

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 811/MP/2025 along with IA No. 87/2025

Subject : Petition under Section 142 of the Electricity Act, 2003 and Regulation 70(2) of CERC (Conduct of Business) Regulations, 2023 read with Order XXI Rule 10 of Code of Civil Procedure Code, 1908 and read with Regulation 65 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 and Section 151 of Code of Civil Procedure Code, 1908 seeking execution / enforcement / compliance of this Commission's Order dated 17.4.2023 passed in I.A. No. 12 of 2023 in Petition No. 246/MP/2022.

Petitioner : Maharashtra State Electricity Distribution Company Limited (MSEDCL)

Respondents : Coastal Gujarat Power Limited & Ors.

Date of Hearing : **21.1.2026**

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

Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, MSEDCL
Shri Vishal Binod, Advocate, MSEDCL
Shri Aditya Dubey, Advocate, MSEDCL
Shri Raj Shukla, Advocate, MSEDCL
Shri P Chidambaram, Sr. Advocate, TPCL
Ms. Shubhi Sharma, Advocate, TPCL
Ms. Vandana Raghwani, Advocate, TPCL
Ms. Shambhavi Jha, Advocate, TPCL
Shri M G Ramachandran, Advocate, GUVNL
Ms. Ranjita Ramachandran, Advocate, GUVNL
Shri Aneesh Bajaj, Advocate, GUVNL
Ms. Shristi Khindaria, Advocate, GUVNL

Record of Proceedings

Learned senior counsel for the Petitioner, MSEDCL, submitted that the Respondents were categorically directed by the Commission on two occasions *vide* the Record of Proceedings dated 1.10.2025 and 10.11.2025 to file a comprehensive reply on maintainability as well as merits. However, Respondent No. 2, TPCL, has filed its

reply only on maintainability and not on merits and thus, has waived its right to file a reply on merits. Learned senior counsel mainly submitted as under:

(a) Respondent No. 2, TPCL along with Respondent No. 1, CGPL ('the Respondents') have willfully acted in non-compliance with the interim order passed by the Commission in the IA No. 12 of 2023 in Petition No. 246/MP/2022 dated 17.4.2023 whereby the Commission had directed CGPL and TPCL to discharge their contractual obligations towards the Petitioner and supply power to it, in accordance with the provisions of the PPA, pending final adjudication of Petition No. 246/MP/2022 by the Commission. The interim order dated 17.4.2023 continues to operate as on date. However, the only exception to the enforcement of the same was pendency of any valid direction under Section 11 of the Electricity Act, 2003 and with the said directions having expired w.e.f. 30.6.2025, there is no impediment for enforcement of the interim order.

(b) Subsequently, on 2.7.2025, TPCL has withdrawn all five generating units from the grid citing reasons of forced shutdown, and as of date, no Declared Capacity is being made available to MSEDCL, despite clear provisions under the PPA, as well as the interim order in Petition No. 246/MP/2022, which clearly directed the Respondents to discharge their contractual obligations towards MSEDCL as per the terms of the PPA. Such conduct by TPCL is causing financial loss to the Petitioner as the Petitioner is being forced to procure alternate power, which is ultimately affecting the end consumers.

(c) The declaration of withdrawal of all units on forced outage after cessation of Section 11 directives and repeatedly changing revival dates of all units shows a clear intention of not fulfilling its obligation of supply of power under the PPA and non-compliance with the directions issued by the Commission *vide* the interim order.

(d) Although the Respondents have filed an appeal before the APTEL bearing Appeal No. 455/2023 challenging the interim order dated 17.4.2023, no stay has been granted against the said order. In fact, the Respondents themselves had not initially pressed for the stay. Subsequently, the Respondents had moved another IA for urgent listing of the Appeal No. 455/2023 on the apprehension that the Commission, without even passing an order on their application for referring the dispute to arbitration, may proceed to punish them under Section 142 of the Act. However, the APTEL dismissed the said IA by order dated 31.10.2025, allowing them to raise their contentions before the Commission.

(e) The Respondents at this stage cannot take the refuge under the plea that since the Commission *vide* its order dated 19.11.2025 in Petition No. 107/MP/2023 & batch (including the Petition No. 246/MP/2022) has decided to refer the disputes to arbitration, the Commission has no adjudicatory role in the matter. The interim order dated 17.4.2023 *ipso facto* does not become nullity. The Respondents are bound to comply with the directions issued by the Commission in the interim order dated 17.4.2023.

(f) As held by the Hon'ble High Court of Delhi in its judgment dated 3.11.2025 in OMP (I) (COMM.) 213/2025 in ReNew Wind Energy (AP2) Pvt. Ltd. v. SECI, the scope of Section 94(2) of the Act is broad enough to allow an interim direction

to be passed which shall stay in operation till the constitution of the arbitral tribunal or till the arbitral tribunal does not conclusively decide on a given issue. Thus, the order dated 17.4.2023 passed by the Commission under Section 94(2) of the Act continues to be valid and in operation.

2. Learned senior counsel for the Respondent, GUVNL, supported the submissions made by learned senior counsel for MSEDCL, particularly, on the broad scope of Section 94(2) of the Act.

3. Learned senior counsel for the Respondent, TPCL, submitted that TPCL has filed its reply on 9.11.2025 on the aspect of jurisdiction of the Commission as well as on the maintainability of the present execution Petition. Learned senior counsel, while narrating the chronology of events, mainly submitted as under:

(a) The present execution/contempt proceedings initiated by the Petitioner are *ex facie* premature and constitute an attempt to secure enforcement of the interim order dated 17.4.2023 despite the pendency of the Appeal No. 455 of 2023 before the APTEL. The Commission ought not to have issued the notice to the Respondent in the present execution Petition filed for the execution of the order dated 17.4.2023, passed in IA No. 12 of 2023 filed in Petition No. 246/MP/2022.

(b) The disputes concerning enforcement of contractual obligations, including termination, performance, scheduling, and levy of contractual consequences, are categorised as non-tariff disputes and fall outside the jurisdiction of the Commission under Section 79(1)(f), as settled by the DVC judgment of the APTEL and also reaffirmed by the Hon'ble Supreme Court.

(c) Since the Commission *vide* order dated 19.11.2025 already held that the disputes involved in the Petition are non-tariff and decided to refer the non-tariff disputes to arbitration, the Commission lacks adjudicatory jurisdiction to entertain or adjudicate such contractual performance disputes. It is a settled principle of law that a jurisdictionally defective order is a nullity in the eyes of the law, incapable of enforcement or obedience.

(d) Accordingly, the contempt proceedings for the non-compliance of the order dated 17.4.2023 are without jurisdiction, and the notice issued to TPCL deserves to be discharged.

(e) In any case, TPCL may be granted liberty to file its comprehensive reply on maintainability as well as merits.

(f) As regards the discontinuation of the supply of power from all five units of the generation station w.e.f. 1.7.2025, TPCL will place on record the detailed rationale for the same.

4. Considering the above, the Commission deemed it appropriate to afford a last opportunity to the Respondent, TPCL, to file its consolidated reply on maintainability as well as merits within three weeks, with a copy to the Petitioner, who may file its rejoinder, if any, within three weeks thereafter.

5. The matter remained part-heard and will be listed for the hearing on **17.3.2026**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)