

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION BHOPAL

Subject: In the matter of petition seeking permission to purchase additional non-solar Renewable Energy Certificate (RECs) due to non-availability of solar RECs in the State of M.P. in particular at factory/ unit – Mahan Aluminum, Bargawan District Singrauli for the purpose of fulfillment of renewable purchase obligation norms for solar RECs.

ORDER

(Date of order: 03rd May, 2021)

M/s. Hindalco Industries Ltd.,

Ahura Centre, 1st Floor, 8 Wing, Mahakali Caves Road,
Andheri (East), Mumbai – 400 093.

- **Petitioner**

Vs.

M.P. Urja Vikas Nigam Ltd.

Urja Bhawan, Link Road No. 2, Shivaji Nagar,
Bhopal - 462016.

- **Respondent**

Shri Mridul Chakravorty, Advocate, Shri Ankit Jain, Advocate and Shri Ali Waris Roa, Authorized Representative appeared on behalf of the petitioner.

Shri Surendra Bajpai and Shri Avneesh Shukla appeared on behalf of respondent.

The subject petition has been filed by the petitioner M/s. Hindalco Industries Limited seeking permission to purchase additional non-solar Renewable Energy Certificate (RECs) due to non-availability of solar RECs in the State of M.P. in particular at factory/ unit – Mahan Aluminum, Bargawan District Singrauli for the purpose of fulfillment of Renewable Purchase Obligation (RPO) norms for solar RECs.

2. The petitioner by affidavit dated 27.12.2019 broadly submitted as follows:

- (1) *M/s Hindalco Industries Limited is an aluminium smelter having captive power plants with 900 MW capacity (6×150 MW) of which one unit is a standby.*
- (2) *It is seeking permission to purchase additional non-solar RECs, due to non-availability of solar RECs, in order to comply with the obligation for fulfilling Solar RPO norms for the FY 2019-20. This is being sought under the powers available to this Hon'ble Commission as per Regulation 17 of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision 1) Regulation, 2010 (hereinafter referred as the MPERC RPO Regulations). It is submitted that neither physical solar energy is available in the market, nor the Solar RECs are not available in energy exchanges for fulfilment of Solar RPO norms for FY 2019-20. The same has resulted in impossibility for the Petitioner, to comply with the Solar RPO norms for the FY 2019-20. As such, this Hon'ble Commission has powers to remove difficulties,*

under **Regulation 17**, in such cases in which the implementation of the abovesaid Regulations becomes difficult or impossible. Accordingly, this Hon'ble Commission may permit the Petitioner to purchase non-solar RECs for fulfilment of Solar RPO.

- (3) In addition to the above, it is relevant to mention herein that the Petitioner has filed a petition, being **Petition No. 25/2019**, whereby it is seeking modification of RPO norms of this Hon'ble Commission, in the light of the issuance of notifications dated 01.02.2019 and 01.10.2019. If the said petition is allowed, then the RPO norms will be modified for FYs 2012-13 onwards, as applicable in terms of the commissioning of the first captive generating unit of the power plant of the Petitioner.
- (4) Therefore, while the above petition is pending adjudication, and keeping in mind the other facts and circumstances of the present case, judicial propriety demands that this Hon'ble Commission takes a lenient view qua the compliance with RPO norms provided under the aforementioned MPERC Regulations.

Chronological brief of facts

- (5) The Petitioner, viz. M/s. Hindalco Industries Limited, is an Aluminium Smelter, having Captive Power Plant (CGP) with 900 MW capacity (6×150 MW) of which one unit is standby. The said six units of 150 MW were commissioned and synchronized with the Grid, at different points of time, from March, 2013 to September, 2016, as given below:

S. No.	Unit Particulars	Date of Commissioning & Synchronization
1.	Unit-1	09.03.2013
2.	Unit-2	21.05.2013
3.	Unit-3	07.12.2013
4.	Unit-4	16.07.2014
5.	Unit-5	27.05.2015
6.	Unit-6	18.09.2016

- (6) The CGP has been set up with an objective of supplying continuous, consistent, quality of power to the Aluminum Smelter Plant. Hence, the sustainability of the parent industry, as well as their captive power plants, are of material importance for the State.
- (7) In the year 2003, the Electricity Act was passed with the objective to introduce competitive environment in the electricity sector and to take measures conducive to development of electricity industry and also for promotion of environmentally benign policies. In addition to the Act, the Central Government had undertaken various others exercises and initiatives towards promotion of renewable energy.
- (8) That on 19.11.2010, in order to promote nonconventional sources of energy, this Hon'ble Commission notified the RPO Regulations for procurement of

renewable energy by the DISCOMs and other obligated entities. Vide the said Regulations, this Hon'ble Commission imposed obligations to purchase minimum renewable energy on all obligated entities such as Distribution Licensees, Captive Consumers and Open Access Consumers. As per Regulation 4.1 of the said Regulations, the percentage of RPO is imposed upon Obligated Entities, which includes captive users such as the Petitioner. Further, Regulation 4.1 also specifies the percentage of Solar RPO Obligation and Non-Solar, Solar RPO Obligations.

Copy of the said MPERC RPO Regulations is annexed herewith and marked as **Annexure P-1.**

- (9) It is submitted that the total consumption of electricity by the Petitioner, from sources other than the distribution licensee, was **5110.9 MUs for FY 2018-19**. As a result, the Petitioner had to comply with RPO norms, at the percentage levels of 7.5% of the said consumption for non-solar, and 1.75% for Solar. The Petitioner had duly **complied** with the above RPO norms for FY 2018-19.
- (10) It is submitted that for the purpose of promoting renewable energy in terms of Section 86(1)(e) of the Act, India's first National Action Plan on Climate Change (NAPCC) was released on June 30, 2008, which provided for certain measures to be adopted in the regulatory/ tariffs regime to help mainstream renewable based sources in the national power system. It is to be noted that the Plan also envisaged for issuance of Renewable Energy Certificates for the first time, in order to address the concerns with respect to divergence in RPOs for the states and hence hindrances being created for the state commissions in providing for higher RPOs. Relevant extract from the aforesaid NAPCC, has been reproduced herein below for ready reference:

"4.2.2 GRID CONNECTED SYSTEMS

... ..

(i) A dynamic minimum renewable purchase standard (DMRPS) may be set, with escalation each year till a pre-defined level is reached, at which time the requirements may be revisited. It is suggested that starting 2009-10, the national renewables standard (excluding hydropower with storage capacity in excess of daily peaking capacity, or based on agriculture based renewable sources that are used for human food) may be set at 5% of total grids purchase, to increase by 1% each year for 10 years. SERCs may set higher percentages than this minimum at each point in time.

(ii) Central and State governments may set up a verification mechanism to ensure that the renewable based power is actually procured as per the applicable standard (DMRPS or SERC specified). Appropriate authorities may also issue certificates that procure renewable based power in excess of the national standard. Such certificates may be tradeable, to enable utilities falling short to meet their renewables standard obligations. In the event of some utilities still

*falling short, penalties as may be allowed under the Electricity Act 2003 and rules thereunder may be considered.
... ..*

*True Copy of the NAPCC dated 30.06.2008 is annexed herewith and marked as **Annexure P-2.***

- (11) *It is submitted that the Forum of Regulators in 2008, had also recommended for promotion of REC mechanism, due to issues arising on account of divergence in RPOs, tariffs and different technologies across the country. The following recommendations were made after considering the report of the working group:*

“11.8 Feasibility of introducing RE certificate mechanism

11.8.1 A suitable mechanism like REC is necessary to promote RE sources on the scale envisaged in the National Action Plan on Climate Change. The MNRE had commissioned a study to examine the feasibility of developing a model to operationalize RECs. The study should also examine the GBI as a basis for evaluation of RECs. The legal sanctity of REC vis-à-vis EA 2003 needs to be examined.”

*True Copy of the recommendations of Forum of Regulators is annexed herewith and marked as **Annexure P-3.***

- (12) *It is submitted that the REC mechanism was also considered effective by the Ministry of New and Renewable Energy, which issued a Report on the Development of Conceptual Framework for Renewable Energy Certificate Mechanism for India, in June 2009, discussing various aspects including the legal sanction for introducing Renewable Energy Certificates, the eligibility of renewable sources and technologies, the obligated entities, the shelf life of such certificates, compatibility with other schemes etc.*

*True Copy of the MNRE Report is annexed herewith and marked as **Annexure P-4.***

- (13) *Hence, as has been stated above, due to uneven distribution of renewable energy sources across the country, which created hindrance for the Ld. SERCs to specify higher RPOs, the regime for RECs began with the aforesaid policy framework laid down by the Central Government. It is further stated that in lieu of the above policies and plan of the Central Government, the Hon'ble Central Commission came out with the mechanism of sale and purchase of RECs through the CERC REC Regulations, 2010. The said REC regime was adopted by the State Commissions by way of either amending their existing regulations or issuing fresh regulations to include the renewable energy certificate mechanism as a means for achieving/ meeting renewable purchase obligation by the distribution licensees and other obligated entities.*

- (14) *In the light of the above, it is evident that RECs were introduced in order to help*

in fulfilment of RPO norms, since availability of physical renewable energy was uneven across states, as generation of such energy is concentrated in some of the states which are conducive for such generation.

In lieu of the aforesaid intent and framework encapsulated by the Central Government, vide its policies and guidelines, from time to time, this Hon'ble Commission had also promulgated its RPO Regulations in 2010, which also provided for the aforesaid regime.

- (15) *It is submitted that in order to further promote electricity generation through renewable sources, Jawaharlal Nehru National Solar Mission (JNNSM) was launched on the 11.01.2010 by the Government of India, wherein the Central Government itself acknowledged creation of a friendly and enabling environment for the purpose of diffusion of electricity generation through renewable sources across the country on priority. Further, the mission itself envisaged the requirement of RECs as an alternative to physical RE power, in order to ensure compliance of the RPO norms under the Regulations. Article 6 in this regard is relevant, which talks about the policy and regulatory framework. The relevant provisions of the JNNSM are extracted herein below:*

"6. Policy and regulatory framework

The objective of the Mission is to create a policy and regulatory environment which provides a predictable incentive structure that enables rapid and large-scale capital investment in solar energy applications and encourages technical innovation and lowering of costs.

Although in the long run, the Mission would seek to establish a sector-specific legal and regulatory framework for the development of solar power, in the shorter time frame, it would be necessary to embed the activities of the Mission within the existing framework of the Electricity Act 2003. The Electricity Act already provides a role for renewables but given the magnitude and importance of the activities under the Mission, it would be necessary to make specific amendments. The National Tariff Policy 2006 mandates the State Electricity Regulatory Commissions (SERC) to fix a minimum percentage of energy purchase from renewable sources of energy taking into account availability of such resources in the region and its impact on retail tariff. National Tariff Policy, 2006 would be modified to mandate that the State electricity regulators fix a percentage for purchase of solar power. The solar power purchase obligation for States may start with 0.25% in the phase I and to go up to 3% by 2022. This could be complemented with a solar specific Renewable Energy Certificate (REC) mechanism to allow utilities and solar power generation companies to buy and sell certificates to meet their solar power purchase obligations.

The Central Electricity Regulatory Commission has recently issued guidelines for fixing feed-in-tariff for purchase of Solar power taking into account current cost and technology trends. These will be revised

on an annual basis. The CERC has also stipulated that Power Purchase Agreement that utilities will conclude with Solar power promoters, should be for a period of 25 years.

.....”

True Copy of the JNSSM is annexed herewith and marked as **Annexure P-5**.

- (16) Therefore, the aforesaid policy and regulatory framework was being developed in order to promote renewable sources of energy. However, to ensure that the provisions envisaging minimum purchase requirements meet with the real time availability of renewable source of energy, the Obligated Entities were given an alternative to physical RE power, in case of its non-availability, in the form of RECs, which could be bought from the energy exchange.
- (17) It is submitted that, in line with the above, the MPERC RPO Regulations, under Regulation 4.3, provides that RPO norms can be fulfilled by purchase of RECs, as an alternate to physical purchase of renewable energy. It is stated that RECs can be traded at energy exchanges.

It is further submitted that the REC regime was created by the Ld. Central Commission through promulgation of CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. As per the said Regulation 8 of the said Regulations, RECs can only be traded, or purchased, through energy exchanges created by the Ld. Central Commission.

- (18) However, it is the case of the Petitioner, that it is **facing difficulty in fulfilling Solar RPO norms on account of non-availability of adequate Solar RECs in power exchanges. It is further submitted that physical Solar energy is also not available freely in the market.** The same requires intervention by this Hon'ble Commission in order to come to the aid of the Petitioner, as it has always bonafidely complied with the RPO norms provided under the MPERC RPO Regulations.
- (19) In this regard, it is submitted that the past inventory of Renewable Energy Certificates (REC) has already depleted with demand far exceeding supply on the Energy Exchanges, and therefore, the captive users, such as the Petitioner, will not be in a position to procure any more RECs and hence, will fail in fulfilling their RPO obligations. In this context, reference may be made to the below table: REC Summary (Solar & Non Solar), as on 16.12.19

Month, Year	Opening Balance (A)	REC Issued (B)	No. of REC Redeemed		Total E=(C+D)	Closing Balance (F=A+B-E)
			RECs Redeemed through Power Exchanges (C)	RECs retained by RE Generators (D)		
Jan, 2019	2473236	673404	805318	98199	903517	2243123
Feb, 2019	2243123	2092011	1240849	15599	1256448	3078686
Mar, 2019	3078686	344468	1177761	37410	1215171	2207983
Apr, 2019	2207983	365455	368902	299	369201	2204237

May, 2019	2204237	535170	750792	9782	760574	1978833
Jun, 2019	1978833	696765	698298	4313	702611	1972987
Jul, 2019	1972987	552581	629628	40832	670460	1855108
Aug, 2019	1855108	409308	430513	9004	439517	1824899
Sep, 2019	1824899	617082	800435	6173	806608	1635373
Oct, 2019	1635373	697050	687439	24181	711620	1620803
Nov, 2019	1620803	371910	505673	19587	525260	1467453
Dec, 2019	1467453	389594	0	0	0	1857047
Total:		58510258	54523646	2129565	56653211	

(20) That, it is pertinent to mention herein that, as observed from the RECs inventory details dated 28.11.2019 published by the REC Registry of India, **the availability of Solar RECs has been reduced significantly**. Further, the monthly issuance and monthly sell bid of Solar RECs is far lower than the monthly buy bid over the last few months. The relevant extract/portion of the Solar RECs Issuance and Trade from April, 2018 to November, 2019 is as follows;

	Opening Balance	Issuance	Self Retained by RE generator	Total sell Bid	Total Buy Bid	Market Clearing volume	Clearance ratio as % of Buy Bid
	Lakh REC	Lakh REC	Lakh REC	Lakh REC	Lakh REC	Lakh REC	%
Apr-18	60.0	0.6	0.01	49.2	8.8	8.8	100.0
May-18	51.8	0.8	0.01	50.0	9.1	9.1	100.0
Jun-18	43.4	0.8	0.03	41.8	5.9	5.9	100.0
Jul-18	38.3	1.4	0.01	36.9	13.8	13.8	100.0
Aug-18	25.9	1.8	0.00	24.0	4.9	4.9	100.0
Sep-18	22.8	0.6	0.00	20.0	23.6	15.6	66.1
Oct-18	7.8	0.7	0.00	5.7	10.3	2.8	26.8
Nov-18	5.8	0.6	0.00	4.0	15.6	0.6	3.8
Dec-18	5.8	0.8	0.02	4.1	14.7	1.8	12.0
Jan-19	4.8	1.4	0.00	3.6	6.9	1.2	17.1
Feb-19	5.0	5.4	0.00	8.1	8.1	4.1	50.3
Mar-19	6.3	0.7	0.19	5.1	9.2	3.5	37.6
Apr-19	3.4	0.5	0.00	2.2	5.6	0.8	14.8
May-19	3.0	1.1	0.00	2.5	7.8	1.9	24.1
Jun-19	2.2	1.0	0.04	1.7	7.1	1.2	17.4
Jul-19	1.9	1.1	0.00	1.8	5.6	1.3	23.2
Aug-19	1.7	0.6	0.00	1.1	5.7	0.7	12.0
Sep-19	1.7	0.6	0.00	1.1	8.5	0.8	9.7
Oct-19	1.4	0.8	0.00	1.0	9.1	1.0	10.9
Nov-19	1.2	0.5	0.00	0.5	6.8	0.5	8.0

True Copy of the REC Inventory dated 28.11.2019 as published by REC Registry of India is annexed herewith and marked as **Annexure P-6**.

(21) Further, with demand exceeding supply, the REC's trading prices at the exchanges have increased substantially, causing additional financial burden for

the industries. In this context, the below table be referred:

Month, Year	Solar REC						Non Solar REC					
	Lakh REC			Rs/REC			Lakh REC			Rs/REC		
	Total Sell Bid	Total Buy Bid	Market Clearing Volume	Market Clearing Price			Total Sell Bid	Total Buy Bid	Market Clearing Volume	Market Clearing Price		
				Floor	IEX	PXIL				Floor	IEX	PXIL
Apr-18	49.2	8.8	8.8	1000	1000	1000	2.5	11.0	1.9	1000	1001	1000
May-18	50.0	9.1	9.1	1000	1000	1000	4.6	6.3	4.0	1001	1010	1000
Jun-18	41.8	5.9	5.9	1000	1000	1000	3.8	11.1	3.0	1002	1150	1050
Jul-18	36.9	13.8	13.8	1000	1000	1000	3.1	9.3	2.4	1003	1200	1050
Aug-18	24.0	4.9	4.9	1000	1000	1000	4.9	9.7	3.3	1004	1200	1101
Sep-18	20.0	23.6	15.6	1000	1000	1000	5.9	7.9	3.5	1005	1100	1300
Oct-18	5.7	10.3	2.8	1000	1001	1000	6.4	9.0	4.3	1006	1251	1201
Nov-18	4.0	15.6	0.6	1000	1101	1051	7.1	10.0	4.5	1007	1252	1260
Dec-18	4.1	14.7	1.8	1000	1450	1500	5.4	17.2	3.8	1008	1320	1255
Jan-19	3.6	6.9	1.2	1000	1750	1500	5.7	10.5	4.9	1009	1500	1501
Feb-19	8.1	8.1	4.1	1000	1500	1908	16.3	12.1	8.1	1010	1395	1555
Mar-19	5.1	9.2	3.5	1000	2000	1700	11.1	11.8	8.3	1011	1500	1395
Apr-19	2.2	5.6	0.8	1000	2000	1800	4.8	10.4	2.9	1012	1300	1500
May-19	2.5	7.8	1.9	1000	2000	2000	6.2	13.7	5.6	1013	1500	1450
Jun-19	1.7	7.1	1.2	1000	2000	2000	4.7	14.9	4.5	1014	1600	1555
Jul-19	1.8	5.6	1.3	1000	2000	2000	5.1	9.9	4.9	1015	1650	1705
Aug-19	1.1	5.7	0.7	1000	2100	2000	4.0	9.4	3.6	1016	1750	1500
Sep-19	1.1	8.5	0.8	1000	2250	2200	6.1	6.3	4.4	1017	1500	1780
Oct-19	1.0	9.1	1.0	1000	2400	2400	7.1	9.6	5.7	1018	1650	1650
Nov-19	0.5	6.8	0.5	1000	2400	2400	4.8	12.7	4.5	1019	1800	1850

(22) *It is submitted that the Petitioner is serious and committed towards its RPO compliance and in furtherance of the same, the said Petitioner's Unit at Mahan has complied with RPO by purchasing RECs (solar and non-solar) for the period up to FY 2018-19. The Petitioner is in the process of complying with its obligations/ RPO for the year 2019-20 by purchasing RECs. However, during the process of compliance, the Petitioner was **unable to comply with its solar obligation(s) under the RPO Regulations due to non-availability of solar RECs** as the past inventory of solar RECs has got severely depleted.*

(23) *Further, it is pertinent to mention herein that as the **floor price of (both) Solar and non-Solar RECs are same, there is no difference in their economic value.** It clearly implies that the Petitioner herein is not abstaining from its obligations, for the purpose of economic benefits, since the floor price of Solar and Non-Solar RECs are same.*

(24) *That, at present, the aforesaid **unforeseen circumstances were beyond the control of the Petitioner** herein and it became impossible for the Petitioner to fulfil its minimum purchase requirement(s) for the year 2019-2020 due to unavailability of Renewable Energy Certificates and physical Solar energy. It is submitted that for the reasons afore-stated it was impossible for the Petitioner to comply with its RPO norms under the MPERC RPO Regulations.*

(25) *In this regard, it is pertinent to mention that the aforesaid **non-compliance will lead to penalisation of the Petitioner under Regulation 15.3** of MPERC RPO Regulation, for reasons beyond its control. It is for this purpose that the Petitioner is approaching this Hon'ble Commission for removing the aforesaid difficulty, and as the aforesaid condition could not have been contemplated by the Petitioner herein, the same became 'impossible' to perform, and as such the*

RPO requirement, qua solar, ought to be exempted. On account of such impossibility, the fulfilment of solar RPO, as per the RPO Regulations, has become frustrated/ impossible.

- (26) *Alternatively, the MPERC RPO Regulations also contains power to remove difficulties under Regulation 17, whereby this Hon'ble Commission is empowered to permit the Petitioner to fulfil Solar RPO through purchase of non-Solar RECs.*
- (27) *Hence, in view of the aforementioned factual background, Petitioner is constrained to file the present Petition under Regulation 17 of MPERC RPO Regulations before this Hon'ble Commission seeking appropriate orders.*

GROUND S

- (28) *The present petition is preferred on the following, amongst other grounds, for proper adjudication, and the same are divided under sub-headings for the convenience of this Hon'ble Commission*

- A. *Because, for the adjudication of the present petition, reference be made to the following Regulations of the MPERC RPO Regulations:*

"4.1. The minimum quantum of electricity to be procured by all the Obligated Entities from generators of Renewable Energy including Co-generation from Renewable Sources of electricity expressed as percentage of their total annual procurement of Electrical Energy excluding consumption met from hydro sources of power during the following Financial years shall be as under, namely :-

S.No.	Financial Year	Cogeneration and other Renewable Sources of Energy		
		<i>Solar (%)</i>	<i>Non Solar (%)</i>	<i>Total (%)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
1.	2010-11	-	0.80	0.80
2.	2011-12	0.40	2.10	2.50
3.	2012-13	0.60	3.40	4.00
4.	2013-14	0.80	4.70	5.50
5.	2014-15	1.00	6.00	7.00
6.	2015-16	1.00	6.00	7.00
7.	2016-17	1.25	6.50	7.75
8.	2017-18	1.50	7.00	8.50
9.	2018-19	1.75	7.50	9.25
10.	2019-20	4.00	8.00	12.00
11.	2020-21	6.00	8.50	14.50
12.	2021-22	8.00	9.00	17.00

”
.....

“17. Power to Remove Difficulties

*The Commission may suo moto or on an application from any person generating electricity from Co-generation and Renewable Sources or Distribution Licensee, review these Regulations and pass appropriate **orders to remove any difficulty in implementing** the provisions of these Regulations."*

From the above, it is evident that the Petitioner is obligated to fulfil RPO norms as specified under Regulation 4.1. Further, under Regulation 17, this Hon'ble Commission has appropriate powers to issue directions for the purpose of removing difficulties in the implementation of the MPERC RPO Regulations.

Re: Solar RPO for the FY 2019-20 ought to be relaxed for the Petitioner

- (29) *Because, for the purposes of fulfilment of minimum renewable purchase obligation (RPO) for Solar, for FY 2019-20, as mandated under Regulation 4.1 of the MPERC RPO Obligations, an exemption is being sought on account of the reasons beyond the control of the Petitioner and/or supervening impossibility, since neither physical Solar energy is available in the market, nor Solar renewable energy certificates (RECs) are available in energy exchanges, and as the aforesaid condition could not have been contemplated by the Petitioner herein, the same became 'impossible' to perform, and as such, the failure to comply with Solar RPO norms is beyond the control of the Petitioner.*
- B. *Because, in the present case, neither physical Solar energy is available in the market, nor Solar RECs are available, as evidenced from the data furnished by the Petitioner. Such non availability of Solar energy, and RECs, is a situation which makes fulfilment of solar RPO as impossible, meaning thereby that the obligations (solar RPO) under the RPO Regulations have become frustrated.*
- C. *Because, the Hon'ble Appellate Tribunal for Electricity in its judgment dated 16.04.2015, passed in Appeal Nos. 258 of 2013 and 21 of 2014, held that RECs are also a renewable source of energy for the purpose of fulfilment of RPO norms. Hence, lack of adequate RECs available in the market means that Solar energy is not available in the market for fulfilment of RPO norms.*
- D. *Because, **aluminium industry requires 24x7 hours of power supply** (i.e. round the clock) as the alumina pot lines have to be always in operating mode and cannot suffer a shut down. This is on account of the fact that any shut down of pot lines would result in solidification of alumina, which would result in irreparable damage to the said pot lines. The same would further require huge investment for reinstallation of alumina pot lines. Therefore, on account of the peculiar load profile of an aluminium plant, such as that of the Petitioner, 24x7 hours of supply is required, which is not possible through physical purchase of renewable energy. The renewable energy can never support a continuous requirement of power, and therefore, **for aluminium industry, the option of fulfilment of RPO norms through physical purchase of renewable energy is not feasible.***

Further, the Petitioner has already demonstrated that Solar RECs are not available in the market. It needs to be appreciated that the Petitioner has, at all times, bonafidely complied with the RPO norms provided under the MPERC RPO Regulations.

Hence, in view of the above, both the modes, i.e. physical renewable energy and RECs, are either not feasible or not available. The said facts put the case of the Petitioner under impossibility in performance of obligations (solar RPO) qua the RPO Regulations. This requires relaxation of Solar RPO norms for the Petitioner qua FY 2019-20.

Re: *Alternatively, and without prejudice, permit the Petitioner to fulfil Solar RPO for FY 2019-20, through purchase of non-Solar RECs*

E. *Because, it is submitted that the Petitioner is seeking permission to fulfil Solar RPO for FY 2019-20 through purchase of non-Solar RPOs, being without prejudice to the aforesaid stand of the said Petitioner that on account of the reasons beyond the control of the Petitioner and/or supervening impossibility, the Solar RPO for the above FY ought to be completely relaxed.*

F. *Because, Regulation 17 of the MPERC RPO Regulations provides as follows:*

“Power to Remove Difficulties

The Commission may suo moto or on an application from any person generating electricity from Co-generation and Renewable Sources or Distribution Licensee, review these Regulations and pass appropriate orders to remove any difficulty in implementing the provisions of these Regulations.”

Hence, the aforesaid provision provides this Hon’ble Commission with the power to review its Regulations and pass appropriate orders in order to remove difficulty in implementation of the provision of the said Regulations.

G. *Because, Regulation 4.1 of the MPERC RPO Regulations envisages minimum purchase of quantum of electricity from cogeneration and renewable sources of energy, wherein there are specific solar and non-solar obligations, envisaged.*

However, the solar RECs are not available in the market, and hence, the Petitioner is facing difficulty in complying with the RPO norms under the MPERC RPO Regulations due to non-availability of solar RECs in the market.

H. *Because, there exists a predicament for the Petitioner, for the reason that it is unable to comply with the Solar RPO norms, for FY 2019-20, under the MPERC RPO Regulations due to non-availability of solar RECs on the energy exchanges. As a result of the same, the Petitioner may be subjected to imposition of a penalty as provided under Regulation 15.3 of the above Regulations.*

I. *Because, on account of the data submitted by the Petitioner, which demonstrates that Solar RECs are not adequately available in the market for*

fulfilment of Solar RPO norms for FY 2019-20, there is a need for this Hon'ble Commission to intervene so that the said Petitioner is not fastened with any liability to pay any penalty.

- J. *Because, the REC inventory details dated 28.11.2019 published by the REC Registry of India, shows that the availability of Solar RECs has reduced significantly, and monthly issuance and monthly sell bids of Solar RECs is far lower than the monthly buy bids over the last few months.*
- K. *Because, from the data made available by the Petitioner, it is evident that the solar RECs are unavailable in the market and hence, the Petitioner is constrained to approach this Hon'ble Commission to permit it to comply with its RPO obligations by way of purchase of non-solar RECs for solar RECs compliance. Accordingly, this Hon'ble Commission by exercising its powers under Regulation 17 of the MPERC RPO Regulations can remove the difficulty of the Petitioner in fulfilling the Solar RPO norms for FY 2019-20, by permitting additional purchase of non-Solar RECs equivalent to such Solar RPO.*
- L. *Because, the **Hon'ble Tribunal in Appeal No. 24 of 2013 in the matter of Indian Wind Energy Association v. GERC & Ors., has held that the non-solar RECs can be purchased in case of non-availability of solar RECs.** Relevant paragraph from the aforesaid judgment of the Hon'ble Tribunal has been reproduced herein below for ready reference:*

"36. Thus, REC issued under the Central Commission's Regulation has been recognized as a valid instrument for discharge of the mandatory RPO. RPO for renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase solar energy by solar certificates only. However, in case solar energy certificates are not available then in such cases additional non-solar certificates can be purchased for fulfilling the Solar RPO."

.....

"62. In the present case, in order to promote solar technology and in view of wind energy generators not coming forward to enter into PPA for supply of wind energy to the distribution licensees, they have entered into PPAs with solar generators for a capacity higher than required for meeting the solar RPO. If under these circumstances, the State Commission, in order to avoid additional financial burden of purchasing non-solar REC on the distribution licensee and the consumers, has allowed to meet non-solar RPO by additional energy procured from solar projects, there is no infirmity in the same. There is no illegality in the State Commission exercising its powers under Regulation 4.2 for such adjustment in the circumstances of the case.

Accordingly, we reject the contention of the Appellant with regard to adjustment of excess solar energy against the non-solar RPO.”

(underline supplied)

In the above case, even though the concerned Regulations provided that Solar RPO can be fulfilled by purchase of non-Solar RECs, in a particular situation, however, the Ld. Gujarat Commission permitted fulfilment of non-Solar RPO through purchase of additional Solar RECs. The Hon’ble Appellate Tribunal, held that even though the Regulations were silent about fulfilment of non-Solar RPO through additional Solar RECs, the action of the Ld. Gujarat Commission in permitting the same, was not illegal. Applying the same principle, this Hon’ble Commission can also exercise its powers available under Regulation 17 for the purpose of removing the difficulty for the Petitioner in purchasing non-Solar RECs for fulfilment of Solar RPO. It is further submitted that the Petitioner has been fulfilling its non-Solar RPO for FY 2019-20. Further, the Petitioner has always (bonafidely) fulfilled its Solar and non-Solar RPO till FY 2018-19.

Therefore, the Petitioner has always been diligent enough to fulfil the mandate of RPO norms provided under the MPERC RPO Regulations. On account of such bonafides of the Petitioner, this Hon’ble Commission ought to exercise its jurisdiction for the purpose of allowing fulfilment of Solar RPO through purchase of non-Solar RECs.

- M. *Because, a similar Petition seeking permission for purchase of additional Solar RECs due to non-availability of non-Solar RECs in compliance to the obligation(s) under Odisha Electricity Regulatory Commission-OERC (Procurement of Energy from Renewable Sources and its compliance), Regulation 2015 was filed before the Hon’ble **Odisha Electricity Regulatory Commission-OERC**, and the Hon’ble OERC was pleased to pass the Order dt. 09.04.2019, in favour of the Petitioner, stating inter alia as follows:*

*“6. We agree with contention of the Respondent M/s. OREDA that following the analogy of purchase of additional solar power in the event of non-availability of non-solar RE power, the Commission may allow purchase of additional solar REC in case of non-availability of non-solar REC to fulfil Renewable Purchase Obligation. Therefore, in exercise of power under Regulation 12.6 in OERC Regulation, 2015 the Commission allows M/s. Hindalco to **purchase additional solar REC** in case of non-availability of non-solar REC to meet its obligation under Regulation for FY 2018-19. The proof of non-availability of non-solar REC shall be verified by M/s. OREDA from the Petitioner before submitting the compliance report to the Commission.*

7. Accordingly the case is disposed of.”

(underline supplied)

It is therefore just, proper and in the interests of justice that, applying the aforesaid analogy, the Petitioner be permitted to purchase additional non-Solar RECs in the event of non-availability of Solar RECs to meet its obligations for the year 2019-20.

- (30) *It is submitted that the Petitioner has filed a petition, being Petition No. 25/2019, whereby it is seeking modification of RPO norms of this Hon'ble Commission, in the light of the issuance of notifications dated 01.02.2019 and 01.10.2019. If the said petition is allowed, then the RPO norms will be modified for FYs 2012-13 onwards, as applicable in terms of the commissioning of the first captive generating unit of the power plant of the Petitioner. This aspect may also be considered while adjudicating the present petition.*
- (31) *It is submitted that this Hon'ble Commission has the necessary jurisdiction to adjudicate the present petition, in terms of Section 86(1)(e) and 86(1)(k) of the Electricity Act, 2003, read with Regulation 17 of the MPERC RPO Regulations.*
- (32) *The Petitioner further submits that the subject matter of the present petition, has not been raised before any other Court/Forum/Commission.*
- (33) *It is stated that the present Petition is bonafide and made in the interest of justice.*
- (34) *The Petitioner craves leave of this Hon'ble Commission to raise any other further points/ grounds at the time of the hearing of the petition.*
- (35) *The Petitioner shall refer to and rely upon documents/correspondence with the leave of this Hon'ble Commission.*

3. With the above submissions, the petitioner prayed as under:

- (a) Relax the fulfilment of Solar Renewable Purchase Obligation(s) for FY 2019-20 provided under Regulation 4.1 of the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulation, 2010; or
- (b) In the alternate, pass an order permitting the Petitioner to purchase additional non-Solar RECs, for the purpose of fulfilment of Solar RPO for the FY 2019-20, by exercising power under Regulation 17 of the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulation, 2010; and
- (c) Pass any other order/s or future order, as this Hon'ble Commission may deem fit and proper in the light of the facts and circumstances of the present case.

4. On 25.01.2020, the petition was admitted and the petitioner was directed to serve a copy of petition to the Respondent and file its compliance with the Commission. The Respondent was directed to file its reply to the petition by 25.02.2020 after serving a copy of the same on the other side. The case was fixed for hearing on 06.03.2020.

5. On 06.03.2020, it was observed that the respondent, M.P. Urja Vikas Nigam Ltd. filed its reply on 05.03.2020 to the subject petition and the Ld. Counsel of the petitioner sought ten days' time to file his rejoinder on the reply filed by the respondent.
6. Considering the request, the petitioner was directed to file rejoinder by 16.03.2020 on the reply filed by the respondent. The petitioner was also directed to submit/ inform the following:
 - (i) Details of RPO compliance by the petitioner during last three financial years including FY 2019-20 mentioning the solar and non-solar sources or RECs purchased by it for fulfilling RPO each year.
 - (ii) Source-wise details alongwith documents in support of its contention for non-availability of solar RECs.
 - (iii) Other alternative if any, available to the petitioner to fulfill its solar RPO other than purchasing non solar RECs.
7. The petitioner was directed to file above details and documents by 16.03.2020 and the case was fixed for hearing on 19.03.2020. The hearing in this matter could not be held due to outbreak of COVID followed by country wide lockdown.
8. At the hearing held through video conferencing on 06.10.2020, the Commission observed the following:
 - (i) The petitioner filed the details and rejoinder on 27.08.2020.
 - (ii) Ld. Counsel for the petitioner submitted that a petition (Petition No. 25 of 2019) seeking amendment in MPERC (Co- Generation & Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulation, 2010 for revision in RPO for captive power plants, filed by the petitioner was fixed for arguments before this Commission on the 24.11.2020. He further submitted that the prayer and relief sought in the subject matter may be affected from the outcome of the aforesaid petition No. 25 of 2019.
 - (iii) In view of the above, Ld. Counsel for the petitioner requested to fix the subject petition for hearing on any date after 24.11.2020.
9. Considering the request of Ld. Counsel for the petitioner, the case was fixed for hearing on the 08thDecember'2020 which was subsequently preponed to 04.12.2020. The Respondent was directed to file reply by 30.10.2020 to the rejoinder filed by the petitioner.
10. At the hearing held on 04.12.2020, Ld. Counsel for the petitioner again submitted that the prayer and relief sought in the subject matter may be affected from the outcome of another Petition No. 25 of 2019 filed by the petitioner seeking amendment in MPERC (Co- Generation & Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulation, 2010 for revision in RPO for captive power plants. He requested to fix the subject petition for hearing on any date after the outcome of aforesaid Petition No. 25 of 2019.

11. The Respondent was given last opportunity to file its response within 15 days on the rejoinder filed by the petitioner and the case was fixed for hearing on 09.02.2021.
12. At the hearing held on 09.02.2021, the Commission observed the following:
- By affidavit dated 21.01.2021, the Respondent filed reply to the rejoinder filed by the petitioner.
 - Ld. Counsel who appeared for the petitioner and the representative for the Respondent concluded their arguments.
13. The parties were directed to file their written submissions within a week. The case was reserved for order on filing of written submissions by the parties within the above stipulated time.
14. The Respondent (MPUVNL) vide affidavit dated 05.03.2020 and Respondent (NRED, GoMP) by affidavit dated 02.12.2020 submitted reply to the subject petition as under:

"Response on Prayer 1:

- Section 86(1)(e) of Electricity Act, 2003 states that SERC must "promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.*
- As per clause 4.1 of Part A of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and its amendments thereof, the Hon'ble Commission determined Solar and Non-Solar RPO to be procured by all Obligated Entities. Through Notification dated 02.10.2015, Hon'ble commission determined the RPO trajectory for Solar and Non-Solar categories till FY 2018-19. Then through notification dated 01.09.2017, Hon'ble Commission determined the RPO trajectory for Solar and Non-Solar categories till FY 2021-22.*

Present MPERC's Solar and Non-Solar RPO Trajectory till FY 2021-22 is as follows:

<i>Sr. No.</i>	<i>Financial Year</i>	<i>Solar RPO (%)</i>	<i>Non-Solar RPO (%)</i>	<i>Total RPO (%)</i>
<i>1</i>	<i>2014-15</i>	<i>1.00</i>	<i>6.00</i>	<i>7.00</i>
<i>2</i>	<i>2015-16</i>	<i>1.00</i>	<i>6.00</i>	<i>7.00</i>
<i>3</i>	<i>2016-17</i>	<i>1.25</i>	<i>6.50</i>	<i>7.75</i>
<i>4</i>	<i>2017-18</i>	<i>1.50</i>	<i>7.00</i>	<i>8.50</i>
<i>5</i>	<i>2018-19</i>	<i>1.75</i>	<i>7.50</i>	<i>9.25</i>
<i>6</i>	<i>2019-20</i>	<i>4.00</i>	<i>8.00</i>	<i>12.00</i>
<i>7</i>	<i>2020-2021</i>	<i>6.00</i>	<i>8.50</i>	<i>14.50</i>
<i>8</i>	<i>2021-2022</i>	<i>8.00</i>	<i>9.00</i>	<i>17.00</i>

- The petitioner has submitted that, they have consumed 5,110.9 MUs in the FY 2018-19 from sources other than the distribution licensee. The petitioner also submitted that it had duly complied with the RPO norms for FY 2-18-19. It must be noted that as per Clause 4.1 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulation, 2010,*

RPO norms must be complied on the total annual procurement of Electrical Energy during any particular financial year. It must be verified that whether the petitioner has complied the RPO norms based on their consumption or based on their consumption or based on their procurement in FY 2018-19.

- (4) *However, the petitioner has not submitted the procurement details for the FY 2019-20 from sources other than the distribution licensee as on date. It is requested to the Hon'ble Commission to seek the details related to procurement from sources different than the distribution licensee for FY 2019-20. Also ask Petitioner to submit the source wise REC purchased till date to fulfill the RPO obligation on the power procured through other sources other than distribution licensee.*
- (5) *The petitioner has submitted that, they are facing difficulty in fulfilling Solar RPO norms on account of non-availability of adequate Solar REC's in power exchanges. But it is respectfully submitted that, data available on the website of REC Registry of India states that total 20,99,335 Solar REC's were issued on monthly basis to RE Generators in FY 2019-20 till Feb 2020, which is equivalent to 2099.33 MUs of Solar Energy. Further, Solar RECs available as on start of FY 2019-20 were 3,35,157. It means, total available Solar RECs in last eleven months were 24,34,492. Whereas, total Solar RECs redeemed through Power Exchanges by obligated entities in the said duration were 22,66,092.*
- (6) *From the above paras, it infers that 93% of available Solar RECs were redeemed by obligated entities and requirement of petitioner based on last FY consumption data could be around 2 lakh Solar RECs which is around only 8% of available Solar RECs. So, if the petitioner had purchase Solar RECs on monthly basis to meet Solar RPO, there might be a possibility that their Solar RPO has been fulfilled partly or fully.*

Response on Prayer 2:

- (7) *It is important to inform the Hon'ble Commission that, through our response against the Petition 25 of 2019, we request the Hon'ble Commission to continue with the present RPO methodology which requires all the obligated entities to comply with the prevailing RPO trajectory with an allowance that captive consumers can procure energy from any of the Renewable Energy sources to meet total RPO as defined for each financial year. Further, we humbly request the Hon'ble Commission to also allow the captive consumers to procure RECs of any source to meet total RPO as defined for each financial year, as floor price determined by Hon'ble CERC for Solar as well as Non-Solar RECs is same i.e. Rs. 1000/REC based on understanding that project could be viable if it is using power for self-use/ selling power to third party/ Distribution Licensee at mutually agreed rates.*

Our Request

- (8) *As requested in our response against the Petition 25 of 2019, we humbly requested the Hon'ble Commission to designate Managing Director as an authority, on behalf of Madhya Pradesh Urja Vikas Nigam Limited, Bhopal*

responsible for collecting RPO compliance data from every obligated entity of the State including Distribution Licensees.

- (9) For tracking of RPO compliance, obligated entities must submit half-yearly data of RPO compliance within forty-five (45) days from the end of each half-year and, MPUVNL shall be required to submit consolidated data of a financial year to Hon'ble Commission on or before 30th June of subsequent financial year. Therefore, we request Hon'ble Commission to include tracking methodology in the prevailing Cogeneration and Generation of Electricity from Renewable Energy Sources of Energy (Revision-I) Regulation, 2010 (Cogen Regulation) to monitor the RPO compliance level yearly and, obligated entities should be penalized for non-compliance, if any.*
- (10) NRED request the Hon'ble Commission to direct the petitioner to fulfill the maximum Solar RPO possible for the FY 2019-20 in the upcoming REC trading sessions.*
- (11) We also request Hon'ble Commission to merge the petition number 25 of 2019 with the current petition, as both are related to Renewable Purchase Obligation for captive user and conduct simultaneous hearing for current as well as above mentioned petition."*

15. By affidavit dated 26.08.2020, petitioner broadly submitted its rejoinder as under:

- "(1) It is brought to the notice of this Hon'ble Commission that the Hon'ble Supreme Court, while taking suo-motu cognizance of the said situation, passed an order dated 23.03.2020 in Suo-motu Writ Petition (C) No. 03/ 2020 under Article 141 and 142 of the Constitution of India, wherein the Apex Court has extended the period of limitation in all proceedings before all fora with effect from 15.03.2020 until further orders. Such an unprecedented step has been taken by the Apex Court in view of the challenge faced by the country on account of COVID-19 virus and the resultant difficulties faced by the litigants before all Courts/ Tribunals/ Commissions across the country.*

*A copy of the order dated 23.03.2020 passed by the Hon'ble Supreme Court in Suo-motu Writ Petition (C) No. 03/ 2020 is annexed herewith and marked as **ANNEXURE- 1.***

- (2) In view of the foregoing undeniable facts, it is submitted that the operations and functioning of the Petitioner has also been severely affected. Thus, there is an inevitable delay in submission of the present Rejoinder due to reasons beyond the control of the Petitioner. The Petitioner may thus be permitted to file the present pleading on the record of this Hon'ble Commission in the interest of justice.*
- (3) The Petitioner is filing the present rejoinder in order to answer the queries/provide the details and information sought for by this Hon'ble Commission, from the Respondent, vide its order dated 06.03.2020, and to object to the submissions made by the Respondent in its reply.*
- (4) At the outset, save and except what are matters of record, the Petitioner denies*

and disputes all the averments, contentions and allegations raised by the Respondent/ in its reply in the manner alleged or at all, and no part of the said reply shall be deemed as an admission by the Petitioner unless the same is specifically admitted in the present rejoinder or otherwise. It is submitted that the Respondent has endeavored to flummox this Hon'ble Commission with bald trivia, without basing its contentions with material cogent data. The Petitioner reserves its right to raise further objections to the said reply at the time of hearing.

- (5) *That before adverting to the para-wise Rejoinder to the Reply filed by the Respondent, the Petitioner craves leave of this Hon'ble Commission to put forth the following preliminary objections/ submissions:*

PRELIMINARY OBJECTIONS/SUBMISSIONS ON BEHALF OF THE PETITIONER

- (6) *At the outset, it is submitted that the following submissions/ objections to the Respondent's reply are in addition to the submissions raised by the Petitioner in the instant petition.*
- (7) *In order to raise objections with respect to the submissions of the Respondent in its reply, it becomes imperative to answer the following queries of this Hon'ble Commission:*

Re: Details of RPO compliance by the Petitioner during the last three financial years including FY 2019-20 mentioning the solar and non-solar sources or RECs purchased by it for fulfilling RPO of each year

- (8) *It is submitted qua the aforesaid query that the Petitioner has complied with its RPO as mandated under the MPERC RPO Regulations for the FYs 2017-18 and 2018-19, and its non-solar RPO for the FY 2019-20. The said RPO compliance of the Petitioner is apparent from the tabulated data provided below:*

Financial Year	Consumption (MWh)			RPO (MWh)		RECs bought		Remarks
				Solar	Non Solar	Solar	Non Solar	
	CGP	Open Access	Total					
2017-18	5108468	0	5108468	76627	357593	76627 #	357593	
2018-19	5110926	0	5110926	89440	383319	89328 + Self Retained 112	383319	
2019-20	5173654		5173654	54155	315256	5915	187388	

- (9) *For the record of this Hon'ble Commission, it is submitted that the Petitioner during the aforesaid financial years, i.e., FY 2017-18, 2018-19 and 2019-20 had an interim order operating in its favour qua compliance with Regulation 4.3 of the RPO Regulations. The said interim order was passed by the Hon'ble High Court of Madhya Pradesh in W.P. (C) 4558/2014 wherein the Petitioner had challenged the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision 1) Regulation, 2010. The said Writ Petition was finally disposed of by the Hon'ble High Court vide order dated*

06.02.2020.

Further, the Hon'ble Supreme Court, vide order dated 08.05.2017 passed in CA No. 6083/2017 also suspended the RECs trading session, which was again permitted by the Apex Court vide an order dated 14.07.2017 with a direction that REC trading can be resumed at floor price.

A copy of the order dated 06.02.2020 passed by the Hon'ble High Court of Madhya Pradesh in W.P. (C) 4558/2014 is annexed herewith and marked as **ANNEXURE-2**.

A copy of the orders dated 08.05.2017 and 14.07.2017 passed by the Hon'ble Supreme Court in CA No. 6083/2017 is annexed herewith and marked as **ANNEXURE-3(Colly.)**.

- (10) In aide to the foregoing, it is submitted that even during this period, when the Petitioner had an interim order in its favour qua its obligations under the MPERC RPO Regulations, the Petitioner purchased and complied with its entire RPO obligation, for the period from inception till FY18 and also part of FY19.
- (11) It is submitted that the aforesaid RPO compliance of the Petitioner is also evident from the following acknowledgment letters provided by the Petitioner to the Respondent:
 - (a) Acknowledgment letter dated 14.07.2018, depicting the RPO compliance of the Petitioner for the FY 2017-18, which is annexed herewith and marked as **Annexure-4 (colly)**;
 - (b) Acknowledgment letter dated 14.05.2019, depicting the RPO compliance of the Petitioner for the FY 2018-19 which is annexed herewith and marked as **Annexure-5 (colly)**; and
 - (c) Acknowledgment letter dated 18.05.2020, depicting the RPO compliance of the Petitioner for the FY 2019-20; which is annexed herewith and marked as **Annexure-6 (colly)**.
- (12) Thus, in terms of Query 1 of this Hon'ble Commission, it is submitted that the Petitioner has conformed to its minimum purchase commitments for the FYs 2017-18, 2018-19, and to the extent of non-solar obligation for the FY 2019-20. The solar obligation of the Petitioner for the FY 2019-20 remains to be fulfilled due to supervening impossibility and reasons beyond its control, which have hindered the Petitioner's attempts to fulfil its solar RPO and due to which the Petitioner has approached this Hon'ble Commission, vide the instant petition.

Re: Source-wise details along with documents in support of its contention for non-availability of solar RECs

- (13) It is submitted qua the aforesaid that the below table proves the non-availability of solar RECs for fulfilment of RPO norms by the Petitioner, for FY

2019-20:

	Buy Bids (REC)			Sell Bids (REC)			Cleared Volume (REC)			Cleared Price(Rs/REC)		
	IEX	PXIL	Total	IEX	PXIL	Total	IEX	PXIL	Total	IEX	PXIL	Average
Apr-19	361,606	197,645	559,251	142,148	78,637	220,785	62,853	20,125	82,978	2,000	1,800	1,951
May-19	614,170	163,143	777,313	169,438	78,108	247,546	134,688	52,491	187,179	2,000	2,000	2,000
Jun-19	500,995	208,451	709,446	120,044	52,120	172,164	92,093	31,675	123,768	2,000	2,000	2,000
Jul-19	424,546	132,789	557,335	135,029	47,875	182,904	104,760	24,296	129,056	2,000	2,000	2,000
Aug-19	452,334	122,200	574,534	74,731	34,640	109,371	56,809	12,038	68,847	2,100	2,000	2,083
Sep-19	630,421	217,053	847,474	72,780	35,234	108,014	58,919	23,484	82,403	2,250	2,200	2,236
Oct-19	659,128	254,763	913,891	59,944	39,636	99,580	59,944	39,636	99,580	2,400	2,400	2,400
Nov-19	472,255	206,678	678,933	36,801	17,652	54,453	36,801	17,652	54,453	2,400	2,400	2,400
Dec-19	672,090	283,340	955,430	41,204	21,513	62,717	41,204	20,667	61,871	2,400	2,400	2,400
Jan-20	1,052,954	519,403	1,572,357	39,413	36,807	76,220	39,413	36,807	76,220	2,400	2,400	2,400
Feb-20	1,094,700	365,463	1,460,163	1,014,459	332,042	1,346,501	984,157	315,580	1,299,737	2,400	2,400	2,400
Mar-20	213,710	9,482	223,192	39,299	37,336	76,635	39,299	9,383	48,682	2,400	2,400	2,400

Total	Apr'19 to	6,935,199	2,670,928	9,606,127	1,905,991	774,264	2,680,255	1,671,641	594,451	2,266,092		
Average	Feb'20	630,473	242,812	873,284	173,272	70,388	243,660	151,967	54,041	206,008	2,214	2,182
Total	Apr'19 to	7,148,909	2,680,410	9,829,319	1,945,290	811,600	2,756,890	1,710,940	603,834	2,314,774		
Average	Mar'20	595,742	223,368	819,110	162,108	67,633	229,741	142,578	50,320	192,898	2,229	2,200

(14) That, from the aforesaid table which details period-wise Buy Bids, Sell Bids, Cleared Volume amongst others, it is evidently clear that the market trend establishes that the total Buy Bid for Solar RECs have been a staggering 96.1 Lakh bids, while the Sell Bids for the same have been a meagrely 26.8 Lakh bids and the Market Cleared Volume has been 22.7 Lakh. Thus, it can be safely inferred that the demand for Solar RECs have been 3.6 times the Supply during the said period leading to a scarcity in availability of the RECs and the same becoming commercially unviable on account of being exorbitantly expensive. Further, the dearth of RECs (Solar/ Non-solar) can be fathomed from the order passed by the Hon'ble Appellate Tribunal for Electricity as given hereinunder:

a. The Hon'ble Appellate Tribunal for Electricity, vide its judgment dated 21.08.2019, passed in M/s Green Energy Association. v. CSERC & Ors. (Appeal No.106 of 2016 and Appeal No. 65 of 2017), has respectfully held as under:

"9.40 In the present case, the Appellant is primarily aggrieved that if RPO would have been enforced to the set targets, some more RECs would have been sold/purchased and would have provided some financial gain to the Appellant association members. It is relevant to note that the REC mechanism has been devised to strike a balance between the States having large

potential and States having less or no renewable energy sources. Besides, the trading of RECs is done on all India basis and the obligated entities are free to sell/purchase such certificates from anywhere across the country. In an ideal case, as per the National Tariff Policy, the State Regulatory Commission are required to enforce the RPO compliance by monitoring the same on real time basis but, while deciding the matter relating to RPO, the Commission is also required to keep in mind the difficulty being faced by the licensee, impact on retail tariff, availability of RECs in the market, etc.”

(15) *At the risk of repetition, it is reiterated that due to **high onset of demand of Solar RECs during FY 2019-20, they were traded at an exorbitant Forbearance Price of Rs. 2400/REC which is almost 2.5 times its Floor Price. In this context, it is submitted that, since power is a major cost element in the Aluminium Industry, procuring Solar RECs at such costs has the potential to gravely effect the economic and financial viability of the Aluminium Industry in the State, particularly that of the Petitioner.***

(16) *Therefore, the contention of the Respondent is baseless, devoid of any merits, and hence, denied in toto, since the same are merely based on surmises, sans any cogent material data and without rightful appraisal of the data available on the website of the REC registry of India.*

Re: Other alternative if any, available to the Petitioner to fulfil its solar RPO other than purchasing non solar RECs

(17) *It is submitted qua the aforesaid that the renewable power is infirm in nature, but Aluminium smelter (electrolysis process) is power intensive industry and requires 24x7 steady power, continuous high DC current of 356 Kilo amperes & stable voltage. It submits that any fluctuation(s) in power supply impacts the overall operating efficiency, and outage of more than 4 hours freezes the metal in the pots which will require at least six (6) months shut down and enormous cost to restart the smelter pot lines. As such, complete reliance on renewable power is not feasible for the Petitioner.*

(18) *It is further submitted that a large parcel of land is required for on-site solar projects. It is estimated that around 6 acres of land is required for producing 1 MW of power. Such land availability is not feasible for a power-intensive industry like that of the Petitioner.*

(19) *Therefore, there seems to be no other alternative available to the Petitioner to fulfil its solar RPO norms under the MPERC RPO Regulation.*

(20) *It is submitted that even the alternative of purchasing solar RECs for meeting the minimum purchase commitments stands defeated since there are not ample solar RECs available in the market to meet the solar RPO requirement under the Regulations.*

Para-wise Reply

(21) *At the outset, and before adverting to the para-wise reply, the Petitioner specifically and fervently denies all averments made in the Reply, filed on behalf of Respondent, to the extent they are contrary or inconsistent with the contents of the captioned amended petition filed on behalf of the Petitioner and/or to the present Rejoinder. Further, nothing contained in the Reply, filed by the Respondent should be deemed to have been admitted, save as expressly stated herein. The Respondent has deliberately an evasive reply and, in the process, has evaded from giving a para-wise response to the captioned petition.*

The Petitioner states that it is not submitting the entire gamut of facts leading to filing of the captioned petition and craves leave of this Hon'ble Commission to treat the contents of the said petition as part and parcel of the present Rejoinder in order to maintain succinctness of the pleadings, brevity in submissions and avoid duplications.

(22) *That the contents of Paras 1 and 2 are a matter of record and hence, need no reply. As such the Petitioner has no quarrel with the contention in the said paragraphs under the present petition.*

(23) *That, the contents of Paras 3 and 4 of the "Response to Prayer (1)" of Reply of the Respondent are denied and disputed by the Petitioner. In this regard, the Petitioner craves leave to rely on the specific submission/objections made in foregoing Paras 11-14, and the same are not being reiterated herein for the sake of brevity.*

(24) *That, the contents of Paras 5 and 6 of the "Response to Prayer (1)" of the Reply of the Respondent are denied and disputed by the Petitioner. The Petitioner craves leave to rely on its submission/objections made in Paras 15-17, as a response to the aforesaid paras, and the same are not being reiterated herein for the sake of brevity.*

(25) *That in response to the contents of Para 1 of "Response to Prayer (2)", the Respondent, on the record of this Hon'ble Commission has itself specifically sought for allowing the Petitioner to meet the RPO compliance by way of purchasing either solar or non-solar RECs, which is specifically the case of the Petitioner in the before this Hon'ble Commission. Thus, the relevant contentions and prayer are vehemently reiterated in this regard.*

(26) *The contentions under Paras 1-5 of "Our Request" of Reply of the Respondent, are vehemently denied and specifically disputed. In fact, the Respondent has mischievously endeavored to plead and obtain certain orders in proceedings initiated by the Petitioner, which is otherwise prohibited under law. It is necessary to highlight that the said paras are made in isolation and do not form part of a response to any of the submissions made in the present petition.*

Further, it is denied that the Respondent can pray for any sort of mechanism to be adopted or introduced by way of the present petition in the manner as suggested or at all. It is denied that the present proceedings have any commonality with the proceedings in Petition No. 25 of 2019 as suggested by

the Respondent or at all and both these proceedings are independent of each other requiring independent and exclusive adjudication of the disputes raised in them. As such the contentions raised before this Hon'ble Commission vide the reply under rejoinder, this Hon'ble Commission ought to reject such contentions of the Respondent and allow the present petition alongwith the prayers as prayed for therein under.

- (27) *In view of the submissions made in the present Rejoinder, the various contentions raised by the Respondent in its Reply being devoid of merits, deserves to be rejected by this Hon'ble Commission. The prayers in the captioned petition are vociferously and vehemently reiterated."*

16. The Respondent by affidavit dated 02.12.2020 filed its reply to the rejoinder filed by the petitioner as under:

- (1) *M/s. Hindalco Industries Limited herein referred to as petitioner has filed rejoinder on the Counter affidavit filed on behalf of Respondent before the Hon'ble Commission. The petitioner in its rejoinder has not brought any new fact or arguments before the Hon'ble Commission and has only reiterated the arguments made in their petition.*
- (2) *In light of above, it is submitted that the matter has been dealt in great detail in the submission made by the respondent vide their reply on 05.03.2020. Therefore, the same has not been repeated for the sake of brevity.*
- (3) *It is further submitted that the respondent agrees with the fact that the REC mechanism has been devised to strike a balance between the States having large potential and States having less or no renewable energy sources.*
- (4) *The respondents pray before the Hon'ble Commission to pass the judgments as considered appropriate by the majesty in the given matter."*

17. Vide letter dated 15.02.2021, the petitioner submitted its written submission in which it reiterated some of the information filed in the petition / previous submissions and further submitted as under:

- (1) *The Petitioner also relied upon the following judgement/ orders of the Hon'ble Appellate Tribunal for Electricity (hereinafter the "**Hon'ble APTEL**") and other State Electricity Regulatory Commission(s), enumerated in the table below, for buttressing its contentions and prayers for permission to procure Non-Solar RECs to fulfil its Solar RPO, as mandated under the MPERC RPO Regulations, while keeping in mind the difficulty being faced by the licensee, impact on retail tariff, availability of RECs in the market, etc.:*

S. No.	Judgements/ Orders	Brief Description
1.	<i>Judgement of Hon'ble APTEL in Appeal No. 24 of 2013, Indian Wind Energy Association v. GERC & Ors.</i>	<i>In this judgement, the Hon'ble APTEL at Para No. 36 categorically held that in case solar energy certificates are not available then in such cases additional non-solar</i>

		<p><i>certificates can be purchased for fulfilling the Solar RPO.</i></p> <p><i>Further at Para No. 62 it was held that the State Commission, in order to avoid additional financial burden of purchasing non-solar REC on the distribution licensee and the consumers, has allowed to meet non-solar RPO by additional energy procured from solar projects and hence, there is no infirmity in the same.</i></p>
2.	<i>Order dated 09.04.2019, passed by the Ld. OERC, in Case No. 65 of 2018, M/s. Hindalco Industries Ltd. v. The Chief Executive, OREDA</i>	<p><i>The Ld. OERC, vide an order dated 09.04.2019, at Para No. 6 while exercising its power to remove difficulties under the OERC (Procurement of Energy from Renewable Sources and its Compliance) Regulation, 2015, permitted purchase of additional solar power in the event of non-availability of non-solar REC to fulfil Renewable Purchase Obligation.</i></p> <p><i>Accordingly, the Ld. OERC allowed purchase of Solar REC to fulfil Non-Solar RPO.</i></p>
3.	<i>Judgement of Hon'ble APTEL in Appeal No. 106 of 2016 and Appeal No. 65 of 2017, M/s. Green Energy Association v. CSERC & Ors.</i>	<i>In this judgement, the Hon'ble APTEL at Para No. 9.40 categorically held that while deciding the matter relating to RPO, the Commission is also required to keep in mind the difficulty being faced by the licensee, impact on retail tariff, availability of RECs in the market, etc.</i>
4.	<i>Order dated 11.09.2020, passed by the Ld. OERC, in Case No. 03 of 2020, M/s. Hindalco Industries v. OREDA</i>	<i>The Ld. OERC, vide an order dated 11.09.2020, at Para No. 7 allowed carry forward of excess RECs while exercising its power to remove difficulty.</i>

- (2) *In the above matrix, it is most respectfully submitted that, in terms of the MPERC RPO Regulations, this Hon'ble Commission has wide ambit and scope to exercise its powers to remove difficulty, as stipulated under Regulation 17.*
- In the present case, qua the **FY 2019-20**, the Petitioner has amply demonstrated the difficulty faced by it in implementing and following the provisions of the MPERC RPO Regulations for fulfilling its Solar RPO, mandated under Regulation 4.1 therein, which envisages the levels of RPO in the State of Madhya Pradesh. Further, the Respondent/ MPUVNL has also acknowledged the same and has itself requested this Hon'ble Commission to allow procurement of RECs of any source, to meet the total RPO as defined for each financial year in the State. The Petitioner has also sought reliance and placed on record of this Hon'ble Commission, the relevant decision(s)/ order(s) passed by the Hon'ble APTEL and other Ld. State Commissions in this regard.*

- (3) *Hence, in cumulation of the aforesaid, it is a fit case for this Hon'ble Commission to exercise its powers under the aforesaid Regulation 17 of the MPERC RPO Regulation and permit the Petitioner to purchase additional Non-Solar RECs, for the purpose of fulfillment of Solar RPO for the FY 2019-20.*
- (4) *In the circumstances, the Petitioner reiterates its prayers in the captioned Petition and fervently urges this Hon'ble Commission to permit it to purchase additional Non-Solar RECs, for the purpose of fulfillment of Solar RPO for the FY 2019-20, by exercising power under Regulation 17 of the MPERC RPO Regulations."*

Commission's observations & findings:

18. The Commission observed as under:

- A.** The subject petition has been filed by the petitioner (M/s Hindalco Industries Limited having captive power plants of 900 MW (6×150 MW) capacity) with following prayers:
- i. Relax the fulfilment of Solar Renewable Purchase Obligation(s) for FY 2019-20 provided under Regulation 4.1 of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulation, 2010; or
 - ii. In the alternate, pass an order permitting the Petitioner to purchase additional non-Solar RECs, for the purpose of fulfilment of Solar RPO for the FY 2019-20, by exercising power under Regulation 17 of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulation, 2010; and
 - iii. Pass any other order/s or future order, as this Hon'ble Commission may deem fit and proper in the light of the facts and circumstances of the present case.
- B.** The petitioner, in the subject petition & additional submissions has cited some judgments in support of its case. It has broadly stated the following:
- i. The said six units of 150 MW each were commissioned between March 2013 to September 2016.
 - ii. The Petitioner has filed petition No. 25/2019, whereby it sought modification of RPO norms of MPERC, in the light of the issuance of notifications dated 01.02.2019 and 01.10.2019 issued by the Ministry of Power, Government of India. If the said petition is allowed, then the RPO norms will be modified for FYs 2012-13 onwards, as applicable in terms of the commissioning of the first

captive generating unit of the power plant of the Petitioner. This aspect may also be considered while adjudicating the present petition.

- iii. It is facing difficulty in fulfilling Solar RPO norms on account of non-availability of adequate Solar RECs in power exchanges. The physical Solar energy is also not available freely in the market. These unforeseen circumstances were beyond control of the petitioner.
- iv. The RECs inventory details dated 28.11.2019 published by the REC Registry of India shows that availability of Solar RECs has reduced significantly. Further, the monthly issuance and monthly sell bid of Solar RECs is far lower than the monthly buy bid over the last few months.
- v. The Petitioner was in the process of complying with its obligations/ RPO for the year 2019-20 by purchasing RECs. However, during the process of compliance, the Petitioner was unable to comply with its solar obligations under the RPO Regulations due to non-availability of solar RECs as the past inventory of solar RECs has got depleted.
- vi. The Petitioner has submitted that it has conformed to its minimum purchase commitments for the FYs 2017-18, 2018-19, and to the extent of non-solar obligation for the FY 2019-20. The solar obligation of the Petitioner for the FY 2019-20 remains to be fulfilled due to supervening impossibility and reasons beyond its control, which have hindered the Petitioner's attempts to fulfil its solar RPO and due to which the Petitioner has approached this Commission, vide the instant petition.
- vii. The aforesaid non-compliance will lead to penalisation of the Petitioner under Regulation 15.3 of MPERC RPO Regulation, for reasons beyond its control. It is for this purpose that the Petitioner is approaching this Hon'ble Commission for removing the aforesaid difficulty, and as the aforesaid condition could not have been contemplated by the Petitioner herein, the same became 'impossible' to perform, and as such the RPO requirement, qua solar, ought to be exempted.
- viii. A Petition seeking permission for purchase of additional **Solar RECs** due to non-availability of non-Solar RECs during FY 2018-19 was filed by the petitioner before the Odisha Electricity Regulatory Commission and the OERC was pleased to pass the Order dt. 09.04.2019, in favour of the petitioner.
- ix. Due to high onset of demand of Solar RECs during FY 2019-20, they were traded at an exorbitant Forbearance Price of Rs. 2400/REC which is almost 2.4 times its Floor Price.

- C. The Respondent has submitted that the Commission may continue with the present RPO methodology which requires all the obligated entities to comply with the prevailing RPO trajectory with an allowance that captive consumers can procure energy from any of the Renewable Energy sources to meet total RPO as defined for each financial year. It has also requested the Commission to allow the captive consumers to procure RECs of any source to meet total RPO as defined for each financial year, as floor price for Solar as well as Non-Solar RECs is same. The respondent has further requested the Commission to pass the judgment as considered appropriate in the given matter.
- D. The petitioner has submitted that the Hon'ble Appellate Tribunal for Electricity in Appeal No. 24 of 2013, in the matter of Indian Wind Energy Association v. GERC & Ors., has held that the non-solar RECs can be purchased in case of non-availability of solar RECs. The relevant paragraph from the aforesaid judgment is as under:

"36. Thus, REC issued under the Central Commission's Regulation has been recognized as a valid instrument for discharge of the mandatory RPO. RPO for renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase solar energy by solar certificates only. However, in case solar energy certificates are not available then in such cases additional non-solar certificates can be purchased for fulfilling the Solar RPO."

*"62. In the present case, in order to promote solar technology and in view of wind energy generators not coming forward to enter into PPA for supply of wind energy to the distribution licensees, they have entered into PPAs with solar generators for a capacity higher than required for meeting the solar RPO. If under these circumstances, the State Commission, in order to avoid additional financial burden of purchasing non-solar REC on the distribution licensee and the consumers, has allowed to meet non-solar RPO by additional energy procured from solar projects, there is no infirmity in the same. **There is no illegality in the State Commission exercising its powers under Regulation 4.2 for such adjustment in the circumstances of the case.***

- E. It is observed that the relevant Regulations of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulation, 2010 provides as under:

"4.1. The minimum quantum of electricity to be procured by all the Obligated Entities from generators of Renewable Energy including Co-generation from Renewable Sources of electricity expressed as percentage of their total annual procurement of Electrical Energy excluding consumption met from hydro sources of power during the following Financial years shall be as under, namely-

S. No.	Financial Year	Cogeneration & other Renewable Sources of Energy		
		Solar (%)	Non-Solar (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
1.	2010-11	0.00	0.80	0.80
2.	2011-12	0.40	2.10	2.50
3.	2012-13	0.60	3.40	4.00
4.	2013-14	0.80	4.70	5.50
5.	2014-15	1.00	6.00	7.00
6.	2015-16	1.00	6.00	7.00
7.	2016-17	1.25	6.50	7.75
8.	2017-18	1.50	7.00	8.50
9.	2018-19	1.75	7.50	9.25
10.	2019-20	4.00	8.00	12.00
11.	2020-21	6.00	8.50	14.50
12.	2021-22	8.00	9.00	17.00

4.3. If an Obligated Entity is not able to fulfill the minimum purchase requirements as per Regulation 4.1 above, such Obligated Entity shall be required to purchase Energy Certificates issued by the Central Agency as specified in PART-B of these Regulations.

4.4. The condition of minimum purchase requirement for the Obligated Entities can be relaxed by the Commission to the extent it is affected by the Force Majeure Conditions such as war, strike, lockout, riots, act of god or natural calamity etc.

15. Effect of Default

15.1. In the event the Obligated Entities do not fulfil the mandate of the obligation to purchase energy from Renewable Energy Sources as provided in these Regulations during any Financial Year and also do not purchase the certificates from the Power Exchange, the Commission may:

(i) direct the Obligated Entity to deposit into a separate Fund, to be maintained by such Obligated Entity, such amount as the Commission may determine as required for purchase of Certificates to the extent of the estimated obligation on the basis of the shortfall in units of RPO and the Forbearance Price of the Certificates which shall be utilized, as may be directed by the Commission, partly for purchase of the certificates and partly for development of Transmission infrastructure for evacuation of power from Generating Stations based on Renewable Energy Sources:

Provided that the Obligated Entities shall not be authorized to use the fund created in pursuance of Clause (i) above, without prior approval of the Commission;

(ii) to the extent of the shortfall in the fulfillment of the Obligations, the Commission may empower an Officer of the State Nodal Agency to procure from the Power Exchange the required number of Certificates out of amount in the Fund.

15.2. The Distribution Licensee shall be in breach of its Licence condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

15.3. Further, where any person though required to comply with these Regulations fails to purchase the required percentage of power from Renewable Energy Sources or the Renewable Energy Certificates, he shall also be liable for penalty as may be decided by the Commission under Section 142 of the Act.

17. Power to Remove Difficulties-

The Commission may Suo-moto or on an application from any person generating electricity from Co-generation and Renewable Sources or Distribution Licensee, review these Regulations and pass appropriate orders to remove any difficulty in implementing the provisions of these Regulations.”

- F.** In another petition bearing No. 25/2019 filed by the same petitioner, the Commission vide Order dated 05/04/2021 has decided as under:

“For Captive Users procuring power from Captive Generating Plants commissioned prior to 01.04.2016, RPO shall be at the level as specified by the Commission for FY 2015-16.

For Captive Users procuring power from Captive Generating Plants commissioned from 01.04.2016 onwards, the RPO level as specified by the Commission for the relevant year or as specified by the Ministry of Power for the relevant year, whichever is higher, for the year of commissioning of the Captive Generating Plants shall be applicable.

Provided that in case of any augmentation in the capacity, the RPO for augmented capacity shall be at the RPO level as specified by the Commission or as specified by the Ministry of Power whichever is higher for the year in which the Captive Generating Plant has been augmented.”

19. In view of the aforesaid and after considering the facts and circumstances of this case and the documents placed on record by the petitioner and the respondent, the Commission observed the following:

- i. The petitioner has submitted that due to high onset of demand of Solar RECs during FY 2019-20, they were traded at an exorbitant Forbearance Price of Rs. 2400/REC which was almost 2.4 times its Floor Price. The petitioner further submitted that since power is a major cost element in the Aluminium Industry, procuring Solar RECs at such costs has the potential to gravely effect the economic and financial viability of the Aluminium Industry in the State, particularly that of the Petitioner. From this, it appears that Solar RECs were available but not purchased by the petitioner due to commercial reasons.
- ii. The Judgment of Hon'ble APTEL in case of IWEA vs GERC cited by the petitioner states that "*There is no illegality in the State Commission exercising its powers under Regulation 4.2 for such adjustment in the circumstances of the case*". However, the applicable Regulations of MPERC, do not provide any relief or adjustment for non-fulfillment of Solar & non-Solar RPOs in any financial year.
- iii. The Regulation 4.4 of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulation, 2010 provides that the condition of minimum purchase requirement for the Obligated Entities can be relaxed by the Commission to the extent it is affected by the Force Majeure Conditions such as war, strike, lockout, riots, act of god or natural calamity etc. However, no such conditions is applicable in the subject case.
- iv. The Commission has passed Order dated 05/04/2021 in petition No. 25/2019 filed by the same petitioner, according to which the applicable RPO norms stand modified for the captive generating units of the petitioner. In compliance of the aforesaid Order, the petitioner is required to rework the quantum of its RPO obligations for the previous years including FY 2019-20. After reworking of its RPO obligations as aforesaid, in case of any shortfall in RPO, the petitioner shall comply with the provisions under Regulation 15.1(i) of the MPERC (Cogeneration and Generation of Electricity from Renewables Sources of Energy) (Revision I) Regulations, 2010 which provides as under:

15.1. In the event the Obligated Entities do not fulfil the mandate of the obligation to purchase energy from Renewable Energy Sources as provided in

these Regulations during any Financial Year and also do not purchase the certificates from the Power Exchange, the Commission may:

(i) direct the Obligated Entity to deposit into a separate Fund, to be maintained by such Obligated Entity, such amount as the Commission may determine as required for purchase of Certificates to the extent of the estimated obligation on the basis of the shortfall in units of RPO and the Forbearance Price of the Certificates which shall be utilized, as may be directed by the Commission, partly for purchase of the certificates and partly for development of Transmission infrastructure for evacuation of power from Generating Stations based on Renewable Energy Sources:

Provided that the Obligated Entities shall not be authorized to use the fund created in pursuance of Clause (i) above, without prior approval of the Commission;

- 20.** In view of the above, the Commission directs the petitioner to rework the RPO obligations as aforesaid and intimate to the Commission. In case shortfall is found in compliance of RPO obligations, the petitioner shall approach the Commission within 3 months from the date of issue of this Order, to obtain appropriate directions in accordance with Regulation 15.1(i) to compensate the shortfall.

With the aforesaid observations and findings, the subject petition is disposed of.

**-sd-
(Shashi Bhushan Pathak)
Member**

**-sd-
(Mukul Dhariwal)
Member**

**-sd-
(S. P. S. Parihar)
Chairman**