



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.: IA No. 28 of 2024
in Petition No. 4/MP/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 1st of May, 2024

IN THE MATTER OF:

Petition under Section 79, including 79(1)(b), 79(1)(f) & 79(1)(k) of the Electricity Act, 2003 seeking termination of the Power Purchase Agreement (PPA) dated 16.09.2021, executed by the Petitioner with Solar Energy Corporation of India Limited (SECI), without any financial liability and consequence thereof.

AND IN THE MATTER OF:

Adani Renewable Energy Seven Limited,
Adani Corporate House, 4th Floor, South Wing,
Shantigram, S G Highway,
Ahmedabad, Gujarat – 382 421

...Petitioner

Versus

Solar Energy Corporation of India Limited
6th Floor, Plate-B, NBCC Office Block,
Tower 2, East Kidwai Nagar,
New Delhi – 110 023

...Respondent

Parties Present: Shri Amit Kapur, Advocate, ARESL
Shri Hemant Singh, Advocate, ARESL
Shri Chetan Garg, Advocate, ARESL
Ms. Lavanya Panwar, Advocate, ARESL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Shirsa Saraswati, Advocate, SECI

आदेश/ ORDER

The Petitioner Adani Renewable Energy Seven Limited (ARE7L) is a Special Purpose Vehicle (SPV) formed by its parent company, Adani Renewable Energy Holding Fifteen Limited (AREHFL), pursuant to being declared as one of the successful bidders for the development and establishment of a 300 MW Wind Power Project (WPP) in the State of Karnataka as per the Request for Selection (RfS) dated 21.12.2020, which was issued by SECI for procurement of 1200 MW of power generated from the ISTS connected Wind Power Project (Tranche-X).

2. Respondent, Solar Energy Corporation of India Limited (SECI) is a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE). SECI has been designated as the nodal agency for the implementation of MNRE schemes to facilitate the implementation of the National Solar Mission (NSM) and achievement of targets set therein.
3. The Petitioner has made the following prayers in the Petition (No. 4/MP/2024):
 - a) *Admit the present petition;*
 - b) *Declare that the Power Purchase Agreement dated 16.09.2021 stands frustrated, and further direct that the Petitioner stands released/ discharged from any obligations under the said Agreement, including any financial liability or consequence thereof, for the reasons stated in the present Petition;*
 - c) *In the interim, direct the Respondent/ SECI not to take any coercive action against the Petitioner, till the pendency of the present petition; and*
 - d) *Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.*

Prayers in IA.No.28 of 2024

- a) *Take on record the Order dated 08.04.2024 passed by the Hon'ble Delhi High Court in W.P.(C) 5154 of 2024 for the purpose of adjudication of the captioned petition in an expeditious manner; and*
- b) *Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.*

Factual Matrix:

4. The brief facts of the case is as under:

Project details	
Scheme	Setting up of 1200 MW ISTS-connected Wind Power Projects in India under Tariff-Based Competitive Bidding(Tranche-X)
Location	At village Koppal, in the State of Karnataka.
Project	300 MW Wind Power Project
21.12.2020	RfS was floated by SECI
29.01.2021	Amendment 1 to RfS
08.02.2021	Amendment 2 to RfS
19.02.2021	Bid was submitted
15.03.2021	E-reverse auction was conducted
19.03.2021	LoA was issued by SECI.
25.03.2021	AREHFL accepted the conditions of LoA and intimated that the project will be executed by SPV i.e., Adani Renewable Energy Seven Limited (ARE7L)
14.07.2021	CTU intimated Adani about grant of Stage-II connectivity and directed Petitioner to sign TSA for 30 years from the date of intimation.
02.09.2021	BG was executed; valid till 09.02.2024 with claim date up to 09.02.2025.
02.09.2021; 03.09.2021; 06.09.2021	SECI vide email sought certain documents (copy of BG within 7 days prior to date of signing of PPA) from the Petitioner and intimated that it plans to sign PPA by 10.09.2021.
07.09.2021	SECI, vide email dated 07.09.2021 informed the Petitioner that L-2 Schedule submitted does not include the requisite details and sought a revised L-2 Schedule specifying the number of Units
08.09.2021	SECI vide email asked the Petitioner to submit an amended version of the BG with validity up to 10.03.2024
09.09.2021	Adani submitted the documents to SECI
13.09.2021	BG was amended and the expiry date was extended up to 10.03.2025
16.09.2021	PPA was executed

20.09.2021	SECI provided a break up of allocation of 300 MW to the Discoms <table border="1" style="margin-left: 40px;"> <thead> <tr> <th>DISCOM name</th> <th>% share</th> </tr> </thead> <tbody> <tr> <td>Jaipur DISCOM</td> <td>40.27</td> </tr> <tr> <td>Ajmer DISCOM</td> <td>27.14</td> </tr> <tr> <td>Jodhpur DISCOM</td> <td>32.59</td> </tr> </tbody> </table>	DISCOM name	% share	Jaipur DISCOM	40.27	Ajmer DISCOM	27.14	Jodhpur DISCOM	32.59
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25.01.2022	Petitioner intimated Karnataka Renewable Energy Development Limited (KREDL) that certain land has been identified for the development of 300 MW of projects and requested for in-principle approval.								
10.02.2022	KREDL denied in-principle approval as there was no suitable land for setting up the project near Alur village								
01.03.2022	Petitioner sought extension in SCoD on account of delay in LTA operationalization;								
24.04.2022	The Petitioner approached a private land aggregator, i.e., SML Electricals India Private Limited (SML)								
27.04.2022	SML intimated the Petitioner about the availability of land parcels at Kotamuchagi, Karnataka which was near the PGCIL's defined sub-station at Kopal for setting up the project.								
05.05.2022	The Petitioner issued progress report to SECI about 300 MW projects to be set up at Koppal, Karnataka. Land acquisition was under process.								
09.05.2022	SML vide its letter dated 09.05.2022 informed the Petitioner that the proposed area of land near Kotamuchagi, Karnataka, for the development of 300 MW of WPP is not available as the same has been allocated to other developers and some suitable parcels of land are already being transferred by original Government Order ("GO") holders to some other developers.								
27.05.2022	SECI extended the dates for achieving conditions subsequent and financial closure: Scheduled Date for achievement of Condition subsequent & Financial Closure. <table border="1" style="margin-left: 40px;"> <thead> <tr> <th>Original Date as per PPA</th> <th>Current Revised Schedule Date</th> </tr> </thead> <tbody> <tr> <td>10.04.2022</td> <td>12.07.2022</td> </tr> </tbody> </table> Scheduled Commission Date <table border="1" style="margin-left: 40px;"> <thead> <tr> <th>Original Date as per PPA</th> <th>Current Revised Schedule Date</th> </tr> </thead> <tbody> <tr> <td>10.03.2023</td> <td>11.06.2023</td> </tr> </tbody> </table>	Original Date as per PPA	Current Revised Schedule Date	10.04.2022	12.07.2022	Original Date as per PPA	Current Revised Schedule Date	10.03.2023	11.06.2023
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Original Date as per PPA	Current Revised Schedule Date								
10.03.2023	11.06.2023								
06.03.2023	SECI informed the Petitioner that Conditions Subsequent and Financial closure was achieved by the Petitioner on 30.06.2022								
10.03.2023	SCoD of the project								

17.04.2023	CTU issued directives to all the Wind Power Project Developers to comply with the provisions of CERC (<i>Connectivity and General Network Access to the inter-State Transmission System</i>) Regulations, 2022 (“GNA Regulations”) alongwith 1 st amendment dated 01.04.2023.
03.05.2023	The Petitioner intimated CTU that it was compelled to surrender the LTA and connectivity for 300 MW on account of non-availability of suitable land parcel for setting up the project.
03.07.2023	SECI issued notice of delay in commissioning the project and stated that LD stands operational from 12.06.2023. Maximum time for commissioning full project was revised to 9 months from the revised SCoD
13.09.2023	The Petitioner submitted status report of the projects and submitted that they are facing difficulties in identification of land parcel for setting up the project.
04.10.2023	SECI upon perusing the documents allowed the Petitioner to commission full project by 07.03.2024 with payment of LD
06.11.2023	The Petitioner submitted that after the first amendment of the RfS, there was vagueness and uncertainty which had crept in for the bidders to make an appropriate site selection by identifying land close to one of the designated sub-stations areas, in terms of Clause 7.2 of the RfS. Further, the Petitioner submitted that despite sincere efforts of the Petitioner for development of 300 MW wind power project, the Petitioner was not able to make substantial progress in the execution of the Project due to non-availability of land at near-by identified sub-station, out of designated sub-stations, as per RfS.
08.04.2024	Delhi High Court Order held that status quo shall be maintained and SECI will not encash the BG till the consideration of the matter by this Commission
08.04.2024	SECI withdrew the invocation of BG.

5. The Petition, along with IA, came up for hearing on 19.04.2024. During the course of hearing, the Petitioner submitted that the instant Petition has been filed seeking termination of the Power Purchase Agreement (PPA) dated 16.09.2021 executed between the Petitioner and SECI, on the ground that due to non-availability of suitable land at the nearby identified sub-station, out of the designated sub-stations in the State of Karnataka, had made it impossible for the Petitioner to commission the Project in a timely manner. The Petitioner further submitted that as per the order of the Hon’ble Delhi High Court, the Commission has to consider whether the interim direction should continue only after considering the facts and circumstances of the case, and the parties may be accordingly permitted to first complete pleadings in the matter.
6. *Per Contra*, SECI submitted that Petitioner had approached the Hon’ble High Court of Delhi by WP (C) No. 5154/2024 and CM Appl. No.21097/2024 restraining SECI from

invoking/encashing the BG. The Hon'ble High Court, vide its order dated 08.04.2024, has directed that the *status quo* be maintained till the consideration of the matter by this Commission and has further held that *it shall be open for this Commission to consider whether or not continuation of the aforesaid interim direction is warranted.*

7. On the aspect of continuation of interim direction, SECI submitted that the matter be decided on 19.04.2024 itself. SECI further objected to any stay on invocation of the BG. During the course of the hearing dated 19.04.2021, SECI submitted that APTEL, in *catena* of judgements held that a BG is an independent and distinct contract between the bank and beneficiary and is not qualified by the underlying transaction between the person at whose instance the BG was given and the beneficiary and that encashment of amount specified in BG does not depend upon the result of the decision in the dispute between the parties and has accordingly, refused to grant any stay on invocation/encashment of the BG. SECI further submitted that it does not intend to file any further submissions on the aspect of the invocation of BG, and no further stay can be granted on the invocation of BG in view of various judgements of APTEL.

Submissions of the Petitioner in IA. No. 28 of 2024:

8. Briefly, the Petitioner has submitted that SECI, prior to the date of listing for admission (i.e., 19.04.2024) sought to invoke the Petitioner's Bank Guarantee vide letter dated 05.04.2024 (*which was received on 06.04.2024*). Bank Guarantee for an amount of Rs. 36 Crores was extended by the Petitioner on 28.02.2024, to be valid up to 10.03.2025 with a claim period up to 10.03.2026. Thus, apprehending encashment of the BG, the Petitioner approached the Hon'ble Delhi High Court by way of a writ petition being W.P.(C) 5154 of 2024 *inter alia* seeking issuance of a writ of Prohibition or any other writ, order, or direction of similar nature restraining the SECI/ Respondent from invoking/encashing/enforcing/calling upon or receiving any money under Bank Guarantee and consequently, stay the operation and effect of letter dated 05.04.2024 issued by SECI till the time the Petition filed by the Petitioner bearing No.4/MP/2024 is decided. In terms of the directions passed by the Hon'ble Delhi High Court, SECI, vide its letter dated 08.04.2024, withdrew the invocation of the Bank Guarantee, and, as such, the instant I.A. has become infructuous.

Submissions of SECI:

9. During the course of hearings dated 19.04.2024 and 29.04.2024, SECI orally submitted that it does not intend to file any submissions on the aspect of invocation of BG as APTEL has

already held in a catena of judgements that BG is an independent and distinct contract between the bank and beneficiary and does not depend upon the result of the decision in the dispute between the parties. SECI submitted that in view of several judgements passed by APTEL on the aspect of invocation of BG, no further stay might be granted by the Commission, and the I.A may be decided as per the Order of the Commission.

Analysis and Decision:

10. We have considered the submissions of the parties and have carefully perused the records qua the issue raised by the Petitioner/Applicant in the I.A. 28 of 2024 on the issue as to *whether any further stay may be granted to the Petitioner on invocation of the Bank Guarantee by SECI pursuant to Hon'ble Delhi High Court's order dated 08.04.2024?*

11. We note that Hon'ble Delhi High Court vide order dated 08.04.2024 has held as under:

17. *Considering the above aspects, it is directed as under:-*

i. *The CERC is requested to take up the petitioner's petition and/or the urgent application that is in the process of being filed before the CERC, at the earliest possible and preferably on 10.04.2024 itself (on which date the concerned bench of the CERC is stated to be assembling);*

ii. *Till consideration of the matter by the CERC, status quo shall be maintained, and no precipitative steps shall be taken by the respondent no.1 qua bank guarantee bearing No.50350IGL0007821 dated 02.09.2021.*

It shall be open for the CERC to consider whether or not continuation of the aforesaid interim direction is warranted or not, considering the facts and circumstances of the case. It is made clear that this Court has not expressed any opinion with regard thereto."

12. From the above, we observe that Hon'ble Delhi High Court vide order dated 08.04.2024 has held that status quo qua bank guarantee bearing No.50350IGL0007821 dated 02.09.2021 shall be maintained till consideration of the matter by the Commission. Further, it is open for the Commission to consider whether or not to continue with the interim directions regarding bank guarantees. We note that during the hearing held on 29.04.2024, the contracting parties have argued the matter at length, making it imperative that we proceed with the adjudication of *stay on invocation of the Bank Guarantee.*

13. We observe that APTEL, in its judgement dated 29.5.2017 in *IA No. 384 of 2017 in Appeal No.161 of 2017 (Shaporji Pallonji Energy (Gujarat) Private Limited V. Gujarat Electricity Regulatory Commission &Anr)* (*Shaporji Pallonji Case*) has distinguished the judgement of the Hon'ble Supreme Court in *Gangotri Case* vis-a-vis powers of the Courts from interfering in the invocation of Bank Guarantee in the following terms:

42. Heavy reliance was placed on behalf of the Applicants on the judgment of the Supreme Court in *Gangotri*. We are of the opinion that the said judgment is not applicable to this case. We do not think that in that case, the Supreme Court took a different view from the law settled by it in a catena of judgments crystallising principles underlying invocation and encashment of Bank Guarantees. In fact, after referring to number of leading cases, which include U.P. State Sugar Corporation, the Supreme Court has in *Gangotri* said that, these judgments lay down general principles relating to Bank Guarantees and there can be no quarrel over the propositions laid down in those cases. The Supreme Court then reiterated that every case has to be decided with reference to the facts of the case involved therein and then discussed the peculiar facts of the case before it. Reliance was placed by the Applicants on the observations of the Supreme Court in this case that the sum claimed was neither an admitted sum, nor a sum which was adjudicated upon in any judicial proceedings. It is submitted that even in this case, the sum is not adjudicated upon. But it must be noted that this is not the only circumstance that weighed with the Supreme Court. The Supreme Court observed that the sum claimed by the Respondents from the Appellants therein did not relate to the contract for which the Bank Guarantee had been furnished but it related to another contract dated 22/08/2005 for which no Bank Guarantee had been furnished. Perhaps the most important fact which distinguishes it from other cases and which was noted by the Supreme Court was that the Bank Guarantee was in the nature of a Performance Guarantee furnished for execution work of contract dated 14/07/2006, which was completed and the work having been completed to the satisfaction of the Respondents, they had no right to encash the Bank Guarantee. Thus, this case turns on its own peculiar facts. It does not take a view contrary to the view taken by the Supreme Court in earlier judgments to which we have made a reference that adjudication of claim is not a precondition to invocation and encashment of a Bank Guarantee. Facts of *Gangotri* can never be equated with the facts of the present case. We may advantageously refer to the Delhi High Court's judgment in *TRF Limited v. ENERGO Engineering Projects Limited*¹⁵, where the Delhi High Court has distinguished *Gangotri*.”

“43. Reliance placed on *Kailash Nath* is also misplaced. In that case, the Supreme Court was considering the arbitrary forfeiture of earnest money by the DDA. One of the questions urged before the Supreme Court was whether even if there was a contractual stipulation in favour of DDA, it could appropriate the earnest money without any loss being caused to it. The Supreme Court considered Section 74 of the Contract Act and inter alia held that damage or loss is sine qua non for the applicability of the Section.

44. We cannot apply this judgment to the present case involving invocation and encashment of Bank Guarantee. The settled principles of law laid down by the Supreme Court will have to be applied to it. Proof of loss or damage is not necessary for invocation and encashment of a Bank Guarantee.”

14. The Hon'ble Supreme Court, vide judgement dated 31.07.1996 in the matter of *Ansal Energy Projects Limited v. Tehri Hydro Development Corporation Limited and Anr [(1996) 5 SCC 450]* has held as under:

“4. It is settled law that bank guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary. Unless fraud or special equity exists, is pleaded and prima facie established by strong evidence as a triable issue, the beneficiary cannot be restrained from encashing the bank guarantee even if dispute between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in performance of the contract or execution of the works undertaken in furtherance thereof. The bank unconditionally and irrevocably promised to pay, on demand, the amount of liability undertaken in the guarantee without any demur or dispute in terms of the bank guarantee. The object behind is to inculcate respect for free flow of commerce and trade and faith in the commercial banking transactions unhedged by pending disputes between the beneficiary and the contractor.

*5. It is equally settled law that in terms of the bank guarantee the beneficiary is entitled to invoke the bank guarantee and seek encashment of the amount specified in the bank guarantee. It does not depend upon the result of the decision in the dispute between the parties, in case of the breach. The underlying object is that an irrevocable commitment either in the form of bank guarantee or letters of credit solemnly given by the bank must be honoured. **The court exercising its power cannot interfere with enforcement of bank guarantee/letters of credit except only in cases where fraud or special equity is prima facie made out in the case as triable issue by strong evidence so as to prevent irretrievable injustice to the parties. The trading operation would not be jettisoned and faith of the people in the efficacy of banking transactions would not be eroded or brought to disbelief.***

15. The above legal position has been reiterated by the Hon'ble Supreme Court in the following judgements- *U.P. State Sugar Corporation Vs Sumac International Limited [(1997) 1 SCC 450]*; *Mahatma Gandhi Sahakara Sakkare Karkhane v. National Heavy Engineering Cooperative Limited & Anr. [(2007) 6 SCC 470]*; *Vintec Electronic Private Limited Vs. HCL Infosystem Limited [(2008) 1 SCC 544]*; *Adani Agri Fresh Vs. Mehboob Shariff & Ors. [AIR 2016 SC 92]*.

16. APTEL, in its judgement dated 29.05.2017 in IA No. 384 of 2017 in Appeal No.161 of 2017, (*Shapoorji Pallonji Energy (Gujarat) Private Limited V. Gujarat Electricity Regulatory Commission & Anr*), after referring to the judgments of the Hon'ble Supreme Court on the subject summarized the law as under:

“31. The principles laid down by the Supreme Court can be summarized as follows: The Bank Guarantee is an independent contract between the bank and the beneficiary thereof. The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable Bank Guarantee. The dispute between the beneficiary and

party, at whose instance the bank has given the guarantee is immaterial and is of no consequence. The liability of the bank is absolute and unequivocal. The bank has to only verify whether the amount claimed is within the terms of the Bank Guarantee or Letter of Credit. Any payment by the bank would obviously be subject to the final decision of the court or the tribunal. At the stage of invocation of Bank Guarantee, there is no need for final adjudication and decision on the amount due and payable by the person giving the Bank Guarantee. **The Courts should not interfere with invocation and encashment of Bank Guarantee unless there is fraud of egregious nature of which the beneficiary seeks to take advantage and which vitiates the entire underlying transaction or a case where irretrievable injustice is likely to be caused to either of the parties. That is to say, there must be special equities in favour of injunction such as when irretrievable injury or irretrievable injustice would occur if injunction were not granted.** Since in most cases payment of money under a Bank Guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country.

There is no question of making out any prima facie case much less strong evidence or special equity for interference by way of injunction by the court in preventing encashment of Bank Guarantee. The bank must honour Bank Guarantees free from interference by the courts, otherwise trust in commerce, internal and international would be damaged irreparably. There has to be glaring circumstances of deception or fraud warranting interference. Final adjudication is not a pre-condition to invoke the Bank Guarantee and that is not a ground to issue injunction restraining the beneficiary from enforcing the Bank Guarantee. The mere fact that the Bank Guarantee refers to the principle agreement without referring to any specific clause in the preamble of the deed of guarantee does not make the guarantee furnished by the bank to be a conditional one. The present case can be examined in the light of these principles.”

17. The *ratio-decidenti*, that emerges from observations of APTEL is as follows:

- a) The Bank Guarantee is an independent contract between the bank and the beneficiary thereof. The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable Bank Guarantee.
- b) The dispute between the beneficiary and the party, at whose instance the bank has given the guarantee is immaterial and of no consequence. The bank has only to verify whether the amount claimed is within the terms of the Bank Guarantee or Letter of Credit. Any payment by the bank would be subject to the final decision of the Court or the Tribunal.
- c) The Courts should not interfere with invocation and encashment of Bank Guarantee unless there is fraud of an egregious nature of which the beneficiary seeks to take advantage and which vitiates the entire underlying transaction or a case where irretrievable injustice is likely to be caused to either of the parties. There must be special equities in favour of an injunction, such as when irretrievable injury or irretrievable injustice would occur if the injunction were not granted.

- d) There is no question of making out any prima facie case by the person seeking an injunction.
- e) Final adjudication is not a pre-condition to invoke the Bank Guarantee and that is not a ground to issue an injunction restraining the beneficiary from enforcing the Bank Guarantee.

18. Relevant provisions of the PPA dated 16.09.2021 are as under:

4.6 Liquidated Damages not amounting to penalty for delay in Commissioning

4.6.1 The Project shall be fully commissioned within the Scheduled Commissioning Date as defined in this Agreement. If the WPD is unable to commission the Project by the Scheduled Commissioning Date for the reasons other than those specified in Article 4.5.1 and 4.5.2, the WPD shall pay to SECI, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

*(a) Delay beyond the Scheduled Commissioning Date upto (& including) the date as on **270 days after the Scheduled Commissioning Date**, as part of the liquidated damages, the total PBG/POI amount for the Project shall be encashed on per-day basis and proportionate to the balance capacity not commissioned. For example, in case of a Project of 240 MW capacity, if commissioning of 100 MW capacity is delayed by 18 days beyond the SCD, then the liquidated damages shall be:*

PBG/POI amount X (100/240) X (18/270).

*4.6.2 The maximum time period allowed for commissioning of the full Project Capacity **with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to 270 days after the SCD of the Project.** In case, the Commissioning of the Project is delayed beyond 270 days after the SCD, it shall be considered as an WPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced/ amended to the Project Capacity Commissioned within 270 days after the SCD and the PP A for the balance Capacity will stand terminated and shall be reduced from the project capacity.*

19. Without going into the merits of the petition, we note that the project was to be commissioned within the SCoD of the project i.e., 10.03.2023. As per Article 4.6.1 of the PPA dated 16.09.2021, if the Petitioner is unable to commission the project by the scheduled date, the Petitioner has to pay the total PBG amount on a per-day basis and proportionate to the balance capacity not commissioned.

20. In the instant case, the Letter of Award for setting up the 300 MW Wind Power Project was issued by SECI on 19.03.2021. As per Article 4.6.1 of the PPAs, the project was to be commissioned within the SCoD, i.e., 10.03.2023. However, the SCoD was extended till

11.06.2023 by SECI which has become the revised SCoD for the purpose of execution of the project. As per Article 4.6.1 of the PPAs, SECI is entitled to encash the PBG (on per day basis) in case of delay in commissioning of the project beyond the SCOD and including the date as on 270 days after the SCoD. On 04.10.2023, SECI allowed the Petitioner to commission the full project by 07.03.2024 with payment of Liquidated Damages. However, the Petitioner, instead of commissioning the project, is seeking a declaration that the PPA dated 16.09.2021 stands frustrated and that the Petitioner stands released/discharged from any obligations under the said Agreement, including any financial liability or consequence thereof. The Petitioner has not brought on record any ground for interference in the invocation of bank guarantee as laid down by the various judgements of the Hon'ble Supreme Court, i.e., fraud of egregious nature or special equity in favour of injunction exists in this case. In view of the above, we are of the view that no case has been made out for the issue of direction to restrain SECI from encashing the BG furnished by the Applicant/Petitioner, till the final adjudication of the main petition. Accordingly, SECI is free to take further action in accordance with the provisions of PPA and law.

21. The IA No. 28 of 2024 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष