



Petition No. 1608 of 2020

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: Petition seeking direction for release of Bank Guarantee deposited with UPPCL.

General Manager (Project),
U.P. State Sugar Corporation Ltd.,
Vipin Khand, Gomti Nagar,
Lucknow – 226010

----- **Petitioner**

1. U.P. Power Corporation Ltd.,
(through its Chairman),
Shakti Bhawan Extn., 14-Ashok Marg,
Lucknow

2. U.P. Power Corporation Ltd.,
(through its Chief Engineer-PPA),
14th Floor, 14 Shakti Bhawan Extn.,
14-Ashok Marg, Lucknow

----- **Respondents**



Following were present:

1. Sh. Deepak Raizada, PPA-RE, UPPCL
2. Representative from UP State Sugar Corporation Ltd.
3. Sh. Amarjeet Singh Rakhara, Advocate, UPPCL
4. Sh. Ajai Vikram Singh, Advocate, UPPCL

ORDER

(Date of Hearing 06.10.2020)

1. The Petitioner U.P. State Sugar Corporation Ltd. (UPSSCL), which is an undertaking of Government of Uttar Pradesh (GOUP), having units at Piparaich in Gorakhpur District and Munderawa in Basti District each of 27 MW cogeneration plant has filed the instant Petition to direct UPPCL to release the BG of both the Piparaich and Munderwa unit.
2. During the hearing, Sh. Ajai Vikram Singh, Counsel of the Petitioner submitted as follows: -
 - a. The Petitioner entered into PPA with UPPCL after bidding process. The contract performance guarantee as per clause 2.13 of RFQ is to be initially valid for a period of three (3) months after the scheduled delivery date and thereafter shall be dealt with in accordance with the provision of PPA.
 - b. The work of commissioning of plant of both the units was commissioned within the scheduled time and the export of power started from November 2019 i.e. at least two months before the COD of 30.12.2019 in terms of the PPA. However, the export of power from the Munderwa unit started from 27-11-2019 and from the Piparaich unit from 28-11-2019. A request was also made to release the bank guarantee of Rs. 3.1125 Crore deposited for each unit by the petitioner.



- c. The opposite party vide its letter dated 07-04-2020 asked the petitioner to extend the validity of the CPG of both the units. It was also stated therein that in case the validity is not extended, the same may be invoked.
- d. The crushing season of both the units at piparaich and Munderwa has ended and at present the cane dues of both the units stand at Rs. 90 crore which has to be cleared as per the government guidelines.
- e. That Rs. 6.225 crore Rupees of both the units of petitioner has been blocked as the bank guarantee and has not been released. This is causing hinderance in clearing the cane dues of the farmers.
- f. That by not releasing the bank guarantee the opposite parties have violated the terms of the tender form.
3. Sh. Amarjeet Singh Rakhara, Counsel of UPPCL submitted that UPPCL has filed its counter affidavit on 05.10.2020. He further argued that the Petitioner has not submitted the copy of the PPA along with the Petition and that clause 4.7 of PPA deals with the return of CPG which provides that the procurer shall release/ return the CPG to the selected bidder at the end of the term of the Agreement. The term of the agreement is also been defined as 10 years. Further, the clause 4.5.1 of the RFQ as quoted by the Petitioner makes it clear that CPG has to be kept valid for the period of the term of the Agreement i.e. during the time when the supply of power is continued by the Petitioner. The clause 4.5.1 of the PPA is as under:-

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4.5.1 The contract Performance Guarantee furnished under this agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the contracted capacity within the time specified in this agreement

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4. Sh. Ajai Vikram Singh, Counsel of the Petitioner requested the Commission to grant two weeks of time to file its rejoinder.
 5. The Commission heard the parties and directed the Petitioner to submit the bidding documents and copy of PPA along with its rejoinder within 2 weeks.
 6. The matter is listed on 10th November 2020.

(Vinod Kumar Srivastava)

Member (Law)

(Kaushal Kishore Sharma)

Member

(Raj Pratap Singh)

Chairman

Place: Lucknow

Date: 19. 10.2020