

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Section 86(1)(b) read with Section 86(1)(f) of the Electricity Act, 2003 and the Power Purchase Agreement dated 15.01.2016, 10.02.2016, 05.07.2016 and 17.08.2016 executed between ReNew Power Pvt. Ltd. and MPPMCL for recovery of pending amounts legally due to ReNew Power Ventures Pvt. Ltd. for the period from June 2020 to April 2021.

ORDER

(Hearing through Video Conferencing)

Date of Order: 30th March' 2022

M/s ReNew Power Private Limited

138, Ansal Chambers-II,
Bhikaji Cama Place, Delhi – 110 066

- **Petitioner**

Vs

The Managing Director

M.P. Power Management Company Limited,
Block No.-15, Shakti Bhawan, Rampur, Jabalpur (MP)

- **Respondent**

Shri Vishrov Mukherjee, Advocate, Shri Girik Bhalla, Advocate and Shri Ishan Nagpal Advocate appeared on behalf of the petitioner.

Shri Deepak Awasthi, Advocate and Shri S.K. Nema appeared on behalf of the Respondent.

The subject petition is filed under Sections 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 read with the Power Purchase Agreements dated 15.01.2016, 10.02.2016, 05.07.2016 and 17.08.2016 executed between the petitioner and Respondent for recovery of pending amounts to be paid to the petitioner by Respondent for the period of June 2020 to April 2021.

2. The Petitioner by affidavit dated 9th July 2021 broadly submitted the following in the subject petition:

- “1. *The Petitioner, ReNew Power Private Limited is a company incorporated under the Companies Act, 1956 having its registered office address at 138 Ansal Chambers-II, Bhikaji Cama Place, New Delhi 110066. ReNew is engaged in the business of generation, operation and maintenance of power plants.*
2. *The present Petition has been filed by ReNew Power Private Limited (formerly known as ReNew Power Ventures Private Limited) (“ReNew/Petitioner”) seeking recovery of Rs. 67.60 crores for the period from June 2020 to April 2021(as on 30.06.2021)from Madhya Pradesh Power Management Company Limited (“MPPMCL” / “Respondent No. 1”) and for issuance of directions to MPPMCL to pay future bills in a timely manner in accordance with the Power Purchase Agreements executed by ReNew.*
3. *ReNew has executed the following Power Purchase Agreements with MPPMCL for supply of power from its 60.9 MW Wind Power Projects located at District Dhar in the State of Madhya Pradesh (“Project”): -*

Details of PPA	Term of PPA	Tariff
PPA dated 15.01.2016 for 21 (10 x 2.1) MW. Along with Supplementary PPAs dated 27.07.2018 and 18.03.2020 (" 21 MW PPA ")	25 years	Rs. 5.92/KWh as per MPERC Order dated 26.03.2013
PPA dated 10.02.2016 for 10.5 (5 x 2.1) MW. Along with Supplementary PPAs dated 27.07.2018 and 18.03.2020 (" 10.5 MW PPA ")	25 years	Rs. 5.92/KWh as per MPERC Order dated 26.03.2013
PPA dated 17.08.2016 for 12.6 (6 x 2.1) MW. Along with Supplementary PPAs dated 27.07.2018 and 18.03.2020 (" 12.6 MW PPA ")	25 years	Rs. 5.92/KWh as per MPERC Order dated 26.03.2013
PPA dated 05.07.2016 for 16.8 (8 x 2.1) MW. Along with Supplementary PPAs dated 27.07.2018 and 18.03.2020 (" 16.8 MW PPA ")	25 years	Rs. 5.92/KWh as per MPERC Order dated 26.03.2013

4. *ReNew has been raising bills in terms of the PPAs on a monthly basis. While initially payments were being made in a timely manner, since June 2020 MPPMCL has stopped payment of monthly bills. It is submitted that monthly bills for the period June 2020 to April 2021 amounting to Rs. 67.60 Crores are currently unpaid.....*
5. *Further, it bears mention that all invoices have been raised in accordance with the Joint Meter Readings ("**JMRs**") duly certified by Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd.*
6. *In addition, to the aforesaid amounts, ReNew is also entitled to Late Payment Surcharge ("**LPS**") in terms of Article 8.6.3 of the 21 MWPPA & 10.5 MW PPA and Article 7.6.3 of the 12.6 MW PPA & 16.8 MW. ReNew reserves its right to claim the amounts towards LPS as and when the invoices towards LPS are raised.*
7. *It is submitted that the last payment made by MPPMCL was on 26.03.2021 for an amount of Rs. 11,72,77,187/- towards monthly bill for May 2020. It is submitted that the amounts have remained unpaid by MPPMCL from June 2020 to April 2021. Such non-payment is contrary to the PPAs as well as the Electricity Act, 2003.*
8. *Amounts due under these bills are admitted amounts. Further, the amounts to be paid to ReNew are part of MPPMCL's Aggregate Revenue Requirement ("**ARR**") and are being recovered by MPPMCL as part of its tariff.*
9. *It is submitted ReNew is constrained to file the present petition seeking issuance of appropriate directions to MPPMCL to clear the past dues and make timely payments in the future as non-payment of dues by MPPMCL has*

not only adversely impacted the present Project but also the Projects run by ReNew. Thereby causing tremendous loss to the investors for no fault of theirs, but also the banks and financial institutions which have financed the said Projects. It is pertinent to note that financing documents have strict payment schedules which ReNew is bound to abide by.

10. On 12.02.2005, in furtherance of Section 3 of the Electricity Act, the National Electricity Policy was notified by Ministry of Power. With regard to giving impetus to renewable energy, it was provided that:
“5.12 Cogeneration and Non-conventional energy sources
5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on nonconventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.”
11. On 06.01.2006, Ministry of Power notified the Tariff Policy which, inter alia, sought to attract adequate investment in the renewable energy sector and emphasised the need for promotion of generation through renewable sources.
12. On 09.11.2010 this Hon’ble Commission notified the MPERC (Co-Generation and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010, (“**MPERC RE Tariff Regulations 2010**”) which inter alia sets out a minimum quantum of purchase of electricity from co-generation and renewable sources of energy.
13. On 30.01.2012, New and Renewable Energy Department, Government of Madhya Pradesh issued the Wind Power Project Policy, 2012 for implementation of Projects wind power projects in the state of Madhya

Pradesh (“MP Wind Policy”). Clause 7.4 of the MP Wind Policy provides that power generated through wind energy shall be sold at the rates determined by this Hon’ble Commission.

14. *On 26.03.2013, this Hon’ble Commission issued a Tariff Order for Procurement of Power from Wind Electric Generators in SMP 12/2013 under Section 86(1)(e) of the Electricity Act, 2003. The tariff of Rs. 5.92/KWh for supply of power to MPPMCL has been fixed pursuant to the said Order.*
15. *On 15.01.2016, 10.02.2016, 05.07.2016 and 17.08.2016 ReNew executed the Power Purchase Agreements with MPPMCL for supply of power from the Project as set out in Paragraph 2 above. The supply of power in respect of the PPAs (total capacity of 60.9 MW) commenced from 30.03.2016 and 23.04.2016, as under:*

S. No	Capacity Commissioned	Name of Developer	Date of Commissioning
1.	25.2 MW (12 x 2.1)	Suzlon Gujarat Wind Park Ltd.	30.03.2016
2.	21 MW (10 x 2.1)	Sarjan Realities Ltd.	30.03.2016
3.	14.7 MW (7 x 2.1)	Suzlon Wind Park Ltd.	23.04.2016

16. *On 10.09.2019, ReNew informed MPPMCL that total outstanding amounts payable by MPPMCL for the present Project had reached an amount of Rs. 22.24 Crores as on 31.08.2019. Accordingly, ReNew requested MPPMCL to clear the dues at the earliest. It may be noted that the said letter was received by MPPMCL on 11.09.2019.*
17. *On 24.02.2020, ReNew informed MPPMCL that total outstanding amounts payable by MPPMCL for the present Project had reached an amount of Rs. 15.97 Crores as on 15.02.2020. Accordingly, ReNew requested MPPMCL to clear the dues at the earliest. It may be noted that the said letter was received by MPPMCL on 24.02.2020 itself.*
18. *On 15.09.2020, ReNew informed MPPMCL that total outstanding amounts payable by MPPMCL for the present Project had reached an amount of Rs. 57.82 Crores as on 15.09.2020. Accordingly, ReNew requested MPPMCL to clear the dues at the earliest.*
19. *On 26.10.2020, ReNew informed MPPMCL that w.e.f. 01.10.2020 the Income Tax Act, 1961 had been amended and amounts payable by MPPMCL had to include TCS charges @ 0.075% on the billed amount. Accordingly, ReNew provided the revised amounts payable by MPPMCL. In respect of the present Project, the revised outstanding amount payable by MPPMCL as on 30.02.2020 was Rs. 56.68 Crores.*
20. *Since there was considerable delay in payment of bills raised for the period from June 2020 and no response forthcoming from MPPMCL, on 29.01.2021, ReNew wrote to MPPMCL regarding the outstanding amounts due to ReNew for supply of power from 14 projects owned by ReNew, including the present*

Project. ReNew stated that as of 29.01.2021, there is an amount of Rs. 69.673 Crores due under the PPAs. MPPMCL was requested to clear all dues at the earliest.

21. *Since MPPMCL were neither made payments, nor rejected ReNew's claims and did not provide any reason for delay in payment, on 21.04.2021, ReNew again wrote to MPPMCL regarding an outstanding amount of Rs. 54.43 Crores for supply of power from the Project between June 2020 to February 2021. Further, in terms of the said letter: -*
 - (a) *ReNew proposed/offered deduction of rebate at 1% on the billed amount if the payments are made on or before 30.04.2021; and*
 - (b) *As a goodwill gesture, ReNew offered to waive the late payment surcharge under the PPAs, if payments are cleared on or before 30.04.2021.*

22. *On 03.06.2021, ReNew wrote to MPPMCL regarding an outstanding amount of Rs. 34.51 Crores for supply of power from the Project between June 2020 to February 2021. In order to get MPPMCL to clear the dues by 30.06.2021, ReNew offered deduction of rebate at 1% on billed amount and proposed to waive off LPS.*

23. *However, despite the aforesaid letters and numerous requests, MPPMCL has not paid the outstanding amounts. Even though the dues are admitted and accepted by MPPMCL, it has not cleared the pending amounts. Moreover, MPPMCL continues to schedule power from ReNew. On 18.06.2021, ReNew issued notice to MPPMCL calling upon MPPMCL to pay Rs. 67.60 Crores by 30.06.2021, failing which ReNew would be constrained to initiate appropriate legal proceedings and approach this Hon'ble Commission.*

24. *It is submitted that till date, no payment has been received from MPPMCL and hence ReNew is constrained to approach this Hon'ble Commission.*

25. *It is submitted that in terms of the PPA: -*
 - (a) *The Procurer i.e. MPPMCL is obligated to make payment to the Seller i.e., ReNew at the tariff fixed by this Hon'ble Commission for the energy delivered by ReNew at the Delivery Point. [Article 8.1.3 of the 10.5 MW PPA and 21 MW PPA, 7.1.2 of the 12.6 MW PPA and 16.8 MW PPA]*
 - (b) *The billing has to be carried out on a monthly basis. [Article 8.5.1 of the 10.5 MW PPA and 21 MW PPA, 7.5.1 of the 12.6 MW PPA and 16.8 MW PPA]*
 - (c) *The Due Date for payment is the 30th day after a Monthly Bill is received by the Procurer.[Article 8.6.1 of the 10.5 MW PPA and 21 MW PPA, 7.6.1 of the 12.6 MW PPA and 16.8 MW PPA read with the definition of Due Date under the PPAs].*
 - (d) *If a MPPMCL does not dispute a bill raised by ReNew by the Due Date then such a bill shall become conclusive. [Article 8.7.1 of the 10.5 MW PPA and 21 MW PPA, 7.7.1 of the 12.6 MW PPA and 16.8 MW PPA]*
 - (e) *In case payment of bill is delayed beyond 30 days, MPPMCL is*

obligated to pay delayed payment surcharge as specified in the respective PPA.[Article 8.6.3 of the 10.5 MW PPA and 21 MW PPA, 7.6.3 of the 12.6 MW PPA and 16.8 MW PPA]

26. *The relevant portions of the PPA are set out below: -*

(a) Re. 10.5 MW PPA and 21 MW PPA

“4.3. Purchase and Sale of Contract Capacity

Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer and the Procurer undertakes to pay Tariff for all the energy supplied. at the Delivery Point corresponding to the Contracted Capacity.

[...]

8.1.3 *The Procurer shall pay to the Seller at the above Tariff for the energy received at the Delivery Point under this Agreement (other than free electricity), as detailed in Article 8.5.2.*

[...]

8.5. Energy Accounting and Billing

8.5.1. *Billing of the metered energy shall be carried out on a monthly basis.*

8.5.2. *For accounting monthly energy fed by Seller to TRANSCO/ DISCOM Grid, total units (other than Free electricity) exported by the Power Project as recorded at the Metering Point by Main Meter as total export (other than Free electricity) shall be billed by the Seller at applicable Tariff. In case there are different sellers owning the WEGs at the same site, which are connected at common metering point, then the billing shall be done as per provisions of the Article 7.3. In the monthly Bill, Total units exported, and breakup of these units into free units supplied and units to be billed at tariff as detailed in Clause 8.1.1, must be shown separately...*

8.6. Payment Mechanism

8.6.1. *The settlement period of the bill of Seller for the energy supplied to Procurer shall be 30 days from the date of submission of the bill to the concerned DISCOM where the power is injected.*

8.6.3. *In case of delay beyond the 30 days payment period, the Procurer will pay delayed payment surcharge on outstanding amount at the rate of 2% p.a. over and above the short term lending rate of the State Bank of India (known as Prime Lending Rate) prevailing on the first day of the month when payment became due.*

8.6.4. *The delayed payment surcharge will be passed on to the DISCOM by the Procurer.*

8.7. Disputed Bill

8.7.1. *If the Party does not dispute a Monthly Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.*

8.7.2. *If the Procurer disputes the amount payable under a Monthly Bill that has been prepared in accordance with Article 8.5.3, as the case may be, it shall pay 100% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:*

(a) the details of the disputed amount;

(b) its estimate of what the correct amount should be; and

(c) *all written material in support of its claim."*

It may be noted that the terms of the 10.5 MW PPA and 21 MW PPA are parimateria and hence only the terms of the 10.5 MW PPA have been quoted for the purposes of this Petition.

(b) Re. 12.6 MW PPA and 16.8 MW PPA

"7.1 Tariff for the Sale of Power

7.1.1 *Tariff for this Agreement is INR 5.92/KWh, as per the MPERC Tariff Order dated 26.03.13 applicable for Wind Energy projects commissioned from 01 .04.2013 to 31.03.2016, for project life of 25 years from the date of COD.*

7.1.2 *The Procurer shall pay to the Seller at the above Tariff for the energy received at the Delivery Point under this Agreement.*

7.5 Energy Accounting and Billing

7.5.1 *Billing of the metered energy shall be carried out on a monthly basis.*

7.6 Payment Mechanism

7.6.1 *The settlement period of the bill of Seller for the energy supplied to Procurer shall be 30 days from the date of submission of the bill to the concerned DISCOM where the power is injected.*

7.6.3 *In case of delay beyond the 30 days payment period, the Procurer will pay delayed payment surcharge on outstanding amount at the rate of 2% p.a. over and above the short term lending rate of the State Bank of India (known as Prime Lending Rate) prevailing on the first day of the month when payment became due.*

7.7 Disputed Bill

7.7.1 *If the Party does not dispute a Monthly Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.*

7.7.2 *If the Procurer disputes the amount payable under a Monthly Bill that has been prepared in accordance with Article 7.5.3, as the case may be, it shall pay 100% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out: (a) the details of the disputed amount; (b) its estimate of what the correct amount should be; and (c) all written material in support of its claim."*

It may be noted that the terms of the 12.6 MW PPA and 16.8 MW PPA are parimateria and hence only the terms of the 10.5 MW PPA have been quoted for the purposes of this Petition.

27. *The present case pertains to adjudication of disputes that have arisen between the parties due to non-payment of the tariff as determined by this Hon'ble Commission. As the Project is setup within the State of Madhya Pradesh and the entire capacity is tied up with MPPMCL, there being no inter-state transaction, it is submitted that this Hon'ble Commission has jurisdiction to decide the present matter in terms of Section 86(1)(b) read with Section 86(1)(f) of the Electricity Act.*

28. *It is submitted that even the PPAs executed between ReNew and MPPMCL provide that when any dispute arises between the parties for any claims*

related to tariff, then such disputes shall be referred to for adjudication before this Hon'ble Commission. It bears mention that the grievance of ReNew is non-payment of tariff by MPPMCL in violation of this Hon'ble Commission's Order dated 26.03.2013. As MPPMCL has failed to abide by this Hon'ble Commission's order, it is only this Hon'ble Commission that has jurisdiction to hear and pass appropriate orders.

29. Without prejudice to the foregoing, despite repeated requests by ReNew for clearing the pending dues, MPPMCL has failed to make payments. In fact, MPPMCL has not even responded to the numerous letters issued by ReNew. The last notice seeking payment was issued to MPPMCL on 18.06.2021, and till date there has been no response from MPPMCL. Clearly, all efforts of amicable settlement have been exhausted and a dispute has arisen between the parties on account of non-payment of tariff by MPPMCL. Given that the claims arise from the PPAs, the adjudication procedure under the PPAs ought to be adopted. It is settled law that where there is a right, there is a remedy and courts are obligated to protect the rights of the parties, as upheld by the Hon'ble Supreme Court in **Sardar Amarjit Singh Kalra v. Pramod Gupta** :(2003) 3 SCC 272, as under:

"33. ... As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, "ubi jus ibiremedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice."

Evidently, in the present case since MPPMCL is not paying the stipulated tariff, the only efficacious remedy available with ReNew is to approach this Hon'ble Commission for recovery of pending dues and for directions to MPPMCL to pay future bills in a timely manner.

Amounts payable to ReNew are conclusive and admitted by MPPMCL

30. It is submitted that MPPMCL is legally obligated to pay the Monthly Bills by the Due Date under the PPAs. However, despite repeated reminders and requests, the Monthly Bills have not been paid. MPPMCL is under a legal and contractual obligation to pay tariff in terms of the PPAs. It is submitted that ReNew has validly raised Monthly Bills in accordance with the provisions of the PPAs. Further, the amounts due have not been disputed by MPPMCL. In terms of Article 8.7.1 of the 21 MW PPA & 10.5 MW PPA and Article 7.7.1 of the 16.8 MW PPA and 12.6 MW PPA, if MPPCL does not dispute a bill by the Due Date (30 days of submission), the bill shall be considered conclusive. It is submitted that Hon'ble CERC by way of Order dated 28.06.2021 in IA No. 64 of 2020 in Petition No. 614/MP/2020 titled '**Adani Power (Mundra) Ltd. v. Gujarat Urja Vikas Nigam Ltd**' reiterated that parties are bound by the PPA and till the time the generating company (Adani) is supplying power and raising the bill in accordance with the PPA, the procurer (GUVNL) is bound to make payment. It was further held that if GUVNL purports to dispute a bill, it may be done so as per the terms of the PPA, as under:

- “21. In terms of Article 11.6.2, either party may dispute the amount payable under monthly or supplementary bills. Article 11.6.9 provides that till the time the dispute is resolved, the procurer shall be liable to pay 100% of the undisputed amount plus 85% of the disputed amount within the due date.
22. Admittedly, despite deductions being made by GUVNL, the power is being supplied by APMuL as per the provisions of the Bid-01 PPA and SPPA.
23. As power is being procured by GUVNL and is being supplied by APMuL as per the provisions of the Bid-01 PPA and SPPA, we are of the view that the parties are bound by terms of the Bid-01 PPA and SPPA and, therefore, raising of bill or any dispute thereon has to be in accordance with the terms and conditions as provided in the Bid-01 PPA and SPPA.

[...]

25. We are of the view that whatever the reasons of dispute may be, the provisions of Article 11.6.9 of the Bid-01 PPA are clear in this regard that provides that “Till the time a dispute is resolved as per Article 11.6 or Article 17, the Procurer shall be liable to pay 100% of the undisputed amount plus 85% of the disputed amount within the due date...”.

[...]

27. GUVNL is directed to pay 100% of the undisputed amount and 85% of the amount as disputed for all the invoices raised since signing of the SPPA till the pendency of the main Petition No. 614/MP/2020. Payment must be made within thirty days of this order.”

The PPA provisions in the case before Hon’ble CERC were similar to the present case. Therefore, in the absence of any dispute being raised by MPPMCL, the monthly bills raised by ReNew are conclusive. MPPMCL being bound by the terms of the PPAs is liable to pay the said dues without further delay.

31. In such a scenario, the amounts are conclusive and stand admitted and MPPMCL should be directed to pay the amounts due forthwith.
32. It is submitted that as of 30.06.2021, MPPMCL has neither disputed any of the Monthly Bills (for June 2020 to April 2021) raised by ReNew nor denied their liability to pay amounts claimed by ReNew in the monthly bills till date, as such the bills have become conclusive. Moreover, despite repeated reminders, pending amounts have not been paid by MPPMCL. Further, MPPMCL has released part-payments with respect to the Monthly Bills and as such, despite having opportunity to dispute the bills, MPPMCL has failed to do so.
33. For the period starting from June 2020 to April 2021, the undisputed amount to be paid to ReNew is Rs. 67.60 crores.
34. It is submitted that the Hon’ble Supreme Court and Hon’ble Appellate Tribunal for Electricity have repeatedly held that Tariff Payments under PPA

must be made on regular monthly basis. In this regard, the following decisions may be noted:-

- (a) **T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd**, (2014) 11 SCC 53 (“PPN Judgment”)
- (b) APTEL Judgment dated 22.02.2013 passed in Appeal Nos. 176 of 2011 titled **T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd** [Para 10 to 29].
- (c) APTEL Judgment dated 11.07.2014 passed in Appeal No. 181 of 2013 titled **Raghu Rama Renewable Energy Limited v. T.N. Generation & Distribution Corpn. Ltd &Ors** [Para 36].

35. It is submitted that the Hon’ble Supreme Court in the PPN Judgment has held that: -

- (a) Unilateral deductions from monthly bills by a party without adjudication are illegal [Para 72]
- (b) Payment of Tariff Invoices have to be made in full when due even if the entire portion or a portion of the invoice is disputed [Para 71].

36. In terms of the above, it is submitted that MPPMCL is under an obligation to make payments, within the due date on a monthly basis. In the present case, MPPMCL has failed to raise any dispute nor has it made any payments.

37. In light of the foregoing, it is submitted that the retention of payment/non-payments by MPPMCL are illegal and contrary to the terms of the PPAs. The said amounts could not have been withheld without raising a substantive dispute within the time prescribed under the PPA after receipt of the Monthly Bill.

Non payment of dues by MPPMCL is contrary to Orders of this Hon’ble Commission and statutory framework under Electricity Act, 2003

38. MPPMCL being a licensee under the Electricity Act, is bound by the provisions thereof. Sections 61 (b) and (c) of the Electricity Act states as follows: -

61. Tariff regulations- The Appropriate Commission shall, subject to the provisions of this Act, specify terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:

- (a) ...
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

39. Further, in terms of Section 86(1)(a) read with Section 62 of the Electricity Act, it is the duty of this Hon’ble Commission to determine tariff, inter alia, for generation of electricity. While determining tariff under Section 62 of the Electricity Act, this Hon’ble Commission is required to be guided by the principles laid out under Section 61 of the Electricity Act. Section 61(b), (c), (d), (h) and (i) requires this Hon’ble Commission to, inter alia, bear in mind

the following principles while determining tariff:-

- (a) That generation of electricity is conducted on commercial principles;
- (b) **Factors that would encourage optimum investments;**
- (c) **Consumers' interest is safeguarded, while the cost of electricity is recovered;**
- (d) Promotion of generation of electricity from renewable energy sources;
and
- (e) The National Electricity Policy ("**NEP**") and the Tariff Policy.

40. It is submitted that, on a conjoint reading of Sections 61, 62 and 86, this Hon'ble Commission is required to determine the levelized tariff for wind generators, such as ReNew. The tariff as determined by this Hon'ble Commission is binding on the generating company and the discom and has to be honoured by both parties.

41. The Hon'ble Supreme Court in **A.P. Transco v. Sai Renewable Power Pvt. Ltd.** : (2011) 11 SCC 34 has inter alia held that fixation of tariff is a statutory function performed by the Appropriate Commission under the Electricity Act.

42. In exercise of the aforesaid statutory powers under the Electricity Act, this Hon'ble Commission has determined the tariff of Rs. 5.92 per unit vide Order dated 26.03.20213 and the same is applicable to ReNew's PPAs. It bears mention that in the past, MPPMCL's efforts to get the generic tariff reduced has been rejected by this Hon'ble Commission. By way of Order dated 07.02.2019, this Hon'ble Commission dismissed MPPMCL's Petition (Petition No. 6 of 2019) seeking modification of wind tariff as determined vide Order dated 26.03.20213, inter alia, holding as under:-

"4. The Commission observed that the petitioner is seeking review of tariff order dated 26.03.2013 for wind electric generators considering normative based CUF as 23% in place of 20% and corresponding tariff varying from 23% to 30% CUF at an interval of 1% on the basis of actual performance and normative CUF of 23% as considered by the Commission in Wind Tariff Order dated 17.03.2016. It has also been requested to direct the parties to amend the respective Power Purchase Agreements accordingly. The Commission noted **that the tariff order dated 26.03.2013 in which the generic tariff for supply of electricity by wind power plants to the distribution licensee was determined, did not contemplate any re-visitation or re-determination of the tariff during the life of the project of 25 years on account of any variations of actual over any of the normative parameters. The PPA has no renewal/revision/review clause empowering the Commission to revise the tariff. The PPAs executed by the petitioner and the generators and their conduct of acting upon such agreements over a long period bind them to adhere to the rights and obligations stated in the agreements. The parties are bound to the terms and conditions of the agreements after signing the PPAs. Conditions of the contract cannot be altered/ avoided on presumption or assumption of the parties. The parties to the contract are not at liberty to amend/**

alter the terms of contract on the ground that the terms of contracts may not be beneficial to one of the parties at a later stage.

[...]

6. *Neither wind tariff order nor the PPA has any revision clause empowering the State Commission to revise the tariff. Once the PPA is executed, the single party cannot have the power to alter any terms of the PPA except through mutual consent of both the parties. Section 64(6) of the Electricity Act, 2003 states that the tariff order shall continue to be in force only during the period specified in the tariff order. **Tariff order having lived its life and having been replaced by a fresh tariff order is not allowed for revision and revisit under Section 62(4) of the Electricity Act, 2003.***

[...]

8. *The petitioner is seeking the review of tariff order dated 26/3/2013, while control period of that tariff order is already over and tariff order for new control period is applicable. As per the act of limitation also such type of review is not applicable after three years which is barred by limitation. The said tariff have been accepted by all the parties and acted upon accordingly. The petitioner could not sought to review the tariff after generators have acted upon the same and the tariff order dated 26.03.2013 was fully accepted by the parties without any reservations.*

9. *In view of the findings above, the Commission is not in a position to consider the prayer of the petitioner at Para (iv) and (v) of the petition regarding review of tariff order dated 26.03.2013 and directions to the parties to amend the respective PPA accordingly. As per the reasons stated above, it is also not possible for the Commission to consider the prayer at Para (ii) to modify the generic tariff orders to the effect that the petitioner will have the option of first right of refusal of energy supplied in excess to the normative CUF and in case of injection of excess power into the grid then no liability of payment by the petitioner.*

[...]

11. *The Commission has observed that the petitioner is seeking the review of the Commission's various generic Tariff Orders for which either the control period has already been expired long back or the control periods are going to end by March 2019. In view of the issues discussed in foregoing paras, the prayer of the petitioner cannot be considered. However, the petitioner is free to submit comments/suggestions, if any, as and when an approach paper for determination of tariff for the ensuing control period is issued."*

Evidently, the tariff as determined by this Hon'ble Commission vide Order dated 26.03.2013 and as agreed by ReNew and MPPMCL in the PPAs is pursuant to a binding statutory framework and is final and ought to be paid by MPPMCL.

The PPA is statutory document and binding on both parties

43. *The Hon'ble Tribunal in Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission, 2014 SCC OnLine APTEL 168 has held that the PPA is a binding contract and right and liabilities under it cannot be escaped by the parties. The Hon'ble Tribunal went on to observe that the terms of a PPA cannot be re-opened to for the purpose of curtailing incentives given to RE developers, as under:*
- "123. The rights and liabilities arising from a binding contract cannot be escaped on the basis of some presumption in relation to same facts leading to the execution of the Agreement between the parties.***
124. *Furthermore, as pointed out by the Respondents, the PPAs do not contain any provisions empowering the State Commission to undertake re-visiting or re-determination of the tariff.*
125. *The State Commission in view of the fact that there was a possibility of considerable reduction in capital cost in future, prescribed the control period of only two years. There is no provision for revision of the tariff prior to two years in the event of deviation in the normative parameters.*
126. ***This Tribunal as quoted above, has already held that the Power Purchase Agreement can be re-opened only for the purpose of giving thrust to the non conventional energy projects and not for curtailing the incentives. The above ratio has been decided in the decision in Ritwik Energy Systems v. Transmission Corporation of Andhra Pradesh Case in Appeal No. 90 and 91 batch of 2006. The relevant portion of the observations is as follows:***
- "Therefore, it is the bounden duty of the Commission to incentivise the generation of energy through renewable sources of energy. PPAs can be reopened only for the purpose of giving thrust to non-conventional energy projects and not for curtailing the incentives."***
44. *Further, the Hon'ble Tribunal in Essar Power Ltd. v. Uttar Pradesh Electricity Regulatory Commission, Appeal No. 82 of 2011 (Judgment dated 16.12.2011) held that power procurement done pursuant to the Electricity Act is statutory in nature and have a legal sanctity, as under:*
- "135. On going through these decisions cited by both, we are of the view that this proposition projected by the Noida Power is not tenable in view of the fact that the power procurement pursuant to the statutory framework constitutes a statutory contract in terms of the pre approved and finalized PPA governed by the provisions of the Act as well as the guidelines. There are specific clauses which require certain acts have to be performed mandatorily making the contract statutory."***

45. *It is submitted that despite the express mandate of Section 61 and contrary to the provisions of the PPAs (which have legal sanctity and are statutory documents), MPPMCL has not fulfilled its legal and statutory obligation to pay Monthly Bills in accordance with the PPAs.*
46. *In the present case, MPPMCL is misusing their dominant position in a arbitrary and coercive manner, since ReNew has dedicated 100% of its capacity to MPPMCL, and it is arbitrarily and without basis withholding payments legally admitted and due to ReNew.*

Conduct of MPPMCL is violative of ReNew's right to property under Article 300A of the Constitution

47. *It is submitted that the tariff of Rs. 5.92 per unit determined by this Hon'ble Commission vide Order dated 26.03.2013 formed the underlying basis for execution of the PPAs. Investments made by ReNew, were pursuant to the Electricity Act, 2003, MPERC RE Tariff Regulations 2010 and the PPAs, which guaranteed that the applicable tariff as determined by this Hon'ble Commission would be applicable for the entire useful life of the project, i.e. 25 years. Further, return on investments were calculated based on levelized tariff of Rs. 5.92/unit. The persistent and wilful non-payment of admitted tariff by MPPMCL is expropriatory in its impact besides being unlawful and unreasonable. The delays and defaults in payment by MPPMCL have crippled ReNew's cashflow.*
48. *It is submitted that Electricity Act, 2003 envisages promotion of private participation in the power sector. It is submitted that the non payment of legal dues disincentivizes and destroys the substratum for private participation and results in virtual expropriation/ nationalization of such assets which is antithetical to the Electricity Act, 2003.*
49. *It is submitted that non payment of tariff is not only in contravention of the existing legal/regulatory scheme (Section 61(b), (c), (d) of Electricity Act) but also impinges on the Fundamental Rights under Article 14, Article 19(1)(g) read with Article 300A of the Constitution of India. Non-payment of tariff has the effect of depriving ReNew of its Investments/Property. Article 300A of the Constitution provides that no person shall be deprived of his property without following due process of law. It is submitted that 'property' is not restricted to physical property alone. It can be extended to mean the investment, shares, material contracts like PPAs, in terms of the wide amplitude given to the meaning of 'property' in the case of **Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596** (Para 42).*
50. *Adequate compensation for acquisition / deprivation of property as a part of legal right has been read as intrinsic to Article 300A of the Constitution of India as laid down by the Constitution Bench in **K.T. Plantation Private Limited v. State of Karnataka : (2011) 9 SCC 1***
"220. Deprivation of property may also cause serious concern in the area of foreign investment, especially in the context of international law and international investment agreements. Whenever a foreign investor

operates within the territory of a host country the investor and its properties are subject to the legislative control of the host country, along with the international treaties or agreements. Even if the foreign investor has no fundamental right, let them know, that the rule of law prevails in this country.

221. *We, therefore, answer the reference as follows:*

[...]

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300-A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors."

Accordingly, it is submitted that the failure to grant reasonable return on investments, amounts to deprivation of assets in violation of Article 300A of the Constitution of India.

Non payment of tariff to ReNew is causing unjust enrichment to MPPMCL

51. *It is submitted that while MPPMCL is not making any payments to ReNew, it is recovering the amounts payable to all renewable generating projects equal to the weighted average tariff for all generating companies with whom MPPMCL has signed a PPA from the ultimate consumers. Therefore, as the PPAs between ReNew and MPPMCL are valid and subsisting the amounts payable to ReNew have also been accounted for in MPPMCL's ARR as approved by this Hon'ble Commission vide Orders dated 17.12.2020 and 08.08.2019 in Petition No. 08 of 2019 and Petition No. 49 of 2019 respectively and MPPMCL is recovering the same.*

52. *As is evident from above, MPPMCL, is recovering from consumers of the State of Madhya Pradesh, the cost of procurement of power supplied by wind based generating companies such as ReNew. It is submitted that the cost of procurement of power from ReNew has been accounted for in the tariff being charged by MPPMCL from its consumers.*

53. *It is submitted that despite recovering these amounts, payments to ReNew are being withheld. This not only amounts to unjust enrichment of MPPMCL but is also contrary to MPPMCL's legal obligation to remit such monies to the ReNew. It is submitted that this is not only a fraud on the consumers bearing the burden of this cost, but is also illegal, unfair and arbitrary.*

54. *Further, MPPMCL's arbitrariness is evident from its prior conduct wherein, despite the PPAs providing for payments of bills by the Due Date (30 days from issuance of bill by ReNew), MPPMCL has not made payments in the stipulated time. On the contrary, past payments have been made at irregular intervals, complete amounts have been withheld and delayed payment surcharge has not been paid. Being a public entity, it is incumbent upon MPPMCL to act in a non-arbitrary manner and the same has been upheld by the Hon'ble Supreme Court in:*

(a) ***Shrilekha Vidyarthi (Kumari) v. State of Uttar Pradesh : (1991) 1 SCC 212:-***

“24. The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.”

(b) ***UNITECH Ltd. &Ors. v. Telangana State Industrial Infrastructure Corporation & Ors: 2021 SCC OnLine SC 99***

“46. ... The State and its instrumentalities are duty bound to act fairly under Article 14 of the Constitution. They cannot, even in the domain of contract, claim an exemption from the public law duty to act fairly [Indsil Hydropower v. State of Kerala, Civil Appeal Nos. 5943-5945 of 2019 (Supreme Court of India), para 33; ABL International Ltd. v. Export Credit Guarantee Corporation of India, (2004) 3 SCC 553, para 23; Central Bank of India v. Devi Ispat Ltd., (2010) 11 SCC 186, para 28]. The State and its instrumentalities do not shed either their character or their obligation to act fairly in their dealings with private parties in the realm of contract. Investors who respond to the representations held out by the State while investing in public projects are legitimately entitled to assert that the representations must be fulfilled and to enforce compliance with duties which have been contractually assumed.”

Conduct of MPPMCL is contrary to principles for promotion of renewable energy as per Electricity Act

55. It is submitted that, in terms of Sections 61(h) and 86(1)(e), there is a statutory obligation on this Hon’ble Commission to ensure promotion of generation of electricity from renewable sources. This view has been endorsed by the Hon’ble Appellate Tribunal in the following decisions:-

(a) ***M.P. Biomass Energy Developers Association v. MERC and Anr, 2017 ELR (APTEL) 0377.***

(b) ***Judgment dated 28.04.2016 in Appeal No. 16 of 2015 titled Green***

Energy Association vs. Madhya Pradesh Electricity Regulatory Commission and Ors.

56. Further, the National Electricity Policy and the Tariff Policy formulated and notified by the Central Government in exercise of powers under Section 3 of the Electricity Act also lays emphasis on promotion of renewable energy. The Hon'ble Supreme Court in **Energy Watchdog v. Central Electricity Regulatory Commission** reported as (2017) 14 SCC 80 (Para 18, 57) has held that the Tariff Policy has statutory force and hence is binding on all. Even the MP Wind Policy, pursuant to which the present Projects have been setup emphasize the need for promotion of generation through renewable sources such as wind and solar energy.
57. It is submitted that, under the Act as well as the NEP, there is an express mandate on the State Government to promote renewable energy and to gradually progress to satisfying the energy demands by way of renewable energy sources. This position has also been affirmed by the Hon'ble Supreme Court in the case of **Gujarat Urja Vikas Nigam Ltd v. Solar Semiconductor Power Co. (India) Pvt. Ltd.** reported as (2017) 16 SCC 498 (Para 31). However, on the contrary, MPPMCL is denying payments to ReNew despite being mandated and obligated to give act in a manner to ensure promotion of and generation from renewable sources.

Non-payment of dues by MPPMCL is causing immense financial hardship to ReNew

58. As it is evident from the abovementioned correspondences, ReNew has been requesting release of payments due from MPPMCL. It is submitted that the lackadaisical approach of MPPMCL, at the cost of hampering the financial health of ReNew, is unreasonable and illegal.
59. The non-payment/delayed payment of dues by MPPMCL has a cascading effect which not only adversely impacts the Project run by ReNew, thereby causing tremendous loss to the investors for no fault of theirs, but also the banks and financial institutions which have financed the Project, including through public money. It is pertinent to note that financing documents have strict payment schedules which ReNew is bound to abide by which are honoured through the payments made by MPPMCL. It is trite that Projects are commissioned after availing debt facilities from banks and financial institutions and the same must be repaid to the banks during the term of the PPA. Repayment of debt along with interest is an integral part of the tariff determined by this Hon'ble Commission.
60. Due to the default on payments by MPPMCL, even the operational expenditure of ReNew is not realized sufficiently and ReNew faces challenges in running the Project in an efficient and uninterrupted manner. On account of deliberate non-payment by MPPMCL, ReNew would face financial difficulties and would have to stretch its resources for ensuring payments for its expenses. Further, MPPMCL's illegal retention of payments is

61. *It is submitted that the Hon'ble Appellate Tribunal for Electricity in its order dated 05.12.2018 in the case of **TANGEDCO v Central Electricity Regulatory Commission** (IA No. 1428 of 2018 in Appeal No. 289 of 2018), directed TANGEDCO to pay 80% of its dues. It was held as follows:*
- "4.12 So far as who will suffer irreparable loss or hardship, admittedly, the issues are answered in favour of the second Respondent not only by the Commission, but also by this Tribunal in earlier judgments dated 14-8-2018. **It is the generators who are facing financial stress on account of various issues including delay in payment of amounts due to them. The Appellant has long term agreement with the second Respondent. If the amounts due are not paid, the Respondent would suffer irreparable injury and therefore justice requires rejection of stay application and direction in favour of second Respondent. Hence, the Appellant is directed to immediately pay 80% of Rs. 70.17 crores which is calculated up to July 2018. They shall continue to pay 80% of claims under different Heads in future also as and when bills are raised so far as the above-mentioned claims which are already allowed by the Commission. In case the issues are answered in favour of Appellant on merits in the appeal, the same can be adjusted towards monthly tariff charges to be paid to the second Respondent since Appellant has long term PPA with second Respondent.**"*
62. *Similarly, even Ld. CERC has passed similar orders directing distribution licensees to make payment of outstanding dues in accordance with the terms of the PPA. For instance, vide Order dated 26.11.2018 in the case of **GMR Warora Energy Limited v MSEDCL** (IA No. 77 of 2018 in Petition No. 284/MP/2018) (Para 8), Ld. CERC directed MSEDCL to pay the dues claimed in view of the fact that GMR Warora Energy Limited had been supplying power regularly and was facing financial difficulties in arranging for working capital.*
63. *In light of the foregoing submissions and the admitted status of the monthly bills and pending amounts, it is evident that the balance of convenience lies in favour of the ReNew as it has complied with all contractual obligations envisaged under the PPA and MPPMCL have not disputed its liability to make payment towards pending dues along with Delayed Payment Surcharge. Needless to mention that in the event if the admitted liability is not paid to ReNew and the reliefs sought herein are not granted, irreparable loss shall be caused to ReNew. In view of such facts and circumstances, this Hon'ble commission may be pleased to direct MPPMCL to pay the pending amounts expeditiously.*

Delayed Payment Surcharge

64. *It is submitted that ReNew is entitled to Delayed Payment Surcharge in terms of Article 8.6.3 of the 10.5 MW PPA and 21 MW PPA, 7.6.3 of the 12.6 MW PPA and 16.8 MW PPA. For any payment made beyond the due date of payment, MPPMCL shall pay Delayed Payment Surcharge on pending amounts at the rate of 2% p.a. over and above the short-term lending rate of the State Bank*

of India (known as Prime Lending Rate) prevailing on the first day of the month when payment became due.

65. It is submitted that ReNew, vide letter dated 21.04.2021, as a goodwill gesture and conditional offer, agreed to waive off the late payment surcharge if payments are processed on or before 30.04.2021. However, since no payments have been made by MPPMCL on or before 30.04.2021 and the condition was neither specifically agreed to by MPPMCL nor fulfilled, such a conditional waiver has lapsed and ReNew is legally entitled to Delayed Payment Surcharge in terms of the PPAs.
66. With regard to payment of LPS, it is submitted that the High-Level Empowered Committee ("**HLEC**") headed by the Cabinet Secretary in its report dated 12.11.2018, albeit in the context of thermal plants, has acknowledged an existing trend whereby the State Discoms are delaying the payment of Monthly Bills and are not paying LPS on delayed payment, despite the PPA providing for the same. Accordingly, HLEC recommended that LPS be mandatorily paid in the event of delay in payment by the Discoms. Recommendation 3.1 of the HLEC report provides as under:-
- "3.1 Mandatory payment of Late Payment Surcharge (LPS)
- It has been observed that due to delay in payment by the DISCOMs, the viability of the generators get hurt severely. As one of the roles of the regulator is to ensure sustainable operation of the power sector, the Committee recommends that Ministry of Power may advise the Regulators to monitor payments by DISCOMs and frame appropriate regulations. It has also been pointed out that frequently the DISCOMs insist that generators should forgo the LPS on the delayed payments, despite its mention in the signed PPA. This again adversely affects the viability of generators and their ability to meet its obligation to service the debt and other operating expenses. Therefore, the Committee recommends that Ministry of Power may engage with the Regulators to ensure that LPS is mandatorily paid in the event of delay in payment by the DISCOMs."
67. The Central Government recommended the constitution of a Group of Ministers ("**GOM**") headed by the Finance Minister, Road Transport Minister, Minister of Commerce, Minister of Oil, Minister of Railways and the Minister of Power to examine the specific recommendations of HLEC which was constituted to address the issue of stressed power projects and forward their comments for consideration by the Cabinet. The GoM thereafter submitted its recommendation to the Cabinet Committee on Economic Affairs ("**CCEA**") on 07.03.2019. The CCEA on 07.03.2019 approved recommendations of the GOM to make payment of LPS as mandatory. A copy of the CCEA Notification dated 07.03.2019 is annexed herewith and marked as **Annexure P-22**.
68. On 08.03.2019, Ministry of Power vide its Office Memorandum has approved the recommendations of GoM qua mandatory payment of LPS, as under: -
- "3.4 Approval with regards to mandatory payment of Late Payment Surcharge (LPS): Ministry of Power may engage with the Regulators

to ensure that LPS is paid in case of delay in payment by DISCOMs as per the provisions of the PPA. Appropriate Regulatory Commission may ensure compliance.”

69. *In view of the above, it is submitted that the conduct of MPPMCL in non-payment of Delayed/Late Payment Surcharge on ReNew’s Monthly Bills is in violation of the express terms of the PPAs and the express directions of the Cabinet. Therefore, this Hon’ble Commission ought to direct MPPMCL to pay the applicable Late Payment Surcharge to ReNew at the earliest.”*

3. With the aforesaid submission, the petitioner prayed the following in the subject matter:

- (a) *Direct MPPMCL to release payments due to ReNew which have been unlawfully withheld;*
- (b) *Pending final adjudication, direct MPPMCL to pay 80% of the pending amounts to ReNew within one week*
- (c) *Pending final adjudication, direct MPPMCL to deposit the balance 20% of the pending amounts with this Hon’ble Commission;*
- (d) *Direct MPPMCL to pay future bills in timely manner in accordance with the PPA.*

4. At the motion hearing held on 21.09.2021, Ld. Counsel who appeared for the petitioner explained the genesis of the petition in light of provisions under aforesaid PPAs executed between the petitioner and the Respondent. The petitioner was asked to inform whether the Power Purchase Agreements in the subject matter are approved by the Commission under Section 86(1)(b) of the Electricity Act’ 2003. In response, Ld. Counsel for the petitioner had sought some time to submit the status in this regard. Considering the request, the petitioner was allowed to file the aforesaid details and documents within a week.

5. The petition was admitted and the petitioner was directed to serve copy of petition on the Respondent within seven days and report compliance of service to the Commission. It was mentioned in daily order dated 22.09.2021 that the Commission would hear the Respondent on the petitioner’s prayer at Para 2(b) & (c) above. The Respondent was directed to file reply to the subject petition within two weeks. The petitioner was directed to file rejoinder on the aforesaid reply within two weeks, thereafter. Both the parties were directed to adhere to the time lines for service of petition and to file their reply/ rejoinder within the time line as aforesaid. The case was fixed for hearing on 09.11.2021.

6. At the hearing held on 09.11.2021, the Commission observed the following:

- (i) The petitioner served copy of petition to Respondent on 08.10.2021.
- (ii) The Respondent filed reply to the subject petition on 03.11.2021.
- (iii) The petitioner did not file its response on the status of approval of PPAs in this matter by the Commission.
- (iv) Ld. Counsel who appeared for the petitioner sought time to file rejoinder and his response on the status of approval of PPAs in this matter.

7. In view of the above, the petitioner was directed to file rejoinder on the aforesaid reply filed by Respondent and its response on the status of approval of PPAs in this matter within a week. The petitioner was directed to strictly adhere with the time lines for filing aforesaid submissions. The case was fixed for arguments on 21.12.2021 however, the case could not be heard due to vacancy of Member (Law) in the Commission from 09.12.2021 to 04.02.2022. The case was fixed for arguments on 15.02.2022.

8. At the hearing held on 15.02.2022, both the parties concluded their arguments. They requested to file written arguments. Considering the request, they were asked to file written arguments within three days and the case was reserved for orders.

9. In reply to the subject petition, by affidavit dated 02.11.2021, Respondent MPPMCL broadly submitted as under:

- (i) *That, before adverting to the factual matrix of the present case, it would be relevant here to take into consideration the averments made in Para 2, of the petition, which contains the details of PPA, executed between the parties and on perusal of the same, it is clear that petitioner has referred to 4 PPA executed on 15.01.2016, 10.02.2016, 17.08.2016 and 05.07.2016. It is the settled principle of law, that every agreement executed between the parties is independent contract and right & liabilities will be decided in accordance with the conditions of each agreement independent of other. Under the aforesaid legal position, the petitioner cannot club the claims of different and distinct PPA, in one petition, as claim under one contract or agreement is independent of other having independent cause of action and therefore, the clubbing of claims of 4 PPA in the present petition is not proper and present petition is liable to be dismissed on this ground alone.*
- (ii) *Without prejudice to the abovementioned submissions, the answering respondent humbly submits that the PPA, which were executed between the parties have specific mechanism in relation to payment to be made to the petitioner in lieu of Energy supplied and also contains the clause that in case of delay of payment or if there is any dispute between the parties, the agreement specifically stipulates the mechanism and the mode of Resolution of the dispute and without adhering to the binding conditions of the agreement petitioner has approached the Hon'ble Commission. The petitioner without availing the mechanism provided in the PPA has approached the Hon'ble Commission, therefore, the present petition is liable to be dismissed.*
- (iii) *That, at this juncture, it would be suffice hereto take into consideration Clauses of the PPA, regarding "Events of Default and Termination" and "Governing law and Dispute Resolution." In PPA dated 15.01.2016 and 10.02.2016, Article 10 deals with "Events of default and Termination", whereas Article 14 deals with "Governing law and Dispute Resolution", whereas the similar provision are contained in Article 9 and Article 13 of the PPA's dated 17.08.2016 and 05.07.2016.*

- (iv) That, as Article 10 & 14 are mutants mutandis to Article 9 & Article 13 of PPA dated 17.08.2016, the answering respondent will deal with Article 10 & 14 of PPA dated 15.01.2016 & 10.02.2016. For the present controversy, the answering respondent rely on Article 10.4 and 14.3.2 of the PPA. Article 10.4 deals with "**Procedure for cases of Procurers Event of Default**", whereas Clause 14.3.2 deals with "**Dispute Resolution through Arbitration.**"
- (v) That, on consideration of Clause 10.4.1 upto 10.4.5 of the PPA, it is clear that it provides for the mechanism, in case the payment is not made within 60 days of presentation of bills as per Article 10.2.1(i) and very specifically provides that after 7 days of the consultation period, the seller is free to sale the contracted capacity to any third party of the sellers choice and seller also has authority to terminate agreement after the end of 3 months period mentioned in Article 10.4.5.
- (vi) That, at this juncture, it would be relevant here to take into consideration Article 12.14 to 12.19 of the "**Tariff Order for procurement of power from Wind Electric Generator 2016**", framed by Commission in exercise of power under Section 86(1)(a),(b), (c) & (e) and Section 62(1) of Electricity Act, 2003. **Article 12.14 to 18 deals with "Payment mechanism"** whereas **Article 12.19 to 12.22 deals with "Default provisions for third party sale or sale to utility"**. Article 12.19 provides as under
"12.19- In case payment is not made within 60 days of presentation of bill (i.e. thirty days more than the prescribed limit of thirty days for normal payment), the developer may issue fifteen clear days" notice to the M.P. Power Management Company Limited to make the payment. This, however, will not absolve M.P. Power Management Company Limited from payment of delayed payment surcharge as provided in Clause 12.16 of this order. In, case, M.P. Power Management Company Limited still does not make the payment, developer shall have the liberty to approach Commission, for allowing sale of power to third party"

The copy of Tariff Order, 2016 is being filed herewith **Annexure R-1**.

- (vii) That, on conjoint reading of Article 10.4 of the PPA and Article 12.19 of the Tariff Order, 2016, it is clear that complete mechanism in case of default of payment is provided and petitioner without complying with the same has approached the Hon'ble Commission and therefore, the present petition is liable to be dismissed on this count alone.
- (viii) That, now the answering respondent will deal with the issue of "Resolution of dispute" as per the provisions of PPA and on perusal of Clause 14.3.2, it is clear that parties have resolved to settle their

disputes through Arbitration. The relevant extract of **Article 14.3.2** of the PPA, is reproduced herein below:

"If the dispute arises out of or in connection with any Claims not covered in Article 14.3.1(a), such shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996, as under provided not settled amicably as per Article 14.2.1."

*That, the aforesaid issue of reference to Arbitration as per Article 14.3.2 was considered by the Hon'ble Commission in the case of **M/s Green Infra Wind Energy Limited Vs. The Managing Director, M.P. Power Management Company Limited, petition No. 52/18, decided on 04.01.2021**, and after appreciating Article 14.3.2 of PPA and also taking note of the judgment rendered by the Hon'ble Supreme Court in the Case of **Gujarat Urja Vikas Nigam Limited Vs. ESSAR Power Limited 2008 (4)SCC 755**. "The Hon'ble Commission has directed for Arbitration proceedings. The copy of Order dated 04.01.2021, passed in Petition No. 52/18, is being filed herewith as **Annexure R-2**.*

- (ix) *That, now the answering respondent will deal with the factual aspects of the matter. It is not in dispute that 4 PPA mentioned in Para 2, of the petition, were executed between the parties and it is also clear from the assertion made in Para 3, of the petition that before June 2020, all the bills raised by the petitioner were timely settled and in relation to Claim for the period June 2020 to April 2021, it is submitted that respondent is facing issue of insufficient funds, as from past few years the amount of Subsidy, which is recoverable from Government of Madhya Pradesh, has been accumulated to the extent of Rs. 20861 Crores. The answering respondent is taking effective steps to make payments to all the Generators in phased manner and in the case of petitioner also, the respondent has taken effective steps to settle his claims. The Respondent is placing on Record the Tabulated Statement, showing Total Bill Received and Total Payment released till 26.10.2021, to different Wind Generators of M/s ReNew Power Pvt. Ltd. as **Annexure R-3**.*
- (x) *That, in relation to **Para V(A)**, "Amount payable to Renew are conclusive and admitted by MPPMGL", it is submitted that it is the case of petitioner himself that before June 2020, his bills were paid in time. It is submitted that the answering respondent has already explained in the preceding paragraphs that they are facing issue of insufficiency of funds and therefore, some delay has occasioned. The answering respondent has already referred to different clauses of PPA and the Tariff order, which specifically empowers the seller to take recourse to approach the Commission for sale of power to third party. The answering respondent humbly submits that they are taking effective steps to clear undisputed bills of the Generators,*
- (xi) *In relation to **Para V(B)**, it is submitted that the answering respondent are complying with the orders and directions of the Hon'ble Commission and contention of the petitioner is without any basis. The petitioner has*

entered into an agreement with the respondent for sale of power for 25 years and if because of unforeseen reasons some delay has occasioned, it does not mean that respondents are not complying with the orders of the Hon'ble Commission, although, the situation is otherwise, the petitioner without taking recourse to the provisions of PPA and the Tariff order, has rushed to the Hon'ble Commission.

- (xii) *In relation to **Para V(C)**, it is submitted that the contention of the petitioner is without any substance for the reasons that answering respondent has not violated any condition of contract and if there is any delay in settlement of bills of the petitioner, that does not mean that there is any violation of right of petitioner under Article 300A of the Constitution. The PPA specifically stipulates the consequences in case of default of bills and the claim of petitioner will be considered in accordance with the provisions of PPA and the tariff order and therefore, the contention of the petitioner, in this regard is meritless.*
- (xiii) *That, in relation to submission raised in **Para V(D)**, it is submitted that the allegation of Unjust Enrichment, against the answering respondent is without any basis as answering respondent is a Government Company engaged in the Management of Power. The answering respondent has already explained the factual position regarding insufficiency of funds and also submitted that they are taking effective steps for settlement of bills from all the generators including the petitioner in a phased manner and there is no evidence that the undisputed amount of petitioner is withheld due to any unjustified reason.*
- (xiv) *That, in relation to **Para V(G)**, it is submitted that the issue of delayed payments of surcharge, has to be looked into as per the provisions of PPA, but before the adjudication of the said issue, it is relevant here to appreciate the conduct of the petitioner, who without taking recourse to Article 10.4 of the PPA and Article 14.3.2 has rushed to the Hon'ble Commission*
- (xv) *That, in view of the aforesaid submissions, the petition filed by the petitioner sans merit and is liable to be dismissed.”*

10. The petitioner by affidavit dated 17.11.2022 broadly submitted the following in its rejoinder:

- A. ReNew has complied with the Notice requirements under the PPA**
- (i) *ReNew vide letters dated 15.09.2020, 29.01.2021, 21.04.2021 and 03.06.2021, repeatedly requested MPPMCL to clear the outstanding dues in accordance with the PPA. However, despite repeated requests, MPPMCL has not made payment. As a result, vide letter dated 18.06.2021, ReNew issued a notice to MPPMCL, requesting for payment Rs. 67.60 Crores by 30.06.2021, failing which ReNew would be constrained to initiate legal proceedings.*
- (ii) *On 09.07.2021, after providing adequate time and notice to MPPMCL to*

clear the outstanding dues, ReNew filed the present petition.

- (iii) *MPPMCL's reliance on Articles 10.2.1 of the 21 MW PPA & 10.5 MW PPA, and Article 9.2.1 of the 12.6 MW PPA & 16.8 MW PPA read with Clause 12.19 of the Generic Tariff Order dated 26.03.2013 is erroneous for the following reasons:*
- (a) *In terms of Article 8.1.1 read with Article 8.1.3 of the PPA, MPPMCL has an obligation to pay monthly tariff bills. ReNew has the right to seek enforcement of this obligation which is by way of the present Petition.*
 - (b) *ReNew has not served a Notice for Procurer Event of Default and neither has ReNew sought permission of this Hon'ble Commission to sell power to third parties. The present petition is for recovery of amounts due from MPPMCL which stand admitted pursuant to the reply filed by MPPMCL.*
 - (c) *Article 10.4 of the 21 MW PPA & 10.5 MW PPA and Article 9.4 of the 12.6 MW PPA & 16.8 MW PPA grants liberty to ReNew under the PPAs, to exercise at its discretion, the right to approach this Hon'ble Commission for seeking permission to sell power to third parties. This is in addition to ReNew's rights to enforce its right to receive tariff.*
 - (d) *In terms of Article 10.4.4 of the 21 MW & 10.5 MW PPA and Article 9.4.4 of the 12.6 MW PPA & 16.8 MW PPA, the parties are obligated to continue to perform their obligations under the Agreement. This would include MPPMCL's obligation to pay the agreed tariff for the power supplied by ReNew. Therefore, MPPMCL cannot avoid its obligations by relying on a part of Article 10.4.1 to contend that ReNew may resort to third party sale and in turn shirk its obligation to pay the tariff.*
 - (e) *Even otherwise, Article 10.4.3 of the 21 MW & 10.5 MW PPA and Article 9.4.3 of the 12.6 MW PPA & 16.8 MW PPA stated that it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the Procurer Event of default. Admittedly no such discussions were made despite ReNew writing repeatedly to MPPMCL.*
 - (f) *In any event, this Hon'ble Commission being the court of competent jurisdiction has the jurisdiction to entertain the present petition and pass necessary orders.*

B. *MPPMCL's financial hardship cannot be a ground for not performing obligations under the PPAs*

- (iv) *MPPMCL's contention that delays in payment after June 2020 has occurred on account of insufficient funds and financial hardships being faced by MPPMCL cannot be countenanced. It is submitted that*

MPPMCL is obligated to pay tariff based on the monthly bills raised by ReNew in accordance with Article 8.1.3 of the 10.5 MW PPA & 21 MW PPA and Article 7.1.2 of the 12.6 MW PPA & 16.8 MW PPA.

- (v) *As on date the principal outstanding amount payable to ReNew for the present Project is Rs. 112.44 Crores. In addition, the LPS payable on account of delay in payment by MPPMCL is Rs. 8.91 Crores.*
- (vi) *MPPMCL cannot be permitted to contend that delays in making payments are common in commercial transactions and unavoidable as Discoms are loss making institutions that are facing extreme financial hardships. It is submitted that similar contentions on poor financial health of Distribution Licensees being a ground for non-payment has been rejected by the Hon'ble Supreme Court in the **Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission**, Civil Appeal No. 1843 of 2021 (Judgment dated 08.10.2021) ("**MSEDCL SC Judgment**"), as under:*
- "196. We need not go into the question whether or not the Appellant has funds to clear its interest liability. **The Appellant cannot continue to get supply of electricity without having appropriate funds. Appellant would necessarily have to raise funds to clear its contractual obligations.***
- 197. Even assuming that the burden of interest would have to be passed on to the consumers, **that cannot be the ground for the Appellant to resile from its contractual commitment to the Power Generating Companies. The Appellant cannot pass on the burden for delay in making payment to the Power Generating Companies.***
- [...]*
- 202. In this case, the bills, payment of which has been delayed, are energy bills, pertaining to energy supplied to the Appellant; and supplied further by the Appellant to its consumers against payment of retail tariff. **Secondly, the energy bills in question, raised by the respondent Power Generating Companies have never been disputed by the Appellant, as noticed by the APTEL in the impugned judgment and order...**"*
- (vii) *Therefore, in light of the aforesaid findings in the MSEDCL SC Judgment, MPPMCL cannot resile from its contractual obligation to make payment of dues to ReNew on the pretext that MPPMCL is a loss-making institution or the fact that it is facing financial difficulties. For companies such as ReNew, sale of power and recovery of tariff is the only source of revenue. Even otherwise it is trite that merely because a contract has become commercially burdensome or financially onerous to perform is not a ground for one party to resile from its commitments and obligations. Therefore, MPPMCL cannot be permitted to renege on its commitments under the PPAs.*

(viii) *It is submitted that Clause 12.14 of the Generic Tariff Order dated 26.03.2013 has recognised the need for settlement of dues by MPPMCL within 30 days of submission of bill by the generating company (ReNew) in order to ensure that the generating company has an assurance of cash inflow for the energy, as under:*

“12.14 The Commission prescribes a settlement period of 30 days from the date of submission of the bill to the concerned Distribution Licensees where the power is injected in order to ensure that the developer has an assurance of cash inflow for the energy, which he delivers to the grid.”

Evidently, by avoiding payments to ReNew, MPPMCL is acting in contravention of this Hon’ble Commission’s Orders.

(ix) *While MPPMCL is citing financial stress to justify non-fulfilment of its obligations to pay ReNew, MPPMCL is making payments to other Independent Power Producers (IPPs) but not to ReNew. Such arbitrary conduct is further adding to the financial distress of ReNew. Being a public entity, it is incumbent upon MPPMCL to act in a non-arbitrary manner. The same has also been upheld by the Hon’ble Supreme Court in **UNITECH Ltd. v. Telangana State Industrial Infrastructure Corporation: 2021 SCC OnLine SC 99 (Para 46)**.*

(x) *Even otherwise it is submitted that MPPMCL cannot be allowed to wriggle out of its obligations under the PPAs by stating that it is undergoing financial stress. Such a submission is tantamount to MPPMCL taking the benefit of its own wrong since:*

(a) *MPPMCL has failed to demonstrate the steps it has taken to raise finances to repay ReNew’s outstanding.*

(b) *The present poor financial condition of MPPMCL is due to its own conduct.*

C. The matter ought to be decided by this Hon’ble Commission

(xi) *MPPMCL’s contention that the present matter ought to be referred to arbitration as per the GIWEL Order dated 04.01.2021 is erroneous. It is pertinent to note that after passing of the GIWEL Order, this Hon’ble Commission vide Order dated 06.10.2021 decided a similar matter in the case of in ‘**Adani Green Energy Ltd. v. MPPMCL**’, Petition No. 12 of 2021 (“**Adani MP Order**”). In the Adani MP Case as well, MPPMCL had sought reference to arbitration in respect of a petition filed by Adani Green Energy Ltd. under Section 86(1)(f) of the Electricity Act on account of non-payment of dues by MPPMCL. In the Adani Case, this Hon’ble Commission was pleased to decide the matter on merits and did not refer the parties to arbitration. Therefore, the present case also being similarly placed, ought to be adjudicated by this Hon’ble Commission.*

(xii) *It is submitted that the present petition is for enforcement of a contractual right being payment of tariff and for recovery of monetary*

claims. Since these dues stand admitted, the issue of reference to arbitration does not arise. It is submitted that Article 14.3.1 of the 21 MW PPA & 10.5 MW PPA and Article 13.3.1 of the 12.MW PPA & 16.8 MW PPA, categorically provides that a "Dispute arising from claim made by any Party..." shall be submitted for adjudication to this Hon'ble Commission if the dispute arises from a claim made by either party in relation to any matter related to Tariff. It is submitted that the present petition is in relation to non-payment of dues by MPPMCL and qualifies as an attempt to renege from payment of the applicable tariff as agreed under the PPAs. Further, the tariff incorporated under the PPA is the tariff that was determined by this Hon'ble Commission vide Order dated 26.03.2013. Thus, ReNew has rightly approached this Hon'ble Commission for release of the undisputed payments. Since the subject matter of the present issues squarely falls within the ambit of Article 14.3.1 of the 21 MW PPA & 10.5 MW PPA and Article 13.3.1 of the 12.MW PPA & 16.8 MW PPA it is prayed that this Hon'ble Commission ought to decide the present petition.

- (xiii) It is submitted that MPPMCL's reliance on the decision of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755 ("GUVNL Case")** is erroneous as the GUVNL Case will not apply in the present matter. It is submitted that the judgment in the GUVNL Case was rendered in context of PPAs executed before advent of the Electricity Act, 2003. In the context of a pre-existing PPA, the Hon'ble Supreme Court observed that the word "and" used in Section 86(1)(f) of the Electricity Act should be read as "or" and the Appropriate Commission would have the discretion to either decide a matter itself or refer the same for arbitration.
- (xiv) However, in the present case since this Hon'ble Commission has approved the standard PPA terms vide order dated 26.03.2013, the terms of the PPAs are binding on both parties. In terms of Article 14.3.1(a) of the 21 MW PPA & 10.5 MW PPA and Article 13.3.1 of the 12.MW PPA & 16.8 MW PPA all claims arising out of matters pertaining to tariff shall be adjudicated by this Hon'ble Commission. Further, in terms of Article 14.3.2 of the 21 MW PPA & 10.5 MW PPA and Article 13.3.2 of the 12.MW PPA & 16.8 MW PPA, only those claims that are not covered under Article 14.3.1.(a) i.e. non-tariff claims shall be resolved by arbitration in terms of the Arbitration and Conciliation Act, 1996. It is submitted that once, such a dispensation has been agreed to by the parties and accepted by this Hon'ble Commission, a claim/dispute related to tariff cannot be referred to arbitration. Therefore, referring the present matter to be resolved through arbitration would be contrary to Sections 7 and 8 of the Arbitration and Conciliation Act, which make it obligatory for the Courts to refer the parties to arbitration strictly in accordance with the terms of the arbitration agreement (in the present case the PPAs executed between ReNew and MPPMCL).

- (xv) *It is further submitted that since the claims stand admitted and the present petition is for enforcement of ReNew's contractual rights, recourse to the arbitration clause is unwarranted.*
- (xvi) *It is further submitted that the Hon'ble Appellate Tribunal for Electricity in **M/s. Sudhakara Infratech Private Limited v. Uttar Pradesh Electricity Regulatory Commission &Ors.**, Appeal No. 319 of 2019 (Judgment dated 06.03.2020) has held that a State Electricity Regulatory Commission while exercising its power under Section 86(1)(f) must act dispassionately by considering the material on record and after conducting proper inquiry, as under:*
- "40. The Electricity Regulatory Commission has been conferred with various responsibilities that include adjudication upon the disputes between licensees and generation companies in terms of Section 86(1)(f) of Electricity Act, 2003. When it sits as an adjudicatory authority over a dispute brought before it, it is expected to act responsibly and render its best judgment dispassionately in accordance with law following the principles of natural justice. An effective hearing, a just and equitable approach and consistency in the decision making are hallmark of fair justice. We record disappointment over the manner in which the State Commission has embarked upon its adjudicatory function in the matter at hand. Not only effective opportunity was denied to the Appellant but also conclusions were reached on untested material without a proper inquiry.*
- [...]*
- (xvii) *As said before, Electricity Regulatory Commissions are established under the Electricity Act, 2003 to discharge the functions specified in law which include the responsibility to "adjudicate upon the disputes" -- as conferred upon the State Commission by Section 86(1)(f) and upon the Central Commission by Section 79(1)(f). In carrying out the adjudicatory function, the Electricity Regulatory Commission (State or Central) acts as a neutral statutory authority. It must, however, be borne in mind that the Commissions also discharge certain other functions, including that of framing Regulations, the power in which regard is conferred by Sections 178 and 180 of the Electricity Act, 2003. It is well settled that in discharging the adjudicatory function, the Commission is bound not only by the statutory provisions but also by the Regulations framed by it which are in the nature of subordinate legislation and, thus, having the force of law. Aside from the binding effect of the Regulations on the Commission, in adjudicating upon a dispute, the Commission is expected to take a non-partisan approach. If there is a dispute on facts, it must hold a proper inquiry inclusive of, if so required, by calling for evidence. The evidence presented by both the sides has to be subjected to such judicial scrutiny as any other adjudicatory forum would undertake. There can be no preferential acceptance of the evidence of one side over that of the other. The appreciation of evidence requires total neutrality."*

D. This Hon'ble Commission ought to compute the amount payable to ReNew

(xviii) *Since the amounts due to ReNew are conclusive and admitted, this Hon'ble Commission ought to compute and direct MPPMCL to make the payment in a time bound manner. It is submitted that computation of claims should not be left to mutual resolution/ conciliation between parties in light of the following judgments of the Hon'ble Tribunal:*

(a) D.B. Power Ltd. V. Central Electricity Regulatory Commission and Anr. Appeal No. 56 of 2020 (Judgment dated 04.02.2021):

“13. *The proceedings before the Central Commission, in the matter brought before it by the Appellant, if we may use such analogy, was in the nature of civil suit for recovery of money claimed as due. The party against whom such claim had been pressed was expected to render all assistance to the adjudicatory forum so that, if any issues required to be determined, necessary inquiry could be made and clear decision thereupon was rendered. The Central Commission, while dealing with a matter of this nature, was expected to reach a decision that was clear, unambiguous, executable and led to finality. In such adjudicatory proceedings, the liability, if it exists, requires to be found and enforced. If there was any amount found due from the Respondent TANGEDCO unto the Appellant, in absence of any provision to the contrary in the contract or law, there was no occasion for the Commission to give any extended time for payment unless, of course, the party claiming had given consent for such enlargement of period for payment to be granted on request.*

14. *Concededly, there was neither any contest to correctness of the claim nor any specific request for three months to be given to TANGEDCO for satisfaction of the claim. Be that as it may, the three months period offered by the Central Commission also passed by with no effective compliance being attempted by the Respondent TANGEDCO.*

15. ***What we are unable to understand is the justification for the inclusion of qualifying clause that was added by the Central Commission as tailpiece to the operative portion of the Impugned Order requiring payment to be made of the amount thereby determined it being made conditional upon “reconciliation of bills with the Petitioner”. If in the opinion of the Central Commission there was a need for reconciliation, questions of fact had arisen. If so, it was the responsibility of the Commission itself to ask the parties to present or discover their respective accounts and on such basis and with their assistance, on the basis of evidence gathered, determine the liability which was to be directed to be discharged. The decree, if we may borrow that expression from the civil jurisprudence, that the Central Commission was intending to pass could not have been***

*made conditional or subject to reconciliation since that would relegate the parties to the same stage as they were prior to the adjudicatory process being initiated. **It has to be remembered that such disputes end up before adjudicatory authorities because the parties are unable to reconcile or resolve on their own. Rendering the enforcement of legitimate claim of a creditor subject to reconciliation by the debtor at its own convenience is throwing the former into a vicious circle, virtually denying the relief indefinitely. Such condition added to the direction to pay the lawful dues is in fact taking back by one hand what has been given by the other...***

16. *We hope and expect that while dealing with matters of such nature in future the Regulatory Commission will bear in mind that there is a need for clear findings to be returned on the liabilities which are subject matter of the lis. Coming back to the matter at hand, ...”*

(b) **Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission &Ors.**, Appeal No. 386 of 2019 (Judgment dated 20.09.2021)

“23. *...What is jarring is the fact that the directions were made subject to “reconciliation”, the responsibility of the Commission to determine having been all but forgotten – irresponsibly abdicated.*

[...]

44. *...The Commission, as the sector regulator, equipped as it is with the requisite powers, can do better. If the reasons for the mess indicated in the additional affidavit dated 29.07.2021 (mentioned earlier) are any pointer, it is the duty of the regulator to effectively deal with some of the issues that statedly plague the food chain and are attributable to actions (or inaction) of the regulatory authority including certain disallowances, delayed implementation of the tariff orders, approvals of gains and losses in MYT Order instead of True up; belated approval of the final true up etc. It is the obligation of the State Commission to ensure, by issuing appropriate directions and enforcement thereof to the logical end, that the Distribution licensee conducts itself in such a manner that it lives up to the objectives of the Electricity Act by maintaining financial discipline, adopting efficient systems, aiding in recovery of the cost of electricity in a reasonable manner and conduct of its business of distribution and supply on commercial principles which only would safeguard the consumers’ interest.”*

E. Joinder of cause of action between parties is permitted

(xix) *MPPMCL’s contention that ReNew cannot club claims under different PPAs in the same petition and on this ground alone the petition ought to be dismissed is erroneous. It is submitted that the 4 PPAs in issue in the*

present dispute cumulatively pertain to the 60.9 MW Kod Project through which power is supplied to MPPMCL. Since the PPAs are cumulative for supply of power from one Project it cannot be said that each PPA would constitute a separate cause of action.

(xx) Moreover, Order II Rule 3 of the Code of Civil Procedure, 1908 (“CPC”) provides that a plaintiff may unite in the same suit several causes of action against the same defendant, as under:

“3. **Joinder of causes of action.**— (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

(xxi) In the present case, the requirement of Order II, Rule 3 of CPC has been satisfied since:

(a) The cause of action for the present petition is the same for all PPAs i.e., non-payment of tariff by ReNew despite the monthly bills having become conclusive and not having been disputed by MPPMCL.

(b) The tariff payable by MPPMCL is the same in all PPAs i.e., Rs. 5.92 per unit in terms of the Hon’ble Commission’s Tariff Order dated 26.03.2013.

F. The PPAs and procurement there under have been approved by this Hon’ble Commission

(xxii) On 22.09.2021, this Hon’ble Commission while admitting the present petition posed a query to the Petitioner as to whether the Power Purchase Agreements (“PPAs”) (forming subject matter of the present Petition) had been approved by this Hon’ble Commission under Section 86(1)(b) of the Electricity Act 2003. In this regard, it is submitted that the PPAs along with Supplementary PPAs executed between the ReNew and MPPMCL do not need prior approval since these PPAs have been entered into in accordance with the applicable Regulations and the Generic Tariff Order dated 26.03.2013.

(xxiii) Regulation 4.8 of First Amendment/Addendum to MPERC (Co-Generation and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (“**MPERC RE Regulations 2010**”), provides that the Generating company is to approach the concerned Transmission Licensee and Distribution Licensee to enable the latter to conduct interconnection studies and ascertain the technical feasibility of evacuation of power. If technically feasible, the PPA may be signed within 15 days of receipt of the approval of the distribution

licensee. Regulation 4.8 provides as under:

“4.8 Procedure for execution of Power Purchase Agreement(s) {PPAs} and Power Purchase and Wheeling Agreement (s) {PP&WAs}

- (a) *The Generator shall approach the M.P. Power Trading Company with the proposal for sale of power generated from their machine(s). The proposal for sale of power shall include details of Company/Project in the applicable format C (i) to (v) as specified in MPERC (Furnishing of Technical details by Generating Companies) Regulations, 2011.*
- (b) *Simultaneously, Generator shall also approach the Transmission Licensee and the Distribution Licensee furnishing the requisite details as at (a) enabling them to conduct interconnection studies. If found feasible, permission shall be granted to the Generator along with an estimate of the cost of extension/bay and other charges within 30 days from the date of receipt of application with a copy to M.P. Power Trading Company. For long term access, M.P. Power Transmission Company shall grant permission, if found technically feasible, within 15 days of receipt of application.*
- (c) ***Thereafter, the M.P. Power Trading Company shall execute the Power Purchase Agreement(s)/Power Purchase and Wheeling Agreement(s), as the case may be, within 15 days from the date of receipt of proposal for sale of power in cases where new interconnection is not required. In cases where new interconnection is required, these agreements shall be executed within 15 days of receipt of permission from the Distribution Licensee and the Transmission Licensee (as applicable).***
- (d) ***In case the above timelines are not maintained, the applicant may approach the Commission.”***

Therefore, the MPERC RE Regulations 2010 does not require the need for either the generating company or the distribution licensee to obtain specific approval from this Hon’ble Commission.

- (xxiv) *The PPAs in issue were signed pursuant to the Generic Tariff Order dated 26.03.2013 and there was no requirement of obtaining approval from this Hon’ble Commission in the said Generic Tariff Order dated 26.03.2013. Clause 12.4 of the Tariff Order dated 26.03.2013 provides for the PPA and tenure of the PPA and does not stipulate any specific requirement for obtaining approval, as under:*

Power Purchase Agreement and Tenure

12.4 The energy generated by the wind generating units will be

procured centrally by the M.P. Power Management Co. Ltd. at the rates specified in this order. The energy so procured will be allocated by M.P. Power Management Co. Ltd. to the three distribution licensees on the basis of actual energy input in the previous financial year. Accordingly, the Power Purchase Agreements will be signed between the developer and the M.P. Power Management Co. Ltd. The M.P. Power Management Company Limited, Jabalpur, in turn, will have back to back power supply agreement with the Distribution Licensees. The agreements will be for exclusive sale of electricity for a period of 25 years from the date of commissioning of plant or for a shorter period in case the developer opts to supply to the licensees after consuming the electricity for self use/ third party sale for some years. The developer may execute agreement with M.P. Power Management Co. Ltd. before commissioning of plants and the Commissioning Certificate may form a part of the agreement. The M.P. Power Management Company Limited, Jabalpur is directed to develop the model agreement accordingly.”

- (xxv) *Further, a similar issue as to whether PPAs were approved by this Hon’ble Commission also arose in Petition No. 67 of 2020 titled ‘M/s OIL India Ltd. v. MPPMCL’. By way of Order dated 06.10.2021, this Hon’ble Commission observed that there was no requirement to obtain specific approval for PPAs executed pursuant to the Generic Tariff Order dated 26.03.2013. In the past, in respect of a similarly placed generating company having a PPA with MPPMCL, this Hon’ble Commission observed vide Letter dated 16.10.2018 that as there is no provision in the tariff order, no separate approval was required to be obtained, as under:*

“The Commission has noted that there is no provision in the tariff order dated 29-06-2016 for approval of Power Purchase Agreement from the Commission. The tariff for procurement is already indicated in the aforesaid tariff order. As such, the instant petition need not be sent to the Commission. Hence, returned herewith in original.”

- (xxvi) *In terms of the foregoing, it is prayed that the present petition ought to be allowed and MPPMCL be directed to:*
- (a) *Release payments due to ReNew which have been unlawfully withheld along with Late Payment Surcharge in accordance with the terms of the PPAs;*
 - (b) *Pending final adjudication, direct MPPMCL to pay 80% of the pending amounts to ReNew forthwith.*
 - (c) *Direct MPPMCL to pay future bills in a timely manner in accordance with the Power Purchase Agreements.”*

11. The petitioner while reiterating contents in subject petition and its rejoinder, has filed written arguments on 15th February’ 2022. In the aforesaid written submission, the petitioner stated that the unpaid monthly bills which are due for the period June 2020 till date are now

amounting to Rs. 144,68,04,988/- (Principal: Rs 131,62,46,022; Interest/LPS: Rs 13,05,58,966) which was Rs. 67.60 Crores at the time of filing subject petition.

Commission's Observations and Findings:

12. The Commission has observed the following from the contents in this petition and submissions of the petitioner and Respondent:

- (i) The Petitioner, ReNew Power Private Limited is a company engaged in the business of generation, operation and maintenance of power plants. The present Petition has been filed seeking recovery of Rs. 67.60 crores for the period from June 2020 to April 2021(as on 30.06.2021) from MP Power Management Company Limited (MPPMCL) and for issuance of directions to MPPMCL to pay future bills in a timely manner in accordance with the Power Purchase Agreements executed between the parties.
- (ii) The petitioner has executed the following Power Purchase Agreements for 25 years with MPPMCL at tariff of Rs. 5.92/KWh as per MPERC Order dated 26.03.2013 for supply of power from its 60.9 MW Wind Power Projects located at District Dhar in Madhya Pradesh:
 - (a) PPA dated 15.01.2016 for 21 MW
 - (b) PPA dated 10.02.2016 for 10.5 MW
 - (c) PPA dated 17.08.2016 for 12.6 MW
 - (d) PPA dated 05.07.2016 for 16.8 MW

The supply of power in respect of the above PPAs (total capacity of 60.9 MW) commenced from 30.03.2016 and 23.04.2016, as below:

S. No	Capacity Commissioned	Date of Commissioning
1.	25.2 MW (12 x 2.1)	30.03.2016
2.	21 MW (10 x 2.1)	30.03.2016
3.	14.7 MW (7 x 2.1)	23.04.2016

Above project is setup in Madhya Pradesh and the entire capacity is tied up with MPPMCL. The subject petition pertains to adjudication of disputes that have arisen between the parties due to non-payment of the tariff by MPPMCL. Since June 2020, MPPMCL has stopped payment of monthly bills.

- (iii) Initially payments were made by MPPMCL in a timely manner, however, MPPMCL stopped payment of monthly bills to the petitioner since June 2020. As submitted by the petitioner, monthly bills for the period June 2020 to April 2021 amounting to Rs. 67.60 Crore were unpaid at the time of filing this petition.
- (iv) The petitioner had informed the Respondent (MPPMCL) on 10.09.2019, 24.02.2020, 15.09.2020 and 26.10.2020 about the outstanding amounts payable by MPPMCL for its Project in this case and requested MPPMCL to clear the dues at the earliest.
- (v) The petitioner (ReNew) proposed/offered deduction of rebate at 1% on the billed amount if the payments are made on or before 30.04.2021; and the

petitioner also offered to waive the late payment surcharge under the PPAs, if payments are cleared on or before 30.04.2021.

- (vi) On 03.06.2021, the petitioner wrote to MPPMCL for an outstanding amount of Rs. 34.51 Crore for supply of power from the Project between June 2020 to February 2021. The petitioner again offered deduction of rebate at 1% on billed amount and proposed to waive off LPS if the dues were cleared by MPPMCL by 30.06.2021.
- (vii) As stated by the petitioner, despite all above communications, the Respondent, MPPMCL has not paid the outstanding amounts which are admitted and accepted by MPPMCL. However, MPPMCL continued to schedule power from the petitioner's project. Lastly, the petitioner issued notice to MPPMCL on 18.06.2021 asking MPPMCL to pay Rs. 67.60 Crores by 30.06.2021 failing which the petitioner would be constrained to initiate appropriate legal proceedings and approach this Commission. However, no payment was received by the petitioner from MPPMCL and therefore, the petitioner has filed this petition.
- (viii) The Respondent has pleaded in the subject petition mainly on the following grounds:
- (a) That, the petition deals with four different PPAs dated 15.01.2021, 10.02.2016, 17.08.2016 and 05.07.2016. The petitioner cannot club the claims of different and distinct PPAs in one petition. as claim under one contract or agreement is independent of other having independent cause of action and therefore, the clubbing of claims of 4 PPA in the present petition is not proper and present petition is liable to be dismissed on this ground alone.
- (b) That, in PPAs dated 15.01.2016 and 10.02.2016, Article 10 deals with "Events of default and Termination" and Article 14 deals with "Governing law and Dispute Resolution" whereas, similar provisions are contained in Article 9 and Article 13 of the PPAs dated 17.08.2016 and 05.07.2016. Since Article 10 & 14 are similar to Article 9 & Article 13 of PPA dated 17.08.2016, therefore, the respondent has relied on Article 10 & 14 of PPA dated 15.01.2016 & 10.02.2016. Article 10.4 deals with "**Procedure for cases of Procurers Event of Default**", whereas Article 14.3.2 deals with "**Dispute Resolution through Arbitration.**" While mentioning the provisions under aforesaid Articles under PPAs, the Respondent has contended that the petitioner has not followed the procedure provided under the PPAs and had directly approached the Commission for adjudication of disputes. The Respondent has further contended that the petitioner ought to have followed the 'Procedure for Procurer Event of Default' as per Article 10 and 14 of the PPAs on account of non-payment by MPPMCL. Even Clause 12.19 of the Tariff Order dated 26.03.2013 provides that if MPPMCL does not clear the bill within 60 days of presentation, the petitioner may give 15 days' notice to MPPMCL to make the payment. In the event MPPMCL does not pay, the petitioner has

liberty to approach the Commission for allowing sale of power to third party.

- (c) The Respondent has stated that all the bills raised by the petitioner were timely settled. However, in relation to claim of petitioner for the period of June 2020 to April 2021, the Respondent has submitted that it is facing liquidity problem, as past period Subsidy, by Government of Madhya Pradesh, has accumulated to the extent of Rs. 20,861 crore. The Respondent is taking effective steps to make payments to all the Generators in phased manner and in the case of petitioner also, the Respondent has taken effective steps to settle his claims. The Respondent has placed on record a tabulated statement, showing total bills received and total payment released till 26.10.2021 to different Wind Generators of M/s ReNew Power Pvt. Ltd.
- (d) The Respondent has contended that the parties ought to decide the issue through Arbitration in terms of Article 14 of the PPA. A similar approach has been followed by this Hon'ble Commission in **M/s Green Infra Wind Energy Ltd. v. MPPMCL** in Petition No. 52 of 2018 (Order dated 04.01.2021).
- (e) With regard to violation of petitioner's right under Article 300A of the Constitution, the Respondent has submitted that the contention of the petitioner is without any substance for the reasons that the Respondent has not violated any condition of contract and delay in settlement of bills of the petitioner if any, does not mean any violation of right of petitioner under Article 300A of the Constitution. The PPA specifically stipulates the consequences in case of default of bills and the claim of petitioner will be considered in accordance with the provisions of PPA and the tariff order and therefore, the contention of the petitioner in this regard has no merit.
- (ix) In response to the above reply, the petitioner has broadly submitted the following in its rejoinder:
- (a) Respondent's contention that the petitioner cannot club claims under different PPAs in the same petition and on this ground alone the petition ought to be dismissed is erroneous. It is submitted that the 4 PPAs in issue in the present dispute cumulatively pertain to the 60.9 MW KOD Project through which power is supplied to MPPMCL. Since the PPAs are cumulative for supply of power from one Project it cannot be said that each PPA would constitute a separate cause of action. Moreover, Order II Rule 3 of the Code of Civil Procedure, 1908 ("**CPC**") provides that a plaintiff may unite in the same suit several causes of action against the same defendant, as under:
- "3. **Joinder of causes of action.**--(1) *Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.*

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

The petitioner has stated that in the present case, the requirement of Order II, Rule 3 of CPC has been satisfied since:

- (a)(i) The cause of action for the present petition is the same for all PPAs i.e., non-payment of tariff by ReNew despite the monthly bills having become conclusive and not having been disputed by MPPMCL.
 - (a)(ii) The tariff payable by MPPMCL is the same in all PPAs i.e., Rs. 5.92 per unit in terms of the Hon'ble Commission's Tariff Order dated 26.03.2013.
- (b) Respondent's reliance on Articles 10.2.1 of the 21 MW PPA & 10.5 MW PPA, and Article 9.2.1 of the 12.6 MW PPA & 16.8 MW PPA read with Clause 12.19 of the Generic Tariff Order dated 26.03.2013 is erroneous for the following reasons:
- (b)(i) In terms of Article 8.1.1 read with Article 8.1.3 of the PPA, MPPMCL has an obligation to pay monthly tariff bills. The petitioner has the right to seek enforcement of this obligation which is by way of the present Petition. The petitioner has not served a notice for Procurer Event of Default and neither has the petitioner sought permission of the Commission to sell power to third parties. The present petition is for recovery of amounts due from MPPMCL which stand admitted pursuant to the reply filed by MPPMCL.
 - (b)(ii) Article 10.4 of the 21 MW PPA & 10.5 MW PPA and Article 9.4 of the 12.6 MW PPA & 16.8 MW PPA grants liberty to the petitioner under the PPAs, to exercise at its discretion, the right to approach this Hon'ble Commission for seeking permission to sell power to third parties. This is in addition to petitioner's rights to receive tariff.
 - (b)(iii) In terms of Article 10.4.4 of the 21 MW & 10.5 MW PPA and Article 9.4.4 of the 12.6 MW PPA & 16.8 MW PPA, the parties are obligated to continue to perform their obligations under the Agreement. This would include MPPMCL's obligation to pay the agreed tariff for the power supplied by ReNew. Therefore, MPPMCL cannot avoid its obligations by relying on a part of Article 10.4.1 to contend that the petitioner may resort to third party sale and in turn shirk its obligation to pay the tariff.
 - (b)(iv) Even otherwise, Article 10.4.3 of the 21 MW & 10.5 MW PPA and Article 9.4.3 of the 12.6 MW PPA & 16.8 MW PPA provided that it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the Procurer Event of default. Admittedly no such discussions were made despite ReNew writing repeatedly to MPPMCL. In any event, this Commission has the jurisdiction to entertain the present petition and pass necessary orders.

(c) As on date the principal outstanding amount payable to the petitioner for the present Project is Rs. 112.44 Crore. In addition, the LPS payable on account of delay in payment by MPPMCL is Rs. 8.91 Crores. The Respondent cannot be permitted to contend that delays in making payments are common in commercial transactions and unavoidable as Discoms are loss making institutions that are facing extreme financial hardships. It is submitted that similar contentions on poor financial health of Distribution Licensees being a ground for non-payment has been rejected by the Hon'ble Supreme Court in the **Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission**, Civil Appeal No. 1843 of 2021 (Judgment dated 08.10.2021) ("**MSEDCL SC Judgment**").

(d) MPPMCL's contention that the present matter ought to be referred to arbitration as per the GIWEL Order dated 04.01.2021 is erroneous. It is pertinent to note that after passing of the GIWEL Order, this Hon'ble Commission vide Order dated 06.10.2021 decided a similar matter in the case of in '**Adani Green Energy Ltd. v. MPPMCL**', Petition No. 12 of 2021 ("**Adani MP Order**"). In the Adani MP Case as well, MPPMCL had sought reference to arbitration in respect of a petition filed by Adani Green Energy Ltd. under Section 86(1)(f) of the Electricity Act on account of non-payment of dues by MPPMCL. In the Adani Case, this Hon'ble Commission was pleased to decide the matter on merits and did not refer the parties to arbitration. Therefore, the present case also being similarly placed, ought to be adjudicated by this Hon'ble Commission.

The present petition is for enforcement of a contractual right being payment of tariff and for recovery of monetary claims. Since these dues stand admitted, the issue of reference to arbitration does not arise. It is submitted that Article 14.3.1 of the 21 MW PPA & 10.5 MW PPA and Article 13.3.1 of the 12.MW PPA & 16.8 MW PPA, categorically provides that a "Dispute arising from claim made by any Party..." shall be submitted for adjudication to this Hon'ble Commission if the dispute arises from a claim made by either party in relation to any matter related to Tariff. It is submitted that the present petition is in relation to non-payment of dues by MPPMCL and qualifies as an attempt to renege from payment of the applicable tariff as agreed under the PPAs. Further, the tariff incorporated under the PPA is the tariff that was determined by this Commission vide Order dated 26.03.2013. Thus, ReNew has rightly approached this Commission for release of the undisputed payments. Since the subject matter of the present issues squarely falls within the ambit of Article 14.3.1 of the 21 MW PPA & 10.5 MW PPA and Article 13.3.1 of the 12.MW PPA & 16.8 MW PPA, it is prayed that this Commission ought to decide the present petition.

(x) Clause 12.19 of the "Tariff Order for procurement of power from Wind Electric Generator 2016 provides as under:

*"12.19- In case payment is **not made within 60 days** of presentation of bill (i.e thirty days more than the prescribed limit of thirty days for normal payment), the developer **may issue fifteen clear***

days" notice to the M.P. Power Management Company Limited to make the payment. This, however, will not absolve M.P. Power Management Company Limited from payment of delayed payment surcharge as provided in Clause 12.16 of this order. In case, M.P. Power Management Company Limited still does not make the payment, developer shall have the liberty to approach Commission, for allowing sale of power to third party"

- (xi) The following "Procedure for cases of Procurer's Event of Default" is provided under Article 10.4 of PPAs executed between the parties in this matter:

"10.4. Procedure for cases of Procurer's Event of Default

10.4.1 In case payment is not made within 60 days of presentation of bill as per Article 10.2.1(i) (i.e. thirty days more than the prescribed limit of thirty days for normal payment), the Seller may issue fifteen clear day's notice to the Procurer to make the payment. This, however, will not absolve the procurer from payment of delayed payment surcharge as provided in Article 8.6.3 of this Agreement. In case, the Procurer still does not make the payment, the Seller shall have the liberty to approach MPERC for allowing sale of power to third party.

10.4.2. Upon the occurrence and continuation of any Procurer's Event of Default specified in Article 10.2 the Seller shall have the right to deliver to the Procurer, a Seller's Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

10.4.3. Following the issue of a Seller's Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

10.4.4. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

10.4.5. After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurer's Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity to any third party of the Seller's choice.

Provided further that at the end of three (3) months period from the period mentioned in this Article 10.4.5, this Agreement may be terminated by the Seller.

- (xii) Similar provisions are provided for "Procedure for cases of Procurer's Event of Default" under Article 9.4 of all other PPAs in this matter.

- (xiii) The Commission has noted that as provided in Article 10.4/9.4 of respective PPAs and Clause 12.19 of Tariff Order, the petitioner is free to sell the contracted capacity to any third party of its choice and the agreement may be terminated by the petitioner in case payments are not made by the Respondent, MPPMCL.
- (xiv) In view of foregoing observations, the Commission has noted that the outstanding amount of Rs. 67.60 crores claimed in the subject petition for the period from June 2020 to April 2021 is undisputed. Therefore, the Respondent is directed to make payment of aforesaid admitted outstanding amount to the petitioner in terms of the provisions of the PPAs/tariff order within 30 days. In future bills, if Respondent doesn't ensure payment as per provisions of PPAs executed between both the parties, the Petitioner may avail an option as provided under Articles 10.4/ 9.4 of the respective PPAs and Tariff Order.

With the aforesaid observations and directions, the subject petition stands disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman