

FORMAT OF BANK GUARANTEE

Guarantee No & date.....
Amount of Guarantee Rs.....
Guarantee cover from dated:.....
To dated:
Last Date for Lodgment of claim:

To

The Secretary
Central Electricity Regulatory Commission
3rd Floor, 36, Chanderlok Building
Janpath, New Delhi 110001

Dear Sir,

THIS DEED OF GUARANTEE made this ___day of July, 2022 between _____ [the Bank] (hereinafter called “the Bank”) of the one part, and _____ [Purchasing entity] of the other part;

2. WHEREAS Indian Wind Power Association (NRC) has filed Civil Appeal No. 4801 of 2018 titled as ‘Indian Wind Power Association (NRC) Vs Central Electricity Regulatory Commission & Anr.’ before the Hon’ble Supreme Court of India against the common Judgment and decree/order dated 12.4.2018 of the Appellate Tribunal for Electricity in Appeal No. 105 of 2017, Appeal No. 173 of 2017 and 95 of 2017 of the Appellate Tribunal.

3. AND WHEREAS vide Order dated 14.7.2017 in tagged Civil Appeal No. 6083 of 2017, Hon’ble Supreme Court passed following directions :

“(c) In the alternative, direct the Respondents to ensure that any obligated entity purchasing RECs at the floor price determined vide the order dated 30.03.2017 shall deposit the difference between the earlier floor price and the present Floor Price with the Respondent No.1, Central Commission during the pendency of the Appeal No. 105 of 2017 before the Appellate Tribunal;”

4. AND WHEREAS in terms of the aforesaid order dated 14.7.2017, a principal amount of Rs. _____ in respect of RECs purchased by _____ [Purchasing entity] since 01.04.2017 has been deposited in a separate bank account maintained by CERC.

5. AND WHEREAS in IA No. 6550/2022, 171037/2018 and 169873/2018 (Tata Power Delhi Distribution Limited v CERC & Ors.) in Civil Appeal No. 4801 of 2018, the Hon’ble Supreme Court of India on 9.5.2022 has inter alia ordered as under:

"In view of the aforesaid, applications are disposed of with a direction that CERC would refund the amounts on a bank guarantee being furnished securing the amount to be refunded to the applicant(s).

That refund should be made within two weeks of the appropriate bank guarantee being furnished."

6. AND WHEREAS the above Order dated 09.05.2022 was inter-alia made applicable to other similarly situated applicants vide Order dated 17.05.2022 in the said Civil Appeal as under:

"It is not disputed that the applicants are identically situated to Tata Power Delhi Distribution Limited in respect of which we have passed orders on 09.5.2022 and thus the same Order would apply in respect of these applicants also."

xxxxx

On hearing learned counsel for parties we make it clear that such of the parties who were interventionists before the Appellate Tribunal will be permitted to be treated at par in the present proceedings also as interventionists."

7. AND WHEREAS, the principal amount of Rs. _____ (total amount to be mentioned) deposited with CERC, in respect of RECs purchased in terms of the aforesaid orders of the Hon'ble Supreme Court, is to be refunded to _____ [name of purchasing entity], against furnishing of Bank Guarantee of the same value to CERC in terms of the aforesaid orders of the Hon'ble Supreme Court.

8. AND WHEREAS in consideration of the orders of the Hon'ble Supreme Court of India in the Civil Appeals as aforesaid and at the request of _____ [name of purchasing entity] We, _____ [Name of the Bank] (hereinafter referred as "the Bank") having its registered office at _____ (full address with pin code) do hereby unconditionally undertake to pay the amount payable under this guarantee without any demur, merely on a demand from the CERC stating that the amount claimed is in terms of the direction/decision of the Hon'ble Supreme Court of India in the aforesaid civil appeals _____ (mention Civil Appeals Nos. & batch). Any such demand in writing made on the Bank by CERC shall be conclusive as regards the amount due and payable by the Bank under the guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____ secured by this guarantee.

9. We, the Bank further agree that the guarantee herein contained shall remain in full force and in effect during the pendency of the aforesaid Civil Appeals _____ (mention the appeals) before the Hon'ble Supreme Court and/or till the CERC certifies the discharge of this guarantee in full. Unless demand for claim under this guarantee is made on us in writing on or before _____ (mention claim period plus 180 days), we shall be discharged from all liabilities under this guarantee thereafter.

10. We, the Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the CERC in writing.

11. We, the Bank also agree that this guarantee will not be discharged due to change in the constitution of the Bank or _____ (name of the purchasing entity).

12. Notwithstanding anything contained herein:

- (i) Our liability under this Bank Guarantee shall not exceed Rs. _____(Rupeesonly)
- (ii) This Bank Guarantee shall be valid up to _____ (initial period of 2 years) and shall, at the request of the _____(name of purchasing entity) be extended from time to time and kept valid till the final disposal of Civil Appeal No. 4801 of 2018 & batch matters pending before Hon'ble Supreme Court of India. Further, a claim period of 180 days after validity period (claim period) is available to you to make a demand under the Bank Guarantee, in respect of a cause of action which has arisen during the validity period only;
- (iii) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before (mention period of the guarantee as found under clause (ii) above plus claim period)

In witness where of the Bank, through its authorised officer, has set its hand and stamp on this ____ day of August 2022 in the city of _____.

Signature :
Name:
Designation with Bank Stamp:
Official Address:

Witness 1

Signature :
Name:

Witness 2

Signature:
Name :