

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

**EXECUTION PETITION NO. 07 OF 2021 & IA NO. 1571 OF 2021
EXECUTION PETITION NO. 08 OF 2021 & IA NO. 1572 OF 2021 & IA NO. 1877 OF 2022
EXECUTION PETITION NO. 10 OF 2021 & IA NO. 1554 OF 2021 & IA NO. 2114 OF 2022
EXECUTION PETITION NO. 11 OF 2021 & IA NO. 2115 OF 2022 & IA NO. 1553 OF 2021**

Dated: 24th February, 2023

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

EXECUTION PETITION NO. 07 OF 2021 & IA NO. 1571 OF 2021

In the matter of:

M/S SPRNG SOURA KIRAN VIDYUT PRIVATE LIMITED

UNIT NO. FF-48 A, FIRST LOOR,
OMAXE SQUARE, PLOT NO. 14,
JASOLA DISTRICT CENTRE,
NEW DELHI.

.... **PETITIONER(S)**

Versus

- 1. SOUTHERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRDESH LIMITED
THROUGH: CHAIRPERSON / MANAGING DIRECTOR
19-13-65/ A, SRINIVASAPURAM
TIRUCHANOUR ROAD, TIRUPATI - 517 503**
- 2. EASTERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRADESH LIMITED
THROUGH: CHAIRPERSON / MANAGING DIRECTOR
P&T COLONY, SEETHAMMADHARA,
VISAKHAPATNAM, ANDHRA PRADESH- 530 013**
- 3. SOLAR ENERGY CORPORATION OF INDIA LIMITED
THROUGH: MANAGING DIRECTOR
1ST FLOOR, A-WING, D-3,
DISTRICT CENTRE, SAKET,
NEW DELHI-110017**

.... **RESPONDENT(S)**

Counsel for the Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Molshree Bhatnagar
Ms. Surabhi Panday
Mr. Neelkandan Rahate
Mr. Deepak Thakur
Mr. Neel Kandan
Mr. Nimesh Jha

Counsel for the Respondent(s) : Mr. Sidhant Kumar
Ms. Manyaa Chandok for R-1 & 2

Mr. M. G. Ramachandran, Sr. Adv.
Ms. Anushree Bardhan
Mr. Aneesh Bajaj
Ms. Tanya Sareen
Ms. Srishti Khindaria for R-3

EXECUTION PETITION NO. 8 OF 2021 & IA NO. 1572 OF 2021 & IA NO. 1877 OF 2022

In the matter of:

M/S SPRNG SOURA KIRAN VIDYUT PRIVATE LIMITED

UNIT NO. FF-48 A, FIRST LOOR,
OMAXE SQUARE, PLOT NO. 14,
JASOLA DISTRICT CENTRE,
NEW DELHI.

.... **PETITIONER(S)**

Versus

- 1. SOUTHERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRDESH LIMITED**
THROUGH: CHAIRPERSON / MANAGING DIRECTOR
19-13-65/ A, SRINIVASAPURAM
TIRUCHANOUR ROAD, TIRUPATI - 517 503
- 2. EASTERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRADESH LIMITED**
THROUGH: CHAIRPERSON / MANAGING DIRECTOR
P&T COLONY, SEETHAMMADHARA,
VISAKHAPATNAM, ANDHRA PRADESH- 530 013
- 3. SOLAR ENERGY CORPORATION OF INDIA LIMITED**
THROUGH: MANAGING DIRECTOR
1ST FLOOR, A-WING, D-3,
DISTRICT CENTRE, SAKET,

NEW DELHI-110017

Now shifted to:

Block 7-9, 6th Floor, Plate-B,
NBCC Office Block Tower,
Kidwai Nagar, New Delhi – 110023.

**4. ANDHRA PRADESH SOLAR POWER
CORPORATION PRIVATE LIMITED**

Through: Chairperson/Managing Director,
H. No. 6-3-856/A/3, Sadat Manzil Compound,
Neeraj Public School Lane,
Opposite to Green Park Hotel,
Ammerpet, Hyderabad – 500 016.

5. MINISTRY OF NEW AND RENEWABLE ENERGY

Through: Principal Secretary
Block-14, CGO Complex,
Lodhi Road, New Delhi – 110 003

.... **RESPONDENT(S)**

Counsel for the Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Molshree Bhatnagar
Ms. Surabhi Panday
Mr. Neelkandan Rahate
Mr. Deepak Thakur
Mr. Neel Kandan
Mr. Nimesh Jha

Counsel for the Respondent(s) : Mr. Sidhant Kumar
Ms. Manyaa Chandok for R-1 & 2

Mr. M. G. Ramachandran, Sr. Adv.
Ms. Anushree Bardhan
Mr. Aneesh Bajaj
Ms. Tanya Sareen
Ms. Srishti Khindaria for R-3

**EXECUTION PETITION NO. 10 OF 2021 & IA NO. 1554 OF 2021 &
IA NO. 2114 OF 2022**

In the matter of:

AYANA KADAPA RENEWABLE POWER PRIVATE LIMITED

3rd Floor, Sheraton Grand Hotel,
Brigade Gateway Campus,
26/1, Dr. Rajkumar Road,

Malleswaram (West),
Bangalore, Karnataka – 560055.

.... **PETITIONER(S)**

Versus

**1. SOUTHERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRADESH LIMITED**

Through Chairperson/Managing Director
19-13-65/A, Srinivasapuram
Tiruchanoor Road, Tirupati – 517 503.

**2. EASTERN POWER DISTRIBUTION COMPANY OF
ANDHRA PRADESH LIMITED**

Through Chairperson/Managing Director
P & T Colony, Seethammadhara,
Visakhapatnam, Andhra Pradesh – 530013.

3. SOLAR ENERGY CORPORATION OF INDIA LIMITED

Through: Managing Director
1st Floor, A-Wing, D-3, District Centre,
Saket, New Delhi – 110017.

.... **RESPONDENT(S)**

Counsel for the Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Aniket Prasoon
Ms. Priya Dhankhar
Mr. Rishabh Bhardwaj
Ms. Dalima Gupta
Ms. Shweta Vashist
Ms. Akanksha Tanvi
Mr. Mohd Aman Sheikh

Counsel for the Respondent(s) : Mr. Sidhant Kumar
Ms. Manyaa Chandok for R-1 & 2

Mr. M. G. Ramachandran, Sr. Adv.
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya
Ms. Tanya Sareen
Ms. Srishti Khindaria
Mr. Aneesh Bajaj for R-3

**EXECUTION PETITION NO. 11 of 2021 & IA No. 2115 of 2022 & IA NO. 1553
of 2021**

AYANA KADAPA RENEWABLE POWER PRIVATE LIMITED

3rd Floor, Sheraton Grand Hotel,
Brigade Gateway Campus,
26/1, Dr. Rajkumar Road, Rajaji Nagar
Bangalore, Karnataka – 560055.

.... **PETITIONER(S)**

Versus

1. SOLAR ENERGY CORPORATION OF INDIA LIMITED

Through Managing Director
1st Floor, A-Wing, D-3,
District Centre, Saket,
New Delhi – 110017.

**2. SOUTHERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRADESH LIMITED**

Through: Chairperson/Managing Director
19-13-65/A, Srinivasapuram
Tiruchanoor Road, Tirupati – 517503.

**3. EASTERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRADESH LIMITED**

Through: Chairperson/Managing Director
P&T Colony, Seethammadhara,
Visakhapatnam, Andhra Pradesh – 530013.

**4. ANDHRA PRADESH SOLAR POWER
CORPORATION PRIVATE LIMITED**

Through: Chairperson/Managing Director
H. No. 6-3-856/A/3, Sadat Manzil Compound,
Neeraj Public School Lane,
Opposite To Green Park Hotel.
Ameerpet, Hyderabad – 500 016.

5. MINISTRY OF NEW AND RENEWABLE ENERGY

Through: Principal Secretary
Block-14, CGO Complex,
Lodhi Road, New Delhi – 110003.

... **RESPONDENT(S)**

Counsel for the Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Aniket Prasoon
Ms. Priya Dhankhar
Mr. Rishabh Bhardwaj
Ms. Dalima Gupta
Ms. Shweta Vashist

Ms. Aakanksha Tanvi
Mr. Mohd. Aman Sheikh

Counsel for the Respondent(s):

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Aneesh Bajaj for R-1 & R-2

Mr. M. G. Ramachandran, Sr. Adv.
Ms. Anushree Bardhan
Mr. Aneesh Bajaj
Ms. Tanya Sareen
Ms. Srishti Khindaria
Ms. Surbhi Kapoor for R-3

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

1. These Execution Petitions are filed seeking execution of the order passed by this Tribunal in Appeal Nos. 371 of 2019 and batch. dated 27.02.2020. Learned counsel on both sides agree that it would suffice, for the disposal of all these Execution Petitions, to note the facts referred to, and the contentions raised, in Execution Petition No. 7 of 2022 arising out of Appeal No.373 of 2019.

2. Appeal No. 373 of 2019 was filed by the Petitioner herein questioning the order passed by the Andhra Pradesh State Electricity Regulatory Commission (hereinafter referred to as "Commission") on 05.10.2019. The AP Discoms had approached the Commission seeking its approval of the long term Power Sale Agreements signed by them with NPTC and SECI, and for adjudication of the tariff and trade margin. By its Order dated 05.10.2019, impugned in the Appeals, the Commission had granted conditional approval for the PPAs and PSAs respectively, at the tariffs discovered through the competitive bidding process as per the guidelines issued by the Government of India. Aggrieved by the said Order passed by

the Commission on 05.10.2019, subjecting its approval of the PPAs/PSAs to the amendment stipulated therein, the Petitioners herein preferred appeals before this Tribunal seeking expungement, of a portion of the directions of the Commission, contending that it fell foul of Section 63 of the Act.

3. While granting the Petitioners the relief sought by them, in the Appeals filed before it, this Tribunal had, by its Order dated 27.02.2020, expunged the portion of the Order of the Commission dated 05.10.2019, as sought by the Petitioners herein. The Present EPs have been filed seeking execution of the Order of this Tribunal in Appeal Nos. 373 of 2019 & batch dated 27.02.2020.

4. Elaborate oral submissions were put forth by Sri Basava Prabhu Patil, Learned Senior Counsel appearing on behalf of the Appellant, Sri M.G.Ramachandran, Learned Senior Counsel appearing on behalf of SECI and Sri Siddanth Kumar, Learned Counsel for the APDISCOMS. A note, containing in brief the gist of their submissions, has also been submitted on behalf of the Petitioners and the APDISCOMS. It is convenient to examine the submissions, put forth by Learned Senior Counsel and the Learned Counsel on both sides, under different heads.

I. IS THE POWER CONFERRED ON THIS TRIBUNAL, TO EXECUTE ITS ORDERS, WIDER THAN THAT OF THE CIVIL COURT?

5. After referring to Sections 2(2) of the CPC which defines a “decree”, to Section 2(9) thereof where the expression “Judgement” is defined, to Section 2(14) where “Order” is defined, to Rules 91 & 92 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 (the “2007 Rules” for short) which relate to “Order” and to “Operative portion of the Order”, Sri Basava Prabhu Patil, Learned Senior Counsel appearing on behalf of the Petitioners, would submit that, unlike Sections 47(1) CPC which provides for execution of a decree, Section 120(3)

of the Act enables this Tribunal to execute its Order; as the term “decree” is not defined under the Act, execution under Section 120(3) of the Act can be sought for the entire Appellate Order or a part thereof; and execution proceedings need not be confined merely to execution of the operative part of the Appellate Order. Learned Senior Counsel would rely on **State of Karnataka vs Vishwabharathi House Building Co-operative Society: (2003) 2 SCC 412** in support of his submission that a statutory tribunal, which has been conferred with the power to adjudicate a dispute and pass necessary Orders, has also the power to implement its Order and make its Order effective, and on **Union of India vs Paras Laminates (P) Ltd: (1990) 4 SCC 453** to contend that, since the Electricity Act confers jurisdiction on this Tribunal to execute its Order, it must be held to have also granted all such powers, and to employ all such acts, as are necessary for its execution.

6. Sri M.G.Ramachandran, Learned Senior Counsel appearing on behalf of SECI, would submit that the powers conferred on this Tribunal under Section 111(3) of the Act is wide; it enables this Tribunal to pass such orders in the appeal as it thinks fit; and any part of the appellate order is executable under Section 120(3) of the Act.

7. On the other hand, Sri Siddant Kumar, Learned Counsel for the Respondent-APDISCOMs, would submit that the executing Court cannot go behind or beyond the decree; Section 120(3) makes the provisions of the CPC application to execution proceedings under the Electricity Act; and, consequently, Section 47(1) CPC is attracted.

A. RELEVANT PROVISIONS OF THE 2003 ACT AND THE RULES:

8. Section 111(3) of the Act, which empowers this Tribunal to confirm, modify or set aside the order appealed against, is no doubt wide. However, it is not the width of the appellate power which is in issue in the present

proceedings, but the scope and ambit of the power conferred on this Tribunal, under Section 120(3) of the Act, to execute its orders. Section 120 of the Electricity Act, 2003 (“the Act” for short) prescribes the procedure and powers of the Appellate Tribunal. Sub-section (3) thereof stipulates that an order, made by the Appellate Tribunal under the Act, shall be executable by the Appellate Tribunal as a decree of the civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

9. The power of execution, vested in this Tribunal, is not an implied power. As it has been expressly conferred, the said power is circumscribed by, and is confined to, what has been stipulated in Section 120 (3) of the Act. Though the word “Order” is not defined in the Act, it has been defined in the 2007 Rules made by the Central Government in exercise of its powers under Section 176 (1) and Section 176(2)(q), (t), and (z) of the Act. Chapter XIV of the 2007 Rules relates to pronouncement of orders. Rule 91, which relates to Orders, stipulates that the final decision of the Tribunal, on an application/petition before it, shall be described as a Judgment. Rule 92 relates to the operative portion of the order, and provides that all orders or directions of the Bench shall be stated in clear and precise terms in the last paragraph of the order.

B. RELEVANT PROVISIONS OF THE CPC:

10. In view of Section 120(3) of the Act, an order of this Tribunal, for the limited purpose of its execution, must be treated as a decree of the Civil Court. As the power conferred on this Tribunal, to execute its orders, is that of a Civil Court, it is necessary to note the relevant provisions in the CPC applicable for execution of decrees. Section 2 (2) of the Civil Procedure Code defines a “decree” to mean “the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in

the Suit". In terms of the definition of a "decree", in Section 2(2) CPC, three essential conditions are necessary: (i) that the adjudication must have been made in a suit; (ii) that the suit must start with a plaint and culminate in a decree; and (iii) that the adjudication must be formal and final and must be given by a Civil Court. **(Diwan Bros. V. Central Bank of India: (1976) 3 SCC 800; Madan Naik v. Hansubala Devi: AIR 1983 SC 676: 1983 3 SCC 15).**

11. Section 2 (9) CPC defines "judgment" to mean "the statement given by the Judge on the grounds of a decree or order. While Section 2 (14) CPC no doubt defines "Orders" to mean "the formal expression of any decision of a Civil Court which is not a decree.", the meaning of the word "Order" used in Section 120(3) would, in view of Rule 91 of the 2007 Rules, be the final decision of the Tribunal. On a conjoint reading of Section 120 (3) of the Act and Section 2(2) CPC, the order of this Tribunal which is capable of execution is its operative portion, which alone can be said to be the formal expression of an adjudication in the appeal conclusively determining the rights of parties with regard to the dispute (matters in controversy) before it.

12. Section 47 (1) CPC relates to the question to be determined by the Court executing the decree and, under sub- section (1) thereof, all questions arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree, shall be determined by the Court executing the decree and not by a separate suit. The powers of the Court to enforce execution is stipulated in Section 51 CPC and is inapplicable to the present case, since the dispute herein is confined to the question as to whether or not the relief sought by the petitioner, in these execution proceedings, should form part of the decree ie the operative portion of the order passed by this Tribunal in Appeal No. 373 of 2019 dated 27.02.2020.

13. The scheme of the Civil Procedure Code is that, in one proceeding, the court determines the liability of a party and the corresponding right of the other party and incorporates them in the decree, and in another proceeding it executes the decree, i.e. at the instance of one party, it specifically enforces the liability against the other. There can be no execution or specific enforcement of a liability without a previous determination of the liability by a court which is incorporated in a formal document called a decree. **(Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker :AIR 1961 All 1(FB): 1960 SCCONLINE All 89).**

14. Section 47 CPC is the only Section that deals with the jurisdiction of an executing court. It is confined to determining all questions arising between the parties to the suit and relating to the execution, discharge or satisfaction of the decree. Any question that does not relate to the execution, discharge or satisfaction of the decree is thus not within the jurisdiction of the executing court. **(Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker :AIR 1961 All 1(FB): 1960 SCCONLINE All 89).**

C. EXECUTION PROCEEDINGS: ITS SCOPE:

15. As an executing Court gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC **(Rameshwar Dass Gupta v. State of U.P. and Another: (1996) 5 SCC 728)**, it can neither go behind the decree nor can it question its legality or correctness, save where the decree, sought to be executed, is a nullity for lack of inherent jurisdiction in the court passing it. **(Sunder Dass vs Ram Prakash :AIR 1977 SC 1201 :1977 2 SCC 662; Jai Narain Ram Lundia vs Kedar Nath Khetan And Others:AIR 1956 SC 359:1956 SCR 62).** The Petitioner may or may not have the right to ask the court which passed the decree to vary it, but they can certainly not ask the executing court to do so. The decree

must either be executed as it stands in one of the ways allowed by law or not at all, unless the Court which passed it alters or modifies it. (**Jai Narain Ram Lundia vs Kedar Nath Khetan And Others: AIR 1956 SC 359:1956 SCR 62**). For instance, if the decree says that on payment being made some definite and specific thing is to be given to the other side, the executing court cannot alter that and allow something else to be substituted for the thing ordered to be given. (**Fry on Specific Performance** (6th Edn., Chapter IV, p. 546 onwards); **Jai Narain Ram Lundia vs Kedar Nath Khetan And Others: AIR 1956 SC 359:1956 SCR 62**).

16. A decree cannot be varied even by the court passing it, except on review or under Section 152. (**Kotaghiri v. Vellanki [I.L.R. 24 Mad. 1 (PC); Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker : AIR 1961 All 1(FB): 1960 SCCONLINE All 89**). A Court executing a decree can neither add to such a decree nor vary its terms. (**Muhammad Sulaiman v. Jhukki Lal [I.L.R. XI All. 228; Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker : AIR 1961 All 1(FB): 1960 SCCONLINE All 89**). The duty of an executing court is to execute the decree as it finds it. It has no jurisdiction to alter or vary it and to execute it as it would stand after the alteration or variance. (**Gobardhan's case [A.I.R. 1932 All. 273 : 1932 A.L.J. 365 (F.B.) : I.L.R. 54 All. 573; Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker : AIR 1961 All 1(FB): 1960 SCCONLINE All 89**).

17. An executing court has jurisdiction only to execute the decree, i.e. it can enforce only the decretal liability. It has jurisdiction, conferred by Section 47 CPC, to decide all questions relating to execution, discharge and satisfaction of the decree, but it has no jurisdiction whatsoever over any other matter and cannot enforce any other liability. It is concerned only with enforcing the decretal liability and not any other. (**Maharaj Kumar Mahmud**

Hasan Khan vs Moti Lal Banker :AIR 1961 All 1(FB): 1960 SCCONLINE All 89). If a decree-holder wants to enforce a liability other than the judgment-debtor's decretal liability, it would strictly not be a question of execution of the decree, and will not be within the jurisdiction of the executing court. (**Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker :AIR 1961 All 1(FB): 1960 SCCONLINE All 89).**

18. The Executing Court cannot travel beyond the original *lis*, between the parties, to any subsequent cause of action. It is also not open to the Executing Court to add to a decree, of which execution is sought, a direction or injunction that were neither prayed for nor formed part of the original *lis* between the parties; and the Executing Court cannot travel behind the decree to add or modify the directions contained therein. (**J&K Bank Ltd. v. Jagdish C. Gupta, (2004) 10 SCC 568; Gurdev Singh v. Narain Singh, (2007) 14 SCC 173).**The entire purpose of execution proceedings is to enforce the directions passed in the decree (**Firm Rajasthan Udyog & Ors. v. Hindustan Engineering and Industries Ltd. (2020) 6 SCC 660).** Findings, even though binding, cannot form the basis of a proceeding for execution.

19. The principles which can be culled out from the above referred judgements is that there can be no execution or specific enforcement of a liability without a previous determination of the liability by a court which is incorporated in a formal document called a decree. Any question, that does not relate to the execution of the decree, is not within the jurisdiction of the executing court. The executing court can neither go behind the decree nor can it question its legality or correctness. The decree must either be executed as it stands in one of the ways allowed by law or not at all, unless the Court which passed it alters or modifies it. A Court executing a decree can neither add to such a decree nor vary its terms. It is not within the

jurisdiction of the executing court to enforce any liability other than the judgment-debtor's decretal liability. The Executing Court cannot travel beyond the original *lis* between the parties, to any subsequent cause of action. It is also not open to the Executing Court to add to a decree or to modify the directions contained therein or to grant a direction that was neither prayed for nor formed part of the original *lis* between the parties. The entire purpose of execution proceedings is to enforce the directions passed in the decree, and nothing more.

20. Let us now examine whether the judgements relied on behalf of the petitioner lay down any principle contrary to what has been declared in the above referred judgements.

D. JUDGEMENTS RELIED ON BEHALF OF THE PETITIONER:

21. Section 25 of the Consumer Protection Act, 1986, which provides for the enforcement of orders by the District Forum, the State Commission or the National Commission, stipulates that every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending therein, and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court, and thereupon the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

22. The Karnataka High Court, while interpreting Section 25 of the Act, had observed that the said provision did not empower the District Forum to execute its order; and, if at all the Forum wanted to enforce the order, it had

to send the order to the court concerned which had jurisdiction over the area, which it had not done.

23. While disagreeing with these observations of the Karnataka High Court, the Supreme Court, in **State of Karnataka v. Vishwabharathi House Building Coop Society: (2003) 2 SCC 412**, held that a legal fiction has been created by Section 25, to the effect, that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit; the legal fiction so created has a specific purpose i.e. for the purpose of execution of the order passed by the Forum or the Commission; only in the event the Forum/State Commission or the National Commission is unable to execute its order, the same may be sent to the civil court for its execution; the Karnataka High Court was, therefore, not correct in holding that, in each and every case, the order passed by the District Forum/State Commission/National Commission, was required to be sent to the civil courts for execution; further, Section 25 should be read in conjunction with Section 27 which conferred an additional power upon the Forum and the Commission to execute its orders; the said provision was akin to Order 39 Rule 2-A CPC or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 CPC; the cardinal principle of interpretation of statutes is that courts or tribunals must be held to possess power to execute their own order; a statutory tribunal, which has been conferred the power to adjudicate a dispute and pass necessary orders, has also the power to implement its orders; and, as the Act is a self-contained code, it must be deemed to have conferred upon the Tribunal all powers in order to make its order effective, even if it has not been specifically spelt out.

24. As held by the Supreme Court, in **Vishwabharathi House Building Coop Society**, where a statutory enactment is a self-contained code which

does not specifically provide for execution of its orders/judgements, it must be deemed that Parliament has conferred upon the statutory tribunal, created under the said Act, all such powers necessary for it to make its orders effective. Section 120 (3) of the Electricity Act not only confers the power of execution on this Tribunal, but also stipulates that the power so conferred is that of a Civil Court. The power of execution under Section 120 (3) is not untrammelled, but is confined to the parameters within which the Civil Court exercises the power of execution ie in terms of the provisions of the CPC and not beyond.

25. Sub-section (6) of Section 129-C of the Customs Act provided that, subject to the provisions of the said Act, the Appellate Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or the discharge of its functions. Sub-sections (7) and (8) of Section 129-C provided that the Tribunal shall, for certain specific purposes, be deemed to be a Civil Court. It is in the context of these provisions, that the Supreme Court, in **Union of India v. Paras Laminates (P) Ltd., (1990) 4 SCC 453**, held that the Tribunal functions as a court within the limits of its jurisdiction; it has all the powers conferred expressly by the statute; furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers; certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power, which is expressly granted in the assigned field of jurisdiction, is efficaciously and meaningfully exercised; the powers of the Tribunal are no doubt limited; its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted; the implied grant is, of course, limited by the express grant; and, therefore, it can only be such

powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective.

26. Applying the law declared by the Supreme Court, in **Paras Laminates (P) Ltd**, this Tribunal can only be said to have such incidental and ancillary powers necessary to make fully effective the express grant of the statutory powers of execution under Section 120(3), however within the bounds of its jurisdiction. As the jurisdiction of this Tribunal, to execute its orders, has been expressly confined by Section 120(3) to that exercised by a Civil Court executing a decree, it is only such incidental powers of execution available to a Civil Court that are also available to be exercised by this Tribunal, and not beyond.

II. WAS DELAY, IN EXECUTION OF THE PROJECT, THE SUBJECT MATTER OF THE APPEAL IN WHICH THE ORDER, NOW SOUGHT TO BE EXECUTED, WAS PASSED?

27. After referring to the Order passed by this Tribunal, in Appeal Nos. 368 of 2019 and batch dated 27.02.2020, Sri Basava Prabhu Patil, Learned Senior Counsel appearing on behalf of the Execution Petitioners, would submit that the subject matter of the Appellate order passed by this Tribunal included, among others, extension of time lines; while rejecting the contention of the AP Discoms that the Appellants had failed to achieve progress in establishing the project within the period stipulated in terms of the PPA and the PSA, and after considering the timelines, this Tribunal held that it was not the stand of the Discoms, before the Commission, that there was delay on the part of the intermediary procurer or SPDs; the condition precedent for enforcement of obligations of either party against the other, under the PPA and PSA, was two months; from the date of approval of the PPAs/PSAs by the Commission, the project must start within the prescribed

time; it was the responsibility of the AP Discoms to obtain the adoption tariff order from the Commission; on account of the conditional order passed by the Commission, there was no finality with regards approval of procurement of power and adoption of tariff; and the contention of the AP Discoms, that there was a delay or there was going to be a delay in achieving SCOD, should be rejected.

28. Reliance is placed by the Learned Senior Counsel on **Deep Chand vs Mohan Lal:(2000) 6 SCC 259** in support of his submission that the purpose of execution proceedings is to enable the decree-holder to obtain the fruits of the decree, and on **Bhavan Vaja vs Solanki Hanuji Khodaji Mansang: (1973) 2 SCC 40** to contend that the Executing Court should find out the meaning of the words employed in the decree by ascertaining the circumstances under which those words came to be used.

29. Sri M.G.Ramachandran, Learned Senior Counsel appearing on behalf of SECI, would submit that this Tribunal had the power to examine the question of delay as it was raised on behalf of the APDISCOMs; the allegations of delay, in completion of the Project, was considered by this Tribunal, and held against the APDISCOMs; its conclusions on this issue form part of the appellate order, and is binding inter-parties; this part of the Order can be executed in proceedings under Section 120(3) of the Act; and, as the letter dated 14.06.2021 is in flagrant violation of the Appellate Order dated 27.02.2020, it can be set aside in Execution proceedings.

30. On the other hand, Sri Siddant Kumar, Learned Counsel for the Respondent-APDISCOMs, would submit that the Appeals, preferred by the Petitioners herein, was confined to expunging the observations of the Commission whereby the approval granted by it was made subject to compliance with certain conditions; the dispute in the Appeal was confined

to the question whether the views of the objectors could be considered in a tariff adoption exercise under Section 63 of the Act; as delay in completion of the project was not in issue before the Commission, the Appeal had no bearing on this aspect; it is only because the APDISCOMS had opposed adoption of the tariff on the ground that the projects were being unduly delayed, that this Tribunal went it to this issue, and held in favour of the Appellant; not every finding in the Order, or in a Judgement of a Court, would constitute a decree; and, consequently, the judgment dated 27.02.2020 does not contain any direction or injunction capable of execution in relation to the obligations arising out of the PPA and the PSA.

31. Learned Counsel would highlight the distinction between the Prayers sought by the Petitioners in the Appeal, and the Reliefs sought by them in the Execution Proceedings, to submit that the latter prayers go far beyond the former. He would contend that what is impugned in the EP is the letter dated 14.06.2021 which was not even in existence when the Appeal was disposed of on 27.02.2020; and termination of the PPA and PSA are subsequent causes of action, and fall beyond the scope of the Appellate proceedings which concluded with the passing of the judgment dated 27.02.2020.

32. The Petitioners claim, that the reliefs sought in the EP forms part of the Order of this Tribunal dated 27.02.2020, is based entirely on the findings recorded by this Tribunal, in the said order, while rejecting the contention of the APDISCOMs that the Petitioners were responsible for the project being delayed.

A. RIVAL CONTENTIONS ON THIS QUESTION AND THE FINDINGS OF THE TRIBUNAL:

33. As noted by this Tribunal, in its Order dated 27.02.2020, the AP Discoms had submitted that the order of the Commission dated 05.10.2019 was stayed on the aspect of trading margin; the Appellants had miserably failed to achieve progress in establishing the project within the period stipulated in terms of the PPA and the PSA; therefore, the Petitioner may face the consequences of payment of liquidated damages in terms of Clause 4.6 of the PPA; if the commissioning of the project within the time frame was delayed, the tariff of the project would be different, and the same would be as prevalent on the date of such delayed commissioning of the project; hence, the tariff now claimed in the PPA/PSA could not be paid; in course of time, the tariff for procurement of solar power, across the country, was further reduced to Rs.2.44 per unit; therefore, the tariff that would be applicable was the one prevalent when the project was ready for supplying power; and there was no Regulation of the Commission specifying Rs.0.07 per unit payable as trading margin.

34. The Petitioners contention in reply thereto, (which has also been noted by this Tribunal in its order), was that the APDiscoms were attempting to raise issues which were not raised by them during the proceedings before the Commission; they could not, therefore, be allowed to take inconsistent pleas before this Tribunal; allegations of delay in achieving SCOD was factually incorrect; the effective date referred to in Article 2.1 of the PPA would be the date when the APERC passes orders after approval for procurement of power and adoption of tariff; in the light of APERC's conditional order which was causing obstacles, the so-called delay, if any, was not attributable to the Petitioner; NTPC had extended the scheduled commissioning date of the project to 04.09.2020 by letter dated 29.11.2019, and the same was consented by the Petitioner by letter dated 13.12.2019; therefore, extension of time was up to 04.09.2020; the inter-se obligations in

terms of the PPA, including commissioning of the project, would be triggered only when finality of adoption of tariff was reached; once the adoption order reached finality in terms of Article 2.1.2 of the PPA, the time for completion of the project, in terms of the PPA, would commence; the delay, if any, could not therefore be attributed to the Appellants, as they could legally seek suitable extension of SCOD under the PPA; and the Tribunal must allow SCOD of the project to be extended by 11 months from the date of the judgment of this Tribunal.

35. While examining the contention of AP Discoms regarding delay in commissioning the project, this Tribunal considered the time frame in terms of the agreement between the parties, and thereafter noted that it was not the stand of the Discoms, before the Commission, that there was a delay on the part of the intermediary procurer or SPDs. This Tribunal then held that, in terms of Article 2.1 which dealt with the effective date and condition precedent, the PPA was effectively signed by both the parties on 05.07.2018; it was incumbent upon the AP Discoms to get approval of the Commission for adopting the tariff and for procurement of power; the condition precedent for enforcement of obligations of either party against the other, under the PPA and PSA, was two months; from the date of such approval, the project in question must start within the prescribed time; therefore, it was not the responsibility of the Petitioner to obtain approval of the Commission regarding adoption of the tariff, and it was the responsibility of the AP Discoms; on account of the conditional order passed by the Commission, there was no finality regarding approval of procurement of power and adoption of tariff; AP Discoms could not take advantage of their own delay; there were Supplementary PSAs to the original PSAs, with the intermediary procurer, extending the existing timelines up to 31.07.2019; time was further extended by the intermediary procurer; finality on approval

of procurement of power and adoption of tariff would be the starting point of time to commission the project within the stipulated timeframe; and, therefore, the contention of AP Discoms, that there was a delay or there was going to be a delay in achieving SCOD, was to be rejected.

36. The submission of APDISCOMS, in short, was that delay in commissioning the project should result in prescribing the tariff prevalent on the delayed date of commissioning; the Petitioners herein (appellants in the Appeals before this Tribunal) had failed to achieve progress in commissioning the project within the period stipulated in terms of the PPA and the PSA; and, hence, the tariff now claimed in the PPA/PSA could not be paid. In response thereto, the Petitioners had contended that the issues sought to be raised by the APDiscoms were not raised by them during the proceedings before the Commission; and they ought not, therefore, to be permitted to take inconsistent pleas before this Tribunal. In its Order dated 27.02.2020, this Tribunal had also opined that it was not the stand of the Discoms, before the Commission, that there was a delay on the part of the intermediary procurer or SPDs.

37. It must be borne in mind that the APDISCOMS did not prefer any appeal against the Order of the Commission dated 05.10.2019. Consequently, they were not entitled to have the order of the Commission set aside, on the ground of delay on the part of the Petitioners in commissioning the project, in the appeal preferred not by them, but by the Petitioners herein. The only appeals filed before this Tribunal were by the Solar Project developers ie the Petitioners in these execution proceedings. The findings recorded by this Tribunal in answer to the contentions raised by the APDISCOMS for the first in the appeal, that too in an appeal not filed by them, was independent of, and not related to, the issues raised by the Petitioners herein in the Appeals filed by them before this Tribunal. While

the findings of this Tribunal on this aspect may, possibly, be binding in a subsequent lis inter-parties, or may possibly constitute res judicata in terms of Section 11 CPC in independent proceedings, if any, instituted by the Petitioners, it certainly cannot form the basis or the foundation of a proceeding for execution, when it is unrelated either to the original proceedings before the Commission or to the issues raised by the Petitioners in the Appeal filed by them before this Tribunal.

38. This aspect can also be examined from another angle. If the APDISCOMS had not taken such a defence for the first time in the Appeals, there would have been no need for this Tribunal to examine this issue while considering the claim of the Appellants for grant of the relief they had sought. The observations of this Tribunal, in answer to the contention raised by the respondents in the Appeal more so one unrelated to the order under appeal or to the issues raised by the Appellants before this Tribunal, cannot be said to be the operative or the decretal part of the order of this Tribunal, warranting execution in the present proceedings.

B. JUDGEMENTS RELIED ON BEHALF OF THE PETITIONER:

39. In **Bhavan Vaja & Ors V. Solanki Hanuji Khodaji Mansang & Anr: (1973) 2 SCC 40**, the Supreme Court held that It is true that an executing court cannot go behind the decree under execution; but that does not mean that it has no duty to find out the true effect of that decree; for construing a decree it can, and in appropriate cases it ought to, take into consideration the pleadings as well as the proceedings leading up to the decree; in order to find out the meaning of the words employed in a decree the Court, often, has to ascertain the circumstances under which those words came to be used; that is the plain duty of the execution Court; and, if the Court fails to

discharge that duty, it has plainly failed to exercise the jurisdiction vested in it.

40. In **Deep Chand vs Mohan Lal : (2000) 6 SCC 259**, the Supreme Court held that the purpose of an execution proceeding is to enable the decree-holder to obtain the fruits of his decree; in cases where the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree, and the other which prevents him from taking the benefits of the decree, the interpretation which assists the decree-holder should be accepted; execution of the decree should not be made futile on mere technicalities; this does not, however, mean that, where a decree is incapable of being executed under any provision of law, it should, in all cases, be executed notwithstanding such bar or prohibition; a rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant; and the policy of law is to give a fair and liberal, and not a technical, construction enabling the decree-holder to reap the fruits of his decree.

41. In the light of the law declared by the Supreme Court, in **Bhavan Vaja: (1973) 2 SCC 40**, and **Deep Chand: (2000) 6 SCC 259**, we must take into consideration the pleadings, as well as the proceedings leading up to the decree, in construing a decree; and in case the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree, and the other which prevents him from taking the benefits of the decree, the interpretation which assists the decree-holder should be accepted.

42. It is necessary, therefore, for us to refer to the reliefs sought and those granted by the Commission in the original petition, and in appeal by this Tribunal, for that would clearly establish that the question of delay in

commissioning of the project was extraneous to the entire proceedings, and was merely a defence taken by the APDISCOMS for the first time in the appellate proceedings, adjudication of which was unnecessary in deciding whether or not to grant the relief sought, in the appeals, by the Petitioners herein.

C. RELIEF SOUGHT BEFORE THE COMMISSION:

43. The Order of the Commission dated 05.10.2019, which was subjected to challenge by the Petitioner herein in Appeal No. 373 of 2019 & batch, arose from out of the public hearings held in the matter of approval of the Power Sale Agreements signed by AP Discoms with NTPC and SECI respectively, and regulation of price thereunder, under Section 86 (1) (b) of the Act, and adoption of tariff under Section 63 of the Act, in respect of purchase of solar power of 750 MW of Phase-II Solar Park at N.P. Kunta, Anantapur District, 250 MW of Phase-II, Batch-II, Tranche-I of NSM of Kadapa Solar Park and 750 MW of Kadapa Ultra Mega Solar Park respectively.

44. APSPDCL, by its letter dated 02-02-2018, had requested the Commission for grant of approval for procurement of solar power by the AP Discoms from SECI for the proposed 750 MW solar park at Kadapa Ultra Mega Solar Park. In terms of the Solar Policy, 2015 of the Government of Andhra Pradesh, the AP Discoms had, with the consent of the Commission, earlier entered into PPAs for a capacity of 690 MU. Subsequently, after approval by the MNRE, Government of India, the AP Discoms had entered into PSAs/PPAs with NTPC / SECI / Genco for purchase of power. The solar power tariffs were stated to be between Rs.2.44 to Rs.3.00 per unit. The Government of Andhra Pradesh, by letters dated 05-12-2017, gave permission to SECI to initiate tendering process for the balance 750 MW in

Kadapa district and to proceed with the discovered tariff, if lower than the ceiling tariff of Rs.3.00 per kWh. SECI was directed to follow the MOP notified guidelines for tariff based competitive bidding process for procurement of solar power. The tariff realized, after reverse auction, was Rs.2.20 per unit for 500 MW and Rs.2.71 per unit for 250 MW, and accordingly PSAs were entered into.

45. On the Commission being requested to grant permission thereto, it issued a public notice inviting comments / suggestions from all interested persons / stakeholders regarding approval of each of the PSAs for 250 MW signed by AP Discoms with SECI, and regulation of price for purchase of solar power generated from the proposed 750 MW Kadapa Ultra Mega Solar Park. Two objectors submitted their views in response to the public notice, and the AP Discoms filed their reply to the said objections.

D. ORDER OF THE COMMISSION DATED 05.10.2019:

46. In its order dated 05.10.2019, the Commission held that the balance of convenience was in favour of approving the request, making it subject to further consideration of the amendments, proposed by the objectors, by the parties to the PPAs/PSAs. The Commission approved procurement of solar power by APSPDCL and APEPDCL from NTPC and SECI for a total quantum of 750 MW, 250 MW and 750 MW respectively at the specified Solar Parks, under the PSAs/PPAs, at the tariff discovered through competitive bidding process, as per the guidelines issued by the Government of India, which stood adopted by the Commission under Section 63 of the Act, subject to the amendments to the PSAs / PPAs respectively, as suggested by the objectors, being considered by the APDISCOMS, NTPC, SECI and the Solar Power Developers, and their reporting back to the Commission, within two (2) months, regarding their respective views on the proposed amendments. Thereafter the Commission was to examine the

proposed amendments and views of the stakeholders received and, after hearing in accordance with law, order incorporation of any amendments in the PSAs/PPAs respectively considered relevant and necessary by the Commission.

E. RELIEFS SOUGHT IN THE APPEALS FILED BEFORE THIS TRIBUNAL AGAINST THE ORDER OF THE COMMISSION DATED 05.10.2019:

47. Appeals were filed by the Petitioners-Solar Power Plants before this Tribunal challenging the order passed by the Commission on 05.10.2019 in the petitions seeking approval for procurement of power by the AP Discoms, at the tariff competitively determined. The relief sought by the Petitioners herein, in Appeal No.373 of 2019 & batch, was to expunge the directions of the APERC in Paragraph No. 26 of its order dated 05.10.2019 in as much as they required the AP Discoms, NTPC, SECI and the Appellant to consider amendments of the terms of the PPA/PSA, suggested by the objectors at the public hearing conducted by APERC; and such directions were contrary to the orders of this Tribunal i.e.,

“subject to the amendments to the Power Sale Agreements (PSAs) / Power Purchase Agreements (PPAs) respectively suggested by Sri M. Venugopala Rao and Sri A. Punna Rao, learned objectors being considered by the Distribution Companies of Andhra Pradesh, M/s. NTPC, M/s. SECI and the Solar Power Developers and their reporting back to the Commission within two (2) months from now their respective views on the proposed amendments. The Commission will examine the proposed amendments and views of the stakeholders received and after hearing in accordance with law, order incorporation of any amendments in the Power Sale Agreements (PSAs) / Power Purchase Agreements

(PPAs) respectively considered relevant and necessary by the Commission.”

F. CONTENTIONS OF THE PETITIONERS, IN SUPPORT OF THE RELIEF CLAIMED BY THEM, IN THE SAID APPEALS:

48. In the said appeals, the Petitioner herein had contended that the proceedings before the Commission was initiated only for procurement of power by AP Discoms through tariff based competitive bidding process under Section 63 of the Act; the bidding process and the bidding documents were in strict compliance with the MoP guidelines; the Commission had acknowledged that there was no material to show that the said guidelines were violated in the bidding process undertaken by NTPC or SECI; and there was no legal basis, therefore, for the Commission to direct the parties to consider any amendments to the bidding documents prepared in line with the MoP guidelines.

49. In the said Appeals, the petitioners herein had further contended that, in the bidding route, bids were invited through a transparent competitive bidding process conducted in terms of the guidelines issued by the Central Government; the Commission was required only to adopt the discovered tariff, ensuring that the guidelines for bidding process was properly adopted; under the Section 63 scenario, the exercise to be discharged by the Commission was limited to verifying whether the bidding process was held in a transparent manner, and in accordance with the MoP guidelines; it is only if it found that such compliance did not exist, could the petition for approval of the tariff be rejected; it was not open for the Commission to make changes to the terms and conditions of the bid, which formed part of bidding document, in a tariff based competitive bidding; and, therefore, the directions issued by the Commission in its order dated 05.10.2019, subjecting approval of procurement of power and adoption of tariff to the proposed

amendments/objections or suggestions that had been raised during the public hearing, were outside the scope of the petition filed before the Commission.

G. RELIEF GRANTED BY THIS TRIBUNAL IN ITS ORDER DATED 27.02.2020:

50. In its order, in Appeal No.373 of 2019 & batch dated 27.02.2020, this Tribunal specifically noted that the entire order, of the Commission dated 05.10.2019, was not the subject matter of challenge in the Appeals, but the challenge was limited only to the directions issued by the APERC indicating that there would be consideration of amendments to the PPA/PSA forming part of the bidding documents which were prepared in line with the guidelines, issued by the Ministry of Power, for tariff based competitive bidding process in respect of procurement of power from Grid connected solar power projects.

51. This Tribunal further held that, though the Order of the Commission dated 05.10.2019 approved procurement of power and adoption of tariff, such approval was subject to amendments/ modifications on account of objections raised in a public hearing by two objectors; and such a conditional approval could not be sustained. Consequently the Appeals were allowed setting aside the highlighted portion of the impugned order which reads as under:

“Therefore, all the three matters under public hearing under consideration herein are ordered approving the procurement of solar power by Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL) and Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL) respectively from M/s. National Thermal Power Corporation Limited (NTPC) and M/s. Solar

Energy Corporation of India Limited (SECI) of a total quantum of 750 MW, 250 MW and 750 MW respectively at the specified Solar Parks under the Power Sale Agreements (PSAs) / Power Purchase Agreements (PPAs) respectively at the tariffs discovered through competitive bidding process, as per the guidelines issued by the Government of India, which stand adopted by the Commission under Section 63 of the Electricity Act, 2003, subject to the amendments to the Power Sale Agreements (PSAs) / Power Purchase Agreements (PPAs) respectively suggested by Sri M. Venugopala Rao and Sri A. Punna Rao, learned objectors being considered by the Distribution Companies of Andhra Pradesh, M/s. NTPC, M/s. SECI and the Solar Power Developers and their reporting back to the Commission within two (2) months from now their respective views on the proposed amendments. The Commission will examine the proposed amendments and views of the stakeholders received and after hearing in accordance with law, order incorporation of any amendments in the Power Sale Agreements (PSAs) / Power Purchase Agreements (PPAs) respectively considered relevant and necessary by the Commission.”

52. This Tribunal further held that, in these Petitions, the tariff payable would be at Rs.2.72 per kWh along with trading margin of 7 paise per unit.

H. OPERATIVE PORTION OF THE ORDER (DECREE) PASSED BY THIS TRIBUNAL WHICH ALONE CAN BE EXECUTED:

53. Consequent on deletion of the highlighted portion of the order of the Commission dated 05.10.2019, the operative part of the said order, as affirmed by this Tribunal in its order dated 27.02.2020, are (1) Procurement

of solar power by APSPDCL and APEPDCL respectively, from NTPC and SECI, of a total quantum of 750 MW, 250 MW and 750 MW respectively at the specified Solar Parks under the PSAs/PPAs respectively, was approved at the tariffs discovered through competitive bidding process, as per the guidelines issued by the Government of India; and (2) the tariff payable would be at Rs.2.72 per kWh along with trading margin of 7 paise per unit.

54. The above referred operative portion of the Order of this Tribunal is the decree which alone could have been executed in the present execution proceedings. The language of the said decree is incapable of two interpretations, and the question of accepting an interpretation which assists the decree-holder to obtain the fruits of the decree does not therefore arise.

55. Let us now take note of what the Petitioner has sought in the present execution proceedings.

I. RELIEFS SOUGHT BY THE PETITIONERS IN THE PRESENT EXECUTION PETITIONS:

56. The reliefs sought, by the Petitioners, in these Execution Petitions, is to (a) set aside the letter dated 14.06.2021 issued by the AP DISCOMs as being contrary to the true effect and spirit of the directions in the Judgment dated 27.02.2020; (b) issue appropriate order(s)/direction(s) to the APDiscoms and SECI to implement and give effect to the judgment of this Tribunal dated 27.02.2020, in its letter and spirit, by executing a supplementary Power Purchase Agreement and Power Sale Agreement in order to effectuate the revised timelines for execution of the project; (c) Issue appropriate order(s)/direction(s) to SECI and Solar Park Implementing Agency, to undertake their respective obligations under the Project Documents (namely the PPA, PSA, ISA and LLA), as necessary for the Applicant to achieve commercial operation of the Projects, including but not limited to handing over of Project land to the Applicant in the Kadapa Solar

Park;(d) Initiate action for wilful disobedience of the Judgment dated 27.02.2020 and appropriate action in terms of Section 146 of the Electricity Act, 2003.

57. The letter dated 14.06.2021, which the Petitioners request to be set aside in these Execution proceedings, was issued by the APDISCOMs, more than a year and three months after this Tribunal passed the Appellate Order (execution of which is now sought) on 27.02.2020. By the said letter dated 14.06.2021, SECI was informed that it had requested AP discoms, by letter dated 17.03.2021, for extension of timelines for completion and commissioning of the three Solar Power Projects for which PSAs were entered into with APDISCOMs on 27.07.2018; as per the field status report dated 24.03.2021, the civil works, such as levelling of land, foundations for mounting arrangements etc, had not commenced in all the three Solar Power Projects; and most of the works, for establishing the solar power projects in respect of the above three developers, had not yet started.

58. Earlier, by the letters dated 01.06.2021 and 20.06.2021, SECI was informed of the decision of APDISCOMs to cancel the three PSAs entered into with SECI with immediate effect, because of the poor work progress in these three solar projects, and as the due date for completion and commissioning of the solar projects had expired on 29.05.2021, which was 32 months from the effective date of the PPAs i.e., 29.09.2018.

59. The reliefs sought, in short, are to declare the action of the APDISCOMs, in seeking to terminate their PSAs with SECI and in refusing to extend time for completion and commissioning of the projects, as illegal; and to direct the implementing agencies to hand over the project land to them. While the Petitioners could, no doubt, have sought such reliefs by filing an independent petition before the Commission, no such relief can be

sought in the present execution proceedings as it goes far beyond the decree ie the operative portion of the Order of this Tribunal dated 27.02.2020.

J. JUDGEMENTS RELIED ON BEHALF OF THE RESPONDENTS:

60. In **J&K Bank Ltd. v. Jagdish C. Gupta, (2004) 10 SCC 568**, the short question, involved in the case, was whether the executing court could go beyond the decree by directing that the respondent be promoted to the post of Chief Manager. It is in this context that the Supreme Court held that the executing court had no jurisdiction to go behind the decree; the decree did not contain any direction to promote the respondent to the post of Chief Manager; and, under such circumstances, the executing court fell in error in issuing directions that the respondent be promoted to the post of Chief Manager. The order under challenge was, therefore, set aside.

61. In **Gurdev Singh v. Narain Singh, (2007) 14 SCC 173**, the decree restrained the appellant, by a permanent injunction, from planting any tree on Khasra No. 17/2 on the one side and Khasra Nos. 218/1 and 17/1 on the other side, and the decree did not speak of removal of any tree which had already been planted. The executing court, while interpreting the said decree, had proceeded to hold that there should not be any tree within two karams on either side of the common boundary of the parties. The Supreme Court held that such an interpretation was not in consonance with the tenor of the decree; a jurisdictional error had been committed by the High Court; the executing court cannot go behind the decree; the decree did not clothe the decree-holder to pray for execution of the decree by way of removal of the trees; and the same could not have been directed by the executing court in the name of construing the spirit of the decree under execution. The impugned judgment was set aside, and the matter remitted to the executing

court for determination of the question as to whether or not the bohar trees in question were in existence prior to passing of the decree.

62. In **Rajasthan Udyog v. Hindustan Engg. & Industries Ltd., (2020) 6 SCC 660**, the reference to arbitrator was only with regard to the determination of price of land or the compensation to be awarded to the appellant by the respondent for the said land, meaning thereby that the arbitrator was required to declare the price of land/compensation to be paid for the land by the respondent to the appellant, and nothing more. The Supreme Court held that, from the facts of the case, it was clear that the award passed by the arbitrator could not be independently executed, as the same was only for fixation of price of land, and not for enforcement of the agreement; as per the agreement, if the respondent agreed to the price so fixed, it could then get the sale deed executed in terms of the agreement, as it had the option of either accepting the price and getting the sale deed executed, or not accepting the price and thus not getting the sale deed executed; this meant that the award was merely for declaration of the price of the land, which would be subject to the agreement, and it was not necessary for the respondent to get the sale deed executed at the price so determined by the arbitrator; what was thus executable was the agreement, and not the award; the relief granted by the court, for execution of the sale deed in terms of the award, was thus outside the realm of law, as the award did not contemplate transfer of land in favour of the respondent, but only determined the price of land; the operative portion of the award also did not give any direction for execution of the sale deed; the submission that substantial justice had been done by the Court, by directing execution of the sale deed, was not worthy of acceptance; in a civil case, the courts had to follow the law in letter and spirit, which had not been done in the present case; and, in law, the sale deed could have been directed to be executed in

execution of the agreement, and not the award, which was only a declaration, fixing the price of land.

63. Relying on **Gurdev Singh v. Narain Singh, (2007) 14 SCC 173**, the Supreme Court, in **Rajasthan Udyog v. Hindustan Engg. & Industries Ltd., (2020) 6 SCC 660**, held that the executing court could not go behind the decree; execution of an award could be only to the extent of what has been awarded/decreed, and not beyond; and going behind the decree, for doing complete justice, did not mean that the entire nature of the case could be changed, and what was not awarded in favour of the respondent could be granted by the executing court.

64. The purpose of execution proceedings is to enforce the verdict of the court. The executing court, while executing the decree, is only concerned with the execution part of it and nothing else. The court has to take the judgment at its face value. (**Meenakshi Saxena v. ECGC Ltd., (2018) 7 SCC 479**). The law laid down by the Supreme Court, in the aforesaid judgements, make it amply clear that the Executing Court cannot go behind or beyond the decree.

65. The present case stands on an even worse footing as the Petitioners pray, in these execution proceedings, that this tribunal set aside an order which was not even in existence on 27.02.2020 ie the date of the order of this Tribunal, and was passed more than a year and three months thereafter.

66. We find merit in the submissions of Mr. Siddanth Kumar, Learned Counsel for the APDISCOMS, that the proceedings before the Commission under Section 63 of the Act, which culminated in the order dated 05.10.2019, did not relate to implementation of the PPA/PSA so approved; the scope of adjudication in the Appeal was limited to compliance with Section 63 of the

Act, and was not concerned with implementation of the PPA/PSA; the order of this tribunal dated 27.02.2020 is confined to approval of the PPA and adoption of the tariff; the alleged breach of the PPA/PSA, as a result of its termination by the letter dated 14.06.2021, would give rise to a fresh cause of action; the petitioners, in effect, seek specific performance of the PSA and the PPA; and the Executing Court cannot travel beyond the original *lis* between the parties.

III. INTERIM ORDER PASSED BY THIS TRIBUNAL IN THE PRESENT EXECUTION PROCEEDINGS: ITS EFFECT:

67. Sri Basava Prabhu Patil, Learned Senior Counsel appearing on behalf of the Execution Petitioners, would submit that the validity of the letter dated 14.06.2021 has been examined by this Tribunal, in these Execution Petitions, on 26.07.2021; and, since all these issues have been examined therein, it is not open to the Respondents to once again contend that the validity of the said letter dated 14.06.2021 cannot be examined in these E.Ps.

68. In its Order in DFR No.249 of 2021 dated 26.07.2021, this Tribunal observed that, on perusal of the order dated 27.02.2020, in more than one instance, they had expressed their opinion that, so far as the effective date for commencement of the timelines for completing the solar project was concerned, the same had not commenced, since the PPA had to be approved; it was also seen that PSA was executed between the Discoms and the intermediary agency NTPC/SECI, as the case may be, for development of 4 solar projects in Kadapa district and 3 solar projects in Ananthapuram Districts in Andhra Pradesh; apparently, there was a back to back agreement with solar power developers; in the said order, they had categorically opined that non-completion of the solar projects in question did not arise since the

PPA was not approved in terms of the guidelines and the procedure contemplated for the same; in that view of the matter, until and unless the PPA was approved, the question of running time for completion of the project would not arise; this was the gist of the above mentioned order; the Respondents, who did not challenge the order of this Tribunal dated 27.02.2020 till date, had started meddling with the contract between the parties by terminating the PSA on the grounds mentioned in the letter dated 14.06.2021; the said letter referred to the effective date as the originally intended date i.e. 29.9.2018, totally ignoring the fact that, in the order of this Tribunal dated 27.02.2020, they had categorically opined that the effective date would be the date on which the PPA was approved i.e., 27.02.2020; this letter was nothing but an indirect method adopted by the Respondent-Discoms to scuttle the contract between the parties; as the Respondent did not challenge the order dated 27.02.2020, they were not entitled, impliedly, to meddle with this process whereby the PSA, which was the foundation for the PPA in question, was being interfered with; and this action of the Respondent/Discoms was in total disregard to the directions given by this Tribunal, and in the teeth of the order dated 27.02.2020.

69. This Tribunal then went on to add that the Learned counsel for the Respondent/discom had submitted that the proceedings, being an execution proceeding, the relief sought by the Appellant/Petitioner could not be entertained, since it was not maintainable for the reason that there was no specific direction in the judgment; they could not accept this objection raised by the Respondent's Counsel for the simple reason that, if disobedience of the order of this Tribunal was brought to their notice or the Tribunal noted such disobedience on its own, it could always initiate suo-moto proceedings; therefore, they were of the opinion that it would justify to suspend or stay the termination intimation issued by the Respondent-

Discom by its letter dated 14.06.2021. This Tribunal granted stay of termination of the PSA, between the Petitioners and the SECI dated 27.07.2018, till the disposal of the petitions, and observed that, in the meanwhile, the Respondents could file their objections to the petitions.

70. This Tribunal also directed the Registry to initiate separate contempt proceedings against both the Respondents-Discoms for the alleged violation in dishonouring the directions of this Tribunal dated 27.02.2020, and to issue notice to the Respondent Discoms/Contemnor A.P. Discoms.

71. Reliance placed on behalf of the Petitioners on the aforesaid interlocutory order of this Tribunal dated 26.07.2021, passed in the present Execution Petitions, is wholly misplaced for it is well settled that Interlocutory orders have no finality, and observations made therein would not bind the Court while passing a final order. 'Interlocutory Orders' are orders of a purely interim or temporary nature which do not decide or touch upon the important rights or the liabilities of the parties. (***Amar Nath v. State of Haryana: (1977) 4 SCC 137; Wharton's Law Lexicon (14th Edn., p. 529); V.C. Shukla v. State through CBI: 1980 Supp SCC 92; P. Ramanatha Aiyar's : The Law Lexicon***). Interim Orders are made by the Court to have effect only for a time. It is one which is made pending the cause and before a final hearing on the merits. (***P. Ramanatha Aiyar's : The Law Lexicon***). In ***Webster's Third International Dictionary (Vol. II, p. 1179)*** the expression "interlocutory order" has been defined as "Not final or definitive : made or done during the progress of an action: Intermediate, Provisional". ***Stroud's Judicial Dictionary (4th Edition, Vol. 3, p. 1410)*** defines "interlocutory order" to mean an order other than a final judgment. ***Halsbury's Laws of England (3rd Edn., Vol. 22, pp. 743-44)*** describes an "interlocutory order" as an order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives

no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of rights already given in the final judgment are to be worked out. (**V.C. Shukla**). It is only an order, which neither terminates the proceedings nor finally decides the rights of the parties, which is an interlocutory order. (**V.C. Shukla**). An intermediate order is one made between the commencement of an action and the entry of the judgment. (**Vol. 60 of the Corpus Juris Secundum; V.C. Shukla**).

72. Interlocutory orders are made in aid of final orders and not vice versa. (**Shipping Corporation of India Ltd. v. Machado Brothers: (2004) 11 SCC 168; Kavita Trehan (Mrs.) v. Balsara Hygiene Products Ltd: (1994) 5 SCC 380; and Pitta Naveen Kumar v. Raja Narasaiah Zangiti: (2006) 10 SCC 261**). No interlocutory order will survive after the original proceeding comes to an end. (**Shipping Corporation of India Ltd.; Kavita Trehan (Mrs.) v. Balsara Hygiene Products Ltd; and Pitta Naveen Kumar v. Raja Narasaiah Zangiti**). When a party obtains an interim order, and the final proceedings come to an end, the interim order also, automatically, comes to an end. (**V. Ramakrishna v. Smt. N. Sarojini: (1992) 2 ALT 35 (DB)**). Interlocutory orders have no finality and are, therefore, not binding. (**Empire Industries Limited v. Union of India: (1985) 3 SCC 314; M. Vijaya Kumar v. General Manager, Milk Products Factory, Andhra Pradesh Dairy Development Cooperative Federation Ltd: (1990) 3 ALT 382; RUCHI KANDPAL VS STATE OF UTTARAKAND : (2019) SCC Online UTTARAKAND 1629 (DB)**).

IV. CONCLUSION:

73. Viewed from any angle, the Petitioners are not entitled to the reliefs sought for in the present Execution Petitions, as these reliefs go far beyond

the decree ie the operative portion of the Order of this Tribunal dated 27.02.2020. The Execution Petitions fail and are, accordingly, dismissed. Consequently the I.As filed therein do not survive after dismissal of the main EPs, and they are also dismissed. Needless to state that dismissal of these EPs will not disable the Petitioners herein from availing their other legal remedies to question the validity of the Orders issued by the APDISCOMS subsequent to the Order of this Tribunal dated 27.02.2020; and, if they do so, their Petitions shall be examined on its merits without being influenced by the opinion expressed by us in this Order.

74. Pronounced in the open court on this the **24th day of February, 2023.**

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / NON-REPORTABLE

ks/tpd