



नई दिल्ली
NEW DELHI

याचिका संख्या/ Petition No.: 580/MP/2020 &
63/MP/2021 along with IA No. 11 of 2021

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 04th of May, 2023

IN PETITION NO. 580/MP/2020

IN THE MATTER OF:

Petition under Sections 63 and 79 of the Electricity Act, 2003 read with the Competitive Bidding Guidelines and Articles 11 and 13 of the Power Purchase Agreement dated 04.09.2018 executed between ReNew Wind Energy (TN) Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

M/s ReNew Wind Energy (TN) Private Limited,
138, Ansal Chambers II,
Bikaji Cama Place,
Delhi-110066

...Petitioner

VERSUS

1. M/s Solar Energy Corporation of India Limited,
1st Floor, D-3, A Wing,
Prius Platinum Building District Centre,
Saket, New Delhi - 110017

2. **M/s M. P. Power Management Co. Limited,**
Block No. 11, 1st Floor,
Shakti Bhawan, Rampur, Jabalpur,
Jabalpur, Madhya Pradesh - 482008
3. **M/s Uttar Pradesh Power Corporation Limited,**
10th Floor Shakti Bhawan Extn.,
14 Ashok Marg, Lucknow,
Uttar Pradesh – 226001
4. **M/s DNH Power Distribution Corporation Limited,**
Vidyut bhavan, 66 kV Road,
Opposite Secretariat, Amla, Silvassa,
Dadra & Nagar Haveli – 396230

... Respondents

IN PETITION NO. 63/MP/2021 AND IA NO. 11/2021

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 seeking declaration that the Transmission Agreement for Connectivity dated 07.08.2018, Transmission Service Agreement dated 06.09.2018 and Agreement for Long Term Access dated 06.09.2018 executed between ReNew Wind Energy (TN) Pvt. Ltd. and Power Grid Corporation of India Ltd. stand frustrated on account of Force Majeure Event and impossibility of performance along with directions to restrain Power Grid Corporation of India Limited from invoking bank guarantees and levying relinquishment charges.

AND IN THE MATTER OF:

M/s ReNew Wind Energy (TN) Private Limited
138, Ansal Chambers II,
Bikaji Cama Place,
Delhi-110066

...Petitioner

VERSUS

Power Grid Corporation of India Limited,

Saudamini, Plot No.2,
Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana)-122001

...Respondents

Parties Present: Shri Amit Kapur, Advocate, RWEPL
Shri Rahul Kinra, Advocate, RWEPL
Shri Aditya Ajay, Advocate, RWEPL
Shri Aashwyn Singh, Advocate, RWEPL
Shri M.G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Aastha Jain, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Shri G. Umapathy, Sr. Advocate, MPPMCL
Shri Aditya Singh, Advocate, MPPMCL
Shri Swapnil Verma, PGCIL
Shri Ranjit Singh, PGCIL
Shri Lashit Sharma, PGCIL
Shri Smarajit Sahoo, RWEPL

आदेश/ ORDER

The Petitioner, M/s ReNew Wind Energy (TN) Pvt. Ltd. (ReNew TN) is a generating company and has setup a 265 MW wind-based power project located at villages of Deshalpar, Ambara, Bhuj (Gujarat). In Petition no. 580/MP/2020, ReNew TN is seeking declaration that it is entitled to terminate the Power Purchase Agreement (PPA) on account of force majeure and impossibility in terms of Article 4.5.3 read with Article 13.5 of the PPA dated 04.09.2018 and in terms of Section 56 of the Indian Contract Act, 1872 and further restrain the Respondents from taking any adverse or coercive action against ReNew TN. In Petition no. 63/MP/2021, ReNew TN is seeking declaration that the 'Transmission Agreement for Connectivity' dated 07.08.2018, 'Transmission Service Agreement' (TSA) dated 06.09.2018 and 'Agreement for Long Term Access' dated 06.09.2018 stands frustrated on account of Force Majeure events and impossibility of performance of obligation in terms of Article 14 of the TSA and in terms of Section 56 of the Indian Contract Act, 1872.

2. The Respondent No. 1, Solar Energy Corporation of India (SECI), in Petition No. 580/MP/2020, is a Government of India Enterprise under the administrative control of the Ministry of New & Renewable Energy (MNRE). One of the main objectives of the Company is to assist the Ministry and function as the implementing and facilitating arm of the National Solar Mission (NSM) for development, promotion and commercialization of solar energy technologies in the country. The Respondent No. 1 in Petition No. 63/MP/2020, Power Grid Corporation of India Limited (PGCIL) is a Government of India undertaking and is the Central Transmission Utility of India (CTU) engaged mainly in transmission of bulk power across different States of India.
3. The Respondent no. 2, Madhya Pradesh Power Management Company Limited (MPPMCL), the Respondent no. 3, Uttar Pradesh Power Corporation Limited (UPPCL) & Respondent no. 4, DNH Power Distribution Corporation Limited (DNHPDCL), in Petition No. 580/MP/2020 herein are, and respectively are the end beneficiaries to whom the power purchased by SECI is being sold under the relevant Power Sale Agreement.
4. ReNew TN has made the following prayers:

In Petition No. 580/MP/2020:

- (a) *Hold and declare that ReNew TN is entitled to terminate the PPA on account of force majeure and impossibility in terms of Article 4.5.3 read with Article 13.5.;*
- (b) *Hold and declare that the PPA stands frustrated on account of force majeure and impossibility of performance in terms of Section 56 of the Indian Contract Act, 1872;*
- (c) *In the alternate, exercise its powers under Section 79 and relieve ReNew TN of its obligations under the PPA;*
- (d) *Restrain and injunct SECI from taking any adverse or coercive action against the Petitioner;*
- (e) *In the interim restrain SECI from taking any coercive steps against the Petitioner; and*
- (f) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

In Petition No. 63/MP/2021:

- (a) *Hold and declare that Transmission Agreement for Connectivity dated 07.08.2018, LTA Agreement dated 06.09.2018 and TSA dated 06.09.2018 stand frustrated on account of force majeure (under the transmission agreements) and impossibility / frustration in terms of Section 56 of Indian Contract Act;*
- (b) *Declare that no relinquishment charges or any other charges or penalties are payable by the Petitioner;*
- (c) *Direct PGCIL to return Bank Guarantee No. 002GM01182260001 dated 14.08.2018 for Rs. 5.00 Crores (Rupees Five Crores only) along with its subsequent amendment dated 29.06.2020 submitted by ReNew TN in terms of the Transmission Agreement for Connectivity dated 07.08.2018.*
- (d) *Direct PGCIL to return of Bank Guarantee No. 002GM01182740001 dated 01.10.2018 for Rs. 13.25 Crores (Rupees Thirteen Crore Twenty-Five Lacs only) along with its subsequent amendments dated 27.11.2018 and 03.08.2020 submitted by ReNew TN in terms of the Long-Term Access Agreement dated 06.09.2018.*
- (e) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

In IA. No. 11 of 2021:

- (a) *Grant ad interim ex parte stay against invocation of Connectivity BG dated 14.08.2018 and LTA BG dated 01.10.2018 or initiation of any coercive steps by the Respondent;*
- (b) *Pass any other order or further relief(s) as may be deemed fit in the present facts and circumstances of the case.*

5. Before moving to the case it is pertinent to mention here that the Petition No. 580/MP/2020 was admitted for hearing on 06.08.2020 and SECI was advised not to encash the Bank Guarantee till the next date of hearing. Accordingly, I.A. No 55 of 2020 was disposed of. Also, the Petition No. 63/MP/2021 was admitted for hearing on 21.05.2021 and the parties were directed to maintain status-quo with respect to invocation/encashment of Bank Guarantee furnished under the Transmission Agreement till the next date of hearing. During the hearing dated 28.05.2021 learned counsel for ReNew TN requested the Commission to list Petition No. 580/MP/2021 along with Petition No. 63/MP/2021 as the issues involved in these Petitions are similar. Accordingly, the petitions were tagged.

Factual Matrix:

6. On 02.08.2016, Government of Gujarat (GoG) notified the Wind Power Policy, 2016.
7. On 22.10.2016, MNRE sanctioned the Guidelines for implementation of Scheme for setting up 1000 MW ISTS connected Wind Power Projects. SECI was designated as the Implementing Agency under the MNRE Scheme and was directed to undertake bidding process for selecting Wind Power Projects.
8. From 18.09.2017, ReNew started submitting applications before the District Collector, Kutch for allocation of land for setting up the present Project. Between 18.09.2017 to 16.05.2019, a total of 145 applications were submitted for allocation of Revenue Land in District Kutch.
9. On 08.12.2017, the Ministry of Power notified *Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects*.
10. On 05.02.2018, SECI issued Request for Selection (RfS) for selecting bidder for bid process for setting up 2000 MW ISTS- connected Wind Power Projects (WPP).
11. On 12.03.2018, ReNew TN submitted its bid.
12. On 05.04.2018, e-Reverse Auction was conducted.
13. On 01.06.2018, Letter of Award (LoA) was issued in favour of ReNew TN for setting up wind power project of 265 MW capacity at District Bhuj in Gujarat with applicable tariff of Rs 2.52 per kWh.
14. On 08.06.2018, ReNew TN submitted application to Power Grid Corporation of India Limited (PGCIL) for grant of Stage II connectivity to ISTS for Nakhatrana Wind Power Project located at Kutch, Gujarat.
15. On 12.06.2018, MNRE issued Office Memorandum observing that mandatory registration with the State RE Nodal Agencies was causing considerable delay in commissioning of projects which were ready to produce electricity. Thus, for the RE projects being

implemented by SECI, NTPC, NVVN or any other agency on behalf of MNRE, mandatory registration with the State RE Nodal Agencies is not required.

16. SECI entered into a Power Sale Agreement (PSA) with MPPMCL, UPPCL & DNHPDCL on 13.06.2018, 23.08.2018 and 29.08.2018 respectively.
17. On 14.06.2018, ReNew TN furnished Performance Bank Guarantee bearing No. 002GM01181650002 amounting to Rs 53 Crores (at the rate of Rs. 20 Lakhs per MW) issued by YES Bank Ltd.
18. On 10.07.2018, ReNew TN submitted application to PGCIL for grant of Long-Term Access for period starting from 28.02.2020 to 28.02.2045.
19. On 17.07.2018, PGCIL granted Stage-I connectivity to ReNew TN for its proposed 300 MW wind farm located in Kutch, with Primary Point being the Bhuj Pooling Station.
20. On 19.07.2018, PGCIL granted Stage-II connectivity for 265 MW to ReNew TN for its proposed 300 MW wind farms in Gujarat from Bhuj PS Sub Station at 220 kV.
21. On 25.07.2018, GoG wrote to all Collectors in the State of Gujarat stating that out of the applications received for land allotment for wind power projects, sanctions have to be granted only for those bids which have been approved by GUVNL. The remaining should be kept pending till a policy decision is taken.
22. On 07.08.2018, ReNew TN and PGCIL entered into Transmission Agreement for Connectivity.
23. On 24.08.2018, PGCIL granted 265 MW LTA to ReNew TN for its 300 MW wind farm in Kutch area. The injection point as per this was at 220 kV level through ReNew-Bhuj PS 220kV S/c line (with minimum capacity of 300 MW) along with associated bays at Bhuj PS & generation switchyard.
24. On 31.08.2018, ReNew TN and PGCIL entered into Bay Consultancy and Supervision Agreement wherein PGCIL agreed to provide consultancy services for implementation of 1 No. 220 kV bay at PGCIL's Bhuj GIS Station for connectivity at 220 kV level.

25. On 04.09.2018, ReNew TN and SECI entered into a PPA wherein SECI had agreed to purchase 265 MW of wind power from ReNew TN as an intermediary and further sell it on a back-to-back basis to distribution companies requiring wind power to fulfil its non-solar RPOs.
26. On 06.09.2018, ReNew TN and PGCIL entered into Agreement for Long Term Open Access (LTA) for transmission/evacuation of power from ReNew TN 's wind power plant in Kutch area in Gujarat to target beneficiaries.
27. On 07.09.2018, ReNew TN wrote to SECI apprising it of the reasons which had delayed the land allotment process which were primarily on account of directions issued by GoG to the collectors regarding policy of land allotment (GoG letters dated 19.04.2018 and 25.07.2018).
28. On 16.11.2018, ReNew TN wrote to SECI stating that, in a departure from the process being followed earlier, only those land allotment applications applied directly in the name of bid winners were being processed.
29. On 14.12.2018, based on representations of ReNew TN regarding difficulty in allocation of revenue land in Gujarat, SECI requested for comprehensive information regarding land allocation.
30. On 17.12.2018, ReNew TN submitted details of all locations to SECI indicating status of all applications made for separate turbine locations, area of land, date of submission of application and status of allotment.
31. On 11.01.2019, ReNew TN informed SECI that it has incurred an inordinate and unforeseeable delay of approximately 6 months in land allocation despite undertaking all necessary steps, including multiple representations to GEDA, GoG and MNRE, and regular follow-ups with the Collectors' Office, thus was in the nature of force majeure.
32. On 08.03.2019, ReNew TN wrote to SECI highlighting the inordinate delay in land allocation on account of change of policy by the GoG due to which the entire process has been kept on hold.

33. On 29.03.2019, SECI granted interim extension of time for compliance of financial closure and conditions subsequent under the PPA to ReNew TN for a period of 3 months from 30.03.2019 i.e. up to 30.06.2019 or the date of issuance of land by GoG, whichever would be earlier. However, the SCoD itself was not extended.
34. On 02.07.2019, Adoption of Tariff Petition No. 162/AT/2019 filed by Tata Power Delhi Distribution Limited was admitted by this Commission. Subsequently, in November 2019, SECI filed an application for transposition of SECI as Petitioner and to implead the Solar/Wind Power Developers and Buying Utilities as Respondents to the Petition for adoption of tariff.
35. On 26.09.2019, the 25th Joint Coordination Committee (JCC) meeting was conducted wherein it was informed that Petitioner's project is stated to be commissioned in phases with unit 1 (150MW) on 30.01.2020 and unit 2 (115MW) on 26.02.2020 and the dedicated transmission line is stated to be scheduled for commissioning on 30.01.2020.
36. On 23.10.2019, in 26th JCC Meeting, ReNew TN revised COD of unit 1 (150MW) to 28.04.2021 and unit 2 (115MW) to 26.05.2021 with nil progress in construction of the dedicated transmission line.
37. On 22.10.2019, MNRE issued a letter recognizing the delays being faced by the developers in procuring land and held that the period between date of application and grant of approval for land less 90 days will be considered for extension of SCoD.
38. On 11.12.2019, in a meeting with the Central Electricity Authority (CEA) and various LTA grantees at Bhuj PS on 11.12.2019, PGCIL informs that additional capacity of 300 MW has become available on the existing system at Bhuj PS on account of relinquishment of 300 MW LTA by other grantees.
39. On 19.02.2020, Ministry of Finance (MoF) issued OM stating that disruption in supply chain on account of spread of Covid-19 in China or any other country will be covered as a case of natural calamity and Force Majeure clause could be invoked.

40. During the 28th JCC Meeting on 30.06.2020, ReNew TN informed that the commissioning schedule of its generation project would be from June, 2021 and that the phasing would be confirmed after the issuance of extension letter from SECI.
41. On 24.03.2020, ReNew TN issued a notice to SECI under Article 11 of the PPA declaring the outbreak of Covid-19 pandemic and the consequent lockdown as a Force Majeure event which has impacted ReNew TN's performance of obligations under the PPA since 13.03.2020.
42. Similarly, on 24.03.2020 and 27.03.2020, ReNew TN issued notices to PGCIL under Article 14 of the TSA declaring the outbreak of Covid-19 pandemic and the consequent lockdown as a Force Majeure event which has impacted ReNew TN's performance of obligations with effect from 17.03.2020.
43. On 17.04.2020, MNRE vide OM recognized the adverse impact of Covid-19 and granted a general time extension on account of lockdown and additional time required for normalization after such lockdown.
44. On 18.05.2020, SECI wrote to ReNew TN stating that a time extension equivalent to period of lockdown and additional period of 30 days.
45. On 21.05.2020, in response to ReNew TN's letter dated 04.03.2020, SECI wrote to ReNew TN stating that WPDs are required to install and operate the Project on Build Own and Operate Basis. Responsibility of selection / identification and procurement / leasing of land (revenue and / or private) lies with the WPD.
46. On 03.07.2020, ReNew TN responded to SECI's letter dated 02.07.2020 denying its contents. ReNew TN stated that it would require additional time for filing its response.
47. On 10.07.2020, SECI responded to ReNew TN's email dated 03.07.2020, *inter alia* stating that:
 - (i) Details of revenue land allotment provided by ReNew TN did not match with the records provided by the District Collector, Kutch. Hence, further to SECI's letters dated 21.05.2020 and 12.06.2020, ReNew TN was requested to provide latest status of land allotment.

- (ii) Contents of letter dated 02.07.2020 are undeniable and would not be withdrawn.
 - (iii) SECI is accountable to the Distribution Companies with whom PSAs have been executed. Delay in commissioning of the Project would impact achievement of RPO targets.
 - (iv) Delay in allotment of revenue land cannot be considered as Force Majeure Event.
48. On 26.07.2020, ReNew TN informed SECI that it is terminating the PPA on account of alleged force majeure reasons.
49. On 29.07.2020, in the 9th Meeting of Working Group for Western Region, PGCIL informed that the commissioning dates of 400 KV ICT III at Bhuj PS have been revised to June, 2020 while 400 KV ICTs VI, VII & VIII have been revised to be commissioned from October, 2020 to December, 2020 progressively on account of delayed supply of material due to COVID-19.
50. On 29.07.2020, ReNew TN sent notice to the Respondent informing that the PPA executed by it with SECI stands frustrated owing to which the Transmission Agreements executed between ReNew TN and the Respondent also stand frustrated.
51. On 31.08.2020, in the 50th JCC Meeting, 100 MW LTA capacity of Wind Energy (AP2) Pvt. Ltd. (300MW) (in addition to 50MW already operationalized LTA) is agreed to be operationalized w.e.f. 10.09.2020.
52. On 07.10.2020, the CBG of Rs. 5 Crore furnished by ReNew TN is invoked by the Respondent vide its demand letter to the bankers of ReNew.
53. On 02.07.2020, SECI informed ReNew TN that as SECI has not received any response to communication dated 21.05.2020 and 12.06.2020, it is construed that ReNew TN does not require any extension in SCOD due to delay in land allotment by GoG.
54. According to ReNew TN, due to occurrence various force majeure events beyond its control ReNew TN was unable to commission the Project within timelines under PPA. The Force majeure events that rendered performance of its obligations impossible within the agreed timelines are:
- (i) *Delays in allocation of revenue land*
 - (ii) *Delays in commissioning of transmission system*

(iii) *Outbreak of Covid-19 and imposition of lockdown causing disruption in supply chain*

(iv) *Delay in adoption of tariff*

55. SECI has refused to acknowledge the delay caused by ReNew TN in achieving the SCoD on account of Force Majeure events. Hence, ReNew TN terminated the PPA on 26.07.2020. ReNew TN filed the present seeking termination of the PPA on *inter alia* the grounds of force majeure and restrain SECI from encashing the Bank Guarantee and its return to ReNew.

Submission of ReNew TN in Petition No. 580/MP/2022 and Petition No. 63/MP/2021 and Consolidated Written Submissions dated 20.12.2022:

56. ReNew TN has submitted as under:

- a) Prior to 19.04.2018, there was no restriction or limitation on allocation of land to wind power projects. As per the GoG Land Policy 2004, land could also be acquired by land developers / OEMs and the same could then be transferred to the entity who won the bid. There were no restrictions on land being allocated only to successful bidders. In fact, ReNew TN has set up close to 604.70MW spread across 273 sites on revenue land and 54 sites on private land in the State of Gujarat. At the time of bid submission, on 12.03.2018, about 100 applications had been made in accordance with the GoG Land Policy 2004 whereas, as on 16.05.2019, a total of 145 applications for land allocation were made. The delay in processing land applications filed by ReNew TN has caused significant delay in commissioning of the Project.
- b) The Project location was premised on the annual CUF being between 39 – 42%. This projected CUF for revenue land formed the underlying basis for the tariff and allowed ReNew TN to competitively bid for the Project. Therefore, it is not feasible for ReNew TN to change the project location as it would adversely impact the CUF, total generation and tariff. ReNew TN by way of letters dated 16.11.2018, 11.01.2019, 20.09.2019, 27.11.2019 and 04.03.2020 repeatedly informed SECI that the Project was being impacted by non-availability of land and the same was a Force Majeure Event.
- c) As on date, ReNew TN has been allotted merely 12 of the 145 locations finally considered for processing, and applications for 113 locations are still pending, after nearly 3 years of application. Even the rejections have been on technical and procedural issues such as failure of ReNew TN 's authorized personnel to be present before the

District Collector, Kutch to sign certain undertakings towards further processing of the applications.

- d) By operation of Article 11.7.1 and impossibility to perform obligations as a direct consequence of force majeure, ReNew TN is excused from performance of its obligations. The delay in land has been continuing for about 20 months and has still continued yet to be resolved. Therefore, ReNew TN is entitled to terminate the PPA in terms of Article 4.5.3 read with Article 13.5.
- e) The delay in finalization of the Project Sites has delayed the Project by over 20 months which is still continuing and therefore, the fundamental basis on which the bids were submitted and PPA executed stand eroded.
- f) Neither the Competitive Bidding Guidelines nor the PPA have a provision to deal with situations where performance of obligations under the PPA becomes impossible on account of supervening event such as delays by statutory authorities. Further, impact of these delays on project implementation has been acknowledged by MNRE and SECI. In such a scenario, this is a fit case for this Commission to exercise its regulatory powers and grant relief to ReNew TN by discharging it from its obligations under the PPA and directing return of bank guarantee.
- g) ReNew TN issued notice to SECI under Article 11 of the PPA declaring the outbreak of Covid-19 pandemic and the consequent lockdown as a Force Majeure event which had impacted ReNew TN's performance of obligations under the PPA since 13.03.2020. Similarly, on 24.03.2020 and 27.03.2020, ReNew TN issued notices of Force Majeure to PGCIL under Article 14 of the TSA intimating disruption of performance of obligations since 17.03.2020. The total delay on account of the Force Majeure Events is about 20 months (20 months on account of delay in grant of land by GoG coupled with delay in commissioning of the transmission system and a minimum of 6 months on account of Covid-19). As per Article 4.6, the Project had to be commissioned within the outer limit of 27 months from Effective Date. Thus, it is impossible to commission the Projects within the said timeline.
- h) Despite Letter of Award being granted to ReNew TN on 01.06.2018 and having entered into PPA on 04.09.2018, SECI did not approach this Commission for adoption of tariff in a reasonable time, as required in the Competitive Bidding Guidelines dated 08.12.2017. The tariff was finally adopted by this Commission vide Order dated 19.02.2020 in Petition No. 162/AT/2019. The obligation of SECI to have the tariff

adopted in a timely manner was in the nature of a reciprocal promise and performance had to be done in terms of Section 52 of the Contract Act, 1872.

- i) The purpose of Performance Bank Guarantee is to ensure timely commissioning of the Project in as much as Article 3.4.1 of the PPAs provides that the Performance Bank Guarantee shall be returned immediately of successful commissioning of the Project. Once the PPAs stand terminated in accordance with the provisions of the PPAs, invocation of the Bank Guarantees is impermissible.
- j) There is no provision under the Electricity Act, 2003 or in the Conduct of Business Rules of the Commission which permits filing of counter claim by the Respondents.
- k) Levy of liquidated damages and grant of specific performance would tantamount to punishing ReNew TN for events beyond their control. PPA stands terminated in accordance with Article 4.5.3 and Article 13.5 based on admitted Force Majeure Events. SECI ought to be directed to return the Bank Guarantees submitted by ReNew TN.
- l) ReNew TN has entered into the following agreements with PGCIL (collectively referred as 'Transmission Arrangement'):
 - (i) Transmission Agreement for Connectivity dated 07.08.2018;
 - (ii) Transmission Service Agreement dated 06.09.2018; and
 - (iii) Agreement for Long Term Access dated 06.09.2018.
- m) ReNew TN is relieved of its obligations under the Transmission Arrangement on account of following force majeure:
 - (i) Initial delay and subsequent impossibility of construction of the Project has made it impossible for ReNew TN to perform its obligations under the Transmission Arrangement.
 - (ii) Impossibility of performance of obligations under the PPA due to Force Majeure events had a cascading impact on ReNew TN's obligations under the Transmission Arrangement, thereby rendering performance of obligations under the Transmission Arrangement also impossible.
 - (iii) Due to non-availability of land, it was not possible for ReNew TN to construct the bays at the Bhuj Pool ISTS SS, associated 220kV bays at the Pooling substation and DTL as required under the Transmission Arrangement.
 - (iv) Accordingly, ReNew TN is not in breach of its obligations since the Project has been impacted by Force Majeure Events beyond the control of ReNew.

Fulfilment of the obligations under the TSA was the underlying basis of the TSA.

- (v) Due to force majeure events and events beyond the control of ReNew TN, performance of aforesaid obligations under the Transmission Arrangement have been rendered impossible which has frustrated the entire Transmission Arrangement.
- n) As the Transmission Arrangement is for the sole purpose of evacuation of power from the Project, impossibility to commission the Project translates into an impossibility to construct and commission the Pooling Substation and DTL as required under the Transmission Arrangement. Therefore, performance of obligations under the Transmission Arrangement has become impossible and the agreements forming part of the Transmission Arrangement stands frustrated in terms of Section 56 of the Contract Act.
- o) Since there is no relief provided under either Agreement on account of Force Majeure, ReNew TN has no option but to take recourse under Section 56 of the Indian Contract Act, as the performance has been rendered impossible due to a force majeure event, being non-availability of land, dehors the Transmission Arrangement. The said position of law has been upheld by the Hon'ble Supreme Court in *Energy Watchdog v. CERC*: (2017) 14 SCC 80.
- p) Relinquishment charges are linked to use of the transmission asset and the likely stranded capacity created by surrender of connectivity and LTAA. In the present case, ReNew TN is not surrendering its connectivity, rather it is not in a position to utilise the transmission asset on account of Force Majeure events beyond the control of ReNew TN and impossibility.
- q) ReNew TN should not be penalized by invocation of bank guarantees or imposition of any charges and fees including relinquishment charges in terms of the *Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters) Regulations, 2009* (CERC Connectivity Regulations, 2009). Occurrence of force majeure events and impossibility of performance had relieved ReNew TN from its obligations, including financial obligations and penalties under the Transmission Arrangement. Further, it is not liable for any penalties, charges or impositions in relation thereto.

- r) The meetings (25th, 26th, 27th Joint Coordination Committee, 9th & 49th meeting of the Working Group for Western Region) records that operationalisation of the transmission system has been delayed significantly and the transmission system would likely be commissioned in December 2020. Commissioning of the transmission system in December 2020 is already delayed by over 9 months from the originally envisaged date of commissioning and is beyond the SCoD of 29.02.2020 envisaged and permitted under the PPA.
- s) Hence, no prejudice would be caused to PGCIL if the Transmission Arrangement is terminated given that the transmission system is not going to be operational before December 2020. Even otherwise, no evacuation of power was possible until commissioning of the Transmission System.
- t) Even if Project had been commissioned by SCoD, there would not have been evacuation of power since the associated transmission system would not have been ready for commissioning before December 2020. Further, given that the existing transmission system is at capacity, no loss is being caused to PGCIL.

Submissions of SECI in Reply dated 25.08.2020 and Written Submissions dated 19.12.2022:

57. SECI vide its reply dated 25.08.2020, has submitted as under:
- a) In terms of Clause 3.14 of the RfS document and Clause 1.6 of the Letter of Award, ReNew TN was allowed to change the State of the proposed Project locations, within 30 days from the date of conclusion of e-Reverse Auction bidding (05.04.2018). Clause 3.16 of the RfS Document specifically stipulates that '*Change of land and Delivery Point for the projects within the State is allowed prior to the deadline of Financial Closure, under prior intimation to SECI.*'
 - b) The non-availability of the revenue land cannot be therefore be said to an event affecting the implementation of the project much less a force majeure within the scope of Article 11 of the PPA.
 - c) Since 20.04.2018, ReNew TN had the knowledge about the upcoming changes in allotment of revenue land in the State of Gujarat. The period being within 30 days from the date of e-reverse auction, ReNew TN even had an option to change the place/location & State for establishing the wind power project considering the anticipated delay in land allotment.

- d) Vide letter dated 07.09.2018, ReNew TN requested SECI for extension of financial closure – 100% ownership of land in the name of Wind Power Developer within three days of execution of the PPA. Even at this stage, ReNew TN was fully aware about its right to change the land within the State before the deadline of financial closure i.e. 30.03.2019 or as extended by SECI.
- e) SECI had been seeking information from ReNew TN for processing the request for extension of time on account of alleged delay in land allotment by Government of Gujarat in terms of the letter dated 22.10.2019 of the MNRE.
- f) ReNew TN has failed to provide the most relevant part of information i.e. date of approval/ Final Possession order/ any other documentary evidence demonstrating approval by the competent authority with respect to land allotment applications for at least 50% of the total land required for the execution of the wind power project. The said information was essential for calculating the time taken by the competent authority to process land allotment applications.
- g) In terms of Article 3.2 providing for consequences of non-fulfilment of Conditions Subsequent and Article 4.6 providing for consequences of delay in commencement of supply of power beyond the scheduled commissioning date, SECI is entitled to Liquidated Damages including encashment of the Bank Guarantees.
- h) Instead of providing the requisite documentary evidence for processing ReNew TN 's case for extension of time in terms of letter dated 22.10.2019 of the MNRE, ReNew TN had proceeded to file the present Petition before the Commission for termination of PPA on ground of sustained force majeure purporting to be in terms of Article 13.5 read with Article 4.5.3 of the PPA.
- i) The claim of ReNew TN that the said alleged events fall within the scope of Article 11.3.1 (d) of the PPA and Article 7.3.1 (f) of the PSA is misconceived and without any basis. In absence of commissioning of wind power project and commencement of supply of power, there was no event of the delivery of power from ReNew TN to the Buying Entities being affected.
- j) ReNew TN is wrongly placing reliance on the OMs dated 20.03.2020 and 17.04.2020 for the purpose of terminating the PPA. The office memorandum of the Government of India dealt with disruption of supply chain, which is not the claim of ReNew TN in the present case and therefore the said office memorandum otherwise has no application.

- k) The Petitioner had raised the issue of adoption of tariff for the first time, (clearly as an after-thought) only by its letter dated 20.09.2019 i.e. after almost 12 months from the date of execution of the PPA and when the scheduled commissioning date is 29.02.2020. This has been done purportedly to cover up the clear default on the part of ReNew TN in implementing the project awarded to them. The attempt being made by ReNew TN is to wriggle out of the obligations assumed by them under the PPA to establish the Wind Power Project which is being promoted as non-conventional energy in larger public interest.
- l) ReNew TN had also not given notice as per Article 11.5 of the PPA which has been provided as a pre-condition for claiming the above events as Force Majeure events within the scope of Article 11 of the PPA. It is also the settled position of law that where the contract requires issuance of a Notice for invoking the Force Majeure clause, the benefit of Force Majeure cannot be granted in the absence of any such notice. Reliance is placed by SECI on the judgement dated 07.11.2017 passed by APTEL in the matter of Maruti Clean Coal and Power Limited -v- Power Grid Corporation of India Limited (2017) ELR (APTEL) 1305, Talwandi Sabo Power Limited v. Punjab State Power Corporation Limited and others Appeal No. 97 of 2016 dated 03.06.2016 and CERC order dated 27.06.2016 in Raichur Sholapur Transmission Company Limited -v- Power Grid Corporation of India Limited in Petition No. 419/MP/2014 read with Order dated 24.01.2019 passed in Review Petition No. 4/RP/2018, Order dated 21.08.2012- Krishna Kilaru & Another -v- Maytas Properties Limited (2013 [176] CompCas483 [AP High Court].
- m) The scope of Force Majeure and relief based thereon is restricted to provisions of Article 11. As held by Hon'ble Supreme Court in Energy Watchdog -v- Central Electricity Regulatory Commission, there is no general power to consider anything on grounds of being 'akin to Force Majeure' and seek relief.
- n) ReNew TN has proceeded to purportedly terminate the PPA after having secured one extension after the another i.e. the extension granted by SECI for compliance of the condition subsequent and financial closure by letters dated 29.03.2019 and 24.05.2019. ReNew TN has been misleading and misrepresenting SECI and seeking such extension without any intention of implementing the power project.
- o) SECI had already granted time extension in scheduled commissioning date in case of other similarly placed Wind Power Developers in Tranche-III and IV, executing the

Project in Gujarat, who had submitted their request for extension quoting the reason for delay in executing the Project as change in land policy by Government of Gujarat along with the documentary evidences.

- p) The allegation made by ReNew TN to the effect that SECI is only interested in encashing the Bank Guarantee is malicious and without any basis. Firstly, SECI is a nodal agency of the Government of India to promote wind power development and is therefore keen on the implementation of the project. Secondly, it is ReNew TN who is seeking to terminate the PPA and put an end to the project. Thirdly, SECI could have encashed the Bank Guarantee when ReNew TN did not fulfil the conditions of Financial Closure even by the time of SCoD i.e. 29.02.2020.
- q) The purported action of termination of the PPA will cause serious prejudice to the entire policy decision of the Government of India.

Submissions of DNHPDCL dated 21.06.2021:

58. DNHPDCL has submitted as under:

- a) Petitioner was well aware that the land allotment policy in the State of Gujarat had changed, and had consciously taken a commercial decision to proceed with setting up the project in the State of Gujarat, and that too only on revenue land. This was at the cost and risk of ReNew TN only.
- b) In terms of Clause 3.14 of the RfS document, ReNew TN was entitled to change the State of the project within 30 days of the e-reverse auction. The e-reverse auction was held on 05.04.2018.
- c) While the change in land allotment policy was within this 30-day period, ReNew TN has taken a conscious decision to not change the State of the project, and to instead pursue the matter with the Government of Gujarat. This is at ReNew TN 's own cost and risk.
- d) The termination of the PPA would result in reduction of the total renewable capacity tied up by the answering Respondent which also caters to the Renewable Purchase Obligation. Any shortfall in RPO would further impact the answering Respondent. The answering Respondent is therefore filing the present reply in response to the claim made in the Petition.
- e) In the present case it was open to ReNew TN to establish the project in any State. The decision to establish the project in the State of Gujarat and thereafter even after being

aware of the change in land allotment policy, to pursue the GoG instead of changing the State was at the sole risk and cost of ReNew TN.

- f) In terms of the PPA, the conditions subsequent and financial closure was to be achieved within 7 months of the effective date i.e. by 30.03.2019 (which was later revised by SECI to be the SCoD i.e. 29.02.2020 on interim basis). Further the SCoD of the project itself was to be achieved by 29.02.2020. There can be no question of any extension of the SCoD on account of the COVID-19 pandemic and national lockdown.
- g) The adoption of tariff however is in no manner a precondition for ReNew TN to fulfil the conditions subsequent under the PPA in terms of Article 3. The Conditions Subsequent and Financial Closure under Article 3.1 of the PPA are to be fulfilled by ReNew TN at its own risk and cost. There is no basis for the ground taken by ReNew TN that an alleged delay in adoption of tariff has impacted the project.
- h) The SCoD being 29.02.2020, the issue of applicable tariff would only become relevant after the said date. In any case, the tariff was adopted prior to the SCD in this case, and therefore it cannot possibly be argued that there was any delay in adoption of tariff.
- i) Termination sought by ReNew TN is illegal, and not in terms of the PPA. If the same is allowed, it would cause irreparable damage to the answering Respondent, as the proportionate capacity would be reduced from the PSA between the answering Respondent and SECI

Submissions of MPPMCL vide Reply dated 15.12.2021 and Written Submissions dated 19.12.2022:

59. MPPMCL has submitted as under:

- a) It was duty and responsibility of SECI to strictly monitor by applying all due diligence on the progress of project execution by ReNew TN and enforce Petitioner to achieve milestones envisaged under the PPA.
- b) There is no provision of extension of timeline for completion of conditions subsequent on interim basis and without seeking extension charges is available in the PPA dated 04.09.2018. Therefore, such waivers on the part of SECI was misconceived and inappropriate and in utter violation of Article 3 of the PPA.
- c) ReNew TN vide letter dated 20.09.2019 and afterwards had started to raise demands of time extensions for completion of conditions subsequent without any financial liability which were impossible to meet without amending the PPAs and PSAs even under

situation of force majeure. The validity of PPAs dated 04.09.2018 executed between SECI and ReNew TN, itself expires after 27 months from the Effective Date, i.e. on 30.11.2020, as per provisions of Article 4.5.6.

- d) From the contents of letter dated 10.07.2020 of SECI, it can be noted that despite the fact after several notices the persistent defaults by Petitioner were conclusively established, SECI did not immediately liquidate the available Performance Bank Guarantee and this allowed sufficient liberty to ReNew TN to frame new excuses and create grounds to take legal recourse for non-performance of the PPA.
- e) Since ReNew TN did not have any new and further excuse to offer to SECI in response to threatening notice dated 10.07.2020, it has opted to approach and file the present Petition before Commission simply to avoid liquidation of Performance Bank Guarantee and further adverse consequences for its deliberate failure in fulfilment of obligations envisaged under PPA dated 04.09.2018. The Petition is completely devoid of any merit.
- f) ReNew TN is in deliberate breach of the PPA by not pursuing the implementation of the Project and fulfil its obligations under the said PPA dated 04.09.2018 executed with SECI. In case the illegitimate prayer by ReNew TN for termination of the PPA without considering the consequent cascading effect on back-to-back PSA and without imposing a financial liability on Petitioner is allowed, MPPMCL on behalf of the innocent retail consumers in the State of Madhya Pradesh will be the ultimate and worst affected stakeholder on the following counts:
 - (i) The end beneficiary, i.e., the retail consumers in the State of MP will be deprived from cost effective and economical wind power despite having a valid and legally enforceable PSA for procurement of power;
 - (ii) It shall be forced to face financial hardships on account of purchasing high-cost replacement power to fulfil universal supply obligations and the retail consumers of MP will have to pay higher tariffs for power;
 - (iii) It may fail/default in meeting the mandatory RPOs as per MPERC regulations.
 - (iv) It may be forced to purchase REC certificates without getting power in terms of MPERC regulations.
 - (v) It will suffer by way of the opportunity cost to miss out any alternative cost effective/ cheap source of power due to the existing PSA for 500 MW capacity with 1st Respondent.

- g) MPPMCL cannot be allowed to suffer for any inappropriate action or inaction on the part of either Petitioner or SECI in implementation of the Project under the PPAs dated 04.09.2018. SECI has not yet issued any notice/letter of termination/ curtailment of the PSA dated 13.06.2018, therefore, SECI is still liable to fulfil its obligations under the PSA and make available the contracted power at agreed terms and conditions.
- h) The non-availability of the revenue land cannot be said to be an event affecting the implementation of the project much less a force majeure within the scope of Article 11 of the PPA. The claim is wholly misconceived as neither the PPA nor the bidding documents mandate the setting up of the WPP at any specific location, especially revenue lands.
- i) Covid-19 cannot be said to have any impact on the timelines of ReNew TN. SCoD falls prior to imposition of lockdown with effect from 25.03.2020 by the Government on account of Covid-19.

Submission of PGCIL dated 13.01.2022 in Petition No. 63/MP/2021:

60. PGCIL has submitted as under:

- a) ReNew TN has failed to construct its generating facility and as such the Respondent has come within its right to invoke the Bank Guarantee of Rs. 13.25 Cr. Owing to such relinquishment, ReNew TN is liable to bear the relinquishment charges in terms of the Commission order dated 08.03.2019 in Petition No. 92/MP/2015 wherein the Commission has held that the stranded capacity on account of the abandoned project will attract relinquishment charges liability as per the methodology detailed in the order. Further reliance is placed on Commission's order dated 03.12.2018 in Petition No. 242/MP/2017 in *Power Grid Corporation of India Ltd. v. Aryan MP Power Generation Pvt. Ltd* and the APTEL judgement dated 22.06.2020 in IA No. 523 of 2020 in A.No. 173 of 2020 in the matter of Vedanta Limited v. PGCIL & Anr. As such the Bank Guarantee furnished by ReNew TN under the subject LTA is liable to be retained by the Respondent and subsequently adjusted towards payment of relinquishment charges.
- b) It is settled law that bank guarantee is an independent contract between the bank and the beneficiary and immune to any disputes between the account party and the beneficiary. Thus, any disputes between ReNew TN and the Respondent, in case of

failure on part of ReNew TN as stated, the subject bank guarantee is liable to be invoked and has rightly been invoked as such by the Respondent.

- c) In the present case, both revocation of connectivity as well as encashment of CBG has taken place prior to the issuance of Revised Detailed Procedure. The same is liable to be governed as per the Pre-Revised Detailed Procedure, 2018.
- d) The submissions of ReNew TN are completely misplaced and contrary to the regulatory scheme which does not envisage any inter-linking whatsoever of supply agreements and transmission agreements
- e) None of the said agreements contain any reference whatsoever relating to the inter-se supply arrangements as between the generator and its beneficiaries and none of the obligations thereunder are subjected to due performance of obligations under the supply agreements.
- f) Each of the force majeure clauses operate within their agreed spheres and with their respective agreed triggers and consequences. Petitioner has completely failed to appreciate the statutory/regulatory scheme and the respective operating fields as regards supply agreements and transmission agreements and has thus wrongly pleaded occurrence of force majeure events under their PPAs with SECI to be considered as force majeure events under the transmission agreements.
- g) The order dated 25.2.2010 passed by the Commission in Petition No. 233/MP/2009 apply mutatis mutandis when existing PPAs are terminated or frustrated. Petitioner's reliance on the Hon'ble Supreme Court judgement in the case of *Ameet Lalchand Shah v. Rishabh Enterprises (2018) 15 SCC 678* is not only based on incorrect understanding of the contractual commitments of ReNew TN vis-à-vis the Respondent but also on an incorrect reading of the above decision of the Supreme Court. The context and facts of the case of *Ameet Lalchand* is completely inapplicable to the present case.
- h) The present controversy miserably fails to satisfy the test of a composite transaction and as such, the Transmission Agreements and the PPA cannot be regarded as composite contracts.
- i) Since the fundamental basis of LTA is disconnected to requirement of PPA, non-existence of one can never be a ground its impossibility.
- j) ReNew TN has undertaken certain statutory obligations which cannot be avoided by it under the garb of a misplaced plea of frustration of contract under Section 56 of the Indian Contract Act, 1872. The same is clearly against the statutory and regulatory

framework under the Electricity Act, 2003, besides being contrary to the law settled by the Hon'ble Supreme Court. The judgements relied upon by ReNew TN do not operate insofar as applicability of Section 56 qua statutory contracts is concerned and are inapplicable to the facts of the present case.

- k) ReNew TN has completely lost sight of the fact that the events pleaded by it as force majeure events do not even qualify as events rendering the obligations impossible.
- l) The plea of ReNew TN is based on the force majeure provisions of the TSA which, as submitted hereinabove, have not come into force and are thus inapplicable.
- m) When ReNew TN is exiting from the LTA granted to it, it must bear the ensuing liability to pay relinquishment charges to the Respondent, which is a liability imposed under the statute' in doing so, ReNew TN is not being "*penalized*" as has been wrongly contended by it.
- n) In view of the findings of the Commission Order dated 03.03.2020 in Petition No. 55/MP/2015, no amnesty from relinquishment charge can be granted to ReNew TN on its plea of force majeure or impossibility of performance and the LTA bank guarantee furnished by it under the subject LTA is liable to be retained by the Respondent and subsequently adjusted toward payment of relinquishment charges.
- o) Reliance placed by ReNew TN on Order dated 09.05.2020 in I.A. No. 91/2019 in Petition No. 108/MP/2019 is completely misplaced and untenable and are liable to be rejected by this Commission. ReNew TN is claiming protection under the aforesaid Order dated 09.05.2020 which provides for return of bank guarantee based on signing of PPA (or PPA and back-to-back PSA, where applicable), even when its PPA has itself been terminated on 26.07.2020 and it has relinquished its LTA and surrendered its connectivity vide its letter dated 29.7.2020. having based its entire claim in the present Petition on frustration of the PPA, ReNew TN cannot be permitted, in the same breath, to rely on the very same PPA only to seek return of its LTA bank guarantee.
- p) Notwithstanding the delay in commissioning of the entire associated transmission system (being few ICTs) required for evacuation of power from ReNew TN 's project, margins have always been available for generation projects which have approached the Respondent and their LTAs have accordingly been operationalized.
- q) Owing to its own delay in commissioning of the project, ReNew TN has never been in a situation to seek such operationalization of its LTA and is now trying to shift the burden of its own delay on to the Respondent, when in reality, the transmission system

for evacuation of the entire capacity of its generation project has been available at Bhuj PS by May, 2021.

Analysis and Decision

61. We have heard ReNew TN and the Respondents and have carefully perused the records.
62. From the submissions of the contracting parties, the following issues emerge for adjudication before the Commission:

Issue No. 1: Whether the Petitioner is entitled to terminate the PPA on account of force majeure and impossibility in terms of Article 4.5.3 read with Article 13.5?

Issue No. 2: Whether the PPA stands frustrated on account of force majeure and impossibility of performance in terms of Section 56 of the Indian Contract Act, 1872?

Issue No. 3: Whether the Transmission Agreement for Connectivity dated 07.08.2018, LTA Agreement dated 06.09.2018 and TSA dated 06.09.2018 stands frustrated on account of force majeure (under the transmission agreements) and impossibility/frustration in terms of Section 56 of Indian Contract Act?

Issue No. 4: Whether the Commission should exercise its powers under Section 79 and relieve ReNew TN of its obligations under the PPA?

Issue No. 5: Whether the Petitioner is liable to pay relinquishment charges as per the methodology determined by the Commission in the order dated 08.03.2019 in Petition No. 92/MP/2019?

Issue No. 6: Whether SECI should be restrained from taking any adverse or coercive action against the Petitioner?

63. We will now discuss the above issues.

64. The Issue No. 1, Issue No. 2, Issue No. 3 & Issue No. 4 are interlinked and hence are taken together for discussion. ReNew TN has submitted that it has become impossible for ReNew TN to commission the Project within the timelines under PPA due to *inter alia* the following *Force Majeure Events*:

- (i) Delay in allocation of Revenue Land for the Project
- (ii) Outbreak of Covid-19 pandemic and the consequent National lockdown
- (iii) Delay in tariff adoption by SECI
- (iv) Delay in commissioning of Transmission System

As such ReNew TN has submitted that it is entitled to terminate the PPA dated 04.09.2018 along with Transmission Agreement for Connectivity dated 07.08.2018, LTA Agreement dated 06.09.2018 and TSA dated 06.09.2018 on account of force majeure and impossibility in terms of Article 4.5.3 read with Article 13.5 of the PPA.

Re. Delay in allocation of Revenue Land for the Project

65. ReNew TN has submitted that land was identified at the time of bid submission on 12.03.2018. ReNew TN under Format 6.1 of the RfS dated 05.02.2018 had specifically stated that location of the Project would be at Village Deshalpar, Ambara, Taluka Nakhartana, District Bhuj, Gujarat. ReNew TN applied for the Project Sites well in advance beginning from 18.09.2017 to 16.05.2019 for a total of 145 sites through its land developers [M/s Maruti Wind Park (India) Pvt. Ltd. and M/s. Bajrang Wind Park (Kutch) Pvt. Ltd. and Original Equipment Manufacturer] in terms of Government of Gujarat's (GoG) Land Policy, 2004, (GoG Land Policy, 2004) which was the prevalent practice at that time. As per the GoG Land Policy 2004 land could also be acquired by land developers / OEMs and the same could then be transferred to the entity who won the bid. On 19.04.2018, GoG changed the procedure for allotment of Revenue Land and *inter alia* directed all District Collectors in Gujarat that land be allotted only to those companies who have won bids invited by either Gujarat Urja Vikas Nigam Limited (GUVNL) or SECI. Further, on 25.07.2018, GoG instructed District Collectors of various districts to process applications, for allotment of revenue land, only for setting up Projects under the bid process initiated by GUVNL and to keep all other applications pending till the finalization of the New Land Policy. On 08.03.2019, GoG issued a clarification *inter alia* stating that Revenue Land would be allotted to only those developers who have won wind bids invited either by GUVNL or SECI or other

agencies of the Government of India, supported by a letter to that effect from GEDA. However, out of 145 applications, 12 applications were processed, and Final Possession Orders (FPO) were issued on 11.05.2018. GEDA approval was processed only for 8 out of 12 locations. The remaining 4 locations clashed / overlapped with other developers. Thus, as on 11.05.2018, 133 applications were pending. Thereafter, in March 2019, out of the remaining 133 applications, 20 locations were dropped on account of clash / overlap with other developers. Out of remaining 113 applications, processing of 49 applications was suspended by the District Collector, Kutch by Orders dated 15.11.2019 due to procedural defects. This was after more than 14 months from the Effective Date. The defects were cured, and the applications were continued for processing on 26.02.2020. No decision or action has been taken by the District Collector, Kutch for the balance applications. Thereafter, processing was suspended due to Covid-19 related lockdown. MNRE by letter dated 22.10.2019 recognised the delays being faced by developers in procuring land and had stated that the period between the date of application and grant of approval for land minus 90 days be considered for extension of SCoD. Considering a 90-day period for processing of applications as well as Effective Date of 30.08.2018, the delay commenced from December 2018 and is still in effect. Due to change in land allocation policy by the GoG and consequent delay in processing applications submitted by ReNew TN, land for the Project has not been provided. The aforesaid delay is squarely covered by the Force Majeure provisions under Article 11.3 of the PPA. Vide, letter dated 27.11.2019, ReNew TN informed SECI about the status of applications. Further, Article 4.5.1 read with 4.5.3 of the PPA stipulates that if ReNew TN is prevented from performing its obligation due to Force Majeure and if the Force Majeure Event continues even after a maximum of 9 months, then ReNew TN may choose to terminate the PPA as per the provisions of Article 13.5. **Per contra**, SECI has submitted that the responsibility of selection, identification, procurement, getting clear possession of 100% of the land is entirely of the Wind Power Developers at their own cost and risk. It was open to ReNew TN to set up the project in any land, whether revenue (Government) land, private land or combination of revenue and private land.

66. We observe that the relevant provision of the Guidelines is as under:

5.2. Site-related project preparatory activities including clearances:

In order to ensure timely commencement of supply of electricity, the bidder would be required to submit documents in respect of matters as mentioned below, as per the time schedule specified in the bidding documents:

a) Land acquisition: Identification of the 100% (hundred per cent) land at the time of bid submission and within 7 (seven) months of the execution of the PPA, submission of documents/ Lease Agreement to establish possession/ right to use 100 % (hundred per cent) of the required land in the name of the WPG or its Affiliate for a period not less than the complete term of PPA. In case the land is in the name of Affiliate, the land should be transferred in the name of WPG prior to Scheduled Commissioning Date (SCD). **Wherever leasing of private land is involved, the lease should allow transfer of land to the lenders or Procurer, in case of default of the WPG.**

b) No Objection Certificate (NOC)/ Environmental clearance (if applicable) for the Project.

c) Forest Clearance (if applicable) for the land for the Project.

d) A letter from State Transmission Utility (STU)/ Central Transmission Utility (CTU), as applicable, confirming technical feasibility of connectivity of the plant to STU/ CTU substation.

e) Any other clearances (if any), as may be legally required.

67. We observe that the relevant provision of the RfS is as under:

3.16. Financial Closure or Project Financing Arrangements

...

...

In addition to the above, the compliance of Financial Closure shall entail fulfilment of the following conditions:

i. *Submission of the details of all planned/proposed wind turbine generators (manufacturer, model number, datasheet, as mentioned at Annexure-A), along with necessary purchase order/agreements for the project at least 14 days prior to the scheduled financial closure date.*

ii. *Ownership and clear possession of 100% of the land identified for the project. In this regard the WPD shall be required to furnish documents/lease agreements to establish possession/right to use 100% of the required land in the name of the WPD or its Affiliate for a period not less than the complete term of the PPA. **In case of leasing of Government land, appropriate state regulations regarding tenure of lease agreement shall be applicable.** In both cases where the lease agreements are for a period shorter than the PPA Term, solely on account of applicable State Governmental regulations, the WPD shall be required to submit an undertaking that the lease agreements shall be appropriately extended in line with the Term of the PPA, when required. In case the land is in the name of the Affiliate, the land should be transferred in the name of the WPD prior to Scheduled Commissioning Date. **Wherever leasing of private land is involved, the lease should allow transfer of land to the lenders or SECI, in case of default of the WPD.***

iii. *Sworn affidavit from the authorized signatory of the WPD listing the details of the land and certifying that total land required for the Project is under clear possession of the WPD. **Change of land and Delivery Point for the projects within the State is allowed prior to the deadline of Financial Closure, under prior intimation to SECI.***

Successful bidders will have to submit the required documents to SECI at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of

documents mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.

68. We observe that the relevant provisions of the PPA are as under:

ARTICLE 3: CONDITIONS SUBSEQUENT & FINANCIAL CLOSURE

3.1 Satisfaction of conditions subsequent & financial closure by the WPD The WPD agrees and undertakes to duly perform and complete all of the following activities at WPD's own risk and cost within seven (7) months from the Effective Date, i.e. by 30.03.2019 unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by SECI:

a) The WPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;

b) The WPD shall produce the documentary evidence of possession of 100% of the land acquired for the Project;

c) The WPD shall submit plans to fulfil the technical requirements according to criteria mentioned under Clause 3.5.9 of the RfS and produce the documentary evidence of the same.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.5 Extension of time

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of nine (9) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

11.3 Force Majeure

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared / notified by the competent state I central authority / agency (as applicable);

b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state I central authority I agency (as applicable); or

c) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause

of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

- d) *An event of Force Majeure identified under Buyer-Buying Entity(ies) PSA, thereby affecting delivery of power from WPD to Buying Entity(ies).”*

11.5 Notification of Force Majeure Event

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The other Party shall take a decision on the claim of the Affected Party within 15 days of receipt of the said intimation of Force Majeure.

69. From the above, we observe that the bidding documents allow leasing of Government land and alternatively leasing of private land. In case of leasing of Government land, appropriate State regulations regarding tenure of lease agreement are applicable. Whereas in case of leasing of private land, the lease should allow transfer of land to the lenders or SECI, in case of default of the WPD. The bidding guidelines also facilitated that in case WPD wanted Change of land and Delivery Point for the projects within the State, the same was permitted prior to the deadline of Financial Closure, under prior intimation to SECI. Further, the WPD had to produce the documentary evidence of possession of 100% of the land acquired for the Project at its own risk and cost within seven (7) months from the Effective Date, i.e. by 30.03.2019.
70. In the instant petition we observe that GoG changed the procedure for allotment of Revenue Land on 19.04.2018. On 25.07.2018, GoG instructed to process applications for allotment of revenue land, only for setting up Projects under the bid process initiated by GUVNL and to keep all other applications pending till the finalization of the New Land Policy. On 08.03.2019, GoG clarified inter alia stating that Revenue Land would be allotted to only those developers who have won wind bids invited either by GUVNL or SECI or other agencies of the Government of India, supported by a letter to that effect from GEDA.

71. From the above we observe that ReNew TN had the knowledge about the changes in allotment of revenue land in the State of Gujarat since 19.04.2018 whereas ReNew TN had the option for allotment of private land and to change the proposed Project location and Delivery Point for the projects within the State. ReNew TN had to produce the documentary evidence of possession of 100% of the land acquired for the Project at its own risk and cost by 30.03.2019. However, ReNew TN preferred not to change its location and instead informed SECI about the status of applications vide letter dated 27.11.2019. SECI in principle extended the timeline of Conditions Subsequent up to the SCoD to facilitate implementation of project. SECI advised ReNew TN to provide alternate plan in case of further delay in allotment of revenue land and provided time up to 30.06.2020 to submit the documentation. However, ReNew TN failed to submit the documents rather terminated the PPA on 26.07.2020.
72. In the instant case we note that ReNew TN had the option for allotment of private land but preferred not to avail the same. ReNew TN has failed to bring on records the factors and circumstances which prevented it from exercising the option. As such, we are of the view that delay in allocation of revenue land for the project is not covered under Article 11.3 of the PPA dated 04.09.2018. In view of above, the Commission holds that no relief can be extended to ReNew TN under this issue.

Re. Outbreak of Covid-19 pandemic and the consequent National lockdown qualifies as a Force Majeure Event under the PPA

73. ReNew TN has submitted that Spread of Covid-19 pandemic and the consequent lockdown across India qualifies as a Force Majeure Event under the PPA and TSA. *Per contra*, SECI has submitted that Covid-19 cannot be said to have any impact on the timelines of ReNew TN. Outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. The Commission has held in similar matters that reliance cannot be placed by the Developers on the Office Memoranda of MNRE dealing with Covid-19 for termination of PPA. SECI has placed its reliance on Order dated 29.07.2022 in Petition No.133/MP/2021 and Order dated 06.09.2022 in Petition No.605/MP/2020.

74. We observe that relevant provisions of the PPA are as under

Scheduled Commissioning Date shall mean 29.02.2020

2.1 Effective Date

2.1.1 This Agreement shall come into effect from 30.08.2018 and such date shall be referred to as the Effective Date.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.6 Liquidated Damages not amounting to penalty for delay in commencement of supply of power to Buyer

4.6.1 The project shall be fully commissioned within 18 months from the Effective date this Agreement

ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

5.1.5 The WPD shall commission the Project within eighteen (18) Months from the Effective Date.

75. We observe that the Ministry of Home Affairs, vide its notifications dated 24.03.2020, 15.04.2020, 01.05.2020 & 17.05.2020, had imposed a nation-wide lockdown from 25.03.2020 to 31.05.2020, throughout the country in order to curb the spread of coronavirus. However, as per PPA ReNew TN was to commission the project by 29.02.2020 which is before the imposition of lockdown on account of Covid-19 i.e. 25.03.2020. ReNew TN has failed to sufficiently justify on records the circumstances due to which it could not commission the project by SCoD i.e. 29.02.2020. In view of above, the Commission holds that no relief can be extended to ReNew TN under this issue.

Re. Delay in tariff adoption by SECI

76. ReNew TN has submitted that Letter of Award was granted to it on 01.06.2018 and PPA stands executed on 04.09.2018. However, SECI approached this Commission for adoption of tariff only in November 2019 i.e. after a period of almost 15 months from the date of execution of the PPA. The tariff was finally adopted by this Commission vide Order dated 19.02.2020 in Petition No. 162/AT/2019. The delay in adoption of tariff had a direct impact on ReNew TN's ability to tie up its finances and draw-down of funds for the Project. *Per contra*, SECI has submitted that the Order for adoption of tariff is not a condition precedent for ReNew TN to implement its obligations under the PPA.

77. We observe that the relevant provisions of the PPA are as under:

ARTICLE 3: CONDITIONS SUBSEQUENT & FINANCIAL CLOSURE

3.1 Satisfaction of conditions subsequent & financial closure by the WPD

The WPD agrees and undertakes to duly perform and complete all of the following activities at WPD's own risk and cost within seven (7) months from the Effective Date, i.e. by 30.03.2019 unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by SECI:

- a) ***The WPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;***
- b) *The WPD shall produce the documentary evidence of possession of 100% of the land acquired for the Project;*
- c) *The WPD shall submit plans to fulfil the technical requirements according to criteria mentioned under Clause 3.5.9 of the RfS and produce the documentary evidence of the same.*

ARTICLE 11: FORCE MAJEURE

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. *Unavailability. late delivery. or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;*
- b. *Delay in the performance of any contractor, sub-contractor or their agents;*
- c. *Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;*
- d. *Strikes at the facilities of the Affected Party;*
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and***
- f. *Non-performance caused by, or connected with, the Affected Party's:*
 - i. *Negligent or intentional acts, errors or omissions;*
 - ii. *Failure to comply with an Indian Law; or*
 - iii. *Breach of, or default under this Agreement.*

78. In terms of the PPA, ReNew TN was to achieve financial closure within 7 months of the effective date i.e. by 30.03.2019 (which was later revised by SECI to be the SCoD i.e. 29.02.2020 on interim basis). It is observed that ReNew TN raised the issue of adoption of tariff for the first time by its letter dated 20.09.2019 after the lapse of scheduled timeline of financial closure viz. 30.03.2019. Subsequently, SECI approached this Commission for adoption of tariff in November 2019 and the tariff was finally adopted by this Commission vide Order dated 19.02.2020 in Petition No. 162/AT/2019 i.e. well before the Scheduled date of Commissioning i.e. 29.02.2020. Further, as per Article 3.1 of the PPA, ReNew TN has to make Project financing arrangements at its own risk and cost and provide necessary certificates to SECI. Furthermore, Article 11.4 of the PPA excludes 'Insufficiency of finances

or funds or the agreements becoming onerous to perform' as Force Majeure event. As such, we are of the view that no relief can be extended to ReNew TN for delay in tariff adoption.

Re. Delay in commissioning of Transmission System

79. ReNew TN has submitted that Connectivity Agreement, the LTAA and the TSA stand frustrated on account of force majeure events which have inordinately delayed the implementation of the generation project by ReNew TN and have resulted in termination of PPA executed by ReNew TN with SECI and also in surrender of the connectivity and long-term access granted by the Respondent. As such, the bank guarantees issued by ReNew TN under the said Agreements are liable to be returned to it owing to the frustration of the underlying contracts. ***Per Contra***, PGCIL has submitted that the present Petition is devoid of any merit and the same is liable to be dismissed. There is no provision in the present Transmission Agreement or LTA Agreement executed by ReNew TN for consideration of force majeure claim. In the absence of a contractual provision, no force majeure claim can be accepted under the Transmission Agreement and LTA Agreement. In view of the clear regulatory prescription and express findings of this Commission in its Orders dated 08.03.2019 in Petition No.92/MP/2015, Order dated 30.12.2018 in 242/MP/2017 and Order dated 03.03.2020 in 55/MP/2015 amongst others, the bank guarantee furnished by ReNew TN under the subject LTA is liable to be retained by the Respondent and subsequently adjusted toward payment of relinquishment charges. Further, in terms of clause 11.2 of the Detailed Procedure and clear stipulation under the Connectivity Agreement, since ReNew TN has failed to complete the dedicated transmission line within the stipulated period of 24 months, the connectivity bank guarantee is liable to be invoked, which the PGCIL has rightly invoked vide its letter dated 07.10.2020, and the encashed amount is liable to be adjusted in the PoC pool.
80. We observe that on 15.05.2018, the Commission issued the '*Detailed Procedure for Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System*' (Detailed Procedures) notified under Regulation 27 of the *CERC Connectivity Regulations, 2009*. In terms of Clause 5.3.1 of the Detailed Procedure, the terminal bays at the ISTS Substation were to be completed by the transmission licensee. The relevant Clauses are as under:

11. *Monitoring of progress of renewable projects after grant of Stage-II Connectivity*
11.1 *Stage-II Connectivity grantee shall furnish progress of the monitoring parameters on quarterly basis in the format given at FORMAT-RCON-II-Mof by the last day of each quarter. Failure to update progress of the monitoring parameters shall be considered as adverse progress and, in such case, CTU shall approach the Commission for appropriate directions. The payment received in terms of these provisions shall be adjusted in the POC pool.*

11.2 *The Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new / under-construction ISTS sub-station. If the grantee fails to complete the dedicated transmission line within the stipulated period, the Conn-BG of the grantee shall be encashed and Stage-II connectivity shall be revoked. The payment received in terms of these provisions shall be adjusted in the POC pool.*

81. We observe that the terms and conditions annexed with ‘Intimation for Grant of Stage-II Connectivity’ dated 19.07.2018 stipulate as under:

“4. The Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new / under-construction ISTS substation. If the grantee fails to complete the dedicated transmission line within the stipulated period, the Conn-BG of the grantee shall be encashed and Stage-II connectivity shall be revoked.”

82. We observe that the relevant condition of the Transmission Agreement for Connectivity dated 07.08.2018 stipulates as under:

“1.0

.....

(f) The Bank Guarantee shall be encashed by POWERGRID in case of failure of Stage-II Connectivity grantee to complete the dedicated transmission line and pooling sub-station within 24 months from the date of intimation of bay allocation at existing or new/under-construction ISTS sub-station or in the case of non-fulfilment of conditions to be met by Stage-II Connectivity grantee in terms of Para 9.3 of RE Connectivity Procedure.”

83. We observe that relevant Clause of Transmission Service Agreement dated 06.09.2018 is as under:

“1.0.....

b) The ‘LTC’ shall furnish a Bank Guarantee, as per format given by the CTU, from a bank for an amount of Rs. 13.25 Crores (Rupees Thirteen crore and twenty-five Lakhs only) as security mechanism for the transmission system to be built, owned and operated by POWERGRID (the same being Rs. 5.0 Lakhs per MW, currently).

...

...
(e) In case LTC fail to construct the generating station /dedicated transmission system or makes an exit or abandon its project, POWERGRID shall have the right to collect the transmission charges and/ or damages as the case may be in accordance with the notification/ regulation issued by CERC from time to time.

(f) The Bank Guarantee shall be encashed by CTU in case of adverse progress of work under the scope of 'LTC', assessed during Joint Co-ordination Meeting. However, the validity of Bank Guarantee shall be extended by concerned 'LTC' as per the requirement to be indicated during Joint Co-ordination Meeting."

84. From the above, we observe that the Detailed Procedure mandates that the Stage-II Connectivity grantees have to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new/under-construction ISTS sub-station failing which the Conn-BG of the grantee can be encashed and Stage-II connectivity revoked. We observe that the condition to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new / under-construction ISTS substation is included in the terms and conditions annexed with 'Intimation for Grant of Stage-II Connectivity' dated 19.07.2018 and the Transmission Agreement for Connectivity dated 07.08.2018. Further as per Long-Term Access Agreement (LTAA) dated 06.09.2018 in case Long-Term Transmission Consumer (LTC) fails to construct the generating station /dedicated transmission system or makes an exit or abandon its project, CTU has the right to collect the transmission charges and/ or damages as the case may be in accordance with the notification/ regulation issued by CERC from time to time.
85. In the instant petition we observe that ReNew TN applied for grant of Stage-II connectivity for 265 MW at the Bhuj PS on 08.06.2018. Stage-II connectivity was granted vide intimation dated 19.07.2018. The connectivity was granted w.e.f. 15.01.2020 at Bhuj PS through a 220kV S/c line from the generating station to the Bhuj PS (with minimum capacity of 300 MW) and as per the terms of the grant, construction of the dedicated/connectivity line along with terminal bays at Bhuj PS and the generation switchyard were under the scope of ReNew TN.
86. We have already observed that ReNew TN had the knowledge about the changes in allotment of revenue land in the State of Gujarat since 19.04.2018 whereas ReNew TN had the option

for allotment of private land and to change the proposed Project location and Delivery Point for the projects within the State. ReNew TN had to produce the documentary evidence of possession of 100% of the land acquired for the Project at its own risk and cost by 30.03.2019. However, ReNew TN preferred not to change its location and instead informed SECI about the status of applications vide letter dated 27.11.2019. SECI in principle extended the timeline of Conditions Subsequent up to the SCoD to facilitate implementation of project. SECI advised ReNew TN to provide alternate plan in case of further delay in allotment of revenue land and provided time up to 30.06.2020 to submit the documentation. However, ReNew TN failed to submit the documents rather terminated the PPA on 26.07.2020.

87. Extracts of Minutes of 49th Meeting of Western Region constituents regarding LTA and connectivity applications held on 30.07.2020 records as under:

“4.0 Proposal for operationalization of already granted LTAs utilizing available margins at Bhuj PS: CTU informed that the current transformation capacity commissioned at Bhuj PS is 2x1500MVA, 765/400kV and 4x500MVA, 400/220kV which is capable to evacuate upto about 1450MW from the pooling station. 1400MW LTA is already effective on the above ICTs and hence 50MW additional capacity is available for further evacuation. Further, as per status provided in the 28th WR JCC meeting held on 30.06.2020, the 5th 400/220kV ICT is expected by July’20 and the 3rd 765/400kV ICT is expected by Aug’20. The balance ICTs are expected progressively by Dec’20. With the commissioning of above ICTs (5th 400/220kV ICT & 3rd 765/400kV ICT) at Bhuj PS, additional capacity of about 1000MW shall become available at Bhuj PS. Certain generation projects at Bhuj PS (viz. Alfanar, ReNew TN AP2, ReNew TN & Avikiran) have been granted LTA through following augmentation works at 765/400/220kV Bhuj PS:

- Installation of 6x500MVA, 400/220kV ICTs at Bhuj PS (in addition to the existing 2x500MVA, 400/220kV ICTs)*
- Installation of 2x1500MVA, 765/400kV ICTs at Bhuj (in addition to the existing 2x1500MVA, 765/400kV ICTs)*

Out of the above generation projects, 200MW capacity of Alfanar(300MW) and 50MW capacity of ReNew TN AP2(300MW) have already been made effective progressively from Jan’20 to Feb’20 at the request of the generation projects. From the progress of RE generators at Bhuj PS as assessed during the 28th WR JCC meeting held on 30.06.2020, it was observed that generation projects of M/s Alfanar & M/s ReNew TN AP2 are under advanced stage of commissioning (Jul’20 to Oct’20) while the rest of the generation projects are delayed beyond Feb’21.

CTU further informed that M/s ReNew TN AP2 vide letter dated 16.07.2020 has requested for part operationalization of LTA for further 100 MW (in addition to 50MW LTA already operationalized), as detailed below:

.....

It was clarified that as on date only 1400MW LTA (including 200MW from Alfanar and 50MW from ReNew TN AP2) has been made effective at Bhuj PS (out of which

only 850MW is commissioned) and the additional requirement of LTA operationalization as expressed by the applicants above is only 200MW (100MW: Alfancar & 100MW: ReNew TN AP2). Hence, total LTA requirement at Bhuj PS is expected to be only 1600MW which can be catered through the 2x1500MVA, 765/400kV ICTs. The 3rd 765/400kV ICT (with ERS support) thus serves only for reliability purposes, in case of outage of any one of the 765/400kV, 1500MVA ICTs.”

88. From the above, we observe that for the required evacuation of power from the ReNew TN's project, margins have always been available for which ReNew TN had approached PGCIL and their LTAs have accordingly been operationalized. There was certainly a delay in commissioning of the ReNew TN's projects. ReNew TN revised COD of unit 1 (150MW) to 28.04.2021 and for unit 2 (115MW) to 26.05.2021 with no progress in construction of the dedicated transmission line. Whereas, the transmission system for evacuation of the entire capacity of its generation project has been available at Bhuj PS by May, 2021. It is pertinent to mention here that Stage-II connectivity was granted vide intimation dated 19.07.2018 w.e.f. 15.01.2020 at Bhuj PS through a 220kV S/c line from the generating station to the Bhuj PS (with minimum capacity of 300 MW). As per the terms of the grant, construction of the dedicated/connectivity line along with terminal bays at Bhuj PS and the generation switchyard were under the scope of ReNew TN within 24 months from the date of connectivity i.e. on or before 18.07.2020. However, it is an admitted position on records that ReNew TN has failed to complete the dedicated line and the pooling sub-stations by 18.07.2020. As such, we are of the view that delay in commissioning of Transmission System is not covered under Article 11.3 of the PPA dated 04.09.2018. In view of above, the Commission holds that no relief can be extended to ReNew TN under this issue.

89. Further, regarding the issue raised citing Section 56 of Indian Contract Act, we observe that. Section 56 of the Contract Act, 1872 reads as: -

... “Contract to do an act afterwards becoming impossible or unlawful: - A contract to do an act which, after the contract is made, becomes impossible, or, by any reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”

90. We observe that in the pleadings SECI in its reply has submitted that SECI had already granted the time extension in SCoD in case of other similarly placed wind power developers executing the projects in Gujarat, who had submitted their request for extension quoting the reason of delay in executing the project because of Change in land policy by GoG along with

documentary evidences. Considering the delay in allotment of revenue land, a few developers had procured private land and are executing the project combining revenue and private land. During the hearing SECI further clarified that even the M/s ReNew Wind Energy Private Limited had procured private land for other projects in the State. SECI in principle extended the timeline of Conditions Subsequent up to the SCoD to facilitate implementation of project. ReNew TN was advised to provide alternate plan in case of further delay in allotment of revenue land and was provided time up to 30.06.2020 for submission of the documentation. However, ReNew TN failed to submit the documents rather terminated the PPA on 26.07.2020. In the given facts and circumstances as analysed in the preceding paragraphs, we don't find any case justifying impossibility of performance of contracts by the Petitioner. As such, we are of the view that no relief can be granted to ReNew TN under Section 56 of the Indian Contract Act, 1872.

91. ReNew TN has further submitted that Hon'ble Supreme Court in *Energy Watchdog vs. CERC, (2017) 14 SCC 80* has held that in situations which have not been provided for in the Guidelines or PPA, the Commission is entitled to exercise general regulatory power to intervene and grant relief as under:

“20. ... the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used.”

92. ReNew TN has further submitted that APTEL in Judgment dated 07.09.2018 in *Appeal No. 336 of 2017 and 359 of 2017 titled Uttar Pradesh Power Corporation Ltd. v. Lanco Anpara Power Ltd. & Ors.* has held that general regulatory powers of Central/State Electricity Regulatory Commission are not done away with entirely and can be exercised in circumstances where there are no guidelines and in cases where there is a need to strike judicious balance between generating companies and Discom to prevent occurrence of any unforeseen or adverse event which was not contemplated by the parties at the time of

execution of the contract. In the present case, neither the Guidelines for Tariff based Competitive Bidding Process for procurement of power from grid connected wind power projects dated 08.12.2017 nor the PPA have a provision to deal with situations where performance of obligations under the PPA becomes impossible on account of supervening event such as delays by statutory authorities. Further, impact of these delays on project implementation has been acknowledged by MNRE and SECI. In such a scenario, this is a fit case for this Commission to exercise its regulatory powers and grant relief to ReNew TN by discharging it from its obligations under the PPA and directing return of bank guarantee.

93. Furthermore, ReNew TN has itself submitted that criterion of termination of PPA on 26.07.2020 may be adjudged *vis-à-vis* specific provisions of PPA. We observe that the PPA was signed by the Petitioner with clear understanding of the implications of various provisions including those of force majeure. In some cases, options (for instance, leasing of Government land and alternatively leasing of private land) were available with the Petitioner to mitigate the alleged hardships, but it chose not to exhaust those options. In some others, reliefs were already extended by the Respondent (SECI). As such, the Commission finds no case to invoke Regulatory powers provided under Section 79 of the Act.
94. In view of the discussions held in preceding paragraphs, we hold that ReNew TN has failed to prove occurrence of any Force Majeure event under Article 11 of the PPA dated 04.09.2018. Accordingly, ReNew TN 's Termination Notice dated 26.07.2020 claiming discharge is not in accordance with Article 4.5.3 read with Article 13.5 of the PPA. Also, we hold that ReNew TN has failed to prove on records that it has completed the dedicated line and the pooling sub-stations by 18.07.2020. Accordingly, ReNew TN's Notice dated 29.07.2020 claiming discharge is not in accordance with the Transmission Agreements.
95. The issues are decided accordingly.

Issue No. 5: Whether the Petitioner is liable to pay relinquishment charges as per the methodology determined by the Commission in the order dated 08.03.2019 in Petition No. 92/MP/2015?

AND

Issue No. 6: Whether SECI should be restrained from taking any adverse or coercive action against the Petitioner?

96. In view of the findings of the Commission on Issue No. 1, Issue No.2, Issue No. 3 and Issue No. 4, no relief is made out in the favour of ReNew TN. Accordingly Petitioner shall be liable to pay relinquishment charges in accordance with *CERC Connectivity Regulations, 2009* and order dated 08.03.2019 in Petition No. 92/MP/2015. Accordingly, Issue No. 5 & Issue No. 6 are also answered against ReNew TN and in favour of the Respondents.
97. The Petition No.'s 580/MP/2020 and 63/MP/2021 along with I.A. 11 of 2021 are disposed in terms of the above.

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