

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 181 OF 2020
APPEAL No. 235 OF 2020
APPEAL No. 247 OF 2020
APPEAL No. 1 OF 2021
APPEAL No. 125 OF 2022
APPEAL No. 130 OF 2022
APPEAL No. 166 OF 2022
AND
APPEAL No. 192 OF 2022

Dated: 14.05.2024

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

In the matter of:

APPEAL No. 181 OF 2020

Adani Green Energy (UP) Limited

Represented by Authorised Signatory

Adani House, Near Mithakhali Six Roads,
Navrangpura Ahmedabad, 380 009 Gujarat

Email id: poonam@jsalaw.com, solar.bd@adani.com,
dipak.panchal@adani.com

... Appellant(s)

Versus

1. Karnataka Electricity Regulatory Commission

Through its Secretary,

37, Mahatma Gandhi Road, Yellappa Garden,
Yellappa Chetty Layout, Halasuru,
Bengaluru, Karnataka 560001

Email id: kerc-ka@nic.in

2. Chamundeshwari Electricity Supply Corporation Limited

Through its Managing Director,
#29, Vijayanagar, 2nd Stage,
Hinakal, Mysore – 570001
Email id: md@cescmysore.org

3. Karnataka Renewable Energy Development Limited

Through its Managing Director
Office at Nd.39, 'Shanthy Gruha',
Bharat Scouts and Guides Building, Palace Road,
Bengaluru, Karnataka 560001
Email id: kredlmd@gmail.com

4. Karnataka Power Transmission Corporation Limited

Through its Managing Director
Corporate Office, Kaveri Bhavan, K.G. Road,
Bengaluru, Karnataka 560001
Email id: md@kptcl.com

5. State of Karnataka

Through its Additional Chief Secretary
Department of Energy Room No. 236, 2nd Floor,
Vikasa Soudha, Dr. Ambedkar Veedhi
Bengaluru, Karnataka 560001
Email id: prs-energy@karnataka.gov.in

... Respondent (s)

Counsel on record for the Appellant(s) : Amit Kapur

Counsel on record for the Respondent(s) : Sumana Naganand
Medha M Puranik
Gayathri Sriram
Garima Jain
Abhijeet Kumar Pandey for Res. 2

Samarth Kashyap for Res.3

Garima Jain
Sumana Naganand
Medha M Puranik
Gayathri Sriram
Abhijeet Kumar Pandey for Res.4

Prateek Chadha for Res.5

APPEAL No. 235 OF 2020

Adani Green Energy (UP) Limited

Represented by Authorised Signatory

Adani House, Near Mithakhali Six Roads,
Navrangpura Ahmedabad, 380 009 Gujarat

Email id: dipak.panchal@adani.com

... Appellant(s)

Versus

- 1. Bangalore Electricity Supply Corporation Limited**
Through its Managing Director,
K.R. Circle, Bengaluru – 560001
Email id: md@bescom.in

 - 2. Karnataka Renewable Energy Development Limited**
Through its Managing Director
Office at Nd.39, 'Shanthi Gruha',
Bharat Scouts and Guides Building, Palace Road,
Bengaluru, Karnataka 560001
Email id: kredlmd@gmail.com

 - 3. Karnataka Power Transmission Corporation Limited**
Through its Managing Director
Corporate Office, Kaveri Bhavan, K.G. Road,
Bengaluru, Karnataka 560001
Email id: md@kptcl.com

 - 4. State of Karnataka**
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Department of Energy Room No. 236, 2nd Floor,
Vikasa Soudha, Dr. Ambedkar Veedhi
Bengaluru, Karnataka 560001
Email id: prs-energy@karnataka.gov.in

 - 5. Karnataka Electricity Regulatory Commission**
Through its Secretary,
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- ... Respondent (s)

Counsel on record for the Appellant(s) : Amit Kapur

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Gayathri Sriram
Garima Jain
Abhijeet Kumar Pandey for Res. 1

Samarth Kashyap for Res.2

Prateek Yadav
Sumana Naganand
Balaji Srinivasan
Medha M Puranik
Deepti CR
Pallavi Sen Gupta
Garima Jain
Sanjay Reddy for Res.3

Prateek Chadha for Res.4

APPEAL No. 247 OF 2020

Adani Green Energy (UP) Limited

Represented by Authorised Signatory

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Email id: poonam@jsalaw.com, solar.bd@adani.com,
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... Appellant(s)

Versus

1. Bangalore Electricity Supply Company Limited

Through its Managing Director,

K.R. Circle

Bengaluru – 560001

Email id: md@bescom.co.in, pstomd@bescom.co.in

2. Karnataka Electricity Regulatory Commission

Through its Secretary,

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Bengaluru, Karnataka 560001
Email id: kerc-ka@nic.in

3. Karnataka Renewable Energy Development Limited

Through its Managing Director
Office at Nd.39, 'Shanthi Gruha',
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4. Karnataka Power Transmission Corporation Limited

Through its Managing Director
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Bengaluru, Karnataka 560001
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5. State of Karnataka

Through its Additional Chief Secretary
Department of Energy Room No. 236, 2nd Floor,
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Bengaluru, Karnataka 560001
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Gayathri Sriram
Abhijeet Kumar Pandey for Res. 1

Samarth Kashyap for Res. 3

Sumana Naganand
Medha M Puranik
Gayathri Sriram
Garima Jain
Abhijeet Kumar Pandey for Res. 4

Prateek Chadha for Res. 5

APPEAL No. 1 OF 2021

Adani Green Energy (UP) Limited

Represented by Authorised Signatory

Adani House, Near Mithakhali Six Roads,
Navrangpura Ahmedabad, 380 009 Gujarat

Email id: dipak.panchal@adani.com

...Appellant(s)

Versus

1. Bangalore Electricity Supply Corporation Limited

Through its Managing Director,

K.R. Circle

Bengaluru – 560001

Email id: md@bescom.co.in

2. Karnataka Electricity Regulatory Commission

Through its Secretary,

16, C-1, Millers Tank Bed Area, Vasanth Nagar,

Bengaluru, 560 052 Karnataka

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3. Karnataka Renewable Energy Development Limited

Through its Managing Director

Office at Nd.39, 'Shanthi Gruha',

Bharat Scouts and Guides Building, Palace Road,

Bengaluru, Karnataka 560001

Email id: kredlmd@gmail.com

4. Karnataka Power Transmission Corporation Limited

Through its Managing Director

Corporate Office, Kaveri Bhavan, K.G. Road,

Bengaluru, Karnataka 560001

Email id: md@kptcl.com

5. State of Karnataka

Through its Additional Chief Secretary

Department of Energy Room No. 236, 2nd Floor,

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Bengaluru, Karnataka 560001

Email id: prs-energy@karnataka.gov.in

... Respondent (s)

Counsel on record for the Appellant(s) : Amit Kapur

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Sumana Naganand
Medha M Puranik
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Abhijeet Kumar Pandey for Res. 1

Samarth Kashyap for Res. 3

Sumana Naganand
Balaji Srinivasan
Medha M Puranik
Deepthi CR
Pallavi Sen Gupta
Prateek Yadav
Garima Jain
Sanjay Reddy for Res. 4

Prateek Chadha for Res. 5

APPEAL No. 125 OF 2022

Kodangal Solar Parks Private Limited

Represented by Authorised Signatory,
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Navrangoura, Ahmedabad, 380009
Email id: poonam@jsalaw.com

...Appellant(s)

Versus

1. Bangalore Electricity Supply Company Limited

Through its Managing Director,
K.R. Circle
Bengaluru – 560001
Email id: md@bescom.co.in

2. Karnataka Renewable Energy Development Limited

Through its Managing Director
No.39, 'Shanthi Gruha',

Bharat Scouts and Guides Building,
Palace Road, Bengaluru - 560001
Email id: prs-energy@karnataka.gov.in

3. Karnataka Power Transmission Corporation Limited

Through by its Managing Director
Corporate Office, Kaveri Bhavan,
K.G. Road, Bengaluru - 560009
Email id: md@kptcl.com

4. Government of Karnataka

Through its Additional Chief Secretary,
Room No. 236, 2nd Floor,
Vikasa Soudha, Bengaluru - 560001
Email id: prs-energy@karnataka.gov.in

5. Hubli Electricity Supply Company Limited

Through its Managing Director,
P.B. Road, Navanagar, Hubballi-580025
Email id: md@hescom.co.in

6. Karnataka Electricity Regulatory Commission

Through its Secretary,
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Yellappa Chetty Layout, Halasuru,
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Email id: kerc-ka@nic.in

... Respondent (s)

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Noor Shergil

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Medha M Puranik
Deepthi CR
Pallavi Sen Gupta
Aakriti Priya
Mohd Shahrukh
Prateek yadav for Res. 1

Sharanagouda Patil for Res. 2

S. Sriranga Subbanna
Sumana Naganand
Balaji Srinivasan
Medha M Puranik
Garima Jain
Aakriti Priya
Mohd Shahrukh
Deepthi CR for Res. 3

Prateek Chadha for Res. 4

APPEAL No. 130 OF 2022

Adani Green Energy (UP) Limited

Represented by Authorised Signatory

Adani House, Near Mithakhali Six Roads,
Navrangpura Ahmedabad, 380 009 Gujarat

Email id: solar.bd@adani.com, dipak.panchal@adani.com

...Appellant(s)

Versus

1. Chamundeshwari Electricity Supply Corporation Limited

Through its Managing Director,

#29, Vijayanagar, 2nd Stage,

Hinakal, Mysore - 570001

Email id: md@cescmysore.org

2. Karnataka Renewable Energy Development Limited

Through its Managing Director

Office at Nd.39, 'Shanthi Gruha',

Bharat Scouts and Guides Building,

Palace Road, Bengaluru, Karnataka - 560001

Email id: kredlmd@gmail.com

3. Karnataka Power Transmission Corporation Limited

Through its Managing Director

Corporate Office, Kaveri Bhavan,

K.G. Road, Bengaluru, Karnataka - 560001

Email id: md@kptcl.com

4. State of Karnataka

Through its Additional Chief Secretary,
Department of Energy Room No. 236, 2nd Floor,
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Bengaluru, Karnataka - 560001
Email id: prs-energy@karnataka.gov.in

5. Karnataka Electricity Regulatory Commission

Through its Secretary,
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Yellappa Chetty Layout, Halasuru,
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Email id: kerca-ka@nic.in

... Respondent (s)

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Garima Jain
Abhijeet Kumar Pandey for Res. 1

Sharanagouda Patil for Res. 2

S. Sriranga Subbanna
Sumana Naganand
Balaji Srinivasan
Medha M Puranik
Garima Jain
Aakriti Priya
Mohd Shahrukh
Deepthi CR for Res. 3

Prateek Chadha for Res. 4

APPEAL No. 166 OF 2022

Adani Green Energy (UP) Limited

Represented by Authorised Signatory

Adani House, Near Mithakhali Six Roads,
Navrangpura Ahmedabad, 380 009 Gujarat

Email id: dipak.panchal@adani.com

...Appellant(s)

Versus

- 1. Bangalore Electricity Supply Corporation Limited**
Through its Managing Director,
K.R. Circle
Bengaluru – 560001
Email id: md@bescom.in

- 2. Karnataka Renewable Energy Development Limited**
Through its Managing Director
Office at Nd.39, 'Shanthi Gruha',
Bharat Scouts and Guides Building,
Palace Road, Bengaluru, Karnataka - 560001
Email id: kredlmd@gmail.com

- 3. Karnataka Power Transmission Corporation Limited**
Through by its Managing Director
Corporate Office, Kaveri Bhavan,
K.G. Road, Bengaluru, Karnataka - 560001
Email id: md@kptcl.com

- 4. State of Karnataka**
Through its Additional Chief Secretary
Department of Energy Room No. 236, 2nd Floor,
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- 5. Karnataka Electricity Regulatory Commission**
Through its Secretary,
37, Mahatma Gandhi Road, Yellappa Garden,
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Bengaluru, Karnataka 560001
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Counsel on record for the Appellant(s) : Amit Kapur

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Garima Jain
Gayathri Sriram

Abhijeet Kumar Pandey for Res. 1

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Prateek Yadav
Sumana Naganand
Balaji Srinivasan
Medha M Puranik
Pallavi Sen Gupta
Sanjay Reddy
Garima Jain
Aakriti Priya for Res. 3

Prateek Chadha for Res. 4

APPEAL No. 192 OF 2022

Adani Green Energy (UP) Limited

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...Appellant(s)

Versus

1. Gulbarga Electricity Supply Corporation Limited

Through its Managing Director,

Station Main Road

Kalaburagi - 585102

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2. Karnataka Renewable Energy Development Limited

Through its Managing Director

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Palace Road, Bengaluru, Karnataka - 560001

Email id: kredlmd@gmail.com

3. Karnataka Power Transmission Corporation Limited

Through by its Managing Director

Corporate Office, Kaveri Bhavan,

K.G. Road, Bengaluru, Karnataka - 560001

Email id: md@kptcl.com

4. State of Karnataka

Through its Additional Chief Secretary
Department of Energy Room No. 236, 2nd Floor,
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5. Karnataka Electricity Regulatory Commission

Through its Secretary,
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Yellappa Chetty Layout, Halasuru,
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Email id: kerc-ka@nic.in

... Respondent (s)

Counsel on record for the Appellant(s) : Amit Kapur

Counsel on record for the Respondent(s) : Sumana Naganand
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Sharanagouda Patil for Res. 2

Shahbaaz Husain
Fahad Khan for Res. 3

Prateek Chadha for Res. 4

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Solar Power Developers (SPDs), operating in the State of Karnataka have approached this Tribunal by way of these 08 appeals impugning therein the orders passed by the Karnataka Electricity Regulatory Commission denying them any relief on account of the *force majeure* events agitated by them. It was found that all the 08 appeals arise out of identical

factual matrix and pose identical issues for determination by this Tribunal. Accordingly, the appeals were tagged and heard together. Hence, the appeals are now being disposed of by way of this common order.

2. Except in appeal No.125/2022, the appellant is *Adani Green Energy (UP) Limited* which is a 100% subsidiary of *Adani Green Energy Limited* (AGEL) and is engaged in the business of setting up of powerplants as well as generation of electricity. In appeal No.125/2022, the appellant is *M/s Codangal Solar Parks Private Limited*, a generating company in terms of Section 2(28) of the Electricity Act, 2003. It is a Special Purpose Vehicle (SPV) of *Marikal Solar Parks Private Limited* (MSPPL) to implement the solar power project involved in the said appeal.

3. *Karnataka Electricity Regulatory Commission* (hereinafter referred to as “KEREC” or the “Commission”), *Karnataka Renewable Energy Development Limited* (KREDL), *Karnataka Power Transmission Corporation Limited* (KPTCL) and *State of Karnataka* are the four common respondents in all the appeals. The KREDL is a nodal agency of Government of Karnataka for facilitating the development of renewable energy in Karnataka. KPTCL is the state transmission utility for the State of Karnataka and sole transmission licensee of the KEREC.

4. *Chamundeshwari Electricity Supply Corporation Limited* (CESC) which is one of the respondents in appeal Nos.181/2020 & 130/2022, *Gulbarga Electricity Supply Corporation Limited* (GESCOM) which is one of the respondents in appeal No.192/2022 and *Bangalore Electricity Supply Corporation Limited* (BESCOM) which is one of the respondents in remaining

05 appeals are the distribution licensees in the State of Karnataka. Hubali Electricity Supply Company Limited (HESCOM) is also one of the respondents in appeal no. 125/2022. These will be referred to hereinafter as 'ESCOMs'. The appellants have entered into Power Purchase Agreements (PPAs) with the respective ESCOMs operating in their areas.

5. After introducing the parties to the appeals, we would now advert to the factual background of the appeals.

6. On 22.05.2014, the Government of Karnataka notified the Solar Policy 2014-2021 (hereinafter referred to as "Solar Policy") with the objective of, *inter alia*, having 2000MW of solar power generation in the State by 2021. To facilitate the setting up of solar power projects under the policy, KREDL was appointed as the nodal agency. KREDL issued a notification dated 05.02.2016 inviting tenders for setting up of 240 MW solar projects in 12 Talukas namely 1. Byadagi in Haveri District, 2. Channapatna in Ramanagara District, 3. Doddaballapur in Bengaluru Rural District, 4. Gubbi in Tumakuru District, 5. Holenarasipura in Hassan District, 6. Jevargi in Kalaburagi District, 7. KR Pet in Mandya District, 8. Magadi in Ramanagara District, 9. Maluru in Kolar District, 10. Periyapatna in Mysuru District, 11. Ramanagara in Ramanagara District, and 12. Tiptur in Tumakuru District.

7. This was followed by issuance of Request for Proposal (RFP) dated 12.02.2016 by KREDL prescribing the technical and commercial conditions for selection of bidders for undertaking the development of these Solar PV Ground Mounted Power Plant in Karnataka.

8. An addendum dated 28.03.2016 was issued by KREDL to the notification dated 05.02.2016 stating that 50MW projects for which no response was received in the earlier tender were to be added to the above 240MW solar power projects, and thus, the total capacity on offer got enhanced to 290MW and the total number of Taluka-wise project on offer stood at 17.

9. The appellants participated in the bids. The appellant *Adani Green Energy (UP) Limited* submitted its proposal for setting up 13 solar power projects with a total capacity of 260MW, whereas MSPPL submitted its proposal for only one solar power project with a capacity of 20MW in Basavanabagewadi Taluk, Vijayapura District. On the basis on these bids submitted by the appellants, MSPPL was declared successful bidder for developing the above noted 20MW solar power projects at Basavanabagewadi Taluk, Vijayapura District, Karnataka, whereas *M/s Adani Green Energy (UP) Limited* was declared successful bidder for 20MW solar power projects in T. Narasipura Taluk of Mysuru District, Gubbi Taluk of Tumakuru District, K.R. Pet Taluk of Mandya District, Ramanagara in Ramanagara District, Jevargi Taluk of the Kalaburagi District, Tiptur Taluk of Tumakuru District, and Magadi Taluk of Ramanagara District in the State of Karnataka. Accordingly, Letters of Award (LoA) as well as allotment letters were issued to the appellants. The LoAs mentioned the discovered tariff as Rs.4.79 per kWh.

10. Thereafter, PPAs dated 02.06.2016, 28.06.2016 & 29.06.2016 were executed by the appellants respectively with the ESCOMs for the purchase of electricity by these ESCOMs from appellant's solar power projects for a period of 25 years at the tariff of Rs.4.79 per unit.

11. However, on 22.07.2016 the KERC directed that all the PPAs pending approval before it be returned to discoms as KREDL had invited bids without the prior approval of the bid documents by it (the Commission) and without following the prevailing guidelines of the *Ministry of New and Renewable Energy* (MNRE).

12. The PPAs were later on approved by the Commission on 27.09.2016, 29.09.2016, 07.10.2016, 14.10.2016 and 17.10.2016 respectively.

13. Meanwhile, vide letters dated 22.07.2016 and 23.07.2016, the appellants requested the KPTCL for grid connectivity of their solar projects in the respective Talukas.

14. Since the acquisition of agricultural land for setting up of these solar power projects and its conversion was getting delayed, the appellants wrote to the Revenue Department, Government of Karnataka, highlighting that the acquisition and conversion of agricultural land in Karnataka was a complex as well as time consuming process resulting in delay in setting up of solar power projects which in turn delayed the achievement of project CoD and requested the Government to simplify the approval procedure under section 109 of Karnataka Land Reform Act, 1961, by permitting a single window clearance within 45 days irrespective of the size of the solar power project.

15. On 22.09.2016, the Central Board of Excise and Customs (CBEC) issued a clarification regarding classification of Solar Photo Voltaic (solar PV) modules with current regulating equipment. It was clarified by the CBEC if the solar modules are equipped with elements and these elements supply power to an external load, the solar module would be classified in CTH 8501

and in case, the elements do not supply power to an external load, the module would be classified under CTH 8541.

16. The PPAs of the appellants were approved by the Commission on different dates i.e. 27.09.2016, 29.09.2016, 07.10.2016, 14.10.2016 and 17.10.2016. The approval was subject to incorporation of certain corrections / modifications by executing Supplementary Power Purchase Agreement (SPPA). The relevant modifications directed to be made to the PPAs were as under:-

“

(a) *Article 5.4 stated that the Developer shall be responsible for power evacuation from the power project to the nearest Delivery Point.*

Modification: *The Developer shall be responsible for power evacuation from the power project to the nearest Delivery Point/ Delivery Points.*

(b) *Clause 10.3.2 (Reporting of Metered Data and Parameters) stated that online arrangement for submission of data by the developer for the entire period of the PPA to BESCO/KREDL.*

Modification: *online arrangement for submission of data by the developer for the entire period of the PPA to SLDC/REMS/BESCO/KREDL.*

(c) *Clause 10.3.3 (Reporting of Metered Data and Parameters) stated that reporting on parameter5s on*

monthly basis shall be submitted by the developer to CESC/KREDL through CESC for the entire period of the PPA.

Modification: reporting on parameters on monthly basis shall be submitted by the developer to SLDC/REMC/CEC/KREDL through CESC for the entire period of the PPA.

- (d) *Article 18.4 provided for an Arbitration Clause in the PPA which stated that in case of any disputes or claims arising out of the PPA shall be settled by the sole or several arbitrators appointed in accordance with the Arbitration Centre-Karnataka (Domestic and International), Rules 2012. The clause also provided for the Procedure, Place and Enforcement of the Arbitral Award.*

Modification: Article 18.4 shall be deleted.”

17. In pursuance to the clarifications issued by CBEC dated 22.09.2016, the Chief Commissioner of Customs, Mumbai, issued public notice on 29.09.2016 advising the importers to classify the goods on the basis of the said clarifications.

18. The Government of Karnataka issued a Government Order on 05.10.2016 to implement the solar policy. By way of the said order, KREDL

was authorized to obtain agricultural land from land owners after obtaining necessary order under Section 109 of Karnataka Land Reforms Act, 1961 and to sub-lease the said land to Solar Power Project Developers.

19. The Additional Chief Secretary, Energy Department, Government of Karnataka wrote a letter dated 20.10.2016 to the Commission stating that in the light of various difficulties being faced by SPDs on account of delays in approval of PPAs, directions may be issued to the ESCOMs to sign SPPAs before 15.11.2016 defining therein the Scheduled Commercial Operation Date (SCOD) as the date on which the period of 12 months from the date of sanctioning of SPPA would end. The letter was replied by the Commission on 25.10.2016 stating that the request of the Government is not acceptable due to following reasons: -

“...Signing of the Supplemental PPA with the said corrections/modifications does not affect any substantive provisions of the PPA and the Supplemental PPA is in the nature of an addendum or corrigendum to the PPA executed.

The original PPA defines the effective date as the date on which the PPA is approved by the Commission. This Commission has already approved the PPAs on different dates and has communicated approvals suggesting certain corrections/modifications to be incorporated by entering into Supplemental PPAs. These Supplemental PPAs, in the present case, do not require any further approval of the Commission.

In light of the above, I am directed to inform that, there is no case to consider the date of signing of the Supplemental PPA as the effective date of the PPA as requested.”

20. On 25.10.2016, the Energy Department, Government of Karnataka wrote a letter to KPTCL referring to a meeting held with SPDs wherein the SPDs had raised concern that KPTCL was not processing the evacuation approvals till approval of PPAs by the Commission and emphasized the necessity of speeding up evacuation approval process. The KPTCL was also requested to process the evacuation approvals on the basis of LOAs issued by KREDL and to obtain other documents from the SPDs at the time of synchronization of the project with the grid.

21. KPTCL issued tentative evacuation scheme approval to the appellants on different dates i.e. 21.06.2016, 27.10.2016, 07.11.2016, 03.12.2016 and 23.02.2017. It was mentioned therein that KPTCL will regularize the tentative evacuation scheme only after the appellants confirm that they have fulfilled the conditions stated therein. The tentative evacuation scheme was accepted by the appellants.

22. Thereafter, SPPAs were executed by the appellants with the ESCOMs on different dates i.e. 26.11.2016, 17.12.2016, 26.12.2016 and 17.01.2017. KPTCL approved the regular evacuation scheme for the solar power projects of the appellants and thereafter the appellants addressed letters to KREDL stating that they had obtained authorization from landowners to lease land to KREDL for further sub-lease to the appellants for setting up of the power projects. Request was made to KREDL for issuing notification with regards

to land conversion. Requisite documents to comply with the conditions as stipulated in clause 4.1 and 4.2 of the PPA were also sent by the appellants to KREDL.

23. On 30.05.2017, the appellants wrote letters to Energy Department, Government of Karnataka referring to the steps taken by the Government under the solar policy to allow deemed conversion of the agricultural land with the request to allow start of the project execution without waiting for formal approval. The Government was informed that the appellants have identified the land for the power projects and had submitted applications in this regard to KREDL which has processed the applications by forwarding the same to the concerned government authorities as per the existing rules.

24. Thereafter, there has been some correspondence between the KREDL and the appellants as well as between appellants and ESCOMs with regards to discrepancies in the documents submitted by the appellants. The ESCOMs refused to accept that the appellants had fulfilled the condition precedent related to obtaining of grid connectivity, clear possession of land title and financial closure.

25. The ESCOMs informed the appellants on 28.06.2017 (in appeal nos. 181/2020, 235/2020, 247/2020, 01/2021, 130/2022, & 166/2022), on 04.08.2017 (in appeal no.192/2022), and on 24.07.2017 (in appeal no.125/2022) that they have not fulfilled the condition precedent with respect to documentary evidence of clear possession of land in their name and certificate from the lead banker regarding financial closure. They were also informed that they were required to pay damages of Rs.12 lakhs as per

article 4.3 of the PPA within 10 days failing which their performance security would be encashed.

26. The appellants issued *force majeure* notices dated 06.07.2017 (in appeal nos. 181/2020, 235/2020, 247/2020, 01/2021, 130/2022, 166/2022, & 192/2022), and dated 25.09.2017 (in appeal 125/2022) in accordance with the article 14.5 and 5.7 of the PPA with the request to allow time extension for fulfilment of condition precedent till issuance of approval from Government of Karnataka to permit use of land for non-agricultural purposes or till the project achieves its Commercial Operation Date, whichever is earlier, as well as to withdraw the letter dated 28.06.2017 / 04.08.2017 / 24.07.2017 imposing levy of penalty. This was followed by another letter dated 13.07.2017.

27. The Government of Karnataka issued an order dated 13.07.2017 empowering KREDL to initiate the process for conversion of the identified land for the project and to enter into lease agreement with the land owners and thereafter to sublease the same to the developers.

28. On 17.07.2017 the appellant in appeal No.181/2020 issued Change in Law notifications under article 15 of the PPA stating that the enactment of GST laws is a Change in Law event which shall result in additional capital cost as well as operating cost for the solar projects and thereby would increase the cost of generation which needs to be reimbursed by the procurer by way of adjustment of tariff.

29. Upon taking cognizance of the fact that delay in connectivity approvals, land conversion etc. on account of *force majeure* events would in turn cause delay in project implementation, Ministry of New and Renewable Energy (MNRE) wrote a letter dated 28.07.2017 to State Governments to the effect that competent authorities can allow extension of time as per contractual agreements.

30. Thereafter, the appellants (except the appellant in appeal No.125/2022) wrote letters dated 31.07.2017 to the ESCOMs referring to their earlier *force majeure* notice and stating that considerable period of time was lost due to KPTCL withholding connectivity permissions as well as delay in approval of PPA by the Commission, delay in grant of connectivity approval and delay in initiation of land acquisition process. Accordingly, the ESCOM was requested to extend the SCOD as per article 5.7 of the PPA, and to withdraw the previous letter whereby penalty was imposed upon them.

31. The ESCOMs, vide letters dated 02.08.2017 informed the appellants about non-acceptance of the *force majeure* event and stating that due to delay in fulfilment of conditions precedent as well as the date that achieving CoD of the power project would remain as per the original PPA. The appellants again wrote letters to the ESCOMs with request to grant extension of time for fulfilment of conditions precedent and achieving SCOD and for not imposing the penalties under clause 4.3 of the PPA in the wake of MNRE letter dated 28.07.2017.

32. KPTCL granted provisional interconnection approval to the appellants in their projects on different dates i.e. on 26.09.2017 in appeal no. 181/2020, on 16.11.2017 in appeal no.235/2020, on 09.03.2018 in appeal no.247/2020, on 20.12.2017 in appeal no.01/2021, on 29.12.2017 in appeal no.130/2022, on 12.03.2018 in appeal no.166/2022, and on 16.11.2017 in appeal no.192/2022. Thereafter the appellants commissioned their projects on different dates i.e. 02.10.2017, 18.11.2017, 22.12.2017, 05.01.2018, 08.01.2018, 27.01.2018 and 28.03.2018. Certificates to this effect have been duly issued by the KPTCL.

33. Aggrieved by the refusal of the Commission to accept the *force majeure* events agitated by the appellants as cause of delay in commissioning of projects, extension of SCOD of the power projects and from withdrawing the imposition of penalty, the appellants filed respective petitions before the Commission.

34. Thereafter, an Office Memorandum dated 20.06.2018 was notified by the MNRE taking note of the business disruption and consequent delays caused in project commissioning on account of implementation of GST laws with effect from 01.07.2017 and deciding to extend the time up to two months for commissioning of the projects which might have been affected due to such disruption.

35. The above noted petitions of the appellants came to be dismissed by the Commission vide orders dated 27.07.2020, in appeal no.181/2020, dated 15.09.2020 in appeal nos.235/2020, 247/2020 & 01/2021, dated

10.07.2020 in appeal no. 130/2022, dated 05.06.2020 in appeal no.166/2022, dated 19.08.2020 in appeal no.192/2022, and dated 27.02.2020 in appeal no.125/2022 holding that the events due to which delay was caused in meeting the timeline for conditions precedent as well as COD do not tantamount to *force majeure* and stating that for this reason effective date of the project shall be taken as the date mentioned in the original PPA.

36. Following two issues, amongst others, were framed by the Commission in the impugned orders which are agitated before us also in these appeals:

- (1) Whether the appellants prove that the “Effective Date” under Article 3.1 of PPA should be treated as the date on which the SPPA was executed or 26.11.2016 when the original PPA was approved by the Commission?
- (2) Whether the appellants had proved that the events or circumstances alleged by them tantamount to “Force Majeure” events entitling them for extension of time for achieving the Conditions Precedent and Scheduled Commissioning Date?

37. On both the issues, the Commission held against the appellants.

38. Before adverting to the rival submissions of the parties we find it necessary to give here a table mentioning the relevant dates in case of each of 08 appeals: -

Particulars	Appeal No. 181/2020	Appeal No. 235/2020	Appeal No. 247/2020	Appeal No. 1/2021	Appeal No. 130/2022	Appeal No. 166/2022	Appeal No. 192/2022	Appeal No. 125/2022
PPA Executed on	28.06.2016	29.06.2016	29.06.2016	29.06.2016	28.06.2016	29.06.2016	29.06.2016	02.06.2016
Effective date as per PPA	27.09.2016	17.10.2016	14.10.2016	14.10.2016	27.09.2016	17.10.2016	29.09.2016	07.10.2016
Condition precedent to be achieved by	26.05.2017	16.06.2017	13.06.2017	13.06.2017	26.05.2017	16.06.2017	28.05.2017	06.06.2017
SCOD to be achieved within	12 months from the Effective Date							
PPA Approved by KERC on	27.09.2016	17.10.2016	14.10.2016	14.10.2016	27.09.2016	17.10.2016	29.09.2016	07.10.2016
Reduction in Tariff	Rs.4.36 per unit (The projects were commissioned under the control period of Generic Tariff Order dt.12.04.2017)							Rs.4.36 per unit
Execution of final SPPAs on	26.11.2016	17.12.2016	17.12.2016	17.12.2016	26.11.2016	17.12.2016	26.12.2016	17.01.2017
SPPA(s) approved by KERC on	No requirement as per KERC's order dated 25.10.2016							Not required

Application for Land Conversion	25.05.2017 (01 day prior of CP)	17.06.2017 (01 day after CP)	13.06.2017 (on the date of CP)	13.06.2017 (on the date of CP)	26.05.2017 (on the date of CP)	12.06.2017 (4 days prior to CP)	27.04.2017 (1 month prior to CP)	23.10.2017 (4 month after CP)
Land conversion order	-	-	-	-	-	20.07.2019 (much after SCOD lapsed)	24.11.2018 (much after SCOD lapsed)	-
Application for Evacuation of power from the Developer	11.07.2016	12.07.2016	04.05.2016	22.07.2016	22.07.2016	22.07.2016	22.07.2016	17.05.2016
Tentative Power Evacuation	27.10.2016	07.11.2016	21.06.2016	27.10.2016	07.11.2016	-	03.12.2016	23.02.2017
Finals Evacuation Scheme	05.12.2016	09.12.2016	13.07.2016	05.12.2016	03.12.2016	-	03.12.2016	28.07.2017
Request for Extension of time	02.08.2017							24.07.2017
Extension granted on	No extension was granted							-
Project Commissioned on	02.10.2017 (1 week after SCOD)	27.01.2018 (4 months after SCOD)	09.03.2018 (almost 6 months after SCOD)	22.12.2017 (2 months after SCOD)	08.01.2018 (5 months after SCOD)	28.03.2018 (almost 6 months after SCOD)	18.11.2017 (almost 2 months after SCOD)	05.01.2018 (almost 3 months after SCOD)

Issue No.1:

39. We shall now take the issue No.1 for determination which, though already quoted hereinabove, is again reproduced hereinbelow:-

- (1) Whether the appellants prove that the “Effective Date” under Article 3.1 of PPA should be treated as the date on which the SPPA was executed or 26.11.2016 when the original PPA was approved by the Commission?

40. From the above given table, it is manifest that there is a time gap of about 5-6 months between the date when the PPAs were executed between the appellants and the ESCOMs and the date when the SPPAs were executed between the two. The initial PPAs executed in the month of June, 2016 were approved by the Commission in the months of September/October, 2016 subject to certain corrections / modifications to be incurred in the PPAs by way of execution of suitable SPPAs. The modifications / alterations to be incorporated in the PPAs as per the direction of the Commission have already been stated in Para No.16 hereinabove.

41. Article 21.1 of the initial PPAs executed between the parties defines “effective date” to mean the date of approval of PPA by the commission. With regards to the date when the PPA shall come into effect, Article 3.1 provides that the agreement shall come into effect from the date of getting concurrence from KERC on the PPA and such date shall be referred to as the “effective date”. After taking note of these provisions in the initial PPA, the Commission has observed in the impugned order as under: -

“13 a) ... In the present case vide letter dated 27.09.2016 (Annexure-P4), the petitioner and the 1st Respondent were informed of the approval of the Commission to the PPA dated 28.06.2016 (Annexure-P3). Therefore, the date 27.09.2016 has to be considered as the Effective Date for the purpose of interpreting the relevant clauses in the PPA. The PPA does not provide that the date of receipt of intimation regarding approval of the Commission to the PPA or the date on which the SPPA is signed by the petitioner and the Respondent No.1 in case the execution of such SPPA is needed, could be considered as the ‘Effective Date’. Therefore, the contention of the petitioner is not acceptable.

...

c) The letter dated 27.09.2016 (Annexure-P4) signed by the Secretary of this Commission communicates approval of the Commission to the PPA dated 28.06.2016 executed between the parties in respect of development of 20 MW (AC) Solar Power Project in T. Narasipura taluk, subject to certain corrections/modifications being incorporated in the said PPA by entering into a suitable SPPA. Therefore, it can be said that the approval of PPA dated 28.06.2016 communicated by letter dated 27.09.2016 is absolute subject to incorporating the corrections/ modifications. For

the purpose of incorporating the corrections/ modifications, the execution of a SPPA is required. There is no direction given to the parties that after entering into the SPPA, the same should be again got approved by the Commission. It cannot be said that the approval of the Commission to the PPA takes effect only after effecting the corrections/modifications suggested, as the corrections/modifications suggested to be carried did not materially alter the rights and liabilities of the parties. Hence, the contention of the petitioner that the SPPA requires approval cannot be accepted. This aspect was clarified by the Commission in a subsequent letter dated 25.10.2016 addressed to the Government (Annexure-1 to the Objections filed by Respondent-3).

42. It is argued on behalf of the appellants that the Commission ought to have considered the date of approval of the SPPAs as the effective date for the project for the reason that pursuance to execution of SPPAs by incorporating the modifications suggested by the Commission, the original PPA stood substantially modified / altered, and therefore, the SPPAs also required to be approved by the Commission. It is submitted that unless the SPPAs got approval from the Commission, the effective date provided under article 3.1 of the PPAs does not kick in. It is, further pointed out that change in definition of “delivery point” incorporated in the SPPAs is a substantial change to the terms of original PPA which would entail added expenditure for the Solar Power Developers for construction of additional evacuation facilities as well as in acquisition of additional land. Relying upon the

judgment of the Hon'ble Supreme Court in *All India Power Engineers Federation and Ors. v. Sashan Power Limited and Ors.* 2017 1 SCC 487, it is submitted that when an agreement is entered subject to certain changes / modifications, until the time such changes are duly ratified by the appropriate commission, the agreement cannot be considered to be concluded.

43. On behalf of respondents, it is argued that the effective date envisaged under article 3.1 of the initial PPAs would remain the same even upon modification of these PPAs for the reason that the modifications suggested by the Commission were minor in nature and do not affect the substantive provisions of the PPA.

44. We are unable to agree to the views of the Commission on the aspect under consideration. When the initial PPAs executed between the appellants and the ESCOMS were placed before the Commission for approval and it found discrepancy in certain article / clauses of the PPA requiring modifications / alterations, it should not have approved the PPAs at all. It should have returned the PPAs with the directions to incorporate suitable modifications / alterations in them before sending those for approval again. It appears that the Commission proceeded to approve the PPAs despite not agreeing to certain articles / clauses in them and made the approval subject to incorporation of corrections / modifications in those articles / clauses of the PPAs. Such conduct of the Commission cannot be appreciated or accepted. A conditional approval of the PPA is unknown in law. Once the Commission directs the parties to the PPA to modify / alter some of its clauses / articles, the approval, if any, given shall not come into effect unless the modified PPA also is approved by the Commission. In this

regard, we find the following observations of the Hon'ble Supreme Court in *M.V. Shannkar Bhat & Anr vs Claude Pinto (Deceased)* By L.Rs. & Ors. (2003) 4 SCC 86 very apt: -

“30. When an agreement is entered into subject to ratification by others, a concluded contract is not arrived at. Whenever ratification by some other persons, who are not parties to the agreement, is required, such a clause must be held to be a condition precedent for coming into force of a concluded contract.”

45. Therefore, when the law requires that a PPA executed between a power developer and a Discom shall not come into effect unless approved by the concerned Electricity Regulatory Commission, the Supplementary PPA which may be executed in pursuance to or in the absence of any directions / suggestions of the Commission, shall also need approval of the Commission before coming into effect. Such requirement cannot be waived off merely by saying that the modifications / alterations are minor in nature and do not affect any substantial clauses of the PPA.

46. Even otherwise also, it cannot be said that the modifications/ alterations suggested by the Commission in the original PPAs were minor in nature. One of the modifications was to be made in article 5.4 of the PPA as under: -

Initial PPA:

“5.4: The developer shall be responsible for power evacuation from the power project to the nearest delivery point.”

Modifications in the SPPA:

“5.4: The developer shall be responsible for power evacuation from the power project to the nearest delivery point / delivery points.”

47. Evidently, the modification significantly affected the obligation of the developers i.e. the appellants herein requiring them to provide for evacuation of power to the nearest delivery points instead of only one delivery point as specified in the initial PPA. It cannot be disputed that as a result of such modification, the appellants had to incur increased cost towards construction of additional evacuation facilities and for that purpose needed surplus land. By no means can such modification / alteration in clause 5.2 of the PPA be said to be a minor one and not substantially affecting the rights and obligations of the parties.

48. The observation of the Commission that there was no direction from it to the parties that after executing the SPPAs, the same should be again got approved by it, is true but that does not absolve the parties to the SPPAs to get the same approved from the Commission. We may note here that law requires a PPA to be got approved by the Commission for it to become effective. No direction from the Commission in this regard is required.

49. Therefore, we hold that since the rights and obligations of the parties i.e. the appellants herein and ESCOMS are governed by the SPPAs, these

SPPAs would become effective from the date of their approval by the Commission. However, since the same have not been approved by the Commission because of the erroneous interpretation of such legal requirement by the Commission itself communicated to the Government of Karnataka vide letter dated 25.10.2016, the SPPAs can be taken to have become effective from the date of their execution. In that case, it would be seen that the appellants have achieved commercial operation of their respective solar power projects within the stipulated period of 12 months from the effective date i.e. a date of execution of the Supplementary PPAs.

ISSUE No.2

50. For the purpose of reference, we reproduce issue No.2 hereinbelow again: -

- (2) Whether the appellants had proved that the events or circumstances alleged by them tantamount to “Force Majeure” events entitling them for extension of time for achieving the Conditions Precedent and Scheduled Commissioning Date?

51. The contentions of the appellants is that even if the effective date is taken to be the date of approval of initial PPA by the Commission, still delay occasioned is only on account of force majeure events which were not within their control. It is stated that delay in approval of the evacuation scheme by KPTCL and delay in issuing land conversion order (from agricultural to non-agricultural) by KREDL were the main factors which contributed to the delay in achieving SCOD for the power projects by the appellants.

52. Article 4.1 of the PPA is as under:-

“4.1 Conditions Precedent

Save and except as expressly provided in Articles 4, 14, 18, 20 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4 (the “Conditions Precedent”) by the Developer within 8 (eight) months from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by CESC MYSORE.”

53. Article 14 of the PPA deals with “force majeure” and is reproduced hereinbelow: -

“14.1 Definitions

14.1.1 *In this Article, the following terms shall have the following meanings:*

14.2 Affected Party

14.2.1 *An Affected Party means CESC MYSORE or the Developer whose performance has been affected by an event of Force Majeure.*

14.3 Force Majeure

14.3.1 *A ‘Force Majeure’ means any event or circumstance or combination of events including those stated below which wholly or partly prevents or unavoidably delays an Affected Party in the*

performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);*
- b) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;*
- c) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractors;*
- d) any judgment or order of any court of competent jurisdiction or statutory authority*

made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Government or

e) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Developer or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit.

14.4 Force Majeure Exclusions

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

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

14.5 Notification of Force Majeure Event

14.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

14.5.2 *The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreements, as soon as practicable after becoming aware of each of these cessations.*

14.6 *Duty to Perform and Duty to Mitigate*

14.6.1 *To the extent not prevented by a Force Majeure Event pursuant to Article 14.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.*

14.7 *Available Relief for a Force Majeure Event*

Subject to this Article 14:

a) No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

b) Every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 5.7.1;

c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event."

54. Thus, the PPA contains enabling provisions regarding extension of time, in case of delay in commissioning occurred due to *force majeure* events. As per article 4.1, the developer i.e. the appellants herein were required to achieve the conditions precedent specified in clause 4 within 8 (eight) months from the effective date unless such completion is affected by any *force majeure* event. *Force measure* events have been defined in article 14.3. It is noticeable that article 14.3.1 commences with the expression "*force majeure means any event or circumstance or combination of events **including those stated below ...***". It is, therefore, manifest that this provision

of the PPA does not restrict *force majeure* to only those events / circumstances mentioned therein but is inclusive in nature. The clause envisages that there may be certain events or circumstances other than those stated therein which also may affect the performance of the obligations under the PPA of any of the parties, and therefore, tantamount to *force majeure* event.

55. In the instant appeals under consideration, we find that before the PPAs were approved by the Commission in the months of September / October, 2016, the appellants had applied for power evacuation scheme in the months of May / July, 2016, which was tentatively approved in the months of October / November / December, 2016. In Appeal No.125/2022, tentative power evacuation scheme was granted on 23.02.2017. Thus, there has been significant delay ranging between 3 months to 4 months (9 months in case of appeal No.125/2022) on the part of KPTCL in approving the tentative evacuation scheme of the appellants. We find that there has been further delay of 1-2 months (5 months in appeal no.125/2022) in issuance of final evacuation scheme by the KPTCL.

56. Even if it is accepted, as observed by the Commission in the impugned order, that the KPTCL had granted tentative evacuation scheme as well as regular evacuation scheme approvals in reasonable time still it was difficult for the developers i.e. the appellants to proceed further with the project before receipt of the final approval of the evacuation scheme which happened only in December, 2016.

57. So far as the delay in obtaining / grant of land conversion is concerned, it has been held by the Commission as under: -

“17 d) ... Therefore, one can say that a definite timeframe of 60 days is prescribed for obtaining an order under Section 109 of the KLR Act, 1961. Had the petitioner applied to KREDL, at least 60 days before the date on which Conditions Precedent had to be achieved and there was a delay by the concerned authorities in processing the same or granting the approval, the date of application to KREDL by the developer, could be considered as the date of fulfilment of the production of the documentary evidence of having clear title and possession of the lands required for the project. Hence, in the present case, had the petitioner applied to KREDL at least 60 days before 26.05.2017, the date on which the Conditions Precedent should have been fulfilled, we could have considered whether making such application and producing the application to Respondent No.1 would amount to fulfilment of the Conditions Precedent within the stipulated time. Therefore, in our considered opinion, it is not possible to hold that the petitioner approaching KREDL on 25.05.2017 (Annexure-R3 collectively) for getting conversion of land etc., is sufficient fulfilment of the Conditions Precedent relating to production of documentary evidence of the title and possession of the lands required.

17 e) Article 14.4 of the PPA, stipulates ‘Force Majeure’ exclusions. Any nonperformance caused due to negligence,

omissions, errors, failure to comply with an Indian Law and breach or default under the Agreement cannot be termed as a 'Force Majeure' event. The Petitioner has not taken steps within reasonable time frame to obtain necessary approvals. Hence, the averment that the Petitioner could not complete the project within the stipulated time frame as it was affected by the 'Force Majeure' event is untenable and denied.”

58. In this regard, we may note that the appellant(s) M/s Adani Green Energy (UP) Limited had written a letter dated 03.08.2016 to the Principal Secretary, Revenue Department, Government of Karnataka, highlighting that the acquisition and conversion of agricultural land in Karnataka for setting up of solar power plants was a complex and time-consuming process and the delay in doing so was hampering the achievement of project milestone including achievement of SCOD of the projects. The appellants impressed upon the Government to simplify the approval procedure under Section 109 of Karnataka Land Reform Act, 1961, by permitting a single window clearance within 45 days irrespective of the size of the solar power project. Thereafter, on 05.10.2016 the Government of Karnataka, while taking note of the fact that the land owners are not showing any interest to give private property on contract basis to private developers and are interested in giving land on contract basis to the institutions / undertaking of the Government only, issued a letter authorizing KREDL to obtain agricultural land from the agriculturists after obtaining the necessary order under Section 109 of the Karnataka Land Reform Act, 1961, and to sub-lease the same to the solar power project developers.

59. Thus, it was the responsibility of KREDL to follow the procedure stated in circular dated 22.02.2016 for obtaining an order under Section 109 of the Karnataka Land Reform Act, 1961 for the purpose of agricultural land from the land owners and to ensure timely approval for land conversion for the purposes of setting up of the solar power projects. It is after the KREDL obtained the land from the agriculturists on lease basis, the same was to be sub-leased to the power developers i.e. the appellants herein, upon receipt of the requisite documents as well as conversion fee etc. from them. It appears that on account of delay on the part of KREDL in completing such process to make the agricultural land available to the appellants i.e. the power developers for its conversion from agricultural to non-agricultural so that the power projects could be set up thereon, the appellants were constrained to approach the KREDL on 25.05.2017 for such approval / sub-lease.

60. Nothing has been brought to our notice from the record to show that KREDL had obtained the agricultural land from the landowners on lease basis more than 60 days before the date on which conditions precedent had to be achieved by the appellants and had placed the same at the disposal of the appellants by way of sublease so that the appellants could have initiated steps for its conversion from agricultural to non-agricultural use. No communication has been addressed in this regard either by KREDL or by KPTCL to the appellants in this regard. Before holding the appellants responsible for the delay in land conversion, it was necessary for KREDL and KPTCL to specify the dates on which the land had been obtained on lease from the agriculturists and the appellants were asked to take the same on sublease. In the absence of any evidence from KREDL or KPTCL on this

aspect, we do not find it justified or appropriate to hold the appellants responsible for delay in taking necessary approvals from the concerned authorities for taking the land required for the power purchase on sublease and obtaining conversion of the land use from agricultural to non-agricultural.

61. The delay occurring in connectivity approvals as well as in land conversion was recognized by the Ministry of New and Renewable Energy, Government of India also and accordingly the Ministry had written a letter dated 28.07.2017 to the State Governments stating that the competent authority can allow extension of time as per contractual agreements.

62. This Tribunal in *Chennamangathihalli Solar Power Project LLP and Ors. V. BESCO and Ors.*, 2020 SCC OnLine APTEL 75 has held that delay in grant of approvals (both evacuation and land conversion) by the government instrumentalities constitute *force majeure* event to entitle the developers for extension of SCOD. We find it advantageous to quote the relevant portion of the said judgment hereinbelow: -

*“7.10 Learned counsel for the Respondent contended that the cited delays in approvals at various levels are of general in nature which by and large have to be faced by all the power project developers including solar projects. This is why a period of 18 months from the signing of PPA has been provided for completion of solar projects whereas the actual construction time may be needed as 6-8 months only. **While going through the factual matrix of the dates indicating submissions of applications for approval and activities undertaken for approving the proposals, it is amply***

clear that the Appellants have also acted in the belated manner resulting into occurrence of some delays in undertaking various activities. However, what thus transpires that there has been considerable delays on the part of the Respondents / Govt. agencies in processing of applications and granting the respective approvals. Thus, Respondents cannot absolve itself from the burden of such delays in execution/completion of the solar projects of the Appellants. In fact, it is pertinent to note that the Govt. as well as State/Discom considering above eventualities granted an extension of six months in COD. Contrary to this, the State Commission rejected the extension with imposition of liquidated damages to corresponding period only on the premise that it is a matter of dispute between the Appellants and the first Respondent.

...

8.11. Regarding force majeure events, Clause 8.3 of PPA, it is noted that under sub-clause (vi), it is provided that “inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals” will also attribute to force majeure. **In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals / clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure under sub-clause (vi) of clause 8.3 which has directly and severely**

affected the execution of the solar projects. To be more specific, if the approval for land conversion is received on last day of September, 2016, it becomes extremely difficult to achieve COD on 03.01.2017 as envisaged under the PPA. Moreover, the grant of extension of the Scheduled COD was accorded by Govt. of Karnataka and in turn, by first Respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA and not beyond.

...

8.17. In view of the above, we are of the considered opinion that considering facts and circumstances of the matter, the first Respondent was justified in extending COD up to six months as per the relevant provision (clause 2.5) of the PPA. **Besides, it is also crystal clear that the approvals / clearances from various Govt. instrumentalities were accorded after considerable delays (of 7-8 months) which in turn attributed to delay in commissioning of the solar projects. As these approvals were beyond the control of the Appellants, the State Govt. and first Respondent have rightly considered them as an event of force majeure and accordingly granted approval for COD extension.** In fact, the Commission failed to analyse all the issues in just and proper manner. The impugned order as such cannot sustain in eyes of settled principle of law as being perverse and arbitrary. **For the forgoing reasons, we hold that the Appellants are entitled for the agreed tariff**

as per the PPA (Rs. 8.40 per unit) without being subjected to LD.

...

9.2. *The findings of the State Commission in the impugned order clearly reflect that **it has ignored the vital material placed before it such as statement of objections filed by first Respondent, recommendations of State Govt. dated 23.06.2017 and communication of MNRE, Govt. of India dated 28.07.2017 regarding grant of COD extension to the solar power developers. Further, it is mandate upon the State Commission to promote co-generation and generation of power from renewable sources of energy, however, in the present case, the State Commission has suo motto interfered for the ultimate loss to RE developers who are land owning farmers and had participated in the programme of the Govt. for solar power development. In fact, the entire solar project is structured on the basis of assured tariff as per Article 5.1 of the PPA being an incentivised tariff and financial institutions have advanced loans on the basis of the assured tariff as per PPA.***

63. Similarly in the subsequent judgment dated 12.08.2021 in *Basaragi KM Solar Power Project LLP v. HESCOM & Ors.* 2021 SCC OnLine APTEL 62, this Tribunal held as under:-

“52. Respondent highlights the fact that the Appellant submitted the application for Grid connectivity and power

evacuation approval on 20.10.2015, which is after nearly 4 months of execution of the PPA.

...

79. It is seen that the project came to be commissioned on 31.03.2017, though the SCOD would be 20.01.2017. The contention of the Appellant is that though they submitted applications for various approvals approaching different authorities, considerable time was spent waiting for these approvals. With one approval from one authority, definitely the Appellant would not be in a position to establish the solar plant. Each approval has significant impact on the commissioning of the project. Unless land conversion approval, evacuation of power approval to get Grid connectivity and so also safety certificate by CEIG are in place, the ESCOM concerned will not consent for commissioning of the solar plant. The land upon which the solar project has to be put up must be converted from agricultural use to non-agricultural use. Only after such conversion, work on the land pertaining to the installation of the machinery and equipment can start. Unless there is approval for Grid connectivity, even if the solar plant is ready there cannot be evacuation of power. This evacuation of power is only possible after the seal of the CEIG certifying the safety of the solar plant. Only after such certificate, the Appellant can seek for Grid connectivity.

...

81. Having regard to the fact that securing these approvals from various instrumentalities of the Government/Government offices, 18 months period was envisaged to complete the project. Having regard to the fact that there could be circumstances or events which could delay the happening of COD within the original time slot, six months' time for extension of commissioning the project at the level of concerned distribution licensee was envisaged. For events beyond that, they had to approach the Respondent Commission.

82. The above procedure was envisaged keeping in mind the possibility of delay happening on account of laches on the part of the offices of Governmental Instrumentalities, though Solar Developer or SPV do not contribute to such delay. Unforeseen happening could possibly delay commissioning of the project, therefore force majeure event clauses were introduced in the terms of PPA as stated above. These force majeure clauses definitely take within its fold, the delay caused by offices of the Government or Governmental Instrumentalities.

...

85. The Respondent HESCOM contends that there was delay in submitting applications to various departments by the Appellant. One has to analyze the circumstances in a holistic approach is whether there was negligence on the part of the Developer to approach and obtain

these approvals? It cannot be said that the considerable time lapsed in obtaining these approvals from various Instrumentalities of the Government was at the instance of the Appellants.

...

88. We are aware that number of appeals are filed pertaining to solar projects in Karnataka under Farmers Scheme. **We also note that in some cases, the Application for conversion of agriculture land was submitted two or three months or may be six months after approval of PPA. We take judicial notice as discussed in Appeal No 160 of 2020 (Clearsky matter) that having regard to the nature of the solar plants to be developed by the farmers between 1 MW to 3 MWs, which required land conversion orders from revenue authorities, which has elaborate process consuming lot of time, the State Government in fact opined that there would be deemed conversion for such solar projects.** However, in spite of such expression, the guidelines to be followed by the revenue authorities for granting deemed conversion orders in favour of the solar plant developers were not clear and though the farmers approached revenue department, the concerned officers seem to have replied that they have not received guidelines in that regard. We also notice that even the guidelines came to be issued much later. Though this fact was not pleaded in all the appeals, but the guidelines in this regard issued by the State Government is common

*which was delayed and not intimated to the concerned authorities, **we are of the opinion that such confusion pertaining to deemed conversion procedure has also led to delay in either approaching the concerned revenue authority for conversion of agriculture land or even if they had approached, the conversion order was granted with much delay.***”

64. Again, in the judgment dated 12.08.2021 in *Clearsky Solar Private Limited v. KERC & Ors.* 2021 SCC OnLine APTEL 33, this Tribunal again recognized that getting land conversion approval is a herculean task and delay in obtaining such approvals is beyond the control of Solar Power Developers and accordingly held the Solar Power Developer entitled to extension of timelines under the PPA. We may quote the relevant portion of the judgment hereunder: -

“165. The discussion made above establishes the fact that the Appellant was running from pillar to post and made all humanly possible efforts to comply with not only condition precedent but also to get all required approvals in order to declare COD of the solar plant. It is seen that the GESCOM had extended SCOD by six months i.e, up to August 2017, but the solar plant of the Appellant was ready well before the original SCOD of 28.02.2017. If the effective date of the PPA is the date on which PPA was approved is taken into consideration, this SCOD would go to March 2017. Though the solar plant of the Appellant was ready well within original

SCOD, the formal land conversion certificate would not be received for the reasons beyond the control of the Appellant. The Commission finds fault with the Appellant for not commissioning the project within the time contemplated in the original PPA. It is noticed in the impugned order that there was an observation by the KERC that there was delay in grant of land conversion. **But, unfortunately, having opined so it concludes the same against the Appellant though the Appellant was not to be blamed. ...**

166. ... **It is noticed that after a total lapse of 10 months' time, land conversion was granted from the date of formal application insisted to be filed by the Appellant. We already discussed that in view of deemed land conversion process applicable to 'Farmers Scheme' as per the guidelines of Government of Karnataka, there was no occasion for the Appellant to apply for land conversion in the normal course. It is also noticed that the solar plant of the Appellant was very much ready for inter connection by 23.02.2017. It could not be commenced on account of formal land conversion approval. This definitely was not within the control of the Appellant. The Appellant had herculean task in getting various approvals."**

65. We may note here that the above noted judgment of this Tribunal in *Clearsky* case has been upheld by the Hon'ble Supreme Court in Order dated 09.12.2022 passed in Civil Appeal No.5134 of 2021.

66. It was sought on behalf of the respondents to distinguish the facts of these three cases from the facts of the appeals under consideration before us but on closure scrutiny we do not find any significant distinction between the factual matrix involved in the above noted cases decided by this Tribunal and the appeals under consideration. Therefore, we do not find any reason to disregard these previous judgments of this Tribunal and to make a departure from the principles evolved therein.

67. Hence, we are unable to countenance the reasoning of the Commission given in the impugned orders in rejecting the claim of the appellants for extension of timelines under the PPA due to *force majeure* events. It is manifest that there had been marked delay on the part of KPTCL in granting tentative as well as final approval to the evacuation schemes of the appellants. Thereafter, there has been significant delay on the part of KREDL and KPTCL in obtaining the land from the land owners on lease basis to be placed at the disposal of the appellants on sublease for setting up of the power projects. Again, there had been delay on the part of KREDL to initiate procedure for conversion of the land from agricultural to non-agricultural use so that the Solar Power Developers i.e. the appellants. Unless the land, duly converted to non-agricultural use, was available to the appellants, it was not possible for them to commence work for installation of the machinery. Similarly, in the absence of grid connectivity, evacuation of power from the project was not possible even if the solar plant was ready. In these circumstances, no negligence or failure can be attributed to the appellants. It is manifest from the record that the appellants were prevented from fulfilling the conditions precedent as well as in achieving SCOD of the

project by the delayed actions of the government instrumentality i.e. KREDL and KPTCL which certainly constituted *force majeure* event in terms of clause 14.3 of the PPA.

68. Accordingly, we decide this issue in favour of the appellants by holding that the events or circumstances agitated by them constitute *force majeure* events entitling them for extension of timelines for achieving the conditions precedent and SCOD as per the PPA.

Conclusion:

69. Considering the above discussion and the findings given by us on the two issues hereinabove, we find the impugned orders of the Commission erroneous and unsustainable in law as well as on facts. The impugned orders in all the above captioned appeals are hereby set aside. The appeals stand allowed.

70. We hold the appellants entitled to the tariff @ Rs.4.79 per unit and direct the ESCOMs to refund the entire amount to the appellants, which has been deducted as liquidated damages from their respective invoices, alongwith carrying cost as per the respective PPAs.

Pronounced in the open court on this 14th day of May, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / NON-REPORTABLE

tp

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 181 OF 2020 & IA No. 851 OF 2024

Dated: 30th May, 2024

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

In the matter of:

Adani Green Energy (UP) Limited Appellant(s)

Versus

Karnataka Electricity Regulatory Commission & Respondent(s)
Ors.

Counsel on record for the Appellant(s) : Amit Kapur for App. 1

Counsel on record for the Respondent(s) : for Res. 1

Sumana Naganand
Medha M Puranik
Gayathri Sriram
Garima Jain
Abhijeet Kumar Pandey for Res. 2

Samarth Kashyap for Res. 3

Garima Jain
Sumana Naganand
Medha M Puranik
Gayathri Sriram
Abhijeet Kumar Pandey for Res. 4

Prateek Chadha for Res. 5

ORDER

IA No. 851 of 2024
(For modification)

Upon hearing the Learned Counsels and on perusal of the application, We find that some inadvertent errors have crept in the

common judgement dated 14th May, 2024 passed by this Tribunal in this batch of eight appeals.

The error is with regards to the tariff mentioned in the respective PPAs in case of all the appeals and is found in paragraph Nos. 9, 10 & 70 of the judgement. Therefore, we direct that the paragraph Nos. 9, 10 & 70 of the judgement dated 14th May, 2024 shall be read as under :-

9. *The appellants participated in the bids. The appellant Adani Green Energy (UP) Limited submitted its proposal for setting up 13 solar power projects with a total capacity of 260MW, whereas MSPPL submitted its proposal for only one solar power project with a capacity of 20MW in Basavanabagewadi Taluk, Vijayapura District. On the basis on these bids submitted by the appellants, MSPPL was declared successful bidder for developing the above noted 20MW solar power projects at Basavanabagewadi Taluk, Vijayapura District, Karnataka, whereas M/s Adani Green Energy (UP) Limited was declared successful bidder for 20MW solar power projects in T. Narasipura Taluk of Mysuru District, Gubbi Taluk of Tumakuru District, K.R. Pet Taluk of Mandya District, Ramanagara in Ramanagara District, Jevargi Taluk of the Kalaburagi District, Tiptur Taluk of Tumakuru District, and Magadi Taluk of Ramanagara District in the State of Karnataka. Accordingly, Letters of Award (LoA) as well as allotment letters were issued to the appellants. The LoAs mentioned the discovered tariff as given the following table :-*

S.No.	Appeal No.	Cause title	PPA executed on	Tariff (in Rs. Per unit)
1.	Appeal No. 181 of 2020	Adani Green (UP) Limited v. KERC & Ors.	28.06.2016	4.79
2.	Appeal No. 235 of 2020	Adani Green Energy (UP) Ltd v. BESCOM & Ors.	29.06.2016	4.84
3.	Appeal No. 247 of 2020	Adani Green Energy (UP) Ltd v. BESCOM & Ors.	29.06.2016	4.82
4.	Appeal No. 1 of 2021	Adani Green Energy (UP) Ltd v. BESCOM & Ors.	28.06.2016	4.84
5.	Appeal No. 125 of 2022	Kondangal Solar Power Parks Pvt. Ltd. v. BESCOM & Ors.	02.06.2016	5.48

6.	Appeal No. 130 of 2022	Adani Green (UP) Limited v. CESC & Ors	28.06.2016	4.92
7.	Appeal No. 166 of 2022	Adani Green Energy (UP) Ltd v. BESCO & Ors.	29.06.2016	5.17
8.	Appeal No. 192 of 2022	Adani Green Energy (UP) Ltd v. GESCOM & Ors.	29.06.2016	4.81

10. *Thereafter, PPAs dated 02.06.2016, 28.06.2016 & 29.06.2016 were executed by the appellants respectively with the ESCOMs for the purchase of electricity by these ESCOMs from appellant's solar power projects for a period of 25 years at the tariff mentioned their respective PPAs.*

70. *We hold the appellants entitled to the tariff as mentioned in their respective PPAs, already noted in the Table given in Para No. 9 hereinabove and direct the ESCOMs to refund the entire amount to the appellants, which has been deducted as liquidated damages from their respective invoices, alongwith carrying cost as per the respective PPAs.*

The remaining portion of the judgement will remain unchanged.

This order be uploaded on the website of the APTEL and shall form part and parcel of the judgement dated 14th May, 2024.

IA is accordingly disposed of.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

js/mkj