

IN THE JOINT ELECTRICITY REGULATORY COMMISSION, GURGAON

REVIEW PETITION. OF 2013
IN PETITION NO. 39 OF 2011

IN THE MATTER OF:

M/s Saheli Exports Private Limited

.....Review Petitioner

VERSUS

Electricity Department, Puducherry

.....Respondent

INDEX OF PAPERS

S. NO.	PARTICULARS	P. NOS.
1.	Review Petition under Section 94 of the Electricity Act, 2003 along with affidavit in support	1-5
2.	Bank draft No. 703519 dt. 3.4.2013 for an amount of Rs. 10,000/- (Rupees Ten Thousand only) drawn on State Bank of India, Chennai in favour of Secretary, Joint Electricity Regulatory Commission	



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PLACE : NEW DELHI
DATED: 5TH APRIL, 2013

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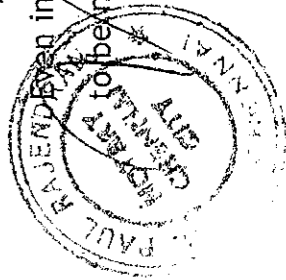
REVIEW PETITION UNDER SECTION 94 OF THE ELECTRICITY ACT, 2003

MOST REPECTFULLY SHOWETH:

1. The present review petition is being filed by the petitioner for review of the order dated 27.2.2013 passed by the Hon'ble Commission deferring the approval of the draft Power Purchase Agreement to be executed by the Petitioner and the Respondent for supply of electricity from the generating station to be established by the Petitioner.
2. By the said order, the Hon'ble Commission has directed the parties to approach for the approval of the draft PPA after the exact location of the plant site with the survey number is mentioned in the draft PPA. It is respectfully submitted that the Hon'ble Commission in the said order has not appreciated and recorded the contention and submissions of the Petitioner in the correct context. In the circumstances and on the decision of the Hon'ble Commission to defer the approval of the draft PPA, the Petitioner is filing the present review petition before the Hon'ble Commission.
3. It is stated that during the course of proceedings for tariff determination, the Petitioner had produced the Agreement to Sell for identified lands in the Devamapuram Village in Karaikal, providing for the terms and conditions for the purchase of land. In the tariff order dated 2.7.2012, the Hon'ble Commission had however determined the cost of the land at Rs. 24 lacs. The Petitioner is aggrieved by the above determination of the land cost and the said issue is pending adjudication before the Hon'ble Appellate Tribunal. Upon the passing of the order by the Hon'ble Appellate Tribunal indicating the land price for consideration in the tariff, then the petitioner may be in a position to identify land available at that price and give the survey number of the land.

Even in terms of the RPSSGP scheme JNNSM, the Survey Number is not required to be mentioned in the draft PPA. It is in these circumstances when there is a

For SAHELI EXPORTS PVT. LTD.

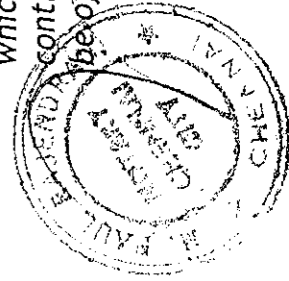


D.V.P. REDDY
DM (Operations & Commercial)

2
limit of the cost of the land in the tariff approved by the Hon'ble Commission, the Petitioner is presently not in a position to identify the exact survey number at this stage. It is in this context that the Petitioner had submitted during the hearing before the Hon'ble Commission and not to the effect that the Petitioner cannot procure land in the village Devamapuram in Karaikal presently.

4. Further, the Hon'ble Commission has in the order dated 27.02.2013 recorded that the Petitioner prays for long time for inclusion of all the clauses in the draft PPA as directed by the Hon'ble Commission in the order dated 30.1.2013. It is respectfully submitted that the contention of the Petitioner is not recorded in the context of the submissions made and the contention of the Petitioner was not that it will take a long time and that the petition need to be deferred by the Hon'ble Commission. The submission of the Petitioner is that the approval of the draft PPA does not require the exact survey number to be mentioned.
5. It is submitted that the approval of the draft PPA is required for the purposes of the Hon'ble Commission ensuring that the terms and conditions of the PPA are not prejudicial to the interest of the consumers. The approval of the draft PPA does not depend upon the survey number of the land being mentioned. The Hon'ble Commission, while approving the draft PPA needs to be satisfied on the material terms and conditions of the PPA and that the said terms are not contrary to law or prejudicial to the consumer interest.
6. The PPA is not a statutory document, but is only statutory to the extent of the tariff which is determined by the Hon'ble Commission and incorporated in the PPA. Otherwise, the PPA is only a bilateral agreement between the parties. In this regard, the Hon'ble Supreme Court in the case of India Thermal Power Limited v. State of Madhya Pradesh and Others, (2000) 3 SCC 379, has held as under:

"11.....These provisions clearly indicate that the agreement can be on such terms as may be agreed by the parties except that the tariff is to be determined in accordance with the provision contained in Section 43-a(2) and notifications issued thereunder. Merely because a contract is entered into in exercise of an enabling power conferred by a statute that by itself cannot render the contract a statutory contract. If entering into a contract containing the prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as

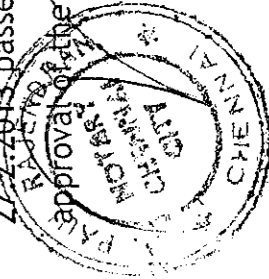


For SAHELI EXPORTS PVT. LTD.

D.V.P. REDDY
GM (Operations & Commercial)

a result of mutual agreement between the parties. therefore, the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section 43-A(2). Opening and maintaining of an escrow account or an escrow agreement are not the statutory requirements and, therefore merely because PPAs contemplate maintaining escrow accounts that obligations cannot be regarded as statutory."

7. It is stated that in any case the execution of the PPA will also be only after the survey number is mentioned in the PPA. In the circumstances, it will not be the case that the PPA is to be executed in the present form, but the proceedings are only for approval of the draft PPA. The Respondent will not enter into any binding agreement with the Petitioner without the survey number of the land being mentioned therein.
8. It is further stated that the reservation on the plant connectivity issue also does not arise in the present case. The sub-station in the village is already identified. The Petitioner undertakes that there will be no extra-burden than already envisaged by the Respondent on account of length of the line on account of the plant location being finalised. The Petitioner also undertakes that it will not claim any relief against the Respondent on account any additional time taken for the construction of the evacuation facilities to the plant site to be identified. The approval of the draft PPA will not in any manner change the nature of the plant connectivity required.
9. It is stated that apart from the issue of survey number, all other issues have been agreed to be incorporated in the draft PPA which was directed by the Hon'ble Commission in the order date 30.01.2013. There are no other issues apart from the issue of the survey number being mentioned in the draft PPA.
10. In the circumstances, the submission of the Petitioner is that the PPA in the present form may be approved by the Hon'ble Commission. The survey number being mentioned is an essential condition for the execution of the PPA, not for the approval of the draft PPA by the Hon'ble Commission. Even the draft PPA circulated in terms of the RPSSGP scheme of the JNNSM, the Survey Number is not required to be mentioned in the draft PPA.
11. In the facts and circumstances mentioned above, the Petitioner is filing the present petition before the Hon'ble Commission for review of the order dated 27-2-2013 passed by the Hon'ble Commission deferring the consideration of the approval of the draft PPA to be entered into between the parties.



For SAHELI EXPORTS PVT. LTD.


(Signature)

D.V.P. REDDY
GM (Operations & Commercial)

4

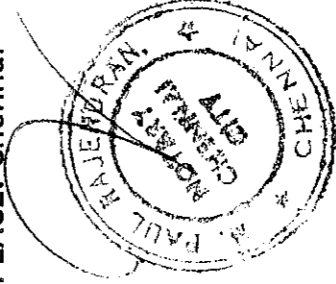
12. It is respectfully submitted that the present review petition is maintainable and within the jurisdiction of the Hon'ble Commission. It is a settled principle of law that the facts and submissions recorded in a judicial order is subject matter of review proceedings for correction.
13. It is further respectfully submitted that the order dated 27.02.2013 suffers from errors apparent on the face of the record and even otherwise there is sufficient cause for review of the order dated 27.02.2013 by the Hon'ble Commission.
14. The Petitioner has paid the requisite court fees for filing the present petition.
15. The present petition is not barred by limitation.
16. In the facts and circumstances mentioned above, it is respectfully submitted that the Hon'ble Commission may be pleased to:
 - (a) Review the order dated 27.02.2013 passed by the Hon'ble Commission to the extent challenged in the present petition;
 - (b) Approve the draft PPA filed before the Hon'ble Commission.
 - (c) Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case.

For SAHELI EXPORTS PVT. LTD.


D.V.P. REDDY
GM (Operations & Commercial)

PETITIONER,
SAHELI EXPORTS PRIVATE LIMITED

DATED: 01.4.2013
PLACE: Chennai



M. PAUL RAJENDRAN, B.A., B.L.,
Advocate & Secretary
GO. NO. 9, NO. 17, KANNI ROAD,
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5

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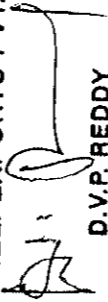
..Respondent

AFFIDAVIT

I, D V Poornachandra Reddy, son of Shri D Venkatachala Reddy, aged about 55 years, resident of N-450,1st Floor,23rd Street, Anna Nagar East,Chennai-600 102 do hereby solemnly affirm and state as under:

1. I say that I am the GM (Operations & Commercial) in the Petitioner, M/s Saheli Exports Private Limited and am conversant with the facts of the present case and hence competent to swear the present affidavit.

2. I say that the contents of the accompany review petition are based on the records of the Petitioner maintained in its ordinary course and believed by me to be true.

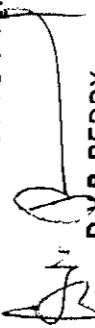
For SAHELI EXPORTS PVT. LTD.

D.V.P. REDDY
GM (Operations & Commercial)

DEPONENT

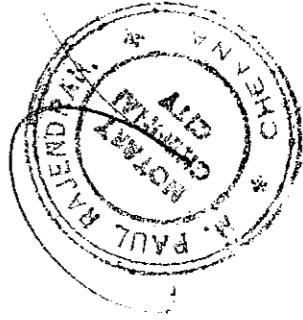
VERIFICATION


I, the deponent above named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Chennai on this 1st day of April, 2013.

For SAHELI EXPORTS PVT. LTD

D.V.P. REDDY
GM (Operations & Commercial)

DEPONENT




M. PAUL RAJENDRAN, B.A., B.L.,
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