

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 78 of 2025

Date of Hearing : 03.02.2026

Date of Order : 14.05.2026

In the Matter of

Petition filed under section 86 (1) (f) of the Electricity Act, 2003 read with Article 3.8 of the Power Purchase Agreement dated 21.02.2014 executed the Petitioner and Respondent HPPC, inter-alia, seeking direction for payment of tariff @Rs. 6.44/unit in terms of tariff deficit & implementation of HERC's order dated 20.01.2016.

Petitioner

M/s. Siwana Solar Power Projects Ltd., Bhiwani

Respondent

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner

1. Mr. Akshay Gupta, Advocate

Present on behalf of the Respondent

1. Mr. Lovepreet Singh, Advocate
2. Ms. Aerika Singh, Advocate
3. Mr. Gaurav Gupta, Xen, HPPC

Quorum

**Shri Nand Lal Sharma
Shri Mukesh Garg
Shri Shiv Kumar**

**Chairman
Member
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Siwana Solar Power Projects Ltd, Bhiwani, seeking to direct the respondent for payment of tariff to the petitioner at the rate of Rs.6.44/unit, instead of Rs. 5.68/unit, in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties and directions passed by this Hon'ble Commission on 20.01.2016 in Case No. HERC/PRO-24 of 2015.
2. **Petitioner's submissions: -**
 - 2.1 That the present petition has been filed by M/s Siwana Solar Power Projects Pvt. Ltd. (herein after referred to as "Petitioner") seeking correct rate of tariff i.e., 6.44 per unit payable by the Haryana Power Purchase Centre (herein after referred to as "HPPC" or "Respondent") as per terms and conditions of the PPA entered and executed between

the Petitioner and Respondent herein. The Respondent was also directed to work out a year to year tariff at a levelised rate of Rs 6.44/unit payable to the Petitioner, in terms of clause 4.1 of the PPA executed between the Petitioner and the Respondent as per Order dated 20.01.2016 passed by this Hon'ble Commission in the petition bearing No. HERC/PR0-24 of 2015.

- 2.2 That the Petitioner entered into a Power Purchase Agreement with the Respondent on 21.02.2014 (hereinafter being referred to as the "Subject PPA") in regard to the designing, constructing, owning, operating and maintenance of Solar PV Project situated at Village Mithi, Tehsil-Siwani Distt. Bhiwani, Haryana (hereinafter "Solar Power Project"). The PPA was executed for a period of 25 years, from the date of commissioning of the plant i.e. 31.12.2024. The tariff rate was earlier fixed at 7.45 per unit was reduced to Rs. 6.44 per unit and is currently at its lowest i.e. 5.68 per unit which was only fixed as an interim arrangement between the parties and never attained any finality.
- 2.3 That Clause 4.1 of the Subject PPA provides that HPPC shall purchase and accept all energy at the lowest of the following tariff:
 - (a) Generic tariff decided by HERC i.e. Rs. 7.94 per unit for FY 2013-14 in case the plant is commissioned before 31.3.2014 or Rs. 7.58 per unit for FY 2014-15 in case the plant is commissioned by 30.6.2014.
 - (b) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through competitive bidding to be floated by HPPC till 31.12.2015.
 - (c) The lowest tariff quoted and accepted in the first long term tender for the purchase of solar power through reverse bidding to be floated by HAREDA till 31.12.2015, as per solar policy of Govt. of Haryana.
- 2.4 That the Respondent floated a Notice Inviting bids for Tender [NIT] bearing No. 51 dated 16.04.2014 to purchase a 50 MW solar power, in furtherance of which, Respondent executed separate Power Purchase Agreements with 4 other solar power developers - wherein the lowest tariff of Rs. 6.44/- per unit was discovered.
- 2.5 That vide its Order dated 13.08.2014, this Hon'ble Commission passed the Tariff Order in PRO No. 50 of 2014, whereby the 'generic tariff' rate, for the solar plants commissioned in FY 2014-15, was fixed at Rs.7.45 per unit.
- 2.6 That the Petitioner's Solar Power Project came to be commissioned on 31.12.2014 (in the FY 2014-15), therefore, according to the Clause 4.1 of the Subject PPA, the generic tariff decided by this Hon'ble Commission vide its Order dated 13.08.2014 (i.e., Rs. 9.93/kWh with a levelized tariff of Rs. 7.45/kWh) was not applied/given by the

Respondent and instead the lowest tariff discovered in the tender process i.e., Rs 6.44/kWh was considered by them.

- 2.7 That the Petitioner in furtherance to the same, raised its first set of bills for the 'sale of power' to Respondent vide Invoice Nos. SSPPPL /HPPC/ 14-15 dated 11.03.2015 (for the period 31.12.2014 to 11.03.2015) and dated 01.04.2015 (for the period from 11.03.2015 to 01.04.2015) - both charged at the approved rate of Rs.9.93/ kWh. But to the utmost shock to the Petitioner the Instead of making payment as per the approved tariff, the Respondent made illegal deductions and paid the bills at a much lower tariff rate of Rs.6.44/kWh, following which disputes arose between the parties.
- 2.8 That aggrieved by the decision of Respondent, the Petitioner Company filed a Petition No. HERC/PR0-24 of 2015 before this Hon'ble Commission. However, advertng to Clause 4.1 of the PPA, this Hon'ble Commission, vide its Order dated 20.01.2016, held that being the lowest tariff discovered in the competitive bidding process in the tender floated by HPPC, the Petitioner herein would be entitled to the tariff of Rs.6.44/kWh. The Commission proceeded to uphold the PPA and further directed HPPC to work out a year-to-year tariff for 25 years corresponding to the levelled tariff of Rs. 6.44 per unit, and directed to pay the tariff to the Petitioner so worked out for the relevant year.
- 2.9 That being aggrieved Order dated 20.01.2016, the Petitioner filed a Petition before the Hon'ble Appellate Tribunal for Electricity ("APTEL"), being Petition No. 150 of 2016, claiming being entitled to the generic tariff of Rs.7.45/kWh, as determined by this Hon'ble Commission in its Tariff Order dated 13.08.2014 (passed in PRO 50/2014 for FY 2014-2015).
- 2.10 That in the meanwhile, the Power Purchase Agreements (PPA's) which were executed between the Respondent and with 4 other developers (wherein the lowest tariff of Rs.6.44/kwh was discovered) were submitted for approval before this Hon'ble Commission, however, the same came to be rejected vide a common order dated 12.09.2016/14.10.2016 passed by this Hon'ble Commission in Petition No. HERC/PR0-6 of 2016, holding that the competitive/standard bidding process and the resultant PPAs were not in line with the Electricity Act 2003. The concerned developers, while claiming parity with the Subject PPA executed by the Petitioner, preferred Petitions (No. 278 of 2016 & 307 of 2016) before the Hon'ble APTEL against the above order.
- 2.11 That on 09.03.2018, the Hon'ble APTEL, while distinguishing the Petitioner's case, applied the Tariff declared by the Ld. Central Electricity Regulatory Commission ("CERC") for the FY 2016-2017 at Rs. 5.68 per unit with respect to the PPA for the abovesaid developers and further remanded the matter back to this Hon'ble

Commission for approval of their respective PPAs. This Order of 09.03.2018 has now attained finality after the Petitions (Nos. 5962, 5869, 5843, 7296 of 2018) challenging the said Order were dismissed by the Hon'ble Supreme Court vide Order dated 10.10.2023.

- 2.12 That the Petitioner was neither a party to the above proceedings nor was in any manner related to the outcome of these proceedings as the same strictly pertained to the PPAs executed with the concerned developers, i.e., (1) M/s JBM Solar Power Pvt. Ltd., (2) M/s Subhash Infra Engineers Pvt. Ltd. and (3) M/s Utrecht Solar Pvt. Ltd. (USPL), and not the Petitioner herein.
- 2.13 That nor the abovementioned Order in no manner modified or touched upon the applicability of the tariff on the parties to the present subject matter, i.e., Petitioner Company and HPPC and neither the PPA even executed between the Petitioner and Respondent was never been modified as well.
- 2.14 That the Despite active terms of the, PPA the Respondent stopped paying the bills of the Petitioner from January 2018 and unilaterally started considering the above tariff of Rs. 5.68/kWh (determined in a case completely unrelated to the Petitioner) for the Petitioner in complete contravention against the terms and conditions of the PPA and as well in noncompliance of the order dated 20.01.2016 passed by this Hon'ble Commission, directing the Respondent herein to pay the Petitioner at a tariff rate of Rs 6.44/kWh as well as the terms of the PPA dated 21.02.2014 to the Petitioner.
- 2.15 That the Petitioner being aggrieved by this malicious act of the Respondent, the Petitioner (during the pendency of Petition No. 150 of 2016 filed by the Petitioner herein before the Hon'ble APTEL) was compelled to file a Petition before this Hon'ble Commission as Petition No. HERC/PRO 5 of 2019, seeking implementation of the Orders dated 13.08.2014 and 20.01.2016 of this Hon'ble Commission.
- 2.16 That this Hon'ble Commission vide its Order dated 10.05.2019, in consonance with the Petition No. 150 of 2016 filed before the Hon'ble APTEL as well as the subsequent replacement of the lowest tariff discovered in the bidding process (Bidding PPAs) from Rs.6.44/kWh to Rs. 5.68/kWh, directed the Respondent herein, as an interim arrangement based on the CERC tariff for the year 2016-17, to pay to the Petitioner tariff at the rate of Rs. 5.68/kWh on year- to-year basis, which was however made subject to the outcome/judgement of the Hon'ble Supreme Court in Petition Nos. 5962, 5869, 5843, 7296 of 2018 - which stands decided as of date.
- 2.17 That, Hon'ble APTEL vide its Order dated 27.05.2019 in Appeal No. 150 of 2016 preferred by the Petitioner against the Order dated 20.01.2016 passed by this Hon'ble

Commission upheld the finality of tariff of Rs 6.44 per unit in respect of the Petitioner and the parties is dispute are still bound by the said Order. However, the Respondent did not comply with the directions passed by the Hon'ble APTEL in Appeal No. 150 of 2016. This Order had also put a quietus to the tariff issue between the Petitioner and Respondent and till date has not been assailed by any party, including Respondent, who stands bound to it. Relevant portion from the said Order passed by the Appellate Tribunal is extracted below:

"While taking note of the judgments of this Tribunal and Hon'ble Gujarat High Court, it emerges that the bidding process undertaken by HPPC was legally sustainable and as such the lowest tariff discovered in the process has to be applied to the case of the Petitioner i.e., the tariff at Rs.6.44/kWh. In view of these facts, we are of the opinion that the State Commission has allowed the tariff applicable to the Petitioner's solar project appropriately and the impugned order does not suffer from any legal infirmity. Hence, interference from this Tribunal is not called for."

- 2.18 That despite the above unequivocal directions, this Hon'ble Commission (sic), in complete violation of the same, continued to pay the Petitioner at the reduced rate of Rs.5.68 per unit. Aggrieved by the actions of the Respondent, the Petitioner filed a petition bearing no. PRO 8/2020 before this Hon'ble Commission, thereby, seeking implementation of inter alia the Orders of this Hon'ble Commission dated 20.01.2016 and 10.05.2019 along with orders passed by Hon'ble APTEL dated 27.05.2019.
- 2.19 That Mr. Vinod Mittal, one of the Petitioner Company's directors, was handling the company's business at the time. At the request of the Respondent and the aforementioned former Director, the Respondent's Advocate requested before this Hon'ble Commission on July 21, 2020, in Petition Case No. PRO-8 of 2020, that the parties contemplate a reconciliation.
- 2.20 That the Petitioner and Respondent entered into this alleged settlement and Mr. Vinod Mittal proceeded to accept a sum of Rs.48,38,038/- from the Respondent as full and final settlement with respect to the outstanding dues till September, 2019 only and thereafter filed Written Submissions dated 18.09.2020 on behalf of the Petitioner Company before this Hon'ble Commission, whereby it sought to withdraw the Petition Case No. PRO No. 8 of 2020 on behalf of the Petitioner. The relevant portion from the Letter dated 17.08.2020 sent by the Petitioner Company which was later accepted by HPPC is extracted below:

"With the above observations and to put an end to the prolonged litigation, we would be willing to arrive at a compromise with HPPC on the issue of our pending claims of billing if HPPC releases our above outstanding amount shown in the sheet attached"

- 2.21 That the Petitioner preferred a Review Petition before this Hon'ble Commission bearing Review Petition No. 7 of 2022 seeking a review of the settlement dated 29.09.2020. However, the same was summarily dismissed vide order dated 14.09.2022. The said review petition was further assailed before the Hon'ble APTEL by way of two Appeals, firstly, bearing DFR No. 460 of 2022 against Order dated 14.09.2022 (later numbered, Appeal No. 411 of 2022) and secondly, bearing DFR No. 217 of 2023 against Order dated 29.09.2020 passed by this Hon'ble Commission whereby the PRO No. 8/2020 was dismissed as withdrawn. Both the above-mentioned Appeals were heard together, at a preliminary stage and were dismissed by the Appellate Tribunal vide order dated 21.08.2023.
- 2.22 Thereafter even a 'Civil Appeal' was filed by the Petitioner herein before the Hon'ble Supreme Court of India, however, the said Appeal was dismissed summarily vide Order dated 02.01.2024. That in the light of the said Order dated 02.01.2024 the dues payable by the Respondent to the Petitioner till September 2019 stood settled.
- 2.23 That vide Order dated 10.10.2023, the Civil Appeals bearing Nos. 5962, 5869, 5843, 7296 of 2018 preferred by the other solar developers i.e., (1) M/s JBM Solar Power Pvt. Ltd., (2) M/s Subhash Infra Engineers Pvt. Ltd. and (3) M/s Utrecht Solar Pvt. Ltd. (USPL), which pertained only to the PPAs executed by them with the this Hon'ble Commission were dismissed by the Hon'ble Supreme Court, upholding the order of the Hon'ble APTEL passed on 16 09.03.2018 whereby the PPA and the tariff fixed therein (i.e., Rs.6.44 per kWh) executed by the Petitioner was categorically distinguished from the other PPAs (with tariff at Rs.5.68 per kWh).
- 2.24 That the interim tariff rate of Rs. 5.68/unit decided by this Hon'ble commission towards the tariff applicable to the Petitioner stands no longer valid, and the tariff rate of Rs. 6.44/unit as decided by the Hon'ble APTEL vide order dated 27.05.2019 would be applicable.
- 2.25 That as the Respondent despite there being PPA on record kept self-favoring and illegal tariff of Rs.5.68 per unit which as per and in accordance to the terms and conditions of the PPA entered between the Petitioner and Respondent is illegal, exorbitant towards the expenses of the Petitioner, and not attained finality under any Orders passed by any forum or judicial body. The said tariff rate was never agreed upon between the parties to the said PPA, either under the Settlement Agreement filed

by the Parties or any other document or order; Moreover, the settlement agreement, even if accepted, solely pertains to the months prior to it, for which invoices were generated and does not, in any manner, deals with the future period.

- 2.26 That the Petitioner herein filed Petition bearing No. HERC/PRO 26 of 2024 before this Hon'ble Commission stating its grievance of lower tariff rate payment being still made by the Respondent herein seeking tariff rate as per and in accordance to the PPA entered between the Petitioner and Respondent back in 2014.
- 2.27 That this Hon'ble Commission erroneously dismissed the aforementioned Petition on the ground of res-judicata; assuming that the said rate of Rs. 5.68 per unit has attained finality vide Order dated 29.09.2020 and 14.09.2022 of this Hon'ble Commission; Order dated 21.08.2023 of the APTEL and Order dated 02.01.2024 upon the basis of settlement been derived between the Petitioner and Respondent herein. However, it is to be noted that the tariff rate mentioned in the settlement was a mere interim arrangement and not final. The Respondent has to adhere by the terms and conditions of the PPA.
- 2.28 That the Respondent through a perverse interpretation of the Order dated 10.05.2019 passed by this Hon'ble Commission with respect to some other solar power plants has been paying tariff at the rate of Rs. 5.68/unit, whereas in terms of the PPA executed between the parties, the Petitioner is entitled to an year to year tariff for a period of 25 years levelized at the rate of Rs. 6.44/unit.
- 2.29 That this Hon'ble Commission had vide its Order dated 20.01.2016, had directed the Respondent to work out the year-to-year tariff for 25 years corresponding to the levelized tariff of Rs. 6.44/unit. It further noted that the said proposal was agreeable to the Respondent herein. The relevant portion from the said Order dated 20.01.2016 is extracted below:
- ".. Further, during the course of arguments, the Commission suggested that the year-to-year tariff should be worked out corresponding to the levelized tariff of Rs.6.44 per Unit and the year-to- year tariff so worked out be paid to the Petitioner by Respondent. This proposal was agreed to by the Respondent. Accordingly, the Commission directs Respondent to work on the year-to-year tariff for 25 Years corresponding to the levelized tariff of Rs.6.44 per unit and pay the tariff to the Petitioner so worked out for the relevant year."*
- 2.30 That the Respondent however continues to pay tariff to the Petitioner at the interim rate of Rs. 5.68/unit decided by this Hon'ble Commission vide order dated 10.05.2019, although the said order specifically states that it is merely an interim arrangement. The

Respondent under the garb of the settlement has been paying the tariff at a lower rate of Rs.5.68/unit than what was agreed to between the parties in terms of the PPA. It is to be noted that the said settlement and the Order date 29.09.2020 passed by this Hon'ble Commission which upholds the settlement nowhere discussed the applicability of the tariff rate post settlement.

- 2.31 That the tariff rate as stated in the settlement entered between the Petitioner and Respondent was merely an interim arrangement and never attained finality vide any Order of any forum or Judicial body. That vide Order dated 27.05.2019, the Hon'ble APTEL upheld the Order of this Hon'ble Commission dated 20.01.2016; wherein the Hon'ble APTEL has specifically referred to the Order dated 09.03.2018. Subsequently, the tariff rate of Rs. 5.68/unit was made applicable only with respect with the other solar power developers and not the Petitioner Company.
- 2.32 That a perusal of the settlement placed on record before, and accepted by, this Hon'ble Commission vide Order dated 29.09.2020 in Petition No. PRO 8, makes it explicitly clear that the said settlement was solely executed with respect to the 'pending claims of billing' for the period until September 2019. The letters for settlement sent on behalf of the Petitioner further states that the tariff of Rs. 5.68 was purely an interim arrangement. The said settlement, even if admitted, merely settled the dispute with respect to the outstanding arrears which were to be paid by the Respondent in terms of the Subject PPA and in no manner stated anything with respect to the tariff to be paid in future, i.e., pursuant to the settlement.
- 2.33 That as per the terms of the PPA, which forms the basis of the sale of electricity between the parties - the tariff applicable to the Petitioner herein should be the lowest discovered tariff in the bidding process, which was found to be Rs. 6.44 per unit. In view of the order passed by this Hon'ble Commission on 20.01.2016, the Respondent ought to pay the year-to-year tariff for 25 years corresponding to the levelized tariff of Rs.6.44/unit and pay the tariff so worked out for the relevant year to the Petitioner. However, the Respondent continues to pay the Petitioner @ Rs.5.68/unit.
- 2.34 That the above contention regarding the applicability of tariff rate post settlement was averred by the Petitioner in the Civil Appeal bearing Diary No. 44243/2023, the same was never adjudicated upon by/before the Hon'ble Supreme Court and the matter was dismissed in limine vide order dated 02.01.2024.
- 2.35 That the following prayers have been made:-

- A. Direct the Respondent to adhere by the terms and conditions of the Power Purchase Agreement dated 21.02.2014 in full capacity and pay tariff to the Petitioner at the rate of Rs.6.44 per unit.
- B. Implement the directions passed by this Hon'ble Commission on 20.01.2016 in Case No. HERC/PR0-24 of 2015 and direct the Respondent to in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;
- C. Direct the Respondent to also pay to Petitioner the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable till the final adjudication of the present petition, within a time bound manner;
- D. Pass any other order as this Hon'ble Commission may deem fit and necessary in the facts and circumstances of the present case.

3. **The respondent's (HPPC) reply: -**

THE PRESENT PETITION IS A GROSS ABUSE OF COURT PROCESS, BARRED BY PRINCIPLE OF *RES JUDICATA* AND UNTENABLE UNDER LAW –

- 3.1 That the present petition has brought up the same issue, which has already been decided by this Hon'ble Commission on two separate occasions through earlier orders and is on based on same cause of action. The present petition is a gross abuse of court process and in view thereof, the present Respondent herein raises serious objections with respect to the tenability of the instant petition, which goes to the root of the matter and are necessary to be adjudicated at the outset. As such, the present composite reply is being filed on behalf of the Answering Respondent limited to be objections on tenability of instant petition. The Respondent reserves the right to file a detailed reply subsequently, if the need so arises or if it is so ordered or deemed fit by the Hon'ble Commission.
- 3.2 That the Petitioner is a habitual litigant who has been abusing the process of law by repeatedly instituting proceedings on the same set of facts and circumstances seeking similar relief. In the present petition as well, the Petitioner seeks a direction that the Respondent be compelled to pay tariff at the rate of ₹6.44 per kWh. It is pertinent to note that the Petitioner has, time and again, agitated this very relief in multiple proceedings, namely Petition No. 8 of 2020, Review Petition No. 7 of 2022, and again in Petition No. 26 of 2024 before the Hon'ble HERC. This position has already been acknowledged by the Hon'ble Commission in its order dated 12.11.2024 (Annexure A-13), wherein it was categorically observed that, in sum and substance, all the petitions filed by the Petitioner

were directed towards seeking tariff at the rate of ₹6.44 per kWh. The Hon'ble Commission further held that the issue had already attained finality in view of its earlier decisions dated 29.09.2020 (Annexure A-9) and 14.09.2022 (Annexure R-1 appended herewith), the judgment of the Hon'ble Appellate Tribunal for Electricity (APTEL) dated 21.08.2023 (Annexure A-10), and the order of the Hon'ble Supreme Court dated 02.01.2024 (Annexure A-11 at page 255 of the petition). Accordingly, the principle of *res judicata* was held applicable, and the petition was dismissed in *limine* without entering into the merits of the case. A copy of the order dated 14.09.2022 passed in HERC Review Petition No. 7 of 2022 is appended herewith and marked as Annexure R-1.

3.3 That admittedly, the present petition is based on the same facts and subject matter as those raised by the Petitioner in Petition No. 26 of 2024, which already stands adjudicated by this Hon'ble Commission vide order dated 12.11.2024 (Annexure A-13). It is further submitted that the issues arising for adjudication, as well as the reliefs claimed in the present petition, are identical to those in Petition No. 26 of 2024. In these circumstances, the present proceedings, being a repetition of issues already decided, are not maintainable in law. The present Petition is not only clearly barred by application of Doctrine of Res Judicata but is vexatious, a sheer wastage of the judicial time, a gross abuse of the court process and an unnecessary harassment to the Respondent, which ought to be viewed strictly against the Petitioner. The principle of Res Judicata is founded on justice, equity and good conscience which require that a party who has once succeeded on an issue should not be harassed by multiplicity of proceedings involving the same issue. Therefore, the present petition deserves to be dismissed with exemplary costs. A copy of Petition No. 26 of 2024 filed by the Petitioner sans annexures is appended herewith and marked as Annexure R-1.

3.4 That the only thing that is distinct in the instant petition from earlier petitions filed by the same Petitioner is the counsel through which it is filed. Such a practice of re-filing the already adjudicated petition under the signature of new counsel shall be greatly deprecated, as it suggests a potential misuse of the system, which cannot be permitted by any Forum/Court. The Hon'ble Supreme Court has repeatedly deprecated the conduct of the parties of changing their counsel and filing successive petitions. Support qua the same can be drawn from the judgment of the Hon'ble Supreme Court passed in *T.N. Electricity Board v. N. Raju Reddiar*, [(1997) 9 SCC 736] wherein it has been held as under:

"It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama

for the petitioner respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession....This practice of changing the advocates and filing repeated petitions should be deprecated with heavy had for purity of administration of law and salutary and healthy practice.” (Emphasis Supplied)

- 3.5 That the sole ground forming base of the instant Petition is that this Hon’ble Commission erred in passing Order dated 12.11.2024 (Annexure A-13) by purportedly assuming that the tariff of ₹5.68/kWh had attained finality on the basis of a settlement between the Petitioner and the Respondent (Para 25 of the Petition). In the earlier petition, however, the identical ground was urged in paras 28 and 29. In fact, the grounds raised in instant petition are a clear cut, copy and paste of the earlier petition, which is tabulated hereunder for the ready reference of the Hon’ble Commission –

Grounds in Petition No. 78 of 2025 (Present Petition)	Corresponding Identical Grounds in Petition No. 26 of 2024 (Earlier Petition)
Para 27 - The Respondent through a perverse interpretation of the Order dated 10.05.2019 passed by this Hon’ble Commission with respect to some other solar power plants has been paying tariff at the rate of Rs. 5.68/unit, whereas in terms of the PPA executed between the parties, the Petitioner is entitled to an year to year tariff for a period of 25 years levelized at the rate of Rs. 6.44/unit. It is pertinent to note that the above order passed in	Para 24 - The Respondent through a perverse interpretation of the Order dated 10.05.2019 passed by this Hon’ble Commission with respect to some other solar power plants has been paying tariff at the rate of Rs. 5.68/unit, whereas in terms of the PPA executed between the parties, the Petitioner is entitled to an year to year tariff for a period of 25 years levelized at the rate of Rs. 6.44/unit. It is pertinent to note that the above order passed in relation to the other solar power plants have: (a) have no inter-relation to the

<p>relation to the other solar power plants have: (a) have no inter-relation to the Petitioner; and (b) clearly been distinguished by the Hon'ble APTEL.</p>	<p>Petitioner; and (b) clearly been distinguished by the Hon'ble APTEL.</p>
<p>Para 28 - While upholding the terms of the Subject PPA, this Hon'ble Commission had vide Order dated 20.01.2016 directed the Respondent to work out the year-to-year tariff for 25 years corresponding to the levelised tariff of Rs. 6.44/unit. It further noted that the said proposal was agreeable to the Respondent herein. The relevant portion from the said Order dated 20.01.2016 is extracted below:</p> <p>".. Further, during the course of arguments, the Commission suggested that the year-to-year tariff should be worked out corresponding to the levelized tariff of Rs.6.44 per Unit and the year-to- year tariff so worked out be paid to the Petitioner by Respondent. This proposal was agreed to by the Respondent. Accordingly, the Commission directs Respondent to work on the year-to-year tariff for 25 Years corresponding to the levelized tariff of Rs.6.44 per unit and pay the tariff to the Petitioner so worked out for the relevant year."</p>	<p>Para 25 - While upholding the terms of the Subject PPA, this Hon'ble Commission had vide Order dated 20.01.2016 directed the Respondent to work out the year to year tariff for 25 years corresponding to the levelised tariff of Rs. 6.44/unit. It further noted that the said proposal was agreeable to the Respondent herein. The relevant portion from the said Order dated 20.01.2016 is extracted below:</p> <p>".. Further, during the course of arguments, the Commission suggested that the year-to-year tariff should be worked out corresponding to the levelized tariff of Rs.6.44 per unit and the year-to year tariff so worked out be paid to the Petitioner by Respondent. This proposal was agreed to by the Respondent. Accordingly, the Commission directs Respondent to work on the year-to-year tariff for 25 Years corresponding to the levelized tariff of Rs.6.44 per unit and pay the tariff to the Petitioner so worked out for the relevant year."</p>
<p>Para 29 - That the Respondent however continues to pay tariff to the Petitioner at the interim rate of Rs. 5.68/unit decided by this Hon'ble Commission vide order dated 10.05.2019, although the said order specifically states that it is merely an interim arrangement. The Respondent under the garb of the settlement has been paying the tariff at a lower rate of</p>	<p>Para 26 - That the Respondent however continues to pay tariff to the Petitioner at the interim rate of Rs. 5.68/unit decided by this Hon'ble Commission vide order dated 10.05.2019, although the said order specifically states that it is merely an interim arrangement. The Respondent under the garb of the settlement has been paying the tariff at a lower rate of Rs.5.68/unit than what was agreed to between</p>

<p>Rs.5.68/unit than what was agreed to between the parties in terms of the PPA. It is to be noted that the said settlement and the Order date 29.09.2020 passed by this Hon'ble Commission which upholds the settlement nowhere discussed the applicability of the tariff rate post settlement.</p>	<p>the parties in terms of the PPA. Neither the said settlement nor the Order date 29.09.2020 passed by this Hon'ble Commission upholding the settlement, discuss the applicability of the tariff rate post settlement. The purported settlement was executed only to put a quietus to the issue of pending/prior bills which had not been cleared by the Respondent. Furthermore, the rate of tariff has not been discussed in any of the letters exchanged between the parties while the terms of the settlement were being deliberated upon.</p>
<p>Para 31- Further, a perusal of the settlement placed on record before, and accepted by, this Hon'ble Commission vide Order dated 29.09.2020 in Petition No. PRO 8, makes it explicitly clear that the said settlement was solely executed with respect to the '<u>pending claims of billing</u>' for the period until September 2019. The letters for settlement sent on behalf of the Petitioner further states that the tariff of Rs. 5.68 was purely an interim arrangement. The said settlement, even if admitted, merely settled the dispute with respect to the outstanding arrears which were to be paid by the Respondent in terms of the Subject PPA and in no manner stated anything with respect to the tariff to be paid in future, i.e., pursuant to the settlement.</p>	<p>Para 28 - Further, a perusal of the settlement placed on record before, and accepted by, this Hon'ble Commission vide Order dated 29.09.2020 in Petition No. PRO 8, makes it explicitly clear that the said settlement was solely executed with respect to the 'pending claims of billing' for the period until September 2019. The letters for settlement sent on behalf of the Petitioner further states that the tariff of Rs. 5.68 was purely an interim arrangement.</p>
<p>Para 32 - Even as per the terms of the PPA, which forms the basis of the sale of electricity between the parties - the tariff applicable to the Petitioner herein should be the lowest discovered tariff in the bidding process, which was found to be Rs. 6.44 per unit. In view of the order passed by this Hon'ble Commission on 20.01.2016, the Respondent ought to pay</p>	<p>Para 30 - Even as per the terms of the PPA, which forms the basis of the sale of electricity between the parties - the tariff applicable to the Petitioner herein should be the lowest discovered tariff in the bidding process, which was found to be Rs. 6.44 per unit. In view of the order passed by this Hon'ble Commission on 20.01.2016, the Respondent ought to pay the year to year tariff for 25 years corresponding to the levelised tariff of</p>

<p>the year-to-year tariff for 25 years corresponding to the levelised tariff of Rs.6.44/unit and pay the tariff so worked out for the relevant year to the Petitioner. However, the Respondent continues to pay the Petitioner @ Rs.5.68/unit.</p>	<p>Rs.6.44/unit and pay the tariff so worked out for the relevant year to the Petitioner. However, the Respondent continues to pay the Petitioner @ Rs.5.68/unit.</p>
<p>Para 34 - For complete disclosure, it is stated that while the above contention regarding the applicability of tariff rate post settlement was averred by the Petitioner in the Civil Appeal bearing Diary No. 44243/2023, the same was never adjudicated upon by/before the Hon'ble Supreme Court and the matter was dismissed in <i>limine</i> vide order dated 02.01.2024.</p>	<p>Para 32 - For complete disclosure, it is stated that while the above contention regarding the applicability of tariff rate post settlement was averred by the Petitioner in the Civil Appeal bearing Diary No. 44243/2023, the same was never adjudicated upon by/before the Hon'ble Supreme Court and the matter was dismissed in <i>limine</i> vide order dated 02.01.2024.</p>
<p>Para 35 - The cause of action to file the present petition arises from the wilful non-compliance of the Orders/direction passed by this Hon'ble Commission on 20.01.2016 which persists till date and non-adherence of the terms and conditions of the subject PPA. The direction with respect to payment of Rs.6.44/unit was upheld by the Hon'ble APTEL vide Order dated 27.05.2019 and was never challenged therefore attaining finality in nature. That during the pendency of the execution proceedings a settlement was entered between the Petitioner and the Respondent with respect to the outstanding arrears and tariff rate therein was a mere interim arrangement and it never attained any finality. It is submitted that the settlement in no manner decided or revised the tariff which was to be paid to the Petitioner by HPPC and the Respondent ought to pay Petitioner at the rate of Rs.6.44/unit in terms of the</p>	<p>Para 33 - The cause of action to file the present petition arises from the wilful non-compliance of the Orders/direction passed by this Hon'ble Commission on 20.01.2016 which persists till date. The direction with respect to payment of Rs.6.44/unit was upheld by the Hon'ble APTEL vide Order dated 27.05.2019 and was never challenged thereafter, thereby attaining finality. Despite this, HPPC paid a lower tariff Rs.5.68/unit basis another decision of this Hon'ble Commission passed on 09.03.2018. While the Petitioner sought to implement the above-mentioned order of 20.01.2016, one of the erstwhile directors of the Petitioner, during the pendency of the execution proceedings, settled the then pending lis on behalf of the Petitioner with HPPC with respect to the outstanding arrears. It is submitted that the settlement in no manner decided or revised the tariff which was to be paid to the Petitioner by HPPC and the Respondent ought to pay Petitioner at the rate of Rs.6.44/unit in terms of the directions passed by</p>

<p>directions passed by this Hon'ble Commission on 20.01.2016. That despite numerous attempts by the Petitioner including approaching the judicial forums the Petitioner was unsuccessful on all fronts. HPPC however continues to baselessly pay the Petitioner tariff at Rs.5.68/unit instead of Rs.6.44/unit and it is due to this reason that the Petitioner has approached this Hon'ble Commission seeking implementation of the aforesaid order of 20.01.2016 and payment of tariff rate in adherence to the terms and conditions of the PPA.</p>	<p>this Hon'ble Commission on 20.01.2016. The above settlement and the tariff adjustment was assailed by the Petitioner before this Hon'ble Commission (in a Review Petition), before the Hon'ble APTEL (in an Appeal) and the Hon'ble Supreme Court (in a Civil Appeal), however, the Petitioner was unsuccessful on all fronts. HPPC however continues to baselessly pay the Petitioner tariff at Rs.5.68/unit instead of Rs.6.44/unit and it is due to this reason that the Petitioner has approached this Hon'ble Commission.</p>
---	---

From a perusal of the forgoing, it is evident that there are no distinct arguments, legal grounds, and evidence that were not presented or considered in the prior petition.

- 3.6 That further identical prayers (as have been sought by way of the present petition) have been made by the Petitioner before this Hon'ble Commission on earlier occasions. The table of the petitions filed and the relevant prayers made are as under:

Case Number <i>Relevant Prayer Clause</i>	Present Status
PRO-51 of 2014 <i>"The Commission may kindly give suitable directions to the Respondent to amend Clause 4.1 of the PPA to bring it in line with the directions issued through its order dated 05.11.2013 i.e. tariff to be paid to the Project Developer as per the Generic Tariff decided by the HERC."</i>	The Hon'ble Commission dismissed the prayer regarding the amendment of clause and grant of generic tariff vide order dated <u>22.07.2014</u> while holding that- <i>"at this belated stage it is not open for the Petitioner to question clause 4.1 of the PPA or for that matter any of the terms and conditions of the concluded PPA."</i>
PRO-24 of 2015 <i>"To direct the Respondent No.1 to pay for the energy injected by the Petitioner at the tariff approved by the Commission vide its Generic Tariff Order dated 13.08.2014."</i>	The Hon'ble Commission vide order dated 20.01.2016 upheld the tariff of Rs.6.44 per unit payable to the Petitioner. Further, the appeal against the said order also stands dismissed by the Hon'ble APTEL.
PRO-05 of 2019	

<p><i>"To direct the Respondent to pay for the energy injected by the Petitioner at the tariff rates approved by the Commission through its Generic Tariff order dated 13.08.2014."</i></p>	<p>The Hon'ble Commission vide order dated 10.05.2019 held that the Answering Respondent was well within its right to settle the energy bills generated by the Petitioner at Rs.6.44/kWh. The Hon'ble Commission further observed that since the discovered tariff has now been replaced by tariff of Rs.5.68/kWh. As such the year to year tariff corresponding the levelized tariff of Rs. 5.68/kWh shall be payable.</p>
<p>PRO-08 of 2020</p> <p><i>"To kindly direct the respondent for immediate implementation of the directions given by Honourable Commission wide order dated 20.01.2016 and 10.05.2019 read with the order passed by Hon'ble Tribunal dated 27.05.2019."</i></p>	<p>The Hon'ble Commission vide order dated 29.09.2020 allowed the Petitioner to withdraw the petition in view of the settlement between the parties. As such, the petition was dismissed as withdrawn. No liberty was granted by the Hon'ble Commission to initiate fresh proceedings.</p>
<p>RA No. 07 of 2022</p> <p><i>"(c) Direct the Respondent to pay the approved tariff of Rs. 6.44/kWh as per the Hon'ble APTEL's order dated 27.05.2019."</i></p>	<p>The Review Application was dismissed as non-maintainable vide order dated 14.09.2022. Further, the appeal against the order also stands dismissed both by the Hon'ble APTEL as well as Hon'ble Supreme Court.</p>
<p>PRO-26 of 2024</p> <p><i>"A. Implement the directions passed by this Hon'ble Commission on 20.01.2016 in case no. HERC/PRO-24 of 2015 and direct the Respondent to pay tariff to the Petitioner at the rate of Rs. 6.44 per unit in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;</i></p> <p><i>B. Direct the Respondent to also pay to Petitioner the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable till the final adjudication of the present petition, within a time bound manner;"</i></p>	<p>The Hon'ble Commission dismissed the petition in <i>limine</i> after observing that the sum and substance of all the petitions filed by the Petitioner thus far pertained to the claim for tariff at the rate of ₹6.44/kWh. It was further held that this issue already stood conclusively resolved by the decisions of the Hon'ble Commission, the Hon'ble Appellate Tribunal for Electricity, and the Hon'ble Supreme Court. Accordingly, the Hon'ble Commission held that the matter had attained finality and, therefore, the principle of <i>res judicata</i> squarely applies to the present case, warranting dismissal of the petition.</p>
<p>Petition No. 78 of 2025 –</p>	

<p>A. <i>“Direct the Respondent to adhere by the terms and conditions of the Power Purchase Agreement dated 21.02.2014 in full capacity and pay tariff to the Petitioner at the rate of Rs.6.44 per unit.</i></p> <p>B. <i>Implement the directions passed by this Hon’ble commission 20.01.2016 in Case No. HERC/PRO-24 of 2015 and direct the Respondent to in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;</i></p> <p>C. <i>Direct the Respondent to also pay to Petitioner the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable till the final adjudication of the present petition, within a time bound manner;”</i></p>	<p>The present petition is clearly untenable in light of foregoing adjudications and is liable to be dismissed.</p>
---	---

3.7 That a bare perusal of the above petitions clearly reflects that the Petitioner has repeatedly filed multiple petitions seeking identical reliefs which have already been adjudicated. The Hon’ble Commission, vide its order dated 12.11.2024 (Annexure A-13), categorically took cognizance of the fact that the sum and substance of all the petitions filed by the Petitioner was for the grant of tariff at the rate of ₹6.44/kWh. This prayer was dismissed on the ground that the issue had already attained finality. In doing so, the Hon’ble Commission specifically referred to the reliefs sought by the Petitioner in Petition No. 8 of 2020, Review Petition No. 7 of 2022, and Petition No. 26 of 2024. The relevant extract of the said order, capturing these observations, is reproduced below:

“In order to have a better understanding, the constructive prayers made by the petitioner, in its petitions filed before this Commission, are tabulated hereunder:-

<i>Petition No. 8 of 2020</i>	<i>Review Petition No. 7 of 2022</i>	<i>The Present Petition</i>
<i>i) To kindly direct the Respondent for immediate implementation of the directions given by Hon’ble</i>	<i>i) review of order dated 29.09.2020 passed by the Hon’ble Commission in Petition</i>	<i>i) Implement the directions passed by this Hon’ble</i>

<p>Commission vide order dated 20.01.2016 and 10.05.2019 read with the order passed by Hon'ble Tribunal dated 27.05.2019;</p> <p>ii) To kindly direct the Respondent to refund the amount of Rs.44,55,268/- deducted illegally as interest while making payment in August 2018 @ Rs.6.44;</p> <p>iii) To kindly direct the Respondent to pay interest @ 15% per annum on the delayed payments made, in compliance to the order of Hon'ble Commission dated 10.05.2019 from the date of commissioning of the Project till the date of final settlement/payment of amount paid less, in line with Clause 5.6 of the PPA;</p>	<p>No HERC/PRO-8 of 2020 having been passed ignoring the order dated 27.05.2019 passed by the Hon'ble APTEL vide which the order dated 20.01.2016 passed by the Hon'ble HERC whereby the approved tariff of Rs. 6.44/kWh is to be given to the Applicant.</p> <p>ii) implement order dated 27.05.2019 passed by the Hon'ble APTEL upholding order dated 20.01.2016 passed by the Hon'ble HERC whereby the approved tariff of Rs. 6.44/kWh is to be given to the Applicant AND</p> <p>iii) direct the Respondent to pay the approved tariff of Rs. 6.44/kWh as per the Hon'ble APTEL's order dated 27.05.2019</p>	<p>Commission on 20.01.2016 in case no. HERC/PRO-24 of 2015 and direct the Respondent to pay tariff to the Petitioner at the rate of Rs. 6.44 per unit in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;</p> <p>ii) Direct the Respondent to also pay to Petitioner the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable till the final adjudication of the present petition, within a time bound manner;</p>
--	--	---

xxx xxx xxx

13. The Commission observes that the sum and substance of all the petitions filed by the petitioner is the grant of tariff of Rs. 6.44/kWh. The said issue stands resolved with the decision of this Commission rendered vide orders dated 29.09.2020 and 14.09.2022, decision of Hon'ble Appellate Tribunal for Electricity vide order dated 21.08.2023 and decision of Hon'ble Supreme Court vide order dated 02.01.2024. Thus, the issue has attained finality. Therefore, the principle of 'Res-judicata' is squarely applicable in the present case."

(Emphasis Supplied)

3.8 That a plea with respect to the payment of tariff @ Rs.6.44/kWh is barred by the applicability of the principal of res-judicata. Section 11 of the Code of Civil Procedure, 1908 along with the applicable 'Explanations' are reproduced below for ready reference of the Hon'ble Tribunal:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

...

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

Section 11 of the CPC (1908) provides that any issue which has been directly and substantially an issue that has been heard and finally decided on merits by a court of competent jurisdiction cannot be tried again by any Court provided the matter directly and substantially in issue is same between the same parties to the suit. As such, the present petition is liable to be dismissed on the sole ground that the dispute with respect to the tariff payable to the Petitioner already stands decided by the Hon'ble Commission vide its earlier orders and thus, is barred by the principal of res-judicata. Attention in this regard is also brought towards the decision in *Reliance Infrastructure Ltd. Vs. Maharashtra Electricity Regulatory Commission* [Appeal No. 267 of 2013, Decided on 28.12.2014] wherein the Hon'ble APTEL held as under:

“(a) The Appellant has sought the same relief in the Petition before the State Commission in the present case No.84 of 2013 as in the case No.109 of 2012. No Appeal was filed against the earlier order in case No.109 of 2012 and it has attained the finality. By the present Appeal, the Appellant is virtually seeking to challenge the earlier order dated 2.1.2013 in case No.109 of 2012 which has attained finality. Principle of Res-judicata will apply in the present case.”

- 3.9 That it is well trite that the law doesn't contemplate multiple adjudications of the same dispute and contrary or inconsistent decisions on the same issues, facts and law between the parties. There cannot be more than one adjudication of the very same dispute. If the cause of action (being that bundle of facts material and germane to the arising of the dispute) and/or the issues (factual and legal) are not severable distinctly, in such cases, only one adjudication is permissible. The reliefs, though maybe apportionable between one or more parties to the dispute, are merely consequential to

the determination of the non-severable factual and legal issues. Attention in this regard is brought towards the decision in the case of *S. Ramachandra Rao v. S. Nagabhushana Rao* [2022 (4) RCR (Civil) 675] wherein the Hon'ble Apex Court observed as under:

"9.3. It is also equally relevant to reiterate that section 11 CPC is not the foundation of the doctrine of res judicata but is merely the statutory recognition thereof and, hence, is not considered exhaustive of the general principles of law. This doctrine, it is recognised, is conceived in larger public interest and is founded on equity, justice and good conscience. These aspects were tersely put by this Court in the case of Lal Chand (dead) by L.Rs. and Ors. v. Radha Krishan: (1977) 2 SCC 88 in the following words: -

"19. ... The fact that section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.."

*9.4. It hardly needs any over-emphasis that but for this doctrine of res judicata, the rights of the persons would remain entangled in endless confusion and the very foundation of maintaining the rule of law would be in jeopardy. Even if this doctrine carries some technical aspects, as explained by this Court in *Daryao* (supra), it is in the interest of public at large that a finality should be attached to the binding decisions of the Courts of competent jurisdiction: and it is also in public interest that individual should not be vexed twice with the same kind of litigation. As noticed, the Constitution Bench has placed this doctrine on a high pedestal, treating it to be a part of rule of law.*

9.5. Having taken into comprehension the object and framework of doctrine of res judicata, a few ancillary principles, relevant to the case at hand, may also be usefully noticed.

9.5.1. The principle that the doctrine of res judicata is attracted not only in separate subsequent proceedings but also at subsequent stage of the same proceedings is hardly

of any doubt or dispute. A 3-Judge Bench of this Court in the case of *Y.B. Patil (supra)*, has tersely underscored this principle of law in the following terms: -

"4. .It is well settled that principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.."

9.5.2. It is also well-settled, as laid down in several decisions, that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction. In the case of *Gorie Gouri Naidu (supra)*, this Court, *inter alia*, said,

"4 The law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the *lis* "

9.5.3. In *Makhija Construction & Engg. (P) Ltd. (supra)*, this Court also clarified the distinction between a precedent and the operation of the doctrine of *res judicata* in the following terms: -

"19. .A precedent operates to bind in similar situations in a distinct case. *Res judicata* operates to bind parties to proceedings for no other reason, but that there should be an end to litigation."

9.5.4. In *S. Nagaraj (supra)*, it was also made clear by this Court that binding decisions cannot be ignored even on the principles of *per incuriam* because those principles have relevance to the doctrine of precedents but have no application to the doctrine of *res judicata*.

... ..

10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of *res judicata* is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of *res judicata* is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of *per incuriam* because that principle applies to the precedents and not to the doctrine of *res judicata*."

(Emphasis Supplied)

3.10 That It is further submitted that the Hon'ble Commission, vide its order dated 12.11.2024 (Annexure A-13), has already examined and applied the principle of *res judicata* under Section 11 of the Code of Civil Procedure, while also relying upon the judgments cited above, to dismiss Petition No. 26 of 2024 filed by the Petitioner. The reliefs sought in that petition were identical to those now raised in the present proceedings. Accordingly, the present petition, being barred by the principle of *res judicata* and involving issues that have already been conclusively adjudicated, deserves to be dismissed outright with the imposition of heavy costs.

THE ALLEGED 'ERRONEOUS DECISION' CAN BE RE-CONSIDERED BY THE SAME COURT/FORUM AND THE PRESENT PETITION IS THEREFORE, OUTSIDE THE JURISDICTION OF THIS HON'BLE COMMISSION -

3.11 That if the Petitioner believes that the Hon'ble Commission has erred in rendering its decision, as has been contended in para 25 of the instant petition, even then such a grievance cannot be agitated by invoking Section 86(1)(f) of the Electricity Act, 2003. The said provision reads as under:

"(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration."

It is submitted that the above provision merely empowers this Hon'ble Commission to adjudicate disputes between licensees and generating companies or to refer them for arbitration. It does not confer jurisdiction upon the Commission to sit in appeal over its own orders. Accordingly, if the Petitioner seeks to contend that the Hon'ble Commission has erred in passing the Order dated 12.11.2024, the proper and only remedy is to prefer an appeal before the Hon'ble Appellate Tribunal for Electricity under Section 111 of the Act, but they cannot seek to reopen the matter under Section 86(1)(f) in any manner.

3.12 That reliance is hereby placed upon judgment of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389, the Hon'ble Supreme Court categorically held that a petition cannot be entertained on the ground that the Court has allegedly erred in its decision. The relevant observation is reproduced hereinbelow:

"The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face

of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

(Emphasis Supplied)

3.13 That Hon'ble Commission itself, in HERC/RA No. 5 of 2024 and IA No. 6 of 2024 in *Haryana Power Purchase Centre, Panchkula v. National Thermal Power Corporation Ltd.*, vide order dated 10.07.2025, has categorically held that:

“The bar against re-consideration of its own decision is a settled principle in adjudicatory jurisprudence. Once a case has been finally heard and adjudicated upon by the authority concerned, the resultant adjudication can be reopened for consideration only in appellate jurisdiction.”

(Emphasis Supplied)

3.14 That, if the Petitioner contends that the Hon'ble Commission has erred in arriving at its decision, such a contention cannot be made the basis for invoking Section 86(1)(f) of the Act, as the said provision does not vest appellate jurisdiction with the Commission. The settled legal position, as reaffirmed by the Hon'ble Commission itself, is that once a matter has been adjudicated, the decision cannot be reopened or reconsidered by the same authority, and the proper recourse for an aggrieved party lies in preferring an appeal before the competent appellate forum rather than re-agitating the same issue before the Commission. Apparently, the petition has been filed with *malafides* to may be build an artificial explanation for saving the limitation for filing of appeal which also reflects gross misconduct. This is a peculiar caser, calling for not only an adversarial order against the conduct of the Petitioner but also imposition of heavy cost on them.

3.15 That without prejudice to the foregoing submissions and without conceding to the maintainability of the present petition, it is respectfully submitted that the allegation of the Petitioner, namely, that the Hon'ble Commission erred in its Order dated 12.11.2024 by purportedly assuming that the tariff of ₹5.68/kWh had attained finality on the basis of a settlement between the Petitioner and the Respondent, is incorrect, wholly misconceived and is emphatically denied. The applicable tariff of ₹5.68/kWh stood conclusively determined by the Hon'ble APTEL in Appeal No. 278 of 2016 vide judgment dated 09.03.2018. The said judgment was carried in appeal before the Hon'ble Supreme Court, which was dismissed the appeal vide order dated 10.10.2023. Consequently, with

the dismissal of the appeal by the Hon'ble Supreme Court, the tariff of ₹5.68/kWh attained finality.

- 3.16 That the Hon'ble Commission, vide its order dated 12.11.2024, did not determine any tariff payable to the Petitioner, nor did it base its order on tariff finality on the basis of settlement between the parties. The scope of the impugned order was limited exclusively to examining the maintainability of the Petitioner's petition. The Hon'ble Commission rightly held the petition to be non-maintainable, since the Petitioner has repeatedly approached the Commission by filing multiple petitions seeking identical reliefs, all of which have already been adjudicated by competent authorities. The order dated 12.11.2024, is founded squarely on the doctrine of res judicata and the principle against multiplicity of proceedings, and not on any assumption, as alleged.
- 3.17 That vide the petition i.e. HERC PRO-8 of 2020, the Petitioner sought tariff at the rate of ₹6.44/kWh. However, vide order dated 29.09.2020, the Hon'ble Commission dismissed the proceedings in view of a settlement arrived at between the parties. The Petitioner, vide the subsequent Petitions i.e. RA-7 of 2022; Petition No. 26 of 2024 and the present Petition contended that such settlement was confined only to its pending billing claims and did not extend to tariff determination. This contention is wholly incorrect and belied from a perusal of Application filed by the Petitioner in Petition No. 8 of 2020 (Annexure A-8), whereby the complete Petition was withdrawn while duly noting that the salient relief sought in that Petition was immediate implementation of the directions contained in Orders dated 20.01.2016, 10.05.2019 read with order of the Hon'ble APTEL dated 27.05.2019. By voluntarily entering into the said settlement, the Petitioner consciously relinquished its claim for tariff at the higher rate of ₹6.44/kWh and thereby accepted that no further relief on this issue survived. Further, as per the own case of the Petitioner, in the memo dated 17.08.2020, the alleged 'interim arrangement' is an arrangement till the outcome of the Civil Appeals pending in the Hon'ble Supreme Court against order of the APTEL in Appeal Nos. 278 and 307 of 2016. The said 'interim arrangement' cannot now be urged as an interim settlement for bills pending as on that date only. This is an afterthought argument of convenience adopted by the Petitioner, which has no real basis.
- 3.18 That the Petitioner has wrongly alleged that the Hon'ble Commission, in its order dated 12.11.2024, erred in holding that the tariff of ₹5.68/kWh had attained finality on the basis of its earlier orders dated 29.09.2020 and 14.09.2022, the judgment of the Hon'ble APTEL dated 21.08.2023, and the order of the Hon'ble Supreme Court dated 02.01.2024. However, the Hon'ble APTEL, vide its order dated 21.08.2023, did not

proceed on any assumption that the tariff of ₹5.68/kWh had attained finality by virtue of a settlement. On the contrary, the Tribunal adjudicated the issue on merits, while specifically taking note of the findings of the Hon'ble Commission in its review order dated 14.09.2022, and thereafter dismissed the appeal filed by the Petitioner. The relevant observations of the Hon'ble Commission, as noted by the Hon'ble APTEL in its order dated 21.08.2023, are reproduced below for ready reference:

"The Commission is not convinced with the arguments of the petitioner that the order dated 27.05.2019 passed by the Hon'ble APTEL supersedes/overrides the order dated 10.05.2019 passed by this Commission, since the order dated 10.05.2019 has neither been challenged by the petitioner nor the same has been set aside by any Court/Tribunal of competent jurisdiction. Even otherwise also, the orders dated 10.05.2019 or 27.05.2019 are not executable, owing to the subsequent settlement arrived at between the parties which has been clearly recorded in the impugned order."

(Emphasis Supplied)

A perusal of the above makes it clear that neither the Hon'ble Commission nor the Hon'ble APTEL relied solely on the settlement between the parties for determining the tariff payable to the Petitioner, as has been incorrectly alleged. In fact, as per the order dated 10.05.2019 of the Hon'ble Commission, the applicable tariff stood determined at ₹5.68/kWh, which continues to hold the field since the said order was neither assailed by the Petitioner nor set aside by any competent court or tribunal. Consequently, the contention that the Hon'ble Commission, in its order dated 12.11.2024, wrongly assumed the tariff of ₹5.68/kWh on the basis of a settlement is wholly misconceived. Both the Hon'ble Commission and the Hon'ble APTEL arrived at their conclusions independently, on merits and in accordance with the governing legal framework, without in any manner resting their findings on an alleged assumption of settlement.

PETITION HOPELESSLY TIME-BARRED AND LIABLE TO BE DISMISSED IN VIEW OF THE LAW OF LIMITATION:

- 3.19 That, without prejudice to foregoing objection, it is submitted that the present petition, as contended, even if held tenable, is hopelessly barred by law of limitation. The instant Petition has been filed by the Petitioner seeking implementation of the directions passed by this Hon'ble Commission on 20.01.2016 in PRO-24 of 2015 and has sought that the Respondent be directed to pay the tariff at the rate of Rs. 6.44 kWh per unit. The relevant part of the prayer clause is reproduced below:

“A. Direct the Respondent to adhere by the terms and conditions of the Power Purchase Agreement dated 21.02.2014 in full capacity and pay tariff to the Petitioner at the rate of Rs.6.44 per unit.

B. Implement the directions passed by this Hon'ble Commission on 20.01.2016 in Case No. HERC/PRO-24 of 2015 and direct the Respondent to in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;”

(Emphasis Supplied)

Attention is also brought towards para 35 of the present petition wherein it has been specifically stated that- *“The cause of action to file the present petition arises from the wilful non-compliance of the Orders/direction passed by this Hon'ble Commission on 20.01.2016 which persists till date.”*

- 3.20 That as such, admittedly, the cause of action, if any, arose in the favour of the Petitioner way back in January, 2016 i.e. once the order dated 20.01.2016 was passed. However, the present petition has been preferred after a delay of over 9 years from the date of passing of the order dated 20.01.2016. Further, neither any application seeking condonation of delay has been appended with the petition nor the delay has been explained in the petition itself. As such, the present petition is liable to be dismissed outrightly being hopelessly time-barred.
- 3.21 That it is further submitted the Electricity Act, 2003 (for brevity “EA, 2003”), which is a special statute, does not provide for any period of limitation for adjudication of claims by this Hon'ble Commission. However, the Hon'ble Supreme Court in *AP Power Coordination Committee & Ors Vs. M/s Lanco Kondapalli Power Ltd & Ors.* [(2016) 3 SCC 468] has held that the limitation period of 3 years would apply in adjudication proceedings initiated under Section 86 (1)(f) of the EA, 2003. It is humbly submitted that the Petitioner has time and again sought the same relief which has consistently been rejected by this Hon'ble Commission. As such, the Petitioner cannot once again be permitted to claim ulterior relief after substantial delay.

THE DISCOVERED TARIFF OF ₹6.44/KWH STOOD SUBSTITUTED WITH THE TARIFF OF ₹5.68/KWH QUA THE PETITIONER AND THE PRESENT PETITION IS THEREFORE, UNTENABLE -

- 3.22 That the Petitioner, by way of the present petition, has contended that tariff at the rate of ₹6.44/kWh is payable in view of the order dated 20.01.2016. In this regard, it is respectfully submitted that the claim for implementation of the order dated 20.01.2016

has already been raised and adjudicated in PRO-5/2019, which was decided vide Order dated 10.05.2019. In the said order, this Hon'ble Commission categorically upheld that the discovered tariff of ₹6.44/kWh stood substituted with the tariff of ₹5.68/kWh. Accordingly, the very foundation of the Petitioner's present claim already stands negated by the subsequent order dated 10.05.2019.

3.23 That the relationship between the Petitioner and the Respondent-HPPC is governed by the Power Purchase Agreement (for brevity 'PPA') for the supply of 5 MW solar power dated 21.02.2014, duly approved by the Hon'ble Commission. The clauses relating to the 'Tariff' payable to the Petitioner as per the PPA are reproduced below for ready reference:

"2.1.41 "Tariff" means the rate payable by HPPC for every kWh of net delivered energy at the delivery point and accepted by Solar Power Developer. The tariff shall be the lowest rate out of the following three options:

a) Generic tariff decided by HERC i.e. Rs. 7.94 for FY 2013-14 in case the plant is commissioned before 31.3.2014 or Rs. 7.58 per unit for FY 2014-15 in case the plant is commissioned by 30.6.2014

b) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through competitive bidding to be floated by HPPC till 31.12.2015

c) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through reverse bidding to be floated by HAREDA till 31.12.2015., as per solar policy of Govt. of Haryana

i. However, the lowest tariff from the above will provisionally be paid to the firm at the time of Commissioning and the final lowest tariff as and when discovered out of the above three options will be payable with effect from the date of commissioning.

Note: The deadline for decision of tariff in respect of b) & c) above shall be 31.12.2015.

.....

4.1. Sale of Energy by Company:

The HPPC shall purchase and accept all energy made available at the Delivery point from the Company's facility, pursuant to the terms and conditions of this agreement as per the amount claimed by the Company for the energy delivered for sale (including captive/ auxiliary consumption of Solar Power generated less the energy imported by IPP) of electricity generated from Solar PV crystalline Power Plant valid for a period of 25 years during the Billing period at the following tariff whichever is the lowest rate out of the following three options:

- a) Generic tariff decided by HERC i.e. Rs. 7.94 for FY 2013-14 in case the plant is commissioned before 31.3.2014 or Rs. 7.58 per unit for FY 2014-15 in case the plant is commissioned by 30.6.2014
- b) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through competitive bidding to be floated by HPPC till 31.12.2015.
- c) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through reverse bidding to be floated by HAREDA till 31.12.2015., as per solar policy of Govt. of Haryana

However, the lowest tariff from the above will provisionally be paid to the firm at the time of Commissioning and the final lowest tariff as and when discovered out of the above three options will be payable with effect from the date of commissioning. The deadline for decision of tariff in respect of b) & c) above shall be 31.12.2015.”

In view of the aforesaid clauses of the PPA subsisting between the parties, the lowest tariff out of the three options is payable- (a) Generic Tariff decided by the Hon'ble Commission; (2) Lowest tariff discovered in the competitive bidding in the tender floated by HPPC; or (3) Lowest tariff discovered as per the competitive bidding in the tender floated by HAREDA.

3.24 That initially, a petition bearing PRO-51 of 2014 was preferred by the Petitioner seeking amendment in the PPA in the manner that the tariff payable shall be the generic tariff decided by the Hon'ble Commission along with certain other reliefs. However, the said petition was dismissed by the Hon'ble Commission and the clauses of the PPA were upheld, vide order dated 22.07.2014, in the following terms:

“The Commission, at the outset, observes that the Petitioner signed a PPA with HPPC including the terms and conditions specified there in. Thus, the PPA, with the consent of both the parties, was forwarded for statutory approval of this Commission and the same was approved by the Commission as a commercial contract between the consenting parties i.e. the buyer in this case HPPC and the seller i.e. Siwana Solar. Consequently, at this belated stage it is not open for the Petitioner to question clause 4.1 of the PPA or for that matter any of the terms and conditions of the concluded PPA.”

Thus, the issue of the correctness and validity of the terms of the PPA already stands settled by the Hon'ble Commission. In case the present petition is allowed, the same

would be contrary to observations made vide the previous order dated 22.07.2014 passed by this Hon'ble Commission wherein the terms of the PPA have been upheld.

3.25 That it is further brought to the notice of the Hon'ble Commission that prior to the commissioning of the Petitioner's power plant, the Respondent-HPPC had floated a NIT for procurement of 50 MW solar power on 16.04.2014. Four bidder-developers were selected in the process and the Respondent signed the PPAs with four developers on 25.6.2015 for 23MW capacity at the lowest discovered tariff of Rs.6.44/kWh. Thereafter, the plant of the Petitioner was commissioned on 31.12.2014 and as such, the lowest tariff of Rs.6.44 per unit was made applicable, in terms of Clause 2.1.41 of PPA.

3.26 That however, being aggrieved by the tariff @ Rs.6.44 per unit, the Petitioner approached the Hon'ble Commission by way of filing a petition PRO-24 of 2015 seeking that the generic tariff determined by the Hon'ble Commission for the power projects commissioned in the FY 2014-15 be paid to the Petitioner, in place of the tariff @ Rs. 6.44 per unit. The said petition came to be decided vide order dated 20.01.2016 wherein the Hon'ble Commission upheld the tariff of Rs.6.44 per unit to be calculated on year-to-year basis. The relevant part of the order dated 20.01.2016 is reproduced below:

"Further, during the course of arguments, the Commission suggested that the year to year tariff should be worked out corresponding to the levellised tariff of Rs. 6.44 per unit and the year to year tariff so worked out be paid to the Petitioner by Respondent No. 1. This proposal was agreed to by the Respondent No. 1. Accordingly, the Commission directs Respondent No. 1 to work out the year to year tariff for 25 years corresponding to the levellised tariff of Rs. 6.44 per unit and pay the tariff to the Petitioner so worked out for the relevant year."

(Emphasis Supplied)

It is submitted that throughout the petition, the Petitioner has tried to read the aforesaid order dated 20.01.2016 in isolation and is seeking its implementation without taking into account the subsequent events vide which the tariff of Rs.6.44 per unit already stands replaced.

3.27 That it is submitted that thereafter, an appeal bearing APL No. 150 of 2016- *M/s Siwana Solar Power Project (P) Ltd. Vs. Haryana Electricity Regulatory Commission & Ors.* was preferred by the Petitioner against the aforesaid dated 20.01.2016 (Annexure A-1), wherein one of the issues raised by the Petitioner before the Hon'ble APTEL was- *"Whether the Appellant is entitled to a tariff of Rs.6.44 per KWH or higher in terms of the PPA dated 21.02.2014?"* The said appeal was dismissed vide judgment dated 27.05.2019 (Annexure A-5), whereby the Hon'ble APTEL was pleased to hold as under:

“... .. While learned counsel for the Appellant contend that the tariff of Rs.6.44/kWh discovered by HPPC through a competitive bidding is not applicable to the Appellant due to the fact that the said bidding was declared null and void by the State Commission and as such the levelized tariff of Rs.7.45/kWh determined by the Commission for FY 2014-15 for solar power plants should apply. On the other hand, learned counsel for the Respondent submits that as per terms of the PPA, the Appellant is entitled for the tariff lowest of the three alternatives provided in Clause 4.1 of the PPA. Learned counsel for the Respondent also contends that the competitive bidding process undertaken by HPPC has been held as valid by this Tribunal vide its judgment dated 09.03.2018 in A.No.278 of 2016 in case of JBM Solar Private Limited. In fact, the State Commission had not approved the bidding process and the PPAs only on account of the deviations not being approved by it and not due to any other reasons. As per the directions of this Tribunal, the State Commission approved the PPAs signed between HPPC and the selected bidders. As such the contentions of the Appellant that the bidding process was illegal is not correct. While taking note of the judgments of this Tribunal and Hon'ble Gujarat High Court, it emerges that the bidding process undertaken by HPPC was legally sustainable and as such the lowest tariff discovered in the process has to be applied to the case of the Appellant i.e. the tariff at Rs.6.44/kWh. In view of these facts, we are of the opinion that the State Commission has allowed the tariff applicable to the Appellant's solar project appropriately and the impugned order does not suffer from any legal infirmity. Hence, interference from this Tribunal is not called for.”

(Emphasis Supplied)

It is further submitted that the Petitioner is trying to take the benefit of the observation of the Hon'ble APTEL at the time of dismissing the Appeal No. 150/2016. It is submitted that the Hon'ble Tribunal has merely observed that the lowest tariff discovered in the bidding process has to be applied. Thus, any observation made in order dated 27.05.2019, cannot be of any help to the Petitioner, as the Appeal No. 150 of 2016 was found to be devoid of merit and was dismissed. Needless to state that the order dated 27.05.2019 has become *otiose* in light of Hon'ble Supreme Court order dated 10.10.2023.

- 3.28 That it is pertinent to mention here that during the pendency of the appeal APL No. 150 of 2016 preferred by the Petitioner herein before the Hon'ble APTEL, the four solar developers selected against the NIT dated 16.04.2014 also approached the Hon'ble APTEL in APL No. 278 of 2016. The appeal was preferred against the order dated 12.09.2016/04.10.2016 passed by the Hon'ble Commission in whereby the PPAs signed

between the parties were disapproved by the Hon'ble Commission on the ground that the same were not in line with the competitive bidding guidelines for renewable energy generation under Section 63 of the Electricity Act, 2003. The said appeal came to be decided vide judgment dated 09.03.2018 whereby the Hon'ble APTEL remanded the matter back to the Hon'ble Commission with the directions to approve the PPA and the payment be made at the tariff of Rs.5.68/kWh being the generic tariff determined by Hon'ble CERC for the projects commissioned in the year 2016-17. The concluding paragraph of the judgment dated 09.03.2018 is reproduced below for ready reference:

“(x) In view of the facts and circumstances of the case, we are of the considered opinion that the PPAs signed between the Appellants and Respondent No. 2 be allowed by the State Commission at the tariff of Rs. 5.68/kWh (without accelerate depreciation) determined by CERC for FY 2016-17.”

In view of the aforesaid order, this Hon'ble Commission vide its order dated 10.01.2019 allowed the PPAs signed between the parties at a tariff of Rs. 5.68/kWh. It is submitted that all the four developers had also filed an appeal against the judgment dated 09.03.2018 before the Hon'ble Supreme Court, which was dismissed vide order 10.10.2023. In other words, the tariff of Rs.5.68/kWh, after the dismissal of appeal by the Hon'ble Apex Court, had become final and is the lowest tariff arrived at in the bidding process, which is squarely applicable to the Petitioner.

3.29 That the Petitioner had submitted that it was not a party to the aforesaid proceedings and the reduced tariff applicable to a third party for Rs.5.68/kWh cannot be applied to the Petitioner's case. In this regard, it is submitted that the PPA itself contemplates that the lowest discovered tariff which is applicable to other selected bidders is applicable to the Petitioner's case. As such, the judgment dated 10.10.2023 read with orders dated 09.03.2018 & 10.01.2019 and the terms of the PPA (including Clause 4.1 reproduced above) directly impacted the case of the Petitioner herein, as the tariff of Rs 6.44/kWh initially discovered was further reduced to Rs.5.68/kWh. It is further submitted that on reduction of tariff, the Petitioner herein once again approached the Hon'ble Commission by way of filing petition- PRO-05 of 2019. The prayer clause of the said petition is reproduced below:

“a) To accept the petition in its present form;

b) To initiate action under section 142 of Electricity Act, 2003 against the Respondent for non-implementation of the directions given by the Commission vide orders dated 13.08.2014 and 20.01.2016.

- c) To direct the Respondent to pay for the energy injected by the Petitioner at the tariff rates approved by the Commission through its Generic Tariff order dated 13.08.2014.
- d) To allow payment of interest on the amount wrongfully withheld by the Respondent in violation of the order passed by the Commission dated 20.01.2016;
- e) May give any other relief, so deemed fit, in the present case”

(Emphasis Supplied)

3.30 That the said petition PRO-05 of 2019 came to be decided vide order dated 10.05.2019 wherein this Hon'ble Commission upheld the tariff of Rs.5.68 per unit and at the same time directed the Respondent to refer to the Hon'ble CERC's order dated 29.04.2016 in SM/03/2016 for the year-to-year tariff calculation of the levelized tariff of Rs.5.68 per unit. The relevant extract of the order dated 10.05.2019 is as follows:

“13. In view of the above discussions, the Commission observes that HPPC was within its rights to settle the energy bills generated by the Petitioner at Rs. 6.44/kWh. The only deviation taken by HPPC is regarding non determination of year to year tariff corresponding to the levelized tariff of Rs. 6.44/kWh, as directed by the Commission in its Order dated 20.01.2016. In this regard, the submission of HPPC that the tariff rate of Rs. 6.44/kWh was discovered through bidding and it was not possible to work back year to year tariff of the same, has been considered by the Commission and the Commission is of the considered opinion that in case of difficulty in the implementation of the Order of the Commission, the appropriate remedy available with HPPC was to seek review from the Commission of its Order. However, presently, that the discovered tariff of Rs. 6.44/kWh has been replaced by Rs. 5.68/kWh, HPPC may refer to the Annexure – 5A of the Hon'ble Central Electricity Regulatory Commission's Order dated 29th April, 2016 in Petition No. SM/03/2016 (Suomotu) wherein year to year tariff corresponding to the levelized tariff of Rs. 5.68/kWh has been worked out by the CERC. Hence, as an interim arrangement, the year to year tariff shall be payable subject to the judgement of Hon'ble Supreme Court in Civil Appeal nos. 5962, 5869, 5843 7296 of 2018.

14. In terms of the above order, the Petition is accordingly disposed of.”

(Emphasis Supplied)

The act and conduct of the Petitioner is liable to be viewed strictly. The Petitioner is habitual of filing multiple petitions arising out of the same issue and such a conduct is liable to be depreciated.

3.31 That yet another petition- PRO-8 of 2020 was filed by the Petitioner. The prayer clause of the petition is reproduced below:

- “1. To kindly direct the respondent for immediate implementation of the directions given by Honourable Commission vide order dated 20.01.2016 and 10.05.2019 read with the order passed by Hon’ble Tribunal dated 27.05.2019.
2. To kindly direct the respondent to refund the amount of ₹44,55,268 deducted in legally as interest while making payment in August 2018 at a tariff of ₹6.44.
3. To kindly direct the respondent to pay interest at 15% per annum on the delayed payments made in compliance to the order of Honourable commission dated 10.05.2019 from the date of commissioning of the project till the date of final settlement payment of amount paid less in line with clause 5.6 of the PPA.”

The aforesaid petition was withdrawn at the behest of the Petitioner. It is submitted that once the Petition has been dismissed as withdrawn without any liberty to initiate another round of proceedings arising out of the same issue, the Petitioner cannot be permitted to re-open any issue which has been raised by way of PRO-08 of 2020.

- 3.32 That since the Petitioner is a habitual litigant, a review petition- RA No. 07 of 2022 was preferred by the Petitioner seeking review of the consent order dated 29.09.2020 on the ground that the same had been passed in ignorance of the order dated 27.05.2019 passed by the Hon’ble APTEL. It is submitted that the Review Petition was dismissed as non-maintainable vide order dated 14.09.2022.
- 3.33 That the Petitioner had also filed an appeal against the aforesaid consent order dated 29.09.2020 in PRO-8 of 2020 and subsequent order dated 14.09.2022 in RA No. 07 of 2022 before the Hon’ble APTEL bearing APL No. 411 of 2022. The Hon’ble APTEL was pleased to dismiss the appeal vide order dated 21.08.2023 while upholding the orders passed by the Hon’ble Commission. It is pertinent to mention here that the appeal filed by the Petitioner against the Hon’ble APTEL’s order dated 21.08.2023 before the Hon’ble Apex Court also stands dismissed vide order dated 02.01.2024 in Civil Appeal bearing Diary No. 44243/2023.
- 3.34 That despite the dismissal of multiple proceedings seeking identical reliefs in respect of grant of tariff at the rate of ₹6.44/kWh and despite the settlement of all disputes between the Petitioner and the Respondent up to the Hon’ble Supreme Court, the Petitioner had once again instituted a petition before this Hon’ble Commission, being Petition No. 26 of 2024 (Annexure R-1), wherein the following prayers were made:
- “A. Implement the directions passed by this Hon’ble Commission on 20.01.2016 in case no. HERC/PRO-24 of 2015 and direct the Respondent to pay tariff to the Petitioner at the rate of Rs. 6.44 per unit in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;

B. *Direct the Respondent to also pay to Petitioner the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable till the final adjudication of the present petition, within a time bound manner;*

C. *Pass any other order as this Hon'ble Commission may deem fit and necessary in the facts and circumstances of the present case."*

(Emphasis Supplied)

3.35 That Petition No. 26 of 2024 was once again dismissed in *limine* after due consideration of all facts and circumstances of the case. The Hon'ble Commission, vide its order dated 12.11.2024 (Annexure A-13), was pleased to hold as under:

"13. The Commission observes that the sum and substance of all the petitions filed by the petitioner is the grant of tariff of Rs. 6.44/kWh. The said issue stands resolved with the decision of this Commission rendered vide orders dated 29.09.2020 and 14.09.2022, decision of Hon'ble Appellate Tribunal for Electricity vide order dated 21.08.2023 and decision of Hon'ble Supreme Court vide order dated 02.01.2024. Thus, the issue has attained finality. Therefore, the principle of 'Res-judicata' is squarely applicable in the present case.

14. In terms of the above discussion, the present petition is dismissed in *limine*, without going into the merits of the case."

(Emphasis Supplied)

3.36 That the Petitioner has once again approached this Hon'ble Commission by filing the present petition, seeking the very same reliefs as were sought in Petition No. 26 of 2024 as well as in various other petitions previously filed by it, as detailed in the preceding paragraphs. Notwithstanding that the facts and circumstances remain identical to those already pleaded and adjudicated, the Petitioner has once again sought reliefs which are repetitive in nature and have already been considered and decided by this Hon'ble Commission. The reliefs sought in the present petition are reproduced below:

"A. Direct the Respondent to adhere by the terms and conditions of the Power Purchase Agreement dated 21.02.2014 in full capacity and pay tariff to the Petitioner at the rate of Rs.6.44 per unit.

B. Implement the directions passed by this Hon'ble Commission on 20.01.2016 in Case No. HERC/PRO-24 of 2015 and direct the Respondent to in accordance with the Power Purchase Agreement dated 21.02.2014 executed between the parties;

C. Direct the Respondent to also pay to Petitioner the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable till the final adjudication of the present petition, within a time bound manner;

D. Pass any other order as this Hon'ble Commission may deem fit and necessary in the facts and circumstances of the present case.”

(Emphasis Supplied)

3.37 That a bare perusal of the prayer clause of the present petition clearly reflects that it is identical to the reliefs sought by the Petitioner in its earlier petitions, which have already been duly adjudicated. In view of the same, the present petition is liable to be rejected outright, as the reliefs claimed by the Petitioner have already attained finality.

For ease of reference, the flow-chart of the related litigations filed and adjudicated by separate Courts, referred to hereinabove, is attached. It is humbly submitted that the relief sought by way of the present petition already stands adjudicated by the Courts at various levels, is time barred and also devoid of any merit. The present petition being nothing but a vexatious attempt made by the Petitioner to seek higher tariff one way or the other, is liable to be dismissed outrightly.

3.38 That it is further submitted that the Petitioner's action of invoking jurisdiction of multiple forums, multiple times in order to obtain the relief in some way or the other, is liable to be depreciated. Reliance in this regard is placed on the judgment of Hon'ble Apex Court in *Udyami Evam Khadi Gramodyog Welfare Sanstha & Anr. Vs. State of Uttar Pradesh and others [(2008) 1 SCC 560]* wherein the Hon'ble Apex Court dismissed the writ petition with costs, on account of 'Forum Shopping' while observing as under:

"9. Although the prayers made in the four writ applications are apparently different, having gone through the writ applications, it became evident that the core issue in each of the matter centers round recovery of the amount advanced to the appellants by the bank. Evidently, orders passed in different stages of the proceedings as also new proceedings based upon fresh calculation on interest on the principal sum had been in question from time to time. As indicated hereinbefore, even a public interest litigation was filed wherein also Appellant No. 2 was a party. Maybe that validity of Section 35A of the U.P. Khadi and Village Industries Board Act, 1960 was one of the issues raised therein but even the recovery proceeding was the subject matter thereof.

We, therefore, are of the opinion that the attempt on the part of the appellants herein must be termed as 'abuse of the process of law'.

...

15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also

should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.

...

16. For the reasons aforementioned, there is not merit in this appeal which is dismissed accordingly with costs. Counsel's fee quantified at Rs. 50,000/-."

(Emphasis Supplied)

3.39 The core issues raised in the present petition are the same as those agitated in the earlier petitions filed by the Petitioner, and even the prayers are substantially identical. It is therefore, humbly submitted that minimum cost of 10 lakhs be awarded in favor of the Respondent, as it had to engage counsel in each vexatious litigation repeatedly filed at the behest of the Petitioner and expend resources at the cost of the consumers of the State in frivolous litigations initiated by the Petitioner against the law.

CONSENT ORDER AND CONSTRUCTIVE RES-JUDICATA:

3.40 That, without prejudice to foregoing objections, it is further the case of the Respondent that once the consent order dated 29.09.2020 has been passed by the Hon'ble Commission whereby the petition (HERC/PRO-08 of 2020) was withdrawn on the basis of the settlement arrived between the parties and no liberty was granted to the Petitioner to initiate any fresh proceedings in respect of the same subject-matter. As such, the bar created by Order XXIII Rule 1(4) reproduced below, squarely applies to the facts of the present case:

"(4) where the plaintiff-

(a) Abandons any suit or part of claim under sub-rule (1), or

(b) Withdraws from suit or part of claim without the permission referred in sub-rule (3).

He shall be liable for such cost as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim."

(Emphasis Supplied)

Reliance in this regard is placed on *Hulas Rai Baij Nath v. Firm K.B.Bass and Co.*, [AIR 1968 SC 111], wherein the Hon'ble Apex Court while considering the provisions of Order XXIII Rule 1 of CPC, particularly sub-rule(3), in crystal clear words held that where plaintiff withdraws from a suit without the permission of the Court, he is precluded from instituting a fresh suit in same subject matter against the same parties. Further, In *Ramesh Chandra Sankla & Ors. v. Vikram Cement*, [(2008) 14 SCC 58], the Apex Court

after referring to the judgment in *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others*, [(1987) 1 SCC 5] held as follows:

“From the above case law, it is clear that it is open to the petitioner to withdraw a petition filed by him. Normally, a Court of law would not prevent him from withdrawing his petition. But if such withdrawal is without the leave of the Court, it would mean that the petitioner is not interested in prosecuting or continuing the proceedings and he abandons his claim. In such cases, obviously, public policy requires that he should not start fresh round of litigation and the Court will not allow him to re-agitate the claim which he himself had given up earlier.

3.41 That once the parties have agreed to a particular course of action i.e. mutual reconciliation/settlement agreement, it is not open for any of the parties to challenge this action. Reliance in this regard is placed on Order 24 Rule 3-A CPC, reproduced below for ready reference:

“3-A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

3.42 That one of the prayers made before the Hon'ble Commission at the time of filing PRO-08 of 2020 was - *“1. To kindly direct the respondent for immediate implementation of the directions given by Honourable Commission wide order dated 20.01.2016 and 10.05.2019 read with the order passed by Hon'ble Tribunal dated 27.05.2019.”* It is submitted that once the petition (PRO-08 of 2020) stands withdrawn, the Petitioner cannot be permitted re-agitate the issue with respect to the implementation of the directions given vide order dated 20.01.2016. Attention of the Hon'ble Commission in brought towards a letter addressed by the Petitioner to the Respondent, in the concluding para of which it has been mentioned- *“With the above observations and to put an end to the prolonged litigation we would be willing to arrive at a compromise with HPPC on the issue of our pending claims of billing if HPPC released our above outstanding amount.”* As such, the intention of both the parties was to mutually settle the disputes and put an end to the prolonged litigation. However, once the disputes stand settled by mutual consultations, the Petitioner cannot be permitted to re-open the issue in view of the explicit bar imposed under CPC. Such a conduct of the Petitioner is liable to be depreciated.

3.43 That the allegations raised by the Petitioner with respect to the validity of authority of the Director to make submissions on behalf of the Petitioner-Company already stands adjudicated about and rejected up till the Hon'ble Apex Court. It is humbly submitted that the judicial decision passed by a competent court of law should be accepted as correct.

In case the petition is heard on merits, the same would result in conflicting decisions operating between the same parties.

- 3.44 That it is further submitted that the Petitioner has already benefitted on account of higher payment of tariff in the initial years in view of the year-to-year tariff calculation of the levelized tariff of Rs.5.68 per unit. No further benefit is liable to be granted to the Petitioner. The grant of higher tariff would be not only be contrary to the terms of the PPA subsisting between the parties but would also contradict the letter and intent of the orders passed by the Hon'ble APTEL and Hon'ble Apex Court.
- 3.45 That light of the submission made hereinabove, the contentions/allegations raised by the Petitioner by way of the present petition are wrong, frivolous, vexatious, without basis and vehemently denied. The Respondent craves the leave of the Hon'ble Commission to give any further clarifications which may be called for by the Hon'ble Commission.

4. **Petitioner's rejoinder**

- 4.1 That the Petitioner is not raising the same issues upon same cause of action. In fact, the cause of action to file the present petition arises from the wilful non-compliance of the orders and direction passed by this Hon'ble Commission on 20.01.2016 which persists till date and non-adherence of the terms and conditions of the subject PPA. It is further submitted that direction with respect to payment of Rs.6.44/unit was upheld by the Hon'ble APTEL vide its Order dated 27.05.2019 and was never challenged therefore attaining finality in nature. That during the pendency of the execution proceedings a settlement was entered between the Petitioner and the Respondent with respect to the outstanding arrears and tariff rate therein was a mere interim arrangement and it never attained any finality. Therefore, the subject Petition is not bound by the principles of *Res-Judicata*.
- 4.2 That the decision given by the Hon'ble Supreme Court in the matter of *T.N. Electricity Board v. N. Raju Reddiar [(1997) 9 SCC 736]* does not apply to the facts and circumstances of the present case.
- 4.3 That the petitioner herein vehemently and categorically denies that it has made any identical prayers in the subject petition and the subject petition is untenable or to be dismissed. The Respondent is duly obligated to pay tariff to the Petitioner herein as per correct and in terms of the PPA w.r.t. the solar power plant.
- 4.4 That this Hon'ble Commission erroneously dismissed the HERC-PRO No. 26 of 2024 on the ground of res-judicata; assuming that the said rate of Rs. 5.68 per unit has attained finality vide Order dated 29/09/2020 and 14/09/2022 of this Hon'ble

Commission; Order dated 21/08/2023 of the Hon'ble APTEL and Order dated 02/01/2024 passed by the Hon'ble Supreme Court; upon the basis of settlement been derived between the Petitioner and Respondent herein. However, it is to be noted that the tariff rate mentioned in the settlement was a mere interim arrangement and not final and the Respondent has to adhere by the terms and conditions of the PPA.

- 4.5 That the Petitioner though categorically denies that the subject petition is bound by the principles of res-judicata or judgments per se and the onus to proof the same lies upon the Respondent herein. It is submitted that there are issues yet to be adjudicated and decided between the parties herein and due to the malicious acts of the Respondent the Petitioner is facing severe monetary loss and damages; if the said issues remained undecided it shall cause grave prejudice to the Petitioner herein.
- 4.6 That the subject Petition is well-within the jurisdictional limits of this Hon'ble Commission and issues stated in the subject petition can be adjudicated by this Hon'ble Commission under Section 86 (1)(f) of the Electricity Act, 2003. The Petitioner has filed a 'fresh' petition which pertains to different issues from the ones involved the previous litigations between the parties and the Petitioner herein is merely seeking intervention of this Hon'ble Commission for compliance of Order(s) dated 20/01/2016 passed in HERC PRO No. 24 of 2015 and for correct payment of tariff as per PPA dated 21/02/2014 entered between the parties i.e., Rs. 6.44 per unit which is till date not been adhered by the Respondent herein.
- 4.7 That this Hon'ble Commission has erroneously dismissed the Petitioner's petition bearing HERC-PRO No. 26 of 2024 upon the grounds of res judicata. It submitted that the Respondent herein cannot take shelter in the light of the previous judicial Orders mentioned in the Order dated 12/11/2024 passed by this Hon'ble Commission as the same are simply relying upon the 'Settlement' derived between the parties which merely stated an interim arrangement of rate of tariff between the Petitioner and the Respondent which actually never attained any finality. Moreover, it is submitted that vide Order dated 09/03/2018 the Hon'ble APTEL in Appeal No. 278 of 2016 while "distinguishing" the Petitioner's case, applied the tariff declared by the Ld. Central Electricity Regulatory Commission (hereinafter referred as "CERC") for the FY 2016-2017 at Rs. 5.68 per unit with respect to the projects for the other said developers and remanded the matter back to this Hon'ble Commission for approval of their respective PPAs. The Order dated 09/03/2018 has now attained finality after the Civil Appeal Nos. 5962, 5869, 5843, 7296 of 2018 challenging the said Order were dismissed by the Hon'ble Supreme Court vide its Order dated 10/10/2023. It is pertinent to note here that

the Petitioner herein was neither a party to the above proceedings nor was in any manner related to the outcome of these proceedings as the same strictly pertained to the PPAs executed with the concerned developers, i.e., (1) M/s JBM Solar Power Pvt. Ltd., (2) M/s Subhash Infra Engineers Pvt. Ltd. and (3) M/s Utrecht Solar Pvt. Ltd. (USPL) only, and not the Petitioner herein. The abovementioned Order in no manner modified or touched upon the applicability of the tariff on the parties to the present subject matter, i.e., Petitioner and HPPC and the PPA even executed between the Petitioner and Respondent was never modified.

4.8 That despite directions of this Hon'ble Commission and terms of the PPA the Respondent deliberately kept on paying the Petitioner at a lower tariff rate of Rs. 5.68 per unit instead of 6.44 per unit. Therefore, aggrieved by such malicious acts of the Respondent only, the Petitioner herein filed HERC-PRO No. 08 of 2020 seeking implementation of the Orders dated 20/01/2016 and 10/05/2019 of this Hon'ble Commission along with the Order dated 27/05/2019 passed by the Hon'ble APTEL. During the proceedings of the said Petition this Hon'ble Commission directed both the Petitioner and Respondent herein to mutually reconcile the matter w.r.t. the remaining dues (i.e., up to September, 2019) of the Petitioner; therefore in subsequent to the same the Petitioner's former director namely- Mr. Vinod Mittal settled the matter on behalf of the Petitioner and filed an affidavit accepting a 'full and final settlement' as Rs. 48,38,038/- w.r.t the outstanding dues of the Petitioner till September, 2019 on 18/09/2020 subject to the outcome of Civil Appeal bearing Nos. 5962, 5843 and 7296 of 2018 filed by the Petitioner herein before the Hon'ble Supreme Court of India and in the light of the aforesaid settlement the HERC-PRO No. 08 of 2020 was 'dismissed as withdrawn' vide Order dated 29/09/2020. Therefore, it is wrong to suggest that said contention is an after-thought argument adopted by the Petitioner with no real basis. It is submitted that the Petitioner has entered into the said settlement with a conscious mind and is clear w.r.t. its terms. The Respondent on the contrary is trying to cook up stories of its own just to avoid its obligation as under the PPA.

4.9 That the subject petition is not time-barred by law as the cause of action still subsists and is continuing and running against the Respondent herein. The Respondent has till date not adhered by the terms of the subject PPA and continue to do so by not paying the Petitioner as per correct tariff rate i.e. Rs. 6.44 per unit despite directions of this Hon'ble Commission. It is further submitted that the Respondent has blind-eyed itself towards the complete contents of paragraph no. 35 of the subject petition which is as under:-

“35. The cause of action to file the present petition arises from the willful non-compliance of the Orders/direction passed by this Hon'ble Commission on 20.01.2016 which persists till date (emphasis supplied) and non-adherence of the terms and conditions of the subject PPA. The direction with respect to payment of Rs.6.44/unit was upheld by the Hon'ble APTEL vide Order dated 27.05.2019 and was never challenged therefore attaining finality in nature. That during the pendency of the execution proceedings a settlement was entered between the Petitioner and the Respondent with respect to the outstanding arrears and tariff rate therein was a mere interim arrangement and it never attained any finality. It is submitted that the settlement in no manner decided or revised the tariff which was to be paid to the Petitioner by HPPC and the Respondent ought to pay Petitioner at the rate of Rs.6.44/unit in terms of the directions passed by this Hon'ble Commission on 20.01.2016. That despite numerous attempts by the Petitioner including approaching the judicial forums the Petitioner was unsuccessful on all fronts. HPPC however continues to baselessly pay the Petitioner tariff at Rs.5.68/unit instead of Rs.6.44/unit and it is due to this reason that the Petitioner has approached this Hon'ble Commission seeking implementation of the aforesaid order of 20.01.2016 and payment of tariff rate in adherence to the terms and conditions of the PPA.”

4.10 That this Hon'ble Commission vide its Order dated 10.05.2019, in consonance with the Petition No. 150 of 2016 filed before the Hon'ble APTEL as well as the subsequent replacement of the lowest tariff discovered in the bidding process (Bidding PPAs) from Rs.6.44/kWh to Rs.5.68/kWh, directed the Respondent herein, as an 'interim arrangement' based on the CERC tariff for the year 2016-17, to pay to the Petitioner tariff at the rate of Rs. 5.68/kWh on year- to-year basis, which was however made subject to the outcome/judgement of the Hon'ble Supreme Court in Petition Nos. 5962, 5869, 5843, 7296 of 2018 - which stands decided as of date. It is further submitted that vide Order dated 27.05.2019 the Hon'ble APTEL upheld the Order of this Hon'ble Commission dated 20.01.2016; wherein the Hon'ble APTEL has specifically referred to the Order dated 09.03.2018. Subsequently, the tariff rate of Rs. 5.68/unit was made applicable only with respect with the other solar power developers and not the Petitioner herein.

4.11 That this Hon'ble Commission vide its Order dated 20.01.2016 specifically directed the Respondent herein to work out a year to year tariff at a levelized rate of Rs. 6.44/unit payable to the Petitioner herein, in terms of clause 4.1 of the PPA executed between the Petitioner and the Respondent. Hon'ble APTEL, vide its Order dated 27.05.2019,

upheld the Order dated 20.01.2016 of this Hon'ble Commission; wherein the Hon'ble APTEL has specifically referred to the Order dated 09.03.2018. Subsequently, the tariff rate of Rs. 5.68/unit was made applicable only with respect with the other solar power developers and not the Petitioner herein. Therefore, as this is the final order which has been passed in terms of the tariff rate payable by the Respondent to the Petitioner, the same stands final and binding, *de hors* the settlement that was executed by a former director of the Petitioner. It is to be noted that the aforesaid order dated 27.05.2019 has not been challenged by the Respondent till date and has therefore attained finality.

4.12 That the Petitioner herein filed petition bearing HERC-PRO No. 08 of 2020 and the Petitioner categorically denies the fact that it is re-opening previous issues through the present subject petition. It is submitted that the Petitioner herein had filed HERC PRO No. 08 of 2020 because despite this Hon'ble Commission's directions the Respondent continued to pay the Petitioner at the reduced rate of Rs.5.68 per unit. That Mr. Vinod Mittal, one of the Petitioner's former directors, was handling the company's business at the time and only the request of the Respondent and the aforementioned former Director, the Respondent's Advocate requested before this Hon'ble Commission on July 21, 2020, in Petition Case No. HERC PRO-8 of 2020, that the parties contemplate a reconciliation therefore, the Petitioner and Respondent entered into a settlement and Mr. Vinod Mittal proceeded to accept a sum of Rs.48,38,038/- from the Respondent as **full and final settlement with respect to the outstanding dues till September, 2019 only. (Emphasis supplied).**

4.13 That the Petitioner herein has filed the 'fresh subject petition' which pertains to different issues and circumstances from the ones involved the previous litigations between the parties and the Petitioner herein and the same remains undecided till date and therefore, the observations made in the judgement of - 'Udyami Evam Khadi Gramodyog Welfare Sanstha & Anr. Versus State of U.P. and Ors. [(2008) 1 SCC 560] passed by the Hon'ble Supreme Court cited by the Respondent in the subject reply does not apply to the present case and hence needs no comment.

4.14 That this Commission, vide its order dated 29.09.2020, had dismissed the petition no. PRO 8 of 2020 'as withdrawn' in the light of the settlement between the parties herein and one Mr. Vinod Mittal (former director of the Petitioner) proceeded to accept a sum of Rs.48,38,038/- from the Respondent as full and final settlement with respect to the outstanding dues till September, 2019 only. It is further submitted that the Respondent's reliance up on Order XXIII Rule 1(4) of the Code of Civil Procedure, 1908 is misplaced in the facts and circumstances of the present case. The Order XXIII Rule

1(4) bars the institution of a fresh suit on the same subject matter only where a party has withdrawn or abandoned the suit without obtaining permission under sub-rule (3) by the concerned court of law which is wrong to suggest in the present case. The petition bearing HERC PRO No. 08 of 2020 was been withdrawn with due permission of this Hon'ble Commission only. Therefore, also the observations made by the Hon'ble Supreme Court in the cases of- (1) Hulas Rai Baij Nath versus Firm K.B. Bass and Co. [AIR 1968 SC 111]; (2) Ramesh Chandra Sankla versus Vikram Cement [(2008) 14 SCC 58] and (3) Sarguja Transport Service versus State Transport Appellate Tribunal, Gwalior and Ors. [(1987) 1 SCC 5]; does not apply to the present case.

Proceedings in the Case

5. The case was heard on 15.10.2025, 16.12.2025 and finally on 03.02.2026, in the court room of the Commission, wherein the petitioner mainly reiterated the contents of its petition, which for the sake of brevity are not being reproduced here. Per-contra, Mr. Lovepreet Singh, the learned counsel for the respondent (HPPC) vehemently argued that the present petition is not maintainable and ought to be rejected on the ground of legal doctrine of 'Res judicata'. Upon hearing the preliminary submissions of the parties, the Commission formed a considered view that before going into the merits of the case, its maintainability, as averred by the respondent, has to be established.
6. The petitioner has also filed its written submissions dated 05.03.2026 as revised on 10.04.2026. Petitioner has made the following averments: -
 - 6.1. That the present Petition is filed by the Petitioner herein under Section 86(1)(f) of the Electricity Act, 2003 seeking intervention of this Hon'ble Commission w.r.t. compliance of directions passed by this Hon'ble Commission vide its Order dated 20.01.2016 passed in Case No. HERC/ PRO-24 of 2015 and further direct the Respondent to pay tariff to the Petitioner at a rate of Rs. 6.44 per unit in accordance with the Power Purchase Agreement ('PPA') dated 21.02.2014 executed between the parties and also direct the Respondent to pay the Petitioner herein the tariff deficit between Rs. 6.44 and Rs. 5.68 per unit payable from March 2019 onwards till the final adjudication of the present case along with interest.
 - 6.2. That the present Petition is not in the nature of a re-adjudication or re-determination of tariff, as erroneously alleged by the Respondent. The tariff payable to the Petitioner at a levelized rate of ₹6.44/unit already stands conclusively determined by this Hon'ble Commission vide Order dated 20.01.2016 in PRO-24 of 2015 and further affirmed by

the Hon'ble Appellate Tribunal for Electricity vide judgment dated 27.05.2019 in Appeal No. 150 of 2016. The said determination has attained finality, having never been challenged by the Respondent before any superior forum.

- 6.3. That the limited scope of the present Petition is confined solely to enforcement and implementation of the aforesaid final orders and the contractual obligations flowing therefrom under the Power Purchase Agreement dated 21.02.2014. It is a settled position of law that proceedings seeking enforcement of final and binding orders constitute a distinct and independent cause of action and are not barred by the principles of res judicata or constructive res judicata.
- 6.4. That none of the earlier proceedings relied upon by the Respondent adjudicated the legality of continuation of tariff at ₹5.68/unit after the conclusion of the Civil Appeals before the Hon'ble Supreme Court on 10.10.2023.
- 6.5. That in absence of any subsequent order modifying the petitioner's tariff or any amendment to the Power Purchase Agreement in accordance with the law, the Respondent's continued payment of tariff at the rate of Rs. 5.68/unit is ex facie illegal, arbitrary, and in direct contravention of:
 - (i) The Power Purchase Agreement dated 21.02.2014;
 - (ii) The final tariff determination made by this Hon'ble Commission; and
 - (iii) The binding affirmations rendered by the Hon'ble Appellate Tribunal for Electricity.
- 6.6. That the Respondent herein is erroneously placing reliance upon the settlement of past arrears up to March, 2019, as well as certain interim arrangements/orders, in an attempt to evade its subsisting contractual obligations under the Power Purchase Agreement dated 21.02.2014 ("PPA"). The Respondent is wrongly seeking to attribute the principles of promissory estoppel and res judicata to the present proceedings. It is submitted that the present Petition is founded upon a continuous and recurring cause of action and is, therefore, legally maintainable and not barred by any such principles.
- 6.7. That the settlement dated 18.09.2020, executed by the erstwhile Director of the Petitioner, was strictly confined to reconciliation and settlement of outstanding arrears up to March, 2019 only. The said position stands duly recorded in the Order dated 29.09.2020 passed in HERC PRO-08 of 2020 and the calculation submitted by the Respondent (copy attached at page number 215 of the paper book). The Respondent's attempt to construe the said settlement as a blanket relinquishment of future claims is wholly misconceived, untenable, and liable to be rejected.

- 6.8. That the Respondent has failed to appreciate that the Petitioner's project stands on a distinct factual and contractual footing from other solar power developers with whom the Respondent subsequently entered into separate PPAs. Any adjudication or outcome arising from disputes pertaining to such other projects cannot, in law or in fact, bind the present Petitioner herein.
- 6.9. That the Petitioner's PPA was duly signed and executed, thereby creating binding contractual rights and obligations. In contrast, the PPAs in respect of certain other solar power projects were not even signed and executed (*emphasis supplied*). Accordingly, the Respondent's reliance on proceedings involving such unrelated entities is misplaced and has no bearing on the rights of the Petitioner under its duly executed PPA.
- 6.10. That this Hon'ble Commission, considering the views of the petitioner and respondent decided the matter vide its Order dated 20.01.2016 passed in HERC-PRO No. 24 of 2015. The operative part of the order regarding tariff to be paid to the petitioner company read as under:
"The order this commission has not been challenged by any parties and as such has attained finality, in view of the above, the issue regarding amendment of clause 2.1.41 and 4.1 of the PPA relating to applicable tariff needs no further adjudication and the tariff payable to generator by HPPC shall be as per the provisions of the PPA."
Further, during the course of arguments, the Commission suggested that the year to year tariff should be worked out corresponding to the levelized tariff of Rs. 6.44 per unit and the year to year tariff so worked out be paid to the petitioner by the respondent-1, accordingly, the commission directs respondent No-1 to work out the year to year tariff for 25 years corresponding to the levelized tariff of Rs. 6.44 Per unit and pay the tariff to the petitioner so worked out for the relevant year.
This order of Commission conclusively held that:
a. Both the parties are bound by Clause 4.1 of the PPA; and
b. The tariff payable to the Petitioner is Rs. 6.44/unit (levelized).
- 6.11. The said Order dated 20.01.2016 also directed the Respondent to work out year-wise tariff corresponding to the levelized tariff of Rs. 6.44/unit and to make payments accordingly. However, the aforesaid Order dated 20.01.2016 was also challenged by the Petitioner before the Hon'ble Appellate Tribunal for Electricity ('APTEL') and tariff @6.44 / unit was though affirmed in *toto* vide Order dated 27.05.2019 in Appeal No. 150 of 2016. It is relevant to note that till date the Respondent has not complied by the said

Order and neither challenged the Order dated 27.05.2019, thereby allowing the tariff of Rs. 6.44/unit to attain complete and irreversible finality.

- 6.12. That on the other hand a tariff of Rs.5.68/unit emanated as an 'interim arrangement' qua Order dated 13.12.2016 passed by the Hon'ble APTEL in Appeal No. 278 of 2016, involving other solar power developers, whose whole project, PPAs, commissioning dates, and regulatory circumstances were materially distinct from that of the Petitioner and the same did not included the Petitioner herein and vide Order dated 09.03.2018 the aforementioned tariff of Rs. 5.68 / unit was affirmed w.r.t other four solar developers. It is pertinent to note that while adjudicating the cases of other developers, the Hon'ble APTEL also expressly distinguished the Petitioner's PPA and tariff from those developers.
- 6.13. The said Order dated 09.03.2018 passed by the Hon'ble APTEL was further challenged by the other four solar developers before the Hon'ble Supreme Court of India bearing Civil Appeal(s) nos. 5962, 5869, 5843 and 7296 of 2018. But, despite the same and to the utmost shock to the Petitioner herein the Respondent deliberately and in an arbitrary manner stopped the payments of the Petitioner and started to consider the tariff for the Petitioner as 'Rs. 5.68 per unit' as well. Therefore, the Petitioner herein filed another Petition bearing HERC-PRO No. 05 of 2019 seeking, at the very least, implementation of the Orders dated 13/08/2014 and 20/01/2016.
- 6.14. That during the course of the proceedings in HERC PRO No. 05 of 2019 this Hon'ble Commission vide its Order dated 10.05.2019, permitted tariff of Rs. 5.68/unit to the Petitioner only as an interim arrangement, explicitly making the same subject to the final adjudication of the pending Civil Appeals before the Hon'ble Supreme Court of India filed by the other four solar developers. The said interim arrangement was never intended to substitute, amend, or override the final tariff of Rs. 6.44/unit determined for the Petitioner.
- 6.15. That vide Final Order and Judgment dated 10.10.2023 the Hon'ble Supreme Court dismissed the appeals filed by the other four developers before it. Thereby, upholding the Hon'ble APTEL's Order dated 09.03.2018 whereby the PPA and the tariff fixed therein (i.e., Rs.6.44 per kWh) executed by the Petitioner was categorically distinguished from the other four developer's PPAs (with tariff at Rs.5.68 per kWh) respectively; leaving the Petitioner's tariff determination of Rs. 6.44 / unit untouched. It is further submitted that there exists no judicial order, direction, or finding modifying the Petitioner's tariff from Rs. 6.44/unit to Rs. 5.68/unit.

- 6.16. That the Respondent has never filed any Review Petition before the Hon'ble Haryana Electricity Regulatory Commission (HERC) of against HERC Petition 24-2015 or APTEL Petition 150-2016, nor has it challenged the said order before any competent judicial forum. The Respondent has also failed to initiate any proceedings seeking amendment or modification of the Power Purchase Agreement (PPA). It is a settled position of law that a PPA is sacrosanct and binding upon the parties, and its sanctity cannot be unilaterally diluted, questioned, or bypassed. In the absence of any challenge, review, or amendment in accordance with law, the Respondent remains strictly bound by the terms and conditions of the PPA as well as the order passed by the Hon'ble Commission.
- 6.17. That further the Petitioner filed HERC-PRO 08 of 2020 before this Hon'ble Commission seeking implementation of directions passed in Order dated 10/05/2019 in HERC-PRO No. 05 of 2019; wherein this Hon'ble Commission directed both the Petitioner and Respondent herein to mutually reconcile the matter w.r.t. the remaining dues (i.e., up to September, 2019) of the Petitioner; therefore in subsequent to the same the Petitioner's former director namely- Mr. Vinod Mittal settled the matter on behalf of the Petitioner and filed an affidavit accepting a 'full and final settlement' as Rs. 48,38,038/- w.r.t the outstanding dues of the Petitioner till September, 2019 on 18/09/2020 subject to the outcome of Civil Appeal bearing Nos. 5962, 5843 and 7296 of 2018 filed before the Hon'ble Supreme Court of India and in the light of the aforesaid settlement the HERC-PRO No. 08 of 2020 was 'dismissed as withdrawn' vide Order dated 29/09/2020. It is further submitted that full and final settlement drawn between the Petitioner and Respondent was only with respect to the outstanding dues till September, 2019 only. (*Emphasis supplied*) and it is settled law that a settlement pertaining to past arrears cannot nullify a binding contractual tariff or final judicial determination.
- 6.18. That in furtherance to the same the Petitioner filed Review Petition No. 07 of 2022 seeking review of the settlement dated 29/09/2020, which was further dismissed vide order dated 14/09/2022. The said orders were challenged before the Hon'ble APTEL by way of two Appeals, both of which were dismissed vide common order dated 21/08/2023.
- 6.19. That the Petitioner thereafter preferred Civil Appeal (Dy. No. 44243 of 2023) before the Hon'ble Supreme Court, which was dismissed vide order dated 02/01/2024. Consequently, dues up to March 2019 stood settled; however, the Respondent still continues to pay the Petitioner at an incorrect tariff rate contrary to the terms of the PPA. It is submitted that the Petitioner made a substantial investments in the plant, modules, and allied infrastructure of the subject project in bona fide reliance on the Respondent's

obligations to comply with the terms of the PPA and to make payments at the correct tariff of Rs. 6.44 per unit, in accordance with the directions of the Order dated 27.05.2019 passed by the Hon'ble APTEL in Appeal No. 150 of 2016. However, owing to the Respondent's mala fide conduct, the Petitioner is suffering grave and irreparable prejudice, resulting in severe financial hardship and losses till date.

- 6.20. That a tariff determination, once finalized and affirmed by Hon'ble APTEL and Hon'ble Supreme Court of India, is binding and enforceable in nature and any interim arrangements, if any will automatically cease to operate and therefore, the Respondent cannot rely upon the interim orders or settlements to perpetuate an illegality or defeat a binding contractual obligation.
- 6.21. That the Respondent's plea of 'res judicata' and 'promissory estoppel' along with judgments- *T.N. Electricity Board v. N. Raju Reddiar*, (1997) 9 SCC 736, *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573, *S. Ramachandra Rao v. S. Nagabhushana Rao* [2022 (4) RCR (Civil) 675], *Y.B. Patil, Gorie Gouri Naidu, Makhija Construction & Engg. (P) Ltd., and S. Nagaraj*; is wholly misconceived and unsustainable in the present case as, the present Petition is arising from a continuing and recurring cause of action such as ongoing non-compliance on part of the Respondent w.r.t. the Order dated 20.01.2016 and continuous under-payment of tariff.
- 6.22. That the Respondent is merely relying upon a confined past settlement of dues dated 18.09.2020 / interim arrangements and 'consent order' passed in HERC-PRO-08/2020 assumed interim arrangement as final arrangement between the parties herein with a deliberate intent to avoid its contractual obligations arising out of the subject PPA.
- 6.23. That no forum has ever adjudicated upon or finally decided the legality of continuing payment of tariff at a lower rate of Rs. 5.68 / unit; when after tariff rate of Rs. 6.44 / unit has already attained finality. Therefore, the bar of Res-Judicata does not apply herein. Reliance is also placed upon judgment dated 17.10.2014 passed by Hon'ble APTEL in Appeal No. 275 of 2013 titled as "*Manglore Electricity Supply Company Limited versus M/s AMR Power Private Limited and Anr.*" wherein the Hon'ble APTEL held- "*34.....in the present case while the OP No.48 of 2011 was withdrawn; there was no determination of lis or existence or otherwise of a particular cause of action. Therefore, the issue of Res-judicata or issue estoppel would not apply to the present facts of the case as the ingredients for the Res-judicata have not been satisfied in the present case. 39.In fact, the AMR Power was constrained to pump power and to receive the payment on PPA rates as per the interim arrangements made due to the directions of the State*

Commission and this Tribunal. Therefore, the question of estoppel would not arise in this case.” Reliance is also placed upon the landmark judgment passed by the Hon’ble Supreme Court in the matter of- Baldevdas Shivlal and Anr. versus Filmsitan Distributers (India) Pvt. Ltd. and Ors. [(1969) 2 SCC 201] wherein the Hon’ble Supreme Court observed- “9.... a consent decree, according to the decisions of the Court, does not operate as res judicata, because a consent decree is merely the recorded contract between the parties to a suit, to which is superadded the seal of the Court. A matter in consent suit may operate as res judicata only if there is an adjudication by the Court. (emphasis supplied)”.

- 6.24. That it is reiterated that in the present case, the cause of action is arising from the wilful non-compliance by the Respondent, of the orders and direction passed by this Hon’ble Commission on 20/01/2016 which persists till date and non-adherence of the terms and conditions of the subject PPA.
- 6.25. That it is respectfully submitted that tariff determination under the Electricity Act, 2003 is not a matter of private contract alone but carries statutory force. Once a tariff is determined by the State Commission and affirmed by the Hon’ble Appellate Tribunal for Electricity, it binds the parties with statutory finality.
- 6.26. That in the present case, the tariff of ₹6.44/unit payable to the Petitioner stands crystallized by judicial and regulatory orders and has never been modified or set aside. The Respondent, being a State procurer, cannot unilaterally substitute the said tariff by mechanically applying a rate applicable to unrelated projects.
- 6.27. That in light of the aforementioned submissions and averments made herein, the following prayers have been made: -
- a) To allow the present Petition and ensure due and proper compliance of the final Order dated 20.01.2016 passed by this Hon’ble Commission in Petition No. HERC/PRO-24 of 2015.
 - b) To direct the Respondent, who has neither challenged the aforesaid Order nor complied with the express directions contained therein regarding working out of year-to-year tariff corresponding to the levelised tariff, to forthwith:
 - i) To pay tariff to the Petitioner at the levelised rate of ₹6.44 per unit, or in the alternative,
 - ii) work out and pay the year-to-year tariff corresponding to ₹6.44 per unit from the date of Commercial Operation Date (CoD) for the entire tenure of the PPA, along with interest as per the terms and conditions of the PPA and in terms of the final judicial and regulatory determinations. It is further submitted that any

continued payment of tariff at ₹5.68 per unit is illegal, arbitrary, and unsustainable in law and is liable to be set aside by this Hon'ble Commission.

Proceedings of the Case

7. The case was heard on 15.10.2025, 16.12.2025 and finally on 03.02.2026, in the court room of the Commission, wherein the parties mainly reiterated the contents of their petition/reply/rejoinder, which for the sake of brevity are not being reproduced here.

Commission's Analysis and Order

8. The Commission has meticulously examined the pleadings preferred by the respective parties, the evidentiary material available on record, and the extensive litigious history surrounding the present dispute. During the course of oral arguments, the Petitioner has strenuously asserted an entitlement to a tariff rate of Rs. 6.44/kWh as against the rate of Rs. 5.68/kWh. This claim is predicated upon the terms of the Power Purchase Agreement dated 21.02.2014 read in conjunction with the findings of this Hon'ble Commission in its order dated 20.01.2016 (Case No. HERC/PRO 24 of 2015), which was subsequently affirmed by the Hon'ble Appellate Tribunal for Electricity (APTEL) vide its judgment dated 27.05.2019 in Appeal No. 150 of 2016.

Per-contra, the Answering Respondent, Haryana Power Purchase Centre (HPPC), challenged the maintainability of the petition, contending that the same is hit by the principle of 'res judicata'. The Respondent further submitted that the matter stands conclusively adjudicated by the consent order dated 29.09.2020 (Case No. HERC/PRO-8 of 2020), which was predicated on a settlement voluntarily arrived at between the parties. The finality of this settlement is further reinforced by the consequent orders of this Commission dated 14.09.2022 (Case No. HERC/Review Petition No. 7 of 2022) and 12.11.2024 (Case No. HERC/Petition No. 26 of 2024) as well as of the Hon'ble APTEL dated 21.08.2023 (DFR No. 217 of 2023).

9. The Commission has heard the arguments of the parties at length, both on the preliminary objection of maintainability raised by the Respondent (HPPC) and on the substantive merits of the dispute, and has meticulously perused the petition, the reply, the rejoinder, and the written submissions placed on record. The core controversy in the present petition revolves around the applicable tariff for the solar power generated by the Petitioner's 5 MW project and supplied to the Respondent. The Petitioner seeks directions to the Respondent to pay a tariff of Rs. 6.44/kWh in accordance with the Power Purchase Agreement (PPA) dated 21.02.2014 and the earlier Order of this

Commission dated 20.01.2016, and to release the tariff deficit currently being withheld by the Respondent, who is making payments at a reduced rate of Rs. 5.68/kWh.

10. After a careful examination of the pleadings, historical litigation between the parties, and the applicable legal principles, the Commission frames the following issues for determination:-
- a) Whether the settlement dated 29.09.2020 affects future tariff payable w.e.f. 01.04.2019.
 - b) Whether the present petition is barred by the principles of Res Judicata, in light of the previous litigations?
 - c) Whether the petition is barred by limitation?
 - d) Whether the Petitioner is entitled to a tariff of Rs. 6.44/kWh as per the PPA and the Commission's Order dated 20.01.2016?

After hearing the learned counsel for the parties and going through the record of the appeal, the findings of the Commission on the issues are as under:-

Issue (a):

Whether the settlement dated 29.09.2020 affects future tariff payable w.e.f. 01.04.2019?

The Respondent asserts that the withdrawal of PRO-8 of 2020, recorded in the order of the Commission dated 29.09.2020, based on a mutual settlement without seeking liberty to institute fresh proceedings, triggers the bar under Order XXIII Rule 1(4) of the CPC. The Respondent cited various judgments, including *S. Ramachandra Rao v. S. Naga bhushana Rao (2022 (4) RCR (Civil) 675)* and *Hulas Rai Baij Nath v. Firm K.B. Bass and Co. (AIR 1968 SC 111)*, arguing that public policy prohibits a party from reopening a claim that was voluntarily abandoned or settled.

Conversely, the Petitioner argued that the previous settlement was merely an interim arrangement strictly confined to past outstanding arrears and did not alter the substantive tariff applicable under the PPA for the remaining period of the 25-year contract. The Petitioner clarified that its former director, Mr. Vinod Mittal, accepted a sum of Rs. 48,38,038/- from the Respondent as a full and final settlement with respect to the outstanding dues till September, 2019 only.

In order to answer the question framed above, the Commission considered it appropriate to analyze the nature of the past proceedings. Therefore, it becomes imperative to examine the contents of affidavit dated 18.09.2020 filed by the petitioner requesting to allow them to withdraw the petition no. 8 of 2020, reproduced hereunder:-

"MOST RESPECTFULLY SHOWETH:

1. *That the Petitioner Company had filed the instant Petition seeking intervention of the Hon'ble Commission in implementation of the order passed in earlier Petition No, HERC/PRO-5 of 2019 dated 10.05.2019. Following prayer was made through this Petition,*
 1. *To kindly accept the petition in its present form;*
 2. *To kindly direct the Respondent for immediate implementation of the directions given by Hon'ble Commission vide order dated 20.01.2016 and 10.05.2019 read with the order passed by Hon'ble Tribunal dated 27.05.2019;*
 3. *To kindly direct the Respondent to refund the amount of Rs. 44,55,268/- deducted illegally as interest while making payment in August 2018 @ Rs.6.44;*
 4. *To kindly direct the Respondent to pay interest @ 15% per annum on the delayed payments made, in compliance to the order of Hon'ble Commission dated 10.05.2019 from the date of commissioning of the Project till the date of final settlement/payment of amount paid less, in line with Clause 5.6 of the PPA;*
 5. *May kindly give any other relief, so deemed fit, in the present case.*
2. *That in the last hearing on this case on 21.07.2020, it was conveyed to the Hon'ble Commission that the parties are making efforts to settle the matter by mutual discussions. Accordingly, Hon'ble Commission notified following Interim Order dated 21.07.2020 (Annex P-1),*

"Accordingly, the Commission directs the Petitioner and Respondents to carry out reconciliation exercise within next four weeks and thereafter report the outcome by way of written submissions."
3. *That the parties to the Petition started dialogue to close the matter by mutual settlement. After mutual discussions and conciliation of pending claims, the Petitioner Company sent a letter to the Respondent dated 17.08.2020 (Annex P-2).*
4. *That in response to the above letter from the Petitioner, the Respondents replied vide their letter dated 21.08.2020 (Annex P-3) conveying acceptance to the negotiated amount with a minor modification in the calculated amount.*
5. *That the Petitioner finally accepted the mutually agreed payment amount vide letter dated 22.08.2020 (Annex P-4) and requested the Respondents to immediately*

release the payment so that Hon'ble Commission could be apprised of the outcome of conciliation. The relevant part of the above letter read as under,

"We accept the amount calculated by you so as to close this long **outstanding payment dispute**. As already conveyed in our letter of 17.08.20, this settlement is subject to the outcome of Civil Appeals (5962, 5869, 5843 & 7296 of 2018) preferred by the Solar Power Developers in Hon'ble Supreme Court.

You are requested to release the above mutually agreed payment of Rs.48,38,038/- as full and final payment **of our pending dues**. We also agree to withdraw Petition No. HERC/PRO-8 of 2020 from HERC on receipt of this amount."

6. That the Respondents have released the mutually agreed amount of Rs.48,38,038/- on 07.09.2020.
7. That the Petitioner would request Hon'ble Commission to allow the present Petition to be withdrawn."

(Emphasis supplied)

Thus, the affidavit dated 18.09.2020 filed by the petitioner requesting to allow them to withdraw the petition no. 8 of 2020, has dealt with the outstanding payment dispute and pending dues only. The prospective tariff rate has nowhere been dealt with.

The contents of the letter dated 17.08.2020 sent by petitioner to the respondent (referred in the above affidavit dated 18.09.2020, as Annex P-2), is reproduced as under:-

"Sub.: Petition No. HERC/PRO-8 of 2020 filed by Siwana Solar Power Projects for consideration of Hon'ble State Commission –

Reconciliation of pending payments and applicable interest on the delayed payments.

Sir,

This has reference to the initiative taken by HPPC for resolving the present **dispute of pending payments** of Siwana Solar Power Project through mutual discussions. We welcome this gesture from HPPC.

During hearing held by the Hon'ble Commission on the subject cited Petition on 21st July, 2020 a joint statement was made by both the parties showing intention to resolve **the issue of claim of pending payments through negotiations**. Hon'ble Commission had accepted the submission of the parties and allowed 4 weeks' time for joint conciliation. A statement of the Petitions filed by Siwana Solar and other connected

Petitions is attached for appreciating the long drawn litigation connected with the Siwana Solar Project.

Accordingly, **we have re-examined the figures of pending payments** as brought out in Annex P-9 of the Petition and have made following observations based on facts,

1. We had indicated that against Invoices of Rs.20,24,28,688/- raised by Siwana Solar, HPPC had paid Rs.19,70,90,933 thus leaving a balance of Rs.53,37,755/- payable by HPPC. In addition Rs.96,33,626.39/- was claimed towards interest payable on delayed payments as per Clause 5.6 of the PPA.
2. **We have tried to look into the reasons for this short payment by HPPC** and find that this amount comprises of the following,
 - a) The Interest amount of Rs.44,55,268/- wrongly deducted by HPPC in Jan. 18, which is yet to be refunded by HPPC to Siwana Solar.
 - b) Although the RE Regulations clearly provide that Tariff Period will be 12 months from the date of commissioning. We have noticed that HPPC has wrongly taken the tariff period as 11 months from CoD instead of 12 months. The power plant of Siwana Solar was commissioned on the midnight of 31" Dec. 2014 & 1" Jan. 2015. Therefore the 1st year tariff was to be applicable upto 31 Dec. 2015, whereas HPPC has wrongly applied it upto 30th Nov. 2015. This has a cascading effect in subsequent years as well. We have tried to correct this error and relative figures are given in the enclosed statement. The total impact on this account is of Rs.3,95,527/-, which is rightly payable by HPPC.
 - c) The quantum of power worked out by Siwana Solar was without deducting 2% energy towards wheeling charges from 31.12.2014 to 12.08.2015, which had an impact of Rs.4,83,798/-.
 - d) The tariff of Rs.5.68 determined by Hon'ble APTEL in Appeal No. 278 & 307 of 2016 dated 09.03.2018 for JBM Solar & others was purely an interim arrangement subject to the outcome of Civil Appeals (5962, 5869, 5843 7296 of 2018) preferred by the Solar Power Developers in Hon'ble Supreme Court. Consequential order passed by Hon'ble State Commission dated 10.01.2019 for approval of PPAs is also an interim arrangement pending outcome of the Civil Appeals filed by Solar Power Developers against the order of APTEL in Appeal Nos. 278 & 307 of 2016 dated 09.03.2018.

With the above observations and to put an end to the prolonged litigation, we would be willing to arrive at a **compromise with HPPC on the issue of our pending**

claims of billing if HPPC releases our above outstanding amount shown in the sheet attached. However, the above settlement amount would be revised if the tariff of Rs.5.68, determined by Hon'ble APTEL in Appeal No. 278 & 307 of 2016 dated 09.03.2018 and accepted by Hon'ble Commission through suo moto consequential order dated 10.01.2019 read with Hon'ble State Commission order of 10.05.2019 in Petition No. HERC/PRO-5 of 2019, gets modified as an outcome of Civil Appeals (5962, 5869, 5843 & 7296 of 2018) preferred by the Solar Power Developers in Hon'ble Supreme Court.

You are requested to convey your concurrence to the above arrangement and release our principle amount of Rs.48,50,795/- as detailed in the attached statement at an early date.

Once this amount is remitted to us, we would be able to submit this letter to HERC in the forthcoming hearing scheduled for.

DA: **Revised Statement of pending payments.**"

(Emphasis supplied)

In the letter dated 17.08.2020 sent by petitioner to the respondent, the reference has been made to words such as 'Reconciliation of pending payments', 'dispute of pending payments', 'the issue of claim of pending payments through negotiations', 'short payment by HPPC', 'compromise with HPPC on the issue of our pending claims of billing if HPPC releases our above outstanding amount' etc., which by no stretch of means be extended to the tariff rate applicable prospectively.

Further, the contents of the letter dated 21.08.2020 sent by the respondent (HPPC) to the petitioner (referred in the above affidavit dated 18.09.2020, as Annex P-3), is reproduced as under:-

"Subject: Petition No. HERC/PRO-8 of 2020 filed by Siwana Solar Power Project Pvt. Ltd. for consideration of Hon'ble Commission- **Reconciliation of pending payments** and applicable interest on the delayed payments

Refer to your letter dated 17.08.2020 whereby it has been requested to remit an amount of Rs. 48,50,795/- in terms of reconciliation and final settlement in the subject matter.

In this context, it is intimated the amount of reconciliation as intimated vide above referred letter has been considered and it has been observed that the amount of reconciliation works out to be Rs. 48,38,038/- (Rs. 445268/- on account interest plus Rs. 3,82,769/- on account of tariff difference) against your calculation of Rs. 48,50,795/

As such, it is requested to kindly undertake that the **subject cited matter has been settled** and the amount of Rs. 48,38,038/- is acceptable to M/s Siwana Solar Power Project Pvt. Ltd. as full and final against final settlement in the matter and **no further claims shall be raised/made in future on this account. The account has been settled** with mutual consent of parties. Notwithstanding to above, a statement to this effect shall also be made in the HERC as agreed upon.

The above undertaking shall be submitted at the earliest so as payments be processed accordingly.”

(Emphasis supplied)

The subject of the letter dated 21.08.2020 sent by the respondent to the petitioner, is ‘...Reconciliation of pending payments...’ and the contents of the letter provides that the ‘subject cited matter has been settled. It gives a clear understanding that the dispute regarding pending payments has been settled and not the tariff rate at which the power is to be supplied by the petitioner to the respondent, which is governed by the terms of the duly executed PPA.

The contents of the letter dated 22.08.2020 sent by the petitioner to the respondent (HPPC) (referred in the above affidavit dated 18.09.2020, as Annex P-4), is reproduced as under:-

“Sir,

We are in receipt of your letter dated 21.08.2020 in response to our letter of 17.08.20 on the subject.

We accept the amount calculated by you **so as to close this long outstanding payment dispute**. As already conveyed in our letter of 17.08.20, this settlement is subject to the outcome of Civil Appeals (5962, 5869, 5843 & 7296 of 2018) preferred by the Solar Power Developers in Hon'ble Supreme Court.

You are requested to release the above mutually agreed payment of Rs.48,38,038/- as full and final payment of our pending dues. We also agree to withdraw Petition No. HERC/PRO-8 of 2020 from HERC on receipt of this amount.”

(Emphasis supplied)

The combined reading of the affidavit dated 18.09.2020 filed by the petitioner in the Commission read with its letters dated 17.08.2020 & 22.08.2020 addressed to the respondent along with the letter of the respondent (HPPC) to the petitioner dated 21.08.2020, finds considerable force in the arguments of the petitioner that the settlement was reached in respect of outstanding demand up to March, 2019

(ref. the calculation sheet of outstanding demand annexed with the letter dated 17.08.2020) that too on interim basis till the outcome of Civil Appeals (5962, 5869, 5843 & 7296 of 2018) preferred by the some other Solar Power Developers in Hon'ble Supreme Court. The same is evident from the reference to the words such as 'Reconciliation of pending payments', 'dispute of pending payments', 'the issue of claim of pending payments through negotiations', 'short payment by HPPC', 'compromise with HPPC on the issue of our pending claims of billing if HPPC releases our above outstanding amount' etc. Hon'ble APTEL, in its order dated 27.05.2019 (Appeal No. 150 of 2016) has upheld the decision of this Commission dated 20.01.2016 (HERC/PRO-24 of 2015), directing to allow the year to year tariff worked out corresponding to the levelized tariff of Rs. 6.44 per unit and the year to year tariff so worked out be paid to the Petitioner by Respondent (HPPC). Therefore, nothing was left to be settled in respect of the future payments. Because the settlement only addressed delayed payments for a specific historical period, it never discussed the applicable tariff rate for the remainder of the 25-year contract, since the order of Hon'ble APTEL in its order dated 27.05.2019, had already removed all ambiguities. The Petitioner did not surrender its ongoing contractual rights by settling past dues. The Contractual obligations cannot be diluted by any interim measures and the regulatory discipline requires strict adherence to adjudicated tariff. Any deviation may undermine the power sector's stability. Therefore, the bar contained under Order XXIII Rule 1(4) of the CPC is not attracted, since the petitioner is not seeking to institute proceedings in respect of the claim that stood abandoned. Rather, the present petition pertains to claims arising for the period subsequent to the settlement. The Petitioner did not "abandon" its substantive right to the 25-year tariff.

In view of the above discussion, the Commission answers this issue in negative i.e. the settlement dated 29.09.2020 does not affect the future tariff payable after 01.04.2019.

Issue (b):

Whether the present petition is barred by the principles of Res Judicata, in light of the previous litigations?

The Respondent has vehemently argued that the present petition is a gross abuse of the process of law and is strictly barred by the doctrine of *Res Judicata* under Section

11 of the Civil Procedure Code (CPC). The Respondent contends that the Petitioner has repeatedly sought the exact same relief i.e. payment of tariff at Rs. 6.44/kWh in multiple prior petitions, namely HERC/PRO-8 of 2020, Review Petition No. 7 of 2022, and HERC/PRO-26 of 2024. The Respondent heavily relied upon the Order dated 12.11.2024 passed in PRO-26 of 2024, wherein this Commission dismissed the petition *in limine*, holding that the issue of tariff had attained finality and the principle of *Res Judicata* squarely applied.

Conversely, the Petitioner argued that the settlement has been reached in respect of outstanding dues up to 31.03.2019 and the issue of tariff applicable post 01.04.2019, has already been settled in the decisions of Hon'ble APTEL (order dated 27.05.2019 in Appeal No. 150 of 2016) along with the order of this Commission dated 20.01.2016 (HERC/PRO-24 of 2015), which was not challenged before any court of competent jurisdiction and hence has attained finality; thus, cannot be altered by any subsequent proceedings.

The Commission observes that it has already examined the Respondent's reliance on Order XXIII Rule 1(4) of the CPC and was found misplaced in the present factual matrix. While it is true that a party cannot institute a fresh suit on a claim they have abandoned, the Petitioner did not "abandon" its right to a 25-year tariff. It merely settled a quantified dispute regarding delayed payments for a specific historical period (up to 31.03.2019) to put an end to that specific prolonged litigation phase. The previous settlement, which led to the withdrawal of Petition No. 8 of 2020, was strictly confined to a quantified dispute regarding historical arrears and delayed payments for the period ending 31 March 2019. By settling these past dues, the Petitioner did not surrender its ongoing contractual rights for the remainder of the 25-year contract. Since the prospective tariff rate was never definitively extinguished by mutual contract amendment or a final merit-based ruling in the previous phase, the petition remains maintainable under Section 86(1)(f) of the Electricity Act.

To apply the doctrine of *Res Judicata*, it is a settled legal prerequisite that the matter directly and substantially in issue must have been finally heard and decided by a competent court on its merits.

A meticulous review of the affidavit dated 18.09.2020 filed by the petitioner in the Commission read with its letters dated 17.08.2020 & 22.08.2020 addressed to the respondent along with the letter of the respondent (HPPC) to the petitioner dated

21.08.2020, unequivocally reveals the intention of the parties. The Petitioner explicitly stated: "we would be willing to arrive at a compromise with HPPC on the issue of our **pending claims of billing** if HPPC releases our above outstanding amount shown in the sheet attached". Based on this, the Petitioner accepted a quantified sum for invoices generated up to 31.03.2019.

The Commission notes that a settlement of past financial arrears does not inherently constitute a permanent amendment to a 25-year statutory Power Purchase Agreement. The PPA executed on 21.02.2014 remains a binding commercial contract. The settlement agreement and the subsequent Order dated 29.09.2020 dismissing PRO-8 of 2020 nowhere discussed or established the applicability of the tariff rate for the prospective period post 01.04.2019.

Therefore, the Commission's earlier observation in the Order dated 12.11.2024 (in PRO-26 of 2024) that the issue had attained finality due to the settlement was limited to the settlement for past dues, not a re-determination of the tariff already settled at Rs. 6.44/kWh in the decisions of Hon'ble APTEL (order dated 27.05.2019 in Appeal No. 150 of 2016) along with the order of this Commission dated 20.01.2016 (HERC/PRO-24 of 2015). The underlying legal issue of the prospective tariff rate has not been definitively extinguished by any mutual contract amendment. Accordingly, the Commission holds that the present petition is not barred by *Res Judicata* and is maintainable under Section 86(1)(f) of the Electricity Act, 2003.

In view of the above discussion, the Commission answers this issue in affirmative i.e. the present petition is not barred by the principles of Res Judicata, in light of the previous litigations.

Issue (c):

Whether the petition is barred by limitation?

The Respondent briefly raised an objection that the petition is hopelessly time-barred. The Respondent submitted that the cause of action, if any, arose on 20.01.2016 when the original Order was passed, and as per the Hon'ble Supreme Court's ruling in *AP Power Coordination Committee & Ors Vs. M/s Lanco Kondapalli Power Ltd*, a 3-year limitation period applies to claims under Section 86(1)(f) of the Electricity Act.

The Commission has examined the objection raised by the respondent (HPPC) and finds no merit in the same. The relationship between the Petitioner and the Respondent is governed by a long-term, 25-year PPA. The sale of electricity is a continuous process, and the generation of monthly invoices gives rise to a recurring and continuous cause of action. The ongoing right to receive the correct contractual tariff for electricity generated and supplied *every subsequent month* constitutes a fresh and continuing cause of action.

The Petitioner's grievance is that the Respondent is *currently* and continuously making payment of year to year tariff applicable corresponding to the levelized tariff of Rs. 5.68/kWh determined by Hon'ble CERC instead of the legally mandated tariff corresponding to the levelized tariff of Rs. 6.44/kWh for ongoing power supply. Because of non-adherence to the PPA clarified by this Commission in its order dated 20.01.2016 (HERC/PRO-24 of 2015) confirmed by Hon'ble APTEL (order dated 27.05.2019 in Appeal No. 150 of 2016), which persists to date, the breach is continuous. Therefore, the petition seeking prospective compliance and payment of the tariff deficit for the unsettled period (post 01.04.2019) is squarely within the bounds of limitation. The objection of the Respondent is overruled.

In view of the above discussion, the Commission answers this issue in negative i.e. petition is not barred by limitation.

Issue (d):

Whether the Petitioner is entitled to a tariff of Rs. 6.44/kWh as per the PPA and the Commission's Order dated 20.01.2016?

The Commission observes that the crux of the substantive dispute is the tariff applicable post settlement i.e. w.e.f. 01.04.2019. The Petitioner claims its entitlement to the levelized tariff of Rs. 6.44/kWh based on the PPA, the Commission's Order dated 20.01.2016, and the Hon'ble APTEL's Order dated 27.05.2019.

Per-contra, the Respondent (HPPC) seeks to justify the payment of year to year tariff corresponding to the levelized tariff of Rs. 5.68/kWh by placing reliance upon subsequent orders passed in cases pertaining to other generating companies, as well as the Order dated 10.05.2019 (in PRO-5 of 2019) passed by this Commission in a separate proceeding.

In order to adjudicate the controversy, the Commission considered it appropriate to examine the contractual framework, underlying legal principles and the binding judicial pronouncements rendered inter se the parties.

The case of the Petitioner rests upon the assertion that it is entitled to the levelized tariff of Rs. 6.44/kWh, as determined in terms of the PPA dated 21.02.2014, and as upheld by this Commission vide Order dated 20.01.2016, which has further attained finality upon affirmation by the Hon'ble Appellate Tribunal for Electricity (APTEL) vide judgment dated 27.05.2019.

The Commission considers it necessary to advert to the relevant clauses of the PPA. Clause no. 2.1.41 and 4.1 of the signed PPA dated 21.02.2014 explicitly outlines the mechanism for tariff determination. The Respondent (HPPC) is obligated to purchase power at the lowest of three options: (a) The generic tariff decided by HERC; (b) The lowest tariff quoted and accepted in HPPC's first long-term tender; or (c) The lowest tariff quoted and accepted in HAREDA's tender. The relevant clauses are reproduced hereunder:-

"2.1.41 "Tariff" means the rate payable by HPPC for every kWh of net delivered energy at the delivery point and accepted by Solar Power Developer. The tariff shall be the lowest rate out of the following three options:

- a) Generic tariff decided by HERC i.e. Rs. 7.94 for FY 2013-14 in case the plant is commissioned before 31.3.2014 or Rs. 7.58 per unit for FY 2014-15 in case the plant is commissioned by 30.6.2014*
- b) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through competitive bidding to be floated by HPPC till 31.12.2015*
- c) The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through reverse bidding to be floated by HAREDA till 31.12.2015., as per solar policy of Govt. of Haryana*

However, the lowest tariff from the above will provisionally be paid to the firm at the time of Commissioning and the final lowest tariff as and when discovered out of the above three options will be payable with effect from the date of commissioning.

Note: The deadline for decision of tariff in respect of ii) & iii) above shall be 31.12.2015

4.1. Sale of Energy by Company:

The HPPC shall purchase and accept all energy made available at the Delivery point from the Company's facility, pursuant to the terms and conditions of this agreement as per the amount claimed by the Company for the energy delivered for sale (including captive/ auxiliary consumption of Solar Power generated less the energy imported by IPP) of electricity generated from Solar PV crystalline Power Plant valid for a period of 25 years during the Billing period at the following tariff whichever is the lowest rate out of the following three options:

- a) *Generic tariff decided by HERC i.e. Rs. 7.94 for FY 2013-14 in case the plant is commissioned before 31.3.2014 or Rs. 7.58 per unit for FY 2014-15 in case the plant is commissioned by 30.6.2014*
- b) *The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through competitive bidding to be floated by HPPC till 31.12.2015.*
- c) *The lowest tariff quoted and accepted in the first long term tender for purchase of solar power through reverse bidding to be floated by HAREDA till 31.12.2015., as per solar policy of Govt. of Haryana*

However, the lowest tariff from the above will provisionally be paid to the firm at the time of Commissioning and the final lowest tariff as and when discovered out of the above three options will be payable with effect from the date of commissioning. The deadline for decision of tariff in respect of b) & c) above shall be 31.12.2015."

Clause 2.1.41 and Clause 4.1 thereof unequivocally stipulate that the tariff payable shall be the lowest of the alternatives specified therein, including the tariff discovered through competitive bidding conducted by HPPC.

The lowest tariff discovered in HPPC's tender was Rs. 6.44/kWh. Consequently, when the Petitioner approached this Commission in PRO-24 of 2015, the Commission, via a conclusive Order dated 20.01.2016, upheld the application of this rate. The Commission specifically directed HPPC: *"...to work on the year-to-year tariff for 25 Years corresponding to the levelized tariff of Rs.6.44 per unit and pay the tariff to the Petitioner so worked out for the relevant year."* It is a matter of record that this proposal was expressly agreed to by the Respondent at the time.

The Petitioner, dissatisfied with decision of this Commission granting year to year tariff corresponding to the levelized tariff of Rs. 6.44/kWh and seeking a higher generic tariff of Rs. 7.45/kWh, appealed the 20.01.2016 Order before the Hon'ble APTEL in Appeal No. 150 of 2016. On 27.05.2019, the Hon'ble APTEL dismissed the appeal but, in doing so, unequivocally cemented the applicability of the Rs. 6.44/kWh tariff to the Petitioner. The APTEL definitively ruled: *"...the bidding process undertaken by HPPC was legally sustainable and as such the lowest tariff discovered in the process has to be applied to the case of the Petitioner i.e., the tariff at Rs.6.44/kWh... the State Commission has allowed the tariff applicable to the Petitioner's solar project appropriately and the impugned order does not suffer from any legal infirmity."* Crucially, this judgment of the Hon'ble APTEL has never been challenged by the Respondent and has absolute binding finality upon the parties herein.

The Respondent has constructed its entire defense around a parallel legal track involving *other* solar developers (M/s JBM Solar Power Pvt. Ltd., M/s Subhash Infra Engineers Pvt. Ltd., and M/s Utrecht Solar Pvt. Ltd.). The PPAs of those developers were initially rejected by this Commission. They appealed to the Hon'ble APTEL (Appeal No. 278 of 2016), which, on 09.03.2018, directed that their PPAs be approved at a CERC-determined generic tariff of Rs. 5.68/kWh. This decision was eventually upheld by the Hon'ble Supreme Court on 10.10.2023.

The Respondent argues that because the PPA ties the Petitioner's rate to the "**lowest discovered tariff**," the reduction of the other developers' tariff to Rs. 5.68/kWh by APTEL retroactively substitutes the Rs. 6.44/kWh rate in the Petitioner's PPA. The Commission finds this interpretation perverse and legally unsustainable. Firstly, the Petitioner was neither a party to Appeal No. 278 of 2016 nor the subsequent Supreme Court appeals. Secondly, the APTEL Order dated 09.03.2018 pertained strictly to the approval of unapproved PPAs of third parties and did not modify the terms of the Petitioner's duly executed and already approved PPA. Thirdly, the rate of **Rs. 5.68/kWh was a generic tariff declared by CERC for FY 2016-17; it was not a tariff "discovered in the first long term tender for purchase of solar power through competitive bidding"** as strictly defined in Clause 4.1(b) of the Petitioner's PPA. Therefore, importing a third-party, CERC-determined generic tariff from a separate litigation into the Petitioner's PPA constitutes a blatant rewriting of the contract, which is impermissible.

The Respondent relies heavily on this Commission's Order dated 10.05.2019 in PRO-5 of 2019 (issued 17 days ahead of the decision of Hon'ble APTEL dated 27.05.2019), which directed HPPC to pay Rs. 5.68/kWh. However, a plain reading of that Order exposes the fallacy of the Respondent's stance. The Commission explicitly stated: "*...as an interim arrangement, the year to year tariff shall be payable subject to the judgement of Hon'ble Supreme Court in Civil Appeal nos. 5962, 5869, 5843 7296 of 2018.*". The Commission agrees with the Petitioner that this rate was solely an interim arrangement. An interim arrangement made pending third-party Supreme Court appeals cannot legally override the final, substantive direction of the Hon'ble APTEL dated 27.05.2019 (passed just 17 days *after* the interim order), which definitively affirmed the Petitioner's final tariff at Rs. 6.44/kWh.

The Commission observes that Clause 4.1 of the PPA unequivocally provides that the applicable tariff shall be the lowest discovered tariff through competitive bidding. It is an **admitted position on record that such tariff was discovered at Rs. 6.44/kWh pursuant to the bidding process undertaken by HPPC**. Further, this Commission, vide order dated 20.01.2016 in Petition No. PRO-24 of 2015, had already adjudicated the issue and held that the Petitioner is entitled to tariff of Rs. 6.44/kWh and directed HPPC to compute year-to-year tariff corresponding to the said levelized tariff. This finding was subsequently upheld by the Hon'ble Appellate Tribunal for Electricity (APTEL) vide judgment dated 27.05.2019, thereby attaining finality inter se the parties. The Petitioner's PPA must now strictly revert to the legally vetted, APTEL-affirmed rate of Rs. 6.44/kWh. The Respondent cannot utilize an interim order as a permanent shield to unilaterally rewrite a concluded PPA and inflict severe ongoing monetary loss upon the generating company.

The Commission observes that the issue of applicability of levelized tariff of Rs. 5.68/kWh based on the tariff approved for other generators upon judicial intervention, has already discussed in detail, by Hon'ble APTEL, in its order dated 27.05.2019. The operative part of the judgement is as under:-

"7.3learned senior counsel for the Respondent No.2/HPPC submitted that in response to Notice Inviting Tender (NIT) dated 16.04.2014, a tariff of Rs. 6.44/kwh was the lowest discovered price quoted and accepted by the bidders. Accordingly, as per the terms of PPA entered with the Appellant, the payment was being made at the same rate against the monthly energy bills raised by the Appellant. However, vide the order dated 12.09.2016, the State Commission did not approve the competitive bidding process and the Power Purchase Agreements (PPAs) entered into by HPPC with the selected bidders on the ground that the process and the PPAs are not in line with the competitive bidding guidelines for renewable energy generation under Section 63 of the Electricity Act, 2003. The decision of the State Commission was mainly on the premise that the deviations were not approved by the State Commission and hence the PPAs are not valid. However, the said order of the Commission was challenged before this Tribunal by JBM Solar Private Limited in which the Tribunal directed the State Commission to approve the PPAs signed between HPPC and the selected bidder at a lower tariff of Rs. 5.68 per Kwh in line with the generic tariff determined by the Central Electricity Regulatory Commission for the Financial Year 2016-17....."

7.4..... Learned counsel was quick to point out that as decided by this Tribunal in its judgment dated 09.03.2018 in Appeal No. 278 of 2016 in the case of JBM Solar Private Limited, the applicable tariff is Rs.5.68/kWh, which is further lower than the tariff being paid to the Appellant at Rs.6.44/kWh. Learned counsel accordingly reiterated that the three alternatives provided in Clause 4.1 of the PPA with the stipulation “whichever is lower” continued to apply to the Appellant and has in no way been modified by the Commission.

Our Findings:-

7.5 We have considered the rival contentions of the learned counsel for the Appellant as well as learned counsel for Respondent No.2. It is relevant to note that in pursuance of the order dated 05.11.2013 of the Respondent Commission, the Appellant had to start generation of power by 31.03.2014, however, the commissioning of the solar project by the Appellant got delayed and finally the project got commissioned only on 31.12.2014. The State Commission while passing the final order dated 21.09.2014 vide which the commissioning of the solar project was extended till 31.12.2014, stipulated that the applicable tariff for the Appellant would be the tariff as determined by the Commission for FY 2014-15. While learned counsel for the Appellant contend that the tariff of Rs.6.44/kWh discovered by HPPC through a competitive bidding is not applicable to the Appellant due to the fact that the said bidding was declared null and void by the State Commission and as such the levelised tariff of Rs.745/kWh determined by the Commission for FY 2014-15 for solar power plants should apply. On the other hand, learned counsel for the Respondent submits that as per terms of the PPA, the Appellant is entitled for the tariff lowest of the three alternatives provided in Clause 4.1 of the PPA. Learned counsel for the Respondent also contends that the competitive bidding process undertaken by HPPC has been held as valid by this Tribunal vide its judgment dated 09.03.2018 in A.No.278 of 2016 in case of JBM Solar Private Limited. In fact, the State Commission had not approved the bidding process and the PPAs only on account of the deviations not being approved by it and not due to any other reasons. As per the directions of this Tribunal, the State Commission approved the PPAs signed between HPPC and the selected bidders. As such the contentions of the Appellant that the bidding process was illegal is not correct. While taking note of the judgments of this Tribunal and Hon'ble Gujarat High Court, it emerges that the bidding process undertaken by HPPC was legally sustainable and as such the lowest tariff discovered in the process has to be applied to the case of the Appellant i.e. the tariff at Rs.6.44/kWh. In view of these facts, we are of the opinion that the State Commission has allowed the tariff

applicable to the Appellant's solar project appropriately and the impugned order does not suffer from any legal infirmity. Hence, interference from this Tribunal is not called for."

(Emphasis supplied)

Thus, HPPC had brought out its facts before Hon'ble APTEL that the tariff of **Rs. 6.44/kWh discovered in the bidding process** has been replaced by Hon'ble APTEL with Rs 5.68 per kWh vide its order dated 09.03.2018 in Appeal No. 278 of 2016 in the case of JBM Solar Private Limited. Hon'ble APTEL, after considering the applicable provisions in the PPA and legal history of Appeal No. 278 of 2016, decided that lowest discovered tariff by HPPC of Rs. 6.44/kWh is applicable in the case, which might have been altered in the subsequent proceedings before various adjudicating authorities. The PPA provides for the '*lowest tariff quoted and accepted in the first long term tender for purchase of solar power through competitive bidding to be floated by HPPC*' and the lowest tariff quoted and accepted by HPPC was Rs. 6.44/kWh. It was only after rejection of discovered tariff of Rs. 6.44/kWh by this Commission that tariff of Rs. 5.68/kWh was made applicable on those generators with the intervention of Hon'ble APTEL. Thus, the tariff quoted and accepted by HPPC remained Rs. 6.44/kWh.

However, the contention of the petitioner to allow the levelized tariff of Rs. 6.44/kWh instead of year to year tariff corresponding to the levelized tariff of Rs. 6.44/kWh, cannot be accepted, since the same is against the settled determination of tariff in the order of this Commission dated 21.01.2016 read with the order of Hon'ble APTEL dated 27.05.2019.

Accordingly, the Commission concludes that the year to year tariff corresponding to the levelized tariff of Rs. 6.44/kWh is the correct and legal rate applicable to the Petitioner w.e.f. 01.04.2019 till the balance tenure of the PPA, in pursuant to the directions passed by this Commission vide its order dated 20.01.2016 and upheld by the Hon'ble APTEL vide its order dated 27.05.2019.

The settlement executed by Mr. Vinod Mittal fully satisfied the financial disputes for the period ending 31.03.2019. However, for all electricity supplied from 01.04.2019 onwards, the Respondent is contractually and legally obligated to pay the Petitioner at the year-to-year levelized rate corresponding to Rs. 6.44/kWh. However, the tariff

payable for the post settlement years will have to be reworked to arrive at the levelized tariff of Rs. 6.44/kWh for the project life.

In view of the above discussion, the Commission answers this issue in affirmative i.e. the petitioner is entitled to year to year tariff corresponding to levelized tariff of Rs. 6.44/kWh as per the PPA and the Commission's Order dated 20.01.2016?

11. **Conclusion:-**

Having answered the above issues and in light of the comprehensive analysis and findings recorded above, the Commission finds overwhelming merit in the prayers of the Petitioner. The preliminary objections regarding *Res Judicata* and limitation raised by the Respondent (HPPC) are hereby rejected.

Accordingly, the Commission accepts the prayers of the Petitioner and passes the following directions:

1. The Respondent is directed to immediately implement the directions passed by this Commission on 20.01.2016 in Case No. HERC/PRO-24 of 2015, which was subsequently upheld by the Hon'ble APTEL vide Order dated 27.05.2019.
2. The Respondent shall pay the tariff to the Petitioner at the year-to-year rate corresponding to the levelized tariff of Rs. 6.44/kWh for the period from 01.04.2019 to the balance duration of the PPA.
3. The tariff paid till 31.03.2019 is covered under the settlement of arrears; hence shall not be re-visited.
4. The year to year rate corresponding to the levelized tariff of Rs. 6.44/kWh has been calculated, as per Annexure-A, based on the year to year tariff calculated by Hon'ble CERC in its calculation of levelized tariff of Rs. 5.68/kWh, by suitably changing the capital cost and keeping the other parameters unchanged. However, tariff for the period up to 31.03.2019 has been kept unchanged and the resultant impact has been equally spread over the years commencing from the current year i.e. FY 2026-27, to arrive at the levelized tariff of Rs. 6.44/kWh.
5. The Respondent is further directed to calculate the tariff deficit; being the difference between the year to year tariff corresponding to the levelized tariff of Rs. 6.44/kWh (as per Annexure A) and the year to year tariff corresponding to the levelized tariff of Rs. 5.68/kWh, for all energy injected by the Petitioner

from 01.04.2019 onwards (i.e. the period subsequent to the final settlement of arrears) till 30.04.2026 and make the payment within thirty days from the date of this order. Further, in line with the principle of restitution, interest @ 9.15% p.a. i.e. the average rate of interest on working capital allowed to DISCOMs in the ARR order dated 25.03.2026, shall also be payable from the date the respective original monthly invoices were due till the date of payment of differential amount. The differential amount shall carry interest on a month-to-month basis, and the liability shall continue to accrue till full payment of both principal and carrying cost. Needless to add that any further delay in payment of differential tariff along with applicable interest thereon, beyond the allowed period of thirty days, will attract late payment surcharge @ 1.25% per month as per Article 5.6 of the duly executed PPA between the parties.

12. In terms of the above Order, the present petition along with the IAs filed in the matter, if any, is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14.05.2026.

Date: 14.05.2026
Place: Panchkula

Sd/-
(Shiv Kumar)
Member

Sd/-
(Mukesh Garg)
Member

Sd/-
(Nand Lal Sharma)
Chairman

Annexure-A

Year	Financial Year	Year to Year Tariff corresponding to the levelised tariff of Rs. 5.68/kWh, as per CERC order dated 29.04.2016			Year to Year tariff recalculated to arrive at levelised tariff of Rs. 6.44/kWh		
		Year to Year Tariff	Discount factor	Discounted tariff	Year to Year Tariff	Discount factor	Discounted tariff
1	2014-2015	7.08	1.00	7.08	7.08	1.00	7.08
2	2015-2016	6.87	0.90	6.21	6.87	0.90	6.21
3	2016-2017	6.65	0.82	5.43	6.65	0.82	5.43
4	2017-2018	6.44	0.74	4.75	6.44	0.74	4.75
5	2018-2019	6.22	0.67	4.15	6.22	0.67	4.15
6	2019-2020	6.01	0.60	3.63	6.85	0.60	4.13
7	2020-2021	5.8	0.55	3.16	6.60	0.55	3.60
8	2021-2022	5.6	0.49	2.76	6.36	0.49	3.13
9	2022-2023	5.39	0.45	2.40	6.12	0.45	2.72
10	2023-2024	5.19	0.40	2.09	5.88	0.40	2.36
11	2024-2025	5.38	0.36	1.96	6.09	0.36	2.21
12	2025-2026	5.18	0.33	1.70	5.85	0.33	1.92
13	2026-2027	3.71	0.30	1.10	5.87	0.30	1.74
14	2027-2028	3.76	0.27	1.01	5.92	0.27	1.59
15	2028-2029	3.81	0.24	0.93	5.95	0.24	1.44
16	2029-2030	3.87	0.22	0.85	6.01	0.22	1.32
17	2030-2031	3.93	0.20	0.78	6.06	0.20	1.20
18	2031-2032	3.99	0.18	0.72	6.13	0.18	1.10
19	2032-2033	4.05	0.16	0.66	6.19	0.16	1.00
20	2033-2034	4.12	0.15	0.60	6.26	0.15	0.92
21	2034-2035	4.2	0.13	0.56	6.33	0.13	0.84
22	2035-2036	4.27	0.12	0.51	6.41	0.12	0.77
23	2036-2037	4.35	0.11	0.47	6.49	0.11	0.70
24	2037-2038	4.44	0.10	0.43	6.58	0.10	0.64
25	2038-2039	4.53	0.09	0.40	6.67	0.09	0.59
	Total		9.57	54.34		9.57	61.57
	Levelized Tariff			5.68			6.44

Note: The year to year tariff determined as above, corresponding to the levelized tariff of Rs. 6.44/kWh, is applicable w.e.f. 01.04.2019.