

Fraud committed in Bagging Hydropower Projects in Sikkim

Dans group allotted projects by fraudulent means

By Soumik Dutta - Gangtok, October 19, 2012

The hydropower sector in the state of Sikkim has been since 2003 - 04 mired in several controversies. The Comptroller and Auditor General (CAG) have in their audit reports on the State Governments finances, time and again pointed out the irregularities, arbitrary allotment process adopted by the GoS in giving away hydropower projects to Independent Power Producers (IPPs), lack of transparency in the process involved, huge losses to the exchequer, undue favoritism and overall lack of a transparent and well defined hydropower policy of the state.

When the huge scam in the hydropower sector of Sikkim involving multi-million dollars was exposed by Delhi based publication Current News in May this year, the Government of Sikkim did everything within its powers to hush off the furor it created in the public minds. It even went on to seal a long pending deal with Teesta Urja Limited (TUL), to create a transparent public image. The TUL and GoS were till recently entangled in an Arbitration case involving 26% equity holding by the GoS in the Joint Venture (JV).

However, delving into the scam deeper reveals similar stories as was exposed by the Current News story involving the GoS and other IPPs too. A detailed research by this correspondent into the process of allotment of two hydropower projects (96 MW Jorethang Loop and 97MW Tashiding hydro electric projects) has revealed startling illegalities and fraudulent practices involving both the developer and the GoS, Energy and Power Department.

The story unfolds with perhaps the most renowned name in the Sikkim hydropower circles, Mr. T. Nagendra Rao's involvement in the allotment of the said two projects to two of his companies. This correspondent would reveal such irregularities in other IPPs who were allotted projects once again due to direct or indirect involvement of Mr. Rao in subsequent stories. These projects were allotted to two organizations; Shiga Energy Pvt. Ltd. (formerly known as UVJ Marketing Pvt. Ltd.) and to Dans Energy Pvt. Ltd. (formerly known as Dans IT Systems Pvt. Ltd.) both owned by Mr. T. Nagendra Rao.

The revelation involving the gross illegality and fraudulent process adopted by Mr. Rao in acquiring these two projects is best understood if the law involved is understood better. In terms of the Companies Act 1956, under section 23, the change of name of company is only effective with the approval of the Registrar of Companies and upon issue of a fresh certificate of registration with the new name.

In terms of the Companies Act 1956, the Dans IT Systems Pvt. Ltd. did not have the capacity to contract, when it entered into contract upon the issue of the Letter of Intent (LOI) by the GoS. This matter is a case of misrepresentation and Fraud. Besides rendering the agreement void, these are also offenses punishable under the criminal laws.

Dans Energy Pvt. Ltd. was previously known as Dans IT Systems Pvt. Ltd. In Dans IT Systems Pvt. Ltd., the company did not have "power generation or any power sector activities" in its object clause of the Memorandum of Association. Therefore, all contracts entered into by Dans IT Systems Pvt. Ltd., which are not stated in its Memorandum of

Association of the Company, are unenforceable and illegal. However, Dans IT Systems submitted its offer to the Energy and Power Department, Government of Sikkim on 26.05.2004.

The Energy and Power Department, Government of Sikkim, issued its LOI on 17.06.2005 and Dans IT Systems Pvt. Ltd. accepted the same on 24.06.2005, when it did not have such activity in its object clause. So for all purpose of law, the contract was entered into and concluded w.e.f. 24.06.2005. The name of the company was changed from Dans IT Systems Pvt. Ltd. to Dans Energy Pvt. Ltd. on 07.10.2005.

Surprisingly, even at that stage, the object clause of the company had not been modified. The Government entered into an Agreement of the concluded contract. In terms of law, when the proposal of Shiga Energy Pvt. Ltd. dated 13.11.2006 was accepted and the Letter of Intent dated 16.11.2006 was issued by the Energy and Power Department, Government of Sikkim, the contract was concluded. The Agreement (Memorandum of Understanding or MOU) which was executed thereafter on 03.09.2008 was an obligation of the parties under such concluded contract. Therefore, for all purposes the agreement is dated 16.11.2006. Surprisingly, on that date Shiga Energy Pvt. Ltd. was not even born or in existence. (Shiga Energy Pvt. Ltd. is born on 26.12.2006 with the fresh Certificate of Incorporation issued for it by the Registrar of Companies dated 26.12.2006) .

Therefore, the entire proposal of Mr. Nagendra Rao in the name of Shiga Energy Pvt. Ltd. dated 13.11.2006 is misrepresentation and amounts to fraud. Legally the entire agreement is void ab initio.

A detailed examination of the balance sheet of Dans IT Systems dated 31.03.2004 by this correspondent revealed that it had only Rs. 1 Lakh as paid-up capital and the balance sheet of UVJ Marketing Pvt. Ltd. the former name of the Shiga Energy Pvt. Ltd. too had only Rs. 1 lakh as authorized capital. The question that arises is how the GoS so blindly agreed to sign contract with a company with such low working capital for projects involving several crores of rupees and with no visible experience in the hydropower sector.

Does it not amount to allotting hydropower projects to beetle nut shop owners of Gangtok, who possibly have the same quantum of working capital! It is now a fact that such projects were allotted to such developers/individuals, fraudulently as well as in violation of Government of India's guidelines and the state of Sikkim's guidelines to allot such projects. Quid pro quo benefits cannot be ruled out either.

When such matters in the Coalgate case is now being sent, or have been sent to the Central Bureau of Investigation (CBI) for investigation and all such projects have been cancelled, the logical question that arises is why these cases of Sikkim not be sent to CBI for investigation after cancelling the projects, which are totally based on fraud.

The Hon'ble High Court of Sikkim could possibly take cognizance of this and refer the matter to CBI. Such allotments must have been made under extraneous circumstances in connivance between the top officers of the Power Department and the politician and the concerned Minister of Power and the Government. Will the GoS ask the CBI to initiate criminal proceedings besides terminating the agreements and taking over the projects and auctioning the same in similar lines as decided by the Hon'ble Supreme Court in the 2G Spectrum case, which is now being auctioned to get the necessary premium to the state coffer, against these companies and the officers and ministers involved from the GoS side, or will it try to protect its back and all vested interest?

All financial institutions who have lent public money to these projects should be alert and take preventive action so that their money is not siphoned as well as take legal action too.