

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

IA No. 59/2025

in

Petition No: 282/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Shri Ravinder Singh Dhillon, Member

Date of Order: 24th December, 2025

In the matter of:

Petition under Section 79 of the Electricity Act, 2003, and the Power Purchase Agreement dated 6.12.2018 executed between ACME Phalodi Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 6.12.2018 executed between ACME Raisar Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd. and the Power Purchase Agreement dated 7.12.2018 executed between ACME Deoghar Solar Power Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 7.12.2018 executed between ACME Dhaulpur Powertech Pvt. Ltd. and Solar Energy Corporation of India Ltd. seeking declaration that the condition of undergrounding of internal 33 kV transmission lines pursuant to Order dated 19.4.2021 passed by the Hon'ble Supreme Court in WP(c) No. 838 of 2019 is a Change in Law event and directions to SECI to compensate the Petitioners towards the additional cost incurred due to such Change in Law event.

And in the matter of:

1. **ACME Deoghar Solar Power Pvt. Ltd.**
Plot No. 152, Sector-44,
Gurugram, Haryana
2. **ACME Dhaulpur Powertech Pvt. Ltd.**
Office No. 104, Munish Plaza, 463 7/20,
Ansari Road, Daryaganj, New Delhi-110002
3. **ACME Phalodi Solar Energy Pvt. Ltd.**
Office No. 104, Munish Plaza, 463 7/20,
Ansari Road, Daryaganj, New Delhi-110002
4. **ACME Raisar Solar Energy Pvt. Ltd.**
Office No. 104, Munish Plaza, 463 7/20,
Ansari Road, Daryaganj, New Delhi-110002

5. **ACME Solar Holdings Pvt. Ltd.**

Plot No. 152, Sector-44,
Gurugram, Haryana

...Petitioners

Vs.

1. **Solar Energy Corporation of India Limited**

6th floor, Plate-B, NBCC Office Block Tower 2,
East Kidwai Nagar, Kidwai Nagar,
New Delhi, Delhi-110023

2. **Haryana Power Purchase Centre**

Shakti Bhawan, Sector 6,
Panchkula- 134109, Haryana

3. **North Bihar Power Distribution Company Limited**

Third floor, Vidyut Bhavan
Bailey Road, Patna- 800001

4. **South Bihar Power Distribution Company Limited**

Third floor, Vidyut Bhavan
Bailey Road, Patna- 800001

5. **Government of Puducherry**

Through the Under Secretary (Power)
Chief Secretariat, Goubert Avenue,
Puducherry- 605001

6. **BSES Yamuna Power Limited**

BSES Bhawan, Nehru Place,
New Delhi- 110019

7. **BSES Rajdhani Power Limited**

BSES Bhawan, Nehru Place,
New Delhi- 110019

8. **Tata Power Delhi Distribution Limited**

NDPL House, Hudson Lines,
Kingsway Camp, Delhi- 110009

...Respondents

Parties Present:

Shri Sujit Ghosh, Sr. Advocate, ACME

Ms. Mannat Waraich, Advocate, ACME

Ms. Ananya Goswami, Advocate, ACME

Shri Tushar Goyal, ACME

Shri Manish Kumar Choudhary, Advocate, Bihar Discoms

Ms. Shrishti Choudhary, Advocate, Bihar Discoms

Shri Anand Kumar Shrivastava, Advocate, TPDDL

Shri Chetan Saxena, Advocate, TPDDL
Ms. Shikha Ohri, Advocate, SECI
Shri Kartik Sharma, Advocate, SECI
Shri Aditya Singh, Advocate, HPPC
Shri Vijayendra Pratap Singh, Advocate, BYPL & BRPL
Miss Urvashi Mishra, Advocate, BYPL & BRPL
Ms. Khushi Mittal, Advocate, BYPL & BRPL

ORDER

The present IA has been filed by the Petitioners, namely ACME Deoghar Solar Power Pvt. Ltd. (Petitioner No. 1/ ACME Deoghar), ACME Dhaulpur Powertech Pvt. Ltd. (Petitioner No. 2/ ACME Dhaulpur), ACME Phalodi Solar Power Pvt. Ltd. (Petitioner No. 3/ ACME Phalodi), ACME Raisar Solar Energy Pvt. Ltd. (Petitioner No. 4/ ACME Raisar) and ACME Solar Holdings Pvt. Ltd. (Petitioner No. 5/ ASHPL) seeking the deletion of BSES Yamuna Power Limited (Respondent No. 6/ BYPL) and BSES Rajdhani Power Limited (Respondent No. 7/ BRPL) from the array of parties in the Petition No. 282/MP/2023. Petition No. 282/MP/2023 has been filed by the Petitioners seeking declaration that the undergrounding of low voltage internal lines (which include 33kV lines) passing through the Potential and Priority Great Indian Bustard ('GIB') habitat area is a Change in Law event in terms of the order dated 19.4.2021 passed by the Hon'ble Supreme Court in I.A. No. 85618 of 2020 in Writ Petition (Civil) No. 838 of 2019 titled as 'M.K. Ranjitsinh & Ors. v. Union of India & Ors ('GIB Order') and also in terms of order dated 1.8.2022 issued by the Ministry of Power. The Petitioners have also sought consequential relief in terms of Article 12 of the PPAs executed between the Petitioners and Solar Energy Corporation of India ('SECI') and Rules 3 of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules'), along with carrying cost.

Background

2. Respondent No. 1/ SECI issued two Request for Selection (RfS) for setting up

ISTS-Connected Solar Power Projects under Global Competitive Bidding for the quantum of 2000 MW (ISTS-I) and 3000 MW (ISTS-II) on 30.1.2018 and 27.2.2018, respectively. In respect of the RfS dated 30.1.2018, the Letter of Award (LoA) was issued to the successful bidder, i.e. Petitioner No. 5/ ASHPL, on 27.7.2018 for the development of the 2x300 MW solar power projects located in Tehsil Pokhran, Rajasthan (which were assigned to be developed by ACME Phalodi and ACME Raisar). Also, for the RfS dated 27.2.2018, ASHPL was found to be the successful bidder and the LoA was issued to ASHPL on 10.8.2019 for the development of the 2X300 MW solar power projects in Pokhran, Rajasthan (which were assigned to be developed by ACME Deoghar and ACME Dhaulpur).

3. In this regard, the following Power Purchase Agreements (PPAs) were executed by the Petitioners with SECI:

- (i) PPA dated 7.12.2018 executed between ACME Deoghar and SECI for supply of 300 MW of solar power;
- (ii) PPA dated 7.12.2018 executed between ACME Dhaulpur and SECI for supply of 300 MW of solar power;
- (iii) PPA dated 6.12.2018 executed between ACME Phalodi and SECI for the supply of 300 MW of solar power; and
- (iv) PPA dated 6.12.2018 executed between ACME Raisar and SECI for the supply of 300 MW of solar power.

4. In relation to the PPAs of ACME Phalodi and ACME Raisar, each dated 6.12.2018, SECI initially executed PSAs with BYPL and BRPL, dated 2.8.2018 and 6.8.2018, respectively, for the supply of 100 MW and 400 MW of solar power.

5. During the execution of the Project, BRPL and BYPL issued termination notices to SECI on 26.2.2024 and 29.2.2024, respectively, which were accepted by SECI *vide*

letters dated 9.10.2024, and consequently, the PSAs dated 2.8.2018 and 6.8.2018 were terminated. Thereafter, a new PSA was executed by SECI with Bihar Discoms for reallocation of 500 MW capacity, which received the regulatory approval of the Bihar Electricity Regulatory Commission (BERC) vide order dated 23.10.2024 in Petition No. 21 of 2024. Further, on 13.11.2024, SECI executed Supplementary PPAs with ACME Phalodi and ACME Raisar to remap the allocated 500 MW capacity to Bihar Discoms.

6. The Respondents, BYPL and BRPL, have challenged the termination of PSAs dated 2.8.2018 and 6.8.2018 before the Delhi Electricity Regulatory Commission (DERC) in Petition Nos. 58 of 2024 & 59 of 2024. The Respondents have also filed two IAs bearing IA No. 14/2024 in Petition No. 58 of 2024 and IA No. 15 of 2024 in Petition No. 59 of 2024 for seeking a stay of SECI's termination letters dated 9.10.2024. Both the Petitions, along with the IAs filed before the DERC, are still pending for final orders.

Submissions of the Petitioner

7. The Petitioner has mainly submitted as under:

(a) The present Application is being filed seeking deletion of Respondent Nos. 6 and 7 from the array of parties in the captioned petition inasmuch as Respondent Nos. 6 and 7, i.e., BYPL and BRPL, no longer hold locus standi to contest the claim of Change in Law made by the Applicants in the captioned Petition on account of termination of the PSAs dated 2.8.2018 and 6.8.2018 by SECI.

(b) Earlier, the request of BYPL and BRPL for termination of the PSA was not acceded to by SECI, and several attempts were made to secure the cooperation of BYPL and BRPL in honouring their obligations under the PSA. However, on account of non-receipt of unconditional consent to off-take the infirm power being generated and ready to be supplied by the ACME Phalodi and ACME Raisar, as well as failure on the part of BRPL and BYPL to perform their material obligations under the respective PSAs, including but not limited to obtaining approval from DERC for off-taking 500 MW solar power, SECI accepted the termination notices *vide* letter dated 9.10.2024.

(c) Admittedly, at the time of filing the present Petition, i.e., on 7.7.2023,

BYPL and BRPL had not proceeded to issue the termination notices, which were issued only on 26.2.2024 and 29.2.2024, followed by termination letters dated 7.5.2024.

Such termination has subsequently been accepted by SECI and the Petitioners. Taking this termination as final, the parties have even altered their position viz. 500 MW capacity identified, and the same has been re-allocated to Bihar Discoms. However, upon issuance of the termination notices culminating in the termination of the PSAs between SECI and BYPL and BRPL, the Respondents BYPL and BRPL wrote to SECI on 28.10.2024 opposing the termination of their PSAs dated 2.8.2018 and 6.8.2018 while claiming the withdrawal of their earlier termination notices.

(d) Previously, the contracted capacity of 500 MW was allocated to BYPL and BRPL, which has now been reallocated to Respondent Nos. 3 & 4, i.e. Bihar Discoms, through a new PSA between SECI and the said Respondents. Such reallocation has been affirmed and approved by the BERC *vide* its Order dated 23.10.2024. Pursuant thereto, SECI executed the Supplementary PPAs with ACME Phalodi and ACME Raisar on 13.11.2024, and as such, the power is being supplied to Bihar Discoms. It is evident from the Regional Energy Accounts published by the Northern Regional Power Committee ("NRPC") in respect of ACME Phalodi and ACME Raisar that power is being scheduled to Bihar Discoms and no supply is being made to Respondent Nos. 6 and 7.

(e) BYPL and BRPL are no longer necessary or proper parties in the present Petition and hence ought to be deleted from the array of parties. The Petitioners, being dominus litis, are entitled to choose the persons against whom it seeks relief and cannot be compelled to litigate against parties in respect of whom no relief is claimed. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in *Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors.* [(1992) 2 SCC 524] and *Kasturi vs. Iyyamperumal and Ors* [(2005) 6 SCC 733].

(f) The fact that such termination of PSAs may not have been accepted by BYPL and BRPL and has accordingly been challenged before DERC does not in any manner alter the present legal position inasmuch as the mere fact of filing of such a petition cannot by itself grant BYPL and BRPL the right to participate in the present Change in Law proceedings, particularly when the PSAs as entered into between SECI and BYPL and BRPL stand terminated, and such action of termination has not in any manner been stayed or set aside. Even otherwise, given that no order has been passed by the DERC in respect of the termination of PSAs and that the CIL claims of the Petitioners have nothing to do with the validity of termination of PSAs by SECI, BRPL, and BYPL cannot be said to be necessary or proper parties in the present Change in Law proceedings.

(g) The Hon'ble Supreme Court in the judgment of the Hon'ble Supreme Court in Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd. & Ors., (2010) 7 SCC 417 has held that in case a party is not found to be a proper or necessary party, the Court has no jurisdiction to implead such a party, against the wishes of the plaintiff. It was further held that the fact that a person is likely to secure a right/interest in a *lis*, after the *lis* is decided, will not make such person a necessary party or a proper party to the same. Placing reliance on the same, the Petitioners submitted that BYPL and BRPL are neither necessary nor proper parties to the present proceedings, and their continued presence in the present proceedings is unwarranted in law and on the facts.

(h) The Commission is also empowered to strike out any party that has been improperly joined. In this regard, once the legal and commercial arrangements between SECI and BYPL and BRPL have ceased to exist, their retention is contrary to the objectives of Order I Rule 10(2) of CPC. Reliance in this regard has been placed on the judgment of the Hon'ble High Court of Delhi in Triumphant Institute of Management Education Pvt. Ltd. v. WWW.Timeseducation.Co & Ors.: [(2017) SCC OnLine Del 10107], wherein the Hon'ble High Court has held that if a cause of action does not survive qua certain defendants, then such defendants should be deleted from the array of parties

(i) Accordingly, the Commission may exercise its discretion under Order I Rule 10(2) of CPC to strike off BYPL and BRPL from the array of parties, as their continued presence is neither necessary nor proper for the effective and complete adjudication of the questions involved in this matter.

Hearing dated 10.9.2025

8. During the course of the hearing, the Petitioners, while pressing upon the IA No. 59/2025, requested that the issue with respect to the deletion of BYPL and BRPL from the array of parties be decided first. The Respondents, BRPL and BYPL, sought liberty to file their replies to the IA in the matter. Considering the submissions of the parties, the Commission permitted BRPL and BYPL to file their respective replies to the IA in the present matter.

Hearing dated 28.10.2025

9. Petition No. 282/MP/2023, along with IA No. 59/2025, was listed for the hearing

on 28.10.2025. The Petitioners and Respondents made their detailed submissions in respect of the IA No. 59/2025 on the aspect of the deletion of BYPL and BRPL from the array of parties. On the request of Petitioners and Respondents BYPL and BRPL, the Commission permitted the Petitioners and Respondents, BRPL and BYPL, to file their respective note of arguments in IA No. 59 of 2025, and the order was reserved in IA No. 59 of 2025. The Petitioners and Respondent No. 6/ BYPL have filed their written submissions in this regard. The submissions of the Petitioners dated 11.11.2025 are already captured in the earlier part of the order, therefore the same is not repeated here for the sake of brevity.

Submissions of BYPL

10. BYPL has filed the following written submissions dated 12.11.2025 to the IA No. 59/2025 as summarised below:

Respondent No. 6 is a necessary and proper party to the captioned Petition

(a) BYPL is a necessary and proper party to the present Petition whose presence is required to effectively adjudicate the present dispute. The Petitioners themselves had added BYPL as a party at the time of filing the present petition, being aware of this crucial fact. BYPL has a direct and subsisting right/interest in the present case and ought not to be deleted at this stage.

(b) Relying on the judgment of *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd. & Ors.*, [(2010) 7 SCC 417] and *Razia Begum v. Sahebzadi Anwar Begum*, [1958 SCC OnLine SC 77], a Court ought to implead necessary and proper parties to the dispute at hand to ensure that complete adjudication is done. This includes all parties, in whose absence, no effective decree could be passed by the Court at all or whose presence would enable the court to completely, effectively and adequately adjudicate all matters in dispute in the suit

(c) ACME Phalodi has, throughout the construction phase of the project, taken the benefit of the underlying contract with BYPL, including for achieving financial closure, obtaining transmission linkages, and extensions from the SECI. Pertinently, ACME Phalodi, throughout this period, represented that

BYPL was the recipient of power under the project. ACME Phalodi continued to obtain numerous extensions of the SCOD for the project, which was originally set to be 25.10.2020. At the insistence of the Petitioner, the SECI unilaterally extended the SCOD at least nine times, leading to the complete derailment of the project.

(d) BYPL had entered into the PSA with SECI on 6.8.2018 in order to fulfil its RPO obligations. Basis the assurances provided by the Petitioners and the SECI, BYPL continued to represent to the DERC that it has arranged the necessary solar power to meet its RPO obligations. In view of the above, the Petitioners are now estopped from selectively ousting BYPL after having taken advantage of the relationship with BYPL to facilitate the execution of the project. ACME Phalodi ought not to be permitted to approbate and reprobate at their convenience.

DERC is the appropriate forum to adjudicate upon the validity of the termination of the PSA

(e) BYPL has challenged the SECI's purported termination of the PSA before DERC. DERC has heard arguments from both parties on November 29, 2024, December 11, 2024, December 18, 2024, January 15, 2025, and January 20, 2025, and reserved the said petition for orders by way of its order dated 20 January 2025. It is unfortunate that the members of the DERC retired before they could pass a decision on the matter. However, BYPL cannot be blamed for delay on this account. It is trite that an act of court shall prejudice no party, and a party should not have to suffer due to a delay in procedure.

(f) DERC is the appropriate forum to adjudicate upon the validity of the termination of the PSA and is, in fact, considering the same. In the event that the Commission proceeds to delete BYPL as a party to the present proceedings while the DERC is considering the issue, it would effectively be substituting its view for that of the DERC, which is properly seized of the matter.

(g) The Petitioner has also wrongfully sought to contend that the PSA is no longer valid on the ground that the DERC has not granted the interim stay on the termination sought by BYPL. However, this contention has no merit because to date, BYPL's application seeking interim relief is to be decided and remains pending before the DERC. The Petitioner has further contended that BYPL has failed to obtain the approval of the PSA from the DERC, and accordingly, the PSA has become invalid. However, BYPL has been actively pursuing the proceedings before the DERC to seek approval of the PSA. In any event, it is settled law that if a contract is subject to supervening approval, specific performance thereof may be directed subject to such approval. Therefore, while the approval of the DERC is pending, the same does not make the terms of the PSA inchoate, permitting the SECI to not comply with its terms. BYPL is still

bound to comply with the terms of the PSA. Thus, the Petitioner's contention that the PSA has become invalid in view of the pending approval is entirely baseless.

SECI's purported termination of the PSA is bad in Law

(h) The Petitioners have erroneously alleged that BYPL purportedly terminated the PSA, which the SECI has purportedly accepted. However, as detailed in the pleadings and herein, BYPL's already rejected, and long withdrawn letter dated 29.2.2024 was already rejected by the SECI and was long withdrawn by BYPL. The Petitioner has deliberately suppressed the letters issued by the SECI, which show that it had expressly rejected and not acted upon BYPL's 29.2.2024 letter.

(i) BYPL was constrained to issue the letter dated 29.2.2024 due to the complete derailment of the project for over three years. While BYPL repeatedly highlighted to the SECI the adverse impact which such extensions were having on it, the SECI neither took any steps to address the Petitioner's concerns nor did it provide any visibility regarding the supply of power under the PSA. However, the SECI rejected this attempt *vide* its letter dated 12.3.2024, and signified its acquiescence to continue with the PSA. BYPL responded *vide* its letter dated 7.5.2024, once again highlighting the grave delay in the implementation of the project. However, the SECI once again categorically rejected BYPL's intent to terminate *vide* its letter dated 14.5.2024. Pertinently, even as late as 2.9.2024, the SECI emphasised through its letter that it had rejected the letters dated 29.2.2024 and 7.5.2024 as the same were not tenable as per the PSA.

(j) Moreover, the SECI repeatedly followed up with BYPL between July and September 2024, seeking its consent to offtake power from the project, and insisted that BYPL comply with the PSA. The correspondence between BYPL and the SECI pursuant to the 29.2.2024 clearly shows that the parties were *ad-idem* regarding the subsistence of the PSA. Therefore, since SECI had not only rejected the termination attempts by BRYPL and BYPL on three occasions but also never acted upon the said termination, it could not subsequently accept the same to conceal its illegal actions.

(k) In the interim, SECI had, during the admitted subsistence of the PSA, on 30.5.2024, already illegally offered the power allocated to BYPL to Bihar State Power Holding Company Limited ("BSPHCL"). This offer was made while the SECI was admittedly seeking BYPL's consent to offtake power under the PSA. BSPHCL gave its in-principle approval on 24.6.2024 and approached the BERC on 23.8.2024

(l) There has been a drastic decline in the price of solar PV modules, which has led to windfall gains being accrued to the Petitioners. In view of this decline,

BYPL had called upon SECI to enter into discussions with the Petitioners to voluntarily reduce the tariff so that the benefit of such reduction can be passed on to BYPL's and BRPL's consumers. However, SECI rejected the request vide its letter dated 23.9.2024, alleging that there was no provision to negotiate the tariff with the developers. Consequently, BYPL was constrained to file a Miscellaneous Petition bearing no. 378/2024, seeking a downward revision and rationalization of the tariff ("Restitution Petition") before the Commission.

(m) Despite the above, on account of the SECI's repeated request for consent and its express rejection of the February 29 Letter and with an intent to continue with the project, BYPL provided its consent *vide* its letters dated September 13, 2024 and October 7, 2024. It is only once BYPL provided its unconditional consent *vide* letter dated October 7, 2024, that the SECI maliciously and belatedly issued its October 09 Letter. BYPL objected to the SECI's illegal conduct *vide* its letter dated October 28, 2024.

(n) BYPL has demonstrated its readiness and willingness to perform the PSA by communicating its unconditional consent and approaching this Commission by way of the Restitution Petition. Once BYPL has demonstrated its willingness to continue with the PSA, the SECI cannot allege that BYPL has breached its obligations and put an end to the PSA.

(o) SECI has created this charade to avoid answering difficult questions raised by BRPL and BYPL in the Reduction Petition, regarding the windfall gain which the Petitioners will receive due to the 57% decline in the price of solar PV modules, and hide its illegal conduct of diverting the power allocated to the BYPL and BRPL to third parties during the admitted subsistence of the PSA. In this regard, the SECI, without disclosing the truth about the existence of the PSA, has gotten the allocation of power approved from the Bihar Electricity Regulatory Commission ("BERC").

(p) SECI's purported termination is not as per the procedure set out in Article 9 of the PSA. SECI has neither issued a 'Preliminary Default Notice' nor triggered the mandatory consultation period as required under Article 9.3 of the PSA.

ACME Phalodi with motivated intentions, is seeking to delete BYPL as a party to the present proceedings

(q) The Petitioner, with motivated intentions, are seeking to remove BYPL as a party to the present petition on account of the glaring concerns highlighted by BYPL in respect of the claims raised by the Petitioner. The Petitioners have approached the Commission with unclean hands and deliberately suppressed from the Commission, material facts regarding the significant decline in the price

of solar PV modules and consequently, the overall project costs.

(r) The Petitioner, while claiming compensation on account of the SC GIB Order, has conveniently failed to inform this Commission that the Hon'ble Supreme Court vide order dated March 21, 2024 ("Modification Order") has modified the SC GIB Order. Pursuant to the Modification Order, the mandatory directions under the SC GIB Order have been recalled by the Hon'ble Supreme Court. Pursuant to the Modification Order, the Commission in the past has clarified that a party can seek compensation for change in law event pursuant to the GIB Order, only if they have incurred additional expenditure for the undergrounding of 33kV cable lines between April 19, 2021 to March 21, 2024.

(s) Additionally, in order to establish whether any additional expenditure has been incurred on account of the purported undergrounding of 33kV transmission lines, Petitioner No. 3 must first provide details of the estimated cost of the Projects considered by it at the rates existing at the time of the bid submission. The Petitioner ought to establish a one-to-one correlation between the projects, towards purchase of the equipment for underground wiring and proof of installation, the invoices and other relevant documents for proof of the payment of claimed amount on account of Change in Law along with auditor's certificate. However, ACME Phalodi has failed to place on record any evidence to substantiate its estimated cost at the time of bid submission.

BYPL ought not to be struck out as a party at this stage of the proceedings

(t) The deletion application is an abuse of process and the Commission ought not to permit the Petitioner to selectively remove parties which are raising objections against the false claims raised by the Petitioners. BYPL continues to have a subsisting right and interest under the PSA and the challenge to the purported termination by the SECI is still pending consideration of the DERC.

(u) Order 1 Rule 10 is the relevant provision to bring on record all the persons, who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time to avoid multiplicity of proceedings. BYPL is a party to the dispute which is the subject-matter of the present proceedings. The Commission should allow BYPL to place on record its submissions in respect of the claims raised by the Petitioner and allow for its continued participation in the present proceedings. However, in the captioned Petition, the interim relief sought by the Petitioner, i.e., the deletion of Respondent No. 6, has no correlation whatsoever with the final relief of compensation sought on account of the purported change in law. Thus, even on this ground, the deletion application ought to be rejected.

(v) The Commission, while exercising its powers under Section 79(1)(b), (f)

of the Act is required to regulate and adjudicate disputes relating to tariff by balancing private party interests with consumer interests in terms of Section 61(d) of the Act. The Commission, in terms of its obligations under Section 61(d), is required to safeguard consumer interests while ensuring the recovery of electricity cost in a reasonable manner. The National Electricity Policy also calls for protection of consumer interests.

(w) The allegations of the Petitioner that BYPL does not have any locus in the present proceedings are misconceived and devoid of any merit, having no basis in either facts or law.

Analysis and Decision

11. The issue involved in the present IA revolves around the deletion of Respondents, BYPL and BRPL, from the array of parties. The issue has been argued in plenitude by both sides. Whereas the Petitioner has strongly contended that BRPL and BYPL ought to be removed from the array of the Respondents, on the other hand, the Respondents, BRPL and BYPL, have argued on the contrary.

12. As per the Petitioner, the Respondents, BRPL and BYPL, were duly arrayed as parties to the Petition, inasmuch as BRPL and BYPL had valid PSAs with SECI on the date of filing of the Petition, i.e., 7.7.2023. Thereafter, on 26.2.2024 and 29.2.2024, BRPL and BYPL initiated the process of termination of the PSAs executed with SECI on account of valid SCOD extensions granted by SECI to the Petitioners. The said termination was accepted by SECI on 9.10.2024, and the capacity earlier allocated to BRPL and BYPL was duly remapped to Bihar Discoms. However, upon issuance of the termination notices culminating in the termination of the PSAs, BYPL and BRPL wrote to SECI on 28.10.2024 opposing the termination of their PSAs while claiming the withdrawal of their earlier termination notices. Therefore, in the absence of a valid PSA and any power being supplied by the Petitioners to BRPL and BYPL, the Petitioners

are not claiming any relief against such parties, as the power from the Petitioner is now being supplied to Bihar Discoms & the same has been approved by BERC and hence cannot be compelled to litigate against them. Further, the Petitioners have contended that BRPL and BYPL are no longer necessary or proper parties in Petition No. 282/MP/2023 as their PSAs stand terminated by SECI and the same have been allotted to Bihar Discoms *vide* new PSA.

13. On the other hand, our attention was also invited to the arguments advanced by the Respondents, BRPL and BYPL, whereby the Respondents have submitted that they are necessary and proper parties in Petition No. 282/MP/2023. It was also argued that the Petitioners themselves have added BRPL and BYPL as parties at the time of the filing of the Petition, and at this stage cannot now rely on SECI's purported termination of the PSA for relieving BRPL and BYPL of their valid and subsisting rights in the Petition. During the construction phase, the Petitioners have taken the benefit of their contract with BYPL and BRPL, and now they cannot be permitted to take a contrary approach. Further, the ground raised by the Petitioners that the PSAs with BYPL and BRPL are not valid now as DERC is adjudicating the validity of SECI's termination of PSAs of BRPL and BYPL. Such contention does not hold good as the final order has not yet been issued .

14. We have heard both parties at length and considered their rival submissions placed on record as well. Tracing the background of the present dispute in the IA, we note that two RfS were floated by SECI for 2000 MW and 3000 MW on 30.1.2018 and 27.2.2018, respectively. In both of the above-mentioned RfS, ASHPL was declared as the successful bidder, and LoA was issued to ASHPL on 27.7.2018 and 10.8.2019 for the RfS dated 30.1.2018 and 27.2.2018, respectively, for developing the solar power

projects in Tehsil Pokhran, Rajasthan. Four PPAs were executed between the Petitioners and SECI. Out of the four PPAs, two PPAs, i.e. between (i) ACME Pahlodi and SECI and (ii) ACME Raisar and SECI, were executed on 6.12.2018. In the context of these PPAs, SECI initially executed PSAs with BYPL on 2.8.2018 and BRPL on 6.8.2018. As an admitted position of fact, the said PSAs have been terminated by SECI, however, such termination has been challenged by BRPL and BYPL before the DERC, which is pending before the DERC on the aspect of whether the termination of PSAs of BRPL and BYPL by SECI was bad in law or not. We also observe that the issue in the present IA relates to the limited issue of whether BRPL and BYPL can be deleted from the array of parties in Petition No. 282/MP/2023 or not. Therefore, we proceed with the analysis of the issue raised in the IA as detailed in the succeeding paragraphs.

15. Before proceeding further, it is pertinent to observe that the issue of deletion of the Respondents, BRPL and BYPL, has been recently addressed by the Commission in an order dated 17.10.2025 in IA No. 61/2025 in Petition No. 91/MP/2024. The IA No. 61/2025 in Petition No. 91/MP/2024 was filed by the same set of Petitioners and the Respondents, arguing along the same lines of argument as in the present IA No. 59/2025 in Petition No. 282/MP/2023. Therefore, it would be prudent to refer to the observations of the Commission in the order dated 17.10.2025 in the IA No. 61/2025, which is reproduced as under:

“...13. We have heard both parties at length and considered their submissions as placed on record. It is an undisputed fact that SECI floated the RfS on 31.1.2018 for setting up the 2000 MW ISTS-connected Solar Power Project, wherein ASHPL was declared the successful bidder and LoA was granted to ASHPL on 27.7.2018. Four PPAs were executed between the Petitioners and SECI. Out of the four PPAs, two PPAs, i.e. between (i) ACME Pahlodi and SECI and (ii) ACME Raisar and SECI, were executed on 6.12.2018. In the context of

these PPAs, SECI initially executed PSAs with BYPL on 2.8.2018, and with BRPL on 6.8.2018. As an admitted position of fact, the said PSAs have been terminated by SECI; however, such termination has been challenged by BRPL and BYPL before the DERC, which is pending on the aspect of whether the termination of PSAs of BRPL and BYPL by SECI was bad in law or not. However, the issue in the present IA pertains to the limited question of whether BRPL and BYPL can be deleted from the array of parties in Petition No. 91/MP/2024 or not. Therefore, we proceed with the analysis of the issue raised in the IA as detailed in the succeeding paragraphs.

14. It would be prudent to first refer to Petition No. 91/MP/2024 filed by the Petitioners. We note that the Petition has been filed on 6.2.2024 by the Petitioners seeking in-principle approval of certain events, Change in Law, and for an appropriate mechanism for appropriate adjustment/ compensation to offset the financial/ commercial impact of the Change in Law events in terms of the PPA between Petitioners and SECI.

15. We now proceed to examine whether the Respondents, BRPL and BYPL, are necessary or proper parties in Petition No. 91/MP/2024. In the present case, the Petitioners have filed an IA for deletion of Respondents, BRPL and BYPL, in Petition No. 91/MP/2024. From the facts and circumstances in the present matter, it is noted that the PSAs executed by SECI with BRPL and BYPL were terminated by SECI and a new PSA was signed by SECI with Bihar Discoms, which was approved by BERC under Section 86(1)(b) of the Electricity Act, and presently the power is being supplied to Bihar Discoms. Such termination of PSAs has been challenged by BYPL and BRPL before the DERC, and the matter is pending before the DERC.

16. Before proceeding further, it would be pertinent to refer to the broad contours of the terms 'necessary party' and 'proper party'. In this regard, we need to refer to Order I Rule 10 of the Code of Civil Procedure, 1908, as reproduced under:

"10. Suit in name of wrong plaintiff.—

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.— The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.— Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the 1 [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

17. For the purpose of answering the pivotal question at hand, we only need to refer to Sub-rule (2) of Order I Rule 10. A bare reading of the provision extracted above indicates that Sub-rule (2) vests a very broad and substantial power in the court to delete or add a party, at any stage of the suit proceedings, either suo motu or upon an application of either of the parties before it. It provides that the court may delete the name of a party on such terms as may appear to the court to be just and proper. It may add any party whose presence before the court is necessary for the effective and complete adjudication of the dispute.

18. The law is well settled that a necessary party is one without whom no order can be made effectively, and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. At this juncture, it is pertinent to refer to the observations of the Hon’ble Supreme Court in the judgment of Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay reported in [(1992) 2 SCC 524], as encapsulated hereinbelow:

“6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case”.

19. We also deem it appropriate to refer to the observations of the Hon’ble Supreme Court in the case of Mumbai International Airport (P) Ltd. vs. Regency Convention Centre & Hotels (P) Ltd. & Ors. [(2010) 7 SCC 417]. Relevant para of the judgment (supra) is reproduced as under:

"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by

the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/ interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

20. Applying the aforesaid observations to the present case, we note that the alleged termination of the PSA of BYPL and BRPL has been challenged before the DERC in separate proceedings, and the outcome of the decision of DERC in such matter is still pending. However, neither the SECI's letter dated 9.10.2024 has been stayed therein nor has SECI been restrained from allocating contracted capacity under the PSAs to other distribution licensees. In fact, the terminated PSA contracted capacity is now allocated to Bihar Discoms by SECI through a new PSA, which BERC has approved. In effect, Bihar DISCOMs have stepped into the shoes of BRPL & BYPL insofar as this terminated PSA contracted capacity is concerned. Furthermore, as per the Petitioners, the monthly tariff for capacity earlier allocated to BRPL and BYPL is now being paid by the Bihar DISCOMs on account of remapping of such capacity. Thus, the obligation to undertake reconciliation and discharge any liability towards Change in Law compensation, in the event a case is decided by the Commission in favour of the Petitioners, will also lie with the Bihar DISCOMs and not BRPL & BYPL under the PSA with SECI. Therefore, we note that BRPL and BYPL have no liability to pay compensation either to SECI or the Petitioners towards additional expenditure incurred by the Petitioners due to the occurrence of events of Change in Law events as highlighted in Petition No. 91/MP/2024, and thus, they have no locus standi at the present stage in the Change in Law proceedings. Their right/ interest in the PSA is now founded upon the future event, i.e., the outcome of proceedings before DERC in their favour, and this renders them neither a necessary nor a proper party to the main Petition.

21. On this aspect, we must hasten to add that the Petitioner is dominus litus, according to which he can choose to proceed to pursue a cause of action against his choice of the Respondents. In this regard, we refer to the observations of the Hon'ble Supreme Court in the case of Razia Begum v. Sahebzadi Anwar Begum, [AIR 1958 SC 886] as reproduced as under:

"24. Under Order 1 Rule 10 of the Civil Procedure Code the court has the power to pass orders regarding the adding of parties or striking off the name of a party. Whether the exercise of this power is a matter of jurisdiction or of discretion appears to have been the subject of difference of opinion in the courts of law here and in England. Whichever view may be correct it is patent that resort to the exercise of such power could only be had if the court is satisfied that it is necessary to make an order under Order 1 Rule 10, in order to effectually and completely adjudicate upon and settle all questions involved in the suit. The court ought not to compel a

plaintiff to add a party to the suit where on the face of the plaint the plaintiff has no cause of action against him. If a party is added by the court without whose presence all questions involved in the suit could be effectually and completely adjudicated upon, then the exercise of the power is improper and even if it be a matter of discretion such an order should not be allowed to stand when that order is questioned in a superior court. The plaintiff is entitled to choose as defendants against whom he has a cause of action and he should not be burdened with the task of meeting a party against whom he has no cause of action.”

22. Applying such observations to the present matter, we note that BRPL and BYPL at the present stage do not hold any right at present in Petition No. 91/MP/2024 since they no longer have a valid arrangement for the procurement of power from the Petitioners’ solar power projects. We also note that when the Petition was filed before the Commission, the Respondents had a substantial interest in the outcome of the Change in Law proceedings as they had a valid existing PSA with SECI; however, after the termination of their PSA, during the pendency of proceedings before us, they no longer can be said to have any direct or substantial interest in the outcome of Change in Law proceedings. Merely on the ground that their right/ interest in the PSA may be revived in future after the outcome of a challenge laid before the DERC, the Respondents at this stage cannot be considered as a necessary or a proper party in the Petition

23. BRPL and BYPL have also argued that the Petitioners are seeking the deletion of their names on account of the glaring concerns highlighted by them and seeking to protect the interests of consumers, etc. However, these submissions, in our view, are not germane to examining the issue at hand and hence need not be addressed by us at this stage...”

16. The above observations of the Commission squarely apply to the facts of the present case. In the present case also, the Respondents, BRPL and BYPL, do not hold any substantial interest in the outcome of the Change in Law proceedings in the present Petition, *i.e.* Petition No. 282/MP/2023, as their PSAs stand terminated and such capacity has subsequently been re-allocated and scheduled to BSPHCL/ Bihar Discoms under an additional PSA which has been approved by BERC. Hence, the Respondents BRPL and BYPL would have no liability to pay any compensation either to SECI or the Petitioners towards the additional expenditure incurred by the Petitioners due to the occurrence of Change in Law events as highlighted in the Petition. Undoubtedly, the Respondents, BRPL and BYPL, have challenged the validity of the termination of their PSAs before DERC, and it is currently pending adjudication.

However, their right/interest in the PSAs is now founded upon the future event, i.e., the outcome of the proceedings before DERC in their favour, and this renders them neither a necessary nor a proper party. The Respondents, BRPL and BYPL, have vehemently argued that they continue to have a subsisting right and interest under the PSA pending the proceedings before the DERC and therefore, they ought not to be struck off as parties solely on the ground of purported termination. However, in the given case, we are unable to accede to such submissions as the matter before us is not a case of a simpliciter unilateral termination by one party to the agreement. In fact, the termination of the PSAs was initiated by the Respondents, BRPL and BYPL, themselves in the first place *vide* Notices dated 29.2.2024, and SECI *vide* letters dated 9.10.2024 appears to have only accepted such termination. The Respondents, BRPL and BYPL, have submitted that the correspondence with SECI after 29.2.2024 and the conduct of the parties clearly reflect that their Termination Notices stood withdrawn and hence, SECI's termination letter dated 9.10.2024 is bad in law. However, these aspects must await the adjudication by DERC in the proceedings pending before it and in the absence of any final decision of DERC thereon or the grant of any stay in these proceedings, the Respondents, BRPL and BYPL, in our view, cannot continue to claim any subsisting rights and interests under the PSAs. Moreover, it also appears that even PSAs, under which the Respondents, BRPL and BYPL, are claiming their rights, have not yet been approved by DERC under Section 86(1)(b) of the Act. In view of the above, the Respondents, BRPL and BYPL, cannot be considered as necessary or a proper party at this stage of the proceedings in Petition No. 282/MP/2023. Hence, IA is decided in favour of the Petitioners and is accordingly allowed.

17. The IA is decided accordingly in terms of the findings above. The Registry is directed to list the matter for hearing on **12.2.2026**.

Sd/-	Sd/-	Sd/-	Sd/-
(Ravinder Singh Dhillon) Member	(Harish Dudani) Member	(Ramesh Babu V.) Member	(Jishnu Barua) Chairperson