



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 275/MP/2024 along with IA 64/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order: 24th of March, 2025

IN THE MATTER OF:

Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003, filed pursuant to the liberty granted by this Commission vide order dated 2.8.2024 in Petition No. 193/AT/2024, seeking declaration that (i) Petitioner's bid dated 17.9.2023 stands expired on 30.6.2024 and Petitioner is not required to execute PPA with Respondent No. 1, and (ii) directions to Respondent No. 2 for return of the Bank Guarantee deposited by Petitioner towards Earnest Money Deposit.

AND IN THE MATTER OF:

M/s. Juniper Green Energy Private Limited
Plot No. 18, 1st Floor, Institutional Area, Sector-32,
Gurugram, Haryana - 122001.

...Petitioner

Versus

- M/s Damodar Valley Corporation (DVC)**
DVC Headquarters, DVC Towers,
VIP Road, Kolkata - 700054

2. REC Power Development and Consultancy Limited (RECPDCL)

D-Block, REC Corporate Headquarter,
Plot No. I-4, Sector-29,
Gurugram, Haryana - 122001

...Respondents

Parties Present:

Shri Vishrov Mukerjee, Advocate, JGEPL
Shri Janmali Manikala, Advocate, JGEPL
Shri Raghav Malhora, Advocate, JGEPL
Ms. Shreya Sundararaman, Advocate, JGEPL
Shri Venkatesh, Advocate, DVC
Shri Bharath Gangadharan, Advocate, DVC
Shri Kartikay Sharma, Advocate, DVC
Shri Matrugupta Mishra, Advocate, RECPDCL
Shri Nipun Dave, Advocate, RECPDCL
Shri Harsh Jani, Advocate, RECPDCL
Shri Tarun Gogoi, RECPDCL
Shri Ritam Biswas, RECPDCL

आदेश/ ORDER

The Petitioner, Juniper Green Energy Pvt. Ltd. (the Petitioner), is a generating company and it submitted its bid dated 17.09.2023 for setting up a 50 MW wind power plant in response to Request for Selection (RfS) for the selection of wind power developers for setting up of 100 MW ISTS-Connected Wind Power Projects in India under Tariff based Competitive Bidding issued by REC Power Development Corporation Limited (RECPDCL). The eReverse auction was conducted on 17.11.2023. The Petitioner was declared as the successful bidder for its full quoted capacity (i.e., 50 MW) @ Rs. 3.58/unit. The Letter of Award was issued by RECPDCL on 06.02.2024. The Petitioner is seeking a declaration that since the Petitioner's bid dated 17.09.2023 stands expired on 30.06.2024, the Petitioner is not required to execute PPA with Respondent No. 1, and the Bank Guarantee deposited by the Petitioner towards Earnest Money Deposit may be refunded. The Petitioner has filed the instant petition pursuant to the liberty granted by this Commission vide order dated 12.08.2024 in Petition No. 193/AT/2024.

2. Respondent no. 1, Damodar Valley Corporation (DVC), is a statutory body established for the development of Damodar Valley with three participating Governments, namely, the Central Government, the Government of West Bengal, and the Government of Jharkhand.

3. Respondent No. 2, REC Power Development Corporation Limited (RECPDCL), is a wholly owned subsidiary of REC Limited, a Maharatna Company under the Ministry of Power. The Ministry of Power (MoP) issued a Letter of Award (LoA) on 21.11.2022 to RECPDCL for acting as the Bid Process Coordinator for bundling 600 MW (500 MW Solar and 100 MW Wind) of RE Power with conventional power under the Flexibility Scheme. Thereafter, RECPDCL issued the Request for Selection (RfS) for the selection of Wind Power Developers (WPDs) for setting up 100 MW ISTS-Connected Wind Power Projects in India under Tariff-based Competitive Bidding under the Flexibility Scheme on 31.07.2023.
4. The Petitioner has made the following prayers:
- (a) *Hold and declare that the Petitioner's bid dated 17.09.2023 stands expired on 30.06.2024 and consequently, LoA dated 06.02.2024 is no longer valid.*
 - (b) *Set aside the REC's request dated 05.08.2024 requiring the Petitioner to execute the PPA with DVC and submit bank guarantee and success charges;*
 - (c) *Direct REC to return the Petitioner's Bank Guarantee bearing no. OGT0005230085967 forthwith, without any deduction or adjustment.*
 - (d) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

IA 64 of 2024

- (a) *Stay Respondent No. 2's request dated 05.08.2024 requiring the Petitioner to execute the PPA with Respondent No. 1 and submit bank guarantee and success charges;*
- (b) *Direct Respondent No. 2 to not take any coercive actions including encashment of the Petitioner's Bank Guarantee bearing no. OGT0005230085967, during the pendency of the present Petition.*
- (c) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

Factual Matrix:

5. The brief facts of the case are as under:

Scheme	Scheme for Flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through Bundling with Renewable Energy and Storage Power
Nodal agency	RECPDCL
Tariff	₹3.58/kWh
Tariff Adoption Order	193/AT/2024 dated 01.08.2024
Capacity (MW)	50 MW
Power	Wind
RfS issued on	31.07.2023
EMD Submission Date	12.09.2023
EMD Validity	01.09.2024
Bid submitted by the Petitioner on	17.09.2023
E-Reverse auction held on	17.11.2023
LOA issued on	06.02.2024
Original Bid Validity until	15.03.2024
Mutual Extended Bid Validity until	30.06.2024

6. The present petition was filed on 13.08.2024, along with IAs. The petition was listed for hearing on 22.8.2024. The Commission, after hearing the parties' submissions, admitted the petition. Notably, IA No. 63/2024, filed for urgent listing of the matter, having served its purpose, was disposed of. The Commission further permitted the respondents to file their reply, including on the aspects of the relief sought by the Petitioner in IA No. 64/2024, and subsequently permitted the Petitioner to submit its rejoinder. The matter was then heard on 08.10.2024, wherein the Commission, upon request, permitted Respondent No. 2 to file its reply, also allowing the Petitioner to file the rejoinder in response. Pursuant to the Commission's directions, the parties filed their respective submissions. During the hearing held on 06.11.2024, the parties made detailed submissions and concluded their arguments. At the parties' request, the Commission permitted them to file written submissions, if any, within two weeks, after which the matter was reserved for orders.

Analysis and Decision:

7. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records and considered the submissions of the parties.
8. On the basis of the submissions of the contracting parties, the following issues arise for adjudication:

Issue No. I: *Whether the Petitioner's bid dated 17.09.2023 has expired on 30.06.2024, and consequently, whether the LoA dated 06.02.2024 is no longer valid ?*

Issue No. II: *Whether the RECPDCL's request dated 05.08.2024 requiring the Petitioner to execute the PPA with DVC and submit the bank guarantee and success charges should be set aside?*

Issue No. III: *Whether RECPDCL should be directed to return the Petitioner's Bank Guarantee without any deduction or adjustment?*

9. Now, we proceed to discuss the above issues.

Re. Issue No. I:

Whether the Petitioner's bid dated 17.09.2023 has expired on 30.06.2024, and consequently, whether the LoA dated 06.02.2024 is no longer valid ?

10. Briefly, the Petitioner has submitted as under:

- a) On 14.09.2023, the Petitioner issued its covering letter in response to the RfS, wherein it stated that the bid pursuant to RfS was valid until 15.03.2024.
- b) On 17.09.2023, the Petitioner submitted its bid in response to the RfS and e-Reverse Auction was held on 17.11.2023.
- c) On 06.02.2024, RECPDCL issued a LoA to the Petitioner for setting up of 50 MW ISTS-Connected Wind Power Project (Project). The LoA was unconditionally accepted by the Petitioner on the same day, i.e., 06.02.2024.
- d) On 12.03.2024, RECPDCL wrote to the Petitioner seeking an extension of the bid validity period of the Project. In response, the Petitioner, vide its email dated 12.03.2024, extended the bid validity period until 30.06.2024. Further, the Petitioner had requested before this Commission that RECPDCL may be directed to tender its letters seeking an extension of bid validity; RECPDCL has not provided a copy of its letters as on date.
- e) On 21.03.2024, the Petitioner wrote to RECPDCL expressing its willingness to execute that Power Purchase Agreement (PPA) and provided the following documents:
 - (a) Details of promoters and their shareholding in the SPV/Project Company.
 - (b) Certificate of Incorporation of the SPV/Project Company and Copy of the Memorandum of Association (MoA) of the SPV/Project Company highlighting the

object clause related to Power/ Energy/ Renewable Energy/ Solar/Wind/ Wind-Solar Hybrid power plant development.

- (c) Board Resolution of HPD for authorization of signing of PPA and subsequent relevant documents
- f) On 23.04.2024, DVC filed Petition No. 193/AT/2024 before this Commission *inter alia*, seeking the adoption of tariff for the Petitioner at the rate of Rs. 3.58 per unit. DVC had filed the petition after the expiry of 60 days from the date of issuance of LoA, which was on 06.04.2024.
- g) On 02.05.2024, the Petitioner wrote to RECPDCL, nominating its subsidiary *M/s. Juniper Green Stellar Private Limited* to execute PPA and develop the Project.
- h) On 05.06.2024, this Commission admitted DVC's Petition No. 193/AT/2024.
- i) On 05.06.2024, the Petitioner wrote to RECPDCL and *inter-alia* stated the following: -
- i. The Petitioner has extended the Bid Validity period till 30.06.2024 in line with RECPDCL's request.
 - ii. The Petitioner had assumed certain Capital Expenditure with respect to project development, including land acquisition, commodity pricing, availability of wind turbine manufacturing, availability of logistics like heavy cranes, movement trolleys, etc, considering the reasonable period of bid validity and timelines for PPA execution. Accordingly, The Petitioner had placed necessary mitigation measures to ensure implementation of the Project within budget. However, these assumptions were disrupted due to the delay in the execution of the PPA.
 - iii. Highlighting the challenges associated with an increase in commodity costs and sourcing of wind turbine generators from the manufacturers (OEM), the Petitioner stated that OEMs are no longer accepting orders since their supply schedules are completely aligned with their maximum capacity of manufacturing facilities for the next 18 (eighteen) months.
 - iv. The Petitioner highlighted its difficulties in confirming binding offers received from suppliers, blocking manufacturing capacity, committing to implementation schedule, and how, consequently, offers are now being subject to withdrawal/cancellation by the respective wind turbine manufacturers and other suppliers due to delay and lack of clarity with respect to signing of PPA.
 - v. The Petitioner also highlighted concerns relating to the impact of increased costs as a result of a delay in execution of PPA due to an increase in commodity prices such

as copper, steel, etc., a sudden surge of the requirement of supply of wind turbines in the Indian market, and land scarcity due to limited wind potential sites and many active competitors. The Petitioner stated that the execution of the Project is under strict scrutiny of the Petitioner's management.

- vi. The delay in the execution of PPA has resulted in additional exposure, uncertainties, risks, and costs. Resultantly, the Petitioner will be at full liberty to walk out freely from PPA execution if the PPA is not executed on or before 30.06.2024. The Petitioner further stated that it would be entitled to the return of the Bank Guarantee towards EMD submitted under the RfS, in full, within 3 days from 30.06.2024.
- vii. RECPDCL was requested to expedite the process and execute the PPA on or before 30.06.2024.
- j) On 10.06.2024, RECPDCL wrote to the Petitioner and *inter-alia* stated the following: -
 - i. This Commission has admitted the Petition for adoption of tariff on 05.06.2024 and that the tariff will be adopted soon.
 - ii. Considering many parties involved in the matter, this Commission may issue an order only after affording time to the parties for filing of replies. Thus, RECPDCL/DVC cannot expedite the process of issuance of tariff and the signing of PPA before 30.06.2024.
 - iii. Further, the Petitioner was requested to ensure compliance regarding the observations in relation to SPV-related documents in order to demonstrate readiness for signing PPA.
- k) On 12.06.2024, the Petitioner wrote to RECPDCL and *inter-alia* stated the following: -
 - i. Copies of SPV-related documents, as highlighted by RECPDCL, have been enclosed.
 - ii. The Petitioner reiterated the challenges that the Petitioner faced due to the delay in the execution of PPA, which has resulted in additional exposure, uncertainties, risks, and costs to the Petitioner.
 - iii. As communicated on 05.06.2024, the Petitioner will be at full liberty to walk out freely from PPA execution if the PPA is not executed on or before 30.06.2024. Further, the Petitioner will be entitled to the return of the Bank Guarantee towards EMD submitted under the RfS, in full, within 3 days from 30.06.2024.
 - iv. RECPDCL was requested to expedite the Petition and adoption of Tariff on priority or obtain necessary approvals for executing the PPA on or before 30.06.2024.

- l) On 12.06.2024, this Commission directed the Respondents (including the Petitioner) to file their respective replies to the Petition within two weeks' time.
- m) On 13.06.2024, RECPDCL wrote to the Petitioner and *inter-alia* stated the following: -
- i. The SPV-related documents submitted by the Petitioner are under scrutiny, and further observations, if any, will be submitted in due course.
 - ii. The tariff petition is next listed on 04.07.2022, and the process followed by this Commission for the adoption of Tariff is beyond RECPDCL's control.
 - iii. In view of Clauses 11.7 and 15 of the RfS, the Petitioner was aware that PPA could only be executed after the adoption of tariff by CERC. This condition was also present in tender documents which were concurred by the Petitioner. Thus, the Petitioner's claim with regard to not executing PPA after 30.06.2024 and, further, the return of Bank Guarantee towards EMD without deduction is untenable.
- n) On 14.06.2024, RECPDCL wrote to the Petitioner in relation to the extension of the validity of its bid and bank guarantee towards EMD. It *inter alia* stated the following: -
- i. Bank Guarantee is valid until 01.07.2024.
 - ii. In terms of the RfS, PPA can only be executed after the adoption of tariff by this Commission. Further, the Bank Guarantee towards EMD is returned upon submission and verification of the Performance Bank Guarantee, which is submitted after execution of PPA.
 - iii. Petition for tariff adoption is currently under this Commission's review and is scheduled for hearing on 04.07.2024.
 - iv. Thus, the Petitioner was requested to convey its confirmation regarding the extension of the bid validity period until 30.09.2024 and also to arrange for an extension of the period of the Bank Guarantee towards EMD by at least 3 months.
- o) On 30.06.2024, the Petitioner wrote to RECPDCL and declined to extend its bid validity beyond 30.06.2024. There is no provision in the RFS or any obligation on the Petitioner to extend the validity of its bid.
- p) On 25.06.2024, the Petitioner filed its reply to the Petition No. 193/AT/2024 *inter-alia* contending that in terms of Clause 26 of the RfS dated 31.07.2023, bids submitted by the prospective bidders are valid for a period of 180 days from the last date of submission of response to the RfS. Accordingly, the Petitioner's bid dated 17.09.2023 was valid only till 15.03.2024. On 12.03.2024, at the instance of RECPDCL, the Petitioner extended its bid validity up to 30.06.2024. On 14.06.2024, RECPDCL requested the Petitioner to extend

the bid validity by an additional 3 months. On 30.06.2024, the Petitioner declined to extend its bid validity any further. Notably, there is no provision in the RFS or any obligation on the Petitioner to extend the validity of its bid beyond 30.06.2024. Consequently, the Petitioner's bid expired on 30.06.2024, i.e., prior to the adoption of tariff by this Commission. Accordingly, DVC's prayer for adoption of tariff for 50 MW capacity *qua* the Petitioner was infructuous since no valid bid would have existed as on the date of adoption of tariff by this Commission.

- q) On 04.07.2024, this Commission heard submissions of the Petitioner and DVC. Thereafter, vide Order dated 11.07.2024 (for hearing held on 04.07.2024), this Commission directed the Petitioner and DVC to file their respective Written Submissions.
- r) On 22.07.2024, this Commission heard submissions of the Petitioner and DVC, and on 02.08.2024, this Commission passed the final Order in Petition No. 193/AT/2024. This Commission *inter alia* held that ***“Accordingly, the Respondent is at liberty to approach the Commission for adjudication of the above indicated issue(s) through a separate Petition. However, as a measure of abundant caution, we are also inclined to clarify that the adoption of tariff by the Commission in respect of Respondent 1 shall be without prejudice to its rights & obligations under the RfS and/or LoA, etc., if any and this, in our view, ought to allay any apprehensions Respondent 1 may have with the adoption of tariff by the Commission.”***
- s) Accordingly, the Petitioner has filed the present petition submitting that:
 - (i) The bid dated 17.09.2023 stands expired as on 30.06.2024.
 - (ii) RECPDCL's conduct demonstrates that the Petitioner's bid stands expired on 30.06.2024.
 - (iii) LoA does not amount to a concluded contract.

11. Vide Written Submissions, the Petitioner has reiterated its submissions made in the plaint. Therefore, the same are not reproduced herewith for the sake of the brevity. Additionally, the Petitioner has submitted as under:

- a) Despite the Petitioner's follow-up with RECPDCL, vide letters dated 05.06.2024 and 12.06.2024, there was a delay in tariff adoption, leading to the expiry of the Petitioner's bid before PPA execution. Notably, this delay is attributable to the Respondents' inaction. DVC's claim that the petition was filed within the extended bid validity is invalid since the Petitioner's extension of bid validity till 30.06.2024 was intended to facilitate the

timely execution of PPA (i.e., by 06.04.2024). In these circumstances, RECPDCL/DVC cannot compel the Petitioner to execute the PPA, post expiry of the bid validity.

- b) The claim that there is no specific timeline for filing a tariff adoption petition after issuing the LoA contradicts Clauses 11.7 and 15.1 of the RfS, which require the PPA to be executed within 60 days of the LoA (i.e., by 06.04.2024) post-tariff adoption. DVC was thus obligated to file for tariff adoption within this timeframe. However, DVC delayed filing Petition No. 193/AT/2024 and filed it only on 23.04.2024. DVC’s failure to adhere to the prescribed timelines for filing the said Petition is deeply concerning. DVC has provided no explanation for the said delay, either to the Commission or to the Petitioner.
- c) The Respondents have consistently violated the timelines under the RfS, as detailed below:

MILESTONES UNDER THE RFS	NUMBER OF DAYS PROVIDED UNDER RFS	NUMBER OF DAYS ACTUALLY TAKEN	ACTUAL DATES
RFS Date	0	0	31.07.2023
Bid Submission	22	46	15.09.2023
LOA Date	110	190	06.02.2024

- d) RECPDCL’s claim that the delay in filing Petition No. 193/AT/2023 was due to the Petitioner’s failure to submit documents within the 45-day timeline in Clause 15.3 of the RfS is a new ground not raised during the proceedings of Petition No. 193/AT/2023. Moreover, Clause 15.3 relates to delays in signing the PPA and not delays in filing the tariff adoption petition.
- e) The Petitioner had submitted the necessary documents on 21.03.2024 stating that it would be signing the PPA with DVC. On 02.05.2024, the Petitioner provided updated documents indicating that the PPA would be signed by its SPV (i.e., *Juniper Green Stellar Pvt. Ltd*). Thus, there was no material change that prevented or delayed DVC in filing Petition No. 193/AT/2023. DVC has not raised any averment/contention claiming delay on account of PPA to be signed with *Juniper Green Stellar Pvt. Ltd*.
- f) In any case, the timeline for signing the PPA (i.e., 60 days after issuance of LoA) cannot be left open and shall be concluded within 170 days, i.e., the indicative timelines as prescribed under the Competitive Bidding Guidelines. The bid process cannot be kept in abeyance without adhering to timelines envisaged for the execution of PPA. In the absence of an explicit extension of timelines provided for in the RfS, DVC / RECPDCL was

required to complete the bidding process and execute a PPA within 180 days.

12. DVC has submitted as under:

- a) As per Clause 15.1 of the RfS, the parties are mandated to enter into the PPA after the adoption of tariff by this Commission. By its Tariff Adoption Order, the Commission has adopted the tariff as prayed for by DVC. However, the Petitioner, on the basis of its own self-serving and erroneous understanding, has refused to sign the PPA with DVC till date.

Re. the Petitioner's bid dated 17.09.2023 stands expired as on 30.06.2024

Re. RECPDCL's conduct demonstrates that the Petitioner's bid stands expired on 30.06.2024

- b) On 23.04.2024, DVC filed the Tariff Adoption Petition before this Commission. Notably, the Petition filed by DVC was within the duly extended bid validity period of the Petitioner. On 05.06.2024, this Commission admitted the Tariff Adoption Petition and, consequently, issued notice to the Respondents therein (including the Petitioner). Pertinently, the same was also within the extended bid validity period. On 14.06.2024, RECPDCL, in view of the pendency of the Tariff Adoption Petitioner, as a measure of abundant caution, requested the Petitioner to extend the bid validity till 30.09.2024. However, the said request was rejected by the Petitioner.
- c) On 01.08.2024, this Commission passed the Adoption Tariff Order, and in view thereof, RECPDCL, *vide* its email dated 05.08.2024, requested the Petitioner to execute the PPA in terms of Clause 15.1 of the RfS.
- d) Notably, the RfS, TBCB Guidelines, and the Flexibility Scheme do not provide any specific timeline for filing the Tariff Adoption Petition before this Commission after the issuance of the LoA to the successful bidders. As per Clause 26 of the RfS, which has sought to be relied upon by the Petitioner, the bid submitted by the bidder (i.e., the Petitioner herein) shall remain valid up to One Hundred Eighty (180) days from the last date of submission of the response to RfS. Pertinently, there is no bar on the extension of validity either in the RfS or in the applicable guidelines.
- e) As per Clause 11.7 of the RfS, the Petitioner was required to sign the PPA with DVC within 60 days after the issuance of the LoA. However, the same was subject to the adoption of tariff by this Commission.

- f) Further, Clause 15.1 of the RfS clearly envisages that the PPA can only be signed after the adoption of tariff by this Commission, and once the Tariff Adoption Petition was filed before this Commission, it was required to follow due process, and there was no way to expedite the tariff adoption process before 30.06.2024 or any other date arbitrarily and belatedly desired by the Petitioner.
- g) RECPDCL ensured that the bid remained valid till the filing of the Tariff Adoption Petition before this Commission and even till the execution of the PPA as per the RfS.
- h) The Petitioner, after understanding and accepting the terms and conditions of the RfP and the bidding documents, cannot now plead that it did not envisage the changing market conditions within a reasonable period of time, which was truly the duty of the bidder as per the RfS and the bid documents. It is trite law that a party to an agreement cannot refuse to perform his obligations under an agreement merely because its performance has become more onerous.

Re. LoA does not amount to a concluded contract

- i) Pertinently, the LoA was contingent on the following two conditions:
 - i. The Petitioner was to acknowledge its issuance and unconditionally accept the same within seven (7) days from the issuance of the LoA,
 - ii. Completion of various activities as stipulated in the RfS within the timelines as prescribed therein.
- j) Nowhere in the RfS or the TBCB Guidelines or the Flexibility Scheme is it mentioned that the PPA cannot be executed if the Commission delays the tariff adoption beyond the bid validity of the selected bidder, and the same is fortified by Clause 15.1 of the RfS which stipulates that the PPA will be signed after the adoption of tariff by this Commission.

Re. The Petitioner cannot be prejudiced on account of the delay in the adoption of tariff

- k) DVC had duly filed the Tariff Adoption Petition before this Commission within the extended bid validity period, as mutually agreed by the Petitioner and RECPDCL.
- l) Neither RECPDCL nor DVC could have expedited the due process and procedure of tariff adoption by this Commission, and hence, the Petitioner ought not to be permitted to contend that it has been prejudiced due to delays of the Respondents when there was no fault of either DVC or RECPDCL.

Re. Petitioner has failed to satisfy the Triple Test Doctrine

- m) The Petitioner has miserably failed to establish a *prima facie* case in its favour.
- n) The balance of convenience does not lie in favour of the Petitioner, as the Petitioner is violating the sanctity of the TBCB Guidelines, RfS, and the Flexibility Scheme by refusing to sign the PPA.
- o) No irreparable loss and injury will be caused to the Petitioner if the relief prayed in the present Petition is rejected by this Commission.
- p) In fact, if the PPA is not executed soon by the Petitioner, DVC will face severe financial impact in as much as it will *inter alia* fail to fulfil its year-wise target as per trajectory given under MOP guidelines *vide* its letter dated 15.09.2022 for implementation of trajectory for replacement of Thermal Energy for the FY 2023-24.

13. The RECPDCL has submitted as under:

- a) On 12.03.2024, RECPDCL wrote to the Petitioner, seeking an extension of the bid validity period of the Project. The Petitioner, vide its email dated 12.03.2024, extended the bid validity period until 30.06.2024.
- b) On 23.04.2024, DVC filed a Petition under Section 63 of the Act bearing Petition No. 193/AT/2024 before this Commission *inter alia* seeking the adoption of tariff of INR 3.58/unit from 50 MW Wind Power Project of Petitioner.
- c) On 02.05.2024, the Petitioner wrote a letter to RECPDCL nominating its subsidiary *M/s. Juniper Green Stellar Private Limited* to execute PPA and develop the Project, wherein the Petitioner stated that they wish to execute the PPA for a capacity of 50MW Wind Power Project awarded to them through *M/s Juniper Green Stellar Private Limited*, which is a 100% subsidiary/SPV of the Petitioner company. The Petitioner, in compliance with Clause 15.3 of the RfS, submitted fresh documents.
- d) On 05.06.2024, the Petitioner issued a letter to RECPDCL informing of its decision to extend the bid validity period until 30.06.2024, citing RECPDCL's request. The Petitioner mentioned the disruptions to its project assumptions, including capital expenditure and logistics, due to delays in PPA execution. It expressed concern over rising commodity costs, difficulties in sourcing wind turbines from fully booked OEMs, and challenges with supplier commitments, all of which have increased risks and costs. The Petitioner warned that if the PPA is not executed by 30.06.2024, it reserves the right to withdraw from the agreement and expects a full return of the Bank Guarantee

within three days from 30.06.2024. The Petitioner urged RECPDCL to expedite the PPA process.

- e) On 10.06.2024, RECPDCL, vide a letter, communicated to the Petitioner that the Commission admitted the Petition for tariff adoption on 05.06.2024, with the tariff expected to be adopted shortly. However, due to the involvement of multiple parties and the need to allow time for replies, RECPDCL indicated that it would not be possible to expedite the tariff issuance and PPA signing before 30.06.2024. RECPDCL also requested the Petitioner to ensure compliance with the observations related to the SPV documents to demonstrate readiness for PPA execution.
- f) On 12.06.2024, the Petitioner, vide a letter, informed RECPDCL that it had enclosed the required SPV-related documents as requested. The Petitioner reiterated the challenges and increased risks it faces due to the delay in executing the PPA. The Petitioner re-stated its intent to withdraw from the PPA if it is not signed by 30.06.2024 and expects the return of the Bank Guarantee within three days of that date. The Petitioner urged RECPDCL to expedite the tariff adoption process or secure the necessary approvals to execute the PPA by the deadline.
- g) On 13.06.2024, RECPDCL highlighted that, according to Clauses 11.7 and 15 of the RfS, the Petitioner was very much aware that the PPA could only be executed after the tariff adoption by this Commission, a condition explicitly stated in the RfS that the Petitioner had agreed to. Therefore, the intention of the Petitioner to withdraw from the PPA if not signed by 30.06.2024, along with the demand for a full return of the Bank Guarantee without deduction, is untenable.
- h) On 30.06.2024, the Petitioner informed RECPDCL that they declined to extend its bid validity beyond 30.06.2024.
- i) On 01.08.2024, this Commission passed the final Order in Petition No. 193/AT/2024 (Order dated 01.08.2024).
- j) On 05.08.2024, RECPDCL, referencing the Commission's Order dated 01.08.2024, wrote to the Petitioner on behalf of DVC, requesting the signing of the PPA between DVC and *Juniper Green Stellar Pvt. Limited* for the 50 MW Wind Power Project. The Petitioner was asked to comply with specific requirements before signing the PPA, including providing a Performance Bank Guarantee at the rate of ₹19.89 Lakh per MW to DVC, paying Success Charges of ₹1 Lakh per MW plus GST to RECPDCL, coordinating with DVC to finalize the PPA execution date, and ensuring the processing

of the Performance Bank Guarantee and Success Charges within seven days prior to the PPA signing.

Re. RECPDCL is acting within the terms and conditions of the RfS

- k) The Petitioner, in this case, was fully aware of the milestones and timelines stipulated in the RfS. Notably, Clause 11.7 of the RfS explicitly requires the selected bidder to sign the PPA within 60 days of issuance of the LoA subject to the tariff adoption by the Commission. If the selected bidder fails to execute the PPA within this time, the Bank Guarantee equivalent to the EMD will be encashed as liquidated damages, and the project will be cancelled.
- l) Clause 11.7 of the RfS makes it abundantly clear that the PPA can only be executed after the tariff is adopted by the Commission. Additionally, Clause 15.1 reiterates that *'The PPA will be signed after adoption of tariff by CERC.'* Therefore, Petitioner's claim that DVC or RECPDCL is delaying the PPA execution is unfounded.
- m) The Petitioner, in its covering letter dated 14.09.2023, provided unconditional acceptance to the RfS issued by RECPDCL. The Petitioner, through the said covering letter, also ensured that it would execute the PPA as per the provisions outlined in both the RfS and the PPA itself, which were to be binding on the Petitioner.
- n) The contentions raised by the Petitioner through the present petition and vide letter dated 05.06.2024 are nothing but an afterthought. The Petitioner was fully aware that DVC had already initiated the Tariff Adoption Petition before this Commission and that the tariff was on the verge of being adopted. The Petitioner was also cognizant that, upon such adoption, it would be obligated to execute the PPA with DVC, as required under the RfS. However, shortly after the Tariff Adoption Petition was admitted by this Commission, the Petitioner issued the letter dated 05.06.2024 to RECPDCL, stating that the Petitioner, at the time of submission of their bid document, had assumed certain capex and opex associated with the Project development which has changed due to increase in the price of the commodity. In light of the above, the Petitioner requested RECPDCL to make necessary arrangements for the execution of the PPA on or before 30.06.2024, failing which the Petitioner shall be entailed to walk freely from the execution of the PPA with DVC without any consequence thereof.
- o) The Petitioner is estopped from raising any claim to avoid execution of the PPA, having unequivocally accepted the terms and conditions of the RfS, as evidenced in its

covering letter dated 14.09.2023. Under the doctrine of estoppel, a party is precluded from acting inconsistently with its earlier representations when such representations have been relied upon by the other party to their detriment.

- p) In this case, both RECPDCL and DVC have reasonably relied on the Petitioner's unconditional acceptance of the RfS and the execution of the PPA. The Petitioner cannot now reverse its position and avoid its contractual obligations by citing an alleged increase in project costs or other unforeseen factors, which were risks inherent in the execution of the project.

Re: RECPDCL has a limited role as the bid process coordinator under the RFS:

- q) DVC issued the LOA dated 22.11.2022 to RECPDCL, in view of the MoP Order dated 17.06.2022, for acting as the Bid Process Coordinator for bundling of 600 MW (500 MW Solar and 100 MW Wind) of RE Power with conventional power under "Scheme for Flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power" of Ministry of Power, Government of India.
- r) The LOA dated 21.11.2022 envisaged the timeline for conducting the bid process whereby the BPC was permitted to give extended time for any of the events in the bidding process by giving prior intimation to DVC, on account of delay in achieving such activities that were required to be completed before the event. Further, such extension of time was not to be in any way deviation from the bidding Guidelines.
- s) The RfS further stipulates the post-award compliances and the role of RECPDCL as BPC to issue a Letter of the award to the Successful Bidder and thereafter, as the authorised representative of DVC, take steps for the execution of the PPA after the adoption of tariff by this Commission.
- t) Under Clause 11.7 of the RfS, the PPA had to be executed within 60 days following the issuance of the LoA subject to adoption of the tariff by the Commission. With the tariff adopted on 01.08.2024, the PPA should have been executed immediately upon intimation by RECPDCL through its letter dated 05.08.2024. However, despite a request from RECPDCL as a prudent BPC, the Petitioner has failed to complete this process, demonstrating a breach of their contractual obligations.
- u) Clause 30 of the RfS unequivocally places the onus on the Wind Power Developer, i.e., the Petitioner, to meet all project milestones in a timely manner, including PPA execution and financial closure. The DVC and RECPDCL were not required to send

reminders, though, in good faith, RECPDCL issued a reminder on 05.08.2024. The Petitioner's failure to meet the milestones is a clear breach of their obligations under the RfS. The Petitioner's claims of delays due to RECPDCL's actions are unfounded and contrary to the responsibilities explicitly assigned to the Petitioner under the RfS.

- v) The present petition appears to be an attempt by the Petitioner to avoid its contractual obligations under the RfS and LoA. The Petitioner, after admission of the Tariff Adoption Petition No. 193/AT/2024 by this Commission very conveniently and as an afterthought for the first time, expressed its intention to walk out from the execution of the PPA, knowing fully well that the matter was pending consideration before the Commission and therefore beyond the control of either RECPDCL or DVC. The Petitioner's claims, therefore, lack merit, as RECPDCL and DVC followed all prescribed procedures without delay, and any issues in the process are due to the Petitioner's non-compliance with the RfS and LoA. The Petitioner is obligated to execute the PPA without further delay.

Re. Acceptance of LOA amounts to a concluded contract

- w) It is a settled legal principle of law that once a LoA is issued and accepted by the successful bidder, it constitutes a concluded contract. By accepting the LoA, the Petitioner expressly consented to the terms outlined therein, creating a binding obligation to proceed with the contractual formalities, including the execution of the PPA with DVC.
- x) The Petitioner's argument regarding the expiry of its bid under Clause 26 of the RfS is misconceived and legally unsustainable. The bid may expire, but once the LoA has been accepted by the successful bidder, the relationship between the Parties becomes binding.
- y) The Petitioner's claim that the LoA "merely indicates a party's intention" to enter into a contract is incorrect. The Hon'ble Supreme Court and Hon'ble High Courts have time and again held that once an LoA is accepted, it goes beyond mere intention and is treated as a concluded contract. Therefore, any argument by the Petitioner to the contrary amounts to an incorrect reading of the LoA.

- 14. Vide the Written Submissions, the RECPDCL has reiterated its submissions made in the plaint, and therefore, the same are not reproduced herewith for the sake of brevity. Additionally, the RECPDCL has submitted as under:

Re. Bid Validity contested when the adoption of tariff was Sub-Judice

- a) The Petitioner raised the issue of bid validity during a critical time when the matter of tariff adoption was sub-judice before this Commission in Petition No. 193/AT/2024. The notice for tariff adoption proceedings was issued on 05.06.2024, and the issue of bid validity was deliberately brought up to create a facade of uncertainty in a process where the Petitioner was already bound under the Letter of Award (LoA). This conduct is not only inappropriate but also contrary to the principles of good faith and fair dealing that govern the obligations of the Petitioner as a participant in the competitive bidding process.

Re. Change in grounds for not signing the PPA

- b) The Petitioner claimed financial hardship and increased project costs as grounds for refusing to sign the PPA. Subsequently, the Petitioner shifted its argument, contending that its bid validity expired on 30.06.2024, thereby nullifying its obligations under the LoA.

Re. LoA is conditional and contingent

- c) The Petitioner erroneously claims that the LoA issued to it is conditional and contingent, rendering it unenforceable. This contention misinterprets Clause 11.7 of the RfS, which explicitly mandates that the selected bidder execute the PPA within 60 days of LoA issuance, subject only to the procedural condition of tariff adoption by the Hon'ble Commission. This procedural requirement does not affect the binding nature of the LoA, which obligates the Petitioner to comply with subsequent formalities. The issuance of the LoA, as per Clause 5.5, concludes the bidding process and binds the selected bidder to perform the obligations outlined in the RfS. The argument that the LoA is non-binding or conditional undermines settled principles of contract law and competitive bidding processes.

Re. Precedent and the Mandate of the Ministry of Power

- d) The Petitioner's conduct, if allowed, will set a dangerous precedent in the competitive bidding framework. The Ministry of Power's Flexibility Scheme was designed to achieve national energy goals by integrating renewable energy through transparent and robust processes. The bidding process involves significant investments of time, money, and effort from stakeholders, including RECPDCL, DVC, and other government

entities. If the Petitioner's hyper-technical objections are accepted, it will encourage bidders to rely on minor procedural issues to avoid the performance of binding contracts. This will not only defeat the purpose of the scheme but also discourage investment and erode confidence in the integrity of the competitive bidding process. Upholding the Petitioner's claims would undermine national energy initiatives and waste public resources already expended in implementing the Flexibility Scheme.

Re: Incorrect assertion that the bid has expired

- e) The Petitioner incorrectly asserts that its bid expired on 30.06.2024 and that this purported expiration nullifies its obligations under the LoA. Clause 26 of the RfS restricts bid validity to the period leading up to the issuance of the LoA. Once the LoA was issued on 06.02.2024, the bid validity became irrelevant, as obligations thereafter are governed by the terms of the LoA.

Re. Conduct of the Petitioner – Delay in Document Submission

- f) The Petitioner's own conduct demonstrates its non-compliance with the terms of the RfS. Under Clause 15.3, the Petitioner was required to submit requisite documents within 45 days, i.e., 22.03.2024, of LoA issuance. This requirement ensures timely verification of documents and facilitates PPA execution.
- g) Vide letter dated 02.05.2024, as per Petitioner's own operational constraint, it chose to re-submit the documents in the name of *M/s Juniper Green Stellar Private Limited* with a delay of 41 days, in supersession of its earlier letter dated 21.03.2023. The Petitioner failed to comply with this timeline, causing delays in the document verification process. Despite multiple opportunities provided by RECPDCL, the Petitioner failed to adhere to its obligations, contributing to procedural delays. The Petitioner's failure to comply with its responsibilities cannot now be used as a basis to claim that delays in PPA execution absolve it from liability. The delay in the submission of documents highlights the Petitioner's lack of commitment and due diligence, further justifying RECPDCL's right to encash the EMD as per Clause 14 of the RfS.

- 15. The Commission vide its Order dated 02.08.2024 in Petition no. 193/AT/2024, *inter-alia*, held as under:

“51. We have considered the submissions of the Petitioner and Respondents, JGEPL & AEPL. As already noted above, as per the overall scheme of the Flexibility Guidelines, the PPAs with the successful bidders can only be entered into after the adoption of tariff by the Appropriate Commission. As a corollary, it follows that the relevant

consideration for the adoption of tariff by the Commission would be the issuance of the LoA to the successful bidders and their acceptance by such bidders. In the present case, both the successful bidders have been issued the LoAs and they have also duly accepted the LoAs without any demur. Undoubtedly, the expiry of the bid validity and the rights accrued upon the bidder thereof are material aspect, the relevancy of the bid validity after the issuance of LoA is itself a disputed position between the parties. Furthermore, the dispute(s) that have emerged between the parties post the award of the LoA and during the pendency of the present petition, are, in our view, not germane to the scope of the present tariff adoption proceedings inasmuch as they cannot said to have any effect either on the transparency of the bid process or the compliance with the provisions of the Guidelines. We are also not convinced as to how the adoption of tariff qua Respondent No. 1 by the Commission would adversely prejudice or preclude it from exercising its rights under the RfS and/or LoA if any, which have accrued at a later stage. On the other hand, entertaining such disputes in the present tariff adoption proceedings would stretch the scope of the present proceedings beyond the prayers made in the present case and converting it into full fledged adjudicatory proceedings. Besides, it is well settled that a court cannot travel beyond the relief sought by the Petitioner before it and in this context, we may gainfully refer to the recent judgment of the APTEL dated 9.7.2024 in Appeal No. 261 of 2021 and Ors. (APML v. MERC and Ors.), wherein the APTEL has observed as under:

[.]

Accordingly, the Respondent is at liberty to approach the Commission for adjudication of the above indicated issue(s) through a separate Petition. However, as a measure of abundant caution, we are also inclined to clarify that the adoption of tariff by the Commission in respect of Respondent 1 shall be without prejudice to its rights & obligations under the RfS and/or LoA, etc., if any and this, in our view, ought to allay any apprehensions Respondent 1 may have with the adoption of tariff by the Commission.”

16. We observe that the relevant clauses of the Competitive Bidding Guidelines stipulate as under:-

*6.5. The Procurer or its authorised representatives shall provide opportunity for pre-bid conference to the prospective bidders, and shall provide written interpretation of the tender documents to any bidder which shall also be made available to all other bidders. All the concerned parties shall rely solely on the written communication. Any clarification or revision to the bidding documents shall be uploaded on the website of the Procurer or its authorised representatives for adequate information. **In the event of the issuance of any revision or amendment of the bidding documents, the bidders shall be provided a period of at least 7 (days) therefrom, for submission of bids.***

9. INDICATIVE TIMETABLE FOR BID PROCESS

9.1. In the bidding process, a minimum period of 22 (twenty-two) days shall be allowed between the issuance of RfS documents and the last date of bid submission. The indicative timetable for the bidding process is indicated in Annexure-I. In normal circumstances, the bidding process is likely to be completed in a period of 110 (one hundred ten) days.

9.2. The Procurer may give extended timeframe than indicated in the Annexure-I and this shall not be construed as deviation to the Guidelines.

[...]

Annexure I - Time Table for Bid Process

S. N.	Event	Elapsed Time from Zero Date
1.	<i>Date of issue of RfS Project specific draft Power Purchase Agreements and other draft Project Agreements.</i>	Zero Date
2.	<i>Bid clarification, conferences, opening of online Data Room to share all Project specific details including site, if specified by Procurer etc. & revision of RfS</i>	**
3.	<i>RfS Bid submission</i>	22 days
4.	Evaluation of bids and issue of LOI	110 days
5.	Signing of PPA	170 days

*** In case of any change in RfS document, the Procurer shall provide the bidders additional time in accordance with clause 6.5 of these Guidelines.*

Note: It is clarified that if the Procurer gives extended time for any of the events in the bidding process, on account of delay in achieving the activities required to be completed before the event, such extension of time shall not in any way be deviation from these Guidelines.”

17. The relevant extracts of the RfS stipulate as under: -

“11. PERFORMANCE BANK GUARANTEE (PBG) / PAYMENT ON ORDER INSTRUMENT (POI)

[...]

11.7. The selected Bidder for the Project selected based on this RfS is required to sign PPA with DVC within 60 Days after the issue of LoA, subject to adoption of tariff by commission. In case, DVC offers to execute the PPA with the Selected Bidder and if the Selected Bidder does not submit the requisite documents as per Clause No. 15, Section III, Instructions to Bidders (ITB) of RfS documents or does not meet eligibility criteria upon submission of documents or does not execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by DVC/RECPDCL from the Bank Guarantee available with DVC/ RECPDCL (i.e. EMD/POI) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

[...]

15. POWER PURCHASE AGREEMENT (PPA)

15.1. DVC shall enter into Power Purchase Agreement (PPA) with Bidders selected based on this RfS. A copy of standard Power Purchase Agreement to be executed between DVC and the selected WPD is available on ISN-ETS Portal <https://www.bharatelectronicstender.com> and also in RECPDCL website www.recpdcl.in. **The PPA will be signed after adoption of tariff by CERC.** Cost to be incurred by Procurer (DVC) in lieu of Tariff petition to be submitted by procurer before competent authority for adoption of discovered tariff is to be borne by successful bidders in proportion to their successful bid quantum. PPA will be executed between DVC and selected bidder or its SPV.

Note: PPA will be executed between DVC and the WPD as per the breakup of the cumulative Project capacity awarded to the Bidder. The Bidder shall provide the project breakup for the cumulative capacity quoted, in the Covering Letter (Format 7.1), which can be changed by the WPD prior to signing of PPA, keeping the total

contracted capacity unchanged from the value as on the date of bid submission. Further, for each Project, the bidder shall provide a tentative hourly generation profile for a representative day for a single year, indicating tentative energy (MWh) and power (MW) to be supplied under the PPA. The final project configuration, adding up to the cumulative capacity awarded to the Bidder, may be intimated to DVC at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity for the Project(s) on account of changes in the project parameters from the data as submitted in the Covering letter, shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the Scheduled Commissioning Date of the Projects.
[...]

15.3. Successful bidders will have to submit the required documents to DVC within 45 days from the issue of LoA. In case of delay in submission of documents beyond the 45 days as mentioned above, DVC shall not be liable for delay in verification of documents and subsequent delay in signing of PPA or date of signing of PPA, whichever is later.

26. VALIDITY OF THE RESPONSE TO RfS

The Bidder shall submit the response to RfS which shall remain valid up to 180 (One Hundred Eighty) days from the last date of submission of response to RfS (“Bid Validity”). RECPDCL reserves the right to reject any response to RfS which does not meet the aforementioned validity requirement.”

18. The timeline stipulated under the LOA dated 21.11.2022 is as under:

“Timeline for conducting the bid process

<i>Event</i>	<i>Elapsed Time from Zero Date</i>
<i>Date of issue of RfS and project-specific PPA</i>	<i>Zero Date</i>
<i>RfS Bid Submission</i>	<i>22 Days</i>
<i>Evaluation of bids and issuance of LOI on receipt of consent from the procurer i.e., DVC</i>	<i>110 Days</i>
<i>Signing of PPA by the procurer</i>	<i>170 days</i>

It is clarified that the BPC may give extended time for any of the events in the bidding process under intimation to DVC, on account of delay in achieving the activities required to be completed before the event. Such extension of time shall not in any way be deviation from the bidding Guidelines.”

19. From the above, we note that vide Order dated 01.08.2024 in Petition no. 193/AT/2024, the Petitioner was given the liberty to approach the Commission for adjudication of the above-indicated issue(s) through a separate Petition. We observe that as per the Competitive Bidding Guidelines, the LoA was to be issued within 110 days of issuance of RfS, and the PPA was to be signed within 170 days of the date of issuance of RfS. However, in case of any change in the RfS document, the DVC was to give an additional time of seven (7) days to the bidder for submission of the bid, as per clause 6.5 of the Guidelines. As per Clause 11.7. of the RfS, the selected bidder was required to sign PPA with DVC within 60 Days after the issue of LoA,

subject to the adoption of tariff by the Commission. In case DVC offers to execute the PPA and if the Selected Bidder does not submit the requisite documents as per Clause No. 15, Section III, Instructions to Bidders (ITB) of RfS documents or does not execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by DVC/RECPDCL from the Bank Guarantee available with DVC/ RECPDCL (i.e., EMD/POI) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled. As per clause 15.1., DVC was to enter into PPA with a successful bidder after the adoption of tariff by the Commission. As per clause 15.3 of the RfS, the successful bidder was to submit the required documents to DVC within 45 days from the issue of LoA. In case of delay in submission of documents beyond the 45 days, DVC was not liable for delay in verification of documents and subsequent delay in signing of PPA or date of signing of PPA, whichever is later. As per clause 26 of the RfS, the bid will remain valid up to One Hundred Eighty (180) days from the last date of submission of the bid. We further note that the timeline stipulated under the LOA dated 21.11.2022, the BPC could extend the time for any of the events in the bidding process under intimation to DVC on account of delay in achieving the activities required to be completed before the event.

20. We note that the timelines in the petition are as under:

Details	Days	Timelines as per Guidelines	Actual dates
RfS	0	31.07.2023	31.07.2023
Bid submission		17.09.2023	17.09.2023
e.Reverse auction			17.11.2023
LOI issued on	110	18.11.2023	06.02.2024
The Petitioner unconditionally accepted the LoA			06.02.2024
Letter for extension of last date of bid till 30.06.2024			12.03.2024
The Petitioner extended the bid validity date to 30.06.2024 on			13.03.2024
Original Bid Validity dated	180	15.03.2024	15.03.2024
PPA ought to be executed as per Guidelines/LoA	170	07.01.2024	06.04.2024
Petition No. 193/AT/2024 for the adoption of tariff filed by DVC			23.04.2024
The Petitioner wrote to RECPDCL, nominating its subsidiary <i>M/s. Juniper Green Stellar Private Limited</i> to execute PPA and develop the Project			02.05.2024
The Commission admitted petition No. 193/AT/2024			05.06.2024

RECPDCL requested for further extension of the bid validity date till 30.09.2024			14.06.2024
The Petitioner rejected the request of RECPDCL for an extension of the bid validity date			30.06.2024
Mutual extended bid validity date			30.06.2024
The Commission vide Order in petition No. 193/AT/2024 adopted the tariff on			01.08.2024
RECPDCL wrote to the Petitioner to execute the PPA with DVC and submit bank guarantee and success charges.			05.08.2024
DVC wrote to the Petitioner requesting to execute a PPA within 4 days from the issuance of DVC's letter			08.08.2024
The Petitioner requested DVC to withdraw its e.mail dated 08.08.2024 and postpone the execution of PPA			12.08.2024
RECPDCL requested the Petitioner for an extension of its bank guarantee towards EMD			29.08.2024
The Petitioner extended its bank guarantee towards EMD until 01.10.2024			30.08.2024

21. From the above, we note that the RfS was issued on 31.07.2023, and the Petitioner submitted the bid on 17.09.2023. The eReverse auction was conducted on 17.11.2023. The Letter of Award was issued by RECPDCL on 06.02.2024. As per the guidelines, the bid was originally valid up to 15.03.2024, which was subsequently mutually extended by the contracting parties up to 30.06.2024. On 23.04.2024 (i.e., before the expiry of the extended bid validity date), DVC filed Petition No. 193/AT/2024 before the Commission for adoption of tariff. We further note that, while the *lis* (petition no. 193/AT/2024) was pending before the Commission, on 02.05.2024, the Petitioner nominated its subsidiary *M/s. Juniper Green Stellar Private Limited* to execute PPA and develop the Project. RECPDCL requested for another extension of the bid validity date, i.e., up to 30.09.2024. However, the same was not accepted by the Petitioner. On 01.08.2024, the Commission adopted the tariff through Petition No. 193/AT/2024. Subsequently, on 05.08.2024 and 08.08.2024, the Respondent required the Petitioner to execute the PPA with DVC and submit bank guarantee and success charges. However, on 12.08.2024, the Petitioner requested DVC to withdraw its e-mail dated 08.08.2024 and postpone the execution of PPA. We observe that as per Clause 11.7. and Clause 15.1 of the RfS, it is stipulated that the Petitioner was required to sign PPA with DVC within 60 Days after the issue of LoA, subject to the adoption of tariff by the Commission. In the instant case, DVC filed petition No. 93/AT/2024 on 23.04.2024, i.e., much before 30.06.2024 (expiry of the

extended bid validity date). Hence, DVC had already taken the *bonafide* steps for execution of the PPA. Further, after the adoption of the tariff by the Commission on 01.08.2024, the Respondents immediately requested the Petitioner to execute the PPA on 05.08.2024 & 08.08.2024. Hence, the Respondents have acted diligently and within time. It is pertinent to mention here that the execution was refused by the Petitioner on 12.08.2024. Additionally, we find no merit in the case of the Petitioner regarding financial hardship and increased project costs as grounds for refusing to sign the PPA. Further, it is also admitted case that as per Petitioner's own operational constraint, it chose to re-submit the documents in the name of *M/s Juniper Green Stellar Private Limited* with a delay of 41 days, in supersession of its earlier letter dated 21.03.2023. The submission that the Petitioner failed to comply with this timeline caused delays in the document verification process. Hence, we are of the view that the Petitioner has failed to make a case in its favour.

22. In view of the above, it is held that no favourable relief can be extended to the Petitioner on this issue. The issue is decided accordingly against the Petitioner.

Re. Issue No. II:

Whether the RECPDCL's request dated 05.08.2024 requiring the Petitioner to execute the PPA with DVC and submit the bank guarantee and success charges should be set aside? AND

Re. Issue No. III:

Whether RECPDCL should be directed to return the Petitioner's Bank Guarantee without any deduction or adjustment?

23. In view of our findings on Issue No. I, other issues viz., Issue No. 2, Issue No. 3 are also decided against the Petitioner and in favour of the Respondents.
24. Petition No. 275/MP/2024, along with IA no. 64 of 2024, is disposed of in terms of the above.

Sd/-
हरीश दुदानी
सदस्य

Sd/-
रमेश बाबू वी.
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष