

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY
COMMISSION AT RANCHI**

Case No. 11 of 2024

Adhunik Power and Natural Resources Limited (APNRL).....Petitioner
Versus
Jharkhand Bijli Vitran Nigam Ltd. (JBVNL)..... Respondent

**CORAM: HON'BLE JUSTICE MR. AMITAV KUMAR GUPTA, CHAIRPERSON
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner : Mr. Eshan Singh-APNRL
For the Respondent : Mr. Ravi Shankar, JBVNL

Date-30th April, 2024

1. Adhunik Power and Natural Resources Limited (APNRL) has filed the instant petition under Section 86 (1) (b) of the Electricity Act, 2003 for approval of the draft addendum no. 4 to the PPA dated 28.09.2012 to be executed between Jharkhand Bijli Vitran Nigam Limited and the petitioner-APNRL in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy (Scheme of Harnessing and allocating koyala transparently in India), 2017 (Shakti Policy 2017).
2. The petitioner's prayers are as follows:
 - (a) For approval of the Draft Addendum No. 4 to the PPA dated 28.09.2012 to be executed between Respondent and Petitioner in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy (Scheme of Harnessing and Allocating Koyala (Coal) Transparently in India), 2017;
 - (b) For grant of any other appropriate relief or reliefs which the Commission deems fit and proper.

Submissions of the Petitioner

3. Learned Counsel has submitted that the petitioner is seeking approval on the Draft Addendum No. 4 to the PPA dated 28.09.2012 to be executed between Jharkhand Bijli Vitran Nigam Limited and Adhunik Power and Natural Resources Ltd. in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy (Scheme of Harnessing and Allocating Koyala (Coal) Transparently in India), 2017 (Shakti Policy, 2017).
4. It is submitted that the petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003, The Petitioner has set up a Thermal Project with an installed capacity of 540 MW (2x270 MW) at Saraikela-Kharsawn District in the State of Jharkhand ('the Project').
5. It was submitted that the Respondent is the distribution licensee of the State of Jharkhand and the Petitioner is supplying a total of 188.85 MW (122.85MW + 66 MW) power to the Respondent on long term basis.

6. It was pointed out that the Project of the petitioner has been set up by the Petitioner pursuant to a Memorandum of Understanding executed between the Petitioner and the Government of Jharkhand in October, 2005, and the Memorandum of Understanding has been extended from time to time (*the MoU"). That Unit-1 of the Project started Commercial Operation on 21.01.2013 and Unit-2 started Commercial Operation on 19.05.2013.
7. it was submitted that the Ministry of Coal, Govt. of India vide Circular No. 23011/15/2016-CPD/CLD dated 22.5.2017 introduced a 'New More Transparent Coal Allocation Policy for Power Sector, 2017', namely, SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) (the 'SHAKTI scheme') for the purpose of providing linkage coal to the Independent Power Producers ('IPPs') having already concluded long term PPA with Discoms.
8. It was submitted that Clause no. 3 of the new SHAKTI B (i) Round (vi) specified the eligibility of Bidders which reads as under:
- “.....
- 3.1 Basic Eligibility Criteria
- 3.1.1 The Bidder having valid already Concluded PPAs in respect of the Specified End Use Plant(s) that is used for participation under Clause 1 above. In this regard "Concluded PPA" shall mean a valid long term PPA (both under section 62 and section 63 of Electricity Act, 2003), based on domestic coal, executed on or before May 17, 2017.*
- 3.1.2 The Bidder shall be required to submit the Verification Certificate, as per the format specified in Appendix II of Annexure I.*
- 3.2 Additional Eligibility Criteria
- 3.2.1 A Bidder having valid already Concluded PPA(s) in respect of the Specified End Use Plant(s) and not having, in respect of such Specified End Use Plant(s), as on the last date of submission of EOI, the following:*
- (a) any coal linkage at all or having coal linkage for quantity which is less than 100% of their coal requirement, computed as per the Norms for Annual Contracted prescribed in Annexure II; and/or*
- (b) any coal mine/coal block or having coal mine/coal block for quantity which is less than 100% of their coal requirement, computed as per the Norms for Annual Contracted Quantity prescribed in Annexure II.*
- For the purposes hereof. (a) and/or (b) in respect of a Specified End Use Plant shall be referred to as the "Allocated Coal Block/ Letter of Assurance (LoA)/ Linkage and the Bidder may bid for the balance quantity of coal. "*
9. It was also submitted that the aforementioned policy extends to the thermal plants who have a coal linkage less than 100% of their coal requirement. In this regard, it was also submitted that the petitioner participated in the earlier Shakti Scheme Bidding rounds, however, the petitioner was not able to secure coal linkage for the full Contracted Capacity i.e. 122.85 MW. In view of the aforesaid fact, the Petitioner participated in the new Shakti Scheme B (ii) round (vi) for securing the coal linkage for the balance quantum after obtaining consent from TANGEDCO, WBSEDCL and the Respondent for the long-term Power Purchase Agreement entered into by the petitioner with PTC/TANGEDCO, PTC/WBSEDCL and

the Respondent. Accordingly, the Respondent consented to the same as per communication dated 24.08.2023.

10. It was also submitted that APNRL participated in the auction process under the SHAKTI Scheme B(ii) round (vi) and offered a discount of thirteen (13) paise per kWh for securing coal linkage for its following long term Power Purchase Agreements:

- PPA 1: 122.85 MW PPA with Jharkhand BijliVitrان Nigam Limited (JBVNL)
- PPA 2: 100 MW PPA with Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) through PTC India Limited.
- PPA 3: 100MW PPA with West Bengal State Electricity Distribution Company Limited (WBSEDCL) through PTC India Limited.

Sl. No	Source	Source Grade	Quantity Allocated (Tonne)	Offered discount (paise/kWh)	LOI reference No(enclosed as Annexure-1 to the amendment)
1	Central Coal Fields Limited (CCL)	G11	460000	13	CCIHQ/C- 4/FSA2023-24/228 dated 05.02.2024
2	South Eastern Coalfields Limited(SECL)	G11	29600	13	SECL/BSP/M&S/F SA/SHAKTVLOVB (i) (R-6)/ APNRL/3518 dated 02.02.2024
3	Mahanadi Coalfield Limited(IB Coalfield)	G13	116000	13	एमसीएल विपनन और बिक्री वाणिज्य/23-24/2021 dated 01.02.2024
4	Mahanadi Coalfield Limited(Talcher Coalfield)	G12	22100	13	एमसीएल विपनन और बिक्री वाणिज्य/23-24/2021 dated 01.02.2024
	Total		627700		

11. It is submitted on behalf of the petitioner that the Coal Companies namely, Central Coalfield Limited(CCL), South Eastern Coal Field(SECL) and Mahanadi Coalfield Limited(MCL) had issued Letter of Intent on 05.02.2024, 02.02.2024 and 01.02.2024 respectively declaring M/s APNRL as provisional successful bidder and allocating the balance coal against the above mentioned PPA's. Accordingly, the coal allocated towards each long term PPA is summarized as below: -

Sl.No	Long-term PPA	CoalQuantity (MT)/Annum
1	PTC-WBSEDCL	543356.66
2	PTC-TANGEDCO	37847.58
3	JBVNL	46495.76
	Total	627700.00

12. It was submitted that in terms of the Scheme Document by PFCCL for the sixth round of auction of coal linkages under paragraph b(ii) of the Shakti policy for IPPs/CPPs having already concluded long term PPAs, dated 26.10.2023, it was required to submit documents as hereunder:

“3.6.8 Submissions by Provisional Successful Bidder(s)

Each Provisional Successful Bidder will be required to submit the following documents of and information within 60 (sixty) days, issuance of LOI to such Provisional Successful Bidder or such additional time period as may be prescribed by CIL at its sole and absolute discretion:

3.6.8.1 Submission of copy of each Amended PPA, along with the approval letter from the appropriate commission; and

3.6.8.2 Submission of the documents specified in Annexure X, to the relevant Subsidiary ... ”

13. It was canvassed that the petitioner apprised the Respondent of the said facts vide letter dated 03.02.2024 and requested the Respondent to initiate the process of Addendum to the PPA dated 28.09.2012, entered between the parties.
14. That petitioner has prayed for the Hon’ble Commission’s approval to enter into Addendum No.4 to the PPA dated 28.09.2012, to be executed between Respondent and Petitioner in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy (Scheme of Harnessing and Allocating Koyala (Coal) Transparently in India), 2017 may be granted.

Submission of the Respondent

15. The Respondent has filed the counter-affidavit supporting the contention of the petitioner. The Respondent has filed the vetted final draft copy incorporating the suggestions of its accounts and legal department of the respondent.
16. It was submitted that the legal department of the respondent suggested a few incorporations to be included in the PPA as detailed below:
- a) CIN no. of the parties to the agreement requires to be mentioned in the proposed PPA in the introductory part.
- *“(CIN: U40108JH2013SGC001702)” added to the introductory part of JBVNL at page no.2 of PPA and “(CIN: U40101WB2005PLC102935)” added to the introductory part of APNRL at page no.2 of PPA.*
- b) Date of earlier executed PPA is required to be mentioned.

- *All other terms and conditions of PPA dated 28.09.2012; Amendment No.1 to the PPA dated 15.02.2018; Amendment No. 2 to the PPA dated 29.09.2022; Amendment No.3 to the PPA dated 29.09.2022; shall remain unaltered.” Omitted from clause no.4 and inserted as clause no. 6 at page no.5 of PPA.*
- c) Incorporation of “exclusive jurisdiction of court of law at Ranchi” be incorporated.
- *“with exclusive jurisdiction of court of law at Ranchi” added at Clause no. 8 at page no. 6 of PPA”*
- d) Address of both parties for the purpose of serving notice requires to be incorporated.
- *“Lansdowne Towers, 2/1A, Sarat Bose Road, Kolkata-700020” replaced with “Lansdowne Towers”, 5th Floor, 2/1A, Sarat Bose Road, Kolkata - 700020, and correspondence address at “Vill- Padampur, Near Power Grid Substation Adityapur Kandra Road, P.O.Kandra, Saraikela- Kharsawan, Jharkhand- 832105” introductory part of APNRL at page no.2 of PPA.*
17. It is submitted by the respondent that all technical and financial terms and conditions are the same as per previous agreement in consonance with SHAKTI scheme.
18. The Respondent has submitted that approval may be given for signing of draft agreement as submitted before the Hon’ble Commission, for submission of signing of Fuel Supply Agreement (FSA).

Commission’s observation and findings

19. The Commission has considered the submissions of the parties and perused the counter-affidavit of the respondent and the materials available on record. It is mandated under section 86(1)(b) of the Act, that the distribution licensee is obligated to get the Power Purchase Agreement, approved by the Commission.
20. Both the parties have prayed for grant and approval of the draft addendum no.4 to the PPA dated 28.09.2012 to be executed between Respondent and Petitioner in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy (Scheme of Harnessing and allocating Koyala (Coal) transparently in India),2017 on the same terms and conditions as per earlier agreement. Moreover, the parties have mutually agreed and consented that the draft of supplementary PPA be executed between them, subject to the approval of this Commission.
21. The Petitioner vide its supplementary affidavit has submitted that the petitioner has no objection to the modification/amendment proposed by the respondent and is willing to enter into execution of the 5th Supplementary Power Purchase Agreement (PPA) under Shakti Scheme B-II Round- VI with JBVNL and also filed the supplementary affidavit stating that the petitioner has no objection to the modification/amendment proposed by the respondent and is

willing to enter into the execution of draft Addendum No. 4 to the PPA dated 28.09.2012 to be executed between Respondent and Petitioner in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy.

22. It is observed by the Commission that the modifications /amendment proposed by the Respondent do not substantially affect the nature of the agreement and the technical and financial terms and conditions in consonance with the contra agreement signed by parties and they do not have any objection to the terms and conditions of the earlier agreement.

In the result, it is ordered as;

ORDER

23. In the facts and circumstances of the case, and considering the provision, of Section 86 (1) (b) of the Electricity Act, 2003 coupled with the discussions made hereinabove, the prayer of the petitioner is allowed.
24. The draft Addendum No. 4 to the PPA dated 28.09.2012 to be executed between Respondent and Petitioner in terms of the sixth round of auction of coal linkages under paragraph B(ii) of the Shakti Policy (Scheme of Harnessing and Allocating Koyala (Coal) Transparently in India), 2017; on the same terms and conditions, as stated above, is hereby approved.
25. The petition stands disposed off, accordingly.

Sd/-
Member(T)

Sd/-
Chairperson