

26. We observe that the relevant provisions of the PPA stipulate as under:

“

4.5 Extensions of Time

4.5.1 In the event that the WPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

a) any Buyer Event of Default; or

b) Force Majeure Events affecting Buyer/ Buying Entity(ies) , or

c) Force Majeure Events affecting the WPD,

the scheduled commissioning Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than ‘day for day’ basis, to permit the WPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the WPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by Buyer.

4.5.2 Void.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of nine (9) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.4 If the Parties have not agreed, within thirty (30) days after the affected party’s performance has ceased to be affected by the relevant circumstance, on the timeperiod by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.5 As a result of such extension, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond 27 months from the date of issuance of LOA by SECI to WPD.

“4.6 Liquidated Damages not amounting to penalty for delay in commencement of supply of power to Buyer.

4.6.1 The selected projects shall be commissioned within 18 months from date of issuance of Letter of Award. A duly constituted Committee will physically inspect and certify successful commissioning of the project. In case of failure to achieve this milestone, SECI shall encash the Performance Bank Guarantee (PBG) in the following manner:

Delay upto six (6) months - Buyer will encash total Performance Bank Guarantee on per day basis and proportionate to the balance Capacity not commissioned.

4.6.2 In case the commissioning of the project is delayed over Six (6) months, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 27 months from the date of LoA. In case, the Commissioning of the Project is

delayed beyond 27 months from the date of LoA, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned, provided that the commissioned capacity is not below 50 MW or 50% of the allocated Project Capacity, whichever is higher, and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity.”

“11.3 Force Majeure:

11.3.1. A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado;*
- b) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*
- c) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power project by the Affected Party or those employed or engaged by the Affected party.*
- d) An event of Force Majeure identified under Buyer- Buying Entity(ies) PSA, thereby affecting delivery of power from WPD to Buying Entity(ies).*

11.4. Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the power project;*
- b. Delay in the performance of any contractor, sub-contractor or their agents;*
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;*
- d. Strikes at the facilities of the Affected Party;*
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and*
- f. Non-performance caused by, or connected with, the Affected Party's:*
 - i. Negligent or intentional acts, errors or omissions;*
 - ii. Failure to comply with an Indian Law; or*
 - iii. Breach of, or default under this Agreement*

... ”

13.5 Termination due to Force Majeure

*13.5.1 If the Force Majeure Event or its effects continue to be present beyond a period of **twelve (12) months**, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such*

Termination Notice without any further liability to either Party from the date of such termination.

27. We observe that Article 4.5 mandates that on occurrence of force majeure events the SCoD of the project can be deferred. Further, as per Article 4.5.3, in case such Force Majeure Event continues even after a maximum period of nine (9) months the contracting parties may choose to terminate the Agreement as per the provisions of Article 13.5. As per Article 13.5.1, if the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months, either Party shall have the right to cause termination of the Agreement without any further liability to either Party from the date of such termination. It is observed that Article 4.5.3 read with Article 13.5.1 of the PPA provides that the PPA can be terminated after twelve (12) months if the Force Majeure Events and their effects continue beyond the said period of 12 months. Further, Article 11.3 stipulates that Force Majeure means any event or circumstance or combination of events that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations viz. Act of God, any act of war, Radioactive contamination or ionising radiation, or an event of Force Majeure identified under Buyer- Buying Entity(ies) PSA, thereby affecting delivery of power from WPD to Buying Entity(ies). Further, unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the power project are specifically excluded from the Force Majeure events. Further, Article 4.6 stipulates that in case of delay of SCoD by six months the SECI is entitled to encash the Performance Bank Guarantee (PBG) on per day basis and proportionate to the balance Capacity not commissioned. Further, SECI has the right to reduce the tariff discovered at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned for the delay beyond six months.
28. In the instant case, the initial SCoD of the project was 03.05.2019 (initial SCoD) which was extended by SECI to 12.12.2019 (extended SCoD) on account of delay in issuance of NOC by MoD. Further, as per the letter dated 08.09.2020, SECI has already given benefit of the period from 25.03.2020 to 24.08.2020 (153 days). SECI has thus calculated the days as under:
- a) For PBG encashment: from 13.12.2019 to 10.11.2020 i.e. (333 days - 153 days = 180 days)
 - b) The Tariff Reduction Period 11.11.2020 to 07.02.2021 i.e. (88 days)

29. Now we take the issues event wise as submitted by the Petitioner to analyse which of the events falls under the force Majeure events as per Article 11.3 of the PPA:

a. Re: Delay in obtaining NOC from MoD, affecting the Project from 26.04.2018 till 24.01.2019

30. We observe that the Petitioner in its plaint has submitted that SECI *vide* its letter dated 21.11.2019 informed the Petitioner that its request for extension of time had been accepted and the Initial SCoD of the Project (i.e., 03.05.2019) was extended up to 12.12.2019, i.e., the Extended SCoD, on account of delay in issuance of NOC by MoD. Since, it's claim for extension of time due to delay in issuance of NOC by MoD was accepted by SECI. As such, there is no dispute between the Petitioner and SECI on this aspect. In view of above, the Commission holds that the event already stands addressed.

b. Re: Unprecedented rainfall, floods and cyclone, affecting the Project from July till Nov. 2019

31. The Petitioner has submitted that the project was delayed and/or prevented from performing its obligations qua commissioning on account of Force Majeure events (Act of God) of unprecedented rainfall, floods and cyclone during the month of July, 2019 till November 2019 and therefore the timeline for commissioning of the project should be extended for a period of 5 months from the Extended SCOD i.e. upto 12.05.2020. ***Per contra***, SECI has submitted that the Petitioner has not furnished the relevant documents in support of the claim that the alleged unprecedented rainfall, floods and cyclone was declared as a Force Majeure event by a competent authority. The documents from Revenue Department, Gandhi Nagar or Gujarat State Disaster Management Authority furnished by the Petitioner do not state that there was rainfall, cyclone, flood amounting to Force Majeure as alleged by the Petitioner. Further, from June 2019 to October 2019, 613 MW of Wind Project located in Kutch District was declared commissioned by various developers having agreements with SECI including the part capacity of 58.5 MW of the Petitioner's project which was also commissioned during the said period.

32. We observe that Article 13.3.1 stipulates that any event or circumstance or combination of events that wholly or partly prevents or unavoidably delays the contracting Party in the performance of its obligations viz. *Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado* is recognized

under the definition of Force Majeure.

33. We observe that the Petitioner has placed reliance on the data obtained from the State Emergency Operation Centre, Revenue Department, Gandhinagar as well as newspaper articles to show that there was unprecedented rainfall in the area preventing it from executing further works. We note that the Petitioner has neither brought on record, any Notice of Force Majeure issued to SECI in terms of the Article 11.5.2 of the PPA highlighting as to how the Project of the Petitioner was affected nor has placed on record an official document/notification clearly classifying the rainfall as a Force Majeure event. It is a settled position that where a contract requires issuance of a Notice for invoking the Force Majeure clause, the benefit of Force Majeure cannot be granted in the absence of any such Notice, it is a sine qua non for invoking the clause under force majeure. Additionally, there is no official document from an appropriate authority classifying the unprecedented rainfall as a Force Majeure event and the period of such Force Majeure, if any. As such, the Commission holds that no relief can be extended to the Petitioner for the alleged event.

c. Re: Extension of Lunar Holidays in China, affecting the Project from December 2019 till 09.02.2020 (approximately 2 months) and the COVID-19 pandemic, the consequent lockdown, and disruption in global and domestic supply chain

34. The Petitioner has claimed that extension of Lunar Holidays (China issued Notifications dated 27.01.2020 and 29.01.2020 extending Lunar Holidays till 09.02.2020) and Outbreak of Covid-19 (February, 2020 to till date) has affected the import and supply of equipment, logistics, WTG components for the power project and the Petitioner is entitled to extension of time beyond 5 months stipulated for in Office Memorandum dated 13.08.2020 of MNRE. **Per contra**, SECI has submitted that the Lunar Holidays do not constitute Force Majeure within the scope of Article 11 of the PPA. In fact, it falls within the scope of Article 11.4 of the PPA dealing with force majeure exclusion. Additionally, Lunar Holidays and Covid-19 cannot be said to have any impact on the Project timelines of the Petitioner since the Petitioner achieved Financial Closure on 03.08.2018. In terms of the PPA read with letter dated 21.11.2019 of SECI the SCoD was 12.12.2019 i.e. prior to outbreak of Covid-19 and imposition of lockdown with effect from 25.03.2020 by the Government on account of Covid-19.
35. We observe that MNRE O.M. dated 20.03.2020 recognized the disruption in supply chain on account of Covid-19 prior to the Lockdown period and imposition of Lockdown by the Government of India only for the purpose of granting extension of time to the Renewable Power Developers to commission their projects. The relevant extract of the same is as given

below:

36.

“3. ...

- a) *All Renewable Energy implementing agencies of the Ministry of New and Renewable Power (MRE) are **hereby directed to treat delay on account of disruption of the supply chains due to spread of coronavirus in China or any other country.***
- b) *The Renewable Energy implementing agencies may grant suitable extension of time for projects, on account of coronavirus, based on evidences / documents produced by developers in support of their respective claims of such disruption of the supply chains due to spread of coronavirus in China or any other country.*
- c) *Further, all project developers claiming aforesaid disruption and desirous of time extensions, shall make, a formal application to SECI/ NTPC/ other implementing agencies, giving all documentary evidence(s) in support of their claim. SECI/ NTPC/ Implementing agencies shall examine the claim objectively and grant appropriate Extension of Time (EoT) based on facts. While considering the requests for grant of extension of time on account of disruption of the supply chains due to spread of coronavirus in China or any other country, SECI/NTPC/any other implementing agency may fully **satisfy itself that the claimants were actually affected due to disruption of the supply chains due to spread of coronavirus in China or any other country in the period for which extension of time has been claimed.** The implementing agencies shall also ensure that no double relief is granted due to overlapping periods of time extension granted for reasons eligible for such relief.”*

37. MNRE vide another O.M. dated 13.08.2020 bearing No. 283/18/2020-GRID SOLAR directed that all RE projects under implementation as on the date of lockdown i.e., 25th March 2020, through RE Implementing Agencies designated by the MNRE or under various schemes of the MNRE, shall be given a time extension of 5 (five) months from 25.03.2020 to 24.08.2020. The relevant portion is given below:

“(3) ...

- a) *All Renewable Energy (RE) implementing agencies of the Ministry of New & Renewable Energy (MNRE) will treat lockdown due to COVID-19 as Force Majeure*
- b) *All RE projects under implementation as on the date of lockdown i.e. 25th March 2020, through RE Implementing Agencies designated by the MNRE or under various schemes of the MNRE shall be given a time extension of 5 (five) months from 25th March 2020 to 24th August 2020. This blanket extension, if invoked by the RE developers will be given without case to case examination and no documents/evidence will be asked for such extension.*
- c) *The timelines for intermediate milestones of a project may also be extended within the extended time provided for commissioning.*

...”

38. We further observe that SECI vide its letter dated 08.09.2020 had given relief to the Petitioner

consistent with O.M. dated 13.08.2020 of MNRE, Government of India, inter-alia, as under:

“In supersession of this Office letter dated 18.05.2020 (referred above at sl. No. 01) and in compliance to MNRE OM No. 283/18/2020-GRID SOLAR dated 13.08.2020, following is hereby conveyed:

- i. Penalty period has been extended up to 09.02.2021*
- ii. No penalty shall be applicable for the period 25.03.2020 to 24.08.2020.*
- iii. Based on the above points, the revised end date for the PBG encashment period and Tariff reduction shall be 10.11.2020 and 09.02.2021 respectively*

It is requested to convey your acceptance to this letter by counter signing this letter and providing the same to SECI within 07 days of date of issuance of this letter.

This is issued without prejudice to other terms and conditions of the RfS and PPA.”

39. It is observed that Article 11.4.1(a) specifically excludes any event of unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the power project from the ambit of Force Majeure. Nonetheless, in view of MNRE's OM dated 20.03.2020, the Petitioner has to submit the documents in support of claim of disruption of the supply chain due to spread of Covid-19 to be considered the claim under Force Majeure. As per SECI, the Petitioner has not submitted any such documents. Therefore, the Petitioner's claim seeking extension of five months on account of disruption in supply chain due to lunar holidays in China and the lockdown in China due to COVID-19 is not tenable.
40. Further, in consonance with MNRE's OM dated 13.08.2020, the Petitioner has been granted a blanket extension of 5 months (that is, from 25.03.20020 to 24.02.2020) by SECI. As such, the Commission holds that no additional relief can be extended to the Petitioner for the alleged events.

Re: Apprehensions arising out of non-scheduling of power from the Project by UPPCL in view of the directions of the UPERC, due to the inordinate delay in filing of the tariff adoption petition by SECI and approval of power procurement by UPPCL

41. The Petitioner has alleged that inordinate delay in tariff adoption and approval of PSA by the Appropriate Commissions, had caused grave financial prejudice to the Petitioner and contributed to slowing down the implementation of power project. The Petitioner has further alleged that as a consequence of failure of UPPCL to approach UPERC in a time bound manner to obtain order approving the PSA, UPPCL stopped scheduling of power as per direction of UPERC and the same caused apprehensions in the minds of the lenders and

investors regarding the future of the project. *Per contra*, SECI has submitted that the Petitioner was not affected in as much as the power generated from the existing capacity were being sold to other identified Buying Entities i.e. Punjab and Goa at the instance of SECI as well as the Petitioner was allowed to sell the Power in the Power exchange, and hence, the claim is misplaced.

42. We observe that Article 3 of the PPA stipulates as under:

3.1 Satisfaction of conditions subsequent by the WPD

The WPD agrees and undertakes to duly perform and complete all of the following activities at WPD's own risk and cost within nine (9) months from the date of issuance of LoA, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by SECI:

- a) Not Used;*
- b) The WPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;*
- c) Not Used;*
- d) The WPD shall provide grant of connectivity intimation letter issued by CTU within nine (9) months from issuance of LoA;*
- e) The WPD shall also produce the documentary evidence of the clear title and possession of the acquired land for the Project;*
- f) The WPD shall fulfil the technical requirements according to criteria mentioned under Clause 3.5.9 of the RfS and produce the documentary evidence of the same.*

43. From above, we observe that the PPA executed between Petitioner and SECI do not provide for any such condition precedent of Adoption of Tariff or approval of PSA for implementation of the PPA. Article 3 does not stipulate adoption of tariff by this Commission or approval of PSA by the State Commission as a condition for fulfillment of Financial Closure by the Petitioner. It is pertinent to mention here that the Financial Closure date was 03.08.2018 i.e. 9 months from date of Letter of Award (03.11.2017) in terms of Article 3 of the PPA and it is an admitted fact that the Petitioner achieved Financial Closure on 03.08.2018.

44. We observe that on 24.06.2019, UPPCL filed a petition bearing No. 1480 of 2019 UPERC, seeking adoption of tariff at INR 2.72/kWh for procurement of 200 MW of wind power and approval of the PSA, after much delay. On the same date another Petition No. 1481 of 2019 seeking adoption of tariff and approval of power procurement from PTC India Ltd. Further, SECI filed a petition bearing No. 369/AT/2019 before this Commission for adoption of tariff after 21 months from the date of signing PPA i.e. 03.10.2019. Meanwhile, on 09.11.2019, SECI had also requested Power System Operation Corporation (POSOCO) to allow

scheduling of power from Petitioner's Project to beneficiaries (i.e., PSPCL and Goa) up to their complete LTA contracted quantum i.e. total of 150 MW.

45. It is noted that on 03.12.2019, this Commission, adopted the tariff of Rs. 2.64/kWh for the 250 MW being developed by Petitioner, under Section 63 of the Electricity Act, in Petition No. 369/AT/2019. Further, the Original SCOD was extended to 12.12.2019 on account of delay in receiving of NOC from MoD.
46. We observe that the tariff was adopted by the Commission on 03.12.2019 i.e. before the lapse of the Extended SCoD viz. 12.12.2019 of the Project. The Commission is of the view that once the Tariff as per (PPA between the contracting parties) has been adopted and becomes enforceable, it becomes the duty of the Respondents to make arrangement for off-take of power. In the instant case, once the Tariff was adopted by the Commission on 03.12.2019 (before the lapse of extended SCoD i.e. 12.12.2019), it was duty of the SECI to make arrangement/alternate arrangement for the supply of the power, which it complied with.
47. It is further noted that the Petitioner had commissioned 184.5MW as on 01.10.2019. Vide email dated 09.11.2019 i.e. well before 12.12.2019 (Extended SCoD) SECI requested POSOCO, *inter-alia*, as under:

"Subject: Request for opening of LTA ratio to 100% for Goa (50MW) & Punjab (100MW) Discom_SECI-2 (RPL

With reference to subject, as per UPPCL letter no 1961 Dated: 01st Oct 19, our scheduling to UP Discom has been stopped from 2nd Oct 19 owing to non-adoption of PPA tariff by CERC.

Currently CoD declared for 184.5 out of 250 MW for which ratio for each discom is given below:

UP discom: 73.8 MW out of 100 MW LTA (40%)

Punjab Discom: 73.8 MW out of 100 MW LTA (40%)

Goa Discom: 36.9 MW out of 50 MW LTA (20%)

So, currently we are able to do only 110.7 MW out of 184.5 MW scheduling and actual power is going up to 160- 165 MW.

So, we request you to facilitate at least 150MW scheduling which is full capacity of other contracted DISCOMs to avoid generation loss (Punjab up to 100 MW and Goa up to 50 MW).

48. We further observe that on 20.12.2019, the Petitioner requested SECI, for issuance of NOC for selling the excess power (beyond allocation to Goa and Punjab) to the extent of 34 MW in the Power Exchange for the period up to 31.03.2020. SECI has categorically submitted that

on 21.12.2019, the Petitioner was allowed as follows: *'excess energy beyond 150 MW Wind Power scheduling may be scheduled outside till scheduling is allowed by UPPCL (Uttar Pradesh Power Corporation Limited).'*

49. On 30.12.2019, UPERC passed order in Petition No.1480/2019 filed by UPPCL, approving the PPA and PSA and the procurement of power thereunder. By Letter dated 10.01.2020, UPPCL requested Uttar Pradesh Power Transmission Limited that in view of the orders passed by the Commission and UPERC, the Wind Power Generators including the Petitioner may be allowed to inject power with immediate effect. Further, SECI vide email dated 10.01.2020 requested the Petitioner *'....to take necessary steps to start scheduling of 100 MW Wind Power to UPPCL with immediate effect'*.
50. We observe that the Petitioner has raised the issue of delay in tariff adoption as a reason for seeking extension of time to commission balance capacity 65.5 MW, by its letter dated 29.07.2020 i.e. after almost 30 months from the date of execution of the PPA dated 02.01.2018 and after the lapse of the Extended SCoD viz. 12.12.2019 of the Project.
51. We are of the view that since the Commission had adopted the tariff in Petition No. 369/AT/2019 on 12.12.2019 i.e. before lapse of extended SCOD (12.12.2019), there could not be any apprehension for sale of power by the Petitioner to SECI in compliance with PPA dated 02.01.2018. Further, SECI had taken appropriate steps for further supply of power in terms of the PSA (150 MW) to other buying entities, mapped with the project with effect from 02.10.2019 till 11.01.2020. Additionally, SECI also allowed the Petitioner to sell excess energy beyond 150 MW Wind Power to be scheduled outside (Power Exchange) till scheduling is allowed by UPPCL.
52. The Petitioner has alleged apprehensions arising out of non-scheduling of power from the Project by UPPCL in view of the directions of the UPERC, due to the inordinate delay in filing of the tariff adoption petition by SECI and approval of power procurement by UPPCL. It is a well settled law that apprehension cannot form the basis of *'avoidance of contract'*. For avoidance of contract (though partly in the instant petition) by the affected party, there has to be some cause of action that makes performance of the contract terms impossible or inequitable and that releases the parties from their obligations. It cannot be on the basis of apprehensions.

53. It is observed that Article 11.3 stipulates that Force Majeure means any event or circumstance or combination of events that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations viz. Act of God, Any act of war, Radioactive contamination or ionising radiation, or an event of Force Majeure identified under Buyer-Buying Entity(ies) PSA, thereby affecting delivery of power from WPD to Buying Entity(ies). Clearly, the claim of the Petitioner based on ‘apprehensions arising out of non-scheduling of power from the Project by UPPCL’ is not covered under Article 11.3 of the PPA and, therefore, does not constitute Force Majeure event.
54. In the instant case there is a valid PPA between the Petitioner and the Respondents and the contracting parties are bound by the terms and conditions of the impugned PPA. The adoption of tariff qua PPA has taken place well before the lapse of extended SCoD and SECI has made alternate arrangements for supply of power accordingly till the adoption of tariff qua PSA by the appropriate forum. Part commissioning/ termination of the contract was the unilateral decision of the Petitioner based on its own judgment. Hence, in our view the Petitioner has failed to make out its case under this event.
55. In view of the discussions held in preceding paragraphs, we hold that the Petitioner has failed to prove happening of any Force Majeure event under Article 11 of the PPA dated 02.01.2018 and as such the request for extension of SCoD beyond 12.12.2019 cannot be considered. Accordingly, the Petitioner’s Termination Notice dated 20.06.2021 claiming discharge is not in accordance with Article 4.5.3 read with Article 13.5 of the PPA.

Issue No. 3: Whether SECI letter dated 05.05.2021 regarding encashment of the Petitioner’s Performance Bank Guarantee and reduction of the tariff payable to the Petitioner needs to be set-aside and whether SECI letter dated 07.05.2021 calling upon the Petitioner to refund alleged excess payment made to the Petitioner needs to be set-aside?

AND

Issue No. 4: Whether SECI is to be directed to return/release the Petitioner’s Performance Bank Guarantee dated 06.11.2020 for an amount of Rs. 13,10,00,000/- (Rupees Thirteen Crores Ten Lakhs Only) issued by IndusInd Bank?

AND

Issue No. 5: Whether SECI needs to be directed to return/refund to the Petitioner the amount of Rs. 10,98,40,00/- (Rupees Ten Crore Ninety-Eight Lakhs Forty Thousand Only) paid by the Petitioner on 12.05.2021 without prejudice to rights and remedies under law?

56. In view of the findings of the Commission on Issue No. 1 and Issue No.2, no relief is made out under Issue No.3, Issue No.4 and Issue No.5. Accordingly, Issue No.3, Issue No.4 and Issue No.5 are also answered in the negative and against the Petitioner.
57. Accordingly, the Petition No. 133/MP/2021 is disposed of as discussed above

Sd/-
(पी. के. सिंह)
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