MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: Petition Under Section 86(1)(c), 86(1)(e), 86(1)(f) and 86(1)(k) of the Electricity Act, 2003 read with clause 19.15, 22.2, 22.3, and 22.4 of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, (Revision-I), 2021 read with Regulation 45, 47 & 48 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016.

ORDER

(Date of Order: 14.05.2026)

M/s Sun Pharmaceutical Industries Ltd.,
Plot No. 2-2A, Industrial Area-3,
Dewas (MP) - **Petitioner**

Vs.

Managing Director,
MP Paschim Kshetra Vidyut Vitaran Co. Ltd.,
GPH Compound, Polo Ground,
Indore (MP) – 452003

Managing Director,
MP Power Management Co. Ltd.,
Shakti Bhawan, Vidyut Nagar,
Rampur, Jabalpur – 482008 - **Respondent(s)**

Shri Rounak Choukse, Advocate appeared on behalf of the petitioner.
Shri Manoj Dubey, Advocate, appeared on behalf of Respondent No. 2.
SE (Comml-HT), appeared on behalf of Respondent No. 1.

The subject petition is filed by M/s Sun Pharmaceutical Industries Ltd., under Sections 86(1)(c), 86(1)(e), 86(1)(f) and 86(1)(k) of the Electricity Act, 2003 read with clause 19.15, 22.2, 22.3, and 22.4 of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, (Revision-I), 2021 read with Regulation 45, 47 & 48 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016.

2. By affidavit dated 11th November' 2025, the petitioner broadly submitted the following in its petition:

i. The Petitioner is a generic pharmaceutical company that is incorporated and registered under the provisions of the Indian Companies Act, 1956, and is

engaged in the developing, manufacturing and/or distributing pharmaceutical products and/or biotechnology products all over the world.

ii. The present petition is being filed through Mr. Kailash Yadav, Authorised Representative of the Petitioner Company who has been duly authorized on 10.02.2025 to file the present petition before the Hon'ble Commission.

iii. The Petitioner Company, in the course of its business, undertaking production of various medicines at its manufacturing units situated at Dewas (MP), to partly fulfil its electricity requirements, procured electricity through a metered connection from Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd. (hereinafter referred to as "Respondent no. 1").

iv. Believing in the Renewable Energy Initiative and the assurances of the respondents, the Petitioner Company to further fulfil its energy requirement had invested and entered into a detailed Power Purchase and Wheeling Agreement (hereinafter referred to as PPWA) with Respondents no.1 and 2 dated 06.11.2019, had set up a solar energy-based power plant of 30 MW capacity at Siddhipur Nipaniya, Tehsil Tarana District Ujjain (MP).

v. The aforesaid PPWA (on Page 2) very specifically records that Respondent no.2 (MPPMCL) in its 87th Board Meeting decided to execute the said PPWA with the Petitioner company with Banking facility for captive use of 20 MW capacity out of the total 30 MW installed capacity of the plant against the petitioner's 10.4 MVA total demand and to provide return of banked power during the period from 15th July to 15th October and from 1" November to 28 February, from 23:00 Hrs to 24:00 Hrs and 00:00 Hrs to 17:00 Hrs by deducting 2% in terms of units (kWh) towards wheeling charges.

vi. The Petitioner company submits that the Petitioner and Respondents, with consent, had inserted very particular and definite clauses in the said PPWA pertaining to banking of energy and other aspects i.e. banking cycle, charges payable, and settlement of inadvertent flow of energy etc. The Petitioner for the ready reference of this Hon'ble Commission is hereinafter reproducing the aforesaid clauses from the PPWA dated 06.11.2019:-

“

2.3 Notwithstanding anything contained in any Regulation, Policy and Tariff Order, settlement of inadvertent flow of energy into the grid by the MPPMCL shall be settled at the tariff based on mutual agreement among the parties, in line with the MPERC order dated 29th Nov 2017 in petition No. 37/2017.

……

10. <u>TARIFF</u>

……

b) BANKING

Banking facility shall be provided as under:

i. Banking facility is provided for captive use of 20 MW capacity out of total 30 MW installed capacity of the plant against Company's 10.4 MVA total demand. Banked power shall returned during period from 15th July to 15th Oct. and from 1st Nov. to 28th Feb, from 23:00 Hrs. to 24:00 Hrs. and 00:00 Hrs. to 17:00 Hrs by deducting 2% in terms of units (kWh) towards wheeling charges.

ii. If wheeled energy is in excess of the energy consumed by the Company at the drawl point in a particular 15 minute block, in a particular month, such block wise cumulative energy shall be banked, which will be returned during the subsequent months.

iii. The applicable rate for payment towards unadjusted energy at the end of each financial year, is Rs.2.44/kWh, which is lowest tariff discovered in state till commissioning of the project. This rate shall be fixed and applicable for the entire tenure of this agreement.

……

11. ENERGY ACCOUNTING

……

11.3 Energy accounting at injection drawl point shall be done for each 15 minute block separately. The wheeled energy in each 15 minute block Shall be adjusted against the consumption recorded by the HT meter(s) in the corresponding 15 minute block, as per allocation indicated by the Company in Annex-IV. In case block wise energy recorded by the meterat the drawl point in a particular month is more than the corresponding block wise wheeled energy, then balance energy supplied shall be billed by the concerned Discom at applicable tariff as per terms and conditions of existing HT agreement subsisting between the Company and the concerned Discom. Further, if block wise energy recorded by the meter at the drawl point in a particular month is less than the corresponding block wise wheeled energy, this energy shall be banked. This banked energy shall be returned as per clause 10 (b)&(ii) of this agreement. After returning of the banked energy during the financial year, if a portion of banked energy still remained unadjusted at the end of each financial year, then such unadjusted energy will be construed as energy purchased and shall be settled at agreed rate as per clause 10(b)(iii) of this agreement.

……

<u>37. OTHER APPLICABLE CONDITIONS</u>

……

37.3 Except the provisions under 2.3 and 10(b) (i), (ii) & (iii) of this Agreement, in the event of issue of new incentive policy by GoMP or any change in the existing regulatory provisions notified by Commission from

time to time, then the same shall be made applicable to this Agreement from its effective date.
……."

vii. The Petitioner submits that the aforesaid clauses of the said PPWA dated 06.11.2019 not only provided the energy accounting for banking, charges to be levied by the Respondents for the banking facility and the price per unit payable by Respondent no.2 to the Petitioner for energy not adjusted at the end of each financial year but in addition to that the Clauses 2.3 and 37.3 of the said PPWA had also covered the eventuality of change in regulations by this Hon'ble Commission from time to time. The parties to the said PPWA had clearly agreed that no change in regulation shall have any effect on the rights and obligations of the parties under clauses 2.3 and 10 (b) (i), (ii) & (iii) of the said PPWA.

viii. The Petitioner submits that as per the terms of the said PPWA 06.11.2019 under Clause 10 (b) (i) and (ii), the Respondents provided the banking facility to the Petitioner by supplying the banked power for consumption at Petitioner's two manufacturing units (Unit-I and Unit-II) situated at Dewas during the period from 15th July to 15th October and from 1st November to 28th February, from 23:00 Hrs to 24:00 Hrs and 00:00 Hrs to 17:00 Hrs by deducting 2% of the banked units (kWh) towards wheeling charges. The banked energy which was not consumed (unadjusted energy) by the petitioner during each financial year was construed as energy purchased as per clause 10(b)(iii) of the PPWA and was purchased by the respondent @ Rs. 2.44/- per kWh. The letters dated 08.05.2020 and 04.06.2021 of Respondent no.1 provide the quantum of such unadjusted energy for the period from 2019-20 to 2020-21 respectively.

ix. The Petitioner contends that the SE (HT Bill Cell) MPPKVVCL (respondent no. 1) issued an internal letter dated 23.02.2023 to another officer of Respondent no.1 (copy also served on the petitioner) with regard to the calculation of the banking units of the petitioner for the year 2021-22 and communicated that as per the Regulation 10 (iii) of the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy), (Revision-II), Regulations, 2021, the banking charges have been revised from 2% to 5% unit loss and the said revised charges need to be applied for the calculation of banking units of the petitioner from year 2021-22 onwards.

x. The Petitioner submits that the petitioner vide letter dated 20.04.2023 informed the respondent no.1 that the PPWA dated 06.11.2019 under Clause 37.3 clearly provided that the provisions under 2.3 and 10 (b) (i), (ii) and (iii) of the said PPWA will not be affected or amended by any change in any law or regulation and therefore, requested the Respondent no.1 to levy 2% only unit loss towards banking charges. Copy of the said letter is annexed herewith and is marked as

Annexure P-5. That Respondent no.1 replied to the said letter vide its letter dated 25.04.2023 and relying on Clause 25 of the PPWA dated 06.11.2019 informed the Petitioner that as per the MPERC regulation dated 12.11.2021, 5% Banking charges will be applicable.

xi. The Petitioner by its letter dated 03.05.2023 to Respondent no.1, replied to the contention of Respondent no.1 in its letter dated 25.04.2023 and submitted that the Clause 37.3 of the PPWA 06.11.2019 has overriding effect on any other Clause of the PPWA as the said clause was a specific clause added at the end of the PPWA so-as-as to cover all the provisions of the PPWA and moreover this clause specifically mentions about the provisions [2.3 and 10 (i), (ii) and (iii)] which are out-of-bounds in the event of issue of any policy or regulatory provisions to be notified in future either by the GoMP or this Hon'ble Commission. The Petitioner in the said letter further contended that the PPWA 06.11.2019 was executed under the policy notified by the New and Renewable Energy Department, GoMP, where provisions have been made for sale of power for captive consumption under preferential norms and therefore, to guarantee the said preferential norms, the specific clause 37.3 was inserted in the said PPWA. The Petitioner vide the said letter again called upon the Respondent no.1 to continue to levy only 2% Banking charges. However, Respondent no.1 did not respond to the said letter of the Petitioner and in violation of the terms and conditions of the PPWA started levying 5% banking charges.

xii. The Petitioner as per Clause 10 (b) (iii) vide its letter dated 30.08.2024 submitted three invoices for the unadjusted banked energy for the period FY 2021-22 to FY 2023-24 to Respondent no.1 and requested to process the said invoices at the earliest possible.

xiii. The Petitioner again vide letter dated 09.09.2024 informed Respondent no.1 that the PPWA dated 06.11.2019 under Clause 37.3 clearly provided that the provisions under 2.3 and 10 (b) (i), (ii) and (iii) pf the said PPWA will not be affected or amended by any change in any law or regulation and therefore, requested the Respondent no.1 to levy 2% only unit loss towards banking charges till the validity of the PPWA instead of 5% or 8% as being applied by the Respondent no.1 in light of gazette notifications published on 21.11.2021 and 09.03.2023.

xiv. The Respondent no.1 on the same day vide letter dated 09.09.2024, without providing any logic or any reasons informed the Petitioner that the remaining banking units shall be calculated by including 8% wheeling charges loss. In the said letter, the Respondent no.1 further communicated to the respondent that from the month of August 2024, the banked power shall be adjusted in accordance with the provisions of the Second Amendment to Madhya Pradesh

Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy), (Revision-II), Regulations, 2021. (ARG-33(II)(ii) of 2023).

xv. The Petitioner vide its letter dated 27.09.2024 to Respondent no.1 reiterated the fact that the Clause 37.3 of the PPWA 06.11.2019 has overriding effect on any other Clause of the PPWA as the said clause was a specific clause added at the end of the PPWA so-as-as to cover all the provisions of the PPWA and moreover, this clause specifically mentions about the provisions [2.3 and 10 (i), (ii) and (iii)] which are out-of-bounds in the event of issue of any policy or regulatory provisions to be notified in future either by the GoMP or this Hon'ble Commission. The Petitioner in the said letter further contended that the Petitioner has invested in the State of Madhya Pradesh based on the provisions of the PPWA 06.11.2019 that are made valid and absolute till the entire term of the said PPWA. The provisions under the said PPWA have been made for the sale of power for captive consumption under preferential norms and therefore, to guarantee the said preferential norms, the specific clause 37.3 was inserted in the said PPWA. The Petitioner vide the said letter again called upon the Respondent no.1 to continue to levy only 2% Banking charges for all the past and future periods and also to ensure payment towards unadjusted energy at the end of each financial year @ Rs 2.44/ kWh as per the terms of the PPWA. However, Respondent no.1 till date has not responded to the said letter of the Petitioner and in violation of the terms and conditions of the PPWA has started levying 8% banking charges.

xvi. The petitioner vide its letter dated 25.11.2024 again submitted three invoices for the unadjusted banked energy for the period FY 2021-22 to FY 2023-24 to respondent no.1 and requested to process the said invoices at the earliest possible.

xvii. The petitioner vide its letter dated 28.03.2025 again submitted three invoices for the unadjusted banked energy for the period FY 2021-22 to FY 2023-24 to respondent no.1 and requested to process the said invoices at the earliest possible.

xviii. The petitioner thereafter received a letter dated 21.04.2025 issued by respondent no.1 to respondent no.2 (copy marked to petitioner also) whereby the respondent no.2 was requested by respondent no.1 to take further steps with regard to the invoices raised by the petitioner for the unadjusted banked energy for the period FY 2021-22 to FY 2022-23.

xix. The petitioner thereafter received a letter from respondent no.1 dated 06.06.2025, whereby the petitioner was informed that the invoice raised by the

petitioner for the unadjusted banked energy for the period 2023-24 cannot be processed in light of the Clause 4.1 of Second Amendment To Madhya Pradesh Electricity Regulatory Commission (Co-Generation And Generation Of Electricity From Renewable Sources Of Energy) 2021 and therefore, the invoice is being returned to the petitioner.

xx. The petitioner further submits that even after passing of more than five months from the date of the aforesaid letter issued by respondent no.1 to respondent no. 2, as no action was taken by the respondents with regard to the aforesaid invoices nor any communication was received by the petitioner, therefore, the petitioner was again compelled to issue a letter dated 29.09.2025 to the respondent no.2 thereby calling upon the respondent no.2 to process the said invoices at the earliest possible (preferably within a period of fifteen days from the date of receipt of the said letter), however, the petitioner submits that till date no communication or reply to the said letter has been received by the petitioner nor the aforesaid invoices have been cleared.

The petitioner has filed this petition on the following grounds: -

I. Because, Respondent no.1 has acted illegally and arbitrarily in levying 5%/8% unit loss towards banking charges on the banked units in complete violation of the terms and conditions of the PPWA 06.11.2019.

II. Because, the Respondent no. 1 has recovered a Higher Rate of banking Charges without authority and as such, the same are liable to be refunded to the Petitioner.

III. Because, the Clause 37.3 of the PPWA 06.11.2019 has overriding effect on any other Clause of the PPWA as the said clause was a specific clause added at the end of the PPWA so-as-as to cover all the provisions of the PPWA and moreover this clause specifically mentions about the provisions [2.3 and 10 (i), (ii) and (iii)] which are out-of-bounds in the event of an issue of any policy or regulatory provisions to be notified in future either by the GoMP or this Hon'ble Commission.

IV. Because, the PPWA 06.11.2019 was executed under the policy notified by the New and Renewable Energy Department, GoMP, where provisions have been made for sale of power for captive consumption under preferential norms and therefore, to guarantee the said preferential norms, the specific clause 37.3 was inserted in the said PPWA and thus, the same has to be adhered to by all the parties to the Agreement.

V. Because, the Petitioner has invested in the State of Madhya Pradesh only by

relying on the provisions of the PPWA 06.11.2019 that are made valid and absolute till the entire term of the said PPWA. The Petitioner and the Respondents knowing the fact that there can be future amendments or changes in the existing laws have not only included various clauses to govern the banking facility and concerned charges payable but have consciously inserted clause 37.3 in the said PPWA dated 06.11.2019 to ensure that any future change in regulation does not affect the rights and obligations of the parties under Clauses 2.3, 10 (i), (ii) & (iii) of the said PPWA. Any unilateral or arbitrary change to the terms of the said PPWA will not only defeat the legitimate expectations of the petitioner and result in loss to the Petitioner but will also be in violation of the principles of natural justice.

VI. Because, Clause 37.1 of the PPWA dated 06.11.2019 provides that any variation, waiver or modification of any of the terms of the Agreement shall be valid only if communicated in writing and signed by or on behalf of the parties hereto as a Supplementary Agreement, whereas in the present case, the Petitioner has never consented to any variation, thus, there can be no unilateral change made by the Respondents relying on the regulations of this Hon'ble Commission.

VII. Because, Clause 2.3 of the said PPWA provides that notwithstanding anything contained in any Regulation, Policy and Tariff Order, settlement of inadvertent flow of energy into the grid by the MPPMCL shall be settled at the tariff based on mutual agreement among the parties, in line with the MPERC order dated 29.11.2017 in petition No. 37/2017. The Petitioner contends that this Hon'ble Commission in the said order dated 29.11.2017 had directed the respondents to explore the possibility of making legally tenable appropriate changes in the aforesaid Power Purchase Agreements after arriving at the mutual consents with the RE generators, which clearly establishes that no unilateral changes can be made by the Respondents without the written consent of the Petitioner.

VIII. Because, the Madhya Pradesh Electricity Regulatory Commission (Methodology for determination of Open Access Charges and Banking Charges for Green Energy and Open Access Consumers) Regulations, 2023. (G-46 of 2023) is not applicable on captive generators like the petitioner because the definition of 'Green Energy Open Access Consumer provided under Regulation 3 (1)(j) excludes Captive generators and, resultantly, the Regulation 11 of the said regulations is also not applicable on the present Petitioner.

IX. That the Petitioner submits that the Respondents are also prevented from not adhering to the terms and conditions of the PPWA dated 06.11.2019, relying on subsequent regulation of this Hon'ble Commission by the application of the 'Principle of Estoppel on them. Estoppel refers to a legal principle that prevents a person from acting in a manner that is contrary to past claims or actions. The

Petitioner submits that only on the assurances of the respondents and relying on the covenants of the PPWA dated 06.11.2019, which had covered the contingency of any future change in regulations, the Petitioner made a huge financial expenditure and set up the captive power plant in the State of Madhya Pradesh. Now, the Petitioner cannot be deprived of its rights under the said PPWA dated 06.11.2019 by the Respondents solely for the reason that this Hon'ble Commission has amended the regulations.

X. The Petitioner craves leave to add to the grounds during arguments and states that the grounds are in the alternative and without prejudice to each other.

3. With the aforesaid submissions the petitioner prayed the following:

i. Allow the present petition of the Petitioner Company and hold that the Respondents shall have to adhere to the terms of Clause 10(b) of the PPWA dated 06.11.2019 and resultantly quash the letter dated 09.09.2024 as illegal and arbitrary;

ii. To direct Respondent no. 1 to levy 2% only in terms of unit (kWh) towards banking charges on the banked units as per Clause 10(i) of the PPWA dated 06.11.2019;

iii. Pass an appropriate order granting either a refund of Rs. 16,21,445/- (Rupees Sixteen Lakh Twenty-one thousand four hundred and forty-five) or give adjustment/credit of 664527 Units towards levy of excessive banking charges by the Respondent no. 1 in violation of terms of the PPWA dated 06.11.2019;

iv. To direct Respondent no. 1 to make payment of invoices as per Clause 10 (b) (iii) towards unadjusted banked energy calculated @ Rs. 2.44/- per kWh.

v. To direct Respondent no. 1 to pay interest accrued to Rs. 66,80,153 (Rupees Sixty-six Lakh Eighty thousand one hundred and fifty-three) due to delayed payment on the part of the Respondent no. 1's failure to clear the invoices.

vi. Pass any further/such order(s) as this Hon'ble Commission may deem fit and proper in the interest of justice.

4. At the motion hearing held on 07.01.2026, Ld. Counsel for Petitioner explained the genesis of the case and prayed for admission of the Petition. The petition was admitted. The Petitioner was directed to serve copy of petition to the Respondents within 7 days. The Respondents were directed to file their replies to the petition in two weeks from the date of receipt of copy of petition. The Petitioner was at liberty to file rejoinder within a week thereafter. The case was fixed for hearing on 19.02.2026.

5. By Affidavit dt. 13th February' 2026, Respondent No. 2 i.e. MP Power Management Co. Ltd., has submitted following in its reply to the petition:

i. By way of instant petition, the Petitioner, being a Solar Captive Consumer of the Respondents and having executed a Power Purchase and Wheeling Agreement (PPWA) with the Respondents, has challenged the impugned letter dated

09/09/2024 issued by the Respondent No. 2, sought levy @ 2% per Unit only, as against 5% or 8%, towards Banking Charges and refund of Rs. 16,21,445/- or in the alternate credit / adjustment of 66452 Units. In substance, the Petitioner alleges that the Respondents are charging excess Banking Charges contrary to the terms and conditions stipulated under Article 37.1 and 37.3 of the PPWA dated 06/11/2019. The Petitioner, inter-alia, alleges that the Respondents have not been replying to his repeated letters.

ii. The answering Respondent No. 2 denies and disputes each and every adverse allegation made by the Petitioner. The petition is bereft of merits and is liable to be dismissed.

iii. Article 10 (b) at page 13 of the related PPWA dated 06/11/2019 provides as under:

"(b) BANKING

Banking facility shall be provided as under:

(i) *Banking facility is provided for captive use of 20 MW capacity out of total 30 MW installed capacity of the plant against Company's 10.4 MVA total demand.* ***Banked power shall be returned*** *during period from 15th July to 15th Oct. and from 1ª Nov. to 28th Feb. from 23.00 Hrs. to 24 Hrs, and from 00.00 Hrs. to 17.00 Hrs.* ***by deducting 2% in terms of units (kWh) towards wheeling charges.***

(ii) *If wheeled energy..... subsequent months.*

(iii) *The applicable rate for payment towards unadjusted energy at the end of each financial year, is* ***Rs. 2.44/kWh,*** *which is the lowest tariff discovered in the State till commissioning of the project.* ***The rate shall be fixed and applicable for the entire tenure of this Agreement.****"*

iv. Articles 37.1 and 37.3 of the PPWA at its page 20 provide for 'other applicable conditions' as under:

"37.1 *Any variation, waiver or modification of any terms of the agreement shall be valid only if communicated in writing and signed by or on behalf of the parties hereto as a Supplementary Agreement and communicated in writing to all concerned.*

37.3 Except the provisions under 2.3 and 10 (b) (i), (ii) & (iii) of this agreement, in event of issue of new incentive policy by GoMP or any change in the existing regulatory provisions notified by Commission from time to time, then the same shall be made applicable to this Agreement from its effective date."

v. Vide Regulation 10.1 (iii) of MPERC (Cogeneration and Generation of Electricity

from Renewable Sources of Energy) Regulations, 2021, (Revision II) in force from 02/11/2021, banking charges were imposed @ 5% of the banked energy as under:

*"**10.3** The quantum of banked energy will be returned at a time to be fixed by M. P. Power Management Company Limited Distribution Licensees during the Financial Year by deducting **5%** of the banked energy towards Banking Charges."*

vi. Thereafter, vide Regulation 11 (d) of MPERC (Methodology for Determination of Open access Charges and Banking Charges for Green Energy Open Access Consumers) Regulations, 2023, in force from 09/03/2023, banking charges were imposed @ 8% of the banked energy as under:

*"**11 (d)** The banking Charges shall be adjusted in each month in kind @ 8% of the total energy banked."*

vii. The issue that may arise for consideration, in view of the controversial provisions in the PPWA and Regulation notified by Hon'ble Commission is:

(i) Whether the Regulations notified u/s. 181 of the Electricity Act, 2003 by the State Electricity Regulatory Commissions prevail over the contractual terms contained in the PPWA?

(ii) Whether the provisions contained under Article 37.3 of the PPWA dated 06/11/2019 act as an estopple against law?

viii. The statutory provisions prevail over the contractual terms of the PPWA and there cannot be any estopple against law. The MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021, (Revision - II) in force from 02/11/2021 MPERC (Methodology for Determination of Open access Charges and Banking Charges for Green Energy Open Access Consumers) Regulations, 2023, in force from 09/03/2023 have statutory force as the same have been notified by the Hon'ble Commission in exercise of powers conferred u/s. 181 of the Electricity Act, 2003.

ix. Judicial decisions uniformly establish that statutory provisions override private contracts, as parties cannot contract out of mandatory laws. Private agreements contrary to, or attempting to bypass, statutory obligations are void. Contractual clauses that contravene legislative intent or special statutes which act as comprehensive codes need to be struck down.

x. The case of Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and Others reported as (2016) 8 SCC 743 revolved around a pivotal question: Can the

tariff fixed under a Power Purchase Agreement (PPA) be reviewed and amended by the State Electricity Regulatory Commission (SERC) despite being incorporated into a contractual agreement between the involved parties? This case brought into focus the balance between contractual autonomy under PPAs and the statutory regulatory oversight mandated by the Electricity Act, 2003. The primary parties involved were Gujarat Urja Vikas Nigam Limited (the appellant and distribution licensee) and Tarini Infrastructure Limited along with Junagadh Power Projects Pvt. Ltd. (the respondents and power producers). The core issue centered on the appellants' challenge against the appellate tribunal's decision to empower the SERC to review and adjust tariffs initially fixed in PPAs. The Supreme Court of India addressed whether tariffs fixed under PPAs are immutable contractual terms or subject to review by the SERC under the Electricity Act, 2003. The appellate tribunal had previously overruled the SERC's refusal to revise tariffs, asserting that changes in circumstances warranted regulatory intervention. The Supreme Court, however, dismissed the appeals, thereby affirming the appellate tribunal's decision. The Court underscored that tariff determination is a statutory function vested in the SERC, which retains the authority to review and amend tariffs based on statutory provisions and regulatory criteria, even if such tariffs are embedded within contractual agreements like PPAs.

xi. The legal principle of "no estoppel against law" dictates that equitable doctrines, such as estoppel or acquiescence, cannot override mandatory statutory provisions, constitutional law, or established legal procedures. If a law requires an act to be done in a specific manner, failure to do so renders it invalid, regardless of any contrary promises or actions by parties.

xii. A procedure other than statutory procedure cannot be adopted even if there is unanimous understanding. All methods other than statutory methods are necessarily forbidden. What cannot be done directly cannot be done indirectly to defeat statutory scheme. The Three-Judge Bench of Supreme Court of India in celebrated case reported as Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 has categorically held as:

"In our opinion, the answer has to be in the negative. It is so because where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This is uncontroverted legal principle."

xiii. In view of the aforesaid legal position, the impugned letters issued by the Respondents levying Banking Charges @ 5% / 8% on the strength of Regulation 10.1 (iii) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021, (Revision - II) in force from 02/11/2021 and Regulation 11 (d) of MPERC (Methodology for Determination of Open access

Charges and Banking Charges for Green Energy Open Access Consumers) Regulations, 2023, in force from 09/03/2023 are most just and correct in their place and need not be quashed. The petition, as filed on behalf of the Petitioner, is sans-merit and deserves be dismissed with costs throughout.

6. At the hearing held on 10.03.2026, Ld. Counsel for Petitioner informed that they received reply from Respondent no. 2 one day before only and requested to grant two weeks' time for submission of rejoinder. Respondent no. 1 informed that they had authorised Respondent No. 1 to file reply on behalf of them. Respondent No. 1 was directed to file authorization on affidavit within a week with a copy of the same to the Petitioner simultaneously. The Petitioner was at liberty to file rejoinder, if any, on replies of Respondents two weeks thereafter. The case was fixed for hearing on 28.04.2026.

7. By affidavit dt. 13.03.2026 the Respondent no. 1 authorised Respondent No. 2 to file reply on behalf of them.

8. By Affidavit dt. 06th April' 2026, Petitioner i.e. M/s Sun Pharmaceutical Industries Ltd., submitted following in their rejoinder to the reply filed by respondent no. 2 i.e., MP Power Management Co. Ltd.:

Preliminary Submissions

A. The Reply filed by Respondent No. 2 is evasive, vague, and bereft of any cogent or convincing reasoning. The Respondent No. 2 has chosen to merely repeat regulatory provisions while completely ignoring the binding contractual obligations undertaken by it under the Power Purchase and Wheeling Agreement dated 06.11.2019 (hereinafter "PPWA"). The Reply is, therefore, liable to be rejected in its entirety.

B. The Petitioner denies all averments, assertions, and contentions raised in the Reply of Respondent No. 2 save and except those specifically and expressly admitted herein. The Reply of Respondent No. 2 does not address the crux of the dispute, namely, that the Respondents themselves had consciously and explicitly agreed to insulate specific clauses of the PPWA from any future regulatory changes.

C. The Petitioner reiterates and affirms all the averments made in the original Petition filed herein and the same are not reproduced here for the sake of brevity but are to be read as part and parcel of this Rejoinder.

Parawise rejoinder

In reply to para 1 to 4 of the reply:

i. The contents of Para 1 to 4 of the Reply, to the extent they contain legal

submissions regarding the applicability of MPERC Regulations, are denied. The Respondent No. 2 has admitted the basic factual matrix, including the existence of the PPWA dated 06.11.2019. However, the characterization given to the said PPWA and its terms is incorrect and misleading. The PPWA was not a mere commercial arrangement subject to regulatory override it was a structured agreement executed by the Respondent No. 2 pursuant to the decision taken at its own 87th Board Meeting, under the policy framework of the New and Renewable Energy Department, Government of Madhya Pradesh. It is respectfully submitted that such a deliberate and policy-backed contractual instrument cannot be unilaterally altered by the Respondents by relying upon subsequent regulatory changes, particularly when the PPWA itself contains a specific savings clause in Clause 37.3.

ii. The argument of the respondent no.2 to justify the applicability of general regulatory provisions over the specific terms of the PPWA, are denied. It is submitted that the maxim generalia specialibus non derogant that general provisions do not override specific ones applies with full force in the present case. Clause 37.3 of the PPWA is a specific provision, mutually agreed upon by both parties, which expressly carves out Clauses 2.3 and 10(b)(i), (ii), and (iii) from the ambit of any subsequent regulatory changes. The Respondent No. 2 cannot seek shelter behind amendment in general regulatory provisions to escape its specific contractual obligations.

In reply to para 5 of the reply:

iii. In reply to Para 5 the petitioner submits that the Respondent No. 2 seeks to justify the levy of enhanced banking charges by placing reliance on Regulation 10.1(iii) of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021 (Revision-II), in force from 02.11.2021. It is submitted that this contention is fundamentally flawed because:

(a) Clause 37.3 of the PPWA specifically and expressly provides that Clauses 2.3 and 10(b)(i), (ii), and (iii) of the PPWA shall not be affected by any subsequent change in regulatory provisions. The said clause reads: *"Except the provisions under 2.3 and 10(b)(i), (ii) & (iii) of this Agreement, in the event of issue of new incentive policy by GoMP or any change in the existing regulatory provisions notified by Commission from time to time, then the same shall be made applicable to this Agreement from its effective date."*

(b) The legislative intent and the plain reading of this clause is unambiguous - the parties consciously agreed to protect the banking-related terms from any future regulatory change. The Respondent No. 2, being a party to this Agreement, cannot now contend otherwise.

(c) The PPWA was executed with the express knowledge and anticipation that regulatory frameworks may be amended in future. Despite this, the Respondents willingly locked in the banking charges at 2% and the unadjusted energy settlement rate at Rs. 2.44/kWh for the entire tenure of the Agreement. To permit the Respondents to now deviate from these terms would render Clause 37.3 otiose and meaningless- a result that is impermissible in law.

(d) The petitioner further submits that the petitioner's rights under the Agreement, including the agreed tariff/rate, constitute a specific contractual right which cannot be curtailed, altered, or taken away except by an express statutory or regulatory provision having overriding effect. A regulation cannot be read to override a binding contractual commitment by implication, particularly where the electricity company has itself undertaken that the rate shall remain unchanged notwithstanding any subsequent regulatory revision. The Regulation, on its plain reading, does not place any embargo on the discom and the generator from mutually fixing or continuing their own agreed rate, and therefore, the contractual stipulation cannot be defeated by a general regulatory provision. This position is consistent with the principle that statutory regulations override contracts only where the regulation expressly so provides.

In reply to para 6 of the reply:

iv. In reply to Para 6, the petitioner submits that the Respondent No. 2 has attempted to argue that the Petitioner ought to comply with the 2023 Regulations (MPERC Methodology for Determination of Open Access Charges and Banking Charges for Green Energy Open Access Consumers). It is most respectfully submitted that:

(a) The said 2023 Regulations are not applicable to the Petitioner because the Petitioner is a **Captive Power Generator** and not a "Green Energy Open Access Consumer" as defined under the said Regulations.

(b) Regulation 3(1)(j) of the 2023 Regulations defines "Green Energy Open Access Consumer" in a manner that expressly **excludes Captive Generators.** The Petitioner's plant admittedly operates under a captive arrangement for the supply of power to its Dewas manufacturing facility.

(c) Consequently, Regulation 11 of the 2023 Regulations, which prescribes the banking charges for Green Energy Open Access Consumers, is wholly inapplicable to the Petitioner.

(d) The Respondent No. 2 has neither disclosed this definitional distinction in its Reply nor attempted to explain how the Petitioner can be brought within the definition of a "Green Energy Open Access Consumer." The said omission is

deliberate and is designed to mislead this Hon'ble Commission.

In reply to para 7 to 11 of the reply:

v. The contents of the said paras are denied to the extent that Respondent No. 2 argues that the PPWA cannot override the statutory framework, it is submitted that the Petitioner does not contend that a contract can override a statute. The Petitioner's case is more nuanced: it is submitted that where the Regulatory Commission itself has the power under Section 86 of the Electricity Act, 2003, to set terms for open access, and where the parties have entered into a PPWA with specific protective clauses for certain agreed terms, those specific terms bind the parties inter se and cannot be unilaterally abandoned. The Commission's own order dated 29.11.2017 in Petition No. 37/2017 clearly directed the Respondents to arrive at mutual consent before making any changes to Power Purchase Agreements-a direction deliberately ignored by the Respondents.

vi. It is submitted that the Respondent No. 2 has failed to address the material fact that the banking charges at 2% were levied and applied by the Respondents themselves for the financial years 2019-20 and 2020-21, as evidenced by the letters dated 08.05.2020 and 04.06.2021 issued by Respondent No. 1 (copies annexed as Annexure P-3 to the Petition). The said conduct of the Respondents amounts to a clear admission that the PPWA terms governed the parties' rights. The Respondents cannot approbate and reprobate simultaneously having accepted the terms of the PPWA for two financial years, they cannot now claim that the same terms do not apply.

vii. The doctrine of promissory estoppel as well as equitable estoppel squarely apply to prevent the Respondents from reneging on their contractual obligations to the detriment of the Petitioner. The Petitioner's investment of substantial capital in setting up a 30 MW Solar Power Plant at Siddhipur Nipaniya, Tehsil Tarana, District Ujjain (MP) was premised entirely on the terms of the PPWA dated 06.11.2019 and the assurances given by the Respondents. To permit the Respondents to unilaterally alter the financial terms of the PPWA after the Petitioner has committed irreversible capital expenditure would be contrary to the doctrine of promissory estoppel and legitimate expectations.

viii. The doctrine of promissory estoppel has been upheld by the Hon'ble Supreme Court in Motilal Padampat Sugar Mills v. State of U.P., AIR 1979 SC 621 and subsequent judgments. In the present case, the Petitioner's reliance on the PPWA terms was not only reasonable but was expressly invited by the Respondents by incorporating specific protective clauses in the Agreement.

ix. Respondent No. 2 cannot evade its contractual obligation by citing regulatory

changes when it was Respondent No. 2 itself that was responsible for drafting and executing the PPWA with such protective clauses and was fully aware of the regulatory framework at the time of execution.

x. The Respondent No. 2 has somewhat attempted to argue that the settlement rate of Rs. 2.44/kWh prescribed under Clause 10(b)(iii) of the PPWA is no longer binding after the regulation has been passed by this Hon'ble Commission. This contention has no merit. Clause 10(b)(iii) expressly states that Rs. 2.44/kWh "shall be fixed and applicable for the entire tenure of this agreement." The use of the word "fixed" in the clause admits of no ambiguity the parties agreed, with full knowledge and mutual consent, that this rate would be immutable for the tenure of the PPWA. Any attempt to deviate from this fixed rate amounts to a breach of contract by the Respondents. Furthermore, Clause 37.3 of the PPWA specifically saves Clause 10(b)(iii) from any subsequent regulatory alteration.

xi. The Respondents have, by levying banking charges at rates higher than contractually agreed and by withholding payment of invoices for unadjusted banked energy, caused wrongful loss to the Petitioner and wrongful gain to themselves. This amounts to unjust enrichment, which courts and regulatory bodies have consistently held to be impermissible in law.

xii. The Hon'ble Supreme Court in the case of **Chamundeshwari Electricity Supply Company Ltd. (Cesc) Vs Saisudhir Energy (Chitradurga) Pvt. Ltd. & Anr. reported in AIR 2025 SC (Civil) 2409** has held that *"This Court has, in a consistent line of judgements, reiterated that regulatory or adjudicatory fora cannot, under the guise of equity or fairness, rewrite the contractual framework or superimpose obligations alien to the agreement. The PPA, being the product of a competitive bidding process and having received regulatory approval, must be construed and enforced strictly in accordance with its express stipulations. To permit otherwise would be to allow the State Commission or the APTEL to override the parties own allocation of risk under the contract.".*

xiii. The Respondent No. 2 has sought to rely upon the decision of the Division Bench (2 Judges) of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Vs Tarini Infrastructure, (2016) 8 SCC 516 for the proposition that tariff determination is a statutory function vested in the SERC, which retains authority to review and amend tariffs based on statutory provisions and regulatory criteria, even if such tariffs are embedded within contractual agreements like PPAS. The petitioner humbly submits that the facts of the said case were completely different and even in that case the Hon'ble Supreme Court has observed as under:-

"In the present case, admittedly, the tariff incorporated in the PPA between the generating company and the distribution licensee is the tariff fixed by the State

Regulatory Commission in exercise of its statutory powers. ***In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent.*** *Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved."*

The petitioner humbly submits that in the present case, the parties voluntarily by including Clause 10(b)(iii) in the PPWA expressly agreed that Rs. 2.44/kWh "shall be fixed and applicable for the entire tenure of this agreement." The use of the word "fixed" in the clause admits of no ambiguity the parties agreed, with full knowledge and mutual consent, that this rate would be immutable for the tenure of the PPWA. Furthermore, the parties also inserted Clause 37.3 in the PPWA to specifically save Clause 10(b)(iii) from any subsequent regulatory alteration by this Hon'ble Commission.

xiv. The petitioner further submits that the Hon'ble Supreme Court in its subsequent ruling in the case of **Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company (India) Private Limited** reported in **AIR 2017 SC 5372** (wherein the Hon'ble Supreme Court has also referred to the case of Gujarat Urja Vikas Nigam Vs Tarini Infrastructure) has held as under:-

"SANCTITY OF POWER PURCHASE AGREEMENT

61. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to be inviolable. ***Merely because in PPA, tariff rate as per Tariff Order (2010) is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the generating company-respondent No. 1 and disadvantage of the appellant. Terms of PPA are binding on both the parties equally.***

……

63. The first respondent placed reliance upon Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and others (2016) 8 SCC 743: (AIR 2016 SC 5580). In the said case, this Court was faced with the substantial question of law viz. whether the tariff fixed under a PPA (Power Purchase Agreement) is sacrosanct and inviolable and beyond review and correction by the State Electricity Regulatory Commission. In that case, respondent No.1 thereon power producer had entered into a PPA with the appellant therein distribution licensee for sale of electricity from the generating

stations to the extent of the contracted quantity for a period of 35 years at Rs. 3.29 per KWH subject to escalation of 3% per annum till date of commercial operation. However, later the power producer found that the place from where the power was to be evacuated was at a distance of 23 kms. as opposed to a distance of 4 kms, envisaged in the concession agreement entered into between the Respondent-power producer and Narmada Water Resources Department (Respondent No.2 therein). On this ground respondent had sought revision of tariff by State Electricity Commission. This Court held that Section 86(1)(b) of Act empowers State Commission to regulate price of sale and purchase of electricity between generating companies and distribution licensees through agreements for power, produced for distribution and supply and that the State commission has power to re-determine the tariff rate when the tariff rate mentioned in the PPA between generating company and distribution licensee was fixed by State Regulatory Commission in exercise of its statutory powers.

Relevant portion of the paras (17) and (18) of the judgment, read as under:-

"17. As already noticed, Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees through agreements for power produced for distribution and supply. As held by this Court in V.S. Rice and Oil Mills v. State of A.P., AIR 1964 SC 1781, K. Ramanathan v. State of T.N. (1985) 2 SCC 116: (AIR 1985 SC 660) and D.K. Trivedi and Sons v. State of Gujarat, 1986 Supp. SCC 20: (AIR 1986 SC 1323) the power of regulation is indeed of wide import...

18. All the above would suggest that in view of Section 86(1)(b) the Court must lean in favour of flexibility and not read inviolability in terms of PPA insofar as the tariff stipulated therein as approved by the Commission is concerned. It would be a sound principle of interpretation to confer such a power if public interest dictated by the surrounding events and circumstances require a review of the tariff. The facts of the present case, as elaborately noted at the threshold of the present opinion, would suggest that the Court must lean in favour of such a view also having due regard to the provisions of Sections 14 and 21 of the General Clauses Act, 1898...."

In the facts and circumstances of that case and that the tariff rate of Rs.3.29/- per KWH was subject to escalation and subject to periodic review. Evacuation was changed from a distance of 4 kms. to 23 kms. from its switch yard. On account of the same, respondent No. 1 therein had incurred an additional cost of about Rs. 10 crores which was not envisaged in the Concession Agreement. In such facts and changed circumstances, this Court thought it apposite to take a lenient view and allow the State Commission to re-determine the tariff rate.

64. In exercise of its statutory power, under Section 62 of the Electricity Act, the Commission has fixed the tariff rate. The word 'tariff has not been defined in the Act.

Tariff means a schedule of standard/prices or charges provided to the category or categories for procurement by licensee from generating company, wholesale or bulk or retail/various categories of consumers. After taking into consideration the factors in Section 61(1)(a) to (1), the State Commission determined the tariff rate for various categories including Solar Power PV project and the same is applied uniformly throughout the State. ***When the sald tariff rate as determined by the Tariff Order (2010) is incorporated in the PPA between the parties, it is a matter of contract between the parties. In my view, respondent No.1 is bound by the terms and conditions of PPA entered into between respondent No.1 and the appellant by mutual consent and that the State Commission was not right in exercising its inherent jurisdiction by extending the first control period beyond its due date and thereby substituting its view in the PPA, which is essentially a matter of contract between the parties, "***

xv. The Hon'ble Supreme Court in its three-judge bench ruling in the case of **Gujarat Urja Vikas Nigam Limited Vs. Renew Wind Energy (Rajkot) Private Limited** reported in **AIROnline 2023 SC 717** has held as under:-

"59. In the present case, the PPA was entered into by the parties on 29.03.2102, within the control period stipulated in the tariff order of 2010. The change in the REC Regulations 2010, whereby the Explanation to Regulation 5 was amended resulted in a change. The pre-existing clause that the power would be "at a price not exceeding pooled cost of the power purchase" was altered to "at the pooled cost of power purchase". This change, was through the Second Amendment (to the REC Regulations), carried out on 10.07.2013. It is a matter of record, that for the period between 29.03.2102 and 10.07.2013- and indeed, after the Second Amendment, no difficulty was experienced in the pricing mechanism agreed by the parties, under the PPA. It was on 10.12.2013 that the respondent WPD approached the state commission for re-determination of tariff. Clearly, this was an opportunistic attempt to derive advantage from the change, brought about by the Second Amendment, and seek to have it applied to an existing contract, which cannot be countenanced. In view of these reasons, it is held that the reasoning of APTEL, and the State Commission cannot be upheld.

60. Power Purchase Agreements are essentially not statutory contracts; however, certain terms contained in those contracts, are regulated by law, i.e. applicable regulations, under the Act. The PPA between a generating company or, as in this case, a wind generator, and a distribution licensee, such as Gujarat Urja, is the outcome of a carefully considered decision, whereby the parties, after due deliberations and negotiations, agree on terms, which are based on existing law and regulations. Aside from contending that the PPA had to be approved, (which this court has rejected in a previous part of this judgment) but was not, the respondents also urge, independently, that the Second Amendment had necessitated re-visiting of

the terms of the PPA, relating to the payment of average pooled power purchase cost, given that the amendment mandated that the power would be at the pooled power purchase cost, as opposed to the previous provision, which stated that the cost would not exceed the pooled power purchase cost.

……

63. Whilst there cannot be any doubt that regulations framed under the Act can be made applicable to existing contracts, what is discernible from PTC India (supra) is that in that case, the applicability of the Trading Margin Regulations which for the first time, compelled persons engaged in trading of electricity, in terms of Section 2 (17) of the Act, to register, obtain licenses, and operate within the margin limits indicated in the regulations. These provisions introduced a new regime, regulating an area, or activity which had hitherto been unregulated. The entire edifice of prescribing general standards for application to all those operating within its sweep, is to ensure that they are universal and constitute a code. The observations in PTC India (supra), therefore, are to be seen in this context. Being regulations of general application, dealing with a range of commercial activity, there could have been no question of existing contracts, operating in isolation, through separate silos, outside of their framework. ***In the present case, however, the PPAs were entered into in the exercise of equal bargaining power, after due negotiation by the parties, and within the framework of existing regulations: both central and state. Therefore, unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties.***

……

66. In view of the above discussion, it is held that agreements, such as the PPAs in the present case, entered into, voluntarily by the parties, before the Second Amendment, were not affected, by its terms. The findings to the contrary in the impugned order, are set aside."

In reply to para 12 of the reply:

xvi. That the contents of Para 12 are denied. The Respondent No. 2 has sought to rely upon the decision of the Hon'ble Supreme Court in Manohar Lal Sharma v. Principal Secretary & Others, (2014) 9 SCC 516 for the proposition that "where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all." It is submitted, with the greatest of respect, that this judgment is wholly inapplicable to the facts of the present case for the following reasons:

(a) The said judgment was rendered in the context of allocation of natural resources by the State and has no bearing on a bilateral contractual arrangement between a renewable energy generator and a distribution licensee regulated under the Electricity Act, 2003.

(b) In the present case, the Petitioner does not seek to override a statutory mandate -it merely seeks enforcement of a mutually agreed contractual term that was itself approved by the regulatory framework prevailing at the time of execution of the PPWA.

(c) Moreover, the Respondents themselves had the statutory power to enter into the PPWA with the protective clauses-Clause 37.3 was not an ultra vires provision but was inserted in accordance with the GoMP's renewable energy policy framework.

Therefore, enforcing the PPWA terms is in itself consistent with the statutory scheme, not contrary to it.

In reply to para 13 of the reply:

xvii. The contents of Para 13 of the Reply, which seek dismissal of the petition with costs and rely on the impugned letters levying 5%/8% banking charges, are specifically denied. The Petitioner submits that the impugned letters dated 23.02.2023 and 09.09.2024 (Annexures P-4 and P-11 to the Petition) are issued in flagrant violation of the binding terms of the PPWA and are liable to be quashed by this Hon'ble Commission in exercise of its powers under Section 86(1)(f) and Section 86(1)(k) of the Electricity Act, 2003. The prayer made by the Respondent No. 2 for dismissal of the Petition with costs is misplaced and deserves to be rejected. The Petitioner reiterates that the banking cycle, banking charges, return of banked power, and the settlement of unadjusted energy are all governed by Clauses 10(b)(i), (ii), (iii) and 11.3 of the PPWA all of which are protected under Clause 37.3. The Respondent No. 2 cannot selectively rely on regulatory provisions when the Agreement itself contains comprehensive provisions on these subjects that are binding on all parties.

PRAYER

In light of the above submissions, it is most respectfully prayed that the reply of the respondent being devoid of merits should not be taken in to consideration and this Hon'ble Commission may be pleased to grant the reliefs sought in the petition by the petitioner.

9. At the last hearing held on 28.04.2026, Parties concluded their arguments. Parties were allowed to file written submission within seven days. Case was reserved for order.

10. The Petitioner i.e. M/s Sun Pharmaceutical Industries Ltd., submitted following in their written submission dt. 04th May' 2026:

The petitioner has filed the present petition Seeking Restoration of Banking charges, banking cycle and calculation methodology and for payment of invoices towards unadjusted banked power and to refund the amount/ give credit of units to the petitioner towards wrongful levy of excessive banking charges by respondent no.1 in violation of the terms and conditions of the PP&WA dated 06.11.2019 executed between the petitioner and respondents. The present petition arises from the respondents' unilateral departure from the express terms of the power purchase and wheeling agreement dated 06.11.2019 and their consequent refusal to honour the agreed banking and settlement mechanism for unadjusted banked energy.

1. Core controversy

Under the PPWA dated 06.11.2019, the parties specifically agreed that: (i) banking facility for captive use of 20 MW out of the 30 MW solar plant would be available on defined periods and time slots, (ii) only 2% in terms of units would be deducted towards wheeling/banking charges, and (iii) unadjusted banked energy at the end of each financial year would be settled at Rs. 2.44/kWh for the entire tenure of the agreement.

The dispute has arisen because Respondent No. 1, relying upon subsequent regulatory changes/amendments, first sought to apply 5% banking charges from FY 2021-22 onwards and thereafter 8% banking charges from August 2024, despite the specific protection granted by Clause 37.3 of the PPWA to Clauses 2.3 and 10(b)(i), (ii) and (iii). The Respondents have further withheld or returned the Petitioner's invoices for unadjusted banked energy for FY 2021-22 to FY 2023-24 instead of settling them in accordance with the agreed contractual rate as provided for in the PP&WA dated 06.11.2019.

2. Relevant contractual scheme

The Petitioner's case rests primarily on the text of the PPWA itself. The aforesaid PPWA very specifically records that Respondent no. 2 (MPPMCL) in its **87th Board Meeting** decided to execute the said PPWA with the Petitioner company with Banking facility for captive use of 20 MW capacity out of the total 30 MW installed capacity of the plant against the petitioner's 10.4 MVA total demand and **to provide return of banked power during the period from 15th July to 15th October and from 1st November to 28th February, from 23:00 Hrs to 24:00 Hrs and 00:00 Hrs to 17:00 Hrs by deducting 2% in terms of units (kWh) towards wheeling charges.** The said PPWA (on Page 3) further specifically records that the rate of payment towards unadjusted energy shall be fixed and applicable for the entire tenure of the agreement.

The Petitioner company submits that the Petitioner and Respondents, with consent, had inserted very particular and definite clauses in the said PPWA pertaining to banking of energy and other aspects i.e. banking cycle, charges payable, and settlement of inadvertent flow of energy etc. The Petitioner for the ready reference of this Hon'ble Commission is hereinafter reproducing the aforesaid clauses from the **PPWA dated 06.11.2019:-**

"

2.3 Notwithstanding anything contained in any Regulation, Policy and Tariff Order, settlement of inadvertent flow of energy into the grid by the MPPMCL shall be settled at the tariff based on mutual agreement among the parties, in line with the MPERC order dated 29th Nov 2017 in petition No. 37/2017.

……..

10. TARIFF

……..

(b) BANKING

Banking facility shall be provided as under:

(i) Banking facility is provided for captive use of 20 MW capacity out of total 30 MW installed capacity of the plant against Company's 10.4 MVA total demand. Banked power shall returned during period from 15th July to 15th Oct. and from 1st Nov to 28th Feb, from 23:00 Hrs. to 24:00 Hrs. and 00:00 Hrs. to 17:00 Hrs by deducting 2% in terms of units (kWh) towards wheeling charges.

(ii) If wheeled energy is in excess of the energy consumed by the Company at the drawl point in a particular 15 minute block, in a particular month, such block wise cumulative energy shall be banked, which will be returned during the subsequent months.

(iii) *The applicable rate for payment towards unadjusted energy at the end of each financial year, is Rs.2.44/kWh, which is lowest tariff discovered in state till commissioning of the project.* ***This rate shall be fixed and applicable for the entire tenure of this agreement.***

……..

11. ENERGY ACCOUNTING

……..

11.3 Energy accounting at injection drawl point shall be done for each 15 minute block separately. The wheeled energy in each 15 minute block Shall be adjusted against the consumption recorded by the HT meter(s) in the corresponding 15 minute block, as per allocation indicated by the Company in Annex-IV. In case block wise energy recorded by the meter at the drawl point in a particular month is more than the corresponding block wise wheeled energy, then balance energy supplied shall be billed by the concerned Discom at applicable tariff as per terms and conditions of existing HT agreement subsisting between the Company and the concerned Discom. Further, if block wise energy recorded by the meter at the drawl point in a particular month is less than the corresponding block wise wheeled energy, this energy shall be banked. This banked energy shall be returned as per clause 10 (b)&(ii) of this agreement. After returning of the banked energy during the financial year, if a portion of banked energy still remained unadjusted at the end of each financial year, then such unadjusted energy will be construed as energy purchased and shall be settled at agreed rate as per clause 10(b)(iii) of this agreement.

…….

37. OTHER APPLICABLE CONDITIONS

……

37.3 Except the provisions under 2.3 and 10(b) (i), (ii) & (iii) of this agreement, in the event of issue of new incentive policy by GoMP or any change in the existing regulatory provisions notified by commission from time to time, then the same shall be made applicable to this Agreement from its effective date.

……."

Thus, most importantly, Clause 37.3 of the PPWA is a specific provision, mutually agreed upon by both parties, expressly carves out Clauses 2.3 and 10(b)(i), (ii) and (iii) from the effect of future incentive-policy changes or changes in regulatory provisions. Thus, the contract itself anticipates future regulatory change and yet consciously protects the banking charge, banking framework and settlement rate from such change. This clause is central to the dispute and is decisive in favour of the Petitioner.

3. Factual sequence

The Petitioner established a 30 MW solar power plant at Siddhipur Nipaniya, Tehsil Tarana, District Ujjain, for captive supply to its Dewas units pursuant to the PPWA executed with the Respondents on 06.11.2019. For the initial years, the Respondents themselves acted upon the PPWA and communicated the quantum of unadjusted energy for FY 2019-20 and FY 2020-21, thereby acknowledging the applicability of the contractual banking and settlement regime.

The change occurred through an internal communication dated 23.02.2023, whereby Respondent No. 1 proposed applying 5% banking charges from FY 2021-22 onwards by relying upon the Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy), (Revision-II), Regulations, 2021. The Petitioner immediately objected by letters dated 20.04.2023 and 03.05.2023, specifically invoking Clause 37.3 and asserting that only 2% could be levied. Despite this, Respondent No. 1 continued with the enhanced levy. Later, by letter dated 09.09.2024, Respondent No. 1 went further and communicated that the remaining banking units would be calculated by including 8% wheeling charge loss and that from August 2024 onward, banked power would be adjusted under the second amendment to Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy), (Revision-II), Regulations, 2021. (ARG-33(II) (ii) of 2023). The Petitioner repeatedly protested by letters dated 27.09.2024 and 25.11.2024.

The Petitioner also raised invoices on 30.08.2024, again on 25.11.2024 and again on 28.03.2025 for unadjusted banked energy for FY 2021-22 to FY 2023-24. Instead of making payment, the Respondents returned or stalled the invoices, and by letter dated 06.06.2025 (Annex P-16) Respondent No. 1 stated that the invoice for FY 2023-24 could not be processed in light of the second amendment regulations. These acts have directly resulted in wrongful deprivation of the Petitioner's contractual dues.

4. Submissions

A. Specific contractual stipulations prevail inter se between the parties

The Respondents do not dispute the execution of the PPWA or the existence of Clause 37.3. Once parties, with full knowledge of the regulatory framework and possibility of future amendment, consciously agreed that Clauses 2.3 and 10(b)(i), (ii) and (iii) would remain unaffected by future regulatory change, the Respondents cannot subsequently disregard that bargain merely because later regulations prescribe a different general norm.

The Petitioner's submission is not that the contract overrides the statute. The narrower and correct submission is that where the parties, acting within the existing statutory and policy framework, have agreed on a specific contractual arrangement and have expressly protected certain stipulations from future changes, those terms continue to bind the contracting parties unless there is an express overriding mandate to the contrary which is not the case in the present matter as none of the subsequent amendments in regulation provide that they will apply to PP&WAs executed before the regulation came into force (retorpsective application) nor they put an embargo on the parties from mutually agreeing on a rate that is different from the one provided in the regulations. Respondent No. 2 itself participated in the arrangement and cannot evade the agreed protection clause now.

B. Clause 37.3 is express, specific and decisive

Clause 37.3 is not a general boilerplate provision. It expressly states that, except for Clauses 2.3 and 10(b)(i), (ii) and (iii), future policy or regulatory changes shall apply to the agreement from the effective date. The necessary implication is that Clauses 2.3 and 10(b)(i), (ii) and (iii) were deliberately excluded from future change. No interpretation can be adopted that renders this carve-out otiose.

The Respondents' attempt to rely on general regulatory provisions while ignoring the express savings language is contrary to settled principles of contractual interpretation. The specific protection under Clause 37.3 must prevail over any general applicability argument, especially when the clause was inserted precisely to address the contingency of future regulatory amendments.

C. The Respondents are bound by their own prior conduct

The Respondents themselves implemented the PPWA for FY 2019-20 and FY 2020-21 and communicated the corresponding unadjusted energy position. That conduct amounts to acknowledgment that the PPWA governed the inter se rights of the parties, including the banking regime and end-of-year settlement. Having acted upon the agreement, the Respondents cannot approbate and reprobate by selectively accepting the beneficial parts of the PPWA and discarding the burdensome ones.

The later unilateral shift to 5% and then 8% charges relying on subsequent regulatory change was not based on any supplementary agreement, nor on

any written contractual modification signed by the parties. The petition specifically points out that Clause 37.1 requires any variation, waiver or modification to be made in writing through a supplementary agreement signed on behalf of the parties. No such exercise was ever undertaken.

D. No unilateral modification was permissible

The record shows that the Petitioner consistently objected to the levy of 5% and 8% charges and repeatedly called upon Respondent No. I to continue levying only 2% as per the PPWA. The Respondents nevertheless proceeded unilaterally. Such unilateral alteration is contrary not only to Clause 37.3 but also to the contractual requirement of formal modification and to the commercial certainty on which the Petitioner had invested in the project.

The rejoinder filed by the petitioner correctly emphasizes that the PPWA was not an accidental or casual arrangement or a standard draft format; on the contrary, the PP&WA itself records that it was executed pursuant to the 87th Board Meeting decision of Respondent No. 2 and within the policy framework of the State. A negotiated and policy-backed instrument of this nature cannot be rewritten unilaterally by one party after the other party has altered its position and made substantial capital investment.

E. The 2023 green energy open access framework does not govern the Petitioner's captive arrangement

The Petition specifically pleads, and the rejoinder reiterates, that the 2023 Regulations concerning methodology for determination of open access charges and banking charges for green energy open access consumers do not apply to the Petitioner because the Petitioner is a captive generator and not a green energy open access consumer within the meaning of those regulations. The Respondents in their reply have not meaningfully answered this definitional objection.

Therefore, the attempt to justify the enhanced levy by invoking the 2023 Regulations is misplaced even on the Respondents' own logic. In any event, even assuming some general regulatory relevance, the express contractual carve-out under Clause 37.3 remains operative for the present PPWA.

F. Invoices for unadjusted energy are contractually payable

Clause 10(b)(iii) and Clause 11.3 leave no ambiguity that unadjusted banked energy at the end of each financial year is to be treated as

purchased energy and settled at Rs. 2.44/kWh. The PPWA further states that this rate is fixed for the entire tenure of the agreement. Thus, once the Petitioner raised invoices for FY 2021-22 to FY 2023-24, the Respondents were contractually bound to process and pay them rather than return them on the basis of later regulatory changes.

The refusal to settle those invoices has led to wrongful withholding of legitimate dues and concomitant wrongful gain to the Respondents. The prayer for payment of invoice amounts, together with consequential interest for delay, therefore squarely arises from the contractual scheme itself.

G. Equity, estoppel and legitimate expectation support the Petitioner's case

The Petitioner invested in a 30 MW solar project on the strength of the PPWA and the assurances embodied in it. The petition and rejoinder both assert that the contractual protection against future regulatory change was one of the foundational terms on which the investment decision was taken. The Respondents are therefore estopped from rescinding from the very terms that induced the Petitioner's investment and structured the commercial viability of the project. The respondents, being State authorities as defined under Article 12 of the Constitution are bound to act in a fair and transparent manner. The respondents in their reply or arguments have failed to give any just reasoning or justification as to why 'Clause 37.2' was incorporated in the PPWA dated 06.11.2019 by the parties, if the respondents were not going to adhere to it in future, relying on a change in regulations, which is exactly what the said clause protects the parties from.

The doctrine of promissory estoppel as well as equitable estoppel squarely apply to prevent the Respondents from reneging on their contractual obligations to the detriment of the Petitioner. The Petitioner's investment of substantial capital in setting up a 30 MW Solar Power Plant at Siddhipur Nipaniya, Tehsil Tarana, District Ujjain (MP) was premised entirely on the terms of the PPWA dated 06.11.2019 and the assurances given by the Respondents. To permit the Respondents to unilaterally alter the financial terms of the PPWA after the Petitioner has committed irreversible capital expenditure would be contrary to the doctrine of promissory estoppel and legitimate expectations. The doctrine of promissory estoppel has been upheld by the Hon'ble Supreme Court in Motilal Padampat Sugar Mills v. State of U.P., AIR 1979 SC 621 and subsequent judgments.

The Respondents' conduct has the effect of imposing higher losses on banked energy while simultaneously denying settlement at the agreed rate for unadjusted energy. Such conduct defeats the Petitioner's legitimate expectation arising from a formal executed agreement and results in manifest commercial prejudice.

5. Reply to the principle defence

The principal defence of the respondents appears to be that statutory regulations prevail over the terms and conditions of the PPWA. This defence misstates the Petitioner's case. The Petitioner's contention is not that a contract can override a statute. The Petitioner's case is more nuanced: it is submitted that where the Regulatory Commission itself has the power under Section 86 of the Electricity Act, 2003, to set terms for open access, and where the parties have entered into a PPWA with specific protective clauses for certain agreed terms, those specific terms bind the parties inter se and cannot be unilaterally abandoned. The Commission's own order dated 29.11.2017 in Petition No. 37/2017 clearly directed the Respondents to arrive at mutual consent before making any changes to Power Purchase Agreements a direction deliberately ignored by the Respondents. The parties themselves anticipated regulatory change and contractually agreed that specific provisions would remain unaffected. Unless such savings clause is held to be invalid or expressly overridden in subsequent regulatory amendment, it must be given full effect. Respondent No. 2's reply, as addressed in the rejoinder, does not satisfactorily explain why Clause 37.3 should be ignored. The reply is therefore insufficient to defeat the Petitioner's contractual and factual case.

6. The law of Precedents is also in favour of the petitioner

i. That the Hon'ble Supreme Court in the case of **Chamundeshwari Electricity Supply Company Ltd. (Cesc) Vs Saisudhir Energy (Chitradurga) Pvt. Ltd. & Anr.** reported in **AIR 2025 SC (Civil) 2409** in Para 42 has held as under:-

"This Court has, in a consistent line of judgements, reiterated that regulatory or adjudicatory fora cannot, under the guise of equity or fairness, rewrite the contractual framework or superimpose obligations alien to the agreement. The PPA, being the product of a competitive bidding process and having received regulatory approval, must be construed and enforced strictly in accordance with its express stipulations. To permit otherwise would be to allow the State Commission or the APTEL to override the parties own allocation of risk under the contract."

ii. The petitioner further submits that the Hon'ble Supreme Court in its subsequent ruling in the case of **Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company (India) Private Limited** reported in **AIR 2017 SC 5372** (wherein the Hon'ble Supreme Court has also referred to the case of Gujarat Urja Vikas Nigam Vs Tarini Infrastructure) has held as under:-

"SANCTITY OF POWER PURCHASE AGREEMENT

61. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to be inviolable. ***Merely because in PPA, tariff rate as per Tariff Order (2010) is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the generating company-respondent No. 1 and disadvantage of the appellant. Terms of PPA are binding on both the parties equally.***

……..

63. The first respondent placed reliance upon Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and others (2016) 8 SCC 743: (AIR 2016 SC 5580). In the said case, this Court was faced with the substantial question of law viz. whether the tariff fixed under a PPA (Power Purchase Agreement) is sacrosanct and inviolable and beyond review and correction by the State Electricity Regulatory Commission. In that case. respondent No.1 thereon power producer had entered into a PPA with the appellant therein distribution licensee for sale of electricity from the generating stations to the extent of the contracted quantity for a period of 35 years at Rs. 3.29 per KWH subject to escalation of 3% per annum till date of commercial operation. However, later the power producer found that the place from where the power was to be evacuated was at a distance of 23 kms. as opposed to a distance of 4 kms, envisaged in the concession agreement entered into between the Respondent-power producer and Narmada Water Resources Department (Respondent No. 2 therein). On this ground respondent had sought revision of tariff by State Electricity Commission. This Court held that Section 86(1)(b) of Act empowers State Commission to regulate price of sale and purchase of electricity between generating companies and distribution

licensees through agreements for power. produced for distribution and supply and that the State commission has power to re-determine the tariff rate when the tariff rate mentioned in the PPA between generating company and distribution licensee was fixed by State Regulatory Commission in exercise of its statutory powers.

Relevant portion of the paras (17) and (18) of the judgment, read as under:-

"17. As already noticed, Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees through agreements for power produced for distribution and supply. As held by this Court in V.S. Rice and Oil Mills v. State of A.P., AIR 1964 SC 1781, K. Ramanathan v. State of T.N. (1985) 2 SCC 116: (AIR 1985 SC 660) and D.K. Trivedi and Sons v. State of Gujarat, 1986 Supp. SCC 20: (AIR 1986 SC 1323) the power of regulation is indeed of wide import...

18. All the above would suggest that in view of Section 86(1)(b) the Court must lean in favour of flexibility and not read inviolability in terms of PPA insofar as the tariff stipulated therein as approved by the Commission is concerned. It would be a sound principle of interpretation to confer such a power if public interest dictated by the surrounding events and circumstances require a review of the tariff. The facts of the present case, as elaborately noted at the threshold of the present opinion, would suggest that the Court must lean in favour of such a view also having due regard to the provisions of Sections 14 and 21 of the General Clauses Act, 1898...."

In the facts and circumstances of that case and that the tariff rate of Rs.3.29/- per KWH was subject to escalation and subject to periodic review. Evacuation was changed from a distance of 4 kms. to 23 kms. from its switch yard. On account of the same, respondent No. I therein had incurred an additional cost of about Rs.10 crores which was not envisaged in the Concession Agreement. In such facts and changed circumstances, this Court thought it apposite to take a lenient view and allow the State Commission to re-determine the tariff rate.

64. In exercise of its statutory power, under Section 62 of the Electricity Act, the Commission has fixed the tariff rate. The word 'tariff' has not been defined in the Act. Tariff means a schedule of standard/prices or charges provided to the category or categories for procurement by licensee from generating company, wholesale or bulk or retail/various categories of consumers. After taking into consideration the factors in Section 61(1)(a) to (i), the State Commission determined the tariff rate for various categories including Solar

Power PV project and the same is applied uniformly throughout the State. ***When the said tariff rate as determined by the Tariff Order (2010) is incorporated in the PPA between the parties, it is a matter of contract between the parties. In my view, respondent No.1 is bound by the terms and conditions of PPA entered into between respondent No.1 and the appellant by mutual consent and that the State Commission was not right in exercising its inherent jurisdiction by extending the first control period beyond its due date and thereby substituting its view in the PPA, which is essentially a matter of contract between the parties.***

iii. That the Hon'ble Supreme Court in its three-judge bench ruling in the case of **Gujarat Urja Vikas Nigam Limited Vs. Renew Wind Energy (Rajkot) Private Limited** reported in **AIROnline 2023 SC 717** has held as under:-

*"**59.** In the present case, the PPA was entered into by the parties on 29.03.2102, within the control period stipulated in the tariff order of 2010. The change in the REC Regulations 2010, whereby the Explanation to Regulation 5 was amended resulted in a change. The pre-existing clause that the power would be "at a price not exceeding pooled cost of the power purchase" was altered to "at the pooled cost of power purchase". This change, was through the Second Amendment (to the REC Regulations), carried out on 10.07.2013. It is a matter of record, that for the period between 29.03.2102 and 10.07.2013- and indeed, after the Second Amendment, no difficulty was experienced in the pricing mechanism agreed by the parties, under the PPA. It was on 10.12.2013 that the respondent WPD approached the state commission for re-determination of tariff. Clearly, this was an opportunistic attempt to derive advantage from the change, brought about by the Second Amendment, and seek to have it applied to an existing contract, which cannot be countenanced. In view of these reasons, it is held that the reasoning of APTEL, and the State Commission cannot be upheld.*

***60.** Power Purchase Agreements are essentially not statutory contracts; however, certain terms contained in those contracts, are regulated by law, i.e. applicable regulations, under the Act. The PPA between a generating company or, as in this case, a wind generator, and a distribution licensee, such as Gujarat Urja, is the outcome of a carefully considered decision, whereby the parties, after due deliberations and negotiations, agree on terms, which are based on existing law and regulations. Aside from contending that the PPA had to be approved, (which this court has rejected in a previous part of this judgment) but was not, the respondents also urge, independently, that the Second Amendment had necessitated re-visiting of the terms of the PPA, relating to the payment of average pooled power purchase cost, given that the amendment mandated that the power would be at the pooled power*

purchase cost, as opposed to the previous provision, which stated that the cost would not exceed the pooled power purchase cost.

……

63. *Whilst there cannot be any doubt that regulations framed under the Act can be made applicable to existing contracts, what is discernible from PTC India (supra) is that in that case, the applicability of the Trading Margin Regulations which for the first time. compelled persons engaged in trading of electricity, in terms of Section 2 (17) of the Act. to register, obtain licenses, and operate within the margin limits indicated in the regulations. These provisions introduced a new regime, regulating an area, or activity which had hitherto been unregulated. The entire edifice of prescribing general standards for application to all those operating within its sweep, is to ensure that they are universal and constitute a code. The observations in PTC India (supra), therefore, are to be seen in this context. Being regulations of general application, dealing with a range of commercial activity, there could have been no question of existing contracts, operating in isolation, through separate silos, outside of their framework.* ***In the present case, however, the PPAs were entered into in the exercise of equal bargaining power, after due negotiation by the parties, and within the framework of existing regulations: both central and state. Therefore, unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties.***

……

66. In view of the above discussion, it is held that agreements, such as the PPAs in the present case, entered into, voluntarily by the parties, before the Second Amendment, were not affected, by its terms. The findings to the contrary in the impugned order, are set aside."

iv. The **Hon'ble APTEL** in its order dated 28.07.2025 passed in **Appeal no. 107 of 2020** in the case of ***M/s Rosa Power Supply Co. Ltd. Vs Uttar Pradesh Corporation Limited and Others*** has held as under:-

"38. What is easily deduced from these judgments of the Apex Court is that the terms of PPA are binding upon the parties and neither the power generator nor the procurer /licensee can be permitted to go against the same. When the tariff determined by Commission in a tariff order or adopted by the Commission after having been discovered through bidding process, is incorporated in the PPA, it becomes matter of contract between the parties and thus, binding upon them

throughout the tenure of the PPA. *LPSC is an incidence arising in case of non-payment of tariff bills by the procurer within due period as agreed in the PPA and therefore, LPSC rate as well as the trigger period after which it becomes leviable also is binding upon the parties throughout the subsistence of the PPA.*

……..

41. Thus, it has been clarified by the Hon'ble Supreme Court in this judgment that where there exist PPAs entered into between the parties in exercise of equal bargaining power as well as after due negotiation and within the framework of existing regulations, unless the subsequent regulations expressly override the existing contracts, the terms of agreements continue to bind the parties. The necessary and logical fallout of the said judgment is that any regulations issued by an Electricity Commission in exercise of its delegated legislative power, are applicable to the PPA executed after the date when those regulations come into force and can not be applied to the PPAs already executed prior to that date, unless the regulations expressly specify 50.

……..

Conclusion:-

67. *In the light of the above discussion, we find that the Commission has grossly erred in holding that the tariff regulations override the terms of PPA as well as in setting aside the LPSC invoice dated 04.01.2019 as being in contravention of UPERC Tariff Regulations, 2014. Hence, the impugned order of the Commission cannot be sustained and is hereby set aside. The appeal stands allowed.*

68. We hold that the tariff regulations issued by an electricity regulatory commission, in exercise of its delegated legislative power, are applicable to the PPAs executed after the date when those regulations come into force and are not applicable to the PPAs already executed prior to that date, unless the regulation expressly specifies so. *Since, in this case, the Tariff Regulations, 2014 nowhere specify that these are applicable to the existing PPAs also, the trigger period of 30 days for levy of LPSC as agreed upon between the parties and embodied in Section 12.17 of the PPA dated 12.11.2006, which is in consonance with Section 26 of Tariff Regulations, 2004 applicable at that time, holds good and binds the parties throughout the tenure of the PPA and does not get impacted by any change in the trigger period effected by way of subsequent tariff regulations issued by*

the Commission."

v. The Respondent No. 2 in its reply has sought to rely upon the decision of the Division Bench (2 Judges) of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Vs Tarini Infrastructure,*** *(*2016) 8 SCC 516 for the proposition that tariff determination is a statutory function vested in the SERC, which retains authority to review and amend tariffs based on statutory provisions and regulatory criteria, even if such tariffs are embedded within contractual agreements like PPAs. The petitioner humbly submits that the facts of the said case were completely different and even in that case the Hon'ble Supreme Court has observed as under:-

"In the present case, admittedly, the tariff incorporated in the PPA between the generating company and the distribution licensee is the tariff fixed by the State Regulatory Commission in exercise of its statutory powers. ***In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent.*** *Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved."*

The petitioner humbly submits that in the present case, the parties voluntarily by including Clause 10(b)(iii) in the PPWA expressly agreed that Rs. 2.44/kWh "shall be fixed and applicable for the entire tenure of this agreement." The use of the word "fixed" in the clause admits of no ambiguity the parties agreed, with full knowledge and mutual consent, that this rate would be immutable for the tenure of the PPWA. Furthermore, the parties also inserted Clause 37.3 in the PPWA to specifically save Clause 10(b)(iii) from any subsequent regulatory alteration by this Hon'ble Commission.

7. Reliefs warranted and Prayer

In view of the above, this Hon'ble Commission may be pleased to allow the petition filed by the petitioner and hold that the PPWA dated 06.11.2019 governs the parties and that Clauses 2.3 and 10(b)(i), 10(b)(ii), 10(b)(iii) continue to operate unaffected by later regulatory changes by virtue of Clause 37.3. The impugned communications applying 5% and 8% banking/wheeling loss, including the letter dated 09.09.2024, deserve to be set aside as being contrary to the binding contractual arrangement.

Consequently, Respondents deserves to be directed: (i) to levy only 2% deduction

in terms of units on banked energy in accordance with the PPWA, (ii) to refund or adjust/credit the excess banking charges already recovered, (iii) to process and pay the Petitioner's invoices for unadjusted banked energy for FY 2021-22 to FY 2023-24 at Rs. 2.44/kWh, and (iv) to pay applicable delayed-payment interest in accordance with law and the Petitioner's claim. These directions alone would restore the parties to the contractual position that existed under the PPWA.

Commission's observations and findings:

11. The Commission has observed the following from the petition and the submissions of the petitioner and Respondents in this matter:

i. The present Petition has been filed by the Petitioner seeking a declaration that the Respondents are bound to continue levying banking charges only at the rate of 2% in terms of Clause 10(b) of the Power Purchase and Wheeling Agreement (PPWA) dated 06.11.2019, and further seeking quashing of the communication dated 09.09.2024 by the Respondent No. 1 whereby banking charges were sought to be applied in accordance with the subsequent regulatory framework. The Petitioner has also sought refund/adjustment of alleged excess banking charges and payment towards unadjusted banked energy at the rate mentioned in the PPWA.

ii. The Petitioner has mainly contended that the PPWA dated 06.11.2019 contained a specific stipulation under Clause 10(b) providing for deduction of 2% in terms of units towards banking/wheeling charges and settlement of unadjusted banked energy at Rs. 2.44/kWh. The Petitioner has further relied upon Clause 37.3 of the PPWA to contend that Clauses 2.3 and 10(b)(i), (ii) and (iii) were expressly protected from any future policy or regulatory changes. According to the Petitioner, the Respondents could not have applied the subsequent MPERC Regulations providing for 5% and thereafter 8% banking charges, and any such application would amount to unilateral modification of the PPWA. The Petitioner has also contended that the Green Energy Open Access Regulations, 2023 are not applicable to it, as it is a captive generator.

iii. The Respondent No. 2 has submitted that the Regulations framed by this Commission under the Electricity Act, 2003 have statutory force and prevail over the contractual terms contained in the PPWA. The Respondent No. 2 has submitted that Regulation 10.1(iii) of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021 provided for banking charges at 5% of the banked energy, and thereafter Regulation 11(d) of the MPERC (Methodology for Determination of Open Access Charges and Banking Charges for Green Energy Open Access Consumers) Regulations, 2023 provided for banking charges at 8% of the total energy banked. It has further submitted that there can be no estoppel against law and no private agreement can be permitted to defeat or

dilute the statutory regulations framed by the Commission in exercise of powers under Section 181 of the Electricity Act, 2003.

iv. In its rejoinder, the Petitioner has reiterated that Clause 37.3 of the PPWA was consciously inserted by the parties to protect the banking related clauses from future regulatory changes. The Petitioner has further submitted that the Respondents had acted upon the PPWA for FY 2019-20 and FY 2020-21 and are therefore estopped from subsequently taking a contrary stand. The Petitioner has relied upon various judgments of the Hon'ble Supreme Court to contend that Power Purchase Agreements cannot be rewritten and that contractual terms entered into voluntarily between the parties must be given effect to. The Petitioner has placed reliance, inter alia, on Gujarat Urja Vikas Nigam Limited v/s Solar Semiconductor Power Company (India) Private Limited, Gujarat Urja Vikas Nigam Limited v/s Renew Wind Energy (Rajkot) Private Limited and Chamundeshwari Electricity Supply Company Ltd. v/s Saisudhir Energy, to contend that the sanctity of contract must be preserved.

v. The principal issue which arises for consideration before the Commission is whether the Petitioner can claim continued applicability of the 2% banking charge mentioned in the PPWA dated 06.11.2019 despite subsequent Regulations framed by the Commission prescribing revised banking charges. The connected issue is whether insertion of a specific contractual clause in a PPWA can enable one consumer/generator to remain outside the uniform regulatory framework applicable to similarly placed consumers/generators.

vi. The Commission has observed that the PPWA dated 06.11.2019 is undoubtedly a contractual document executed between the parties. However, such agreement operates within the statutory and regulatory framework governing electricity, open access, renewable energy, banking of energy and related charges. The banking facility is not merely a private commercial arrangement between two parties, it involves use of the grid, adjustment of energy, system operation, commercial settlement and treatment of banked energy within the regulated electricity framework. Therefore, any term relating to banking facility and banking charges must necessarily remain subject to the relevant provisions under the Regulations notified by the Commission from time to time.

vii. The Commission further observes that the Regulations framed by the Commission under the Electricity Act, 2003 have legislative strength. Once the Commission has notified Regulations specifying the applicable banking charges, such Regulations are required to be applied uniformly and cannot be varied or diluted by an individual contractual clause. The Commission's Regulations are framed after following the prescribed statutory process and are intended to regulate a class of consumers/generators in a uniform, transparent and non-discriminatory manner. Therefore, the Petitioner cannot be allowed to rely upon a specific/distinguished

clause in the PPWA to claim a different treatment from other similarly placed consumers/generators.

viii. The Commission is of the view that the said contention of the Petitioner cannot be accepted in absolute terms. It is correct that an agreement voluntarily executed between parties creates binding contractual obligations. However, such contractual obligations are always subject to the law in force. The Indian Contract Act, 1872 does not recognize an unrestricted freedom to contract in derogation of statutory provisions or Regulations having force of law.

Section 10 of the Indian Contract Act, 1872 provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."

Thus, for an agreement to be enforceable as a contract, the consideration and object of the agreement must be lawful. The enforceability of a contractual clause therefore, depends not merely on consent of the parties, but also on whether such clause is consistent with the law. A clause in a private agreement cannot be enforced in a manner which would defeat a statutory Regulation notified by the competent authority.

ix. Further, Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is lawful unless:

"it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy."

x. The Commission has observed that the most relevant part of Section 23 for the present matter is that an agreement is not lawful if its object, if permitted, would defeat the provisions of any law. Therefore, even assuming that Clause 37.3 was mutually inserted by the parties to protect Clause 10(b) from future regulatory changes, such clause cannot be applied in a manner that would defeat the Regulations notified by this Commission under the Electricity Act, 2003. The Contract Act itself recognizes that if a contractual agreement is inconsistent with the law or statutory Regulations, the law or statutory Regulations shall prevail.

xi. The Commission is of the considered view that insertion of such a Clause 37.3 in the PPWA, to the extent it seeks to insulate the Petitioner from future regulatory changes in respect of banking charges, is not justified. If such clauses are allowed to prevail, then one consumer/generator would be able to continue under an earlier and more beneficial regime merely because a specific clause was inserted in its agreement, whereas other similarly placed consumers/generators would be governed by the Regulations notified by the Commission. Such an outcome would be

contrary to the principles of equality, fairness, non-discrimination and natural justice. A regulatory framework cannot be permitted to operate differently for similarly placed entities merely on the basis of individual contractual arrangements.

xii. The Commission has also observed that the very purpose of framing Regulations is to bring certainty, uniformity and discipline in the electricity sector. If each individual agreement is permitted to carve out exceptions from the Regulations, the regulatory framework would become fragmented and redundent. The statutory Regulations notified by the Commission cannot be reduced to optional provisions capable of being avoided through a private agreement. Such an interpretation would defeat the purpose of the Electricity Act, 2003 and the regulatory powers vested in the Commission.

xiii. The Commission therefore holds that, in cases where a contractual agreement and statutory Regulations are in conflict, the Regulations shall have overriding effect over the contractual agreement. The PPWA cannot be read in a manner that defeats or restricts the operation of Regulations notified by the Commission. The clause in the PPWA which is inconsistent with the Regulations notified by the Commission must be aligned to the Regulations. Accordingly, Clause 37.3 of the PPWA cannot be interpreted to mean that the Petitioner shall remain permanently insulated from future regulatory changes in banking charges.

xiv. The Commission finds merit in the submission of Respondent No. 2 that there can be no estoppel against law. Even if the Respondents had earlier applied the 2% banking charge in terms of the PPWA, such prior conduct cannot prevent the application of subsequent Regulations notified by this Commission. Once the Regulations came into force, the Respondents were bound to act in accordance with the same. Prior application of the contractual clause cannot create a vested right in favour of the Petitioner to resist future statutory or regulatory changes.

xv. The Commission also takes note of the reliance placed by Respondent No. 2 on the principle laid down in Manohar Lal Sharma v. Principal Secretary & Others, (2014) 9 SCC 516, wherein the Hon'ble Supreme Court held that where a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all, and all other modes are necessarily forbidden. The said principle is applicable in the present case to the extent that the regulatory mechanism prescribed by this Commission cannot be bypassed through a private contractual arrangement. Once banking charges are prescribed under the Regulations, they are required to be applied in the manner provided therein and not in any other manner as agreed privately between the parties.

xvi. The Commission further notes that Respondent No. 2 has relied upon Gujarat Urja Vikas Nigam Limited v/s Tarini Infrastructure Limited and Others, (2016) 8 SCC 743, wherein the Hon'ble Supreme Court recognized the wide regulatory powers of the State Commission and held that tariff and related matters incorporated in a PPA

may still remain subject to regulatory oversight under the Electricity Act, 2003. The said judgment supports the proposition that the State Commission's statutory role cannot be curtailed merely because certain terms are mentioned in a contractual agreement.

xvii. As regards the judgments relied upon by the Petitioner, including Gujarat Urja Vikas Nigam Limited v/s Solar Semiconductor Power Company (India) Private Limited and Gujarat Urja Vikas Nigam Limited v/s Renew Wind Energy (Rajkot) Private Limited, the Commission is of the view that the said judgments do not advance the case of the Petitioner in the facts of the present matter. Those judgments were rendered in their own factual context and primarily dealt with the sanctity of PPAs and the impermissibility of rewriting contractual terms in the absence of a statutory or regulatory basis. The present case stands on a different footing because the Respondents are not seeking alteration of the PPWA merely on commercial considerations. The Respondents have acted on the basis of Regulations notified by the Commission, which have statutory force and are applicable uniformly.

xviii. The Petitioner's reliance on the principle of sanctity of contract is therefore misplaced in the present case. The Commission is recognizing that the PPWA itself must operate subject to the prevailing statutory and regulatory framework. The doctrine of sanctity of contract cannot be invoked to defeat the operation of Regulations notified under the Electricity Act, 2003. The judgments cited by the Petitioner do not lay down that a contractual clause can override statutory Regulations notified by the Commission.

xix. The Commission also does not find merit in the Petitioner's contention that the 2023 Regulations cannot apply merely because the Petitioner is claiming status as a captive generator. The banking of energy and its commercial treatment are matters governed by the Regulations notified by the Commission from time to time. The Petitioner has availed banking facility within the regulated electricity framework, and therefore cannot claim that the banking charges specified by the Commission would not apply to it. The Petitioner cannot accept the benefit of banking under the regulated framework while denying the applicability of the regulatory charges specified for such banking facility.

xx. The Commission further observes that the Petitioner's argument based on legitimate expectation and promissory estoppel is also not sustainable. Legitimate expectation cannot operate against statutory Regulations. Similarly, promissory estoppel cannot be invoked to prevent a regulated entity from complying with Regulations having force of law. The Petitioner entered into the PPWA knowing fully well that the electricity sector is a regulated sector and that the Commission is empowered to amend, revise and notify Regulations from time to time.

xxi. The Commission is also of the view that allowing the Petitioner to continue paying banking charges at 2% despite the Regulations prescribing 5% and thereafter 8%

would result in preferential treatment to the Petitioner. Such preferential treatment would be unfair to other consumers/generators who are governed by the Regulations and are required to bear the banking charges those may be specified by this Commission from time to time. A regulatory dispensation must apply uniformly unless the Regulations themselves provide for a specific exception. No such exception has been shown in favour of the Petitioner.

xxii. The Commission finds it appropriate to mention the judgment of the Hon'ble Supreme Court in *PTC India Ltd. v. Central Electricity Regulatory Commission* in Civil Appeal No. 3902 of 2006, wherein the Hon'ble Supreme Court considered the scope and effect of Regulations notified by the Commission under the Electricity Act, 2003. Hon'ble Supreme Court has categorically held that Regulations notified under the Act form part of the statutory regulatory framework and have an overriding effect over existing contracts between regulated entities. The relevant findings of the Hon'ble Supreme Court are reproduced hereinbelow:

"59. Summary of Our Findings:

i. *In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by Orders (decisions).*

ii. A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations."

xxiii. Although the said judgment was rendered in the context of the Regulation making power of the Central Commission under Section 178 of the Electricity Act, 2003, the principle laid down therein is equally relevant in the present matter, as the State Commission is also empowered to frame Regulations under Section 181 of the Electricity Act, 2003. The ratio of the said judgment makes it clear that Regulations framed by an Appropriate Commission are not mere executive instructions but constitute subordinate legislation. Therefore, where a contractual clause contained in a PPWA is inconsistent with the Regulations notified by the Commission, the said contractual clause must be aligned with the Regulations.

xxiv. Accordingly, the Commission holds that the Respondents were justified in applying the banking charges as per the Regulations notified by the Commission from time to time. The levy of banking charges at 5% pursuant to the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2021 and

thereafter at 8% pursuant to the applicable subsequent regulatory framework cannot be said to be illegal, arbitrary or contrary to law.

xxv. Consequently, the prayer of the Petitioner seeking a direction to the Respondents to levy only 2% banking charges in terms of Clause 10(b) of the PPWA is untenable. The prayer for quashing the communication dated 09.09.2024 is also unsustainable, as the said communication is in consonance with the regulatory framework applicable at the relevant time.

xxvi. Since the Commission has held that the Respondents were entitled to apply the revised banking charges in accordance with the Regulations, the Petitioner's prayer for refund of Rs. 16,21,445/- or adjustment/credit of 6,64,527 units towards alleged excessive banking charges is not maintainable and deserves to be rejected.

xxvii. The prayer seeking payment of invoices for unadjusted banked energy strictly on the basis of Clause 10(b)(iii) of the PPWA at Rs. 2.44/kWh is also subject to the applicable Regulations and energy accounting framework notified by the Commission from time to time. The Respondents shall process the Petitioner's claims, if any, strictly in accordance with the Regulations applicable from time to time, energy accounting mechanism and other relevant orders of the Commission, and not merely on the basis of the contractual articulation contained in the PPWA.

xxviii. In view of the foregoing, the Commission holds that the specific clause inserted in the PPWA cannot be permitted to override or dilute the Regulations framed by the Commission. The Regulations notified by the Commission shall have overriding effect over inconsistent contractual terms. Therefore, the Petition being devoid of merit is hereby dismissed.

With the above observations and directions, the subject petition is dismissed and disposed of.

(Gajendra Tiwari)
Member

(Gopal Srivastava)
Acting Chairman