

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 346/MP/2020

Coram:

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

Date of Order: 13.05.2026

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003, for adjudication of disputes between DVC and PSPCL and for directions.

And

In the matter of:

**Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata-700054**

...Petitioner

Vs

**Punjab State Power Corporation Limited,
PSEB, Head Office,
The Mall, Patiala,
Punjab-147001**

...Respondent

Parties Present:

Shri Venkatesh, Advocate, DVC
Shri Shivam Kumar, Advocate, DVC
Shri Mohit Gupta, Advocate, DVC
Ms. Suparna Srivastava, Advocate, PSPCL
Ms. Sunidhi Singh, Advocate, PSPCL

INTERIM ORDER

Damodar Valley Corporation (in short 'DVC') has filed the instant petition under Section 79(1)(f) of the Electricity Act, 2003 (in short 'Act') for adjudication of disputes between DVC and Punjab State Power Corporation Limited (in short, 'PSPCL'), seeking the following relief(s):

- (a) *"Declare that PSPCL is liable to pay to DVC towards the fixed charges for BTPS-A for the period 23.2.2017 to 25.3.2018, a sum aggregating to Rs 340.04 crores*



towards principal and delayed payment surcharge as on 31.1.2020 and further interest at the rate specified in the Hon'ble Commission's Regulations till full payment and discharge of all the outstanding;

- (b) Direct PSPCL to pay the amount due to DVC in terms of the prayer (a) above within 30 days from the date of the order together with interest as per the delayed payment surcharge for the period till due payment and discharge of the amount outstanding by PSPCL;*
- (c) Pass an interim order directing PSPCL to pay on an ad-hoc basis 85% of the amount claimed by DVC subject to further adjustments on the passing of the final order;*
- (d) Allow DVC to file the duly affirmed affidavit to the Petition and the annexures to the Petition as and when the restrictions imposed due to Covid-19 are lifted;*
- (e) pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case."*

Background

2. DVC is constituted under the Damodar Valley Corporation Act, 1948 and controlled by the Central Government and operates as a generating company. DVC entered a Power Purchase Agreement (in short 'PPA') on 7.11.2006 with PSPCL to supply 200 MW of electricity from one of its generating stations, Bokaro Thermal Power Station (in short 'BTPS-A'), in accordance with the terms and conditions contained in the PPA.

3. Clauses 4.4 and 4.5 of the PPA required PSPCL to seek long-term open access from Power Grid Corporation of India Ltd (PGCIL) and coordinate the necessary transmission system for power evacuation from DVC's delivery points. As per Article 5.10 of the PPA and applicable tariff regulations, PSPCL was obligated to pay tariffs, including fixed and energy charges, for the scheduled quantum of power from BTPS-A. PSPCL remained liable for fixed charges for power that DVC was prepared to generate and deliver, even if PSPCL did not schedule it for delivery.

Submissions of DVC

4. In the above background, DVC has submitted the following:

- a. As per the PPA and applicable regulations, DVC was capable of generating and supplying electricity from the Commercial Operation Date (COD) of BTPS-A. Although DVC informed PSPCL about the arrangements required for power delivery, PSPCL did not complete the necessary formalities and failed to finalise the Long-Term Access (LTA) Agreement within the timeline prescribed by PGCIL. As a result, the LTA initially granted was revoked. On 16.8.2016, DVC informed PSPCL that the COD of BTPS-A was expected by September 2016. After this declaration, PSPCL was required to start scheduling power up to 200 MW under the PPA. DVC requested PSPCL to obtain approval from PGCIL for LTA to enable the delivery of power. On 23.2.2017, DVC declared the COD of BTPS-A and asked PSPCL to confirm the status of the LTA. DVC also informed PSPCL that non-drawal of power would result in liability to pay fixed charges. Despite repeated reminders, PSPCL delayed signing the LTA Agreement. Due to this delay, PGCIL revoked the granted LTA. This inaction by PSPCL directly affected DVC's ability to supply power under the PPA.
- b. DVC informed PSPCL that DVC had filed a tariff petition for BTPS-A before the Commission. Pending the tariff order, DVC proposed fixed charges of ₹1.6853/kWh and energy charges of ₹1.95/kWh. PGCIL notified PSPCL regarding 200 MW LTA, subject to signing the LTA Agreement within 30 days. PGCIL also requested that PSPCL sign the LTA Agreement and Transmission Service Agreement (TSA) to share transmission charges in accordance with the applicable Tariff Regulations. DVC repeatedly urged PSPCL to complete the LTA formalities so that power from BTPS-A could be scheduled without delay. DVC also requested PGCIL to allow the immediate commencement of the 200 MW supply. PSPCL, instead, asked DVC to relinquish its 200 MW share from Durgapur TPS, another DVC generating station, stating that the power was no longer required. PSPCL further proposed terminating the PPA for that station after July 2017, so that the capacity could be allocated to another utility.
- c. Despite several requests from DVC, PSPCL continued to delay signing the LTA Agreement. PGCIL granted an additional 15 days for execution of the agreement. PSPCL then sought a further extension of two months, stating that the matter was under consideration by its management. In a meeting held on

25.9.2017, PSPCL suggested three options, including scheduling power from multiple stations and reducing the fixed costs of Durgapur Steel TPS.

- d. The PPA covered round-the-clock power supply from DVC's three generating stations- BTPS-A, Durgapur Steel TPS, and Raghunathpur TPS. PSPCL's attempt to unilaterally terminate the PPA for 200 MW from Durgapur Steel TPS was disputed by DVC. The PPA was valid for 25 years and could be reviewed only after five years. DVC requested PSPCL to sign the LTA for BTPS-A independently without linking it to the dispute relating to Durgapur TPS. DVC also stated that, as discussed in the meeting held on 18.9.2017, it was willing to reduce the fixed charges of Durgapur Steel TPS. The matter was escalated to the Secretary, Ministry of Power, seeking intervention due to the financial losses suffered by DVC because of PSPCL's delay in signing the LTA Agreement for BTPS-A. PSPCL was warned that action would be taken under the PPA if the agreement was not signed by 17.11.2017.
- e. PSPCL proposed that it would sign the LTA Agreement for BTPS-A only after a reduction of 20 paise in the fixed charges of Durgapur Steel TPS. DVC responded that fixed charges for BTPS-A were payable from 23.2.2017, being the COD, and that the reduction of fixed charges for Durgapur Steel TPS was still under consideration. On 4.12.2017, PSPCL was informed that DVC had agreed to reduce the fixed charges of Durgapur Steel TPS by 20 paise. DVC reiterated that PSPCL must pay fixed charges for BTPS-A as per the PPA and the Commission's Tariff Regulations, and that PSPCL had never raised objections earlier. DVC rejected PSPCL's request to pay fixed charges only from the scheduling date and pointed out that PSPCL's failure to sign the LTA Agreement amounted to default. Due to continued delays, PGCIL revoked the LTA earlier granted. PSPCL thereafter requested revival of the 200 MW LTA and confirmed its acceptance of the reduction in fixed charges of Durgapur Steel TPS, along with a request for a supplementary agreement. PGCIL informed PSPCL that the revoked LTA could not be restored and directed to file a fresh online application. PSPCL submitted a new application, and PGCIL indicated that LTA could again be granted for 200 MW, subject to signing the agreement within 30 days.
- f. Power supply from BTPS-A to PSPCL commenced on 26.3.2018 after PSPCL confirmed scheduling and requested execution of the supplementary

agreement for the reduction of fixed charges of Durgapur Steel TPS. DVC again reiterated its entitlement to fixed charges from the COD of BTPS-A and invited PSPCL to resolve the issue. DVC also shared sample calculations showing the reduced fixed charges for Durgapur Steel TPS, effective from the scheduling date of BTPS-A. It was emphasised that PSPCL must pay fixed charges for the period during which power from BTPS-A was not scheduled. PSPCL thereafter shared its own sample calculations relating to Durgapur Steel TPS fixed charges. An amount of ₹86.74 crore was jointly reconciled at PSPCL's Patiala office on 1st and 2nd August 2019, and confirmed in writing by DVC. After this reconciliation, PSPCL was requested to place the matter before its competent authority and communicate its decision regarding the balance fixed charges of BTPS-A amounting to ₹188.68 crore, after adjusting the gain-sharing amount of ₹86.74 crore. As a goodwill gesture, DVC adjusted ₹86.74 crore from the original claim of ₹275.42 crore, reducing the outstanding amount to ₹188.68 crore.

- g. PSPCL refused to pay the balance amount of ₹188.68 crore and maintained that fixed charges were payable only from 26.3.2018. By its letter dated 7.2.2020, PSPCL denied liability for the period from 23.2.2017 to 25.3.2018 due to non-scheduling of power. In response, DVC, by letter dated 3.3.2020, stated that PSPCL was now liable to pay the entire principal amount of ₹275.42 crore along with late payment surcharge, totalling ₹340.04 crore as on 31.1.2020. DVC objected to PSPCL's unilateral adjustment of the entire gain amount and asserted that PSPCL was bound by the agreed 50% gain-sharing arrangement. Discussions were held on gain sharing for power supplied by BTPS-A and adjustment against PSPCL's liability for the period from 23.2.2017 to 25.3.2018. PSPCL requested reconciliation of its 50% share amounting to ₹86.74 crore, which was jointly verified. However, PSPCL continued, through communications dated 15.10.2019 and 7.2.2020, to refuse to pay the remaining amount of ₹188.68 crore and insisted on paying fixed charges only from 26.3.2018. Consequently, DVC asserted that PSPCL is liable for the full amount of ₹275.42 crore including the applicable late payment surcharge.

5. PSPCL filed, vide its reply on 23.10.2020 and submitted its arguments on merits, to which a rejoinder was filed by the Petitioner on 19.3.2021.

Hearings in the matter

6. The matter was admitted on 25.8.2020, and the parties were directed to complete their pleadings. Thereafter, on 14.3.2023, the Commission sought additional information and directed completion of pleadings. PSPCL filed IA No.24/IA/2024 on 23.2.2024 seeking interim protection against coercive recovery by DVC, and it was heard along with the Petition on 18.3.2024. The Commission reserved the order in the matter and directed that no precipitative action shall be taken by any party during the pendency of the Petition. However, the order could not be issued before two Members of the Coram demitted office. Therefore, the matter was again heard on 5.9.2024, 14.11.2024, 21.1.2025, 25.3.2025 and 13.5.2025. At that stage, since the issue of arbitrability of disputes was pending consideration in batch matters before the Appellate Tribunal for Electricity (APTEL), the Petition was adjourned to be listed after the decision in those batch matters. After APTEL delivered its judgment dated 28.8.2024 in Appeal No.309 of 2019 (MPPMCL v. DVC), which was affirmed by the Hon'ble Supreme Court on 23.9.2024, and the subsequent final judgment of the APTEL on 25.2.2026 in Appeal Nos.348, 371 & 400 of 2025 (Mundra UMPP batch) having settled the law on arbitrability, the Commission directed the parties to file written submissions on the issue of arbitrability. The matter was also listed on 19.8.2025, and the oral arguments on the issue of arbitrability on behalf of the Petitioner were concluded. PSPCL contended that the Commission ought to first determine whether liability pertained to 'scheduled power' or 'contracted power' before deciding arbitrability. Owing to paucity of time, the hearing remained inconclusive and the matter was adjourned. The matter was finally heard on 30.9.2025, when detailed oral arguments were advanced by the learned counsel for both parties on the question of arbitrability. The learned counsel for the Petitioner submitted that the dispute was contractual in nature and qualified as a non-tariff dispute referable to arbitration as per

the APTEL judgment dated 28.8.2024. The learned counsel for PSPCL opposed the same, contending that the issue related to fixed charges determined under Tariff Regulations and constituted a tariff dispute falling within the Commission's jurisdiction. The Commission, after hearing the Parties, reserved its order on the question of arbitrability of the dispute on 30.9.2025.

Interlocutory Application

7. During the pendency of the Petition, PSPCL has filed Interlocutory Application No. 24/IA/2024 on 23.2.2024 (IA), seeking directions restraining DVC from taking any coercive action, for removal and stay of the Supplementary Invoice dated 5.1.2024 from the PRAAPTI Portal, and for protection against enforcement of any invoices relating to the disputed period prior to 26.3.2018. The Commission, after hearing the learned counsel for the parties on 18.3.2024, directed the Petitioner not to take any precipitative action against PSPCL with regard to the invoices raised in the PRAAPTI portal till final disposal of the present Petition.

Written submissions by DVC

8. The Petitioner has filed Written Submissions dated 12.7.2025 on the question of arbitrability of the disputes and has mainly submitted the following:

a. The dispute between the parties arises out of the PPA and is rooted in the rights and obligations flowing from the contractual framework agreed between the parties, including obligations relating to the scheduling of power, the application for LTA, and payment of fixed charges for declared capacity. The nature of the dispute is one of contractual breach, inasmuch as the claim arises from non-performance of obligations under the PPA and enforcement of payment obligations stipulated therein, and therefore the dispute is required to be characterised as a “non-tariff dispute”.

b. The classification of disputes into “tariff” and “non-tariff” stands conclusively settled by the judgment of MPPMCL v. DVC dated 28.8.2024, wherein disputes

arising out of contractual breach, which do not have any bearing on tariff either directly or indirectly, have been categorised as non-tariff disputes. The aforesaid judgment stands affirmed by the DVC Supreme Court Order dated 23.9.2024, thereby attaining finality and binding precedential value, particularly in light of the distinction drawn between Sections 79(1)(f) and 86(1)(f) of the Act.

c. Disputes relating to termination or breach of contract, including disputes concerning performance of obligations under a PPA and recovery of dues arising therefrom, do not fall within the scope of tariff regulation and are therefore required to be treated as non-tariff disputes, mandatorily referable to arbitration where an arbitration agreement exists.

d. Tariff disputes are confined to matters having a bearing on tariff, such as a change in law, delay in project completion, *force majeure* events, or other regulatory issues impacting tariff determination, whereas disputes arising purely from contractual non-performance, including non-scheduling and payment defaults, fall outside the regulatory domain. The present dispute does not involve any determination, revision, or regulation of tariffs, either directly or indirectly, and is limited to the enforcement of contractual payment obligations, namely the recovery of fixed charges and interest arising from breach of the PPA. The mere fact that the claim relates to fixed charges does not render the dispute a tariff dispute, as the claim arises out of breach of contractual obligations under the PPA and not out of any exercise of tariff determination by this Commission.

e. The PPA contains an arbitration clause, which evidences the clear intention of the parties to resolve disputes arising out of contractual obligations through arbitration, and such contractual intent is required to be given full effect.

f. Section 79(1)(f) of the Act contemplates both adjudication of disputes and reference of disputes to arbitration, and the legislative scheme, read with Section 158 of the Act, envisages that disputes not falling within the regulatory domain are to be referred to arbitration. The expression “and to refer any dispute for arbitration” appearing in Section 79(1)(f) cannot be rendered redundant, and must be given a meaningful interpretation so as to give effect to the statutory mandate of referring non-tariff disputes to arbitration.

g. The principles laid down in the DVC APTEL Judgment clearly delineate the scope of jurisdiction of this Commission and identify the category of disputes

which must necessarily be referred to arbitration, including disputes arising out of contractual breach.

h. A clear commonality exists between the dispute involved in the DVC APTEL case and the present case, inasmuch as both cases involve PPAs containing arbitration clauses, disputes arising out of performance and obligations under such PPAs, and reliefs relating to payment of fixed charges or damages for non-performance.

i. The reliefs sought in the present Petition, being recovery of fixed charges and interest on account of non-performance of contractual obligations, are in the nature of damages arising out of breach of contract and do not involve any issue of tariff determination or regulation.

j. The DVC APTEL Judgment, having been affirmed by the Hon'ble Supreme Court, is binding on this Commission under Article 141 of the Constitution of India, and is required to be followed in the interest of judicial discipline. By application of the doctrine of merger, the APTEL judgment stands merged with the order of the Hon'ble Supreme Court, and the law laid down therein constitutes the prevailing and enforceable law governing the field. The law declared by the Hon'ble Supreme Court applies retrospectively to all pending proceedings, and therefore governs the present dispute irrespective of the stage of the proceedings.

k. Jurisdiction is a matter of law and goes to the root of the matter; in the absence of jurisdiction, any adjudication by this Commission would be without authority and would render the proceedings a nullity. Jurisdiction cannot be conferred by the parties' consent, and where the dispute falls outside the Commission's statutory jurisdiction, it cannot be adjudicated merely because the Petition has been filed before this forum.

l. Objections relating to lack of jurisdiction and arbitrability can be raised at any stage of the proceedings, including collateral proceedings, and are required to be examined at the threshold.

m. The present dispute, being one arising out of breach of PPA and claim for damages and interest thereon, is purely contractual in nature, does not have any impact on tariff, and squarely falls within the category of non-tariff disputes. Once the dispute is held to be non-tariff in nature, the Commission inherently lacks

jurisdiction to adjudicate it and is bound, in terms of Section 79(1)(f) read with Section 158 of the Electricity Act, to refer the dispute to arbitration.

Reply to Written Submissions of the Petitioner by PSPCL

9. PSPCL, in its response dated 14.8.2025 filed to the Written Submissions filed by the Petitioner dated 12.7.2025 on the question of arbitrability of the disputes, has mainly submitted the following:

a. The Petitioner had itself, during the hearings held on 21.1.2025 and 25.3.2025, requested that the present matter be taken up after the decision in batch matters concerning arbitrability of tariff and non-tariff disputes, and subsequently sought time on 13.5.2025 to file Written Submissions on arbitrability, which indicates that the issue is not settled in the manner sought to be projected by the Petitioner.

b. The reliance placed by the Petitioner on the judgment of MPPMCL v. DVC and the affirmation thereof by the DVC Supreme Court Order is misplaced and requires proper appreciation in the context of the facts and issues involved in the present case. The said judgment deals with the issue of arbitrability in the context of disputes relating to termination of PPA and the applicability of Section 8 of the Arbitration and Conciliation Act, 1996, in proceedings under Section 79(1)(f) of the Act, and lays down the distinction between tariff and non-tariff disputes.

c. A dispute which directly or indirectly impacts tariff is required to be treated as a “tariff dispute” falling squarely within the jurisdiction of the Commission under Section 79(1)(f) of the Act, whereas only those disputes which arise purely out of breach or termination of contract without any bearing on tariff can be categorised as non-tariff disputes referable to arbitration. The ratio of the DVC APTEL Judgment is confined to disputes concerning termination of PPA, where the core issue relates to the legality and validity of termination, which has no bearing on tariff, and therefore such disputes were held to be non-tariff and arbitrable. The present dispute, however, is fundamentally distinct, inasmuch as it pertains to liability for payment of fixed charges, which are not merely contractual in nature but are an integral component of the tariff determined under the applicable regulatory framework.

d. Under the 2014 Tariff Regulations, the tariff for a generating station comprises capacity charges and energy charges, and fixed charges correspond to capacity charges forming part of the tariff structure. In view of the above statutory scheme, any dispute relating to fixed charges inherently relates to tariff and therefore falls within the exclusive regulatory and adjudicatory jurisdiction of the Commission under Section 79(1)(f) of the Act.

e. The contention of the Petitioner that disputes relating to fixed charges can be treated as non-tariff disputes is erroneous, as fixed charges are inseparable from tariff and cannot be viewed in isolation as purely contractual claims. The comparison sought to be drawn by the Petitioner between the present case and the DVC APTEL case is incorrect and misleading, inasmuch as the primary issue in the DVC APTEL case pertained to the termination of the PPA, whereas the present case concerns the payment of fixed charges forming part of the tariff.

f. A bare perusal of the prayer clauses in the DVC APTEL case demonstrates that the principal relief sought therein was a declaration regarding invalid termination of the PPA, with consequential reliefs relating to payment, whereas in the present case, the sole dispute is with respect to payment of fixed charges. The Petitioner has selectively relied on certain portions of the prayer clause in the DVC APTEL case while omitting the crucial aspect relating to termination of PPA, thereby attempting to create a false equivalence between two factually distinct cases.

g. The ratio of a judgment can be treated as binding precedent only when the material facts and issues involved are substantially similar, and in the absence of such similarity, reliance on such precedent is misplaced and legally untenable.

h. The doctrine of *stare decisis* requires application of precedent only in cases which are materially alike, and does not permit mechanical or blind application of a judgment without examining the factual matrix and legal context of the case at hand. In the present case, the dispute relating to payment of fixed charges, being part of the tariff, is clearly distinguishable from disputes relating to termination of PPA, and therefore, the ratio laid down in the DVC APTEL Judgment, as affirmed by the Hon'ble Supreme Court, is not applicable to the present case.

i. Since the dispute directly relates to tariff, it squarely falls within the jurisdiction of the Commission and cannot be referred to arbitration under the guise of being a non-tariff dispute.

Analysis and Decision

10. We have examined the rival contentions. Petitioner's contention is that the dispute is contractual in nature and it constitutes a non-tariff dispute; on the contrary, PSPCL's contention is that the present dispute is a tariff dispute and has to be adjudicated by the Commission. Thus, the limited issue before us at this stage is whether the dispute raised by the Petitioner in the present Petition constitutes a tariff-related dispute or a non-tariff dispute and whether the same falls under the adjudicatory jurisdiction of the Commission under Section 79(1)(f) of the Act?

11. PSPCL has contended that it is necessary to first determine whether PSPCL's liability towards fixed charges pertained to 'scheduled power' or 'contracted power' before deciding on its arbitrability. We are of the view that the issue raised by PSPCL is on 'merits' and it will be considered after deciding the issue of 'arbitrability' and hearing both parties.

12. The core dispute in the present Petition is whether PSPCL is liable to pay the fixed/ capacity charges component of the tariff for the period from 23.2.2017 to 25.3.2018, even though power was not scheduled by PSPCL during this period.

13. We now proceed to examine whether PSPCL's liability to pay the fixed charges for the period from 23.2.2017 to 25.3.2018 is a tariff-related dispute or a non-tariff dispute. It is necessary to examine the statutory contours of the jurisdiction vested in the Commission under Section 79 of the Act. Clauses (a) to (d) of Section 79(1) confer upon the Commission the power to regulate the tariff of generating companies and to regulate and determine the tariff for inter-State transmission of electricity. Clause (f) of Section 79(1) empowers the Commission to adjudicate disputes involving generating companies or transmission licensees only in regard to matters connected with clauses

(a) to (d) or, in the alternative, to refer such disputes to arbitration. Thus, the Commission's jurisdiction to adjudicate disputes is not plenary but statutorily circumscribed, and is invoked only when the dispute has a demonstrable nexus with tariff regulation.

14. Section 79(1) of the Act provides as follows:

“Section 79. Functions of Central Commission: ---

(1) The Central Commission shall discharge the following functions, namely: -

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;*
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*
- (c) to regulate the inter-State transmission of electricity;*
- (d) to determine tariff for inter-State transmission of electricity;*
- (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;*
- (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*
- (g) to levy fees for the purposes of this Act;*
- (h) to specify Grid Code having regard to Grid Standards;*
- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*
- (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
- (k) to discharge such other functions as may be assigned under this Act.”*

15. The dispute pertains to the period from 23.2.2017 to 25.3.2018, i.e. the 2014-19 tariff period, governed by the 2014 Tariff Regulations. As per Regulation 20(1) of the 2014 Tariff Regulations, the tariff for a thermal generating station is based on a two-part structure comprising capacity charges and energy charges. The capacity charges shall be derived on the basis of the annual fixed charges consisting of the five components as provided in Regulation 21 of the 2014 Tariff Regulations. Regulation 20(1) and Regulation 21 of the 2014 tariff Regulations, which provide as follows:

“20. Components of Tariff:

- (1) The tariff for supply of electricity from a thermal generating station shall comprise two parts, namely, capacity charge (for recovery of annual fixed cost consisting of the*

components as specified in Regulation 21 of these regulations) and energy charge (for recovery of primary and secondary fuel cost and limestone cost where applicable).
.....”

“21. *Capacity Charges:* The Capacity charges shall be derived on the basis of annual fixed cost. The annual fixed cost (AFC) of a generating station or a transmission system including communication system shall consist of the following components:

- (a) Return on equity;
- (b) Interest on loan capital;
- (c) Depreciation;
- (d) Interest on working capital; and
- (e) Operation and maintenance expenses:

.....”

16. Further, Regulation 42 of the 2014 Tariff Regulations provides for the raising of monthly bills and recovery of capacity charges and energy charges determined as per the Regulations from the beneficiaries as a percentage share of the installed capacity of the generating station. Regulation 42 of the 2014 Tariff Regulations provides as follows:

“42. *Billing and Payment of charges:*

(1) Bills shall be raised for capacity charge, energy charge and the transmission charge on monthly basis by the generating company and the transmission licensee in accordance with these regulations, and payments shall be made by the beneficiaries or the long-term transmission customers/ DICs directly to the generating company or the transmission licensee, as the case may be.

(2) Payment of the capacity charge for a thermal generating station shall be shared by the beneficiaries of the generating station as per their percentage shares for the month (inclusive of any allocation out of the unallocated capacity) in the installed capacity of the generating station. Payment of capacity charge and energy charge for a hydro generating station shall be shared by the beneficiaries of the generating station in proportion to their shares (inclusive of any allocation out of the unallocated capacity) in the saleable capacity (to be determined after deducting the capacity corresponding to free energy to home State as per Note 3 herein).

.....”

17. The PPA also recognises that the tariff for the sale of power by DVC to PSPCL will be determined by the Commission from time to time in accordance with the terms and conditions of tariff specified in the tariff regulations, which provides for a two-part

tariff structure as the basis for tariff determination of thermal generating stations.

Clause 4.1 of the PPA provides as follows:

"4.1. Subject to the provisions of this agreement, DVC shall supply the energy at the delivery point on scheduled basis and PSEB shall pay to DVC for the scheduled energy as per REA prepared by ERPC. Tariff for such sale of power by DVC to PSEB at DVC Periphery will be determined by CERC from time to time in accordance with CERC regulation on terms and conditions of tariff including capital cost.

DVC shall file its Tariff Petition before CERC at least 2 months in advance to expected date of commissioning of the Unit. In case the tariff as provided above is not determined/approved by CERC/other competent authority prior to commencement of commercial operation of the unit, the same would be worked out by DVC based on the above provision and the guidelines for tariff as applicable from time to time and within capital cost as approved by CEA/ other competent authority for the project. This would be mutually discussed between the bulk power customers and DVC and if not agreed within one month from date of the unit commissioning, the same shall be billed by DVC on provisional basis subject to retrospective adjustment as and when the tariff is determined/approved by CERC/ other competent authority."

18. Clause 6 of the PPA provides for a dispute resolution mechanism, and it is as follows:

"6. DISPUTE RESOLUTION MECHANISM:

6.1 All differences or disputes between the parties arising out of or in connection with these presents save any question or matter of dispute which falls within the scope and purview of the statutory arbitration under the provisions of the Electricity Act, 2003 as amended shall be settled through arbitration as provided herein.

6.2 In the event of such differences between the parties and failing settlement of the same through mutual discussions amongst parties concerned, if the disputes are not settled within three months, any party may by a written notice of 30 (thirty) days to the other party or parties request for appointment of a Sole Arbitrator, to be decided mutually by parties concerned and in case of disagreement, shall be guided by the provisions of the Arbitration Act, 1996 and any statutory modification thereto. The Sole Arbitrator shall give a speaking and reasoned award. The decision of the Sole Arbitrator shall be final and binding on the parties. The venue of the arbitration and meetings shall be at Kolkata. The Sole Arbitrator shall decide his fees with the consent of the parties and it will be shared equally.

6.3 In the event that PSEB or its successor entity disputes any bill or part thereof as raised by DVC, it shall pay 95% of the disputed amount forthwith and refer the dispute for Arbitration in accordance with Law. The amount exceeding/beneath the said 95% that is finally awarded shall be paid/ adjusted with interest @ 15% per annum, to be calculated from the date on which the amount in dispute was payable/refundable.

6.4 The court of Kolkata shall be the jurisdiction in all matters relating to this Agreement between DVC and PSEB."

19. Under clauses (a) to (d) of sub-section 1 of Section 79 of the Act, the Commission is required to regulate the tariff of the generating stations owned or controlled by the Central Government and the tariff of the generating stations which have composite scheme for generation and sale of electricity in more than one State, to regulate the inter-state transmission of electricity and determine the tariff of inter-State transmission system. Under Section 79(1)(f) of the Act, the Commission has the power to adjudicate the disputes involving a generating company or transmission licensee in respect of the matters connected with clauses (a) to (d) of sub-Section 1 of Section 79 of the Act or refer to arbitration. In other words, the jurisdiction of the Commission for adjudication of the dispute or to refer to arbitration is invoked if the dispute involves either a generating company or a transmission licensee, and the dispute pertains to the regulation of tariffs.

20. The Petitioner has contended that the dispute is purely contractual in nature and arises out of breach of obligations under the PPA, and therefore constitutes a non-tariff dispute liable to be referred to arbitration. Reliance has been placed on the judgment of MPPMCL v. DVC as affirmed by the DVC Supreme Court Order. The Respondent, PSPCL, on the other hand, has consistently contended that the present dispute pertains to payment of fixed charges arising under the tariff framework determined by the Commission and constitutes a tariff-related dispute falling within the exclusive adjudicatory jurisdiction of the Commission under Section 79(1)(f) of the Act. PSPCL has emphasised that the claim directly involves the fixed/ capacity charge component of the two-part tariff approved by the Commission and cannot be treated as a pure contractual money claim.

21. PSPCL has submitted that under the 2014 Tariff Regulations, the tariff for a generating station is structured as a two-part tariff comprising capacity charges and

energy charges. The fixed charges claimed by the Petitioner correspond to the capacity charge component of the tariff and are therefore an integral and inseparable part of the tariff framework determined by the Commission. It has been contended that capacity charges are statutorily recognised components of tariff, designed to enable recovery of the annual fixed costs of the generating station, including return on equity, interest on the loan, depreciation, operating and maintenance expenses, and working capital. Accordingly, any dispute relating to such fixed charges necessarily arises within the tariff regime and cannot be treated as a standalone contractual claim. Since fixed charges form part of the tariff determined under the applicable regulations, any claim for payment or recovery thereof inherently involves issues relating to tariff determination and application. Therefore, disputes concerning entitlement to fixed charges fall squarely within the Commission's regulatory jurisdiction under Section 79(1)(f) of the Act.

22. Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Essar Power Limited (2008) 4 SCC 755 has held that disputes pertaining to tariff or matters intrinsically connected with tariff determination under the Act fall within the exclusive domain of the Regulatory Commission and cannot be ousted by an arbitration clause. The Commission is therefore empowered to adjudicate disputes involving generating companies in regard to matters connected with tariff regulation.

23. We observe the following position emerges from the DVC APTEL Judgment dated 28.8.2024 (affirmed by the Hon'ble Supreme Court on 23.9.2024):

"22. Thus, it is seen that the concept of arbitration is not alien to the disputes arising under various provisions of Electricity Act, 2003 and in appropriate cases, where a valid arbitration agreement exists between the parties and the dispute does not concern the regulatory functions of the Commission, the Commission would be not only justified but also bound to refer the dispute for arbitration.

...

25. At this juncture, we would again revert to Section 79(1) of the Electricity Act, 2003. Section 79(1) empowers the Commission to adjudicate upon the disputes relating to

regulation of tariff for the generating companies as well as inter-state transmission of Electricity and to determine tariff inter-state transmission of electricity as provided under clause (1) to (d) therein. We wonder how the dispute relating to termination of PPAs would be regarded as a dispute relating to tariff or regulation of tariff of the generating companies, as held by the Commission in the impugned order. To understand this aspect, it is necessary to determine what constitutes tariff and non-tariff disputes. In our considered opinion, all the matters which would have a bearing upon the tariff for a generating company would constitute "tariff disputes" namely disputes related to Change in Law, delayed completion of projects, invocation of Force Majeure events etc. Such matters impact the tariff for a generating company directly and, therefore, fall solely within the jurisdiction of the Central Commission under Section 79(1) of the Electricity Act, 2003. However, the disputes related to termination or breach of contract which do not impact the tariff either directly or indirectly, can be considered as non-tariff related disputes referable to arbitration.

26. Perusal of the prayer clauses in the two petitions filed before the Commission reveals that primary and main relief sought by 1st Respondent is the declaration that Appellant shall not be entitled to treat the PPAs having been terminated. All other reliefs are ancillary or consequential in nature. Thus, the main issue would be whether or not have been the PPAs legally and validly terminated. Essentially, the dispute relating to termination of a PPA is confined to the legality and validity of the termination of PPA and does not relate to tariff or regulation of tariff.

...

37. In the instance case, there is undisputedly a valid and subsisting arbitration clause contained in the PPAs. We have already held that the dispute between the parties primarily relates to the termination of the PPAs which is a non-tariff dispute and thus, referable to arbitration."

24. The above findings of APTEL have subsequently been affirmed by the Hon'ble Supreme Court under the DVC SC Order, wherein it was held as follows:

"We do not find any good ground and reason to interfere with the impugned judgment in view of the difference of language in Section 79(1)(f) of the Electricity Act, 2003, from Section 86(1)(f) of the 2003 Act. The power of the Central Electricity Regulatory Commission under Section 79(1)(f) is different from the discretion exercised by the State Electricity Regulatory Commission under Section 86(1)(f) of the 2003 Act."

25. It follows that any dispute that bears a direct or indirect nexus with a tariff must be characterised as a "tariff dispute" and falls within the adjudicatory domain of the Commission under Section 79(1)(f) of the Act. In contrast, disputes arising purely from contractual breach or termination, without any linkage to tariff, are to be treated as "non-tariff disputes" and would be amenable to resolution through arbitration in accordance with the agreed dispute resolution mechanism.

26. The controversy in the DVC APTEL case was centred around termination of the PPA, whereas the present dispute pertains to the obligation to pay fixed charges as determined under the regulatory framework. As per Regulation 20 of the 2014 Tariff Regulations, the tariff for a thermal generating station is based on a two-part structure comprising capacity charges and energy charges. Fixed charges, thus, representing the capacity charge component under the said framework, are statutorily embedded within the tariff structure determined by the Commission and cannot be segregated from it.

27. We observe from the judgment of APTEL dated 25.2.2026 in Appeal Nos. 348 of 2025, 371 of 2025 and 400 of 2025 (Gujarat Urja Vikas Nigam Limited & Ors. v. Tata Power Company Limited & Ors. – Mundra UMPP batch) that disputes relating to payment or recovery of fixed charges/ capacity charges even in the context of alleged contractual defaults, non-scheduling, or diversion of power are tariff-related disputes falling squarely within the adjudicatory jurisdiction of the Central Commission. The relevant portions of the said judgment are extracted below:

“It is clear that the disputes which relate to the regulatory functions of the CERC and which impact tariff, either directly or indirectly cannot be referred to arbitration, as such disputes are non-arbitrable. As noted hereinabove, the power conferred on the Central Commission, under Section 79(1)(f), is with respect to disputes involving generating companies (i) in regard to, (ii) matters connected with, Clauses (a) to (d) of Section 79(1)”

...
“(x) In the light of the law declared by this Tribunal, in the DVC Judgement, it must be held that disputes, including those which fall within the ambit of the regulatory functions of the Commission, or which impact tariff either directly or indirectly, are non-arbitrable and, notwithstanding an arbitration agreement in existence and the tests stipulated in Section 8(1) of the 1996 Act being satisfied, cannot be referred to arbitration.”

28. In this regard, it is apposite to refer to the observations of the APTEL in its judgment dated 27.3.2025 in Appeal No. 134/2024 (NPCIL v GUVNL & anr), wherein the scope of Section 79(1)(a) and Section 79(1)(f) of the Act has been examined.

APTEL has clarified that the jurisdiction of the Commission under Section 79(1)(f) is attracted where the dispute involves a generating company and is in regard to matters connected with the Commission's power to regulate tariff under Section 79(1)(a). The same has also been reiterated by the Commission in an order dated 28.1.2026 in Petition No. 91/MP/2018 & batch. Relevant portions of the above-referred APTEL judgment are extracted below:

“(iii) SECTION 79(1)(f): ITS SCOPE:

Section 79(1)(f) of the Electricity Act requires the Central Commission to discharge the function of adjudication of disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) of Section 79(1), and to refer any dispute for arbitration.

The power conferred on the Central Commission to adjudicate disputes is confined only to those disputes involving (1) generating companies or (2) transmission licensees. As long as the dispute involves a generating company or a transmission licensee, and even if the other parties to the dispute are neither generating companies nor transmission licensees, the Central Commission would have jurisdiction to adjudicate disputes.

xxx

The jurisdictional facts, necessary for the CERC to exercise its powers of adjudication of the dispute under Section 79(1)(f) read with Section 79(1)(a), is firstly that the dispute involves a generating company owned or controlled by the Central Government; secondly that the dispute is in regard to matters connected with the power of the CERC to regulate the tariff of such a generating company.

xxx

By use of the words ‘in regard to’, in Section 79(1)(f), Parliament has made it clear that the disputes, to which a generator is a party to, can be adjudicated by the CERC only ‘for the purposes of’ clauses (a) to (d) of Section 79(1), and not otherwise. By use of the words “connected with”, in Section 79(1)(f), Parliament has stipulated that the dispute should be really incidental or in close proximity to clauses (a) to (d) of Section 79(1).”

29. We note the observations of the Commission in order in Petition No. 91/MP/2018 & batch, wherein, while examining the scope of jurisdiction under Section 79(1)(f) read with Section 79(1)(b) of the Act, it has been held that the exercise of adjudicatory jurisdiction is contingent upon the existence of certain jurisdictional facts, namely: (i) the dispute involves a generating company having a composite scheme, and (ii) the dispute is in regard to matters connected with regulation of tariff. The Commission has also observed that the term “tariff” is of wide import and includes not

only the fixation of rates but also the regulatory framework governing such determination.

30. In view of the above, since the issue raised in the present proceedings relates to fixed/ capacity charges, which constitute a component of the tariff, it falls within the regulatory domain of the tariff. We take note of the submission of the Petitioner that disputes arising out of alleged contractual breaches under the PPA, which do not impact tariff determination or regulation, fall outside the adjudicatory jurisdiction of the Commission, while relying on the judgment of the APTEL in MPPMCL v. DVC. However, in light of the subsequent judgment in the Mundra UMPP batch, the earlier reliance placed on the judgment dated 28.8.2024 in MPPMCL v. DVC no longer advances the case of the Petitioner. The law now stands clarified that disputes relating to the regulatory functions of the Commission, or which impact tariff either directly or indirectly, are non-arbitrable, notwithstanding an arbitration agreement. It is also observed that though the Petitioner has characterised the dispute as arising from non-scheduling of power and consequent contractual breach, the nature of the relief sought is determinative. Even though non-scheduling may arise from contractual conduct, the consequence sought, namely the recovery of fixed/capacity charges, is governed by tariff principles and forms an integral part of the tariff framework regulated by the Commission.

31. In the present case, the dispute pertains specifically to fixed charges, which constitute one of the two fundamental components of the tariff under the recognised two-part tariff structure. Fixed charges, being capacity charges, are designed to compensate the generating company for making capacity available and are governed by availability-based tariff principles. Therefore, any dispute concerning entitlement to fixed charges necessarily involves the interpretation and application of tariff

regulations. The present dispute is not merely about recovery of a sum arising out of an alleged contractual breach, but concerns the entitlement to recover capacity charges within the framework of a tariff determined under the applicable regulations. Applying the aforesaid principles to the facts of the present case, the Commission finds that the adjudication of the present dispute necessarily involves examination of the entitlement to recover such charges, the regulatory framework governing such recovery, and the interplay between the PPA and the Tariff Regulations.

32. In view of the foregoing analysis, the Commission holds that the present Petition raises a tariff-related dispute falling squarely within the adjudicatory jurisdiction of the Commission under Section 79(1)(f) of the Act. The Commission is empowered and duty-bound to adjudicate the dispute on the merits and is not required to refer it to arbitration.

33. The Petition will be listed for hearing 'on merits' in due course.

**sd/-
(Ravinder Singh Dhillon)
Member**

**sd/-
(Harish Dudani)
Member**

**sd/-
(Ramesh Babu V.)
Member**

**sd/-
(Jishnu Barua)
Chairperson**