

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 249/MP/2024

Subject : Petition under Section 79(1) (f) of the Electricity Act 2003 seeking damages as per the Power Sale Agreement dated 17.7.2018 executed between Tata Power Delhi Distribution Limited and Solar Energy Corporation of India Limited, and pro-rata share of Performance Bank Guarantee encashed by Solar Energy Corporation of India Limited pursuant to the order dated 18.3.2024 in I.A No. 83 of 2024 in Appeal No. 29 of 2024 passed by the APTEL.

Petitioner : TPDDL

Respondent(s) : SECI and anr.

Date of hearing : **7.4.2026**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Shri Buddy Ranganadhan, Senior Advocate, TPDDL
Shri Anand Shrivastava, Advocate, TPDDL
Shri Ankit Bhandari, Advocate, TPDDL
Ms. Janhavi Johar, Advocate, TPDDL
Shri M.G. Ramachandran, Senior Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Ritika Singh, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Venkatesh, Advocate, MVBPL
Shri Suhael Buttan, Advocate, MVBPL
Shri Vineet Kumar, Advocate, MVBPL
Shri Nikunj Bhatnagar, Advocate, MVBPL

Record of Proceedings

The matter was called out through a virtual hearing.

2. During the hearing, the learned senior counsel for the Petitioner submitted that the dispute in the present Petition pertains to a claim for damages against Respondent, SECI, under the PSA on account of non-supply of power. He further submitted that despite the back-to-back nature of the agreements, there is no privity of contract with the generator, and SECI remains independently liable. He also submitted that in the absence of any operational payment security fund mechanism, reliance on the same is misplaced, and the Petitioner is entitled to damages under Section 73 of the Contract Act, 1872.



3. In response, the learned senior counsel for the Respondent, SECI, mainly submitted as under:

- a) The PPA/PSA form a back-to-back contractual framework wherein the provisions of the PPA, including liquidated damages under Section 74 of the Contract Act, 1872, stand incorporated and constitute the exclusive remedy;
- b) Upon termination of the PPA due to the generator's default and recovery of liquidated damages, SECI's obligations stand discharged; and
- c) The recovered amounts are contractually required to be routed through the Payment Security Fund, and any delay in disbursement is due to a lack of clarity in the mechanism and not attributable to SECI. Accordingly, the Petitioner cannot invoke Section 73 of the Contract Act, 1872, to claim additional damages beyond the agreed framework.

4. The learned counsel for the Respondent, MVBPL, submitted that no claim for damages lies against it, and submitted that no relief has been sought against the generator and, in the absence of privity of contract, no liability can be fastened upon it. The generator's liability is limited to specified contingencies, which are not applicable in the present case, and the issue of termination of the PPA is sub judice before the APTEL.

5. In rejoinder, the learned senior counsel for the Petitioner, rebutting the submissions of the Respondents, mainly submitted as under:

- a) The PPA and PSA, though back-to-back, are independent contracts and do not create any privity of contract between the Petitioner and the generator, as settled by the Hon'ble Supreme Court in the case of *Mohd. Sirajuddin*;
- b) SECI, as a trader, undertakes separate obligations of purchase and resale and cannot evade liability on account of the generator's default; and
- c) In the absence of a liquidated damages clause in the PSA, the Petitioner is entitled to claim damages under Section 73 of the Contract Act, 1872, and the contractual bar on consequential losses does not restrict recovery of direct losses.

6. The Commission, after hearing the parties at length, permitted them to file a written note of submissions, if any, by **24.4.2026**.

7. Subject to the above, an order in the matter was reserved.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)

