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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6622/2016 & CM No. 27145/2016**

**M/S MAHESHWARI MINING & ENERGY PVT.
LTD.**

.... Petitioner

Through: **Mr Rajendra Singhvi and Ms
Arundhati Chakraborty, Advocates.**

versus

**MINISTRY OF NEW & RENEWABLE ENERGY
& ANR**

..... Respondents

Through: **Mr Jasmeet Singh, CGSC with Mr
Srivats Kaushal, Advocate for R-
1/UOI.**

**Mr Bharat Sangal, Mr Babita
Kushwaha and Ms Anindita Deka,
Advocates for R-2.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.02.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an Office Memorandum dated 11.02.2016 issued by respondent no.1 (hereafter 'MNRE'). It is stated in the said Memorandum that there is no financial support available to maintain the wait list under 750 MW VGF Scheme and, therefore, there is no need to operate the same. The said Memorandum also indicates that it has been decided by the Inter-Ministerial Group (IMG) and the Cabinet Committee of the Economic Affairs (CCEA) that the remaining fund for 750 MW Scheme be utilised

for setting up implementation of a Scheme to set up over 2000 MW Grid Connected Projects under VGF Scheme of JNNSM, Phase-II, Batch-III.

2. The petitioner was one of the bidders for “750 MW Grid Connected Solar Power Projects under JNNSM Phase-II, Batch-I” and prays that directions be issued to the respondents to allocate 10 MW PV Power Project out of the remain unallocated capacity on account of default of a successful bidder.

Factual Background

3. Solar Energy Corporation of India (referred to as ‘SECI’) is a Government of India Enterprise and is under the administrative control of MNRE (Ministry of New and Renewable Energy). One of its main object is to assist MNRE and function as the implementing and facilitating arm of the Jawaharlal Nehru National Solar Mission (JNNSM) for development, promotion and commercialization of solar energy technologies in India. SECI was designated as the implementing agency for implementation of “750 MW Grid Connected Solar Power Projects under JNNSM Phase-II, Batch-I” (hereafter ‘the 750 MW Scheme’).

4. In order to implement the 750 MW Scheme, SECI had invited Requests for Selection (RFS) and issued the necessary document in this regard. The same are, hereafter, referred to as ‘the RFS’. In terms of the RFS, bids were invited from various bidders to set up Solar Photo Voltaic Power Projects (Solar PV Projects). The Bid information and Instructions to Bidders (included as a part of the RFS) clearly indicate that the total capacity offered for a Solar PV Projects was 750 MW. Under the 750

MW Scheme, Solar Power Developers (SPDs) – successful bidders – would set up a Solar PV Projects on ‘Build Own Operate’ basis. Each bidder was required to bid for a project of a capacity of at least 10 MW and not more than 50 MW.

5. Clause 3.4 of the RFS contains provisions regarding operating of a waiting list. The petitioner has founded its case on the said clause and claims that he is entitled to be allocated part of the default capacity (that is, the capacity freed on account of default of a successful bidder).

6. The 750 MW Scheme was floated on 28.10.2013 and the petitioner submitted its bid on 19.01.2014. Thereafter, on 25.02.2014, SECI published the list of successful bidders.

7. It is stated that one of the successful bidders, who had applied for a project of a capacity of 30 MW, defaulted and the said capacity remained un-allotted. The petitioner was placed at serial number 2 in the waiting list and claims that he is entitled to 10 MW capacity on account of the said default.

8. Since, the petitioner was not being considered for the same, the petitioner filed a writ petition (being W.P.(C) 2527/2015) captioned *M/s Maheshwari Mining & Energy Pvt. Ltd. v. The Managing Director, Solar Energy Corporation of India & Anr., inter alia*, praying that a direction be issued to the respondents to allocate 10 MW PV Power Project out of the unallocated default capacity and issue a Letter of Intent (LOI) for the same. The said petition was listed alongwith W.P.(C) 888/2015 captioned *Welspun Renewable Energy Pvt. Ltd. v. Union of India & Anr.* SECI filed

a counter affidavit opposing the said petitions, *inter alia*, stating that the MNRE had issued guidelines for implementation of a Scheme for setting up 2000 MW Grid Connected Solar PV Power Projects under Phase-II, Batch-III and the petitioner did not satisfy the qualifying requirement of the said Scheme. It was further stated that the 750 MW Scheme under Batch-I of Phase-II was completely different from the 2000 MW Scheme under the Phase-II, Batch-III.

9. The said petitions were disposed of by an order dated 15.01.2016, whereby the MNRE was required to take a fresh look on the matter of approval of capacity in terms of Clause 3.4 of the RFS.

10. Thereafter, MNRE issued the Office Memorandum dated 11.02.2016, which is impugned herein.

Reasons and Conclusions

11. Before proceeding further, it would be relevant to refer to Clause 3.4 of the RFS, which is set out below:-

“3.4 Waiting List

After the allocation of aggregate capacity of 750 MW, a waiting list of up to 100 MW shall be maintained by SECI up to the date of “Financial Closure”. SECI shall allocate Projects to the waiting list Bidders after approval of the capacity to be allocated by MNRE. The Bidders who agree to be in the waiting list and who agree for retaining their EMD-BGs by SECI shall only be considered in the waiting list. Bidders who wish to keep their Project(s) in waiting list shall give a declaration in the covering letter as per Format 6.1. In the absence of such a declaration, it shall be construed

that such Bidders are not willing to get included in the waiting list and therefore, they shall not be considered for the same. Further, if the Bidders wishing to be in the waiting list (based on their declaration submitted in the response to RfS), opt out after the selection process of 750 MW capacity is over, then SECI shall forfeit the EMDs of such Bidders.”

12. There is no dispute that in terms of the RFS, SECI was required to maintain a waiting list of bidders desirous of availing of default capacity (capacity released on account of default of successful bidders). Admittedly, the petitioner had opted to be a part of the wait list. It appears that, thereafter, there had been a reconsideration in this regard and the respondents had decided to abandon the wait list. One of the reasons, as indicated in the counter affidavit, is that the tariff under the subsequent Scheme has reduced considerably. It is affirmed that the same had come down from ₹5.45 per kWh to ₹4.43 per kWh and is likely to reduce further. In view of the above, the support from the Government of India is also reduced from ₹2.5 crore per MW to ₹1 crore per MW.

13. It is apparent from the averments made in the counter affidavit that there is sufficient reason for the MNRE to have taken the decision to not proceed with the wait list. The said decision is neither arbitrary nor unreasonable and, therefore, no interference with the same is warranted.

14. This Court is also of the view that the petitioner has no vested right in insisting that the wait list be operated, considering that the RFS expressly provides that SECI reserves its right to reject all bids and cancel the RFS without assigning any reason. Clause 3.23 of the RFS is relevant

and is set out below:-

“3.23 Right of SECI to reject a Bid-

SECI reserves the right to reject any or all of the responses to RfS or cancel the RfS without assigning any reasons whatsoever and without any liability.”

15. It is also relevant to note that SECI had also reserved the right to modify, amend or supplement the RFS document as indicated in Clause 2 of the Disclaimer set out in the opening pages of the RFS.

16. In view of the above, the present petition is unmerited and is, accordingly, dismissed. The pending application is disposed of.

FEBRUARY 22, 2019
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VIBHU BAKHRU, J