

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION SHIMLA**

In the matter of :-

M/s Ginni Global Private Limited,
2nd Floor, Shanti Chamber,
11/6B, Pusa Road, New Delhi-110005
.....Applicant

Versus

The HP State Electricity Board Ltd. thro' its,
Chief Engineer (SO),
Kumar House, Shimla-171004
....Respondent

Petition Filing No. 12 of 2016

(Decided on 5th July, 2016)

CORAM

**S.K.B.S. Negi
CHAIRMAN**

Counsels: -

for petitioner:

Ms Shalini Thakur
Advocate

for respondent:

Sh. Ramesh Chauhan,
Authorised Representative

ORDER

(Last heard on 2nd July, 2016 and Orders reserved)

M/s Ginni Global Private Ltd., having its registered office at 2nd Floor, Shanti Chamber, 11/6 B, Pusa Road, New Delhi-110005 (hereinafter referred as “the Appellant”) has moved the present application under section 151 of the Civil Procedure Code, for reviving the main petition in view of failure of Good Faith Negotiations undertaken in terms of Clause 13.1 of the PPA, and after exhausting the remedies available under Clause 13.1 of the PPA, subsequent to the Orders dated 30.08.2014 and 15.11.2014.

2. The brief facts leading to the filing of this petition are that-

- (a) the Applicant i.e. M/s Ginni Global Ltd. has signed MOU with GoHP on 09.12.2000 for setting up a small hydro project of 5 MW Capacity (two units) at Tarella in Chamba Distt. The First Unit was commissioned and synchronized on 15.11.2010 and after commissioning of the project, same was in operation;

- (b) due to heavy snow fall in the month of January, 2011 and continuous rainfall in the month of February, 2011 and March, 2011, massive land slide is stated to have occurred which had damaged the water conductor system etc., resulting in stoppage of the power generation w.e.f. 06.03.2011;
- (c) the Applicant informed the concerned authority regarding the incident;
- (d) the Applicant/Petitioner had gone for an alternate arrangement by making forebay near slip point and spent around Rs. 8.25 Crores (as intimated by the firm) and the project was again commissioned on 19.02.2013;
- (e) the Applicant filed a petition, numbered as 97 of 2013, before this Commission, requesting for revision in tariff on account of additional capital expenditure, which was disposed of vide Order dated 31.08.2013, which reads as under.-

“The PPA stands executed on 07.06.2004 and the Project is commissioning on 15.11.2007, the issue concerning additional capitalization needs to be dealt in the manner laid down in the PPA itself. The petitioner has not exhausted the remedy available to him under the PPA;

The increase in tariff on account of change in policy can be claimed by way of separate petition, which remedy also stands availed by the petitioner.

In view of the above, the petitioner is allowed to withdraw this petition, with liberty to file fresh petition, if so required.”

3. As a sequel to Order dated 31.08.2013 the Applicant moved petition No. 132 of 2013 for resolution of the dispute under section 86 (1)(f) of the Electricity Act, 2003, and also for redetermination of tariff due to additional cost incurred by the petitioner on account of Force Majeure events. During the proceedings, the petitioner stated that the Respondent Board constituted a committee to settle the issue, in relation to the Force Majeure event, through Good Faith Negotiations, i.e. the mode provided in the PPA and to await the outcome sought adjournment of the petition. Subsequently the parties further sought time for the completion of the negotiation process. Ultimately the Commission felt that no purpose would be served by listing/adjourning the matter again and again simply to ascertain the status of intra-parties negotiations, and disposed the petition vide Order

dated 30.08.2014 with the liberty to the parties, in case any of them is not satisfied with the outcome of the negotiations, may approach the Commission again. Thereafter the petitioner moved petition No. 188 of 2014, seeking recall of the Order dated 30.08.2014 and the Commission vide its Order dated 15.10.2014 held that the Order dated 30.08.2014, is a reasonable and correct and it need not be interfered with, as the matter is still open to be considered on merits.

4. The Good Faith Negotiations were resorted to by both the parties. In this case the Respondent Board had constituted a technical Committee for verification of an event of Force Majeure and actual cost involved in the restoration work. The Committee submitted its report.

5. The report of the Committee was placed before WTDs of the Respondent Board and the same was rejected by the WTDs with the observation that the rain and the snow in the area, where damage had occurred, could reasonably have been expected and was not an unforeseen cause beyond the control of the IPP and, therefore, did not constitute an Act of God in the Force Majeure Conditions.

6. The said observation was communicated to the Applicant by the Respondent Board on 09.10.2015. However, the Good Faith Negotiations could not yield the agreement as per stand taken by both the parties in their commercial interest.

7. The Applicant i.e. M/s Ginni Global Private Ltd is not satisfied with the outcome of the intra-parties negotiations and has now filed the petition under Section 151 of the Code of Civil Procedure, before this Commission, for recalling Orders of the Commission dated 30.08.2014 and 15.11.2014 for the decision.

8. The Respondent Board objects-

- (a) that the petition no 132/2013 already stands disposed of by the Commission vide Order dated 15.11.2014. After the failure of the Good Faith Negotiations, the petitioner has the option to invoke Arbitration Clause of the PPA instead the re-opening the decided petition under the garb of Section 151 of CPC, which is not permissible.;
- (b) that the liberty has to be exercised by the petitioner by moving a substantive petition, in which the result of the Good Faith Negotiations was not the subject matter;
- (c) that even otherwise the petitioner cannot seek revision of the Tariff till the dispute of the basic ground of revision is settled.

9. This Commission vide its recent Order dated 6th January, 2016 in a similar petition i.e. Petition No. 133 of 2015- **M/s Sarabari Enterprises Pvt. Ltd. V/s HPSEB Ltd.** has declined to recall/relist the already disposed of petition, under the garb of Section 151 of the CPC. Moreover in the petition, sought to be relisted, the outcome of the Good Faith Negotiations was not the subject matter. After the failure of the Good Faith Negotiations, the parties have the option either to invoke Arbitration Clause of the PPA, or move a substituted petition against the fresh cause of action.

10. In light of the above discussions and averments made by the Respondent Board, and considering the fact that the petitioner has not exhausted the remedy available under the PPA, the Commission declines to entertain this petition.

It is so ordered.

--Sd/-
S.K.B.S. Negi
Chairman