O.A.No.7 of 2024

C.SARAVANAN, J.

An exparte ad interim order was passed on 05.01.2024. Thereafter, the case was listed for hearing on 19.02.2024 and finally today.

2.After hearing the learned Senior Counsel for the applicant and the learned counsel for the respondents, it emerges that the respondents have breached the terms and conditions of the User Agreement dated 14.12.2022 since the applicant failed to pay the amounts in time as per clause 7 of the User Agreement dated 14.12.2022.

3.If there was a delay in payments by the applicant, as per clause 7 of the User Agreement dated 14.12.2022, the respondents were entitled to only surcharge at the rate of SBI PLR + 2% per annum calculated on the outstanding payment due calculated on per day basis for each date of the delay compounded monthly. Relevant clause reads as under:-

*"**7.2: Payment Terms**:-*

7.2a ***FPEPL*** *shall pay to* ***PWESPL*** *for PE charges*

» *Advance of 25% (inclusive of GST) of the Total Service Charge for 25 MWac, towards advance as computed in accordance with sub-clause 7.1a above, within 10 days from the date of execution of this Agreement.*

» *Balance 75% of the Total Service Charges to paid by way of Demand Draft against issuance of NOC/Consent to TANGEDCO (in the applicable format) for load transfer in favour of FPEPL/or its nominee's. However, if PWESL has carried out its obligation and obtained evacuation approvals in its name FPEPL will be obligated to make this payment within 1 week of the approval date or June 30th whichever is later.*

» *Late payment surcharges:*

- ***In case payment of any amount is delayed by the FPEPL beyond its Due Date, a late payment surcharge shall be payable by FPEPL to PWEPSL at the rate of SBI PLR + 2% per Annum ("Late Payment Surcharge") calculated on the outstanding payment due, calculated on per day basis for each day of the delay compounded monthly.****"*

4.After TANGEDCO had granted approval on 30.06.2023, the applicant should have paid the balance amount of Rs.1,95,75,000/-. However, the delay in payment by the applicant has been condoned by the respondents in their communications.

5.Their last payment was made on 27.11.2023 by the applicant. After receiving the aforesaid amount, the 1st respondent by its communication dated 28.11.2023 has informed the applicant it they will return a sum of Rs.1,79,25,000/- back to the applicant.

6.It appears that the respondents have meanwhile entered into third party contract and have committed to allocate 25 MW that was to be allotted to the applicant under the User Agreement dated 14.12.2022 to a third party. The respondents should have first terminated the contract under User Agreement dated 14.12.2022 and thereafter proceeded to allocate 25 MW capacity to third party.

7.The applicant has not only invested in land for developing solar energy park, but also paid the principle amount that was agreed.

8.Considering the same, I am is of the *prima facie* view that the respondents cannot allot 25 MW earmarked for the applicant under the User Agreement dated 14.12.2022 to a third party. The only remedy that was available to the respondents was either to terminate the contract and forfeit the amount paid by the applicant or in the alternative call the applicant for a conciliation in terms of clause 19.1 of the User Agreement dated 14.12.2022.

9.Therefore, I am of the view that the interim order passed by this Court on 05.01.2024 is to be continued for a period of 60 days from today.

10.The respondents shall not allot the aforesaid 25 MW to any third party with whom the respondents may have entered into contract subsequently in violation of the User Agreement dated 14.12.2022.

11.It is open for the parties to sit across and attempt to resolve the dispute with a open mind in accordance with clause 19.1 of the User Agreement dated 14.12.2022, failing which approach before the Arbitral Tribunal as per clause 19.2 of the User Agreement dated 14.12.2022.

12.It is expected that the conciliation proceedings will commence latest by 26.02.2024 and end by 16.03.2024. Thereafter, it is open for the parties to workout the remedy before the Arbitral Tribunal under the User Agreement dated 14.12.2022. Liberty is given to the applicant to move suitable application under Section 17 of the Arbitration and Conciliation Act, 1996 for continuation of the order beyond the period of sixty days.

13.The Original Application is disposed of with the above observations.

20.02.2024

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C.SARAVANAN, J.

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