

Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2167/2023

In the matter of Petition filed u/s 86(1) (f) of the Electricity Act, 2003 for adjudication of dispute and also seeking compensation u/s 70 of the contract Act, 1872.

Coram:

Dr. B.N. Sharma,	Chairman
Sh. Hemant Kumar Jain,	Member
Dr. Rajesh Sharma,	Member

Petitioner: Maharaja Shree Umaid Mills Limited

Respondents : 1. Jodhpur Vidhyut Vitran Nigam Ltd
2. Rajasthan Urja Vikas Nigam Limited
3. Rajasthan Rajya Vidhyut Prasaran Nigam Limited.

Date of hearing : 05.10.2023, 05.12.2023, 11.01.2024, 30.01.2024, 13.02.2024

Present : Ms. Susan Mathew, Advocate for Petitioner.
Sh. Bipin Gupta, Advocate for Respondent RUVNL
Sh. Rahul Lodha, Advocate for Respondent RVPNL.

Order Date: **02.04.2024**

Order

1. M/s Maharaja Shree Umaid Mills Limited (hereinafter also referred as "Petitioner") has set up two wind energy based power projects of 1.50 MW

each at village Chord District Jaisalmer under REC Mechanism and the same was commissioned on 30.03.2012.

2. Jodhpur Vidyut Vitran Nigam Ltd (hereinafter also referred as "JdVVNL" or "Respondent No. 1") is a company carrying on the business of distribution and supply of electricity in the area of supply mentioned in its license and having its registered office at New Power House, Basni industrial area, Jodhpur.
3. Rajasthan Urja Vikas Nigam Limited (hereinafter also referred as 'Respondent no. 2' or 'RUVNL') is a Company created by the Govt. of Rajasthan to carry out power trading business of the State power Distribution Companies and has executed Power Purchase Agreements ('PPAs') with the petitioner on behalf of Jodhpur Vidyut Vitran Nigam Limited.
4. Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. (hereinafter also referred as "RRVNL" or "Respondent No. 3") is a company under the Companies Act, 1956 and having its Registered Office at Vidhyut Bhawan, Jyoti Nagar, Jaipur and functions as Transmission and Bulk Supply Licensee in the State.
5. **The petitioner in its petition and during hearing(s) mainly made following submissions:**
 - 5.1 The Petitioner submitted that initially PPA was executed with JdVVNL under REC mechanism. However, in the year 2014, fresh PPA was executed with JdVVNL on 25.08.2014 for supply of power under preferential tariff at Rs.4.46 per kwh. Though the PPA was executed on 25.08.2014, the re-commissioning took place on 31.10.2014 without any break or loss of power. The power supplied till 31.10.2014 was accounted under the REC mechanism and the power supplied w.e.f 01.11.2014 onwards was under the Preferential tariff mechanism as per the PPA executed on 25.08.2014.

- 5.2 The Petitioner further submitted that on requirement of additional power for its units, the Petitioner requested RRECL on 01.02.2017 for allowing switching over of 3 MW Wind Power plants from PPA mode to Captive mode, to use 100% power for its Textile Manufacturing Plant at Pali. RRECL forwarded the Petitioner's request to Respondent No.2 vide its letter dated 13.02.2017 for necessary consideration.
- 5.3 The Petitioner also submitted that JdVVNL ignored and neglected the requests of the Petitioner and did not respond to the said application for a period of more than 2 years in spite of repeated reminders and personal follow ups. Therefore, the Petitioner again requested RRECL on 01.02.2019 for issuing necessary approval for switchover of its Plant from Preferential Tariff mode to Captive Mode. RRECL once again forwarded the request to RUVNL vide their letter dated 07.02.2019 with recommendation to allow switching over as requested by the Petitioner.
- 5.4 The Petitioner further submitted that there was still no response to the requests and the Petitioner for more than three years have been paying huge amount as electricity bill as HT consumer of the Distribution Licensee. The energy sold to the JdVVNL under the PPA was getting adjusted towards the Renewable Purchase Obligation of the JdVVNL. The Respondents were, never interested in Switching over due to the commercial advantage it was having due to the PPAs executed with the Petitioner, which led to the Respondents delaying the requests of the Petitioner for a period of more than 3 years. The Petitioner once again sent a letter dated 11.10.2019 for the same.
- 5.5 The Petitioner again submitted that RUVNL upon receipt of the above letter, on 25.10.2019 sought information from the Petitioner with respect of the location of Captive usage of energy, which was provided vide letter dated 30.10.2019.

- 5.6 The Petitioner also submitted that the Respondent Discom in its 34h Meeting of the Board of Directors held on 8th November, 2019 has in principle approved the request of the Petitioner to switch over its 3 MW Wind power plant to Captive Mode. A bare perusal of the minutes of meeting makes it crystal clear that nowhere it has been mentioned to terminate the PPA immediately, but has given in principle approval to switching over the plants to Captive Mode, which allows the Respondents to start the procedure for the switchover and complete the same in a time bound manner so that the PPA can be terminated without any energy losses to the Petitioner.
- 5.7 The Petitioner again submitted that the Respondents arbitrarily and whimsically obtained an undertaking dated 10.12.2019 from the Petitioner on the assurance of completing the switchover by 31.12.2019 without conveying the minutes of meeting dated 08.11.2019 to the Petitioner; subsequently the Respondents issued a short notice dated 11.12.2019 to the Petitioner intimating about the approval of switchover of PPA to Captive Mode and termination of PPA w.e.f 01.01.2020. However, the letter dated 11.12.2019 was issued after obtaining the Undertaking on the basis of assurance and concealment of facts. Also, there was no direction to the Petitioner to adopt the procedures applicable for the New Captive Power Plants. The Petitioner immediately thereafter vide its letter dated 12.12.2019 requested the JdVVNL to issue necessary instructions to execute the required Wheeling and Banking Agreements on or before 01.01.2020 so that necessary switchover can be completed in time in all respects without any loss of power.
- 5.8 The Petitioner further submitted that as required by the Respondents vide their letter dated 17.12.2019, the Petitioner vide letter dated 18.12.2019 has furnished all the required details as per the conditions laid down in the Electricity Rules, 2005 and also intimated that the unit is 100% owned by the Petitioner who shall consume 100% energy as captive use at their Pali

Manufacturing Plant having 132 KV voltage supply connection with the Respondent. The Petitioner also requested the Respondent to complete all the formalities mainly the execution of Wheeling & Banking Agreement on top most priority so that Transmission Agreement with Respondent No.3 can be executed before the termination date of PPA.

- 5.9 The Petitioner further submitted that vide said communication the Petitioner also undertook to make the payment of Transmission and Wheeling Charges and to follow all applicable rules and regulations for Captive Power Plant based on Renewable Energy (wind) from time to time.
- 5.10 The Petitioner further submitted that instead of executing the agreements as required, JdVVNL advised the Petitioner to complete all the formalities as defined in Procedures for Grant of Open Access as approved by the State Commission vide its letter dated 24.12.2019, which was not at all required in the case of the Petitioner as the process of the Petitioner is switch over and not setting up new Captive Power Plants. The procedures laid down by the State Commission is applicable for New Power Generators and are lengthy as these procedures start from permission from RRECL for installation, technical feasibility of site for installation, availability/assessment/approval of power evacuation system, approval and installation of metering equipment, execution of Transmission Agreement with RVPNL, execution of Wheeling & Banking Agreement with Distribution Licensee and final approval and commissioning of metering equipment by M & P JdVVNL.
- 5.11 The Petitioner also submitted that in the case of the Petitioner all these formalities and compliances were completed long back in the year 2012 at the time of signing of the First PPA under the REC mechanism. All that was required to be done was the execution of the Wheeling & Banking Agreement and Transmission Agreement, as the power was being regularly generated, metered and supplied to the Respondents under the PPA

dated 25.08.2014 and there is no change in the site condition or evacuation system.

5.12 The Petitioner also submitted that RRECL also issued a letter dated 28.01.2020 to the Respondent as well as RVPNL requesting them to execute necessary agreements for the switchover into Captive mode. The Petitioner vide letter dated 29.01.2020 informed the Respondent Discom as well as Respondent No.3 that the ABT meters with Proper metering arrangements are already in place and therefore Joint Meter Reading (if required) for the re-commissioning of the projects under Captive Mode can be done simultaneously to the execution of the Wheeling and Banking Agreement by Discom and Transmission Agreement by RVPNL.

5.13 The Petitioner again submitted that it submitted Bank Guarantee as security deposit on 06.02.2020 for execution of the necessary agreements, but the Respondents without following the requisite formalities, kept on insisting the Petitioner to do all empty formalities which were not required in the case of the Petitioner. Even the NOC as required by Respondent No.3 was issued only on 11.03.2020, that too when the Petitioner has addressed a letter dated 4.03.2020 to the Respondent Discom that the requirements as sought by them not necessary for a Plant which is already commissioned long back on 30.03.2012. Even after forwarding the NOC by the Petitioner to Respondent No.3 for executing the Transmission Agreement no action was taken by the Respondent No.3 which shows the lethargic approach of the Respondent No.3.

5.14 The Petitioner further submitted that in the meantime, on 22.03.2020, the Government of India imposed complete lock down due to Covid-19 pandemic followed by various Lock Down orders/restrictions by the Rajasthan State Government as well. Considering the inordinate delay in switching over to captive use and the fact that the Petitioner have been

paying a huge amount to the Respondent as HT Consumer, for its consumption, the Petitioner vide letter dated 22.06.2020 requested the Respondent 2 for restoration of its status as a Generator under preferential mechanism as the Petitioner realized that the Respondents were arbitrarily, whimsically and with malafide intention delaying the switchover. The manufacturing plant of the Petitioner was also completely shut down due to Lock down orders and it was re-started only on 09.06.2020 that too with various restrictions as per the guidelines issued by the State Government.

5.15 The Petitioner also submitted that no actions were taken by the Respondents in pursuance of the request of the Petitioner to restore the PPA. Therefore, RRECL also vide letter dated 29.07.2020 recommended the re-instatement of the PPA since no agreements were executed for switchover to Captive Mode till then.

5.16 The Petitioner also submitted that aggrieved by the inaction of the Respondents, the Petitioner filed Petition No. RERC /1912/21 qua the letter dated 11.12.2019 and seeking consequential reliefs, which was dismissed by the Commission vide the order dated 30.09.2021. The Review Petition No. RERC/1959/2021 filed against the said order was also dismissed by the Commission vide order dated 29.11.2022.

5.17 The Petitioner further submitted that the Petitioner has challenged the order dated 30.09.2021 passed by this Commission in Petition No. RERC/1912/21 before the Hon'ble Appellate Tribunal. In the meantime, the Petitioner issued a letter dated 06.01.2023 to the Respondents to complete the switch over procedures and further after filing the above Appeal, the Petitioner once again sent a letter dated 09.02.2023 to the Respondent Discom and RRVPNL to expedite the switch over process. The Respondents upon receipt of the above letters orally directed the Petitioner to approach RRECL for necessary approval from State Level Screening Committee (SLSC) in

pursuance of which the Petitioner issued a letter dated 20.02.2023 to RRECL requesting for necessary approval from SLSC for switchover of the plant of the petitioner to Captive.

- 5.18 The Petitioner further submitted that the RRVPN, unlike the early occasion, without insisting for any unwarranted procedural formalities, immediately on 22.02.2023 issued letter granting permission to execute Open Access Agreement with the Petitioner for a period from the date of agreement till 31.03.2035 subject to payment of Security Deposits for Transmission Charges and SLDC charges. Immediately on the next day i.e. on 23.02.2023, the Petitioner deposited. Rs. 16,94,340/- towards Security Deposit for Transmission Charges and Rs. 11,708/- towards Security Deposit for SLDC Charges.
- 5.19 The Petitioner further submitted that on 25.02.2023, the Petitioner sent a letter to RRVPNL providing the details of ABT Meters installed at injection end and details of payment of security deposits, thereby all the formalities for the execution of the agreement, subsequently on 08.03.2023, the Agreement for Long Term Open Access was executed at Jaipur with RRVPNL.
- 5.20 The Petitioner further submitted that the Petitioner immediately on 09.03.2023, once again issued a letter to Respondent to execute Wheeling & Banking Agreement so that the switchover procedures will be completed and the Plant of the Petitioner will become a Captive Power Plant from the date of execution of Wheeling & Banking Agreement. In reply to the said letter, the Respondent Discom issued a letter dated 09.03.2023 to the Petitioner to submit approval of SLSC for the switchover. The Respondent vide its letter dated 17.03.2023 expressed their inability to execute Wheeling & Banking Agreement or completing other formalities at Discom level in the absence of SLSC/SLEC approval.

- 5.21 The Petitioner again submitted that on 21.03.2023 the Petitioner once again requested RRECL for intervening and issuing necessary instructions to JdVVNL for completing formalities. The copies of earlier approval of Respondent No.3 dated 11.12.2019 and RRECL dated 28.01.2020 were also re-submitted for ready reference and prompt action. RRECL vide letter dated 26.04.2023 conveyed to the Petitioner about the approval of SLSC taken in its meeting dated 05.04.2023 for the switchover of the Petitioner's plants, subject to withdrawal of petition filed in APTEL regarding challenge to the impugned letter dated 11.12.2019/ reinstatement of PPA and to furnish document in that regard for further action.
- 5.22 The Petitioner again submitted that in view of the subsequent development, the Petitioner, who was more interested in reducing the huge financial losses and additional financial burden it has been incurring, agreed "not to press" for the relief for re-instatement of PPA as sought in the appeal subject to the JdVVNL completing the switchover and commissioning the project under Captive within a period of one month. In pursuance to the same, the Petitioner filed an I.A No.1249/2023 before the APTEL in Appeal No. 463 of 2023 seeking amendment in the prayers in view of the subsequent development.
- 5.23 The Petitioner further submitted that the APTEL expressed the view that since the Petitioner has agreed for switchover and given an undertaking before the RRECL for not insisting for reinstatement of the PPA, the only remedy available to the Petitioner is to go back to the Commission and file fresh Petition seeking compensation for the energy injected from the date of termination of PPA till the switchover is completed. The counsel for the Appellant after instructions from the client, sought liberty from the APTEL to withdraw the Appeal with liberty to raise all the issues before the Commission, in view of the subsequent developments as stated in the amendment application, the Hon'ble APTEL therefore disposed of the

Appeal vide order dated 01.06.2023 granting liberty to approach the Commission seeking reliefs which were not sought in Petition No.1912/2021.

5.24 The Petitioner further submitted that subsequent to the withdrawal of the Appeal, the same was intimated to the Respondents by the Petitioner. The JdVVNL vide its letter dated 23.06.2023 directed the Petitioner to deposit the security amount towards Wheeling Charges for the purpose of executing the Wheeling and Banking Agreement, which was compiled by the Petitioner on the same date and subsequently the JdVVNL executed the Wheeling and Banking Agreement on 26.06.2023 from which date the plants of the Petitioner have been treated under CPP mode and accordingly the Respondent Discom started the energy adjustment as Captive Power plant.

5.25 The Petitioner also submitted that the limited question of law to be decided in the present matter, which were not sought in the earlier petition No. RERC 1912/2021 is as follows:

- a. Whether the energy injected into the grid from 1.01.2020 till 25.06.2023 should be adjusted against the HT bills of the Petitioner?
- b. Whether the Appellant is entitled to be compensated to offset the losses it has suffered due to switching over the plants of the Petitioner from Preferential to Captive Power Mode from 1.01.2020 till 25.06.2023.
- c. If issue no. (b) is decided in affirmative, What compensation?

5.26 The Petitioner also submitted that the Respondents failed to pay tariff for the energy injected quoting the alleged termination of PPA when the Respondent Discoms under the PPA has no power to terminate the PPA but the termination was solely for the purpose of switch over to Captive Mode on the requests made by the Petitioner and pursuant to the approval by

the Board of Directors dated 8.11.2019. The Respondents further with malafide intentions kept on using the benefit of the energy injected by the Petitioner who have been waiting for the switchover procedures to be completed before the alleged termination date and had been billing a huge amount as tariff from the Petitioner for the energy consumed by them as HT Consumer. The Respondents also failed and neglected to adjust the energy injected by the Petitioner into the Grid against the energy consumed by the Petitioner.

- 5.27 The Petitioner also submitted that the Restitution principles dominant especially in the Power Sector demands one party to restore the other party into the same economic condition to offset all the losses it has been suffered due to the happening of a particular event which occurred for reasons not attributable to the Petitioner. It is stated that even the concept of Late Payment Surcharge also establishes the principle that time is the essence of any service for which money is the consideration. The Petitioner has paid a huge amount of Rs. 122.19 Crores as HT consumer from January, 2020 till June, 2023. If the energy injected into the grid would have been adjusted against the monthly consumption or the switchover was completed before the termination date, the Petitioner could not have paid the said huge amount. In other words, if the switchover had taken place in a smooth way as per the decision taken by the Board of Directors on 8.11.2019, the Petitioner could have saved a huge amount.
- 5.28 The Petitioner also submitted that there was no reason for the Respondents to delay the switchover process as the subsequent switchover procedure makes it ample clear that all the action for the switchover were to be taken by the Respondents and there was nothing the Petitioner Could have been done for the switchover process. It was the Respondents who had to execute the Wheeling and Banking Agreement as well as the Transmission Agreement. Though the JdVVNL asked for fresh approval from SLEC, the Petitioner took prompt action to comply the same. It is pertinent to mention

here that in 2019 there was no requirement of SLEC's approval, especially, in the light of the approval granted by the Board of Directors dated 8.11.2019. The Petitioner therefore is entitled to be compensated to offset the losses suffered, which is in addition to their entitlement to get the energy injected into the grid adjusted against their bills as HT consumer from the period commencing from 1.01.2020 till 25.06.2023.

- 5.29 The Petitioner further submitted that in view of the above facts and circumstances, the Petitioner is filing the present Petition on the following grounds amongst others, which are in addition and without prejudiced to each other:

GROUND

- A. Because there was inordinate delay on the part of the Respondents in taking each step and the ulterior motives of the Respondents are apparent from the fact that the Respondents insisted for adopting procedure which is not applicable to the case of the Petitioner and has been enjoying free energy since 1.01.2020 till 25.06.2023. Further the malafide intention of the Respondent Discom is clear from the fact that consensus in the form of undertaking was fraudulently obtained from the Petitioner without intimating about the exact decision taken on 8.11.2019, due to their dominant position by stating that the same is required for the switchover and the process of switchover will be completed by 31.12.2019. Immediately on obtaining the undertaking the Respondent Discom issued the communication dated 11.12.2019 informing about the so-called decision of the Board of Directors to terminate the PPA w.e.f 1.01.2020 whereas no such decision to terminate the PPA was taken by the Board of Directors. Further the Respondent Discoms failed in the commitment to complete the switchover procedures before the alleged termination date. Therefore, the Petitioner is entitled for energy adjustment by way of re-calculating

the bills from the period 1.01.2020 till 25.06.2023 as Captive power plant and any excess amount paid should be either refunded or adjusted against the future bills. In addition to the above, the Petitioner is also entitled for compensation to offset the losses suffered by them on account of the illegal action/inaction on the part of the Respondents.

B. Because even after the alleged termination of the PPA w.e.f 1.01.2020, the Respondent Discom continued to receive the energy injected by the Petitioner into the Grid and used it for their commercial gain. It is stated that the Respondent Discom did not send a single communication to the Petitioner to stop injecting the energy and continued to enjoy the benefit without any objections. It is stated that the Power Plants of the Petitioner were finally switched over to Captive Power Plants on 26.06.2023 and till then the energy injected to the Grid was freely used by the Respondent Discoms without any protest or demur for their benefit/monetary gain. It is stated that since supply of power was non-gratuitous, the Petitioner is entitled to be compensated for the power supplied by them which was received and consumed by the Respondent Discom; having continuously received power from the Petitioner for almost three and half long years, it is not open to Respondent Discom to contend that they are not liable to pay consideration and further compensate the Petitioner for the power supplied by them, more so since the Respondent Discom had, in turn, supplied the said power to their consumers, and have collected money from them at the tariff fixed by the Commission.

C. Because the Respondent totally ignored the reason for the termination of PPA, which was for the switchover of the plants to Captive Mode; other than on the request of the Petitioner, the Respondents has no power/ authority to terminate the PPA. The Respondent Discom, using its mighty and dominant position, has forced the Petitioner to give an undertaking on the assurance that the switchover procedure, which

hardly takes a maximum of a couple of weeks, will be done before the proposed termination date. The Respondent failed and neglected to take any action after the issuance of the letter dated 11.12.2019, which shows the ulterior motives of the Respondent and therefore the Petitioner is entitled for payment/energy adjustment for the energy injected into the grid in the interregnum period and also entitled for all the losses suffered on account of the inaction on the part of the Respondents.

- D. Because the Petitioner is entitled to be compensated under Section 70 of the Contract Act as the Respondent Discom on one hand stopped paying the Tariff to the Petitioner on the basis of the alleged termination of the contract/PPA with effect from 1.01.2020 on other hand not only failed to adjust the said energy against the consumption of energy by the Petitioner as HT Consumer but also didn't take any steps to refrain the Petitioner from injecting energy into the Grid but enjoyed the energy injected into the Grid for a period of more than three and half years without making any payment and/or compensation, on the ground of absence of PPA for the said period. It is stated that Section 70 comes into picture when there is no agreement/contract between the parties and therefore the Petitioner is entitled for the reliefs as sought in the present Petition.

Section 70 relates to obligations of person enjoying the benefit of a non- gratuitous act, and stipulates that, where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. Three conditions must be satisfied before Section 70 can be invoked. The first is that a person should lawfully do something for another person or deliver something to him. The second condition is that, in doing the said thing or delivering the said thing, he must not intend to act gratuitously, and the third is

that the other person, for whom something is done or to whom something is delivered, must enjoy the benefit thereof. When these conditions are satisfied, Section 70 imposes upon the latter the liability to compensate the former in respect of, or to restore, the thing so done or delivered. (State of W.B. v. B.K. Mondal and Sons: AIR 1962 SC 779).

- E. Because the Petitioner is entitled for compensation for the unlawful enrichment by the Respondent Discom. It is stated that in the present case, the PPA was allegedly terminated on 1.01.2020 and even if there was no contract as claimed by the Respondents in the previous Petition, they continued to enjoy the energy injected by the Petitioner without any objections till the switchover of the Power plants to Captive Mode on 26.06.2023. The Respondent Discom with malafide intention refused to execute the Wheeling and Banking Agreement and had been charging a huge amount from the Petitioner for the consumption of energy by the Petitioner as HT Consumer. Section 70 prevents one party from unlawful enrichment. Once the energy injected into the Grid by the Petitioner on the genuine and bonafide reason that the Respondents will switch over the power plant into Captive Mode as per the decision taken by the Board of Directors of the Respondent Discom and the enjoyment of the same by the Respondent Discom without any refusal, they are bound to compensate the Petitioner as per Section 70 of the Contract Act.
- F. Because the Respondent Discom failed to adjust the energy injected against the energy consumed by the Petitioner as HT Consumer and deprived the Petitioner to receive not only the tariff but also caused to incur a huge amount running into approximate Rs. 5 to 6 crores (actual amount will be ascertained upon revising the monthly power bills after allowing adjustment of the monthly injected power) as excess payment of electricity charges as HT Consumer, ignoring the fact that the Board of Directors have taken the decision for switchover of the power plants into Captive Power Mode, thereby the Petitioner would be saving a

huge amount as HT consumer. There were no logical reasons for delaying the switch over procedure but the Respondents in an arbitrary and whimsical way refused to take any action to even the Wheeling and Banking Agreement as well as the Transmission Agreement due to which the Petitioner has suffered huge losses and also incur huge amount for making payments to the Respondent Discom as HT consumer, which the Petitioner is entitled to receive from the Respondent, hence, the Petitioner is entitled to claim compensation for each day of losses it has suffered.

G. Because the Respondents had adopted unethical and unlawful tactics in executing the requisite agreements due to which the Petitioner has suffered huge losses, harm and injury. It is stated that there was no reason for not switching over the plants into Captive Power Mode in compliance of the decision dated 8.11.2019. All that was required for switch over was execution of Wheeling and Banking Agreement and Transmission Agreement, which was to be done by the Respondents. There was no delay on the part of the Petitioner; on the contrary the Petitioner was running from pillar to post for getting their plants switchover to Captive Power Mode. The Respondents kept on insisting the Petitioner to follow procedure which was not required under law, which is evident from the fact that on the Respondent No.3 executed the Transmission Agreement, on compliance of their demand for an NOC from the Discom. Further the Discom also agreed for executing the Wheeling and Banking Agreement on submission of approval letter from SLEC. The delay occurred was solely contributable to the Respondents and therefore the Petitioner is entitled for the reliefs as sought in the present petition.

H. Because it is a well settled law that a claim for compensation lay even though there is no contract or there existed a contract which was not valid and enforceable. Further voluntary acceptance and enjoyment of a work done / service provided by one party creates a cause of

action for the other party to make a claim u/s 70 of the Contract Act in the present case the JdVVNL continued to avail the benefit of power supply without disconnecting the same and utilized the power without any demur which constitute a fresh relationship between the Petitioner and the respondents dehors the PPAs which formed the basis for the claim u/s 70 of the Contract Act, which transaction was separable from the obligations arising under the PPAs even though the PPAs were held to be unenforceable and therefore the Petitioner is entitled for compensation in addition to the energy adjustment.

5.30 In view of the submission made hereinabove, the petitioner in its petition mainly prayed to:

- a) Direct the Respondents to adjust the energy injected by the Petitioner into the Grid, from 1.01.2020 till 25.06.2023 i.e. 12230211 units against the bills of the Petitioner as HT Consumer and revise the said bills from January, 2020 till 25th June, 2023 and to adjust the excess amounts paid by the Petitioner against the future bills.
- b) In alternative to prayer (a) the Respondents may be directed to pay compensation of Rs.6.50 per unit (being the average cost of power purchased by the Petitioner from the Respondent No. 1 as HT Consumer) for the energy injected into the grid from 1.01.2020 till 25.06.2023 or such other rate/amount as deemed fit and proper by this Commission along with interest from the date of order till realization.
- c) Declare that the Petitioner is entitled to be compensated to offset the financial losses suffered by the Petitioner on the monthly excess amount paid by the Petitioner from 1.01.2020 till 25.06.2023 in case prayer (a) is allowed
- d) Pass any such other order as this Commission may deem fit and proper in the facts and circumstances of the case.

6. Reply on behalf of RRVPN:

- 6.1 RRVPN submitted that Petitioner vide letter dated 01.02.2017 requested RRECL for allowing switching over of 3.0 MW Wind Power Plants from PPA mode to Captive mode and RRECL in turns forwarded this request to MD, RUVNL on 13.02.2017.
- 6.2 The RRVPN further submitted that BoD of RUVNL in its 34th meeting held on 08.11.2019 considered the request of the Petitioner and allowed it to switch over 3.0MW Wind Power Project from Power Purchase Agreement signed on 25.08.2014 with Jodhpur Discom. The said PPA was terminated by RUVNL vide letter dated 11.12.2019.
- 6.3 The RRVPN further submitted that thereafter Petitioner filed Petition No. 1912/2021 before RERC challenging the PPA termination by RUVNL wherein RVPN was not a party and the same was dismissed by the Commission on 30.09.2021. Aggrieved by aforesaid, Petitioner filed review petition No. 1959/2021 before RERC which was dismissed on 29.11.2022. It is pertinent to state here that in the aforesaid petitions, RVPN was not a party and no direction was given by the Commission qua RVPN. Thereafter Petitioner filed Appeal No. 463 of 2023 challenging above orders of RERC and the Appeal was withdrawn before Hon'ble APTEL vide order dated 01.06.2023.
- 6.4 The RRVPN also submitted that Petitioner submitted an online application on 11-02-2020 for LTOA of 3.0 MW w.e.f 12-04-2020 to 31-03-2035. The LTOA application was processed by RVPN in accordance to RERC (Terms and Conditions for Open Access) Regulations, 2016. NOC for LTOA, was sought from Discom vide letter dated 18-02-2020 and NOC was conveyed by JdVVNL for injection and drawl end vide letter dated 11.03.2020. Thereafter, on completion of all the requisite formalities above LTOA of

3.0MW from 220kV GSS Akal to 132kV GSS Pali was allowed to Petitioner vide this office letter dated 143 dated 26-05-2020. The open access was allowed subject to the condition of providing certificate for installation of ABT compliant meters in respect of injection end and Petitioner was requested to deposit the security amount and execute the Open Access Agreement in the prescribed manner as per provisions of RERC (Terms and Condition for Open Access) Regulations 2016. However, Petitioner has neither deposited security amount nor has executed agreement for LTOA and did not convey their decision of not proceeding further.

6.5 The RRVPN further submitted that thereafter, Petitioner again approached their office vide their letter dated 09.02.2023 in the matter of switchover of their Power Purchase Agreement of 3.0 MW wind power plant from Preferential Tariff to captive mode. Considering their request, they were allowed to execute the Open Access Agreement for 3.0 MW LTOA from 220kVGSS Akal to 132kV GSS Pali for the period from date of Agreement to 31.03.2035 after fulfilling following conditions as per this office earlier letter no. 143 dated 26-05-2020 which are as under:

- i. Provide certificate for installation of ABT compliant meters in respect of injection end.
- ii. Deposit security against transmission charges as per current tariff amounting to Rs 16,94,340/- (3 months x 3.0 MW x 188.26 Rs/kW/month x 1000)
- iii. Deposit security against SLDC charges as per current tariff amounting to Rs 11,708/-(3 months x 3.0MW x 130.08 paisa/kW/month x 1000)

6.6 The RRVPNL further submitted that this office letter dated 22.02.2023

allowed the Petitioner to execute open access agreement after fulfilling conditions mentioned in sanction letter dated 26.05.2020 and Petitioner furnished certificate for installation of ABT compliant meters and deposited security against transmission and SLDC charges. Thereafter, LTOA Agreement was executed on 08-03-2023.

6.7 The RRVPN also submitted that the petitioner contention regarding Petitioner letter dated 29.01.2020 wherein the petitioner has informed the RRVPN regarding ABT meter status, are not admitted in the manner stated and Petitioner submitted an online application on dated 11-02- 2020 for Long Term Open Access of 3.0MW w.e.f 12-04-2020 to 31-03-2035. The LTOA application was processed by RVPN in accordance with RERC(Terms and Conditions for Open Access) Regulations, 2016 and Procedure for grant of Open Access by carrying out the following acts:

- i. NOC for LTOA was sought from injection and drawl end Discom i.e. JdVVNL.
- ii. NOC was conveyed by JdVVNL for injection and drawl end vide letter dated 11-03-2020.
- iii. The Shortcomings observed in the Bank Guarantee furnished along with the LTOA application were conveyed to the firm. The Petitioner failed to overcome the shortcomings in the Bank Guarantee and requested to allow cash deposit in place of Bank Guarantee against security @Rs 10,000/MW as per Clause 10(5) of RERC Open Access Regulation.
- iv. In view of the lockdown due to Covid-19, request made by Petitioner was accepted and firm was allowed to deposit amount of security in the form of cash in place of Bank Guarantee. M/s Maharaja Shree Umaid Mills deposited the security amount on 01-5-2020.
- v. That vide e-mail dated 01-05-2020, Petitioner submitted certificate for installation of ABT meter at Drawl end and requested to allow open access with assurance to submit ABT meter certificate in respect of

Injection end in due course of time.

- vi. Upon completion of all the requisite formalities LTOA of 3.0MW from 220kV GSS Akal to 132kV GSS Pali was allowed to Petitioner vide letter dated 26-05-2020. The open access was allowed subject to the condition of providing certificate for installation of ABT compliant meters in respect of injection end. The firm was requested to deposit the security amount and execute the Open Access Agreement in the prescribed manner as per provisions of RERC (Terms and Condition for Open Access) Regulations 2016.
- vii. It shall not be out of place to state that Petitioner has neither deposited security amount nor has executed agreement for LTOA.

6.8 The RRVPN also submitted that the contentions regarding lethargic approach of RRVPN to executing WBA after getting NOC from JdVVNL are wrong, baseless and are completely denied. As already stated in the preceding paras, the LTOA application dated 11-02-2020 submitted by Petitioner was processed by RRVPN in accordance to RERC (Terms and Conditions for Open Access) Regulations, 2016 and Procedure for grant of Open Access and sanction letter was issued on 26-05-2020 wherein Petitioner was requested to deposit the security amount and execute the Open Access Agreement. But the Petitioner neither deposited security amount nor executed open access agreement and did not even took efforts to convey their decision of not proceeding further. This clearly indicates frivolous and indecisive attitude of the Petitioner who disappeared after sanction of LTOA. After lapse of nearly 2 years, Petitioner approached the answering respondent requesting again for allowing LTOA. The answering respondent was considerable enough to allow the Petitioner to execute the Open Access Agreement as per sanction letter issued earlier vide letter no. 143 dated 26-05-2020.

- 6.9 The RRVPN again submitted that contention of petitioner regarding RVPNL letter dated 22.02.2023 is not admitted and it is submitted that the Petitioner approached the answering Respondent vide their letter dated 09-02-2023 in the matter of Switchover of their Power Purchase Agreement of 3.0MW wind power plant from Preferential Tariff to captive mode. As the Petitioner had already fulfilled all the requirements as per RERC (Terms of Conditions of open access) Regulations, 2016 and open access was already sanctioned earlier vide letter dated 26-05- 2020, their request was considered and they were allowed to execute Open Access Agreement for 3.0MW LTOA from 220kVGSS Akal to 132kV GSS Pali for the period from Date of agreement to 31-03-2035 after fulfilling following conditions mentioned in sanction issued earlier vide letter dated 26-05- 2020. Thereafter, the Petitioner furnished certificate for installation of ABT compliant meters and deposited amount of security against transmission and SLDC charges following which, LTOA Agreement was executed on 08-03-2023.
- 6.10 The RRVPN further submitted that the contention made in Ground No. A to H of the Petition are denied and it is submitted that the open access was allowed on dated 26.05.2020 subject to the condition of providing certificate for installation of ABT compliant meters in respect of injection end and Petitioner was requested to deposit the security amount and execute the Open Access Agreement in the prescribed manner as per provisions of RERC (Terms and Condition for Open Access) Regulations 2016. However, Petitioner has neither deposited security amount nor has executed agreement for LTOA. Thereafter, Petitioner approached the answering Respondent vide their letter dated 09-02-2023 in the matter of Switchover of their Power Purchase Agreement of 3.0MW wind power plant from Preferential Tariff to captive mode. As the Petitioner had already fulfilled all the requirements as per RERC (Terms of Conditions of open access) Regulations, 2016 and open access was already sanctioned earlier vide letter dated 26-05-2020, their request was considered and they were

allowed to execute Open Access Agreement for 3.0 MW LTOA from 220kVGSS Akal to 132kV GSS Pali for the period from Date of agreement to 31-03-2035 after fulfilling conditions mentioned in letter dated 26-05- 2020. Thereafter, the Petitioner furnished certificate for installation of ABT compliant meters and deposited security against transmission and SLDC charges following which, LTOA Agreement was executed on 08-03-2023. In view of the aforesaid, the actions of the answering Respondents are within four corners of law and completely reasonable. On this ground alone, the present petition deserves to be dismissed.

7. Reply on behalf of RUVNL:

- 7.1 The RUVNL has submitted that the power purchase agreement of the petitioner was terminated with effect 01.01.2020 in respect of 3 MW wind power project and on termination of the PPA there was no privity of contract between the petitioner and the answering respondent, therefore, no compensation or cost of energy could be claimed by the petitioner against the answering respondent and therefore, the petition and the prayers are not maintainable and deserves to be quashed.
- 7.2 The RUVNL further submitted that the petitioner had challenged the termination of the PPA and had claimed to quash and set aside the order of termination and also to allow all consequential benefits from the date of termination of PPA. The RERC in petition no. 1912 of 2021 decided on 30-09-2021 declined to grant the prayers prayed for and rejected the petition vide order dated 30-09-2021.
- 7.3 The RUVNL further submitted that the petitioner, thereafter, approached the appellate tribunal for electricity in appeal of 463 of 2023 and the petitioner sought permission to withdraw the appeal to approach the Commission for the reliefs which were not sought earlier before the Commission and the permission was granted and appeal was dismissed. Thus, the order of regulatory commission dated 30-09-2021 has been

upheld. Since already the petitioner has claimed consequential benefits from the date of termination which have been declined by the Commission and upheld by the appellate tribunal for electricity, now by way of this petition same relief in different language cannot be permitted to be prayed as it is barred under the provisions of order 2 rule 2 of CPC and therefore the petition is liable to be dismissed.

- 7.4 The RUVNL also submitted that after the termination of the contract, petitioner tried to deviate from termination of contract and started insisting to reinstate the PPA and therefore he did not persuade the transmission company to enter into a LTOA for pursuance of transmission agreement and in absence of transmission agreement no wheeling and banking agreement could have been executed.
- 7.5 The RUVNL also submitted that there is no fault of the answering Discom. Long term agreement has been executed on 8th March 2023 and on execution of the long term open access agreement the wheeling and banking agreement has been executed on 26-06-2023 thus there is no fault of the answering respondent and therefore the petition is liable to be rejected.
- 7.6 The RUVNL further submitted that SLSC has granted permission on 05-04-2023 and that too with a condition. That condition has been satisfied by the petitioner only on 1-6-2023 and on compliance of the SLSC approval conditions within 20 days, wheeling and banking agreement has been executed on 26-06-23.
- 7.7 The RUVNL submitted that there is no question of law to be decided in light of the earlier order of the commission dated 30-09-2021 as well as the reliefs prayed for therein and the order of APTEL dated 01-06-2023. The petitioner cannot claim the adjustment of any units injected by him without any PPA

or the transmission agreement and thereafter wheeling agreement. The petitioner was also informed not to inject the energy but in spite of that petitioner continued to inject the energy gratuitously and therefore no claim can be made by the petitioner contrary to principle of the contract act as well as electricity act.

8. Rejoinder on the behalf of Petitioner

8.1 The Petitioner submitted that the PPA was terminated neither on account of any default of the Petitioner nor on account of any reasons stated in the PPA but on account of the requests made by the Petitioner dated 1.02.2019, 11.10.2019 and the subsequent decision taken by the Board of Directors of the respondents in its 34th meeting held on 8.11.2019 grant in principle approval to switch over its 3 MW Wind Power Plant from Preferential tariff to Captive Mode. The purpose of giving in-principle approval in advance and the termination was proposed by the respondents on 01.01.2020 proves that the said time was for the effective switchover to CPP Mode without any energy loss.

8.2 The Petitioner further submitted that during the pendency of Appeal No.463/2023, the Petitioner once again issued a letter dated 6.1.2023 to the Respondents to complete the switch over procedures, though the Respondents were initially in the year 2020 were insisting to adopt procedures not applicable for an already commissioned plant, for the first time, directed the Petitioner to approach RRECL for necessary approval from SLSC so that the Wheeling and Banking Agreement can be executed. It is stated that even though SLSC approval was not required as the Final Approval has to be granted by the Board of Directors, the Respondents caused delay in each and every time to have unlawful gain to themselves. It is stated that RRECL vide letter dated 26.04.2023 conveyed about the approval by SLSC dated 5.04.2023 to switchover to CPP subject to withdrawal of the Appeal filed before APTEL to the extent it has sought

reinstatement of the PPA and further directed to furnish document in support of the same.

8.3 The Petitioner also submitted that when the IA No. 1249/2023 seeking amendment in the prayers was heard, Hon'ble APTEL expressed that if the termination of the PPA vide letter dated 11.12.2019 is held to be illegal, then the consequence would be the reinstatement of the PPA and since the Petitioner has agreed for switchover, the only remedy available to the Petitioner is to go back to the Commission and to file fresh Petition seeking compensation for the energy injected from the date of termination of the PPA till the switchover has been completed, it is in this context, the Petitioner sought liberty to withdraw the Appeal with liberty to raise all the issues before this Commission. In view of the same, the Hon'ble APTEL has passed the order dated 1.06.2023 and therefore the Petitioner has rightly approached this Commission with the reliefs as prayed for in its Petition and has a strong case in its favour and therefore entitled for the reliefs as prayed for in the Petition. The relief sought in the present Petition could not have sought in the previous petition since the present cause of action arose only after the switchover of the Power plant to captive mode and hence, the provisions of Order 2 Rule 2 of CPC is not applicable.

8.4 The Petitioner further submitted that the fact that subsequently when the Transmission Agreement and Wheeling and Banking Agreement were executed in the year 2023 no such compliances were demanded by the respondents except approval from SLSC. The respondents have kept the Petitioner in dark regarding the steps to be taken and did not take any steps for executing the Agreements for a period of more than 6 months and therefore the Petitioner has challenged the letter dated 11.12.2019 so that the Petitioner would not suffer any further losses. The Respondents were commercially using the electricity injected into the grid even after the expiry of the PPA. The Respondent never disconnected the Power plants from the grid and continued to enjoy/use the electricity so generated on

the pretext of switchover procedure. It is a well settled principle that no one can take advantage of its own mistake. The respondent who acted without diligence and failed to discharge its duties cannot put the blame upon the Petitioner that the Petitioner did not persuade the transmission company. The respondent neglected and ignored the repeated requests made by the Petitioner to complete the switchover procedure within the stipulated time, took advantage of the delay for unlawful gain by not only taking huge amount from the Petitioner as HT consumers but also by selling the energy generated from the plant to its consumers.

8.5 The Petitioner submitted that the respondent even after the repeated requests failed and neglected to complete the formalities for switchover. If SLSC approval was the only criteria required for executing the Transmission Agreement and the Wheeling and Banking Agreement, why the respondent never intimated the same in the year 2019 itself, which means that in 2019 the only requirement for switchover was the approval from Board of Directors, which was received on 8.11.2019 itself and there was no cogent reason for the respondents to delay the execution of the Transmission Agreement as well as the Wheeling and Banking Agreement, which clearly shows the arbitrariness, high handedness and whimsical approach of the respondents to delay the switchover procedure on one pretext or other to have unlawful financial gain for themselves. Thus the respondents are liable to pay compensation as claimed by the Petitioner for each day of the delay caused by it.

8.6 The Petitioner also submitted that the contention of Respondent regarding the adjustment of units injected without any PPA or any WBA are denied. It is stated that the PPA has been terminated only to facilitate the switchover of the Power plants into Captive Mode and therefore it was incumbent upon the respondents to complete the switchover simultaneously so that the energy generated is not wasted or the Petitioner would not suffer any losses on any count. It is due to the inaction on the part of the respondents,

the petitioner suffered huge financial losses due to which the respondent is liable to compensate the petitioner under the provisions of the Contract Act. It was on the assurance of the respondents, the Petitioner agreed for the termination of the PPA with effect from 1.01.2020 so that the energy generated from the plant can be utilized for captive use immediately after the termination date. It is stated that Section 70 can be invoked only in the absence of a valid agreement or contract between the parties and therefore the Petitioner is entitled for the reliefs as sought in the present Petition and the communication dated 27.08.2020 does not support the contentions of the respondents. It is stated that even though the Petitioner as per the invoices were not entitled for tariff in view of the order dated 30.09.2021, they are entitled to be compensated for the losses suffered by them on account of the lacuna on the part of the respondents to switch over the Power plants into Captive mode within the stipulated time.

Commission's View

9. The Commission have given its thoughtful consideration to the facts of the case emanating from the pleadings of the parties and have taken note of rival submission made by learned counsels for petitioner as well as respondents.
10. After going through the pleadings made by the petitioner, the Commission observes that the crux of the dispute is that the petitioner wants compensation under section 70 of contract Act 1872 for the units injected into the grid after termination of PPA till Wheeling and Banking Agreement signed i.e. from 01.01.2020 till 25.06.2023, as switchover to Captive mode was allegedly delayed by Respondents even after the approval was granted from the BoD on dated 08.11.2019 and according to the petitioner, If the BoD had already approved the switchover then necessity of separate approval from SLSC to execute WBA was an attempt to abnormally delay

the switch over.

11. The Commission observes that during the pendency of Appeal before Hon'ble Tribunal, the Petitioner filed Intermediate Application No. 1249/2023 seeking amendment in prayer and Hon'ble Aptel disposed the Petition as withdrawn with respect to the I.A vide order dtd 01.06.2023 and allowed the Petitioner to go back to the Commission and to file fresh Petition seeking compensation for the energy injected from the date of termination of the PPA till the switchover has been completed. Hence, the instant petition.
12. Per contra the counsel on behalf of RUVNL has submitted that the challenge to termination of PPA was dismissed by this commission vide order dtd. 30.09.2021. The Petitioner was unable to persuade the RRVPN to enter into LTOA and in absence of the same WBA could not have been executed. Further, the LTOA was executed on 08.03.2023 and the Petitioner got SLSC approval on 05.04.2023 with condition to withdrawal of appeal filed in Hon'ble APTEL and the same was implemented on 01.06.2023. Further, in compliance of the same, WBA was executed on 26.06.2023 and hence, the Petitioner cannot claim compensation for the unit injected into the grid without PPA.
13. While supporting the arguments of RUVNL, the counsel on behalf of RRVPN submitted that the LTOA was allowed to the Petitioner in accordance to RERC (Terms and Conditions for Open Access) Regulations vide letter dated 26.05.2020 subject to deposition of security amount against transmission and SLDC charges and ABT meter compliance. But, the Petitioner neither deposited security amount nor completed ABT compliance and after lapse of nearly two years the Petitioner again requested to allow LTOA on dated 09.02.2023. Thereafter, the Petitioner furnished documents fulfilling the condition as mentioned in sanction letter on 26.05.2020, following the same, LTOA agreement was executed on RERC/2167/2023

08.03.2013.

14. Since the matter is old and complicated, for sake of simplification the commission would like to state chronology of events in brief before discussing the issues on merit.

14.1 The petitioner requested the respondent Discom for switch over of its 3 MW wind plants from PPA to Captive mode and the same was principally agreed by the Respondents. Subsequently to give effect this switchover the existing PPA was terminated with effect from 01.01.2020.

14.2 On request of the petitioner, RRECL on 28.01.2020 recommended RRVPN and JdVVNL to do needful for switchover of the petitioner's plant to Captive mode. Further, the Petitioner submitted an online application on 11.02.2020 for LTOA w.e.f 12.04.2020 to 31.03.2035. Subsequently, LTOA was allowed to the Petitioner vide letter dated 26.05.2020 subject to fulfillment of some conditions regarding security deposits and submission of compliance in respect of ABT meter. Meanwhile, the Petitioner on 22.06.2020 requested the RUVNL to re-instate the PPA due to ongoing delay in switchover and unprecedented impact on plant operation due to Covid-19 impact. RUVNL sent a letter on 27.08.2020 to the Petitioner to stop energy injection into the grid as PPA has been terminated and, the copy of the same letter also forwarded to RRVPN.

14.3 Since the switchover was allegedly getting delayed, the Petitioner filed Petition No. RERC/1912/21 in the Commission wherein the termination of PPA was challenged. The Commission dismissed the petitioner vide order dtd.30.09.2021. Again the review petition filed by the Petitioner which was dismissed vide Commission order dtd. 29.11.2022. The Petitioner filed appeal before Hon'ble APTEL against Commission's order dtd. 30.09.2021. Meanwhile, the Petitioner on 06. 01. 2023 & 09.02.2023 again requested JdVVNL and RVPN to complete the switchover process. Further, the Petitioner was directed to approach the RRECL to

get SLSC approval for switchover. Also, in response of the Petitioner request, the RVPN sent an intimation letter to execute Open Access Agreement after fulfilling the subject condition on their prior approval letter dtd. 26.05.2020.

14.4 Subsequently, the Petitioner deposited security amount on 23.02.2023 against transmission/SLDC charges . After meeting all criteria as required for Open Access, the agreement was executed on 08.03.2023. After that the Petitioner again requested JdVVNL to execute the WBA. In response of that JdVVNL requested the Petitioner to submit SLSC approval to execute WBA. Again on 17.03.2023, JdVVNL intimated the Petitioner that in- principle approval from SLSC/SLEC is mandatory for switchover as per Rajasthan Wind Policy subject to comply RERC regulation. Subsequently, The Petitioner requested the same to RRECL.

14.5 In response, RRECL intimated the Petitioner on 26.04.2023 regarding SLSC approval granted on 05.04.2023 subjected to withdrawal of appeal from Hon'ble APTEL and also subjected to not re-instatement of PPA which was terminated. In view of this, the Petitioner filed an I.A in APTEL on 31.05.2023 seeking amendment in prayers. The petitioner was allowed to withdraw its petition vide APTEL order dtd. 01.06.2023 and was directed to seek relief from the Commission, which was not sought in its earlier petition No. 1912/2021. Subsequently on 26.06.2023, the WBA was executed between petitioner and the Respondent and the plant switched over to captive mode.

15. By going through the chronology of events, the Commission observes that PPA was terminated w.e.f. 01.01.2020, after the in-principle approval from the BoD of respondent Discom for switch over the petitioner's plant from PPA to Captive mode. The termination was challenged by the petitioner before the Commission but it was rejected vide order dtd. 30.09.2021 and review petition filed subsequently was also rejected vide order dated

29.11.2022. Further, the petitioner preferred appeal before Hon'ble APTEL against the above orders of the Commission but the same was disposed as withdrawn by Hon'ble APTEL vide order dated 01.06.2023. Relevant portion of Tribunal's order on dated 01.06.2023 is extracted hereunder:

“

After arguing for some time, Ms. Susan Mathew, seeks permission to withdraw this Appeal with an opportunity to approach the Commission seeking reliefs, which were not sought for earlier before the Commission in their Petition No. 1912 of 2021. Granting liberty, as sought for, the Appeal is dismissed as withdrawn. “

16. In light of these events, the Commission is of the considered view that the order of the Commission dated 30.09.2021 has attained finality through which the termination of PPA was held legal. Apart from this, the petitioner has also submitted an undertaking for not insisting for reinstatement of the PPA. Thus, the issue of termination of PPA is already settled. Operative paras of the order of the Commission dated 30.09.2021 is reproduced hereunder :

“10. Commission observes that initially petitioner requested for changeover from PPA mode to captive supply in 2017, which was not agreed to by RUVNL. In 2019 petitioner again requested and RUVNL agreed for the same in its board meeting dt. 08.11.2019. For implementing the board's decision, RUVNL sought for petitioner's consent to terminate the PPA. Petitioner was also agreeing to the same and submitted the list of authorize persons. The contention of Respondent seems logical that for switchover first its PPA has to be terminated as power already contracted cannot be considered for wheeling to captive use. Therefore, Respondent rightly initiated the process of termination of PPA.

11. The petitioner on 10.12.2019 also submitted an undertaking vide which it confirmed and agreed for the termination of PPA and a confirmation that all future liabilities shall be the sole responsibility of the Petitioner. The undertaking reads as under:

M/S Maharaja Shree Umaid Mills Limited, a company registered under the Companies Act 1956 with its office located at Jodhpur Road, Pali 306401 hereby undertake that we agree to terminate Power Purchase Agreement signed with JdVVNL on 25.08.2014 for sale of entire energy generated from (2X1.5) MW wind power project located at Village Chord District Jaisalmer w.e.f 01.01.2020.

We also undertake that M/S Maharaja Shree Umaid Mills Limited shall sole responsible for any kind of liability arising in future in respect of this agreement.

12. Thus, the petitioner was agreeing for termination of its PPA dt. 25.08.2014. Commission also observed that Petitioner wrote to Respondent JdVVNL on 12.12.2019 and 18.12.2019, wherein the Petitioner has acknowledged that the PPA for its wind Power plant is going to be terminated w.e.f 01.01.2020 and further requested the Jodhpur Discom to execute the required Wheeling and Banking Agreements for the switchover the Power Project from preferential Tariff to Captive Power plant at the earliest.

13. From the above undertaking and letters written thereafter to Jodhpur Discom it is clear that petitioner never disputed the termination of PPA 22.06.2020. Thus, Petitioner was well aware of the termination and its consequence. It is petitioner's afterthought due to which it requested RUVNL to reinstate the earlier PPA. The PPA was already terminated on 01.01.2020, therefore, the request to reinstate the PPA on 22.06.2020 was not agreed to by Respondent.

....."

17. The Commission further observes that the petitioner didn't stop injecting energy into the grid even after 01.01.2020 i.e. termination of PPA. In our view the petitioner was not authorized to inject energy into the grid after termination of the PPA. The same was intimated to the petitioner by respondent RUVNL vide its letter dated 27.08.2020 but even after, the petitioner was continuously injecting energy. Relevant part of the said letter of RUVNL is extracted hereunder for ready reference :

".....

Sub: Regarding termination of PPA of 3.0 MW Wind Power Project at Village-Chord, District-Jaisalmer

Ref: Letter No. RUVNL/CE/SE (PP)/F. Wind/D. 701, dated 11.12.2019.

In reference to the above cited subject, it is to intimate that your PPA with Jodhpur Discom for 3.0 MW Wind Power Project at Village-Chord, District- Jaisalmer has been terminated w.e.f 01.01.2020 as per SE (PP), RUVNL letter No. 701, dated 11.12.2019.

However, you are regularly raising invoices for payment against the energy injected into the grid despite termination of PPA.

Therefore, you are requested to stop the energy injection into the grid and not to raise energy invoices for payment since we do not have commercial relationship now after expiry of PPA RUVNL/Discom is not liable to pay for the energy injected into the grid after expiry of PPA."

18. The Commission observes that LTOA was allowed to the Petitioner by the Respondent in accordance to RERC (Terms and Conditions for Open Access) Regulations vide letter dated 26.05.2020 with subject to deposition of security against transmission and SLDC charges. But, the Petitioner neither deposited security amount nor intimated the respondents for delay in depositing security amount. In view of this, the Commission notes that the respondents cannot be held responsible for the delay in switchover process rather the petitioner was himself responsible for this. Hence, the contentions of the petitioner that switchover process was delayed by the respondents, lacks merit.

19. The Commission further observes that section 70 of the Contracts Act 1872, bounds the receiving person to give compensation to delivering person provided the transaction is lawful, the delivering person was not intending to do so gratuitously and the receiving person enjoys the benefit. Section 70 of the Contract Act 1872 is extracted hereunder for ready reference :

"70. Obligation of person enjoying benefit of non-gratuitous act.— Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

20. The Commission also observes that Hon'ble APEX Court has deliberated on the issue of application of section 70 of the Contract Act 1872 in its judgment West Bengal v. BK Mondal, AIR 1962 SC 779. Relevant para of the judgment is reproduced hereunder :

"It is plain that three conditions must be satisfied before this section

can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied Section 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered. In appreciating the scope and effect of the provisions of this section it would be useful to illustrate how this section it would operate. If a person delivers something to another it would be open to the latter person to refuse to accept the thing or to return it; in that case Section 70 would not come in to operation. Similarly, if a person does something for another it would be open to the latter person not to accept what has been done by the former; in that case again section 70 would not apply. In other words, the person said to be made liable under section 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under section 70 arises."

21. In view of this, the Commission notes that in the instant case the petitioner is delivering person, the respondent Discom is receiving person and the petitioner is delivering electricity to the respondents. As already discussed, the injection of electricity into the grid without any PPA is an unauthorized act of the petitioner. Without valid PPA/Agreement between petitioner and respondent Discom, the injection cannot be termed as lawful act. Also it cannot be said as gratuitous act of the petitioner as the respondent Discom had already communicated the petitioner to stop injection vide its letter dated 27.08.2020. Thus, these two conditions are not satisfied which is essential to invoke section 70 of the Contract Act. At the same time it is pertinent to mention that although the respondent Discom had communicated to the petitioner to stop injecting power after termination of the PPA but the petitioner didn't stop and the respondent Discom also benefitted from the energy injected by the petitioner by selling it to its consumers. In view of above, it is to be noted that out of the three essential conditions to be satisfied to invoke section 70, only one condition is satisfied here i.e. respondent Discom enjoyed benefit from the injection of energy. Hence section 70 of the Contract Act 1872 cannot be invoked here as all three conditions are must to be satisfied before invoking this section.

22. The Commission also observes that Hon'ble APTEL vide its recent judgment dated 26.02.2024 in the matter of M/s TGV SRAAC Ltd Vs APERC and Ors , have dealt with the issues of applicability of section 70 of the Contract Act and injection of power into the grid without Agreement/Authorization. Relevant para of the judgment are extracted hereunder:

"15. The claim of the Appellant is with regard to the power evacuated by it into the grid w.e.f. 26th March, 2016 (in case of units at Site-1 & Site-2) and w.e.f. 27th March, 2017 (in case of units at Site-3 & Site-4) till 7th June, 2019. Manifestly, no objection was raised to such injection of power into the grid from the wind power generation units of the Appellant during this period at any point of time by the officials of 2nd Respondent & 3rd Respondent. Even the respondents continued to gain financial benefit from such power by selling it to the consumers. We wonder, as to why, such conduct of the parties i.e. continued supply of power by the Appellant from its wind power generating units even after the expiry of the wheeling agreements on one hand and receiving as well as utilization of such power by the respondents without any objection or demur on the other hand, cannot be construed to constitute a fresh contractual relationship between the parties beyond the expiry of wheeling agreements. Such kind of contracts are known as "Quasi Contract" which have gained legal recognition in India also by way of Section 70 in the Contract Act, 1872.

19. We may, elucidate the concept of 'Quasi Contract' as well as Doctrine of 'Unjust Enrichment' by way of following illustration :-

"A person X sends some goods to person Y in the absence of any order from Y. Y is dutybound to either refuse delivery of goods as and when those are tendered to him or immediately after receipt of goods, to return those to X or at least send a communication (oral, telephonic or written) to him informing him that he has sent the goods without any order from Y and hence, should take those back. However, in case Y accepts goods stoically and also utilizes them, he cannot be heard to say that he shall not pay to X for them as he has not ordered them. In that case, Y shall be required to pay for the goods. This is what the essence of Section 70 of Contract Act also is."

20.

..... At no point of time was any objection raised by the officials of 2nd & 3rd Respondent and they even continued to avail benefit of such power by selling it to consumers. Therefore, all the ingredients of Quasi Contract envisaged under Section 70 of the Contract Act, as explained by the Hon'ble Supreme Court in B.K. Mondol judgement, are fulfilled in the present case.

21 We do not feel impressed by the arguments raised on behalf of

the respondents that such injection of power into the grid by the Appellant in the absence of contract or authorization creates grid indiscipline and, therefore, cannot be accounted for. We feel that the 2nd and 3rd Respondents also were responsible for so called grid indiscipline, if any, in this case. They were aware about the fact that initial agreements executed with the Appellant have expired and the Appellant continues to inject power into the grid. It was for them, to avoid grid indiscipline, to object to such evacuation of power into the grid by the Appellant and to stop the same or at least to notify the appellant to desist from doing so. They did neither.
..... "

23. The Commission observes that the instant matter is differentiable on the terms and conditions defined clearly by Hon'ble APTEL in above judgment. In above judgment, the generator was under impression that the Discom will compensate him for the power injected as the Discom never communicated the generator explicitly to stop injection, in absence of any PPA. In that case, an implied contract or quasi contract came into existence between the generator and the Discom. On the other hand, in the instant matter, the petitioner was communicated regularly on each and every step by the respondents whether it is by way of termination of PPA , by way of sanction of Open Access subject to some conditions or by way of written directions to stop injection of power in absence of PPA. Thus the question of implied or quasi contract does not arise here. The petitioner was injecting electricity into the Grid on his own, in absence of any PPA or Authorization from the respondents and despite of clear communication to stop injection.
24. According to section 70 of the Contract Act, the respondents were duty-bound to send a communication (oral, telephonic or written) to the petitioner informing him that he has injected electricity without any Agreement/Authorization from the respondents and hence, should stop injection. The respondents full-filled their duty as they had sent communication dated 27.08.2020 to the petitioner to stop injection of electricity. In view of above, the Commission notes that the respondents were not at fault and they cannot be held liable for any fault at their part.

The petitioner was quite aware of the fact that the Discom does not need this power that's why the Discom communicated to him to stop injection of power and such injection without any PPA, even despite of clear communication to stop , tantamounts to Grid indiscipline.

25. In view of above discussion, the Commission is having considered view that injection of power into the Grid without any PPA/Agreement was unauthorized. As the respondents already communicated to the petitioner to stop injection in absence of any PPA, no case of implied contract or quasi contract can be made out under the Contract Act in the instant matter. Thus the petitioner has failed to make out any case either under Electricity Act or Contract Act. Therefore no compensation can be granted to the petitioner for injection of power into the grid without authorization/PPA for the period 01.01.2020 to 25.06.2023.
26. Before parting with this order, the Commission observes that RRVPNL should have played proactive role in this matter. After termination of PPA when Open Access was granted to the petitioner, but the petitioner didn't complete formalities in prescribed timeline, RRVPNL should have disconnected the plant of the petitioner from the Grid in absence of a valid agreement to inject power into the Grid. In future, RRVPNL should ensure timely disconnection in such type of situation.
27. The matter is disposed in above terms with no order as to cost.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman