

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 92/MP/2024 with IA.No.36/2024**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V, Member  
Shri Harish Dudani, Member**

**Date of Order: 3.01.2025**

**In the matter of:**

Petition under Section 79 (1) (c), (f) and (k) of the Electricity Act, 2003 read with Regulation 41 & 42 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 for an appropriate decision on the submission of Payment on Order Instrument in lieu of Connectivity Bank Guarantee.

**And**

**In the matter of:**

1. Indosol Solar Private Limited .....Petitioner  
Aurobindo Galaxy, A Wing, 16<sup>th</sup> Floor, Opp. IKEA  
Rayadurgam, Hyderabad,  
Telangana-500081

**Versus**

1. Central Transmission Utility of India Limited  
First Floor, Saudamani, Plot No.2, Sector-29,  
Gurugram, Haryana -122001
2. Indian Renewable Energy Development Agency Limited  
3<sup>rd</sup> Floor, August Kranti Bhawan,  
Bhikaji Cama Place, New Delhi-110066.
3. Ministry of New and Renewable Energy  
Atal Akshaya Urja Bhawan, CGO Complex,  
Lodhi Road, New Delhi- 110003, India



4. Ministry of Power (MoP), Gol  
Shram Shakti Bhavan, Rafi Marg,  
New Delhi-110001

..... Respondents

**Parties Present:**

Ms. Swapna Seshadri, Advocate, ISPL  
Ms. Harsha V Rao, Advocate, ISPL  
Ms. Suparna Srivastava, Advocate, CTUIL  
Ms. Divya Sharma, Advocate, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Swapnil Verma, CTUIL  
Ms. Kavya Bhardwaj, CTUIL  
Shri Lashit Sharma, CTUIL

**ORDER**

Indosol Solar Private Limited (ISPL) has filed the instant Petition under Section 79 (1) (c), (f), and (k) of the Electricity Act, 2003, read with Regulation 41 & 42 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 for an appropriate decision on the submission of Payment on Order Instrument in lieu of Connectivity Bank Guarantee.

2. The Petitioner has made the following prayer in the Petition:

**Prayer in Petition No.92/MP/2024**

- i. Direct the CTUIL to accept the Payment on Order Instrument issued by IREDA in lieu of bank guarantee to be submitted under Regulation 8 of the GNA Regulations and protect the in-principle grant of connectivity accorded to the Petitioner.*
- ii. Pass such further or other order(s) as the Hon'ble Commission may deem fit in the facts of the present case.*

**Interim Prayer:**

- i. Direct the CTUIL not to take any coercive steps for cancellation of connectivity granted vide letters bearing Ref. CTU/S/5/Conn/INT-1A-2200000363, CTU/S/5/Conn/INT-1A-2200000364, CTU/S/5/Conn/INT-1A-2200000365 and*



CTU/S/5/Conn/INT-1A-2200000366 dated 31.01.2024 till the present Petition is decided; and

ii. Pass such further order(s) as deemed fit and proper in the circumstances of the case.

**Prayer in IA. No. 36/IA/2024:**

- i. Allow the impleading of IREDA, MNRE and MOP as Respondents No. 2 3, and 4 respectively, to the present Petition.
- ii. Pass such other order(s) or direction(s), which this Hon'ble Commission may deem fit and proper.

The IA.No.17/2024 (Diary No.105/2024) and 35/2024 (Diary No.207/2024) were disposed of vide RoP for haring dated 27.02.2024 and 01.05.2024.

**Submissions of Petitioner**

3. Petitioner has made the following submissions:

- (a) Petitioner, Indosol Solar Private Limited, is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003, and is a Special Purpose Vehicle of M/s. Shirdi Sai Electricals Limited was formed pursuant to the winning of Tranche I of the Production Linked Incentive Scheme (PLI Scheme) for setting up Fully Integrated High-Efficiency Solar PV Modules. The Petitioner is setting up one of India's first Fully Integrated Solar PV Module manufacturing facilities (Polysilicon-Ingot-Wafer-Cell and Module) with a global scale capacity of 20 GW equivalent of 20 GW metallurgical silica, 20 GW Polysilicon, 15 GW Ingot/wafer 10 GW of Cell and Module along with in-house Float glass manufacturing capacity of 10 GW. The Petitioner also emerged successful in Tranche II of the Production Linked Incentive Scheme for setting up Fully Integrated High-Efficiency Solar PV Modules, announced by the Government of India to promote domestic manufacturing and reduce imports of Solar Panels, which also aligns with the Aatma Nirbhar Bharat Initiative of Government of India.
- (b) The Energy (Power-II) Department, Government of Andhra Pradesh vide GO Ms.No.19 dated 12.09.2022 sanctioned a solar capacity of 3500 MW in the districts of Kurnool, YSR (Kadapa), and Ananthapur, with an assurance to allot Government lands for development of the Solar Power Projects on lease basis to the Petitioner.



NREDCAP, which is the Nodal Agency for Renewable Energy, was appointed as the Nodal Agency for the implementation of the proposed projects.

- (c) The solar parks of the Petitioner (four within the capacity allocated) are proposed to be connected to the inter-state transmission system (ISTS), and the power is proposed to be evacuated on a 400kV single circuit transmission line from the upcoming 765/400/220kV PGCIL Kurnool-III ISTS grid substation at Kurnool (Kurnool -III).
- (d) NREDCAP vide letter dated 07.11.2023 to CTUIL recommended connectivity for 3500 MW at the Kurnool III substation to the Petitioner and informed CTUIL about the allotment of land, pursuant to and in furtherance of the government Order, aggregating to 21038.99 Acres situated at Urichintala Village, Anantapuram District (Acres 2835.36), M. Kambaladinne Villiage, YSR (kadapa) District (Acres 3,774.64) and Kolimigundla Villiage, Kurnool District, Andhra Pradesh State, on lease basis.
- (e) Petitioner proposes to implement the projects in phases, and hence, it submitted four connectivity applications to the CTUIL through the National Single Window System under Regulation 4 of the GNA Regulations that enables an RPPD for grant of connectivity. The details of the connectivity applications are as follows:

S. NO.	APPLICATION ID	QUANTUM
1.	2200000363	800 MW
2.	2200000364	900 MW
3.	2200000365	900 MW
4.	2200000366	900 MW

- (f) An earlier dispute had arisen between the Petitioner and Respondent (CTUIL) on the issue of time stamping of the Petitioner's connectivity applications. The Petitioner had approached this Commission by filing Petition (Diary) No.512/2023. This Commission heard the matter on 29.11.2023 and passed a RoP. Pursuant to the above, at the 26<sup>th</sup> Consultation meeting for Evolving Transmission Schemes in the Southern Region held on 29.12.2023, the CTUIL accorded power connectivity for the 3500 MW evacuation capacity applied for.
- (g) In terms of Regulation 8 of the GNA Regulations, 2022, the Applicant shall submit a connectivity bank guarantee in three parts, Conn-BG1 amounting to Rs. 50 lakhs, and Conn-BG2 and Conn-BG3, depending on whether the Applicant falls under Regulations 7.1 or 7.2 of the GNA Regulations. The Applicant is required to furnish

the Conn-BG1, Conn-BG2, and/ or Conn-BG3 as applicable within one month from the in-principle grant of connectivity.

- (h) In terms of GNA Regulations, Petitioner, for the purposes of securing evacuation capacity required to furnish bank guarantees as under:

<b>S. No.</b>	<b>Description</b>	<b>2200000363 Rs. in Cr.</b>	<b>2200000364 Rs. in Cr.</b>	<b>2200000365 Rs. in Cr.</b>	<b>2200000366 Rs. in Cr.</b>
1.	Conn-BG1	0.5	0.5	0.5	0.5
2.	Conn-BG2	6	6	6	6
3.	Conn-BG3	16	18	18	18
<b>Total</b>		<b>22.5</b>	<b>24.5</b>	<b>24.5</b>	<b>24.5</b>

- (i) Petitioner has regular banking transactions with the Indian Renewable Energy Development Agency (IREDA), a Government of India undertaking that operates under the administrative control of the Ministry of Renewable Energy and an NBFC registered with the Reserve Bank of India. The Petitioner proposed to obtain and have the POI issued. The Petitioner is in the process of negotiating. However, unless there is specific approval by CTUIL, IREDA, for that matter, no institution will be in a position to issue POI, which is a financial obligation on their part.
- (j) Petitioner vide letter dated 24.01.2024 requested CTUIL to consider Payment Order Instrument (POI) issued by IREDA in lieu of the bank guarantees to be submitted under Regulation 8 of the GNA Regulations as the POI will have the same effect as that of a bank guarantee issued by any public sector bank and serve the purposes as sought to be served by the connectivity bank guarantees. CTUIL vide email dated 29.01.2024 communicated to the Petitioner that the Petitioner's request for submission of POI in lieu of bank guarantee is not tenable as the GNA Regulations mentions only bank guarantee for grant of connectivity/ general network access. CTUIL thus called for the Petitioner to submit the requisite bank guarantees as per the timelines specified in the GNA Regulations.
- (k) CTUIL vide letters dated 31.01.2024 intimated in-principle grant of connectivity to the Petitioner and called upon the Petitioner to submit the applicable connectivity bank guarantees within one month, failing which the application for connectivity shall be closed, and the application fee be forfeited. Petitioner is required to furnish bank guarantees on or before 02.03.2024. Regulation 16 of the GNA Regulations enumerates the purpose and treatment of the connectivity bank guarantees. In

terms of Regulation 16, the subsisting bank guarantees shall be adjusted towards unpaid transmission charges, if any. The connectivity bank guarantees, in essence, are submitted to secure evacuation capacity by the Applicant in the initial stage and timely payment of transmission charges post commissioning up until the subsistence of such bank guarantees in terms of the Regulations. The Regulations do not envisage any other role to be played by bank guarantees, and the POIs to be issued by IREDA will squarely serve the above purpose.

- (l) IREDA being a Government of India undertaking to operate under the aegis and control of the Ministry of Power, the POI issued by IREDA shall hold the same legitimacy as a bank guarantee issued by a scheduled bank recognised by the Reserve Bank of India. POI to be issued by IREDA shall fulfil all conditions as stipulated for the bank guarantee to be furnished under the GNA Regulations as per the instructions provided in 'FORMAT-CONN-BG-Amendment' posted on the website of CTUIL as of 21.06.2023 (being the latest format for submission of bank guarantee under the GNA Regulations). Vide a press release dated 04.09.2020, the Minister for New & Renewable Energy and Power approved a proposal for acceptance of a Letter of Undertaking issued by IREDA, PFC & REC in lieu of bank guarantees for Earnest Money Deposit (EMD) and performance bank guarantee (PBG) by SECI, NTPC and NHPC in the case of tenders/biddings for developing Renewable Energy (RE) projects in the country. The Minister had directed that implementing agencies on behalf of the MNRE shall henceforth accept EMD in the form of bank guarantees or Payment on Order Instrument. There can be little doubt that the POI serves the same purpose as a bank guarantee and has become commonly accepted by various implementing agencies. SECI carried out amendments in its RfS and PPAs to include POIs and prescribed a format of the Payment on Order Instrument to be issued by IREDA/REC/PFC. The POIs issued by IREDA are fulfilling the purposes of a connectivity bank guarantee envisaged under the GNA Regulations and the Petitioner must be permitted to submit the same in lieu of bank guarantees for securing its connectivity.
- (m) Since the language of Regulation 8 of the GNA Regulations states "Bank Guarantee," the CTUIL has refused to accept the POI in lieu of the Bank Guarantees. However, under Regulations 41 & 42 of the GNA Regulations, this Commission retains the power to remove difficulty and to relax any of the provisions

of the said Regulations. The language of Regulation 42 dealing with the power to remove difficulties is of wide amplitude and to be exercised on a case-to-case basis with the objective of giving effect to the Regulations themselves. Since the objective of Regulation 16 is to secure the charges towards transmission/evacuation which get secured by a POI in equal measure as would be by a Bank Guarantee, this is a fit case for exercising such powers as well. The commission may also consider directing appropriate amendments to be carried out in the Regulations to enable the submission of POIs and other such instruments issued by public sector undertakings, which will further the objective of the Regulations. The Petitioner undertakes to provide the POI within such time as this Commission may deem fit once the relaxation/removal of difficulty power is exercised.

**Hearing on 27.02.2024 in IA 17/2024 (Diary No.105/2024):**

4. Petitioner submitted that the time given to submit BG expires on 29.02.2024, failing which its connectivity applications will be closed; the Petitioner has also moved the instant IA seeking interim directions for an extension of time for submissions of the BG/POI till the main Petition is decided. Alternatively, the Petitioner prayed for the grant of time to submit BG, which may be replaced with POI subject to the outcome of the Petition. Petitioner is willing to submit the BG, which may be replaced with subject to the outcome of the main Petition and/or amendment of the GNA Regulations, and keeping in view that the amount involved is substantial, the Petitioner is requesting for an extension of 45 days to submit such BG.
  
5. Respondent, CTUIL, submitted that the issue involved in the matter is somewhat generic in nature and not specific to the Petitioner herein only. The representative of CTUIL further added that there are some issue(s) involved with the POI as compared to the BG and pointed out that under the Insolvency and Bankruptcy Code, while BG is specifically exempted from the Corporate Insolvency Resolution Process (CIRP) that permits CTUIL to encash the BG even if a company is subject to CIRP, the same dispensation is not there for POI and other instruments. The representative of CTUIL fairly submitted that the above aspect requires examination.

6. Considering submissions made by the learned counsel for the Petitioner and the representative of CTUIL and the special circumstances, the Commission ordered as under:

- (a) CTUIL will not proceed to revoke the in-principle grant of Connectivity to the Petitioner provided the Petitioner submits POI from IREDA within 7 days of issue of RoP, which shall be replaced by BG of the requisite amount by 31.03.2024, failing which CTU will take action as per GNA regulations.
- (b) BG(s) to be furnished by the Petitioner in terms of (a) above will be subject to the outcome of the main Petition. Accordingly, IA (Diary) No. 105/2024 was disposed of.
- (c) CTUIL to file its reply to the main Petition and the Petitioner, who may file its rejoinder within two weeks thereafter.

**Hearing on 15.03.2024 in Review Petition (Diary) No.138/2024:**

7. Petitioner had filed a Review Petition seeking a limited modification of the Record of Proceedings for the hearing dated 27.2.2023 in IA (Diary) No. 105 of 2025 in Petition (Diary) No. 89 of 2024 ('Impugned ROP').

8. Petitioner submitted that since the main issue involved in the Petition is whether the Bank Guarantee provided for in the GNA Regulations can be substituted with a POI as an interim relief, the direction to give a POI cannot be issued. Moreover, the prayer of the Petitioner in IA(Diary) No. 105 of 2024 was to grant the time extension for submission of a Bank Guarantee subject to the final decision in the Petition. The Petitioner sought an extension of 30 days for submission of the Bank Guarantee under the GNA Regulations, 2022.

9. Commission ordered that Para 3(a) of the ROP dated 27.02.2024 be modified as under:

*“(a) CTUIL will not proceed to revoke the in-principle grant of Connectivity to the Petitioner provided the Petitioner submits Bank guarantee within 30 days from today, failing which CTUIL may take appropriate action in terms of the provisions of the GNA Regulations.”*



10. The Commission further ordered that the 30-day period will commence from the date of hearing, i.e., 15.3.2024. All other terms contained in the ROP dated 27.02.2024 shall remain unaltered. The Review Petition (Diary) No. 138 of 2024, which has been treated as a Miscellaneous Petition is disposed of in terms of the above.

**Hearing on 01.05.2024 in IA 35/2024(Diary No.207/2024):**

11. Petitioner submitted that the instant IA moved by the Petitioner for an extension of time till 30.04.2024 for submission of the bank guarantee to CTUIL and to protect the connectivity granted to the Petitioner has now become infructuous and, therefore, may be disposed of by the Commission accordingly. Learned counsel submitted that the Commission may proceed to take up the main matter and may direct the party to complete the pleadings therein. Learned counsel also submitted that the Petitioner has also moved IA (Diary) No.233/2024 for impleadment of Indian Renewable Energy Development, Ministry of Power, and Ministry of New and Renewable Energy as parties to the Petitioner as their views would be germane to the aspect of submission of the Payment of Order Instrument in lieu of Bank Guarantee under Regulation 8 of the GNA Regulations.
12. The Commission disposed of IA (Diary) No. 207/2024 as having been rendered infructuous and directed Petitioner to implead IREDA, MNRE, and MOP as parties to the Petition and file a revised memo of parties.

**Submissions of the Petitioner in IA.No.36/2024:**

13. Petitioner has made the following submissions:

- (a) IREDA being the agency issuing the POI, and MNRE being the body exercising administrative control over IREDA and having previously directed its implementing agencies to accept such POI, they are necessary and proper parties to the present Petition and submissions on their behalf shall be germane in the adjudication of the present Petition on merits, as the Commission had previously expressed the view that the submission of POI in lieu of bank guarantee shall require detailed considerations. Hence, impleading

IREDA and MNRE is crucial for adjudication of the present Petition. MOP is responsible for evolving general policy in the field of energy. Hence, it is required to hear the MOP on the issues involved in the Petition, the same being important for the ease of business and development of the renewable energy sector in the country. Hence, MOP is also a proper party to the present Petition.

**Submissions of the Petitioner:**

14. Petitioner vide submissions dated 09.05.2024 has filled Amended Memo of Parties after impleading IREDA, MNRE, and MOP as party to the present Petition.

**Submissions of the Respondents:**

15. Respondent CTUIL vide affidavit dated 29.05.2024 has submitted as under:
- (a) Regulation 8 of the GNA Regulations provides that a connectivity applicant must submit bank guarantees in favour of the Respondent in the prescribed manner and format “issued by any scheduled commercial bank recognized by the Reserve Bank of India.” The clear and unequivocal language of the Regulation permits the furnishing of a bank guarantee issued by a scheduled bank, and that too is recognized by the Reserve Bank of India and does not envisage furnishing of any other instrument in lieu thereof. The use of the word “shall” occurring in Regulation 8 shows that the provision is mandatory in its operation with regard to the furnishing of connectivity bank guarantee and, as such, is necessarily to be complied with.
- (b) Regulation 8.2(c) provides for furnishing of the connectivity bank guarantee within one month from the intimation of the in-principle grant of connectivity, failing which the consequences of closure of the connectivity application and forfeiture of the application fees ensue. The requirement to furnish connectivity bank guarantees as per Regulation 8 of the GNA Regulation with a clear legislative intent expressed clearly in imperative words cannot be substituted with another security instrument in the manner sought by the present Petitioner, notwithstanding its effectiveness or acceptability by various implementing agencies.

- (c) The power to remove difficulty or relax the provisions of any Regulation can be exercised only to make minor adaptations and peripheral adjustments in the Regulations and to make its implementation effective, without touching its substance, whereas, in the present Petition, the Petitioner has in effect sought for an amendment to Regulation 8 of the GNA Regulations by inserting another financial instrument in the form of POI as an alternative for submission by a connectivity grantee, which cannot be permitted under the present “Miscellaneous Petition.” The provisions as they exist in the statute book must, therefore, necessarily be followed till they are subsequently amended (if at all).
- (d) The Petitioner has contended that a POI is to have the same effect as that of a Conn-BG issued by any public sector bank. While doing so, it has relied upon a Press Release dated 04.09.2020 issued by the MNRE approving a proposal for acceptance of POI issued by IREDA, PFC, or REC in lieu of BGs as earnest money deposits by SECI, NTPC, and NHPC in the case of tenders/biddings for developing RE projects in the country. The said Press Release concerns the implementing agencies like SECI, NTPC, and NHPC who act as intermediaries for the sale and purchase of power from renewable energy generators and enter into PPAs together with back-to-back Power Sale Agreements (PSAs) with ultimate beneficiaries. The POI may be accepted by such implementing agencies in lieu of the BGs as per the terms of the tender documents or the PPAs/PSAs. The connectivity grants are not a part of power sale/purchase transactions of the implementing agencies and the answering Respondent has no privity to the same.
- (e) Besides “securing evacuation capacity” as submitted by the Petitioner, Conn BGs serve as a security mechanism to recoup the non-payment of transmission charges by the connectivity grantee. Therefore, the substitution proposed by the Petitioner does not align with the procedural and regulatory requisites envisaged within the relevant legal framework. Besides, it is settled law that a bank guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and/or the validity of the primary contract between the beneficiary and the

person at whose instance the same is given. In addition to having been issued in terms of a statutorily prescribed procedure, the bank guarantee (Conn-BG) is unconditional and requires the bank to make payment of the sum stipulated therein on demand by the Respondent without demur, reservation, or protest. Subject to limited exceptions, it is a well-established principle that the beneficiary of a bank guarantee cannot be restrained from encashing the same, even in cases where a dispute arises between the beneficiary and the party at whose instance it has been given by the bank. Such stringent enforceability measures may not be applicable to POI in a similar manner.

- (f) Given the distinct operational modalities of POI and Conn-BGs, it is imperative to recognize that the objectives outlined within the GNA Regulations cannot be effectively achieved through the POI as on comparison of both the instruments, it can be seen that the POI is a Letter of Undertaking and is different from a contract of guarantee, owing to which under the Insolvency and Bankruptcy Code, 2016 (hereinafter the “Code”), the POI would not stand immune from the rigours of Section 14 of the Code. In the case of a bank guarantee, there is an exception carved out under Section 14(3) of the Code as per which its encashment can take place even when the moratorium is in place; however, there is no such provision for POI.
  
- (g) That upon failure of the Petitioner in the submission of the applicable Conn-BGs within the timelines, the in-principle grants of connectivity issued to the Petitioner were revoked on 22.04.2024. The same was in compliance with the statutory duty of the Respondent in terms of the GNA Regulations, 2022, and in line with the directions of this Commission vide its Record of Proceedings dated 27.02.2024 and 15.03.2024 in the matter. As such, there is no merit in the present Petition and the same is liable to be dismissed by this Commission. The Respondent is bound to follow the applicable Regulations and the Detailed Procedure in letter and spirit as the same are statutory in nature and also have a clear regulatory prescription with regard to the furnishing of Conn-BGs only.

### **Submissions of Petitioner**

16. Petitioner vide Affidavit dated 20.07.2024 had filled its Rejoinder by reiterating its earlier submission and has additionally submitted as under:

- (a) Petitioner, in essence, seeks a minor adaptation and peripheral adjustment in giving effect to the provisions of the GNA Regulations and is in no manner inconsistent with the scheme or the essential provisions of the GNA Regulations. The present direction is sought in giving effect to the provisions of the GNA Regulations only and in no manner compromises its basic structure or primary features.
- (b) Banks generally give guarantees on a 100% margin or on the issuance of counter guarantees by entities such as IREDA. As a result, promoters, such as the Petitioner, have to make the payment twice, first to the financial institution for issuing a counter-guarantee and second to the bank for issuance of a bank guarantee. For a Petitioner's project, where the bank guarantee to be furnished under the GNA Regulations is about Rs. 96 crores, the Petitioner faces difficulties in cash flow on account of the above requirement. On the other hand, financial institutions geared towards the development of renewable energy, such as IREDA, understand the nature of the sector and processes the requests of developers in a much faster manner.
- (c) The CTUIL has failed to establish a single circumstance under the GNA Regulations where a Payment of Order Instrument will not satisfy the purposes sought to be achieved by a bank guarantee.

### **Hearing on 28.08.2024:**

17. Petitioner submitted that earlier, the Petitioner had moved IA No.35/2024 (Diary No.207/2024) in the matter, praying *inter alia* an extension of time till 30.04.2024 for the submission of the Bank Guarantee (BG) to CTUIL and the protection of the in-principle connectivity granted to the Petitioner. However, subsequently, the said IA, having been rendered as infructuous, was disposed of by the Commission. The Petitioner submitted

that the Commission may now proceed to deal with the main issue involved in the matter, i.e., permitting the submission of Payment of Order Instrument in lieu of BG under Regulation 8 of the GNA Regulations.

18. Respondent, CTUILL, submitted that keeping in view that the in-principle grant of connectivity issued to the Petitioner vide letters dated 31.1.2024 has already been revoked on 22.4.2024, the prayers of the Petitioner, which pertain to the said grant, no longer survive and the cited issue has become merely an academic exercise. Learned counsel further submitted that the Petitioner had also approached the High Court of Delhi in W.P (Civil) No. 5632 of 2024, inter alia seeking issuance of appropriate writ, order, or direction to CTUILL to maintain the status quo on the connectivity granted against its applications until the Commission hears and passes the order in IA (Diary) No. 207 of 2024. However, CTUILL having already revoked the in-principle grant of connectivity by its communication dated 22.04.2024, the Petitioner sought liberty to take appropriate steps to assail the said communication, which was accorded by the High Court vide order dated 23.04.2024. Thus, the in-principle grant of connectivity, as concerned in the present, stands revoked, and the Petitioner is, if at all, aggrieved by such revocation; it may approach the Commission by way of a separate Petition. Learned counsel also pointed out that after the above revocation, the Petitioner again applied for the connectivity afresh and has also been accorded an in-principle grant against such fresh application(s). Also, in respect of this fresh in-principle grant, the Petitioner has proceeded to submit the BGs without any protest or demur. However, neither this subsequent in-principle grant forms part of the record nor does the prayer seeking permission to submit the Payment of Order Instrument in lieu of BG pertain to this subsequent in-principle grant.
19. Petitioner pointed out that the above developments have already been placed on record by the Petitioner vide affidavit dated 25.04.2024 and submitted that vide Record of Proceedings for the hearings dated 27.02.2024 in IA (Diary) No. 105/2024 and 15.03.2024 in Review Petition (Diary) No.138/2024, CTUILL was asked not to revoke the in-principle grant of connectivity to the Petitioner provided the Petitioner submits the BG within 30 days from 15.03.2024, i.e., by 15.04.2024. However, owing to certain restrictions, the Petitioner could not furnish the BG in the given timeframe and had, accordingly, moved the IA No. 35/2024 seeking an extension of time granted under an

order dated 15.03.2024. The said IA was also mentioned by the Petitioner for urgent listing, which was orally rejected by the Commission. However, since no formal order has yet been passed by the Commission, the Petitioner could not avail its first appellate remedy in terms of Section 111 of the Electricity Act, 2003 and, accordingly, filed a Writ Petition before the High Court Delhi on 17.04.2024. Learned counsel also pointed out that CTUIL has also proceeded to file its reply only after the Petitioner had filed its additional affidavit dated 25.04.2024. Learned counsel further submitted that since the Petitioner intends to submit the Payment on Order Instrument in lieu of BGs given in respect of the subsequent in-principle grant as well, the issue involved is not merely an academic exercise, and the Commission ought to exercise its Power to Relax and Power to Remove Difficulties under the GNA Regulations to permit such relief.

20. Considering the submission made by the learned counsel for the parties, the Commission reserved the matter for Order.

**Analysis and Decision:**

Petitioner had applied for a grant of 3500 MW Connectivity through 4 (four) separate applications dated 17.11.2023 and 18.11.2023. CTUIL granted *in principle* Connectivity to the Petitioner vide letters dated 31.01.2024, wherein requirement of Conn BGs was mentioned. As per the intimation to in principle grant of Connectivity, Petitioner was required to furnish Conn-BG1, Conn-BG2, and Conn-BG3 within 1(one) month of intimation, i.e., on or before 01.03.2024.

21. Prior to in principle grant of connectivity, Petitioner vide letter dated 24.01.2024, requested CTUIL to consider limits sanctioned by IREDA termed as Payment Order Instrument (POI) in lieu of the bank guarantees (Conn-BG1, Conn-BG2, and Conn-BG3) to be submitted under Regulation 8 of the 2022 GNA Regulations, which was rejected by the CTUIL vide email dated 29.01.2024. Thereafter, Petitioner approached the Commission vide the instant Petition praying to direct CTUIL to extend the time limit to submit BG/POI. The commission allowed the submission of BGs up to 15.04.2024. However, Petitioner having failed to deposit requisite BGs in the extended timeline, CTUIL vide letter dated 22.04.2024 revoked in principle grant of Connectivity.

22. CTUIL, during a hearing on 28.8.2024, submitted that since the in-principle connectivity stands revoked on 22.4.2024, the prayers of the Petitioner, which pertain to the said grant, no longer survive and the cited issue has become merely an academic exercise. In response, Petitioner submitted that since the Petitioner intends to submit the Payment on Order Instrument in lieu of BGs given in respect of the subsequent in-principle grant as well, the issue involved is not merely an academic exercise, and the Commission ought to exercise its Power to Relax and Power to Remove Difficulties under the GNA Regulations to permit such relief.
23. Petitioner vide IA 26/2024 prayed to allow impleading IREDA, MNRE, and MOP as parties for adjudication on the aspect of submission of Payment of Order Instrument in lieu of bank guarantee under Regulation 8 of 2022 GNA Regulations. The Commission, vide RoP dated 01.05.2024 allowed the impleadment of new parties. However, none of them filed their reply in the matter.
24. We have perused submissions of Petitioner and Respondent and information available on record. The main issue that remains for our consideration is whether Regulation 8 of 2022 GNA Regulations can be relaxed to allow Payment of Order Instrument (POI) in lieu of Bank Guarantee issued by a scheduled commercial bank through the instant Petition.
25. Regulation 8.4 of the 2022 GNA Regulations provides as under:

*“8.4. Conn-BG1, Conn-BG2 and Conn-BG3 shall be issued by any scheduled commercial bank recognized by the Reserve Bank of India, in favour of CTU, as per the Format stipulated in the Detailed Procedure for Connectivity and GNA issued in accordance with Regulation 39.1.”*

....

***Treatment of Connectivity Bank Guarantee***

*16.1. Conn-BG1 shall be returned within 30 days of declaration of commercial operation of full capacity by the Connectivity grantee.*

*16.2. Conn-BG2 and Conn-BG3 shall be returned in five equal parts over five years corresponding to the generation capacity which has been declared under commercial operation by the Connectivity grantee:*

*Provided that in case of declaration of commercial operation of part capacity by the Connectivity grantee in a financial year, total quantum of such capacity declared under commercial operation within a financial year shall be considered while returning the Conn-BG2 and Conn-BG3 at the end of the financial year.*





16.3. *In case of non-payment of transmission charges under Regulation 13 of the Sharing Regulations for more than 3 months from the due date, such transmission charges shall be recovered by encashing Conn-BG1 (if subsisting), Conn-BG2 and Conn-BG3, as required. Connectivity shall be revoked from the date when Conn-BG2 and Conn-BG3, as available is not sufficient to cover transmission charges under Regulation 13 of the Sharing Regulations.*

16.4. *The proceeds of encashed Conn-BG1, Conn-BG2 and Conn-BG3 in terms of Regulation 16.3, shall be adjusted in Monthly Transmission charges under the Sharing Regulations.”*

As per the above, 2022 GNA Regulations clearly provide that Conn BGs issued by a scheduled commercial bank recognized by the Reserve Bank of India in favour of CTUIL are to be submitted.

26. Petitioner has submitted that Banks give guarantees on a 100% margin or on the issuance of counter-guarantee by entities like IREDA. As a result, Petitioner has to make payment twice, first to the financial institution for issuing a counter-guarantee and second to the bank for issuance of a bank guarantee. Therefore, Petitioner seeks minor adaptation and peripheral adjustment in giving effect to the provisions of GNA Regulations, accordingly sought direction to CTUIL to accept a Payment of Order Instrument (POI) issued by IREDA in lieu of the Connectivity bank guarantees.
27. CTUIL has strongly objected to the prayers of the Petitioner as they, in a manner, have the effect of an amendment to Regulation 8 of the GNA Regulations by inserting another financial instrument in the form of POI as an alternative for submission by a connectivity grantee, which could not be permitted under ‘Miscellaneous Petition’ under Power to Relax or remove difficulty. Petitioner has referred to the MOP guidelines issued vide gazette Resolution dated 21.08.2023 for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects, which allows such instruments for payment security.
28. CTUIL has submitted that the POI is a Letter of Undertaking and is different from a contract of guarantee, owing to which under the Insolvency and Bankruptcy Code, 2016 (the “Code”), the POI would not stand immune from the rigours of Section 14 of the Code. While in the case of a bank guarantee, there is an exception carved out under Section 14(3) of the Code as per which its encashment can take place even when the moratorium is in place; however, there is no such provision for POI.

29. Petitioner has referred MOP vide gazette Resolution dated 21.08.2023, published the guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects; these guidelines provide the following for payment security:

**“11. BANK GUARANTEES/ PAYMENT ON ORDER INSTRUMENTS/ LETTERS OF UNDERTAKING**

*The Generator shall provide the following bank guarantees/ letters of undertaking to pay to the Procurer in terms of the RfS*

**11.1. Earnest Money Deposit (EMD) as per Clause 8.3** to be submitted along with response to RfS, in the form of:

(a). Bank Guarantee(s);

**OR**

(b). "Payment on Order instrument" / Letter of Undertaking, to pay in case of default of the RE Power Generator in terms of RfS, from Indian Renewable Energy Development Agency (IREDA)/ Power Finance Corporation Limited (PFC)/ REC Limited (REC).

**"Payment on Order instrument"** means Letter of Undertaking from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC) [the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE)/ Ministry of Power (MoP)], to pay in case situation of default of generator in terms of tender conditions/Power Purchase Agreement (PPA) arises. Such Letter(s) will have same effect as that of a Bank Guarantee issued by any public sector bank. Such "Payment on Order instrument" would have terms and conditions similar to that of any Bank Guarantee given by any public sector bank and would promise to pay the Procurer on demand within stipulated time. Generators can seek such Letters(s) by offering due security to the above mentioned three non-banking financial institutions mentioned above (IREDA, PFC & REC). Procurer(s) shall not accept the instrument of 'Letter of Undertaking' as described above or in any other form, from any other non-banking financial institutions or bank, except IREDA, PFC & REC.”

**11.2. Performance Guarantee (PBG)**, to be fixed by the Procurer, but not to be less than 5% (five percent), of the estimated Project cost, for the financial year in which the bids are invited, or any other criteria specified in the RfS, to be submitted at the time of signing of the PPA, in the form of:

(a). Bank Guarantee(s);

**OR**

(b). "Payment on Order instrument" / Letter of Undertaking to pay in case of default of SPG in terms of Power Purchase Agreement (PPA), from Indian Renewable Energy Development Agency (IREDA)/ Power Finance Corporation Limited (PFC) and REC Limited (REC);

11.3. In addition to the other remedies, this PBG (or alternatives provided thereto as per these Guidelines) can be encashed to recover any damages/dues of the generator in terms of the PPA. It is hereby clarified that the damages/dues recovered by the Intermediary Procurer by encashing the PBG, upon the default of the generator under the PPA, shall be credited to the Payment Security Fund to be maintained by the Intermediary Procurer under Clause 6.3 of these Guidelines. PBG (or alternatives provided thereto as per these Guidelines) shall be returned to the generator within 45 days of the SCSD of the project. In case of part commencement of supply of power, PBG corresponding to such part capacity, should be released within 45 days.

11.4. Procurer(s) may release the Bank Guarantees submitted by a generator as 'Performance Bank Guarantee (PBG)', if the generator is able to replace the same with



"Payment on Order instrument" / Letter(s) of Undertaking to pay in case situation of default of generator in terms of Power Purchase Agreement (PPA) arises, from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC). Generators can seek such Letters(s) by offering due security to the above mentioned three non-banking financial institutions (IREDA, PFC & REC) for seeking replacement of their Bank Guarantees already pledged with the implementing agencies."

Petitioner has submitted a copy of the Counter Guarantee/ POI issued by IREDA for the issue of bank guarantee, which has the following security stipulation:

**1. SECURITY STIPULATION:**

A.	<b>SECURITIES STIPULATED</b>
	a) Margin Money of 5% in the form of BG/FDR for issuance of non-fund facility, with validity up-to the claim period of counter guarantee/ non-fund-based facility.
	b) Personal Guarantee of Promoter the following promoters: i. Mr. K. Ravi Kumar Reddy (Net Worth - Rs 4.59 Cr on 07.06.2023) ii. Mr. K. Kiran Kumar Reddy (Net Worth - Rs 5.65 Cr on 07.06.2023)
	c) Pledge of 99% shares of Applicant Company (Axis Energy Ventures India Private Limited)
	<i>Note:</i> • All the securities taken for issue of Guarantee will not be released up to the Claim Period, or Settlement Date, whichever is earlier.
	<b>TIMELINE FOR SECURITY CREATION</b>
	• All the securities, as mentioned above, are required to be created upfront. • If security is not created/ perfected within stipulated time period as per Security Clause, additional charge of Rs. 1000 per lakh per annum which shall be calculated on daily basis considering the number of days in a year as 365(proportionate amount would be charged for the amount less than a lakh, if any)) from the expiry of the given period till perfection of security shall be applicable.

30. We have perused Section 14 of the Insolvency and Bankruptcy Code (IBC), 2016 as under:

**"14 Moratorium.**

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

*d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

.....

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) The provisions of sub-section (1) shall not apply to-*

*(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;*

*(b) a surety in a contract of guarantee to a corporate debtor*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."*

The above clearly states that a Contract bank guarantee is excluded from the ambit of 'moratorium' and, therefore, immune from the rigours of Section 14 of IBC, whereas POI does not fall under Section 14 (3) for immunity.

31. We note that CTUIL plans and develops an ISTS system for the evacuation of power from generating stations to load centres. Bank Guarantees serve as security against the Connectivity sought by a generating station and are encashed in case such a generating station does not achieve the milestones provided in the GNA Regulations. Such a security instrument is required to be a robust instrument for guaranteed recovery to the statutory body, which is ultimately adjusted in monthly transmission charges of beneficiaries.
32. We also observe that POI in lieu of Conn-BGs is not provided for in GNA Regulations, and Petitioner has sought the same under Powers to relax. Since CTU is of the view that POI does not fall under Section 14 (3) of IBC for immunity, we do not find a case for relaxing the Regulations. Petitioner is well aware of the regulations which require a Bank Guarantee to be furnished. The only reason why the Petitioner has sought to allow POI is the double security it is required to furnish in case of a Bank Guarantee, which depends on the financial parameters of the petitioner.
33. In view of the above, the prayers of the Petitioner in the instant petition are rejected. We, however, direct the commission's staff to examine the acceptable instruments other

than the Bank Guarantee for providing adequate guarantees against default and process the same through amendment to the GNA Regulations as per law.

34. Petition no. 92/MP/2024, along with IA No. 36/2024, is disposed of in terms of the above.

**Sd/  
(Harish Dudani)  
Member**

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

**Sd/  
(Jishnu Barua)  
Chairperson**

