

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION, SHIMLA-02.**

In the matter of.-

M/s Four Seasons Power Private Ltd.,
215-217, Somdutt Chamber-II, 9 Bhika ji Cama Place,
New Delhi-110066.

.....Petitioner

Versus

The Himachal Pradesh State Electricity Board Ltd.
through its Executive Director (Pers.), Vidyut Bhawan,
Shimla-171004

.....Respondent

Petition No.17 of 2014

(Decided on 09.07.2014)

CORAM

**SUBHASH C. NEGI,
CHAIRMAN**

Counsels:

for the Petitioner - Shri Ajay Vaidya, Advocate

for the Respondent - Shri Ramesh Chauhan, Authorised Representative

ORDER

(Last heard on 30.6.2014 and Orders reserved)

M/s Four Seasons Power Private Ltd., a Company incorporated under the Companies Act, 1956, having its Corporate Office at 215-217, Somdutt Chamber-II, 9 Bhika Ji Cama Place, New Delhi-110066, (hereinafter referred as “the petitioner Company”) through Shri Surinder Singh S/o Shri Bir Singh, its authorised signatory, has moved this petition for allowing the petitioner Company to change its name from Excel Cars Ltd. to Regent Energy Ltd., having its Head Office at B-1, H-1, Mohan Cooperative Industries Estate, Mathura Road, New Delhi-110044, in the Power Purchase Agreement dated 27.7.2005 executed between the petitioner and the Himachal Pradesh State Electricity Board , the predecessor in interest of the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the Respondent Board”) without complying with regulation 50-A of the Commission’s Conduct of Business Regulations, whereunder the parties to the PPA, are required to move joint petition.

2. The brief facts, which are relevant for the disposal of this petition, are that the petitioner Company, pursuant to an Implementation Agreement entered into on 20.7.2002 between the petitioner Company and the State Government, is operating and maintaining the Sharan Hydro Electric Project of 2.6 MW capacity on Chakki Nallah, a tributary of Beas River in Kullu Distt. (hereinafter referred as “the project”) and has executed, with the Respondent Board, the Power Purchase Agreement dated 27th July, 2005.

3. Subsequently, one Tripartite Agreement was executed on 28.4.2007, among the State of Himachal Pradesh, the petitioner Company and M/s Four Seasons Marketing (P) Ltd., having its registered office at 215-217, Somduitt Chambers-II, 9 Bhikaji Cama Place, New Delhi-110066, whereunder M/s Four Seasons Marketing (P) Ltd. transferred/ assigned all the assets, liabilities, rights, privileges and benefits of this project to the present petitioner i.e. M/s Four Seasons Power Private Ltd. Due to the change in the name of the petitioner Company, the Supplementary Implementation Agreement was entered into between the Govt. of Himachal Pradesh and the petitioner Company on 10.9.2010. This has necessitated the petitioner Company to move the present petition, seeking the approval of this Commission for the change of the name in the Power Purchase Agreement executed on 27.7.2005 with the respondent Board.

4. In response to the petition the Respondent Board submits that the petition in the present form is not maintainable and deserves to be dismissed. The petitioner Company by virtue of the present petition is seeking change of name of the Company from M/s. Four Season Marketing Pvt. Ltd. to Four Seasons Power Pvt. Ltd. In PPA dated 27.07.2005, but in the prayer clause the petitioner Company is seeking modification of the PPA dated 19.12.2006 entered with M/s. Excel Cars Ltd. to Regent Energy Ltd. Therefore, it appears that the petitioner Company itself is confused as to for what purpose he has filed the present petition and what directions it seeks to obtain from this Commission. It is also submitted that even if it is considered it to be a petition for change of name from M/s. Four Season Marketing Pvt. Ltd to M/s Four Seasons Power Private Ltd. in PPA dated 27.07.2005, as per the supplementary IA, entered with the Govt. of HP, the same cannot be taken as M/s Four Seasons Marketing Pvt. Ltd. is to pay a

sum of Rs. 4,68,000.00 as liquidated damages, to the Respondent Board, on account of the delay caused by it for commissioning the project by the Scheduled date in terms of the provisions of the PPA for which requisite notice has been served upon the Firm. The Respondent Board further adds that it would not have any objection for change of name from M/s. Four Season Marketing Pvt. Ltd. to M/s Four Seasons Power Pvt. Ltd. in PPA dated 27.7.2005, provided M/s. Four Seasons Marketing Pvt. Ltd. pays dues of the Respondent Board before the change of name and also that the conditions of the PPA dated 27.7.2005 remain unaltered even after the change of name and the company, sought to be substituted, undertakes to comply with the same without any reservation whatsoever.

5. During the course of the hearing of this petition, Shri Ajay Vaidya, the learned Advocate for the petitioner expressed his intention to recast the petition and prayed time for that purpose. The Commission provided that opportunity to the learned Advocate on 04.03.2014 and further on adjournment prayers made on 3.4.2014, 25.4.2014 and 6.6.2014. Ultimately he, instead of recasting the petition or filing the joint petition as contemplated under regulation 50-A of the HPERC (Conduct of Business) Regulations, has filed the rejoinder, whereunder it is admitted that due to some typing error the name of the Company has been inadvertently typed as “M/s Excel Cars Ltd. to Regent Energy Ltd.”, and it should have been taken as “to change the name from M/s Four Seasons Marketing (P) Ltd. to M/s Four Seasons Power Private Limited”. Further the petitioner Company denies that the petitioner Company, in any manner, has to pay the liquidated damages of Rs.4,68,000/-because the period for starting construction was extended upto 30.6.2011 and penalty of Rs.18,02,667/- imposed has already been paid. It is contended that when the petitioner Company has already been granted extension of time by the competent authority that too when the Company has already deposited the said amount for extension of time, the demand raised by the Respondent Board is not tenable at this stage.

6. With the background, as set out in preceding paras of this Order, the Commission is of the view that the petition, in the present form, is not maintainable for the reason that.-

- (a) the question of the payment of dues from the M/s Four Seasons Marketing Pvt. Ltd. should have been settled in accordance with the dispute resolution mode set out in the Power Purchase Agreement by resorting to intra parties negotiations;
- (b) the petition has not been processed in the manner as laid down in regulation 50-A of the Conduct of Business Regulations of this Commission.
- (c) the petition has not been properly amended especially when the sufficient opportunity has been given to the petitioner repeatedly.
- (d) it is entirely for the contracting parties to settle as to whether they should execute the contract or not. This Commission lacks jurisdiction to make any direction to the Discom i.e. the Respondent Board to execute the Power Purchase Agreement with any party, with particular stipulation.

In view of the foregoing discussion this petition is dismissed.

(Subhash C. Negi)
Chairman