

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

IA No. 61/2025
in
Petition No: 91/MP/2024

Coram:

Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Date of Order: 17th October, 2025

In the matter of:

Application under Section 79 and 94(2) of the Electricity Act, 2003 read with Regulations 26 and 65 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 seeking a direction from this Commission to delete Respondent No. 6 and Respondent No. 7 from the array of parties in Petition No. 91/MP/2024 pending before this Hon'ble Commission.

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, Haryana- 134109
- 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. (ACME Deoghar), ACME Dhaulpur Powertech Pvt. Ltd. (ACME Dhaulpur), ACME Phalodi Solar Power Pvt. Ltd. (ACME Phalodi), ACME Raisar Solar Energy Pvt. Ltd. (ACME Raisar) and ACME Solar Holdings Pvt. Ltd. (ASHPL) (collectively referred to 'the Petitioners') 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 Petition No. 91/MP/2024. Petition No. 91/MP/2024 has been filed by the Petitioners seeking (i) an in-principle approval of certain events as events of Change in Law and (ii) an appropriate mechanism for appropriate adjustment/ compensation to offset financial/ commercial impact of Change in Law events in terms of Article 12 of the Power Purchase Agreements (PPAs) signed between the Petitioners and Solar Energy Corporation of India (Respondent No. 1/SECI) along with carrying cost and interest on carrying cost.

Background

2. Pursuant to the MoP Guidelines dated 3.8.2017, SECI floated its Request for Selection (RfS) *vide* RFS No. SECI/C&P/SPD/RfS/2000MW/012018 dated 31.1.2018 for setting up 2000 MW ISTS-Connected Solar Power Projects (Tranche-I), wherein ASHPL/Petitioner No.5 was declared as the successful bidder and was granted Letter of Award (LoA) on 27.7.2018. Subsequently, ASHPL established two companies, namely ACME Phalodi and ACME Raisar, to develop a 4x300 MW capacity Solar Power Project in Rajasthan at Village Sanwara, Tehsil Pokhran, Jaisalmer (the 'Project'). In this regard, the following PPAs were executed by the Petitioners with SECI:

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

3. In relation to the PPA 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.

4. 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 dated 29.10.2024 was executed by SECI with Bihar Discoms for the reallocation of 500 MW capacity, which received the regulatory approval of the Bihar Electricity Regulatory Commission (BERC) on 23.10.2024. Further, on 13.11.2024, SECI executed Supplementary PPAs with ACME Phalodi and ACME Raisar in order to remap the allocated 500 MW capacity to Bihar Discoms.

5. 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

6. 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 Petition No. 91/MP/2024 inasmuch as Respondent Nos. 6 and 7, i.e., BYPL and BRPL, no longer hold the locus standi to contest the claim of Change in Law made by the Petitioners on account of termination of the PSAs dated 2.8.2018 and 6.8.2018 by SECI.

(b) Initially, 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 6.2.2024, BYPL and BRPL had not proceeded to issue the termination notices which were issued belatedly only on 26.2.2024 and 29.2.2024. Hence, the Petitioners had duly arrayed BYPL and BRPL as parties to Petition No. 91/MP/2024. 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) Earlier, 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 dated 29.10.2024 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 has been supplied to Bihar Discoms by them since 10.12.2024. Hence, the commercial, legal, and contractual obligations have been duly transferred, leaving BYPL and BRPL with no subsisting interest or obligation with respect to the subject matter.

(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. Arraying the said Respondents in the present proceedings was not necessitated on account of any direct legal interest but rather at the insistence of SECI's back-to-back contractual arrangements with the said Distribution Companies. Presently, in the absence of any subsisting contractual relationships, BYPL and BRPL cannot be considered as necessary or proper parties to the present adjudication.

(f) The fact that such termination of the 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 in as much 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. Accordingly, given that no order has been passed by the DERC on the said IAs, it clearly indicates that the action of termination of the PSAs has not been interfered with in any manner till date.

(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, as well as BRPL, have ceased to

exist, their retention is contrary to the objectives of Order I Rule 10(2) of CPC, which is to facilitate effective and complete adjudication, not to entertain interlopers or redundant entities.

(i) Accordingly, it is prayed that 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 19.5.2025

7. During the course of the hearing, the Petitioners requested the amendment of the prayers, and also for the deletion of the names of BYPL and BRPL from the array of the Respondents. On the other hand, BYPL and BRPL vehemently opposed such deletion during the course of the hearing. Considering the submissions of the parties, the Commission directed the Petitioners to file appropriate interim applications in response to the above, and the Respondents were directed to file their reply to such applications of the Petitioners. Thereafter, the Petitioners filed IA No. 60 of 2025 for amendment of prayers in the Petition No. 91/MP/2024 and IA No. 61 of 2025 for deletion of names of BYPL and BRPL from the array of parties. BYPL and BRPL filed their replies to IA No. 61 of 2025, each dated 13.8.2025.

Reply of BYPL and BRPL

8. Although BYPL and BRPL have filed their respective replies to the IAs, they have raised common issues in their replies each dated 13.8.2025. For the sake of brevity, the common submissions of both BRPL and BYPL are summarised below:

SECI's termination of PSA dated 2.8.2018 (BYPL PSA) and PSA dated 6.8.2018 (BRPL PSA) is bad in law

(a) The Petitioners in the Application have erroneously contended that the PSA purportedly stands terminated and consequently, BYPL and BRPL are no longer a necessary and proper party to the present Petition. The Petitioners

are guilty of *suppressio veri* and *suggestio falsi*. The Petitioners have deliberately suppressed the letters issued by SECI, which show that it had expressly rejected and not acted upon the February 29 Letter and February 26 Letter.

(b) BYPL and BRPL were constrained to issue the February 29 Letter and February 26 Letter, due to the complete derailment of the project. The original scheduled commissioning date ("SCOD") of the Project was October 25, 2020. However, at the instance of the Petitioners, SECI unilaterally extended the SCOD nine times, that too, without even consulting BYPL and BRPL.

(c) While repeatedly highlighted to SECI, the adverse impact which such extensions were having on it, 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. Given this uncertainty, BRPL and BYPL were constrained to issue the February 26 and February 29 Letters, respectively, seeking to terminate the PSA. However, SECI rejected this attempt vide its letter dated March 12, 2024, and signified its acquiescence to continue with the PSA. It further insisted that BRPL and BYPL act as per the PSA and provide their consent to offtake power from the early commissioning of the project.

(d) BRPL and BYPL responded *vide* their letters dated 7.5.2024 ("May 07 Letter"), once again highlighting the grave delay in the implementation of the project. However, SECI once again categorically rejected BRPL's and BYPL's intent to terminate vide its letter dated May 14, 2024. Pertinently, even as late as September 02, 2024, Respondent No. 1 emphasized through its letter that it had rejected the February 26, February 29 Letter, and May 07 Letter as the same was not tenable as per the PSA. Therefore, since SECI had not only rejected the termination attempted by BRPL 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.

(e) SECI vide email dated July 1, 2024, informed BYPL and BRPL that power under the PSA could be commissioned early. Further, between July and September 2024, it repeatedly sought the consent of BRPL and BYPL to offtake power from the project's early commissioning.

(f) 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 and BRPL 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 September 23, 2024, alleging

that there was no provision for negotiating the tariff with the developers. Consequently, BYPL and BRPL were constrained to file the Miscellaneous Petitions, seeking a downward revision and rationalization of the tariff (“Restitution Petition”) before the Commission.

(g) In view of the SECI’s repeated request for consent to offtake power, and its express rejection of the February 29 and February 26 Letter, SECI decided not to pursue its earlier intent to terminate the PSA. Further, with the intent to continue with the PSA, BYPL and BRPL gave their consent to offtake power vide their letters dated September 13, 2024, and October 07, 2024, clearly showing their willingness and readiness to perform their obligations. The Petitioners and/or SECI cannot allege that BRPL and BYPL have breached their obligations and put an end to the PSA. However, despite the same, SECI vide its October 09 Letter, proceeded to purportedly accept the long-withdrawn and rejected February 29 and February 26 letters. BYPL and BRPL objected to SECI’s illegal conduct vide its letter dated October 28, 2024.

(h) 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 obtained approval for the allocation of power from the Bihar Electricity Regulatory Commission (“BERC”).

(i) SECI had surreptitiously, vide its letter dated May 30, 2024, already offered the entire power mapped for the Petitioners to the Bihar discoms, i.e., Bihar State Power Holding Company Limited (“BSPHCL”). The BSPHCL gave its in-principle approval on June 24, 2024 and approached the BERC on August 23, 2024, for its approval for the procurement of power. Thus, BYPL and BRPL cannot be penalised by the SECI for filing the Reduction Petition and approaching the Commission. BRPL and BYPL are entitled to approach the appropriate Commission to seek appropriate relief.

(j) 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. BYPL and BRPL have challenged SECI’s termination of the PSA vide October 9 Letter before DERC vide Petition No. 59/2024 and Petition No. 58/2024. The DERC has reserved the orders in the Petitions vide its order dated 20.1.2025.

BYPL and BRPL have been ready and willing to comply with their obligations under the PSA

(k) BYPL and BRPL vide letter dated October 7, 2024, had provided their unconditional consent to offtake power from the early part commissioning of the project. BYPL and BRPL had only mentioned that the tariff for purchasing such power shall be subject to the Restitution Petition and the approval of the PSA to be granted by DERC. BRPL's and BYPL's consent was never contingent on the outcome in the Restitution Petition.

(l) BRPL and BYPL have been actively pursuing the proceedings before DERC to seek approval of the PSA. An act of court shall prejudice no party, and a party should not have to suffer due to a delay in procedure. Therefore, delay in approval of the PSA cannot be a factor for SECI to purportedly terminate 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, it does not make the terms of the PSA inchoate, permitting SECI to not comply with its terms. The Respondents are still bound to comply with the terms of the PSA.

BYPL and BRPL are necessary and proper parties to the present petition.

(m) The Petitioners themselves have added BRPL and BYPL as parties at the time of the filing of the Petition. The Petitioners cannot now rely on SECI's purported termination of the PSA to seek to divest BRPL and BYPL of their valid and subsisting right and interest in the present Petition.

(n) During the construction phase of the project, the Petitioners have taken the benefit of the underlying contract with BYPL and BRPL. In fact, even while seeking various permissions and linkages, the Petitioners, throughout, called out to the PPA and the connected PSA with BRPL and BYPL. The Petitioners cannot be permitted to take a contrary approach at their convenience, where on the one hand, they have taken the benefit of the relationship with the BYPL and BRPL, and on the other hand, they choose to de-tag themselves from BRPL and BYPL.

(o) The Petitioners have 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 BRPL and BYPL. However, this contention has no merit because it is settled law that an interim order does not finally and conclusively decide an issue.

(p) The Petitioners' reliance on the decision in *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd. & Ors.*, [(2010) 7

SCC 417] is entirely misplaced. The Petitioners have placed reliance on the observation of the Hon'ble Supreme Court 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 same"*. However, this observation is not applicable to the present dispute. In fact, the situation is the reverse in the present case because BRPL and BYPL continue to have a right/ interest in the present dispute. It is not the case that BRPL and BYPL are 'likely' to have such a right/ interest, as alleged by the Petitioners.

(q) DERC is the appropriate forum to adjudicate upon the validity of the termination of the PSA and is, in fact, considering the same. Therefore, the Commission ought not to adjudicate upon the same and allow BYPL and BRPL to protect their rights and interests in the present proceedings. SECI's purported termination is unsustainable both in law and in fact. Therefore, the PSA, along with BRPL's and BYPL's rights and interests accruing from it, continue to subsist till date. Accordingly, BRPL and BYPL remain a necessary and proper party to the present proceedings and will be severely prejudiced if they are deleted from the present petition in a premature manner.

Hearing dated 19.8.2025

9. The Petition, along with IA No. 61/2025, was listed for the hearing on 19.8.2025. The Petitioners made detailed submissions in the matter with respect to the deletion of BYPL and BRPL from the array of parties. The same was objected to by BYPL and BRPL. On the request of Petitioners and the Respondents, BYPL and BRPL, the Commission permitted the Petitioners and Respondents, BRPL and BYPL, to file their respective written submissions in IA No. 61 of 2025, and the order was reserved in IA No. 61 of 2025. The Petitioners and Respondents have filed their written submissions in this regard, which are not repeated here for the sake of brevity.

Decision

10. The gravamen of the issue involved in the present IA pertains to the deletion of the names of the Respondents, BYPL and BRPL, from the array of parties. The Petitioners have vehemently argued that BRPL and BYPL are neither necessary nor

proper parties to the present Petition and, therefore, they ought to be removed from the array of Respondents. Whereas, the Respondents, BRPL and BYPL, while *vehemently* contesting the said submissions, have argued that they continue to be necessary and proper parties to the Petition.

11. It is the case of the Petitioners that 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., 6.2.2024. Thereafter, on 26.2.2024 and 29.2.2024, BRPL and BYPL initiated the process of terminating 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 the 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 no longer 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. Accordingly, BRPL and BYPL are no longer necessary or proper parties in Petition No. 91/MP/2024 as their PSAs stand terminated by SECI, and the same have been allotted to Bihar Discoms *vide* new PSA.

12. On the contrary, it is the Respondents' case that they are necessary and proper parties in Petition No. 91/MP/2024. In fact, the Petitioners themselves have added BRPL and BYPL as parties at the time of the filing of the Petition and now, at

this stage, cannot rely on SECI's purported termination of the PSA to seek to divest BRPL and BYPL of their valid and subsisting right and interest in the Petition. During the construction phase, the Petitioners have taken advantage of their contracts 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 has not granted the interim stay against SECI's termination of the PSAs of BRPL and BYPL. Such contention does not hold good as the final order has not been issued yet.

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.

24. The IA is decided accordingly in terms of the findings above. The Registry is directed to list the matter for hearing in the month of November 2025.

Sd/-
(Ravinder Singh Dhillon)
Member

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson