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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th January, 2023
+ **W.P.(C) 14136/2021 & CM APPLs.44610/2021, 46811/2022, 2893/2023**

SUN RENEWABLES RT PRIVATE LIMITED Petitioner
Through: Mr. Deepak Khurana, Mr. Abhishek Bansal & Mr. Ashwini Kumar Tak, Advocates (M-9811231287)

versus

MINISTRY OF NEW AND RENEWABLE ENERGY, UNION OF INDIA & ANR. Respondents
Through: Mr. Sanjeev Uniyal & Mr. Dhawal Uniyal, Advocates for UOI (M-9560806614)
Mr. Shailesh Madiyal, Mr. Sudhanshu Prakash and Mr. Rajan Parmar, Advocates for R-2 (M: 9910532449).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 seeking direction to the Respondents to comply with the scheme '*Achievement Linked Incentives and Award Scheme*' under '*Grid Connected Rooftop and Small Solar Power Plants Program*'. The Petitioner seeks release of its balance amount to the tune of Rs.96.96 lacs pending under the said Scheme.
3. The Petitioner- Sun Renewable RT Pvt Ltd. is engaged in various businesses related to renewable energy. One of its business activities is to build, acquire and operate solar assets as also selling electricity to various

governmental industries and customers.

4. The Government of India launched a scheme for rooftop and small powerplants which involved giving incentives by the government for operationalising solar power generation units. The said scheme, titled “Achievement-Linked Incentives and Awards Scheme” (*hereinafter ‘Scheme’*) under the “Grid Connected Rooftop and Small Solar Power Plants Program” (*hereinafter ‘program’*). The same was launched by the government with an intention to promote grid connected rooftop and power generating plants in order to reduce dependence on fossil fuel-based electricity generation. The purpose of the said scheme was to create an environment for investment by private players in the solar energy sector.

5. The Scheme was originally launched on 4th May, 2016, as per which proposals were to be submitted by companies which were willing to generate solar power. The Scheme was amended on 30th March, 2017 which contemplated incentives based upon achievement of targets. Further to the amendment of the Scheme issued by the Ministry on 30th March, 2017, a Request for Selection (*hereinafter ‘RfS’*) of bidders was issued by Respondent No.2- NTPC Vidyut Vyapar Nigam Ltd. (*hereinafter ‘NVVNL’*) on 31st March, 2017 for the implementation of a 13.5 KWP Grid Connected Rooftop Solar PV Systems for the Ministry of Health and Family Welfare (Under RESCO model) (*hereinafter ‘project’*).

6. The Petitioner had submitted its offer and was awarded a Letter of Allocation (*hereinafter ‘LoA’*) dated 11th August, 2017 issued by Respondent No.2 to implement Grid Connected Rooftop Solar PV systems at the following institutions with the specified capacity:

STATE	Part A / B / C	Name of the Institute	Capacity (kWp)	Levelized Tariff (Rs/kwH)
Karnataka	C	National Institute of Mental Health and Neuro Sciences (NIMHANS), Bengaluru	1144	3.33
		All India Institute of Speech & Hearing (AIISH), Mysuru	472	3.33
Uttarakhand	C	AIIMS Rishikesh	1360	1.95
Total			2976	

**** This is an indicative capacity. Actual capacity may vary as per sanction letter.**

7. As per the said LoA, the total capacity that was to be created was 2976 KWP. On 10th November, 2017, the Petitioner informed NVVNL that the setting up of Rooftop Solar PV system in AIIMS Rishikesh (AIIMS) was not feasible as it was informed that there was an expansion plan underway for the said AIIMS. The said request was made within 6 months period of the grant of the LoA. Initially, there was no response from Respondent No.2. Later, NVVNL accepted the said deletion of the AIIMS project and the installation was restricted to NIMHANS, Bengaluru and the All-India Institute of Speech & Hearing (AIISH), Mysuru vide its sanction letter dated 12th February, 2018. As per the sanction letter, the installation and commissioning was limited to the following institutions and capacity:

Sl. No.	State	Name of the Institute	Part A / B / C	Capacity (kWp)	Levelized Tariff (Rs/kwH)
1.	Karnataka	NIMHANS, Bengaluru	C	1144	3.33
2.	Karnataka	AIISH, Mysuru	C	472	3.33
The Cumulative Capacity (in kWp)				1616	

8. In the meanwhile, NVVNL vide its letter dated 21st December, 2018 also returned the Performance Bank Guarantee relating to capacity allocated for AIIMS, Rishikesh. In respect of both the abovementioned projects at NIMHANS, Bengaluru and AIISH, Mysuru, the installation of the systems and operationalisation was completed on 31st July and 13th July, 2018 respectively, well within timeline under Clause 3.2 and 3.3 of the RfS. Having executed and commissioned 100% of the allocated capacity within the stipulated time, the Petitioner then made various representations to the Respondent No.1- Ministry of New and Renewable Resources (*hereinafter 'Ministry'*) seeking release of its incentives being 25% of the benchmark cost.

9. In response thereto a sum of Rs. 1,45,44,000/- was released by the Ministry on 30th September, 2019. According, to the Petitioner, the Ministry had released subsidy / incentive at a lower rate of 15% of the benchmark cost of Rs. 60,000/- per KWP instead of 25% of the benchmark cost of Rs.60,000/- per KWP, It was so because the Ministry considered the achievement of the Petitioner as being 54.30% against the original target of 2976 KWP that was allocated. By comparing the achieved target against the original capacity allocated, the Ministry held the Petitioner to be entitled to an incentive of 15% to an overall amount of Rs. 1,45,44,000/-. The relevant

portion of the order reads as under:

- “• Name of one of the bidder selected by NVVN through tender M/s SUN-AMP Energy Private Ltd.
- Target allocated by NVVN to the above mentioned bidder within six months from the date of sanction: 2.976 MW as on 11.08.2017
- Capacity reported as executed: 1.616 MW
- Target Achieved by the bidder: 54.30% against target allocated
- Eligible incentive: Rs. 1,45,44,000/- (Rupees One Crore Forty Five Lakh Forty Four Thousand only) (i.e. @9750 per kW or 15% of the project cost calculated@ benchmark cost whichever is lower for aggregate 1.616 MW capacity)”

10. Thereafter, the Petitioner made a claim for the release of the remaining amount, however, the said representation of the Petitioner was not agreed to by the Ministry.

11. The stand of the Ministry was that as against the allocated capacity 2976 KWP, execution of only 1616 KWP had taken place. Thus, the Ministry refused to accede to the Petitioner's request. The Petitioner made further representations which was not acceded to despite NVVNL confirmed in its letter dated 8th December, 2020 that the total capacity commissioned before the stipulated date was 1616 KWP which was in terms of the sanctioned letter. Hence the present petition.

12. The relief sought in the petition is as under:

- “A. Issue a Writ of mandamus or such other appropriate Writ directing Respondent No. 1 to comply with its own 'Achievement-Linked Incentives and Awards Scheme' [under its 'Grid Connected Rooftop and Small Solar Power Plants Program'] dated 30.03.2017 (**Annexure P-1**), and as provided for in 'Request for Selection' dated 31.03.2017

(Annexure P-2), and thereby release the legitimate & balanced pending incentives of Rs. 96.96 lacs to the Petitioner;”

13. Mr. Khurana, Id. counsel for the Petitioner submits that NVVNL has confirmed in repeated communications that the sanction letter, though, initially for 2976 KWP capacity, was later altered to 1616 KWP. Despite this confirmation by NVVNL, the Ministry has still considered the capacity to be 2976 KWP which is contrary to record itself. He submits that under Clauses 3.2, 3.3 of the RfS, the Petitioner had a time period of 6 months for submitting the project sanction documents and completion was to be within 12 months from the date of issuance of LoA. Both the conditions have been fulfilled by the Petitioner. The deletion of AIIMS, Rishikesh was for reasons which were unrelated to the Petitioner and deletion of the said project from the sanction letter was duly approved by NVVNL. Under such circumstances, the incentive had to be based on the final sanction letter and not the initial sanction letter..

14. On behalf of the Respondents, Counter Affidavit has been filed by the Respondent No.1 / Union of India. As per the Ministry, the change in capacity allocation was to be considered within 3 months of issuance of LoA which according to the said Respondent was not done. The relevant paragraphs of the Counter Affidavit are set out below-

“xi. That while issuing the sanction letter dated 12.02.2018, NVVN has not cancelled the capacity allocated vide LoA dated 11.08.2017. As per clause 4 (b) of the LoA dated 11.08.2017, the change in capacity allocation is to be considered by NVVN within 3 months of issuance of LoA based on the request of bidder. No such request

within stipulated time has been made by M/s SUN-AMP Energy Private Ltd.

xii. That the consideration of sanction letter dated 12.02.2018 as revised LoA will lead to automatic cancellation of the capacity due to the fact that as per scheme guidelines the work order has to be placed by NVVN within six months from date of sanction from the Ministry, failing of which the sanction order will be automatically cancelled. So, if the request to accept the target of 1616 kW with revised LoA dated 12.02.2018 is considered than as per scheme norms this capacity is automatically gets cancelled and the project becomes ineligible for any incentive.”

15. Heard ld. Counsels for the parties and perused the record. In the opinion of the Court, the counter affidavit extracted above fails to take into consideration the sanction letter which was issued by NVVNL on 12th February 2018. The Letter of Allocation was issued on 11th August, 2017 as per which the sanctioned capacity was 2976 KWP and within 3 months, i.e., on 10th November, 2017, a letter was written by the Petitioner seeking deletion of AIIMS, Rishikesh with proper reasoning, which was thereafter approved by NVVNL. The stand of the Government, that the request was not made within 3 months by NVVNL, considering that the initial LoA was issued on 11th August, 2017 and the letter of the Petitioner to NVVNL was of 10th Nov 2017, is incorrect. The stand of the Ministry that the work order had to be placed by the NVVNL within six months from the date of sanction from the Ministry thereby making the project, i.e., the Petitioner ineligible for incentive is also unreasonable. Even the sanction letter dated 12th February, 2018 explicitly states that the incentive amount shall be disbursed upon timely completion of the project. The relevant portion of ‘Table A’

attached to the sanction letter reads as under:

“Applicable incentive structure

<i>Achievement within sanctioned period vis-à-vis Target Allocation (Capacity Commissioned within 12 months from the date of LOA out of sanctioned capacity)</i>	<i>Incentive Rate for General Category States (applicable for the capacity Commissioned within 12 months from the date of LOA)</i>	<i>Incentives Rate for Special Category States/UTs (applicable for the capacity Commissioned within 12 months from the date of LOA)</i>
80% and above	25% of Benchmark Cost	60% of Benchmark Cost
Below 80% and upto 50%	15% of Benchmark Cost	36% of Benchmark Cost
Below 50% and upto 40%	10% of Benchmark Cost	24% of Benchmark Cost
Below 40%	Nil	Nil

16. The ultimate test is that the project had to be completed within time prescribed in the RfS i.e., 12 months from the date of LOA which the Petitioner has fulfilled. The relevant portion of the RfS is set out below:

“3.2 The Successful Bidders selected as described in Clause 1.5 above shall be issued Letter of Allocation (LOA) indicating the allocated capacity & Levellised Tariff etc.

3.3 The bidders who have been notified as Successful Bidders, shall be given 12 months from the date of issuance of Letter of Allocation for execution of the capacity. The time for submission of project sanction documents by the bidder to NVVN as per the list at Annexure A of Section

VI Forms and Formats will be maximum 06 months from the date of issuance of allocation letter/LoA, which can be extended upon the merit of case.

The capacities against the State name are indicative only. The capacity allocation change if any, may be considered by NVVN at its own discretion within six months of LoA, based on bidder request/requirement of NVVN, as per terms and conditions of RfS and approval of NVVN at its sole discretion. Failure of non-compliance of conditions stipulated above shall lead to forfeiture or PBG for that State in proportion to the capacity allocated in the NVVN identified location.”

17. The change in the sanctioned capacity and its approval by NVVNL is not disputed. The factum of completion of the project is not disputed. As per the Scheme, if the implementation is 80% and above within the sanctioned period the incentive ought to be given in the highest slab.

18. The entire purpose of the Scheme is to increase the installation and use of solar panels for the purpose of encouraging renewable energy projects. In the opinion of the Court, the Scheme is a beneficial scheme the purpose of which is to promote private participation and incentivise energy efficiency. Thus, in such cases literal / technical construction ought to be avoided. Rather, the authorities ought not to follow a pedantic approach but a pragmatic approach that fulfils the purpose for which the Scheme was made.

19. When the Scheme was introduced in 2016, the rationale behind it was explained in the following words:

“[A] Achievement-Linked Incentives

India has a huge potential for solar energy which needs to be fully harnessed for reducing, pollution from diesel, coal and other fossil fuels as also for saving precious financial resources, Further development of 40 GW Rooftop Solar (RTS) power is

part of India's commitment before United Nations Framework Convention on Climate Change (UNFCCC). RTS projects have distinct advantage over ground mounted projects as they don't required pooling of land or dedicated transmission lines. Hence Government of India has been stressing on undertaking RTS projects on rooftops and surplus areas of all Government PSU building premises."

20. Climate change is a cause for concern. Harnessing solar energy is the need of the hour and India has already taken giant strides towards the same. The development of 40GW Rooftop Solar power, which is a part of India's broad commitments before the United Nations Framework Convention on Climate Change (UNFCCC), as envisaged by the Scheme itself, is one such step. If India is to fulfil the said objective, public-private partnership has to play a prominent role in the same.

21. Justice A.K. Sikri., speaking for a two judge Bench in ***Badshah v. Urmila Badshah Godse (2014) 1 SCC 188*** has observed that law must be in a way that it fulfils its purpose. The relevant observations of the Court are as under:

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of

the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

22. The Petitioner, at the initial stage, informed the reason for which AIIMS, Rishikesh had to be deleted due to the stand of the said institution. The Petitioner was not to be blamed for the same. The deletion was duly accepted and, thus, the reason for rejection of the incentives in terms of the Scheme is not valid. The order dated 30th September, 2019 of the Ministry had calculated the incentive at a lower rate than what the Petitioner is entitled to. If the total allocation is taken as 1616 KWP, which justifiably ought to be taken as the sanctioned capacity, then there is no justifiable cause for refusing the incentive to the Petitioner. The letter dated 8th December, 2020 of NVVNL is also clear to this effect where it has confirmed as under:

“This has reference to the above cited letters requesting to consider the capacity mentioned in Sanction Letter Issued by NVVN for disbursement of incentives on the basis of timely commissioning of projects by the bidder. The aforesaid matter was also discussed by CEO(NVVN) with Joint Secretary (MNRE) on 23.08.2018. The following facts are again submitted for kind consideration of MNRE for releasing achievement linked incentive to NVVN:

a) NVVN was allocated Ministry of Health and Family Welfare (MoHFW) for implementation of Grid Connected Roof Top and small Solar PV Projects under the Expert PSU Scheme of MNRE.

b) Based on the feasibility assessment done by NVVN

for Roof Top Solar PV Projects at different institutes, MNRE issued sanction order to NVVN on 11.07.2017 for cumulative capacity of 10.027 MW (attached as Annexure-1).

c) As per the above order, Roof Top Solar PV Projects were to be commissioned within 15 Months from the date of issue of MNRE Sanction letter i.e. by 10.10.2018.

d) NVVN prepared the RFS documents based on various reference documents available on website of MNRE, RFS issued by SECI and various discussions held with MNRE officials in this regard.

e) The RFS document envisaged that LOA capacity would be indicative and final capacity would be based on PPA signed by Agencies keeping the Implementation schedule unchanged i.e. project SCOD by 10.10.2018. As per the provisions of RFS document, NVVN issued LOA to the bidders on 11.08.2017 for the Indicative capacity based on the feasibility assessment carried out by itself. The scheduled commissioning date for the RTS PV projects were kept before stipulated target of MNRE (10.10.2018).

f) Subsequently as per the RFS provisions, Sanction letters were issued by NVVN to the bidders for firm capacity based on the PPAs signed with different institutes. The bidder-wise capacity allocated as per LOA vis-a-vis the firm capacity as per sanction letter issued by NVVN is attached as Annexure-11.

g} Total 3.54 MW capacity was commissioned before the stipulated time schedule of 10.10.2018 and are eligible for incentive as per MNRE norms as given below:

S.No.	Successful bidder name	LOA date	Indicative Capacity (KW) as per LOA	Sanction letter date	Firm capacity (KW) as per Sanction letter	Capacity (KW) Commissioned before MNRE stipulated date

1.	M/S Sun-Amp Energy Pvt. Ltd.	11.08.2017	2976KW (In 03 no. Institutes)	12.02.2018	1616KW (In 02 no. Institutes)	1616 KW
2.	M/S Horizon Luminous Pvt. Ltd.	11.08.2017	2248KW (In 05 no. Institutes)	12.02.2018	1985KW (In 4 no. Institutes)	1918 KW

h) The firm capacity in the Sanction letter for M/S Sun-Amp Energy Pvt. Ltd. was revised in view of one of the institutes (i.e. AIIMS, Rishikesh) denied installation of 1360 KW due to its future building expansion plans. AIIMS, Rishikesh further allocated some buildings which were not shadow free. The relevant communications are attached as Annexure - III.

i) In view of the full capacity of 16161 KW as per Sanction letter installed before stipulated target date, M/S Sun-Amp is eligible to get incentive @25% of benchmark cost i.e. @Rs.15000/KWp (Rs.242.40 lakh).

j) However, MNRE vide its order no.318/23/2019 dated 30.09.2019 has allowed incentive @15% of Benchmark Cost (Rs.145.44 lakh), considering Indicative capacity In LOA vis-a-vis the commissioned capacity of 1616 KW.

k) As stated above, as per the RFS document provisions, which have been prepared as per MNRE reference documents and SECI's RfS, the bidders eligibility for incentive is to be considered as per the firm capacity in the Sanction letter.

l) It is also pertinent to mention that NWN has implemented the scheme duly complying all the guidelines and provisions issued by MNRE.

In view of the above, it is again requested to consider the incentive eligibility for the Agencies in accordance with targeted firm capacity as per Sanction letter issued by NVVN and allow balance incentive of

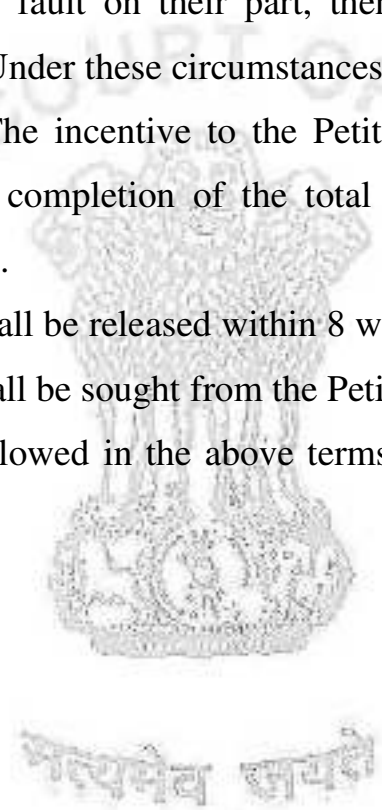
Rs.96.96 Lakhs.”

23. In the considered opinion of the Court, as per the sanction letter dated 12th February, 2018, the Petitioner is entitled to the full incentive as claimed by it.

24. The Court is also of the considered opinion that if private players, such as the Petitioner before the Court, are denied benefits that they are entitled to without any fault on their part, then the very purpose of the Scheme gets defeated. Under these circumstances the Petitioner is entitled to the relief prayed for. The incentive to the Petitioner shall accordingly be released by taking the completion of the total capacity allocation to the Petitioner as 1616 KWP.

25. The incentives shall be released within 8 weeks. If any documentation is required, the same shall be sought from the Petitioner within two weeks.

26. The petition is allowed in the above terms. All pending applications are disposed of.



**PRATHIBA M. SINGH
JUDGE**

JANUARY 27, 2023
dj/sk