

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

**APPEAL NO. 313 OF 2017,  
APPEAL NO. 314 OF 2017 &  
APPEAL NO. 315 OF 2017**

**Dated: 16.12.2024**

**Present: Hon'ble Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member**

**Appeal No. 313 of 2017**

**IN THE MATTER OF:**

M/s Aurum Renewable Energy Private Limited  
Aurum Platz  
Pandita Ramabai Marg, B. N Cross Lane,  
Mumbai, Maharashtra – 400007.

**...Appellant**

Versus

1. Secretary,  
Central Electricity Regulatory Commission,  
3rd And 4th Floor,  
Chanderlok Building,  
36, Janpath, New Delhi – 110001.
2. Chairperson,  
NTPC Vidyut Vyapar Nigam Limited  
NTPC Bhawan, Core 7, Scope Complex  
7 Institutional Area, Lodhi Road  
New Delhi-110003.
3. Ministry of New And Renewable Energy  
Through: The Secretary  
Block-14, CGO Complex,  
Lodhi Road, New Delhi-110003.
4. Chief Engineer/ Incharge, SLDC  
SLDC Punjab State Power Corporation Ltd.  
220 KV Grid Sub-Station, PSPCL, Ablowal,  
Patiala-147 001.

5. Chief General Manager (Commercial & RAC)  
Central Power Distribution Company Of  
Andhra Pradesh Ltd.  
Mint Compound, Hyderabad-500063.
6. Chief General Manager (Commercial, RAC & Plg.)  
Eastern Power Distribution Company  
of Andhra Pradesh  
Corporate Office, P&T Colony,  
Seethammadhara, Vishakhapatnam-530013.
7. Chief General Manager, Operation, Commercial & IPC  
Northern Power Distribution Company of Andhra Pradesh Ltd.  
H.No. 1-1-478, 503 & 504 Opposite NIT Petrol Bunk,  
Chaitnaya Puri, Kazipet, Warrangal-506004.
8. Chief Engineer (Commercial)  
Chattisgarh State Power Distribution Company Ltd.,  
Fourth Floor, Vidyut Seva Bhawan, Dangania,  
Raipur (Chhatisgarh)-492013.
9. Chief Engineer (Commercial)  
Maharashtra State Electricity Distribution Company Ltd.  
"Prakashgad", 5<sup>th</sup> Floor, Anant Knekar Marg,  
Bandra (East), Mumbai-400051.
10. Managing Director  
Ajmer Vidyut Vitran Nigam Ltd.  
Old Power, Hathi Hata, Ajmer-305001.
11. CMD, Jaipur Vidyut Vitran Nigam Ltd.  
Jaipur-302005.
12. Managing Director  
Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House, Industrial Area,  
Jodhpur-342003.
13. Chief Engineer (PPA)  
U.P. Power Corporation Ltd  
14<sup>th</sup> Floor, Shakti Bhawan, Ext. 14,  
Ashok Marg, Lucknow-226001.

14. Chief General Manager (Commercial)  
Assam Power Distribution Company Ltd.  
Bijulee Bhawan, Paltanbazar, Guwahati-781001.
15. The General Manager (Electricity)  
Bangalore Electricity Supply Corporation Power Purchase,  
BESCOM, Corporate Office,  
K.R. Circle, Bangalore-560001.
16. Chief Engineer (Commercial)  
Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054.
17. Sr. GM (PP), GRIDCO Ltd.  
Janpath, Bhubhaneswar-751022.
18. Director (Distribution)  
Tamil Nadu Generation And Distribution Company Ltd.  
144, Anna Salai Chennai-600002, Tamil Nadu, India
19. Chief Engineer (PTR)  
West Bengal State Electricity Distribution  
Company Ltd.  
Vidyut Bhawan, 7 Th Floor, Block-DJ,  
Sector-II, Bidhannagar, Kolkata-700091. **...Respondents**

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Mr. Aashwyn Singh  
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Ms. Himangi Kapoor  
Mr. Vineet Kumar  
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Mr. Anand K. Ganesan  
Ms. Neha Garg  
Mr. Ashwin Ramanathan for R-10 to 12

Mr. Rajiv Srivastava  
Ms. Gargi Srivastava for Res. 13

**IN THE MATTER OF:** **Appeal No. 314 of 2017**

M/s. Diwakar Solar Projects Limited  
Plot No.4, Software Units Layout,  
HITEC City, Madhapur,  
Hyderabad – 5000081.

**...Appellant**

**Versus**

1. Secretary,  
Central Electricity Regulatory Commission,  
3rd And 4th Floor,  
Chanderlok Building,  
36, Janpath, New Delhi – 110001.
2. Chairperson,  
NTPC Vidyut Vyapar Nigam Limited  
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3. Ministry of New And Renewable Energy  
Through: The Secretary  
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220 KV Grid Sub-Station, PSPCL, Ablowal,  
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Jaipur-302005.
12. Managing Director  
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Bijulee Bhawan, Paltan Bazar. Guwahati-781001.
15. The General Manager (Electricity)  
Bangalore Electricity Supply Corporation  
Power Purchase, BESCOM,  
Corporate Office, K.R. Circle, Bangalore-560001.
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Kolkata-700054.
17. Sr. GM (PP), GRIDCO Ltd.

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19. Chief Engineer (PTR)  
West Bengal State Electricity Distribution Company Ltd.  
Vidyut Bhawan, 7<sup>th</sup> Floor, Block-DJ,  
Sector-II, Bidhannagar, Kolkata-700091.

**...Respondents**

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Ms. Swapna Seshadri  
Ms. Neha Garg  
Mr. Ashwin Ramanathan  
for R-10 to 12  
  
Mr. Rajiv Srivastava for Res. 13

**Appeal No. 315 of 2017**

**IN THE MATTER OF:**

M/s KVK Energy Ventures Private Limited  
6-3-1109A/1 3<sup>rd</sup> Floor, Navabharath Chamber.  
Raj Bhawan Road, Somaiguda  
Hyderabad - 500 082.

...Appellant

Versus

1. Secretary,  
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Mr. Shivam Sinha  
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Mr. Sidhant for Res. 1
- Mr. Tushar Jain for Res. 2
- Mr. Sanjiv Kumar Saxena  
Mr. Ruchir Mishra for Res. 3
- Ms. Swapna Seshadri  
Ms. Neha Garg

Mr. Ashwin Ramanathan  
Mr. Anand K. Ganesan for Res. 10 to 12

Mr. Rajiv Srivastava  
Ms. Gargi Srivastava for Res. 13

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. These Appeals have been filed by the Appellants challenging the order of the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission" or "Commission") dated 18.09.2017 in Interlocutory Application No. 48 of 2017 in Petition No. 41/MP/2014, dated 15.09.2017 in Interlocutory Application No. 52 of 2017 in Petition No. 327/MP/2013 and dated 15.09.2017 in Interlocutory Application No. 53 of 2017 in Petition No. 14/MP/2014.

#### **Description of the Parties**

2. The Appellants in the three captioned appeals are M/s. Aurum Renewable Energy Private Limited (in short "AREPL") in Appeal No. 313 of 2017, M/s. Diwakar Solar Projects Limited (in short "DSPL") in Appeal No. 314 of 2017 and M/s. KVK Energy Venture Private Limited (in short KEVPL") in Appeal No. 315 of 2017. These are companies incorporated under the Companies Act, 1956, inter-alia, setting up 20 MW, 100 MW, and 100 MW solar thermal power projects respectively.

3. Respondent No. 1 in all three appeals is the Central Electricity Regulatory Commission, which is the statutory body established under Section 76 inter-alia

vested with powers to adjudicate disputes under Section 79 of the Electricity Act, 2003 (in short “Act”).

4. The Respondent No. 2 is M/s. NTPC Vidyut Vyapar Nigam Ltd. (in short “NVVN”) is the company incorporated under the Companies Act, 1956 and is the nodal agency vested with the power to execute agreements for sale and purchase of power under Jawaharlal Nehru National Solar Mission (in short JNNSM).

5. Respondent No. 3 is the Ministry of New and Renewable Energy (in short “MNRE”) is the nodal ministry for the promotion and development of renewable energy technology including power generated through solar technologies.

6. Respondents Nos. 4 to 19 in these appeals are the beneficiaries of these projects and are the companies engaged in the Supply and Distribution of Electricity.

### ***Factual Matrix of the Case***

7. All three appeals have been filed assailing the orders passed by the CERC in separate IAs filed by the Appellants seeking modification/ amendments in the original petition filed before the CERC.

8. The CERC dismissed these IAs with the observations as under:

*“30. Without going into the merit of the amendments sought in these three petitions, it is apparent from the factual matrix, grounds and prayers sought to be substituted through the amendment that they give rise to a separate cause of action completely different from those*

*pleaded in the original petitions. The proposed amendments have completely altered the nature of dispute and thereby do not help in determining the real question in controversy between the parties. In the original petitions, the dispute was confined to the variation in the DNI relied upon at the time of bid and the DNI actually on the ground and compensation for such variation. On the other hand, the ground taken for the amendment is that globally the thermal solar technology has failed and it is not viable for the Petitioners to discharge their obligations under the PPA. In our view, the proposed amendments fundamentally change the nature and character of the case; as the cause of action, the grounds for relief and the relief prayers in the amendment applications are fundamentally different from the original petitions. Moreover, since the nature of dispute between the Petitioners and NVVN changes on account of the proposed amendment, the amendments sought cannot be imperative for determining the real issue in controversy and for proper and effective adjudication of the case. Further, the amendments are likely to cause prejudice to NVVN who has entered into back to back PPAs with the distribution companies on the basis of PPAs with the Petitioners. **Finally, refusal of the amendments will not result in injustice to the Petitioners or multiplicity of litigation as they can pursue the relief prayed for through separate petitions since the cause of action in both cases are different.** Since, the very basis and the prayers in the original petitions are sought to be completely changed through the amendments, we are of the considered view that allowing amendments are not relevant for determining the real questions in controversy between the parties and for proper and effective adjudication of the dispute between the parties.”*

9. The Appellants are aggrieved by the dismissal of their IAs filed for seeking an amendment to the petitions, hence the appeals.

10. Considering that the issue in the three appeals is identical, these appeals are disposed of by this common judgment.

11. MNRE in an initiative to promote solar energy projects, launched the JNNSM Phase-I in January 2010. MNRE also issued the Guidelines for the Selection of new grid-connected Solar Power Projects in July 2010 (in short Guidelines) to promote the development of solar power projects (i.e. Solar PV and Solar Thermal Projects).

12. NVVN was identified by the Government of India as the nodal agency for facilitating the purchase and sale of power by entering into Power Purchase Agreements ("PPAs") with the Solar Power Developers ("SPDs") for forward sale to various state utilities in the discharge of their Renewable Purchase Obligations ("RPO").

13. NVVN issued a Request for Selection ("RFS") on 18.08.2010 for New Grid Connected Solar Thermal Projects under Phase-I of JNNSM. Successful bidders were selected based on the maximum discount offered on the generic tariff issued by the Central Commission in an Order dated 26.04.2010. Accordingly, seven bidders with a weighted average tariff of Rs.11.48/kWh under the Concentrated Solar Power ("CSP") technology were awarded.

14. On 18.08.2010, NVVN issued a draft Power Purchase Agreement (PPA) as part of the Request for Selection (RFS). Clause 4.4.1 required bidders to specify the maximum electricity off-take by NVVN based on the project's Capacity Utilization Factor (CUF), which measures the plant's efficiency in generating

electricity. The CUF is linked to the Direct Normal Irradiance (DNI), a measure of solar radiation received per unit area. The design and construction of the solar thermal plant depend on the DNI available at the project site.

15. At the time of bidding, no ground-based DNI readings were available for the project site or any other location in India, as at least one year of ground data is required to accurately measure annual DNI. Solar thermal power technology (CSP) was new and experimental in India, and ground stations for DNI assessment were unavailable. In collaboration with the National Renewable Energy Laboratory (NREL) USA, MNRE developed high-resolution solar resource maps for the northwestern region of India using satellite data. The Appellant relied on MNRE's DNI data, verified against global satellite data, which estimated the DNI to be above 2000 kWh/sqm/year.

16. On 27.09.2010, the Appellant quoted a tariff of INR 12.19 per kWh, offering a discount of INR 3.12 per kWh on the Commission's approved tariff. The project's capacity and CUF (agreed at 23% maximum, 18% minimum) were based on DNI levels provided by MNRE and global agencies. After being selected as a successful bidder and signing a PPA with NRVN on 10.01.2011, the Appellant established a weather station to monitor DNI. By December 2012, ground readings recorded the DNI at 1671 kWh/sqm/year, with current data procured from the National Institute Wind Energy - NIWE (formally C-WET) showing a lower DNI of 1515 kWh/sqm/year.

17. The DNI data was a key basis for the PPA between NRVN and the Appellant. However, due to significant and ongoing declines in DNI, the project's CUF dropped, resulting in reduced electricity generation and lower revenue than anticipated. This made the Rs. 12.19 per unit tariff unsustainable for the project. The Appellant approached the Commission to seek a tariff revision due to the

DNI variation and had earlier, in 2012, requested the MNRE to classify the variation as an event beyond its control.

18. In response to the Appellant's representation, MNRE formed an Expert Committee, which concluded that the reduction in DNI levels faced by the Appellant was beyond its control. Based on this, MNRE granted a 10-month extension for project commissioning, moving the commercial operation date to 09.03.2014, though other requested reliefs remained unresolved.

19. During proceedings on 28.02.2014, the Commission ordered MNRE to respond within two weeks. However, MNRE sought 10 extensions, and after over three years, finally submitted its response on 14.06.2017, which was served to the Appellant on 25.07.2017.

20. The Appellant has been waiting for MNRE to review the variation between ground DNI readings and satellite data available during the bidding process, which affected its project development. While MNRE was considering the representation, changes in market dynamics occurred. Specifically, the tariff for solar PV projects dropped significantly from INR 17.91 per unit to INR 2.44 per unit, while solar thermal tariffs fell from INR 15.31 to INR 12.08 per unit. These changes impacted the viability of the Appellant's project.

21. The prolonged delay by MNRE in addressing the Appellant's representation has rendered the project impractical. In its response dated 14.06.2017, MNRE took an adversarial stance on the DNI issue, despite being the nodal ministry responsible for supporting solar thermal projects in their early stages in India. This position contradicted MNRE's earlier statement that it was considering the Expert Committee's favourable findings for developers.



22. As time passed, the Appellant had to revise the reliefs sought in the ongoing proceedings. Key developments included:

- (a) a continued decline in DNI, with ground readings dropping from 1659 kWh/sqm/year (March 2012-February 2013) to 1515 kWh/sqm/year;
- (b) various DISCOMs refusing to procure bundled power from NVVN, particularly from solar thermal plants;
- (c) due to the falling solar PV tariffs, NVVN would face an additional annual cost of INR 39.29 crores, totalling INR 982.22 crores over 25 years, if the project was commissioned at the original tariff and CUF;
- (d) the PPA's performance had become impractical and unfeasible.

23. Due to intervening events, the Appellant sought to amend its original petition before CERC, adding a request to declare the contract with NVVN as frustrated. The amendment application was heard on 28.08.2017 and 15.09.2017. However, CERC orally rejected the amendment on 15.09.2017, citing objections from NVVN and MNRE that the amendment would change the nature of the original petition and was filed too late and the order was finally published on 18.09.2017.

24. Hence, aggrieved by the said order in Interlocutory Application No. 48 of 2017 in Petition No. 41/MP/2014, the Appellant has preferred the present appeal.

### **Submissions of the Appellant (Appeal No. 313 of 2017)**

25. The Appellant challenged the CERC's Order dated 18.09.2017 on the ground that the CERC rejected the Appellant's request to amend a petition but allowed the filing of a separate petition.

26. The Appellant argued that this ruling contradicts Supreme Court judgments and will lead to unnecessary multiplicity of proceedings, especially when no prejudice is caused to the Respondents. The Gujarat DISCOMs are the relevant contesting parties, and the Rajasthan DISCOMs' objections are irrelevant.

27. The Appellant contended that principles of natural justice apply, and while the CPC may be referenced, it is not strictly applicable under the Electricity Act.

28. The trial stage and limitation arguments are misplaced as CERC allowed the Appellant to file a new petition, which the Respondents can challenge on merits. Denial of the amendment would lead to a multiplicity of proceedings, which goes against the Supreme Court's ruling in **LIC v. Sanjeev Builders and Anr., C.A No. 5909 2022**, wherein it has been held that amendments should be allowed if necessary to resolve the core issue and avoid prejudice to the other side.

29. The Appellant further argued that the nature of the adjudicatory proceeding under Section 79(1)(f) of the Electricity Act, 2003, remains unchanged, as it only seeks to add subsequent events and amend the relief sought. Citing **Sampath Kumar v. Ayyakannu (2002) 7 SCC 559, para 7 and 9**, the Appellant asserted that amendments should be allowed if they prevent a multiplicity of proceedings and do not alter the suit's core structure.

30. The Appellant's cause of action (reduction of DNI) remains the same, but subsequent developments necessitate a change in relief. This includes the impossibility of complying with the PPA due to MNRE and DISCOMs' actions. A court can modify relief based on new developments, and the reduction of DNI

was deemed a force majeure event by this tribunal in ***NVVN v. Godawari Green Energy, Appeal No. 403 of 2017.***

**Submissions of the Appellants (Appeal No. 314 and 315 of 2017)**

31. The Appellants argued that the cause of action in the Original Petition arose from the discrepancy between the Direct Normal Irradiance (DNI) data used during bidding and the actual on-ground DNI readings, which impacted the viability of the project. Initially, the Appellant relied on DNI data from the Ministry of New and Renewable Energy (MNRE) and satellite data, estimating a 23% Capacity Utilization Factor (CUF) for the project. However, subsequent measurements revealed significantly lower DNI levels, with readings ranging from 1527 kWh/sq. m/year to 1732 kWh/sq. m/year, far below the originally adopted figure of 2167 kWh/sq. m/year, undermining the project's viability.

32. The Appellants further argued that the amendment sought does not change the nature of the proceedings, as the cause of action remains the same—relief due to the non-workability of the Power Purchase Agreement (PPA) caused by uncontrollable reduction in Direct Normal Irradiance (DNI) levels. Initially, the Appellant sought tariff revisions and project extensions to maintain the economic viability of the project. However, due to subsequent developments, including MNRE's confirmation that states refused to procure solar thermal power and the drastic drop in solar PV tariffs, the Appellant now seeks discharge from the PPA, as it is no longer economically viable.

33. Citing ***Abdul Rehman v. Mohd. Ruldu (2012) 11 SCC 341, para 13***, the Appellants argued that if the factual basis is already contained in the original petition, amendments seeking relief based on that foundation do not change the

nature of the suit. Therefore, the amendment should be allowed, and the CERC's rejection of the application should be set aside.

34. The Appellants asserted that amending the Original Petition is crucial to address the fundamental issue of whether the Power Purchase Agreement (PPA) has become unfeasible due to significant reductions in Direct Normal Irradiance (DNI) levels and changes in the solar power market.

35. The Original Petition was initiated due to discrepancies between the DNI data used for bidding and the actual on-ground readings, rendering the project unviable. The Appellant initially sought tariff revisions and project extensions to maintain economic viability but now seeks discharge from the PPA based on the same underlying facts. The Appellant relies on the following case laws:

- i. ***Rajesh Kumar Aggarwal v. K.K. Modi (2006) 4 SCC 385, para 16-18:*** Emphasizes that amendments should be allowed to determine the real controversy without causing injustice, highlighting the "real controversy test."
- ii. ***LIC v. Sanjeev Builders 2022 SCC OnLine SC 1128, para 70:*** Reinforces that amendments necessary for resolving the core issue and avoiding multiplicity of proceedings must be permitted unless they cause prejudice or alter the suit's nature.
- iii. ***North Eastern Railway Admin. v. Bhagwan Das (2008) 8 SCC 511:*** Stresses that amendments should be allowed if they do not cause injustice and are essential for determining the real questions in controversy.

36. The Appellants further stated that the amendment aims to discharge the PPA due to uncontrollable DNI reductions and economic shifts, such as the

drastic fall in solar PV tariffs from Rs. 17.91/unit in 2010 to around Rs. 2.5/unit, making solar thermal projects economically unviable. MNRE's letter dated 17.08.2016 indicates state refusals to procure solar thermal power, further justifying the need for amendment. The amendment does not change the nature of the suit but seeks a different remedy based on the same cause of action. The factual basis for the amendment was already present in the Original Petition, aligning with Supreme Court rulings that permit such amendments to ensure justice and avoid redundant proceedings.

37. During the proceedings before the CERC, several critical developments have emerged:

- i. DNI Degradation: Continuous decline in Direct Normal Irradiance (DNI) levels has rendered the Power Purchase Agreement (PPA) unfeasible.
- ii. State Refusal to Procure Power: Various states and distribution licensees are refusing to buy bundled power from NVVN (Respondent No. 3), leaving no market for the project's power. [Ref: MNRE Letter dated 17.08.2016].
- iii. Solar PV Tariff Drop: Solar PV tariffs have drastically decreased from Rs. 17.91/unit in 2010 to around Rs. 2.5/unit, making solar thermal power (Rs. 15.31/unit) economically unviable.
- iv. MNRE Delays: MNRE delayed considering the Solar Thermal Plant (STP) developers' representations, despite CERC's 2014 order to resolve the issue within two weeks. MNRE requested ten extensions over three years, eventually filing a reply in 2017, taking an adverse position against the Appellant. These factors have led to the Appellant's claim that the PPA is now unworkable and seeks discharge from its obligations.

38. The table below highlights the consistent delays by the Ministry of New and Renewable Energy (MNRE), as they repeatedly sought extensions and adjournments in addressing the issue.

28.02.2014	Ld. CERC directed the SPDs to approach the MNRE for consideration of their request for the extension of commissioning date, while also directing MNRE to disposing of the same within 2 weeks.
14.03.2014	MNRE sought two weeks to consider the representation made by SPDs. (First extension)
21.03.2014	Ld. CERC granted time till 30.06.2014 (three months) to MNRE to consider representations.
25.06.2014	MNRE sought extension till 31.08.2014 (second extension)
01.07.2014	Ld. CERC granted time till 31.08.2014 (two months)
28.08.2014	MNRE sought two months to consider the representation made by SPDs (third extension)
08.09.2014	Ld. CERC granted time till 31.10.2014 (two months)
30.10.2014	MNRE sought extension till 31.01.2015 (fourth extension)
26.11.2014	Ld. CERC granted further extension till 31.01.2015 (two months)
30.01.2015	MNRE sought extension till 30.03.2015 (fifth extension)

13.02.2015	Ld. CERC granted time till 31.03.2015
27.03.2015	MNRE sought extension till 30.06.2015 (sixth extension)
14.07.2015	MNRE sought extension till 30.09.2015 (seventh extension)
21.07.2016	MNRE sought extension till October 2016 (eight extension)
17.08.2016	MNRE informed the Ld. Commission that as the consultation mechanism adopted by MNRE is taking some time, it would be in fitment of things if the Commission takes decision on the issue of time extension in SCOD. (ninth extension)
17.05.2017	MNRE sought 15 days to file affidavit in reply to the Petitions and time till August 2017 to consider representations (tenth extension)
14.06.2017	MNRE filed its reply before the Ld. Commission claiming that there was no advisory issued on the DNI and the SPDs were expected to carry out their due diligence relating to the DNI before participating in the bid.

39. The Hon'ble Madras High Court in ***Hi. Sheet Industries v. Litelon Limited 2006 SCC OnLine Mad 1077***, emphasized that courts should consider subsequent events to resolve the real controversy between parties. The court held that limitations are irrelevant when determining the true issue at hand, provided no prejudice is caused to the other party. It is essential for courts to acknowledge changed circumstances, which can make original relief inappropriate or necessary to ensure complete justice and shorten litigation. In

the case at hand, the court allowed an amendment, considering damages as the appropriate relief due to changed circumstances.

40. The Appellants argued that NVVN has not claimed any prejudice in its pleadings, yet the CERC erroneously found that the amendment would cause prejudice. In a prior order dated 11.10.2017, the CERC, in a similar case, noted that NVVN and distribution licensees failed to prove any legal injury or loss due to the STP developers' actions, and thus could not claim compensation.

*“232. Whereas, in I.A. No. 8 of 2017 in Petition No. 16/MP/2014 (MEIL), ostensibly, the letters dated 21.08.2015, 16.12.2016, & 27.12.2016 and letters dated 6.1.2017 & 16.1.2017 neither state that the DISCOMs have failed in compliance of RPO and that they have suffered a loss and needs to be compensated by the Petitioner, nor, state that the “compensation” claimed is for onward transfer to the effected DISCOMs. In the impugned letters, the Respondent No.1 has referred only to invoking of Article 4.4.1. Further, Respondent No.3 has also not referred to any loss caused due to non-compliance of RPOs. Therefore, the Respondents have failed to bring on record the proof of any 'legal injury' in the sense of some loss or damage having been sustained on account of breach i.e. short supply of the power energy to the DISCOMS. Hence, NVVNL and the distribution companies are not entitled to raise any claim from the Petitioner on this account unless they prove that they suffered loss by the way of penalty from the SERC on account of non-compliance of RPO due to shortfall generation.”*

41. This finding was upheld by APTEL on 26.07.2022 in Appeal No. 403 of 2017 and batch.



*“113. Therefore, we set aside the Impugned Order to the extent that liquidated damages have been levied on GGEL and upholding the decision of non-levying of the compensation for liquidated damages on MEIL for reasons cited in the Impugned Order and observation made by us in the foregoing paragraphs.”*

42. The Hon’ble Supreme Court dismissed NVVN’s civil appeal on 18.05.2023 on grounds of limitation and the decision has attained finality.

43. The Ministry of New and Renewable Energy (MNRE) filed its reply on 11.06.2017, which was served on the Appellant only on 25.07.2017. Upon learning MNRE's stance, the Appellant filed an amendment application on 18.08.2017, well before the pleadings were complete, as the Appellant’s rejoinder was only submitted on 15.02.2018. The Central Commission, through its orders dated 08.08.2017 and 17.08.2017, directed the Appellant to file a rejoinder and NVVN to respond to the amendment application, confirming that the pleadings were still ongoing, and the trial had not commenced. In ***Ajendranathji v. Swami Keshavprakeshdasji (2006) 12 SCC 1, para 60 and 61.*** it was established by the Hon’ble Supreme Court that trial begins when issues are framed and evidence is to be recorded, which had not yet occurred as the pleadings were incomplete.

44. Even if the trial had technically commenced, there is no restriction on granting the amendment, as subsequent events and delays by MNRE could not have been anticipated or raised earlier by the Appellants, despite exercising due diligence.

45. The CERC erred in its order by stating that refusing the amendment would not lead to multiple proceedings since the causes of action are different. However, the cause of action remains the same, namely the declining Direct Normal Irradiance (DNI) levels and separate petitions would result in multiple proceedings. Established legal principles allow for amendments to pleadings at any stage to avoid such multiplicity. In ***Pankaja v. Yellappa (2004) 6 SCC 415, para 12***, the Hon'ble Supreme Court affirmed that courts can permit amendments even when there is a delay, as the main objective is to reduce litigation.

### **Submissions of Respondent No. 1**

46. Respondent No. 1 submitted that the Appellants have appealed against the CERC order dated 18.09.2017, which rejected their amendment applications and the Appellants' petitions are still pending before the CERC, and the Commission has refrained from addressing the merits of the Appellants' arguments, reiterating that the amendments were rejected because they fundamentally altered the nature of the case (as explained in paras 28 to 30 of the impugned order). However, specific issues before the Commission were raised during a hearing on 20.09.2017.

47. The Appellants cited a prior CERC decision from 2003 (***NTPC v. Madhya Pradesh State Electricity Board***) where amendments were allowed under Regulation 111 of the CERC (Conduct of Business) Regulations, 1999, arguing that the Commission was incorrect in rejecting their amendments. The Commission, however, maintains that it consistently uses the Civil Procedure Code as a guiding principle and that there was no deviation from its past practice in the impugned order. The Respondent Commission's judgment, including key paragraphs not discussed in oral arguments, supports this position.

*"3. The Electricity Act, 2003, which presently governs the procedure applicable to the proceedings before the Commission and its predecessor Act, namely, the Electricity Regulatory Commissions Act, 1998 are silent on the issue. Therefore, the Code of Civil Procedure (for short, the Code) is the relevant mariner's compass to guide our path.*

*4. Order VI Rule 17 of the Code provides for amendment of pleadings. According to these provisions, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Order VI, Rule 18 of the Code lays down the consequences of failure of a party to amend his pleadings after the order. It has been provided that "if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited, then within 14 days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such 14 days, as the case may be, unless the time is extended by the court." In the case before us, the time for filing of amended petition was not limited by the Commission's order dated 13.12.2002. Therefore, in accordance with the provisions of Order VI, Rule 18 of the Code, the petitioner in the normal course could file the amended petition within 14 days. However, as is noticed above, the amended petition was not filed within the statutorily mandated period of 14 days but was filed nearly six months of the order dated 13.12.2002. Therefore, the application*

*for condonation of delay has been filed on behalf of the petitioner. Meanwhile, affidavits were filed on behalf of the petitioner wherein the petitioner made repeated pleas for determination of variable charges along with fixed charges.*

*5. A bare reading of Rule 18 reveals that the Court, the Commission in the present case, has the power in appropriate cases to extend the time for filing of amended petitions. In the Interest of justice, a party may be permitted to amend its pleadings despite its default to amend within the time previously allowed. It is a settled position of law that where the amendment has not been carried out by the party after obtaining leave of the court within time limited by the order or within 14 days of the date of the order where time is not specified, extension of time to amend can be granted under the inherent powers of the court. In Pahali Raut Vs Khulona Bewa (AIR 1985 Orissa 165), the question to extend time to enable one of the defendants whose application for amendment of written statement had been allowed, to carry out the amendment "long after expiry of the period of fourteen days prescribed under Order VI, Rule 18 of the Code" was considered. The Orissa High Court held that:*

*"The aforesaid discussion shows that it is the obligation of the party to carry out the amendment where leave to amend has been granted, within the time specified by the order or, within fourteen days from the date of the order where time is not so specified. Lest the party be indifferent or rest on his oars the embargo is put that unless the amendment is carried out aforesaid, the party shall be debarred from amending his pleadings. But the harshness of the provision is mellowed by clothing the Court with jurisdiction to extend time in fit cases;*

*even otherwise there is the saviour provision in S.151 of the Code of Civil Procedure. However, extension should not be a matter of course but would depend upon facts and circumstances."*

*6. In our opinion, determination of variable charges in the present petition is necessary since variable charges are an input for computation of interest on working capital, an element of the fixed charges. The Commission under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (for short, the Regulations) is clothed with same Inherent powers as are vested in a civil court under Section 151 of the Code. We are not convinced by the contention of the Respondent No.1 that the petitioner is guilty of laches or unconscionable delay or the amended petition is not bonafide."*

48. The Commission clarified that Regulation 111 was applied only to condone delays, similar to how Civil Courts condone delays under Order VI Rule 18 of the Civil Procedure Code using Section 151. The claim that the Commission inconsistently applied precedent or has inherent powers to allow amendments outside the Code of Civil Procedure is incorrect and denied. The Appellants filed their amendment applications after final arguments had already commenced, as recorded in the hearings referenced in paras 8, 9, and 10 of the impugned order. The remaining appeals were heard and reserved for judgment on 15.09.2017.

**Submissions of Respondent No. 2- NVVN (In Appeal No. 313 of 2017-  
Adopted by R2 in 314 and 315 of 2017)**

49. Respondent No. 2 argued that the Appellant through IA No. 48 of 2017, sought to change the nature of the reliefs in the Original Petition by replacing the original prayer with a completely different one. While the original petition sought implementation of the PPA with tariff revisions, FERV adjustments, and time extensions, the amendment sought to declare the PPA as non-viable and void. This change introduced a new case with different facts and a new cause of action.

50. The Original Petition was akin to proceedings under Section 73 of the Indian Contract Act, 1872, seeking compensatory relief due to changes in DNI levels and a revised tariff under the PPA. In contrast, the amendment resembles a claim under Section 20 of the Indian Contract Act, 1872, seeking a declaration that the PPA was void ab initio due to a mistake of fact. This demonstrates that the amendment introduces a new, inconsistent case, fundamentally altering the reliefs in the original petition. Amendments that are malafide and change the nature of the case should not be allowed, as supported by various court rulings, including ***Life Insurance Corporation of India vs. Sanjeev Builders & Anr. 2022 SCC online SC 1128 (Para 70 (iv) and (x))***, ***Basavaraj vs. Indira and Others 2024 SCC OnLine SC 208 (Para 18)***, ***M. Revanna vs. Anjanamma (2019) 4 SCC 332 (Para 7)***, ***Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha vs. Purva Vidarbha Mahila Parishad 2021 SCC OnLine Bom 1194 (Para 40)***, ***Peethani vs. Repaka Venkata & Ors. (2009) 11 SCC 308 (Para 10)***.

51. The Appellant originally omitted the claim that the PPA was void when filing the petition. Under Order II Rule 2 of the CPC, a party cannot later sue for an omitted or relinquished claim. This principle is upheld by the Hon'ble Supreme Court in ***N.V. Srivasa Murty vs. Mariamma AIR 2005 SC 2897 (para 13 and 14)***. Based on this, the CERC's decision to reject the amendment application was justified, and the appeal should be dismissed.

52. The Appellant filed an interlocutory application to amend its pleadings after the trial had already commenced on 08.08.2017. In ***Vidyabai & Ors. vs. Padmalatha & Anr., AIR 2009 SC 1433, para 10***), the Hon'ble Supreme Court held that amendments under Order 6 Rule 17 of the CPC are only permissible if the party, despite due diligence, could not have raised the issue before the trial began. In this case, the trial had already commenced with the final hearing and completion of pleadings by all parties, as further supported by rulings in ***Baldev Singh vs. Manohar Singh, AIR 2006 SC 2832 (para 17)*** and ***Brij Gopal Pallod vs. Municipal Council Zaheerabad, 2013(2) ALT 353 (para 15)***. Here also, the Appellant's application sought to avoid its obligations under a Power Purchase Agreement (PPA) with NVVN and prevent the invocation of bank guarantees (BGs), thus attempting to change the substance of the original petition and causing potential prejudice to NVVN.

**Consolidated Submissions of Respondent Nos. 10 to 12 (Rajasthan Discoms)**

53. Respondent Nos. 10 to 12 submitted that the amendments proposed by the Appellant do not meet the criteria set out under Order VI Rule 17 of the Civil Procedure Code (CPC), 1908. Although the CPC does not directly apply to proceedings before the Central Commission, its principles do apply, as the Central Commission has no specific procedural rules for amendments in pleadings. The Appellants have relied on precedents under Order VI Rule 17 of the CPC to argue that the amendments should have been allowed, based on the principles established by that provision.

*Order VI Rule 17 reads as under:*



“Order VI:

.....

*17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

54. In the present case, the solar generators sought amendments to their petitions, originally filed before the Central Commission, to substitute their prayers. Initially, the petitions aimed for higher tariffs based on the Central Commission's purported regulatory powers. However, the proposed amendment now claims that the Power Purchase Agreement (PPA) does not survive due to a fundamental mistake of fact, altering the nature of the proceedings. The amendments were rejected because they changed the core issue, moving away from tariff adjustment to the validity of the PPA itself. The Central Commission, supported by Order VI Rule 17 of the CPC, held that such amendments—especially after the trial commenced—should not be allowed as they fail to meet the conditions for determining the real controversy. Even though the proceedings are summary in nature, this does not justify permitting amendments at any stage.

55. The Central Commission has the authority to consider petitions as civil suits under Section 94 of the Electricity Act, 2003, similar to a civil court. However, as



proceedings are generally based on undisputed documents, they proceed in a summary manner. Since the final hearing has already begun, the trial has effectively commenced, even in a summary suit. Therefore, the bar under the proviso to Order VI Rule 17 of the CPC applies, and the amendments should be rejected on this basis.

56. The Central Commission did not address this aspect and instead applied the main provision of the rule. Furthermore, even if the amendments are considered, they cannot revive claims that are time-barred. Established law holds that amendments cannot revive time-barred claims, as clarified in ***Voltas Limited v. Rolta India Limited (2014) 4 SCC 516 (paras 29 to 31)***:

*“29. Mr Nariman, learned Senior Counsel, has also contended that the counterclaims filed before the learned arbitrator is an elaboration of the amount stated in the notice and, in fact, it is an amendment of the claim of the respondent which deserved to be dealt with by the learned arbitrator. In this context, we may refer with profit to the ruling in *K. Raheja Constructions Ltd. v. Alliance Ministries [1995 Supp (3) SCC 17]* wherein the plaintiff had filed a suit for permanent injunction and sought an amendment for grant of relief of specific performance. The said prayer was rejected by the learned trial court. A contention was canvassed that the appellant had not come forward with new plea and, in fact, there were material allegations in the plaint to sustain the amendment of the plaint. The Court observed that having allowed the period of seven years to elapse from the date of filing the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963 any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the*

respondent. The said principle has been reiterated in *South Konkan Distilleries v. Prabhakar Gajanan Naik* [(2008) 14 SCC 632] and *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander* [(2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777] .

30. In *Revajeetu Builders and Developers v. Narayanaswamy and Sons* [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] , while laying down some basic principles for considering the amendment, the Court has stated that as a general rule the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

31. In the present case, when it is absolutely clear that the counterclaim in respect of the enhanced sum is totally barred by limitation and is not saved by exception carved out by the principle stated in *Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581]* , we are unable to agree with the view of the Division Bench of the High Court that the counterclaim, as a whole, is not barred by limitation. Thus analysed, the counterclaim relating to the appeal which deals with civil contracts shall be restricted to the amount stated in the letter dated 17-4-2006 i.e. Rs 68,63,72,178.08, and as far as the other appeal which pertains to air-conditioning contract, the quantum shall stand restricted to as specified in the letter dated 21-3-2006 i.e. Rs 19,99,728.58.”

57. The Appellant's new prayer to declare the PPA unworkable and void is time-barred. Filing a suit in 2017 to treat a PPA signed on 10.01.2011 as void

would clearly fall outside the limitation period, making the amendments inadmissible. Therefore, the proposed amendments lack merit and should be rejected.

**Submissions of Respondent No. 13- UPPCL (In Appeal No. 313 of 2017)**

58. Respondent No. 13 submitted that the original petition, filed on 26.02.2014, sought to:

- a) Revise the tariff under the PPA due to DNI variation and increase it by Rs. 3.16/unit on Rs. 12.19/unit.
- b) Revise the tariff due to foreign exchange rate changes.
- c) Extend the project's commissioning date by 18 months.
- d) Direct NVVN to amend the PPA accordingly.
- e) Prevent the invocation of Performance Bank Guarantees worth Rs. 21.18 crore for delays in achieving COD.
- f) Request an interim order to restrain the invocation of the guarantees pending the petition's outcome.

59. Further, in its Interlocutory Application (I.A. No.48/2017), the Appellant, AREL, sought amendments to the main petition by adding paragraphs related to new claims, including that MNRE and NVVN mismanaged recommendations by cherry-picking, failed to facilitate solar power developers under JNNSM, and overlooked the failure of Concentrated Solar Power (CSP) technology and objections from Distribution Companies. Additionally, AREL sought to amend its prayers by requesting declarations that the Power Purchase Agreement (PPA) dated 10.01.2014 is unviable due to inaccurate DNI readings and that the solar thermal project is not workable. They also requested the return of the bank

guarantee of INR 148.33 crore and asserted that no loss would result from the non-performance of the PPA.

60. The Appellant has filed an appeal under Section 111(1) & (2) of the Electricity Act, 2003, challenging the CERC's order dated 18.09.2017 in Interlocutory Application No. 48 of 2017 in Petition No. 41/MP/2014. However, as per legal precedents in ***Jindal Stainless Ltd. v. State of Orissa, (2000) ELR (APTEL) 459, Banarasi v. Rampal, (2003) 9 SCC 606, and North Plastic Ltd. v. Hindustan Photo Films, (1997) 7 SCC 452***, a person must suffer a legal grievance or be wrongfully deprived of something to qualify as an "aggrieved person." The Appellant, having not suffered any legal wrong or prejudice, does not meet the criteria of an "aggrieved person" under Section 111 of the Electricity Act.

61. The Electricity Regulatory Commission's (ERC) Conduct of Business Regulations, 1999, does not specifically provide for amendments to pleadings. However, under Section 94 of the Electricity Act, 2003, the Commission has powers equivalent to a civil court under the Code of Civil Procedure, 1908 (CPC). This includes the power to review its decisions. For amending pleadings, the Commission must follow Order 6 Rule 17 of the CPC, which allows amendments at any stage of proceedings to address the real controversy, provided it is done before the trial starts. After the trial begins, amendments are only permitted if the party, despite due diligence, could not have raised the issue earlier.

62. Under Order 6 Rule 17 of the Civil Procedure Code (CPC), the Appellant argued that amendments should be allowed when they elaborate on the defense or add pleas. However, the Hon'ble Supreme Court in ***Rajesh Kumar Aggarwal v. K.K. Modi and Ors. (2006) 4 SCC 385*** clarified that amendments are allowed if they address the "real controversy" between parties and do not alter the basic

structure of the suit. If the amendment merely changes the nature of the relief and not the suit's foundation, it may be allowed. However, if it seeks to fundamentally change the structure of the case, the amendment should be rejected.

63. In the case of ***Revajitu Builders and Developers vs. Narayanswamy (2009) 10 SCC 84***, the Hon'ble Supreme Court outlined principles for allowing amendments to pleadings, emphasizing that amendments should only be allowed if they are necessary to resolve the real controversy, do not cause irreparable prejudice to the other party, and are sought in good faith. Amendments that fundamentally change the nature of the case or are time-barred should be rejected. Courts must exercise their discretion carefully, ensuring that amendments do not lead to injustice or unnecessary litigation.

64. In the current appeal, the Central Commission noted that the petitioners initially sought revisions to the tariff based on discrepancies in DNI, foreign exchange variations, and project commissioning dates. After MNRE clarified it had no role in DNI estimation, the petitioners filed applications to amend their petitions, raising new grounds and claims, including that the solar thermal ecosystem had changed and that the PPAs were unworkable. The amended prayers sought to nullify the PPA and return bank guarantees. However, the Commission found that these amendments introduced entirely new causes of action, fundamentally altering the dispute, and thus did not support the amendments.

65. In the Impugned Order dated 18.9.2017, the Commission held that the Appellant had no valid cause of action to seek a tariff revision based on DNI (Direct Normal Irradiance). The Ministry of New and Renewable Energy (MNRE) never provided any advisory related to DNI for project bids. The MNRE

guidelines, available on their website, were purely for reference, and the site also included disclaimers that the ministry wouldn't be responsible for any inaccuracies. The petitioner was expected to conduct due diligence on DNI and submit bids at their own risk. If insufficient data was available, the Appellant could have opted out of the bid. Therefore, the petitioner cannot claim compensation or advisory on DNI from MNRE.

66. In this appeal, the key legal issue is whether the amendment of pleadings sought by the Appellant would fundamentally alter the nature of the case. Initially, the Appellant had requested adjustments related to tariff increases, foreign exchange rate variations, project deadline extensions, and restraint on the encashment of the Performance Bank Guarantee. There was no mention of voiding the Power Purchase Agreements (PPAs) or releasing the Appellant from its obligations. However, after the final hearing began on 08.08.2017, the Appellant sought new reliefs, including a declaration that the PPAs were void ab initio, and release from all obligations. This change in the reliefs sought on substantially different grounds would significantly alter the character of the case, which is generally not permissible after the trial has commenced.

67. An Interlocutory Application, as defined in Rule 2(j) of the Civil Rules of Practice, refers to an application made during an ongoing suit, appeal, or proceeding, excluding those for execution of a decree or order. These applications are temporary and do not resolve the main issue of the case. They can be modified through subsequent applications based on new facts or circumstances (as noted in ***Arjun Singh vs. Mohindra Kumar, AIR 1964 SC 993***). In the present appeal, the Appellant sought fresh reliefs through an interlocutory application, which is impermissible under the applicable legal provisions.

## **Analysis and Conclusion**

68. Heard the parties at length.

69. The Appellant filed an original petition before the Commission seeking tariff revision/compensation on account of a drastic reduction in the Direct Normal Irradiance (DNI) as against the expected DNI at the time of bidding.

70. The generation of electricity is based on the DNI for Solar Thermal Technology-based Solar Power Plants (SPP). Reduction in DNI affects the energy output thus reducing the efficiency of the plant.

71. The Appellants in the instant appeals found that the actual DNI at the site is much lower than the anticipated DNI which was based on certain information gathered by them including from the MNRE website.

72. Realising that reduced DNI would make these plants unviable, the Appellants approached the Commission seeking tariff revision.

73. The Appellants in the original petitions prayed as under:

(a) Revise the applicable tariff under Article 9 of the PPA on account of **variation in DNI levels** and allow an upward revision,

(b) **Revise the applicable tariff** under Article 9 of the PPA on account of variation in foreign exchange rates and allow an upward revision.

74. The key cause of action by the Appellant is variation in DNI levels, which certainly be the main cause of action in either seeking relief for tariff revision or termination of PPA on account of viability.



75. The Appellant herein has challenged the CERC's Order dated 18.09.2017, which rejected their application to amend the petition in Petition No. 41/MP/2014 but granted liberty to file a separate petition. The Appellant has contended that this ruling contradicts Hon'ble Supreme Court judgments and will lead to a multiplicity of proceedings, despite no prejudice being caused to the Respondents, Gujarat DISCOMs, who did not contest the matter.

76. The Appellant herein has also emphasized that the procedural principles of natural justice under the Electricity Act, 2003, should apply, and not the strict application of the Civil Procedure Code (CPC), as the stages like trial commencement or framing of issues do not apply here. Furthermore, CERC did not reject the amendment based on trial commencement, and since CERC allowed the filing of a separate petition, there should be no argument about the limitation of claims. The Appellant has also asserted that allowing the amendment would avoid a multiplicity of proceedings, in line with the Hon'ble Supreme Court's judgment in **LIC v. Sanjeev Builders Private Limited, Civil Appeal No. 5909 of 2022.**

*“70. Our final conclusions may be summed up thus:*

*(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.*

***The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.***

***(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is***



***mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.***

***(iii) The prayer for amendment is to be allowed***

***(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and***

***(ii) to avoid multiplicity of proceedings, provided***

***(a) the amendment does not result in injustice to the other side,***

***(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and .....***

77. The Appellant has filed an application to amend their petition following MNRE's reply dated 14.06.2017, which was necessitated by new developments that required modifying the relief sought. The Appellant has argued that the amendment should be allowed to avoid multiplicity of proceedings, as supported by the Hon'ble Supreme Court rulings in ***Rajesh Kumar Aggarwal v. K.K. Modi (2006) 4 SCC 385*** and ***Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559***, which emphasize that amendments should be allowed if they do not change the nature of the suit and aim to resolve the real controversy between the parties. The relevant extract in ***Rajesh Kumar Aggarwal vs. K.K. Modi, (2006) 4 SCC 385***, is as follows:

*“17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of the relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in*

*the new suit cannot be permitted to be incorporated in the pending suit.*

*18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties.”*

78. The relevant paragraph in **Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559** is as follows:

*“7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.*

....

*9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made.....”*

79. It is pertinent to mention that the cause of action (reduction of DNI) remains the same, and the amendment simply reflects the impossibility of complying with the PPA due to MNRE and DISCOMs' stand. Additionally, the Hon'ble Supreme Court has recognized that courts can modify relief based on subsequent developments.

80. Due to the categorical positions taken by MNRE and the DISCOMs, the Appellant found it impossible to comply with the PPA and has sought to modify the relief through the amendment. Courts can adjust relief based on subsequent developments. Notably, the reduction in DNI was recognized as a force majeure event by this Tribunal in its Judgment dated 26.07.2022 in **NVVN v. Godawari Green Energy Limited (Appeal No. 403 of 2017)**. The relevant paragraph is as follows:

*“110. We decline to accept the contention of NVVN as explained in the foregoing paragraphs. However, as observed earlier the event of “low DNI” is a natural phenomenon and cannot be controlled by the Generators, occurring of such event is thus, uncontrollable event which cannot be attributed to the Generator.*

*111. Further, the Review Committee of MNRE suggested that “the Committee felt that the situation of low DNI could be considered as akin to Force Majeure event not being in the control of the SPDs”. Accordingly, the event of “low DNI” was considered as Force Majeure Event for the extension of SCOD of the projects. The same was agreed to by CERC, approving the SCOD by ten months.*

*112. As per Article 4.4.1 of the PPA and the observation of CERC vide the Impugned Order, no compensation can be claimed by NVVN against the event which is not attributed to the Generator and*

*is uncontrollable. DNI, as mentioned earlier, is a natural phenomenon, depends on the nature and cannot be controlled by the Generators.*

*113. Therefore, we set aside the Impugned Order to the extent that liquidated damages have been levied on GGEL and upholding the decision of non-levying of the compensation for liquidated damages on MEIL for reasons cited in the Impugned Order and observation made by us in the foregoing paragraphs.”*

81. The Respondent No. 2 has alleged that the Appellant, through IA No. 48 of 2017, sought to entirely replace the original reliefs in the petition, shifting from enforcing the PPA with revised tariffs to declaring the PPA unviable and void ab initio due to a mistake of fact. This amendment introduces a new cause of action, inconsistent with the original petition, which sought compensation under Section 73 of the Indian Contract Act for losses due to DNI variations. The Appellant's attempt to amend the petition after final proceedings had commenced, and after relinquishing a portion of its claim earlier, is barred by Order II Rule 2 of CPC. Additionally, the amendment would change the fundamental nature of the case and prejudice NVVN's rights.

82. It cannot be denied that the main reason, for either the revision of tariff as sought in the petition or termination of PPA as amended in vide the aforementioned IA, is the same i.e. reduction in DNI affecting the viability of the project.

83. Undisputedly, the final response of MNRE declaring that the developers are responsible for not ascertaining the actual DNI level at sight, resulted in a change in the relief sought by the Appellants.

84. The counsel for Respondent No. 10-12 has alleged that the Appellants originally filed petitions seeking a tariff increase under the PPA due to reduced Direct Normal Irradiance (DNI) levels. However, they later sought to amend their petitions, requesting a declaration that the PPA was unviable and void, and for the return of their bank guarantee. These amendments were filed after the commencement of final hearings, violating Order VI Rule 17 of CPC, which bars amendments after trial commencement unless due diligence is proven. The proposed amendments also fundamentally altered the original relief sought, shifting from tariff revision to voiding the PPA.

85. Further, the Respondent(s) can on merits before the Commission, accordingly, no prejudice will be caused to the Respondent(s) and the principle of natural justice will stand complied. However, not allowing the amendment will lead to multiplicity of proceedings contrary to the Hon'ble Supreme Court's judgment as noted above- ***"(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side--"***

86. However, NVVN submitted that the Appellant by way of its IA has attempted to (1) wriggle out of its obligations under the PPA entered into between the Appellant and NVVN and (2) restrain the NVVN from invoking the BGs. Further, the Appellant is seeking to change the fundamental basis and substance of the Original Petition by raising a belated claim which would cause grave prejudice to the NVVN.

87. Certainly, seeking relief for termination of PPA shall relieve the Appellant from its responsibilities under the PPA, however, NVVN only sighted the reason

for encashment of bank guarantee, which we find unacceptable as the bank guarantee is an instrument for ensuring performance by the developer and in case there are sufficient reasons for termination of PPA, it cannot prejudice the other party.

88. Further, the nature of the case will remain unchanged, since it remains an adjudicatory proceeding under Section 79(1)(f) of the Electricity Act, 2003, the said amendment is only adding subsequent events, and adding an alternate prayer instead of original prayers.

89. However, this Tribunal is of the opinion that the levels of DNI are not under the direct control of the Generators and therefore are bound to be attributed as an uncontrollable factor. The change of prayer/ amendment as sought by the Appellants who have approached this Tribunal needs to be addressed or else it would cause grave injustice to these Generators.

90. In the light of above, it cannot be denied that the refusal to amend the petition will result in a multiplicity of proceedings contrary to the Hon'ble Supreme Court's view in Civil Appeal No. 5909 of 2022 in the case of ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited and Anr.***, considering the same cause of action as the reduction in the DNI and the occurrence of subsequent events (MNRE reply dated 14.06.2017), the nature of proceedings will remain the same i.e. whether the reduction in DNI levels is affecting the project's tariff and no prejudice to the respondents as the tariff of the project is already multi-fold high as compare to the prevailing tariff, which certainly has to be borne by the consumers.

91. Undisputedly, the PPA tariff which is above Rs. 10 per kWh will cause prejudice to the consumers, we find such an argument to continue with the project

at such a high-cost tariff contrary to section 61 of the Act, even when the Appellants want to terminate such PPA.

92. Also, this court is bound by the decisions of the Hon'ble Supreme Court and the judgments passed by this Tribunal itself (supra), and therefore the contentions of the Generators are to be accepted qua the Appeal.

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal Nos. 313, 314, and 315 of 2017 have merit and are allowed to the extent challenged in this Appeal.

The Impugned Orders dated 18.09.2017 in Interlocutory Application No. 48 of 2017 in Petition No. 41/MP/2014, dated 15.09.2017 in Interlocutory Application No. 52 of 2017 in Petition No. 327/MP/2013 and dated 15.09.2017 in Interlocutory Application No. 53 of 2017 in Petition No. 14/MP/2014 are set aside and the Commission is directed to allow the parties to amend the pleadings to the extent challenged herein this Appeal.

The Captioned Appeal and IAs, if any are disposed of in the above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 16<sup>TH</sup> DAY OF DECEMBER, 2024.**

**(Virender Bhat)**  
**Judicial Member**

**(Sandesh Kumar Sharma)**  
**Technical Member**

pr/mkj