

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

Appeal No. 174 of 2017

Dated: 10.02.2025

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

In the matters of:

Orange Bercha Wind Power Limited
Through its authorized signatory
301 B, 3rd Floor, D-21 Corporate Park,
Sector 21, Dwarka, New Delhi- 110075

...Appellant

Versus

1. Madhya Pradesh Electricity Regulatory Commission
Through its secretary
5th Floor, Metro Plaza, Arera Colony,
Bittan Market, Bhopal 462 016,
Madhya Pradesh
2. Madhya Pradesh State Power Transmission Company Ltd.
Through its Managing Director
Block No. 2, Shakti Bhawan,
Rampur Jabalpur – 482008
3. Madhya Pradesh State Load Despatch Centre
Through its Chief Engineer
Nayagaon, Rampur, Jabalpur – 482008
4. Madhya Pradesh Power Management Company Ltd.
Through its Managing Director
Shakti Bhawan, Vidyut Nagar,
Rampur, Jabalpur – 482008

5. Madhya Pradesh New and Renewable Energy Department
Through its Principal Secretary
Vallabh Bhawan, Mantralaya,
Near Satpura, Arera Hills, Bhopal -462004

...Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Sitesh Mukherjee, Sr. Adv.
Mr. Rahul Balaji
Mr. Deep Rao Palepu
Mr. Vishal Binod
Mr. Syed Jafar Alam
Mr. Aman Shukla

Counsel for the Respondent(s) : Mr. Shri Venkatesh
Mr. Ashutosh Srivastava for R-1

Mr. Ashish Anand Bernard
Mr. Paramhans Sahani for R-2 & 3

Mr. Nitin Gaur for R-4

JUDGEMENT

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

1. This Appeal has been filed by M/s. Orange Bercha Wind Power Private Limited challenging order dated 19.04.2017 (in short "Impugned Order") passed by the Madhya Pradesh Electricity Regulatory Commission (in short "MPERC", or "Respondent No. 1" or "Commission") in Petition No. 07/2017 filed by the Appellant seeking extension of the Control Period of the Tariff Order dated 26.03.2013.

Description of Parties

2. The Appellant is a generating company under Section 2(28) of the Electricity Act, 2003 that has set up a 50 MW Wind Power Generation Project in Bercha, Madhya Pradesh at Tehsil Badnagar/ Ratlam in District Ujjain/ Ratlam in Madhya Pradesh with connection point at 220/132kV Badnagar Grid substation in District Ujjain through 132kV dedicated Double Circuit Single Strand (in short “DCSS”) transmission line from 132/33kV pooling substation at Village Laptiya in District Ratlam.

3. Respondent No. 1, i.e., the MPERC is a Statutory Authority constituted under the Electricity Regulatory Commissions Act, 1998 and Section 82 of the Electricity Act, 2003.

4. Respondent No. 2, Madhya Pradesh Power Transmission Company Limited (in short “MPPTCL”), is a wholly owned state government company, that undertakes all activities relating to intra-state transmission of electricity in the State of Madhya Pradesh in accordance with provisions of the Electricity Act 2003 (in short “Act”).

5. Respondent No. 3, Madhya Pradesh State Load Despatch Centre (in short “SLDC”), is the apex body in the State having the responsibility to ensure integrated operation of the power system within the State and discharges its functions and duties as provided under Section 32 of the Electricity Act.

6. Respondent No. 4, Madhya Pradesh Power Management Company Limited (in short “MPPMCL”), is a company incorporated under the Companies Act, 1956,

and is the holding company for all the electricity distribution companies in the State. It also undertakes procurement of power for the distribution companies.

7. Respondent No. 5, Madhya Pradesh New and Renewable Energy Department (in short “MPNRED”), is the nodal agency that has framed the renewable energy policy for the State of Madhya Pradesh and regulates and issues guidelines for Projects. Respondent No. 5 is not a contesting Respondent and is a proforma Respondent.

Factual Matrix of the case

8. The Commission issued the Tariff Order on 26.03.2013 and in terms of the Tariff Order the power from wind power generating companies commissioned on or before 31.03.2016 was to be sold to Respondent No. 4 at Rs. 5.92 per unit.

9. The Appellant earlier known as Naga Renewables & Infra Private Limited, (now known as Orange Bercha Wind Power Private Limited, was granted permission to develop the Project on 23.07.2013 by the MPNRED.

10. The Appellant registered itself with MPNRED on 06.09.2013 to execute the PPA for the sale of power at Rs. 5.92 per unit in terms of the Tariff Order dated 26.03.2013. The Appellant envisaged to commission the Project before 31.03.2016.

11. On 10.01.2014, the Appellant received Connectivity Approval from Respondent No. 2, which required the Appellant to construct a 132kV Double

Circuit Single Strung (DCSS) line from its Project's bus bar to the 220kV Badnagar substation, at its own expense. Respondent No. 2 was responsible for constructing the feeder bay at the Badnagar substation, also at the Appellant's cost. Additionally, the Appellant was obligated to ensure real-time telemetry data transmission to the Sub-Load Despatch Centre (Sub-LDC). On 11.08.2015, the Appellant requested information from Respondent No. 2 regarding the necessary Power Line Carrier Communication (PLCC) equipment and materials to establish voice and data communication between the Project and the Sub-LDC.

12. Thereafter, a Connection Agreement was executed between Respondent No. 2 and the Appellant on 31.10.2015.

13. On 03.03.2016, the Appellant requested Respondent No. 4 to provide its consent for the commissioning of the Project and execute the Power Purchase Agreement. Vide the said letter it was indicated that the Appellant expects to commission the Project by 31.03.2016.

14. Respondent No. 4 provided its consent for commissioning the Project on 09.03.2016, and stated that PPA will be executed after the commissioning of the Project, provided the Project is commissioned on or before 31.03.2016.

15. Once the Appellant had fulfilled its obligations on 14.03.2016, Respondent No. 2, informed that the PLCC link between the Appellant's Project and the Badnagar sub-station was commissioned successfully as per the specification and requirements of Respondent No. 2.

16. On 18.03.2016, the Appellant received CEIG approvals per Regulation 43 of the Central Electricity Authority (Safety and Electric Supply Measures), 2010, authorizing the commencement of supply, and on 21.03.2016, upon obtaining this approval, the Appellant notified SLDC of the completion of the required communication equipment for voice and data transmission.

17. The Appellant submitted all necessary documentation on 22.03.2016, including the CEIG approval, to SLDC, confirming that the power evacuation and transmission setup along with PLCC voice and data communication equipment up to the Badnagar substation had been completed in line with the 20.11.2015 letter from Respondent No. 2.

18. Consequently, the Appellant requested SLDC's clearance for line charging. However, on that same day, SLDC for the first time requested the Appellant to install PLCC terminals between the 220 KV Badnagar and 440 KV Sub-LDC, a requirement previously unspecified in any prior communication, including the letter dated 20.11.2015. In the interim, SLDC provided a spare channel using an existing MPPTCL Puncom PLCC panel at the Badnagar substation for telemetry data but did not address the Appellant's line charging clearance request made on 22.03.2016.

19. On 22.03.2016, Respondent No. 2 tested, certified, and sealed the ABT meters already installed at the Project. Two days later, on 24.03.2016, Respondent No. 2 connected the Appellant's telemetry data to a spare channel linking the Badnagar substation to the Sub-LDC at Indore. This spare channel was only provided two days after the Appellant was initially informed of its

availability and thereafter on 26.03.2016, the voice and data links between the Project and the 400 KV Sub-LDC were inspected and confirmed operational.

20. Respondent No. 4 informed Respondent No. 2 on 28.03.2016 that only project commissioning was required by 31.03.2016, and that the PPA could be signed afterward. On 29.03.2016, Respondent No. 2 and the Appellant rechecked all internal data links at PSS Laptiya, the Badnagar substation, and the Sub-LDC, but signal strength remained weak. The CGL modem at PSS Laptiya was set to a baud rate of 600, while the SCADA at SLDC operated at 300, necessitating further adjustments. The Appellant made adjustments only upon SLDC's instructions, as recorded in the 29.03.2016, meeting minutes.

21. On 30.03.2016, modems at the Sub-LDC and PSS Laptiya were replaced and verified, yet signal strength issues persisted, leading to an investigation of the spare channel provided by Respondent No. 2. This investigation revealed that the spare channel, while made available, was not in usable condition.

22. Subsequently, to confirm and resolve this problem, Respondent No. 2, switched over the Appellant's telemetry data connection from the Spare Channel to another working channel (located in the same PLCC panel) used by the Ingoriya sub-station. Immediately, upon the said switchover, the Appellant's telemetry data reached sub-LDC, Indore at the required strength levels, and the communication data link system from the Appellant's sub-station to Indore sub-station was working properly. However, due to the system configuration of the software's setting, data was not available in readable format. The PLCC panels were functioning properly as per requirement.

23. On 01.04.2016, SLDC intimated to the Appellant that the permission for charging of evacuation line could not be granted, due to the non-availability of telemetry data with SLDC.

24. Thereafter, the Power Telecommunication Coordination Committee (PTCC) approval for the Project was received by the Appellant on 05.04.2016, and on 07.04.2016, the Appellant informed SLDC that telemetry data was available to SLDC in the format required from 7 pm on 01.04.2016 and in this regard, the Appellant requested SLDC to grant the charging permission.

25. On 12.04.2016, SLDC confirmed that telemetry data was successfully transferred on 04.04.2016, yet incorrectly claimed that the Appellant had not arranged for data transfer as of 01.04.2016, despite the Appellant having installed the necessary equipment before 31.03.2016. To expedite project commissioning, the Appellant sought assistance from officials of the Respondent Companies.

26. Thereafter, on 20.04.2016, the Appellant petitioned the Principal Secretary, Department of Energy, GoMP, requesting project commissioning and execution of the PPA at the rate of Rs. 5.92 per unit per the 26.03.2013, Tariff Order. On 30.04.2016, Respondent No. 4 invited the Appellant to apply for a power purchase agreement (PPA). In response to this, on 02.05.2016, the Appellant expressed readiness to enter into an agreement, while reserving the right to claim payment at the Rs. 5.92 per unit tariff applicable for projects commissioned before 31.03.2016. Finally, on 03.05.2016, Respondent No. 4 consented to the Project's commissioning.

27. On 04.05.2016, the Appellant again wrote to Respondent No. 3 reiterating its position as stated in the letter dated 02.05.2016 sent by the Appellant to Respondent No. 4.

28. After receipt of consent for commissioning, on 03.05.2016 the Appellant approached SLDC for charging of the line which was allowed on 04.05.2016.

29. The Appellant therefore despite being ready in all respects for commissioning of the Project before 31.03.2016, achieved actual commissioning on 05.05.2016, which is after the expiry of the earlier control period in terms of the Order dated 26.03.2013, for which the tariff for supply of power was Rs 5.92 per unit.

30. On 17.06.2016, Respondent No. 2 issued a letter to the Appellant demanding charges for procurement and installation of PLCC Terminals for the Telemetry Data.

31. The Appellant filed Writ Petition No. 14363 of 2016 in the High Court of Madhya Pradesh, arguing that the Project was prepared for commissioning by 31.03.2016, but delays caused solely by Respondents No. 2 and 3 prevented timely completion. The Appellant sought the following reliefs:

(a) An order directing the Respondents to issue a commissioning certificate effective 31.03.2016, for the 50 MW Wind Power Project;

- (b) Recognition of entitlement to Rs. 5.92 per unit tariff per the 26.03.2013 Tariff Order, applicable until 31.03.2016; or
- (c) Alternatively, a directive for the Respondents to execute a provisional PPA under the 17.03.2016 Tariff Order, paying Rs. 4.78 per unit, while allowing the Appellant to pursue claims on the applicable tariff before MPERC.

32. On 12.09.2016, the High Court of Madhya Pradesh passed an Order in the Writ Petition filed by the Appellant, directing Respondent No. 4 to consider the request of the Appellant to release the undisputed amount of bills at a lower rate under the Order dated 17.03.2016, without prejudice to the rights of the Appellant.

33. Appellant vide an application dated 05.10.2016 filed in W.P No. 14363 of 2016 submitted that it has received communication from Respondent No. 4 that a PPA can only be executed at a lower tariff of Rs. 4.78 per unit in accordance with the Tariff Order dated 17.03.2016 and not as per the Appellant's claim of Rs. 5.92 in accordance with the Tariff Order dated 26.03.2013.

34. On 01.02.2017, Respondent No. 4 wrote to the Appellant referring to the pending writ petition, stating that a PPA has not been executed even after a period of more than 8 months from the date of commissioning of the Project in accordance with the Tariff Order dated 17.03.2016. Respondent No. 4 further stated that the Commission in the hearing on 24.01.2017 in SMP No. 59 of 2016 expressed displeasure at delay in the execution of pending PPAs for wind energy projects that have been commissioned. In this regard, it was directed that a PPA in accordance with the Tariff Order dated 17.03.2016 be executed by 10.02.2017,

failing which Respondent No. 4 will not enter into a PPA with the Appellant and allow injection of any power generated from the Project.

35. In view of the aforesaid letter and during the pendency of the writ petition, on 10.02.2017, the Appellant was constrained to enter into PPA with Respondent No. 4 at the tariff of Rs. 4.78 per unit in accordance with the Tariff Order dated 17.03.2016.

36. Thereafter, on 23.02.2017, the High Court of Madhya Pradesh issued an order in W.P. No. 14363 of 2016, directing the Appellant to file a petition with MPERC within three weeks. MPERC was instructed to decide on the matter within six months. Additionally, Respondent No. 4 was ordered to pay for electricity already supplied, once the Appellant resubmitted its bill.

37. Following this order, the Appellant filed Petition No. 07/2017 with MPERC, seeking an extension or relaxation of the control period specified in the 26.03.2013 Tariff Order.

38. The Commission dismissed the petition vide order dated 19.04.2017, citing the executed Power Purchase Agreement (PPA) of 10.02.2017, which set the commissioning date of the 50 MW wind project as 05.05.2016. The Commission ruled that, as the project was commissioned after 01.04.2016, it fell under the 17.03.2016 tariff order and was therefore not eligible for an extension of the control period.

39. Aggrieved by the Impugned Order dated 19.04.2017 passed by the Commission in Petition No. 07/2017, the Appellant has preferred the present appeal.

Submissions of the Appellant

40. The Appellant submitted that the Appellant completed all necessary requirements for commissioning its Project before 31.03.2016, fulfilling obligations under the Connection Approval dated 10.01.2014 and the Connection Agreement dated 31.10.2015 with MPPTCL.

41. Key facts supporting this, undisputed by the Respondents, include:

- a) Appellant confirmed by letter on 21.03.2016 that payments were made, and communication equipment was delivered to MPPTCL between 14.02.2016 and 11.03.2016.
- b) MPPMCL gave consent for commissioning on 09.03.2016.
- c) In a 14.03.2016 meeting, MPPTCL confirmed the successful commissioning of the PLCC link to the Badnagar substation as per its standards.
- d) CEIG approval was granted on 18.03.2016, requesting details of the installation's charging date.
- e) On 21.03.2016, MPSTLDC was informed that all communication arrangements were complete.
- f) A request for charging clearance was made to MPSTLDC on 22.03.2016, following CEIG clearance and PLCC completion.

- g) MPPTCL tested and certified all meters, including ABT meters, in a meeting on 22.03.2016.
- h) A letter from MPPCML dated 28.03.2016 clarified that if commissioning was achieved by 31.03.2016, PPA execution could occur after this date.

42. These actions collectively demonstrate compliance and readiness for commissioning before the 31.03.2016 deadline.

43. The above data demonstrates that by 31.03.2016, the CEIG had approved connections for each of the Project's 25 wind turbine generator (WTG) locations (each of 2 MW), and all ABT meters were tested, certified, and sealed on 22.03.2016, as confirmed in a meeting between MPPTCL and Appellant.

44. The Minutes of Meeting dated 14.03.2016 confirm that all PLCC obligations were fulfilled, with nothing outstanding from the Appellant.

45. Based on these events, it is contended that the failure to issue the Commissioning Certificate before 31.03.2016 was intentional, aiming to deny the Appellant, a tariff rate of Rs. 5.92 per kWh. Although the Commissioning Certificate was eventually issued on 05.05.2016, it relied on documents that were already available before 31.03.2016, including:

- a) CEIG drawing approval on 23.02.2016,
- b) MPNRED execution approval on 01.03.2016,
- c) CEIG charging permission on 18.03.2016, and
- d) A prior connectivity approval was granted on 09.03.2016.

46. These documents, already accessible by 31.03.2016, indicate that the commissioning certificate did not depend on the communication system's function. Denying the tariff as determined by MPERC on these grounds would constitute arbitrary treatment.

47. Further submitted that on 22.03.2016, MPSTLDC, Respondent No.3 unexpectedly required the Appellant to extend telemetry data from Badnagar to SLDC Indore and supply PLCC terminals, warning that failure to comply would revoke permission to inject power into the grid. This demand was raised for the first time, as all prior approvals, including the Connection Agreement, only required connection to the 220 kV Badnagar substation. Despite these new requirements, the Appellant promptly took action, yet delays ensued due to issues on MPSTLDC, Respondent No. 2, and MPSTLDC's side, Respondent No. 3, as shown by the following:

- a) On 24.03.2016, MPSTLDC and Appellant checked the data link between the Project and Indore SLDC, finding signal issues.
- b) On 26.03.2016, further testing confirmed data links to Indore, but the signal strength was still insufficient.
- c) Multiple adjustments, including modem and configuration changes, were made in meetings, but as of 30.03.2016, data transmission remained problematic. When the Appellant's telemetry data was redirected from the spare to a working channel used by the Ingoriya substation, signal strength improved, revealing the issue lay with MPSTLDC's spare channel.

- d) Finally, readable telemetry data was received at MPSLDC starting at 7 PM on 01.04.2016.

48. This demonstrates the Appellant's compliance and highlights delays due to infrastructure issues on the part of MPPTCL.

49. MPPTCL, Respondent No. 2, and SLDC, Respondent No. 3 delayed requisitioning and installing necessary equipment between the MPPTCL substation and the Indore Sub-LDC. The spare channel provided by MPPTCL, as required under the Connection Agreement, was faulty.

50. SLDC further failed to provide accurate data parameters, rendering telemetry data unreadable. Notably, MPPTCL confirmed on 14.03.2016 that the PLCC between the project site and Badnagar substation met specifications.

51. SLDC improperly withheld charging permission until telemetry and communication facilities were demonstrated, despite Regulation 17.7 of the Madhya Pradesh Electricity Grid Code allowing SLDC to waive data requirements. Although the required equipment was in place by 31.03.2016, SLDC failed to exercise its discretion to waive data requirements and issue energization approval, depriving the developer of regulated tariffs and renewable energy incentives.

52. SLDC could have conditionally approved project commissioning, pending further telemetry demonstration, but delay the commissioning certificate. This denial of charging permission breached SLDC's obligations under the Electricity

Act, 2003. Moreover, the Appellant's connectivity obligations extended only to the Badnagar substation; telemetry requirements beyond Badnagar to Ingoriya were not within the Appellant's statutory or contractual responsibilities. The delays were largely due to the faulty spare channel provided by MPSLDC/ MPPTCL.

53. MPSLDC/ MPPTCL cannot exploit their own delay or failure to claim a lower tariff, as it is a fundamental legal tenet that no party should benefit from its own misconduct. This position is supported by *Nirmala Anand v. Advent Corporation Pvt. Ltd. & Ors.*, (2002) 5 SCC 481 (Para 45), which reinforces this doctrine. Also, this Tribunal vide order dated 27.09.2011 in Appeal No. 91 of 2010, in *Ind-Bharath Energies (Maharashtra) Ltd. v. Maharashtra State Electricity Distribution Co. Ltd.*, where the principle is similarly emphasized at Para 11. This legal maxim prevents MPPTCL/MPSLDC from profiting due to their own delay or omission.

54. The Appellant further contended that on 30.04.2016, MPPMCL, Respondent No. 4 informed the Appellant that it had missed the 31.03.2016 COD deadline and that any power sales would be subject to the lower tariff set in the 17.03.2016 Tariff Order. Appellant responded on 02.05.2016, noting financial loss from idle operations since 22.03.2016. While reserving its right to claim the Rs. 5.92 per unit tariff, it agreed to an interim arrangement.

55. MPPMCL then issued a new commissioning consent on 03.05.2016, followed by charging permission from MPSLDC on 04.05.2016, and MPPTCL issued the Commissioning Certificate on 05.05.2016.

56. Seeking recognition of 31.03.2016 as COD and entitlement to the higher tariff, Appellant filed Writ Petition No. 14363 of 2016 in the Hon'ble High Court of Madhya Pradesh on 12.09.2016. During its pendency, MPPMCL, per MPERC's directive, asked the Appellant on 01.02.2017 to execute a PPA.

57. MPPMCL warned that failing to execute would halt power injection. The PPA was executed on 10.02.2017, recording COD as 05.05.2016, though the Appellant expressly reserved its right to dispute this under the claim of undue influence and coercion. On 23.02.2017, the Hon'ble High Court directed the Appellant to take the matter to MPERC, specifying that bill submission would not affect its claim for a 31.03.2016 COD and Rs. 5.92 tariff.

58. On 15.03.2017, the Appellant filed Petition No. 07 of 2017 before the MPERC, Respondent No. 1. At the admission stage on 19.04.2017, without notice to the Respondents, MPERC dismissed the petition for lack of maintainability, citing the PPA and a belated commissioning certificate from 05.05.2016.

59. However, MPERC also made substantive findings without allowing the parties a hearing, which is procedurally improper. Under Section 86(1) (f) of the Electricity Act, 2003 and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. (2008) 4 SCC 755, a generator's petition against a licensee is clearly maintainable. MPERC erred by ruling on maintainability without framing it as an issue or allowing for notice and a hearing.

60. The Impugned Order was issued on the very first day of listing, disregarding the Hon'ble High Court's directions from W.P. 14363 of 2016, dated 23.02.2017,

which had directed the Appellant to approach MPERC within three weeks to resolve pending claims, including issues over billing and payment per the PPA, without prejudice to Appellant's rights.

61. Additionally, the Appellant had reserved its right to argue that its project was ready for commissioning before 31.03.2016 and that its 10.02.2017 PPA execution did not waive its earlier claims. The Hon'ble High Court's order affirmed that the issues remained open for MPERC's consideration. Consequently, the PPA execution does not affect the outstanding issues, which remain open before MPERC and this Tribunal.

62. The conduct of the MPERC, Respondent Commission contradicts established legal principles requiring courts to support their decisions with clear reasoning, as emphasized by the Hon'ble Supreme Court in *Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity* (2010) 3 SCC 732 (Par 40-41), *Commercial Tax Dept. v. Shukla and Brothers* (2010) 4 SCC 785 (Para 11, 16, 20, 21), and *UPSRTC v. Jagdish Prasad Gupta* 2009 (12) SCC 609 (Para 8, 9, 10).

63. The Impugned Order by MPERC relied solely on the fact that the PPA was executed per the 17.03.2016 Tariff Order. This approach disregarded other relevant facts and circumstances of the dispute and did not comply with the High Court's directive from 23.02.2017, which required a comprehensive evaluation of the case.

64. The issues raised in this present Appeal are already addressed by this Tribunal's judgment in ***Kamuthi Solar Power Ltd. v. Tamil Nadu Electricity Regulatory Commission & Ors.*** dated 07.10.2022 in Appeal No. 287-288 of 2021. In that case, the Tribunal found that TANGEDCO's failure to timely provide evacuation facilities caused delays in commissioning the power project. The delay was not attributed to the Appellant, who was ready to commission the project by 31.03.2016; thus, the Appellant was entitled to the tariff applicable on that date. This precedent supports the Appellant's claim in the current Appeal. The relevant paragraph of the aforesaid judgment is as follows:

"55. It is important to note here that the commissioning process of a solar PV plant is different from the conventional power plants, in case of solar PV plant, after the installation of PV system is completed and the inspection is done, it is ready to be plugged to the grid for the evacuation of energy, and thus, such process is referred to commissioning of the system. Even, the Respondents have confirmed to it by citing that the grid connectivity shall be extended only after the solar PV plant is commissioned.

56. Therefore, the only conclusive evidence of the readiness or commissioning of the project is the self-certification by the Appellant and subsequent acceptance letter issued by the CEIG, as held in the foregoing paragraphs.

57. In our opinion it was TANDEGCO's failure to provide the evacuation facility in time (before 31.03.2016) which now seeks to take advantage of its own wrong, a fact which is not attributable to Appellant which has commissioned its project before 31.03.2016.

...

ORDER

For the foregoing reasons as stated above, we are of the considered view that the present Appeals filed by the Generators i.e. Appeal no. 287 of 2021 filed by KSPL and Appeal no. 288 of 2021 filed by RREL, have merit and thus allowed. The Impugned Order dated 20.07.2021 passed by the Tamil Nadu Electricity Regulatory Commission in Petition M.P. No.26 of 2020 (M/s. Kamuthi Solar Power Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd. & Ors.) and in Petition M.P. No.25 of 2020 (M/s. Ramnad Renewable Energy Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd. & Ors.) is set aside. We hold that the solar PV plants commissioned by the Generators i.e. M/s. Kamuthi Solar Power Ltd. and M/s. Ramnad Renewable Energy Ltd. have achieved commissioning within the control period ending on 31.03.2016 and are entitled for a tariff of Rs. 7.01/unit from 18.09.2016, the date at which the actual flow of firm power started, as per the notification issued by TNERC vide its Tariff Order dated 12.09.2014 for the solar PV projects commissioned on or before 31.03.2016.”

65. In the Taxus Infrastructure & Power c. GERC & Ors. Judgment dated 04.07.2018 in Appeal No. 131 of 2015, this Tribunal upheld GERC's decision that the deemed COD for Taxus Infrastructure's solar project was 31.03.2013, with delays attributed to state authorities' failure to perform duties. Although GUVNL sought a review (Petition No. 08 of 2018), this Tribunal only allowed limited

review, noting it had not addressed the CEA (Safety and Electric Supply) Regulations, 2010 (Taxus Review Judgment). This judgment emphasized that delays caused by authorities are not the developer's responsibility and that CEIG approvals are crucial for determining COD.

66. Therefore, in the present case, the Appellant completed PLCC requirements by 14.03.2016, and CEIG approval was granted on 18.03.2016, indicating readiness by 31.03.2016. Unlike in Taxus, there was no prior PPA with MPPMCL, making any reliance on State Nodal Authority/commissioning requirements from the Taxus Review Judgment inapplicable.

67. Further, submitted that the judgments relied upon by the Respondents are inapplicable to the present case. The *GUVNL vs. Solar Semiconductor Power Co. Ltd.*, (2017) 16 SCC 498, cited by Respondents is inapplicable here because it pertained to specific provisions in a PPA, whereas no PPA existed between Appellant and MPPMCL to govern commissioning delays. Further, GUVNL relied on GERC's Conduct of Business Regulations, which lack provisions for inherent powers. In contrast, the MPERC RE Regulations 2010 (Regulation 18) retain such inherent powers.

68. MPERC's reference to the ***Kotamreddi Seetamma v. Vannelakanti Krishnaswamy Row & Anr.***, passed by Hon'ble Madras High Court on 18.04.2016 is also misplaced, as the PPA between Appellant and MPPMCL was signed while W.P. No. 14363 of 2016 was pending. Following the High Court's 23.02.2017 order, MPERC was tasked with resolving issues on commissioning delays and tariff applicability, regardless of PPA execution. Additionally, the tariff

set in the PPA is governed under Section 62 of the Electricity Act, 2003, making it a statutory rate determined by MPERC. This statutory tariff element limits principles of mutuality and signifies that tariff incorporation into the PPA is regulatory, not a product of mutual contract negotiation.

69. MPPTCL, Respondent No. 2, cited Government of Maharashtra v. Deokar's Distillery dated 10.03.2003 and Akella Lalitha v. Sri Konda Hanumanta Rao dated 28.07.2022 in C.A No. 6325 of 2015 to argue that Appellant's Petition No. 07 of 2017, which requested an extension of the control period, cannot be granted due to the GUVNL Judgment. MPPTCL further argued that the Appellant cannot alter the terms of the commissioning certificate, as it was not previously contested. This argument is flawed as it is settled law that courts may grant reliefs not specifically requested if the issues are sufficiently covered in pleadings, as per the Hon'ble Supreme Court ruling in V. Prabhakar v. Basavaraj K. 2022 (1) SCC 115. The Court can overlook deficiencies in pleadings if parties understand the issues involved and provide evidence on them.

70. Additionally, this Tribunal vide judgment dated 23.03.2023 in Tata Power Delhi Distribution Ltd. v. DERC IN I.A. No. 1766 of 2022 in Appeal No. 334 of 2021 confirmed that it must adjust relief based on proven facts, provided such relief does not conflict with the pleadings. This judgment reinforced that relief can be molded to suit the case's facts, even if not precisely outlined in the original plea, so long as it aligns with the main appeal's intentions.

71. Further submitted that the Appellant presented all relevant facts to MPERC, demonstrating that the Project was ready for commissioning by 31.03.2016.

However, delays in commissioning were attributed solely to MPPTCL and MPSTLDC's actions. Specifically, the Appellant's timely commissioning relied on MPPTCL and MPSTLDC's obligation to grant charging permission and establish a working telemetry data system. While the necessary telemetry and communication equipment were available by 31.03.2016, MPSTLDC improperly delayed charging permission, insisting on further verification of telemetry data functionality. This action contravened Regulation 17.7 of the Madhya Pradesh Electricity Grid Code, which allows SLDC to waive certain data requirements if reasonable.

72. In BSECOM v. Hirehalli Solar Power Project LLP & Ors. (Civil Appeal No. 7595 of 2021) vide judgment dated 27.08.2024, the Hon'ble Supreme Court upheld this Tribunal's findings that delays in commissioning, which arose from government-related delays in land conversion approvals, were beyond the project developer's control. Consequently, the developer was entitled to the original tariff. Importantly, the Hon'ble Supreme Court affirmed this Tribunal's approach in reassessing evidence and making determinations on factual matters. The relevant portion of the judgment dated 27.08.2024 is as follows:

“10.4 The entire dispute before the KERC and the APTEL revolves on a question of fact – whether the respondents were negligent or not diligent in securing approvals and hence, is the delay in commissioning attributable to them. The KERC's appreciation of the evidence has led it to the conclusion that the delay in commissioning was due to the respondents' delay in making the applications, despite the approval of the PPA. However, the APTEL

has taken note of certain additional factors affecting the time taken to secure the approvals that were not considered by the KERC. These include the time taken by the government to provide the PTCL that is required for approval of land conversion, and the delay caused by the authority in evacuation approval. Considering these additional factors, the APTEL has reappreciated the evidence to find that the delay was not attributable to the respondents but to the government bodies and relevant authorities. We find that there is no error in the APTEL's approach, and it is reasonable in its reappreciation of evidence.

10.5 Further, the APTEL also correctly took note of the fact that a large number of SPDs have raised similar issues, and the government has responded to the same by requiring DISCOMs to set-up committees to look into these cases. The large number of cases that raise similar grounds and the government's response show that the delay was not faced by the respondents alone, and hence cannot be entirely blamed on them. The government has itself acknowledged that the land use conversion process is a long and arduous one, which led it to deem conversion for solar power projects under the present scheme. However, due to lapses in the implementation of the deemed conversion, the SPDs were unable to avail the same. The APTEL has rightly appreciated these facts to hold that the respondents acted diligently and with care and caution to secure approvals, and hence their claims cannot be rejected through recourse to Article 8.3(b)(iv).

...

13. Conclusion: After considering the learned counsels' submissions in light of the above findings of the APTEL, we find that no substantial question of law arises in the present case. The APTEL has primarily decided a question of fact as to the attributability of the delay, and from the above, it is clear that the APTEL's findings are neither illegal nor unreasonable. Hence, we find no reason to interfere with the same."

73. The Hon'ble Supreme Court has endorsed this Tribunal's approach of re-evaluating evidence to establish factual findings that support granting relief to affected parties. Accordingly, the Appellant prayed that this Tribunal should consider its submissions and the admitted facts to establish that its project was ready for commissioning before 31.03.2016, thereby entitling it to related benefits.

Submissions of the Respondent No. 1, MPERC

74. Respondent No.1 submitted that the Appellant has argued that the Respondent Commission failed to assess its case on the merits, causing significant prejudice. The Appellant sought a waiver of the delay in commissioning and an extension of the control period under the Tariff Order dated 26.03.2013, which governs power procurement from Wind Electric Generators. The Appellant claims its project was ready before 31.03.2016 but was delayed due to Respondent No. 2 (Madhya Pradesh SLDC) and Respondent No. 3 (MPPMCL), entitling it to a tariff of Rs. 5.92 per unit.

75. Respondent No. 2 denied this, contending that the applicable tariff should be based on the actual commissioning date. To support its claim of entitlement, the Appellant must demonstrate that the delay was not due to its own actions. Additionally, the PPA dated 10.02.2017 between the Appellant and Respondent No. 3 specifies in Article 4 that the commissioning date for the 50 MW Wind Energy Generators (WEG) is 05.05.2016. The relevant extract of the PPA is as follows:

“1. ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

.....

<i>Tariff Order</i>	<i>Means the order issued by MPERC for procurement of Power from Wind Electric Generators on 17.03.2016</i>
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....

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4. ARTICLE 4: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

4.1 Synchronisation, Commissioning and Commercial Operation

4.1.1 Commissioning of seller’s 25x2=50MW capacity WEG s at Loc No.B-01, B-04, B-16, B-33, B-38, B-72, B-71, B-73, B-75, B-77, B-78, B-79, B-80, B-82, B-83, B-84, B-85, B-86, B-87, B-89, B-90, B-91, B-92, T-1 & T-2 near village Lapatiya, Dhanesarg, Jhar, Kamed, Sandla, Tahsil Ratlam, District Ratlam has been taken place on 05.05.2016. The WEGs have completed their performance acceptance test as per standards prescribed and they have been successfully

synchronised with the Grid System and demonstrated the reliable operation.....”

76. The counsel submitted that since the Appellant expressly agreed to the applicability of the Tariff Order dated 17.03.2016 and accepted the corresponding tariff in the PPA dated 17.02.2017, it cannot now deviate from its obligations under that agreement. The Respondent emphasized that a PPA is binding and cannot be disregarded simply because it may be inconvenient for one party. The Hon'ble Supreme Court, in Gujarat Urja Vikas Nigam Limited vs. EMCO Limited and Anr. (02.02.2016, (2016) 11 SCC 182), has affirmed that the terms of a PPA are binding and must be strictly adhered to by the parties. The relevant extracts of the Judgment is as follows:

“32. Apart from that, the conclusion of the Tribunal in the instant case is wrong. First of all the PPA does not give any option to the respondent to opt out of the terms of the PPA. It only visualises a possibility of the producer not commissioning its PROJECT within the “control period” stipulated under the 1st Tariff Order and provides that in such an eventuality what should be the tariff applicable to the sale of power by the 1st respondent. Secondly, the PPA does not ‘entitle’ the 1st respondent to the “tariff as determined by the” 2nd respondent by the 2nd Tariff Order. On the other hand, the PPA clearly stipulates that in such an eventuality:

“Above tariff shall apply for solar projects commissioned on or before 31st December 2011. In case, commissioning of Solar Power Project is delayed beyond 31st December 2011, GUVNL shall pay the tariff as

determined by Hon'ble GERC for Solar Projects effective on the date of commissioning of solar power project or above mentioned tariff, whichever is lower."

38. The 1st respondent knowing fully well entered into the PPA in question which expressly stipulated under Article 5.2 that "the tariff is determined by Hon'ble Commission vide tariff order for solar based power project dated 29.1.2010

39. Apart from that both the respondent No. 2 and the appellate tribunal failed to notice and the 1st respondent conveniently ignored one crucial condition of the PPA contained in the last sentence of para 5.2 of the PPA:-

"In case, commissioning of Solar Power Project is delayed beyond 31st December 2011, GUVNL shall pay the tariff as determined by Hon'ble GERC for Solar Projects effective on the date of commissioning of solar power project or above-mentioned tariff, whichever is lower."

The said stipulation clearly envisaged a situation where notwithstanding the contract between the parties (the PPA), there is a possibility of the first respondent not being able to commence the generation of electricity within the "control period" stipulated in the 1st tariff order. It also visualised that for the subsequent control period, the tariffs payable to a PROJECTS/power producers (similarly situated as the first respondent) could be different. In recognition of the said two factors, the PPA clearly stipulated that in such a situation, the 1st

respondent would be entitled only for lower of the two tariffs. Unfortunately, the said stipulation is totally overlooked by the second respondent and the appellate tribunal. There is no whisper about the said stipulation in either of the orders.”

77. The counsel further highlighted that the PPA, signed on 10.02.2017, was executed well after the issuance of the Tariff Order on 17.03.2016. As such, the Appellant, having benefited from the PPA, cannot now seek relief that contradicts its clear terms. Any attempt by the Appellant to obtain a higher tariff would unfairly impact consumers across Madhya Pradesh. The Respondent also refers to Clauses 4.1 and 12.9 of the 17.03.2016 Tariff Order, which specify its applicability to Wind Electric Generation projects, further solidifying the argument that the terms set in this order must govern the project’s tariff structure. The relevant extracts of the Tariff Order is as follows:

“4.1 The tariff order will be applicable to all new wind electric generation projects in the State of Madhya Pradesh commissioned at 0.00hrs on 01.04.2016 or thereafter for sale of electricity to the distribution licensees within the state of Madhya Pradesh. This order also specifies the terms and conditions (other than tariff) for captive users or for sale to third party.”

“12.29 All existing projects that is projects commissioned before 0.00hrs of 01.04.2016 shall continue to be governed by the terms and conditions applicable at the time of their commissioning.”

78. The counsel for the Appellant submitted that the Appellant contended that the Respondent Commission erred by dismissing its petition solely on maintainability grounds without first raising or conducting a hearing on this issue. However, the dismissal was based on the commissioning date of 05.05.2016, yet the Appellant argued that delays were caused by Respondent No. 2 and No. 3, not itself. The Appellant sought relief for a waiver or relaxation of the Control Period in the Tariff Order dated 26.03.2013 due to these delays.

79. However, the Respondent Commission maintains that, upon reviewing Petition No. 07 of 2017, it found the delay attributable to the Appellant, leading to the petition's dismissal. The counsel further argued that extending the Control Period under the 2013 Tariff Order would be against consumer interest, which the Commission has a duty to protect when setting tariff terms for Wind Electric Generators. Thus, it denied the requested extension or relaxation.

80. The Appellant submitted that the Tribunal has consistently emphasized the importance of safeguarding consumer interests as per the Electricity Act. In NTPC Limited v. CERC (Appeal No. 134 of 2008, judgment dated 03.06.2010), the Tribunal held that tariffs must be determined to be cost-effective for consumers. Tariff adjustments that increase costs ultimately affect consumers, and thus any additional capitalization should align with this objective.

81. The Appellant's petition before the Respondent Commission sought a waiver for project commissioning delays and an extension of the Control Period in the 2013 Tariff Order. However, the Hon'ble Supreme Court, in All India Power Engineering Federation v. Sasan Power Limited, (2017) 1 SCC 487 (judgment dated 08.12.2016), held that waivers impacting consumer interests—and thus

public interest—should generally be denied. The Court noted that tariff determinations must protect consumer interests as mandated under Sections 61 to 63 of the Electricity Act, which require the Commission to ensure cost-effective and reasonable electricity tariffs. The Commission must consider the overall public interest when adjusting tariffs and must only approve adjustments if they align with competitive, transparent processes, particularly when tariffs have been determined via competitive bidding under Section 63.

82. The Appellant argued that the Respondent Commission failed to use its inherent powers under Regulation 45 of the MPERC Regulations, thereby violating the principles of natural justice by dismissing the petition without considering its merits. However, the counsel for the Respondent Commission contended that, after reviewing Petition No. 07 of 2017, it found the delay in commissioning was attributable to the Appellant and, thus, denied the request for a higher tariff. It emphasized the use of inherent powers is discretionary and based on case-specific facts, as established by the Hon'ble Supreme Court in *Raj Bahadur Ras Raja v. Seth Hiralal* AIR 1962 SC 527 and *Ramji Dayawala v. Invest Import* (1981) 1 SCC 80. These rulings clarify that inherent power exists to ensure justice but is not automatically exercised in every instance. The Respondent Commission argued that the Appellant is attempting to benefit from its own delays at the expense of consumer interests in Madhya Pradesh.

Submissions of the Respondent No. 2, MPPTCL

83. The Respondent No. 2 adopted the submissions of Respondent No. 4.

Submissions of the Respondent No. 3, MP SLDC

84. Respondent No. 3 submitted that in the state of Madhya Pradesh, electricity generators must adhere to regulatory requirements before obtaining grid connections. Specifically, all renewable energy generators must establish a Data Acquisition System (DAS) to transmit telemetry data to the State Load Dispatch Centre (SLDC). This system must also include a compatible communication facility, as mandated by applicable regulations.

Regulation 6(3) of the Central Electricity Authority (Technical Standard for Connectivity to the Grid) Regulations, 2007 provides as under: -

"6(3) The requestor and user shall provide necessary facilities for voice and data communication and transfer of operational data, such as voltage, frequency, line flows, and status of breaker and isolator position and other parameters as prescribed by Appropriate Load Despatch Centre."

Amendment of Regulation 6.2 of Part 6 of Principal Regulations of the CERC (Indian Electricity Grid Code (Third Amendment) Regulations, 2015 provides as under: -

"6. Amendment of Regulation 6.2 of Part 6 of Principal Regulations: In Regulation 6.2 of the Principal Regulations, the sentences "This code also provides the methodology for re-scheduling of wind and solar energy on three (3) hourly basis and the methodology of compensating

the wind and solar energy rich State for dealing with the variable generation through a Renewable Regulatory charge. For this, appropriate meters and Data Acquisition System facility shall be provided for accounting of UI charges and transfer of information to concerned SLDC and RLDC." shall be substituted by the sentences "This code also provides the methodology for re-scheduling of wind and solar energy generators which are regional entities, on one and half hourly basis and the methodology of handling deviations of such wind and solar energy generators. Appropriate meters shall be provided for accounting of charges for deviation under DSM Regulations. Telemetry/ communication system & Data Acquisition System shall also be provided for transfer of information to the concerned SLDC and RLDC."

Amendment to clause 5.10 of the Madhya Pradesh Electricity Grid Code (Revision-I), 2005 (Fourth Amendment) provides as under: -

"5.10 Communication Facilities:

Reliable and efficient speech and data communication systems shall be provided by all the users to facilitate necessary communication and data exchange, and supervision/control of the grid by the SLDC, under normal and abnormal conditions. All Users shall provide the required facilities at their respective ends and SLDC and this shall be indicated in the Connection Agreement."

85. On 31.10.2015, the Appellant and Respondent No. 2, MPPTCL, entered into a Connection Agreement outlining the terms for their respective Connection Works for the Project. Under Clause 1.1(4), the Appellant is solely responsible for implementing the Automatic Meter Reading (AMR) system, as well as providing voice and data communication facilities necessary for transferring real-time operational data to the SLDC. The relevant extract of Clause 1.1(4) of Connection Agreement is as follows:

“Clause 1.1(4)

The Applicants shall provide, necessary Automatic Meter Reading (AMR) system and facilities conforming to IS: 15959 (Indian Standard for Data Exchange for Electricity Meter Reading, Tariff and Load Control Companion Specification issued for a common communication protocol for all make meters) for voice & data communication for transfer of real time operational data such as voltage, frequency, real and reactive power flow, energy, status of circuit breakers & isolators, transformer taps and other parameters from their station to Data Collection Center (DCC) of SLDC as per MPEGC. MPPTCL shall provide access to Applicant's data-transfer through-communication network in case spare channels are available on mutually agreed terms. The location of DCC of SLDC shall be at Indore/Bhopal/Jabalpur as the case may be Additional communication system from DCC to the concerned SLDC shall be the arranged by MPPTCL, however its cost shall be borne by the Applicants. The

responsibility of data transfer from their plant to SLDC shall be that of the Applicants.”

86. Further the counsel submitted that on 29.01.2016, the CERC, in a ruling related to non-compliance with its order from 26.09.2012 in Petition No. 168/MP/2011, emphasized the necessity for all users to supply telemetry data to the respective RLDC and SLDC for grid monitoring and operation. Telemetry data must be in a readable format to ensure effective monitoring and decision-making regarding the power network. According to these provisions, users are legally obligated to establish voice and data communication systems to transfer operational data to the SLDC, as specified in the Connection Agreement. Only after the necessary communication facilities are installed between the generator's power plant and the SLDC sub-station can the SLDC grant the user charging permission.

87. The counsel argued further that the Appellant was contractually and legally required to establish communication and data transfer facilities for operational data exchange with the concerned SLDC. According to Clause 1.1(4) of the Connection Agreement and relevant regulations, this communication link was to extend from the power plant in Bercha to the sub-SLDC in Indore. However, as of 31.03.2016—the date on which the Appellant claims it was prepared for operation—data facilities were only provided up to the Badnagar Sub-station, not reaching the Indore sub-SLDC as required. Due to this incomplete setup, the SLDC could not grant charging permission. The CERC has underscored the importance of telemetric data from users for effective grid operation, emphasizing the Appellant's failure to meet this obligation. Thereafter, as per Clause 14 of

CERC order dated 29.01.2016 in the matter of **Non-compliance of Commission's direction dated 26.09.2012 in Petition No.168/MP/2011: -**

"14. Under the Grid Code, it is the responsibility of all users, STUs and CTU to provide systems to telemeter power system parameters in line with interface requirements and other guideline made available by RLDC and associated communication system to facilitate data flow up to appropriate data collection point on CTUS system. Telemetry of on-line operational data is not only essential for effective monitoring of grid but also forms key input for effective running of State estimation and other EMS tools at RLDC and SLDCs, which are essential for reliable and secure operation of the grid. In view of the critical importance of telemetry and associated communication system for ensuring reliability in operation of the grid and optimum utilization of the transmission system, there is an imperative need for all users to establish the telemetry and associated communication system in time bound manner so that the power system operation may be most reliable and optimum. Moreover, in view of the requirement of communication system for a generating station and sub-station, the planning should be done in advance by the generating company and transmission licensee to ensure that necessary system are in place before commissioning of generating station or sub-station to take care of the communication requirements even at the time of injection of power infirm by a generating station and sub-station during testing."

88. On 17.03.2016, the MPERC issued the Tariff Order 2016, effective from 01.04.2016, reducing the tariff for new wind generation projects in Madhya Pradesh from Rs. 5.92/unit to Rs. 4.78/unit, which spurred the Appellant to expedite operations. However, records indicate that the Appellant failed to meet contractual milestones by 31.03.2016 and has attempted to hold the Respondent accountable as a scapegoat to retain the benefit of the 2013 Tariff Order.

89. The Appellant only extended its telemetry data transfer to the Badnagar sub-station, while contractually required to connect to the sub-LDC in Indore for SLDC charging approval. The Appellant cannot avoid its contractual duties by claiming a lack of control over extending telemetry beyond Badnagar.

90. Supporting letters highlight the delay:

- a) A letter dated 03.03.2016 indicated that 6 WTGs were still pending installation.
- b) On 21.03.2016, the Appellant confirmed communication equipment delivery.
- c) SLDC's 29.03.2016 letter noted weak signal transfer, and on 30.03.2016, it reported that SCADA data was unreadable.
- d) SLDC denied charging permission on 01.04.2016 due to the lack of telemetry data at the SLDC, and on 07.04.2016, the Appellant admitted that telemetry was only operational from 01.04.2016.
- e) SLDC confirmed full telemetry commissioning by 04.04.2016.

91. These records indicate that the Appellant did not meet its contractual milestones by 31.03.2016 and now attempts to hold the Respondent responsible

for benefiting from the 2013 Tariff Order. The Appellant's assertion that it could not control the extension of telemetry data beyond Badnagar does not exempt it from its contractual obligations.

92. Additionally, the Commission's Impugned Order—premised on the Appellant's PPA with MPPMCL on 10.02.2017 and the Project's commissioning post-01.04.2016—requires the matter be considered under Clause 4.1 of the 2016 Tariff Order. Consequently, the Appellant cannot seek relief at the appellate stage that exceeds the Impugned Order's scope.

93. The counsel continued to argue that the obligation to provide telemetry data to the respective SLDC/RLDC was solely the responsibility of the Appellant as confirmed by regulatory and contractual provisions. A letter dated 20.11.2015 from MPPTCL to the Appellant clarified that communication equipment was to be supplied by the Appellant with the estimated project cost excluding this equipment.

94. Telemetry data could be transmitted via optical network, VSAT, dedicated lease-line, or PLCC, with the Appellant opting for PLCC. The letter further indicated that upon cost receipt, a 10–12-month period was necessary for design finalization, procurement, and project completion. Despite these clear timelines, the Appellant attempted to meet the 31.03.2016 deadline but ultimately fell short, subsequently shifting the blame onto the Respondents.

Submissions of the Respondent No. 4, MPPMCL

95. The counsel for the Respondent No. 4 submitted that the Appellant sought to commission a 50 MW wind power project under a tariff rate of Rs.5.92 per unit as per the MPERC Tariff Order dated 26.03.2013. Respondent No. 4 had initially consented, via a letter dated 09.03.2016, to commission the project under the 2013 tariff rate, provided it was completed by 31.03.2016.

96. However, the Appellant did not commission the project by this date and did not enter a Power Purchase Agreement (PPA) during the valid control period. On 17.03.2016, a new MPERC Tariff Order reduced the rate to Rs.4.78 per unit for projects commissioned between 01.04.2016 and 31.03.2019.

97. Following this, on 20.04.2016, the Appellant requested commissioning at the previous rate of Rs.5.92 per unit, but Respondent No. 4 replied on 30.04.2016, stating the lower rate would apply as the project was not commissioned by 31.03.2016. The Appellant, in a further representation on 02.05.2016, contended that delays beyond 31.03.2016 were due to uncontrollable factors outside their responsibility, requesting approval for commissioning under the original tariff rate.

98. The counsel further submitted that Respondent No. 4, in a letter dated 03.05.2016, informed the Appellant that a new MPERC tariff order had been issued on 17.03.2016, covering a control period from 01.04.2016 to 31.03.2019. Respondent No. 4 granted consent for the Appellant to commission its 50 MW Wind Power Project before 30.05.2016 under the terms of the new tariff order, with consent expiring on 31.05.2016. Acknowledging this, the Appellant agreed by letter dated 04.05.2016 to commission the project under the revised tariff, and the plant was commissioned on 05.05.2016, with the Madhya Pradesh Power

Transmission Company Limited, Respondent No. 2, issuing a Commissioning Certificate on the same date.

99. The Appellant, however, did not enter into a Power Purchase Agreement (PPA) with Respondent No. 4 from the commissioning date until February 2017. On 01.02.2017, Respondent No. 4 reminded the Appellant to finalize the PPA by 10.02.2017 in line with the 17.03.2016 Tariff Order, failing which Respondent No. 4 would not allow power injection from the project. Subsequently, the parties executed the PPA on 10.02.2017 for a 25-year term, adhering to the 17.03.2016 tariff order which set the tariff at INR 4.78/kWh for projects commissioned between 01.04.2016 and 31.03.2019. The PPA Article 7.1.1 confirms this rate, with no unresolved disputes regarding commissioning dates or tariff rates.

100. The Appellant executed the PPA with Respondent No. 4 based on the 17.03.2016 tariff order, yet simultaneously petitioned the MPERC for an extension of the previous control period under the 26.03.2013 tariff order. This petition was filed without contesting the 05.05.2016 Commissioning Certificate, which establishes the applicable tariff order.

101. The Hon'ble Supreme Court, in Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. Ltd. (2017) 16 SCC 498, addressed such requests for control period extensions. The Court held that consumer interest is paramount in electricity law, and that regulatory bodies must be vigilant in setting tariff terms to protect consumers. The ruling emphasized that any exercise of inherent powers affecting tariffs must prioritize and safeguard consumer interests at all times. The relevant paragraph of the judgment is as follows:

“37. This Court should be specially careful in dealing with matters of exercise of inherent powers when the interest of consumers is at stake. The interest of consumers, as an objective, can be clearly ascertained from the Act. The Preamble of the Act mentions “protecting interest of consumers” and section 61(d) requires that the interests of the consumers are to be safeguarded when the appropriate Commission specifies the terms and conditions for determination of tariff. Under Section 64 read with Section 62, determination of tariff is to be made only after considering all suggestions and objections received from the public. Hence, the generic tariff once determined under the statute with notice to the public can be amended only by following the same procedure. Therefore, the approach of this Court ought to be cautious and guarded when the decision has its bearing on the consumers.”

102. Respondent No. 4, as a public entity, has a duty to secure the lowest-cost power for consumers. Considering this, it lawfully executed the PPA with the Appellant under the applicable 17.03.2016 Tariff Order. Despite the Appellant's request to extend the control period of the 26.03.2013 Tariff Order, they did not contest the Commissioning Certificate dated 05.05.2016, which is critical to determining the applicable tariff. Since the Commissioning Certificate is unchallenged, the request to extend the previous control period lacks grounds.

103. The Hon'ble Supreme Court, in Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. Ltd., ruled that extending a control period is

impermissible, reinforcing that it cannot be extended under any circumstances. The relevant paragraph of the judgment is as follows:

“38. Regulation 85 provides for extension of time. It may be seen that the same is available only in two specified situations – (i) for extension of time prescribed by the Regulations, and (ii) extension of time prescribed by the Commission in its order for doing any act. The control period is not something prescribed by the Commission under the Conduct of Business Regulations. The control period is also not an order by the Commission for doing any act. Commissioning of a project is the act to be performed in terms of the obligation under the PPA and that is between the producer and the purchaser viz. Respondent 1 and appellant. Hence, the Commission cannot extend the time stipulated under the PPA for doing any act contemplated under the agreement in exercise of its powers under Regulation 85. Therefore, there cannot be an extension of the control period under the inherent powers of the Commission.

39. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under this Act.

40. Extension of control period has been specifically held to be outside the purview of the power of the Commission as per “Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd.” This appeal is hence, allowed. The

impugned orders are set aside. However, we make it clear that this judgment or orders of the Appellate Tribunal or Commission shall not stand in the way of Respondent 1 taking recourse to the liberty available to them for redetermining of tariff if otherwise permissible under the law and in which case it will be open to the parties to take all available contentions before the Commission.”

104. Regarding the binding nature of PPAs, the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. (GUVNL) case ruled that PPA terms cannot be modified to favor one party, such as a generator, at the expense of consumers. The Court emphasized that PPA conditions are equally binding on both parties and must not be altered to disadvantage consumers. The relevant paragraph of the judgment is as follows:

“65. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to inviolable. Merely because in PPA, tariff rate as per Tariff Order, 2010 is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the

generating company, Respondent 1 and disadvantage of the Appellant. Terms of PPA are binding on both the parties equally.

66. In “Gujarat UrjaVikas Nigam Ltd. v. EMCO Ltd.”, facts were similar and the question of law raised was whether by passing the terms and conditions of PPA, the respondent can assail the sanctity of PPA. This Court held that power producer cannot go against the terms of the PPA and that as per the terms of the PPA, in case, the first respondent is not able to commence the generation of electricity within the “control period” the first respondent will be entitled only for lower of the tariffs.”

105. That the Hon’ble Supreme Court further in its judgment in GUVNL held that:

“60. In case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs 15 per unit for twelve years, the first respondent should commission the solar PV power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the

parties so as to prejudice the interest of GUVNL and ultimately the consumers.

61. As pointed out earlier, the Appellate Tribunal has taken the view that the control period of the Tariff Order was fixed by the State Commission itself and hence the State Commission has inherent power to extend the control period of the Tariff Order. It may be that the tariff rate as per Tariff Order, 2010 as determined by the Committee has been incorporated in Clause 5.2 of the PPA. But that does not in any manner confer power upon the State Commission to exercise its inherent jurisdiction to extend the control period to the advantage of the project proponent, first respondent and to the disadvantage of GUVNL who are governed by the terms and conditions of the contract. It is not within the powers of the Commission to exercise its inherent jurisdiction to extend the control period to the advantage of any party and to the disadvantage of the other would amount to varying the terms of the contract between the parties.”

106. The Hon'ble Supreme Court judgment reinforces that a PPA is a contract mutually agreed upon by both parties, based on clear terms and prudent business decisions. Thus, the Commission lacks authority to amend the PPA or extend the control period to benefit one party at the expense of the other, as this would alter the contractual terms. If the Appellant is granted a judicially-ordered amendment to increase the tariff or extend the control period of the 26.03.2013 Tariff Order, Respondent No. 4 should also have the option to reconsider its participation in the PPA, given that increased tariffs impact consumers.

Analysis and Conclusion

107. After hearing all the parties at length, the following questions need to be answered through this Appeal:

- i) *Whether the project was ready and commissioned on or before 31.03.2016, and if not,*
- j) *Whether the delay in the Commissioning of the Project beyond 31.03.2016 is attributable to the Appellant and the Power Purchase Agreement dated 10.02.2017 executed between the Appellant and Respondent No. 4 shall be at the tariff rate of Rs. 5.92 per unit as per the Tariff Order dated 26.03.2013 or at lower tariff of Rs. 4.78 per unit in accordance with the Tariff Order dated 17.03.2016?*

108. If the answer to i) above is affirmative, ii) will become infructuous or meaningless.

109. It is important to note the following undisputed facts of the case:

- i. Appellant vide letter dated 21.03.2016 confirmed that payments were made, and communication equipment was delivered to MPPTCL between 14.02.2016 and 11.03.2016.
- ii. MPPMCL gave consent for commissioning on 09.03.2016.

- iii. In a 14.03.2016 meeting, MPPTCL confirmed the successful commissioning of the PLCC link to the Badnagar substation as per its standards.
- iv. CEIG approval was granted on 18.03.2016, requesting details of the installation's charging date.
- v. On 21.03.2016, MPSLDC was informed that all communication arrangements were complete.
- vi. A request for charging clearance was made to MPSLDC on 22.03.2016, following CEIG clearance and PLCC completion.
- vii. MPPTCL tested and certified all meters, including ABT meters, in a meeting on 22.03.2016.
- viii. A letter from MPPCML dated 28.03.2016 clarified that if commissioning was achieved by 31.03.2016, PPA execution could occur after this date.

110. As seen from above, MPPMCL, Respondent No. 4 gave commissioning consent for the Project on 09.03.2016, and thereafter, during the meeting on 14.03.2016, MPPTCL verified that the PLCC link between the Project and Badnagar sub-station was successfully commissioned.

111. The minutes of the meeting dated 14.03.2016 are as follows:

“Minutes of meeting held among M/s. MPPTCL, M/s. Orange Bercha Wind Power Pvt Ltd, M/s. Srex Power India Pvt Ltd & M/s. CGL Bangalore on 14th March 2016 at 132 kV S/s Orange Bercha, 50 MW Wind Power Project, Bercha.

Members Present:

M/s. MPPTCL	M/s Orange Bercha Wind Power Pvt Ltd	M/s. Srex Power India Pvt Ltd	M/s. CGL,
Mr. S P. Yadav AE Commn. Ujain.	Mr. Rakesh Dubey Project Manager	Mr. N Patnayak Mr. Vinay Kumar Singh	Mr. Vinay D Engineer CGL

Mr. Vinay Devalamakkikar from CGL, Bangalore visited Orange Bercha Wind Power Pvt Ltd 's 132 KV S/s Bercha and MPPTCU's 220 kV S/s Badnagar between 10.03.2016 to 14.03.2016 for commissioning of CGL make PLCC panels.

The details of work are given below: -

1. All internal cards of panels were checked / tested and found ok.
2. The frequency bands supplied by MPPTCL have been allocated to each PLCC panel.

Frequency bands are listed below-

SL. No.	Panel Description	Frequency
1	Carrier equipment with protection coupler.	244 kHz Tx/ 240 kHz Rx
2	Carrier equipment without protection coupler.	254 kHz Tx/ 250 kHz Rx

3. *Transmission and Reception levels adjustment, Hybrid adjustment, and Curve of amplitude response were equalized in both cabinets.*
4. *Tuning of coupling devices (LMU's) have been checked for the link and system found ok.*
5. *The hot line services have been checked by MPPTCL and system found ok.*
6. *Speech option configured as per MPPTCL requirement, End to end voice communication Tested through EPABX checked by MPPTCL and system found ok.*
7. *Speech service and AF Input/output signals have been checked and found ok.*
8. *End to end protection signaling checked by MPPTCL representatives and system found ok.*

PLCC link b/w 132kV S/s 50 MW Orange Bercha Wind Power project and 220 kV S/s Badnagar is commissioned successfully as per specification and requirement of MPPTCL.”

112. CEIG approval for the Project was granted on 18.03.2016, requesting notification of the installation's charge date. On 21.03.2016, MPSLDC was informed that all communication equipment requirements for voice and data were complete. Further, the Appellant addressed a letter on 22.03.2016 requesting MPSLDC charging clearance, citing CEIG clearance and PLCC setup to Badnagar.

113. It cannot be denied that the Appellant was required to provide the connectivity up to the Badnagar sub-station, and further, connectivity is the responsibility of the State Utilities, the Respondents herein.

114. As seen from the MoM dated 14.03.2016, the PLCC link between the generator and the Badnagar substation was commissioned successfully as per the specifications and requirements of MPPTCL.

115. Further, the statutory CEIG Approval was granted on 18.03.2016, and is reproduced hereinunder:

“Provisional approval is granted to connect above subject electrical installations with high tension electricity supply under the provisions of Electricity Act, 2003, regulations of Central Electricity Authority (Measures relating to Security and Electricity Supply) Regulations, 2010 and on compliance of Indian standards under regulation 43 of Central Electricity Authority (Measures relating to Security and Electricity Supply) Regulations, 2010. Kindly provide information of the date, on which the installation is charged, along with the proof to this office.”

116. During the meeting on 22.03.2016, MPPTCL and Orange Bercha tested, certified, and sealed all meters, including ABT meters. On 28.03.2016, MPPMCL advised MPPTCL that Projects commissioned by 31.03.2016 could execute PPAs afterward, without a 31.03.2016 deadline for PPA execution.

117. Undisputedly, these facts support that the Project was ready for commissioning by 31.03.2016.

118. It is clear from the above that the Appellant has met all necessary requirements for grid connection, supported by various approvals and actions completed prior to 31.03.2016.

119. CEIG had granted approval for each of the Project's 25 WTG locations (2 MW each), and ABT meters were tested, certified, and sealed by 22.03.2016, as confirmed in meeting records also.

120. The Appellant fulfilled its PLCC obligations before 31.03.2016, with no outstanding requirements noted in the 14.03.2016 Minutes of Meeting. The delayed issuance of the Commissioning Certificate until 05.05.2016, despite all necessary approvals and permissions (e.g., CEIG approvals, execution approval from MPNRED, and charging permission), appears intended to deny the Appellant the 5.92 Rs/kWh tariff.

121. However, on 22.03.2016, MPSLDC required the Appellant to extend telemetry data from Badnagar to SLDC Indore on a temporary basis, warning that failure to do so could result in the withdrawal of grid injection permission. This requirement was not previously stipulated, as prior approvals and the Connection Agreement only mandated connection to the 220 kV Badnagar substation.

122. We find the direction of MPSLDC as totally arbitrary and perverse, as also beyond the scope of the contract, and accordingly, deserves to be condemned.

123. Despite these new requirements, the Appellant's conduct in promptly responding and taking additional liabilities cannot be ignored, however, in the completion of the additional work certain delays ensued due to issues on and failures on the part of the Respondents, as shown by the following:

- a) On 24.03.2016, MPPTCL and Appellant checked the data link between the Project and Indore SLDC, finding signal issues.
- b) On 26.03.2016, further testing confirmed data links to Indore, but the signal strength was still insufficient.
- c) Multiple adjustments, including modem and configuration changes, were made in meetings, but as of 30.03.2016, data transmission remained problematic. When the Appellant's telemetry data was redirected from the spare to a working channel used by the Ingoriya substation, signal strength improved, revealing the issue lay with MPPTCL's spare channel.

124. Finally, readable telemetry data was received at MP SLDC starting at 7 PM on 01.04.2016, clearly indicating that the failure on the part of the Respondents in providing the faulty channel resulted in the delays.

125. It cannot be disputed that the Appellant's connectivity obligations extended only to the Badnagar substation; telemetry requirements beyond Badnagar to Ingoriya were not within the Appellant's statutory or contractual responsibilities, and the delays were largely due to the faulty spare channel provided by MP SLDC/ MPPTCL.

126. The Appellant had already fulfilled its obligations but encountered delays due to MPPTCL/MPSLDC in issuing the Commissioning Certificate, the action of the State agencies has to be rejected with a stern warning.

127. We agree with the submissions of the Appellant that MPSLDC/ MPPTCL cannot exploit their delay or failure to force the Appellant to claim a lower tariff, as it is a fundamental legal tenet that no party should benefit from its own misconduct, reliance is placed on ***Nirmala Anand v. Advent Corporation Pvt. Ltd. & Ors., (2002) 5 SCC 481 (Para 45)***, which reinforces this doctrine. Also, this Tribunal vide order dated 27.09.2011 in Appeal No. 91 of 2010, in ***Ind-Bharath Energies (Maharashtra) Ltd. v. Maharashtra State Electricity Distribution Co. Ltd.***, where the principle is similarly emphasized at Para 11. This legal maxim prevents MPPTCL/MPSLDC from profiting due to their own delay or omission.

128. On 24.03.2016, a meeting with MPPTCL confirmed that activities for establishing PLCC between the Project and SLDC Indore were in progress and another meeting on 26.03.2016 found that while the data link was functional, the signal strength reaching Indore was weaker than sent. Multiple troubleshooting sessions followed, including modem adjustments and channel switching. On 30.03.2016, switching to an alternative channel resolved signal issues but data remained unreadable due to software configuration needs. Ultimately, MPSLDC received readable telemetry data on 01.04.2016 at 7 PM, indicating the problem was with the spare channel provided by MPPTCL.

129. Therefore, it is imperative to hold that the delay in commissioning is attributed to MPPTCL and MPSLDC's failure to install and requisition necessary equipment between the Badnagar substation and Indore Sub-LDC, as per their obligations under the Connection Agreement.

130. The Appellant cannot be made to suffer because of MPPTCL and MPSLDC's failure to perform work that was not part of the initial contract.

131. Additionally, the spare channel provided by MPPTCL was faulty, and SLDC's incorrect data parameters rendered telemetry data unreadable. This is evident from the 14.03.2016 agreement where MPPTCL confirmed the PLCC connection between the Project and Badnagar substation was operational as required.

132. Despite the Appellant having installed all necessary telemetry and communication equipment by 31.03.2016, MPSLDC did not grant energization approval, citing unreadable telemetry data.

133. On 30.04.2016, MPPMCL informed the Appellant that it had failed to achieve the COD by 31.03.2016, and any future power sales would be subject to the 17.03.2016 Tariff Order which in our opinion is wrong and cannot be entertained. Per Contra, the Appellant's Project had been idle since 22.03.2016, resulting in financial loss.

134. Reliance is placed on ***BSECOM v. Hirehalli Solar Power Project LLP & Ors.*** (Civil Appeal No. 7595 of 2021), the Hon'ble Supreme Court vide judgment

dated 27.08.2024 upheld this Tribunal's findings that delays in commissioning, which arose from government-related delays in land conversion approvals, were beyond the project developer's control. Consequently, the developer was entitled to the original tariff. Importantly, the Hon'ble Supreme Court affirmed this Tribunal's approach in reassessing evidence and making determinations on factual matters.

135. Further, the State Commission has erred in ignoring the fact that MPPMCL warned the Appellant that failing to execute would halt power injection, forcing the PPA execution on 10.02.2017, recording COD as 05.05.2016, though the Appellant expressly reserved its right to dispute this under the claim of undue influence and coercion. Also, on 23.02.2017, the Hon'ble High Court directed the Appellant to take the matter to MPERC, specifying that bill submission would not affect its claim for a 31.03.2016 COD and Rs. 5.92 tariff.

136. We decline to agree with Respondent No. 2, contending that the Appellant must demonstrate that the delay was not due to its actions and to support its claim of entitlement, additionally, the PPA dated 10.02.2017 between the Appellant and Respondent No. 3 specifies in Article 4 that the commissioning date for the 50 MW Wind Energy Generators (WEG) is 05.05.2016, in the light of facts and observations made in the previous paragraphs.

137. We also find the arguments of the Respondents as unwarranted and irrational that it is the responsibility of the generator to provide a communication link between a sub-station of the state transmission utility and the SLDC, as the generator cannot be granted access to their sub-station for laying their equipment

if at all any responsibility can be placed on the generator, it can be the cost for laying down such infrastructure by the respective state utility, on being asked, none of the Respondents could provide the details on whether any direction was issued to the Appellant for depositing such amount.

138. Reliance of the Respondents is also misplaced on the Hon'ble Supreme Court judgment in ***Gujarat Urja Vikas Nigam Limited vs. EMCO Limited and Anr. (02.02.2016, (2016) 11 SCC 182***), as the project was commissioned before 31.03.2016 and there is no extension of the control period.

139. We find that the present case is similar to our ruling in the Kamuthi Solar Power Ltd. v. Tamil Nadu Electricity Regulatory Commission & Ors. in Appeal No. 287-288 of 2021, dated 07.10.2022. In the Kamuthi case, we found that TANGEDCO's delay in providing the necessary evacuation facilities led to the power project's delayed commissioning, despite Kamuthi's readiness to commission before the cutoff date of 31.03.2016. Consequently, the delay was not attributable to Kamuthi, entitling it to the tariff applicable as of 31.03.2016. This precedent supports the current Appellant's claim also for the tariff rate as of the same cutoff date, given that the project delay was due to factors beyond its control.

“55. It is important to note here that the commissioning process of a solar PV plant is different from the conventional power plants, in case of solar PV plant, after the installation of PV system is completed and the inspection is done, it is ready to be plugged to the grid for the evacuation of energy, and thus, such process is referred to

commissioning of the system. Even, the Respondents have confirmed to it by citing that the grid connectivity shall be extended only after the solar PV plant is commissioned.

56. Therefore, the only conclusive evidence of the readiness or commissioning of the project is the self-certification by the Appellant and subsequent acceptance letter issued by the CEIG, as held in the foregoing paragraphs.

57. In our opinion it was TANDEGCO's failure to provide the evacuation facility in time (before 31.03.2016) which now seeks to take advantage of its own wrong, a fact which is not attributable to Appellant which has commissioned its project before 31.03.2016.

...

ORDER

For the foregoing reasons as stated above, we are of the considered view that the present Appeals filed by the Generators i.e. Appeal no. 287 of 2021 filed by KSPL and Appeal no. 288 of 2021 filed by RREL, have merit and thus allowed.

The Impugned Order dated 20.07.2021 passed by the Tamil Nadu Electricity Regulatory Commission in Petition M.P. No.26 of 2020 (M/s. Kamuthi Solar Power Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd. & Ors.) and in Petition M.P. No.25 of 2020 (M/s. Ramnad Renewable Energy Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd. & Ors.) is set aside.

We hold that the solar PV plants commissioned by the Generators i.e. M/s. Kamuthi Solar Power Ltd. and M/s. Ramnad Renewable Energy Ltd. have achieved commissioning within the control period ending on

31.03.2016 and are entitled for a tariff of Rs. 7.01/unit from 18.09.2016, the date at which the actual flow of firm power started, as per the notification issued by TNERC vide its Tariff Order dated 12.09.2014 for the solar PV projects commissioned on or before 31.03.2016.”

140. Further our judgement in Appeal No. 131 of 2015, Taxus Infrastructure & Power v. GERC & Ors. dated 04.07.2018 found that delays in project commissioning were due to the state authorities' failure to act diligently, and thus deemed the project's Commercial Operation Date (COD) to be 31.03.2013. It was established that developers cannot be held liable for authority-caused delays and that CEIG approval should be factored in. In the present matter also, the Appellant's PLCC setup met MPPTCL's standards by 14.03.2016, with CEIG approval following on 18.03.2016. Thus, the COD should be recognized as before 31.03.2016.

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No. 174 of 2017 has merit and is thus allowed. The Impugned Order dated 19.04.2017 passed by the Madhya Pradesh Electricity Regulatory Commission in Petition M.P. No. 07/2017 is set aside.

We hold that the Appellant's plant was commissioned within the control period ending on 31.03.2016, making it eligible for a tariff of Rs. 5.92/unit to be paid from the date of electricity supply into the grid.

Respondent No. 2 shall make the required payment along with the carrying cost at the LPS rate within three months from the date of this judgment.

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

PRONOUNCED IN THE OPEN COURT ON THIS 10th DAY OF FEBRUARY, 2025.

**(Virender Bhat)
Judicial Member**

**(Sandesh Kumar Sharma)
Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj