

subsequent amendments thereof ("**Medium-term Competitive Bidding Guidelines**") on the Discovery of Efficient Electricity Price ("**DEEP**") portal.

A copy of the Medium-term Competitive Bidding Guidelines issued by the Ministry of Power is annexed hereto and marked as **ANNEXURE P - 3**

6. The above competitive bidding as desired to be conducted by the Petitioner/ JSPL-D was also informed to this Hon'ble Commission vide a letter dated 06.06.2023.

A copy of the letter dated 06.06.2023 issued by the Petitioner/ JSPL-D to this Hon'ble Commission is annexed hereto and marked as **ANNEXURE P - 4**

7. As the Petitioner/ JSPL-D has carried out fresh bidding process for medium-term power procurement, the provisions of the Electricity Act, 2003 ("**EA 2003**") mandates that this Hon'ble Commission ought to approve the fresh source of power for the Petitioner/ JSPL-D for onward supply to its consumers in OPJIP. While approving the source, this Hon'ble Commission also ought to adopt the tariff at which such procurement and supply

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is sought to be made by the Petitioner/ JSPL-D. It is also submitted that no deviations were taken from the Standard Bidding Documents issued by the Ministry of Power, Government of India.

8. In the above context, it would be appropriate and relevant to reproduce Section 63 of the EA 2003, which states as follows:

***"Section 63. (Determination of tariff by bidding process):***

*Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."*

(Underline Supplied)

The above provision of the EA 2003 makes it clear that the Appropriate Commission shall necessarily adopt the tariff determined by way of competitive bidding. The only thing which needs to be seen by this Hon'ble Commission is whether the bidding process was carried out in terms of the guidelines and in a transparent manner.

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9. While keeping the foregoing background in mind, it is submitted that in order to ensure that continuous power supply is made available to the consumers in OPJIP, the Petitioner/ JSPL-D initiated a Request for Participation on the DEEP Portal under the Medium-term Competitive Bidding Guidelines. The bids were invited on the basis of lump-sum tariff as per the aforesaid guidelines for procurement of 240 MW power from 01.08.2023 for a period of 5 years.
10. Accordingly, the Petitioner/ JSPL-D issued the bidding documents, i.e., Request for Qualification ("**RfQ**"), Request for Proposal ("**RfP**") and Agreement for Procurement of Power under Medium-Term on Finance, Own and Operate Basis ("**FOO**") on 24.05.2023 (*collectively referred to as the "**Bid Documents**"*).

A copy of the Request for Qualification and Request for Proposal dated 25.05.2023 is annexed hereto and marked as **ANNEXURE P – 5 (COLLY.)**

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A copy of the Draft Agreement for Procurement of Power under Medium-Term on FOO basis is annexed hereto and marked as

**ANNEXURE P – 6**

11. In terms thereof, it is relevant to note that the tender document was uploaded on 25.05.2023 on the DEEP Portal, bearing

**Event No. NIT- PFC Consulting Limited/Medium/Lumpsum Tariff/23-24/ET/57** as per the Medium-term Competitive Bidding Guidelines. The Schedule of the bidding process is provided hereinbelow:

	<b>Event Description</b>	<b>Date and Time</b>
1.	Date and time of Start of e-Tender Stage	25-May-2023
2.	Last date and time for receiving queries on RFQ and RFP	29-May-2023
3.	Pre-Bid Meeting	02-June-2023
4.	Utility response to queries	09-June-2023
5.	Last date and time of submission of Application and Bids (including Section A and Section B) – <b>Bid Due Date</b>	16-June-2023 (18:00 hours)
6.	Opening of Application	16-June-2023 (18:30 hours)
7.	Intimation to Qualified Bidders for opening of their Bids	26-June-2023

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8.	Opening of Bids of those Qualified Bidders	30-June-2023
9.	Start of e-Reverse Auction	30-June-2023
10.	Close of e-Reverse Auction	30-June-2023
11.	Letter of Award (LOA)	within 10 days from close of e-Reverse Auction
12.	Signing of APP	Within 10 days of issue of LOA

In terms of the above, it is reiterated herein that the bids were invited for procurement of 240 MW power under Medium-Term arrangement from 01.08.2023 for a period of 5 years. Further, the last date of submission of the bids was declared as 16.06.2023.

A copy of the invitation for bids under the Medium-Term Competitive Bidding Process issued by the Petitioner/ JSPL-D bearing Event No. NIT- PFC Consulting Limited/Medium/Lump-sum Tariff/23-24/ET/57 is annexed hereto and marked as **ANNEXURE P – 7**

12. Subsequently, a pre-bid meeting was conducted on 02.06.2023, which was conducted online. Pursuant thereto,

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responses to queries of the bidders raised during the aforesaid meeting were uploaded on the DEEP Portal.

13. Initially, four (4) bidders submitted their proposals, offering a total capacity of 540 MW within the due date, in the following manner:

<b>Sl. No.</b>	<b>Name of the Bidder</b>	<b>Capacity Offered in MW</b>
1.	DB Power Limited	100
2.	MB Power Limited	100
3.	Jindal Power Limited	240
4.	Instinct Infra and Power Limited	100

14. In terms of the above, the responses were checked for compliance and responsiveness based on the requirements and framework detailed in the Standard Bidding Documents provided by the Ministry of Power vide the Medium-term Competitive Bidding Guidelines. Accordingly, suitable clarifications were sought from the bidders, and the said bidders were requested to respond by 26.06.2023.

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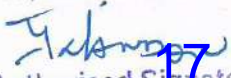
15. Pursuant to the above, the bidders who qualified and were selected for participating in the e-Reverse Auction are as under:

Sl. No.	Name of the Bidder	Capacity Offered in MW
1.	DB Power Limited	100
2.	Jindal Power Limited	240
3.	Instinct Infra and Power Limited	100

16. Subsequently, the financial bids of the above qualified bidders were opened on 30.06.2023, based on the recommendations of the Bid Evaluation Committee, pursuant to which, the E-Reverse Auction was carried out, and the outcome of the same was presented to the said Committee. Thereafter, the Bid Evaluation Committee approved procurement of 240 MW power at the following discovered tariff:

Sl. No.	Bidder Name	Fixed Charge (Rs./kWh)	Variable Charge (Rs per kWh)			Total tariff (Rs./kWh)	Allotted Quantity (MW)
		Cost of Generation (Rs./kWh)	Cost of Generation (Rs./kWh)	Cost of transmission charges (Rs./kWh)	Cost of transmission Losses (Rs./kWh)		

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1	Jindal Power Limited	2.70	2.70	0	0	5.40	240
2	DB Power Limited	2.40	2.40	0.65	0.35	5.80	-
3	Instinct Infra and Power Limited	2.42	2.42	0.65	0.32	5.81	-

A reading of the above results clearly reveals that the generation cost of the above companies were between Rs. 2.40/ kWh to Rs. 2.70/ kWh.

17. Although, it is evident that Jindal Power Limited emerged as the "*lowest quoted bidder*" for the entire period for supplying the full quantum of 240 MW @ Rs. 5.40/ kWh, however, the Petitioner is of the view that the quoted tariff could have been lesser considering the low cost of generation as quoted by Jindal Power Limited, amongst the other bidders who participated in the e-reverse auction.
18. In addition to the above, bid sheet for the e-Reverse Auction conducted on 30.06.2023 by PFC Consulting Limited bearing Event No. NIT- PFC Consulting Limited/Medium/Lumpsum Tariff/23-24/ET/57 as **ANNEXURE P – 8**.

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19. In view of the above, the Petitioner/ JSPL-D is filing the present petition before this Hon'ble Commission seeking permission to initiate a process of negotiation of the tariff which has been discovered through the process of competitive bidding carried out on the DEEP Portal in terms of the Guidelines issued by the Ministry of Power in terms of Section 63 read with Section 86 of the EA 2003, from all the aforementioned bidders.
20. As a matter of fact, it would be in the interest of justice, equity and fair play while keeping the consumers' interest in mind to explore downward negotiation of tariff in the present case, so that, the Petitioner can procure cheaper power for onward supply to its consumers.
21. Furthermore, while considering the present petition for allowing/ permitting negotiation of the tariff (*as detailed hereinbefore*), this Hon'ble Commission ought to specifically note that the Medium-term Competitive Bidding Guidelines does not contain any provision which permits negotiation of tariff. In such a situation, when the guidelines are silent, it is trite and settled law that the Appropriate Commission has the

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ability to exercise its regulatory powers in the interest of justice. In this context, the Petitioner/ JSPL-D seeks to place reliance on the following judgments:

- (a) Judgment of the Hon'ble Supreme Court in *Energy Watchdog v. Central Electricity Regulatory Commission and Others*, reported in (2017) 14 SCC 80, wherein, it was held as under:

*"20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante*

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