

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 20/MP/2021

Coram:

**Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 7.12.2023

In the matter of:

Petition under section 79(1)(c) of the electricity act, 2003 read with regulations 33A of the CERC (grant of connectivity, long-term access and medium-term open access in inter-state transmission and related matters) Regulations, 2009 and section 56 of the Indian Contract Act, 1872 for relinquishment of connectivity and for release of the bank guarantee dated 16.08.2018 (and amendment/ extension thereof), in light of events subsequent which has rendered the transmission agreement for connectivity dated 03.08.2018 frustrated and impossible to perform.

And in the matter of:

Vaayu Renewable Energy (Mevasa) Private Limited (VREMPL),

Through the managing director
Plot no. 33, Daman Patalia road,
Bhimpore, Daman-396210
Email id: ashish.npti@gmail.com
Phone no.: 9650010510

.....Petitioner

Versus

Central Transmission Utility of India Limited (CTUIL),

Through its Authorized Representative
First Floor, Saudamini, Plot No. 2, Sector- 29,
Near IFFCO Chowk Metro Station
Gurgaon, Haryana-122001

.....Respondent

Parties Present: Shri Sajjan Poovayya, Sr. Advocate, VREMPL
Shri Venkatesh, Advocate, VREMPL
Shri Abhishek Nangia, Advocate, VREMPL
Shri Ashish Srivastava, VREMPL
Ms. Suparna Srivastava, Advocate, CTUIL

Shri Tushar Mathur, Advocate, CTUIL
Shri Partha Sarathi Das, CTUIL
Shri Bhaskar Wagh, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjit Singh Rajput, CTUIL
Ms. Priyansi Jadiya, CTUIL

ORDER

Vaayu Renewable Energy (Mevasa) Private Limited (VREMPL) (hereinafter to be referred as “the Petitioner”) has filed the Petition under section 79(1)(c) of the Electricity Act, 2003 read with regulations 33A of the CERC (grant of connectivity, long-term access and medium-term open access in inter-state transmission and related matters) Regulations, 2009 and section 56 of the Indian Contract Act, 1872 for seeking appropriate orders from this Commission. The Petitioner has made the following prayers:

- (a) *Allow the Petitioner to relinquish its connectivity granted vide the Transmission Agreement for Connectivity dated 03.08.2018 without being subjected to any penalty; and*
- (b) *Direct the Respondent to release the Bank Guarantee dated 16.08.2018 furnished by the Petitioner.*

2. Petitioner, while filing the petition in 2021, has made PGCIL the sole respondent. However, vide affidavit dated 20.10.2022, the petitioner has filed an amended memo of parties & has made CTUIL the sole respondent, consequent to the separation of CTUIL from PGCIL as per the direction of the MoP. Accordingly, submissions made by PGCIL, wherever referred to in the petition, shall be considered as that of CTUIL.

Submissions of the Petitioner:

3. Petitioner has mainly submitted as follows:

- (a) The Petitioner applied for Stage-I Connectivity on 13.06.2018 and for Stage II connectivity on 13.06.2018 at. Jam Khambaliya pooling station, for its 300

MW Wind Farm and Generation Project at Dharampur, Jamnagar in the State of Gujarat.

- (b) Vide letter dated 17.07.2018, the Respondent granted Stage-I Connectivity for the above 300 MW Wind Farm Project, with connectivity being at Jam Khambaliya Pooling Station owned, operated and maintained by the Respondent and being part of the Inter-State Transmission System (ISTS).
- (c) In compliance with the conditions specified in Clause 9.2.2 of the Detailed Procedure, the Petitioner submitted the following documents to the Respondent along with the application for grant of Stage II Connectivity:
1. Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II; and
 2. Release of at least 10% of funds towards generation project execution supported by the Auditor's certificate regarding the release of such funds.
- (d) Respondent vide Letter dated 17.07.2018, granted Stage-II Connectivity to the petitioner with start date of connectivity as 30.12.2019. The Petitioner & Respondent executed the Transmission Agreement for Connectivity on 03.08.2018. Subsequently, the Petitioner furnished a Bank Guarantee to the Respondent on 16.08.2018 of a sum of Rs. 5 Crores.
- (e) Some of the events have rendered the Transmission Agreement for Connectivity dated 03.08.2018 frustrated and impossible to perform, which are as under:
- Change in Gujarat land acquisition policies making it impossible for the Petitioner to acquire either revenue or private lands
 - GEDA, the Nodal Agency for Renewable Energy in Gujarat, has stopped issuing Project approvals (Developer Permissions) for SECI projects or other wind developers who proposed to construct wind projects on private lands (it is a well-known fact that no project can be installed in Gujarat without a Developer Permission)
 - Revenue land is being allotted to only SECI projects in the identified Renewable Energy Parks, which is more than 500 Kms from the

Petitioner's project site, where the Petitioner has already been allotted more than 50% of its required land.

- Projects connected to Jam Khambhaliya ISTS are not being allowed to bid for the SECI Tranche-X.
 - Even the construction of Jam Khambhaliya ISTS (where the Petitioner's Project is proposed to be connected for evacuation of power) is facing considerable delays wherein its implementation schedule has been extended from March 2021 to Aug 2021 (for 5 months) due to COVID-19 lockdown
 - Even after the expiry of 75% of its scheduled time, no appreciable progress is visible on the ground, which can demonstrate that the substation and the 400 KV EHV power transmission line can be commissioned within the time period. And due to COVID-19, it may not be even possible to commission the Jam Khambhaliya ISTS before 31.03.2022
 - Reluctance of project financiers (in view of the above) to sanction financing for the Petitioner's Project, resulting in the impossibility of achieving financial closure.
- (f) The events as mentioned hereinabove have completely swept away the basis/ foundation of the Agreement contemplated by the Parties, rendering the Agreement completely frustrated/ impossible to perform (for no fault of either of the Parties), and now, even the project financiers are reluctant to sanction the financing for the Petitioner's Project.
- (g) The change in land policy of the Govt. of Gujarat has affected the project as below:
- i. The Revenue Department, Govt. of Gujarat vide Letter Ref. JMN/2018122561A-1 dated 25.07.2018 directed that Revenue land will be allotted to bid winners of GUVNL projects only. This completely stopped land allotment activities to winners/developers of wind power projects bided/likely to be bid, out by SECI and other Central Government Agencies.

- ii. The Secretary, Ministry of New and Renewable Energy, vide its communication dated 07.08.2018 advised GEDA to continue with all Wind Power Projects irrespective of the source of bidding agency. All District Collectors were also advised to process all applications relating to land allotment irrespective of Bidding Agencies.
- iii. The Government of Gujarat, vide its letter dated 11.09.2018, directed that “Land be allotted to companies who have won bids of GUVNL/SECI or any other Central Govt. agency supported by a letter from GEDA”. However, despite this direction, district collectorates did not process any file for Govt. of Gujarat revenue land allotment (including the Petitioner’s), as it was given to understand that the Govt. of Gujarat was drafting a policy of Hybrid Renewable Energy Parks.
- iv. The Govt. of Gujarat issued its Hybrid Land Policy on 25.01.2019, wherein all new allotment of land for Wind Power Projects would happen only in the Hybrid Parks. However, the Govt. of Gujarat did not notify or designate any ‘Hybrid Park’ creating further confusion due to which the Wind power projects continued to suffer in the absence of allotment of land.
- v. Subsequently, the Revenue Department, Govt. of Gujarat, vide its letter dated 27.11.2019, completely stopped the allotment of land for Wind Power Projects from SECI Tranche-V projects onwards. It has been proposed that from SECI Tranche-V onwards, the land for project development shall only be provided to Wind Power Projects in the proposed RE Parks being developed by Private entities.
- vi. Furthermore, subsequent to the issuance of the letter dated 27.11.2019, GEDA, the Nodal Agency for Renewable Energy in Gujarat, also stopped issuing Project approvals (Developer Permission) for SECI projects and also for other wind developers who proposed to construct wind projects even on private lands.
- vii. That on account of the supervening event of the revenue land for the Wind Farm Project having been rejected, an event beyond its control, the Petitioner was not able to maintain the time frame specified in Clause 9.3.2 of the Detailed Procedure and consequently, the timelines for completing the project.

- (h) Accordingly, the Petitioner filed Petition No.55/MP/2019 before this Commission, on 2.3.2019, praying for an extension of time by 8 months to achieve the financial closure. The Commission, vide its Order dated 30.12.2019, allowed the Petition and granted an extension of 8 months (till 31.08.2020). The Commission also directed that timelines under Clause 9.3 of the Detailed Procedure shall be aligned to the expected SCOD or COD of the Jam Khambhaliya ISTS substation.
- (i) The impact of the event of Covid-19 pandemic on the petitioner's project is as below:
- i. The outbreak of the COVID-19 pandemic further hampered the progress of the Petitioner's Project. Considering the gravity of the circumstances, the Ministry of Finance, vide its Office Memorandum dated 19.2.2020, has also clarified that disruptions of the supply chains due to the spread of coronavirus should be considered as a case of natural calamity and Force Majeure clauses may be invoked, wherever considered appropriate.
 - ii. The Petitioner filed the Petition No. 586/MP/2020 before this Commission, seeking further extension of time for achieving the milestones, including achieving the conditions of financial closure, in light of the force majeure conditions on account of the pandemic outbreak of COVID-19. However, the COVID Extension Petition could not be taken up by this Commission as it has not been functioning since September 2020.
 - iii. In supersession of its earlier Office Memorandums dated 17.04.2020 and 30.06.2020 (not in supersession of 20.03.2020), the Ministry of New and Renewable Energy vide its Office Memorandum dated 13.08.2020 decided that all RE projects under implementation as on the date of lockdown, i.e. 25th March 2020 through RE Implementing Agencies designated by the MNRE or under various schemes of the MNRE, shall be given a time extension of 5 (five) months from 25th March 2020 to 24th August 2020.
 - iv. The Petitioner vide its letter dated 29.08.2020 requested the Respondent for an extension of 5 months to comply with the condition of achieving Financial Closure and requested the Respondent to align all related timelines, however, the Respondent, vide its letter dated 23.09.2020, inter

alia, arbitrarily granted an extension of less than 5 months (from 31.08.2020 till November 2020).

- v. The Petitioner, *vide* its letter dated 23.11.2020, again requested the Respondent for a minimum extension of 2 more months (total 5 months, as has been provided by Respondent to other projects and, admittedly, for the Jam Khambhaliya Substation). Therefore, Petitioner was constrained to approach the High Court of Delhi by way of Writ Petition (Civil) No.9977 of 2020.
- (j) The Hon'ble High Court, *vide* its Order dated 07.12.2020, directed that the petitioner shall make a representation to the respondent apprising about the steps taken for and the hindrance faced in ensuring the timely compliance with the order dated 30.12.2019 of the Central Electricity Regulatory Commission. The representation shall also make out the grounds for seeking an extension till January 2021. Such representation shall be filed before the respondent on or before 11.11.2020 and the respondent shall take a decision thereon on or before 18.12.2020.
- (k) Accordingly, the Petitioner, *vide* its letter dated 11.12.2020, made a representation before the Respondent duly explaining the reasons why the Petitioner's Project was delayed and how the same has now been rendered completely frustrated and impossible to perform.
- (l) Subsequently, SECI issued its 'Request for Selection (RfS) Document for Selection of Wind Power Developers for Setting up of 1200 MW ISTS-connected Wind Power Projects in India under Tariff-Based Competitive Bidding (Tranche-X)' dated 21.12.2020 which do not allow Jam Khambhaliya ISTS connected projects (including the Petitioner's Project) to bid.
- (m) The Petitioner is in no position to complete the requirements prescribed under this Commission's connectivity procedure due to the supervening events and the restrictions imposed by the Govt of Gujarat for setting up wind power projects on private land as well as on Govt of Gujarat revenue land, a situation which is completely beyond the Petitioner's control. Further, without having clarity on land policy and GEDA approval (Developer Permission), it is impossible for the Petitioner to achieve financial closure for setting up the wind power project.

- (n) Furthermore, even the construction of Jam Khambhaliya ISTS (where the Petitioner's Project is proposed to be connected for evacuation of power) is facing considerable delays wherein its implementation schedule has been extended from March 2021 to Aug 2021 (for 5 months) due to COVID-19 lockdown. Even after the expiry of 75% of its scheduled time, no appreciable progress is visible on the ground, which demonstrates that the substation and the 400 KV EHV power transmission line can be commissioned within the time period and due to COVID-19 may not even be possible to commission the Jam Khambhaliya ISTS before 31.03.2022.
- (o) The Respondent, vide its Reply dated 30.12.2020 to the representation made by the Petitioner, sought to put the entire blame on the Petitioner alleging that the Petitioner is not willing to perform the Agreement.
- (p) Therefore, the present case is not wherein the petitioner is attempting to "exit" or "abandon the project" but is a clear-cut case wherein the entire basis or foundation of the Agreement as contemplated by the parties has been completely swept away rendering the Agreement completely frustrated/impossible to perform (for no fault of either of the parties).
- (q) Furthermore, there are other users who want ISTS connectivity at Jam Khambhaliya substation; the bay allotted to the Petitioner may be allocated to them, and consequently, there would not be any unutilized capacity in Jam Khambhaliya substation.
- (r) It was recorded during the 53rd Meeting of Western Region Constituents regarding LTA and Connectivity Applications in Western Region held on 27.11.2020 (communicated on 16.12.2020) that Reliance Industries Limited (RIL) has applied for connectivity to the ISTS for 500 MW as a bulk consumer located at Moti Khavdi, Jamnagar, Gujarat from 01.01.2022.
- (s) This Commission vide its Order dated 07.01.2020 in Petition No.159/MP/2019 titled "Toramba Renewable Energy Private Limited v. Powergrid Corporation of India Limited", after considering the similar circumstances, exercising its powers under Regulation 33A, directed for release of the bank guarantee without any penalty.
- (t) Clause 10.11 of the Detailed Procedure is not applicable to the present case. Furthermore, since there would not be any unutilized capacity in Jam

Khambhaliya substation and the Respondent would not have to bear any losses as there are other users who want ISTS connectivity at Jam Khambhaliya substation (the bay allotted to the Petitioner may be allocated to them), this Commission may exercise its powers under Regulation 33A of Connectivity Regulations in the present case also and pass a similar order relinquishing the Petitioner's connectivity and for release of the Petitioner's Bank Guarantee, without being subjected to any penalty.

Submissions of the Petitioner in IA No. 29/2021:

4. The petitioner has re-iterated its earlier submissions and submitted as follows:
 - (a) M/s Reliance Industries Limited (RIL) has already applied for connectivity to the ISTS for 500 MW as a bulk consumer located at Moti Khavdi, Jamnagar, Gujrat, from 01.01.2022. As per the application, the bulk consumer entity is located close to the proposed Jam Khambhaliya PS, which is under implementation by M/s Jam Khambhaliya Transco Ltd. with an expected SCOD of August 21. M/s RIL further stated that they have no issue in developing the 400 kV dedicated lineup to Jam Khambhaliya PS, provided that the same is allowed by the extant regulations.
 - (b) If the bay allocated to the Petitioner is allocated to M/s RIL, there would not be any unutilized capacity in the Jam Khambhaliya substation, and the Respondent would not have to bear any loss.
5. The Petitioner has sought direction for restraining the Respondent from revoking the Applicant's/ Petitioner's Stage-II connectivity and invoking the Applicant's/ Petitioner's Bank Guarantee during the pendency of the present Petition.

Hearing dated 19.03.2021:

6. During the hearing dated 19.03.2021, the Commission admitted the Petition and directed PGCIL not to take any coercive steps against the Petitioner, including invocation of bank guarantee till the next date of hearing and disposed of IA No. 29/2021. The relevant extracts are as follows:

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6. *As regards the Petitioner's request for impleadment of GEDA as party, it was observed by the Commission that various documents of Govt. of Gujarat relating to land acquisition/ allocation for setting-up of Wind Power Projects as relied upon by the Petitioner has already been placed on record by the Petitioner in support of its plea, and accordingly, there was no need to implead GEDA as party to the present Petition.*
7. *It was further observed by the Commission that in its order dated 3.2.2021 in W.P (C) No. 161/2021 and Ors., the Hon'ble High Court has directed that no coercive steps including invocation and/or encashment of bank guarantee shall be taken till the first date of hearing before this Commission. The Commission also observed that the PGCIL has maintained the aforesaid position and has not yet taken or initiated any coercive steps including invocation and/or encashment of bank guarantee in terms of the aforesaid order. Accordingly, the Commission directed PGCIL not to take any coercive steps against the Petitioner including invocation of bank guarantee till the next date of hearing. Accordingly, the Commission disposed of IA No.29/2021."*

Reply of PGCIL:

7. PGCIL vide affidavit dated 21.06.2021 has submitted as follows:

- (a) The milestones to be achieved by the connectivity grantees are in view of the directions of this Commission made in its Order dated 29.9.2017 passed in Petition No.145/MP/2017 which do not permit reserving the bay for a wind power developer/generator which is not ready for commissioning so as to avoid any under-utilization of bays in national interest. That being so, in the event of failure to achieve the above milestones as applicable, Stage-II connectivity is to be revoked by the Respondent under intimation to the grantee. Considering that these provisions of the Detailed Procedure, 2018 are mandatory in their operation and no relaxation whatsoever is permissible qua them, it follows that any failure to submit documents regarding financial closure or proof of release of at least 10% funds, as the case may be, is bound to result in cancellation of the Stage-II connectivity granted to a renewable energy developer. The same is also the mandate for the Respondent under the Detailed Procedure, 2018 which the Respondent is bound and obliged to follow.
- (b) Despite its inability to acquire revenue lands owing to a change in land allotment policy, the Petitioner only sought an extension (of 8 months) from this Commission for fulfilling the mandatory conditions prescribed under Clause 9.3.2; change in land allotment policy was thus neither considered nor pleaded by the Petitioner as an event of permanent force majeure

rendering the implementation of the project or the utilization of the Stage-II connectivity impossible or frustrated.

- (c) The Petitioner was satisfied with the extension of 8 months granted by this Commission for achieving the milestones prescribed under clause 9.3.2 of the Detailed Procedure, 2018, and, as such, did not challenge the same; the Order thus attained finality. Further, with the passing of the aforesaid Order, the issue of the Petitioner's project being impacted by the change in land allotment policy by the Government of Gujarat was also set to rest between the parties and the Petitioner under the settled principles of law, could not be allowed to later re-agitate the same.
- (d) As per the extension granted by the Order dated 30.12.2019 in Petition No. 55/MP/2019, the Petitioner was liable to achieve the milestones as set out in clause 9.3.2 of the Detailed Procedure, 2018 by August 2020. However, on 7.7.2020, the Petitioner once again approached this Commission by filing another Petition (Petition No.586/MP/2020) seeking a further extension of six months from 31.8.2020 to achieve the aforesaid milestones.
- (e) The conduct of the Petitioner and the submissions made by it before this Commission & before the Hon'ble High Court of Delhi, it was evident that the Petitioner had taken a conscious commercial decision to abandon its project on account of reluctance of its project financiers in financing the project and for the necessary prescribed consequences were bound to follow.
- (f) The response of the Respondent w.r.t. individual issues raised by the Petitioner is as follows:
- (i) **Impossibility of the Petitioner to acquire land in Gujarat for the establishment of its project:**
- (a) Vide amendment dated 27.11.2019, the Government of Gujarat decided that wind power projects under SECI Tranche-V and onwards could be allotted 'revenue land' only in the proposed Renewable Energy Parks; for projects under previous SECI Tranches, government land was to be allotted at pre-identified locations. The said "change in policy" was applicable only with respect to the SECI awarded projects; it did not prevent any project developer from acquiring private land as already contemplated in the original policy.

(b) Vide Order dated 30.12.2019 in Petition No. 55/MP/2019, this Commission categorically rejected the plea of the Petitioner, holding that non-availability of revenue lands was not a ground for any extension of time in complying with regulatory timelines as the Petitioner could always procure private land.

(c) a plea which has already been rejected by this Commission in its Order dated 30.12.2019, cannot in law be allowed to be re-agitated by the Petitioner in the present proceedings; and

(d) a plea which has not been found to be adequate by this Commission for even grant of extension of time for achieving financial closure, cannot by any stretch of the imagination be considered adequate for contending a completely impossibility of performance.

(ii) Non-grant of approval to the project by Gujarat Energy Development Agency (GEDA):

During the Meeting held on 28.11.2020 under the chairmanship of the Chief Minister of Gujarat for allotment of land for a Renewable Energy Park of 30 GW and other issues, it has been categorically clarified by GEDA that permission for projects being developed on private land will be granted. The Petitioner's plea, thus being factually incorrect and deliberately misleading, is liable to be rejected.

(iii) Delay in implementation of Jam Khambaliya pooling sub-station:

The progress of the "Transmission System for Jam Khambaliya Pooling Station and Interconnected Jam Khambaliya Pooling station for providing connectivity to RE projects (1500MW) in Dwarka (Gujarat)" is being monitored regularly in the JCC Meetings. In the 30th JCC Meeting of the Western Region held on 24.12.2020, the representative of Jam Khambaliya Transco Ltd. submitted that though an extension of SCOD for the sub-station has been granted till August 2021, it is expected that the same would be completed by June 2021 itself. As such, the contention of the Petitioner as regards the so-called delay in implementation of the pooling station is completely unfounded.

(iv) Project connected to Jam Khambaliya sub-station not being permitted to bid under SECI Tranche-X:

The Petitioner had sought connectivity from the Respondent without having participated in any bidding process and without having any long term power tie-up. As such, the Petitioner had taken a conscious commercial decision to obtain connectivity first and seek the avenues of power tie-up, through the bidding route or through long term PPAs, as the case may be, at a later stage. As such, tie-up of power was never a consideration for the Petitioner for availing connectivity from the Respondent.

(v) Utilization of the Jam Khambaliya sub-station by other connectivity applicants:

The application of Reliance Industries Ltd. is still under process and till appropriate directions are issued by this Commission in a Petition which may be filed in that regard, the question of grant of connectivity upon its application would remain premature. Since the Jam Khambaliya pooling substation is likely to be commissioned by June 2021, there is a high likelihood that the substation will remain idle.

(vi) Reliance on Order dated 7.1.2020 passed by this Commission in Petition No.159/MP/2019:

(a) Petitioner has also relied upon an Order dated 7.1.2020 passed in Petition No.159/MP/2019. The Petition was filed by Toramba Renewable Energy Pvt. Ltd. (TREPL), a stage-II connectivity grantee, seeking an extension of time by 9 months to procure the balance land and to achieve financial closure as per the timelines specified under Clause 9.3.2. This Commission inquired from the Respondent as to whether any expenditure had been incurred by it based upon the connectivity granted to TREPL. In response, the Respondent submitted that the associated bay was being implemented under the Regulated Tariff method/Cost plus Method and investment approval for the same was yet to be received and, as such, no expenditure had been incurred on the same.

(b) However, in the present case, not only substantial expenditure has already been incurred by the transmission licensee implementing the Jam Khambaliya sub-station, but the same is also likely to be commissioned in June 2021. Considering that there is presently no

pending connectivity application at the Jam Khambaliya sub-station, it is imperative that the bank guarantee furnished by the Petitioner is encashed so as to mitigate the impact of non-utilization of the said sub-station by the Petitioner.

(vii) Impossibility of performance of the Transmission Agreement under Section 56 of the Indian Contract Act, 1872:

- (a) The Supreme Court in the matter of India Thermal Power Ltd vs. State of Madhya Pradesh & Ors. [(2000) 3 SCC 379] has held that if entering into a contract contains prescribed terms and conditions which are a must under the statute, then that contract becomes a statutory contract. Similarly, if a contract incorporates certain terms and conditions in it which themselves are statutory, then the said contract to that extent is also statutory.
- (b) The execution of a Transmission Agreement with the prescribed terms is a mandate under Clause 10.9 of the Detailed Procedure, 2018, notified therein. In fact, the Transmission Agreement is executed in the standard format provided under the formats annexed with the Detailed Procedure, 2018 itself. The same is thus a statutory contract; the mandatory prescription for encashment of bank guarantee under clause 1(f) is also the statutory liability imposed under the Agreement.
- (c) The Commission on 20.2.2021 notified the “Revised Procedure for Grant of Connectivity to projects based on Renewable Sources to inter-State transmission system”. In terms of Clause 5.1(3), the existing bank guarantee of Rs. 5 Cr. submitted by the Petitioner is liable to be construed as ‘Conn-BG-1’ of Rs. 50 Lakh and ‘Conn-BG-2’ of Rs. 4.5 Cr, both of which are liable to be encashed in terms of clause 5.1(4) of the Revised Procedure, which provides that if the associated bay(s) at the ISTS sub-station is being constructed by ISTS licensee, the amount corresponding to Conn-BG1 and amount of Conn-BG2 in terms of Clause 10.8(a) of this Procedure shall be forfeited.
- (d) No relief under Regulation 33A in the form of release of the subject bank guarantee as prayed for by the Petitioner may be permitted by this Commission, especially in light of the fact that 400kV bay allotted

to the Petitioner is currently under implementation by an ISTS licensee (i.e. Jam Khambaliya Transco Limited) and the said bay is likely to remain unutilized.

Rejoinder of Petitioner to the Reply of PGCIL

8. In response to the reply filed by PGCIL, the petitioner vide its rejoinder dated 03.06.2022 submitted as follows:

- (a) The Detailed Procedure, 2018, was notified by this Commission in accordance with Regulation 27 of the Connectivity Regulations, 2009; therefore, Regulation 33A can be invoked to seek relaxation of provisions of the Detailed Procedure, 2018, notified by this Commission.
- (b) While duly considering the objection/submissions made by PGCIL, this Commission exercising its “Power to Relax” under Regulation 33A of the Connectivity Regulations, 2009 to relax the provision 9.3 of Detailed Procedure issued under the Connectivity Regulations, 2009 has granted an extension of 8 months to Petitioner to achieve the milestones envisaged under Clause 9.3 of Detailed Procedure, 2018.
- (c) At the time of filing the Extension Petition, the letter dated 27.11.2019 was not issued by the Government of Gujrat. Therefore, the same was not implemented by the Petitioner as a ground for the frustration of the Termination Agreement.
- (d) Change in Land Policy of the State of Gujarat was neither notified nor pleaded by the Petitioner to seek the extension of eight months for complying with the conditions prescribed under Clause 9.3.2 of the Detailed Procedure, 2018.
- (e) While the Petitioner had identified private lands for the development of the wind Power Project, GEDA has started to allot the revenue lands to the successful bidders of SECI/GUVNL bid Projects in conflict with the locations identified by the Petitioner in terms of the 2D x 3D criterion laid down under the Micrositing Guidelines.
- (f) Nodal Agency i.e. GEDA has stopped issuing Project approval (Developer permission) for SECI projects from Tranche –V being developed on private lands, and the same has not been disputed or contended by PGCIL in its Reply.

- (g) Petitioner is not able to obtain the exclusive rights over the locations identified by it through the micrositing study as the same would violate the procedure which is prescribed under the Micrositing Guidelines notified by MNRE. Hence, it has become impossible for the Petitioner to develop the Project on account of the Change in GoG Policy and allotment of revenue land within the vicinity of private lands identified by the Petitioner. Therefore, the Petitioner has rightly placed reliance upon the letter dated 27.11.2019 to plead frustration with the contract/agreement, and the objection raised by PGCIL is liable to be rejected.
- (h) The sanctioning of the finance by the Project financiers towards the proposed wind power project of Petitioner is a consequence of the Change in the Land Policy of the GoG, therefore, the same cannot be considered as a ground basis which the Petitioner has pleaded the frustration of the Contract.
- (i) The provisions of the Contract Act are applicable to Transmission Agreement under the Act. Section 174 of the Act provides that the provisions of the Act will override if other laws are inconsistent with it. In the present case, the provisions of the Contract Act are in no way detrimental to the Act. Accordingly, other laws will also be applicable, as long as the same are not in contradiction of the Act.
- (j) Section 56 of the Contract Act is an exhaustive law as it stands in India. The performance of an act may be considered impossible when it defeats the object and purpose of the party on which they have entered into an Agreement. Therefore, in the event that an untoward event or change of circumstances totally upsets the very foundation upon which the parties have entered the Agreement, then it will be considered as an event which made it impossible for the promisor to do an act which he had promised to do so.
- (k) The commissioning of the Jam-Khambaliya PSS is being continuously extended/ delayed due to various reasons (including COVID-19 – not attributable to any Party). Therefore, there would be no immediate stranded capacity and/or loss to the CTU in case the Petitioner surrenders its connectivity, especially considering the fact there are other developers who have provided their principal approval for being allotted the bays allocated to the Petitioner

(l) Reliance Industries Limited (“RIL”) has filed a Petition No.124/MP/2021 before this Commission seeking a grant of connectivity of its oil refinery located at Moti Khavadi, Jamnagar, Gujarat to the CTU network, at the nearest Jam Khambhaliya Pooling Station, in order to procure 500 MW of Renewable Power.

(m) On 05.01.2022, this Commission disposed of Petition No. 124/MP/2021, thereby directing CTU to grant connectivity to RIL as a bulk consumer as per provisions of Connectivity Regulations, 2009.

Hearing dated 22.09.2022:

9. During the hearing dated 22.09.2022 on the specific query of the Commission regarding the status of the bays, PGCIL submitted that the ISTS licensee-Jam Khambhaliya Transco Limited, who was implementing the concerned bays at Jam Khambhaliya sub-station, has declared the commercial operation of such bays in the month of April 2022. Further, considering the request of Petitioner, the matter was adjourned.

Submissions of CTUIL:

10. CTUIL vide affidavit dated 07.11.2022 has submitted as follows:

(a) Jam Khambhaliya (GIS) PS including 1 no. 400kV GIS line bay for VREMPL has been commissioned by ISTS transmission licensee Jam Khambhaliya Transco Ltd. on 12.04.2022.

(b) Reliance Industries Ltd. (RIL) was granted Connectivity for 500 MW as a Bulk Consumer for its Oil Refinery at Moti Khavdi, Jamnagar, Gujarat through a 400kV D/c line vide CTU intimation dated 28.01.2022. That 2 nos. 400kV GIS line bays at Jam Khambhaliya (GIS) PS are required to be constructed by RIL through POWERGRID or another licensee.

(c) VREMPL last attended 30th JCC meeting of WR held on 24.12.2020. As per the last status received from VREMPL vide its email dated 09.10.2020, the phase-wise commissioning schedule of its 300MW WPP was Phase-1(100MW):31.10.2021; Phase-2(100MW):15.12.2021; Phase-3(100MW): 31.01.2022 and commissioning schedule of its dedicated transmission line (DTL) was 15.10.2021 & work on the construction of DTL was not started.

- (d) RIL has approached Powergrid for the implementation of the connectivity system. For termination of the 400kV D/c line at Jam Khambhaliya 400/220kV (GIS) PS, 2 nos. 400kV GIS line bays are required. RIL desires the termination of each circuit of the 400kV D/c line in different diameters for reliability. Accordingly, RIL has proposed the construction of two half-diameters instead of one full diameter for the termination of the connectivity line at Jam Khambhaliya (GIS) PS.
- (e) The matter was deliberated in the meeting held on 04.05.2022 and 03.06.2022 amongst CEA, CTU, ATL (JKTL) & RIL, wherein one option emerged was to terminate one circuit of RIL (Oil Refinery) (GIS) – Jam Khambhaliya (GIS) 400kV D/c line in the bay allocated to VREMPL and another circuit in the new bay. RIL would be implementing (through Powergrid) one complete GIS diameter at Jam Khambhaliya (GIS) PS along with the implementation of a new GIS Building by extending the existing bus bar. It was decided that CTUIL shall approach CERC requesting permission to allocate VREMPL's 400kV line bay at the existing Jam Khambhaliya (GIS) PS to RIL for termination of one circuit of RIL (Oil Refinery) (GIS) – Jam Khambhaliya (GIS) 400kV D/c line.
- (f) It is proposed that the 400kV (GIS) line bay, which shall be available after the surrender of Connectivity by VREMPL, may be allocated to RIL for the termination of one circuit of RIL (Oil Refinery) (GIS) – Jam Khambhaliya (GIS) 400kV D/c line. RIL (through Powergrid) would implement one complete 400kV diameter wherein another circuit of the above line shall be terminated in one line bay, and the other line bay of this newly implemented diameter could be allocated to VREMPL or any other agency as per requirement. That it is, however, be mentioned that the 400kV GIS line bay constructed under ISTS by JKTL for termination of 400kV S/c line from 300MW WPP of VREMPL shall remain unutilized from 12.04.2022 (i.e. COD of JKTL) till the start date of Connectivity by RIL i.e. 01.04.2023.

Hearing dated 10.11.2022:

11. The Commission directed CTUIL to submit the details of the JKTL sub-station at Jam Khambhaliya with reference to the status of bays (voltage-wise) allocation and status of decisions as per Minutes of Meeting of CEA dated 8.6.2022 and

the matter was adjourned.

Petitioner's reply to the submissions made by CTUIL:

12. In response to the information filed by CTUIL dated 07.11.2022, the petitioner vide affidavit dated 21.11.2022 has submitted as follows:

- (a) It is evident that by way order dated 05.01.2022 passed by this Commission the bay which was allocated to Petitioner in the Jam Khambaliya (GIS) has been allocated in favour of RIL for termination of one circuit of Oil Refinery (GIS), therefore, apprehension of CTUIL as raised in its reply that the Jam Khambhaliya would remain idle on account of non-commissioning of the pooling substation and non-grant of connectivity to RIL stands addressed.
- (b) The Non-utilization of the other line bay of the newly implemented diameter of RIL cannot be a subject matter of consideration of this Commission.
- (c) In terms of Clause 1.0(f) Transmission Agreement for Connectivity dated 03.08.2018 executed between the Petitioner and CTUIL, it was agreed that right to encash the Bank Guarantee will only be created in favour of CTUIL in case the Stage-II Connectivity grantee fails to complete the dedicated transmission line and pooling substations within 24 months from the date of intimation of bay allocating at existing or new/under construction ISTS substation.
- (d) On 23.03.2020, CTUIL issued a letter to Petitioner intimating the bay allocation at Jam Khambhaliya (GIS) PS for the Stage-II connectivity granted through the Petitioner- Jam Khambhaliya (GIS) PS 400kV S/c line has been finalized by Jam Khambhaliya Transco Ltd. Therefore, the right created in favour of CTUIL can only be invoked 24 months from the date of allocation of bay, i.e., 23.03.2022.
- (e) The Petitioner has approached this Commission much before the specified period of 24 months as required for the commissioning of the dedicated transmission line to expire.
- (f) APTEL in the matter titled, Vaayu Renewable Energy (Kaveri) Private Limited vs. CERC & Anr, Appeal No. 26 to 28 of 2020 has held that as the requisite period of 24 months had not yet lapsed; therefore, the penalty of encashment of BG could not have been imposed by this Commission.

Submissions of CTUIL:

13. In compliance to the RoP for the hearing dated 10.11.2022, CTUIL vide affidavit dated 08.12.2022 has submitted as follows:

(a) **Details of the JKTL sub-station at Jam Khambaliya with reference to the status of bays (voltage-wise) allocation**

(i) One no. of 400kV line bay was allocated to Vaayu Renewable Energy (Mevasa) Private Limited and four nos. of 220kV line bays were allocated to various applicants as per details given below:

Name of Applicant	Stage-II Conn. Quantum (MW)	No. of bays allocated	Bay allocated (Voltage level)	Bay allocated (Bay no.)	Implementation of line Bays at ISTS end
Vaayu Renewable Energy (Mevasa) Private Limited	300	1	400kV	407	ISTS
Airpower Windfarms Pvt Ltd	250	1	220kV	202	ISTS
POWERICA Ltd.	50.6	1	220kV	203	ISTS
M/s Apraava Energy Private Limited (Formerly CLP India Private Limited)	250.8	1	220kV	201	ISTS
Torrent Power Limited	115	1	220 kV	206	ISTS

(ii) Jam Khambaliya (GIS) PS including 1 no. 400 kV GIS line bay for VREMPPL and 7 Nos. of 220 kV line bays have been commissioned by ISTS transmission licensee Jam Khambaliya Transco Ltd. on 12.04.2022.

(b) **Status of decisions as per Minutes of Meeting of CEA dated 08.06.2022**

- (i) In line with decisions in the above meeting, an affidavit was filed on 07.11.2022 by CTUIL in Petition No. 20/MP/2021 requesting CERC that the 400kV (GIS) line bay which shall be available after the surrender of Connectivity by VREMPL and the same may be allocated to RIL for termination of one circuit of RIL (Oil Refinery) (GIS) – Jam-Khambhaliya (GIS) 400kV D/c line. RIL (through Powergrid) shall implement one complete 400kV diameter wherein another circuit of the above line shall be terminated in one line bay, and the other line bay of this newly implemented diameter could be allocated to VREMPL or any other entity as per requirement.
- (ii) However, as per the Transmission Agreement signed on 28.06.2022 between Powergrid & RIL (Oil Refinery), RIL (GIS) – Jam-Khambhaliya (GIS) 400kV D/c (Twin HTLS conductor with a minimum capacity of 1800MW) line & 2 Nos. of 400kV line bays along with two complete Diameters at Jam-Khambhaliya would be implemented by Powergrid.
- (iii) Accordingly, CTUIL, vide email dated 17.11.2022, requested RIL to confirm whether two complete diameters are being implemented for the termination of the connectivity line of RIL at Jam-Khambhaliya (GIS) PS. RIL in its response vide email dated 18.11.2022, has intimated that considering the project timeline, it is not feasible for them to wait longer for the clearance to get the bay vacated by VREMPL. Hence, RIL (through Powergrid) is building two complete diameters in compliance to CEA requirements, and the aforesaid bay is no longer required by RIL. Accordingly, one. No. of 400kV line bay allocated to VREMPL is likely to remain unutilised/vacant in the foreseeable future after the surrender of its St-II Connectivity.

Hearing dated 13.12.2022:

14. During the hearing dated 13.12.2022, the matter was adjourned and the Commission observed that the interim protection granted to the Petitioner vide Record of Proceedings for the hearing dated 19.3.2021 will continue till the next date of hearing.

Submission of Petitioner:

15. Petitioner vide affidavit dated 22.12.2022 has submitted as follows:

- (a) Reliance India Limited had approached CTUIL for the implementation of the connectivity system and for the termination of 400kV D/c at Jam Khambaliya, 2 No. 400kV GIS line bays were required by RIL. RIL had proposed the construction of two half-diameter bays for better system reliability. However, in any event, RIL could have utilised one bay allocated to Petitioner on an immediate basis.
- (b) Petitioner has been requesting CTUIL for the relinquishment of the bay and for allocating the bay to some other transmission system users (including RIL). Thus, the relief sought in the present Petition should be allowed in order to ensure that the bay allotted to Petitioner should not remain unutilized.
- (c) CTUIL has substantially failed to perform its obligation within the time stipulated under the Transmission Agreement. The bay allocation at Jam Khambaliya Station was only intimated on 23.03.2020 by CTUIL. There has been a delay in the development of Jam Khambaliya Pooling Station and the scheduled completion of the Project was revised to 31.03.2021. Further, CTUIL has failed to complete the development of the Transmission Project even on the scheduled date of completion of the Project and the Jam Khambaliya Station was only commissioned on 12.04.2022.
- (d) Despite the extension being granted by the Ministry from time to time, CTUIL was not able to commission the Transmission system.
- (e) A party which itself is in default of its obligations as envisaged under the Agreement cannot impose a penalty upon the other party for not complying with their reciprocal obligations under the Transmission Agreement if the underlying contract can no longer be enforced or is void then the Bank Guarantees issued thereunder cannot be encashed.
- (f) Clause 9.3.2 of the DoP only entitles CTUIL to revoke the Stage-II Connectivity.
- (g) CTUIL has failed to fulfil the dual principle of Section 73 of the Contract Act as in January 2021, CTUIL was aware that Petitioner is not in a position to continue with the Transmission Agreement and is seeking revocation of the Stage-II Connectivity. However, despite being aware of the above position, CTUIL did not take any steps to allot the bay to some other applicant who would have applied for a similar configuration as Petitioner. In the instant

case, Reliance India Limited has applied for connectivity to the ISTS for 500 MW as bulk consumer w.e.f. 01.01.2022.

- (h) Clause 11.2 Detailed Procedure 2018, CTUIL can only encash the Bank Guarantee in the event, the Stage-II Connectivity grantee fails to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months. However, CTUIL in the instant case has taken a position that the Bank Guarantee submitted by Petitioner is to be encashed before the expiry of the period of 24 months granted to Petitioner. CTUIL has acted in contravention to the Detailed Procedure, 2018, notified by this Commission, which is not permissible under law.

Hearing dated 10.01.2023:

16. During the hearing dated 10.01.2023, the Commission directed CTUIL to clarify the following aspects:

- (a) Whether RIL originally requested 2 Nos. of 400 kV line bays along with two complete diameters?
- (b) Cost involved in the implementation of the following two options:
- (i) Termination of 400 kV D/C line at Jam Khambaliya sub-station with implementation of two new 400 kV bay diameters.
- (ii) Termination of 400 kV D/C line at Jam Khambaliya with implementation of one new 400 kV bay diameter and utilization of the existing VREPL 400 kV GIS line bay.

Submission of CTUIL:

17. CTUIL vide affidavit dated 10.02.2023 has re-iterated its earlier submissions submitted as follows:

- (a) Since no action either for revocation of connectivity or for invocation of BG has yet been initiated by the Respondent against the Petitioner, in terms of clause 5.1(1) and (2), the provisions of the Revised Procedure are liable to apply while treating the connectivity and BG furnished by the Petitioner. Further, in terms of clause 5.1(3), the existing BG of Rs.5 Cr. submitted by the Petitioner is liable to be construed as 'Conn-BG-1' of Rs.50 Lakh and 'Conn-BG-2' of Rs.4.5 Cr. As regards invocation of the said BG, clause 9.3 of the Revised Procedure categorically provides not only for revocation of Stage-II connectivity but also for encashment of Conn-BGs in case of default

of a Stage-II grantee in terms of clause 9.2.2.

- (b) The existing BG of Rs. 5 Cr. Submitted by the Petitioner now stands bifurcated as Conn-BG1 of Rs. 50 Lakh and Conn-BG-2 of Rs. 4.5 Cr., both of which are liable to be encashed in terms of Clause 5.1(4) of the Revised Procedure.
- (c) No relief under Regulation 33A in the form of release of the subject BG as prayed for by the Petitioner may be permitted by this Commission, especially in light of the fact that 400kV bay allotted to the Petitioner at Jam Khambaliya sub-station is to remain unutilized from 12.4.2022 (i.e. the COD of the substation) till the same is allocated to some other entity.

CTUIL submissions in compliance to the hearing dated 10.01.2023:

18. The CTUIL vide affidavit dated 14.03.2023 has been submitted as follows:

- (a) Reliance Industries Ltd. (RIL) was granted Connectivity for 500 MW as a Bulk Consumer for its Oil refinery at Moti Khavadi, Jamnagar, Gujarat vide CTU intimation dated 28.01.2022 (subsequently amended vide intimation dated 21.04.2022).
- (b) The date from which the Connectivity sought by RIL is 01.04.2023. RIL approached Powergrid for the implementation of the connectivity system. For termination of the 400kV D/c line at Jam Khambaliya 400/220kV (GIS) PS, 2 nos. 400kV GIS line bays are required.
- (c) As per Transmission Agreement signed on 28.06.2022 between Powergrid & RIL (Oil Refinery); RIL (GIS) – Jam-Khambaliya (GIS) 400kV D/c (Twin HTLS conductor with a minimum capacity of 1800MW) line & 2 Nos. of 400kV line bays along with two complete Diameters at Jam-Khambaliya would be implemented by Powergrid.
- (d) Cost involved in implementation:
- (i) Termination of 400 kV D/C line at Jam Khambaliya sub-station with implementation of two new 400 kV bay diameters.
- Cost of building two complete diameters GIS (4 bays): Rs. 56.26 Cr. (Considering SOR of Sep'21 price level, wherein, 400kV GIS per bay

cost is Rs. 12.23 Cr. and to arrive at project completion cost, above cost has been multiplied by 1.15 times)

(ii) Termination of 400 kV D/C line at Jam Khambaliya with implementation of one new 400 kV bay diameter and utilization of the existing VREPL 400 kV GIS line bay.

- Cost of building one complete diameter (2bays): Rs. 28.13 Cr. (Considering SOR of Sep'21 price level and to arrive at project completion cost, the above cost has been multiplied by 1.15 times)
- One no. of 400kV bay at Jam Khambaliya has already been constructed for Vaayu by JKTL on 12.04.2022 (i.e. COD of JKTL) and the same can be utilized by RIL for termination of other circuit of RIL (Oil Refinery) (GIS) – Jam-Khambhaliya (GIS) 400kV D/c line upon surrender of connectivity by Vaayu.

Petitioner's Submission:

19. The Petitioner vide affidavit dated 20.03.2023 re-iterated its earlier submissions and mainly submitted as follows:

- (a) Since January 2021, CTUIL has been aware that the Petitioner is not in a position to continue with the Transmission Agreement and is seeking revocation of the Stage-II Connectivity. However, despite being aware of the above position, CTUIL did not take any further steps to allot the bay to any other applicant who would have applied for a similar configuration as that of the Petitioner.
- (b) CTUIL has raised a contention that since no action either for revocation of connectivity or for revocation of BG has been initiated by the Respondent against the Petitioner, therefore in terms of Clause 5.1(1) and (2) of the Revised Procedure, the provisions of the Revised Procedure be applied in the present case. Vide letter dated 30.12.2020; CTUIL has already taken an action towards the revocation of Stage-II Connectivity and has intimated that a subsequent action for encashment of Conn-BG will also be taken by CTUIL. Thus, the contention of CTUIL that the Revised Procedure would be applicable to facts of the present case is contrary to the provisions as approved by this Commission and is liable to be rejected.

(c) The case of the Petitioner is squarely covered by the Judgment dated 12.04.2022 passed by the Tribunal in Appeal No. 53 of 2022 filed by Shapoorji Pallonji Infrastructure Capital Company Private Limited against CTUIL wherein it was held that as the request for revocation of Stage-II connectivity was made more than a year prior to issuance of Revised Procedure, therefore, the provisions contained in Clause 5.1(2), (3) and (4) of the Revised Procedure could not have been invoked by this Commission to impose virtually a penalty of Rs 50.0 Lakh against the two CBGs.

Hearing dated 23.03.2023 and 15.05.2023:

20. During the hearing dated 23.03.2023, the matter was adjourned and on 15.05.2023, the counsel for the Petitioner and CTUIL made their detailed submissions. The Commission gave time to the petitioner & respondent to file their respective written submissions and reserved the matter for order. Subsequent to the hearing dated 15.05.2023, no submissions have been made by either party.

Analysis and decision:

21. We have considered the submissions of the Petitioner and Respondent and also perused the records. The only issue which arises for our consideration is **whether the Petitioner may be allowed to relinquish its Stage-II Connectivity without subjecting it to any Penalty?** We now proceed to discuss the above issue.

22. The petitioner has filed the present Petition seeking relinquishment of its connectivity without being subject to any penalty and mainly submitted that for the development of a 300 MW Wind Farm and Generation Project, it was granted Stage-II Connectivity. Events such as Change in Gujarat land acquisition policies, stopping of issuance of Project approvals for SECI projects by GEDA, Projects connected to Jam Khambhaliya ISTS not being allowed to bid for the SECI Tranche-X and thereon, reluctance of project financiers to sanction

financing for the Petitioner's Project have rendered the Transmission Agreement for Connectivity dated 03.08.2018 frustrated and impossible.

23. Petitioner had earlier filed Petition No.55/MP/2019 before this Commission and the Commission, vide its Order dated 30.12.2019, granted an extension by 8 months (till 31.08.2020) to achieve milestones as per Clause 9.3 of the Detailed Procedure dated 15.5.2018. Thereafter, the Petitioner, vide its letter dated 29.08.2020, requested the Respondent for an extension of an additional 5 months for complying with the condition of achieving Financial Closure, in terms of MNRE OM dated 17.04.2020. However, the Respondent, vide its letter dated 23.09.2020, granted an extension of 3 months (from 31.08.2020 till November 2020). The Petitioner was constrained to approach the High Court of Delhi by way of Writ Petition (Civil) No.9977 of 2020, and the Hon'ble High Court, vide its Order dated 07.12.2020, directed that the petitioner shall make a representation to the respondent apprising him about the steps taken and the hindrance faced in ensuring timely compliance with the order dated 30.12.2019 of the CERC.

24. Accordingly, the Petitioner, vide its letter dated 11.12.2020, made a representation before the Respondent duly explaining the reasons why the Petitioner's Project was delayed and how the same has now been rendered completely frustrated and impossible to perform. The Petitioner has also submitted that subsequent to the relinquishment of its Connectivity at Jam Khambhaliya PS, there would not be any unutilized capacity in the Jam Khambhaliya substation, and the Respondent would not have to bear any losses as there are other users who want ISTS connectivity at Jam Khambhaliya substation and the bay allotted to the Petitioner may be allocated to them. Further, as per Clause 11.2 of the Detailed Procedure 2018, CTUIL can only encash the Bank Guarantee in the event that the Stage-II Connectivity grantee

fails to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months; however, CTUIL in the instant case has taken the position that the Bank Guarantee is to be encashed before the expiry of the period of 24 months.

25. CTUIL has submitted that the milestones to be achieved by the connectivity grantees are in view of the directions this Commission made in its Order dated 29.9.2017 passed in Petition No.145/MP/2017, which do not permit reserving the bay for a wind power developer/generator that is not ready for commissioning so as to avoid any under-utilization of bays in national interest. In the event of failure to meet the milestones as applicable, Stage-II connectivity is to be revoked, and in terms of Clause 5.1(3) of the Revised Procedure, the existing bank guarantee of Rs. 5 Crore. submitted by the Petitioner is liable to be construed as 'Conn-BG-1' of Rs. 50 Lakh and 'Conn-BG-2' of Rs. 4.5 Crore, both of which are liable to be encashed in terms of clause 5.1(4) of the Revised Procedure, which provides that if the associated bay(s) at the ISTS sub-station is being constructed by the ISTS licensee, an amount corresponding to Conn-BG1 and an amount of Conn-BG2 in terms of Clause 10.8(a) of the revised Procedure shall be forfeited. No relief under Regulation 33A in the form of release of the subject bank grantee may be permitted by this Commission, especially in light of the fact that the 400kV bay allotted to the Petitioner is implemented by an ISTS licensee (i.e. Jam Khambaliya Transco Limited) and has been commissioned on 12.04.2022 and the same is likely to remain unutilized. Further, on the option to allocate the VREMPL bay to other users, RIL, vide email dated 18.11.2022, has intimated that considering the project timeline, it is not feasible for them to wait longer, and RIL (through Powergrid) is building two complete diameters in compliance with CEA requirements, and the aforesaid bay is no longer required by RIL.

26. CTUIL has also submitted that since no action, either for revocation of connectivity or for invocation of BG, has yet been initiated by the Respondent against the Petitioner, in terms of clauses 5.1(1) and (2), the provisions of the Revised Procedure are liable to apply while treating the connectivity and BG furnished by the Petitioner.

27. The Petitioner was granted Stage-II connectivity under Pre-revised Procedure dated 15.05.2018 for "Grant of Connectivity to projects based on Renewable Sources". The relevant provisions are as follows:

"9.3 Conditions to be met by Stage-II Connectivity Grantees

9.3.1 After grant of Stage II connectivity, the grantee covered under Clause 9.2.1 shall have to achieve the following milestones in accordance with bidding documents and submit the proof to CTU within a week of achieving the milestone(s):

(i) Ownership or lease rights or land use rights of the land required as per bidding documents for the capacity of Stage-II connectivity.

(ii) Financial closure within the time stipulated in the PPA. Sanction letter from financial institution to be submitted as proof of financial closure.

(iii) Proof of release of at least 10% funds towards generation project execution within three months from the date of financial closure supported by Auditor's certificate regarding release of such funds through equity.

9.3.2 After grant of Stage II connectivity, the grantee covered under Clause 9.2.2 shall have to achieve the following milestones and submit the proof to CTU within nine months from date of grant of Stage-II Connectivity:

(i) In case of an entity who has submitted the proof of release of at least 10% funds shall submit documents regarding achievement of financial closure;

(iii) In case of entity who has submitted documents regarding achievement of financial closures shall submit the proof of release of at least 10% funds.

9.3.3 In the event of failure to achieve above milestones as listed in Clause 9.3.1 or Clause 9.3.2 above, as applicable, Stage-II connectivity shall be revoked by the CTU under intimation to the grantee.

.....

11. Monitoring of progress of renewable projects after grant of Stage-II Connectivity

11.1 Stage-II Connectivity grantee shall furnish progress of the monitoring parameters on quarterly basis in the format given at FORMAT-RCON-II-Mof by the last day of each quarter. Failure to update progress of the monitoring

parameters shall be considered as adverse progress and in such case CTU shall approach the Commission for appropriate directions. The payment received in terms of these provisions shall be adjusted in the POC pool.

11.2 The Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new / under-construction ISTS sub-station. If the grantee fails to complete the dedicated transmission line within the stipulated period, the Conn-BG of the grantee shall be encashed and Stage-II connectivity shall be revoked. The payment received in terms of these provisions shall be adjusted in the POC pool.

....”

As per above, if a Stage-II Connectivity Grantee fails to submit the proof of release of at least 10% funds from equity or fails to achieve financial closure, his Stage-II Connectivity is to be revoked. Further, if the Stage-II Connectivity grantee fails to complete the dedicated transmission line within 24 months from the date of intimation of bay allocation at an existing or new / under-construction ISTS sub-station, the Conn-BG of the grantee shall be encashed, and Stage-II connectivity shall be revoked.

28. The Commission has notified the Revised Procedure for “Grant of Connectivity to projects based on Renewable Sources” on 20.02.2021 in supersession of Detailed Procedure 2018, and the relevant provisions of the Revised Procedure are as follows:

“5. Provisions with regard to Connectivity and Bank Guarantee

5.1 After coming into force of this Procedure, for an entity which has been granted Stage-II Connectivity under the Pre-revised Procedure,

(1) Any action already initiated for revocation of Stage-II Connectivity or encashment of Bank Guarantee prior to the issue of this Procedure shall be completed under the Pre- revised Procedure.

(2) Any action including revocation of Stage-II Connectivity or encashment of Bank Guarantee initiated after the issue of this Procedure shall be in accordance with this Procedure.

(3) Conn-BG submitted under the Pre-revised Procedure shall be treated as ConnBG1 for Rs. 50 lakh and Conn-BG2 for the balance amount.

(4) In the event of encashment of such Conn-BG1 or Conn-BG2 as worked out in terms of sub-clause (3) of Clause 5.1 above, under Clause 10.8 of this Procedure:

(i) If the associated bay(s) at the ISTS sub-station is being constructed by Stage-II grantee itself, amount corresponding to Conn-BG1 shall be forfeited and balance amount being treated as Conn-BG2 under this Procedure shall be refunded.

(ii) If the associated bay(s) at the ISTS sub-station is being constructed by ISTS licensee, amount corresponding to Conn-BG1 and amount of Conn-BG2 in terms of Clause 10.8(a) of this Procedure shall be forfeited and any excess amount submitted as Conn-BG under the Pre-revised Procedure shall be refunded.

.....”

9. Application for Stage-II Connectivity

9.2 Eligibility for Stage-II Connectivity

Following shall be eligible for grant of Stage-II Connectivity:

9.2.2 An entity who is a grantee of Stage-I Connectivity or has applied for Stage-I Connectivity or has applied for Stage-I Connectivity and Stage-II Connectivity simultaneously, and is not covered under Clause 9.2.1, and has achieved the following milestones:

(i) Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II Connectivity; and

(ii) Financial closure of the project (with copy of sanction letter) or release of at least 10% of the project cost including the land acquisition cost through equity, duly supported by Auditor's certificate.

9.3 Conditions to be met by Stage-II Connectivity Grantees

9.3.1 After grant of Stage-II connectivity, the grantees covered under Clause 9.2.1 shall have to achieve the following milestones in accordance with the Letter of Award or the Power Purchase Agreement and submit the proof to CTU within a week of achieving the milestone(s):

(i) Ownership or lease rights or land use rights of the land.

(ii) Financial closure with sanction letter from financial institution.

(iii) Proof of release of funds duly supported by Auditor's certificate.

9.3.2 After grant of Stage-II Connectivity, the grantees covered under Clause 9.2.2 shall have to achieve the following milestones and submit the proof to CTU within nine months from date of grant of Stage-II Connectivity or within nine months prior to SCOD of substation at which Stage-II Connectivity is granted, whichever is later:

(i) In case of an entity who has submitted the proof of release of at least 10% of the project cost including the land acquisition cost through equity, duly supported by Auditor's certificate, shall submit documents regarding achievement of financial closure;

(ii) In case of entity who has submitted documents regarding achievement of financial closures shall submit the proof of release of at least 10% of the project cost including the land acquisition cost through equity, duly supported by Auditor's certificate.

9.3.3 If a grantee of Stage-II Connectivity covered under Clause 9.2.2, subsequently submits LOA or PPA with Renewable Energy Implementing Agency or distribution licensee, consequent upon tariff based competitive bidding within the timeline under Clause 9.3.2, it shall be deemed to be a grantee under Clause 9.2.1 and shall be required to meet the conditions under Clause 9.3.1.

9.3.4 In the event of failure to achieve above milestones as listed in Clause 9.3.1 or Clause 9.3.2 above, as applicable, Stage-II Connectivity shall be revoked by CTU under intimation to the grantee and Conn-BG1 and Conn-BG2 shall be encashed by CTU in accordance with the provisions under Clause 10.8(b) of this Procedure.

9.3.5 CTU shall monitor the status of projects on quarterly basis covered under Clause 9.3.1 and 9.3.2 and take timely necessary action.

.....
10. Processing of Applications and Grant of Stage-II Connectivity

.....
10.8 Conn-BG1 and Conn-BG2 issued by a scheduled bank in favour of "Power Grid Corporation of India Ltd" shall be submitted as per FORMAT-RCON-BG, for the amount as detailed below:

(a) Conn-BG1 and Conn-BG2 shall be furnished by the Applicants as detailed below:

Bay allocated	Conn-BG1	Conn-BG2	Additional Conn-BG2 for each additional bay
132 kV	Rs. 50 Lakh	Rs. 3 Crore	Rs. 3 Crore
220/230 kV	Rs. 50 Lakh	Rs. 3 Crore	Rs. 3 Crore
400 kV	Rs. 50 Lakh	Rs. 6 Crore	Rs. 6 Crore

Provided that Conn-BG2 and Additional Conn-BG2 shall not be payable if the Stage-II Connectivity grantee constructs the bay by itself;

(b) In case Stage-II Connectivity is revoked in accordance with Clause 9.3.4 or Clause 11.2 of this Procedure, Conn-BG1 and Conn-BG2 shall be encashed.

.....
11. Monitoring of progress of renewable projects after grant of Stage-II Connectivity

11.1 Stage-II Connectivity grantee shall furnish progress of the monitoring

parameters on quarterly basis as per FORMAT-RCON-II-M by the last day of each quarter. Failure to update progress of the monitoring parameters shall be considered as adverse progress and in such cases, CTU shall approach the Commission for appropriate directions.

11.2 (A) Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and generator pooling sub-station(s) on or before:

(a) the scheduled date of commercial operation of the generation project, for cases covered under Clause 9.2.1, as intimated at the time of making application for grant of Stage-II Connectivity or as extended or delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee, as the case may be.

(b) six months after the scheduled date of commercial operation as intimated at time of making application for grant of Stage-II Connectivity, for cases covered under Clause 9.2.2.

(B) If a grantee fails to complete the dedicated transmission line(s) and/or generator pooling station(s) within the timeline stipulated under sub-Clause (A) above, Stage-II Connectivity shall be revoked and Conn-BG1 and Conn-BG2 shall be encashed, as per provisions of Clause 10.8.

*(C) In case of Applicants which have been granted Stage-II Connectivity under Clause 9.2.2 but are subsequently covered under Clause 9.3.1, the last date for completion of dedicated transmission line(s) and generator pooling station(s) shall be the SCOD of the project or as extended or delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee, as the case may be.
....”*

As per above, if a Stage-II Connectivity Grantee fails to submit the proof of release of at least 10% funds from equity or fails to achieve financial closure, his Stage-II Connectivity is to be revoked and Conn-BG1 and Conn-BG2 shall be encashed. Also, if the Stage-II Connectivity grantee fails to complete the dedicated transmission line within six months after the scheduled date of commercial operation as intimated at the time of making the application for the grant of Stage-II Connectivity, the Stage-II Connectivity shall be revoked, and Conn-BG1 and Conn-BG2 shall be encashed.

29. We note that the Petitioner was granted Stage-II Connectivity vide PGCIL letter dated 17.07.2018 as per the CERC Connectivity Regulations 2009 and Detailed Procedures for Grant of connectivity to projects based on renewable energy sources to Inter-State Transmission System, 2018 at Jam Kahmbhaliya PS. The intimation for the grant of Connectivity to the Petitioner provides the provision to complete the dedicated transmission line(s) and Pooling sub-stations(s) within 24 months from the date of intimation of bay allocation at an existing or new/under-construction ISTS sub-station, and if the grantee fails to complete the dedicated transmission line within the stipulated period, the Conn-BG of the grantee shall be encashed and Stage-II connectivity shall be revoked.

30. We also note that this Commission vide its Order dated 30.12.2019 in petition no. 55/MP/2019, granted an extension of 8 months (till 31.08.2020) for the competition of milestones in the detailed Procedure, which was further extended by PGCIL up to November 2020. Thereafter, the Petitioner approached the Hon'ble High Court seeking further relief, and the Hon'ble High Court, vide order dated 07.12.2020, directed the Petitioner to make a representation to the respondent apprising about the steps taken and the hindrance faced in ensuring timely compliance with the order dated 30.12.2019 of the CERC and also make out the grounds for seeking extension till January 2021. However, Petitioner vide letter dated 11.12.2020 to the PGCIL, submitted the Progress/ Status Report, including the reasons why it has not been able to achieve the financial closure for setting up the wind power project. The Petitioner stated that without clarity on land policy and GEDA approval, it is impossible for VREMPL to achieve financial closure to set up its wind power project, and it is in no position to complete the requirements prescribed under the Connectivity Procedure. The Petitioner also stated that due to uncertainties for normalcy to return from the grip of COVID-19 and the COD of the ISTS station at Jam Khambhaliya, which may not happen

before 31.03.2022, the project financiers are reluctant to come forward for sanctioning of financing for the proposed project.

31. We further note that, in response to the Petitioner's letter dated 11.12.2020, PGCIL vide letter dated 30.12.2020 provided its observations on the Progress Report submitted by the Petitioner and clarified that, from the submissions of Petitioner regarding the impossibility of achieving the financial closure and completion of the wind power project, it is evident that M/s VREMPL was not in a position to comply with the requirement of 9.3.2 of RE Detailed Procedure. Therefore, the consequential effect of non-compliance shall be the revocation of Stage-II Connectivity and encashment of Conn-BG. The relevant extract of the PGCIL letter dated 30.12.2020 is as below:

"In the progress/status report received on 14.12.2020 by POWERGRID, M/s VREMPL has inter alia submitted the following:

I. M/s VREMPL is in no position to complete the requirement prescribed under the Connectivity Regulations, 2009/Detailed Procedure for obtaining financial closure and it is impossible for Mevasa to achieve financial closure for setting up the wind power project. (Point A, serial number (XII), 2nd para, page 4)

II. The project financiers are reluctant to finance the proposed wind power project of Mevasa and the project activities are at a complete stand still. (Point B, 2nd and 3rd Para (unnumbered), page 5).

III. It is impossible for M/s VREMPL to complete the wind power project owing to the everchanging guidelines of land allotment by the GoG. (Point A, serial number (XII), page 4).

IV. M/s VREMPL has alleged that the COD of the ISTS sub-station at Jam Khambaliya has been extended till 30.06.2021 and the commissioning of the ISTS pooling station at Jam Khambaliya may not happen before 31.03.2022. (Point B, 2nd para (un-numbered), page 5).

.....

D. As evident from your submission regarding impossibility in achieving the financial closure and completion of the wind power project, M/s VREMPL is not in a position to comply with the regulatory requirement under Para 9.3.2 of RE Detailed Procedure, 2018. The consequential effect of the non-compliance by a Stage-II Connectivity grantee with Para 9.3.2 of RE Detailed Procedure entails the revocation of the Stage-II connectivity as per Para 9.3.3 of RE Detailed Procedure, 2018.

E. The 400kV bay allotted to M/s VREMPL is currently under implementation by the TSP (i.e. M/s Jam Khambaliya Transco Limited) under ISTS. However, due to uncertainty of M/s VREMPL's wind power project and considering that there are

currently no pending Connectivity applications at Jam Khambaliya, the said bay is likely to remain unutilized.

F. In the 29th Joint Coordination Committee Meeting for Generation Projects in Western Region held on 24.11,2020, CTU informed M/s VREMPL regarding submission of the requisite documents for financial closure by November, 2020, failing which the Stage-II connectivity shall be liable for revocation and Conn-BG shall be liable for encashment. The relevant extract of the minutes of the 29th Joint Coordination Committee Meeting for Generation Projects in Western Region held on 28.09.2020 are enclosed at Annexure 'C'.

In view of the above, the Stage-II Connectivity granted to M/s VREMPL is liable for revocation and Conn-BG shall be dealt with in terms of the Connectivity Regulations, 2009/RE Detailed Procedure, 2018, Transmission Agreement and Orders of the CERC, issued from time to time.”

From the above, we are of the view that PGCIL, vide the above-referred letter, just informed, the Petitioner of the consequential effect of non-compliance with the milestones as per the Detailed Procedure in response to the Status report submitted by the Petitioner and did not initiate any action towards the revocation of Stage-II Connectivity and encashment of Bank Guarantee of the petitioner

32. We observe that the revised Procedure for “Grant of Connectivity to projects based on renewable sources to inter-State transmission system” was issued on 20.02.2021, and as concluded above, no action either for revocation of connectivity or for encashment of BG was initiated by the Respondent against the Petitioner. Therefore, in terms of clause 5.1(1) and (2), the provisions of the Revised Procedure is to be applied while treating the connectivity and BG furnished by the Petitioner. Accordingly, in terms of clause 5.1(3), the existing BG of Rs.5 Crore submitted by the Petitioner is liable to be construed as ‘Conn-BG-1’ of Rs.50 Lakh and ‘Conn-BG-2’ of Rs. 4.5 Crore. We further observe that Jam Khambhaliya (GIS) PS, including 1 no. 400kV GIS line bay for VREMPL has been commissioned by ISTS transmission licensee Jam Khambhaliya Transco Ltd. on 12.04.2022.

33.With regard to the Petitioner's contention that CTUIL was aware that the Petitioner is not in a position to continue with the Transmission Agreement and is seeking revocation of the Stage-II Connectivity. Despite that, CTUIL did not take any steps to allot the bays allocated to the Petitioner to some other applicant who would have applied for the same configuration as the Petitioner. In the instant case, Reliance India Limited has applied for connectivity to the ISTS for 500 MW as bulk consumer w.e.f. 01.01.2022, and if the bay allocated to the Petitioner was allocated to RIL, there would not be any unutilized capacity in Jam Khambhaliya substation, and the CTUIL would not have to bear any loss. In this regard, we are of the view that once connectivity is granted to a connectivity grantee and if the allocated bays are already under construction or constructed, the connectivity grantee cannot rely on the other users for the utilisation of bays allocated to it. Further, in terms of the provisions of the revised procedure dated 20.02.2021, failure to achieve the required milestones shall result in the revocation of the connectivity and the encashment of the BGs. Moreover, in the instant case, RIL has also confirmed that the VREMPL bay is no longer required by RIL. Accordingly, one 400kV line bay allocated to VREMPL, which has already been commissioned on 12.04.2022, is to remain unutilised after the relinquishment of its Stage-II Connectivity.

34.We also observe that the Petitioner has relied upon this Commission Order dated 07.01.2020, in Petition No.159/MP/2019 titled "Toramba Renewable Energy Private Limited vs. Powergrid Corporation of India Limited". In the said case, PGCIL had not incurred any expenditure towards Connectivity granted to the Petitioner, therefore exercising "Power to relax" under Regulation 33A Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009,, the Commission allowed discharge of Connectivity Bank

Guarantee furnished by the Petitioner, relaxing the provision 10.11 of Detailed Procedure dated 15.5.2018 issued under the said Regulations. The relevant extract of the order dated 07.01.2020 is as under:

“36. Keeping in view the hardships faced by the Petitioner and the fact that PGCIL has not incurred any expenditure towards Connectivity granted to the Petitioner, we exercise our powers to invoke “Power to relax” under Regulation 33A Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 to relax the provision 10.11 of Detailed Procedure dated 15.5.2018 issued under the said Regulations and allow discharge of Connectivity Bank Guarantee furnished by the Petitioner.”

The bank guarantee at the stage of the connectivity application was brought in to ensure that the connectivity assets built by PGCIL do not remain unutilized or stranded. As PGCIL had not incurred any expenditure towards Connectivity granted to the Petitioner, *the* Connectivity Bank Guarantee furnished by the Petitioner was discharged by the Commission in petition no, 159/MP/2019. However, in the present case, Jam Khambhaliya (GIS) PS, including 1 no. 400kV GIS line bay for VREMPL, has been commissioned by ISTS transmission licensee Jam Khambhaliya Transco Ltd. on 12.04.2022. Therefore, no relief can be granted to the Petitioner in terms of the aforesaid order in Petition No.159/MP/2019.

35. The Petitioner has also relied upon the Judgment dated 12.04.2022 passed by the APTEL in Appeal No. 53 of 2022, filed by Shapoorji Pallonji Infrastructure Capital Company Private Limited against CTUIL, wherein it was held that as the request for revocation of Stage-II connectivity was made more than a year prior to the issuance of the Revised Procedure, therefore, the provisions contained in Clauses 5.1(2), (3) and (4) of the Revised Procedure could not have been invoked by this Commission to impose virtually a penalty of Rs 50.0 Lakh against

the two CBGs. The relevant extract of the Tribunal order dated 12.04.2022 is as under:

“20. The request for revocation of Stage-II connectivity had concededly been made on 15.01.2021, more than a year prior to the issuance of the Revised Detailed Procedure. The said request had been acceded to by the respondent PGCIL on 04.03.2021, again more than eleven months prior to issuance of the Revised Detailed Procedure.

21. The purpose of requirement of CBGs is to insulate or indemnify the transmission utility against any loss it might incur on account of defaults on the part of the entity entering into TSA in timely compliances till the commencement of evacuation of power. As noted earlier, no loss has been suffered by the respondent PGCIL on account of either grant of Stage-II connectivity or its revocation.

22. More important than the above, however, is the fact that PGCIL has not initiated at any stage, not even till date, any action for encashment of CBGs. If there was any need for compensation for the loss suffered, PGCIL would have initiated action for encashment of the CBGs while granting revocation as requested, on 04.03.2020. From this conduct, from the correspondence exchanged (compelling the appellant to approach the CERC), and from the submissions made, it is clear that PGCIL was clueless as what was to be done with the CBGs that had been furnished as a pre-condition for grant of the Stage-II connectivity, after the same had been revoked and the TSAs cancelled upon request albeit with mutual consent. Since PGCIL had not suffered any financial loss in the process and since it was not finding a cause to initiate action to encash CBGs under the extant Detailed Procedure, the only just and fair dispensation to be accorded on the petition of the appellant by CERC was to allow the CBGs to be discharged and returned.

23. The provision contained in Clause 5.1(2), (3) & (4) of the Revised Detailed Procedure could not have been invoked by CERC to impose virtually a penalty of Rs.50.0 lakh each against the two CBGs on the appellant on the assumption that action for encashment of CBGs had been initiated after the issuance of the Revised Detailed Procedure for the simple reason there is no claim of such action having been initiated at any stage by PGCIL....”

In the aforesaid case, a request for revocation of Stage-II connectivity had been made on 15.01.2021, more than a year prior to the issuance of the Revised Detailed Procedure. The said request was acceded to by the PGCIL on 04.03.2021. Therefore, the Tribunal has taken the view that the provisions contained in Clauses 5.1(2), (3) & (4) of the Revised Detailed Procedure could not have been invoked by CERC to impose virtually a penalty on the appellant on the assumption that action for encashment of CBGs had been initiated after the issuance of the Revised Detailed Procedure. However, in the present case, neither any such request been made by the Petitioner to the PGCIL for revocation of the connectivity, nor has any action regarding the revocation of connectivity been taken by the PGCIL. Therefore, no relief can be granted to the Petitioner in terms of the above order.

36. The Petitioner has also relied upon APTEL Order dated Appeal No. 26 to 28 of 2020 titled “Vaayu Renewable Energy (Kaveri) Private Limited vs. CERC & Anr”, wherein APTEL held that as the requisite period of 24 months had not yet lapsed,

therefore, the penalty of encashment of BG could not have been imposed by this Commission. In the aforesaid matter, the order for revocation of the Connectivity and encashment of BG was passed by this Commission before the expiry of the 24-month period as provided in the detailed procedure dated 15.05.2018. However, in the present case, no such order either for revocation of connectivity or encashment of BG has been passed by this Commission yet, and moreover, the timeline of 24 months for the completion of the dedicated transmission line has also elapsed, and in such a case, the Stage-II connectivity of the Petitioner is to be revoked, and BG is to be encashed. However, as concluded in the preceding paragraphs, the present case is to be dealt with as per the Revised Procedure dated 21.02.2021; therefore, no relief can be granted to the Petitioner in terms of the aforesaid order of APTEL.

37. In view of the above discussion, we are of the view that the Petitioner has failed to achieve the milestones in terms of Clauses 9.3.4 and 11.2 of the Revised Procedure., Therefore, the Connectivity of the Petitioner shall be revoked and Conn-BG1 and Conn-BG2 shall be encashed, as per the provisions of Clause 10.8 (b) and 5.1 (4) of the Revised Procedure. Keeping in view the same, we direct PGCIL/CTU to take the appropriate action as per the provisions of the Revised Procedure within 15 days of the issue of this order.

38. Petition No. 20/MP/2021 is disposed of in terms of the above.

**Sd/
(P. K. Singh)
Member**

**Sd/
(Arun Goyal)
Member**

**Sd/
(I. S. Jha)
Member**

**Sd/
(Jishnu Barua)
Chairperson**