

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

In the matter of :-

M/s Four Seasons Power Private Ltd.
215-217, Somdutt Chambers-II,
9, Bhikaji Cama Place, New Delhi-110066
....Petitioner

Versus

The HP State Electricity Board Ltd. thro' its,
Executive Director (Personnel)
Vidyut Bhawan, Shimla-171004
....Respondent

Petition Filing No. 8 of 2016

(Decided on **3rd May, 2016**)

CORAM

S.K.B.S. Negi
CHAIRMAN

Counsels: -

for petitioner:	Sh. Ajay Vaidya, Advocate
for respondent:	Er. Suneel Grover, CE (SO)

ORDER

(Last heard on 30.04.2016 and order reserved)

M/s Four Seasons Power Private Ltd., which is a company incorporated under the Companies Act, 1956, having its registered Office at 215-217, Somdutt Chambers-II, 9, Bhikaji Cama Place, New Delhi-110066, hereinafter referred as the petitioner Company through Sh. Surinder Kumar S/o Sh. Bhim Singh its authorised signatory, has moved this petition, seeking direction to the Himachal Pradesh State Electricity Board Ltd., Shimla (hereinafter referred as “the respondent Board”), to modify/annul the PPA as executed on 19.12.2006, by the petitioner Company with the respondent Board and thus allowing the petitioner Company to change its name from M/s Fourseasons Marketing (P) Ltd. to M/s Four Seasons Power Private Ltd. having its head Office at 215-217, Somdutt Chambers-II, 9, Bhikaji Cama Place, New Delhi-110066.

2. The facts in brief leading to this petition are that-

- (a) The petitioner Company (Formerly known as M/s Four Seasons Marketing (P) Ltd., has set up a Small Hydro Power Project having capacity of 2.6

MW in the name of Sharan Hydro Electric Project on Chakki Nallah in Distt. Kullu for which the IA with the GoHP and PPA with the HPSEB, the predecessor of the respondent Board, were signed on 20.05.2002 and 27th July, 2005 respectively.

- (b) M/s Four Seasons Marketing (P) Ltd. for change of name, executed one Tripartite Agreement with the Govt. and the petitioner Company, mentioning that M/s Four Seasons Marketing (P) Ltd. had transferred/assigned all the assets, liabilities, rights privileges and benefits of the project i.e. Sharan Hydro Electric Project to the present petitioner Company.

3. The Respondent Board has raised the preliminary objection to the maintainability of this petition stating that-

- (a) the petitioner has filed this petition under the HPERC (Power Procurement from renewal Sources and Co-generation by the Distribution Licensee) Regulations, 2007, which have already been repealed/replaced by Regulations of 2012;
- (b) the petitioner has not complied with the directions given in petition No. 17 of 2014, regarding settlement of liquidated damages claim with the respondent Board, as per provisions of the PPA.

4. The petitioner moved a petition bearing petition No. 17 of 2014 for seeking the same relief and the Commission disposed of that petition vide its Order dated 09.07.2014, after taking into consideration;-

- (a) that the PPA under reference was executed on 27.07.2005, but in the prayer clause the petitioner was seeking modification of the PPA dated 19.12.2006;
- (b) that M/s Four Seasons Marketing Pvt. Ltd. was to pay the sum of Rs. 4,68,000/-, as liquidated damages, to the Respondent Board, on account of the delayed commissioning of the project;
- (c) that the respondent Board had no objection for the change of name in the PPA dated 27.07.2005, provided M/s Four Seasons Marketing Pvt. Ltd. pays dues of the Respondent Board, before the change of name and also that conditions of the PPA dated 27.07.2005, remain unaltered even after the change of name and the substituted company undertakes to comply with the same without any reservations whatsoever;

- (d) that the petitioner Company was given opportunity, by adjourning the matter four times on 04.03.2014, 03.04.2014, 25.04.2014 & 06.06.2014, either to recast the petition or to move the joint petition, as contemplated under regulation 50-A of the Conduct of Business Regulations of this Commission;
 - (e) that the petitioner Company denied that petitioner Company, in any manner, had to pay the liquidated damages, as the penalty of Rs. 18,02,667/- for extension of time for completion of the construction of the project, as imposed, had already been paid.
5. While disposing of the said petition, the Commission vide its Order dated 09.07.2014 concluded in clear terms that the petition was not maintainable for the reasons 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 had 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 had not been properly amended especially when the sufficient opportunity had 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.
6. The Commission's Order dated 09.07.2014, has not been challenged by way of appeal and as such has attained finality.
7. In the present petition the petitioner has reiterated its previous stand and has put reliance on the Commission's decision dated 20th August, 2010, rendered in petition No. 193 of 2009 - **M/s Regant Energy Ltd. V/s the State of Govt. of HP & others.** The petitioner Company, through the present petition is again seeking a direction to the Respondent Board for the change in the PPA dated 19.12.2006, ignoring the fact that the actual date of the PPA is 27.09.2005 without attending the observations made in Commission's Order dated 09.07.2014.

8. The decision dated 20th August, 2010 rendered in **Petition No. 193 of 2009- M/s Regent Energy Ltd. V/s State of HP Govt.**, (now relied upon by the petitioner Company) is distinguishable and as such cannot be invoked in the present case. In that case the PPA in relation to Rakchad Hydro Electric Project located on Salaring Khad a tributary of the Satluj river in Kinnaur Distt. was approved on the joint petition, subject to the tariff and other conditions of the PPA to be stipulated by the Commission's Regulations on Power Procurement from Renewable Sources, as and when such regulations were to be made. The said stipulations, made by the Commission on the joint petition were binding on parties. In the present case despite clear cut observations made in the Commission's Order dated 09.07.2014, the petitioner Company has not moved the joint petition and has not properly amended the prayer clause, even though the sufficient repeated opportunity has been given to the petitioner Company, to do so.

9. The Commission's Order dated 09.07.2014, in the petition No. 17 of 2014, seeking the same relief, has already attained finality. The principle of finality as well as fairness requires that there should be end to litigation. Issues which were settled cannot be re-agitated, except by way of appeal, if permissible.

This petition is disposed of accordingly.

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