



KERALA STATE ELECTRICITY BOARD Ltd

(Incorporated under the Companies Act, 1956)

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ABSTRACT

Execution of E&M works of Bhoothathankettu (3X8MW) Small Hydro Electric Project-Import of 3rd foreign consignment from China – Request from M/s HUNAN ZHAOYANG GENERATING EQUIPMENT CO LTD, China & M/s SSEB to open LC (Letter of Credit) for USD1928320 in favour of M/s. Hunan Zhaoyang Generating Equipment Co. Ltd, China by KSEBL for the Import of 3rd and final foreign consignment from China and to pay Customs Duty (25% of USD 2047600) directly by KSEBL to Customs Department - FTD Decision - Ratified - Orders issued.

SBU-Generation

BO (DB)No.458/2022(513/AE3/2022)

Thiruvananthapuram, Dated: 28.05.2022

- Read: 1. Agreement No.CE (PED)/05/2014-15 dated 18-03-2015
2. B.O (FTD) No. 789/2020 (513/AE3/2013/CE(PED) dated 30-12-2020
3. MoM dated 30-11-2021, 28-12-2021, 23-02-2022
4. Remarks of the Financial Advisor, KSEBL dated 21-03-2022
5. Note No. LA&DEO/R/2-2/2022 dated 25-03-2022
6. BO (FTD) No. 293/2022 (513/AE3/2022) dated 07-04-2022
7. Note No. 513/AE3/2013/CE (PED)/62 dated 05-05-2022 of the Chairman and Managing Director to the Board of Directors.
8. Proceedings of the 64th Meeting of the Board of Directors held on 12-05-2022 vide Agenda No. 12-05/2022

ORDER

The Chief Engineer (Generation & PED) reported that the contract for the execution of Electro-Mechanical works of Bhoothathankettu SHEP (3X8MW) was awarded to M/s.Sree Saravana Engineering Bhavani Pvt. Ltd, Tamilnadu- Hunan Zhaoyang Generating Equipment Co. Ltd, China Consortium (M/s SSEB-ZHAOYANG Consortium) as per agreement read as 1st above. The E & M equipment are to be supplied by M/s. Hunan Zhaoyang Generating Equipment Co.Ltd, China (M/s Hunan) in three consignments, out of which the supply of two consignments has been completed. The testing of 3rd foreign consignment was conducted at their works at China and witnessed online by KSEBL officials. A conditional MDCC was issued to M/s SSEB for the supply of 3rd foreign consignment as per B.O read as 2nd above. But M/s SSEB did not take steps for supplying the third consignment from China. In April 2021, M/s SSEB filed a Writ Petition, before the Honourable High Court of Kerala for price escalation beyond the original contract period, to provide a financial support of ₹16.3 Crore for the procurement of third and final consignment from China and to provide a financial support of ₹.2.3 Crore as advance for the procurement of balance indigenous items. In the last hearing, Honourable High Court of Kerala, had not inclined to admit as desired by the petitioner's counsel and the same was kept pending with liberty to move again. The non supply of the third and final consignment from China has brought the work to standstill.

M/s.SSEB requested financial support for importing the third consignment from China and informed that delays due to handing over of forest land and various factors

including the floods during 2018 and 2019, outbreak of Covid-19 and also due to the increase in dollar rate, their financial stability has been affected and they are not able to mobilise any amount from their supporting financial agencies and requested unconditional support from KSEBL to pay the whole amount for the third consignment.

As per the purchase order placed by M/s SSEB on M/s Hunan, the total cost of first, second and third consignment is USD4950000. The cost of third consignment is USD2047600. M/s Hunan agreed for a payment through 4 LCs amounting to USD1132000, USD265440, USD265440 and USD265440 respectively. Also KSEBL shall ensure that the payment of USD495000 will be paid to M/s Hunan by M/s. SSEB after defects liability period, before releasing performance Guarantee to M/s. SSEB.

In the meeting convened by the Chairman and Managing Director on 28.12.2021 it was decided to open LC in favour of M/s Hunan, China to facilitate the import of third consignment from China and accordingly a draft tripartite agreement for the amended payment conditions was prepared. The LA & DEO has approved the draft tripartite agreement with certain modifications in the legality of the clauses. The Financial Adviser remarked that since the condition of payment through Letter of Credit is not envisaged as a mode of payment in the original agreement, the decision of the Director Board may be taken for amending the payment conditions. M/s. Hunan requested KSEBL to open 4 LCs for despatching the 3rd and final foreign consignment including spares as they don't trust M/s. SSEB. They have also requested that the test certificates shall not be submitted to the bank, since test certificate has already been submitted to KSEBL. M/s Hunan also insisted that the payment for second, third and fourth LC is to be made after taking over of first, second and third machines after 72 hours continuous operation.

A Joint meeting was conducted by the Director (Generation-Electrical) and Director (Generation-Civil) on 23.02.2022 to discuss about the opening of 4 numbers of LCs by KSEBL and the modifications in the agreement clauses requested by M/s.Hunan & M/s.SSEB. During the meeting, it was decided that the first, second, third and fourth LC's will be opened by KSEBL subject to the approval of the Board. Also the admissible claims of price escalation of Civil Works will be released on arrival of third and final foreign consignment at Indian Port for meeting the cost of clearance and transportation. Also the 80% payment for the supply of balance Indigenous materials will be made to M/s. SSEB and this payment will not be deducted from the LC dues. It was decided to retain the BG's for Civil works also till the completion of defects liability period for recouping the amount spent by KSEBL, since the Bank guarantees for E&M works will not be sufficient.

Accordingly the clauses were modified in the draft tripartite agreement. The Financial Advisor remarked that test certificate may be insisted and no exemption may be given. It was also opined that as per the draft tripartite agreement, the payment of 1st LC, 2nd LC, 3rd LC, and 4th LC may be released after the satisfactory completion of testing, commissioning, performance guarantee test and handing over of the unit to KSEBL. Since Performance Guarantee test is now replaced as "72 Hours test", the deletion of this condition shall be accepted only with proper written justification of such deletion by the Chief Engineer and Technical Directors. The LA & DEO has remarked that no patent illegality is noted in the revised draft tripartite agreement and the same can be proceeded with after incorporating the suggestion from the end of Financial Adviser. It is also to be ensured that no material discrepancy has been crept in before acting upon the said agreement.

The Chief Engineer (Generation & PED) recommended that the LC payment for second, third and fourth LCs may be released after 72 hours test since, as per the original agreement, the 15% payment is to be made after taking over after 72 hours test (Performance test), and not performance guarantee test. The field acceptance test

payment after defects liability period will be released only after successful completion of performance guarantee test.

It is also reported that the total amount available with KSEBL in the form of bank guarantee and cash for the project (including Civil and E&M works) is ₹.17,73,07,490/- (₹.17,23,08,000 as BG and ₹49,99,490 as Cash). If KSEBL makes payment for the four LCs and customs duty, there could be a shortage of approximately ₹3 Crore in the E&M contract considering the dollar rate as ₹.75. If liquidated damages are imposed, the amount will be higher. For recouping the amounts spent by KSEBL, the bank guarantees for civil works contract will also have to be retained till the end of defects liability period.

It is also reported that the contract amount of E&M works of BSHEP work is ₹81.8 Crore and Civil works is ₹108.04 Crore. KSEBL has already spent ₹163.96 Crore including Civil work (Civil - ₹.106.13 Crore, E&M ₹.57.83 Crore). It is also reported that the Government of India has imposed restrictions on importing equipment in any public procurement process from countries sharing land border with India. Any bidder which shares a land border with India has to obtain registration from DPIIT. This decision was taken amid the border standoff with China and this restriction is applicable for work orders placed after 23.07.2020. If the present agreement is terminated, new tender has to be floated in such a way that the machines from China has to be imported. This will require the mandatory DPIIT registration and may delay the work. At present for this work order, DPIIT registration is not applicable since the original agreement was executed before 23.07.2020.

The proposal was placed before the Full Time Directors. Having considered the matter in detail the Full Time Directors in the meeting held on 30.03.2022 resolved to accord sanction and the BO read as 6th above was issued in this regard. Further resolved that the Director (Generation-Electrical) shall provide proper oversight with Director (Generation-Civil). The Principal Secretary (Power) vide letter dated 29.04.2022 opined that the matter may be placed before the Board of Directors of KSEBL if not done earlier.

The matter was placed before the Board of Directors for ratification as per the Note read as 7th above.

Having considered the matter in detail, the Board of Directors in its 64th Meeting held on 12.05.2022 resolved to ratify the action taken by the Full Time Directors vide BO (FTD) No.293/2022 (513/AE3/2013/CE(PED) dated 07/04/2022 to accord sanction for the following:

1. To make the payment for importing the 3rd and final consignment from China by opening 4 LCs in favour of M/s Hunan Zhaoyang Generating Equipment Co. Ltd, China and by paying customs duty and recoup this amount from the payments to be made to M/s SSEB at later stages as detailed in the tripartite agreement and from the Bank Guarantees of M/s SSEB available with KSEB Ltd. for the civil and electromechanical works.
2. To execute the drafted tripartite agreement between KSEBL, M/s Sree Saravana Engineering Bhavani Pvt Ltd, Tamilnadu, M/s Hunan Zhaoyang Generating Equipment Co. Ltd, China for the import of third foreign consignment from China for the amended payment conditions as per the draft tripartite agreement.
3. To open first LC by KSEBL in favour of M/s Hunan Zhaoyang Generating Equipment Co. Ltd, China for USD1132000 before despatch of 3rd foreign consignment including spares and the payment shall be released after the submission of all necessary documents (Bill of Lading, Invoice, Packing List, Test

- Certificate, Certificate of Origin, Insurance Documents, etc) by M/s Hunan to the Bank as per LC draft.
4. To open Second LC by KSEBL for 1st machine in favour of M/s Hunan Zhaoyang Generating Equipment Co. Ltd, China for USD265440 before the equipment leave Chinese port and the payment will be effected after satisfactory completion of testing, commissioning, completion of 72 hours test and handing over of Unit-1 to KSEBL.
 5. To open third LC by KSEBL for 2nd machine in favour of M/s Hunan Zhaoyang Generating Equipment Co. Ltd, China for USD265440 before the starting of erection of Unit-2 and the payment will be effected after satisfactory completion of testing, commissioning, completion of 72 hours test and handing over of Unit-2 to KSEBL.
 6. To open Fourth LC by KSEBL for 3rd machine in favour of M/s Hunan Zhaoyang Generating Equipment Co. Ltd, China for USD265440 before the starting of erection of Unit-3 and the payment will be effected after satisfactory completion of testing, commissioning, completion of 72 hour test and handing over of Unit-3 to KSEBL.
 7. To pay the required Customs Duty of 25% of USD 2047600 (Rs 3.84 Crore approx) as advance at interest rate of SBI PLR+2% for the import of final consignment from China as per Clause 2 ii) a, b, c, d of supply order No.02-A/14-15 dated 06.01.2015.

The Board directed to ensure that no excess payments over and above that controlled by the original agreement, due to consortium in the process.
Orders are issued accordingly.

By Order of the
Director Board

sd/-

LEKHA G
Company Secretary

To:
The Deputy Chief Engineer (PED) with full powers of Chief Engineer, VB, TVPM

Copy to: The Financial Advisor/ Chief Internal Auditor/Company Secretary/ Chief Engineer (IT)/ Chief Engineer (HRM)
The TA to CMD/D(P&S,SCM)/D(GE)/ D(GC)/D(T&SO)/D(D&IT)/ D(REES, S, S & W)
The PA to the D (F)
The RCAO/The RAO
Library/Stock File

Forwarded / By Order

Chitert

Assistant Executive Engineer