

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/Petition No. – 51 of 2021

IA No. – 16 of 2022

Date of Hearing : 24.08.2022

Date of Order : 30.08.2022

IN THE MATTER OF:

Petition under Sections 142 of the Electricity Act, 2003 seeking initiation of appropriate action against the Respondents for non-compliance of directions dated 02.06.2021 in Case No.: HERC / PRO- 38 of 2020 passed by the Hon'ble Haryana Electricity Regulatory Commission.

Petitioner

1. M/s. AMPSolar Park Private Limited.

Respondents

1. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
2. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Panchkula
3. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
4. Haryana Power Purchase Centre, Panchkula (HPPC)
5. New & Renewable Energy Department, Haryana & HAREDA (HAREDA)

Present on behalf of the Petitioner

1. Ms. Jyotsna Khatri, Manager (Legal)

Present On behalf of the Respondents

1. Mr. Rajesh K. Sheoran, Advocate for HVPNL
2. Shri Ashok Muthria, Xen, HVPNL

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

1. The present petition has been filed with the following prayers: -
 - a. Allow the instant Petition and declare that Respondent No. 1 to 4 are in violation of Order dated 02.06.2021 in Case No. HERC / PRO- 38 of 2020;
 - b. Grant final connectivity to the petitioner for its 30 MW Solar Power Project in a time bound manner;
 - c. Award the costs of this proceedings in favour of the petitioner and against respondent No. 1 to 4; and
 - d. Issue any other appropriate order or directions which this Hon'ble Commission may deem fit in the facts and circumstances of the present case.

2. The case was heard on 02.03.2022, 17.03.2022, 20.04.2022, 11.05.2022, 03.08.2022 and finally on 24.08.2022.
3. The hearing scheduled for 03.08.2022 was adjourned as the counsel for the respondent no. 1 (HVPNL) was unwell. In the hearing held prior to that i.e. on 11.05.2022, Ms. Aerika Singh, learned counsel appearing for the respondent no. 1 (HVPNL) submitted as under: -

“..The petitioner, suo-moto, vide a letter dated 27.04.2022 apprised that AMP Solar Park Private Limited has not changed its leading shareholding i.e. AMP Energy Pvt. Ltd. since the submission of application for the grant of connectivity on 21.08.2018. The Committee in its meeting held on 28.04.2022, after due deliberations, decided that HPPC/DHBVNL may be asked to supply the comments/recommendations on the letter dated 27.04.2022, filed by the petitioner.”

Upon hearing the Counsel, the Commission, vide its interim order dated 13.05.2022, directed Sh. Rajesh Goel, SE, HVPNL, present in the hearing, to personally follow up with HPPC/DHBVNL and ensure that the Committee communicates its decision in the matter to the petitioner, within 15 days from the date of this order. The Commission made it clear that no further extension of time shall be granted and in case the timeline given in this order is not adhered to, necessary action shall be initiated.

4. In compliance of the Commission's interim order dated 13.05.2022, the 'Committee' vide letter dated 03.06.2022, communicated the final decision to the petitioner, rejecting the application for grant of connectivity on the ground that it has failed to maintain its equity shareholding position exactly in accordance with clause 4.16 (minimum equity to be held by the promoters) of Haryana Solar Policy, 2016. Accordingly, respondent no. 1 (HVPNL) filed an affidavit dated 13.07.2022, submitting as under: -

“3. In compliance of the order dated 13.05.2022, the Committee has considered and examined the documents submitted by the petitioner and found that the petitioner has failed to maintain its equity shareholding position in accordance with Clause 4.16 (Minimum Equity to be held by the promoter) of Haryana Solar Power Policy, 2016 which is reproduced here under for facility of reference: -

4.16 Minimum Equity to be held by the Promoter

The project developer may be individual/company/firm/group of companies or a Joint venture/Consortium of maximum 4 partners having minimum 51% shareholding of leading partner.

The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project. This shall not be applicable to the Solar Power Projects developed by the public limited companies. Thereafter, any change may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be. Further, only new plant and machinery shall be allowed under this policy.

After considering all the aspects, on recommendation of the Committee, the WTD had taken a decision to cancel the in-principal feasibility issued to the Petitioner. As such, the Bank Guarantee No. 016BG01193190005, amounting to Rs.30,26,000/- submitted by the Petitioner for its Solar Plant has also been returned. A copy of the letter/ order bearing Memo No. Ch-148/ISB-618 dated 03.06.2022 conveying the decision to the Petitioner along with the Minutes of Meeting (MoM) dated 18.05.2022 has already been placed on record as Annexure B (Colly.) along with the I.A. No. 16 of 2022 filed by the Petitioner.

4. That all the prevailing procedures/guidelines/regulations/policies etc. applicable to the case of the Petitioner for the grant of final connectivity have been duly followed by the Committee.

5. That the allegations, if any, raked by the Petitioner in its I.A. No. 16 of 2022 are false, incorrect and hence denied, in view of the reply already submitted by the Respondent No.1-HVPNL before the Hon'ble Commission."

The Commission has perused the case records as well as the decision of the 'Committee' including the reasons for cancelling the in-principal feasibility granted to the petitioner. The Commission observes that after considering the factual matrix of the case including purported inaction of the respondent(s) concerned, this Commission had issued an order dated 13.05.2022 for compliance within 15 days i.e. on or before 28.05.2022. The same was complied with by HVPNL on 03.06.2022 rejecting grant of connectivity. On perusal of

the decision of the committee, as conveyed by them, it is observed that there is not even a whisper regarding the delay vis-à-vis this Commission's order dated 13.05.2022. The Commission has taken a serious note of the said lapse on the part of HVPNL and expects that in future all orders / directions of this Commission shall be complied with within the time limit set for the purpose. Given the facts and circumstances of the present case, including the delay of a few days for deciding the application for grant of connectivity by the Committee, the Commission does not find sufficient grounds for proceeding with the penal action under section 142 of the Act against the respondent (HVPNL) as prayed for by the petitioner herein.

Having held as above, the Commission is of the considered view that a contempt proceeding u/s 142 of the Act ought not to be clubbed with relief sought under any other section of the Electricity Act, 2003 including the regulations notified by this Commission thereunder. In the presents case, the grant of connectivity has been refused for violating the shareholding stipulation of the Haryana Solar Power Policy, 2016.

The Commission notes the fact that in the present matter there are four entities involved i.e. Amp Energy India Pvt. Ltd., Amp Solar Ventures Pvt. Ltd., Amp Solar Park Pvt. Ltd. and Amp Solar Technology Pvt. Ltd. In principle feasibility for connectivity was granted to Amp Solar Park Pvt. Ltd., reportedly a Special Purpose Vehicle (SPV), whose entire shareholding was transferred to Amp Solar Technology Pvt. Ltd. Hence, as a corollary the Company/SPV i.e. Amp Solar Park Pvt. Ltd. was reduced to a 'Shell' company with no stake in the solar park project. The Commission, at this stage, is not expressing any views on the merit of HVPNL's decision dated 03.06.2022. However, in case the rationale of HVPNL's decision declining connectivity is disputed, the parties are free to avail the remedy available to them under the Electricity Act, 2003.

5. In terms of the above order, the present petition is disposed of, there is no order as to cost.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 30.08.2022.

Date: 30.08.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman