

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**ORDER ON**

**IA NO. 718 of 2020 IN APPEAL NO. 23 of 2020**

**Dated : 23<sup>rd</sup> October, 2020**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**IA NO. 718 of 2020 IN APPEAL NO. 23 of 2020**

1. Avaada Energy Private Limited  
(Formerly Giriraj Renewables Pvt. Ltd.-  
Demerged Undertaking of Welspun Energy Pvt. Ltd.)  
910/19, Suryakiran, Building 19,  
Kasturba Gandhi Marg,  
New Delhi 110001

... Applicant/Appellant

**Versus**

1. Central Electricity Regulatory Commission  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building,  
36Janpath,  
New Delhi – 110 001
2. Solar Energy Corporation of India Ltd.  
Through  
Having its registered office at:  
1st Floor, A-Wing, D-3  
District Centre, Saket,  
New Delhi-110017
3. Maharashtra State Electricity Distribution Company Ltd.  
Prakashgad, Plot no. G-9  
Anant Kanekar Marg  
Bandra (E)  
Mumbai – 400051

...Respondents

Counsel for the Applicant/Appellant (s) : Mr. Basava P. Patil, Sr.Adv.  
Mr. Ankur Sood

Counsel for the Respondent(s) : Mr. M.G. Ramachandran,  
Sr.Adv.  
Mr. Prabhas Bajaj for R-2

Mr. Buddy A. Ranganadhan  
Mr. Shashwat Kumar  
Mr. Rahul Chouhan  
Ms. Himangini Mehta  
Mr. Naman Mittal for R-3

**ORDER**  
**IA NO. 718 of 2020**  
*(Appln. for directions)*

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The instant Application has been filed by the Applicant/Appellant - Avaada Energy Private Limited along with the present Appeal being Appeal No.23 of 2020 in order to seek urgent and essential directions for: (i) implementation and commissioning of 28 MW part-capacity of the Project in accordance with the directions issued by the Central Electricity Regulatory Commission (**CERC**) vide orders dated 17.12.2018 and 11.12.2019; and (ii) commissioning of additional capacity of 29 MW completed by the Applicant/Appellant till date or in the alternative, issue "no objection" to the Applicant/Appellant to supply the said part-capacity of 29 MW completed by the Applicant/Appellant (along with any further capacity completed in future) to any third parties in accordance with law. The aforesaid directions are urgent and vital because the project implementation work has been stalled on account of the

Respondent No.2's refusal to honour the terms of the PPA or the directions issued by the CERC.

2. The present appeal arises out of the order dated 13.01.2020 (read with corrigendum dated 16.01.2020) passed by the CERC, whereby the CERC: (a) did not grant further time period of 90 days to commission the balance 72 MW Project capacity (out of total 100 MW); and (b) held that the issue of alleged termination of the Power Purchase Agreement (**PPA**) dated 26.07.2016 and Power Sale Agreement (**PSA**) dated 18.01.2019 has become infructuous.

3. **The Applicant / Appellant has made the following submissions for our consideration:-**

3.1 During the pendency of the present Appeal, the Applicant/Appellant filed an Interim Application (I.A. No. 718/2020) seeking implementation of 28 MW at PPA tariff and direction for synchronisation & supply 72 MW capacity to MSEDCL or open access consumers. The captioned interim application was filed seeking *inter alia* the following reliefs:

*"In view of the aforementioned facts and circumstances of the present case it is, therefore, most respectfully prayed that this Tribunal may graciously be pleased to:*

a. *Direct Respondent No. 2 & Respondent No. 3 implement and complete the commissioning procedure for the part-capacity of 28 MW and to make the payment of PPA tariff in accordance with the directions of the CERC vide orders dated 17.12.2018 and 11.12.2019 and consequential relief arising out of the same;*

b. *Direct the Respondent No. 2 & Respondent No. 3 to complete the commissioning procedure for the additional capacity of 29 MW completed as on date; or in the alternative, issue "no objection" to the Applicant/Appellant to supply the said capacity of 29 MW (along with any further capacity completed in future) to any third parties in accordance with law;*

c. *Pass such further or other order(s) as this Tribunal may deem fit in the facts and circumstances of the case”.*

3.2 Upon hearing the counsels for the Applicant/Appellant and SECI, the Tribunal on 09.07.2020 was pleased to issue the following directions:

*“In the above circumstances, we are of the opinion that in view of the plant being ready to generate of 28 MWs power, if it is not made functional, there would be national waste of the power under investment as the plant is ready for commissioning at least up to 28 MWs. Therefore, we direct the Respondent authorities including SECI to do the needful immediately by issuing necessary certificates and complete other formalities for commissioning of the plant to an extent of 28 MWs of power by the Applicant/Appellant generator in terms of the PPA and also as per order of the CERC. The generator shall be paid tariff in terms of PPA.”*

3.3 Thereafter, on 19.08.2020, the following directions were issued by the Tribunal:

*“After hearing all the parties at length for the directions application, we are of the opinion that Applicant/Appellant is at liberty to sell 29 additional solar MW capacity to any DISCOM or party including Respondent/MSEDCL.*

*The SECI and Respondent/DISCOM shall complete the pleadings in this Appeal i.e. they shall file reply to the main appeal on or before 04.09.2020 with advance copy on the other side and rejoinder, if any, shall be filed on or before 14.09.2020 with advance copy on the other side.*

*We direct the Registry to list DFR No. 51 of 2020 filed by SECI with this Appeal and parties are directed to complete pleadings as stated above in this appeal also.”*

3.4 MSEDCL has not challenged or contested or sought modification of either the orders passed by the CERC. SECI and MSEDCL also did not challenge the interim Orders dated 09.07.2020 and 19.08.2020 passed by this Tribunal.

3.5 The Applicant/Appellant wrote to MSEDCL seeking implementation of the directions issued vide letters dated 24.08.2020, 26.08.2020

and 12.09.2020 seeking grid synchronisation of the balance capacity to enable commencement of supply of power generated to MSEDCL/ third party and release of outstanding payments.

3.6 Despite the clear direction passed this Tribunal in its order dated 19.08.2020, MSEDCL has failed to grant grid synchronisation for supply of electricity generated from the remaining capacity by seeking additional information on one pretext or other so as to circumvent the aforesaid directions passed by the Tribunal. In this behalf, it is necessary to refer to the following letters issued by MSEDCL:

Letter dated 19.08.2020 by MSEDCL:

*Vide above referred emails PTC application and requisite documents are submitted for Commissioning of 72.75 MW Captive Power Plant of M/s Avaada Stara MH Pvt Ltd at Varkute, Satara.*

*While scrutinizing the said application it is observed as under:*

- a. *Final grid connectivity letter dated 08.07.2020 shows that 100 MW connectivity has been changed in the name of M/s. Avaada Energy Pvt. Ltd from M/s. Giriraj Renewables Pvt Ltd. While PTC application is received in the name of Avaada Satara MH Pvt. Ltd. There is no document submitted that M/s. Avaada Energy Pvt. Ltd had allowed Avaada Satara MH Pvt. Ltd. to use this connectivity.*
- b. *MSETCL, vide letter dated 28.11.16 issued this grid connectivity to 100 MW solar pv power project of M/s. Welspun Energy Pvt Ltd ( now Avaada Energy Pvt ltd) at the same site Varkute Malwadi, Tal. Man , Dist. Satara under JNNSM Phase –II, Batch-III, Tranche-I and Avaada Energy Pvt ltd has filed Appeal challenging CERC Order in APTEL for re- instatement of 100 MW PPA.  
*Clarify regarding the connectivity permission of this 72.75 MW Captive Power Plant of M/s Avaada StaraMH Pvt Ltd at Varkute Satara. Already 28MW solar capacity is synchronized at this location, hence submit the grid connectivity permission of MSETCL for 72.75+28=100.75MW capacity.**
- c. *start-up connection document submitted by you shows that the start-up connection is installed at MSETCL sub-station in commensurate with 100 MW which is in the name of Giriraj Renewable Pvt Ltd. At present there is no start up connection of 72.75 MW in name of Avaada Satara MH Pvt. Ltd. Hence start up connection of 72.75 MW needs to*

*be taken and meter shall be installed at generation end at voltage level according to SoP.*

- d. Solar park registration certificate from MEDA.*
- e. Synchronization permission for 72.75 MW of Avaada Satara MH Pvt. Ltd from SLDC is not submitted.*

*In view of the above, it is requested to comply with the discrepancies as raised above for processing your PTC application of 72.75 MW Captive Power Plant of M/s Avaada StaraMH Pvt Ltd at Varkute Satara .”*

Letter dated 21.08.2020:

*“This office is in receipt of your letter under reference regarding sale of additional 28 MW Solar Power under Short term basis from your project located at Village Verkute – Shirtav, Tal Man. Dist. Satara. It is understood that, the additional 28 MW Solar Capacity is not yet commissioned. Hence, your request cannot be processed. However, after commissioning of your project you may apply for short term sale of power through online portal facility provided by MSEDCL for such transactions as per the terms and conditions mentioned therein.”*

Letter dated 03.09.2020:

*8. Further, you have requested to sign the PPA to SECI and MSEDCL of this partly commissioned capacity **as per APTEL daily order dated 09.07.2020** and PPA terms. However, MSEDCL has already cancelled this PSA Vide letter dated 18.01.2019 and as per SECI PPA clause no 4.6, minimum capacity for acceptance of part commissioning should be 50% of the Project Capacity, Hence, 28 MW can't be considered under SECI PSA.*

*9. Further, vide emails dated 13.08.2020, 14.08.2020, 17.08.2020 it was requested by M/s. Avaada Satar MH Pvt. Ltd. to issue permission to commission the 72.75 MW Captive Power Plant at the same project site which was refer back by this office on 19.08.2020 with discrepancies that the grid connectivity of 100 MW is on name of M/s. Avaada Energy Pvt. Ltd., there was no synchronization permission from the MSLDC and also separate SEM arrangement for captive power plant was not available.*

*10. In mean time, you have informed that there will be PPA under CPP with 5 number of consumer and requested for CPP consumer wise metering arrangement which is also issued subject to individual CPP consumer wise MEDA registration is for total 72.75 MW Capacity on single name of M/s. Avaada Satara MH Pvt. Ltd.*

*11. From above foregoing activities, it seems that you intend to utilize 72.75 MW capacity for Captive Power Plant out of already sanctioned*

100 MW grid connectivity for SECI project under name of M/s. Avaada Energy Pvt. Ltd.

12. Subsequently, vide email dated 19.08.2020 you have requested for purchase of additional 29 MW Solar power under Short Term basis to MSEDCL from the same project located at Village Verkute – Shirtav, Tal. Ma, Dist. Satara, which was rejected by this office vide letter dated 21.08.2020 as the same was not yet commissioned and informed that you may apply for Short term sale of power through online portal facility provided by MSEDCL for such transactions as per the terms and conditions mentioned therein after commissioning of the same.

13. Further vide letter dated 24.08.2020 you have requested as a M/s. Avaada Energy Pvt. Ltd. to comply with the direction of APTEL daily order dated 19.08.2020 and grant commissioning of this additional 29 MW capacity at the earliest so as to enable you to supply the power generated and minimize the losses. It is also mention that you wish to place on record that the construction activity for the balance capacity is in full swing. However the commissioning of this project require to be done as per the provisions of Maharashtra State RE Policy 2015 dated 20.07.2015 and Methodology for the installation of projects under the comprehensive policy for grid connected power projects based on New and Renewable (Non-Conventional) Energy sources- 2015 dated 09.09.2015 which inter-alia requires MEDA registration as a mandatory condition which is on name of M/s. Avaada Satara MH Pvt. Ltd.

In view of above it is requested you to bring clarity in your proposal regarding plant setup arrangement like project registration, metering etc and submit documents in line with prevailing regulations/polices so that further approvals/permission can be given by this office for commission of balance capacity of 72 MW at village-Varkute and Malwadi, Tal-Man, Dist-Satara. Also, kindly note that APTEL order dated 19.08.2020 has granted a liberty to you to sell the power from additional 29 MW capacity to any Discom/Party after commissioning of the Project.”

3.7 MSEDCL has an obligation to make payment against the electricity supplied to MSEDCL and also to permit/ facilitate the sale of power generated from the balance capacity beyond 28 MW to any party, but evidently it has failed to do so.

**4. The Respondent-2 / SECI has made the following submissions:-**

4.1 At the outset, the contents of the Application for Directions being I.A. No. 718 of 2020 are denied in their entirety, except for matters that form part of the record. It is respectfully submitted that the



Application filed by the Applicant/Appellant is neither maintainable nor sustainable in law. Respondent No.2 – Solar Energy Corporation of India Limited (hereinafter referred to as '**SECI**') has filed its Reply to the present Appeal of the Applicant/Appellant. The contents of the submissions made by SECI in its Reply to the Appeal may also be treated as an integral part of the present Reply as well.

4.2 Having regard to the facts stated and submissions made in the main appeal, the reliefs sought in the present Application are entirely unsustainable in law and deserve to be rejected. The PPA between SECI and the Applicant/Appellant has stood validly terminated since 11.04.2019. The PSA between SECI and MSEDCL [which forms the material basis for entering into the PPA with the Applicant/Appellant] has also stood terminated by MSEDCL to the extent of 100 MW capacity, on 11.04.2019, and MSEDCL is claiming such termination on 18.01.2019 itself.

4.3 With effect from 10.4.2019, neither the PPA, nor the PSA [to the extent of 100 MW capacity] is in existence. There is no contractual relationship in existence between SECI and the Applicant/Appellant as on date. The termination of the PPA has also been upheld by the Central Commission. As such, there is no permissibility whatsoever for the Applicant/Appellant to seek any relief from this Tribunal in relation to the said PPA which is no longer in existence, for commissioning of either 28 MW capacity or further 29 MW capacity [allegedly developed by the Applicant/Appellant]. The present Application deserves to be rejected on this ground alone.

4.4 The terms of the PPA, as submitted hereinabove, do not permit the date for commissioning to be extended beyond 10.05.2018, for any



reason whatsoever [including any Force Majeure event]. Further, the terms of the Guidelines and the RfS document, which are part of the bidding documents on the basis of which the PPA was executed, also do not permit any part-commissioning of capacity less than 50 MW, as submitted hereinabove. Therefore, the reliefs prayed for by the Applicant/Appellant in the present Application for Directions – are also contrary to the contractual provisions and unsustainable in law. In fact, the reliefs prayed are even beyond the relief which had been sought by the Applicant/Appellant before the Central Commission. Granting such a relief would also be contrary to the law laid down by the Hon'ble Supreme Court in, inter alia, the following judgments wherein it was held that the Central Commission / this Tribunal / any Court cannot grant any relief contrary to the terms of the contract between the parties:

- a) Gujarat Urja Vikas Nigam Limited -v- Solar Semi Conductor Power Co. (India) P. Ltd (2017) 16 SCC 498 - paragraphs 60, 65, 66, 68.
- b) Gujarat Urja Vikas Nigam Limited-v-ACME Solar Technologies (Gujarat Pvt) Ltd and Ors., (2017) 16 SCC 498 – paras 6 and 7.
- c) Gujarat Urja Vikas Nigam Limited-v-. EMCO Limited & Anr. (2016) 11 SCC 182 - para 37.
- d) Rajasthan State Industrial Development & Investment Corporation-v-Diamond & Gem Development Corpn. (2013) 5 SCC 470 – paras 23, 24, 30, 40.
- e) Energy Watchdog-v-CERC, (2017) 14 SCC 80 – paras 19, 20

4.5 In view of the law laid down in the aforesaid judgments of the Hon'ble Supreme Court which are squarely applicable to the facts of the present case. Therefore, the reliefs sought by the Applicant/Appellant in the Application for Directions are entirely

unsustainable in law, and the Application deserves to be dismissed on this ground as well.

4.6 By its Appeal No. 23 of 2020, the Applicant/Appellant has challenged order dated 13.01.2020 passed by Central Commission whereby, inter alia, the Application of the Applicant/Appellant praying for further extension of time has been rejected and termination of the PPA has been upheld. Allowing the present Application would, in effect, result in grant of final relief to the Applicant/Appellant at the interim stage itself. Such an order would be contrary to the settled proposition of law that it would not be permissible to grant final relief in the form of an interim order. The present Application would deserve to be dismissed on this ground as well.

4.7 The Application for Directions filed by the Applicant/Appellant was listed for the first time before this Tribunal on 09.07.2020. On that date, a prayer had been made on behalf of the Counsel appearing for the Respondent No.2 – SECI that this Tribunal may permit SECI to file its Reply to the Application to place on record the aforesaid facts and submissions on behalf of SECI. However, this Tribunal was pleased to pass an order on the said date allowing prayer (a) in the Application, in relation to commissioning of 28 MW power. This Tribunal, by its order dated 09.07.2020, inter alia, directed as under:-

*“..... Therefore, we direct the Respondent authorities including SECI to do the needful immediately by issuing necessary certificates and complete other formalities for commissioning of the plant to an extent of 28 MWs of power by the Applicant/Appellant generator in terms of the PPA and also as per order of the CERC. The generator shall be paid tariff in terms of the PPA.....”*

4.8 Without prejudice to the above, it is submitted that SECI is an intermediary trader and is not a grid connected entity. The commissioning and synchronisation etc. with the grid has to be in the state of Maharashtra and as per the agreement which MSEDCL has registered/placed before the Maharashtra SLDC and STU. With MSEDCL claiming termination of the PSA with effect from 18.01.2019, the purchase of Power under the PPA also stands terminated on a back to back basis.

4.9 In view of the facts stated and submissions made hereinabove on behalf of SECI, it is most respectfully submitted that the Application for Directions would deserve to be dismissed and the above-mentioned order dated 09.07.2020 would deserve to be vacated by orders of this Tribunal. The answering Respondent – SECI prays accordingly. This submission is without prejudice to the submission on behalf of SECI that the direction to pay *tariff in terms of the PPA* would include all other clauses of the PPA including the mandatory reduction of tariff as stipulated in Clause 9.2 of the PPA. It is submitted that the Projects which are being commissioned during the years 2019 onwards have tariff ranging less than Rs.3/KWh as against the tariff under the PPA of Rs.4.43/kWh

**5. The Respondent No.3 / MSEDCL has made the following submissions:-**

5.1 In addition to the appeal, the Applicant/Appellant has filed the instant IA for Directions as set out under the prayers (stated supra).

5.2 The IA for Directions was listed before this Tribunal on 09.07.2020, however, the Respondent No.3 was not before this Tribunal on the said date on account of deficiency in service of the IA for Directions.

Vide its order dated 09.07.2020, this Tribunal stated that in view of the plant of the Applicant/Appellant being ready to generate 28 MWs power, there would be national waste of the power if it is not made functional as the plant is ready for commissioning at least up to 28 MWs. The Respondent authorities including SECI were thus directed to do the needful immediately by issuing necessary certificates and complete other formalities for commissioning of the plant to an extent of 28 MWs of power by the Applicant/Appellant generator in terms of the PPA and also as per the order of the CERC. It was further directed that the generator shall be paid tariff in terms of PPA and so far as balance of megawatts power and the dispute is concerned, the Respondents shall file objection, if any, on or before 27.07.2020.

5.3 However, after having extensively heard the Applicant/Appellant and the Respondents on 19.08.2020, this Tribunal, vide its order of even date, effectively set aside its order dated 09.07.2020, and held that the Applicant/Appellant is at liberty to sell the additional capacity of 29 MW to any Distribution Company ("**DISCOM**") or party, including the Respondent No.3. Moreover, the Respondent No.3 has been directed to continue making payments at the tariff as mutually agreed by the Applicant/Appellant and Respondent No.3 under the short-term arrangement (as opposed to paying PPA tariff, as directed in order dated 09.07.2020). It is submitted that the said directions were passed by this Tribunal upon being apprised of the short-term arrangement for procurement of power between the Respondent No.3 and the Applicant/Appellant, in light of which the submissions of the Applicant/Appellant qua national wastage of power of 28 MW were rendered infructuous. Further, after having

considered the submissions of the Respondents, this Tribunal stated that the issue regarding issuance of commissioning certificate for the 28 MW capacity of solar power would be decided at the time of final hearing of the appeal itself.

5.4 Thereafter, the IA for Directions was listed across several dates before this Tribunal, wherein the Applicant/Appellant and Respondent No.2 have made detailed submissions qua the limited points being raised in the IA for Directions.

5.5 The Applicant/Appellant has raised two main issues qua the Respondent No.3 with regard to the compliance of the directions given by this Tribunal vide order dated 19.08.2020:

- i. Payment of pending arrears by Respondent No.3; and
- ii. Liberty granted to Applicant/Appellant to sell power from 29 MW additional capacity to any DISCOM or party including Respondent No.3

**Re: Payment of pending arrears by Respondent No.3**

5.6 This Tribunal, vide its order dated 19.08.2020, had directed the Respondent No.3 to pay tariff for the power being procured under short term arrangement, without keeping any arrears pending. It is respectfully submitted in this regard that on 22.09.2020, the Respondent No.3 has released payments in favour of the Applicant/Appellant against the invoices which had fallen due for sale of the synchronized 28 MW power from the Applicant/Appellant's project for the months of April, May and June of 2020. It is further submitted that invoices raised for the supply of power during the months of July and August 2020 will be cleared as and when they fall due as per the scheme of supply of power on

short term basis through the online portal scheme of Respondent No.3.

5.7 While the Respondent No.3 has complied with the directions as given in the Order of 19.08.2020, and made payments for power procured by it from the 28 MW capacity of the Applicant/Appellant, it is relevant to highlight that the said procurement has been carried out under a scheme that has been initiated by the Respondent No.3 for procurement of power on a short term basis through an online portal, with a view to facilitate and enable generators to supply their power in the current scenario of reduced demand on account of the prevailing pandemic i.e. COVID-19, and for those generators who may not have valid energy purchase agreements or who may not be able to schedule electricity to its consumers under Open Access due to the lockdown on account of the COVID-19 (“Online Portal Scheme”).It is pertinent to state that procurement of power under the said Online Portal Scheme is distinct from the earlier short term arrangement(s) between the Applicant/Appellant and Respondent No.3 for sale of power, and as such, sale of power under the said Online Portal Scheme is subject to the terms and conditions that have been stipulated in this regard.

***Re: Liberty granted to Applicant/Appellant to sell power from 29 MW additional capacity to any DISCOM or party including Respondent No.3***

Respondent No.3 has not objected to sale of 29 MW capacity to third parties

5.8 The Order of 19.08.2020 has granted the Applicant/Appellant the liberty to sell the additional capacity of 29 MW to any DISCOM or party including the Respondent No.3.

5.9 The Applicant/Appellant, vide its letter dated 24.08.2020, requested the Respondent No.3 to commission the balance capacity of 29 MW. It is relevant to state that the said letter does not make any reference to seeking permission to synchronize the said capacity of 29 MW with the grid. It is thus submitted that the Applicant/Appellant has erroneously contended that the Respondent No.3 has denied permission to the Applicant/Appellant to synchronize the capacity of 29 MW with the grid. It is submitted in this regard that the permission to synchronize can only be issued by State Load Dispatch Centre ("SLDC"). Further, in terms of Regulation 6.1 & 6.2 of the MERC (Transmission Open Access) Regulations, 2016, prior to seeking such permission, the supplier is required to obtain connectivity from the State Transmission Utility. It is pertinent to state that neither the SLDC nor the STU are parties to the present proceedings before this Tribunal.

5.10 The Respondent No.3 issued letter dated 03.09.2020 to the Applicant/Appellant, in response to Applicant/Appellant's letter dated 24.08.2020, and *inter alia* stated with regard to the request for commissioning of 29 MW that the same is to be done as per the provisions of the Maharashtra State Renewable Energy Policy 2015 dated 20.07.2015 and Methodology for installation of projects under the comprehensive policy for grid connected power projects based on new and renewable energy sources-2015 dated 09.09.2015, as per which Maharashtra Energy Development Agency ("MEDA") registration is required as a mandatory condition. It is thus submitted that the Applicant/Appellant has wrongly contended that the commissioning of balance 29 MW capacity does not require the MEDA registration certificate.



- 5.11 During the course of the arguments, the Applicant/Appellant has also referred to the Ministry of Power Office Memorandum dated 12.06.2018 (“MoP Letter”) to submit that the Applicant/Appellant is not required to obtain the MEDA registration, since this requirement has been dispensed with by the said MoP Letter. However, it is submitted that the MoP Letter, and the subsequent exemption from submitting MEDA registration, is applicable only to those projects which are being implemented by agencies such as SECI, NTPC, etc. on behalf of the MNRE. Meaning thereby, for those projects which are not being implemented by the agencies on behalf of MNRE, the state specific mandatory requirements are to be satisfied by the project developers. In the present facts and circumstances, the Applicant/Appellant is supplying power under short term arrangement *de hors* the PPA and PSA, which have been terminated, and the validity of such termination is currently pending adjudication before this Tribunal. As such, it cannot be said that the power is being supplied under a project being implemented by SECI.
- 5.12 The Applicant/Appellant has also contended that the Respondent No.3 has in the past procured power from the Applicant/Appellant under short term arrangements without seeking submission of the MEDA registration, whereas for the sale of additional capacity of 29 MW, the Respondent No.3 is now insisting on submission of the same. It is submitted in this regard that the terms and conditions of the Online Portal Scheme *inter alia* stipulate the submission of MEDA Registration. Moreover, with regard to the 28 MW capacity being procured by the Respondent No.3 under the Online Portal Scheme, the Respondent No.3 had issued conditional Letters of Intent dated 31.03.2020 and 23.06.2020 (“**LOIs**”), which clearly

state that the generators have been granted relaxation for uploading requisite undertakings and documents (including MEDA registration) on account of the prevailing pandemic (COVID-19), with a condition that the same would have to be submitted at the time of agreement. It is further relevant to state that the power being procured by Respondent No.3 from the Applicant/Appellant in the period of May 2018 till September 2019 was not under the present Online Portal Scheme, and was as per a separate ad-hoc arrangement between them.

**The Applicant/Appellant is attempting to sell power through another entity i.e. Avaada Satara MH Private Limited**

- 5.13 In view of the liberty granted by this Tribunal, the Applicant/Appellant intends to sell power through another entity i.e. Avaada Satara MH Private Limited (“**Avaada Satara**”), to the captive consumers (5 *consumers*) of Avaada Satara from the balance project capacity of 72 MW. It is relevant to state that the said arrangement has not been brought to the notice of this Tribunal by the Applicant/Appellant.
- 5.14 The Avaada Satara is a separate and distinct legal entity from the Applicant/Appellant. Therefore, for supply of its power through the grid, it will require its own separate permissions / approvals / synchronisation / commissioning etc. for which it has to follow the procedure as applicable to it. In this case, the project of Avaada Satara will be a 'captive generating plant' having a capacity of 72.75 MW.
- 5.15 Through its emails dated 13.08.2020, 14.08.2020 and 17.08.2020, Avaada Satara submitted its application to the Respondent No.3

seeking Permission to Commission (“**PTC**”) and submitting requisite documents for commissioning of 72.75 MW Captive Power Plant located at Varkute, Satara. Pertinently, the applications have been made by Avaada Satara and not the Applicant/Appellant herein. The said arrangement is thus clearly a new power supply arrangement independent of the power supply arrangement envisaged by the Applicant/Appellant under SECI-PPA-PSA. Accordingly, MSEDCL / MSETCL /SLDC or any other concerned relevant entity will have to follow the prescribed procedure for granting any approvals/permissions in this regard.

5.16 The Respondent No.3, vide its letter dated 19.08.2020, issued in response to the PTC applications submitted by Avaada Satara, highlighted that the following discrepancies in the said applications:

- a) Final grid connectivity letter dated 08.07.2020 shows that 100 MW connectivity has been changed in the name of M/s. Avaada Energy Pvt. Ltd (*the Applicant/Appellant*) from M/s. Giriraj Renewables Pvt. Ltd, while the application for PTC is received in the name of Avaada Satara, and there is no document to submitted stating that the Applicant/Appellant had allowed Avaada Satara to use its connectivity.
- b) MSETCL, vide its letter dated 28.11.2016, had issued grid connectivity to 100 MW power project of the Applicant/Appellant at the same site- Varkute Malwadi, Tal. Man, District Satara. Clarification may be provided regarding connectivity permission of 72.75 MW captive power plant of Avaada Satara, and since 28 MW at the same site is already

synchronized, submit grid connectivity permission of MSETCL for 72.75+28= 100.75 MW capacity.

- c) Startup Connection in the name of Avaada Satara for 72.75 MW to be taken;
- d) Once Startup connection is taken then the meters will be installed as per Standard Operating Procedure; and
- e) Synchronization permission for 72.75 MW of Avaada Satara to be obtained from the SLDC.

5.17 Further, in the present case, Avaada Satara is also required to comply with provisions of MERC (Distribution Open Access) Regulations, 2016 and metering arrangement required therein (Regulation 8.5).

5.18 It is learned from the Minutes of Meeting of the 23rd meeting of the Committee for processing Grid Connectivity Applications of Wind/Solar Power Projects, that M/s Avaada Energy had already approached MSETCL for grant of grid connectivity for additional 72.5 MW. The relevant extract from said MoM is as follows:

**“3) M/s. Avaada Energy Pvt. Ltd.’s 72.75MW Solar Power Project proposed at Village: Varkute, Tal.: Maan, Dist.: Satara:**

*M/s. Avaada Energy Pvt. Ltd. has proposed 72.75MW Solar Power Project at Village: Varkute, Tal.: Maan, Dist.: Satara The proposal was discussed in the meeting. As per technical feasibility report submitted by C. E., Karad zone, it has been proposed to interconnect said solar Power Project either by LILO on existing 220KV Khanapur-Pandharpur Line or by removing existing LILO arrangement of 220kV Varkute S/s on 220kV Hiwarwadi-Bhalawani Line and connecting on 220kV Khanapur- Pandharpur Line.*

*MSETCL informed that, a 100MW Solar PV Power Project of M/s. Giriraj Renewables Pvt. Ltd (earlier M/s. Welspun Energy Pvt. Ltd.) selected under JNNSM, Phase-II, Batch-III, is already connected Making LILO on 220kV Vita – Pandharpur line (220kV Hiwarwadi - Bhalawani Line).*

***MSETCL informed that, as per load flow study it is observed that in case of evacuation of proposed 72.75MW SPP of M/s. Avada in addition to existing already connected 100MW SPP of M/s. Giriraj at 220kV Varkute S/s. (LILO on 220kV Hiwarwadi-Bhalawani Line) the line gets overloaded during N-1 contingency. However, the proposed 72.75***

*MW SPP can be connected independently by making LILO on 220kV Khanapur-Pandharpur line or for total evacuation of 100 MW + 72.75 MW power from Varkute s/s. Existing LILO arrangement on 220kV Hiwarwadi - Bhalawani Line needs to be removed and connected on 220kV Khanapur-Pandharpur Line.*

***Also, it is learnt that at present installed capacity at Varkute is only 28MW against granted 100MW capacity. Hence, if developer is ready to surrender the balance project capacity of 72MW at Varkute project it will be feasible to accommodate proposed 72.75MW at existing Varkute substaion with separate metering arrangement.”***

5.19 Avaada Satara is at liberty to avail the grid connectivity by complying with the above technical requirement of MSETCL. However, M/s Avaada Satara and the Applicant/Appellant have not opted for the same. The above fact also raises doubt about the Applicant/Appellant's claim that the understanding with Avaada Satara is an interim arrangement in order to sell power from the Applicant/Appellant's project as no document has been provided by the Applicant/Appellant to substantiate this understanding.

5.20 The aforesaid requirements are generic to all generators who approach MSEDCL seeking Permission to Commission and open access for supply of power to any party. Hence, Avaada Satara is also required to comply with such requirements. The Applicant/Appellant, just like its understanding that it can commission any capacity at any time at its own discretion, is under an impression that it, and its group companies, can interchangeably use approvals / permissions obtained for any power project for another power project etc.

5.21 It is further submitted that by raising this issue, the Applicant/Appellant is misleading the Tribunal and trying to bypass the procedural requirements which is required to be followed by

each RE Generator depending on the type of project, under which scheme / policy it is developed etc.

5.22 It is relevant to reiterate that the Applicant/Appellant has relied upon the MOP Letter to demonstrate that it is not required to submit the MEDA registration since the project is being implemented by SECI. However, it is submitted that the MoP letter is applicable to only those projects which are been implemented by agencies (such as SECI, NTPC, etc.) on behalf of MNRE. Meaning thereby, for the projects which are not being implemented by the agencies on behalf of MNRE, the state specific mandatory requirements are required to be satisfied by the project developers. In the present case, SECI is the agency implementing the project on behalf of MNRE, and hence, the project developer, i.e., the Applicant/Appellant, was not required to obtain the MEDA registration under the PPA-PSA. However, as submitted above, Avaada Satara is the project developer which is developing the 72 MW captive power project in Maharashtra. Since, this project is not being developed by any agency on behalf of MNRE, the requirement of obtaining MEDA registration as per the RE Policy 2015 cannot be dispensed with. Avaada Satara, being aware of the same, has already obtained the MEDA registration for its 72 MW project.

5.23 Avaada Satara, being a separate entity which is developing the captive power project, is required to comply with all the state specific requirements for developing the project in Maharashtra. Therefore, the Applicant/Appellant's argument with respect to requirement of MEDA registration by the Applicant/Appellant is unnecessary and it

is only deflecting the matter in hand from the issues raised in the present appeal before this Tribunal.

5.24 The entire issue of power supply arrangement from 72 MW power project of Avaada Satara being agitated orally by the Applicant/Appellant's before this Tribunal is alien to the issues/grounds raised in the present appeals. The present reliefs sought by the Applicant/Appellant with respect to its 72 MW captive power plant is above and beyond the scope of the present appeal. The Applicant/Appellant has not even filed any application to seek such reliefs / directions before this Tribunal. It may be easily construed that in event the Applicant/Appellant is directed to approach this Tribunal through an application, it would become very evident that the issues raised herein has no nexus with the appeal filed by the Applicant/Appellant.

5.25 The Applicant/Appellant, by way of its oral arguments is attempting to by-pass the prevailing rules and regulations application in the State of Maharashtra. Moreover, these reliefs which are being sought on behalf of Avaada Satara (*actual developer of the captive power plant under consideration*) is not even a party before this Tribunal nor was a party before the Central Commission.

5.26 The Applicant/Appellant is seeking directions on behalf of an entity (*Avaada Satara*) which is not even a party before this Tribunal for developing the project in the State of Maharashtra, to by-pass various regulations issued by the Maharashtra Electricity Regulatory Commission ("MERC"), in an appeal which doesn't even arise from an order passed by MERC. The Applicant/Appellant is interpreting



the regulations passed by the MERC and how the MERC should deal with it, without even approaching the MERC.

- 5.27 Even if it is assumed without admitting that there has been any deliberate non-compliance by any of the entities (*such as MSEDCL, MSETCL, SLDC, etc.*) of any of the regulations prevailing in the State of Maharashtra, which are applicable to the Avaada Satara's project, the MERC is the correct forum to seek appropriate remedy.
- 5.28 Without prejudice to the submissions made above, it is also submitted that Avaada Satara had vide letter dated 30.09.2020 issued to the Respondent No.3 *inter alia* submitted that it would install separate metering for Avaada Satara, and in the meantime requested Respondent No.3 to allow power to be metered from proposed metering scheme with proposed CT ratio for appointment/bifurcation of energy associated with 28 MW of the Applicant/Appellant and 72 MW of Avaada Satara. Respondent No.3, vide its letter dated 05.10.2020, has permitted such temporary arrangement for metering as requested by the Avaada Satara would be accepted subject to Avaada Satara issuing a fresh undertaking to this effect.
- 5.29 In light of the above, it is evident that there is no compliance pending on the part of MSEDCL with respect to the 29 MW capacity. The Applicant/Appellant can thus supply the additional capacity of 29 MW to whomever it wants, however, the Applicant/Appellant would have to comply with all such legal requirements as may be applicable. Moreover, should the Applicant/Appellant seek to challenge any such legal requirement as may be presently

applicable in the State of Maharashtra, in that case this Tribunal would not be the appropriate forum to challenge any such requirements/conditions, and the Applicant/Appellant would have to approach the MERC.

5.30 In view of the submissions made hereinabove, it is respectfully submitted that this Tribunal may be pleased to dismiss the IA for Directions filed by the Applicant/Appellant in the present appeal.

**6. Rejoinder submissions of the Applicant/Appellant in response to the objections raised by the Respondents:-**

6.1 After the order dated 19.08.2020 was passed by this Tribunal, MSEDCL raised various oral objections before this Tribunal to explain its non-compliance with the directions. It is respectfully submitted that MSEDCL's objections/ arguments are completely unfounded and untenable – it is nothing but a blatant attempt to avoid complying with the orders passed by the Tribunal.

6.2 MSEDCL has raised the following objections:

- (a) The Applicant/Appellant does not have a MEDA Registration, which is a mandatory pre-condition for supply of power to MSEDCL or any third parties in terms of the Maharashtra State RE Policy, 2015 and Methodology for the installation of projects under the comprehensive policy for grid connected power projects based on New and Renewable (Non-conventional) Energy Sources dated 09.09.2015 (collectively, the Policy).
- (b) The Applicant/Appellant has sought permission for supply of 72 MW power from the same plant through a different entity, i.e.

Avaada Satara MH Pvt. Ltd. (Satara MH), and not through the Applicant/Appellant.

- 6.3 During the course of arguments, MSEDCL has admitted that:
- (a) MSEDCL has been accepting power generated from 28 MW for the period from 16.04.2018 to 30.09.2019 and thereafter from 01.04.2020 to 30.09.2020 *dehors* the PPA.
  - (b) The Applicant/Appellant was permitted to supply power to third parties under open access from 01.10.2019 to 31.03.2020 *dehors* the PPA.
  - (c) The aforementioned supply of electricity by the Applicant/Appellant was allowed without any MEDA Registration.

6.4 Importantly, SECI's stand before the Tribunal was also that MEDA Registration would not be required by the Applicant/Appellant for supplying electricity.

6.5 The Applicant/Appellant submits that the MEDA Registration is not required for the supply of power in the present case for the following reasons:

- (a) MEDA is a state facilitating agency for aiding the renewable energy developers in getting grid connectivity, approvals and other benefits. This is clearly recorded in MEDA's brochure which defines the objective of MEDA to be the following:

- “1. To propagate, promote and develop new and renewable sources of energy and technologies & to implement energy conservation schemes.*
- 2. To encourage power generation through renewable energy sources.*
- 3. To create mass awareness about the increasing need for energy conservation & use of renewable energy sources.*
- 4. To implement the renewable energy programmes of the State Govt. & the Ministry of New Renewables (MNRE), Govt. of India.”*

- (b) The requirement for MEDA Registration arises at the stage of seeking Grid connectivity. This is evident from the terms of the Policy, which states that:

*“1.1 It will be necessary for the project developer to submit application for grid connectivity recommendation in the prescribed format to MEDA. The application should include, along with other details, details about the project capacity, project site location, details of nearest MSEDCL/MSETCL sub-station etc.*

*1.2 There will be a preliminary scrutiny of the application by MEDA office, subsequent to which the developer and MSETCL/MSEDCL will be informed for the purpose of technical feasibility report. MSETCL/MSEDCL shall prepare the technical feasibility report and furnish it to MEDA.*

*1.3 On receipt of the technical feasibility report, MEDA will verify its conformity with the solar power generation area, and make recommendation to MSETCL/MSEDCL for grid connectivity.*

*1.4 The application for grid connectivity by the project developer will be scrutinised by the Committee for grid connectivity constituted by MSETCL in which thorough consultation will be done.*

*...Permission / approval for new grid connectivity shall be given by MSETCL/MSEDCL as per the decision of the Committee and as per their prescribed methodology.”*

Avaada Energy has already been granted Grid connectivity for the entire 100 MW by MSETCL (a sister concern of MSEDCL) and is only seeking Grid synchronisation for the balance capacity above 28 MW. In fact, even after acknowledging the alleged termination of the PPA by SECI (which is under challenge in the present appeal), MSETCL has by letter dated 08.07.2019 extended the grid connectivity for entire 100 MW and allowed the name change (as approved by Registrar of Companies) from Giriraj Renewables Pvt. Ltd to Avaada Energy Pvt. Limited. The

connection agreement dated 28.03.2018 executed with MSETCL continues to remain in force.

Hence, the requirement for MEDA registration is not applicable since the purpose for the registration has already been achieved. That requiring Applicant/Appellant to now go back for MEDA Registration would be tantamount to putting the cart before the horse since the final step in the process, i.e. grid connectivity has already been completed.

- (c) Even otherwise, as per Office Memorandum dated 12.06.2018 (**OM**) issued by Ministry of New and Renewable Energy, Government of India, registration with MEDA (State RE Nodal Agency) is not required in case of RE projects being implemented by SECI, NTPC, NVVN or other agencies. The relevant part of the OM is extracted below:

*“For the RE projects being implemented by SECI, NTPC, NVVN or any other agency on behalf of the Ministry of New and Renewable Energy, mandatory registration with the state RE Nodal Agencies is not required. Further, there is also no requirement of any recommendation from State RE Nodal Agencies as a condition for any approval that maybe required by the Developer(s) for project implementation. It would be sufficient to have a valid LOA or PPA either with SECI, NTPC, NVVN or any other agency through which the project is being implemented by MNRE for seeking any approval that may be required for the project.”*

- (d) The present Project is a SECI Project and the status thereof is currently under consideration before the APTEL. In these proceedings, the APTEL has granted to the Applicant/Appellant liberty to sell additional capacity to any DISCOM or party. Once permission has been granted by the APTEL, there is no requirement for a mere technical approval, i.e. MEDA

Registration, for sale of power generated during the interim period while the status of the Project is under the consideration of the APTEL. If the Applicant/Appellant is required to obtain MEDA Registration for supply of power during the pendency of the present proceedings, the directions issued by APTEL will be rendered futile.

- (e) Moreover, it is apparent from MSEDCL's own past conduct that MEDA Registration is not required by the Applicant/Appellant to supply power generated to either MSEDCL or third parties. In this context, it is relevant to point out that Applicant/Appellant supplied electricity generated from 28 MW part-capacity:
- I. From 16.04.2018 to 30.09.2019: To MSEDCL under short-term arrangement *dehors* the PPA and without MEDA Registration.
  - II. From 01.10.2019 to 31.03.2020: To third parties under open access *de hors* the PPA and without MEDA Registration.
  - III. From 31.03.2020 to 30.09.2020: To MSEDCL under short-term arrangement *dehors* the PPA and without MEDA Registration.
  - IV. From 01.10.2020 to 31.10.2020: To the exchange under the short-term arrangement since MSEDCL did not continue with the arrangement for this period due to expiry of cut-off date for the application on the web portal.
  - V. Applicant/Appellant has applied on the web portal of MSEDCL for supplying power under short term arrangement for period of 01.11.2020 to 31.01.2021.

- VI. Having accepted that the Applicant/Appellant can supply electricity generated from 28 MW part-capacity to either MSEDCL or third parties without MEDA Registration, MSEDCL's refusal to co-operate for the supply of electricity generated from the balance capacity is mala fide and lacks any justification. Once MSEDCL has permitted supply of power generated from 28 MW part-capacity without MEDA Registration, it cannot disallow supply of the power generated from the balance capacity on the ground that the Applicant/Appellant does not have MEDA Registration.
- 6.6 Due to the must-run nature of Solar PV Projects, national waste being caused on account of stranded power and recurring losses being suffered by the Applicant/Appellant, it had no option but to take all possible steps to ensure that the power generated from the stranded capacity is evacuated . However, on account of the hurdles being created by MSEDCL in power supply by the Applicant/Appellant and its refusal to accept supply of power generated from the additional capacity beyond 28 MW despite the orders passed by this Tribunal and CERC, the power generated by the Applicant/Appellant was being laid waste.
- 6.7 In the circumstances, subject to the orders that may be passed by this Tribunal and the final outcome of the present appeal proceedings, the Applicant/Appellant took the following steps in order to enable supply of power generated from 72 MW additional capacity of the present Project under group captive structure:
- (a) Avaada Satara MH Pvt. Ltd (Avaada Satara MH) is a subsidiary company of the Applicant/Appellant/ Avaada Energy Private



Limited that was initially incorporated for the purpose of a different project under open access/ group arrangement.

- (b) Subsequent to order dated 13.01.2020 passed by CERC (Impugned order), Applicant/Appellant through its subsidiary Avaada Satara MH as alternative arrangement submitted an application on 14.01.2020 for grant of open access supply of power.
- (c) Accordingly, Avaada Satara MH applied for MEDA registration and was granted MEDA Registration on 14.08.2020.
- (d) Therefore, for implementation of the 72 MW capacity, an internal arrangement was entered into between Applicant/Appellant and its subsidiary, Avaada Satara MH.

6.8 The aforementioned arrangements were entered to prevent wastage of power generated and strictly subject to the orders that may be passed by the Tribunal. Pursuant to the metering approvals granted by MSEDCL vide letters dated 29.07.2020, 05.08.2020 and 17.08.2020, by letter dated 13.08.2020, an application was submitted through Avaada Satara MH seeking commissioning of 72MW captive power plant.

6.9 However, as in the case of direct supply by the Applicant/Appellant, MSEDCL has continued to create hurdles and avoid compliance with its obligation to facilitate sale of the power generated in terms of this Tribunal's order dated 19.08.2020. In this context, reference may be made to the letters dated 19.08.2020 and 03.09.2020 issued by MSEDCL (contents already reproduced above).

6.10 Applicant/Appellant responded to MSEDCL's letter on 12.09.2020 stating that:

“9. By letter dated 03.09.2020, MSEDCL has sought to thwart and prevent implementation of the directions of the APTEL by refusing to release payment against the supply of electricity or to permit commencement supply of electricity generated from the balance capacity beyond 28 MW by blocking Grid connectivity. The reasons stated in the letter dated 03.09.2020 for refusing implementation of the directions of APTEL are absolutely false, frivolous and baseless.

10. The entire capacity completed by us above and beyond 28 MW (currently, 59 MW) is lying stranded and is leading to severe national waste due to the refusal of MSEDCL to implement the directions of APTEL. Moreover, the infrastructure created is being laid waste.

11. The establishment of Avaada Satara MH Pvt. Ltd. and its application for supply through group captive arrangement was done with as an alternative and interim arrangement in accordance with the interim permission granted by APTEL in order to prevent the 59 MW capacity, which SECI and MSEDCL are maliciously refusing to accept, from being stranded and laid waste.

12. In view of the aforesaid background, we once again call upon MSEDCL to implement the directions of APTEL by:

- (A) Releasing the payment due to us in respect of the supply of electricity to MSEDCL from the 28 MW capacity; and
- (B) Grant Grid synchronisation along with necessary permissions for the balance capacity completed by us to enable us to sell the power in the manner directed by APTEL.”

6.11 It is a settled principle that necessary support should be provided to green energy projects rather than leading them to failure on technical or specious grounds as laid down in the following judgments:

**Gulbarga Electricity Supply Company Limited v. Karnataka Electricity Regulatory Commission (Appeal No. 87/2015 decided on 26.05.2016 by APTEL)**

*“There can be no dispute that the object of the said Act and the relevant Government policies is to encourage projects based on renewable sources of energy. If an acceptable and genuine case is made out such projects should be helped. If such projects close down; that will deprive the consumers of environmentally benign power. In the long run such approach will be harmful to the power sector and to the consumers.”*

**SRM Power Private Limited v. Bangalore Electricity Supply Company Limited (Judgment dated 29.03.2019 passed by APTEL)**

*“...the object of the said Act and the relevant Government policies is to encourage the projects based on the renewable sources of Energy. If an acceptable and genuine case is made out, such projects should be helped. If such projects close down, that will deprive the consumers of environmentally benign power.”*

6.12 In the above background, MSEDCL should not prevent implementation of the Tribunal's orders/ directions and render the balance capacity of the project as stranded. Towards this end, the following reliefs may be granted:

- (a) To permit synchronisation/ evacuation of balance Project capacity of 72 MW through the Applicant/Appellant and meter installation/ sealing for the same without awaiting MEDA Registration OR permit supply through Avaada Satara MH Pvt. Ltd. (which already has MEDA Registration) on group captive arrangement by relying upon the Grid connectivity granted in favour of its parent company i.e., the Applicant/Appellant herein (with due permission of the Applicant/Appellant to its subsidiary); and
- (b) MSEDCL shall continue to accept power supplied from 28 MW capacity, which is already synchronized / commissioned, till the disposal of the present Appeal.

**7. Our Consideration & Findings:-**

7.1 We have carefully considered and analysed the submissions of the learned counsel for the Applicant/Appellant and learned counsel for the Respondent Nos. 2 & 3. The main grievance of the Applicant is regarding non-synchronisation of the completed capacity of its plant beyond 28 MW. The Applicant has alleged that in spite of the clear directions passed by this Tribunal in its order dated 19.08.2200, MSEDCL has failed to grant synchronisation for supply of electricity from the remaining capacity by seeking additional information on

one pretext or the other so as to circumvent the aforesaid directions passed by this Tribunal. As would be seen from the various letters issued by MSEDCL dated 19.08.2020, 21.08.2020, 03.09.2020 etc., the MSEDCL has raised various objections/issues in relation to synchronisation of balanced capacity of 72 MW beyond the initial commissioned capacity of 28 MW. Learned counsel for the Appellant submitted that MSERDCL had an obligation to permit / facilitate the sale of power generated by the Applicant's plant beyond 28 MW to any party but evidently it has failed to do so.

7.2 Learned counsel for the second Respondent/SECI at the outset contended that the instant IA is neither maintainable nor sustainable in law. He emphasised that the contents of the submissions made by SECI in its reply on the Appeal may also be treated as an integral part of the present Reply as well. Learned counsel for the second Respondent vehemently submitted that the PPA between the SECI and the Applicant has stood validly terminated since 11.04.2019. Further, the PSA between SECI and MSEDCL has also stood terminated by MSEDCL to the extent of 100 MW capacity and MSEDCL is claiming such termination on 18.01.2019 itself. In view of these facts, there is no contractual relationship in existence between SECI and the Applicant as on date and the termination of the PPA has also been upheld by the Central Commission. As such, there is no permissibility whatsoever for the Appellant to seek any relief from this Tribunal in relation to the said PPA which is no longer in existence, for commissioning of either 28 MW capacity or further 29 MW capacity. Therefore, the present Application deserves to be rejected on this ground alone. Learned counsel pointed out that the relief prayed by the Applicant in the present application for directions

are also contrary to the contractual provisions besides being beyond the relief which had been sought by the Appellant before the Central Commission. Therefore, such a relief would be beyond the relief which had been sought by the Appellant before the Central Commission. Granting such a relief would also be contrary to the law laid down by the Hon'ble Supreme Court in, inter alia, the following judgments wherein it has been held that the Central Commission / this Tribunal / any Court cannot grant any relief contrary to the terms of the contract between the parties:-

- a) Gujarat Urja Vikas Nigam Limited -v- Solar Semi Conductor Power Co. (India) P. Ltd (2017) 16 SCC 498 - paragraphs 60, 65, 66, 68.
- b) Gujarat Urja Vikas Nigam Limited-v-ACME Solar Technologies (Gujarat Pvt) Ltd and Ors., (2017) 16 SCC 498 – paras 6 and 7.
- c) Gujarat Urja Vikas Nigam Limited-v-. EMCO Limited & Anr. (2016) 11 SCC 182 - para 37.
- d) Rajasthan State Industrial Development & Investment Corporation-v- Diamond & Gem Development Corpn. (2013) 5 SCC 470 – paras 23, 24, 30, 40.

7.3 Learned counsel for the second Respondent further submitted that SECI is an intermediary trader and is not a grid connected entity. The commissioning and synchronisation etc. with the grid has to be in the state of Maharashtra and as per the directions/approval of MSEDCL/STU. Learned counsel emphasised that in view of the facts stated and submissions made hereinabove on behalf of SECI, it is prayed that the Application for Directions would deserve to be dismissed and the above-mentioned order dated 09.07.2020 ought to be vacated by this Tribunal. Learned counsel also clarified that these submission are without prejudice to the submission on behalf of SECI that the direction to pay *tariff in terms of the PPA* would

include all other clauses of the PPA including the mandatory reduction of tariff as stipulated in Clause 9.2 of the PPA.

7.4 Learned counsel for the third Respondent/MSEDCL submitted that the Applicant has raised two main issues for the MSEDCL with regard to the compliance of the directions given by this Tribunal vide order dated 19.08.2020 namely - Payment of pending arrears by Respondent No.3; and liberty granted to Appellant to sell power from 29 MW additional capacity to any DISCOM or party including Respondent No.3. In this regard, it is submitted that on 22.09.2020, MSEDCL has released payments in favour of the Applicant against the invoices which had fallen due for sale of the synchronized 28 MW power from the Appellant's plant for the months of April, May and June of 2020. Further, the invoices raised for the supply of power during the months of July and August 2020 will be cleared as and when they fall due as per the scheme of supply of power on short term basis through the online portal scheme of Respondent No.3. Learned counsel was quick to submit that the Respondent No.3 has complied with the directions as given in the Order of 19.08.2020 by this Tribunal in totality.

7.5 Learned counsel for Respondent No.3 further submitted that MSEDCL has not raised any objections towards the Appellant selling the additional capacity of 29 MW of power to any third party, under open access or otherwise. Admittedly, the permission to synchronize can only be issued by SLDC and in terms of Regulation 6.1 & 6.2 of the MERC (Transmission Open Access) Regulations, 2016, prior to seeking such permission, the supplier is required to obtain connectivity from the State Transmission Utility. It is pertinent to state that neither the SLDC nor the STU are parties to the present

proceedings before this Tribunal. Further, the Respondent No.3 issued letter dated 03.09.2020 to the Appellant, in response to Appellant's letter dated 24.08.2020, and *inter alia* stated with regard to the request for commissioning of 29 MW that the same is to be done as per the provisions of the Maharashtra State Renewable Energy Policy 2015 dated 20.07.2015 and methodology for installation of projects under the comprehensive policy for grid connected power projects based on new and renewable energy sources-2015 dated 09.09.2015, as per which MEDA registration is required as a mandatory condition. Learned counsel pointed out that Applicant has wrongly contended that the commissioning of balance 29 MW capacity does not require the MEDA registration certificate.

7.6 Learned counsel further submitted that the exemption from submitting MEDA registration, is admitted only to those projects which are been implemented by agencies such as SECI, NTPC, etc. on behalf of the MNRE. In the present facts and circumstances, the Appellant is supplying power under short term arrangement *de hors* the PPA and PSA, which have been terminated, and the validity of such termination is currently pending adjudication before this Tribunal. As such, it cannot be said that the power is being supplied under a project being implemented by SECI.

7.7 Moreover, 28 MW power presently being supplied by the Applicant to MSEDCL is purely on short term basis under the terms & conditions of the Online Portal Scheme which *inter alia* stipulates the submission of MEDA Registration. However, LOIs issued by Respondent No.3 dated 31.03.2020 and 23.06.2020 clearly state that the generators have been granted relaxation for uploading requisite undertakings and documents (including MEDA registration) on account of the



prevailing pandemic (COVID-19), with a condition that the same would have to be submitted at the time of agreement. It is further relevant to state that the power being procured by Respondent No.3 from the Appellant in the period of May 2018 till September 2019 was not under the present Online Portal Scheme, and was as per a separate ad-hoc arrangement between them.

7.8 Learned counsel for Respondent No.3 pointed out that in view of the liberty granted by this Tribunal, the Applicant intends to sell power through another entity i.e. Avaada Satara MH Private Limited to the captive consumers (*5 consumers*) of Avaada Satara from the balance project capacity of 72 MW. It is relevant to state that the said arrangement has not been brought to the notice of this Tribunal by the Applicant. From the record, it is noted that Avaada Satara is a separate and distinct legal entity from the Appellant and, therefore, for supply of its power through the grid, it will require its own separate permissions / approvals / synchronisation / commissioning etc. for which it has to follow the procedure as applicable to it. Accordingly, the Respondent No.3 vide its letter dated 19.08.2020, issued in response to the PTC applications submitted by Avaada Satara, highlighted the various discrepancies in the said applications, stated supra. Further, in the present case, Avaada Satara is also required to comply with provisions of MERC (Distribution Open Access) Regulations, 2016 and metering arrangement required therein (Regulation 8.5). Learned counsel pointed out that from the minutes of meeting of 23rd meeting of the Committee for processing Grid Connectivity Applications of RE Power Projects, that M/s Avaada Energy had already approached MSETCL for grant of grid connectivity for additional 72.5 MW. In view of the above, Avaada

Satara is at liberty to comply with the above technical requirement of MSETCL. However, M/s Avaada Satara and the Appellant have not opted for the same. The above fact also raises doubt about the Appellant's claim that the understanding with Avaada Satara is an interim arrangement in order to sell power from the Appellant's project as no document has been provided by the Appellant to substantiate this understanding. Learned counsel reiterated that by raising this issue, the Appellant is misleading this Tribunal and trying to bypass the procedural requirements which is required to be followed by each RE Generator depending on the type of project, under which scheme / policy it is developed etc.

7.9 Learned counsel for MSEDCL contended that Avaada Satara, being a separate entity which is developing the captive power project, is required to comply with all the state specific requirements for developing the project in Maharashtra. Therefore, the argument of the Appellant with respect to requirement of MEDA registration is unnecessary and it is only deflecting the matter in hand from the issues raised in the present appeal before this Tribunal. Learned counsel for MSEDCL further submitted that there is no compliance pending on the part of MSEDCL with respect to the 29 MW capacity. The Appellant can thus supply the additional capacity of 29 MW to whomever it wants, however, the Appellant would have to comply with all such legal requirements as may be applicable. In view of these facts, learned counsel for Respondent NO.3 requested that this Tribunal may be pleased to dismiss the IA for Directions filed by the Applicant in the present appeal.

7.10 Vide its rejoinder submissions, learned counsel for the Applicant submitted that the objections/arguments of MSEDCL are completely unfounded and untenable – it is nothing but a blatant attempt to avoid complying with the orders passed by the Tribunal. Learned counsel further submitted that importantly, SECI's stand before this Tribunal was also that MEDA Registration would not be required by the Applicant for supply electricity. Learned counsel for the Applicant reiterated that the MEDA Registration is not required for the supply of electricity in the present case. In fact, MEDA is a state facilitating agency for aiding the renewable energy developers in getting grid connectivity, approvals and other benefits and these aspects are clearly recorded in MEDA's brochure which defines the objective of MEDA. The requirement for MEDA Registration arises at the stage of seeking Grid connectivity which is evident from the terms of the Policy. In the instant case, Avaada Energy has already been granted Grid connectivity for the entire 100 MW by MSETCL and is only seeking Grid synchronisation for the balance capacity out of 100 MW over & above 28 MW. In fact, even after acknowledging the alleged termination of the PPA by SECI (which is under challenge in the present appeal), MSETCL has by letter dated 08.07.2019 extended the grid connectivity for entire 100 MW and allowed the name change (as approved by Registrar of Companies) from Giriraj Renewables Pvt. Ltd to Avaada Energy Pvt. Limited. The connection agreement dated 28.03.2018 executed with MSETCL continues to remain in force. Hence, the requirement for MEDA registration is not applicable since the purpose for the registration has already been achieved.

7.11 Learned counsel for the Applicant also rejoined that as per Office Memorandum dated 12.06.2018 issued by MNRE, registration with

MEDA is not required in case of RE projects being implemented by SECI, NTPC, NVVN or other agencies. Undoubtedly, the grid connectivity to the Applicant was granted by the STU/SLDC based on the same facts that project is being implemented through SECI under back to back arrangement with MSEDCL. However, on account of certain disputes, the implementation of the project through SECI is presently under adjudication before this Tribunal. In various proceedings before this Tribunal, liberty has been granted to the Applicant to sell additional capacity to any discom or party there is no requirement for a mere technical approval, i.e. MEDA Registration, for sale of power generated during the interim period.

7.12 Learned counsel for the Applicant submitted that in the prevailing circumstances, subject to the final outcome of the present appeal, the Applicant took various steps in order to enable supply of power generated from 72 MW additional capacity of the present Project under group captive structure through Avaada Satara MH Pvt. Ltd. which is a subsidiary company of the Appellant. Accordingly, Avaada Satara submitted application on 14.01.2020 for grant of open access and also applied for MEDA registration which was granted on 14.08.2020. Therefore, the internal arrangement was entered into between Appellant and its subsidiary Avaada Satara MH for implementation of the plant's 72 MW balanced capacity. Learned counsel was quick to submit that the aforesaid arrangements were entered to prevent wastage of green power. Further, pursuant to the metering approvals granted by MSEDCL vide letters dated 29.07.2020, 05.08.2020 and 17.08.2020, by letter dated 13.08.2020, an application was submitted through Avaada Satara MH seeking commissioning of 72MW captive power plant. Learned counsel

highlighted that it is settled principle that necessary support should be provided to green energy projects rather than leading them to failure on technical or specious grounds. Learned counsel placed reliance on the following judgments:-

**a) *Gulbarga Electricity Supply Company Limited v. Karnataka Electricity Regulatory Commission (Appeal No. 87/2015 decided on 26.05.2016 by APTEL)***

**b) *SRM Power Private Limited v. Bangalore Electricity Supply Company Limited (Judgment dated 29.03.2019 passed by APTEL)***

7.13 Summing up his submissions, learned counsel for the Applicant reiterated that MSEDCL should not prevent implementation of the Tribunal's orders/ directions and render the balance capacity of the project as stranded. In this regard, the Applicant prayed that synchronisation / evacuation of balance Project capacity of 72 MW through the Appellant and meter installation/ sealing for the same without awaiting MEDA Registration. In the alternative, the supply through Avaada Satara MH Pvt. Ltd. should be permitted which has already got MEDA registration by relying upon the Grid connectivity granted by its parent company i.e., the Applicant. Further, MSEDCL should continue to accept power supplied from 28 MW capacity, which is already synchronized / commissioned, till the disposal of the present Appeal.

7.14 We have carefully evaluated the rival submissions of the parties and also perused the entire material placed before us during the proceedings. Besides, we have heard learned counsel for the parties at considerable length of time. What thus transpires is that the core issue before us is synchronisation of balance capacity of power plant of the Applicant beyond 28 MW which stand

synchronised in the power system and power from the same is already being procured by MSEDCL under short term measures. In our order dated 19.08.2020, we had given the Applicant a liberty to sell its additional commissioned power of 29 MW to either MSEDCL or any third party so that the green power is not stranded without utilisation. It is a grievance of the Applicant that after issuance of this Tribunal's order dated 19.08.2020, MSEDCL has not facilitated the evacuation of its balanced power and rather has raised many objections which are unfounded and untenable. On the other hand, while SECI is mainly concerned with the PPA/PSA which stand terminated and any relief granted to the Applicant under those terminated PPA /PSA through the instant IA. While going through the submissions of SECI, it evidences that their submissions / arguments are mainly on the main appeal which is pending adjudication this Tribunal. However, SECI has not objected to the synchronisation / evacuation of additional 29 MW power of the Applicant which is dehors PPA /PSA.

- 7.15 Learned counsel for the second Respondent/MSEDCL has mainly contended that as far as first 28 MW of power is concerned that is being supplied purely on short term basis through OnLine portal under which the exemption for MEDA certificate has been exempted for the time being due to pandemic situation. Regarding plant's capacity of 29 MW or more, the Applicant has to follow the prescribed procedure of MEDA/STU/SLDC for getting grid connectivity and synchronisation /commissioning of the plant's capacity etc.. As the PPA/PSA stand terminated, it cannot be claimed that the Applicant's project is being implemented through SECI. As such, the Applicant has to obtain necessary MEDA registration / grid connectivity afresh as laid down under the

Renewable Policy of Maharashtra. Further, the Applicant and its subsidiary Avaada Satara has also contributed to substantial doubt/confusion relating to the real Applicant to whom the grid connectivity or MEDA registration is to be given.

7.16 Having regard to the submissions / arguments of the parties and other various provisions relating to the RE policy of Maharashtra, procedure for grid connectivity / evacuation etc., we opine that Avaada Energy has already been granted grid connectivity for the entire 100 MW by MSETCL out of which 28 MW stand synchronised and the Applicant is seeking synchronisation for the plant's capacity. We further note that MSETCL by its order dated 08.07.2019 has extended the grid connectivity for entire 100 MW in the name of the Applicant and the connection agreement dated 28.03.2018 executed with MSETCL is also continuing to remain in force. Accordingly, we opine that the requirement of MEDA registration for the Applicant at this stage is not applicable since the purpose of which registration is required has already been achieved and the project is under the stage of completion. Moreover, the project was getting implemented thorough SECI and based on the PPA/PSA executed between the parties, the Applicant was given exemption from MEDA registration and also provided with grid connectivity for the entire capacity of 100 MW after considering the technical aspects relating to system studies required for grid connectivity etc.. The same cannot be withdrawn / taken back in lieu of any dispute between the parties i.e. SECI & MSEDCL.

7.17 In view of these facts, we are of the considered opinion that the grid connectivity already granted to the Applicant in the name of Avaada



Energy Pvt. Ltd. should be honoured and the Applicant be facilitated for evacuation of its additional capacity beyond 28 MW to either MSEDCL or any third party. We also clarify that at this stage, we are not inclined to interfere in the legal status of the Applicant and its subsidiary Avaada Satara MH Pvt. Ltd. which is also not a subject matter of the Appeal in hand. With these observations, the instant IA being IA No.718 of 2020 is disposed of.

8. List the main Appeal No. 23 of 2020 & DFR No. 51 of 2020 on **25.11.2020.**

Pronounced in the Virtual Court on **this 23<sup>rd</sup> day of October, 2020.**

**(S. D. Dubey)**  
**Technical Member**

**(Justice Manjula Chellur)**  
**Chairperson**

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