

12. In terms of Article 3.1 of the PPA, Avaada was required to fulfil the 'Conditions Subsequent' activities within a period of seven (7) months from the Effective Date of the PPA and Article 3.2 of the PPA provides for the consequences of non-fulfilment of 'Conditions Subsequent' activities within the time period of seven (7) months from the Effective Date, namely Appellant can issue a notice in writing of seven (7) days, whereafter the PPA shall automatically stand terminated.

13. On 05.09.2016, Avaada addressed a letter to SECI inter alia, stating that it is not in a position to execute the solar power project and requested for release of its Performance Bank Guarantees (in short "PBGs"), however, SECI vide letter dated 02.11.2016 rejected the request and by letter dated 09.11.2016, reminded Avaada of its obligation to fulfil the Conditions Subsequent before the expiry of last date as stipulated in the PPA.

14. Thereafter, on 11.11.2016, SECI proceeded to issue the termination notice to Avaada in terms of Article 3.2 of the PPA, which was replied by Avaada on 29.11.2016, claiming compliance of the Conditions Subsequent by stating that *'company has adequate funds for the purpose of equity infusion and shall execute the project through internal sources as per conditions of PPA terms and conditions'* and vide letter dated 08.12.2016, Avaada submitted further documents purporting to demonstrate that it has adequate funds to finance the project on its own, in compliance with Conditions Subsequent, by enclosing its certified Balance Sheet and Profit and Loss Account, however, SECI was not satisfied. Accordingly, on 01.03.2017, SECI issued another seven (7) days' notice of termination in terms of Article 3.2.1 of the PPA.

15. In response, Avaada vide letters dated 02.03.2017, 06.03.2017, 24.03.2017, 15.04.2017 and 03.05.2017 had written to SECI and also sent a cheque of Rs. 6.48 crores to the Appellant purportedly as “extension charges”.

16. In this background, Avaada approached CERC by Petition No. 95/MP/2017 seeking the following relief:

- “(i) Restrain the Respondent from terminating the PPA;*
- (ii) Direct the Respondent to permit the assignment of the PPA to Giriraj Renewable Private Limited in terms of Articles 15 of the PPA;*
- (iii) Direct the Respondent to extend the Scheduled Commissioning Date and the time-period for Conditions Subsequent for the Force Majeure like period; or*
- (iv) In the alternate to prayer (iii), direct the Respondent to allow extension of time to complete the Conditions Subsequent in terms of Article 3.2.2 of the PPA and the consequent extension of the Scheduled Commissioning Date;*
- (v) During pendency of the proceedings, grant ad-interim injunction against the Respondent from taking any action towards terminating the PPA.”*

17. Separately, SECI submitted that vide letter dated 08.05.2017, it has informed Avaada that PPA stands terminated after the expiry of the stipulated period of seven (7) days from the date of issuance of the termination notice dated 01.03.2017 and the question of any extension of time did not arise. The cheque of Rs. 6.48 crores sent by the Respondent No.1 was also returned, as informed by SECI.

18. During the proceedings before the Central Commission, MSEDCL was specifically impleaded pursuant to orders passed by CERC as it was initially not a party to Petition No. 95/MP/2017, and subsequently, it participated in the proceedings and also filed reply.

19. Avaada submitted that it has relied upon various letters dated 31.12.2016, 06.05.2017 & 03.02.2018 issued by Tehsildar, District Satara and Government of Maharashtra, for arguing before CERC *inter-alia* claiming that the project work had suffered due to technical problems in land documents digitization process, which was undertaken by District revenue authorities in October 2016 onwards for larger public interest, also the execution of work got affected by disturbance in law and order situation including ROW issues created by anti-social elements in and around the local site area. Also added that registration process at sub-registrar was on hold due to digitization of records, accordingly, the Government of Maharashtra acknowledged the delays due to Government related procedures and recommended time extension for 12 months for interim and final milestones under the PPA i.e. financial closure and Scheduled COD of 100 MW Solar Power Project.

20. During the pendency of the proceedings before CERC, Avaada successfully commissioned and synchronized 28 MW out of total 100 MW project capacity with the grid and started injecting power into the grid.

21. The Central Commission vide order dated 17.12.2018, disposed of the Petition No. 95/MP/2017 with the following findings and directions:

“38. ... If a firm wants to execute a project through its own resources and the same is certified by the Managing Director of the firm, we find no reason for the Respondent to insist on Financial Closure. The

Respondent not having questioned letter of Managing Director and subsequently, the Petitioner having installed 28 MW capacity and stating that it is willing to install full capacity, does not leave scope as regards capacity of the Petitioner in project financing. We hold that the contention of the Respondent that the Petitioner has not fulfilled Conditions Subsequent as regards Project Financing is not acceptable.

53. The Petitioner has not sought any relief as regards change in shareholding pattern and rather it is the Respondent that has raised this issue. In fact, the issue regarding change of shareholding pattern has been raised by the Respondent for the first time, on 19.5.2017, in the reply to the present petition. The Petitioner has stated that due to internal re-arrangement/ re-structuring of shareholding of the shareholders there is consolidation of shareholding from nine (9) to seven (7) and thereafter to two (2). In view of the fact that a) the process of demerger has been approved through a judicial process by NCLT; b) the Petitioner has informed the Respondent through various correspondences; c) the erstwhile company that signed the PPA i.e. WEPL is not in existence after demerger; d) this change in shareholding resulted from re-organization/ reconstitution of shares and not through transfer of shares; and e) the Resultant Entity i.e. GRPL has been performing functions of erstwhile company subsequent to demerger approved by NCLT and has presently installed 28 MW, we are not convinced with arguments of the Respondent. More so because of the fact that it has not raised this issue before approaching this Commission nor has opposed the matter in NCLT despite being aware of the matter. We decide accordingly...

86. It is an admitted fact that 28 MW capacity of the Project has been synchronized with the grid w.e.f. 16.4.2018 while balance 72 MW is yet to be commissioned. In fact, w.e.f. 16.4.2018 and till the date when Order in this petition has been reserved, the situation of injecting 28 MW into the grid remained unaltered. Having already commissioned 28 MW, we are satisfied that the Petitioner intends to continue with installation of the balance 72 MW.

87. Taking into account the fact that the Petitioner has acquired land, taken grid connectivity and made other arrangements for the purpose of setting up 100 MW capacity of which 28 MW is already installed and synchronized with the grid, the Commission deems it fit to allow the completion of the balance capacity of the Project with extension of the SCOD to 90 days from the date of issue of this Order. This extension of SCOD is subject to the condition that the Petitioner shall pay, within one week of this Order, an amount as provided in clause 3.2.2 of the PPA for the extended period of 90 days for balance capacity of 72 MW. Since 28 MW of capacity has been commissioned during pendency of this petition and that we have condoned delay period up to date of issue of this Order, the SCOD for this capacity of 28 MW shall be as per provisions of the PPA assuming that the total period of delay in commissioning is condoned.

Summary of Decisions:

88. Based on the above, the summary of our decision is as under: