

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 48/MP/2023**

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

**Date of Order: 25<sup>th</sup> April, 2024**

**In the matter of**

Petition under Sections 79 (1)(b) & (f) of the Electricity Act, 2003 read with relevant provisions of Power Purchase Agreements dated 22.12.2021 and 19.1.2022.

**And**

**In the Matter of:**

**Jaiprakash Power Ventures Limited,**  
"JA House", Basement (Right Wing),  
63, Basant Lok, Vasant Vihar,  
New Delhi – 110057

**...Petitioner**

**Versus**

**1. PTC India Limited,**  
2<sup>nd</sup> Floor, NBCC Tower,  
15 BhikaJi Cama Place,  
New Delhi-110066

**2. Torrent Power Limited,**  
'Samanvay' 600, Tapovan, Ambavadi,  
Ahmedabad-380015, Gujarat

**...Respondents**

**Parties present:**

Shri Venkatesh, Advocate, JPVL  
Shri Bharath Gangadharan, Advocate, JPVL  
Shri Kartikay Trivedi, Advocate, JPVL  
Shri Ravi Kishore, Advocate, PTCIL  
Shri Keshav Singh, Advocate, PTCIL  
Ms. Swapna Seshadri, Advocate, TPL  
Shri Harsha V Rao, Advocate, TPL

## ORDER

The Petitioner, Jaiprakash Power Ventures Limited (hereinafter referred to as “JPVL/Petitioner”), has filed the present Petition seeking to set aside the invoices dated 12.5.2022 and 7.6.2022 raised by Respondent No.2, Torrent Power Limited (hereinafter referred to as, “TPL”) towards purchase of power from the other alternate arrangement for the period from 13.4.2022 to 14.4.2022 under Article 5.2.3(f) of the Power Purchase Agreements dated 22.12.2021 & 19.1.2022 executed between Respondent No.1, PTCIL and Respondent No.2, TPL read with the Power Purchase Agreements dated 24.12.2021 & 19.1.2022 executed between the Petitioner and PTC. The Petitioner has made the following prayers:

*“(a) Admit the present Petition;*

*(b) Set aside the Impugned Invoices dated 12.05.2022 being invoice revision No. TPL/PTC-RC/11-R1/2023 and invoice dated 07.06.2022 being Invoice No. TPL/PTC-RC/17/2023 and direct TPL to pay the withheld amount of Rs 3.71 Crs. with carrying cost from the due date of payment;*

*(c) Declare that no penalty under Clause 5.2.3 (f) of the PPAs is due or payable by the Petitioner;*

*(d) Pass any such order(s)/directions(s) which this Commission may deem fit and proper in light of the facts and circumstances of the present case”.*

### **Submissions of the Petitioner**

2. The Petitioner has mainly submitted as under:

(a) On 8.12.2021, TPL floated a tender inviting bid for the procurement of power for its distribution licence areas in the State of Gujarat through a competitive bidding process. Subsequently, PTC, *vide* its email dated 8.12.2021, intimated to the Petitioner regarding the above tender for the purchase of power on a short-term basis for the period from 1.4.2022 to 30.9.2022 and further sought authorization therefrom to participate in the said tender process on behalf of the Petitioner.

(b) In response, on 9.12.2021, the Petitioner authorized PTC to

participate in the subject tender process on behalf of the Petitioner. Accordingly, on 16.12.2021, PTC, *vide* its email, provided the L1 rates to the Petitioner to be quoted for the subject tender. However, on 17.12.2021, PTC, *vide* its email intimated to the Petitioner the request it has received from TPL for revising the bid price and quantum for the subject tender. Accordingly, on 18.12.2021, the Petitioner, in response to the above request from PTC, offered its revised bid for the subject tender. Pursuant thereto, the Petitioner participated in the above tender process through PTC, and after qualifying all the necessary requirements, JPVL/PTC emerged as the successful bidder for the subject tender.

(c) Subsequently, PTC, *vide* its email dated 22.12.2021, intimated to the Petitioner regarding the Letter of Award (hereinafter referred to as “the LoA”) received from TPL for the subject tender and, accordingly, requested the Petitioner to provide its acceptance at the earliest. On the same day, i.e., on, 22.12.2021, JPVL, *vide* its email, provided PTC the acceptance of the LoA for the subject tender issued by TPL. Accordingly, on 22.12.2021, TPL, *vide* its LoA awarded the contract to PTC for the supply of power to TPL’s licence area in the State of Gujarat.

(d) On the basis of the above LoA, on the same day, i.e., 22.12.2021, PTC intimated to Petitioner that it would be processing the application for booking of transmission corridor for the supply of power to TPL from the Petitioner’s plant, i.e., JNSTPP. Accordingly, on 22.12.2021, TPL and PTC executed a PPA for the supply of 100 MW power, which was to be procured by PTC from the Petitioner’s plant and thereafter to be supplied to TPL on a Short-Term Basis for a period from 1.4.2022 to 30.9.2022. A conjoint reading of Article 5.2.3 (a) and (f) of the PPA establishes that there cannot be any reason or occasion whatsoever to saddle any additional cost upon the Petitioner under the guise of arranging replacement power in case the deviation from the seller, i.e., the Petitioner, is not more than 20% of the contracted energy for which open access has been allocated on a monthly basis.

(e) On 24.12.2021, the Petitioner executed a PPA with PTC for the supply of 100 MW power from its JNSTPP to TPL through PTC on a short-term basis on the following terms:

Period	Duration of Supply	Quantum	*Rate quoted at GETCO Periphery including trading margin
1.4.2022 to 30.4.2022	RTC i.e., 00:00 Hrs. to 24:00 Hrs.	100 MW	Rs. 4.75/kWh
1.5.2022 to 31.5.2022		100 MW	Rs. 4.75/kWh
1.6.2022 to 30.9.2022		100 MW	Rs. 4.84/kWh

(f) For the said supply, PTC was merely acting as an agent/trader on behalf of the Petitioner for the supply of power to TPL. As per the terms of the PPA, all obligations as per the present PPA were to apply *mutatis mutandis* to the Petitioner

(g) Subsequently, on 4.1.2022, TPL floated another tender inviting bid for the procurement of power for its distribution licence areas in the State of Gujarat through a competitive bidding process. On 6.1.2022, the Petitioner, vide its email, authorized PTC to participate in the aforesaid tender process. All the terms of the tender were to be on a back-to-back basis between the parties (TPL-JPVL-PTC). Accordingly, on 12.1.2022, PTC, vide its email, provided the L1 rates to the Petitioner to be quoted for the subject tender. Pursuant thereto, the Petitioner participated in the above tender process through PTC and, subsequent to certain revisions in tariff (pursuant to negotiations), emerged as the successful bidders.

(h) Accordingly, on 19.1.2022, TPL, vide its letter issued LoA to PTC for the supply of power to TPL's licence area in the State of Gujarat for the quantum. PTC, vide its email dated 19.1.2022, intimated the Petitioner for the LoA received by TPL for the said tender and, accordingly, requested the Petitioner to provide its acceptance therefrom at the earliest. In the interregnum, in terms of the above LoA, on 19.1.2022, TPL executed the PPA with PTC for the supply of 100 MW power, to be procured from the Petitioner's Plant and supplied to TPL on a Short-Term Basis for a period from 1.4.2022 to 30.11.2022. On the same day, i.e., 19.1.2022, the Petitioner executed a PPA with PTC for the supply of 100 MW power from its JNSTPP to TPL through PTC on a short-term basis in the following manner:

Period	Duration of Supply	Quantum	*Rate quoted at GETCO Periphery including trading margin
1.4.2022 to 30.4.2022	RTC i.e. 00:00 Hrs. to 24:00 Hrs.	100 MW	Rs. 4.45/kWh
1.5.2022 to 31.5.2022		100 MW	Rs. 4.45/kWh
1.6.2022 to 30.6.2022		100 MW	Rs. 4.57/kWh
1.7.2022 to 30.11.2022		100 MW	Rs. 4.56/kWh

(i) All the terms and conditions of this PPA were the same as the earlier executed PPA dated 24.12.2021 between the parties, except the period of supply of power, which was from 1.4.2022 to 30.11.2022 and at the rate of tariff as set out above. Both sets of the PPAs dated 22.12.2021 read with 24.12.2021 and PPAs dated 19.1.2022 had back-to-back arrangements and were simultaneously operational, being concurrent to each other. Accordingly, the Petitioner, *vide* its email dated 20.1.2022 intimated to the PTC its acceptance of the LoA dated 19.1.2022 issued by TPL. On the basis of the above acceptance of LoA, on 20.1.2022, PTC intimated to the Petitioner that it would be processing the application for booking of a transmission corridor for the supply of power to TPL from JNSTPP.

(j) The trading margin for the supply of the requisite power to TPL was kept at 1.90 Paisa/kWh. However, all other terms and conditions of the present transaction between the parties were to be in line with the TPL tender dated 4.1.2022 and LoA dated 19.1.2022. From 1.4.2022 onwards, the Petitioner commenced the supply of power from JNSTPP to TPL through PTC as per the terms of the PPAs executed between the parties.

(k) On 12.4.2022, on account of Boiler Tube Leakage, one unit of the Petitioner's generating station was put under forced outage from 00.00 hours, which affected the Petitioner's ability to supply power to all its beneficiaries, including TPL.

(l) The Petitioner had booked power for sale on the Indian Energy Exchange (Power Exchange) on 12.4.2022. However, as there was a Boiler Tube leakage in Unit-I of the Petitioner's Plant, the said Unit was taken under forced outage at 00:00 Hrs of 12.4.2022. Thus, by the time the said Unit was

put under forced outage, the result at the Power Exchange market was already published for 12.4.2022, and the change in the Power Exchange schedule was not possible.

(m) On 13.4.2022, the Petitioner submitted its schedule based on a pro-rata basis for all the beneficiaries, including PTC, through which it was supplying power to TPL in compliance with Regulation 6.5.19 of IEGC 2010. The Petitioner had punched in the schedule of TPL-Surat on a prior basis and the balance of power was booked for sale on the Power Exchange market was already published for 13.4.2022, and the change in Power Exchange schedule was not possible.

(n) On 14.4.2022, the synchronization of Unit-I was delayed. However, as soon as Unit I was synchronized, the Petitioner made a request to WRLDC for restoring the schedule.

(o) PTC, *vide* its email dated 29.4.2022, sought reasons from the Petitioner for the issue raised by TPL with respect to the sale of power over the Power Exchange by the Petitioner during the forced outage period of the Unit, i.e., 12.4.2022 to 14.4.2022. Article 5.2.3(f) of the PPA was invoked by TPL to support its claim for its entitlement towards the reimbursement of the additional cost borne by it in arranging replacement power that also, when the power has been supplied over Power Exchange, instead of supplying to TPL. In response, the Petitioner, *vide* its e-mail dated 2.5.2022, informed that (i) the Petitioner was forced to curtail contracted capacity for TPL due to forced outage of one of its Units during the period from 12.4.2022 to 14.4.2022, which accounted the deviation in the supply of power and same is permissible as per the terms of Clause 5.2.3 (a) of the tender document as well as the PPA executed between the parties, which permits deviation in supply up to 20% of the contracted power, (ii) liquidated damages (“LD”), as claimed by TPL, is payable by the Petitioner only when the deviation is more than 20%. (iii) restrictive reading of Clause 5.2.3 (f) by ignoring provisions of Clause 5.2.3 (a) to 5.2.3 (e) is not permissible. (iv) The claim of LD is premised on selective reading of the clauses of the PPA and, therefore, is wrong as PPA has to be read in its entirety. (v) No LD is payable by the Petitioner as curtailment is within the permissible limits as provided under the terms of the

PPA. (vi) Revision was done for 3 days up to 00.00 hours of 15.4.2022. However, the same was restored before the said time at 20:00 on 14.4.2022, which goes on to indicate the *bona fides* of the Petitioner.

(p) TPL raised the Impugned Invoices on the Petitioner and has withheld payments of the Petitioner, despite the fact that the actual scheduling had deviated only by 4.22% and 3.06% of the contracted power for the month of April 2022 for the respective PPAs, which is well within the permissible limit for deviation of 20% in the contracted period, in terms of the PPAs.

(q) PTC, *vide* its email dated 8.6.2022, intimated to the Petitioner of the above arbitrary stand taken by TPL whereby, as per TPL, the invoices dated 12.5.2022 and 7.6.2022 are still payable by the Petitioner. In response, the Petitioner, *vide* its email dated 1.7.2022, informed the PTC that power has to be scheduled as per the generator's availability, and since it is an undisputed fact that only one unit was operational, there was a limited supply of power not only to TPL but to other beneficiaries also. Further, the Petitioner reiterated its stand that the reduction in schedule is within 20% of contracted energy, and therefore, neither liquidated damages nor replacement cost is applicable. Therefore, the raising of Impugned invoices cannot be sustained. Pertinently, on the same day, PTC *vide* its email, intimated TPL of the above stand of the Petitioner.

(r) TPL, *vide* its email dated 9.7.2022, informed PTC that Impugned invoices have been raised in line with the provisions of the IEGC and the PPA. Furthermore, in response to the Petitioner's email dated 1.7.2022, TPL contended that, on the basis of the Petitioner's representation, it has already downwardly revised one of its replacement cost invoices, and the replacement invoices have been raised purportedly for the availability of the Unit during which the power was being sold on the Power Exchange. Pertinently, the present stand of TPL was communicated to the Petitioner by PTC *vide* its email dated 11.7.2022.

(s) In light of the aforementioned facts and circumstances, it is evident that TPL has raised the Impugned Invoices contrary to the express terms of the PPA and has arbitrarily withheld an amount of Rs. 3.71 crore, payable to the Petitioner.

(t) As per the provisions of the PPAs, more particularly, Articles 5.2.3 (a) to 5.2.3 (f), all of which pertain to liquidated damages, it is evident that the liability to reimburse the additional cost borne by the procurer in arranging the replacement power will be triggered only in case where the deviation is more than 20% of the contracted power in terms of Article 5.2.3 (f). The said provisions of the PPAs, i.e., Article 5.2.3 (a) to Article 5.2.3 (f), are to be read conjointly in order to give purposeful interpretation to the provisions of the Liquidated Damage (LD) under the PPAs as a whole.

(u) Pertinently, Article 5.2.3 (a) is clear in its terms that no penalty/Liquidated Damages are payable by either party if the deviation in actual scheduling on a monthly basis is below 20%.

### **Hearing dated 10.5.2023**

3. The Petition was admitted on 10.5.2023, and notices were issued to the parties to file their respective replies and rejoinders.

### **Replies by the Respondents**

4. PTC/ Respondent No.1, in its reply dated 21.7.2023, has mainly submitted as under:

(a) The claim of the Petitioner is not tenable in terms of Article 5.2.3 (f) of the PPAs.

(b) From a conjoint reading of clause 5.2.3 (a) and 5.2.3 (f) of the PPAs, it is clear that clause 5.2.3 (f) is in addition to the provisions contained in 5.2.3 (a) and does not restrict the provisions of 5.2.3 (f).

5. TPL/ Respondent No.2, in its reply dated 28.9.2023, has mainly submitted as under:

(a) The Petitioner has no privity of contract with reference to either of the above contracts and cannot indirectly question the contractual rights being exercised by TPL against PTC.

(b) Article 5.2.3 (a) of the PPA provides for deviation in supply by the seller up to 20% of the contracted capacity. Article 5.2.3 (f) penalises the sale of power to a



third party and requires the seller to reimburse the procurer for the additional cost of arranging replacement power.

(c) PTC had given certain suggestions/sought clarity on some aspects of the draft tender vide ET 82 and not raised any issue regarding ET 104. However, no issue was raised regarding Article 5.2.3(f) or its applicability either by PTC directly or on behalf of the Petitioner. Furthermore, PTC participated in the tender process vide ET 82 and ET 104 after obtaining due concurrence from JPVL on the tender documents. Other participants had sought clarification/given suggestions on Clause 5.2.3(f) in ET 82 and ET 104. In fact, in ET 104, another specific issue was raised about the applicability of the cost of replacement of power in addition to liquidated damages. In turn, Respondent No. 2 TPL maintained its stand. This clarification published in Corrigendum was available publicly. If the Petitioner had any concerns, it could have raised the issue at that juncture. However, the Petitioner went ahead with the bidding process.

(d) Article 5.2.3 (f) begins with the term 'Further' and, in as many words, states that it is in addition to the provisions above it under the head of 'Liquidated Damages'. The Ministry of Power, in a draft amendment to the Short-Term Bidding Guidelines dated 22.12.0221 ("Bidding Guidelines"), has conveyed its intention that damages for selling of contracted power would be recovered in addition to the LD.

(e) The Petitioner continued to book power to Power Exchange on 12.4.2022 and 13.4.2022 for 13.4.2022 and 14.4.2022, respectively. The Petitioner had capacity available to offer at the Power Exchange, which was prioritized over its contractual obligations as it had already assessed the duration of the outage till 14.4.2022.

(f) The Petitioner is trying to obfuscate the facts by submitting that it was under the impression that the boiler would recover and hence, it had scheduled power at the Power Exchange as even schedules for the other beneficiaries continue to be lower than their entitlements.

(g) The Petitioner informed WRLDC that the expected time for revival would be 00:00 hours of 15.4.2022. However, despite this when the Petitioner is expecting an outage of one unit for more than 3 days, no attempt was made to first meet

the contractual obligations and subsequently sell the balance on the spot markets.

(h) If the construction suggested by JPVL is adopted, then it would lead to a chaotic situation where buyers would contract excess capacity since there would be no certainty on the 20% of the supply, cascading to back downs and underdraws and inefficient utilisation of the system. The entire contracted capacity is intended to be available when the contract is signed and not only a part of it. A purposive interpretation of the clauses supports the conclusion that any third-party sale of the contracted capacity without the buyer's consent is required to be penalised.

(i) A deviation of up to 20% is permissible to account for unforeseen outages, etc. However, sale to third parties for commercial reasons, even if the deviation is within 20%, is not permitted. The right of the buyer in Article 5.2.3(f) is in addition to the rest of the provisions of Article 5.2.3(a).

(j) The Petitioner itself has admitted in its rejoinder to the PTC's reply dated 19.8.2023 that Article 5.2.3 (a) is there to address cases of natural wear and tear and unforeseen damages to the system. Hence, Article 5.2.3 (a) is not a blanket exemption for the seller to offer its supply to any third party while avoiding the supply of the contracted capacity to the buyer.

(k) IEGC, 2010 does not contemplate a situation where part capacity is offered on the Power Exchange, and part is tied up in contracts. The intention is clear that when the entire capacity is tied up, then the schedules will be revised downwards on a pro-rata basis only. Regulation 6.5.19 of IEGC permits revision of schedules provided the source is indicated as that particular unit, as opposed to the entire plant indicated as a source in the open access application. In this case, the entire plant has been specified as the source both in the PPA and in the open-access application.

### **Rejoinder of the Petitioner**

6. The Petitioner, in its rejoinder dated 8.9.2023, has mainly submitted as follows:

(a) The scope of Article 5.2.3 of the PPAs is expressed in its terms, i.e., to restrict any deviation in the scheduling of power beyond 20% of the contracted capacity.

(b) When Article 5.2.3 (a) is read in conjunction with Article 5.2.3 (f) of the PPAs, there remains no doubt that it is the seller's liability to reimburse the additional cost borne by the procurer in arranging the replacement power only in case there is a deviation of more than 20% of the contracted power. However, in the instant case, Respondent No. 2, TPL has raised the invoices and has arbitrarily held the payable amount of Rs. 3.71 crores despite the deviation in the supply of power of only 4.22% and 3.06% of the contracted capacity for the month of April 2022. Furthermore, the total deviation in the contract period is approximately .01%, which is way below the threshold of 20%.

(c) The ambit of Article 5.2.3 (f), while the parties executing the agreement was clear that such provision has to be read in conjunction with the remaining provisions of the clause, especially Article 5.2.3(a), which permitted deviation up to 20%.

(d) The intent of the parties is evident from the subsequent tenders floated by TPL, wherein there is a specific provision for liquidated damages for any shortfall in power below 100% of the contracted capacity. However, no such provision was consciously incorporated into the subject PPAs executed between the parties.

(e) The employment of the word 'Further' in clause 5.2.3 (f) of the PPAs makes it evident that Article 5.2.3 (f) will come into play only when the deviation from the contracted capacity is more than 20%. In case the parties would have intended to give Article 5.2.3 (f) an overriding effect or intended it to be read in isolation, the parties would have refrained from using the word 'Further' in the said clause.

(f) Since the Ministry of Power's amendment dated 21.2.2022 to Short-Term Bidding Guidelines does not use the word 'Further' in its provision for liquidated damages, the reliance placed by TPL on the Bidding Guidelines is of no avail.

(g) Parties in order to avoid any commercial implication arising from such operational contingency, the parties had consciously incorporated the provision for allowing deviation up to 20%. There is nothing on record to establish that the

Petitioner was selling TPL's share of contracted capacity over the Power Exchange

7. Pursuant to the liberty granted by the Commission vide Record of Proceedings for hearing dated 10.11.2023, the parties have also filed their respective written submissions.

### **Written Submissions**

8. The Petitioner, in its written submissions dated 21.11.2023, has mainly submitted as under:

a) It is a settled principle for the construction of a contract that a contract must be read as a whole by giving harmonious construction to all the clauses contained in the PPA. The word 'Further' at the beginning of Article 5.2.3 (f) of the PPA makes it evident that the said provision is in addition and supplemental to the other provisions of Article 5.2.3, i.e., sub-clause(a) to (e). Also, the Clause 5.2.3 (f) is in continuation to the remaining provision of Article 5.2.3, i.e., (a) to (e); therefore, the same cannot be construed to be as a stand-alone clause of the PPA.

b) Article 5.2.3 was added to provide the Petitioner with operational freedom to handle any operational emergency and to shield it from any commercial implications brought about by such a circumstance. Thus, the parties agreed and incorporated such a provision for permitting deviation up to 20% without levy of any damages liquidated or otherwise. It is settled law that courts are not supposed to undermine the business efficacy of the commercial bargain between the parties.

c) In addition, the Petitioner stated that if there is an ambiguity in the interpretation of any clause/article of a contract agreed between parties, then the ambiguous clause/article should be interpreted against the interests of the party that created, introduced, or requested that a clause be included in the contract. The said principle is termed as the “contra proferentem rule”, which has been upheld by the Hon'ble Supreme Courts in the ***Industrial Promotion and Investment Corporation of Odisha Ltd v. New India Assurance Company Limited 2016 (15) SCC 315***. In the present case, the PPAs were drafted/constructed by TPL, and hence, in terms of the rule of “contra proferentem”, the ambiguity, if any, in the interpretation of Article 5.2.3 (f) of the PPAs should be held against TPL and in the favour of the Petitioner.

d) Respondents do not have power or authority to determine the quantum of power supplied by the Petitioner to its beneficiaries. As, the same has to be done by a State/Central Agency or by the Appropriate Government.

9. Briefly, Respondent No.1, PTC, in written submissions dated 24.11.2023, has mainly submitted as under:

a) The PPA and the PSA are back-to-back arrangements, forming part and parcel of the same transaction wherein power generated by the Petitioner is supplied to Respondent No.2 through Respondent No. 1.

b) Role of Respondent No.1 in the entire transaction is that of a conduit/facilitator between the generating company and the distribution licensees.

c) Since Respondent No.2 is purchasing the contracted quantum of power from the Project of the Petitioner, the ultimate beneficiary of the power is Respondent No.2. Therefore, there exists a privity of contract amongst all the parties in the

present Petition. As regards the doctrine of privity, it is a well-established legal premise that a contract cannot confer rights or impose obligations under it on any person except to the parties to it. However, where there is a third-party beneficiary in the contract, such beneficiaries are an exception to the doctrine of privity. The beneficiary is an entity that draws any benefit out of the contract. In the present transaction, Respondent No.2 is the beneficiary of power supplied by the Petitioner through Respondent No.1. Thereby, there exists a privity of contract.

**Written Submissions dated 18.12.2023 filed by TPL**

10. Briefly, Respondent No.2/TPL in its written submissions dated 18.12.2023, has mainly submitted as under:

- a) There is no direct contractual relationship between JPVL and TPL. As, TPL had signed the Power Purchase Agreements dated 22.12.2021 and 19.1.2022, only with PTC, and there is no privity of contract between JPVL and TPL. JPVL, being a third party to the contract, cannot raise any claims against TPL.
- b) The agreement between PTC and JPVL is wholly independent of the bidding being conducted by TPL. Neither the bid documents nor the PPAs signed between TPL and PTC make any reference to PTC's supply obligation being back-to-back or dependent on any other contract being signed by PTC.
- c) The source of the power supply was the power plant of the Petitioner. PTC is entitled to change the source of power at any time, subject to TPL's consent. Hence, JPVL, as a third party to the contract, has no claim or interest in the contractual arrangements between TPL and PTC.

d) Additionally, during the course of the hearing, PTC submitted that he had no issues against TPL. Therefore, there is no dispute between PTC and TPL, and JPVL cannot maintain the said Petition against TPL in the absence of a claim by PTC against TPL.

e) In the present case, neither the RfP/tender documents nor the PPAs reveal any agreement about the contracts being back-to-back as contemplated under Regulation 2 (1) (d) of the Central Electricity Regulatory Commission (Procedure, Terms, and Conditions for grant of trading licence and other related matters) Regulations, 2020. Accordingly, unless there is a specific agreement between the parties of the PPA and the PSA being back-to-back, the generators cannot be permitted to bypass the above definition and simply raise claims against TPL.

f) The contracts/ agreements executed between TPL and PTC and a separate PPA between PTC and the Petitioner cannot be termed as “back-to-back,” as they are separate and distinct due to the different considerations in each of the said contracts/PPAs.

### **Analysis and Decision**

11. We have considered the submissions of the parties. The Petitioner has submitted that the actions of TPL are unfair, arbitrary, and untenable. Article 5.2.3 (a) of the PPAs dated 22.12.2021 and 19.01.2022 permit deviation of power up to 20%, and no penalty can be fastened upon the Petitioner for any deviation below the said level. Further, Article 5.2.3 (f) of the PPAs dated 22.12.2021 and 19.1.2022 provide for reimbursement of the additional cost borne by the Procurer in arranging replacement power. However, the same cannot be read in isolation as it is sought to be done by TPL, and the same gets triggered only when the deviation level is above 20%. The Petitioner has elaborated that as per bare perusal of the above Articles,

the parties are to ensure that scheduling does not deviate by more than 20% of the contracted power. In case of deviation of more than 20% of contracted power by the seller/procurer, the defaulting party shall be liable to pay compensation to the other party at Rs. 2.00 per kWh for the quantum of shortfall in excess of the permitted deviation, i.e., 20%. Further, in case, the seller sells the power to a third party instead of supplying electricity to the procurer under the contract, the seller is liable to reimburse the additional cost to be borne by the Procurer for arranging the replacement power. Hence, according to the Petitioner, the seller's liability to reimburse the additional cost borne by the Procurer in arranging the replacement power will be triggered only in case there is a deviation of more than 20% of the contracted power. The Petitioner has submitted that no liability can be fastened upon him for reimbursing the additional cost borne by the Procurer in arranging the replacement power. The Petitioner has further submitted that it has always been supplying the entire contracted capacity to TPL. However, the small deviation was an anomaly and solely on account of the forced outage issue which was beyond the control of the Petitioner.

12. The Petitioner has submitted that Article 5.2.3 (a) of the PPA sought to be read in conjunction with 5.2.3 (f) to give true meaning and import of Article 5.2.3 of the PPAs, and anything otherwise will render the said Article nugatory. Even otherwise, the use of the word 'further' in Article 5.2.3 (f) of the PPA expressly implies that Article 5.2.3 (f) will be triggered only when the deviation from the contracted energy is in excess of 20% as per Article 5.2.3 (a) of the PPA. As per the express terms of the PPA, the parties, while executing the PPAs, had never intended for any imposition of LD on curtailment, more so when curtailment is within the limits as provided under Article 5.2.3, i.e., 20%. Article 5.2.3 of the PPA, as well as the



bidding document, is a standard clause for LD, and power supplied under such nature of contracts, no LD is leviable on curtailment or deviation, when the same is within the prescribed limit, i.e., 20% and deviation to such extent is allowed without imposition of any LD. The Petitioner has further submitted that in the above facts and circumstances and as per settled law, there cannot be an arbitrary imposition of LD, if any, without the alleged breach being adjudicated by this Commission. Even otherwise, there cannot be any reason or occasion to allege breach because, as per the terms of the PPA, deviation up to 20% is permissible, and the present deviation was admittedly within the prescribed limit.

13. Respondent TPL has submitted that the TPL raised Invoices based on a sound and legitimate reading of the PPAs. Article 5.2.3(a) permits deviations up to 20% but not third-party sales. The Petitioner has conveniently sought to read sub-clauses (a) and (f) together, excluding sub-clauses (d) and (e). For example, applying the Petitioner's interpretation, it appears that parties bear the charges of open access revision only when deviation is above 20%. This is clearly not the intention of the provision, and the provision is applicable at all times whether or not the deviation is above 20%. It is not denied that Unit 1 of the power plant was under forced outage from 12.4.2022 to 14.4.2022. However, the issue in the present Petition is not of forced outage. The issue raised in the present Petition is that the Petitioner sold its available power to a third party for commercial reasons, even when it could have met more of its beneficiaries' requirements under the contract from the capacity available with it. In fact, such a sale to third parties is not contemplated at all since the only purpose for the distribution licensees procuring short-term power is to ensure that their universal supply obligations in the area of supply are met, particularly during peak periods at optimal cost. The rate at which the Petitioner sold the power on the Power Exchange was as high as Rs. 12 per unit. Respondent TPL

denied that the use of the word 'further' in Article 5.2.3 (f) means that it will be triggered when a deviation in supply is in excess of 20% of the contracted capacity. There is no overriding effect that the suggested interpretation of Article 5.2.3 (f) brings. It is in addition to the rest of the clauses and that is what the use of the words 'further' suggests. The Petitioner is trying to obfuscate the meaning of the contract by suggesting a contingency between sub-clauses (a) and (f). The use of the words 'further' and 'in addition' in sub-clause (f) clearly indicates that this provision is in addition to the rest of the sub-clauses. Accordingly, TPL has rightly withheld the invoice amount of Rs. 3.71 crore.

14. Respondent, PTC has submitted that from a conjoint reading of Articles 5.2.3 (a) and 5.2.3 (f), it is clear that Article 5.2.3 (f), is, in addition to the provisions contained in Article 5.2.3 (a) and not that Article 5.2.3 (a) restricts the provisions of the Article 5.2.3 (f). It is pertinent to mention that the Petitioner did not supply power on 12.4.2022 on account of an outage at the plant of the Petitioner. In view of the fact that the Petitioner was not able to supply the contracted capacity for reasons beyond its control, Respondent No.2 did not levy any liquidated damages, and provisions of Article 5.2.3, more so Clause (f), were not invoked. As the Petitioner did not supply the contracted quantum of power, Respondent No.2 raised the issue of compensation as per Article 5.2.3 (f). Respondent No.2, vide email dated 29.4.2022, informed Respondent No.1 that in the present scenario, provisions of Article 5.2.3 (f) are applicable. In turn, PTC has conveyed the same to the Petitioner.

15. The dispute involved in the present Petition is in respect of the Invoices dated 12.5.2022 and 7.6.2022 issued by Respondent No.2, TPL, upon Respondent No.1, PTCIL for the cost incurred by TPL towards the purchase of power from other alternate arrangements for the period from 13.4.2022 to 14.4.2022 by invoking the

Article 5.2.3(f) of the PPAs dated 22.12.2021 and 19.1.2022. In furtherance to the said Invoices, Respondent No.1, PTCIL correspondingly raised the invoices dated 13.5.2022 upon the Petitioner, towards the replacement power cost incurred by TPL, in terms of PPAs dated 24.12.2021 and 19.1.2022. However, prior to dealing with the aforesaid dispute on merits, it would be pertinent to deal with the primary objection raised by the Respondent, TPL, that the agreements between the Petitioner and the Respondent, PTCIL, are wholly independent of the PPAs dated 22.12.2021 and 19.1.2022 signed between the Respondents, TPL and PTCIL and as such there is no privity of contract between the Petitioner and TPL. Per contra, the Respondent, PTCIL, and the Petitioner have submitted that the PPAs between the Petitioner and PTCIL and the PPAs between TPL and PTCIL are on a back-to-back basis and there is a clear nexus between both the sets of PPAs.

16. We have considered the submissions of parties on the aspects of the arrangement of supply between the parties and the privity of contract between the Petitioner and Respondent No.2, TPL. It is pertinent to note that the tender document dated 8.12.2021 issued by the Respondent, TPL, for inviting the bids for procurement of power from the trading licensees, Discoms, and the State Electricity Utilities, Generators, etc., required the participants to specify the source of power for bid. Further, even the Letter of Awards issued by Respondent, TPL to Respondent, PTCIL identifies the injecting sources, their quantum, and the price thereof for various periods, including the Petitioner herein. Subsequently, the PPAs entered into between Respondents, TPL, and PTCIL, at recital A, also identify the Injecting Sources, including the Petitioner herein, and it requires that the Seller, i.e., PTCIL sells the electricity from these Identified Sources only as mentioned in recital A and provides the option to supply from alternate sources only upon the concurrence of

the Procurer. The relevant extracts of the PPA dated 22.12.2021 executed between the Respondents, TPL, and PTCIL are reproduced hereunder:

*“A. Pursuant to the e-bidding process, PTC India Limited has been selected by the Procurer, as the Seller for sale and supply of power for the Contracted Capacity as under, in accordance with the terms of this Agreement.*

<i>Period</i>	<i>Time Duration (Hours)</i>	<i>Quantum (MW)</i>	<i>Injecting Source</i>
<i>1<sup>st</sup> Apr'22 to 31<sup>st</sup> May'22</i>	<i>00 to 2400</i>	<i>50</i>	<i>MB Power MP Limited</i>
		<i>100</i>	<i>Jaypee Nigrie STPP</i>
	<i>0900 to 2400</i>	<i>50</i>	<i>SEMBCORP Energy India Limited (Project-2)</i>
<i>1<sup>st</sup> Jun'22 to 30<sup>th</sup> Sep'22</i>	<i>00 to 2400</i>	<i>50</i>	<i>MB Power MP Limited</i>
		<i>100</i>	<i>Jaypee Nigrie STPP</i>
	<i>0900 to 2400</i>	<i>50</i>	<i>SEMBCORP Energy India Limited (Project-2)</i>

#### *4.4 Change in Source*

*TPL, subject to any additional condition it may deem fit, may allow the Seller to supply power through an alternate source on request of the Seller. If the power is being supplied through alternate source, additional charges and losses if any, including charges and losses due to cancellation of existing corridor and booking of new corridor including Open Access charges, Application fees, cancellation charges, scheduling charges of Gujarat SLDC etc. shall be to the account of Seller.*

*It is clarified that the Seller is required to supply electricity from the identified source only as mentioned in Recital A of this PPA. In case of non-availability of the identified source, the Seller can supply power under the option of alternate source only upon concurrence of the Procurer.”*

17. Similarly, the PPAs entered into between the Petitioner and Respondent No.1, PTCIL also indicates that the agreement between the Petitioner and PTCIL has been entered into to establish the commitment of PTCIL to TPL and all the risks, title, and obligations as per the provisions of the agreement between PTCIL and TPL shall be applicable mutatis mutandis to the Petitioner herein. Moreover, it also indicated that the Agreement between PTCIL and TPL will form an integral part of the PPA between the Petitioner and PTCIL. The relevant extract of the PPA dated 24.12.2021 between the Petitioner and PTCIL is reproduced hereunder:

*"2. In line to above, PTC and TPL have signed an Agreement dated 22<sup>nd</sup> December 2021 (herein after referred to as "Agreement"), enclosed at Annexure-1.*

*3. To establish the commitment of PTC to TPL, vide the Agreement referred at Sr.No.2 above, PTC hereby enters into this PPA with JPVL. It is expressly agreed here that all the risks, title and obligations as per the provisions of the Agreement, signed between PTC and TPL shall be applicable mutatis mutandis to JPVL.*

*4. The Agreement referred in Sr.No.2 above enclosed herewith at Annexure, hereby, becomes an integral part of this PPA."*

18. Thus, evidently, the supply to Respondent, TPL, by an intermediary, Respondent No.1, PTCIL, was not in the capacity of the merchant trader but from the identified source(s) as specifically mentioned/indicated right from the tender stage, in LOAs and also in the PPAs. Moreover, by virtue of the provisions of PPAs between TPL and PTCIL being applicable *mutatis mutandis* to the Petitioner under the PPAs with PTCIL and the former being an integral part of the latter, it transpires that both the sets of agreements are back-to-back agreements which are inextricably linked to the each other. Hence, in our view, the Petitioner can bring a claim against the PTCIL and/or TPL in the event of failure on their part to discharge their obligations under the respective PPAs, thereby causing any legal injury/grievance to the Petitioner.

19. The Respondent, TPL, has also relied upon the definition of 'Back-to-Back contract' under Regulation 2(1)(d) of Trading Licence Regulations, 2020 and has submitted that the said Regulations require the parties to specifically agree that the contracts are back to back contracts and in the present case, neither the tender document nor PPA reveals any such agreement about the contracts being back-to-back as contemplated in the definition. Regulation 2(1)(d) of the Trading Licence Regulations reads as under:

*"..(d) 'Back to Back contracts' shall mean the contracts for inter-State transaction in electricity in which a Trading Licensee buys a specific quantity of power for a particular duration from one party and simultaneously sells it to another party on*

*similar terms and conditions and shall include the contracts, wherein the parties specifically agree that the contracts are back to back contract....”*

As per the above definition, all such contracts for inter-state transactions in electricity in which a trading licensee such as PTCIL buys a specific quantity of power for a particular duration from one party and simultaneously sells it to another party on similar terms and conditions would be covered as ‘Back to Back contracts.’ As already noted above, both the sets of agreements in the present case, i.e., agreements between the Petitioner and PTCL and the agreements between PTCIL and TPL, clearly identify the generation source as well as the end beneficiary of supply, i.e., TPL, and are on similar terms and conditions thereby falling within the scope of the above definition. The reliance of Respondent, TPL, on the second part of the definition to contend that the parties had to have specifically agreed upon that the contracts are back-to-back contracts is, in our view, misplaced as the second part of the said definition is an inclusive part and therefore, it does not mandatorily have to be specifically agreed between the parties that the contracts are back to back so as to fall within the scope of the said definition.

20. Without prejudice to the above, even if we were to accept the contention of Respondent, TPL *in toto*, and to hold that there is no privity of contract between the Petitioner and TPL and as a result, no direction can be passed against Respondent, TPL, specifically as prayed for by the Petitioner under prayer (b), we are still of the view that the present Petition would be maintainable against Respondent(s) in respect of prayer (c), whereby the Petitioner has sought a declaration that no penalty under Article 5.2.3(f) of the PPA is due or payable by the Petitioner. Respondents, PTCIL and TPL, being ad-idem on the applicability of the said article, in other words, the non-existence of a dispute between PTCIL and TPL under their PPAs *qua* interpretation and applicability of said article would be irrelevant for the purpose of

considering the prayer (c) of the Petitioner. Hence, the Commission would still be required to examine the crux of the dispute, i.e., the validity of invocation of Article 5.2.3(f) of the PPAs by Respondent(s) in the facts & circumstances of the present case.

21. Coming to the merits, the relevant provisions of the PPAs providing for liabilities of each side under certain eventualities are as under:

**PPA dated 22.12.2021 signed between PTC and TPL**

*“5.2.3 Liquidated Damages:*

*(a) Both the parties would ensure that actual scheduling does not deviate by more than 20% of the contracted power as per the approved open access on calendar monthly basis.*

*(b) In case deviation from Procurer side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Procurer shall pay compensation at Rs. 2.00 per kWh for the quantum of shortfall in excess of permitted deviation of 20% in energy off-take while continuing to pay open access charges as per the contract.*

*(c) In case deviation from Seller side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Seller shall pay compensation to Procurer at Rs. 2.00 per kWh for the quantum of shortfall in excess of permitted deviation of 20% in the energy supplied and pay for the open access charges to the extent of energy not supplied by the Seller.*

*(d) In case of revision/ cancellation of approved open access corridor, the party seeking revision/ cancellation of open access corridor shall bear all the open access charges as applicable from the injection point till the point of drawl applicable due to such surrender/ cancellation. Further, if the power is not supplied by the Seller due to forced outage or constraint in generator evacuation system, the Seller shall bear the open access charges as applicable from the injection point till the point of drawl due to such revision.*

*(e) Payment for invoice related to Liquidated Damages, Open Access charges and any other invoices shall be made within 7 Business Days from the receipt of invoice by Fax/e-mail (excluding the day of receipt of invoice).*

*(f) Further, in case, Seller sells the electricity from the identified source/ alternate source of supply to the third party instead of supplying electricity to the Procurer under the contract, the Seller is liable to reimburse the additional cost to be borne by the procurer in arranging replacement power.”*

## PPA dated 19.01.2022 signed between PTC and TPL

*“.....(f) Further, In case the Seller fails to offer the contracted power as per the Agreement to the Procurer and sells this power without Procurer’s consent to any other party, the Seller shall be liable to reimburse the additional cost to be borne by the Procurer in purchasing the replacement power. These damages shall be in addition to Liquidated Damages as per clause 5.2.3 of this PPA, for failure to supply the Contracted Capacity.”*

22. Perusal of the above provisions reveals that Articles 5.2.3 (a) & 5.2.3 (f) of the PPAs pertain to liquidated damages. On a simple reading it can be seen that Article 5.2.3 (a) of the PPAs provides for deviation in supply by the seller up to 20% of the contracted capacity. Whereas, Article 5.2.3 (f) penalises the sale of power to a third party and requires the seller to reimburse the Procurer for the additional cost of arranging replacement power. Thus, the parties have envisaged different types of damages or compensation for different types of breaches in the PPA. It is common practice to prescribe different types of penalties for different types of breaches. While in the case of Article 5.2.3(a), the Article for liquidated damages shall be applicable only in case of deviation beyond 20%, Article 5.2.3(f) will be applicable where the supplier has sold the contracted power to a third party, i.e., in case of non-supply.

23. We note that the scheme of Article 5.2.3(a) of the PPAs is expressed in terms that only in case there is a deviation of more than 20% of the contracted capacity, the defaulting party shall be liable to pay the compensation. The terms of Article 5.2.3(a) of the PPAs provide that no penalty/liquidated damages are payable by either party if the deviation in actual scheduling on a monthly basis is below 20%. However, Article 5.2.3(f) would be applicable even if the deviation is below 20% in case the supplier has sold the contracted power to a third party, as Article 5.2.3 (f) seeks to prevent undue commercial gain on the sale of the contracted power to a



third party through levy of charge for non-supply of contracted capacity to the contracted party.

24. In the facts presented before us, we note that TPL has (and consequently, PTCIL) raised the Impugned Invoices and has proceeded to withhold the corresponding payments to that effect. Also, it is pertinent to note that the quantification of replacement cost as claimed under the Impugned Invoices (i.e., working/computation as supplied along with Impugned Invoices) have not been contested before us either by the Petitioner or the Respondent, PTCIL.

25. We further observe that the parties have intentionally used the word 'Further' in Article 5.2.3 (f) of the PPAs. In this regard, we would like to recall the effect of the import of the word 'Further' in any clause that was deliberated upon by the Hon'ble Supreme Court in the case of K. **Chandrasekhar v. State of Kerela** [(1998) 5 SCC 223], wherein it has been held that the meaning of the word 'Further' is additional, more or supplemental. The same is not restrictive as being sought to be interpreted by the Petitioner.

26. The cardinal principle to ascertain the intention of the parties to a contract, as has been held by the courts, is only through the words that they have used in PPAs, as the same is a commercial document that ought to be interpreted in a manner to give efficacy to each provision and words of the contract rather than to invalidate it. Thus, the use of the word 'Further' in Article 5.2.3(f) is a supplemental effect and the said provisions have to be read in addition to the remaining Article of the 5.2.3 [including Article 5.2.3(a)].

27. From the perusal of the provisions of the PPAs, it is clear that the intention of the parties is that any third-party sale outside the contract would require

reimbursement of the additional cost to be borne by the Procurer in arranging replacement power. Article 5.2.3 (f) is an additional independent provision from the rest of the provisions in Article 5.2.3. The modification of language of Article 5.2.3 (f) in the PPA dated 19.1.2022 clarifies *sans doute* intention of the parties to the PPAs (PTC and TPL) of incorporating Article 5.2.3(f) in the PPA dated 21.12.2021. This clarification reiterates and highlights the intention of the parties that the payment of differential cost qua replacement power shall be different from the Liquidated Damages for failure to supply the contracted capacity. Thus, even in the case where the deviation in supply is up to 20% and Article 5.2.3(a) is not triggered. However, if such contracted power is sold to a third party, Article 5.2.3(f) will be applicable. The same is also evident from the definition of contracted capacity in the PPA, which is defined as under:

*“Contracted Capacity shall mean the net capacity of power in MW contracted between the Seller and the Procurer(s) at the delivery Point.”*

Thus, it is clear that PPA has been executed for the contracted capacity in MW, and the Procurer has rights over such contracted capacity. The seller cannot divert part of such contracted capacity on the pretext that its obligation is only for energy corresponding to 80% of the contracted capacity.

28. This issue regarding the applicability of damages in case of deviation in supply and non-supply has already been settled by the Commission in its order in Petition No.83/MP/2019, 403/MP/2019, and 216/MP/2021 dated 2.6.2023 (in the matter of MSEDCL vs. GMR & Ors.) The Commission, in the said order dated 2.6.2023, had observed as under:

*“62. It is a settled principle of law that the intention of the parties to a contract has to be gathered from the terms and conditions as well as nature thereof. As we have observed in para 58 of this order, the parties have agreed to different compensation mechanisms for different types of breaches i.e. in case of non-*

*acknowledgement of LOIs, EMD shall be forfeited; in case of non-performance of contractual obligations, the CPG shall be forfeited in terms of Clause 15.4; and in case of deviation beyond the permitted limit of deviation, liquidated damages shall be computed at the rate of 20% of tariff per KWh for the quantum in excess of permitted deviation in terms of clause 23. Coming to the dispute between the parties, the provisions of clause 23.3 would be applicable only when there is deviation in scheduled energy from contracted energy in excess of permitted deviation of 15%. On the days when the Bidder has stopped supplying power to the Procurer, the provisions of Clause 23.3 would not be applicable since it is not possible to determine the quantum of deviation in scheduled energy from the contracted power in the absence of actual supply of power to MSEDCL. **Such instances of stoppage of supply of power would be treated as a separate breach of LOI and would be covered under clause 15.4 which deals with non-performance of contractual obligations.***

67. *In the light of the above discussion, we decide the various aspects of the issue arising out of the breach on account of deviation in scheduled energy from contracted power or short supply of power or non-supply of power as under:*

.....  
(a) *Liquidated damages as mentioned in Clause 23 of NIT is applicable in case where deviation in scheduled energy from Bidder Side or deviation in scheduled energy from Procurer side is more than 15% of the contracted power. This provision is applicable to the specific breach of deviation in scheduled energy **and does not cover cases of non-supply of power.***

(b) *There is stoppage of supply of power by GMRETL and TPTCL and their source generators resulting in failure to discharge contractual obligations for 12 days in response to LOIs dated 26.9.2018 and by MPL and SWPGL for the periods from 1.10.2018 to 31.10.2018 and from 1.12.2018 to 31.12.2018 even though LOIs have been accepted. **In such cases, MSEDCL shall be entitled to forfeit CPG as per Clause 15.4 of the LOIs.***

Accordingly, we are of the view that TPL has raised the Invoices correctly as per the provisions of the PPAs. Article 5.2.3(a) permits deviations up to 20% but not third-party sales of contracted capacity.

29. Further, the reliance placed by the Petitioner on Regulation 6.5.19 of the IEGC 2010 is not relevant since PTC has specified the entire plant of the Petitioner as an injection source and not Unit-1. In case of any downward revision, the Regulation is amply clear that the schedule of all the beneficiaries will be revised downwards on a pro-rata basis. However, in the present case, instead of a

downward revision of the schedule of all beneficiaries, the Petitioner has opted to sell power on Power Exchange and not fulfil its contractual obligations.

30. In view of the above, we hold that provisions of the PPAs are clear in their terms that no liquidated damages can be imposed in case the deviation is within the limit of 20%. However, in case of the sale of contracted power to a third party, even if the deviation is less than 20%, the penalty shall be payable as per Article 5.2.3(f) of the PPAs. Accordingly, we decide that Respondents, PTCIL, and TPL have rightly invoked the Article 5.2.3(f) of the PPAs in the present case, and as such, no direction can be issued for a refund of such amount as prayed for in prayer (b) nor can it be declared that no penalty can be imposed upon the Petitioner under Article 5.2.3(f) of the PPAs as prayed for in prayer (c). In light of the above, the prayers of the Petitioner are not sustainable.

31. In view of the above observations and findings, Petition No. 48/MP/2023 stands disposed of.

Sd/-  
**(P.K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(Jishnu Barua)**  
Chairperson