

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 14th November, 2014

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

**I.A.No.1/2014
IN
OP No.24/2014**

BETWEEN:

M/s. Saisudhir Energy (Chitradurga) Private Ltd.,
No.401, G.P. Elite, 8-2-283/4,
Road No.14, Banjara Hills,
Hyderabad – 500 034
[Represented by Shri Chidanandayya, Advocate]

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PETITIONER

AND

- 1) The Managing Director,
Chamundeshwari Electricity Supply Corporation Limited,
No.927, New Kantharaj Urs Road,
Sarswathipuram,
Mysore – 570 009
[Respondent represented by M/s. Justlaw, Advocates]

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RESPONDENT

- 1) The Petitioner in the above case has filed an Interlocutory Application (I.A.) on 13.11.2014, seeking an Order directing the Respondent-CESC not to invoke the Performance Guarantee under Article 5.8 of the Power Purchase Agreement (PPA), till the disposal of the Petition (wrongly mentioned as 'till the disposal of the Writ Petition').

- 2) We have heard the learned counsel for both the parties in the matter.
- 3) The Petitioner has been urging that it has not been able to fulfil the 'Conditions Precedent' under Article 4.2 of the PPA on account of the Karnataka Power Transmission Corporation Limited (KPTCL) not being able to provide evacuation approval for the Project from the proposed site near Talak in Chitradurga District, until the 220 kV line is constructed in the area.
- 4) The learned counsel for the Respondent-CESC has, however, stated that on account of some changes in the development of certain Projects in the area, KPTCL may now be able to give the evacuation approval even before the proposed 220 kV line being built. He further stated that the Petitioner should approach KPTCL with specific plans for the alternative arrangement for evacuation of power from the proposed Project, if the Petitioner is serious about implementing the same in the above location.
- 5) We have noted that the Respondent-CESC, in its communication dated 17.5.2014, has indicated its readiness to consider the extension of the Project's Completion Date under the PPA till 27.9.2014. However, the Petitioner has stated that even after issuing the said communication, the Respondent-CESC has not supported the Petitioner in its efforts to get the evacuation approval from KPTCL. Instead, the Superintending Engineer of

- the Respondent-CESC, in his letter dated 14.10.2014, has issued notice to the Petitioner to pay Liquidated Damages of Rs.24.90 Crores within fifteen days, failing which 100% of the Performance Security furnished by the Petitioner would be encashed.
- 6) We have perused the relevant Articles of the PPA, particularly Articles-4 and 5. We would like to hear the parties on, whether the operation of Article 5.8 of the PPA dealing with recovery of Liquidated Damages for delay in commencement of supply of power, can be invoked even before the fulfilment of the Conditions Precedent in Article 4.2 of the PPA. Pending a decision in the matter, it would be appropriate for the parties to maintain *status quo* in this case.
- 7) Further, in view of the statement made by the learned counsel for the Respondent-CESC that KPTCL is likely to give evacuation approval for the Petitioner's Project through an alternative line and the earlier offer dated 17.5.2014 of the Respondent-CESC to consider extension of the period of completion of the Project, we deem it appropriate to direct the Respondent-CESC not to proceed with the invoking of the Performance Guarantee for a period of six weeks from today. The Petitioner is directed to ensure that the Bank Guarantee is kept current during the said period, failing which the Respondent-CESC shall be free to encash the Bank Guarantee before its expiry date.

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- 8) Office is directed to intimate the above Order on I.A.No.1/2014 to both the parties. List the matter for further hearing on 27.11.2014.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER