
- 3.21 Further it is also requested to adopt the tariff discovered through the competitive and transparent bid process. Post approval of the Commission, PPA will be executed with Kreate Energy, copy of which will be submitted to the Commission for records.
4. At the time of E-hearing dated 4 September 2020, LBSCML reiterated its submission mentioned in the Petition. On replying to the query of the Commission, Kreate Energy stated that because of lower quantum of power to be procured in present matter it is difficult to find out generator for it, plus fixed charges of RLDC/SLDC are being loaded on lower quantum of power to be procured. This makes rate in present matter higher than that quoted for other SEZs in the State of Maharashtra.

Commission's Analysis and Ruling

5. Deemed Distribution Licensee status of LBSCML has been taken on record by the Commission vide its Order in Case No 275 of 2018 dated 17 December, 2018 for the Sector Specific SEZ and Information Technology (IT) SEZ being developed by Arshiya Limited at Village Sai, Taluka Panvel, Dist. Raigad, Maharashtra. The Commission has notified specific conditions of licences Regulations applicable to LBSCML on 27 February 2019.
6. In above referred Order dated 17 December, 2018, the Commission made following observations:

“16. LBSCML has stated that there is presently one consumer of HT Commercial category having one MW load which is under operation and power supply to the SEZ is being obtained from MSEDCL and it shall submit a separate Petition for approval of power procurement and determination of Tariff for the consumers in its SEZ area in accordance with the provisions of MERC (Multi Year Tariff) Regulations, 2015. LBSCML has requested the Commission to permit it to continue with the existing supply arrangement for the consumers in its SEZ area till the filing of such Petition.

17 The Commission notes that LBSCML while making the above request has not provided any specific timeframe for submission of Petition of PPA and/or ARR approval. LBSCML has envisaged completion of first phase of SEZ in FY 2019-20 with estimated demand of 20 to 50 MW and projected sale of 105 to 263 MU. Considering such projection, the Commission directs LBSCML to file its Petition for Power Purchase Agreement approval by 31 December, 2019.”

Thus, while issuing above Order in December 2018, LBSCML was having only one consumer with load of 1 MW. However, considering its estimated demand which is

projected to reach upto 20-50 MW in FY 2019-20, the Commission directed LBSCML to file petition for approval of power purchase agreement by 31 December 2019.

7. However, the Petitioner has filed the present Petition only on 8 September 2020 and that too with a request to start power procurement from 1 October 2020. While justifying delay in filing Petition, LBSCML has stated that although it got Grid Connectivity for 148 MW, which includes laying of transmission line and 220 kV substation, considering forest land involved, transmission project execution work is delayed. Therefore, it took additional Grid Connectivity of 1 MW on 22 kV expresses feeder emanating from 100 kV transmission substation. All these issues and Covid-19 pandemic caused delay in filing this Petition which LBSCML has requested to condone. Considering the reasons provided by LBSCML, the Commission condones the delay in filing the present Petition.
8. However, the Commission notes that projected load of 20-50 MW for FY 2019-20 submitted while taking on record Distribution Licensee status of LBSCML has not been achieved. In fact, 1 MW load which was there in December 2018, still remains the same in September 2020 with number of consumers increasing to 13. Thus, expected load growth has clearly not happened. LBSCML has stated that this is due to present poor overall economic situation. However, it has proposed to start its Distribution Licensee business with base load of 0.5 MW and Peak Load of 0.5 MW from 1 October 2020 with expectation that load will increase in future.
9. Accordingly, LBSCML initiated the power procurement process through DEEP Portal for 1 MW RTC power for the period of one year from 1 October 2020 to 30 September 2021 as per Standard Bidding Guidelines issued by the MoP dated 30 March, 2016 without any deviation. Due date for Bid submission was extended once as no response was received. The Commission observes that LBSCML has followed the procedure set out in the Standard bidding guidelines and post E-RA process discovered rate of Rs 5.64/kWh by Kreate Energy, a single bidder. Thereafter, LBSCML requested Kreate Energy to further reduce the rate so that consumer tariff is not adversely affected. In reply, Kreate Energy has reduced the rate to Rs 5.29/kWh for same terms and conditions. As only one bidder has submitted the bid, LBSCML has sought the approval of the Commission to proceed further in view of following provision of the SBD:

“....If the number of Bidders responding to the RfP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.”
10. The Commission notes that earlier it has approved such request for other SEZ based Distribution Licensee, but rate discovered in that case was lower than present case. Rate of Rs. 5.29/kWh discovered in present case is much more than the current market trends/rates. The Commission notes that recently vide its Order in Case No 171 of 2020 dated 15 Sep 2020, it has adopted rate of Rs 3.97/kWh for RTC and Rs 4.29/ kWh for peak load of M/s Eon Kharadi Infrastructure Private Limited (EON) SEZ Phase I for

load of 16 MW and the successful bidder for RTC load in that matter was Kreate Energy which is the trader in the present case also.

11. The Commission is fully aware of the fact that every tender is a separate process and may not be comparable with other tenders. However apart from these recently adopted rates as mentioned in Para 10 above, the overall short-term market trend also does not justify the rate of Rs 5.29/kWh since there was a single bidder.
12. During the hearing, Kreate Energy tried to justify this rate on the ground that source of power supply is in Eastern Region and considering the fact that operating fixed charges of RLDC/SLDC, inter-state and intra-state losses, transmission charges etc. are being loaded on limited quantum of electricity (0.5 MW RTC & 0.5 MW Peak) as against substantial quantum for EON SEZ, effective per unit rate works out to be higher in present matter. The Commission noted the justification but cannot comment on such computation of effective rate as it is not submitted in the present proceedings.
13. As only one bidder had participated in the process and the proposed rate of Rs. 5.29/kWh is higher than the recently adopted rates by this Commission and is also not reflective of current market rates, the Commission cannot give consent to proceed with selection of single bidder as a successful bidder. Consequently, the Commission rejects the prayer of petitioner for adoption of tariff. The Commission directs LBSCML to undertake re-bidding of its power requirement. Till that period, present arrangement of consumer being supplied by MSEDCL shall be continued.
14. Notwithstanding above, the Commission notes that every distribution licensee is expected to optimise its power procurement cost. Financial Prudence undertaken by the Distribution Licensees in these regards is subject to verification at the time of true-up process. Relevant clause related to prudence to be undertaken with reference to power procurement stipulated in MYT Regulations, 2019 is reproduced below:

“23.4 The financial prudence with respect to revenue expenditure shall be assessed in terms of the following parameters:

.....

*(c) transparent method of power procurement, **with the objective of optimising the power purchase expenses**, as specified in Regulations 19, 20, 21, and 22:*

*(d) **optimum purchase of power** considering factors such as requirement of power, **Merit Order Dispatch**, potential for earning additional net revenue based on the differential between the rate for purchase of power from different sources and the market rate for sale of surplus power, if any:”*

Above provisions of MYT Regulations, 2019 are equally applicable to SEZs which are deemed Distribution Licensees under the Electricity Act, 2003 and planning to operationalise its Distribution License. The Commission notes that there are several operational SEZs in Maharashtra but all of them have not come forward to act as

Distribution Licensee. Even if they are not procuring power due to varied reasons, they are required to comply with their mandate of providing reliable and continuous supply to units under SEZ in co-ordination with local distribution licensee, further all units under these SEZs are consumer of local Distribution Licensee. Once, SEZ is acting as a Distribution Licensee, there is a reasonable expectation that it will be supplying electricity competitively compared to the incumbent Distribution Licensee since the SEZ's are insulated from providing any cross-subsidy in tariff. However, during initial period of operations, limited consumer load causes sunk cost of distribution system being loaded on limited sales and thereby increasing Average Cost of Supply. Therefore, providing electricity at lower tariff to its consumer can be achieved only if power procurement rate is reasonable. Further, as stated earlier in this Order, any power procurement includes fixed fees to be paid to RLDC/SLDC, transmission charges and losses etc to be borne by the procurer and these charges could increase effective rate of power procurement if quantum to be procured is much smaller. The Commission is concerned about the fact that due to various reasons (including a very low demand) some SEZs are not able to carry out their obligations as a Distribution Licensee. The Distribution Licensees need to address the issues of their consumers while ensuring financial prudence. Merely stating that the low demand is resulting in higher cost of supply may not be the appropriate thing. This is true for some other SEZs also. Hence, the Commission advises SEZs to consider starting their operation as independent Distribution Licensee only when they are in a position to comply with all the Provisions of the MYT Regulations. They could review their position based on the expected load and after ensuring that the power procurement rates are reasonable/competitive and are also reflective of market trends.

15. The Commission also notes that licence area of SEZ is not exclusive to it but incumbent Distribution Licensee is parallel licensee in that area. Hence, consumers in SEZ have option to take supply from SEZ or incumbent Distribution Licensee. Therefore after the rebidding for the power procurement as has been directed by the Commission in Para 13 above, while operationalizing distribution licence or during operation also, SEZ shall keep its consumers informed about its electricity tariff vis-à-vis tariff of other parallel distribution licensee so that consumer can take informed decision for sourcing their power requirement. The Commission also notes even if the present pandemic period is not considered, that while it approves the demand forecast and power procurement by relying on estimations of SEZs, in reality such load growth is not getting materialized and consumers are subjected to higher rate of FAC as fixed cost burden of already tied-up power purchase contracts is loaded on limited sales. All these facts are defeating the objective of operationalizing deemed distribution licensee status of SEZ for reducing the electricity cost. The Commission is concerned about such situations which is ultimately leading to increased tariff to SEZ consumers. Therefore, the Commission may undertake a study to assess the performance of operationalized SEZs as deemed Distribution Licensee.
16. Hence following Order:

ORDER

1. Case No 183 of 2020 is rejected.
2. Laxmipati Balaji Supply Chain Management Limited shall undertake re-bidding of its power requirement as per observations made in para 13 and 14 above.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

