

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 114/MP/2023 along with IA No. 28/2023 and 51/2023

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 30th April, 2024

In the matter of:

Petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003, read with Regulation 32 of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 for setting aside the letter dated 23.03.2023 issued by the Central Transmission Utility of India Ltd.

And in the matter of:

1. M/s Soltown Infra Private Limited
R-1, Off No. - 1, Shree S Mohar Plaza,
Yudhistir Marg, C-Scheme, Jaipur,
Rajasthan - 302001
2. Mr Rahul Gupta
R-1, Off No. - 1, Shree S Mohar Plaza,
Yudhistir Marg, C-Scheme, Jaipur,
Rajasthan - 302001
3. Mr Arunabh Mohanty
R-1, Off No. - 1, Shree S Mohar Plaza,
Yudhistir Marg, C-Scheme, Jaipur,
Rajasthan – 302001

.....Petitioners

Versus

1. Central Transmission Utility of India Ltd.
Plot No. 2, Near IFFCO Chowk Metro Station
Sector 29, Gurugram-122001 Haryana

.....Respondent



Parties Present: Shri Sanjay Sen, Sr. Advocate, SIPL
Ms. Ruth Elwin, Advocate, SIPL
Ms. Neha Dabral, Advocate, SIPL
Shri Parinay Deep Shah, Advocate, SIPL
Shri Kartik Sharma, Advocate, SIPL
Ms. Shikha Ohri, Advocate, SIPL
Shri M.G. Ramachandran, Sr. Advocate, CTUIL
Shri Alok Shankar, Advocate, CTUIL
Shri Kumarjeet Ray, Advocate, CTUIL
Ms. Srishti Khindaria, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL

ORDER

Soltown Infra Private Limited (hereinafter to be referred to as “SIPL”) and its Directors, Mr. Rahul Gupta & Mr. Arunabh Mohanty (hereinafter collectively referred to as “Petitioner”), filed the instant Petition praying to set aside CTUIL’s letter dated 23.3.2023 whereby the Petitioner has been blacklisted from applying for and obtaining connectivity or open access with CTUIL for a period of 3 years.

2. The Petitioner had also moved an IA No. 29/2023 seeking amendment to the Petition, including an amendment to IA 28/2023, for incorporating the additional prayer for quashing of the Second Revocation Notice and connected facts & grounds in this regard. The Commission vide RoP for hearing dated 14.07.2023 allowed the I.A. No. 29/2023, and accordingly, the IA No. 29/2023 was disposed of. The Petitioner has made the following prayers in the amended Petition:

Prayer(s) in Amended Petition:-

- (i) *quash the Blacklisting Letter dated 23.03.2023 (being Annexure P-1 herein) issued by the CTU;*
- (ii) *quash the Second Revocation Letter dated 05.04.2023 (being Annexure P-19A herein) issued by the CTU; direct the CTU to permit the Petitioners to convert the 675 MW Connectivity, initially granted under the Connectivity Regulations, 2009, to Connectivity in compliance with the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022;*
- (iii) *direct the CTU to grant all necessary connectivity and transmission-related permissions to*



the Petitioner, to the generators at the Petitioner's solar park, and to the consumers of the power injected via the solar park of the Petitioner, in accordance with the applicable provisions of law and the GNA regulations;

- (iv) direct the urgent listing of this Petition along with the Interim Application seeking ad-interim ex-parte stay, for hearing, and the matter be expeditiously disposed of; and/or*
- (v) Pass such order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.*

3. The Petitioner has also filed I.A. No. 28/2023 and 51/2023 and made the following prayers:

Prayers in amended 28/IA/2023

- (i) That the Hon'ble Commission may be pleased to grant an ad-interim ex-parte stay on the operation and effect of the CTU Blacklisting Letter dated 23.03.2023, pending the disposal of the present petition by the Hon'ble Commission;*
- (ii) Grant an interim stay on the operation of the second revocation letter dated 05.04.2023 and all consequences arising therefrom, until the final disposal of the present petition.*
- (iii) Grant an interim injunction restraining the CTU from allotting the said connectivity of the Petitioner at Bikaner-II substation to any other entity, until the final disposal of the present petition.*
- (iv) That the present Application for Interim Stay be urgently listed for hearing, and the matter be expeditiously disposed of; and/or*
- (v) Pass such order(s) as this Hon'ble Commission may deem fit and proper in facts and circumstance of the present case.*

Prayers in 51/IA/2023

- (i) Grant an interim injunction restraining the CTU from allocating the 675 MW Stage II Connectivity at Bikaner II ISTS Sub-station to any other entity, until the final disposal of the present petition;*
- (ii) Grant an ad-interim ex-parte stay on the operation and effect of the CTU Blacklisting Letter dated 23.03.2023 pending the disposal of the present petition by the Hon'ble Commission;*
- (iii) Grant an interim stay on the operation of the Second Revocation Letter dated 05.04.2023 and all consequences arising therefrom until the final disposal of the present petition;*
- (iv) That the present Application for Interim Injunction be urgently listed for hearing and the matter be expeditiously disposed of; and/or*
- (v) Pass such order(s) as this Hon'ble Commission may deem fit and proper in facts and circumstances of the present case*

Petitioner's submissions:

4. The petitioner has mainly submitted as follows:



- (a) Soltown Infra Private Limited (SIPL) is a Solar Park Developer (SPD) developing a 675 MW solar park in Bikaner, Rajasthan in terms of Rajasthan Solar Energy Policy, 2019.
- (b) SIPL applied for Stage I Connectivity for 600 MW and 1200 MW on 12.10.2021 and 30.11.2021, respectively. Subsequently, the CTUIL granted Stage I Connectivity for 600 MW on 21.12.2021 and 1200 MW on 22.01.2022.
- (c) Further, SIPL submitted three applications, i.e., Application No. 1200003573 for 500 MW, Application No. 1200003579 for 600 MW, and Application No. 1200003603 for 700 MW for the Grant of Stage II Connectivity. The CTUIL thereafter granted Stage II Connectivity for 500 MW on 07.03.2022, for 600 MW on 07.03.2022, and for 700 MW on 07.03.2022. The Stage II Connectivity for all the aforementioned applications was granted at the ISTS substation at Bikaner II PS.
- (d) A Transmission Agreement for Connectivity was entered into between CTUIL and SIPL on 12.04.2022.
- (e) On 08.07.2022, representatives of SIPL were called by the CTUIL at their office. During the meeting, all documents submitted with all three applications made for Grant of Stage II Connectivity were physically verified by the concerned CTUIL officials and entered into a table prepared by CTUIL. Thereafter, it was found that there were certain errors in the land documents that SIPL submitted that needed rectification.
- (f) The tables showing land documents, as prepared by CTUIL after verification of the documents in each of the three applications, were shared with SIPL vide email dated 08.07.2022, which was subsequently responded to by SIPL vide email dated 11.07.2022. Thus, in furtherance of the aforesaid events entailing detailed scrutinization and verification by CTUIL, all issues relating to land that had arisen between SIPL and CTUIL regarding all the three aforesaid applications for Grant of Stage II Connectivity were deemed to be satisfactorily resolved.
- (g) CTUIL sent an email dated 12.07.2022 in which SIPL was asked to acquire further land and give information on the progress of the projects. In response to the CTUIL's



letter, the petitioner submitted that all the milestones for acquiring sufficient land, as set out in the tables mentioned in the CTUIL email dated 08.07.2022, were met within the requisite period of 3 weeks.

- (h) SIPL vide emails to the CTUIL dated 10.05.2022, 18.05.2022, 26.05.2022, and 21.06.2022 had repeatedly followed up with CTUIL regarding the allocation of bays. The Bay Allocation Letter was only issued on 12.07.2022 by the CTUIL after being satisfied with all the queries raised in the meeting between CTUIL and SIPL dated 08.07.2022 and the subsequent email of the CTUIL dated 08.07.2022 and the reply of SIPL vide email dated 11.07.2022.
- (i) However, even after the satisfactory resolution of the issues that had come up in the three applications of SIPL for Grant of Stage II Connectivity and the issuance of the subsequent Bay Allocation Letter dated 12.07.2022, the CTUIL sent a Show Cause Notice dated 04.08.2022 with Ref. No. C/CTU/SCN/SOLTOWN (hereinafter referred to as the "First Show Cause Notice") to Petitioner requiring to explain why the Grant of Stage II Connectivity for 500 MW, 600 MW, and 700 MW should not be revoked.
- (j) The Petitioner replied to the Show Cause Notice vide Reply dated 18.08.2022 and subsequent Addendum dated 21.08.2022, where all the allegations made on SIPL were answered with detailed submissions.
- (k) Personal hearings were given to SIPL by the CTUIL on 11.08.2022 and 29.08.2022. It was clear from the aforementioned personal hearings that SIPL had no option but to surrender the Stage II grant of Connectivity for 500 MW, 600 MW, and 700 MW (1800 MW cumulatively). To maintain a harmonious relationship with CTU and avert a protracted dispute, SIPL surrendered the entire 1800 MW Stage II Connectivity through its letter dated 30.08.2022.
- (l) CTU, vide its letter dated 31.08.2022, decided and disposed of the First Show Cause notice by revoking the Grant of Stage II Connectivity for 1800 MW issued earlier and the respective Transmission Agreements. CTUIL also encashed the Connectivity Bank Guarantee furnished by SIPL amounting to INR. 50,00,000.



- (m) Subsequent to the revocation of Stage II Connectivity for 1800 MW, fresh Stage II Connectivity Applications were filed by SIPL for 350 MW and 125 MW, cumulatively amounting to 475 MW. In addition to the above 475 MW, Stage II Connectivity Application for 200 MW was applied for earlier on 25.04.2022 and granted on 15.07.2022 at the Bikaner III ISTS Sub-station.
- (n) The CTUIL granted Stage II Connectivity for 350 MW and 125 MW on 26.10.2022 at the Bikaner II PS. The earlier subsisting 200 MW Stage II Connectivity granted to SIPL at the Bikaner III ISTS sub-station was shifted to the Bikaner II ISTS sub-station.
- (o) In view of the Stage II Connectivity granted by the CTU for 675 MW, SIPL and CTUIL entered into a Transmission Agreement for Connectivity on 17.11.2022.
- (p) A fresh Show Cause Notice dated 22.02.2023 (hereinafter referred to as the "Second Show Cause Notice") was sent by the CTU to the Petitioner demanding an explanation as to why an action of blacklisting the Petitioner should not be taken to prevent from participating in the Grant of any Open Access from CTUIL for a period of 3 years.
- (q) The Petitioner replied to the Second Show Cause Notice sent by the CTUIL vide its Reply dated 03.03.2023. Some of submissions are as under:
- (i) In light of the Revocation of the Grant of Stage II Connectivity for 1800 MW and the encashment of the Connectivity Bank Guarantee amounting to INR. 50,00,000 read with the CTUIL letter dated 31.08.2022 wherein it was stated by the CTUIL that "*...Further, in light of the unconditional withdrawal of Stage II connectivity as aforesaid and the associated consequences as detailed below, the proceedings under the show cause notice are decided as under*", it was evident that a final decision had taken place and the First Show Cause Notice was disposed of. Thus, it is reasonable to conclude that no second set of proceedings could continue on the same cause of action, and no further punishment, such as blacklisting, can be awarded once the punishment of revocation of connectivity and encashment of bank guarantee had already been



meted out to SIPL. This was on account of the doctrine of double jeopardy, which is a recognized principle in the realm of administrative law.

- (ii) The First Show Cause notice only indicated the possibility of revocation of Stage II Connectivity and did not mention the possibility of blacklisting of Petitioner. Therefore, the Second Show Cause notice cannot broaden the scope of the First Show Cause notice, especially when the proceedings of the First Show Cause notice had already been concluded.
- (iii) As per CTUIL's established procedure, SIPL was given an opportunity to correct the deficiency, which SIPL duly complied with, and subsequently, the bay was allocated to SIPL on 12.07.2022 on the basis of the said rectification. After the revocation of SIPL's 1800 MW connectivity by letter dated 31.08.2022, fresh Stage II Connectivity was granted to SIPL, and substantial investments were made by SIPL on the basis of said Grant of Stage II Connectivity. CTUIL allotting SIPL the Bays, issuing them fresh Stage II Connectivity post the revocation of the 1800 MW Stage II Connectivity, and the execution of the fresh Transmission Agreements dated 17.11.2022 amply demonstrates that even the CTUIL did not believe that the inadvertent doubling of documents in the first set of connectivity applications was deliberate.
- (iv) The repeated threat of cancellation of Stage II Connectivity on the same cause of action violates the principles of legitimate expectations.
- (v) Since CTUIL is required to act fairly, reasonably and in accordance with the law, any decision to depart from the expectation must be based on a rational and relevant consideration. Furthermore, such repeated threat of cancellation of connectivity, creates uncertainty and frustrates the reasonable expectation that once permission has been granted, it will be sustained.
- (r) Despite the detailed submissions made by the Petitioner, in the Reply dated 03.03.2023, the CTUIL sent the Blacklisting Letter dated 23.03.2023 vide which the



CTUIL blacklisted the Petitioner from applying for and obtaining any connectivity or Open Access with CTUIL for a period of three years from the date of issuance of the said letter.

- (s) Subsequent to the issuance of the Blacklisting Letter dated 23.03.2023, the CTUIL inter alia, in complete contravention of the established principles of natural justice and without the issuance of any show cause notice to such effect contemplating such an action, issued the letter dated 05.04.2023 (hereinafter referred to as the “Second Revocation Letter”) vide which the subsisting 675 MW Stage II Connectivity granted to the Petitioner by the CTUIL was revoked and cancelled, on the basis of the Blacklisting Letter dated 23.03.2023 even though it had no application on the subsisting 675 MW Stage II Connectivity.
- (t) The First Show Cause Notice dated 04.08.2022 and the Second Show Cause Notice dated 22.02.2023 issued by the CTUIL were both based on the same cause of action, i.e., the inadvertent clerical error with regard to the land documents which the CTUIL alleges to be fraudulent. It is pertinent to mention here that the First Show Cause Notice dated 04.08.2022 was disposed of by the CTUIL vide letter dated 31.08.2022, vide which the CTUIL revoked the Grant of Stage II Connectivity for 1800 MW and encashed the Connectivity Bank Guarantee amounting to INR. 50,00,000.
- (u) The Blacklisting Letter dated 23.03.2023 was issued almost 6 months after the issuance of the CTU letter dated 31.08.2022 revoking the 1800 MW Stage II Connectivity is bad in law, untenable and void ab initio on account of the fact that the aforesaid letter of the CTU blacklisting the Petitioner emanated from the Second Show Cause Notice dated 22.02.2023 which itself was barred on account of the fact that no second set of proceedings can continue on the same cause of action and no further punishment can be awarded once the Petitioner have already been sufficiently penalised and punished for the alleged wrongdoing, in terms of the doctrine of double jeopardy.
- (v) After the revocation of the 1800 MW Stage II Connectivity on 31.08.2022, CTU granted the new 475 MW Stage II Connectivity on 26.10.2022 and Transmission



Connectivity Agreements were signed between CTUIL and SIPL on 17.11.2022 for the fresh 475 MW and the earlier subsisting 200 MW Stage II Connectivity In none of the documents, including the letters granting Stage II Connectivity or the Transmission Connectivity Agreements, did the CTUIL mention that the new connectivity grant was conditional or subject to the outcome of any alleged parallel proceedings or investigations they claim were ongoing during this period, as stated in the Blacklisting Letter dated 23.03.2023. Without prejudice to the applicability of the relevant provisions of GNA Regulations 2022 from 05.04.2023, the petitioner submits that there were no ongoing proceedings at the time the connectivity was granted, and the same was an apparent afterthought.

- (w) In the Blacklisting Letter, the CTUIL states in para (e) that the penalties imposed on SIPL through their letter dated 31.08.2022 were in line with the provisions of the CERC Revised Procedure and the executed agreements and that these penalties constituted a regulatory and contractual closure of the issue. However, CTU also claims that the subsequent proceedings stemming from the Second Show Cause Notice originated from the rights reserved under the same 31.08.2022 letter, which supposedly closed the issue. This contradiction highlights that CTU has taken inconsistent positions. On the one hand, they assert that the consequences of the First Show Cause Notice, leading to the Revocation Letter dated 31.08.2022, provided regulatory and contractual closure. On the other hand, they claim that the Second Show Cause Notice, culminating in the Blacklisting Letter, arose from the same 31.08.2022 letter that supposedly concluded the matter.
- (x) By granting the Petitioner connectivity of 675 MW, the CTU acknowledged the Petitioner's right to subsequently obtain open access to their solar park. The Petitioner, in reliance on this legitimate expectation, invested substantial resources in land acquisition, agreements with investors, and other project development activities. The CTU Blacklisting Letter, which restricts the Petitioner from obtaining open access, contravenes these legitimate expectations, causing significant financial and reputational harm to the Petitioner and is in violation of the Agreements.



- (y) Open access is a statutory right under the Electricity Act, 2003, and the CTU by way of a letter, cannot take away the Petitioner's statutory right.
- (z) A bare reading of the Second Show Cause Notice dated 22.02.2023, which led to the Blacklisting Letter dated 23.03.2023, reveals that the proceedings in these letters pertained to the 1800 MW Connectivity and not the current 675 MW Connectivity granted to SIPL by the CTUIL. Therefore, CTUIL erred in using the Blacklisting Letter as a basis to revoke the 675 MW Stage II Connectivity, as it did not have the authority to do so because none of the Show Cause notice ever envisaged cancellation of the connectivity of 675 MW.
- (aa) CTU did not issue any show-cause notice or provide prior intimation before revoking the 675 MW Stage II Connectivity for SIPL. Without such notice, SIPL was denied the opportunity to defend its interests, leading to an arbitrary action that contradicts the principles of natural justice and caused significant financial losses for SIPL.
- (bb) The 675 MW Stage II Connectivity, which was subsisting with SIPL following the issuance of the Blacklisting Letter, was granted in terms of the Connectivity Regulations, 2009. The 675 MW Connectivity of SIPL would come under 37(2) of the GNA Regulations with regard to the transition of the aforesaid Connectivity from the old regime, i.e., the Connectivity Regulations, 2009, to the new regime, i.e., GNA Regulations. A perusal of the aforesaid Regulations makes it evident that the transition from the old regime to the new regime would not be akin to the process of applying for fresh connectivity.
- (cc) GNA Regulations in no way provide the Nodal Agency, i.e., CTUIL, with the power to exercise discretion with regard to whether the entities possessing existing Connectivity granted under the old regime will be allowed to transition into the new regime or not. In fact, on the contrary, the language of Regulation 37.2 makes it clear that for the entities possessing existing Connectivity who come under the aforesaid Regulations, only two outcomes are envisaged, i.e., either surrender existing connectivity or furnish surplus bank guarantee as intimated by the CTU and transition into the new regime.



- (dd) The new GNA regime that came into force on 05.04.2023 under the GNA regulations 2022 has changed the landscape. SIPL already has connectivity, and under the new GNA regime, it doesn't need to apply for fresh open access, as the onus is on the drawee entity. Even if the blacklisting notice were to continue (which it should not), its prospective nature would still allow SIPL to transition under the new GNA regime and operate without fresh open access. However, this would be possible only if the second revocation letter is quashed.
- (ee) The CTU's treatment of SIPL, a smaller solar park developer, in comparison to other larger solar park developers, constitutes discrimination and arbitrary action in violation of guarantees of equality before the law and equal protection of the laws. In the matter of obtaining Stage-I connectivity, the Petitioner submits that the CTU strictly enforced the requirement of an authorisation certificate from the Central or State Government, as mandated by Clause 6.2(v) of the CERC Revised Procedure for RE Projects. SIPL Infra had to rectify the issue and obtain the necessary authorisation before being granted connectivity. However, as per the information obtained through the RTI application dated 30.04.2022, there were some solar park developers who were granted connectivity without having the required authorization certificates. The CTU's inconsistent enforcement of the authorization certificate requirement is a clear instance of discrimination against SIPL.

Submissions of the Petitioner in 28/IA/2023:

5. The petitioner re-iterated the submissions in the original Petition and made additional submissions as under:
- (a) This Commission may consider staying the operation of the CTU Blacklisting letter dated 23.03.2023 and the Second Revocation Letter dated 05.04.2023.
- (b) If the Second Revocation Letter is not stayed, the CTU might allocate the said connectivity at the Bikaner II substation to a different entity. This raises concerns that the petitioner may have been targeted in order to favour another entity further down the queue. In such a scenario, if the substation becomes fully occupied and even if the petitioner eventually prevails in their case before the CERC, their efforts, time, and resources will be rendered futile, as they would be unable to obtain the



connectivity at the Bikaner II substation, consequently making the entire petition infructuous. Thus, irretrievable loss will be caused to the petitioner if the Second Revocation Letter is not stayed.

Hearing dated 02.05.2023:

6. During the hearing dated 02.05.2023, the senior counsel for the Petitioner submitted that the present Petition had been filed, inter alia, for setting aside CTUIL's letter dated 23.3.2023 sent to the Petitioner SIPL and its Directors/Promoters have been blacklisted from applying for and obtaining connectivity or open access with CTUIL for a period of 3 years from the date of issuance of the said letter. Learned senior counsel for the Respondent, CTUIL, submitted that the Respondent has certain objections towards the maintainability of the present Petition. Learned senior counsel submitted that for the grant of connectivity, SIPL had deliberately submitted duplicate/fabricated documents relating to land rights, which amounts to fraud. Learned counsel submitted that, as held by the Hon'ble Supreme Court in various judgments, the power to blacklist is an inherent power and the Petitioner can challenge the same on the ground of arbitrariness or disproportionate before the Writ Court only and not before this Commission. Considering the submissions made by the parties, the Commission directed the Respondent to file its response to the Petition and IA, both on maintainability & merits, with a copy to the Petitioner, who may file its rejoinder.

Hearing dated 14.07.2023:

7. After hearing the learned senior counsel for the Petitioner and the Respondent, CTUIL, the Commission ordered amended Petition to be taken on record and directed CTUIL to file its consolidated reply to the amended Petition on maintainability as well as on merits within three weeks, with a copy to the Petitioner, who may file its rejoinder, within two weeks thereafter. Accordingly, IA No.29/2023 was disposed of. The Commission further directed CTUIL to also elaborate on an affidavit within two weeks of the reason for the revocation of the 675 MW Stage-II Connectivity granted to the Petitioner subsequent to the revocation of the 1800 MW connectivity against which the Petitioner has been blacklisted.



Reply on of Respondent, CTUIL:

8. The respondent, CTUIL, in its reply vide affidavit dated 05.06.2023 and 18.08.2023, has submitted as follows:

- (a) Pursuant to the applications filed by the SIPL on 07.03.2022, Respondent, relying on the applications and the undertakings given by the Petitioner and assuming them to be true, processed the applications and granted Stage II Connectivity for a total of 1800 MW. Stage-II Connectivity was granted for the entire 1800 MW on 07.03.2022 to the Petitioner Company. Subsequently, on 25.04.2022, Petitioner Company again applied for the grant of Stage II Connectivity for 200 MW at Bikaner-III PS as a Solar Park Developer. Thereafter, on 15.07.2022, based on the application and the undertaking given by the Petitioner Company, Respondent granted Stage-II Connectivity to the Petitioner Company for 200 MW at Bikaner-III PS.
- (b) On 25.07.2022, CTUIL received an anonymous complaint against the grant of Stage-II Connectivity for Bikaner-II PS for 500 MW, 600 MW, and 700 MW. It was alleged that the Petitioner Company did not meet the criteria (land rights) for grant of Stage-II Connectivity.
- (c) Upon receiving the complaint against the grant of Stage-II Connectivity to the Petitioner Company for 1800 MW, CTUIL started taking the necessary actions and examined the complaint received. On 04.08.2022, CTUIL issued a Show Cause Notice to the SIPL seeking reasons and response as to why the grant of Stage-II Connectivity of 1800 MW shall not be revoked.
- (d) CTUIL categorically highlighted that in regard to the title reports and the auditor certificates, Petitioner Company had given an undertaking and also submitted an affidavit wherein it was stated that “where any falsity or inaccuracy is detected in the document/statements, the application shall be liable for rejection or revocation along with all consequences in this regard.”
- (e) On 10.08.2022, SIPL issued a letter to CTUIL seeking an extension for filing its response to the First SCN on the grounds of extracting documentation. CTUIL, in



good faith did not object to the request made in order to give an opportunity to SIPL to justify its fraudulent conduct. CTUIL on 12.08.2022 granted an extension till 18.08.2022 as per the request made by SIPL.

- (f) SIPL vide letter dated 18.08.2022 submitted its response to the First SCN, in which the Petitioner Company admitted to the discrepancies in the applications. The Petitioner Company termed the duplication of land documents a clerical error stating that four wrong documents were uploaded in the 700MW application. Additionally, the Petitioner admitted that nine land documents with different registration endorsements were uploaded due to another clerical mistake.
- (g) After having filed a detailed response and representation to the First SCN, the Petitioner Company requested a personal hearing. Even though Respondent had no obligation to give a personal hearing in the instant case, it acceded to the request made by the Petitioner Company.
- (h) On 29.08.2022, a personal hearing was held at CTUIL's office wherein SIPL reiterated the submissions as provided in response to the First SCN, and CTUIL highlighted all the infirmities in the applications (including those mentioned in the First SCN) and the fraud committed by the Petitioner Company in relation to the land rights.
- (i) On 30.08.2022, the Petitioner Company issued a letter 'unconditionally' withdrawing the grant of 1800 MW Stage-II Connectivity, Bikaner-II PS. Pertinently, vide the said letter, it was stated that since the issue pertaining to the grant of Stage-II Connectivity, Bikaner-II PS for 1800 MW is still unresolved, the three applications for 500 MW, 600 MW, and 700 MW along with the transmission agreements dated 12.04.2022 are being withdrawn.
- (j) On 31.08.2022, CTUIL revoked the 1800 MW of Stage-II Connectivity at Bikaner-II PS and also terminated the transmission agreements dated 12.04.2022 of the Petitioner Company. CTUIL encashed the Bank Guarantee of INR 50,00,000, irrevocably appropriating the amount. The revocation of Stage-II Connectivity at Bikaner-II PS aggregating to 1800 MW, the resultant deallocation of the bay, and the termination of the transmission agreements dated 12.04.2022 are not contested.



- (k) Since the connectivity was obtained using fraudulent documents, revocation of such connectivity is not a penal action on the petitioner but merely a revocation of an entitlement wrongfully obtained. The penal action for submitting forged documents could not have been said to be limited to merely revocation of the connectivity. CTUIL had reserved the right to take the necessary action against the Petitioner Company in terms of the First SCN.
- (l) On 31.08.2022, SIPL filed applications seeking a grant of Stage-II Connectivity in Bikaner-II PS for 350MW and 125MW, which the Respondent granted on 26.10.2022.
- (m) The Petitioner filed fresh applications in terms of the 2009 Regulations through the online portal. All the applications are taken up in the External Committee Meeting i.e., CMETS. All applications received on the online portal are required to be processed for grant on a non-discriminatory basis in terms of the provisions of the 2009 Regulations and Revised Procedure. Since the decision on the action to be taken in terms of the August SCN was being deliberated and no specific decision had been taken, the subsequent applications were processed in the ordinary course per the extant regulations.
- (n) After administrative reviews and evaluation of the appropriate course of action, on 22.02.2023, CTUIL issued another Show Cause Notice to SIPL seeking a response and representations as to why SIPL should not be blacklisted for the following reasons:
- (i) Duplicity of land documents in multiple applications.
 - (ii) Duplicity of endorsements in multiple agreements.
 - (iii) Misrepresentations in the title report.
 - (iv) Violation of the undertaking and affidavit submitted for accuracy and correctness of data and records.
- (o) Pertinently, the February SCN also referred to the August SCN and the fraud committed therein by the SIPL. On 03.03.2023, the SIPL submitted its reply to the February SCN. It is submitted that it is a matter of record that the February SCN was



not challenged. Further, the Petitioner's reply thereto only demonstrates that the Petitioner was aware that the August SCN had not been closed.

- (p) Reply dated 03.03.2023 was not satisfactory; accordingly, on 23.03.2023, CTUIL acting in terms of the powers inherent to all public authorities, blacklisted the Petitioner for a period of three years from applying and granting of access from the date of the said letter.
- (q) In cognizance of the provisions under the GNA Regulations, CTUIL issued a letter dated 05.04.2023 ("Second Revocation Letter") cancelling the 675 MW connectivity of SIPL. The 675 MW connectivity was revoked due to the blacklisting of the Petitioner Company, the connectivity of 675 MW could not, in any case, transition to the new GNA regime under the GNA Regulations as it would entail entering into new agreements and processing of new applications of an already blacklisted entity.

On Maintainability:

CTUIL has the inherent power to Blacklist the Petitioner

- (r) Blacklisting is an inherent power, and there is no specific requirement under any law to entail such powers with CTUIL. CTUIL is an instrumentality of the state and a PSU discharging functions in terms of Section 38(2) of the Electricity Act and various rules and regulations framed thereunder. Any government, its agency, or its instrumentality can blacklist a company in a contractual matter where fraud has been committed by any person or company.
- (s) The inherent power of blacklisting has been recognized by the Supreme Court of India in *Patel Engineering Ltd. vs. Union of India and Anr. (2012) 11 SCC 257*, wherein it stated that the authority of the state to blacklist need not be a statutory power and is a necessary concomitant to its executive power.
- (t) In addition to the above judgment of the Supreme Court, it is also submitted that the Delhi high court, in the case of *SARR Freight Corporation v. Engineers India Limited 2018 SCC OnLine Del 10320*, held that a specific condition for blacklisting a contractor not included under the tender conditions does not bar a party from



blacklisting since it would have an inherent right to refrain from dealing who is found to have indulged in unacceptable practices.

The Commission lacks jurisdiction to entertain the present petition

- (u) It is submitted that the Petitioner has invoked the jurisdiction of this Commission by filing the present petition under Section 79(1)(f) of the Electricity Act. However, this Commission does not have jurisdiction to consider the present petition since (a) none of the powers under the 2009 Regulations have been exercised, and therefore, the remedy cannot be in terms of the provisions of the Electricity Act and; (b) the determination of the validity of blacklisting requires judicial review which cannot be exercised this Commission.
- (v) The position of judicial review of the blacklisting order has already been settled by the Supreme Court of India in *Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731*, in the aforesaid order, the Court held that blacklisting is subject to judicial review when the same is issued by State or any instrumentality of state. Further, in *Hyundai Rotem Company v. Delhi Metro Rail Corporation, 2018 SCC OnLine Del 6690*, the High Court of Delhi held that an order of blacklisting may be subject to judicial review if it is found that such order/action was not reasonably taken.
- (w) In addition to the above judgments, the Supreme Court, in the landmark judgment of *PTC India Ltd. vs. Central Electricity Regulatory Commission (2009) 5 SCC 466*, held that APTEL does not have the power of judicial review, which can only be exercised by courts.
- (x) The petitioner, instead of satisfying the CTUIL about the discrepancies, admitted that the documents submitted for the Stage-II connectivity application were forged. Therefore, in response, the Petitioner, after realising that they had committed serious fraud upon CTUIL, issued a letter dated 30.08.2022 to CTUIL and decided to revoke such grant of 1800 MW of Stage-II Connectivity.
- (y) As a result of blacklisting the Petitioner, the Petitioner was not entitled to deal with CTUIL for seeking connectivity and access for three years, and therefore, the



granted connectivity would not have been put to use for inter-state transmission of power.

- (z) It is submitted that while no person can be penalised twice for the same act, the Second SCN is not barred by any law. It is submitted that, as pointed out, revocation of Stage-II Connectivity, which was obtained without satisfying the criteria for grant of the same, cannot be termed as a penalty. The CTUIL's letter dated 31.08.2023 categorically stated that the action of revocation is without prejudice to its rights that CTUIL has qua the infirmities pointed out in the First SCN.
- (aa) It is also submitted that the only penal action that the Respondent took in relation to the fraud committed was blacklisting the Petitioner and promoters for a period of three years. The revocation of 1800 MW of Stage-II Connectivity does not amount to any punishment. Further, it is the Petitioner who sent the Revocation Letter dated 30.08.2022 requesting to revoke the grant of 1800 MW of Stage-II Connectivity.
- (bb) one day after seeking revocation of 1800 MW Stage-II Connectivity in Bikaner-II PS, the Petitioner Company filed two applications seeking an aggregate of 475 MW of Stage-II Connectivity. Since the personal hearing under the First SCN was only concluded on 29.08.2022 and the decision was still pending, the rejection of new applications filed by the Petitioner would have amounted to pre-maturely presuming that the Petitioner has been blacklisted.
- (cc) The Petitioner has contended that the scope of First SCN was limited to revocation and associated consequences, which meant encashment of bank guarantee. It is submitted to the contrary by the Respondent that the Blacklisting Letter issued by the Respondent clarified this position taken by the Petitioner Company wherein it was stated that the revocation and encashment of the bank guarantee was in terms of the Revised Procedure and the existing regulations only.
- (dd) While the Petitioner has a statutory right to connectivity, the same is not absolute in nature. Every statutory right that any party has is not absolute in nature, and the conditions prescribed therein must be fulfilled. The High Court of Calcutta, in the case of *Ajit Mandal vs. Tapan Kumar Ghana 2013 SCC OnLine Cal 7143*, held that where a statutory right has to be exercised, the conditions provided there under must



be fulfilled. Upon committing fraud, the Petitioner cannot take a plea that the statutory right of connectivity under the Electricity Act is violated.

- (ee) Even the Allahabad High Court, in the case of *Shashi Prabha v. Dy. Director of Consolidation Budaun*, 2020 SCC OnLine All 636, while dealing with the issue pertaining to fraud, observed that once it is proved that a fraud has been committed, no right can be claimed by the fraudster on the grounds of technicalities.
- (ff) Further, it is now a settled position of law that upon the commission of a fraud, every solemn act of a party gets vitiated, and even the principles of natural justice need not be complied with. The same has been upheld by the Supreme Court of India in the case of *Ganpatbhai Mahijibhai Solanki v. State of Gujarat and Ors.* (2008) 3 SCC 556.
- (gg) The grant of status of a “Connectivity + GNA grantee,” would have been in the variance of the CTUIL’s blacklisting letter dated 23.03.2023 wherein CTUIL had blacklisted the Petitioner Company with respect to not only the grant of further connectivity but also the grant of any open access for a period of three years. Accordingly, in view of the express fraud and infirmities under the application and the regulatory framework, CTUIL revoked the Stage-II Connectivity granted to the Petitioner vide its letter dated 05.04.2023.
- (hh) The order to blacklist has been passed only after due deliberation since it impacts the business interests of the concerned party, and till such decision was taken after due deliberation and following due process, the applications were permitted to take their own course. However, once the decision was taken to blacklist after examining the evidence against the Petitioner and affording him a due hearing, there was no question of entertaining any further application or permitting the applicant to enjoy the fruits of his deliberate misconduct. On the contrary, it was necessary to blacklist the Petitioner altogether for the requisite period of time.
- (ii) The blacklisting of the Petitioner Company was done in terms of the extant law and principles of natural justice while the revocation was done as the entity had already been blacklisted, and in terms of the GNA Regulations, the answering Respondent would have had to enter into new agreements with such blacklisted entity.



(jj) The answering respondent was, for the first time, faced with a situation where the certificates submitted for seeking connectivity were issued fraudulently, and therefore, allegations of arbitrariness are entirely baseless. CTUIL is now undertaking stricter scrutiny of applications for connectivity and access, and any application that is dishonest and misleading would be in line with the procedure followed in the case of the Petitioner. CTUIL, being 'State' in terms of the Constitution of India, is bound to act fairly and consistently, and even in the present proceeding, it has acted solely in terms of law laid by the SC and legal advice received from independent counsels.

Rejoinder of the Petitioner to the reply of CTUIL:

9. The petitioner, in its rejoinder vide affidavit dated 10.07.2023 and 05.09.2023 in response to the reply filed by CTUIL, has submitted as follows:

- (a) It is incorrect to state that the Respondent granted the entire 1800 MW Stage II Connectivity, as well as the subsequent 200 MW Stage II Connectivity, solely on the basis of applications and undertakings given by the Petitioner. The Respondent was statutorily obliged to grant the Connectivity after conducting thorough due diligence. In terms of the same, if any inadvertent or unintentional discrepancy or mistake on the part of the Petitioner was made, the same ought to have been put to the notice of the Petitioner before the issuance of the grant, and the same was to be allowed to be remedied, in terms of the specific provisions of the Connectivity Application submitted by the Petitioner Company.
- (b) The Respondent in the First Show Cause Notice did not even specify which duplications were being referred to in the applications submitted by the SIPL, and yet it was the Petitioner themselves who had responded, pointing out the inadvertent errors in the Connectivity Applications supplied by it. It is further submitted that the Respondent cannot use the term 'all associated consequences' as mentioned in the First Show Cause Notice and expand it to include the consequence of blacklisting within it. It is submitted that the consequences being referred to in addition to the revocation of the connectivity were the encashment of BGs supplied by the



Petitioner for the purposes of Connectivity. This can be evidenced by the fact that the Revised Procedure also provides that in case of revocation of connectivity, BGs supplied by the allottees would be encashed.

- (c) The alleged discrepancies in the Applications submitted by the Petitioner Company for the grant of the Stage II Connectivity were inadvertent clerical errors that had cropped up due to the sheer volume and size of the applications as well as the supporting documents that had been uploaded by the Petitioner Company. In terms of the same, the Petitioner, in their Reply dated 18.08.2022 as well as the Addendum to the Reply dated 21.08.2022 to the First Show Cause Notice, had sufficiently and reasonably explained the alleged discrepancies mentioned in the First Show Cause Notice issued by the Respondent. It is pertinent to mention here that the Addendum to the Reply dated 21.08.2022 has not been dealt with by the Respondents. In any event, the Petitioner, prior to the issuance of the First Show Cause Notice, had satisfactorily rectified the errors in the application which had been pointed out by the Respondent in the meeting dated 08.07.2022. The same had been acknowledged and accepted by the Respondent, which can be evidenced from the emails dated 08.07.2022, 11.07.2022, and 12.07.2022 exchanged between the Petitioner and the Respondent. The Respondent even allocated the bay to the Petitioner Company upon being satisfied that the application stood rectified.
- (d) A Withdrawal Letter dated 30.08.2022 was sent by the Petitioner pursuant to the personal hearing dated 29.08.2022, which was held at the Respondent's office. In this meeting, the Respondent clarified that surrendering the connectivity would not bar the Petitioner from applying for fresh connectivity. Therefore, the Respondent, at this stage, made it clear that the issue would come to an end with the surrender of the connectivity.
- (e) If the Respondent did not consider the revocation of the connectivity and the encashment of BGs as a penal action and closure of the issue, then they ought to have stated that penal consequences of Blacklisting were in the First Show Cause Notice itself and not misrepresented to the petitioner in the first show cause that the worst consequences were revocation only. This induced the petitioner to surrender the connectivity in order to avoid conflict with the Respondent CTU. Subsequently,



post such surrender and allocation of fresh connectivity, the Respondent cannot take a U-turn 6 months later and blacklist the petitioner for the same cause of action.

- (f) The grant of the unconditional fresh connectivity to the quantum of 675 MW post the issuance of the First Revocation Letter clearly demonstrates that even the Respondent was of the view that the matter had been concluded vide the issuance of the First Revocation Letter and that no further consequences were being considered in furtherance of the same.
- (g) Pertinently, much like the Connectivity Regulations, 2009, the GNA Regulations do not grant any power to the Respondent CTU to blacklist or take any punitive measures against a Solar Park Developer on the basis of anonymous letters or inquiries conducted after the granting of connectivity. A perusal of the provisions of the GNA Regulations will make it clear that the Respondent CTU's authority is only limited to the specific functions enumerated therein. These Regulations have been duly notified after public consultation, and at no time was it considered that Respondent ought to be granted any authority over any entity, much less a private Solar Park Developer. An absurd situation may arise wherein the Respondent CTU may begin disciplinary proceedings against various entities such as State Discoms/SLDCs/RLDCs as and when it shall so deem necessary.
- (h) The Respondent had specifically addressed the Petitioner's response dated 03.03.2023, in which Petitioner Company mentioned that it had received fresh connectivity after the First Revocation letter and argued that this connectivity would become meaningless if open access were denied. In response, the Respondent made a specific averment in its Blacklisting Letter stating that the blacklisting proceedings were independent of the fresh connectivity, implying that the connectivity would remain unaffected. Consequently, the Respondent has been inconsistent and mala fide in its dealings with the Petitioner, first indicating that the fresh connectivity would remain untouched but later asserting that the Petitioner would not be allowed to transition to the new GNA regime.
- (i) The nodal agency cannot exercise autonomy beyond the Statute and the regulations made thereunder to refuse permissions or refuse to enter into statutory contracts



mandated to be entered into by the Act and the regulations thereunder. In terms of the same, the Respondent being a creature of the statute and the statute read with the applicable regulations not providing for the power of blacklisting makes it clear that it has expressly not been vested with the same power and cannot exercise the same under any circumstances whatsoever. Thus, it is wholly erroneous for the Respondent to claim that it has chosen to blacklist the Petitioner in terms of its right to exercise commercial freedom, which does not subsist with it.

- (j) The time taken to grant the fresh connectivity was adequate for CTU to point out if any part of the fresh connectivity was subject to any other parallel proceedings. The fact is that no such parallel proceedings were going on. CTU, in its reply, has totally evaded placing on record any proof of any proceeding that may have been going on after the first revocation notice. There are no file notings or exchange of letters to demonstrate that even CTU was considering that any proceedings were left to be conducted after the first revocation.

Submissions of the Petitioner in 51/IA/2023:

10. The petitioner has filed the present I.A. seeking an interim injunction restraining the Respondent, Central Transmission Utility of India Limited, from re-allotting the 675 MW Connectivity of the Petitioner to any other entity until the final disposal of the present petition and mainly submitted as follows:

- (a) CTU, during the pendency of the aforesaid Petition and the Interlocutory Applications has made the 675 MW Stage II Connectivity already granted to M/s. SIPL at the Bikaner II 400/220 KV Sub-Station is available for re-allotment. The CTU has represented the same in the “Status of margins available at Existing / Under Construction/Planned ISTS RE Pooling Stations for proposed RE integration”, as of 30.04.2023 on its website.
- (b) This Commission may grant an injunction restraining the CTUIL from re-allotting the Stage II Connectivity of 675 MW allotted to Petitioner to any other entity till the disposal of the Main Petition.



- (c) The *prima facie* case in so far as the grant of interim injunction restraining the CTU from re-allotting the 675 MW Stage II Connectivity at Bikaner II ISTS Sub-station is concerned favors the Petitioner for several reasons. Firstly, the Second Revocation Letter *vide* which the 675 MW Stage II Connectivity granted to M/s. SIPL which has already been challenged before this Commission and is pending adjudication, was issued without providing any show cause notice to the Petitioner, depriving them of the opportunity to present their arguments or explain why their 675 MW connectivity should not be revoked. Moreover, the CTU states in the Second Revocation Letter that transitioning to the GNA regime would amount to granting permission for the transmission of power. However, under Regulation 37.2 of the GNA Regulations 2022, entities with existing connectivity are entitled to transition as a matter of right, and the responsibility to apply for GNA lies with the drawee entity. Consequently, regardless of the status of a challenge to the blacklisting notice, the bar on obtaining open access or connectivity should not prevent the transition of connectivity to the GNA regime, particularly when the regulations mandate such transfer at the discretion of the entity holding the connectivity. Additionally, it is essential to recognize that the Petitioner already holds connectivity. Therefore, transitioning to the GNA regime would not result in granting any new permission for the transmission of power to the petitioner entity. Further, while the Blacklisting letter explicitly states its prospective nature, the Second Revocation Letter applies it retrospectively by revoking the already granted 675 MW Stage II Connectivity.
- (d) It is further submitted that the CTU, by re-allotting (inviting fresh connectivity applications) for the 675 MW Stage II Connectivity previously granted to SIPL at the Bikaner II ISTS Sub-station which is the subject matter of the present Petition and IAs filed by the Petitioner, is attempting to create a third-party interest in the Stage II Connectivity which will render the prayers in the Main Petition as well as the Interlocutory Applications as infructuous.
- (e) Unless the CTU Blacklisting Letter is stayed with immediate effect, the Petitioner will be in default of its obligations to its investors, with whom it has already signed agreements. This, too, will cause irretrievable loss to the Petitioner because once the investor of the Petitioner leaves, it will be nearly impossible for the Petitioner to sustain the project even if it succeeds in the matter subsequently.



- (f) It is further submitted that granting the interim injunction restraining the CTU from re-allotting the 675 MW Stage II Connectivity at the Bikaner II ISTS Sub-station until the disposal of the present petition as sought by the Petitioner by way of this instant application would not result in any loss or harm to the Respondent, CTU.

Hearing dated 21.08.2023:

11. During the hearing, the Learned senior counsel of Petitioner submitted that CTUIL is already in the process of allocating the Petitioner's subsequent Stage II Connectivity of 675 MW at Bikaner-II S/S as revoked by CTUIL and in case any third-party rights are created on the said capacity, the present Petition would be rendered infructuous. Accordingly, learned senior counsel urged that CTUIL be directed to maintain the status quo in the matter. In response, learned counsel for CTUIL submitted that pursuant to the Record of Proceedings for the hearing dated 14.7.2023, the Commission has already declined to grant similar relief at this stage of the proceedings.
12. Considering the submissions made by the learned senior counsel for the Petitioner and learned counsel for the CTUIL and to ensure that the prayers of the Petitioner do not become infructuous, the Commission directed the CTUIL not to allocate the revoked capacity (675 MW) at Bikaner- II S/s to any other entity until the next date of hearing.
13. The CTUIL vide affidavit dated 05.09.2023, in compliance with the RoP for the hearing dated 21.08.2023, has submitted that the petitioner had submitted a copy of the letter issued by Rajasthan Renewable Energy Corporation Limited (RRECL) authorizing it as a Renewable Power Park Developer.

Hearing dated 12.09.2023:

14. During the hearing, learned senior counsel for the Petitioner and the CTUIL made detailed submissions both on the maintainability and the merits of the case. Considering the submissions made by the learned senior counsels for the parties, the Commission directed the Petitioner and the Respondent, CTUIL, to furnish certain clarifications. The Commission also directed that in the meantime, the interim



protection granted by the Commission, vide RoP for the hearing dated 21.8.2023, shall continue till the next date of hearing.

CTUIL

- (a) What were the discrepancies in the land related documents in respect of the Petitioner's 1800 MW (500 MW + 600 MW + 700 MW) Connectivity Applications? Whether the discrepancies observed were removed by the Petitioner in terms of the rectification opportunity given to them by the first show cause notice?
- (b) Whether there was any discrepancy in the documents submitted by the Petitioner regarding 675 MW connectivity?

Petitioner:

- (a) Total area of the land required for the 1800 MW (500 MW + 600 MW + 700 MW) connectivity and area of land available with the Petitioner while making the application for the grant of the connectivity along with documentary proof.
- (b) Reasons for surrendering 1800 MW connectivity if the discrepancies observed by CTUIL were removed by the Petitioner in terms of the rectification opportunity given to them?
- (c) Reasons for applying the fresh connectivity of only 675 MW (200 MW+350 MW + 125 MW) instead of 1800 MW.
- (d) Total area of land-related documents in respect of the Petitioner's 1800 MW (500 MW + 600 MW + 700 MW) Connectivity Applications where the discrepancies were observed and whether such discrepancies were removed by the Petitioner in terms of the rectification opportunity given to them.

Submissions of Petitioner:

15. The petitioner, in its submission vide affidavit dated 18.10.2023 in compliance with the RoP for the hearing dated 12.09.2023, submitted as follows:

- (a) The total quantum of the land required for the 1800 MW (500 MW + 600 MW + 700 MW) connectivity and area of land available with the Petitioner while making the application for the grant of the connectivity is as under:



| Summary of Land Details in SIPL Applications & Actual Registry | | | | | | |
|--|--------------------------------|---|---|--|--|--|
| Applic-ation | 50% Land Required as per Norms | Land As per Application made by the Petitioner (Area in Acre) | Area as per Actual Registry, and also verified by CTU on 08-07-2022 during Rectification (Area in Acre) | Discrepancy mentioned by CTU in its reply dated 18-08-2023 | Actual Difference between CTU Reply and Post Rectification | Rectification |
| 500 MW | 650 | 750.69 | 678.52 | 28.55 | 0.00 | Discrepancy in Area rectified in meeting dated 08-07-2022 and the same verified by CTU |
| 600 MW | 780 | 908.26 | 809.33 | 100.00 | 0.00 | Discrepancy in Area rectified in meeting dated 08-07-2022 and the same verified by CTU |
| 700 MW | 910 | 1029.56 | 525.81 | 528.86 | 0.00 | Discrepancy in Area rectified in meeting dated 08-07-2022 and the same verified by CTU |
| Total | 2340 | 2688.51 | 2013.67 | 657.41 | 0.00 | Discrepancy in Area rectified in meeting dated 08-07-2022 and the same verified by CTU |

**Above table demonstrates that all the discrepancies pointed out by CTU in its reply dated 18-08-2023, were already discussed, pointed out and rectified during the rectification opportunity given on dated 08-07-2022. No new or other discrepancies were pointed out by CTU in its reply dated 18-08-2023.*

- (b) The petitioner, in response to the specific query of the commission, i.e., “Reasons for surrendering 1800 MW connectivity if the discrepancies observed by CTUIL were removed by the Petitioner in terms of the rectification opportunity given to them,” has submitted that the Petitioner, in order to avoid a protracted dispute with the



CTU, which would have put the investors of the Petitioner's Project on alert, issued the withdrawal letter. It is pertinent to mention here that the CTU is the sole nodal agency empowered under Section 38 of the Electricity Act, 2003, to grant connectivity to the inter-State Transmission System (ISTS).

- (c) Further, the most severe penalty suggested by the First show cause was the revocation of 1800 MW connectivity. While SIPL could have contested this before this Commission, the prolonged process, possibly extending over a year, posed a significant risk. At this juncture, the petitioner was already engaged in advanced discussions with developers who had committed substantial investments in SIPL's park. Entering a prolonged dispute with CTU, which seemed determined to cancel the connectivity as discerned from the meeting and their notice, would have undoubtedly unnerved the investors/developers. Given the available connectivity at the Bikaner 2 substation and SIPL's prepared land availability, the petitioner concluded the more pragmatic decision was to secure the 650 MW connectivity to serve the current investors rather than embarking on a contentious litigation with CTU, risking a potential exodus of developers to other solar parks.
- (d) The petitioner, in response to the specific query of the commission, i.e., "Reasons for applying for the fresh connectivity of only 675 MW (200 MW + 350 MW + 125 MW) instead of 1800 MW," has submitted as under:
- (i) The 200 MW connectivity (distinct from the 1800 MW surrendered/cancelled connectivity) was awarded to the Petitioner by CTU post the meeting dated 08.07.2022 (but prior to the first cancellation notice of 1800 MW). This was awarded to the Bikaner 3 substation and, hence, is an existing allocation. Post the revocation of the Petitioner's 1800 MW connectivity, all the projects of the Bikaner 3 substation were shifted to the Bikaner 2 substation, and all of the Petitioner's fresh applications were treated last in the queue by CTU.
- (ii) Subsequent to the withdrawal by the Petitioner on 30.08.2023 and the following revocation by CTU on 31.08.2023, the Petitioner had filed fresh applications for Stage-II Connectivity for the quantum of 350 MW + 125 MW + 150 MW + 100 MW, totalling up to a sum of 725 MW.



- (iii) Out of the above-mentioned applications, CTU rejected the 100 MW application, citing that the Petitioner has used Right to Use land agreements.
 - (iv) The balance 625 (fresh - Stage II) + 200 (existing with Stage II) MW applications of the Petitioner went to the CMETS meeting, which was held on 30.09.2022.
 - (v) At the CMETS meeting, the Petitioner requested a total of 2 bays at 220 kV each for the balance of 825 MW quantum. However, it was during this meeting that the Petitioner was informed that only one 400 kV bay could be given for this quantum of 825 MW power. It was informed by CTU that if the Petitioner were to apply for a 675 MW quantum, their application would be eligible for a total number of two bays at 220 kV.
- (e) The petitioner in response to the specific query of the commission, i.e., “Total area of land related documents in respect of the petitioner’s 1800 MW (500 MW + 600 MW + 700 MW) connectivity applications where the discrepancies were observed and whether such discrepancies were removed by the Petitioner in terms of the rectification opportunity given to them” has submitted that all the discrepancies observed in the applications were rectified during rectification meeting dated 08.07.2022.

Hearing dated 20.10.2023:

16. During the hearing dated 20.10.2023, CTUIL sought additional time to file the details as sought by the commission vide RoP for the hearing dated 12.09.2023. The commission directed the parties to file their respective written submissions and also directed that the interim protection granted by the Commission vide RoP for the hearing dated 21.8.2023 will continue till the next date of hearing.

Submissions of CTUIL:

17. CTUIL vide affidavit dated 27.10.2023 in compliance to the RoP for the hearing dated 12.09.2023 has submitted as follows:

- (a) The Petitioner’s various applications for Stage-I and Stage-II Connectivity and the corresponding grants given against the same is compiled as follows:-



| S. No | Date of Application | Stage I Application No. | Date of Grant | Quantum (MW) | Cumulative St. I Connectivity (On the date of grant) | Stage II Application No. | Date of Application | Date of Grant | Quantum | Cumulative St. II Connectivity (On the date of grant) {in MW} |
|-------|---------------------|-------------------------|---------------|--------------|--|--------------------------|---------------------|---------------|---------|---|
| 1 | 12.10.21 | 1200003485 | 21.12.21 | 600 | 600 | 1200003573 | 02.12.2021 | 07.03.2022 | 500 | 1800 |
| 2 | 30.11.21 | 1200003571 | 22.01.22 | 1200 | 1800 | 1200003579 | 02.12.2021 | 07.03.2022 | 600 | |
| - | - | - | - | - | 1800 | 1200003603 | 23.12.2021 | 07.03.2022 | 700 | |
| 3 | 23.04.22 | 1200003886 | 15.07.22 | 200 | 2000 | 1200003889 | 25.04.2022 | 15.07.2022 | 200 | 2000 |
| - | - | - | - | - | 2000 | 0212100007 | 31.08.2022 | 26.10.2022 | 350 | 675 |
| - | - | - | - | - | 2000 | 0212100008 | 31.08.2022 | 26.10.2022 | 125 | |

Discrepancies in the Petitioner's Position during the blacklisting process

- (b) The unconditional withdrawal of the 1800 MW connectivity granted to the SIPL makes it clear that the matter was unresolved and was likely to lead to more coercive action from the CTUIL. In the event that the Petitioner was of the belief that all the issues with respect to the application for grant of connectivity stood resolved, then there was no reason to either seek a personal hearing and later withdraw the applications and not challenge encashment of the BG furnished with them.
- (c) Further, on 29.08.2022, the Petitioner met with the officials of the Respondent for a detailed personal hearing even after they claimed that the matter had been resolved and closed. Subsequently, after the major deficiencies were pointed out and on realising that the clarifications being given by them were bound to be considered unsatisfactory, the Petitioner chose to unconditionally withdraw its application for connectivity on 30.08.2022.
- (d) While submitting that the matter had been resolved on 21.08.2022, the Petitioner first sought a personal hearing in any case. Thereafter, the Petitioner met with the officials of CTUIL for a detailed personal hearing, and only after realising that the personal hearing was also not satisfactory and discrepancies in the application were not explained did the Petitioner choose to withdraw the aggregate Stage-II connectivity and subsequently re-apply. It is relevant to mention here that since the personal hearing happened only on 29.08.2022, the action to be taken at the end of CTUIL continued to be deliberated internally, and the issues were far from 'resolved'.

Open Access not a right under the Act

- (e) Neither a generating company nor a solar park has a statutory right of open access. In terms of the statutory scheme of the Electricity Act, a transmission licensee is



under an obligation to provide open access in terms of the applicable regulations. The right of open access to the destination of use is specifically provided only to a captive generating station. A generating station and, thus, by implication, a Solar Park does not have any statutory right either under the Electricity Act or any Regulations made thereunder that can be said to be granted a statutory right of open access.

- (f) In terms of the GNA Regulations, a grant of connectivity essentially means a grant of connectivity along with GNA. Therefore, there is no right that the Petitioner may have to GNA when there is no conformity to the provisions of the Act and regulations thereunder. The Petitioner has expressly flouted the requirements under the Revised Procedure and tried to misrepresent the same in order to obtain connectivity fraudulently and deprive eligible entities of a grant of connectivity.

Realignment and Novation of Contract in terms of the GNA Regulations

- (g) In terms of the GNA Regulations, new contracts would have to be entered into, which would extinguish the old connectivity agreement under the Connectivity Regulations. It would create new rights in terms of the access that is granted in terms of the GNA Regulations. Therefore, the agreement to be signed in terms of Regulation 37 of the GNA Regulations is a new contract.
- (h) The realignment of the connectivity agreements in terms of the GNA would mean the creation of new rights. Under the GNA Regulations, access does not have to be separately applied for. Hence, when the connectivity agreements under the Connectivity Regulations would entail only the grant of connectivity and not Long Term or other Access, connectivity agreements under the GNA Regulations would give the bundle of rights of connectivity as well as access. Therefore, such realignment in terms of the GNA Regulations would mean that a new contract with new rights would have to be entered into.
- (i) Therefore, as the new agreements under the GNA Regulations would entail new rights through a new contract, and CTUIL, having blacklisted an entity, cannot enter into new contracts with them, which would essentially frustrate the blacklisting order subsisting.



- (j) The present petition does not challenge the 1800 MW grant and is not the subject of the present petition, and the grievance of the petitioner relates to the 675 MW Connectivity only. It is submitted that in terms of the Connectivity Regulations and the detailed procedure, the opportunity for rectification is granted prior to the grant of Connectivity. The Petitioner was asked to explain the availability of land after the grant of Stage-II Connectivity since the applications were based on a short-term land use right agreement. The show cause notice related to documents furnished at the time of application for Stage-II Connectivity as the same were the only documents relevant to determine eligibility for grant of connectivity. It is also apposite to put on record that in response to show cause notice, the Petitioner accepted the mistakes in the application made by them, and the only explanation offered for the same was that 'they were clerical errors.' However, no rectification of the same was either possible or even attempted during the personal hearing, so the Petitioner unconditionally withdrew its applications.

Whether there was any discrepancy in the documents submitted by the Petitioner regarding 675 MW connectivity?

Land Documents

- (k) The Petitioner applied for the 675 MW Stage-II Connectivity in Bikaner-II PS via three separate applications for 350 MW, 125 MW, and 150 MW. While submitting the applications for the cumulative quantum of 675 MW, the Petitioner submitted the land lease documents for satisfying clause 9.2.2 of the Revised Procedure as against the land-use rights documents submitted with the 1800 MW (cumulative) application. Therefore, no discrepancy was observed in the land documents submitted for the 675 MW Stage-II Connectivity application.

Financial Irregularities

- (l) In terms of Form No. AOC-4 filed by SIPL in terms of Section 137 of the Companies Act, 2013, for FY 21-22 (the latest filed financial statements of SIPL), it is clear that the authorised share capital of SIPL is Rs. 1,00,000/-. That the authorised capital as on 12.09.2023 was also Rs. 1,00,000/-. Clearly, not just the 1800 MW applications but the 675 MW also were not in terms of the applicable Regulations and Detailed Procedures.



- (m) Therefore, the Petitioner has not satisfied the eligibility for subsequent 675 MW applications, and even the 675 MW connectivity is liable to be revoked. By way of a fraudulent CA Certificate (against which CTUIL has already initiated appropriate proceedings), SIPL, even in the application for 675 MW, has misrepresented its paid-up share capital and release of equity.
- (n) Further, the CA Certificates are also clearly vitiated by double counting the funds released. In each of the applications, the fund requirement has been computed as 10% of the project cost for each project. It is submitted that the total fund that should have been certified must be based on the aggregate project cost of 1800 MW and not 500, 600, and 700 MW applications.
- (o) In terms of the Reply to the Second Show Cause Notice dated 03.03.2023, the Petitioner expressly states that they shall develop the solar parks for cost in the range of 17-18 lakh per MW, which is already heavily reduced from the norms of the Ministry of New and Renewable Energy which stands at about 70 lakhs/MW. However, even if the CA Certificate furnished along with the Stage-II Connectivity Applications are assumed to be true. The CA Certificates state that the project cost is 4 Lakh/MW. Therefore, the CA Certificates and the response of the Petitioner to the Second Show Cause Notice are contradictory.
- (p) In the Second Show Cause Notice, the Petitioner clearly acknowledges that there is a requirement of long terms right to use agreements. However, even after recognizing a need to have long term right to use agreements, the right to use agreements that had been submitted with the 1800 MW applications were for five months only.
- (q) Even at the juncture of a second show cause notice, the Petitioner continues to act recklessly and carelessly by submitting deficient CA Certificates and not even rectifying them.

Hearing dated 20.12.2023:

18. During the course of the hearing, learned senior counsels for the Petitioner and Respondent, CTUIL, made detailed submissions and concluded their arguments in



the matter. The commission indicated that the interim protection granted vide Record of Proceedings for the hearing dated 21.8.2023 would continue till the outcome of the Petition and reserved the matter for order.

Submissions of Petitioner:

19. The Petitioner, in its submissions dated 08.1.2024, re-iterated its earlier submissions and mainly submitted as follows:

- (a) The consequences envisaged in the First Show Cause Notice clearly provided for the revocation of the connectivity and associated consequences, i.e., encashment of bank guarantees. Thus, it is clear that having represented to the petitioner that the worst consequence of the cause of action in the first show cause is revocation and thereby having induced the petitioner to have surrendered its 1800 MW connectivity, the Respondent could not have later changed its stand altogether and sent a second show cause and imposed a second punishment of blacklisting.
- (b) The attempt to increase and enhance the scope of punishment by issuing the Second Show Cause Notice and the consequent Blacklisting Letter is clearly an afterthought and not tenable in terms of the law of the land.
- (c) The grant of the unconditional fresh connectivity post the issuance of the First Revocation Letter clearly demonstrates that even the Respondent was of the view that the matter had been concluded vide the issuance of the First Revocation Letter and that no further consequences were being considered in furtherance of the same.
- (d) Much like the Connectivity Regulations, 2009, the GNA Regulations do not grant any power to the Respondent to blacklist or take any punitive measures against a Solar Park Developer on the basis of anonymous letters or inquiries conducted after the granting of connectivity.
- (e) The Respondent did not issue any show cause notice or provide prior intimation before revoking the 675 MW Stage II Connectivity of the Petitioner Company and, in effect, denied the Petitioner Company to defend its interests, leading to an arbitrary action that contradicts the principles of natural justice and causes significant financial losses. It is pertinent to mention here that the Respondent had



specifically addressed the Petitioner's response dated 03.03.2023, in which Petitioner Company mentioned that it had received fresh connectivity after the First Revocation letter and argued that this connectivity would become meaningless if open access were denied. In response, the Respondent made a specific averment in its Blacklisting Letter stating that the blacklisting proceedings were independent of the fresh connectivity, implying that the connectivity would remain unaffected. Consequently, the Respondent has been inconsistent and mala fide in its dealings with the Petitioner, first indicating that the fresh connectivity would remain untouched but later asserting that the Petitioner would not be allowed to transition to the new GNA regime.

- (f) Respondent has interpreted the word 'Equity' defined in Regulation 9.2.2 of the Connectivity Regulations, 2009, as equity share and has narrowed down its implication to "any share other than preference share." It is submitted that all major project companies applying to the Respondent have a small paid-up capital at the time of making the application for connectivity. It is further submitted that they also do not meet this definition of equity in this context. It is a general industry practice to consider the contribution of the owner of the project as equity, and if the same is not considered, there are several other companies who would be disqualified from their already awarded project due to the Respondent's arbitrary and wrong interpretation.

Submissions of CTUIL:

20. The CTUIL, in its submissions dated 27.01.2024, has re-iterated its earlier submissions and mainly submitted as follows:

- (a) Pursuant to the applications filed by the Petitioner Company on 07.03.2022, Respondent, relying on the applications and the undertakings given by the Petitioner and assuming them to be true, processed the applications and granted Stage II Connectivity for a total of 1800 MW. Thus, Stage-II Connectivity was granted for the entire 1800 MW to the Petitioner.
- (b) On 25.07.2022, the Respondent received an anonymous complaint in relation to the fraud committed by the Petitioner Company under the three applications for the grant



of 1800 MW of Stage-II Connectivity for Bikaner-II PS. The complaint alleged that the Petitioner Company did not meet the criteria for the grant of Stage-II Connectivity. In pursuance thereof, when the inquiries were made and leading to detailed scrutiny, it was revealed that the Petitioner had fraudulently duplicated the registration endorsements, providing multiple uses of the same land parcels across different applications (i.e., in 500MW as well as 700MW application and in 600MW and 700MW application), discrepancies in title report vis-à-vis submitted land agreements, etc. were observed. It was revealed that individually when each of the three applications was seen there was no patent discrepancy of duplication could be found, but when the applications were seen together, then the above deliberate wrongful act could be seen.

- (c) As a result of restraint on the grant of access for a period of three years, the Stage-II connectivity granted to the petitioner would have only led to squatting of connectivity, and vide letter dated 05.04.2023, CTUIL intimated the revocation of Stage-1 and Stage-2 Connectivity granted aggregating to 675 MW.
- (d) The Commission does not have jurisdiction to consider the present petition since blacklisting is an administrative action. It has been exercised as an inherent power of a contracting entity and not under Section 38 or any other provisions of the Electricity Act, 2003. The basis of blacklisting as laid down by the Hon'ble Court is that while the State authorities cannot arbitrarily refuse to deal with the grant of privileges etc., as in the case of a private party who can decide not to enter into a contract, the state authorities have the inherent right to blacklist a person for a specified period on the basis of wrongful conduct and refuse any dealing with him. Such an action of a State Authority is subject to judicial review. The power of judicial review is under the extraordinary jurisdiction of the Hon'ble High Court and the Hon'ble Supreme Court.
- (e) CTUIL has the power to withhold grants in its regulatory capacity, like connectivity and GNA, when the same is done in a rational, reasonable, and non-discriminatory manner. CTUIL has clearly established why it has not acted in any discriminatory manner, and it has merely blacklisted the Petitioner due to the fraud that the Petitioner played on CTUIL vide its application. Therefore, as a regulatory body exercising regulatory functions in terms of the Act, CTUIL could choose not to deal with an entity



such as the Petitioner.

- (f) The Petitioner's statutory claim is only an expectation for the grant of connectivity subject to applicable laws and principles, and the same is not absolute in nature. The Hon'ble High Court of Calcutta, in the case of *Ajit Mandal vs. Tapan Kumar Ghana 2013 SCC OnLine Cal 7143 (Paragraph 12)*, held that where a statutory claim has to be exercised, the conditions provided there under must be fulfilled. It is irrational that a person who commits a deliberate wrong and acts in a fraudulent manner can still retain the statutory grant of privilege. Upon committing fraud, the Petitioner cannot take a plea that the statutory claim for connectivity under the Act is violated. Especially so when the Petitioner has not met the conditions precedent to grant such right either in the land route or the financial requirements.
- (g) CTUIL letter dated 31.08.2022 was adequate notice to the Petitioner for all future applications made and processed by the Respondent in routine. Any grant of connectivity etc., pending such further action for the infirmities as on 31.08.2022, cannot be said to be absolute, and if blacklisting is decided on a subsequent date after following the due process, it will have implications on such connectivity granted.
- (h) The Petitioner's applications for 675 MW were also defective, and the Petitioner does not satisfy the criteria for grant of Stage-II Connectivity. The aforesaid Stage-II Connectivity was obtained relying on a CA Certificate that certified that the applicant, i.e., the Petitioner, has spent 10% of the total project cost through equity.
- (i) Upon analysing the balance sheet of the Petitioner available on the website of the Ministry of Corporate Affairs, it is evident that the total authorised and paid-up share capital of the Petitioner is only Rs. 1,00,000/- (One Lakh only). It is obvious that 10% of the Project cost has not been spent through equity, and thus, the Petitioner has failed to satisfy the eligibility criteria specified in the detailed procedure. The only reason no show cause has been issued qua the same is because the discrepancy has been identified after the date of termination of the 675 MW Connectivity.

Analysis and decision:

21. We have considered the rival submissions.



22. To summarise, the Petitioner has mainly submitted as follows:

- (a) SIPL applied for Stage I connectivity for 600 MW and 1200 MW, which was granted by CTUIL on 21.12.2021 and 22.1.2022, respectively. Thereafter, on 2.12.2021, SIPL applied for Stage II connectivity for the 1800 MW (tranches of 500 MW, 600 MW, and 700 MW), which was granted by CTUIL on 7.3.2022 pursuant to which a Transmission Agreement for Connectivity was entered into with CTUIL on 12.4.2022. On 25.4.2022, SIPL applied for the grant of Stage II connectivity for another 200 MW (not part of its 1800 MW applications).
- (b) After rectifying all the errors, including the removal of erroneous land documents from the list of supporting documents, on 12.7.2022, CTUIL proceeds to issue the Bay Allocation letter to SIPL. The said letter was issued by CTUIL only after it was satisfied with the replies to the queries raised by it during the meeting dated 8.7.2022 and the subsequent correspondences between the parties dated 8.7.2022, 11.7.2022, and 12.7.2022. CTUIL also granted Stage II connectivity to SIPL for 200 MW on 15.7.2022.
- (c) However, on 4.8.2022, CTUIL issued a first show cause notice to SIPL and its directors/promoters, inter alia, alleging that they had deliberately misrepresented and misled the CTUIL and for acting contrary to Clause 9.2.2 of the Revised Procedure for grant of Stage-II connectivity. The Petitioner responded to the said show cause on 18.8.2022. Further, vide separate addendums dated 21.8.2022, the Petitioner, inter alia, also highlighted that the applications, to the above extent, were rectified by SIPL in accordance with the provision allowing for the rectification of the applications.
- (d) However, in order to maintain a harmonious relationship with CTUIL and avert a protracted dispute, SIPL, vide its letter dated 30.8.2022, sought to surrender/withdraw the entire 1800 MW Stage II connectivity. Thereafter, CTUIL, vide its letter dated 31.8.2022, closed the proceedings under the aforesaid show cause by revoking the Stage II connectivity for 1800 MW and the Transmission Agreements



thereof and encashment of the connectivity bank guarantee furnished by SIPL amounting to Rs. 50 Lakh.

- (e) On 31.8.2022, SIPL applied afresh for a grant of Stage II connectivity for 350 MW and 125 MW, which was granted by CTUIL on 26.10.2022. However, on 22.2.2023, CTUIL issued a second show cause notice to SIPL and its directors/promoters, which expanded the scope of the first show cause notice and asked the Petitioner to show cause as to why the Petitioner should not be blacklisted from getting open access and connectivity from CTUIL. The Petitioner responded to the second show cause notice vide letter dated 3.3.2023. However, on 23.3.2023, CTUIL issued a blacklisting letter to SIPL and its promoters/directors from applying for and obtaining any connectivity or open access from CTUIL for a period of three years. Also, on 5.4.2023, CTUIL revoked SIPL's subsisting 675 MW Stage II connectivity, which was not the subject matter of any of the show-cause notices.
- (f) The Petitioner has further stated that the reading of the Second Show Cause Notice dated 22.02.2023, which led to the Blacklisting Letter dated 23.03.2023, reveals that the proceedings in these letters pertained to the 1800 MW Connectivity and not the current 675 MW Connectivity granted to SIPL by the CTU. Therefore, CTU erred in using the Blacklisting letter as a basis to revoke the 675 MW Stage II Connectivity, as it did not have the authority to do so because none of the Show Cause notice ever envisaged cancellation of the connectivity of 675 MW. SIPL was denied the opportunity to defend its interests, leading to an arbitrary action that contradicted the principles of natural justice and caused significant financial losses for SIPL.

23. The Respondent CTUIL has submitted as follows:

- (a) The present petition does not challenge the 1800 MW grant is not the subject of the present petition, and the grievance of the petitioner relates to the 675 MW Connectivity only. In terms of the Connectivity Regulations and the detailed procedure, the opportunity for rectification is granted prior to the grant of Connectivity. The Petitioner was asked to explain the availability of land after the grant of Stage-II Connectivity since the applications were based on a short-



term land use right agreement. The show cause notice was related to documents furnished at the time of application for Stage-II Connectivity as the same were the only documents relevant to determine eligibility for grant of connectivity and, in response to the show cause notice, the Petitioner accepted the mistakes in the application made by them, and the only explanation offered for the same was that 'they were clerical errors.' However, no rectification of the same was either possible or even attempted during the personal hearing, so the Petitioner unconditionally withdrew its applications.

- (b) Since the connectivity was obtained using fraudulent documents, revocation of such connectivity is not a penal action on the petitioner but merely a revocation of an entitlement wrongfully obtained. The penal action for submitting forged documents could not have been said to be limited to merely revocation of the connectivity. CTUIL had reserved the right to take the necessary action against the Petitioner Company in terms of the First SCN. After administrative reviews and evaluation of the appropriate course of action, on 22.02.2023, CTUIL issued another Show Cause Notice ("Second SCN") to SIPL, seeking a response and representation as to why SIPL should not be blacklisted. The Petitioner's reply dated 03.03.2023 was not satisfactory; accordingly, on 23.03.2023, CTUIL acting in terms of the powers inherent to all public authorities, blacklisted the Petitioner for a period of three years from applying and granting of access from the date of the said letter.
- (c) Further, in cognizance of the provisions under the GNA Regulations, CTUIL issued a letter dated 05.04.2023 ("Second Revocation Letter") cancelling the 675 MW connectivity of SIPL. The 675 MW connectivity was revoked due to the blacklisting of the Petitioner Company, the connectivity of 675 MW could not, in any case, transition to the new GNA regime under the GNA Regulations as it would entail entering into new agreements and processing of new applications of an already blacklisted entity.
- (d) Grant of the status of a "Connectivity + GNA grantee" would have been in the variance of the CTUIL's blacklisting letter dated 23.03.2023 wherein CTUIL had blacklisted the Petitioner Company with respect to not only grant of further connectivity but also grant of any open access for a period of three years. Accordingly, in view of the express fraud and infirmities under the application



and the regulatory framework, CTUIL revoked the Stage-II Connectivity granted to the Petitioner vide its letter dated 05.04.2023.

24. Considering the rival submissions, the following issues arise for our consideration:

Issue No. 1: Whether the Commission has the jurisdiction to decide the dispute regarding the backlisting of the Petitioner? Whether any directions can be issued to quash the Blacklisting Letter dated 23.03.2023 issued by the CTU?

Issue No. 2: Whether the CTUIL has rightly revoked the fresh connectivity to the quantum of 675 MW in respect of SIPL? Whether any direction is required to be issued to quash the Second Revocation Letter dated 05.04.2023 issued by the CTU?

25. The above issues have been dealt with in succeeding paragraphs.

Issue No. 1: Whether the Commission has the jurisdiction to decide the dispute regarding the backlisting of the Petitioner? Whether any directions can be issued to quash the Blacklisting Letter dated 23.03.2023 issued by the CTU?

26. CTUIL vide letter dated 23.03.2023 blacklisted the Petitioner. The relevant extract of the letter dated 23.03.2023 is as under:

"This is with reference to the Stage-II Connectivity sought by Soltown Infra Private Limited ("SOLTOWN") to the extent of aggregate 1800 MWs under three applications, namely Application No. 1200003573 for 500 MW, Application No. 1200003579 for 600 MW and Application No. 1200003603 for 700 MW and the consequent, grant of connectivity intimated vide CTU letter Ref No. C/CTU/N10511200003573, C/CTU/N10511200003579, and C/CTU/N10511200003603 dated 07.03.2022 respectively. Further a Show Cause Notice Ref No. C/CTU10223/SCN2 dated 04.08.2022 was also issued for inter alia deliberately misrepresenting and misleading CTU to approve the satisfaction of the conditions for grant of Stage-II connectivity under Clause 9.2.2 which amounted to fraud.

Whereas, SOLTOWN was granted multiple opportunities to explain the deliberate misrepresentation including a personal hearing at the request of SOLTOWN in due compliance of the principles of natural justice. In this regard, requests by SOLTOWN for extensions were also acceded to in order to ensure that SOLTOWN can make its best representation in response to the aforesaid show cause notice dated 04.08.2022.

Whereas, SOLTOWN had appeared for a personal hearing on 29.08.2022 but failed to satisfactorily explain the infirmities in the aforesaid applications and fairly admitted the mistakes on its part. Consequently, vide its letter dated 30.08.2022, SOLTOWN requested 'As the matter under discussion still remain unresolved, therefore we wish to unconditionally withdraw our three Stage11 connectivity's awarded as per the above-mentioned letters.' It is pertinent to note that SOLTOWN had categorically requested for an unconditional withdrawal.



Whereas, pursuant to the aforesaid request for unconditional withdrawal, CTU vide its letter dated 31.08.2022 revoked the Connectivity granted to SOLTOWN for cumulatively 1800MW and transmission agreements dated 12.04.2022 stood terminated with immediate effect. Further, it was declared that SOLTOWN shall not have any right to claim under the subject Stage-11 connectivity grants and same shall stand terminated for all intent and purposes. Further, CTU also categorically communicated that it was entitled to encash connectivity bank guarantee and appropriate the amount irrevocably. In this regard, it may be noted that CTU has encashed the said bank guarantee and credited the proceeds to the transmission charges pool (POC pool) on 11.09.2022. It also clearly denoted that the aforesaid actions were without prejudice to CTU'S rights in regard to the infirmities pointed out in communications resting with the CTU'S show cause notice dated 04.08.2022 as well as material shared during personal hearing held on 29.08.2022.

.....

Whereas it may also be pertinent to note that Hon'ble Central Electricity Regulatory Commission has held that connectivity to the inter-state transmission system is a national asset. Such connectivity also forms a part of the public infrastructure and is a resource to be utilized in the best interest of the nation and its citizenry. Any attempt to obtain access to the inter-state transmission system by illegal or fraudulent means also calls for an action towards an appropriate regulatory and exemplary resolution.

Whereas, notwithstanding the fraudulent conduct of SOLTOWN, it was with reference to the aforesaid that the show cause notice dated 22.02.2023 was issued to SOLTOWN invoking the rights reserved for taking actions against the specifically notified actions of SOLTOWN in the previous show cause notice dated 04.08.2022 regarding deliberate & misleading representations, fraudulent conduct, infirmities, anomalies and violation of various undertakings, declarations and statements made on affidavit.

Whereas, SOLTOWN submitted its response to the aforesaid show cause notice dated 22.02.2023 vide letter dated 03.03.2023. It may be noted that there is no merit in the submissions made in the aforesaid SOLTOWN letter dated 03.03.2023 in response to the specific matters on which categorical responses were sought. Notwithstanding the same, the following may be observed with respect to the submissions and contentions of SOLTOWN:

a)With reference to submissions made under the heading 'Background of Company & Its Promoters,, 'Business Model,, 'Comparison of SOLTOWN Solar Parks with MNRE funded Solar Parks, (Paras 3 - 9) it may be noted that the same does not preclude an independent conclusion on the specific facts, circumstances and merits of the case where SOLTOWN, regardless claimed background and business model, did act in a manner which was fraudulent and calculated to deceive CTU, while also being in direct contravention to the provisions of law / regulations / procedures / advisories and its own undertakings and declarations.

(b)With reference to the submissions made under the heading 'Land Use Fundamental, (Paras 10 - 12), it may be noted that SOLTOWN has fairly admitted to its wrongdoing, while labelling it as an inadvertent error. While the same has been duly considered by CTU in the personal hearing as well in consideration of



the aforesaid letter dated 03.03.2023, it does not adequately answer the sophistication and meticulousness in the duplication of registration endorsements in the land agreements submitted under one application in other applications, thereby leading the examiners to arrive at a finding of substantial compliance for each application in its individuality.

(c) With reference to the submissions made under the heading 'First Show Cause Notice dated 04.08.2022' (Paras 13 - 17); the same has been adequately responded in the previous communications and the personal hearing. It is denied that the actions of SOLTOWN amount to minor/ inadvertent deficiencies for the reasons and explanations provided above. Further, it may be noted that the present legal proceedings cannot be precluded merely because SOLTOWN has made certain expenditures under the Stage-11 Connectivity granted to it when the applicant and the grant itself were vitiated by fraud ab initio. It may further be noted that SOLTOWN has been afforded fair opportunity including grant of extensions in the matter of personal hearings and representations, and as such CTU has been duly compliant of the requirements of principles of natural justice.

(d) With reference to the submissions made under the heading 'Applications after Revocations of Previous Connectivities, (Para 18), it may be noted that the present proceedings are independent of the aforesaid grants and emanate from the previous show cause notice dated 04.08.2022 and the revocation letter dated 31.08.2022, as also explained above.

(e) With reference to the submissions made under the heading 'Show Cause Notice dated 22.02.2023 by CTU, (Paras 19 - 30) it is re-emphasised that the fraudulent conduct of SOLTOWN was a serious as well as an unprecedented matter which has been under review of various stakeholders as well as administrative hierarchies. The revocation of Stage-II Connectivity (1800MW), encashment of bank guarantee, termination of transmission agreements and deallocation of bays were the outcomes duly contemplated in terms of the provisions of CERC Revised Procedure and the executed agreements. The same amounted only to a regulatory and contractual closure of the issue. However, in terms of the statutory significance of the grant in question, the statutory roles and responsibilities of CTU as well as those of SOLTOWN as generation project developer, the fraudulent conduct of SOLTOWN merited a review by the concerned stakeholders. The present proceedings emanate from the rights reserved under CTU letter dated 31.08.2022, which was duly communicated to SOLTOWN. The aforesaid, as well as the reasonings and explanations provided above also adequately respond to unfair allegations of double jeopardy vis-a-vis the present proceedings. It may further be noted that as per the established law, the plea of legitimate expectation is barred in case of express fraud. All other submissions in the subject heading of SOLTOWN'S letter have been addressed in the preceding sections of this letter.

Therefore, in light of the specific facts and circumstances of the present case, the explanations and reasonings duly provided in the present communication as well as all previous communications made by CTU to SOLTOWN with reference to the present proceedings, SOLTOWN and its Promoters/Directors; are blacklisted from applying for



and obtaining any connectivity or open Access with CTU for a period of three years from the date of the issuance of this letter.”

As per above, CTUIL has blacklisted the SIPL and its Promoters/Directors from applying for and obtaining any connectivity or open Access with CTU for a period of three years from the date of issuance of the letter, i.e.23.3.2023. for deliberate and misleading representations, fraudulent conduct, infirmities, anomalies, and violation of various undertakings, declarations, and statements made on affidavit by the Petitioner in respect of Stage-II Connectivity applications for an aggregate quantum of 1800 MW (namely Application No. 1200003573 for 500 MW, Application No. 1200003579 for 600 MW and Application No. 1200003603 for 700 MW).

27. Petitioner SIPL has stated that no second set of proceedings can continue on the same cause of action, and no further punishment can be awarded once the Petitioner has already been sufficiently penalized and punished for the alleged wrongdoing, in terms of the doctrine of double jeopardy. Further, the Petitioner has stated that the CTUIL, which is a nodal agency empowered to grant statutory permissions having no statutory right to blacklist a grantee from seeking/ obtaining connectivity/Open Access, cannot go beyond the four corners of the Statute, i.e., Section 38 of the EA 2003 and exercise powers it has not been vested with.

28. CTUIL has submitted that the Petitioner has invoked the jurisdiction of this Commission by filing the present petition under Section 79(1)(f) of the Electricity Act. However, this Commission does not have jurisdiction to consider the present petition since (a) none of the powers under the 2009 Regulations have been exercised, and therefore, the remedy cannot be in terms of the provisions of the Electricity Act and; (b) the determination of the validity of blacklisting requires judicial review which cannot be exercised by this Commission. CTUIL has stated that blacklisting is an inherent power, being an instrumentality of the state and a PSU discharging functions in terms of Section 38(2) of the Electricity Act and various rules and regulations framed thereunder. CTUIL has also stated that any government, its agency, or its instrumentality can blacklist a company in a contractual matter where fraud has been committed by any person or company. In this regard, the CTUIL has placed its reliance on the Judgement of the Hon'ble Supreme Court of India vide judgement dated



11.05.2012 in the case of *Patel Engineering Ltd. vs. Union of India and Anr.* (2012) 11 SCC 257 quoted as under:

“11. The concept of Blacklisting is explained by this Court in *M/s. Erusian Equipment & Chemicals Limited v. Union of India and others*, (1975) 1 SCC 70, as under:

“Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains.” The nature of the authority of State to blacklist persons was considered by this Court in the above mentioned case [1] and took note of the constitutional provision (Article 298)[2], which authorises both the **Union of India and the States to make contracts for any purpose and to carry on any trade or business**. It also authorises the acquisition, holding and disposal of property. **This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract.** However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel State to enter into a contract, everybody has a right to be treated equally when State seeks to establish contractual relationships. The effect of excluding a person from entering into a contractual relationship with State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

12. It follows from the above Judgment that the **decision of State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into contractual relationship with such persons is called blacklisting**. State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. **The authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc.** There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that State is to act fairly and rationally without in any way being arbitrary – thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.”

As per above, the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into a contractual relationship with such persons is called blacklisting. Further, the authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose.

29. CTUIL has also referred to the Order dated 04.10.2013 of the Hon'ble Supreme Court of India in *Kulja Industries Ltd. v. Western Telecom Project BSNL* (2014) 14 SCC 731 quoted as follows:



"2. The short question that falls for determination in this appeal is whether the respondent-Bharat Sanchar Nigam Limited (for short 'BSNL') could have blacklisted the appellant for allotment of future contracts for all times to come. High Court of Judicature at Bombay before whom the blacklisting order was assailed by the appellant has answered that question in the affirmative and dismissed Writ Petition No.2289 of 2011 filed by the appellant giving rise to the present appeal.

.....

17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. **"blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.** The legal position on the subject is settled by a long line of decisions rendered by this Court starting with *Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr.* (1975) 1 SCC 70 where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the Authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed:

"20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

.....

27. In the result, we allow this appeal, set aside the order passed by the High Court and allow writ petition No.2289 of 2011 filed by the appellant but only to the extent that while the order blacklisting the appellant shall stand affirmed, the period for which such order remains operative shall be determined afresh by the competent authority on the basis of guidelines which the Corporation may formulate for that purpose. The needful shall be done by the Corporation and/or the competent authority expeditiously but not later than six months from today. The parties are left to bear their own costs."

As per above, "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties, the right to



take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties, but any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities.

30. Section 38(2) of the Electricity Act, 2003 provides the functions of the Central Transmission Utility as follows:

(a) to undertake transmission of electricity through inter-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to inter-State transmission system with –

....

(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by-

*(i) any licensee or generating company on payment of the transmission charges;
or*

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

.....”

As per the above provisions of the Act, the Central Transmission Utility has to provide non-discriminatory open access to its transmission system for use by any licensee or generating company or consumer. It is pertinent to mention that “open access” has been defined in Section 2(47) of the Act as “the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission.” This Commission has specified the Connectivity Regulations, 2009 and GNA Regulations, 2022, to facilitate non-discriminatory access to inter-State transmission systems. CTU has been designated as the nodal agency for the grant of connectivity and open access to inter-State transmission systems in terms of the above regulations.



31. We observe that the Petitioner was granted 1800 MW Stage-II Connectivity by CTU under Connectivity Regulations, 2009. The Revised Procedure for “Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System” (Revised Detailed Procedure) dated 22.02.2021 issued under Connectivity Regulations, 2009 provides as follows:

“9. Application for Stage-II Connectivity

.....

9.2 Eligibility for Stage-II Connectivity

Following shall be eligible for grant of Stage-II Connectivity:

9.2.1 An entity which

(i) has been issued the Letter of Award (LOA) by, or

(ii) has entered into a Power Purchase Agreement (PPA) with, a Renewable Energy Implementing Agency or a distribution licensee or an authorized agency on behalf of distribution licensee consequent to tariff based competitive bidding, on submission of such Letter of Award or PPA, as the case may be:

Provided that:

(a) such an entity is a grantee of Stage-I connectivity or has applied for Stage-I Connectivity or has applied for Stage-I Connectivity and Stage-II Connectivity simultaneously.

(b) an entity implementing the Renewable Hybrid Generating Station(s) including Round the Clock Hybrid Project, shall be eligible to apply for separate Stage-II Connectivity for each location based on the same LOA or PPA, for the capacity of the project not exceeding the quantum of power for which LOA has been awarded or PPA has been signed. For this purpose, the locations and capacity at each such location, duly certified by the Renewable Energy Implementing Agency or the distribution licensee, as the case may be, shall be submitted along with the Connectivity applications.

9.2.2 An entity who is a grantee of Stage-I Connectivity or has applied for Stage-I Connectivity or has applied for Stage-I Connectivity and Stage-II Connectivity simultaneously, and is not covered under Clause 9.2.1, and has achieved the following milestones:

(i) Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II Connectivity; and

(ii) Financial closure of the project (with copy of sanction letter) or release of at least 10% of the project cost including the land acquisition cost through equity, duly supported by Auditor’s certificate.”

32. The Petitioner was granted Stage-II Connectivity under Clause 9.2.2 of the above-quoted Procedure. We note that the Connectivity Regulations, 2009, or the Detailed



Procedures issued thereunder contain no provisions for blacklisting a connectivity grantee for any reason, including fraudulent conduct. CTUIL has argued that in terms of the judgement of the Supreme Court in *Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731*, there is no need for any such power of blacklisting being specifically conferred by a statute since the power to blacklist for breach of contract is inherent in CTU being a contracting party. CTUIL has further submitted that it being an instrumentality of the State, its action regarding blacklisting can only be challenged through judicial review before the High Court.

33. We have given our careful consideration to the referred Supreme Court judgements as quoted in paragraphs 28 and 29 of this Order. As per the judgement of the Supreme Court in *Patel Engineering Ltd. vs. Union of India and Anr. (2012) 11 SCC 257*, the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into a contractual relationship with such persons is called blacklisting. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc., and there need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary. In *Kulja Industries Ltd. v. Western Telecom Project BSNL (2014) 14 SCC 731*, Hon'ble Supreme Court has held that any such decision regarding blacklisting is subject to judicial review by a writ court when the same is taken by the State or any of its instrumentalities. We observe that CTU is an instrumentality of the State, and accordingly, its decision with regard to blacklisting is subject to judicial review by a writ Court. Accordingly, the prayer of Petitioner for quashing the CTU letter dated 23.3.2023 regarding blacklisting is not maintainable before the Commission under Section 79(1)(f) of the Act, and the Petitioner is at liberty to seek remedy at the appropriate forum in accordance with law.

34. Issue No.1 is answered accordingly.

Issue No. 2: Whether the CTUIL has rightly revoked the fresh connectivity to the quantum of 675 MW in respect of SIPL? Whether any direction is required to be issued to quash the Second Revocation Letter dated 05.04.2023 issued by the CTU?



35. Stage-II Connectivity for 675 MW was revoked by the CTUIL vide letter dated 05.04.2023 quoted as follows:

“Sub: Revocation of Connectivity granted to M/s Soltown Infra Pvt. Ltd. (SOLTOWN)

Ref: (i) Grant of Stage-I Connectivity vide intimations nos. C/CTU/N/05/1200003485 dated 21.12.2021 for 600MW, C/CTU/N/05/1200003571 dated 22.01.2022 for 1200MW, and C/CTU/N/05/1200003886 dated 15.07.2022 for 200MW

(ii) Grant of Stage-II connectivity vide intimation nos. C/CTU/N/05/1200003889 dated 15.07.2022 for 200 MW (as amended vide letter dated 26.10.2022), C/CTU/N/05/0212100007 dated 350MW, and C/CTU/N/05/0212100008 dated 26.10.2022 for 125MW

(iii) CTU letter dated 23.03.2023 blacklisting M/s SOLTOWN along with its Directors/Promoters

Sir,

This is with reference to our earlier letter dated 23.03.2023, blacklisting M/s SOLTOWN and its Promoters/Directors from applying for and obtaining any connectivity or open access with CTU for a period of three years from issuance of letter dated 23.03.2023. It is to mention that M/s SOLTOWN was earlier granted Stage-II Connectivity (cumulative quantum of 675 MW) vide CTU intimations referred at (ii) above along with Stage-I Connectivity vide CTU intimations referred at (i) above.

Further, as per CERC notification dated 01.04.2023, the effective date of GNA Regulation including arrangement for Transition shall be 05.04.2023 in place of 15.10.2022 and options shall be exercised by concerned entities afresh in accordance with these regulations on the basis of their status as on 05.04.2023. It is also to mention that GNA transition under Regulation 37 would amount to permission for transfer of power as per the connectivity granted to any developer. However, in light of blacklisting of M/s SOLTOWN shall not be allowed for transition under Regulation 37 of GNA Regulations, hence Stage-I and Stage-II Connectivity granted to M/s SOLTOWN become infructuous.

In view of the above, Stage-I and Stage-II Connectivity granted to M/s SOLTOWN as referred at Ref (i) & (ii) above, are hereby revoked along with associated Transmission Agreements with immediate effect. Further, Conn-BGs, submitted by M/s SOLTOWN shall be treated as per applicable CERC Regulations/Procedure.”

As per the above letter, the Stage-II Connectivity for 675 MW was revoked by CTUIL in light of the blacklisting of the SIPL and its Promoters/Directors vide its letter dated 23.03.2023.

36. We note that the Petitioner was granted connectivity for the quantum of 675 MW (200+350+125) in the following manner:

| S. No | Date of Application | Date of Grant | Stage II Application No. | Quantum (in MW) | Total Quantum (in MW) |
|-------|---------------------|---------------|--------------------------|-----------------|-----------------------|
| 1 | 25.04.2022 | 15.07.2022 | 1200003889 | 200 | 675 |
| 2 | 31.08.2022 | 26.10.2022 | 0212100007 | 350 | |
| 3 | 31.08.2022 | 26.10.2022 | 0212100008 | 125 | |



CTUIL and SIPL have also entered into a transmission agreement dated 17.11.2022 for the 675 MW Stage-II Connectivity, which was valid till the connectivity was granted.

37. We have observed under Issue No.1 that the Blacklisting of the Petitioner was done due to anomalies in Stage-II Connectivity applications for 1800 MW (500+600+700). Such blacklisting vide letter dated 23.3.2023 was preceded by a show cause notice dated 04.08.2022 and a second show cause notice dated 22.2.2023. The relevant extracts of the First Show Cause Notice dated 04.08.2022, revocation letter dated 31.08.2022, and second show cause notice dated 22.2.2023 are as under:

(A) First Show Cause Notice dated 04.08.2022

“Sub: Notice to Show Cause for acting contrary to the conditions prescribed under Clause 9.2.2 of the Revised Procedure and contrary to clear representations contained in the Undertakings and Affidavits submitted with the Connectivity Applications.

Sir,

This is with reference to the Stage-II Connectivity sought by Soltown Infra Private Limited ("SOLTOWN") to the extent of aggregate 1800 MWS under three applications, namely Application No. 1200003573 for 500 MW, Application No. 1200003579 for 600 MW and Application No. 1200003603 for 700 MW. After a preliminary scrutiny of the applications, the grant of connectivity was intimated vide CTU letter Ref No. C/CTU/N10511200003573, C/CTU/N10511200003579, and C/CTU/N10511200003603 dated 07.03.2022 respectively.

....

*4. Whereas, upon receipt of information about certain infirmities/anomalies in the Stage-II Connectivity applications made by SOLTOWN, a post grant detailed scrutiny by CTU was carried in respect of all the **three connectivity applications aggregating 1800 MW. This examination inter alia revealed that SOLTOWN has duplicated and submitted the same land right related documents** in more than one application and also, the same computer-generated endorsements have been submitted with different land right related documents purporting it to be registered.*

5. Whereas, prima facie it appears that SOLTOWN has, deliberately misrepresented and misled CTU to approve the satisfaction of the conditions for grant of Stage-II connectivity under Clause 9.2.2 which constitutes a fraud. Consequently, the grant of Stage-II connectivity in favour of SOLTOWN is vitiated by reason of such wilful and deliberate act on the part of SOLTOWN.

*6. And, therefore, SOLTOWN is hereby called upon to explain within 7(seven) days from the date of this notice (addressed by both email/Registered AD), **why 1800 MW (aggregate) Connectivity granted to Soltown Infra Private Limited vide CTU letter Ref No. C / CTU / N / 05 / 1200003573, C / CTU / N / 05 / 1200003579, and C / CTU / N***



/ 05 / 1200003603 dated 07.03.2022 cannot be revoked along with all associated consequences for deliberately misrepresenting and misleading CTU and for acting contrary to Clause 9.2.2 of the Revised Procedure for grant of Stage-II connectivity.”

(B) Second show cause notice dated 22.02.2023:

“This is with reference to the Stage-II Connectivity which were granted to Soltown Infra Private Limited ("SOLTOWN") for a cumulative quantum of 1800 MWs vide CTU intimation letters dated 07.03.2022 (vide ref nos. C/CTU/N10511200003573, C/CTU/N10511200003579, and C/CTU/N10511200003603) against application nos. 1200003573 for 500 MW, 1200003579 for 600 MW and 1200003603 for 700 MW respectively.

In this regard, subsequent to the grant of Stage-II connectivity on coming to know of a serious breach and fraud played by SOLTOWN and its Directors, a detailed scrutiny was carried out by CTU in respect of all the three connectivity applications referred above and the following abnormalities were revealed: -

- a) Duplicity of land documents in more than one application.*
- b) Duplicity of endorsements from one agreement to another.*
- c) Misinterpretations in the title report.*
- d) Bilateral violation of the undertaking/ Affidavit submitted for accuracy and correctness of data and records.*

....

Subsequent to above, vide email dated 30.08.2022, SOLTOWN submitted a letter dated 31.08.2022, unconditionally withdrawing all the three (3) subject Stage-II Connectivity grants aggregating 1800 MW. In view of the specific request regarding withdrawal of the Stage-II Connectivity, CTU revoked the subject three (3) Stage-II Connectivity granted to SOLTOWN vide letter dated 31.08.2022 along with all associated consequences attached, including encashment of BG.

CTU in its revocation letter dated 30.08.2022 had stated that the actions taken by it were without prejudice to CTU'S rights in regard to the infirmities pointed out in the Show Cause Notice dated 04.08.2022 as well as material shared by CTU during the personal hearing held on 29.08.2022

In furtherance to the aforesaid, the matter regarding infirmities in the applications was further reviewed at various levels and it has been taken into cognizance that SOLTOWN has acted in direct contravention of the Regulations of CERC, RE Revised Procedure, and advisory uploaded on CTU website and in fact had fraudulently attempted to gain by getting all the three (3) Stage-II Connectivity by overlapping and duplicating land documents.

In this regard, it is pertinent to mention that the various milestones, including fulfilment of the requirement under Clause 9.2.2 of RE Revised Procedure, are the objective criterions which have been prescribed by CERC for assessing the eligibility of the applicants and filtering out ineligible applicants. Accordingly, it is imperative that the prescribed conditions for grant of Stage-II Connectivity are met by applicants in absolute conformity with the regulatory provisions. The deliberate misrepresentation on the part of SOLTOWN misled CTU to approve the satisfaction of the conditions for grant of Stage-II connectivity under



Clause 9.2.2 of Revised RE Procedure which constitutes a fraud on the part of SOLTOWN and its Directors to obtain the grant from CTU. Accordingly, it is proposed to consider that SOLTOWN and its Directors, the Group Companies and other companies where the said Directors are involved, etc. be Blacklisted from getting any open access from CTU for a specified period.

*In light of the aforesaid, SOLTOWN and its Directors are hereby to show cause within 15 (fifteen) days from the date of this notice as to why an action of Blacklisting of SOLTOWN, its Directors, Group Companies and other companies where the said Directors are involved, should not be taken **to prevent from participating in the Grant of any open access from CTU for a period of three (3) years.** The reply to this Show Cause Notice shall be addressed to COO, CTU and shall be delivered at Central Transmission Utility of India Limited, Plot No. 2, Sector 29, Gurugram -122001 within the timeline of 15 days from the date of this letter. CTU reserves the right to take further action in the matter in accordance with Law.”*

We observe that the show cause notice dated 04.08.2022 was with respect to 1800 MW connectivity only, and the penal action that was proposed to be taken was only the revocation of the 1800 MW connectivity and associated consequences. There is no mention of any action to be taken against 200 MW connectivity out of the 675 MW connectivity, which was also subsisting as on the date of issuance of the said show cause notice. We also note that CTUIL, vide their letter dated 31.08.2022, revoked the Stage-II Connectivity to the quantum of 1800 MW and terminated the Transmission Agreement dated 12.04.2022. Further, the Second Show cause notice dated 22.02.2023 also referred to fraudulent representation contained in Undertakings and Affidavits submitted with the Connectivity applications for 1800 MW, and there is no mention of 675 MW connectivity, which was also subsisting as on the date of issuance of the show cause notice dated 22.02.2023.

38. We observe that no show cause notice was issued to the Petitioner before revoking 675 MW of Connectivity, nor was any opportunity given to the Petitioner to be heard before the revocation of the 675 MW Stage-II Connectivity vide CTUIL letter dated 05.04.2023.

39. The Hon'ble Supreme Court of India vide order dated 18.04.2023 in *Civil Appeal Nos. 2890-2891 of 2023 (arising out of SLP(c) NOS. 10362-10363 of 2022) in the matter of Isolators and Isolators Vs Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd. & Anr.* held as follows:



*“23. As regards the question of penalty, we find force and substance in the contentions urged on behalf of the appellant that such an imposition cannot be approved for two major factors: **The first and foremost being that in the show-cause notice dated 26.11.2019, the appellant was put to notice only as regards the proposition of debarment and in the said notice, nothing was indicated about the proposed imposition of penalty.** Though in the cancellation orders dated 19.11.2019 and 21.11.2019, the respondents purportedly reserved their right to take appropriate steps, those orders cannot be read as show-cause notice specifically for the purpose of imposition of penalty. The submissions on behalf of the respondents in this regard that the said orders dated 19.11.2019 and 21.11.2019 have attained finality do not take their case any further. Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression ‘cancelled with imposition of penalty’ in those orders. **Looking to the terms of contract, quantification of the amount of penalty (if at all the penalty is considered leviable) could not have been carried out without affording adequate opportunity of response to the appellant. That being the position, the action of the respondents in imposing the penalty without even putting the appellant to notice as regards this proposed action cannot be approved.**”*

23.1. Secondly, the authority concerned has proceeded to impose the maximum of penalty to the tune of 10% of the deficit supply without specifying as to why the maximum of penalty was sought to be imposed. In this regard, the relevant factors as indicated by the appellant could not have been ignored altogether. Unfortunately, the High Court has totally omitted to consider this aspect of the grievance of the appellant.

*23.2. Though, ordinarily, for such an omission of the High Court, the course would have been to remit the issue for consideration but, we are of the view that no useful purpose would be served by remitting such an issue in this matter. This is for the simple reason that imposition of penalty against the appellant cannot be approved because of the want of specific show-cause notice. **Moreover, no specific quantum of loss has been specified by the respondents so as to justify the imposition of maximum of penalty.** Viewed from any angle, the impugned order dated 17.08.2020 is required to be set aside.”*

The Hon’ble Supreme Court has clearly held in the above judgement that any action of imposing a penalty cannot be approved without even putting the affected party on notice for the proposed action. In light of the same, the revocation of the 675 MW Connectivity of SIPL, without putting it on notice for the proposed action of revocation, is in violation of the principle of natural justice. It is further noticed that the blacklisting order was prospective in operation and was not intended to affect the pre-existing contract. The decision conveyed to the Petitioner through the letter dated 23.3.2023 reads as under:

“Therefore, in light of the specific facts and circumstances of the present case, the explanations and reasonings duly provided in the present communication as well as all previous communications made by CTU to SOLTOWN with reference to the present proceedings, SOLTOWN and its Promoters/Directors; are blacklisted from applying for and obtaining any connectivity or open Access with CTU for a period of three years from the date of the issuance of this letter.”



The above decision is prospective in operation, which debars the Petitioner from applying for or obtaining connectivity or open access from CTU for a period of 3 years from the date of issue, i.e., 2.3.2023, and does not cover the pre-existing grant of connectivity for 675 MW and therefore, the blacklisting order cannot be retrospectively applied to revoke the connectivity for 675 MW.

40. We observe that CTUIL, while revoking the Connectivity for 675 MW, has stated that “GNA transition under Regulation 37 would amount to permission for transfer of power as per the connectivity granted to any developer, however, in light of blacklisting of M/s SOLTOWN shall not be allowed for transition under Regulation 37 of GNA Regulations, hence Stage-I and Stage-II Connectivity granted to M/s SOLTOWN become infructuous.”. As per this, the 675 MW Connectivity was revoked as a result of the blacklisting of the Petitioner and not due to any shortcomings in the application for 675 MW. We have perused the guidelines on the Blacklisting of different Government organizations.

(A) Policy on Black Listing by the Balmer Lawrie & Co. Ltd.:

“.....

C. Effect of banning on other ongoing contracts/tenders

C.1 If an agency is put on holiday/ banned, such agency should not be considered in ongoing tenders/future tenders

C.2 However, if such an agency is already executing other order(s)/ contract (s) where no corrupt/fraudulent/ collusive/coercive practice is found, the agency should be allowed to continue till its completion without any further increase in scope except those incidental to original scope mentioned in the contract.

C.3 If an agency is put on the Banning List during tendering and no irregularity is found in the case under process:

C.3.1 After issue of the enquiry / bid / tender but before opening of Technical Bid, the bid submitted by the agency shall be ignored.

.....”

(B) “Policy & Procedure for Debarring/ Blacklisting of Agency from Business Dealing with MSEDCL” of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL):

“15. CONSEQUENCES OF BANNING / SUSPENSION / DE- REGISTRATION /



/ DEBARMENT / BLACKLISTING

Upon issuance of the order of banning/suspension/deregistration/debarment/ Blacklisting of an agency from future business dealings with MSEDCL, the banned/suspended/deregistered/debarred/blacklisted agency along with its Joint Venture Partner Firm shall not be allowed to participate in any future tender/s, during the baned/suspended/deregistered/debarred/blacklisted period. Further, in case the agency has already participated in the tender process and the price bid is not opened prior to issuance of the order of banned/suspended/deregistered/ debarment/blacklisting of business dealings, its Techno Commercial Bid shall be rejected and Price Bid shall not be opened.

In the event the Price Bid of the participating agencies has been opened and the agency against whom the order of banned/suspended/deregistered/debarment/blacklisting of business dealings has been issued, the bid of the banned/suspended/deregistered /debarred/blacklisted agency shall be rejected even if he is found to be successful bidder, considering the agency as disqualified. **Provided the order of banned/suspended/deregistered/ debarment/blacklisting of business dealings issued against any agency shall not override the rights of the banned/suspended/deregistered /debarred/blacklisted agency already engaged in executing any other contract(s) till its completion.**

If registered agency/s (a firm partnership or company) is deregistered /banned/suspended/ debarred/blacklisted, then any other registered agency/s (a firm, partnership or company), with any partner or power of attorney holder of the deregistered/banned/suspended agency/s, shall also stand automatically deregistered/banned/suspended/debarred/blacklisted. Proprietor/ Partner/s Director/s Power of Attorney Holder/s of banned /suspended / deregistered / debarred/blacklisted firm shall not be allowed in Joint ventures.

Debarred Agency/s (in case of Firms with outside registration) and/or agency who are penalized by any other Govt./ Semi Govt. agency such as PWD /CPWD /MJP /MHADA /MES/CIDCO etc shall not be entitled to be issued any tender document/s or quotations/s for any MSEDCL works during the period of debarring/blacklisting. Further for bids in process, the agency/s will not be considered for award of works/contract, even if the said debarred/blacklisted agency/s is having registration of MSEDCL or any other Govt./ semi Govt. agency such as PWD/CPWD/MJP/MHADA/MES/CIDCO etc”

(C) “Guidelines on debarment of firms from the Bidding” issued by the Department of Expenditure vide OM dated 2.11.2021 provides as follows:

“18. Contracts concluded before the issuance of the debarment order shall, not be affected by the debarment Orders.”

41. As per the above-quoted guidelines for blacklisting by different Govt. organizations of banned/suspended/deregistered/debarment/blacklisting issued against any agency



shall not override the rights of the banned/suspended/deregistered /debarred/blacklisted agency already engaged in executing any other contract(s) till its completion. In the present case, the CTUIL and SIPL have already entered into a transmission agreement on dated 17.11.2022 for the 675 MW Stage-II Connectivity, which was valid till the connectivity was granted.

42. CTUIL has submitted that the realignment of the connectivity agreements in terms of the GNA would mean the creation of new rights because, under the GNA Regulations, access does not have to be separately applied for. Hence, when the connectivity agreements under the Connectivity Regulations would entail only the grant of connectivity and not Long Term or other Access, connectivity agreements under the GNA Regulations would give the bundle of rights of connectivity as well as access. Therefore, such realignment in terms of the GNA Regulations would mean that a new contract with new rights would have to be entered into. Therefore, the new agreements under the GNA Regulations would entail new rights through a new contract, and CTUIL, having blacklisted an entity, cannot enter into new contracts with them, which would essentially frustrate the blacklisting order subsisting.

43. On the above aspect, we observe that the 675 MW Stage-II Connectivity was already subsisting as on the date of issuance of the blacklisting letter dated 23.03.2023, and accordingly, it cannot be termed as a fresh Connectivity. In this regard, the relevant provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 is as under:

“37.2. If Connectivity has been granted but Long Term Access has not been granted in accordance with the Connectivity Regulations, 2009 and Connectivity is yet to become effective as on the date of coming into effect of these regulations, the same shall be treated as under:

(a) The entity shall have the option of, either (i) to convert the Connectivity granted under the Connectivity Regulations, 2009 as Connectivity made under these Regulations complying with the requirements under these regulations, or (ii) to surrender such Connectivity.

(b) Such option under clause (a) of this Regulation shall be exercised by the applicant within one month of coming into effect of these Regulations, failing which the Connectivity granted under the Connectivity Regulations, 2009 shall be considered as surrendered.



(c) In case the Connectivity is surrendered in terms of option (ii) of clause (a) of this regulation or clause (b) of this regulation, Conn-BG1 and Conn-BG2, if any, furnished under the Connectivity Regulations, 2009 shall be returned.

Provided that in case the construction of terminal bay has been awarded for implementation under ISTS through CTU, Conn-BG2 furnished under the Connectivity Regulations, 2009 shall be encashed.

(d) In case, the entity exercises the option to convert the Connectivity granted under the Connectivity Regulations, 2009 as Connectivity under these Regulations in terms of option (i) of clause (a) of this regulation, the Nodal Agency shall, within next 30 days, intimate the amount of Conn-BG1, Conn-BG2 and Conn-BG3, to be paid by such entity in terms of Regulation 8 of these regulations, after adjusting bank guarantee, if any, paid by such entity under the Connectivity Regulations, 2009.

(e) Conn-BG1, Conn-BG2 and Conn-BG3 shall be furnished by the entity within two (2) months of intimation under clause (d) of this Regulation.

(f) On furnishing of Conn-BG1, Conn-BG2 and Conn-BG3 under clause (e) of this Regulation, existing agreements between the entity and the Nodal Agency shall be aligned with provisions of Regulation 10.3 of these regulations.

(g) On alignment of existing agreements under clause (f) of this Regulation, the entity shall become Connectivity grantee for all purposes under these regulations.

....”

As per the above provisions of the GNA Regulations 2022, if the Connectivity has been granted but Long Term Access has not been granted in accordance with the Connectivity Regulations, 2009, and the entity exercises the option to convert its Connectivity under GNA Regulations, on furnishing of Conn-BG1, Conn-BG2, and Conn-BG3, the existing agreements between the entity and the Nodal Agency shall be aligned with provisions of GNA Regulations and on the alignment of existing agreements, the entity shall become Connectivity grantee. Therefore, in terms of the GNA Regulations, the Connectivity granted to an existing connectivity grantee under Connectivity Regulations cannot be termed as fresh connectivity, but it is to be aligned as per GNA Regulations. As per the quoted guidelines for blacklisting by different Govt. organizations, blacklisting issued against any agency shall not override the rights of such agency already engaged in executing any other contract(s) till its completion, which implies blacklisting works for future contracts post - blacklisting and not on current contracts.



44. In view of the above discussions, we observe that CTUIL has revoked the 675 MW Connectivity granted to SIPL vide its letter dated 05.04.2023 without the issuance of any show cause notice. Further, no opportunity was given to SIPL to be heard with respect to any infirmity in the said 675 MW Connectivity Applications before the issuance of the revocation letter dated 05.04.2023. Further, the Petitioner was a Connectivity grantee for 675 MW as on 5.4.2023 who had already entered into a Transmisison Agreement with CTU and carried rights under the Connectivity Regulations, 2009 and the GNA Regulations to transition its Connectivity under the GNA Regulations. Therefore, we are of the view that the revocation of 675 MW Connectivity vide letter dated 05.04.2023 is not in order, and accordingly, the revocation letter dated 05.04.2023 is hereby set aside.

45. As we have set aside the letter dated 05.04.2023 vide which the 675 MW Connectivity granted to SIPL was revoked under issue no. 2, we direct CTUIL to allow the Petitioner to convert the 675 MW Connectivity, initially granted under the Connectivity Regulations, 2009, to Connectivity in compliance with the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022. Accordingly, the Prayer (ii) and (iii) of the Petitioner are allowed .

46. The Petition No. 114/MP/2023, along with IA Nos. 28/2023 and 51/2023 are disposed of in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(Jishnu Barua)
Chairperson

