

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 305/MP/2024 along with IA No. 76/2024
and 306/MP/2024 along with IA No. 77/2024**

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V, Member

Shri Harish Dudani, Member

Date of Order:30.03.2025

Petitioner No. 305/MP/2024

In the matter of:

Petition under Sections 79 & 94 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) regulations, 2022, along with Regulation 65-69 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 2023, seeking the humble indulgence of this Commission concerning the limited directions issued vide the Order dated 21.04.2024 in Petition No. 291/MP/2023 read with Order dated 04.05.2024 passed in IA (Diary) No. 230 of 2024 in Petition No. 291/MP/2023 in relation to achieving the Financial Closure and Scheduled Commissioning of the Gadag 300 MW project and consequentially to seek an extension of time for compliance with the said limited direction(s).

And

in the matter of:

SolarOne Energy Private Limited,
Registered Office: 1A, Vandana Building,
Tolstoy Marg, New Delhi-110001
Corporate Office: Level-6, Building No.11,
DLF Cyber City, Phase2, Gurgaon-122002

.....Petitioner

Versus

Central Transmission Utility of India Limited,
Saudamini, 1st Floor, Plot No. 2,
Sector-29, Gurugram- 122001, Haryana

.....Respondent

Petitioner No. 306/MP/2024

In the matter of:

Petition under Sections 79 & 94 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) regulations, 2022, along with Regulation 65-69 of



the Central Electricity Regulatory Commission (Conduct of Business) Regulations 2023, seeking the humble indulgence of this hon'ble Commission concerning the limited directions issued vide the Order dated 21.04.2024 in Petition no. 292/MP/2023 read with Order dated 04.05.2024 passed in IA (Diary) No. 231 of 2024 in Petition No. 292/MP/2023 in relation to achieving the Financial Closure and Scheduled Commissioning of the Koppal 300 MW project and consequentially to seek an extension of time for compliance with the said limited direction(s)

**And
in the matter of:**

SolarOne Energy Private Limited,
Registered Office: 1A, Vandana Building,
Tolstoy Marg, New Delhi-110001

.....Petitioner

Corporate Office: Level-6, Building No.11,
DLF Cyber City, Phase2, Gurgaon-122002

Versus

Central Transmission Utility of India Limited
Saudamini, 1st Floor, Plot No. 2,
Sector-29, Gurugram, Haryana- 122001

.....Respondent

Parties Present:

Shri Basava Prabhu Patil, Sr. Advocate, SEPL
Ms. Molshree, Advocate, SEPL
Shri Nipun Sharma, Advocate, SEPL
Shri Rishabh Sehgal, Advocate, SEPL
Shri Geet Ahuja, Advocate, SEPL
Shri Shida Dass, Advocate, SEPL
Shri Alok Shankar, Advocate, CTUIL
Shri Kumarjeet Ray, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Ms. Priyansi Jadiya, CTUIL

ORDER

The Petitioner, SolarOne Energy Private Limited, has filed the instant Petition Nos. 305/MP/2024 and 306/MP/2024 under Sections 79 and 94 of the Electricity Act, 2003, seeking an extension of time for achieving the Financial Closure and Scheduled Commissioning of the Gadag 300 MW and Koppal 300 MW Project.

2. The Petitioner in the respective Petition has made the following prayers:

Prayer(s) in Petition No. 305/MP/2024



- (a) Allow the present Petition to the extant facts pleaded and grounds urged above;
- (b) Issue ex-parte, ad-interim order(s) / direction(s) to the Central Transmission Utility of India, to not take any precipitative and / or coercive actions against the Petitioner including revocation of connectivity and / or invocation of the Bank Guarantee(s) furnished to Central Transmission Utility of India, till the final disposal of the present Petition;
- (c) Issue appropriate order(s) / direction(s) holding that the Petitioner is entitled to seek extension of the time prescribed for achieving Financial Closure and extend the timeline for achieving the financial closure in relation to the 300 MW Project being developed by the Petitioner being connected at Gadag S/s from 21.10.2024 to 21.10.2025;
- (d) Issue appropriate order(s) / direction(s) holding that the Petitioner is entitled to seek extension of the time prescribed for achieving Scheduled Commercial Operation Date and extend the timeline for achieving the Scheduled Commercial Operation Date in relation to the 300 MW Project being developed by the Petitioner being connected at Gadag S/s from 21.01.2025 to 21.04.2026;
- (e) Issue appropriate order(s) / direction(s) declaring that all other rights ensuing under the GNA Regulations to a Connectivity Grantee shall be available to the Petitioner;
- (f) Issue appropriate order(s) / direction(s) to ensure that the intent and purpose for allowing relief to the Petitioner by way of the findings and directions in the Order dated 21.04.2024, is not taken away and the Petitioner is not deprived from reaping the fruits of the decree;
- (g) Issue appropriate order(s)/direction(s) to Central Transmission Utility of India Limited to take into account the revised timelines of compliance as and when extended by this Hon'ble Commission towards achieving the financial closure and scheduled commissioning date of the 300 MW Gadag Project and do not precipitate any action against the Petitioner in terms of the original timelines under Para 61 of the Order dated 21.04.2024;
- (h) Issue appropriate order(s)/direction(s) to Central Transmission Utility of India Limited to initiate the necessary course of action for getting the connectivity agreements amended as per the GNA regulations and declare SolarOne Energy as a connectivity grantee under the GNA regulations; and

Pass such other and further order(s) as this Commission may deem fit and appropriate in the facts and circumstances of the present case.

Prayer(s) in IA No. 76/2024 in Petition No. 305/MP/2024

- (a) Allow the present Application;
- (b) Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited to take any coercive and/ or precipitative step(s) against the Applicant herein, including invocation and / or encashment of Bank Guarantee(s) bearing No. IGT2200830 and IGT2200822 amounting to Rs. 50,00,000/- and 3,00,00,000/- respectively submitted by the Applicant in favour of Central Transmission Utility of India Limited, till the final disposal of the accompanying petition;
- (c) Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited from taking any step(s) towards rendering the 300 MW connectivity granted to the Applicant at Gadag revoked, till the final disposal of the accompanying petition;

Pass such other and further order(s) as this Commission may deem fit and appropriate in the facts and circumstances of the present case

Prayer(s) in Petition No. 306/MP/2024

- (a) *Allow the present Petition to the extant facts pleaded and grounds urged above;*
- (b) *Issue ex-parte, ad-interim order(s) / direction(s) to the Central Transmission Utility of India, to not take any precipitative and / or coercive actions against the Petitioner including revocation of connectivity and / or invocation of the Bank Guarantee(s) furnished to Central Transmission Utility of India, till the final disposal of the present Petition;*
- (c) *Issue appropriate order(s) / direction(s) holding that the Petitioner is entitled to seek extension of the time prescribed for achieving Financial Closure and extend the timeline for achieving the financial closure in relation to the 300 MW Project being developed by the Petitioner being connected at Koppal S/s from 21.10.2024 to 21.10.2025;*
- (d) *Issue appropriate order(s) / direction(s) holding that the Petitioner is entitled to seek extension of the time prescribed for achieving Scheduled Commercial Operation Date and extend the timeline for achieving the Scheduled Commercial Operation Date in relation to the 300 MW Project being developed by the Petitioner being connected at Koppal S/s from 21.01.2025 to 21.04.2026;*
- (e) *Issue appropriate order(s) / direction(s) declaring that all other rights ensuing under the GNA Regulations to a Connectivity Grantee shall be available to the Petitioner;*
- (f) *Issue appropriate order(s) / direction(s) to ensure that the intent and purpose for allowing relief to the Petitioner by way of the findings and directions in the Order dated 21.04.2024, is not taken away and the Petitioner is not deprived from reaping the fruits of the decree;*
- (g) *Issue appropriate order(s)/direction(s) to Central Transmission Utility of India Limited to take into account the revised timelines of compliance as and when extended by this Hon'ble Commission towards achieving the financial closure and scheduled commissioning date of the 300 MW Koppal Project and do not precipitate any action against the Petitioner in terms of the original timelines under Para 61 of the Order dated 21.04.2024;*
- (h) *Issue appropriate order(s)/direction(s) to Central Transmission Utility of India Limited to initiate the necessary course of action for getting the connectivity agreements amended as per the GNA regulations and declare SolarOne Energy as a connectivity grantee under the GNA regulations; and*

Pass such other and further order(s) as this Commission may deem fit and appropriate in the facts and circumstances of the present case

Prayer(s) in IA No. 77/2024 in Petition No. 306/MP/2024

- (a) *Allow the present Application;*
- (b) *Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited to take any coercive and/ or precipitative step(s) against the Applicant herein, including invocation and / or encashment of Bank Guarantee(s) bearing No. IGT2200857 and IGT2200861 amounting to Rs. 50,00,000/- and 3,00,00,000/- respectively submitted by the Applicant in favour of Central Transmission Utility of India Limited, till the final disposal of the accompanying petition;*
- (c) *Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited from taking any step(s) towards rendering the 300*

MW connectivity granted to the Applicant at Koppal revoked, till the final disposal of the accompanying petition;

Pass such other and further order(s) as this Commission may deem fit and appropriate in the facts and circumstances of the present case

Submissions of the Petitioner in Petition No. 305/MP/2024:

3. The Petitioner has mainly submitted as follows:
 - a) By way the Order dated 21.04.2024 in Petition No. 291/MP/2023 (hereinafter referred to as 'Order dated 21.04.2024'), the Commission had quashed and set aside the revocation of the 300 MW Connectivity undertaken by the Central Transmission Utility of India Limited (hereinafter referred to as "CTUIL") and allowed the Petitioner herein to retain such connectivity by allowing the conversion from the LOA/PPA route to Land/ Land Bank Guarantee (BG) route subject to adherence to certain conditions.
 - b) Subsequently, the Petitioner approached this Commission seeking certain clarification/relaxation in the conditions mentioned in Para 61 of the Order dated 21.04.2024. While allowing certain relaxation vide Order dated 04.05.2024 in terms of Para 61 (a) of the Order dated 21.04.2024, the Commission was of the view that the prayers sought in relation to Para 61(c) be sought separately by way of an independent petition. Accordingly, liberty was granted to the Petitioner to pursue the prayers for Para 61 (c) subsequently by way of a separate petition.
 - c) The Petitioner filed a subsequent petition bearing Petition (Diary) No. 257/ 2024 and was under the *bona-fide* assumption that the prayers in relation to Para 61(c) of the Order dated 21.04.2024 are being considered by this Commission and pending adjudication. It is only once the Order dated 02.08.2024 in Petition No. 218/MP/2024 filed by CTUIL, came to be passed by this Commission that it was clarified that the Petition (Diary) No. 257 /2024 filed previously has been disposed of in relation to prayers of Para 61 (a) and that a separate petition shall be filed by the Petitioner in relation to Para 61(c) of the Order dated 21.04.2024.
 - d) The entire certainty in relation to whether the Petitioner is entitled to retain the 300 MW Connectivity at Gadag S/s in view of the apprehensions raised by CTUIL was settled only by way of the Order dated 02.08.2024 in Petition No. 218/MP/2024 and the Tribunal's Order dated 16.08.2024, and hence the present Petition is being filed to seek necessary prayers.

- e) By way of the present Petition, the indulgence of the Commission is being sought, invoking its adjudicatory and regulatory jurisdiction, to extend the timelines directed to be achieved in Para 61 (c) for the reasons and grounds prayed hereinunder.
- f) This Commission, vide Order dated 21.04.2024, has held that there was no fault of the Petitioner, and the annulment of the LOA was for reasons not attributable to the Petitioner. Having considered that there has been no fault on the part of the Petitioner for not being able to utilize the connectivity at Gadag S/s as per the original prescribed timelines leading to revocation of the connectivity by CTUIL, this Commission exercised its inherent powers and the power to relax to allow the Petitioner to retain the 300 MW connectivity at Gadag S/s. However, the Petitioner found certain conditions stipulated in Para 61 of the Order dated 21.04.2024 not aligned with the provisions of the GNA Regulations and the MoP Guidelines.
- g) While on the one hand, the Commission has held that the Petitioner is not at any fault, on the other hand, the direction(s) that are detailed in Para 61 of the Order dated 21.04.2024 proceed to penalize the Petitioner. Such cannot be the intent and purpose of the Order dated 21.04.2024 passed by the Commission. On the one hand, the Commission has concluded, a finding on fact, that the Petitioner is at no fault for the annulment of the LOA and that the Petitioner is committed to and serious about implementing the Project and utilising the 300 MW connectivity at Gadag S/s. However, on the other hand, by giving timelines such as nine (09) months for achieving the commissioning of the Project and six (06) months for achieving the financial closure, it appears to have penalized the Petitioner. It is a settled law that no penalty of any nature can be imposed upon a person where he is of no fault.
- h) Another aspect that this Commission ought to appreciate that as per the best business practices and emerging from the Solar Competitive Bidding Guidelines issued by the Central Government for Solar PV Projects, the scheduled commercial operation date ought to be 24 months; therefore, shortening the timelines for achieving the commissioning of the Project by almost 1/3rd of the time allowed by the Central Government, appears to defeat the intent and purpose of the Order dated 21.04.2024, i.e., not to penalise the Petitioner and allowing it to retain the connectivity at Gadag S/s. Further, it may be noted that considering the intricacies in the development of such projects, the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023 (hereinafter "First Amendment to the GNA

Regulations”) allows an extension of six months after the scheduled date of commercial operation as intimated by the Applicant at time of making application for the grant of Connectivity, for cases covered under clause (xi)(b) or (xi)(c) of the Regulation 5.8.

- i) Immediately after the above Order dated 21.04.2024 was passed, the Petitioner on 29.04.2024 approached CTUIL by way of its email and letter of the same date, notifying in furtherance of the Order dated 21.04.2024, the change in configuration of the Project from 300 MW Solar to 300 MW Solar/Wind Hybrid.
- j) The Petitioner filed IA (Diary) No. 230 of 2024 in Petition No. 291/MP/2023 before the Commission *inter alia*, seeking clarity on certain concerns raised from the Order dated 21.04.2024 and also seeking an extension of time for compliance with such timelines prescribed in Para 61 of the Order dated 21.04.2024. On 04.05.2024, the Commission vide the Order of the same date, disposed of Petitioner’s IA (Diary) No. 230 of 2024 in Petition No. 291/MP/2023 (‘Order dated 04.05.2024’) and granted a one-time extension to the Petitioner to submit the bank guarantee by 20.05.2024 along with a direction to convert the said IA into a miscellaneous petition. Insofar as the other prayers of the Petitioner with respect to financial closure and scheduled commissioning date of the project were concerned, this Commission granted liberty to the Petitioner to approach it in the future, if required. Notably, the Petitioner, in compliance with the directions of this Commission, converted IA (Diary) No. 230 of 2024 into a Miscellaneous Petition, which was numbered by this Commission as Petition (Diary) No. 257 of 2024. The final orders with an extension of time for compliance were passed on 19.05.2024.
- k) CTUIL, on 28.05.2024, approached this Commission by way of a Petition bearing No. 218/MP/2024 seeking directions from this Commission on issues with respect to the change in the source of the renewable energy generating stations for the purpose of grant of connectivity under the GNA Regulations and for the first time raised the said issue before this Commission. The said Petition of CTUIL was disposed of by this Commission, vide Order dated 02.08.2024, holding that SolarOne shall furnish the land documents in terms of Regulation 5.8(xi) of the GNA Regulations based on solar configuration as per the original Connectivity application of SolarOne filed under the 2009 Connectivity Regulations within two weeks of the instant order and may thereafter apply for a change in configuration after completing the transition process. It was also held that in case SolarOne is not able to furnish land documents in terms

of Regulation 5.8(xi) of the GNA Regulations corresponding to a full 300 MW capacity within two weeks, the Connectivity quantum corresponding to land documents furnished by SolarOne shall be retained, and balance Connectivity shall be revoked, and Conn-BGs with respect to the quantum of connectivity revoked shall be dealt with in terms of Regulation 24.2 or 24.3 of the GNA Regulations as applicable.

- l) This Commission, in its Order dated 21.04.2024, has noted that the entire issue of retention of the connectivity is emerging from the inaction of SECI to secure an off-taker for the Project, for which SolarOne cannot be held liable/accountable. Accordingly, the Commission had allowed SolarOne to retain the connectivity, but it had to submit the land documents within a specific timeframe. All original timelines and extensions that have been complied with by SolarOne were under the bonafide assumption that the land required is 312 acres (out of 625 acres of the total land requirement, on the basis of the Solar-Wind hybrid configuration). It is only on 02.08.2024 that the Commission directed that the total land requirement shall be on the basis of 450 acres (on the basis of solar configuration only) since the Petitioner had to first transition to the GNA regime and only then can seek a change in configuration.
- m) As per the earlier understanding, under Solar-Wind Hybrid 300 MW (200 MW Solar and 100 MW Wind), SolarOne is required to have the requisite land in terms of the GNA Regulations, namely Solar (3 acres per MW) and Wind (0.25 acres per MW) therefore $200 \text{ MW} \times 3 + 100 \text{ MW} \times 0.25 = 625$ acres. Out of 625 acres, under the GNA Regulations, SolarOne is required to submit registered land lease deeds/land use deeds for 50 percent of the total land requirement, i.e., 312 acres.
- n) However, considering the directions of the Commission passed vide the Order dated 2.8.2024. First, the transition process is required to be concluded before the process for change in configuration is commenced. Therefore, SolarOne is required to submit the land documents as under:
- Solar (300 MW x 3 acres) = 900 acres. 50 percent of 900 acres = 450 acres.
- o) Aggrieved by the Order dated 02.08.2024, the Petitioner approached the APTEL by way of a limited Appeal bearing No. 348 of 2024, seeking an extension of time in so far as the timelines for compliance of submitting land documents were concerned. The APTEL, vide its Order dated 16.08.2024, allowed such activities to be completed by 14.09.2024. Notably, the Order dated 16.08.2024 has not been challenged by CTUIL and attained finality qua CTUIL.

- p) The first round of litigation started with the filing of Petition No. 291/MP/2023 on 20.09.2023 and ended with Appeal No. 348 of 2024, which was disposed of by the APTEL on 16.08.2024 vide the Order of the same date. Hence, during this period of approximately eleven (11) months that were spent before this Commission and the APTEL, the Petitioner could not have proceeded to take any steps towards the construction and development of the Project as there existed uncertainty regarding the 300 MW Connectivity.
- q) Even under the GNA Regulations, where the connectivity is granted on the LOA/PPA route, the maximum time allowed for achieving the Financial Closure shall be 12 months. However, where the REGS has been granted in-principal connectivity, the Financial Closure is required to be achieved, at the latest, by 06 months prior to the scheduled date of a commercial operation or start date of connectivity, whichever is later.
- r) The Petitioner is complying with the directions of the APTEL and endeavors to comply with the same by 14.09.2024 in relation to conditions originally mentioned in Para 61(a) of the Order dated 21.04.2024. However, the conditions mentioned in Para 61(c) of the Order dated 21.04.2024, in view of the time spent before the regulatory forums and the generally accepted timelines for completion of the Project, cannot be achieved in the period specified therein, i.e., to achieve the Financial Closure by 21.10.2024 (06 months from the date of the Order dated 21.04.2024) and to achieve the Scheduled Commercial Operation by 21.01.2025 (09 months from the date of the Order dated 21.04.2024). Even on a best-effort basis, it will be practically impossible to achieve both these milestones in the period mentioned by the Commission.
- s) During the planning of the Project, the Petitioner was under a *bonafide* view that it would establish a Solar Wind Hybrid Project and planned the implementation of the project in line with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects, wherein the usual timelines for completion of the Project are also allowed as 24 months.
- t) On 13.09.2024, the Petitioner vide its email informed the CTUIL that the Petitioner had procured 329.67 acres of land for its 300 MW project at Gadag S/s and for the balance land, the acquisition of land is under process.
- u) It is in this background that the Petitioner has preferred to file the present Petition seeking the indulgence of the Commission, seeking relief(s) in the nature of extension, permissible in law.

- v) It is a settled principle of law that an act of the court shall prejudice no man – “actus curiae neminem gravabit”. Such principle is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.
- w) It is a settled principle of law that the law cannot compel a man to do what he cannot possibly perform – “lex non cogit ad impossibilia”. The law itself and its administration are understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases.
- x) It is a settled principle of law that in the cases where an extension of time is sought, the bonafide time spent pursuing a legitimate relief before the appropriate legal forum is to be added to the time finally allowed by way of an extension. The time spent before the Commission and the APTEL must, therefore, be excluded from the timelines prescribed by the Commission for achieving the Financial Closure (by 21.10.2024) and Scheduled Commercial Operation Date (by 21.01.2025), even with best efforts basis cannot be achieved in the prescribed timeline.
- y) The Petitioner, being a serious player with international standing, has undertaken the positive steps towards the implementation of the Project, such as acquiring land, entering into arrangements for procurement of modules/turbines (as the case may be), entering into the EPC arrangements, etc. Since the Petitioner has already invested huge sums towards the implementation of the Project, it is serious to implement the Project.
- z) Since there was no clarity on account of SECI not executing the PPA till 10.08.2023, the Petitioner could not have proceeded with the implementation of the Project. There cannot be any intention to compel the Petitioner to create a 300 MW Project, which may be rendered stranded due to the cancellation of the LOA.
- aa) It is a settled principle of law that no one can take advantage of its own wrong. The time taken by CTUIL in processing the application of the Petitioner cannot prejudice the Petitioner so much so that its 300 MW connectivity is threatened to be revoked.
- bb) It is prayed that an extension of at least 18 months and 24 months for achieving the financial closure and the scheduled commissioning date of the Project, respectively, be granted to the Petitioner. If the extension in achieving the financial closure and the scheduled commissioning date of the 300 MW Project is not allowed by the Commission, then the Petitioner will be financially prejudiced, including encashment

of connectivity bank guarantee submitted by the Petitioner in lieu of the connectivity for the Project.

- cc) CTUIL did not accord its approval to the transition request of the Petitioner (letter dated 29.04.2024) for months, due to which the Petitioner was in a strong dilemma to move forward towards the implementation of the Project. It was the obligation of CTUIL to provide the necessary information to the Petitioner for transitioning the Project from Solar configuration to hybrid configuration so as to enable it to take further steps towards the development of the Project. Thus, due to inaction on the part of CTUIL, the Petitioner lost a substantial period of time in achieving the FC and SCOD of the Project.
- dd) In terms of the understanding of CTUIL, the Petitioner till date, has only been considered as an in-principle grantee, and only once the land documents are submitted, the CONBGs are furnished in favour of CTUIL and a fresh Connectivity Agreement is granted that the Petitioner shall be considered as a 'Connectivity Grantee'. For raising debt financing for power sector projects, financial institutions insist upon a grant letter issued for the connectivity. Therefore, in the absence of such a letter till date, attaining financial closure by 21.10.2024 is practically impossible.

Submissions of the Petitioner in Petition No. 306/MP/2024

4. The Petitioner SolarOne Energy Private Limited in Petition No. 306/MP/2024, has made similar submissions as made in Petition No. 305/MP/2024, except for the fact that Petition No. 306/MP/2024 is filed by the Petitioner pursuant to and in furtherance to the Order dated 21.04.2024 in Petition No. 292/MP/2024 and Order dated 04.05.2024 in IA. Diary No. 231/2024 passed by the Commission, allowing the Petitioner to retain the 300 MW Connectivity at Koppal S/s subject to certain conditions. The Petitioner has submitted that vide email dated 13.09.2024, the Petitioner provided the details of the 450 acres of land procured by it for its 300 MW project at Koppal.

Submission of the Petitioner in IA No. 76/2024 in Petition No. 305/MP/2024 and in IA No. 77/2024 in Petition No. 306/MP/2024

5. The Petitioner, by reiterating the submission made under the respective main Petition, additionally has submitted as under:
 - a) The balance of convenience squarely lies with the Applicant, and no prejudice or irreparable loss or injury will be caused to CTUIL if ex-parte interim orders are granted.
 - b) Any invocation and/or encashment of the BG by CTUIL pending the final disposal of the captioned Petition will render the present Petition infructuous and will inflict irreparable harm upon the Applicant. It is, therefore, imperative that any coercive action by CTUIL, including by way of invocation and/or encashment of the BG, be stayed during the pendency of the captioned Petition and status quo be maintained.

Hearing dated 19.09.2024:

6. The Commission heard the matter on 19.09.2024 and directed CTUIL to file its reply on maintainability of the Petitions, if any, and the Petitioner to file its rejoinder, if any. CTUIL was further directed to confirm whether the land documents submitted by the Petitioner as per its email dated 13.9.2024 are in line with the requirement of the GNA Regulations or not, and if the submitted land document is not in order, details of the action taken by the CTUIL, in terms of the Commission Order dated 2.8.2024 in Petition Nos. 218/MP/2024 and 219/MP/2024.

Submissions of the Respondent CTUIL

7. The Respondent CTUIL vide submission dated 07.10.2024 has filed similar submissions in both Petitions on maintainability of the Petitions as under:

Cause of Action

- a) The expression “cause of action” has been defined in *Mulla's Code of Civil Procedure*. as

“‘cause of action’ means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.”

In other words, the cause of action is a bundle of facts, which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant [See: *State of Rajasthan v. Swaika Properties*, (1985) 3 SCC 217].

- b) The Petitioner has filed the instant petition with the same set of facts that gave rise to Petition Nos. 291/MP/2023 and 292/MP/2023 and has been adjudicated conclusively by the Commission *vide* Order dated 21.04.2024.
- c) As a result of the Petitioner assuming certain concessions not granted by the Order dated 21.04.2024, CTUIL was constrained to approach the Commission to seek directions to proceed with processing of the connectivity applications of the Petitioner in terms of the provisions of the GNA Regulations as interpreted in previous orders including the Commission's Order in Petition No. 9/MP/2024. The Commission *vide* Order dated 02.08.2024 in Petition Nos. 218/MP/2024 and 219/MP/2024 agreed with the submission of the CTUIL but granted the Petitioner further time to comply with the directions in the First CERC Order.
- d) In the Order dated 02.08.2024, the Commission did not make any observations or issue further directions in terms of financial closure or the Petitioner's scheduled commissioning date. The Order dated 02.08.2024 cannot be read in isolation as both the Order dated 21.04.2024 and the Order dated 02.08.2024 are inextricably linked. Subsequently, the Petitioner approached the APTEL, impugning the Order dated 02.08.2024 and seeking a further extension of time in complying with the direction of the Commission in the Order dated 21.04.2024 (Appeal Nos. 348 of 2024 and 349 of 2024). The APTEL disposed of the said appeals *vide* the Order dated 16.08.2024 ("APTEL Order").
- e) The APTEL Order modified the directions in the Order dated 21.04.2024 and the Order dated 02.08.2024 and only extended the timeline prescribed in the Order dated 21.04.2024. Therefore, the APTEL has already taken a view and settled the *lis* before the Commission in the present petition. The Commission cannot now be asked to modify an order that stands merged with the APTEL Order. The APTEL Order is the final direction in the present *lis*, and judicial comity mandates that this Commission cannot, in the exercise of power either under Section 79 or under Section 94 of the Electricity Act, modify the orders, which already stand merged with the APTEL Order.
- f) The APTEL Order expressly provides that it has not interfered with any other directions in the Order dated 02.08.2024 except the relaxation given to the timeline originally prescribed in the Order dated 21.04.2024. The Petitioner cannot be allowed to re-agitate the issues giving rise to Order dated 21.04.2024 for any reason whatsoever.

- g) The Order dated 21.04.2024 and the Order dated 02.08.2024 formed a consolidated finding on the facts leading to the filing of Petition Nos. 290/MP/2023 and 291/MP/2023. The appeal before the APTEL as filed and/or pressed was limited in scope. The APTEL entertained the appeal and modified the findings of the Commission. Therefore, it is now not open to the Commission to further review the findings returned in Petition Nos. 291/MP/2023 and 292/MP/2023, as modified by the Order dated 02.08.2024 and the APTEL Order.
- h) The Commission was inclined to use its extraordinary powers only on the representation of the Petitioner that it has made substantial progress in the implementation of the Project in the Order dated 21.04.2024. The present petition only demonstrates that the averments made in Petition Nos. 291/MP/2023 and 292/MP/2023 do not appear to be true or bona fide and seem grossly inflated and aggrandized to obtain a favourable order from the Commission.
- i) In any event, the Commission cannot relax the conditions imposed in the exercise of its power to relax after the order passed has merged with the APTEL Order.

Jurisdiction of the Commission

- j) The doctrine of *functus officio* is well-established in India. The Hon`ble Supreme Court, in the case of *SBI v. S.N. Goyal*, [(2008) 8 SCC 92], held and explained the concept of *functus officio*. The doctrine of *functus officio* implies that once a court has passed an order after a lawful hearing, it no longer has the authority to re-examine the matter and, therefore, cannot reopen the case. This is only subject to the provisions of Section 152 of the CPC or the powers of the court to review the judgment.
- k) The Commission has the power to review its order in terms of Section 94 of the Act read with Regulation 52 of the CERC (Conduct of Business) Regulations, 2023 (“COB Regulations”). In the present Petition, there is no ground for review that has been made out by the Petitioner. It seeks to pray for relief in the nature of modification of the Order dated 21.04.2024 relying on the power of this Commission to review it without satisfying the grounds for review and the procedure prescribed by this Commission, including the limitation period.

Limitation

- l) Without prejudice to the above submissions, it is relevant to note that a petition for review of the Order dated 21.04.2024 (subject to the provisions of applicable law)

could have been filed within 40 days of the order. The instant petition, though, has been titled as a Miscellaneous Petition and is nothing but a review in disguise. The present petition has been filed with a delay of over 100 days without any justification or an application for condonation of delay.

- m) In light of the above, the present petition is not maintainable and must be dismissed at the outset.

Submissions of the Petitioner

8. The Petitioner, vide affidavit 15.10.2024 in both the Petitions, has mainly submitted, as under:

Cause of action

- a) The contention of CTUIL that the instant Petition has been filed with the same set of facts that gave rise to Petition No. 291/MP/2023 and has been adjudicated conclusively by the Commission vide its Order dated 21.04.2024 is misleading and erroneous. CTUIL did not disclose the fact before the Commission that subsequent to the Order dated 21.04.2024, the Petitioner, by way of I.A. No. 230 of 2024 in Petition No. 291/MP/2023, sought certain clarification/relaxation in the conditions mentioned at Para 61 of the Order dated 21.04.2024 from the Commission with respect to extension in the timeline for achieving the FC and SCOD. The said I.A. was allowed and disposed of vide Order dated 04.05.2024 by the Commission; while allowing certain relaxation in terms of Para 61 (a), the Commission was of the view that the prayers sought in relation to Para 61(c) with respect to FC and SCOD be sought separately by way of an independent Petition. Accordingly, liberty was granted to the Petitioner to pursue the prayers for Para 61 (c) subsequently by way of a separate Petition.
- b) The reliefs as sought by the Petitioner in the present Petition with respect to extension in the timeline for achieving the FC and SCOD has never been adjudicated by the Commission, and it is also discernible that the issue of extension in the timeline for achieving the FC and SCOD is still alive and the Petitioner has approached the Commission strictly in terms of the liberty granted to it.
- c) Further, the contention of CTUIL that the Order dated 02.08.2024 is inextricably linked to the Order dated 21.04.2024 is wrong and unsustainable. The Order dated 02.08.2024 was passed in the Petition filed by CTUIL only on the issue of retention

of connectivity; the issues with respect to extension in the timeline for achieving the FC and SCOD were never raised or objected to by CTUIL in the said Petition. Hence, when the issue of FC and SCOD has not been dealt with by the Commission, no findings have been rendered on the said issue vide the Order dated 02.08.2024, the question of the Order dated 02.08.2024 being inextricably linked to the Order dated 21.04.2024 does not arise at all.

- d) Further, CTUIL's stand that the APTEL has already taken a view and settled the *lis* before the Commission and the Commission cannot now be asked to modify the Order dated 21.04.2024, that stands merged with the APTEL's Order dated 16.08.2024, is misleading and deserves to be dismissed *in limine*. The APTEL has not at all adjudicated the issue of extension in the timeline for achieving the FC and SCOD of the project. In fact, the APTEL, vide its Order dated 16.08.2024, has adjudicated the limited appeal only on the aspect of extension of time in so far as the timelines for compliance of submitting land documents in terms of Regulation 5.8(xi) of the GNA Regulations were concerned so as to retain the 300 MW connectivity. Notably, the issue of extension in the timeline for achieving the FC and SCOD of the project was never raised before the APTEL, nor has any decision/findings been rendered by the APTEL vide its Order dated 16.08.2024. Hence, the question of adjudication of the issue of FC and SCOD by the appellate body has not taken place in the present case and is still open to be adjudicated by way of the present Petition.
- e) As far as the applicability of the doctrine of merger is concerned, the same is not applicable in the facts and circumstances of the present case since the issue of FC and SCOD has not been adjudicated, and there is no operative order to that effect in place. The doctrine of merger is only applicable in those cases where a higher court modifies, reaffirms, or reverses a lower court's decision; the lower court's decision is merged into the higher court's decision. The doctrine of merger is based on the idea that there should not be more than one operative order or decree governing the same subject at any given time. However, in the present case, when the issue of FC and SCOD has never been adjudicated, the applicability of the doctrine of merger does not arise at all.
- f) The Petitioner is not seeking modification or review of the findings returned by the Commission vide Order dated 21.04.2024; in fact, the Petitioner has filed the present Petition in terms of the liberty granted vide Order dated 04.05.2024 by the

Commission for a cause of action which has never been adjudicated, i.e., extension in the timeline for achieving the FC and SCOD of the project.

- g) Moreover, the Petitioner's cause of action is sustainable in the eyes of the law in terms of Regulation 69 of the CoB Regulations, which empowers the Commission to extend the time provided in any of its Orders.
- h) Additionally, in terms of Section 148 of the Code of Civil Procedure, 1908 ("CPC"), which is akin to Regulation 69 of the CoB Regulations, if the court fixes any period for doing any act, then the said section empowers the court, to enlarge such period, even though the period fixed may have expired. Therefore, the Commission is empowered to extend the timelines granted for achieving the financial closure (06 months) and commissioning of the project (09 months) through its Order dated 21.04.2024 and adjudicate the present Petition.
- i) Further, the submission of CTUIL that the Petitioner has obtained a favourable order from the Commission by not stating the true facts towards the substantial progress made by it in implementing the project is wrong and baseless. The Petitioner, in order to prove its bonafide and seriousness towards implementation of the Project, has duly provided substantial documents to the Commission as well as to CTUIL; no objections were ever raised by CTUIL, and neither the same was disputed at any stage. The Petitioner has undertaken positive steps towards the implementation of the Project, such as acquiring land, entering into arrangements for procurement of modules/turbines (as the case may be), entering into EPC arrangements, etc.
- j) The Petitioner has procured 329.67 acres of land for its 300 MW project at Gadag S/s and for the balance of land, the acquisition of land is under process. Further, the Petitioner has procured 450 acres of land for its 300 MW project at Koppal S/s. The Petitioner has already invested huge sums towards the implementation of the Project and, therefore, is serious about implementing the Project.
- k) The Petitioner has a valid cause of action (in relation to a time extension for achieving FC and SCOD) that has never been adjudicated in the previous rounds of litigation, whether it be before the Commission or the APTEL, and the same is sustainable in terms of the CoB Regulations.

Hearing dated 17.10.2024

9. Matter was argued in detail on 17.10.2024, as under:



- i. The Petitioner mainly submitted as under:
- a) The instant Petitions have been filed based on the liberty granted to the Petitioner by this Commission vide Order dated 04.05.2024, and the contention of the CTUIL that the petition is not maintainable on the score that the order has merged or attained finality with the APTEL may not be a correct position of law, because merger can take the place of what has been decided and what has been approved by the APTEL.
 - b) These Petitions are not a review of earlier Order 21.04.2024, and the Petitioner is only seeking an extension of time under the provision of Regulation 69 of the CBR. CTUIL is also raising the limitation issues, looking at this petition as a review. However, these Petitions have been filed in line with the liberty granted by the Commission to approach the Commission, if necessary, in the future.
 - c) Once the Petitioner opts for transition under Regulation 37.2, CTUIL, within the next 30 days, is required to intimate the quantum for which Conn BG-1, Conn BG-2, and Conn BG-3 are to be submitted and within two months of such intimation by the CTUIL, the Petitioner is required to give CON BG-1, Conn BG-2, and Conn BG-3. After submission of Conn-BGs, the subsequent conditions that have been stipulated under the GNA Regulations have to be complied with by the Petitioner. In terms of the GNA Regulations, after the Petitioner becomes a connectivity grantee, the Petitioner will comply with financial closure within a period of 12 months. Further, in terms of the MOP bidding guidelines, the timeline for commissioning the project is 24 months. The first step is whether the Petitioner is a connectivity grantee and whether the Petitioner has to comply to achieve the financial closure without being a connectivity grantee, which is contrary to the regulations. CTUIL till date has not intimated to the Petitioner the amount of Conn BG-1, Conn BG-2, and Conn BG-3, which are to be submitted by the Petitioner. Without being a connectivity grantee, taking steps to achieve financial closure by the Petitioner does not arise. It is only when the Petitioner becomes a connectivity grantee he can go forward and approach any financial institution for financing for the purpose of achieving financial closure.
 - d) For Connectivity at the Koppal substation, the Petitioner has given land documents for the entire 450 acres. However, for connectivity at the Gadag substation, the Petitioner is able to arrange land documents for 329 acres out of the required 450 acres.

ii. CTUIL has mainly submitted as under:

- a) The land documents have been submitted adequately for one project that is based in Koppal for 300 MW; 453 acres of land have been submitted. For the other project at Gadag, the land acquired is up to 87 MW short. Thus, for the Project at Koppal required land is available, and for the project at Gadag land, only 213MW out of 300MW is available.
- b) The connectivity of the Petitioner had been revoked at the transition stage, so CTUIL has to transition the connectivity; CTUIL will transition it for 300 MW and 213 MW, respectively, for the two projects. 87 MW shall be treated in terms of the Commission Order dated 2.8.2024, with the consequences mentioned in the Order for the treatment of the bank guarantee. The Order provides that the deductions shall be from the Con-BG2 and Con-BG3 of the GNA Regulations. Again, no Con-BG2 and Con-BG3 of the GNA Regulations were available with CTUIL. However, Con BG2 from the erstwhile Stage-II connectivity is available and is good enough to meet the requirements of the Commission`s Order.
- c) In the new Regulations, if the Petitioner had transitioned in the normal course, Con-BG1 would have remained as it is, Con-BG 2, at that point, was submitted for the 220 KV Bay for Rs 3 crores. It was a standard amount that the bank guarantee also in the transition provisions. It needs to be maintained as it is in the ordinary course, and Con-BG3 is for the system that is to be awarded to them is 2 lakh per MW. Now, Con-BG2 of Rs. 3 crores of the Connectivity Regulations is available with CTUIL. CTUIL is taking due approvals and shall notify the 300 MW and 213 MW for Koppal and Gadag, respectively.
- d) After taking into account everything that was placed on record, when the Commission is passing a discretionary Order and when the remedy is considered as a discretionary remedy, the provision of the Regulations in a particular aspect does not apply to the Petitioner.
- e) In the land documents that were submitted, there were some fallacies in them. CTUIL had to examine those documents and initiate the transition Process; CTUIL is administering that within 7 to 10 days. CTUIL will issue the letters and also place a copy for the Commission.
- f) There are other projects being implemented that do not wait for a final grant. Even to date, the final grant has not been issued in about 70% of the connectivity

grants, and most of those projects are actually after the transition; because a lot of details are still being worked out, that does not mean those projects are not going ahead or they are not approaching their financial closures.

- g) There have been relaxations to the timeline set in Orders by the Commission and APTEL. None of the Orders, which now subsist as of today, the Order dated 21.04.2024, then the Order dated 4.05.2024, then the Order dated 17.05.2024, then the Order dated 2.08.2024, read with the APTEL Order dated 16.08.2024. None of these Orders can be read in isolation. All these Orders have merged, and then the Commission's Order and the APTEL Order together form a consolidated document that governs the rights of the Petitioner herein. After the Commission's Orders have been merged with the APTEL's Order, the Commission cannot now exercise some sort of jurisdiction in the original Petition and sit in judgment over what the APTEL has already done. This is nothing but a review of the Commission Order, which cannot be done because an appeal has already been preferred, and this consolidated set is what governs the rights of the parties here.

10. The Commission reserved the matters for order on the maintainability.

Submissions of the Petitioner

11. Petitioner, vide written submissions dated 21.10.2024, under both the Petitions, has reiterated its earlier submissions and additionally has submitted as under:
- a) Regulation 37.2 of the GNA Regulations, which requires that upon Petitioner exercising the 'option' to transition, CTUIL is required by law within 30 days to communicate the details of CONBGs to be submitted, cannot unilaterally be dispensed with by CTUIL. Importantly, there is never any suggestion/pleading made by CTUIL before this Commission seeking either relaxation of the 30-day time period and/or seeking an extension of time for compliance. CTUIL has proceeded to, on its own whims and fancies, take its sweet time to process the application of the Petitioner for transition. Even after compliance demonstrated on 14.09.2024 by the Petitioner as required by this Commission at Para 61 (a), i.e., submission of 50 percent of the Land Documents, CTUIL, till date, has not complied with its statutory mandate under Regulation 37.2 of the GNA Regulations.

- b) It is CTUIL understanding too (Para 33 of the 02.08.2024 Order of this Commission) that once the Petitioner exercises its option to transition, CTUIL is required to issue 'in-principle grant of connectivity' along with 'details of CONBGs to be submitted.' This understanding of CTUIL has further been confirmed by the Commission vide its Order dated 02.08.2024. Both these statutory mandates have not been complied with by CTUIL. In fact, during the course of the arguments, CTUIL indicated that it would take another week or 10 days to issue such communication.
- c) To avoid scrutiny by the Commission regarding the delay and non-compliance shown by CTUIL, CTUIL, during the course of the hearing, submitted that the documents submitted by the Petitioner had some fallacies, which has taken time for CTUIL to respond. Till date, no such intimation has been made by CTUIL to the Petitioner.
- d) Regulation 11 (A) of the GNA Regulations provides for certain conditions subsequent to be met within stipulated timelines by a Connectivity Grantee. Till the Petitioner is declared as a 'Connectivity Grantee,' the conditions in relation to Financial Closure cannot be achieved. Further, the inclusion of 'Financial Closure' under Regulation 11 (A) also demonstrates the practical aspect of financing. The financial institutions resist processing applications of the project developers till the letter granting Connectivity is issued by CTUIL.

The Commission has already considered, on facts, that the reason for annulment of the LOA and non-utilisation of the Connectivity by the Petitioner was not for the reasons attributable to the Petitioner. With no clarity/visibility on the PPA, the Petitioner could not have proceeded to formalise engagements either with EPC, Module Suppliers, or obtain land. It is also important to point out here that in case the Petitioner would have proceeded to execute the PPA with SECI (basis of a legal PSA with no post facto changes), the Petitioner would have been entitled in law to an extension of time to implement the Project and consequently, would have availed benefit under the MoP Orders. Therefore, following a prudent utility practice, the Petitioner awaited clarification from SECI and, immediately thereafter, approached the Commission for necessary relief(s), which culminated in the Order dated 21.04.2024.

- e) Without being formally recognized as a 'Connectivity Grantee' under the GNA Regulations, which is still pending declaration at CTUIL's end, no significant investment decision or commitment can be made towards the commissioning of the project. The Petitioner argues that any adverse order, either by the Commission or

any other judicial forum, would exacerbate financial losses, akin to the risk of the land already acquired becoming a sunk cost. Therefore, until the grant of connectivity is secured, any investment would pose a substantial risk to the Petitioner. In view of the foregoing, and in accordance with the MoP Bidding Guidelines and Clause 11(a)(2) of the GNA Second Amendment, the Petitioner undertakes to comply with the prescribed timelines as set out in the Regulations and to achieve FC before six months prior to the SCOD or the Start Date of Connectivity, whichever is later.

- f) The contention raised by CTUIL in the present case that the Petitioner has not made any substantial progress in the implementation of the project is completely false and is denied *seriatim*. The Petitioner, being a serious player with international standing, has undertaken positive steps towards the implementation of the Project, such as acquiring land, entering into arrangements for procurement of modules/turbines (as the case may be), and entering into EPC arrangements, etc.
- g) The period lost in pursuing several litigations and non-confirmation on the connectivity grantee status of the Petitioner, which not only resulted in the delay in the execution of the Project but also exposed the Project to great adverse financial impact. Hence, the Petitioner is justified in claiming an adequate extension of time to achieve the FC and SCOD of the Project. Any actions taken towards the commissioning of the project, in the absence of the Petitioner's status as a Connectivity Grantee, pose a significant risk.
- h) On account of various rounds of legal proceedings and uncertainty on the outcome of the same, the Petitioner could not have proceeded to take any steps towards the implementation of the Project, and the future of 300 MW Gadag and 300 MW Koppal Projects were under dark. As a consequence of this, the timelines anticipated by the Petitioner for the completion of the Project are impacted leading to a delay in the completion of the same. Therefore, in the time spent before the Commission and the APTEL, the Petitioner could not have proceeded to take any steps towards the construction and development of the Project; accordingly, the Petitioner is entitled to receive the reliefs as prayed by it in the present Petition.

Analysis and Decision:

12. We have considered the submission of the Petitioner and the Respondents and perused the facts on record. The instant Petitions have been reserved for Order on

maintainability of the Petitions, and accordingly, the issue of maintainability has been dealt with.

13. The Petitioner has submitted that the Commission, vide Order dated 21.04.2024 in Petition Nos. 291/MP/2023 and 292/MP/2023, had allowed the Petitioner to retain the 300 MW such connectivity each at Gadag S/s and Koppal S/s by allowing the conversion from the LOA/PPA route to Land/ Land Bank Guarantee (BG) route subject to adherence to certain conditions. The Petitioner has further submitted that the Commission vide Order dated 04.05.2024 in IA (Diary) No. 230 of 2024 in Petition No.291/MP/2023 allowed certain relaxation in terms of Para 61 (a) of the Order dated 21.04.2024 and granted liberty to the Petitioner to pursue the prayers for Para 61 (c) subsequently by way of a separate Petition.
14. Per contra, the CTUIL has submitted that the instant Petitions are not maintainable, citing the ground that (i) there is no cause of action after merging of the Commission Order dated 21.04.2024 Petition Nos . 291/MP/2023 and 292/MP/2023, Order dated 02.08.2024 in Petition Nos. 218/MP/2024 and 219/MP/2024 with the APTEL Order dated 16.08.2024. CTUIL has submitted that in the present Petition, there is no ground for review of the Order dated 21.04.2024, and the instant petition titled as a Miscellaneous Petition is a review in disguise and has been filed with a delay of over 100 days without any justification or an application for condonation of delay.
15. We have considered the submission of the Petitioner and the Respondent, **and the issue that arises for our consideration is whether the instant Petitions, i.e., Petition Nos. 305/MP/2024 and 306/MP/2024 are maintainable or not.**

The issue is dealt with in the succeeding paragraphs.

16. According to the Petitioner, the instant Petition has been filed in terms of the liberty granted to the Petitioner to pursue the prayers for Para 61 (c) subsequently by way of a separate petition vide Order dated 04.05.2024 in Petition (Diary) No. 257/2024 and has mainly prayed that *“the Petitioner is entitled to seek extension of the time prescribed for achieving Financial Closure and extend the timeline for achieving the financial closure in relation to the 300 MW Project being developed by the Petitioner being connected at Gadag S/s from 21.10.2024 to 21.10.2025 and that Petitioner is entitled to seek extension of the time prescribed for achieving Scheduled Commercial Operation Date and extend the timeline for achieving the Scheduled Commercial Operation Date in relation to the 300 MW Project being developed by the Petitioner being connected at Gadag S/s from 21.01.2025 to 21.04.2026;”* Similar prayer have been placed by Petitioner for its project at Koppal

S/s

17. The Petitioner has submitted that it cannot achieve the Financial Closure for its project by the timeline specified under the Order dated 21.4.2024 due to the following reasons:

a) As per the best business practices and emerging from the Solar Competitive Bidding Guidelines issued by the Central Government for Solar PV Projects, the scheduled commercial operation date ought to be 24 months. Therefore, shortening the timelines for achieving the commissioning of the Project by almost 1/3rd of the time allowed by the Central Government appears to defeat the intent and purpose of the Order dated 21.04.2024, i.e., not to penalise the Petitioner and allowing it to retain the connectivity at Gadag S/s. Considering the intricacies in the development of such projects, The Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023 (hereinafter "First Amendment to the GNA Regulations") allows an extension of six months after the scheduled date of commercial operation as intimated by the Applicant at the time of making the application for grant of Connectivity, for cases covered under clause (xi)(b) or (xi)(c) of Regulation 5.8.

b) Conditions mentioned in Para 61(c) of the Order dated 21.04.2024, in view of the time spent before the regulatory forums and the generally accepted timelines for completion of the Project cannot be achieved in the period specified therein, i.e., to achieve the Financial Closure by 21.10.2024 (06 months from the date of the Order dated 21.04.2024) and to achieve the Scheduled Commercial Operation by 21.01.2025 (09 months from the date of the Order dated 21.04.2024). Even on a best-effort basis, it will be practically impossible to achieve both these milestones in the period mentioned by the Commission.

c) CTUIL did not accord its approval to the transition request of the Petitioner (letter dated 29.04.2024) for months, due to which the Petitioner was in a dilemma whether or not to move towards the implementation of the Project without CTUIL's consent. It was the obligation on the part of CTUIL to provide the necessary information to the Petitioner for allowing the transitioning of the Project from Solar configuration to hybrid configuration so the project is speedily implemented. Thus, due to inaction on the part of CTUIL, the Petitioner lost a substantial period of time in achieving the FC and SCOD of the Project.

d) CTUIL, on the other hand, averred that the Petitioner, to date, has only been considered as an in-principle grantee, and only once the land documents are submitted, the CONBGs are furnished in favour of CTUIL and a fresh Connectivity Agreement is granted, that the Petitioner shall be considered as a 'Connectivity Grantee.' For raising debt financing for power sector projects, financial institutions insist upon grant letters issued for Connectivity. Therefore, in the absence of such a letter till date, attaining financial closure by 21.10.2024 is practically impossible.

e) Once the Petitioner opts for transition under Regulation 37.2, CTUIL, within the next 30 days, is required to intimate the quantum for which CON- BG1, Conn-BG2, and Conn-BG3; after that, within two months, the Petitioner is required to give CON-BG1, Conn-BG2, and Conn-BG3. After submission of CON-BGs. the conditions subsequent which have been stipulated under the GNA regulations have to be complied with by the Petitioner. In terms of the GNA Regulations, after the Petitioner becomes a connectivity grantee, the Petitioner will comply with financial closure within a period of 12 months. CTUIL, till date, has not intimated about the amount of CON-BG1, Conn-BG2, and Conn-BG3 to be submitted by the Petitioner.

18. CTUIL has submitted that the GNA Regulations clearly indicate the requirement of Conn-BGs as Rs. 50 lakh for Conn-BG1, Rs. 2 lakh per MW for Con-BG3, and Rs. 3 crores per Bay for Conn-BG2 for a 220 KV Bay. CTUIL has further submitted that the Order dated 02.08.2024 provides that in case of submission of land documents for part capacity, the deductions shall be from the Con-BG2, Con-BG3 of the GNA Regulations.

19. We have considered the submissions of the Petitioner and the Respondent CTUIL. In order to examine the revocation of connectivity, we may refer to the relevant extracts Regulation 24.6 of the GNA Regulations:

"24.6 Revocation of Connectivity

(1)

.....

iv. Connectivity granted to an REGS (other than Hydro generating station) or ESS (excluding PSP) shall be revoked, if LOA or PPA on basis of which Connectivity was granted, is terminated prior to the COD of the project.

.....

(2) In case of revocation of Connectivity under subclauses (a) to (d) of Clause (1) of this regulation, Conn-BG-1, Conn-BG2 and Conn-BG3 shall be dealt with in terms of regulation 24.2 or regulation 24.3 of these regulations, as applicable."

As per the above, in the case of termination of LOA or PPA, based on which Connectivity has been granted prior to the project's COD, such Connectivity shall be revoked.

20. Further, the relevant extract of the Order dated 21.04.2024 in Petition Nos. 291/MP/2023 and 292/MP/2023 in which the Commission had clarified and directed the CTUIL to invoke the BGs for non-submitting the land documents or land BG in terms of Regulation 5.8(xi) of the GNA Regulations, is as under:

*"59. We observe that Petitioners have made progress in the implementation of the project and have submitted that they are serious about and committed to developing the project and, hence seek to retain the Connectivity. Further, we have already concluded that the annulment of the LoAs was not due to default on the part of the Petitioners. **We observe that since the GNA Regulations do not have the provision to allow such conversion, we find merits in the submission of the Petitioners that they may be allowed to retain the Connectivity, keeping in view the progress made by the Petitioners on the ground as noted in paragraph 58 above and the seriousness and sincerity with which the Petitioners wish to develop the project. We are of the considered view that different routes of Connectivity were introduced in the first amendment to the GNA Regulations to ensure the full commitment of the applicants so that the projects are implemented in the the committed timeline. Considering these facts, we find the case of Petitioner(s), a fit case to be considered under our powers to relax and powers to remove difficulty and further invoke our regulatory power in order to safeguard the interests of the sector** Regulation 41 of the GNA Regulations vests the Commission with the power to relax any of the provisions of the GNA Regulations to remove the hardship in operation of the GNA Regulations.....*

.....
*61. We note that the Petitioner(s) have been holding on to the Connectivity since June 2022, which is approximately two years. We are also aware that Connectivity is a crucial resource that should be optimally utilized. Keeping in view that the annulment of the LoAs was not due to default on the part of the Petitioners and the seriousness and commitment shown by the Petitioners by way of progress made to bring on the projects, **we, in the exercise of our powers under Regulation 41 and Regulation 42 of the GNA Regulations, hereby relax the provisions of Regulation 24.6 and allow the Petitioners under Petition No. 291/MP/2023 and in Petition No. 292/MP/2023 to convert each of their Connectivity granted under LOA route to any other route as provided for in Regulation 5.8(xi) of the GNA Regulations, subject to the following conditions** as listed below:*

*(a) Petitioner(s), within two weeks of the issuance of this order, may either submit the Land documents or Land BG in terms of Regulation 5.8(xi) of the GNA Regulations for full 300 MW Connectivity each (under Petition No. 291/MP/2023 and in Petition No. 292/MP/2023). **Failing which, CTUIL shall revoke the Connectivity granted to the Petitioner(s).** Further, the Petitioner(s) shall not be allowed to submit part land documents and part Land BG.*

*(b) In case the Petitioner(s) submit Land BG under sub-clause (a) of this Paragraph, the Petitioner(s) shall submit requisite land documents within three months of the issuance of this order, **failing which CTUIL shall revoke the Connectivity granted to the Petitioners.***

(c) After the annulment of the LoAs, the SCODs of the projects mentioned under LoA do not hold under both the Petitions. Considering that nearly two years have elapsed since the granting of connectivity and the Petitioners have shown that considerable progress has already been made in the projects, we are of the considered view that nine (9) months from the issuance of this order shall be sufficient time to commission the project. We

*accordingly direct that the project developer shall commission its project within nine (9) months of the issuance of this order. Further, the milestones for achieving Financial closure and the release of 10% of the project cost under equity as required under Regulations 11(A) and 11(B) of the GNA Regulations shall have to be achieved within six months of the issue of this Order. **In case Petitioner(s) fail to achieve financial closure or the release of 10% of the project cost under equity, the connectivity shall be revoked.***

.....”

As per the above, the Commission allowed the Petitioner to retain the Connectivity, which was revoked under Regulation 24.6 of the GNA Regulations by the CTUIL, and transit from the LoA route to any other route provided for in Regulation 5.8(xi) of the GNA Regulations. The whole premise based on which Connectivity was allowed to be retained despite the revocation of the LOA/PPA was that the Petitioner had made substantial progress and was serious about implementing the project within a short timeframe.

21. It is observed that considering the advanced progress made and commitment shown by the Petitioner towards the development of the project initially, the Petitioner was given special facilitation four times by the Commission by way of using powers to relax listed as follows:

- a) First time, as prayed for by the Petition, the Commission vide Order dated 21.04.2024, by exercising the powers under Regulation 41 and Regulation 42 of the GNA Regulations, restored the revoked Connectivity of the Petitioner for 300 MW each at Gadag S/s and Koppal S/s and allowed the Petitioner to convert the Connectivity from the LoA route to either on Land or Land BG route subject to submission of the Land documents or Land BG within two weeks of the issuance of the Order (submit land documents within three months in case of conversion of Land BG), commissioning of the project within nine months, and achieving of the Financial Closure and release of 10% of the project cost under equity within six months.
- b) Second time, considering the Petitioner's submission regarding its inability to submit the land document within the stipulated time as given under Order 21.04.2024 and initiation of the process by the Petitioner of obtaining the necessary Shareholders' approval, had extended the timeline up to 20.05.2024 for submission of the applicable BG of Rs. 30 crores for each of the Petitioner's project.
- c) Third time, considering the inability of the Petitioner to submit the BG owing to the failure of the Petitioner to secure the approval of its Board, the

Commission, vide Order dated 19.05.2024, permitted the Petitioner one week's time, i.e., by 27.05.2024 to provide all the requisite land documents to CTUIL.

d) Fourth time, the Commission, vide Order dated 02.08.2024, has allowed the Petitioner to submit the land document for a connectivity quantum of 300 MW of solar project within two weeks.

e) Further, the APTEL, vide an Order dated 16.08.2024, has extended the timeline till 14.09.2024 for the submission of land documents.

From the above, it is clear that the Petitioner sought relaxation from the Commission on the pretext of the advanced stage of the project. The most important milestone testifying to the Petitioner's seriousness in the implementation of the project is achieving financial closure of the project, which the Petitioner has not been able to achieve and is now seeking more time to achieve the same. We note that the Petitioner has been holding onto Connectivity for the last three years and is seeking an extension in the timeline for achieving the financial closure from 21.10.2024 to 21.10.2025 and for achieving the Scheduled Commercial Operation Date from 21.01.2025 to 21.04.2026. We note that Connectivity is a scarce resource where a number of generating stations apply to seek connectivity at the same substation. Conditions for providing the LOA/LAND/BG while making an application for the connectivity in case of REGS have been specifically included in the GNA Regulations to address the issue of squatting. Subsequent milestones, such as the Financial Closure and achieving the commercial operation, ensure that REGS is not just blocking the connectivity and is serious about bringing the project to fruition.

22. Now, let us examine the progress of the Petitioner in the instant case as submitted in a series of Petitions whereby relaxations were sought:

| Sl. No. | Petition No. | Progress made by the Petitioner |
|----------------|---|---|
| 1. | Petition No. 291/MP/2023 and Petition No. 292/MP/2023 | In 291/MP/2023 (For Project at Gadag) <ul style="list-style-type: none">The Petitioner under Petition No. 291/MP/2023 had secured registered lease rights of 205 acres of land and had also signed an agreement to lease around 300 acres with the landowners. |

| | | |
|----|---|---|
| | | <ul style="list-style-type: none"> The Petitioner has engaged with Suzlon Energy for delivery and supply of Wind Turbine Generators for a 100 MW capacity of value INR 598,83,64,000/-, engaged with PV module manufacturer for delivery and supply of 200 MW AC solar modules of value INR 433,45,76,064/-, and engaged with Ipower Renewable Energy Private Limited and Energy Systems Private Limited for procurement of land on lease, vide agreements dated 14.08.2023 and 28.03.2023 respectively. <p>In Petition No. 292/MP/2023 (For Project at Koppal)</p> <ul style="list-style-type: none"> The Petitioner had already executed an Agreement to Lease deeds of about 346 acres of land by expending INR 70,80,000 in favour of various landowners and land aggregators. |
| 2. | IA (Diary) No. 230 of 2024 in Petition No.291/MP/2023 (converted into Miscellaneous Petitions Diary No.257 of 2024) | Considering the Petitioner's submission on facing difficulty in submitting the land documents as directed at Para 61(a) of the order dated 21.4.2024, on account of the ongoing General Elections 2024 and implementation of the model code of conduct till 1.6.2024, and Petitioner prayer to submit the Land BG of Rs. 30 crores in each case, the Commission vide Order dated 04.05.2024 has allowed Land BG of Rs. 30 crores for each Project at Gadag and Koppal respectively to be submitted by 20.05.2024. |
| 3. | Compliance affidavit dated 17.05.2024 (which was converted into IA vide Order dated 19.05.2024) in Petition (Diary) No. 257 of 2024 | <p>Progress towards implementation of the project at Gadag</p> <ul style="list-style-type: none"> The Petitioner had executed the registered lease deeds for 205.29 acres, executed registered deeds for land use rights for the 21.78 acres, and uploaded the documents on the portal for registration for around 29 acres, which registration was to be formalised by 20.05.2024, thus making the total registered deed as 256.07 acres. Further, the demand draft was ready for the 55.93 acres for which landowners are still to execute the deeds with the Petitioner. Thus, 312 acres of land have been arranged. |
| 4 | Petition No. 218/MP/2024 and 219/MP/2024 | The Commission, vide Order dated 02.08.2024, has directed SolarOne to furnish the land documents for solar configuration within two weeks of the issuance of the Order, and in case of submission of land document for |

| | | |
|---|---|---|
| | (filed by CTUIL seeking certain clarification) | part capacity, the Connectivity quantum corresponding to land documents furnished by SolarOne shall be retained, and balance Connectivity shall be revoked. |
| 5 | APTEL Order dated 16.08.2024 | The APTEL extended the timeline for submission of Land documents till 14.09.2024 |
| 6 | Petition No. 305/MP/2024 and Petition No. 306/MP/2024 | <p>For Project at Gadag</p> <ul style="list-style-type: none"> The Petitioner vide email dated 13.09.2024 intimated CTUIL regarding the procurement of 329.67 acres of land, and acquisition of the balance land is under process for its 300 MW project at Gadag S/s <p>For the Project at Koppal</p> <ul style="list-style-type: none"> The Petitioner, vide email dated 13.09.2024, provided the details of the 450 acres of land procured by it for its 300 MW project at Koppal. |

23. It is observed from the above-mentioned submissions that the only progress made by the Petitioner over the last 11 months is the procurement of about 100 acres of additional land at each location of Gadag and Koppal, respectively. The reason for exercising Power to Relax Regulation 24.6 of the GNA Regulations for the Petitioner was to extend a special dispensation to the Petitioner to retain the Connectivity based on the commitment shown by it (Petitioner) to implement the project in a short timeframe so that the transmission system is optimally utilised and scarce resource is not blocked.

24. It is further observed that the Petitioner is yet to achieve the financial closure which was required to be done by 21.10.2024 as per Order dated 21.04.2024. The arguments raised and grounds given in the present Petition to seek more time to achieve the financial closure and COD of the project, such as a reference time of 24 months under bidding guidelines to achieve the COD, the status of the connectivity grantee, non-communication by CTUIL about Conn-BGs to be furnished by the Petitioner to enable transition, delays due to court proceedings, etc., do not hold any water.

25. With regard to maintainability of the Petitions, CTUIL has submitted that the instant Petitions are not maintainable, citing the ground that (i) there is no cause of action

after merging of the Commission Order dated 21.04.2024 in Petition Nos. 291/MP/2023 and 292/MP/2023, Order dated 02.08.2024 in Petition Nos. 218/MP/2024 and 219/MP/2024 with the APTEL Order dated 16.08.2024. CTUIL has further submitted that in the present Petition, there is no ground for review of the Order dated 21.04.2024, and the instant Miscellaneous Petition, which is, in effect, a review in disguise and has been filed with a delay of over 100 days without any justification or an application for condonation of delay.

26. *Per Contra*, the Petitioner has referred to the Commission's Order dated 04.05.2024 in IA (Diary) No. 230 of 2024 in Petition No.291/MP/2023 granting liberty to the Petitioner to pursue the prayers for Para 61 (c) subsequently by way of a separate petition.

27. We have considered the submissions of the Petitioner and Respondents. We have perused Para 61(c) of the Order dated 21.4.2024 in Petition No. 291/MP/2023 along with IA No. 75/2023 and Petition No. 292/MP/2023 along with IA No. 74/2023 quoted as under:

"61. We note that the Petitioner(s) have been holding on to the Connectivity since June 2022, which is approximately two years. We are also aware that Connectivity is a crucial resource that should be optimally utilized. Keeping in view that the annulment of the LoAs was not due to default on the part of the Petitioners and the seriousness and commitment shown by the Petitioners by way of progress made to bring on the projects, we, in the exercise of our powers under Regulation 41 and Regulation 42 of the GNA Regulations, hereby relax the provisions of Regulation 24.6 and allow the Petitioners under Petition No. 291/MP/2023 and in Petition No. 292/MP/2023 to convert each of their Connectivity granted under LOA route to any other route as provided for in Regulation 5.8(xi) of the GNA Regulations, subject to the following conditions as listed below:

.....
(c) *After the annulment of the LoAs, the SCODs of the projects mentioned under LoA do not hold under both the Petitions. Considering that nearly two years have elapsed since the granting of connectivity and the Petitioners have shown that considerable progress has already been made in the projects, we are of the considered view that nine (9) months from the issuance of this order shall be sufficient time to commission the project. We accordingly direct that the project developer shall commission its project within nine (9) months of the issuance of this order. Further, the milestones for achieving Financial closure and the release of 10% of the project cost under equity as required under Regulations 11(A) and 11(B) of the GNA Regulations shall have to be achieved within six months of the issue of this Order. In case Petitioner(s) fail to achieve financial closure or the release of 10% of the project cost under equity, the connectivity shall be revoked.*

..."

Further, the relevant portion of the order dated 04.05.2024 in IA (Diary) No. 230 of

2024 in Petition No. 291/MP/2023 and IA (Diary) No. 231 of 2024 in Petition No.292/MP/2023 is extracted as under

“4. In response, the learned senior counsel submitted that the Applicant is not pressing for any other reliefs as prayed in the IAs and they may be considered as withdrawn with the liberty to approach the Commission in the future, if required.

5. Taking into account the submissions made by the learned senior counsel for the Applicant and learned counsel for Respondent, CTUIL, including the reasons put forth by the Applicant for seeking the extension of time and the categorical assurance given by the learned senior counsel for the Applicant that no further extension shall be sought by the Applicant for compliance with the condition at paragraph 61(a) of the order dated 21.4.2024, the Commission deems it appropriate to grant one-time extension of time limit prescribed for compliance with the condition at paragraph 61(a) of the order dated 21.4.2024. Accordingly, the Commission permits the Applicant to submit the BG of Rs. 30 crores each for its Project at Gadag and Koppal to CTUIL by 20.5.2024. However, the Commission also clarified that in the event the Applicant fails to submit the BGs by 20.5.2024, CTUIL shall proceed with the revocation of connectivity granted to the Applicant. Insofar as the other prayers made in the IAs are concerned, as submitted by the learned senior counsel for the Applicant, they stand withdrawn with a liberty to the Applicant to approach the Commission in the future, if required.”

As per the above, the Petitioner had included a prayer in its IAs filed in Petition Nos. 291/MP/2023 and 292/MP/2023 seeking an extension of the timeline to achieve milestones under Para 61(c) of the Order dated 21.4.2024. However, this prayer was withdrawn by the Petitioner with the liberty to approach later, if required. Thus, the prayers of the Petitioner for the extension of the timeline prescribed for achieving the Financial Closure and commissioning of the Project under Para 61(c) of the Order dated 21.4.2024 were not at all the subject matter of the adjudication in the Order dated 04.05.2024. The Petitioner was granted a specific liberty to approach the Commission in the future if required. Let us see as to what extent such liberty could have been exercised by the Petitioner.

28. As per Regulation 69 (Extension or abridgement of time prescribed) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 (CBR, 2023), the Commission may extend the time prescribed in the CBR Regulations or by orders of the Commission for doing any act for sufficient reasons. Therefore, the liberty granted by the Commission only extended the timeline of 40 days prescribed in Regulation 52 of the CBR, 2023, from 04.05.2024 for the review of the decision.

As evident from Para 4 of the order dated 04.05.2024, the Petitioner has sought liberty to approach the Commission only if required. Considering the timelines prescribed by the Commission in Para 61(c) of the order dated 21.04.2024, such liberty would only mean that the Petitioner would implement the project diligently and approach the Commission to seek additional time over and above the time prescribed in Para 61(c) only if required. However, the Petitioner has misconstrued the liberty granted to it by the Commission to delay the compliance of timelines prescribed in the order dated 21.04.2024. Thereafter, the Petitioner approached the Commission only on 13.09.2024, i.e., about 140 days after the order dated 04.05.2024, with the same prayers. While such delay in filing the present Petition remained unexplained by the Petitioner, the liberty granted to the Petitioner cannot be taken out of context of the facts and circumstances under which directions in the order dated 21.04.2024 were issued.

29. We note that the Petitioner was granted relaxations vide Order dated 21.04.2024 to retain the Connectivity, which was subject to it achieving the milestones of submitting land documents, Financial closure, and its commissioning. However, we observe that the Petitioner has been seeking relaxations sequentially, where after securing one relaxation, it is seen to ask for more relaxations in a sequential manner, which is not appropriate.
30. Considering the above discussions, we are of the considered view that the instant Petitions Nos. 305/MP/2024 and 306/MP/2024 are not maintainable. Accordingly, we direct CTUIL to proceed in terms of the directions issued under Para 61(c) of the Order dated 21.04.2024 in Petition Nos. 291/MP/2023 and 292/MP/2023.
31. The issue is answered accordingly.
32. Further, the Petitioner has also filed IA No. 76/2024 in Petition No. 305/MP/2024 and IA No. 77/2024 in Petition No. 306/MP/2024 by praying for (i) restraining CTUIL from taking any coercive and/or precipitative step(s) against the Petitioner, including the invocation and/or encashment of Bank Guarantee(s), and (ii) (c) Issue appropriate ex-parte, ad-interim order restraining CTUIL from taking any step(s) towards rendering the 300 MW connectivity granted to the Petitioner at Gadag and

at Koppal revoked, till the final disposal of the instant Petitions. As we have already taken a decision on the Petitions filed by the Petitioner, thus, the prayers under the above IAs have been addressed accordingly.

33. Accordingly, Petition No. 305/MP/2024, along with IA No. 76/2024 and Petition No. 306/MP/2024, along with IA No. 77/2024, are disposed of in terms of the above.

**Sd/
(Harish Dudani)
Member**

**Sd/
(Ramesh Babu V.)
Member**

**Sd/
(Jishnu Barua)
Chairperson**