



**Petition No. 1386 of 2018**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**PRESENT:**

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF:** Hon'ble APTEL judgment dated 06.03.2020 in appeal no. 319 of 2019 against the Commission's order dated 12-06-2019 in Petition no. 1386 of 2018.

M/s Sudhakara Infratech Pvt. Ltd.,  
Metro Residency, 304,  
Rajbhavan Road, Hyderabad – 500082  
Telangana

----- **Petitioner**

1. M/s U.P. Power Corporation Ltd., (through its Managing Director), Shakti Bhawan, 14-Ashok Marg, Lucknow – 226001
2. M/s UP New & Renewable Energy Development Agency, (through its Director), Vibhuti Khand, Gomti Nagar, Lucknow – 226010
3. M/s UP Power Transmission Corporation Ltd., (through its Managing Director), 7<sup>th</sup> Floor, Shakti Bhawan, 14-Ashok Marg, Lucknow-226001
4. M/s Dakshinanchal Vidyut Vitran Nigam Ltd., (through its Managing Director), Urja Bhawan, NH-2 (Agra-Delhi Bypass Road), Sikandara, Agra, UP- 282002

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Following were present:

1. Sh. Deepak Raizada, PPA-RE, UPPCL
2. Sh. Pankaj Saxena
3. Sh. Raja Rai
4. Ms. Puja Priyadarshni, Advocate
5. Sh. Ruchir Rai, Advocate
6. Sh. Hemant Sahai, Advocate
7. Sh. Sourav Roy, Advocate





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**ORDER**  
**(Date of Hearing 22.09.2020)**

1. The Petitioner (M/s Sudhakara Infratech Pvt. Ltd) is a generating company within the meaning of Section 2(28) of the Electricity Act 2003 and is in the process of establishing a 5 MW Solar PV power plant at Haiderpur, Tehsil Kalpi, District Jalaun, Uttar Pradesh.
  
  2. The Petitioner had filed a Petition no.1386 of 2018 under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 3.2 of PPA dated 02.12.2015 and amended PPA dated 22.03.2018 before the Commission in the matter to remit back the amount of performance BG, to declare that the delay in commencement of supply from the proposed solar power plant was due to delay in completion of the evacuation system and other related issues. The Commission vide its Order dated 12.06.2019 dismissed the Petition. Thereafter, the Petitioner aggrieved by the Commission's Order dated 12.06.2019 filed an Appeal No. 319 of 2019 before the Hon'ble APTEL. Further, the Hon'ble APTEL vide order dated 06.03.2020 directed the parties to appear before the Commission on 15.04.2020. However, the matter could not be heard on 15.04.2020 due to outbreak of Corona Virus pandemic and was listed on 22.09.2020.
  
  3. During hearing on 22.09.2020, Sh. Sourav Roy, Counsel of the Petitioner further submitted that the Hon'ble APTEL vide order dated 06.03.2020 has remitted the matter to the Commission for adjudication in accordance with law. The relevant extract of the order is as below:
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59. For the reasons and conclusions set out earlier in context of the appeal at hand, the impugned order dated 12.06.2019 of the State Commission is set aside. The encashment of performance bank guarantees was improper, unjust and unfair. The termination of PPA dated 16.07.2019 by the respondent is also held to be unfair and unjust and, therefore, treated as nonest.

60. The request of the Appellant for extension of time for completion of the project is remitted to the State Commission for adjudication in accordance with law. For this, the State Commission shall hold an appropriate inquiry so as to ascertain and determine the progress made by the respondent Transco vis-a-vis the transmission line and evacuation system and also the reasons explained by the Appellant for lack of progress on its part granting such reasonable time as may be found to be just and proper for completion of the project such that the resources applied so far by both sides do not get wasted. The respondent UPNEDA shall forthwith refund the amount realized by it from the banker of the Appellant by encashment of the performance bank guarantees with interest calculated at 9% per annum from the date of having received credit till refund. Upon receipt of such refund, the Appellant shall, in turn, be obliged to get the bank guarantees replenished and revalidated, keeping the same alive in terms of its obligation under the contract which continues to subsist.”  
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4. Sh. Sourav Roy, Counsel of the Petitioner submitted that during the proceedings before the Hon'ble APTEL, it was mentioned that another developer named Pinnacle had sought the same relief from the Commission which was allowed by the Commission vide Order dated 12.02.2018.

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5. The Counsel of the Petitioner further submitted that the Hon'ble APTEL has set aside the Commission's Order dated 12.06.2019. The matter has thus been remanded on a very limited issue to grant such reasonable time as may





be found to be just and proper for completion of the project such that the resources applied so far by both sides do not get wasted.

6. Sh. Hemant Sahai, Counsel of Respondent UPPCL agreed that it is a matter of limited remand. However, the APTEL Judgement has to be read in its entirety before filing its reply. Therefore, he requested the Commission to grant 4 weeks time to file its written submission.
7. Sh. Sourav Roy, Counsel of the Petitioner submitted that he will take merely 6 days' time in filing his rejoinder and therefore, the matter may be kept for hearing as early as possible.
8. The Commission heard the parties and granted 4 weeks time to Respondents to file their written submission and thereafter 6 days' time to the Petitioner to file his rejoinder.

9. **The matter is listed on 28<sup>th</sup> October 2020**

(Vinod Kumar Srivastava)  
Member (Law)

(Kaushal Kishore Sharma)  
Member

(Raj Pratap Singh)  
Chairman

Place: Lucknow

Date: 05.10.2020