

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 65/MP/2024

Coram:

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

Date of Order: 13th August, 2025

In the matter of:

Petition under Section 79 (1)(b) of the Electricity Act, 2003 seeking approval of the Commission for the Supplemental Power Purchase Agreements dated 28.02.2023.

And

In the matter of:

- 1. Dakshin Haryana Bijli Vitran Nigam Limited,**
Vidyut Nagar, Vidyut Sadan,
Hissar- 125005, Haryana
- 2. Uttar Haryana Bijli Vitran Nigam Limited,**
Vidyut Sadan, IP 3 &4, Sector -14
Panchkula- 134113, Haryana

Through
Chief Engineer,
Haryana Power Purchase Centre (HPPC)
Plot No. IP-3&4, Sector-14,
Panchkula-134113, Haryana

...Petitioners

Vs.

Adani Power Limited,
Formerly Adani Power (Mundra) Limited,
Adani House. Near Mithakhali Six Roads,
Navrangpura, Ahmedabad- 380009, Gujarat

.. Respondent

Parties present:

Shri Tushar Mathur, Advocate, HPPC
Shri Amit Kapur, Advocate, APL
Ms. Poonam Verma Sengupta, Advocate, APL
Shri Saunak Rajguru, Advocate, APL

Ms. Priyakshi Bhatnagar, Advocate, APL
Shri Kumar Gaurav, APL

ORDER

The present Petition has been filed by Haryana Power Purchase Centre (HPPC) on behalf of Dakshin Haryana Bijli Vitran Nigam Limited as well as Uttar Haryana Bijli Vitran Nigam Limited (hereinafter referred to as “Haryana Discoms”/ “Petitioners”) seeking approval of the Supplemental Power Purchase Agreements (“SPPAs”) executed between the Petitioners and the Respondent, Adani Power Limited (hereinafter referred to as “Respondent No. 1/APL”), on 28.2.2023.

Facts of the case

2. The Respondent, APL, has set up the Mundra Power Project of a total capacity of 4620 MW in the Special Economic Zone (SEZ) at Mundra in the State of Gujarat. The generating station has four phases, namely, Phase-I & II comprising Unit Nos. 1 to 4 (4x330 MW), Phase-III comprising Unit Nos. 5 and 6 (2x660 MW) and Phase-IV comprising Unit Nos. 7 to 9 (3x660 MW). From Phases I, II & III, APL has entered into two PPAs dated 2.2.2007 and 6.2.2007 for the supply of the 2x1000 MW power to Gujarat Urja Vikas Nigam Limited (GUVNL), each from Phases I, II & III.

3. On 25.5.2006, Haryana Power Generation Company Limited (HPGCL) issued a Request for Qualification (RfQ) to procure 2000 MW of power on a long-term basis on behalf of Haryana Discoms. The Request for Proposal (RfP) document was issued to the qualified bidders on 4.6.2007. The Respondent submitted the bid for the supply of 1424 MW of power at a levelized tariff of Rs. 2.94/kWh (Rs. 0.977/kWh as the capacity charge and Rs. 1.963/kWh as the energy charge) from Phase-IV (Units 7, 8 and 9) of its Mundra Power Project.

4. The Respondent was declared as the successful bidder, and a Letter of Intent (LoI) was issued to the Petitioner on 17.7.2008. Accordingly, two separate PPAs dated 7.8.2008 were executed by the Respondent with UHBVNL and DHBVNL for the supply of 712 MW of power to each from Phase-IV of the Mundra Power Project. The Haryana Electricity Regulatory Commission (HERC), vide order dated 16.9.2008 at the instance of UHBVNL/DHBVNL, adopted the tariff under Section 63 of the Electricity Act, 2003 (the Act) on 31.7.2008.

5. The Respondent entered into a Coal Supply Agreement (**CSA**) dated 9.6.2012 for the supply of an annual contracted quantity of 6.405 MMTPA of coal with Mahanadi Coalfields Ltd. (MCL). Subsequently, the respondent rationalized the coal linkage from MCL to SECL & WCL on 13.10.2015 & 15.2.2021, respectively.

6. Thereafter, the Respondent filed a series of litigation before different forums wherein reliefs had been sought for mitigation of hardship caused by the increase in export price of coal from Indonesia on account of the promulgation of Regulation of Ministry of Energy and Mineral Resources No.17 of 2010 on 23.09.2010 (hereinafter referred to as "Indonesian Regulations").

7. Considering the continuing challenges faced by the Respondent, particularly on account of the increase in price of imported coal after promulgation of Indonesian Regulations, the Respondent stopped generation on 25.8.2021 owing to depletion of coal stock and unaffordable cost of generation at Mundra.

8. Accordingly, several meetings took place between the Respondent and the Government of Haryana, HPPC, to resolve the issues amicably, but the Respondent did not restore the power supply to the State of Haryana. Further, a meeting was held

on 23.4.2022 under the guidance of the Hon'ble Chief Minister, Haryana, with the representatives of the Respondent, wherein it was decided that Haryana will surrender the power of approximately 224 MW and the Respondent will commence power supply from the units 7 & 8 of the Mundra power plant.

9. Thereafter, the Memorandum for signing of the SPPAs with the Respondent and other related issues in line with the Minutes of Meeting dated 23.4.2022 was deliberated upon by the Council of Ministers in its meeting held on 27.6.2022, and it was decided that the draft Supplemental PPA be approved subject to the concurrence of the Advocate General (AG). Accordingly, the matter was referred to AG, Haryana, for concurrence and comments on the draft SPPAs.

10. Upon receiving concurrence from the AG Haryana, the agenda was again placed before the Council of Ministers, and after approval of the Council of Ministers through circulation on 21.12.2022, the proposal for signing the Supplemental Agreement (s) with the Respondent was approved. The draft SPPAs were shared with the Respondent.

11. Based on the approval of the Council of Ministers on 21.12.2022, the SPPAs dated 28.2.2023 were executed between the Respondent & Haryana Discoms. The salient features of the SPPA are as under:

- (a) From the date of re-commencement of supply after signing of the SPPAs, the Respondent shall be entitled to monthly tariff payments in accordance with the provisions contained in Schedule 5 of the PPA for the revised contracted capacity.
- (b) If there's a shortage in domestic coal and for power generated using alternate or imported coal, the Discoms will have three options:

- (i) To avail power only to the extent of domestic coal availability- Quoted energy tariff, including Change in Law, shall be payable in accordance with the PPA for the scheduled energy.
- (ii) To avail power generated with the alternate/imported coal for the capacity beyond domestic coal availability and up to the Declared capacity.

For the units scheduled using alternate/ imported coal, the pass through of cost will be allowed with reference to the tariff worked out based on the HBA index of the month of recommencement of supply after signing of the Supplemental Agreement as base and thereafter, every month based on CERC monthly indexation. The ocean freight will be as per the CGPL PPA, and the Port Handling Charges will be as applicable for the Mundra Power Plant.

- (iii) To authorise the Respondent to sell the power produced beyond the domestic coal availability and use the alternate/imported coal to be sold in the Power Exchange.

For power not scheduled/ un-requisitioned, Haryana DISCOMs/ DHBVN may allow sale of power, as per clause "c" above, for which profit sharing shall be as per the PPA provisions. In this case, Haryana DISCOMs/DHBVN would continue to pay the capacity charges in terms of the PPA for the revised contracted capacity under the Supplemental Agreement.

- (c) The quoted Capacity Charges shall be payable for the Declared Capacity for all the above-mentioned, as per the PPA.
- (d) On the units produced using the alternate/ imported coal, the fixed charges will be the same as agreed to in the PPA. A reduction in Capacity Charges to the extent of 10 paise will apply to the capacity delivered/ scheduled based on imported coal, only for units generated above ACQ quantities and subject to the PPA being in profit, when reviewed over a particular financial year.

- (e) The Change in Law shall be as per the PPA and as approved by the CERC. Separate supplemental invoice(s) as per the PPA dated 07.08.2008 shall be raised by the Seller for seeking reimbursement of the approved Change in Law events.
- (f) The claims pertaining to the period prior to signing of the SPPA and are pending before various forums in relation to the PPAs dated 07.08.2008, shall be settled in line with the final orders/judgments.
- (g) The contracted capacity of the Haryana Discoms shall be revised to 1200 MW delivered at Haryana periphery, which corresponds to 1320 MW at the generator's end.
- (h) The entire materialisation against domestic coal linkage to Mundra Power Plant would be apportioned between the PPAs with Haryana Discoms and other long-term PPAs in the ratio of 1566MW:414MW.

12. In view of the foregoing, the Petitioners have filed the present Petition for approval of the Supplemental Power Purchase Agreements dated 28.2.2023 (SPPA) for recommencing procurement of power from the Respondent's Project to address the power deficit situation faced by the State of Haryana. The Petitioners have made the following prayers in the Petition.

- a. To admit the Petition;*
- b. To approve the Supplemental Power Purchase Agreements dated 28.02.2023 executed between the Petitioners and the Respondent;*
- c. The Petitioners crave relief of this Hon'ble Commission to allow further submissions, prayers, additions and alterations to this Petition as may be necessary from time to time.*
- d. Pass any other Order as the Commission may deem fit and appropriate under the circumstances of the case."*

13. The Petition was admitted on 19.4.2024, and notice was issued to the Respondent. During the course of the hearing, the learned counsel for the Petitioners submitted as under:

(a) The issue of jurisdiction of this Commission has been conclusively settled by the Hon'ble Supreme Court in the case of Energy Watchdog v. CERC, [(2017) 14 SCC 80] wherein the Hon'ble Court explained what constitutes a 'composite scheme' and jurisdiction of this Commission for regulating the tariff of generation projects having a composite scheme. In light of the decision of the Hon'ble Supreme Court, this Commission has the jurisdiction to regulate the tariff under Section 79 (1) (b) of the Electricity Act, 2003, under the composite scheme.

(b) This Commission vide order dated 16.12.2013 in the matter of Adani Power Ltd v. UHBVNL & Ors. has held that the composite scheme can be entered into by the generating company at any stage subsequently, and the jurisdiction gets vested in this Commission as and when the generating company enters into a composite scheme. Accordingly, the Commission decided the issue of jurisdiction in the said order dated 16.12.2013.

(c) This Commission has approved the amendment to the PPA of Gujarat Utilities (GUVNL), who are also procuring power from the Adani Power (Mundra) Limited under its Order dated 12.04.2019 passed in Petition No.374/MP/2018: GUVNL v. Adani Power (Mundra) Limited, wherein, on the issue of the jurisdiction this Commission held that it would have jurisdiction power under Section 79(1)(b) of the Act to consider the proposed amendments to the PPAs, including the provisions relating to tariff in the PPAs, since they flow from the Competitive Bidding Guidelines issued by the Central Government in pursuance to the provisions of Section 63 of the Act.

(d) In the instant case, from a bare perusal of the features of the supplemental PPA, it is evident that by way of the Supplemental PPA, the parties have mutually agreed to modify the arrangement for payment of 'tariff' in case of use of imported coal by the Respondent. Thus, under Section 79(1)(b) of the

Electricity Act, 2003, the Respondent having a 'composite scheme' of generation, such agreements on payment of 'tariff' could only be 'regulated' by this Commission, including approval of the present supplemental PPA.

14. Learned counsel for the Respondent, APL, also supported the submissions made by the learned counsel for HPPC and submitted that this Commission has the necessary jurisdiction to approve the SPPAs. Learned counsel further circulated a compilation of judgments and referred to (i) orders of the Commission dated 16.10.2012, 2.4.2013, and 21.2.2024 in Petition No. 155/MP/2012, (ii) judgment of APTEL dated 7.4.2016 in Appeal No. 100 of 2013, (iii) judgment of the Hon'ble Supreme Court in the case of Energy Watchdog & Ors. v. CERC & Ors., [(2017) 14 SCC 80], etc. in detail to buttress his submissions.

15. The Respondent, vide its reply dated 31.5.2024, has mainly submitted as under:

- (a) APL supports the present Petition filed by the Haryana Discoms and has no objection if this Commission approves the SPPAs, which are signed based on mutual agreement between the contracting parties, i.e. Haryana Discoms and APL.
- (b) The SPPAs were signed pursuant to Article 18.1 of PPAs, which incorporates an express provision for the amendments.
- (c) The Commission is empowered to approve the SPPAs in exercise of its statutory powers under Section 63, read with Sections 79 and 61 and also the regulatory powers envisaged under Section 79 (1)(b) of the Act, read with principles laid down in Energy Watchdog vs. CERC & Ors. [(2017) 14 SCC 80].
- (d) The Commission and the State Commissions, on various occasions, have allowed the amendment to Section 63 PPAs, invoking the enabling provision

envisaged in the PPAs themselves. In this regard, reliance has been placed on CERC's order dated 21.2.2018 in Petition No. 21/MP/2018 (*KSK Mahanadi Power Co. Ltd. vs. TANGEDCO & Ors*), order dated 12.4.2019 in Petition No. 374/MP/2018 (*GUVNL vs. APMuL & Ors.*) and order dated 21.2.2018 in Petition No. 41/MP/2018 (*GMR Kamalanga Energy Ltd. vs. GRIDCO Ltd. and Bihar State Power (Holding) Co. Ltd.*). Reliance has also been placed on the orders of the State Commissions, viz, MERC's Order dated 20.3.2018 in Petition No. 70 of 2018 (*APML vs. MSEDCL*), RERC's Order dated 24.1.2018 in Petition No. RERC-1313/18 (*APRL vs. JVVNL & Ors.*), GERC's Order dated 2.2.2018 in Petition No. 1703 of 2018, and Order dated 15.3.2018 in Petition No. 1707 of 2018 (*GUVNL vs. ACB (India) Ltd.*).

Hearing dated 28.8.2024

16. During the course of the hearing, the learned counsel for the Petitioner reiterated the submissions made in the Petition. In response to the specific query regarding the necessary jurisdiction of this Commission to approve the agreements entered into by the distribution licensees for the purchase power under Section 79(1) of the Act, learned counsel for the Petitioner submitted that keeping in view that the generating station of the Respondent, APL, has a composite scheme of generation and sale of electricity in more than one State in terms of Section 79(1)(b) of the Act, this Commission is the Appropriate Commission having a requisite jurisdiction over the matter and in the past also, the Commission has allowed the amendments to the Power Purchase Agreements entered into under Section 63 route. Learned counsel for the Respondent, APL, also supported the above submission advanced by the learned counsel for the Petitioner on the jurisdiction aspect. However, the Commission prima facie observed that reference to the orders allowing the adjustment/passing of the discount in tariff to the procurer(s) under the SHAKTI may not be relevant to the present case. In response, learned counsel for both sides sought liberty to file their

submissions to the above query and leave to address this issue of jurisdiction thereafter.

17. After hearing the learned counsel for the parties, the Petitioner and the Respondent were directed to file their concise submissions on the limited aspect of jurisdiction to approve the Supplemental Power Purchase Agreements entered into by the Distribution Licensees under Section 79(1)(b) vis-à-vis Section 86(1)(b) of the Act. In compliance with the direction of the Commission, APL vide its compliance affidavit dated 17.9.2024 and HPPC vide its compliance affidavit dated 4.10.2024 have filed submissions on the aspect of jurisdiction of the Commission in this matter. After hearing the learned counsel for the Petitioner, the Commission directed both sides to file their concise submissions on the limited aspect of jurisdiction to approve the Supplemental Power Purchase Agreements entered into by the Distribution Licensees under Section 79(1)(b) vis-à-vis Section 86(1)(b) of the Act.

18. APL, vide its compliance affidavit dated 17.9.2024, has made the following submissions on the aspect of jurisdiction:

(a) As per Section 79(1)(b) read with 79(1)(f) of the Act, this Commission is vested with jurisdiction over generating companies which have a composite scheme for generation and sale of electricity in more than one State. In other words, the moment generation and sale of electricity take place in more than one State, the Central Electricity Regulatory Commission becomes the 'Appropriate Commission' to exercise the jurisdiction.

(b) In the present case, Adani generates power at Units 7-8 of Mundra TPS in Gujarat, and supplies power to Haryana Discoms at the Haryana periphery. Evidently, the generation and sale of electricity takes place in more than one State, to attract Section 79(1)(b) read with 79(1)(f) of the Act, thereby conferring jurisdiction solely on this Commission. In this regard, the

judgments in *Energy Watchdog & Ors. vs. CERC & Ors.* [(2017) 14 SCC 80], *GRIDCO Limited vs. OERC & Ors.* [2022 SCC OnLine APTEL 4], and *Parampujya Solar Energy Pvt. Ltd. vs. CERC & Ors.* [2022 SCC OnLine APTEL 80] constitute binding precedents on this Commission.

- (c) The existing Power Purchase Agreements (PPA) dated 7.8.2008, signed *inter se*, incorporate an express provision for the amendments, viz. Article 18.1 of the PPAs. The Supplementary Power Purchase Agreements (SPPAs) dated 28.2.2023 have been signed pursuant to Article 18.1 of the existing PPAs. Accordingly, this Commission, being the 'Appropriate Commission', is empowered under the statutory contract, viz. PPA, to approve the amendments to the PPAs.
- (d) The power of this Commission to approve the Supplemental PPAs emanates from its statutory and regulatory powers under Sections 79, 61 and 63 of the Act.
- (e) The Hon`ble Supreme Court, being fully apprised of the fact that the PPA in question was a Section 63 PPA, by Order dated 29.10.2018 in Miscellaneous Appeal No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 (*Energy Watchdog vs. CERC & Ors.*), held that it will be open to the applicants therein to approach this Commission for approval of the proposed amendments to the PPAs. Subsequently, this Commission, by Order dated 12.4.2019 in *GUVNL vs. APMuL & Ors.* in Petition No. 374/MP/2018, exercised its jurisdiction and approved the amendments proposed to the PPAs therein.

19. HPPC, vide its compliance affidavit dated 4.10.2024, has made the following submissions on the aspect of jurisdiction:

- (a) The jurisdiction of this Commission has been conclusively settled by the Hon`ble Supreme Court in the case of *Energy Watchdog v. CERC*, [(2017) 14 SCC 80] wherein the Hon`ble Supreme Court explained as to what constitutes a 'composite scheme' and jurisdiction of this Commission for regulating the tariff of generation projects having a composite scheme. In light of the decision of the Hon`ble Supreme Court, this Commission has the

jurisdiction to regulate the tariff under Section 79 (1) (b) of the Act under a composite scheme.

- (b) Further, this Commission vide its Order dated 16.12.2013 *Adani Power Ltd v. UHBVNL & ors.* held that the composite scheme can be entered into by the generating company at any stage subsequently, and the jurisdiction gets vested in this Commission as and when the generating company enters into a composite scheme. The aforesaid decision of the Commission was challenged by the Petitioners before the Appellate Tribunal for Electricity (the APTEL) in Appeal No. 44/2014, which has since been disposed of vide Judgment dated 7.4.2016, whereby the APTEL has also upheld the jurisdiction of this Commission.
- (c) In fact, this Commission has approved the amendment of the PPA of the Gujarat Utilities (GUVNL), which are also procuring power from the Adani Power (Mundra) Limited by its Order dated 12.4.2019 passed in Petition No. 374/MP/2018 (*GUVNL v. Adani Power (Mundra) Limited*). In the aforesaid order, on the issue of jurisdiction, the Commission has categorically held that it would have jurisdiction power under Section 79(1)(b) of the Act to consider the proposed amendments to the PPAs, including the provisions relating to tariff in the PPAs, since they flow from the Competitive Bidding Guidelines issued by the Central Government in pursuance to the provisions of Section 63 of the Act.
- (d) Similar to the case of GUVNL, even in the present case, considering the continuing challenges faced by the Respondent, particularly on account of the increase in prices of imported coal post the intervention of Indonesian Regulations, the Respondent stopped generation on 25.8.2021 owing to depletion of coal stock and unaffordable cost of generation at Mundra. Accordingly, several meetings took place between the Respondent and the Government of Haryana, HPPC, to resolve the issues amicably, wherein it was decided that Haryana will surrender the power of approximately 224 MW and the Respondent will commence power supply from units 7 & 8 of the Mundra power plant. Thereafter, a memorandum for signing of the SPPAs

with the Respondent and other related issues in line with the Minutes of Meeting dated 23.4.2022 was deliberated by the Council of Ministers in its meeting held on 27.6.2022 and it was decided that the draft Supplemental PPA be approved subject to the concurrence of the Advocate General. Upon receiving concurrence from the AG, Haryana, the agenda was again placed before the Council of Ministers and after approval of the Council of Ministers through circulation on 21.12.2022, approved the proposal for signing the Supplemental Agreement (s) with the Respondent, the SPPAs dated 28.2.2023 were executed between the Respondent and Haryana Discoms. Thus, even in the present case, the execution of the Supplemental PPA had been a product of policy directives of the State of Haryana and has accordingly been placed before this Commission for its approval.

- (e) From a bare perusal of the salient features of the supplemental PPA, it is evident that by way of the Supplemental PPA, the parties have mutually agreed to modify the arrangement for payment of 'tariff' in case of use of imported coal by the Respondent. Thus, under Section 79(1)(b) of the Act, the Respondent having a 'composite scheme' of generation, such agreements on payment of 'tariff' could only be 'regulated' by this Commission, including approval of the present supplemental PPA.
- (f) The Commission has the power not only to regulate tariffs but also to approve amendments, including supplemental PPAs, when such agreements are aligned with or without covered by the existing Guidelines or specific provisions. This includes the power to approve or reject the proposed amendments, as reflected in previous rulings as elaborated above.

Hearing dated 29.4.2025.

20. During the course of the hearing on 29.4.2025, the learned counsel for the Petitioner and the learned counsel for the Respondent, APL, made detailed submissions and concluded their respective arguments in the matter. Considering the submissions made by the learned counsels for the parties, the Commission permitted

the parties to file their respective written submissions. In response, the parties have filed their respective written submissions and have reiterated the submissions made in the pleading.

Analysis and Decision

21. We have considered the submissions made by the Petitioner and the Respondent. From the pleadings of the parties, including the written and oral submissions, the following issues arise for our consideration:

Issue No. 1: Whether the Commission has the power to approve the proposed amendments, especially since the tariffs specified in the PPAs were determined under Section 63 of the Act?

Issue No. 2: If the answer to the first issue is affirmative, whether the Supplemental Power Purchase Agreements dated 28.2.2023 need to be approved?

The aforesaid issues have been dealt with in the succeeding paragraphs.

Issue No. 1: Whether the Commission has the power to approve the proposed amendments, especially since the tariffs specified in the PPAs were determined under Section 63 of the Act?

22. On the issue of jurisdiction, the parties have submitted that the jurisdiction of this Commission has been conclusively settled by the Hon`ble Supreme Court in *Energy Watchdog v. CERC*, [(2017) 14 SCC 80] wherein the Hon`ble Supreme Court has held that the Commission has the jurisdiction to regulate the tariff under Section 79 (1) (b) of the Act under composite scheme.

23. The parties have relied on the Commission`s order dated 12.4.2019 in Petition No. 374/MP/2018: *GUVNL v. Adani Power (Mundra) Limited* and have submitted that the Commission has approved the amendment to the PPA of Gujarat Utilities (GUVNL), which are also procuring power from the same generating station of the Respondent. The Respondent has submitted that the Hon`ble Supreme Court, being

fully apprised of the fact that the PPA in question was a Section 63 PPA, by order dated 29.10.2018 in Miscellaneous Appeal No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 (Energy Watchdog vs. CERC & Ors.), held that it will be open to the applicants therein to approach this Commission for approval of the proposed amendments to the PPAs. Subsequently, this Commission, by Order dated 12.04.2019 in Petition No. 374/MP/2018 [GUVNL vs. APMuL & Ors], exercised its jurisdiction and approved the amendments proposed to the PPAs therein. In the aforesaid order, on the issue of jurisdiction, the Commission has categorically held that it would have jurisdiction power under Section 79(1)(b) of the Act to consider the proposed amendments to the PPAs, including the provisions relating to tariff in the PPAs, since they flow from the Competitive Bidding Guidelines issued by the Central Government in pursuance to the provisions of Section 63 of the Act.

24. The SPPAs have been signed on 28.2.2023 pursuant to Article 18.1 of the original PPAs, which provides as under:

“18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.”

25. The Hon'ble Supreme Court in All India Power Engineer Federation & Ors. Vs Sasan Power Ltd. & Ors. [(2017) 1 SCC 487] (hereinafter referred to as 'the Sasan Judgment 2016') has held that if the tariff is increased after the adoption under Section 63, the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest. The relevant extract of the said judgment is as under

*“31. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. **This is for the reason that what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with Guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative intent and the language of Sections 61 and 62 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest.**”*

26. In the present case, since the parties have not only made substantial amendments in the tariff but also in other terms and conditions of the original PPAs, the Petitioner has approached the Commission praying for approval of SPPAs dated 28.2.2023 in accordance with the decision of the Hon'ble Supreme Court in Sasan Judgment 2016 and Article 18.1 of the PPAs. The salient features of the SPPA dated 28.2.2023 are as under:

- (i) From the date of re-commencement of supply after signing of the SPPAs, the Respondent shall be entitled to monthly tariff payment in accordance with the provisions contained in Schedule 5 of the PPA for the revised contracted capacity.
- (j) If there's a shortage in domestic coal and for power generated using alternate or imported coal, the Discom will have three options:
 - (iv) To avail power only to the extent of domestic coal availability- Quoted energy tariff, including Change in Law, shall be payable in accordance with the PPA for the scheduled energy.
 - (v) To avail power generated with the alternate/imported coal for the capacity beyond domestic coal availability and up to declared capacity.

For the units scheduled using alternate/ imported coal, the pass through of cost will be allowed with reference to the tariff worked out

based on the HBA index of the month of recommencement of supply after signing of the Supplemental Agreement as base and thereafter, every month based on CERC monthly indexation. The ocean freight will be as per the CGPL PPA, and the Port Handling Charges will be as applicable for the Mundra Power Plant.

- (vi) To authorise the Respondent to sell the power produced beyond the domestic coal availability and use the alternate/imported coal to be sold in the Power Exchange.

For power not scheduled/ un-requisitioned, Haryana DISCOMs/ DHBVN may allow sale of power, as per clause "c" above, for which profit sharing shall be as per the PPA provisions. In this case, Haryana DISCOMs/DHBVN would continue to pay the capacity charges in terms of the PPA for the revised contracted capacity under the Supplemental Agreement.

- (k) The quoted Capacity Charges shall be payable for the Declared Capacity for all the above-mentioned, as per the PPA.
- (l) On the units produced using alternate/ imported coal, the fixed charges will be the same as agreed to in the PPA. A reduction in Capacity Charges to the extent of 10 paise will apply to the capacity delivered/ scheduled based on imported coal only for units generated above ACQ quantities & subject to the PPA being in profit when reviewed over a particular financial year.
- (m) The Change in Law shall be as per the PPA and as approved by the CERC. Separate supplemental invoice(s) as per the PPA dated 07.08.2008 shall be raised by the Seller for seeking reimbursement of approved Change in Law events.
- (n) The claims pertaining to the period prior to signing of the SPPA and are pending before various forums in relation to the PPAs dated 07.08.2008 shall be settled in line with the final orders/judgments.

- (o) The contracted capacity of Haryana Discoms shall be revised to 1200 MW delivered at Haryana periphery, which corresponds to 1320 MW at the generator's end.
- (p) The entire materialisation against domestic coal linkage to Mundra Power Plant would be apportioned between the PPAs with Haryana Discoms and other long-term PPAs in the ratio of 1566 MW:414 MW.

27. The relevant extract of the judgments relied upon by the Petitioner and the Respondent is extracted as under:

Energy Watchdog & Ors. vs. CERC & Ors. [(2017) 14 SCC 80]: -

*“19. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). **This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b).** For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to “regulate” tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. **Considering the fact that the non-obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff.** In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to “regulate” tariff. **It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only***

in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used.

24. The scheme that emerges from these sections is that **whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved**, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. **This is the precise scheme of the entire Act, including Sections 79 and 86.** It will be seen that **Section 79(1) itself in clauses (c), (d) and (e) speaks of inter-State transmission and inter-State operations.** This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression **"within the State"** in clauses (a), (b) and (d), and **"intra-State"** in clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, **the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act.** What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. **Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted.** This being the case, we are constrained to observe that the expression **"composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State.**

25. ... The aforesaid dictionary definitions lead to the conclusion that the expression **"composite" only means "consisting of at least two elements".** **In the context of the present case, generation and sale being in more than one State, this could be referred to as "composite".**

26. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a "composite scheme". This makes it clear that the expression "composite scheme" does not have some special meaning – **it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.**

GRIDCO Limited vs. OERC & Ors. [2022 SCC OnLine APTEL 4]: -

"9. Section 79(1)(b) of the Electricity Act confers jurisdiction on the Central Commission to regulate of the tariff of such generating companies as enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State. In contrast, Section 86(1)(a) and (b) confers the jurisdiction on the State Commission to determine the tariff of generation, supply, transmission etc. of

electricity “within the State” as also the purchase and procurement process of Distribution Licensees including price at which the electricity is to be procured through agreements for purchase of power for distribution and supply “within the State”. Undoubtedly, in situation where the procurement or sale of electricity is “within the State”, the jurisdiction of tariff determination is of the State Commission. But, in cases where the generating company from which the supply is taken is covered by a “composite scheme for generation and sale of electricity in more than one State”, the jurisdiction is shifted to the Central Commission.”

Parampujya Solar Energy Pvt. Ltd. vs. CERC & Ors. [2022 SCC OnLine APTEL 80]:

“36. From the above, it is clear that the matters of the tariff of generating companies owned or controlled by the Central Government is under the regulatory regime of the Central Commission. Further, the tariff of companies other than those owned or controlled by the Central Government is also regulated by the Central Government if such generating companies have entered into or otherwise have a composite scheme for generation and sale of electricity “in more than one State”. In contrast, the matters relating to tariff for generation, supply, transmission, wheeling, purchases or procurement “within the State” falls to the jurisdiction of the corresponding State Commission under Section 86 of Electricity Act, 2003. To put it simply, matters pertaining to inter-state transactions of such nature pertain to the jurisdiction of the Central Commission.”

28. Undisputedly, the jurisdiction with regard to the regulation of tariffs vests with the Commission in this case in accordance with the Energy Watchdog judgment of the Supreme Court. In the Energy Watchdog judgment, the Hon`ble Supreme Court has held that Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt a tariff. The Hon`ble Supreme Court further held that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. However, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission’s general regulatory powers under Section 79(1)(b) can then be used. Thus, the Energy

Watchdog judgment reiterated the findings of the Sasan Judgment 2016 regarding the regulation of tariff outside the four corners of the PPAs, further clarifying that such general power to regulate tariff resides under Section 79 (1)(b) of the Act. However, the judgment of Energy Watchdog has been further clarified by the Hon`ble Supreme Court, subsequently, in Civil Appeal No 11826 of 2018 in the matter of Haryana Power Purchase Centre vs Sasan Power Ltd & Ors (Sasan Judgment 2023). The said judgment dated 6.4.2023 clarified that in the Energy Watchdog case, the Hon`ble Supreme Court was not dealing with a case arising from the fixation of tariff under Section 63, but regulation of tariff after the PPA was approved and rates were fixed under Section 63. The judgment also dealt with the limitation of the residuary power under Section 79 of the Act with regard to the amendment of the tariff determined under Section 63 of the Act. The relevant portion of the judgment dated 6.4.2023 is extracted as under:

*“(87) It is true that as far as the said case is concerned, the case arose from claims which were made under the PPA on the basis that there were changes in law apart from the argument that a case of Force Majeure was made out. **It is not a case which actually on facts involved the Court dealing with a case arising from the fixation of tariff under Section 63. In fact, it arose after a PPA was approved and the rates were fixed already under Section 63.** However, if we notice the contents of para 19 and 20, the principle which the first respondent seeks to canvas before us does not appear to emerge. **The argument of the first respondent is that even de hors the terms of the contract, there is general regulatory power available under Section 79 of the Act. There is an overarching authority with the Commission exercising power under Section 79 which would enable it and which would empower it to grant compensation even de hors the terms of the contract it is contended. The argument appears to be that unlike generality of contracts, a regulated contract which is a long term contract or an incomplete contract generates space for power with the appropriate regulatory body to revisit the rates and thereby vouchsafe a fair deal to both sides, be it a seller or the procurer.***

(88) What this Court has laid down in para 19 and 20 in Energy Watchdog may be summarized as follows:

(89) *In the case of fixation of tariff under Section 63 of the Act, what is contemplated is to begin with guidelines which have been issued under Section 63. When the Commission is asked to exercise power under Section 63, it is beholden to the guidelines as it cannot depart from the same. In a area where the guidelines do not occupy the field, undoubtedly, the Commission is clothed with power as a regulatory body to act in the best interest of all sides and to fix the tariff in a manner which is fair in the sense bearing in mind the paramount interest of increased generation of power, the interest of the consumer, as also ensuring of a fair return to the seller. So far so good. When the Commission exercises the power under Section 63, this power is not abridged when there are no guidelines holding the field.*

(90) *We are not dealing with a case where the exercise of power of the Commission under Section 63 is under review. **In a case where, however, the rates are approved under Section 63 and PPA is entered into, the question would undoubtedly arise as to whether there is a power which can be described in a manner of speaking to be plenary power with the Commission under Section 79? Can there be a power which can be christened as omnibus?** Can the Tribunal, in other words, disregard the express words of the contract? Can it discover a new change in law which the parties have not contemplated as change in law? In short, can the Tribunal rewrite the contract and create a new bargain?*

(91) *We are of the view that the Tribunal cannot indeed make a new bargain for the parties. The Tribunal cannot rewrite a contract solemnly entered into. It cannot ink a new agreement. **Such residuary powers to act which varies the written contract cannot be located in the power to regulate.** The power cannot, at any rate, be exercised in the teeth of express provisions of the contract.*

29. The findings of the Hon`ble Supreme Court relevant to the present case in the above judgment can be summarised as under:

(a) Energy Watchdog judgment dealt with a case where the regulation of the tariff was being done after the tariff was fixed and the PPA was approved.

(b) The Hon`ble Supreme Court reiterated that in areas where the guidelines do not occupy the field, undoubtedly, the Commission is clothed with power as a regulatory body to act in the best interest of all sides and to fix the tariff in a

manner which is fair in the sense bearing in mind the paramount interest of increased generation of power, the interest of the consumer, as also ensuring of a fair return to the seller.

(c) The Hon`ble Supreme Court rejected the argument that, unlike the generality of contracts, a regulated contract, which is a long-term contract or an incomplete contract, generates space for power with the appropriate regulatory body to revisit the rates and thereby vouchsafe a fair deal to both sides, be it a seller or the procurer.

(c) The Hon`ble Supreme Court rejected the argument that there is a power with the Commission under Section 79 which can be described in a manner of speaking to be plenary power.

(d) The general regulatory power vested with the Commission under Section 79 of the Act with regard to Section 63 PPAs is not omnibus.

(e) Such residuary powers to act which vary the written contract cannot be located in the power to regulate.

30. Thus, the Hon`ble Supreme Court has held that the Commission cannot amend the express provisions of a written contract between the parties using its general regulatory power under Section 79 of the Act. Therefore, the question which arises for our consideration is where the parties have mutually decided to amend the PPAs, which is the Appropriate Commission in terms of Article 18.1 of the original PPAs, to approve such amendments. This is to be seen not only in the light of the proposed amendment in the tariff but also in the light of the amendment in other terms and conditions of the PPA.

31. Perusal of the SPPAs reveals that the parties have agreed to material amendments in the terms and conditions, including the tariff of the original PPAs dated 7.8.2008. In terms of the Energy Watchdog judgment, the Commission is vested with the power under Section 79 of the Act to regulate the tariff of the PPA dated 7.8.2023 after the tariff was determined through the TBCB process. However, the present amendment neither involves the regulation of tariffs nor requires the determination of tariffs either under Section 62 or under Section 63 of the Act. In terms of the Sasan Judgment 2023, the amendment of the original PPA brings back the present matter to the fixation of tariff stage, which in this case is being done mutually by the generator and the procurers for the remaining term of the PPA. Further, there are other terms and conditions of the PPA which are being amended by the parties. While rejecting the general regulatory power under Section 79 of the Act as a plenary power, the Hon`ble Supreme Court in the Sasan Judgment 2023 has held that such residuary powers under Section 79 of the Act vary the written contract. cannot be located in the power to regulate. Therefore, the general regulatory power under Section 79, which is limited to the regulation of tariffs, is not adequate to allow the revisions in the other terms and conditions of the PPAs.

32. As regards amendment of tariff provisions, it is pertinent to note that the tariff for the original PPAs dated 7.8.2023 entered into between the Respondent APL and Haryana Discoms was adopted by the Haryana Electricity Regulatory Commission under Section 63 of the 2003 Act on 31.7.2008. It is also noted that, though analogous to Section 79(1)(b), Section 86(1)(b) also empowers the State Commission to regulate the electricity purchase and procurement process of distribution licensees, including the price at which electricity shall be procured from the generating companies. The relevant extract of Section 86 is reproduced as under:

Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a).....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

33. The Hon`ble Supreme Court vide its judgment dated 8.1.2024 in Civil Appeal No. 6503 of 2022 in the case of Jaipur Vidyut Vikas Nigam Limited vs. MB Power (2024 SCC Online SC 26), while observing that Section 86 (1) (b) is analogous to Section 79, has further noted that Section 86(1)(b) of the Act gives ample power to the State Commission to regulate electricity purchase, procurement process of distribution licensees, and price at which electricity shall be procured from the generating companies. The relevant extract of the judgment is as under

“70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.”

34. As observed earlier, the proposed amendment in PPAs is beyond the scope of regulation under Section 79 (1)(b) or determination of tariff under Section 62 or Section 63 of the Act. The tariff has been amended mutually by the parties in SPPAs. Notably, the State Commission had approved the PPA and adopted the tariff of the Respondent

in the present matter. Further, the State Commission has been vested with ample power to regulate electricity purchase, the procurement process and the price at which such electricity shall be procured from the generating companies. Therefore, we are of the considered opinion that the State Commission shall be the Appropriate Commission to consider the proposed amendment of the PPAs by the parties, including the price at which electricity shall be procured.

35. For the sake of argument, even if it is assumed that this Commission accepts tariff amended by the parties on a mutual basis, the power to determine whether a distribution licensee in the State should enter into PPA or procurement process with such generating companies based on the tariff determined/accepted by CERC still vests with the State Commission. In this regard, reference can be made to Rule 8 of the Electricity Rules, 2005, which is extracted as under:

“8 Tariffs of generating companies under section 79- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of subsection (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.”

36. In view of the above, the State Commission is the Appropriate Commission to consider the amended terms and conditions of the PPA, including the amended provisions for tariff under Section 86 of the Act. Needless to add that the revised terms and conditions of tariff so fixed by the State Commission in the SPPAs shall be regulated by this Commission, thereafter, in terms of the Energy Watchdog judgment.

37. The parties have also relied on the order of the Commission dated 12.4.2019 in Petition No 374/MP/2018 (GUVNL v. Adani Power (Mundra) Limited), wherein the Commission approved the amendment of the Respondent's PPA with GUVNL from the same generating Station. The relevant extract of the order dated 12.4.2019 is reproduced as under:

“37.....

(g) In the light of the above judgments, it emerges that the PPAs in question including the powers to approve amendments thereto contained in Article 18.1 of the respective PPAs flow from and are consistent with the Guidelines and Section 63 of the Act. Without prejudice to the above power flowing from Article 18.1 of PPAs, the Commission can exercise its powers to regulate tariff under Section 79(1) (b) of the Act in a scenario where it is not covered by any of the provisions of the Guidelines or where no Guidelines are framed at all or Guidelines do not deal with a given situation, as clearly stipulated in paragraph 20 of the judgment in Energy Watchdog Case extracted above. Therefore, not only does the Commission have the statutory powers to allow amendments pursuant to Article 18.1 of the respective PPAs, but also has the regulatory power under Section 79(1) (b) of the Act in the absence of any Guidelines or specific provisions in the Guidelines with regard to amendment of the PPAs to either approve the proposed amendment or reject the same.

.....

41. The legal principles adopted in the aforesaid orders in the context of the SHAKTI scheme are that the Commission can approve amendments to the tariff provisions in the PPA if parties agree to such amendments through Supplemental PPAs pursuant to policy directive of the Government, if it is in public interest. dated 1.12.2018 for rehabilitation of the stressed imported coal based power projects in consumer interests. The Commission is of the view that as in the cases of SHAKTI Scheme, the supplemental PPAs involving revision of tariff pursuant to the policy directive of the Government of Gujarat as propounded in the GR of 1.12.2018 which has been submitted to the Commission for approval needs to be considered if it is in the public interest.

42. In the light of the above discussion, we are of the view that this Commission has the requisite jurisdiction and power under Section 79(1)(b) of the Act in the light of the judgment of the Hon'ble Supreme Court in Sasan Case and Energy Watchdog Case as well as Article 18.1 of the Bid 01 and Bid-02 PPAs to consider the proposed amendments to the PPAs, including the provisions relating to tariff in the PPAs, since they flow from the Competitive Bidding Guidelines issued by the Central Government in pursuance to the provisions of Section 63 of the Act.”

38. As regards reliance on the order dated 12.4.2019 in Petition No 374/MP/2018, we do not find merit in the argument of the parties for the reason that the said order was issued prior to the law evolved in the Sasan Judgment 2023(supra). The order in Petition No 374/MP/2018 relied on Article 18.1 of the PPA read with Section 63 and Section 79(1)(b) of the Act to approve the SPPAs entered into by GUVNL and Adani Power Limited. The Commission relied on the Energy Watchdog judgment and the Sasan Judgment 2016.

39. As deliberated earlier, the Sasan judgment 2023 of the Hon`ble Supreme Court subsequently clarified that for a tariff determined under Section 63 of the Act, the residuary powers which vary the written contract cannot be located in the power to regulate under Section 79(1)(b). Thus, it is evident that amendments in other terms and conditions of the PPA, including reduction or addition in contracted quantity, would be out of the scope of power to regulate under Section 79(1)(b), which in any case is confined to regulation of tariff only. Further, in the present case, the tariff was determined under Section 63 of the Act and the original tariff was adopted by the State Commission. It is the State Commission, which is vested with ample power under Section 86(1) (b) to regulate the electricity purchase and procurement process of distribution licensees, including the price at which electricity is being purchased. Accordingly, the State Commission is the Appropriate Commission under Article 18.1 of the Act to approve amendments in the terms and conditions of the PPAs, including the tariff.

40. Thus, we opine that this Commission does not have the necessary jurisdiction to deal with the issues involved in the Petition, i.e., approval for SPPAs dated

28.2.2023. Accordingly, the Petitioner is at liberty to approach the State Commission for appropriate relief.

41. In view of the above discussion Issue No. 1 and Issue No. 2 stand answered accordingly.

42. Petition No. 65/MP/2024 is disposed of in terms of the above.

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