

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 16 of 2019

**In the matter of:**

Application for adjudication of dispute between Beta Infratech Private Limited and UPCL in respect of termination of Power Purchase Agreement dated 01.03.2017 signed between Parties for Procurement of 107 MW of power on long term basis from 225 MW (ISO) Gas Based Combined Cycle Power Project in Village Mahuakhera Ganj, Kashipur, Distt. U.S. Nagar, Uttarakhand.

**In the matter of:**

M/s Beta Infratech Private Limited

... Petitioner

AND

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Respondent

CORAM

**Shri D.P. Gairola**      **Member (Law)**

**Shri M.K.Jain**        **Member (Technical)**

**Date of Order: November 15, 2019**

The Order relates to the objection raised by M/s Beta Infratech Private Limited during the proceedings before the Commission in the matter of adjudication of dispute between Beta Infratech Private Limited and UPCL, in respect of termination of Power Purchase Agreement dated 01.03.2017, requesting recusal of Member (Technical), UERC from adjudication of present dispute.

## **1. Background and Petitioner's submissions**

- 1.1 The Commission held a hearing in the matter on 22.10.2019, wherein M/s Beta Infratech Private Ltd. (hereinafter referred to as "M/s BIPL") submitted before the Commission that the current Member (Technical) of the Commission was part of the Committee formed by UPCL, when he was serving as Director (Projects) therein, which approved the termination

of PPA between UPCL and M/s Beta Infratech Private Limited (hereinafter referred to as "M/s BIPL"), and, therefore, he should not be part of the bench hearing the current proceedings in the matter.

- 1.2 The Commission directed M/s BIPL to submit its written submission in the matter alongwith legal position, in response to which M/s BIPL vide their letter dated 22.10.2019 submitted before the Commission that the request for recusal of Member (Technical), UERC has been made in the light of the fact that he was earlier the Director (Projects) of UPCL, which is the Respondent in the present matter, and in that capacity he had been involved in the internal process of UPCL to take the decision to issue the communication dated 04.02.2019 titled 'Termination Notice' which is being impugned and is the critical subject matter of the present Petition.
- 1.3 The Petitioner further submitted that Member (Technical), UERC, while discharging his function in the capacity of Director (Projects), UPCL, had been member of the internal committee that had been created by UPCL to undertake consultation with the Petitioner, and had also conducted a meeting held on 07.08.2018 in which the Committee made certain observations that then went on to form one of the grounds for the issuance of the Impugned Termination Notice.
- 1.4 The Commission also directed UPCL to submit its responses on the comments made by M/s BIPL in the matter, in response to which UPCL vide its letter dated 08.11.2019 submitted its comments. The Respondent's comments and the Commission's views on the same have been discussed at subsequent paras of this Order.

## **2. Respondent's submission**

- 2.1 The Respondent, i.e. UPCL submitted that the PPA was executed on 01.03.2017 with M/s BIPL but they could not commence generation from its Gas plant despite elapse of timelines as provided in PPA dated 01.03.2017 which had various commercial implications, and despite non-commencement of supply of power, M/s BIPL time and again applied for extension of CoD.
- 2.2 UPCL submitted that despite timelines provided in the PPA, M/s BIPL defaulted in complying with the same, and as per the terms & conditions of the PPA dated 01.03.2017, and based on the opinion of legal department it was established that the event of default had occurred on the part of M/s BIPL on account of non-commencement of supply even

after expiry of 12 months from the scheduled delivery date. UPCL submitted that they followed the procedure laid down in the PPA regarding event of default, and accordingly, a preliminary default notice was served to M/s Beta Infratech Pvt. Ltd. Further, as per Clause 16.3 of the PPA dated 01.03.2017 "Procedure and Termination for cases of Seller's Event of Default" UPCL initiated the process.

- 2.3 UPCL further submitted that pursuant to the same, a committee consisting of 3 members (including Chairman) was constituted by UPCL for bilateral discussions with M/s BIPL regarding non-commissioning of its 107 MW Gas Plant by 16<sup>th</sup> March 2018 and thereby committing a "Sellers event of default" in view of provisions of PPA dated 01.03.2017. UPCL submitted that, the committee after discussions submitted its view that extension of the COD to M/s BIPL should not be permitted and PPA dated 01.03.2017 signed between UPCL and M/s BIPL may be terminated keeping in view the interest of UPCL & consumers of the state. UPCL submitted that the Committee was constituted merely to opine whether UPCL should continue with the PPA or not, however, grounds of termination were decided in consultation with legal division of UPCL.
- 2.4 UPCL submitted that, the then Director (Project) performed their duty as entrusted upon them by UPCL, and said recommendations were made by all the members of the Committee and not individually by the then Director (Project)/Chairman of the Committee, which was subsequently placed before Managing Director, UPCL for further necessary action in the matter. UPCL submitted that the Power Purchase Agreement dated 01.03.2017 was cancelled by UPCL, but as such no action was taken in the matter by Director (Project)/Chairman of the Committee in their individual capacity.
- 2.5 UPCL submitted that since the then Director (Project), UPCL was never a part of implementation of termination of Power Purchase Agreement dated 01.03.2017 signed with M/s BIPL in individual capacity, it is beyond comprehension as to how hearing of present matter before the Commission would be affected if the then Director (Project), UPCL hears the matter in the capacity of Member (Technical), UERC.
- 2.6 UPCL submitted that the only issue in the current matter is whether the termination of PPA dated 01.03.2017 is as per contract or not, and it doesn't matter who is going to hear the alleged dispute as a Member, and, accordingly, no interest of Member (Technical) appears to be involved in the matter.

2.7 UPCL submitted that it is not necessary that Member (Technical), UERC necessarily recuses himself from the hearing of this matter, because in the capacity of the then Director (Project) he was discharging duties as assigned by UPCL, and as Member (Technical), UERC he is discharging different duties as entrusted upon him now, and both the scenarios being different, cannot be juxtaposed. UPCL submitted that request made by M/s BIPL of recusal of Member (Technical), UERC, from the matter cannot be entertained per se as his presence in the hearing in this matter will be more relevant in the light of his long techno-commercial experience of the sector.

### **3. Commission's views and decision**

3.1 The Commission analysed the submissions made by the Petitioner and the Respondent regarding the Petitioner's contention for recusal of Member (Technical), UERC, from hearing in the current matter.

3.2 In this regard, the Commission is of the view that though Member (Technical) (previously Director (Projects), UPCL) has joined the Commission it would not affect the unbiased working of the Commission which is conducted under the Act and prevalent Regulations, however, since the Petitioner has raised an objection on his hearing the proceedings, hence, in order to give a fair opportunity to both the parties and avoid any conflict of interest that may arise in the matter, the Commission has decided that Member (Technical) may recuse himself from the proceedings related to the present matter. As a result of the same, the future proceedings in this matter shall be heard by a single member Commission, comprising of Member (Law), UERC.

3.3 The Commission also decides to hold a hearing in the merits of the Petition on 13.12.2019.

4. Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law)**