

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 28 of 2017

**In the matter of:**

Application seeking approval of the Commission on the Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and M/s RV Akash Ganga Solar Power Ltd.

**In the matter of:**

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

**In the matter of:**

M/s RV Akash Ganga Solar Power Ltd. ... Respondent

CORAM

**Shri Subhash Kumar      Chairman**

**Date of Order: July 18, 2017**

This Order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner" or "Licensee") seeking approval for transfer of PPA dated 21.08.2010 entered into with M/s RV Akash Ganga Infrastructure Ltd. to M/s RV Akash Ganga Solar Power Ltd. due to demerger of Solar Power Project to a newly formed Company, i.e. M/s RV Akash Ganga Solar Power Ltd. by the Hon'ble National Company Law Tribunal vide its Order dated 10.04.2017.

## **1. Petitioner's Submissions**

- 1.1. UPCL had filed the Petition seeking approval of the Commission for transfer of PPA dated 21.08.2010 entered into with M/s RV Akash Ganga Infrastructure Ltd. to its 100% subsidiary company M/s RV Akash Ganga Solar Power Ltd.
- 1.2. The Petitioner submitted that M/s RV Akash Ganga Infrastructure Ltd. vide letter dated 21.04.2017 intimated to the Petitioner that the Hon'ble National Company Law Tribunal vide its Order dated 10.04.2017 demerged the Solar Power Project to a newly formed 100%

subsidiary company M/s RV Akash Ganga Solar Power Ltd. and further requested the Petitioner to transfer the PPA dated 21.08.2010 to M/s Akash Ganga Solar Power Ltd. for balance period of the PPA.

## 2. Commission's Views & Decisions

### 2.1. Legal Requirement for approval of PPA

2.1.1. A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.

2.1.2. Section 86(1)(b) of the Electricity Act, 2003 stipulates that one of the function of the Commission is to regulate electricity purchase and procurement process of the distribution licensee including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

2.1.3. Further, the Distribution and Retail Supply Licence issued by the Commission lays down certain conditions of license, which amongst others also has the following:

*"5.1 The Licensee shall be entitled to:*

*(a) ...*

*(b) Purchase, import or otherwise acquire electricity from any generating company or any other person under Power Purchase Agreements or procurement process approved by the Commission; ..."*

*(Emphasis added)*

2.1.4. Further, Regulations 7(2) & 7(3) of the UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2013 (RE Regulations, 2013) specifies that:

*"(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations shall enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. The distribution licensee shall sign the PPA within two months of offer made by the generating company, failing which the generating company may approach the Commission for suitable remedy.*

*(3) The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating station in such form and manner as*

*specified in these regulations and Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 as amended from time to time."*

*(Emphasis added)*

2.1.5. Further, in the instant Petition, the Petitioner has sought transfer of the PPA in favour of M/s RV Akash Ganga Solar Power Ltd. for the balance period of the PPA which is equivalent to entering into a new PPA. Accordingly, in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee was required to seek approval of the PPA entered or proposed to be entered by it from the Commission.

## **2.2. Commission's Analysis of the PPA and Order on the same**

2.2.1. The Commission vide its Order dated 07.11.2014 approved the PPA dated 21.08.2010 subject to certain modification. In the instant Petition, the Petitioner submitted that the RV Akash Ganga project has demerged from M/s RV Akash Ganga Infrastructure Ltd. and newly 100% subsidiary company M/s RV Akash Ganga Solar Power Ltd. has been formed after the approval of the Hon'ble National Company Law Tribunal vide its Order dated 10.04.2017.

2.2.2. Further, clause 25, i.e. "Assignment" provides as follows:

*"The Agreement may not be assigned by either UPCL or the Solar Photovoltaic Power Plant without the consent in writing of the other party, except that either party may assign its rights under this Agreement, or transfer such rights by operation of law, to any corporation with which or into which such party shall merge or consolidate or to which such party shall transfer all or substantially all of its assets; provided that such assignee or transferee shall expressly assume, in writing, delivered to the other party to this Agreement, all the obligations of the assigning or transferring party under this Agreement."*

*(Emphasis added)*

The Commission observes that clause 25 of the PPA dated 21.08.2010 read with the Order of Hon'ble NCLT, allows the transfer of the PPA signed with M/s RV Akash Ganga Infrastructure to its 100% subsidiary company, i.e. M/s RV Akash Ganga Solar Power Ltd.

2.2.3. The draft PPA, to be transferred to M/s RV Akash Ganga Solar Power Ltd., submitted

by UPCL has been examined in light of the relevant rules & regulations. The Commission observes that certain clauses in the draft PPA submitted by UPCL are inconsistent with the provisions of the Act/Regulations. Such observations have been discussed in the subsequent sub-Paras. UPCL is required to take note of the same and incorporate necessary corrections in the draft PPA while executing the PPA with the project developers.

- a) The Respondent vide its letter dated 15.06.2017 submitted comments on the draft PPA submitted for approval by UPCL. The Respondent has submitted that on Page-1, second line be amended as M/s RV Akash Ganga Solar Power Limited registered under the Company's Act, 1956 instead of 2013. The Petitioner is required to make necessary modification accordingly.
- b) Para 1 of the draft PPA provides the day on which PPA is brought into effect. The place for date has been left blank. The above mentioned Para needs to be corrected and completed while the final PPA is being signed.
- c) The Petitioner has referred Annexure- IX and Annexure- X in Para 8 on Page no. 2 of the PPA, however, there is no such annexure attached to the PPA. The Commission observes that the Petitioner has inadvertently mentioned Annexure- IX and Annexure-X. The Petitioner is required to delete it.
- d) The Respondent vide its letter dated 15.06.2017 submitted that in Para 8 at Page no. 2, after the word M/s RV Akash Ganga Solar Power Limited and, "therefore" word should be added. The Petitioner is required to make necessary modifications accordingly.

2.2.4. UPCL is directed to take note of the above observations/corrections/modifications pointed out in the PPA and carry out the same in the PPA and submit the amended/supplementary PPA to the Commission within 15 days of the date of the Order.

3. Ordered Accordingly.

**(Subhash Kumar)**  
**Chairman**