

## INDEPENDENT REVIEW PANEL

**In the matter of:**

**Aerowatt Mauritius Ltd**

**(Applicant)**

**v/s**

**Central Electricity Board**

**(Respondent)**

**(Cause No. 10/16/IRP)**

### **RULING**

#### **FACTS**

On the 15 October 2015, the Respondent launched an invitation for bids through an open advertisement procedure for the procurement of Electricity from the Solar PV Farms of 10-15mWac (inclusive) Capacity, which are to be set up by respective bidders. Under the terms of the procurement, the Energy Supply and Purchase Agreement to be signed with the Central Electricity Board was for a term not exceeding 20 years.

The initial deadline for the submission of the bids was on the 4<sup>th</sup> December 2015 however it was extended to 22<sup>nd</sup> of December 2015.

On the 22<sup>nd</sup> February 2016 the Applicant was notified via email by the Central Electricity Board that its bid has not been retained.

On the 26<sup>th</sup> February 2016 the Applicant submitted a challenge to the Respondent and on the 3<sup>rd</sup> of March 2016 the Respondent informed the Applicant that the challenged cannot be entertained.

The Applicant submitted to the IRP an application for review together with its statement of case, power of attorney and witness statement.

On the 11<sup>th</sup> March 2016, the Respondent notified the IRP that as per the provision of the Public Procurement (Regulations 2008), First Schedule (regulation 2) the Central Electricity Board is exempted from the Public Procurement Act for '*Goods purchased for resale, including services incidental to the purchase or distribution of such goods*'. Furthermore the Respondent reiterated the fact that the tender falls in the above mentioned contract and that the application for review filed by the Applicant should not be entertained and therefore requested the IRP to set aside the application.

The case was fixed for proforma on the 25<sup>th</sup> March 2016. Counsel for the Respondent raised a preliminary objection to the fact the IRP does not have jurisdiction to hear the case due to the fact that the Central Electricity Board is exempted from the Public Procurement Act for '*Goods purchased for resale, including services incidental to the purchase or distribution of such goods*'. Counsel for the Applicant stated that the IRP does have jurisdiction. The matter was fixed for arguments on the 13<sup>th</sup> April 2016.

### **Arguments**

Counsel for the Applicant submitted that the general rule is that any procurement done by a public body is to fall under the Act. He further submitted that the Central Electricity Board should have gone through the process of the Public Procurement Act because the sum is not less than a hundred million rupees. Counsel stressed on section 2(a) of the act and submitted that nothing in these regulations are to be construed as excluding the application of the Public Procurement Act to the Central Electricity

Board in respect of a procurement contract to which the Central Electricity Board intends to be a party and for goods for more than a hundred million rupees.

On the other hand Counsel for the Respondent submitted that according to the First schedule in particular Regulation 2 of the amended regulation that the Central Electricity Board is an exempt organisation. He further submitted that Central Electricity Board is buying the production of electricity, good purchased for resale including incidental to the purchase of such goods. Counsel submitted that this particular bidding is an open advertised bidding and is outside the scope of procurement Act by virtue of the exemption expressly granted by the Regulation and thus submitted that the Panel have no jurisdiction as regards to the present matter.

### **Findings**

After having considered the arguments of both Counsel, the panel have unanimously reached the conclusion that the Independent Review Panel has full jurisdiction to hear the matter. First and foremost, the Central Electricity Board has opted to go through an open advertising bidding process. If one has opted to go through the bidding process then the law should be applicable in its entity. The second issue that the Panel has taken into consideration is that of the threshold of one hundred million rupees. That's a huge sum of money. The Panel is of the view that if the said threshold had been exceeded then no doubt that it has to go through the Central Procurement Board as defined by law. Without any doubt, the Legislator in his wisdom has given due consideration to set out a reasonable amount of money in play as a threshold. The Panel is of the firm view that the Central Electricity Board cannot arbitrarily offer a contract for such a huge amount for such a lengthy period of time without being subject to the Public Procurement Act. For this reason the Panel is of the view that the Central Electricity Board should have gone through the Central Procurement Board.

Same ruling applies to the case of Aerowatt Mauritius Ltd v/s Central Electricity Board (CN 11/16/IRP).

**(A. Kallee)**  
***Vice-Chairperson***

**(R. Rajanah)**  
***Member***

**(R. Ragnuth)**  
***Member***

**Dated 23 May 2016**