IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 348 OF 2025 & IA NO. 1797 OF 2025
APPEAL NO. 371 OF 2025 & IA NO. 1850 OF 2025
and
APPEAL NO. 400 OF 2025 & IA NO. 1946 OF 2025

Dated: 25th February, 2026

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

APPEAL NO. 348 OF 2025 & IA NO. 1797 OF 2025

In the matter of:

GUJARAT URJA VIKAS NIGAM LIMITED
Through its Managing Director
Sardar Patel Vidyut Bhawan,
Race Course Circle, Vadodara,
GUJARAT - 390007 … Appellant

VERSUS

1. **TATA POWER COMPANY LIMITED**
(earlier Coastal Gujarat Power Limited)
Through its Managing Director,
"Corporate Centre" 34, Sant Tukaram Road,
Carnac Bunder,
Mumbai, Maharashtra - 400009 ... Respondent No.1

2. **PUNJAB STATE POWER CORPORATION LIMITED**
Through its Chief Engineer (PP&R)
PP&R, Shed T-1, Thermal Design,
Patiala, Punjab – 147001. ... Respondent No.2

3. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED**
Through its Managing Director
4th Floor, Prakashgad, Plot No. G-9

Bandra (East), Mumbai – 400051 ... Respondent No.3

4. **AJMER VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
Hathi Bhata, Old Power House,
Ajmer, Rajasthan – 305001 ... Respondent No.4

5. **JAIPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan – 302006 ... Respondent No.5

6. **JODHPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
New Power House, Industrial Area,
Jodhpur, Rajasthan – 342003. ... Respondent No.6

7. **UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED**
Through its Chief Engineer
Vidyut Sadan, Plot No. C-16
Sector-6, Panchkula, Haryana - 134112 ... Respondent No.7

8. **DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED**
Through its Chief Engineer
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana - 125005 ... Respondent No.8

9. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
6th, 7th & 8th Floors, Tower-B,
World Trade Centre, Nauroji Nagar,
New Delhi – 110029 ... Respondent No.9

Counsel on record for the Appellant(s) : Ranjitha Ramachandran
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Shambhavi Jha
Divyansh Kasana
Nihal Bhardwaj
Siddharth Nigotia
Manu Tiwari
Aashwyn Singh
Abhishek Nangia
Mohit Mansharamani
Akash Lamba
Harsh Vardhan
Aniket Kanhaua
Adarsh Singh
Indu Uttara
Ananya Dutta
Priya Dhankar
Vineet Kumar
Surbhi Kapoor
Tanishka Khatana
Nikunj Bhatnagar
Kunal Veer Chopra
Punyam Bhutani
Vedant Choudhary
Kamya Sharma
Drishti Rathi
Nishant G
Manav Saluja
Vandana Ragwani for Res.1

Ramanuj Kumar
Vishal Binod
Aditya Dubey
Sagnik Maitra
Swadha Sharma for Res.3

APPEAL NO. 371 OF 2025 & IA NO. 1850 OF 2025

In the matter of:

1. **UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED**
Through its Chief Engineer
Vidyut Sadan, Plot No. C-16
Sector-6, Panchkula, Haryana - 134112 … Appellant No. 1

2. **DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED**
Through its Chief Engineer
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana - 125005

Through its Haryana Power Purchase Centre
Through its Chief Engineer
Shakti Bhawan, Second Floor, Sector-6,
Panchkula, Haryana – 134 109 … Appellant No. 2

VERSUS

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
6th, 7th & 8th Floors, Tower-B,
World Trade Centre, Nauroji Nagar,
New Delhi – 110029 … Respondent No.1

2. **COASTAL GUJARAT POWER LIMITED**
Through its Managing Director
C/o Tata Power Company Limited
34, Sant Tuka Ram Road,
Carnac Bunder, Mumbai – 400021 … Respondent No.2

3. **TATA POWER COMPANY LIMITED (earlier Coastal Gujarat Power Limited)**
Through its Managing Director,
"Corporate Centre" 34, Sant Tukaram Road,
Carnac Bunder,
Mumbai, Maharashtra – 400009 … Respondent No.3

4. **POWER SYSTEM OPERATION CORPORATION LIMITED WESTERN REGIONAL LOAD RESPATCH CENTRE**
Through its General Manager

B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi – 110016 … Respondent No.4

5. **GUJARAT URJA VIKAS NIGAM LIMITED**
Through its Managing Director
Sardar Patel Vidyut Bhawan,
Race Course Circle, Vadodara,
GUJARAT – 390007 ... Respondent No.5

6. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED**
Through its Managing Director
4th Floor, Prakashgad, Plot No. G-9
Bandra (East), Mumbai – 400051 ... Respondent No.6

7. **AJMER VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
Hathi Bhata, Old Power House,
Ajmer, Rajasthan – 305001 ... Respondent No.7

8. **JAIPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan – 302006 ... Respondent No.8

9. **JODHPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
New Power House, Industrial Area,
Jodhpur, Rajasthan – 342003. ... Respondent No.9

10. **PUNJAB STATE POWER CORPORATION LIMITED**
Through its Chief Engineer (PP&R)
PP&R, Shed T-1, Thermal Design,
Patiala, Punjab – 147001. ... Respondent No.10

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Rishabh Sehgal
Shaida Das
Varnika Tyagi
Harshit Dhamija
Shambhavi Jha
Divyansh Kasana
Nihal Bhardwaj
Siddharth Nigotia
Manu Tiwari
Aashwyn Singh
Abhishek Nangia
Mohit Mansharamani
Akash Lamba
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Indu Uttara
Ananya Dutta
Priya Dhankar
Vineet Kumar
Surbhi Kapoor
Tanishka Khatana
Nikunj Bhatnagar
Kunal Veer Chopra
Punyam Bhutani
Vedant Choudhary
Kamya Sharma
Drishti Rathi

Nishant G
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Ranjitha Ramachandran
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Aneesh Bajaj for Res.5

Amal Nair
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Anand K. Ganesan
Khyati Chhabra
Swapna Seshadri
For Res.7, 8 & 9

APPEAL NO. 400 OF 2025 & IA NO. 1946 OF 2025

In the matter of:

PUNJAB STATE POWER CORPORATION LIMITED
Through its Dy. Chief Engineer (PP&R)
PP&R, Shed T-1A, Thermal Design Complex,
Shakti Vihar, PSPCL, Patiala, Punjab – 147001. ... Appellant

VERSUS

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
6th, 7th & 8th Floors, Tower-B,
World Trade Centre, Nauroji Nagar,
New Delhi – 110029 ... Respondent No.1

2. **COASTAL GUJARAT POWER LIMITED**
Through its Managing Director
C/o Tata Power Company Limited
34, Sant Tuka Ram Road,
Carnac Bunder, Mumbai – 400021 … Respondent No.2

3. **TATA POWER COMPANY LIMITED**
Through its Managing Director,
Bombay house 24,
Homi Mody Street, Mumbai,

Maharashtra – 400001 ... Respondent No.3

4. **POWER SYSTEM OPERATION CORPORATION LIMITED WESTERN REGIONAL LOAD RESPATCH CENTRE**
Through its General Manager
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi – 110016 … Respondent No.4

5. **GUJARAT URJA VIKAS NIGAM LIMITED**
Through its Managing Director
Sardar Patel Vidyut Bhawan,
Race Course Circle, Vadodara,
GUJARAT – 390007 ... Respondent No.5

6. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED**
Through its Managing Director
4th Floor, Prakashgad, Plot No. G-9
Bandra (East), Mumbai – 400051 ... Respondent No.6

7. **AJMER VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
Hathi Bhata, Old Power House,
Ajmer, Rajasthan – 305001 ... Respondent No.7

8. **JAIPUR VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan – 302006 ... Respondent No.8

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Through its Managing Director
New Power House, Industrial Area,
Jodhpur, Rajasthan – 342003. ... Respondent No.9

10. **UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED**
Through its Chief Engineer
Vidyut Sadan, Plot No. C-16
Sector-6, Panchkula, Haryana - 134112 … Respondent No.10

11. **DAKSHIN HARYANA BIJLI VITRAN**

NIGAM LIMITED
Through its Chief Engineer
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana – 125005 … Respondent No.11

Counsel on record for the Appellant(s) : Poorva Saigal
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Counsel on record for the Respondent(s) : Hemant Sahai
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Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Kanika Chugh
Suhael Buttan
Shubhi Sharma
Tushar Srivastava
Nipun Sharma
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Shaida Das
Varnika Tyagi
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Shambhavi Jha
Divyansh Kasana
Nihal Bhardwaj
Siddharth Nigotia
Manu Tiwari
Aashwyn Singh
Abhishek Nangia
Mohit Mansharamani
Akash Lamba
Harsh Vardhan
Aniket Kanhaua
Indu Uttara
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Drishti Rathi
Nishant G
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Vandana Ragwani for Res.3

Ramanuj Kumar
Vishal Binod
Aditya Dubey
Sagnik Maitra
Swadha Sharma for Res.6

J U D G M E N T

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

Appeal No. 348 of 2025 is filed by Gujarat Urja Vikas Nigam Limited aggrieved by the order passed by the CERC in Petition No. 107/MP/2023 and Petition No. 205/MP/2023 dated 19.11.2025. Petition No. 107/MP/2023 was filed before the CERC by Gujarat Urja Vikas Nigam Ltd, under Sections 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication of disputes, and for directions to supply electricity under the contracted capacity of 1805 MW under the Power Purchase Agreement dated 22.04.2007 between Tata Power and GUVNL; for compensation/damages for short-supply/non-supply; and for consequential reliefs, including refund. Petition No. 205/MP/2023 was filed by Tata Power Company Limited against, among others, GUVNL under Section 79(1)(f) of the Electricity Act seeking appropriate directions as against wrongful and unsustainable demand of the penalty for availability below 75% during the contract year 2022-23 by GUVNL and RUVNL, and deduction of fixed charges and DC penalty by GUVNL from monthly bills being against the provisions of PPA dated 22.04.2007.

Appeal No. 371 of 2025 is filed by Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited, against the order passed by the CERC in Petition No. 123/MP/2022 dated 19.11.2025. Petition No. 123/MP/2022 was filed, by Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited, under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.04.2007 with Coastal Gujarat Power Limited.

Appeal No. 400 of 2025 is filed by Punjab State Power Corporation Limited aggrieved by the order passed by the CERC in Petition No. 85/MP/2022 dated 19.11.2025. Petition No.85/MP/2022 was filed before the CERC by the Punjab Power Corporation Ltd, under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003, for adjudication and directions in regard to the Power Purchase Agreement dated 22.04.2007 with Coastal Gujarat Power Limited. Petition No. 123/MP/2022 was filed by Uttar Haryana Bijli Vitaran Nigam Ltd before the CERC, under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003, for adjudication and directions in regard to the Power Purchase Agreement dated 22.04.2007 with Coastal Gujarat Power Limited

While the relief sought by GUVNL in Appeal No. 348 of 2025 is to set aside the order passed by the CERC in Petition No. 107/MP/2023 and Petition No. 205/MP/2023 dated 19.11.2025 to the extent challenged in the said appeal, the relief sought by the Haryana Discoms in Appeal No. 371 of 2025 is to set aside the order of the CERC in Appeal No. 123/MP/2022 dated 19.11.2025 to the extent challenged in its appeal. The relief sought by the Punjab State Power Corporation Limited, in Appeal No. 400 of 2025, is to set aside the order dated 19.11.2025 passed by the CERC in Petition No. 85/MP/2022 to the extent challenged in its appeal.

The Appellant-Procurers and the Respondent Tata-Power, in their respective Petitions filed before the CERC, had sought the following reliefs:

i. Petition No. 107/MP/2023 (GUVNL)

"(a) Declare that the Respondent No. 1, TPCL is obligated to generate and supply electricity to GUVNL at the tariff terms and conditions in the Power Purchase Agreement (PPA) dated 22.04.2007 and without any claim for any increase in tariff for the coal price or otherwise.

(b) Direct the Respondent No. 1, TPCL to specifically perform the obligations under the PPA dated 22.04.2007 and undertake the generation and supply of electricity qua the contracted capacity of 1805 MW to GUVNL at the tariff terms and conditions contained in the said PPA dated 22.04.2007.

(c) Direct TPCL to declare availability to GUVNL against the contracted capacity of 1805 MW and Western Regional Load Dispatch Centre (WRLDC) to schedule the requirement of GUVNLin terms of the provisions of the PPA dated 22.04.2007 and in accordance with the provisions of Electricity Act, 2003, Indian Electricity Grid Code and other applicable provisions of law.

(d) Hold that TPCL is liable to refund the excess amount of (1) Rs. 657 Crs from for the period from 13.10.2021 to 31.12.2021 and (2) Rs 516.62 crores for the period from 01.01.2022 to 05.05.2022 paid by GUVNL to TPCL over and above the tariff terms and conditions contained in the PPA.

(e) Hold that TPCL is liable to pay damages to GUVNL for the non-supply in electricity to the extent of the contracted capacity during the periods from (i) 1st March 2021 till 05.05.2022; and (ii) from 01.01.2023 till 12.02.2023 as per Appendix A

(f) Hold that TPCL is liable to pay damages to GUVNL for non-compliance by TPCL of the Section 11 directions issued by the Central Government for the period from 06.05.2022 to 31.12.2022.

(g) Hold that TPCL is liable to compensate and pay exemplary damages to GUVNL in terms of Section 73 of the Indian Contract Act, 1872 (ICA, 1872) for not undertaking the obligation of generation and supply of electricity in terms of Article 4 of the PPA for the period from 13.02.2023 onwards for which GUVNL is forced to procure costlier power from alternate sources to maintain power supply to consumers of the State, without prejudice to the right of GUVNL under prayers mentioned hereinabove for specific performance.

(h) Direct interest on the amount payable by TPCL to GUVNL at the delayed payment surcharge rate for the respective payments relating to the date on which the cause of action arose and till payment and discharge.

(i) Award exemplary costs to GUVNL payable by TPCL for deliberate and fundamental breach or breach of fundamental terms by TPCL of the PPA dated 22.04.2007.

(j) Pass ad interim ex-parte orders in terms of prayers (a), (b) & (c) mentioned above; and

(k) Pass any such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case."

ii. Petition No. 85/MP/2022 (PSPCL)

"(a) Direct the Respondent No 1 and Respondent No. 2 to resume generation and supply in so far as PSPCL is concerned to the extent of contracted capacity of 475 MW in terms of the PPA dated 22.04.2007, maintaining the proportionality of the total generation between the procurers.

(b) Direct WRLDC to schedule the quantum of power to the extent of 475 MW being the contracted capacity of HPPC in terms of the PPA dated 22.04.2007.

(c) Pass ad Interim ex parte orders in terms of prayers (a) and (b) above and confirm the same after notice;

(d) Direct the Respondent No. 1 and 2 to re-compensate HPPC for the amount of Rs 289.0 crores as on 31.12.2021 as well as for the period from 01.01.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month.

(e) Direct that the Respondent No.3 shall be jointly and severably liable to recompense PSPCL for the amount of Rs 289.0 crores as on 31.12.2021 as well as for the period from 01.01.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month.

(f) Pass any such further order or orders as this Commission may deem just and proper in the circumstances of the case."

iii. Petition No. 123/MP/2022 (HPPC)

"(a) Direct the Respondent No 1 and Respondent No. 2 to resume generation and supply in so far as HPPC is concerned to the extent of contracted capacity of 380 MW in terms of the PPA dated 22.04.2007, maintaining the proportionality of the total generation between the procurers.

(b) Direct WRLDC to schedule the quantum of power to the extent of 380 MW being the contracted capacity of HPPC in terms of the PPA dated 22.04.2007.

(c) Pass ad Interim ex parte orders in terms of prayers (a) and (b) above and confirm the same after notice;

(d) Direct the Respondent No. 1 and 2 to re-compensate HPPC for the amount of Rs 316.42 crores as on 28.02.2022 as well as for the period from 01.03.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month.

(e) Direct that the Respondent No.3 shall be jointly and severably liable to re-compensate HPPC for the amount of Rs 316.42 crores as on 28.02.2022 as well as for the period from 01.03.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month.

(f) Pass any such further order or orders as this Commission may deem just and proper in the circumstances of the case."

iv. Petition No. 205/MP/2023 (TATA POWER)

"(a) Hold and declare that Supplementary Bill dated 05.04.2023 & 06.04.2023 as issued by GUVNL and RUVNL are unlawful, unsustainable and de hors the terms of the PPA and the Directions dated 05.05.2022 issued by MoP under Section 11 of the Electricity Act, 2003 read with subsequent clarifications; and

(b) Set aside the Supplementary Bill dated 05.04.2023 & 06.04.2023 as issued by GUVNL and RUVNL for being unlawful, unsustainable and de hors the terms of the PPA and the Directions dated 05.05.2022 issued by MoP under Section 11 of the Electricity Act, 2003 read with subsequent clarifications; and

(c) Hold and declare that the methodology to calculate the DC Penalty for the Contract Year 2022-2023 will include the entire period of 12 months

including the period of supply of power under the Directions being in consonance with the terms of the PPA and the Directions dated 05.05.2022 issued by MoP under Section 11 of the Electricity Act, 2003 read with subsequent clarifications;

(d) Hold and declare that the methodology to calculate Cumulative Capacity for the months of January and February 2023 will include the period of supply of power under the Directions dated 05.05.2022 issued by MoP under Section 11 of the Electricity Act, 2003 read with subsequent clarifications;

(e) Hold and declare that the deductions of INR 120.99 Cr by GUVNL (being INR 37.84 Cr towards DC Penalty and INR 79.29 Cr towards Capacity charges and INR 4.86 Cr towards Rebate) is unlawful, unjustifiable and unsustainable within the terms of the PPA and applicable law; and

(f) Pass any such further other orders or order as this Commission may deem just and proper in the circumstances of the case."

A common order was passed by the CERC in Petition Nos. 107/MP/2023, 85/MP/2022, 123/MP/2022, 56/MP/2023, 185/MP/2023 and 205/MP/2023 on 19.11.2025 ("Impugned Order"). In the said order, CERC directed that the disputes between the procurers and the generating company under the long term PPA be referred to arbitration, holding that non-tariff contractual disputes must be mandatorily resolved through arbitration. Aggrieved thereby, the present Appeals.

II. RIVAL CONTENTIONS:

Elaborate Submissions, both oral and written, were made by Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Appellant-GUVNL, and Ms. Poorva Saigal, Learned Counsel appearing on behalf of the Appellant-PSPCL and HPPC. Oral and written submissions

were put forth, in the afore-said three Appeals, on behalf of the Respondent-TPCL, by Sri P. Chidambaram and Sri Sanjay Sen, Learned Senior Counsel and Mr. Sri Venkatesh, Learned Counsel. It is convenient to examine the rival contentions, put forth by Learned Senior Counsel and Learned Counsel on either side, under different heads.

III. SHOULD APTEL REFRAIN FROM DECIDING ISSUES WHICH ARE NOT NECESSARY FOR DISPOSAL OF THE APPEAL?

A. SUBMISSIONS URGED ON BEHALF OF RESPONDENT-TPCL:

It is submitted, on behalf of the Respondent-TPCL, that they seek to capture the essence of the issues arising for adjudication, while consciously avoiding academic questions that do not directly bear upon the present dispute **(ITO v. Murlidhar Bhagwan Das, (1964) SCC Online SC 18);** the Appellate Court / Tribunal must only decide issues that are necessary to dispose of the Appeal; in the present batch of appeals (arising from the Order dated 19.11.2025 of the CERC), the legal issues that arise for consideration of this Tribunal are: (a) whether the DVC APTEL judgment and the DVC SC Order constitute a binding judicial precedent governing the present case?; (b) whether the dispute in the present case qualifies as a "*Tariff*" or a "*Non-Tariff*" dispute within the meaning of clause (f) of Section 79(1) read with clauses (a) to (d) of Section 79(1) of the Electricity Act?; (c) whether invocation of Section 8(1) of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") is a mandatory pre-condition for the CERC to exercise its power of reference to arbitration under Section 79(1)(f) of the Electricity Act?; (d) whether the reliefs sought against WRLDC by HPPC and PSPCL operate as a legal impediment to the reference of the principal/main dispute to arbitration?; and (e) whether Petition No. 205/MP/2023 filed by **TPCL** could be referred to arbitration?

B. JUDGEMENTS RELIED UPON BY THE RESPONDENT-TPCL UNDER THIS HEAD:

1. In **ITO v. Murlidhar Bhagwan Das: 1964 SCC OnLine SC 18,** the Supreme Court observed that the decision of an Income Tax Officer given in a particular year does not operate as res judicata in the matter of assessment of the subsequent years; the jurisdiction of Tribunals in the hierarchy created by the Income-Tax Act is no higher than that of the Income Tax Officer; it is also confined to the year of assessment; Section 31 prescribes the mode of disposal by an Assistant Appellate Commissioner of an appeal preferred to him : the appeal before him is certainly confined to an the assessment year; after hearing the appeal, he can either confirm, reduce, enhance or annul the assessment; he can set aside the assessment and direct the Income Tax Officer to make a fresh assessment; the various sub-sections of that section describe in detail the orders or directions that can be made or issued by him in respect of various matters; but no power is conferred on him to make an order or issue directions in respect of an assessment of a year which was not the subject-matter of the appeal; it may, therefore, be held on a construction of the provisions of Section 31, that the jurisdiction of the Appellate Assistant Commissioner is strictly confined to the assessment orders of a particular year under appeal; Section 33 inter alia, deals with an appeal to the Tribunal against the order of the Appellate Assistant Commissioner under Section 31; and Section 33-B confers power of revision on the Commissioner against an order of the Income Tax Officer; the jurisdiction of the Appellate Tribunal or the Revisional Tribunal, as the provisions indicate, is confined only to the subject-matter which is under appeal or revision; the jurisdition of the High Court or the Supreme Court under Section 66 or Section 66-B, as the case may be, is far more limited and it is confined only to the questions referred to them; obviously the questions referred by the Tribunal cannot exceed its jurisdiction; and it is, therefore, manifest that assessment or reassessment

made under the said sections or pursuant to the orders or directions made thereunder must necessarily relate to the assessment of the year under review, revision or appeal, as the case may be.

C. ANALYSIS:

We have no quarrel with the submission, urged on behalf of the Respondent-TPCL, that this Tribunal, while adjudicating an appeal preferred against the order of the CERC, should confine its examination only to the issues raised before the Commission, and should not be swayed by academic aspects which do not relate either to the issues involved or the contentions raised in this appeal by Learned Senior Counsel/Learned Counsel on either side. Suffice it to make it clear that we shall confine our examination only to the issues involved, consider only the contentions raised on behalf of the parties to these appeals, and refrain from deciding issues unconnected thereto.

IV. BINDING NATURE OF THE DVC JUDGEMENT AND THE EXTENT OF ITS APPLICATION TO THE PRESENT CASE?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT PROCURERS:

It is contended, on behalf of the Appellant-Procurers, that the ***DVC*** *Decision* of this Tribunal, as also the ***MB Power*** *Decision* of the Delhi High Court- 2023 SCC OnLine Del 149, are distinguishable on facts, and do not constitute a binding precedent for the present case for mandatory reference to arbitration; the ***DVC*** *Decision* is based on foreclosure and valid termination, and the ***MB Power*** *Decision* is based on non-satisfaction of conditions and termination; both these cases did not involve generation and supply of power under a valid PPA; the ***DVC*** *decision,* which was based on application of Section 8 of the Arbitration and Conciliation Act, 1996 (the "1996 Act"), does

not hold that every breach or termination is ipso facto a contractual issue falling outside the CERC's adjudicatory jurisdiction; Para 25 of the ***DVC Decision*** qualifies it to be as '*other than those having impact on tariff*', and Para 22 as "other than Regulatory functions"; the ***DVC*** *Decision* in Para 25 also notes that the impact on tariff can be direct or indirect; in the Impugned Order, the ***DVC*** *decision* has been misconstrued and misapplied; the purported commonality in TPCL's Reply with the **DVC Case** shows complete difference; and the following decisions on the scope of the term 'tariff' are relevant **(i)** ***BSES v. DERC*** (Judgement of APTEL in Appeal No. 94/95 of 2012 dated 04.09.2012); (ii) ***SECI v. KSERC*** (Judgement of APTEL in Appeal No. 414 of 2022 dated 13.08.2024); and (iii) ***Transmission Corporation of A.P v. Sai Renewable*****: (2011) 11 SCC 34.**

It is submitted, on behalf of the Appellants-PSPCL and HPPC, that the issues involved in the PSPCL/HPPC Petitions are regulatory in nature dealing with enforcement of the Grid Code, Scheduling and Despatch, and is not arbitrable even in terms of the **DVC** case.

B. SUBMISSIONS URGED ON BEHALF OF RESPONDENT-TPCL:

On whether the ***DVC APTEL Judgement*** *as affirmed by the Supreme Court is a binding judicial precedent,* it is submitted, on behalf of the Respondent-TPCL, that the DVC case and the present case demonstrate that both cases arise from alleged non-performance (in case of TPCL) / termination (in case of DVC); in short, the cases arise out of breach of contract**;** further, both the PPAs contain mutually agreed arbitration clauses; the Arbitration clause in the present case even distinguishes between a *Tariff* and a *Non-tariff* dispute *(Ref: Chart @ Pg. 13 of the Reply & Art. 17.3.2 of PPA);* in the DVC case, the PPAs were terminated by MPPMCL; in the present case, the Procurers are seeking specific performance of the PPA, damages/recovery for the period of non-supply, and directions to WRLDC to

ensure proportionate supply; importantly, even though CERC had passed final orders in the **DVC** matter, APTEL, and later the Supreme Court, upheld the primacy of arbitration and directed reference to arbitration; the DVC SC Order affirmed the APTEL order on merits; it has a binding effect as a precedent on the present dispute (including under Article 141 of the Constitution); and this is a case where the CERC inherently lacks jurisdiction (***Jagmittar Sain Bhagat v. Director, Health Services, Haryana: (2013) 10 SCC 136****, and* ***Isabella Johnson v. MA Susai (Dead) by Lrs.'(1991) 1 SCC 494****).*

C. JUDGEMENTS RELIED UPON BY THE APPELLANTS-PROCURERS UNDER THIS HEAD:

1. In **Madhya Pradesh Power Management Company Ltd. V. Damodar Valley Corporation & Ors. (Judgement of APTEL in Appeal 309 of 2019 dated 28.08.2024),** both the subject PPAs contained a fore-closure clause entitling either of the parties to fore-close the PPA by giving one year prior notice to the other party.

It is in this context that this Tribunal observed that the concept of arbitration is not alien to disputes arising under various provisions of Electricity Act, 2003 and in appropriate cases, where a valid arbitration agreement exists between the parties and the dispute does not concern the regulatory functions of the Commission, the Commission would be not only justified but also bound to refer the dispute for arbitration; in the instant case, undisputedly both the PPAs dated 3rd March, 2006 and 14th May, 2007 contain the arbitration clause; the PPAs also provide for fore-closure by any of the parties by giving one year prior notice to the other party; in terms of the fore-closure clauses contained in the PPAs, the Appellant had issued notices notifying the 1st Respondent about fore-closure of the PPAs; the notices were duly received by the 1st Respondent, and vide their letters, they had rejected termination of the PPAs by the Appellant.

This Tribunal further observed that Section 79(1) of the Electricity Act empowers the Commission to adjudicate upon the disputes relating to regulation of tariff for the generating companies as well as inter-state transmission of Electricity and to determine tariff inter-state transmission of electricity as provided under clause (a) to (d) therein; they wondered how the dispute relating to termination of PPAs would be regarded as a dispute relating to tariff or regulation of tariff of the generating companies, as held by the Commission in the impugned order; to understand this aspect, it was necessary to determine what constitutes tariff and non-tariff disputes; in their considered opinion, all matters which would have a bearing upon the tariff for a generating company would constitute "tariff disputes", namely disputes related to Change in Law, delayed completion of projects, invocation of Force Majeure events etc; such matters impact the tariff for a generating company directly and, therefore, fall solely within the jurisdiction of the Central Commission under Section 79(1) of the Electricity Act, 2003; however, disputes related to termination or breach of contract, which do not impact tariff either directly or indirectly, can be considered as non-tariff related disputes referable to arbitration.

2. In **MB Power (M.P.) Ltd. v. SBI, 2023 SCC OnLine Del 149,** the plaintiff had contended that, in view of the termination, the PPA never commenced as the appointed date had not been fixed; and this position was disputed by the defendant Nos. 2 and 3 who had contended that the PPA had not come to an end, the dispute related to Section 79(1)(b) as it involved a generating company (plaintiff) having a composite scheme for generation and sale of electricity in more than one State, and as such, the same needed to be adjudicated in terms of Section 79(1)(f) by the CERC.

It is in this context that the Delhi High Court held that, in the case on hand, the agreement for procurement of electricity between the plaintiff and the applicant which was a trading company, stood terminated, and in that

sense, there was no agreement or a composite scheme governing the plaintiff and defendant No. 2 for generation and sale of electricity; the submission of the plaintiff that the agreement had not commenced; this plea was not disputed; in the absence of any agreement/scheme governing the plaintiff and the defendant No. 2/applicant, there existed no dispute with respect to tariff to be adjudicated by the CERC; if the PPA has not commenced, then Section 79(1)(b) is not attracted; this has been held by the Division Bench of the Delhi High Court in **Global Energy Pvt. Ltd**; the submission that, since the composite scheme for generation and sale arises out of the PPAs entered into by the plaintiff, the disputes forming the subject matter of the present suit arising out of the PPA is clearly in regard to matters connected with generating companies having a composite scheme for generation and sale of electricity in more than one State, as provided in Section 79(1)(b), and as such needs to be adjudicated by the CERC under section 79(1)(f) was liable to be rejected; for the Court to accept this submission, it must be apparent that the dispute between the parties essentially relates to tariff of the generating company, i.e., the plaintiff; it was contended that the present issue has had an impact on tariff, as the actions of the plaintiff have prevented the applicant from supplying power to defendant No. 3 under the PSA, and as such defendant No. 3 has been forced to secure power from the open market at rates much higher than the tariff determined; this contention was wholly irrelevant and could not be taken into consideration while deciding this application filed under Order VII Rule 11 of the CPC, as the same has been raised in the written statement of defendant No. 3 and does not flow from the plaint or the documents of the plaintiff; even otherwise, since the PPA has not commenced, the PSA cannot be put in operation and as such no issue relating to tariff arises in the Suit for determination by CERC.

3. In **BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2012 SCC OnLine APTEL 150,** this Tribunal held that the term

‘Regulate’, used in Section 79(1)(f) of the Electricity Act, has a wider scope and implication not merely confined to determination of tariff; Section 61 and 79 not only deal with the tariff but also deal with the terms and conditions of tariff; the terms and conditions necessarily include all terms related to tariff; determination of tariff and its method of recovery will also depend on the terms and conditions of tariff; for example, interest on working capital which is a component of tariff will depend on the time allowed for billing and payment of bills; this will also have an impact on terms and conditions for rebate and late payment surcharge; similarly, billing and payment of capacity charge will depend on the availability of the power station; and, therefore, the scheduling has to be specified in the terms and conditions of tariff.

This Tribunal further held that the billing, payment, consequences of early payment by way of grant of rebate, consequences of delay in payment by way of surcharge, termination or suspension of the supply, payment security mechanism such as opening of the Letter of Credit, escrow arrangement, etc, are nothing but terms and conditions of supply; terms and conditions of tariff would necessarily include all the terms related to tariff; accordingly, the billing, the payment, the consequences of delay in the payment by way of surcharge, rebate for payment within a specified period, termination or suspension of supply, payment security mechanism etc., are included in the terms and conditions of supply; Section 79(1)(f) of the Act, 2003 provides for the adjudication of the disputes involving the Generating Company in the matters connected with clauses 1 (a) to 1 (d) of Section 79; anything involving Generating Station of NTPC as to the generation and supply of electricity will be a matter governed by Section 79(1)(f) of the Act; the Central Commission has the requisite powers u/s 79 (1) (f) of the Act, 2003 to deal with the following aspects: (a) any dispute which may arise between the NTPC and the beneficiaries in regard to generation and sale of electricity by NTPC to beneficiaries; (b) any claim of NTPC for recovering the money

from the beneficiaries for supply of electricity or for maintenance of payment security mechanism; and (c) the Central Commission by way of appropriate Regulations can make any modifications with regard to the terms of the Power Purchase Agreement entered into between the parties.

4. In **Solar Energy Corpn. of India Ltd. v. Kerala State ERC, 2024 SCC OnLine APTEL 91,** this Tribunal observed that Section 79(1)(f) of the Electricity Act empowered the Central Commission to adjudicate upon disputes involving generating companies or transmission licensees in the mattes connected with clauses (a) to (d) of the said Section; therefore, any dispute involving a generating station or a transmission licensee covered under Clauses (a), (b) & (c) will fall within the jurisdiction of the Central Commission; Clauses (a) (b) & (c) of Section 79(1) of the Act begin with the expression "to regulate"; it is only the clause (d) which begins with the term "to determine tariff"; "Regulation of Tariff" is totally distinct from "Determination of tariff"; and Regulation of Tariff includes all the necessary terms and conditions relating to the tariff such as billing, consequences of delay in payment of electricity charges, rebate, termination, suspension of electricity supply, payment of security, etc.

5. In **A.P. TRANSCO v. Sai Renewable Power (P) Ltd., (2011) 11 SCC 34,** the Supreme Court held that, under the Electricity Act, 2003, "tariff" has neither been defined nor explained in any of its provisions; of the Act; in the absence of any specific definition in any of these Acts, the Court would have to depend upon the meaning attached to these expressions under the general law or in common parlance; the expression "tariff" has been explained in *Law Lexicon With Legal Maxims, Latin Terms And Words & Phrases* (2nd Edn., 1997) as *"determination, ascertainment, a table of rates of export and import duties, in which sense the word has been adopted in English and other European languages and as defined by the law dictionaries the word 'tariff' is*

a cartel of commerce; a book of rates; a table or catalogue, drawn usually in alphabetical order, containing the names of several kind of merchandise, with the duties or customs to be paid for the same as settled by the authority or agreed between the several princes and States that hold commerce together."; it has also been explained as a schedule, system, or scheme of duties imposed by the Government of a country upon goods imported or exported; published volume of rate schedules and general terms and conditions under which a product or service will be supplied; a document approved by the responsible regulatory agency listing the terms and conditions including a schedule of prices, under which utility services will be provided; purchase price ultimately would form part of the tariff, as tariff relatable to a licensee or a consumer would have essentially taken into account, the purchase price; the purchase price may not include tariff, but tariff would always or is expected to include purchase price; Sections 61 and 62 read with Sections 86(1)(*a*) and (*b*) deal with fixation of tariffs in relation to production, distribution and sale of generated power to the end consumer; these provisions clearly demonstrate that the Regulatory Commission is vested with the function for determining the tariff for generation, supply, transmission and billing of electricity, etc., as well as regulation of electricity purchase and procurement process of distribution licensees, including price at which electricity shall be procured from the generating companies; it cannot be said that procurement of power from the generating companies will not fall within the ambit of powers and functions of the Regulatory Commission.

D. JUDGEMENTS RELIED UPON BY THE RESPONDENT-TPCL UNDER THIS HEAD:

1. In **Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136,** the Supreme Court observed that it was a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be

conferred with the consent of the parties nor by a superior court; if the court passes a decree, having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the root of the cause; such an issue can be raised at any stage of the proceedings; the finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction; similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of parties equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation; the court cannot derive jurisdiction apart from the statute; and in such eventuality the doctrine of waiver also does not apply. (Vide **United Commercial Bank Ltd. v. Workmen: AIR 1951 SC 230, Nai Bahu v. Lala Ramnarayan: (1978) 1 SCC 58, Natraj Studios (P) Ltd. v. Navrang Studios: (1981) 1 SCC 523** and **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar: (1999) 3 SCC 722**)

2. In **Isabella Johnson (Smt) v. M.A. Susai, (1991) 1 SCC 494,** the Supreme Court followed its earlier decision in **Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy [(1970) 1 SCC 613,** wherein a bench comprising three Judges of the Supreme Court had taken the view that a decision on the question of jurisdiction of the Court or a pure question of law unrelated to the right of the parties to a previous suit, was not res judicata in subsequent suit; in **Mathura Prasad Bajoo Jaiswal**, the Supreme Court had observed that, in determining the application of the rule of res judicata, the court is not concerned with the correctness or otherwise of the earlier judgment; the matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened; a mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties; but, where the decision is on a

question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11, Code of Civil Procedure means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue; where, however, the question was one purely of law and it related to the jurisdiction of the court, or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata, a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

E. ANALYSIS:

In the impugned order, passed in Petition No. 107/MP/2023 and batch dated 19.11.2025, the CERC, after noting that both sides had made elaborate submissions on the precedential values of the **DVC** Judgment, and on whether the **SC Order** (in the appeal preferred against the **DVC** Judgment) amounted to a declaration of law / a binding law of precedence in terms of Article 141 of the Constitution of India, held that it did do not find it necessary to go into the said question for the reason that, even as per TPCL, the principles of law shall be those as decided in the **DVC** Judgment, even if the doctrine of merger applied; this would inevitably require them to examine the ratio laid down and/or the principles of law decided in the **DVC** Judgment, and its applicability to the present batch of Petitions; if the submissions of Procurers were accepted and it was held that the SC Order, which declined to interfere with the **DVC** Judgment in view of the difference of language in Section 79(1)(f) from the Section 86(1)(f) of the Act, could not be held as a declaration of law under Article 141 of the Constitution, the **DVC** Judgment, having been passed by APTEL and affirmed by the Supreme Court, would be

a binding judicial precedent for the Commission; and this would again require them to examine the ratio laid down and/or principles laid down in the **DVC** Judgment, and whether it applied to the facts and circumstances of the present batch of Petitions.

Against the order passed by this Tribunal in **Madhya Pradesh Power Management Company Limited vs. Damodar Valley Corporation (judgment in Appeal No. 309 of 2019 dated 28.08.2024)** (the "**DVC** judgment" for short), the Damodar Valley Corporation ("DVC" for short) filed Civil Appeal No. 10480 of 2024 and the Supreme Court, in its order dated 23.09.2024, observed that they did not find any good ground and reason to interfere with the judgment of this Tribunal in view of the difference of language in Section 79(1)(f) of the Electricity Act from Section 86(1)(f) of the said Act; the power of the Central Electricity Regulatory Commission under Section 79(1)(f) was different from the discretion exercised by the State Electricity Regulatory Commissions under Section 86(1)(f) of the 2003 Act; and, accordingly, the appeal was dismissed.

It is unnecessary for us to refer to the other part of the afore-said order of the Supreme Court whereby an arbitrator was appointed in view of the dismissal of the Civil Appeal and with the consent of the Counsel for the parties who requested the Court to nominate an arbitrator.

As detailed hereinabove, all that the Supreme Court has observed, in the first paragraph of its order, is that the language of Section 79(1)(f) is different from Section 86(1)(f) of the Electricity Act. The difference in language is only in the first limb of both these provisions. While the first limb of Section 79(1)(f) relates to "*adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with Clauses (a) to (d)* [i.e. Clauses (a) to (d) of Section 79(1)]", the function of the State Commission under the first limb of Section 86(1)(f) is "to adjudicate upon the

disputes between the licensees, and generating companies." The term "licensee" is defined in Section 2(39) of the Electricity Act to mean a person who has been granted a licence under Section 14. Section 14, in turn, provides for the grant of licence to any person (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader. Therefore, a licensee under Section 86(1)(f) can either be a transmission licensee or a distribution licensee or a trading licensee. Disputes with any of the aforesaid licensees on the one hand, and a generating company on the other, would fall within the adjudicatory jurisdiction of the State Commissions under Section 86(1)(f) of the Electricity Act.

What is, however, common both to Section 79(1)(f) and Section 86(1)(f) is the second limb which is *"to refer any dispute for arbitration."* What was referred by the Supreme Court, in its order in Civil Appeal No. 10480 of 2024 dated 23.09.2024, is evidently only the first limb of both the afore-said provisions and not the second limb. In any event, as has been pointed out by the CERC itself in the impugned order, since the Supreme Court has expressed its disinclination to interfere with the **DVC** judgment of this Tribunal, it is the law declared the **DVC** judgment which would govern.

It must be borne in mind that a judgment is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. **(State of Orissa v. Sudhansu Sekhar Misra: AIR 1968 SC 647; Quinn v. Leathem, [1901] A.C. 495).** As a case is only an authority for what it actually decides, it cannot be quoted for a proposition that may seem to follow logically from it**. (Quinn v. Leathem [1901] A.C. 495; State of Orissa v. Sudhansu Sekhar Misra, (1968) 2 SCR 154).** Judgments ought not to be read as statutes**. (Sri Konaseema**

Cooperative Central Bank Ltd. v. N. Seetharama Raju, AIR 1990 AP 171; Kanwar Amninder Singh v. High Court of Uttarakhand, 2018 SCC OnLine UTT 1026).

Judgments of Court should be read in the context of the questions which arose for consideration in the case in which the judgment was delivered. **(Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638).** Quotability as 'law' applies to the principle of a case, its ratio decidendi. Statements which are not part of the ratio decidendi are not authoritative**. (Gurnam Kaur, (1989) 1 SCC 101).** It is not everything said by a Judge, while giving judgment, that constitutes a precedent. (**Union of India v. Dhanwanti Devi, (1996) 6 SCC 44; State of Orissa v. Mohd. Illiyas (2006) 1 SCC 275; ICICI Bank v. Municipal Corpn. of Greater Bombay (2005) 6 SCC 404; State of Orissa v. Sudhansu Sekhar Misra 1967 SCC OnLine SC 17; Quinn v. Leathem, [1901] A.C. 495; Mandava Rama Krishna v. State of Andhra Pradesh, 2014 SCC OnLine AP 294).** The ratio of any decision must be understood in the background of the facts of that case. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. (**PTC India Ltd v Jaypee Karcham Hydro Corporation Ltd: 2010 SCC Online Del 2735).**

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute, and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary

for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. (**Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr: AIR 2004 SC 778; PTC India Ltd v Jaypee Karcham Hydro Corporation Ltd: 2010 SCC Online Del 2735(Del HC DB)).**

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases. (**P.S. Rao v. State, JT 2002 (3) SC 1**; **PTC India Ltd v Jaypee Karcham Hydro Corporation Ltd: 2010 SCC Online Del 2735 (Del HC DB)).** Consequently, it is the ratio of the **DVC** judgement, and not a stray observation therein, which would constitute a binding precedent.

V. CAN THE CERC REFER A DISPUTE TO ARBITRATION WHICH IT LACKS JURISDICTION TO ADJUDICATE?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT PROCURERS:

It is contended, on behalf of the Appellant-Procurers, that Section 79(1)(a), (b) and (f) of the Electricity Act, 2003 apply if (i) the matter is related to electricity; (ii) the matter involves a generating company; and (iii) it is *in regard to matters connected with 'regulation of tariff';* if these tests are satisfied, there is no lack of jurisdiction in the CERC under either part of Section 79(1)(f); the second part is not wider in scope to bring within its ambit matters other than those which CERC is empowered to adjudicate under the first part; the term 'any dispute', in the second part, refers to any of the

disputes which fall within the first part, and not disputes wholly unconnected thereto; reading of the provision in any other manner will result in adding words to Section 79(1)(f) which is an unambiguous provision; the ***DVC*** decision does not proceed on the basis that the CERC lacks jurisdiction, and there is no whisper in this regard in the said decision; the submission of lack of jurisdiction, if accepted, would require the CERC to outrightly reject the Petition (and the CERC cannot even refer the matter for arbitration); the law laid down by the Supreme Court, in ***GUVNL v. Essar*, (2008) 4 SCC 755**, still constitutes a binding precedent, including on non-application of a bilateral arbitration agreement and Section 11 of the Arbitration & Conciliation Act, both with reference to Section 86 and Section 79 (Paras 59-60 of ***GUVNL***); this is also recognised in (i) ***Renew Decision*:** 2025:DHC:9650; (ii) ***Coastal Andhra Decision*** : 2012 SCC OnLine Del 3352; and (iii) ***PTC DHC:* (2012) 130 DRJ 351**; the Impugned Order was passed by the CERC without considering the binding ratio of ***GUVNL v. Essar*;** and, in any event, reference to CERC in Para 59 of the ***GUVNL*** judgement would be binding if not as a ratio, but at the least as an obiter.

B. SUBMISSIONS URGED ON BEHALF OF RESPONDENT-TPCL:

It is submitted, on behalf of the Respondent-TPCL, that they are complying with the terms of the PPA which provides for payment of penalty in case of non-supply of power (*Ref: Article 1.2.5);* there is no *'dispute'* about the penalty which has been paid and is payable; the present dispute is a "Non-Tariff" dispute; once the dispute is classified as a '*Non-Tariff'* dispute under Section 79(1)(f), the CERC's adjudicatory jurisdiction stands ousted, and the CERC is statutorily bound to refer the matter to arbitration; the **DVC APTEL Judgment,** in para 21, holds that Section 79(1)(f) provides discretion to the CERC to "*refer any such disputes for Arbitration*"; in this context, the phrase "*refer any such disputes for Arbitration*" finds its meaning and scope in the following paras (a) Para 22 of the DVC APTEL Judgement signifies that: (i)

concept of arbitration is not alien to the Electricity Act; (ii) appropriateness has to be determined based on a valid Arbitration Agreement, and such dispute should not concern "regulatory functions" of the Commission; (iii) after such determination is done, CERC "would be not only justified but also bound to refer the dispute for arbitration"; (b) Para 25 of the DVC APTEL Judgement signifies that: (i) termination of a PPA cannot qualify as a "*Tariff*" dispute; (ii) the distinction between "*Tariff*" dispute and "*Non-Tariff*" dispute; (iii) all matters which would have a bearing upon tariff for a generating company will constitute "Tariff" dispute namely "disputes relating to change in law, delayed completion of projects, invocation of force majeure events etc. ..."; (iv) dispute *"related to termination or breach of contract which do not impact tariff either directly or indirectly can be considered as non-tariff related disputes referable to Arbitration.";* (c) Para 30 and 36 of the DVC APTEL Judgement signifies that: (i) besides Section 8, Section 79(1)(f) '*also empowers*' the CERC '*to refer any dispute for arbitration*' involving generating companies or transmission licensees; (ii) that *Non-tariff* disputes involving a generating company or a transmission licensee do not fall within the ambit of clause (f) of Section 79(1) of the Electricity Act, and are thus arbitrable; the present matter is not a case of determination or regulation of tariff; it is also not a case of direct or indirect '*regulation of tariff*' (including *'in relation to'* or '*in connection with*') as: (a) the Supreme Court in **Jaipur Vidyut Vitran Nigam Ltd. vs. MB Power (M.P.) Ltd (2024) 8 SCC 513, Para 103** specifies the scope of '*regulation of* tariff' and takes into account all judicial pronouncement relied by the Procurers; **JVVNL** has been considered at length in the DVC APTEL Judgement; (b) hence, the scope/applicability of '*regulation of tariff*' qua *Non-Tariff* dispute is no more *res-integra;* (c) the dispute herein arises purely out of alleged breach of contract, and interpretation of contractual obligations under the PPA is a matter of private contract and not *Tariff*; and the Supreme Court, in **India Thermal Power Ltd. vs. State of M.P: (2000) 3 SCC 379,** held that a PPA is

not wholly statutory, and only those clauses which directly relate to tariff determination under the statute partake of a statutory character, whereas other commercial and performance-related obligations remain purely contractual.

C. JUDGEMENTS RELIED UPON BY THE APPELLANTS-PROCURERS UNDER THIS HEAD:

1. In **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755,** the Supreme Court held that it is in the discretion of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator; there are various reasons why the State Commission may not decide the dispute itself and may refer it for arbitration by an arbitrator appointed by it; for example, the State Commission may be overburdened and may not have the time to decide certain disputes itself, and hence such cases can be referred to an arbitrator. Alternatively, the dispute may involve some highly technical point which even the State Commission may not have the expertise to decide, and such dispute in such a situation can be referred to an expert arbitrator; there may be various other considerations for which the State Commission may refer the dispute to an arbitrator instead of deciding it itself; there is an implied conflict between Section 86(1)(*f*) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since under Section 86(1)(*f*) the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the court can refer such disputes to an arbitrator appointed by it; on a harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996, whenever there is a dispute between a licensee and the generating companies only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators)

nominated by it can resolve such a dispute; this is also evident from Section 158 of the Electricity Act, 2003; however, except for Section 11 all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(*f*) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail); after the Electricity Act, 2003 has come into force, all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it; there can be no adjudication of disputes between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it; all disputes, and not merely those pertaining to matters referred to in Clauses (*a*) to (*e*) and (*g*) to (*k*) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it; and this is because there is no restriction in Section 86(1)(*f*) about the nature of the dispute.

2. In **Coastal Andhra Power Ltd vs APCPDCL:** 2012 SCC OnLine Del 3352, the Delhi High Court observed that in the present case, while the issue concerning increase in price of the Indonesian coal and the consequent invocation of the *force majeure* clause by CAPL may not be strictly construed as a dispute arising from a claim by either party "for any change in or determination of the tariff or any matter related to tariff", it is not as if the change in the price of coal will not affect the tariff at all; it is possible that the determination of such dispute could result in a change in the tariff; such a dispute can then be said to have arisen within the ambit of Article 17.3.1; therefore, one way of approaching the problem would be for CAPL to approach the CERC which will, in terms of Section 79(1)(f) of the EA, determine which part of the dispute between the parties is referable to arbitration; the words "and to refer any dispute for arbitration" occurring at the end of Section 79(1)(f) of the EA contemplates such a course; this power to

refer any dispute to arbitration, which is common to both the CERC under Section 79(1)(f) and the SERC under Section 86(1)(f), has to be seen in addition to the power of the CERC to decide the disputes arising under Sections 79(1)(a) to (d); where the CERC is of the view that the dispute actually relates to the determination of tariff, it will exercise its jurisdiction and decide such dispute; on the other hand, a dispute not involving the tariff can be referred to arbitration; this interpretation harmonises Section 79(1)(f) of the EA with Article 17.3.1 of the PPA; and although the decision of the Supreme Court in *GUVNL* case concerned the scope of the powers of the SERC, it would equally apply to the interpretation of Section 79(1)(f) of the EA insofar as it concerns the power of the CERC to refer disputes to arbitration.

3. In **PTC India Ltd. v. Jaiprakash Power Ventures Ltd., 2012 SCC OnLine Del 2838,** the Delhi High Court referred to Para 35 of the judgement of the Supreme Court in *Booz Allen and Hamilton Inc.* v. *SBI Home Finance* on what was an issue involving determination of rights in rem and the apparent non-arbitrability of such dispute, and then observed that it was contended by the Respondent that Article 15.2 of the PPA states that the agreement was solely for the benefit of the parties and their successors and was not to be construed as creating any "duty, standard of care or any liability towards any third person"; however, with the goods in question being electricity which is not meant for consumption by the purchaser of the electricity but for onward sale by the trading licencee to distribution companies and ultimately to the consumers, the above interpretation that Article 15.2 does not create rights in rem is not correct.

D. JUDGEMENTS RELIED UPON BY THE RESPONDENT-TPCL UNDER THIS HEAD:

1. In Para 103 of its judgement, in **Jaipur Vidyut Vitran Nigam Ltd. v. MB Power (M.P.) Ltd., (2024) 8 SCC 513,** the Supreme Court referred to

Para 20 of its earlier judgement in **Energy Watchdog v. CERC, (2017) 14 SCC 80**, wherein it was observed that the entire Electricity Act should be read as a whole; all discordant notes struck by the various Sections must be harmonised; considering the fact that the non obstante clause in Section 63, advisedly, restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether; either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(*b*) is the source of the power to regulate, which includes the power to determine or adopt tariff; Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff; in a situation, where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(*b*), only in accordance with those guidelines; and it is only in a situation, where there are no guidelines framed at all or where the guidelines do not deal with a given situation, that the Commission's general regulatory powers under Section 79(1)(*b*) can be used.

2. In **India Thermal Power Ltd. v. State of M.P., (2000) 3 SCC 379,** it was contended on behalf of the Appellant that the appellant/IPPs had entered into PPAs under Sections 43 and 43-A of the Electricity Supply Act and as such they are statutory contracts and, therefore, MPEB had no power or authority to alter their terms and conditions; and this contention has been upheld by the High Court.

The Supreme Court held that the said contention was not correct and the High Court was wrong in accepting the same; Section 43 empowered the Electricity Board to enter into an arrangement for purchase of electricity on such terms as may be agreed; Section 43-A(1) provided that a generating company may enter into a contract for the sale of electricity generated by it with the Electricity Board; as regards the determination of tariff for the sale of

electricity by a generating company to the Board, Section 43(1)(2) provided that the tariff shall be determined in accordance with the norms regarding operation and plant-load factor as may be laid down by the authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined from time to time by the Central Government by a notification in the Official Gazette; these provisions clearly indicated that the agreement could be on such terms as may be agreed by the parties except that the tariff is to be determined in accordance with the provision contained in Section 43-A(2) and notifications issued thereunder; merely because a contract is entered into in exercise of an enabling power conferred by a statute, that by itself cannot render the contract a statutory contract; if entering into a contract containing the prescribed terms and conditions is a must under the statute, then that contract becomes a statutory contract; if a contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory; a contract may contain certain other terms and conditions which may not be of a statutory character, and which have been incorporated therein as a result of mutual agreement between the parties; therefore, the PPAs could be regarded as statutory only to the extent that they contained provisions regarding determination of tariff and other statutory requirements of Section 43-A(2); opening and maintaining of an escrow account or an escrow agreement were not statutory requirements and, therefore, merely because PPAs contemplated maintaining escrow accounts that obligation could not be regarded as statutory.

The Supreme Court further held that there was no dispute that MoUs and PPAs were concluded contracts, but to say that MoUs and PPAs are concluded contracts is one thing and to say that under those contracts the appellants and other IPPs acquired a legal right and MPEB incurred an enforceable obligation in respect of providing an escrow coverage is a

different thing; the MoUs and IPPs, while providing for payment of dues by MPEB, had also at the same time made provisions for securing these payments; apart from an undertaking by MPEB under those agreements an obligation was imposed upon MPEB to open a revolving letter of credit or letters of credit for payment of the dues; by way of further security it was provided in those contracts that escrow account shall be opened and maintained by MPEB to secure payment of the amount equal to 1.5 times the monthly bill; those contracts also provided for a guarantee agreement with the State Government for payment of dues of MPEB; thus the purpose of opening and maintaining an escrow account was to secure payment for the electricity to be supplied by the generating companies to MPEB; the escrow account was, therefore, really required to be opened at that stage and, therefore, it was provided in most of these contracts that the escrow account shall be opened at the time of the first unit commercial operations date.

E. ANALYSIS:

(a) CONTENTS OF THE IMPUGNED ORDER ON THIS ISSUE:

In the impugned order, passed in Petition No. 107/MP/2023 and batch dated 19.11.2025, the CERC observed that, even if non-tariff disputes involving the generating company did not fall within the ambit of clauses (a) to (d) of Section 79(1) and could not therefore be adjudicated by the CERC under the first part of Section 79(1)(f) of the Electricity Act, such a dispute would, nonetheless, be arbitrable, and can be referred to arbitration by the Central Commission in view of the expression *“and to refer any dispute for any arbitration”* in the latter part of Section 79(1)(f). The CERC arrived at this conclusion placing reliance on the law declared by this Tribunal in the **DVC** judgment.

The CERC further observed, albeit in the context of Section 8(1) of the Arbitration and Conciliation Act, 1996 (the “1996 Act” for short), that the jurisdiction of the Central Electricity Regulatory Commission (the ”CERC”/“Commission” for short) to adjudicate disputes, under Section 79 (1)(f) read with Section 79(1)(b) of the Electricity Act, did not extend over matters not related to the regulation of tariff of a generating company having a composite scheme; in other words, as explained by APTEL in the **DVC** Judgment, non-tariff disputes involving a generating company did not fall within the ambit of Section 79(1)(f) of the Electricity Act, not at least in the first part; such disputes would then be arbitrable – falling within the scope of the expression *“and to refer any dispute for arbitration”* as appearing in the later part of Section 79(1)(f), and the Commission was required to refer to such disputes to arbitration; the **DVC** Judgment clarified the scope of adjudicatory powers of the Commission under Section 79(1)(f) read with Section 79(1)(b) of the Electricity Act and, after examining what constitutes tariff and non-tariff disputes, specifically held that non-tariff disputes, involving a generating company, did not fall within the ambit of Section 79(1)(f) of the Electricity Act and were, thus, arbitrable (Paragraphs 25, 26 and 36 of the **DVC** Judgement).

The CERC thereafter observed that, in the present case, they had examined the nature of dispute(s) involved in this batch of matters as per the principles laid down by the **DVC** Judgment, and had found that the main/primary dispute(s) involved did not impact tariff or regulation of tariff of the generating company; as a corollary, it followed that the adjudicatory jurisdiction of the Commission did not extend to dispute(s) qua TPCL and the Procurers as raised in these matters, and the only avenue left was to refer them to arbitration under Section 79(1)(f) of the Electricity Act; the objection raised by TPCL, regarding lack of adjudicatory jurisdiction of the CERC to adjudicate the main dispute(s) involved in this batch of Petitions, in light of the **DVC** Judgment, could not be faulted; the main dispute(s) involved in this

batch of Petitions did not relate to tariff or regulation of tariff, and the Commission, therefore, lacked jurisdiction to adjudicate upon them; the Commission, being a creature of the statute, enjoyed limited adjudicatory jurisdiction under Section 79(1)(f) read with Section 79(1)(b); for matters not falling within such limited jurisdiction, i.e., non-tariff related matters, the Commission was, as laid down in the **DVC** Judgment, bound to refer such matters to arbitration; a non-tariff issue, involved in the generating station covered under Section 79(1)(b) of the Electricity Act, would fall under the scope of *"and to refer any dispute for arbitration"* as appearing in the latter part of Section 79(1)(f); and the Commission was bound to refer such non-tariff disputes to arbitration in terms thereof, even if none of the Parties had sought for such a reference.

As reliance, in passing the impugned order, is placed by the CERC on the **DVC** Judgement of this Tribunal, it is necessary to take note of its contents, and the law declared therein**.**

(b) DVC JUDGEMENT: ITS CONTENTS:

In **Madhya Pradesh Power Management Company Ltd vs Damodar Valley Corporation** (Judgement in Appeal No. 309 of 2019 dated 28.08.2024), (the **"DVC"** Judgement for short), the issue with regards arbitrability of the dispute between a Generating Company and a Distribution Company, as well as applicability of Section 8 of the 1996 Act to Petitions under Section 79(1)(f) of the Electricity, Act, 2003 filed before the CERC, arose for consideration.

Both the PPAs, entered into by the Appellant with the first respondent, contained a foreclosure clause entitling either of the parties to fore-close the PPA by giving one-year prior notice to the other party. The Appellant issued two notices dated 28th February, 2017 and 2nd May, 2017 thereby terminating

the PPAs dated 3rd March, 2006 and 14th May, 2007 respectively in terms of the termination/foreclosure clauses contained in the two PPAs. The first Respondent did not accept termination of the PPAs, and informed the Appellant about the same vide communication dated 12th May, 2017 and 30th May, 2017. Subsequently, the first Respondent filed two separate Petitions under Section 79(1)(f) of the Electricity Act before the 2nd Respondent – CERC. The prayer clause read as under :- *(a) Declare that MPPMCL shall have the obligation to pay for the contracted capacity in terms of the provisions of the PPA dated 3.3.2006 read with the Regulations and Orders of this Commission, and Declare that MPPMCL shall not be entitled to treat the PPA having been terminated from February, 2018 contrary to the terms of the PPA dated 3.3.2006; (b) Hold that the Respondent MPPMCL is liable to pay tariff to DVC namely the fixed charges and Energy Charges for the quantum of electricity scheduled by MPPMCL and deemed fixed charges for the quantum of electricity declared available by DVC but not scheduled by the Respondent, MPPMCL; (c) Direct the Respondent MPPMCL to pay the amount of Rs 437.32 crore due and outstanding to DVC as on 1.2.2018; (d) Award the cost of proceedings; and (e) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.*

Invoking the arbitration clause contained in the two PPAs, the Appellant filed its statement of objections in both the petitions, purportedly under Section 8 of the 1996 Act, thereby objecting to the maintainability of the Petitions, and seeking a direction to the parties to get the dispute adjudicated through arbitration in accordance with the arbitration clause of the PPAs.

In its common order in both the Petitions dated 23.07.2019, the CERC held that the Petitions were not maintainable, and ruled out the applicability of Section 8(1) of the 1996 Act to the Petitions before it. The CERC held that the disputes, foreclosing the subject matter of the two petitions, were filed with it

under section 79(1) of the Electricity Act, and was therefore not arbitrable. The CERC based its findings on two judgments of the Supreme Court (a) **Gujrat Urja Vikas Nigam Ltd. vs. Essar Power Ltd,** (2008) 4 SCC 755; and (b) **MRMGC Ltd. vs. Aftab Singh & Anr**. (Judgment in Review Petition Nos. 2629-30 of 2018 dated 13.03.2018). The said order of the CERC dated 23.07.2019 was subjected to challenge before this Tribunal in Appeal No. 309 of 2019.

The question which arose for consideration before this Tribunal, in the **DVC** Judgement (ie in **Madhya Pradesh Power Management Company Ltd. v. Damodar Valley Corporation And Anr. (Judgement in Appeal No. 309 of 2019 dated 28.08.2024)** was whether there was any provision in the Electricity Act, 2003 by virtue of which Section 8(1) of the 1996 Act had no applicability to Petitions, under Sections 79 and 86 of the Electricity Act, brought before the Commission; and whether the disputes involved therein could not be submitted to arbitration. (Refer: Para 19 of the DVC judgement).

After observing that Section 2(3) and 8(1) of the 1996 Act were material for deciding the issue under consideration (Refer: Para 18 of the DVC Judgement), this Tribunal held that there was no dispute that the Commission, be it the Central Commission or the State Commission, while adjudicating disputes under Sections 79 and 86 of the Electricity Act, 2003, as the case may be, performed an adjudicatory role and thus came within the purview of "Judicial Authority" as referred to in Section 8 of the 1996 Act. (Refer: Para 19 of the said Judgement).

This Tribunal thereafter recorded its findings as under:-

(i) Section 79(1)(f) of the Electricity Act empowered the Central Commission to adjudicate disputes involving generating companies and distribution licensees with regards matters connected with clauses (a) to (d)

of sub-section (1) ie matters connected to regulation of tariff of the generating companies as well as inter-state transmission of electricity and to determine tariff for inter-state transmission of electricity. (Refer: Para 21 of the DVC Judgement)

(ii) It (ie Section 79(1)(f)) also gives discretion to the Commission to refer any such dispute for arbitration. (Refer: Para 21 of the DVC Judgement)

(iii) In appropriate cases, where a valid arbitration agreement exists between the parties and the dispute does not concern the regulatory functions of the Commission, the Commission would not only be justified but also bound to refer the dispute for arbitration. (Refer: Para 22 of the DVC Judgement).

(iv) Disputes relating to termination of PPAs would not be regarded as a dispute relating to tariff or regulation of tariff of generating companies. (Refer: Para 25 of the DVC Judgement).

(v) All matters, which would have a bearing upon the tariff for a generating company, would constitute "tariff disputes" namely disputes related to Change in Law, delayed completion of projects, invocation of Force Majeure events etc. (Refer: Para 25 of the DVC Judgement).

(vi) Such matters impact tariff for a generating company directly and, therefore, fall solely within the jurisdiction of the Central Commission under Section 79(1) of the Electricity Act, 2003. (Refer: Para 25 of the DVC Judgement).

(vii) Disputes related to termination or breach of contract, which do not impact tariff either directly or indirectly, can be considered as non-tariff related disputes referable to arbitration. (Refer: Para 25 of the DVC Judgement)

(viii) Disputes relating to termination of a PPA is confined to the legality and validity of termination of the PPA, and does not relate to tariff or regulation of tariff. (Refer: Para 26 of the DVC Judgement).

(ix) The ratio which can be clearly deduced from the judgement of the Supreme Court, in **Gujarat Urja Vikas Nigam Ltd vs Essar Power Ltd: (2008) 4 SCC 755** and **Emaar MGF Land Ltd vs Aftab Singh & another (Judgement in Review Petition Nos. 2629-2630 of 2018 dated 13.02.2018)**, is that, in case of any conflict (express or implied) between the provisions of the Electricity Act and any other statute, the provisions of the Electricity Act would prevail, but where there is no such conflict, both the statutes are to be read together. (Refer: Para 28 of the DVC Judgement).

(x) There is no conflict or inconsistency between Section 8(1) of the 1996 Act and Section 79(1) of the Electricity Act, 2003. (Refer: Para 30 of the DVC Judgement)

(xi) Section 8(1) of the1996 Act makes it mandatory for a judicial authority to refer parties for arbitration where it finds that a valid arbitration agreement exists between the parties, and a party to the arbitration agreement so applies. (Refer: Para 30 of the DVC Judgement)

(xii) Section 79(1)(f) of the Electricity Act also empowers the Central Commission to refer any dispute for arbitration apart from adjudicating the disputes involving generating companies or transmission licensees etc. (Refer: Para 30 of the DVC Judgement)

(xiii) In view of the provisions of Clauses (a) to (d) of Section 79(1) of the Electricity Act, only non-tariff disputes can be referred to arbitration. (Refer: Para 30 of the DVC Judgement).

(xiv) The Electricity Act is a self-contained comprehensive legislation which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public sector participation in the process, but also ensures creation of special adjudicatory mechanism to deal with the grievances of any person aggrieved by any order made by an adjudicating officer under the Act. (Refer: Para 32 of the DVC Judgement).

(xv) However, the expression *"and to refer any dispute for arbitration"* used at the end of clause (f) of both the Sections 79(1) and 86(1) of the Electricity Act, 2003 leaves scope for some disputes to be referred for arbitration. This view is further strengthened by Section 158 of the Act which provides that arbitration directed by the Commission shall be subject to the provisions of the 1996 Act. (Refer: Para 32 of the DVC Judgement).

(xvi) In case it is held that all disputes brought before the Commission are to be adjudicated upon by it, and the Commission does not have the power to refer any dispute for arbitration even though it finds a valid arbitration agreement existing between the parties, it would render the above noted expressions used in Section 79(1) and 86(1) of the Electricity Act, 2003 (ie *"and to refer any dispute for arbitration"*), as well as Section 158, totally redundant. (Refer: Para 33 of the DVC Judgement).

(xvii) It is manifest that the Parliament, while passing the Electricity Act, 2003, did not intend to completely rule out the applicability of the provisions of the 1996 Act to disputes under the Electricity Act, 2003. (Refer: Para 33 of the DVC Judgement).

(xviii) Non-tariff disputes, involving a generating company or a distribution licensee, do not fall within the ambit of clause (f) of Section 79(1) of the Electricity Act, 2003, and are thus arbitrable. (Refer: Para 36 of the DVC Judgement).

(xix) In the instance case, there is undisputedly a valid and subsisting arbitration clause contained in the PPAs. As the dispute between the parties primarily relates to termination of the PPAs, which is a non-tariff dispute, it is referrable to arbitration. (Refer: Para 37 of the DVC Judgement).

As reference was made, in the **DVC** Judgement, to (1) the judgement of the Supreme Court in **Gujarat Urja Vikas Nigam Limited;** (2) the judgement of the Supreme Court in **Emmar MGF Land Limited;** (3) the judgement of the Delhi High Court in **MB Power (Madhya Pradesh) Limited Vs. State Bank of India & Ors. – 2023/DHC/000227;** and (4) the judgement of the Supreme Court in **Jaipur Vidyut Vitran Nigam Ltd vs MB Power (Madhya Pradesh) Ltd: 2024 SCC OnLine SC 26,** it is useful to note the facts and the law declared therein.

(c) JUDGEMENT OF THE SUPREME COURT IN GUJARAT URJA VIKAS NIGAM LIMITED:

What was referred, in the **DVC Judgement** of this Tribunal, are the observations of the Supreme Court in Paras 56 to 59 and 61 of its Judgement in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755.** Paras 56 to 59 read thus:-

"***56.*** *Hence, we have to add the aforementioned words at the end of Section 175 otherwise there will be an irreconcilable conflict between Section 174 and Section 175.*

57. *In our opinion the principle laid down in Section 174 of the Electricity Act, 2003 is the principal or primary whereas the principle laid down in Section 175 is the accessory or subordinate to the principal. Hence Section 174 will prevail over Section 175 in matters where there is any conflict (but no further).*

58. *In our opinion Section 174 and Section 175 of the Electricity Act, 2003 can be read harmoniously by utilising the samanjasya, badha and*

gunapradhana principles of Mimansa. This can be done by holding that when there is any express or implied conflict between the provisions of the Electricity Act, 2003 and any other Act then the provisions of the Electricity Act, 2003 will prevail, but when there is no conflict, express or implied, both the Acts are to be read together.

59. *In the present case we have already noted that there is an implied conflict between Section 86(1)(f) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since under Section 86(1)(f) the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the court can refer such disputes to an arbitrator appointed by it. Hence on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996 we are of the opinion that whenever there is a dispute between a licensee and the generating companies only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996. This is also evident from Section 158 of the Electricity Act, 2003. However, except for Section 11 all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(f) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail).”*

After extracting Paras 56 to 59 of **Gujarat Urja Vikas Nigam Ltd.**, this Tribunal, in the **DVC** Judgement, observed that the ratio which could be clearly deduced there-from was that, in case of any conflict (express or implied) between the provisions of the Electricity Act and any other statute,

the provisions of the Electricity Act would prevail but where there is no such conflict, both the statutes are to be read together.

This Tribunal, in the **DVC** Judgement, then extracted Para 61 of the Judgement in **Gujarat Urja Vikas Nigam Ltd,** which reads thus:-

"***61.*** *We make it clear that it is only with regard to the authority which can adjudicate or arbitrate disputes that the Electricity Act, 2003 will prevail over Section 11 of the Arbitration and Conciliation Act, 1996. However, as regards the procedure to be followed by the State Commission (or the arbitrator nominated by it) and other matters related to arbitration (other than appointment of the arbitrator) the Arbitration and Conciliation Act, 1996 will apply (except if there is a conflicting provision in the Act of 2003). In other words, Section 86(1)(f) is only restricted to the authority which is to adjudicate or arbitrate between licensees and generating companies. Procedural and other matters relating to such proceedings will of course be governed by the Arbitration and Conciliation Act, 1996, unless there is a conflicting provision in the Act of 2003.*"

This Tribunal, in the **DVC** Judgement, thereafter opined that they did not see any conflict or inconsistency between Section 8(1) of the 1996 Act and Section 79(1) of the Electricity Act; Section 8(1) of the 1996 Act made it mandatory for a judicial authority to refer the parties for arbitration where it finds that a valid arbitration agreement exists between the parties, and a party to the arbitration agreement so applies; Section 79(1)(f) of the Electricity Act also empowers the Central Commission to refer any dispute for arbitration apart from adjudicating the disputes involving generating companies or transmission licensees etc; and, in view of clauses (a) to (d) of Section 79(1) of the Electricity Act, only non-tariff disputes can be referred to arbitration.

Apart from the afore extracted paras, there are other observations of the Supreme Court in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755** which are also of significance. They read thus:-

"***26.*** *It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies.* ***Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word "and" in Section 86(1)(f) between the words "generating companies" and "to refer any dispute for arbitration" means "or". It is well settled that sometimes "and" can mean "or" and sometimes "or" can mean "and" (vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 404).***

27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word "and" between the words "generating companies" and the words "refer any dispute" means "or", otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some arbitrator. Hence the word "and" in Section 86(1)(f) means "or".

28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation.

29. This is also evident from Section 158 of the Electricity Act, 2003 which has been quoted above. *We may clarify that the agreement dated 30-5-1996 is not a part of the licence of the licensee. An agreement is something prior to the issuance of a licence. Hence any provision for arbitration in the agreement cannot be deemed to be a provision for arbitration in the licence. Hence also it is the State Commission which alone has power to arbitrate/adjudicate the dispute either itself or by appointing an arbitrator.*

30. *Shri Jayant Bhushan, learned counsel for one of the parties in the connected case submitted that Section 86(1)(f) is violative of Article 14 of the Constitution of India because it does not specify when the State Commission shall itself decide a dispute and when it will refer the matter to arbitration by some arbitrator. In our opinion there is no violation of Article 14 at all.* ***It is in the discretion of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator.*** *Some leeway has to be given to the legislature in such matters and there has to be judicial restraint in the matter of judicial review of constitutionality of a statute (vide Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720 : JT (2008) 2 SC 639 : (2008) 3 Scale 45]).*

31. There are various reasons why the State Commission may not decide the dispute itself and may refer it for arbitration by an arbitrator appointed by it. For example, the State Commission may be overburdened and may not have the time to decide certain disputes itself, and hence such cases can be referred to an arbitrator. Alternatively, the dispute may involve some highly technical point which even the State Commission may not have the expertise to decide, and such dispute in such a situation can be referred to an expert arbitrator. There may be various other considerations for which the State

Commission may refer the dispute to an arbitrator instead of deciding it itself. *Hence there is no violation of Article 14 of the Constitution of India.*

33. *Section 175 of the Electricity Act, 2003 states that the provisions of the Act are in addition to and not in derogation of any other law. This would apparently imply that the Arbitration and Conciliation Act, 1996 will also apply to disputes such as the one with which we are concerned. However, in our opinion Section 175 has to be read along with Section 174 and not in isolation.*

35. *It is well settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner [vide Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266 : AIR 1999 SC 3558] (SCC para 17 : AIR para 12), Dhanajaya Reddy v. State of Karnataka [(2001) 4 SCC 9 : 2001 SCC (Cri) 652 : AIR 2001 SC 1512] (SCC para 23 : AIR para 22), etc.].* ***Section 86(1)(f) provides a special manner of making references to an arbitrator in disputes between a licensee and a generating company. Hence by implication all other methods are barred.***

60. *In the present case, it is true that there is a provision for arbitration in the agreement between the parties dated 30-5-1996. Had the Electricity Act, 2003 not been enacted, there could be no doubt that the arbitration would have to be done in accordance with the Arbitration and Conciliation Act, 1996. However,* ***since the Electricity Act, 2003 has come into force w.e.f. 10-6-2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. After 10-6-2003 there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. We further clarify that all disputes, and not merely those pertaining to matters referred to in Clauses (a) to (e) and***

(g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of the dispute.

62. Since the High Court has appointed an arbitrator for deciding the dispute between the licensee and the generating company, in our opinion, the judgment of the High Court has to be set aside. Only the State Commission or the arbitrator (or arbitrators) appointed by it could resolve such a dispute. *We, therefore, set aside the impugned judgment of the High Court but leave it open to the State Commission or the arbitrator (or arbitrators) nominated by it to adjudicate/arbitrate the dispute between the parties expeditiously. Appeal allowed. The impugned judgment set aside…………..”* (emphasis supplied).

After extracting Paras 26 to 28 of the Judgement in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755,** a three judge bench of the Supreme Court, in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82**, observed that it was clear on a reading of this judgment that the expression “and” occurring in Section 86(1)(*f*) must be read as “or”; but this is only because, as has been pointed out in the **Gujarat Urja Vikas Nigam Ltd** judgment, the State Commission cannot both decide the dispute itself and also refer it to an arbitrator.

After extracting Paras 26 to 28 of the Judgement in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755,** having noted that this position had been subsequently approved by a three-Judge Bench of the Supreme Court in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82**, and on taking note of Sections 86(1)(f) and 174 of the Electricity Act, another three Judge bench of the Supreme Court, in **M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd., (2021) 14 SCC**

548, observed that it was evident that Section 86(1)(*f*) of the 2003 Act is a special provision which overrides the general provisions contained in Section 11 of the 1996 Act; Section 86(1)(*f*) vests a statutory jurisdiction with the State Electricity Commission to adjudicate upon disputes between licensees and generating companies, and to refer any dispute for arbitration; the word "and" between "generating companies" and "to refer any dispute for arbitration" is to be read as "or", since the State Electricity Commission cannot obviously resolve the dispute itself and also refer it to arbitration.

The law declared by the Supreme Court, in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755,** (which has been referred with approval and followed in the subsequent three-judge bench judgements of the Supreme Court, in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82**, and **M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd., (2021) 14 SCC 548),** are summarized as under:

(1) Disputes under Section 86(1)(*f*) can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. (Para 26)

(2) The word "and" in Section 86(1)(*f*), between the words "generating companies" and "to refer any dispute for arbitration", means "or". (Para 26)

(3) Otherwise, it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some arbitrator. Hence the word "and" in Section 86(1)(*f*) means "or". (Para 27)

(4) Section 86(1)(*f*) is a special provision and hence will override the general provision in Section 11 of the 1996 Act for arbitration of disputes between licensees and generating companies. (Para 28)

(5) Section 11 of the 1996 Act has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(*f*) shall apply in such a situation. (Refer Para 28). This is also evident from Section 158 of the Electricity Act, 2003**.** It is the State Commission which alone has power to arbitrate/adjudicate the dispute either itself or by appointing an arbitrator. (Para 29).

(6) It is in the discretion of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator. (Para 30).

(7) Section 86(1)(*f*) provides a special manner of making reference to an arbitrator in disputes between a licensee and a generating company. Hence, by implication, all other methods are barred. (Para 35).

(8) There is an implied conflict between Section 86(1)(f) of the Electricity Act, 2003 and Section 11 of the 1996 Act since, under Section 86(1)(f), the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the 1996 Act, the court can refer such disputes to an arbitrator appointed by it. (Para 59).

(9) Whenever there is a dispute between a licensee and a generating company only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the 1996 Act. This is also evident from Section 158 of the Electricity Act, 2003. (Para 59)

(10) Except for Section 11, all other provisions of the 1996 Act will apply to arbitration under Section 86(1)(f) of the Electricity Act, 2003 (unless there is a

conflicting provision in the Electricity Act, 2003, in which case such provision will prevail). (Para 59)

(11) After the Electricity Act, 2003 came into force w.e.f. 10-6-2003, all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. There can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. (Para 60).

(12) All disputes, and not merely those pertaining to matters referred to in Clauses (*a*) to (*e*) and (*g*) to (*k*) in Section 86(1), between licensees and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(*f*) about the nature of the dispute (Para 60).

(13) It is only with regard to the authority which can adjudicate or arbitrate disputes that the Electricity Act, 2003 will prevail over Section 11 of the 1996 Act. (Para 61)

(14) As regards the procedure to be followed by the State Commission (or the arbitrator nominated by it) and other matters related to arbitration (other than appointment of the arbitrator) the Arbitration and Conciliation Act, 1996 will apply (except if there is a conflicting provision in the Electricity Act. (Para 61).

(15) Section 86(1)(f) is only restricted to the authority which is to adjudicate or arbitrate between licensees and generating companies. Procedural and other matters relating to such proceedings will be governed by the 1996 Act, unless there is a conflicting provision in the Electricity Act. (Para 61)

(16) Only the State Commission or the arbitrator (or arbitrators) appointed by it can resolve a dispute between the licensee and the generating company. (Para 62).

(d) JUDGEMENT OF THE SUPREME COURT IN EMAAR MGF LAND LTD v. AFTAB SINGH:

In **Emaar MGF Land Ltd. v. Aftab Singh: (2019) 12 SCC 751,** the Supreme Court observed that, not only were proceedings under the Consumer Protection Act, 1986 special proceedings which were required to be continued under the said Act despite an arbitration agreement, there were a large number of other fields where an arbitration agreement could neither stop nor stultify the proceedings; for example, any action of a party, omission or commission of a person which amounts to an offence had to be examined by a criminal court and no amount of agreement between the parties shall be relevant for the said case; there may be a commercial agreement between two parties that all issues pertaining to the transaction are to be decided by arbitration as per the arbitration clause in the agreement; in case where a cheque is dishonoured by one party in a transaction, despite the arbitration agreement, the party aggrieved has to approach the criminal court; similarly, there are several issues which are non-arbitrable; there can be prohibition, both express or implied, for not deciding a dispute on the basis of an arbitration agreement; the Supreme Court had occasion to consider the above aspect and has noticed various disputes which were non-arbitrable, including in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532;** Section 2(3) of the 1996 Act contains a general provision which clarifies that *"This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration"*; and Section 2(3) gives predominance to *any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration*.

The Supreme Court, in **Emaar MGF Land Ltd**, further observed that the amendments, under Section 8 of the 1996 Act, were aimed to minimise the scope of judicial authority to refuse reference to arbitration, and the only ground on which reference could have been refused was that it, prima facie, finds that no valid arbitration agreement exists; notwithstanding any prior judicial precedents referred to under Section 8(1), the amendment related to those judicial precedents which explained the discretion and power of judicial authority to examine various aspects while exercising power under Section 8; the legislative intent and object were confined only to the above aspects, and was not on those aspects where certain disputes were not required to be referred to arbitration; it could not be said that, after the amendment under Section 8(1), the law laid down by the Supreme Court with reference to Section 2(3) of the 1996 Act, where large number of categories were held to be non-arbitrable, had been reversed or set at naught; neither any such legislative intendment was there nor any such consequence was contemplated that the law laid down by the Supreme Court, in the context of Section 2(3) of the 1996 Act, has to be ignored or reversed; while carrying out the amendment to Section 8(1) of the 1996 Act, the statutes providing additional remedies/special remedies were not in contemplation; the legislative intent was clear that the judicial authority's discretion to refuse arbitration was minimised in respect of the jurisdiction exercisable by the judicial authority with reference to Section 8; that the amendment was also aimed to do away with the special or additional remedies was not decipherable from any material; in the event, the interpretation as put by the learned counsel for the petitioner was accepted, Section 8 had to be read to override the law laid down by the Supreme Court, with reference to various special/additional jurisdictions as had been adverted to and noted in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532**, which was never the intent of the amendment to Section 8; the amendment to

Section 8 could not be given such an expansive meaning and intent so as to inundate the entire regime of special legislations where such disputes were held to be not arbitrable; and something which the legislation never intended could not be accepted as a side wind to override settled law.

(e) JUDGEMENT OF THE DELHI HIGH COURT IN MB POWER (MADHYA PRADESH) LIMITED v. STATE BANK OF INDIA & ORS:

In **MB POWER (MADHYA PRADESH) LIMITED v. STATE BANK OF INDIA & ORS: 2023/DHC/000227 (Judgement of the Delhi High Court in CS(COMM) 282/2022 dated 13.01.2023),** an application was filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC", for short) by the applicant PTC India Limited (Defendant No. 2 in the titled suit) seeking rejection of the suit on the ground that the disputes therein were covered under the Electricity Act, 2003, and as such ought to be adjudicated by the appropriate Electricity Regulatory Commission under the aegis of the said Act.

The plaintiff in the suit, MB Power (Madhya Pradesh) Limited- a company incorporated under the Companies Act, 1956 and a generating company' within the meaning of Section 2 (28) of the Electricity Act, had developed and was operating a 1200 MW (2 x 600 MW) coal-based thermal power project. Defendant No. 1 was a public sector bank, Defendant No. 2/applicant was an Electricity Trading Licensee as per the provisions of the Electricity Act, and Defendant No. 3 was an Electricity Distribution Licensee in the State of Tamil Nadu. The Applicant entered into a Power Supply Agreement ("PSA") with Defendant No. 3, and later entered into a back-to-back Power Purchase Agreement ("PPA") with the plaintiff. In terms of the PPA, Defendant No. 1 issued a Performance Security in the form of a Bank Guarantee for an amount of ₹15 crore on behalf of the plaintiff, and in favour of the applicant. It is the case of the plaintiff in the suit that the applicant has

been unlawfully withholding the Bank Guarantee, after lapse of the PPA dated October 28, 2021, and has filed the suit for declaration, mandatory and permanent injunction against the defendants, and to restrain them from invoking the Bank Guarantee.

It was contended, on behalf of the applicant, that the suit was liable to be rejected under Order VII Rule 11 of the CPC, as the suit is barred by law; the Supreme Court in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 775**, while interpreting 86(1)(f) of the Electricity Act, had held that it is a special provision and will override the general provisions of the Arbitration and Conciliation Act, 1996; this position was reiterated by the Supreme Court in **Chief General Manager (IPC) MP Power Trading Co. Ltd. v. Narmada Equipments Pvt. Ltd., 2021 SCC Online SC 255,** and **Hindustan Zinc Ltd. (HZL) v. Ajmer Vidhyut Nigam Ltd., (2019) 17 SCC 82;** the scope of the term 'regulate' used in the above provision was very wide; in **Transmission Corporation of Andhra Pradesh Ltd v. Rain Calcining Ltd and Ors., 2019 SCC Online SC 1537,** it was held that regulatory powers of the Commission were extensive and included whatever needs to be done for achieving the objects and purposes of the Act; any dispute involving a generating company, i.e., plaintiff, would be a matter connected with regard to clauses (a) to (d) of Section 79(1) and as such, as per Section 79(1)(f), needed to be adjudicated by the CERC.

It is in this context that the Delhi High Court observed that it was not the case of the parties that the dispute between them needed to be adjudicated by the State Commission in terms of the functions stipulated in Section 86 of the Act; Section 79(1) itself, in clauses (c), (d) and (e), speaks of inter-State transmission and inter-State operations; this is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in clauses (a), (b) and (d), and "intra-State" in

clause (c); and the issue which was to be considered was whether the dispute falls within the ambit of Section 79(1)(b) to enable the CERC to adjudicate the same under Section 79(1)(f).

The Delhi High Court, thereafter, observed that the applicant received a letter dated April 19, 2022 from the plaintiff informing them of the deemed termination of the PPA in terms of Article 4.4 therein; Article 4.4, inter-alia, stipulates that, if the appointed date does not occur for whatever reason, on expiry of 120 days from the date of the PPA, the PPA is automatically deemed to be terminated with the mutual consent of the parties without requiring any positive action on the part of either party; it is the case of the plaintiff that, in view of the termination, the PPA never commenced, as the appointed date has not been fixed; the aforesaid position is disputed by defendant Nos.2 and 3, inasmuch as, according to them, the PPA has not come to an end; and, it is in this background, the jurisdiction of the CERC has to be seen.

The Delhi High Court then observed that sub clauses (a), (c) and (d) of Section 79(1) had no applicability to the present issue; it was the case of defendant Nos.2 and 3 that the dispute related to Section 79(1)(b), as it involved a generating company (plaintiff) having a composite scheme for generation and sale of electricity in more than one state and, as such, the same needs to be adjudicated in terms of Section 79(1)(f) by the CERC; Section 79(1)(b) stipulates the functions of the CERC to include regulating the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies entered into or otherwise have a composite scheme for generation and sale of electricity in more than one state; in the case on hand, the agreement for procurement of electricity between the plaintiff and the applicant which is a trading company, stood terminated and, in that sense, there is no agreement or a composite scheme governing the plaintiff and defendant No.2 for

generation and sale of electricity; it was the submission, urged on behalf of the plaintiff, that the agreement had not commenced; this plea was not disputed; and, in the absence of any agreement / scheme governing the plaintiff and defendant No.2 / applicant, there exists no dispute with respect to tariff to be adjudicated by the CERC.

The Delhi High Court, thereafter, observed that the functions of CERC are limited to matters covered by clauses (a) to (k) of Sub-Section (1) of Section 79 of the Act; it was the plea of the applicant that Section 79(1)(b) will come into play only when a PPA for supply to more than one State is in place; it followed that, if the PPA has not commenced, then Section 79(1)(b) is not attracted; the submission urged on behalf of Defendant No.3 that, since the composite scheme for generation and sale arises out of the PPAs entered into by the plaintiff such as the PPA dated October 28, 2021, the disputes forming the subject matter of the present suit, arising out of the PPA, is clearly in regard to matters connected with generating companies having a composite scheme for generation and sale of electricity in more than one State, as provided in Section 79(1)(b), and as such needs to be adjudicated by the CERC under Section 79(1)(f), was also liable to be rejected; for this Court to accept this submission, it must be apparent that the dispute between the parties essentially relates to tariff of the generating company, i.e., the plaintiff; it was contended that the present issue has had an impact on tariff, as the actions of the plaintiff had prevented the applicant from supplying power to defendant No. 3 under the PSA, and as such defendant No. 3 has been forced to secure power from the open market at rates much higher than the tariff determined; this contention was wholly irrelevant and could not be taken into consideration while deciding this application filed under Order VII Rule 11 of the CPC, as the same has been raised in the written statement of defendant No. 3, and did not flow from the plaint or the documents of the plaintiff; even otherwise, since the PPA had not commenced, the PSA could not be put in

operation and as such no issue relating to tariff arises in the Suit for determination by the CERC; the submission of defendant Nos. 2 and 3, that the present matter relates to Section 79(1)(b) and as such needs to be adjudicated by the CERC under Section 79(1)(f), is liable to be rejected; further, there were no averments in the plaint and/or the documents filed by the plaintiff which showed that the dispute was with regard to tariff of the generating company (plaintiff); and, in fact, the prayer made was with regard to return of the Bank Guarantee pursuant to termination of the PPA by the plaintiff.

With respect to the contention that, in view of Section 174 of the Electricity Act, Civil Courts had no jurisdiction, the Delhi High Court observed that, in view of the finding that the dispute raised in the plaint was not covered by Section 79(1)(b), the CERC had no jurisdiction to entertain the same; the suit filed by the plaintiff shall be maintainable; the plea that the right of the plaintiff to seek relief squarely entails adjudication of the rights and obligations under the PPA, and can only be done by the Commission is also not appealing in the facts of this case when the PPA has not commenced which governs tariff; it is not to be construed that the dispute with regard to tariff, relatable to the period when the PPA was in operation before termination, the Commission shall not have jurisdiction; in other words, a dispute relatable to tariff for the period when the PPA was in operation before termination, surely, can be decided by the Commission as the same falls within the ambit of Section 79(1)(b) of the Act.

(f) JUDGEMENT OF THE SUPREME COURT IN JAIPUR VIDYUT VITRAN NIGAM LTD VS MB POWER (MADHYA PRADESH) LTD: 2024 SCC ONLINE SC 26:

It is unnecessary for us to take note of the contents of this judgement under this head, in as much as this Tribunal, in the **DVC** Judgement, observed that the

judgement in **JAIPUR VIDYUT VITRAN NIGAM LTD** did not advance the case of DVC; in **JAIPUR VIDYUT VITRAN NIGAM LTD,** the dispute between a distribution licensee and a generating company was entertained by the High Court of Judicature of Rajasthan in a Writ Petition; and, in these circumstances, the Supreme Court held that the High Court erred in directly entertaining the Writ Petition, and the Writ Petitioner had an alternate remedy of approaching the State Electricity Regulatory Commission.

(g) JUDGEMENT OF THE DELHI HIGH COURT IN RENEW WIND ENERGY (AP2) (P) LTD. V. SOLAR ENERGY CORPN. OF INDIA: 2025 SCC ONLINE DEL 8252

Since reliance is placed, on behalf of the Respondent-TPCL, on the judgement in **Renew Wind Energy (AP2) (P) Ltd, v. Solar Energy Corpn. of India, 2025 SCC OnLine Del 8252**, it is useful to refer to the law declared, by the Delhi High Court, in this Judgement.

The law declared by the Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd,** can be summarized as under:-

(i) An objection pertaining to statutory bars/exclusion to proceeding under the 1996 Act can be gone into by a Court acting under the jurisdiction conferred by Section 9 of the 1996 Act;

(ii) Section 2(3) of the 1996 Act accounts for the possibility of a special statute prevailing over the 1996 Act and providing for a different mechanism to deal with a category of dispute(s) arising within the domain of the exclusionary legislation.

(iii) Disputes made non-arbitrable, by legislative command, cannot be privately adjudicated by parties' consent.

(iv) In a scenario, where a statute provides for arbitration through a specialized procedure, arbitration, as a mode of dispute resolution, is not ousted, but the manner in which it is to be invoked may be governed by the special statute.

(v) In Section 79(1)(f) of the Electricity Act, the word “and”, which appears between the words “clauses (a) to (d) above” and the words “to refer any dispute for arbitration”, should read as “or” in accordance with the law declared by the Supreme Court, **in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd,** in the context of Section 86(1)(f), which is, in this context, pari-materia to Section 79(1)(f).

(vi) The two-fold functions of the CERC, under Section 79(1)(f) of the Electricity Act, are (a) adjudication of disputes and (b) referring them for arbitration.

(vii) The power of the CERC, qua the first facet, is discretionary as recognized by the Supreme Court in Paras 30 and 31 of **GUVNL**, in the context of Section 86(1)(f).

(viii) In a case before the CERC involving generating companies or transmission licensees, where the dispute is connected with matters listed under Section 79(1)(a)-(d), the CERC may choose to itself adjudicate upon the dispute or refer the same for arbitration. The mere existence of an arbitration clause in the agreement between the parties would not have a determinative effect on the CERC's decision while exercising its discretionary power under this provision.

(ix) A conjoint reading of Section 79(1)(f) and Section 158 of the Electricity Act would reveal that the CERC's referral power, as also the act of referring parties for arbitration, is effectively a trigger mechanism for invoking the provisions of the 1996 Act.

(x) Paragraph 59 of **GUVNL** is not limited to an analysis of Section 86(1)(f). The express words "or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it" squarely apply to Section 79(1)(f).

(xi) The referral power of the CERC under Section 79(1)(f) would disable any Court/authority, other than the CERC, from referring disputes involving generating companies or transmission licensees for arbitration.

(xii) Section 86(1)(f) is broader than Section 79(1)(f) of the Electricity Act. In **Torrent Power Ltd. v. U.P. ERC: 2025 SCC OnLine SC 1410,** the Supreme Court held that the adjudicatory jurisdiction of the Central Commission is specified under Section 79(1)(f) and is limited to adjudication of disputes involving generating companies or transmission licensees, in regard to matters connected with clauses (a) to (d), and the State ERCs have a comparatively broader jurisdiction under Section 86, to adjudicate upon all disputes between the licensees and generating companies, without being limited to categories specified in clauses (a) to (d) of Section 79.

(xiii) Since the scope of referral powers under Section 79(1)(f) and 86(1)(f) are the same, the dictum of **GUVNL** would squarely apply, and the referral powers under Section 79(1)(f) would prevail over Section 11 of the Arbitration Act.

In short, the law declared by the Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd,** is that: (a) Section 79(1)(f) of the Electricity Act vests two distinct powers with the CERC, ie adjudicatory powers and referral powers; the CERC, in the exercise of its adjudicatory powers, can only adjudicate upon disputes connected with Section 79(1)(a)-(d); however, while exercising its referral powers, it can refer "any" dispute for arbitration; (b) the power of the CERC to refer a dispute involving generating companies or transmission licensee for arbitration prevails over the referral powers of a

Court/authority, other than the CERC, under Sections 8 or 11 of the Arbitration Act; and (c) the CERC has the exclusive power and prerogative under Section 79(1)(f) of the Electricity Act to refer disputes concerning generating companies or transmission licensee for arbitration.

The Delhi High Court is the jurisdictional High Court and exercises judicial superintendence over orders of both the CERC and this Tribunal. The afore-said observations of the Delhi High Court, in **Renew Wind Energy (AP2) Pvt Ltd,** are therefore binding on this Tribunal.

The contents of the other part of the Judgement of the Delhi High Court in **Renew Wind Energy (AP2) Pvt Ltd,** wherein the scope and ambit of the second limb of Section 79(1)(f) of the Electricity Act was considered, shall be referred to later under this head. Suffice it to note that the opinion expressed by the Delhi High Court, on the applicability of the second limb of Section 79(1)(f) to the nature of disputes to be referred to arbitration, appears to be contrary to the judgement of the Supreme Court in **Hindustan Zinc**, and may therefore not constitute a precedent binding on this Tribunal. More on these aspects later in this order.

(h) SECTION 79(1)(f): ITS SCOPE:

Section 79 of the Electricity Act relates to the functions of the Central Commission and, under sub-section (1) thereof, the CERC discharges the functions enumerated in clauses (a) to (k). Section 79 (1)(f) requires the Commission to discharge the function *"to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d)…. and to refer any dispute for arbitration"*

The power conferred on the Central Commission, under Section 79(1)(f) of the Electricity Act to adjudicate disputes, is confined only to those disputes involving (1) generating companies or (2) transmission licensees. As long as

the dispute involves a generating company or a transmission licensee, and even if the other party/parties to the dispute are neither generating companies nor transmission licensees, the Central Commission would have jurisdiction to adjudicate such disputes, provided they fall within the ambit of clauses (a) to (d) of Section 79(1). **(Nuclear Power Corporation of India V. Central Electricity Regulatory Commission: (Judgement of APTEL in Appeal No. 134 Of 2024 dated 27.03.2025).** The Respondent-TPCL is a generating company in terms of Section 79(1)(b) of the Electricity Act.

Apart from the requirement that the dispute should involve a generating company, the jurisdiction conferred on the Central Commission, under the first limb of Section 79(1)(f), is further confined to adjudication of such disputes *"in regard to matters connected with"* clauses (a) to (d) of Section 79(1). It is not every dispute involving a generating company, but only those disputes which involve a generating company and are in regard to matters connected with clauses (a) to (d) of Section 79(1) which can be adjudicated by the Central Commission. While clauses (c) and (d) relate to inter-State transmission with which we are not concerned in the present appeal, clauses (a) of Section 79(1) relates to regulation of tariff of generating companies owned or controlled by the Central Government. The Respondent-TPCL is not a generating company owned or controlled by the Central Government, and hence clause (a) of Section 79(1) is also inapplicable to the case on hand. Consequently, it is only if the disputes raised by GUVNL, PSPCL, HPPV and TPCL, in the Petitions filed by them before the CERC, which culminated in the impugned order being passed, fall within the ambit of clause (b) of Section 79(1), can the CERC be held to have jurisdiction to adjudicate such disputes.

The function of the CERC, under Section 79(1)(b), is to regulate the tariff of non-central govt owned and controlled generating companies which enter or otherwise have a composite scheme for generation and sale of electricity

in more than one State. It is not in dispute that, in the present case, the Respondent-TPCL is a generating company which generates and sells electricity in more than one State, for the electricity generated by the Respondent-TPCL is procured by GUVNL, PSPCL and HCC, among other procurers, all of which distribute electricity in different States. Consequently, regulation of tariff of the Respondent-TPCL would fall within the ambit of Section 79(1)(b) of the Electricity Act.

(i) JURISDICTION BEING CONFERRED ON A TRIBUNAL UPON CERTAIN SPECIFIED TERMS: ITS EFFECT:

Wherever jurisdiction is given to a court (or Tribunal) by an Act of Parliament, and such jurisdiction is only given upon certain specified terms contained in that Act, these terms must be complied with, in order to create and confer jurisdiction on it for, if they be not complied with, it would lack jurisdiction. **(Nusserwanjee Pestonjee v. Meer Mynoodeen Khan [LR (1855) 6 MIA 134 (PC); Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572).** Every tribunal of limited jurisdiction is bound to determine whether the matter, in which it is asked to exercise its jurisdiction, comes within the limits of its special jurisdiction, and whether the jurisdiction of such a tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it, and that statute also defines the conditions under which the tribunal can function, it goes without saying that, before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. **(Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572).**

As it derives its powers from the express provisions of the Electricity Act, the powers, which have not been expressly given by the said Act, cannot be

exercised by the Regulatory Commissions**. (Rajeev Hitendra Pathak v. Achyut Kashinath, (2011) 9 SCC 541).** Since the Central Commission is a creation of the Electricity Act under Section 76(1), and a body corporate under Section 76(3) thereof, its jurisdiction is limited to those specifically conferred on it under the provisions of the Electricity Act, and not beyond. **(BSES Rajdhani Power Ltd vs DERC: (Judgement of the Supreme Court in Civil Appeal No.4324 of 2015 dated 18.10.2022). Such Tribunals exercise limited jurisdiction. (S.D. Joshi v. High Court of Bombay, (2011) 1 SCC 252).** The Central Electricity Regulatory Commission can exercise jurisdiction only when the subject matter of adjudication falls within its competence, and the order that may be passed is within its authority, and not otherwise. **(Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel 764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52). (Nuclear Power Corporation of India v. Central Electricity Regulatory Commission (Judgment of Aptel in Appeal No. 134 of 2024 dated 27.03.2023).** Consequently, it is only if the dispute involves generating companies and is in regard to matters connected with clauses (a) to (d) of Section 79(1) can the CERC exercise its adjudicatory jurisdiction under the first limb of Section 79(1)(f) of the Electricity Act.

(j) JURISDICTIONAL FACTS:

While the CERC is empowered, by Section 79(1)(b), to regulate the tariff of the Respondent-TPCL, the question which arises for consideration is whether it is also has jurisdiction under Section 79(1)(f) to adjudicate disputes, involving the Respondent-TPCL, in the various Petitions filed by the Procurers and TPCL itself before the Commission, for it is only if such disputes are in regard to matters connected with the regulation of tariff of the Respondent-TPCL, would the CERC have jurisdiction to adjudicate such disputes.

A 'jurisdictional fact' is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends the jurisdiction of a court, a tribunal or an authority**. (Arun Kumar vs. Unio of India:(2007) 1 SCC 732; Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58).** The fact or facts upon which the jurisdiction of a court, a Tribunal or an authority, depends can be said to be a "jurisdictional fact". If the "jurisdictional fact" exists, a court, Tribunal or authority has jurisdiction to decide other issues. If such fact does not exist, a court, Tribunal or authority cannot act. The existence of a jurisdictional fact is thus the sine qua non or the condition precedent for the assumption of jurisdiction by a court or Tribunal of limited jurisdiction. Once such a jurisdictional fact is found to exist, the court or Tribunal has the power to decide adjudicatory facts or facts in issue**. (Carona Ltd. v. Parvathy Swaminathan & Sons (2007) 8 SCC 559; Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58; Halsbury's Laws of England (Fourth Edition), Volume 1, para 55, page 61 ; Reissue, Volume 1(1), para 68, pages 114-15, Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi AIR 1959 SC 492; Arun Kumar v. Union of India [2006] 286 ITR 89 (SC) ; (2007) 1 SCC 732; BGR Energy Systems Ltd. v. ACCT, 2009 SCC OnLine AP 238; Bharat Electronics Ltd. v. Deputy Commr., (CT), 2011 SCC OnLine AP 1080; K. G. F. Cottons (P) Ltd. v. Asst. Commr. (CT): 2015 SCC OnLine Hyd 46; and Ad Age Outdoor Advertising P. Ltd. v. Govt., A. P., 2011 SCC OnLine AP 1077)**.

As existence of a 'jurisdictional fact' is the sine qua non for the exercise of power, the CERC can only proceed with the case and take an appropriate decision in accordance with law if the jurisdictional fact exists. **(Arun Kumar v. Union of India:(2007) 1 SCC 732; Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58; Carona Ltd. v. Parvathy Swaminathan & Sons, (2007) 8 SCC 559).** The jurisdictional facts necessary for the CERC to

exercise its powers of adjudication of the dispute, under Section 79(1)(f) read with Section 79(1)(b) of the Electricity Act, is firstly that the dispute involves a generating company, other than those owned or controlled by the Central Government; secondly that such a generating company enters into or otherwise has a composite scheme for generation and sale of electricity in more than one State; and thirdly, that the dispute is in regard to matters connected with clause (b) of Section 79(1) ie matters connected with the regulation of tariff of such a generating company.

The first requirement of the Respondent-TPCL not being a generating company owned or controlled by the Central Govt, as also the second requirement of the Respondent-TPCL generating and selling electricity in more than one State, are satisfied in the present case. It is only if the third jurisdictional fact, of the dispute being in regard to matters connected with the regulation of tariff of such a generating company, is satisfied, can the CERC then exercise jurisdiction to adjudicate the dispute considering the adjudicatory facts involved in such a lis. We shall examine, what the expressions "involve", *"in regard to"*, *"connected with"* and *"regulate"* in Section 79(1)(f) mean, later in this order under another head.

(k) SECTION 79 VIS-À-VIS SECTION 86 OF THE ELECTRICITY ACT:

Section 86 of the Electricity Act relates to the functions of the State Regulatory Commission, and Section 86(1)(a) empowers the State Commission to determine the tariff for generation and supplying within the State. Unlike Section 79(1)(b) which relates to regulation of tariff of generating companies involved in inter-State generation and supply of electricity, Section 86(1)(a) is confined to determining the tariff for generation and supply within the State and not inter-State.

Section 86(1)(f) confers power on the State Commission to adjudicate disputes between licensees and generating companies, and to refer any disputes to arbitration. Adjudication of disputes under Section 86(1)(f) is with respect to disputes between licensees (which would include distribution licensees) and generating companies. The scope of Section 86(1)(f) is very wide as it covers all disputes, between licensees and generating companies, which relate to the regulatory jurisdiction of the State Commission. In other words, there is no restriction in Section 86(1)(f) regarding the nature of the licensee. Thus, all disputes relating to the regulatory jurisdiction of the State Commission which involves the Distribution Licensee or a trading licensee or a transmission licensee should be adjudicated exclusively by the State Commission. **(Pune Power Development Private Ltd. v. Karnataka Electricity Regulatory Commission, 2011 SCC OnLine APTEL 24)**

A comparison of Section 79 and Section 86 of the Electricity Act would make it evident that the jurisdiction of the Central Commission is restricted only to clauses (a) to (d) of Section 79(1) with regard to disputes involving generating Companies or transmission licensees. This means that any dispute between distribution licensees and inter-State trading licensees is excluded from the ambit of Section 79(1)(f). The power to adjudicate disputes between a Distribution Licensee and a Trading Licensee has been vested with the State Commission under Section 86(1)(f) of the Act. (**Pune Power Development Private Ltd. v. Karnataka Electricity Regulatory Commission, 2011 SCC OnLine APTEL 24).**

All disputes between licensees which do not fall under Section 79(1)(a) to (d) are within the jurisdiction of the State Commission. (**Pune Power Development Private Ltd. v. Karnataka Electricity Regulatory Commission, 2011 SCC OnLine APTEL 24).** Unlike Section 79(1)(f) which confines exercise of jurisdiction by the CERC only to adjudicate disputes

involving generating companies in regard to matters connected with clauses (a) to (d) of Section 79(1), Section 86(1) empowers the State Commission to adjudicate any dispute between licensees and generating companies, apart from those disputes which fall within the ambit of clauses (a) & (b) of Section 79(1) as the jurisdiction to adjudicate such disputes is conferred on the Central Commission alone and, notwithstanding the wide language used in Section 86(1)(f), the State Commission lacks jurisdiction to adjudicate such disputes since the Electricity Act does not confer concurrent jurisdiction on both the Commissions. In other words in view of the scheme of the Electricity Act, more particularly Sections 79 and 86 thereof, the State Commission cannot claim concurrent jurisdiction with the Central Commission in any dispute covered by clauses (a) to (d) of Section 79(1), and if any matter falls under the scheme of clauses (a) to (d) of Section 79(1), the provisions of Section 86(1)(f) are inapplicable. (**SECI vs KSERC** (Judgement of Aptel in Appeal No. 414 of 2022 dated 13.08.2024)

(I) THE WORD "AND" IN SECTION 79(1)(f) SHOULD BE READ AS "OR":

There are two limbs to clause (f) of Section 79(1) of the Electricity Act. The first relates to adjudication of disputes involving generating companies in regard to matters connected with clauses (a) to (d) of Section 79(1), and the second is *"to refer any dispute for arbitration"*. Unlike the first limb of clause (f) of Section 79(1), the language of which is different from that used in the first limb of Section 86(1)(f), the words *"and to refer any dispute for arbitration"*, used in the second limb of Section 79(1)(f), are identical to the words *"and to refer any dispute for arbitration"* used in the second limb of Section 86(1)(f) of the Electricity Act.

In **GUVNL v. ESSAR, (2008) 4 SCC 755,** the Supreme Court held that the word "and" in Section 86 (1)(f) should be read as "or" in as much as the

State Commission cannot, at the same time, adjudicate upon disputes between licensees and generating companies, and simultaneously refer such disputes to arbitration; and on the word *"and"* being read as *"or"*, the State Commission would have the discretion either to adjudicate disputes between licensees and generating companies or to refer such disputes for arbitration.

In **Renew Wind Energy (AP2) (P) Ltd, v. Solar Energy Corpn. of India, 2025 SCC OnLine Del 8252**, the Delhi High Court held that, in Section 79(1)(f) of the Electricity Act, the word *"and"*, which appears between the words "clauses (a) to (d) above" and the words "to refer any dispute for arbitration", should read as *"or"* in accordance with the law declared by the Supreme Court, **in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd,** in the context of Section 86(1)(f), which is, in this context, pari-materia to Section 79(1)(f).

(m) \WHERE THE SAME EXPRESSION IS USED IN TWO SIMILAR PROVISIONS, IT SHOULD BE UNDERSTOOD TO CARRY THE SAME MEANING:

It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act **(Maxwell's Interpretation of Statutes, Edn. 10, p. 522).** Where the legislature uses the same expression in two provisions of the same Statute, the said expression must be understood to carry the very same meaning, for words are generally used in the same sense throughout in a statute unless there is something repugnant in the context. **(Bhogilal Chunilal Pandya v. State of Bombay: AIR 1959 SC 356).** Ordinarily, the rule of construction is that the same expression, where it appears more than once in the same statute, must receive the same meaning unless the context suggests otherwise. **(Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593: 1990 SCC OnLine SC 93).** In other words, where the legislature uses the same expression in the same

statute at two places or more, then the same interpretation should be given to that expression unless the context requires otherwise. (**Raghubans Narain Singh v. U.P. Government, 1966 SCC OnLine SC 37; Singareni Colleries Company Limited V. Telangana State Electricity Regultory Commission: (Judgement of Aptel in Appeal No. 256 of 2024 and batch dated 28.08.2025).** If the field of the two provisions were to be the same, the same words would, ordinarily, be used. (**B.R. Enterprises v. State of U.P (1999) 9 SCC 700; Kurapati Bangaraiah vs Govt of AP: (2015) 5 ALD 622) (Uttar Pradesh Power Corporation Limited and Ors. V. Uttar Pradesh Electricity Regulatory Commission Ors: (Judgement of APTEL in Appeal No. 308 Of 2024 Dated 30.08.2024)**

As the very same words *"to refer any dispute to arbitration"* are used both in the second limb of Section 79(1)(f) and 86(1)(f) and, since the context does not suggest otherwise and there is nothing repugnant in the context of both these provisions requiring a meaning being given to the words *"to refer any dispute to arbitration"* in Section 79(1)(f) different from that to be given to the said words in Section 86(1)(f), the words *"to refer any dispute to arbitration"* must carry the same meaning in both these provisions. Consequently, the word *"and"* in Section 79(1)(f) must be read as *"or"*, and the Central Commission as having the discretion under Section 79(1)(f) either to adjudicate disputes in regard to matters connected with clauses (a) to (d) of Section 79(1) or to refer any dispute for arbitration.

(n) TWO LIMBS OF SECTION 79(1)(f): ARE THEY UNCONNECTED WITH EACH OTHER:

It is contended, on behalf of the Respondent-TPCL, that the CERC has rightly held that the second limb of Section 79(1)(f) should be read independent of the first limb and, even in cases where the Central Commission lacks jurisdiction to adjudicate disputes under the first limb of

Section 79(1)(f) (ie to adjudicate disputes in regard to matters connected with clauses (a) to (d) of Section 79(1), more particularly non-tariff disputes), it would nonetheless have jurisdiction to refer *"any"* dispute (ie the non-tariff dispute) to arbitration.

This submission also finds support from the Delhi High Court Judgement, in **Renew Wind Energy (AP2) (P) Ltd,** wherein it was held that the Central Commission not only has the jurisdiction to refer disputes, in regard to matters connected with clauses (a) to (d) of Section 79(1) to arbitration, but it also has the power to refer disputes, even in regard to matters unconnected with clauses (a) to (d) of Section 79(1), to arbitration as the scope and ambit of the second limb of Section 79(1)(f) is extremely wide.

Accepting this submission, urged on behalf of the Respondent-TPCL, would result in startling consequences. A plain and literal reading of the words refer *"any"* dispute for arbitration, independent of the first limb of Section 79(1)(f), can be construed to mean that the Central Commission could refer even a dispute which does not fall within the ambit of Electricity Act, say for example a matrimonial dispute, also to arbitration. In this context, it must be borne in mind that a Tribunal, which is a creation of a Statute, has only the powers expressly conferred on it, or resulting directly from the powers so conferred. Acting otherwise goes to the very existence of the power. Statutory Tribunals, set up under an Act of Parliament, are creations of the Statute**, (R.K. Jain v. Union of India, (1993) 4 SCC 119),** and should be guided by the conditions stipulated in the statutory provisions while exercising powers expressly conferred or those incidental thereto. **(Commissioner of Central Excise v. Sri Chaitanya Educational Committee, 2011 SCC OnLine AP 1078).** Statutory Tribunals, created by an Act of Parliament, have limited jurisdiction and must function within the four-corners of the Statute which created them. **(O.P. Gupta v. Dr. Rattan Singh, (1964) 1 SCR 259).** It is not

open to such Tribunals to travel beyond the provisions of the statute. **(D. Ramakrishna Reddy v. Addl. Revenue Divisional Officers, (2000) 7 SCC 12).** An authority created by a statute must act under the Act and not outside it. As it is a creation of the statute, it can only decide the dispute in terms of the provisions of the Act. **(K.S. Venkataraman & Co. v. State of Madras, AIR 1966 SC 1089; Mysore Breweries Lt. v. Commissioner of Income-Tax, (1987) 166 ITR 723 (KAR)). (Nuclear Power Corporation of India v. Central Electricity Regulatory Commission (Judgment of Aptel in Appeal No. 134 of 2024 dated 27.03.2025).**

Both the CERC and the State Commissions are creations of the Electricity Act, and their powers and functions are confined only to the provisions of the said Act and not beyond. Consequently, the jurisdiction conferred on the CERC under the second limb of Section 79(1)(f), and on the State Commission under the second limb of Section 86(1)(f), to refer any dispute to arbitration must be understood only as the power to refer *"any"* dispute under the Electricity Act to arbitration, and not disputes falling outside the purview of the said Act.

Even if we were to read the words *"any dispute"*, in the second limb of Section 79(1)(f), to mean any dispute under the Electricity Act, and that the CERC can refer any dispute under the Electricity Act to arbitration, it would still result in unacceptable consequences.

Not all disputes under the Electricity Act fall within the adjudicatory jurisdiction of either the CERC or the State Commissions. Disputes involving consumers are not amenable to the adjudicatory jurisdiction of either of these Commissions. In **Torrent Power Ltd vs UPERC: 2025 SCC OnLine 1410**, the Supreme Court held that the adjudicatory jurisdiction of the Central Commission is specified under Section 79(1)(f) and is limited to adjudication of disputes involving generating companies or transmission licensees, in

regard to matters connected with clauses (a) to (d); the State Electricity Regulatory Commissions have a comparatively broader jurisdiction under Section 86, to adjudicate upon all disputes between the licensees and generating companies, without being limited to categories specified in (a) to (d) of Section 79; however, even this enlarged jurisdiction of the State Electricity Regulatory Commissions does not include the power to adjudicate disputes involving consumers, and by extension their grievances.

The Electricity Act provides for separate fora for redressal of grievances of consumers. Section 42(5) requires every distribution licensee to establish a forum for redressal of grievances of consumers in accordance with the guidelines as may be specified by the State Commission. Section 42(6) enables any consumer, who is aggrieved by the non-redressal of his grievances by the forum for redressal of consumer disputes, to make a representation, for the redressal of his grievance, to an Ombudsman appointed or designated by the State Commission. The CGRF established in terms of the guidelines made by the State Commission, and the Ombudsman appointed/ designated by the State Commission, are the two authorities which can be approached by a consumer for redressal for his grievance, and not either the Central or the State Commission. If, on an expanded meaning being given to the words *"any dispute"*, disputes involving consumers under the Electricity Act are held capable of being referred to arbitration by the CERC under Section 79(1)(f), we must then hold that such disputes can be referred to arbitration by the State Commission also, for the second limb in both the said provisions are identically worded. As shall be elaborated later, in this order, such a construction would fall foul of the law laid down by the Supreme Court in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82.**

Further, even if the words *"any dispute"* in Section 79(1)(f) were to be read as *"any dispute"* under the Electricity Act involving generating companies, but unrelated to clauses (a) to (d) of Section 79(1), it would still result in a situation where the CERC would then be held to have jurisdiction to refer a dispute, between a generating company supplying electricity intra-State and a distribution licensee, to arbitration. This would result in conferring power on the CERC to refer a dispute, not falling within its adjudicatory jurisdiction under Section 79(1)(f) and falling within the adjudicatory jurisdiction of the State Commission under Section 86(1)(f) of the Electricity Act, for arbitration. It may also result in conferring concurrent jurisdiction in both the CERC and the State Commission to refer any dispute, under the Electricity Act involving generating companies, to arbitration ie the State Commission must thereby be held to have the jurisdiction to refer disputes, falling within clauses (a) & (b) of Section 79(1) to arbitration in the exercise of its powers under Section 86(1)(f), though the jurisdiction to adjudicate such disputes vests exclusively with the Central Commission under Section 79(1)(f) of the Electricity Act.

In this context, it must be borne in mind that the Electricity Act is conceived to be a complete code in itself. **(PTC India Ltd vs CERC: (2010) 4 SCC 603; Pune Power Development Private Ltd. v. Karnataka Electricity Regulatory Commission, 2011 SCC OnLine APTEL 24).** All disputes, in relation to transaction involving generators/ licensees, are made subject to the jurisdiction of the State Commission or the Central Commission as contained in Sections 86 and 79 of the Electricity Act respectively. (**Pune Power Development Private Ltd. v. Karnataka Electricity Regulatory Commission, 2011 SCC OnLine APTEL 24).** However, a PPA executed between parties, which deals with generation and supply of electricity, will either be governed by the State Commission or the Central Commission constituted under the Electricity Act, for, if neither Commission is held to have

jurisdiction, it would lead to absurdity. (**Energy Watchdog v. CERC, (2017) 14 SCC 80; SECI vs KSERC** (Judgement of Aptel in Appeal No. 414 of 2022 dated 13.08.2024)**.**

Except for Section 64(5) which enables, on fulfilment of the conditions stipulated therein, for a State Commission to exercise jurisdiction to determine tariff for inter-state supply of electricity, which may otherwise fall within the jurisdiction of the Central Commission, our attention has not been drawn to any other provision in the Electricity Act which confers concurrent jurisdiction on both the Central and the State Commission. Accepting the construction placed, on behalf of the Respondent-TPCL, on the words *"refer any dispute for arbitration"* in Section 79(1)(f), as conferring power on the CERC to refer a non-tariff dispute involving a generating company, not falling under Section 79(1)(b) of the Electricity Act, for arbitration, would require us to hold that, since the second limb of Section 86(1)(f) is identically worded, the State Commission would also have jurisdiction to refer such a dispute to arbitration, meaning thereby that both the CERC and the State Commission would have concurrent jurisdiction to refer such disputes to arbitration.

Even more unacceptable consequences may result on such a construction being placed on the second limb of Sections 79(1)(f) /86(1)(f), for the Regulatory Commission of one State would then be entitled to refer a dispute, falling outside the said State in its entirety, to arbitration resulting in such a Commission exercising the power of referral of disputes to arbitration, the jurisdiction to adjudicate which is not conferred on it but is vested exclusively in another State Regulatory Commission. The law does not permit any court/tribunal/authority/forum to usurp jurisdiction, especially in cases where such an authority does not have jurisdiction on the subject-matter. **(Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136).** The powers, which have not been expressly given to them by the Statute

creating them, cannot be exercised by them. **(Rajeev Hitendra Pathak v. Achyut Kashinath, (2011) 9 SCC 541).** The Central Electricity Regulatory Commission can exercise jurisdiction only when the subject matter falls within its competence, and the order that may be passed is within its authority, and not otherwise. **(Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel 764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52).**

If the second limb of Section 79(1)(f)/86(1)(f) were intended to be independent of and unconnected with the first limb, Parliament would not have provided for both of them in the same clause (f) and, instead, would have made a separate provisions for both of them (ie (1) adjudication and (2) referring the dispute to arbitration) in two different clauses of Section 79(1)/86(1). As Parliament chose to provide for both of them in the same clause, it is evident that the first and the second limbs of clause (f) of Section 79(1) are integrally connected with each other, with both adjudication and referral to arbitration relating to the same nature of disputes. The word *"any dispute"*, in the second limb of both Section 79(1)(f) and Section 86(1)(f), can therefore only mean any dispute as referred to in the first limb of the said provision.

The word *"any"* has been defined by the Concise Oxford English Dictionary (Eleventh Edition) to mean (1) used to refer to one or some of a thing or number of things, no matter how much or how many; and (2) whichever of a specified class might be chosen. P. Ramanatha Aiyar 3rd Edition 2005 defines the words "any dispute" to mean any dispute which the authority is competent to try and decide.

Since the CERC is competent to decide (adjudicate) only disputes falling under clauses (a) to (d) of Section 79(1), its jurisdiction under Section 79(1)(f), to refer disputes to arbitration, must be confined only to such disputes which

fall within clauses (a) to (d) of Section 79(1), and none other. In other words, the jurisdiction of the CERC to refer disputes to arbitration is confined to "any dispute" falling under clauses (a) to (d) of Section 79(1) of the Electricity Act. Likewise, since the power conferred by Section 86(1)(f) on the State Commission is to adjudicate disputes between a generator and a licensee within its jurisdiction, it can only refer such disputes for arbitration, and not any other dispute. In other words, the jurisdiction of the State Commission, to refer disputes to arbitration, is confined to any dispute between a generator and a licensee falling within its jurisdiction ie intra-state.

The underlying basis for the Supreme Court, in **GUVNL v. ESSAR, (2008) 4 SCC 755,** to hold that the word *"and"* in Section 86(1)(f) should be read as *"or"* is that the State Commission cannot adjudicate disputes between licensees and generating companies, and simultaneously refer such disputes for arbitration; and it can only do one of the two, meaning thereby that Section 86(1)(f) confers power on the State Commission to refer only such disputes for arbitration which it was otherwise entitled to adjudicate. Applying the same analogy, it is only such disputes which the CERC is empowered to adjudicate under Section 79(1)(f) that can be referred by it for arbitration, instead of taking upon itself the task of adjudicating such disputes. Those disputes, which do not fall within the ambit of clauses (a) to (d) of Section 79(1) and which the CERC lacks jurisdiction to adjudicate, cannot be referred to arbitration by the Central Commission.

In this context it is necessary to note that the law declared by the Supreme Court in **GUVNL v. ESSAR** has been referred with approval and followed in two subsequent three-judge bench judgements of the Supreme Court in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82** and **M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd., (2021) 14 SCC 548,** neither of which were noticed by this Tribunal in the **DVC**

judgment. In fact, paras 26, 27 and 30 of the **GUVNL** judgment, which required the word "and" under Section 86(1)(f) to be read as "or", were also not brought to the notice of this Tribunal in the **DVC** judgment.

We must therefore express our inability to agree with the submission, urged on behalf of the Respondent-TPCL, that the power to refer disputes to arbitration, under the second limb of Section 79(1)(f), is independent of and unconnected with the power of adjudication conferred by the first limb of the said provision. Consequently, the CERC cannot, in cases where it lacks jurisdiction to adjudicate the dispute in terms of Section 79(1) (f), refer such a dispute to arbitration.

(o) STRAY SENTENCE IN A JUDGEMENT CANNOT BE READ OUT OF CONTEXT OR BE UNDERSTOOD AS A DECLARATION OF LAW:

Nowhere, in the **DVC** judgment, has this Tribunal specifically stated that disputes, which do not fall within the ambit of Clauses (a) to (d) of Section 79(1)(f), should, nonetheless, be referred to arbitration under the second limb of the said provision. Such an inference is drawn by the CERC, possibly, on the basis of a stray sentence in Para 36 of the **DVC** judgment, that *"non-tariff disputes involving the generating company or a distribution licensee do not fall within the ambit of clause (f) of Section 79(1) of the Electricity Act, 2003 and are thus are arbitrable"*. This sentence is sought to be read out of context by the CERC, and as a declaration of the law by this Tribunal that, though the CERC lacks jurisdiction to adjudicate non-tariff disputes involving a generating company, it can nonetheless refer such disputes to arbitration.

As noted hereinabove, the ratio of the **DVC** judgment must be gathered from the facts of the case and the setting in which the law was declared. The afore-said sentence, in para 36 of the said judgement, cannot be read out of

context to conclude that disputes, which do not fall within the ambit of clauses (a) to (d) of Section 79(1), can nonetheless be referred to arbitration by the CERC in the exercise of its jurisdiction under the second limb of Section 79(1)(f).

A stray sentence in a judgment cannot be read out of context**. (GUVNL v. (GERC (Order of APTEL in Appeal No. 371 of 2023 dated 09.11.2023).** It is not a profitable task to extract a sentence here and there from a judgment and to build upon it**. (Quinn v. Leathern, [1901] A.C. 495; State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 647; Delhi Administration (NCT of Delhi) v. Manohar Lal, (2002) 7 SCC 222; Dr. (Investigation), (2002) Nalini 257 Mahajan v. Director of Income-tax ITR 123 Delhi) and Bhavnagar University v. Palitana Sugar Mill P. Ltd., (2003) 2 SCC 111; B.F. Ditia v. Appropriate Authority, Income-Tax Department, 2008 SCC OnLine AP 904; Sri. Konaseema Cooperative Central Bank Ltd. v. N. Seetharama Raju, AIR 1990 AP 171; Kanwar Amninder Singh v. High Court of Uttarakhand, 2018 SCC OnLine UTT 1026)** A word here or a word there should not be made the basis for inferring inconsistency or conflict of opinion. Law does not develop in a casual manner. It develops by conscious, considered steps**. (Sri. Konaseema Cooperative Central Bank Ltd. v. N. Seetharama Raju, AIR 1990 AP 171).** Further, a stray sentence in a judgment cannot be understood as this Tribunal overruling the earlier judgments of this Tribunal which have held that the power of the Central Commission to adjudicate disputes is confined only to clauses (a) to (d) of Section 79(1).

Such a construction would also fall foul of the judgment of the Supreme Court in **GUVNL Vs. ESSAR** which has been followed in two subsequent three-judge bench judgments of the Supreme Court in **Hindustan Zinc**

Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82, and **M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd., (2021) 14 SCC 548).**

(p) JUDGEMENT OF THE HIGH COURT IN RENEW WIND ENERGY:

While this Tribunal may not have explicitly stated, in the **DVC** Judgement, that the CERC has the jurisdiction under Section 79(1)(f) to refer disputes, which do not fall within the ambit of Clauses (a) to (d) of Section 79(1), to arbitration in the purported exercise of its powers under the second limb of Section 79(1)(f), such a conclusion has been arrived at by the Delhi High Court in **Renew Wind Energy (AP2) Private Limited vs. SECI (2025 DHC 9650)**.

With respect to the scope and ambit of the words *"and refer any dispute for arbitration"* in the second limb of both Section 79(1)(f) and Section 86(1)(f), the observations of the Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd. v. Solar Energy Corpn. of India, 2025 SCC OnLine Del 8252,** are summarized as under:

(i) The power to refer disputes for arbitration, under the second part of Section 79(1)(f), is broader than the power to adjudicate disputes in the first part.

(ii) While the adjudicatory powers are restricted to disputes connected with matters enumerated under Section 79(1)(a)-(d), the referral power extends to "any dispute" involving generating companies or transmission licensee.

(iii) The referral power of the CERC has two facets: (a) the power to refer disputes, connected with clauses (a) to (d) of Section 79(1), for arbitration which the CERC is itself capable of adjudicating; and (b) the power to refer a dispute for arbitration which it is not capable of adjudicating.

(iv) Referral power of the CERC, to refer disputes for arbitration which fall outside the scope of Section 79(1)(a)-(d), shall be exercised when there exists an arbitration clause, on the basis of which CERC can refer a given dispute for arbitration.

(v) In such a situation, while the CERC cannot adjudicate upon the dispute, it can nevertheless refer the same for arbitration. In this context, there is no discretion vested with the CERC. Once it is ascertained that the nature of dispute falls beyond the matters enumerated in Section 79(1)(a)-(d), and there exists an arbitration clause in the agreement entered into between the parties, the CERC is bound to refer the same for arbitration.

(vi) If the second limb is confined to disputes referred to in the first limb, the words 'connected therewith' would be required to be read after the words "to refer any dispute" in Section 79(1)(f) ie as: *"to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute* ***connected therewith*** *for arbitration"*.

(vii) CERC would remain competent to refer a dispute for arbitration, even if the same is found to not relate to tariff.

(viii) While the adjudicatory powers may be different, the referral powers are similarly worded. Both Section 79(1)(f) and Section 86(1)(f) contain the expression *"and to refer any dispute for arbitration"*. Thus, qua referral powers, neither the CERC nor the State Commission is bound by the nature of dispute before them.

The law declared by the Delhi High Court in this regard, in **Renew Wind Energy (AP2) Private Limited**, in short, is that the CERC can refer any dispute to arbitration; while it has the discretion either to refer disputes falling within the ambit of Clauses (a) to (d) of Section 79(1) for arbitration or to

exercise its jurisdiction to adjudicate such disputes; however, disputes which do not fall within the ambit of clauses (a) to (d) of Section 79(1) must necessarily be referred to arbitration, as the CERC lacks jurisdiction to adjudicate such disputes. Though this judgment of the Delhi High Court, in **Renew Wind Energy (AP2) Private Limited,** has not been specifically referred to in the impugned order passed by the CERC, the law declared by the Delhi High Court in the afore-said judgement does support the view taken by the CERC, in the impugned order, in justification of its decision to refer the subject disputes to arbitration in as much as the CERC has held that the primary dispute, in the present case which related to a breach of contract, was a non-tariff dispute and did not fall within the ambit of clauses (a) to (d) of Section 79(1).

(q) JUDGEMENT OF THE JURISDICTIONAL HIGH COURT IS BINDING:

In this context, we must also bear in mind that the law declared by the Delhi High Court, which is jurisdictional High Court both for the CERC and this Tribunal, is binding both on this Tribunal and the CERC. In **East India Commercial Co. Ltd. v. Collector of Customs, 1962 SCC OnLine SC 142,** the Supreme Court held that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence. In **Ambica Industries v. CCE, (2007) 6 SCC 769,** the Supreme Court held that the decision of the High Court shall be binding on the authorities which are within its jurisdiction.

In **Commissioner of Income-Tax v. Thana Electricity Supply Ltd: 1993 SCC OnLine Bom 591,** a Division Bench of the Bombay High Court observed that the law declared by the Supreme Court are binding on all courts in India, what is binding is, of course, the ratio of the decision and not every expression found therein; and the decisions of the High Court are binding on

the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction.

(r) JUDGEMENTS OF HIGH COURT WHICH RUNS CONTRARY TO THE LAW DECLARED BY THE SUPREME COURT IS NOT BINDING:

However, if the law declared by the jurisdictional High Court is contrary to the law declared by the Supreme Court, both the CERC and this Tribunal would be bound to follow and apply the law declared by the Supreme Court, and not the contrary view taken by the High Court, for it is settled law that all courts/statutory tribunals in India are bound to follow the decision of the Supreme Court in view of Article 141 of the Constitution of India. Judicial discipline requires, and decorum known to law warrants, that appellate directions should be taken as binding and followed. In the hierarchical system of courts which exists, it is necessary for each lower tier to accept loyally the decisions of the higher tier. **(Cassell & Co. v Broome: (1972) 1 ALL ER 801 (HL); Smt. Kaushalya Devi Bogra (Smt) and Ors. vs The Land Acquisition Officer, 1984 2 SCC 324).** When the Supreme Court decides a principle, it would be the duty of the High Court or a subordinate Court (or for that matter a statutory tribunal) to follow the decision of the Supreme Court. A judgment of the High Court (or Tribunal which refuses to follow the decision and directions of the Supreme Court is a nullity. (**Narinder Singh v. Surjit Singh, (1984) 2 SCC 402); Kausalya Devi Bogra v. Land Acquisition Officer, (1984) 2 SCC 324; Municipal Corporation of Guntur, Guntur v. B. Syamala Kumari, 2006 SCC OnLine AP 838; Somprakash v. State of Uttarakhand, 2019 SCC OnLine Utt 648; Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638).** In the hierarchical set up of our courts, the High Court/subordinate Tribunal is bound by the decisions of the Supreme Court. **(Sakinala Harinath v. State of A.P., 1993 SCC OnLine AP 195 (FB)).**

No order of a subordinate Court/tribunal can be construed to run counter to the Supreme Court's order. (**Mohd. Aslam v. Union of India, (1997) 5 SCC 475).** The law declared by the Supreme Court binds Courts in India (**Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887).** It is the duty of the High Court (as also statutory tribunals), whatever be its view, to act in accordance with Article 141 of the Constitution of India and to apply the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law, of the Supreme Court, cannot be forsaken by any Court/Tribunal oblivious of Article 141 of the Constitution of India**. (Chandra Prakash v. State of UP, (2002) 4 SCC 234; State of Punjab v. Bhag Singh, (2004) 1 SCC 547; and State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568).**

(s) JUDGEMENT OF THE SUPREME COURT IN HINDUSTAN ZINC LTD:

It is useful in this context to refer to the judgment of the Supreme Court in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82.** The question that arose for consideration, in **Hindustan Zinc Ltd,** was regarding the scope of arbitration proceedings under the Electricity Act, 2003, in particular, Section 86(1)(*f*) thereof read with Section 158. The appellant-Hindustan Zinc Ltd had four high tension electricity connections for which four contracts were entered into with the respondent for purchase of electricity. The appellant also set up a captive power plant which was commissioned and synchronized with the Rajasthan Vidyut Prasaran Nigam Ltd Grid. Short-term open access, to the transmission and distribution systems of this grid, was sought under the Regulations and requisite permission was obtained. Thereafter, the appellant entered into three open access agreements with the respondent for wheeling of power from its captive power plant, on the respondent's distribution system, to the three units that were owned by it. Open access commenced, and the power generated at its

captive power plant was injected at the grid sub-stations from where it was transmitted on the respondent's transmission system, and then supplied to the appellant's three units.

The dispute that arose between the parties was as to the unscheduled inter-change charges which became payable under clauses 8 and 9 of the three agreements. Each of the three units was described as an open access consumer. When disputes arose between the appellant and the respondent, the Rajasthan Electricity Regulatory Commission, by two Orders passed by it, stated that it will itself decide the dispute between the parties; however, by a subsequent Order, the Commission appointed an arbitrator under Section 86(1)(*f*) read with Section 158 of the Electricity Act, referring the dispute to arbitration. The award passed by the arbitrator was challenged before the Commercial Court in a Petition filed under Section 34 of the 1996 Act which was dismissed.

In the Section 37 appeal filed thereagainst, the High Court held that the captive generating plant of the company was to use, through open access, the distribution system of the respondent to wheel power to three of its own units. Given this fact, and given the fact that the three agreements were entered into with respect to these three units, the High Court held that the status of the appellant company was that an *open access consumer*, and not that of a generating company; and, as a result, Section 86(1)(*f*) of the Electricity Act would not be attracted. Consequently, the issue being one of inherent lack of jurisdiction, the High Court reversed the order of the Commercial Court, Ajmer, and set aside the entire award stating that the dispute raised between the parties, in the present case, would be outside the scope of Section 86(1)(f) of the Electricity Act altogether.

It is in this context that the Supreme Court, in **Hindustan Zinc Ltd**, observed that adjudication of disputes, under Section 86(1)(f) of the Electricity

Act, can only be between licensees and generating companies and not between licensees and consumers, which is provided for in an open access situation by Section 42; under the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004, , clause 29, in particular, gives a three-tier hierarchy of challenge when it comes to disputes raised between distribution licensees and consumers in relation to matters qua open access; this is quite apart from the separate mechanism provided in Section 42(6) of the Electricity Act, where a representation for redressal of grievances may be made to the Ombudsman appointed or designated by the State Commission; and the Supreme Court, in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755**, had occasion to construe the language of Section 86(1)(*f*) of the 2003 Act.

After extracting Paras 26 to 28 of the judgement in **Gujarat Urja Vikas Nigam Ltd**, the Supreme Court, in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82,** observed that what becomes clear on a reading of the judgment, in **Gujarat Urja Vikas Nigam Ltd.** ,was that the expression *"and"* occurring in Section 86(1)(*f*) must be read as *"or"*; but this is only because, as has been pointed out in the judgment, the State Commission cannot both decide the dispute itself and also refer it to an arbitrator; otherwise also, reference of any dispute for arbitration can only be between the licensees and generating companies and not otherwise; this being the case, the High Court was right in stating that the arbitrator could not, in law, have been appointed by the State Commission under Section 86(1)(f) of the Electricity Act; and the award based on such appointment would be non-est in law.

As the attention of the Delhi High Court in **Renew Wind Energy (AP2) (P) Ltd**, was not drawn to the judgement of the Supreme Court in **Hindustan**

Zinc Ltd, we must necessary follow the law declared in the judgement of the Supreme Court, and not the contrary view taken by the Delhi High Court.

(t) ONLY DISPUTES WHICH CAN BE ADJUDICATED BY THE COMMISSION CAN, AT ITS DISCRETION, BE REFERRED TO ARBITRATION:

From the law declared by the Supreme Court, in **Hindustan Zinc Ltd,** it is clear that a State Commission can only refer such disputes to arbitration which it can adjudicate under the first limb of Section 86(1)(f). In other words, it is only disputes between licensees and generating companies, (which the State Commission can adjudicate under the first limb of Section 86(1)(f)), which can be referred to arbitration under the second limb of the said provision, and not disputes between licensees and consumers, which do not fall within the adjudicatory jurisdiction of the State Commission under the first limb of Section 86(1)(f). Consequently, and in as much as the language employed in the second limb of both Sections 79(1)(f) and 86(1)(f) is identical, it must necessarily be held, following the declaration of law by the Supreme Court in **Hindustan Zinc Ltd,** that it is only disputes involving generating companies in regard to matters connected with clauses (a) to (d) of Section 79(1), (i.e. the disputes which the CERC is empowered to adjudicate), which can be referred to arbitration by the Central Commission. It is for this reason that in all the three judgments, i.e. in **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755,** in **Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82**, and in **M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd., (2021) 14 SCC 548,** the Supreme Court has held the word *"and"*, in Section 86(1)(f) of the Electricity Act, should be read as *"or".* As a result, disputes which do not fall within the ambit of clauses (a) to (d) of Section 79(1), and which cannot be adjudicated by the CERC

under Section 79(1)(f), cannot be referred to arbitration under the second limb of Section 79(1)(f).

Since the word *"and"* was read as "or" in **GUVNL Vs. ESSAR,** on the ground that the Commission cannot simultaneously adjudicate the same dispute and simultaneously refer such a dispute to arbitration, and it can do only one or the other, it is evident that the power to refer a dispute to arbitration can be exercised only with respect to those disputes which the Commission is empowered to adjudicate, and none other. Consequently, if the CERC lacks jurisdiction to adjudicate a non-tariff dispute involving a generating company, it must be held to also lack jurisdiction to refer such a dispute to arbitration.

Suffice it to conclude, our opinion under this head, holding that it is only disputes, which fall within the ambit of clauses (a) to (d) of Section 79(1), which can either be adjudicated by the CERC or, in the alternative, be referred to arbitration under Section 79(1)(f) of the Electricity Act. As shall be elaborated later in this Judgement, reference to arbitration is permissible only with respect to such disputes which do not fall under the "non-arbitrable disputes" category.

Following the **DVC** Judgement of this Tribunal, we hold that disputes, including those which fall within the ambit of the regulatory functions of the Commission, or which impact tariff either directly or indirectly, are non-arbitrable and, not-withstanding an arbitration agreement in existence and the tests stipulated in Section 8(1) of the 1996 Act being satisfied, cannot be referred to arbitration.

VI. REGULATION OF TARIFF: A STATUTORY FUNCTION:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT PROCURERS:

It is contended, on behalf of the Appellant-Procurers, that the real issue is as to what matters the CERC should adjudicate itself, and what matters it can or should refer to arbitration; in ***GUVNL v. Essar*** : **(2008) 4 SCC 755,** reference to arbitration has been held to be a discretion (judicial discretion); 'Regulation of tariff' is a statutory function vested in the CERC; it is covered, qua generators, by Sections 79(1)(a) & (b); it is a function vested primarily to regulate generation and supply of electricity at a reasonable tariff, determine terms and conditions for supply by the distribution licensees to its consumers; Section 79 read with Sections 61 to 64, the Rules/Regulations notified thereunder, and Regulatory Orders relate to the regulatory functions of the CERC i.e. regulation of tariff; ***PTC v. Jaiprakash,*** **(2012) 130 DRJ 351** holds such matters to be *in rem* (Refer: Section 61(d), Section 94(3)); and the regulator's role is to ensure accessibility of goods/services and ensure comprehensive development, and not for proliferation of remedies (Refer: ***State of HP v. JSW,*** **2025 INSC 857)**; in the two decisions, ie in ***BSES v. DERC,*** and ***SECI v. KSERC***, this Tribunal has listed wide ranging aspects falling under the CERC's adjudicatory jurisdiction, namely, method of recovery, billing, payment rebate, late payment surcharge, availability, scheduling, termination, suspension of supply, force majeure, payment security mechanism, Letter of Credit, escrow arrangement; implementation issues, fulfilment/non-fulfilment of condition precedent, conditions subsequent, extension of time in commissioning the projects; these are not mere rate or price; all these have been construed as being part of Regulation of tariff or matters connected therewith; the ***DVC*** *decision,* including the Supreme Court's order in the Civil Appeal preferred there-against, could not and did not overrule these decisions; as the scope of Section 79 is clearly laid down therein, these decisions cannot also be held inapplicable on the ground that they had examined the scope of Section 79 vis-à-vis Section 86, and was not rendered in the context of arbitration; the issue, specifically raised in the

said judgements, was that non-tariff issues do not fall under the jurisdiction of the CERC (Para 37 of ***BSES v. DERC***), and are matters falling within the jurisdiction of the SERC, and it was held therein that all these issues are related to regulation of tariff; CERC has not considered the settled principles on the regulatory and adjudicatory functions vested in the CERC/Regulator; and, in ***Sai Renewable*****,** (2011) 11 SCC 34, it was held that tariff includes terms and conditions of supply, and the term 'tariff' is wider in scope than purchase price. (Also refer: ***PTC Constitution Bench*****, (2010) 4 SCC 603** and the ***BSES v. DERC*** judgement of this Tribunal.

B. JUDGEMENTS RELIED UPON BY THE APPELLANTS-PROCURERS UNDER THIS HEAD:

1. In **State of H.P. v. JSW Hydro Energy Ltd., 2025 SCC OnLine SC 1460,** the Supreme Court held that the Court should bear in mind the need to enable the regulator to exercise comprehensive jurisdiction; Courts must not impair the functioning of the regulator by taking away certain aspects of the sector outside the regulator's scope, thereby fragmenting regulation and creating plurality of jurisdictions; it is in the interest of good governance through regulation to ensure that there is no proliferation of remedies and there are no parallel, multiple remedial forums; further, this also ensures that the sectoral law is developed in a coordinated and systematic fashion by the regulator that is equipped to deal with not only legal issues but also has specialised knowledge in other areas.

2. In **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603,** the Supreme Court held that the term "tariff" is not defined in the 2003 Act; the term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it; if one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the appropriate Commission shall determine the actual tariff in accordance with the provisions

of the Act, including the terms and conditions which may be specified by the appropriate Commission under Section 61 of the said Act; under the 2003 Act, if one reads Section 62 with Section 64, it becomes clear that although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide Section 111; and these provisions, namely, Sections 61, 62 and 64 indicate the dual nature of functions performed by the Regulatory Commissions viz. decision-making and specifying terms and conditions for tariff determination.

C. ANALYSIS:

(a) CONTENTS OF THE IMPUGNED ORDER ON THIS ISSUE:

On Issue No.1, ie whether the subject dispute was connected with 'regulation of tariff' of TPCL, and was a 'tariff' dispute or a 'non-tariff' dispute as explained by the **DVC** Judgment, the CERC, in the impugned order passed in Petition No. 107/MP/2023 and batch dated 19.11.2025, observed that, insofar as the jurisdiction of the Commission under Section 79(1)(f) read with Section 79(1)(b), to adjudicate upon the disputes involving generating companies having a composite scheme was concerned, the same would extend to matters connected with the regulation of tariff of such generating companies; indisputably, TPCL qualified as a generating company having a composite scheme for the generation and sale of electricity in more than one State in terms of Section 79(1)(b) of the Act; for the exercise of adjudicatory jurisdiction under Section 79(1)(f) read with Section 79(1)(b) of the Act, the disputes involving such a generating company had to be in regard to matters connected with the regulation of its tariff; the crucial question was as to what constituted a dispute connected with the regulation of tariff, in other words, 'tariff dispute' and 'non-tariff disputes'; this issue was answered by APTEL in paragraphs 25 and 26 of the **DVC** Judgment; as per the findings of APTEL in the said paras, all matters which would have a bearing upon the tariff for a

generating company would constitute “tariff disputes”; for e.g. disputes related to Change in Law, delayed completion of Projects, invocation of Force Majeure events, etc., impacted the tariff for a generating company directly and, therefore, fell solely within the jurisdiction of the Commission under Section 79(1) of the Act; however, disputes related to termination of contract or breach of contract that did not impact tariff either directly or indirectly, could be considered as non-tariff related disputes referable to arbitration.

The CERC further held that the Judgment in **BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission and Anr. (Judgement of Aptel in Appeal Nos. 94 & 95 of 2012 dated 4.9.2012)** was specifically referred to and relied upon by DVC in Appeal No. 309 of 2019, and it was only after taking into account the submissions made thereon that the findings pertaining to tariff and non-tariff disputes were rendered by APTEL in the **DVC** Judgement; the Judgment in **Solar Energy Corporation of India Limited v. Kerala State Electricity Regulatory Commission (Judgement of Aptel in Appeal No. 414 of 2022)** reiterated the scope of ‘regulation of tariff’ as held in the **BSES Rajdhani Power Limited** Judgment, and further held that the adjudicatory powers of the CERC under Section 79(1)(f) were not only restricted to determination of tariff as well as regulation of tariff, but included other disputes or differences which necessarily impact regulation of tariff; and, unlike the **DVC** Judgment, the **SECI** Judgment did not deal with the specific disputes between the parties, and/or the prayers made in connection thereof, to examine whether the dispute impacted the tariff or the regulation of the tariff.

(b) ARBITRABILITY OF DISPUTES:

As noted earlier in this order, this Tribunal, in the **DVC** Judgement, has held that (i) disputes concerning the regulatory functions of the Commission, (ii) disputes relating to tariff or regulation of tariff of generating companies, (iii)

matters which have a bearing upon the tariff for a generating company, and (iv) matters which impact the tariff for a generating company directly or indirectly, fall solely within the jurisdiction of the Central Commission under Section 79(1) of the Electricity Act, 2003, and cannot be referred to arbitration. In effect, such disputes cannot be referred for arbitration, as they are non-arbitrable or are incapable of being subjected to arbitration.

The 1996 Act contains two Parts — Part I and Part II. Part I contains the heading "Arbitration" and Part II the heading "Enforcement of Certain Foreign Awards". Chapter I of Part I relates to the "General Provisions", in which Section 2 deals with definitions. Section 2(3) contains a general provision which clarifies that "This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration". Section 2(3) gives predominance to *any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration*. **(Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751)**.

The three facets of arbitrability, relating to the jurisdiction of the Arbitral Tribunal, are as under: (*i*) *Whether the disputes are capable of,* having regard to their nature, being resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of a public fora (courts or specialized tribunals); (*ii*) *Whether the disputes are covered by the arbitration agreement*? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview of the arbitration agreement; (*iii*) *Whether the parties have referred the disputes to arbitration*? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counter-claim filed before the Arbitral Tribunal. **(Booz Allen & Hamilton Inc. v. SBI Home**

Finance Ltd., (2011) 5 SCC 532; Arasmeta Captive Power Co. (P) Ltd. v. Lafarge India (P) Ltd., (2013) 15 SCC 414).

Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in the place of courts and tribunals which are public fora constituted under the laws of the country. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may, by necessary implication, stand excluded from the purview of private fora. Consequently, where the cause/dispute is non-arbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration even if the parties may have agreed upon arbitration as the forum for settlement of such disputes. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532).** Arbitration is not permissible where the legislature has reserved adjudication of disputes to a special forum. **(Umri Pooph Pratappur (UPP) Tollways (P) Ltd. v. M.P. Road Development Corpn., 2025 SCC OnLine SC 1569; Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd: (2011) 5 SCC 532; Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751).**

The well-recognized examples of non-arbitrable disputes are: (*i*) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (*ii*) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (*iii*) guardianship matters; (*iv*) insolvency and winding-up matters; (*v*) testamentary matters (grant of probate, letters of administration and succession certificate); and (*vi*) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes. **(Booz Allen &**

Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532). In addition to the six non-arbitrable categories set out in ***Booz Allen & Hamilton Inc.* v. *SBI Home Finance Ltd.*, (2011) 5 SCC 532**, a seventh category of non-arbitrable disputes are those relating to trusts, trustees and beneficiaries arising out of a trust deed and the Trust Act. (**Vimal Kishor Shah v. Jayesh Dinesh Shah, (2016) 8 SCC 788; Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751).**

The afore-said cases relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide *Black's Law Dictionary*). Generally, and traditionally, all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532; A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386; Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751).**

(c) REGULATORY FUNCTIONS AND TARIFF:

In order to examine what disputes would fall within the regulatory functions of the Commission, and what disputes would impact tariff- directly or indirectly, rendering such disputes non-arbitrable and as incapable of

reference to arbitration under Section 79(1)(f) of the Electricity Act, we must first understand what are the regulatory functions which the Commission discharges, and what the expression "tariff" means.

The jurisdiction of the CERC under Section 79(1)(f) of the Electricity Act, to either adjudicate upon disputes or refer disputes for arbitration, is confined, among others, to clause (b) of Section 79(1). It is only if the dispute is referrable to clause (b) of Section 79(1), ie the dispute is in regard to matters connected with the regulation of tariff of the Respondent-TPCL (a generating company selling electricity in more than one State), can the CERC validly exercise jurisdiction to either adjudicate such a dispute or to refer such a dispute for arbitration. It is necessary for us, therefore, to understand what the expressions "regulate" and "tariff" mean.

(d) JUDGEMENT OF THE DELHI HIGH COURT IN RENEW WIND ENERGY (AP2) (P) LTD:

The Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd**, observed that the word 'regulation' is of wide amplitude; Section 79(1)(f) of the Electricity Act would attract, not merely a strict regulation of tariff, but also disputes "connected with" the regulation of tariff; the test for determining whether Section 79(1)(f)'s adjudicatory powers are attracted is the requirement of a nexus between the dispute between the parties and the regulation of tariff; and the powers of the CERC under the said provision are broad enough to cover disputes which affect considerations that has led to the fixation of tariff and further entitlements, charges, rights and obligations the determination of which utilizes tariff as an input function.

On the scope of the expression 'regulation of tariff', the Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd,** referred to the judgement of this Tribunal in **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory**

Commission, declaring that Section 79 of the Electricity Act deals, not merely with tariff, but also the terms related to tariff; the term 'Regulate' used in Section 79(1)(f) of the Act has a wider scope and implication not merely confined to determination of tariff; Section 61 and 79 not only deal with the tariff but also deal with the terms and conditions of tariff; the terms and conditions necessarily include all terms related to tariff; determination of tariff and its method of recovery will also depend on the terms and conditions of tariff; for example, interest on working capital which is a component of tariff will depend on the time allowed for billing and payment of bills; this will also have an impact on the terms and conditions for rebate and late payment surcharge; similarly, billing and payment of capacity charge will depend on the availability of the power station, and therefore, the scheduling has to be specified in the terms and conditions of tariff; and, accordingly, billing, payment, consequences of early payment by way of grant of rebate, consequences of delay in payment by way of surcharge, termination or suspension of the supply, payment security mechanism such as opening of the Letter of Credit, escrow arrangement, etc., are nothing but terms and conditions of supply.

The Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd,** also referred to the judgement of this Tribunal, in **Solar Energy Corporation of India Ltd. v. Kerala State Electricity Regulatory Commission**, wherein it was held that the expression 'Regulation of Tariff' was broad, and included terms and conditions related to tariff; the powers of the CERC under Section 79(1)(f) extend not only to regulation of tariff but also to disputes or differences which necessarily impact the regulation of tariff. The Delhi High Court further held that the finding of APTEL, in **Solar Energy Corporation of India Ltd. v. Kerala State Electricity Regulatory Commission**, seemed to arise not just from an interpretation of the term 'regulation of tariff' but also the expression "in regard to matters connected with" as it appeared in Section

79(1)(f), as it was held in the said judgement that clauses (a),(b) & (c) of Section 79(1) of the Act begin with the expression “to regulate”; it is only clause (d) which begins with the term “to determine tariff”; regulation of Tariff is totally distinct from “Determination of tariff; Regulation of Tariff includes all the necessary terms and conditions relating to the tariff such as billing, consequences of delay in payment of electricity charges, rebate, termination, suspension of electricity supply, payment of security, etc; a close and meaningful interpretation of the provisions of Section 79 & 86 of the Act, would indicate that the adjudicatory powers of the Central Commission under 79(1)(f) are not restricted to only determination of tariff as well as Regulation of tariff, but include other disputes or differences between generating companies and transmission licensees which necessarily impact regulation of tariff; this would include fulfilment/non-fulfilment of conditions precedent as well as conditions subsequent, claim for extension of time in commissioning all projects on the ground of Force Majeure events etc; even though disputes on these subjects do not specifically relate to determination or the regulation of tariff but these would necessarily have a direct bearing upon the regulation of tariff and, therefore, would come under the purview of the Central Commission under Section 79 of the Act.

(e) “REGULATE”: ITS SCOPE:

In this context, it must be borne in mind that the Commission exercises the powers of a regulator. Regulatory powers are extensive, and they include whatever needs to be done for achieving the objects and purposes of the Electricity Act. (**Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674; K. Ramanathan v. State of T.N., (1985) 2 SCC 116; V.S. Rice & Oil Mills v. State of A.P., AIR 1964 SC 1781; Deepak Theatre v. State of Punjab, 1992 Supp (1) SCC 684; AIR 1992 SC 1519]**; and **D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20**).

The word “regulate” is wide enough to confer power on the State to regulate either by increasing the rate or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question (electricity) and to arrange for its equitable distribution and its availability at fair prices. The power to regulate can be exercised for ensuring the payment of a fair price. (**V.S. Rice & Oil Mills v. State of A.P: AIR 1964 SC 1781; Nuclear Power Corporation Of India V. Central Electricity Regulatory Commission & Anr. (Judgement of Aptel in Appeal No. 134 of 2024 & batch dated 27.03.2025).**

The word “regulation” has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied. In modern statutes, concerned as they are with economic and social activities, ‘regulation’ must, of necessity, receive a wide interpretation. **(G.K. Krishnan v. State of T.N; (1975) 1 SCC 375; Nuclear Power Corporation Of India V. Central Electricity Regulatory Commission & Anr. (Judgement of Aptel in Appeal No. 134 of 2024 & batch dated 27.03.2025).**

The word ‘regulate’ is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. Some courts have given to the term a somewhat restricted, and others have given to it a liberal, construction. The different shades of meaning are brought out in **Corpus Juris Secundum, Vol. 76 at p. 611**: ‘“Regulate” is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations; “Regulate” is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or

rules; to rule; to conduct; to fix or establish; to restrain; to restrict.'(See also **Webster's Third New International Dictionary, Vol. 2, p. 1913 and Shorter Oxford Dictionary, Vol. 2, 3rd Edn., p. 1784**). (**K. Ramanathan v. State of T.N., (1985) 2 SCC 116; Nuclear Power Corporation Of India V. Central Electricity Regulatory Commission & Anr. (Judgement of Aptel in Appeal No. 134 of 2024 & batch dated 27.03.2025).**

The power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. The word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy. The question essentially is one of degree, and it is impossible to fix any definite point at which 'regulation' ends and 'prohibition' begins. (**K. Ramanathan v. State of T.N., (1985) 2 SCC 116; Nuclear Power Corporation of India V. Central Electricity Regulatory Commission & Anr. (Judgement of Aptel in Appeal No. 134 of 2024 & batch dated 27.03.2025).**

The Court (or, for that matter, this Tribunal), while interpreting the expression "regulate", must necessarily keep in view the object to be achieved and the mischief sought to be remedied. (**Jiyajeerao Cotton Mills Ltd. v. M.P. Electricity Board: 1989 Supp (2) SCC 52; Nuclear Power Corporation Of**

India V. Central Electricity Regulatory Commission & Anr. (Judgement of Aptel in Appeal No. 134 of 2024 & batch dated 27.03.2025).

(f) "IN REGARD TO" AND "CONNECTED WITH": ITS MEANING:

The power conferred on the CERC, by Section 79(1)(f), is to adjudicate upon disputes involving generating companies in regard to matters connected with, among others, clause (b). Let us now examine what the expressions "involving", "in regard to" and "matters connected with", used in Section 79(1)(f) mean. The expressions 'in respect of' or 'in connection with' or 'in relation to' or 'relating to' or 'regard to' are of the widest amplitude. **(Renusagar Power Co. Ltd. v. General Electric Co: (1984) 4 SCC 679; Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale (1995) 2 SCC 665).** In Blacks' Law Dictionary, Super Deluxe 5th Edition, at page 1158, the term 'relate' (which is similar to the term 'regard') is defined as under: "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; 'with to'." **(State Wakf Board v. Abdul Azeez: AIR 1968 Mad 79 : (1967) 1 MLJ 190; Nitai Charan Bagchi v. Suresh Chandra Paul: 66 CWN 767; Shyam Lal v. M. Shyamlal [AIR 1933 All 649 : 1933 All LJ 728).** In 76 Corpus Juris Secundum at pages 620 and 621 it is stated that the term 'relate' is also defined as meaning to bring into association or connection with; 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and 'pertaining to'**. (Doypack Systems (P) Ltd. v. Union of India: (1988) 2 SCC 299).**

Section 79(1)(f), which confers on the CERC the power to adjudicate disputes "involving" generating companies, is "in regard to" matters "connected with" clauses (a) to (d) of Section 79(1) of the Electricity Act 2003. The word "involve", according to the Shorter Oxford Dictionary, means "to enwrap in anything, to enfold or envelop; to contain or imply". **(CIT v. Surat**

Art Silk Cloth Manufacturers' Assn., (1980) 2 SCC 31). It is stated, in the **Advanced Law Lexicon, P Ramanatha Aiyer 3rd Edition, 2005, Book 2, Pg 2455,** that the primary significance of the word "involve" is "to roll up or envelop; and it also means to comprise, to contain, to include by rational or logical construction.

The words 'in regard to', occurring in a statute, must be given the interpretation justified by the context in which they occur. These words, ordinarily, mean 'for' or 'for the purpose of'**. (M.A. Jaleel v. State of Mysore, AIR 1961 Mys 210).** The word "connected" means intimately connected or connected in a manner so as to be unable to act independently**. (Kashi Nath Misra v. University of Allahabad, 1965 SCC OnLine All 416).** The connection, contemplated by the words "connected with", must be real and proximate, not far-fetched or problematical. (**Rex v. Basudev, 1949 SCC OnLine FC 26).** In **Strong & Co., of Romsey Limited, Appellants and Woodifield (Surveyor Of Taxes) Respondent., [1906] A.C.448,** it has been held that the words "connected with" are used in the sense that they are really incidental to the subject of the provision itself, and not if they are mainly incidental to some other subject other than what the provision relates to.

By use of the words 'in regard to', in Section 79(1)(f), Parliament has made it clear that the disputes, to which a generator is a party to, can be adjudicated by the CERC only 'for the purposes of' clauses (a) to (d) of Section 79(1), and not otherwise. By use of the words "connected with", in Section 79(1)(f), Parliament has stipulated that the dispute should be really incidental or in close proximity to clauses (a) to (d) of Section 79(1). As clauses (a), (c) and (d) of Section 79(1) have no application to the facts of the present case, it is only if the jurisdictional facts disclose that the dispute, in the present case, is inter-twined with clause (b) of Section 79(1), can the CERC then exercise jurisdiction under Section 79(1)(f) to adjudicate the present dispute. In other

words the dispute, which can be adjudicated by the CERC, must be an integral part of clause (b) of Section 79(1), and should be incidental to or in close proximity thereof.

(g) "TARIFF": ITS SCOPE:

The PPA executed between the Appellants-Procurers and CGPL (now TPCL) defines 'tariff' to mean the tariff as computed in accordance with Schedule 7. Clause 1.1(i) of Schedule 7 stipulates that the method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule. Clause 1.1(ii) stipulates that the tariff shall be paid in two parts comprising of Capacity and Energy Charge. Clause 1.2 relates to monthly tariff payment, and Clause 1.2.1 relates to the Components of Monthly Tariff Payment. Thereunder, the Monthly Bill for any Month in a Contract Year shall consist of the following: (i) Monthly Capacity Charge Payment in accordance with Article 1.2.2 below; (ii). Monthly Energy Charge for Scheduled Energy in accordance with Article 1.2.3 below; (iii). Incentive Payment determined in accordance with Article 1.2.4 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year); (iv). Penalty Payment determined in accordance with Article 1.2.5 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year); (v). Penalty Payment determined in accordance with Article 1.2.8 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month *of the next Contract Year)."* While Clause 1.2.2 relates to monthly capacity charge payment, Clause 1.2.3 relates to monthly energy charges and prescribes the formula for its calculation.

The term "tariff" is not defined in the Electricity Act. Tariff means a schedule of standard/prices or charges provided to the category or categories for procurement by the licensee from the generating company, (**Gujarat Urja**

Vikas Nigam Ltd. v. Solar Semiconductor Power Company (India) Pvt. Limited, ((2017) 16 SCC 498; Ginni Global Ltd. v. H.P. ERC, 2022 SCC OnLine APTEL 124). While the word "Tariff" can be said to mean the amount that the licensee is permitted to recover from its beneficiaries in any financial year (**Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674),** it would include within its ambit not only the fixation of rates but also the rules and regulations relating to it. **(PTC (India) Ltd. v. CERC, (2010) 4 SCC 603).**

On the question as to what would constitute a tariff dispute, this Tribunal, in the **DVC** judgment, has held that disputes relating to (*i*) change in law, (*ii*) delay in completion of projects, (*iii*) invocation of force majeure event etc. would constitute tariff disputes as they impact the tariff of a generating company directly and fall solely within the jurisdiction of the Central Commission under Section 79(1). By use of the word "etc", this Tribunal, in the **DVC** judgment, made it clear that they had only provided instances of tariff disputes, and these instances were not to be understood as an exhaustive list of tariff disputes which are non-arbitrable.

In **BSES RAJDHANI Power Limited vs. DERC (judgment of APTEL in Appeal Nos. 94 and 95 of 2012 dated 04.09.2012),** this Tribunal held that the terms and conditions of supply, necessarily, include all terms related to tariff; interest on working capital is a component of tariff since this would depend on billing; payment of bills, will also have an impact on terms and conditions for rebate and late payment surcharge; payment of security mechanism, such as opening of the Letter of Credit, and escrow arrangement, also relate to the terms and conditions of supply; and billing, payment, surcharge, rebate for payment, termination or suspension of the supply, payment mechanism would fall within the terms and conditions of tariff.

In **SECI vs KSERC (judgment of APTEL in Appeal No. 414 of 2022 dated 13.08.2024),** this Tribunal held that regulation of tariff would include the terms and conditions relating to tariff such as billing, consequences of delay in payment of electricity charges, rebate, termination, suspension of electricity supply, payment of security, etc.

In **Mokia Green Energy Private Limited vs. Punjab State Power Corporation Ltd. & Anr. (Judgment of APTEL in Appeal No. 323 of 2025, dated 08.01.2026)** this Tribunal held that tariff is not a mere numerical figure but is intrinsically linked to, and inseparable from, the terms and conditions stipulated in the bid documents, it is beyond dispute that variations in the applicable terms and conditions can result in materially different numerical value in terms of ₹ per kWh, as such conditions have a direct bearing not only on project costs but also on the risk perception and commercial assessment of the bidders.

As noted hereinabove, the components of monthly tariff payment under Clause 1.2.1 of Schedule-7 of the PPA includes monthly capacity charge payment, monthly energy charges for scheduled energy, penalty payment determined in accordance with Article 1.2.5 and penalty payment determined in accordance with Article 1.2.8. Consequently, any dispute which may impact tariff, as referred to in the afore-said judgements, as also the components of Tariff in Schedule-7 of the PPA, can be said to impact tariff rendering such disputes non-arbitrable. Such disputes, falling within the ambit of Section 79(1)(b), must, therefore, only be adjudicated by the CERC, and cannot be referred to arbitration, as such disputes are non-arbitrable.

While disputes with respect to matters, referred to in the afore-said judgements, may constitute tariff disputes and hence non-arbitrable, it would be wholly inappropriate for us to provide an exhaustive list of disputes which would fall within the ambit of Regulatory functions of the Commission either

under Section 79(1) or Section 86(1), as also what would, either directly or indirectly, impact tariff for such disputes to be held non-arbitrable. Suffice it to hold that, in the light of the law declared by this Tribunal in the **DVC** judgment, any dispute which concerns the Regulatory functions of the Commission, or impacts tariff directly or indirectly, or relates to tariff or regulation of tariff, cannot be referred to arbitration as such disputes are non-arbitrable.

Regulatory functions are assigned to, and the power to determine tariff is conferred on, an independent regulator (the Regulatory Commission, be it Central, State or Joint) by the Electricity Act, a special enactment. As discharge of the regulatory functions, and exercise of the power to determine tariff, would have a bearing on the public at large (for instance, the consumers), it is only the Regulatory Commissions which can discharge Regulatory functions and exercise the power to determine tariff, and such functions can neither be discharged nor can such power be exercised by a private forum such as an arbitral tribunal. Consequently, disputes which relate to the regulatory functions of the Commission and those which impact tariff, both directly and indirectly, can only be adjudicated by the Regulatory Commissions and cannot be referred for arbitration by an arbitrary Tribunal.

Before deciding whether it should exercise its discretion to refer the dispute before it to arbitration, the CERC must first examine whether the dispute raised before it involves a generating company or a transmission licensee, and secondly whether the dispute is in regard to matters connected with clauses (a) to (d) of Section 79(1). If it does not, then the CERC can neither adjudicate the dispute nor refer such dispute to arbitration. If the dispute raised before it satisfies the afore-said two requirements, the CERC should then examine whether the dispute forms part of the regulatory functions of the Commission, and whether the dispute impacts tariff either directly or indirectly. If it either impacts tariff or relates to the regulatory

functions, the Commission cannot refer such disputes to arbitration. If the dispute does not, then the Commission can exercise its discretion, for just and valid reasons, to either adjudicate such a dispute or refer the said dispute to arbitration.

(h) WHAT DISPUTES CAN BE REFERRED TO ARBITRATION?

The next question which arises for consideration is to what disputes can be referred by the CERC to arbitration. It is clear that the disputes which relate to the regulatory functions of the CERC and which impact tariff, either directly or indirectly cannot be referred to arbitration, as such disputes are non-arbitrable. As noted hereinabove, the power conferred on the Central Commission, under Section 79(1)(f), is with respect to disputes involving generating companies (*i*) in regard to, (*ii*) matters connected with, Clauses (a) to (d) of Section 79(1). As the jurisdiction of the CERC is confined to adjudicate only such disputes, it cannot refer any dispute, not falling within the ambit of clauses (a) to (d) of Section 79(1), for arbitration. There may well be disputes which are in regard to matters connected with clauses (a) to (d) of Section 79(1), but which do not relate to the regulatory functions of the CERC or impact tariff either directly or indirectly. Such disputes can, in the exercise of the discretionary jurisdiction of the CERC under Section 79(1)(f), either be adjudicated by the Central Commission or be referred to arbitration. One such instance would be valid termination of a PPA which does not impact tariff, which was referred, by the DVC Judgement of this Tribunal, to arbitration.

VII. IS THE PRESENT DISPUTE A REGULATORY DISPUTE WHICH IMPACTS TARIFF?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT PROCURERS:

It is contended, on behalf of the Appellant-Procurers, that TPCL's contention, that a tariff dispute relates only to determination of tariff, is erroneous; Section 79(1)(b) deals with regulation of tariff which is wider in scope than determination; in fact, determination of tariff is a plenary function, and cannot be said to be adjudicatory; Section 79(1)(f) does not relate to regulation of tariff, but to adjudication in regard to matters connected therewith, which obviously is not restricted to determination or even regulation of tariff; the expressions 'regulate', 'involving', 'in regard to', 'matters connected with' are wide enough to cover all disputes with a nexus to regulation or tariff (Ref: (i) ***UPPCL v. NTPC,*** (2009) 6 SCC 235); (ii) ***Renusagar v. General Electric,*** (1984) 4 SCC 679); and (iii) ***SECI v. KSERC***; the Impugned Order itself rejects TPCL's claim that Tariff relates only if those matters covered in Schedule 7 of the PPA; and yet it has considered regulation of tariff in a narrow / pedantic manner, and without reference to other binding precedents.

It is further contended, on behalf of the Appellant-Procurers, that TPCL has a subsisting obligation to generate and supply electricity to procurers/discoms for supply to consumers in the respective states; this obligation is as per the PPA dated 22.04.2007 entered into for 25 years pursuant to a competitive bidding process undertaken in terms of Section 63, and as per the Central Government Guidelines, terms and conditions, bid documents including PPA terms and conditions; this, as per ***DVC*** *Decision*, falls squarely within the scope of regulatory functions (Para 22), having impact on tariff (Para 25), falls under adjudicatory functions, and is not an arbitrable dispute (Section 2(3) of the Arbitration & Conciliation Act); both the Petitions filed by GUVNL and TPCL are matters connected with regulation of tariff and the regulatory functions of the CERC; if the contents of the Petitions and prayers are seen, the contrary claim is untenable; GUVNL is seeking specific performance to enforce the obligations of TPCL to generate and supply

electricity at the tariff terms and conditions of the PPA; Tariff is a clear input in seeking specific performance and calculation of damages for non-performance; the stand of TPCL is that it will not generate and supply at the PPA tariff, and should be given a higher tariff for performance of its obligations (Ref: Para 7 (BB), (CC) of the Memorandum of Appeal at Pg.20-21, Vol 1); this plea is taken despite the fact that a similar claim for higher tariff was conclusively rejected on all counts, including on grounds of force majeure, in ***Energy Watchdog:*** (2017) 14 SCC 80 - contract becoming onerous cannot be a ground for wriggling out of obligations; TPCL is camouflaging the same aspects of force majeure by taking the impermissible plea that TPCL is entitled to commit a breach of the 25 years agreement, and the same is outside the purview of the regulatory jurisdiction of the Commission; nothing can be more bizarre than a party taking advantage of its own wrong, and self-creating a deliberate breach; GUVNL had also raised the issue of refund of the amount paid in excess of the PPA tariff which is again necessarily related to tariff; the consideration of damages is also based on the tariff payable to TPCL, and the higher cost incurred by GUVNL; further, non-compliance of Section 11 is also raised; in Petition No. 205/MP/2023, TPCL is challenging deduction of capacity charges by GUVNL and compensation for GUVNL as per PPA terms for not meeting availability; the aspect of availability is directly related to capacity charges and penalty which is clearly tariff even as per PPA, and is further recognised in ***BSES v. DERC*** at Para 32; similarly, suspension of supply is also recognised in ***BSES v. DERC*** at Para 33; the impugned Order, at Paras 30 and 31, acknowledges and holds that there is nexus to tariff, but proceeds on the basis that it is not sufficient; this means that there is, admittedly, some elements of the CERC's regulatory functions, and therefore the whole matter is not arbitrable; and even a consequential effect on tariff means the dispute has an impact on tariff. especially when the *DVC Decision* states in Para 25 '*directly or indirectly*'; and, in Para 107-109 of the ***Renew***

Decision, the Delhi High Court has held that regulation of tariff is wide, and matters related to Tariff as input falls within the adjudicatory jurisdiction of the CERC.

It is also contended, on behalf of the Appellant-Procurers, that TPCL has wrongly alleged that there has been an agreement of GUVNL to accept LD or to pay higher tariff; the claim for damages, for non-performance, is under Section 79 for breach of Article 4 of the PPA (Para 75 of GUVNL's Petition at Page 625, Vol. III, Appeal); there was no agreement to pay higher price by GUVNL for supply of power; any amendment of PPA needs approval of the CERC [Article 18]; and, in any event, these are matters on merits, and are not relevant to the issue of arbitrability.

B. JUDGEMENTS RELIED UPON BY THE APPELLANTS-PROCURERS UNDER THIS HEAD:

1In **U.P. Power Corpn. Ltd. v. NTPC, (2009) 6 SCC 235,** the Supreme Court held that regulatory provisions are required to be applied having regard to the nature, textual context and situational context of each statute and case concerned; the power to regulate implies a power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner; it also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or may be conducted; the word 'regulation' is a word of broad import, having a broad meaning, and is very comprehensive in scope; the different shades of meaning are brought out in *Corpus Juris Secundum*, Vol. 76 at p. 611 which states that ' "Regulate" is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to

govern or direct according to rule; to control, govern, or direct by rule or regulations; “Regulate” is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict.’ (See also *Webster's Third New International Dictionary*, Vol. II, p. 1913 and *Shorter Oxford Dictionary*, Vol. II, 3rd Edn., p. 1784.)”

2. In **Renusagar Power Co. Ltd. v. General Electric Co., (1984) 4 SCC 679,** the Supreme Court held that expressions such as “arising out of” or “in respect of” or “in connection with” or “in relation to” or “in consequence of” or “concerning” or “relating to” the contract are of the widest amplitude and content.

3. In **Renew Wind Energy (AP2) (P) Ltd. v. Solar Energy Corpn. of India, 2025 SCC OnLine Del 8252,** the Delhi High Court held that it was it is important to stress and give sufficient weight to Parliament's wisdom to empower the CERC to refer disputes involving generating companies or transmission licensee for arbitration; Parliament, by a special statute, has conferred this referral power on the CERC for disputes between a defined category of litigants; permitting any other Court or authority to exercise powers under Sections 8 or 11 of the Arbitration Act in the same field would displace the forum chosen by the special law and render Parliament's wisdom nugatory; doctrinally, Section 79(1)(f) read with Section 158 of the Electricity Act provides a special statutory route to reach the destination, which is arbitration; any other general route, such as the one provided for under Sections 8 or 11, would inherently conflict with this special route, even though the ultimate outcome remains the same; the referral power of the CERC under Section 79(1)(f) whereby, it can refer disputes involving generating companies or transmission licensee for arbitration, conflicts with the power of a Court/Authority, other than the CERC, under Sections 11 or 8 of the Arbitration

Act; the Supreme Court in ***GUVNL*** has held that provisions of the Electricity Act prevail over the Arbitration Act insofar as the latter is found to be in conflict, both implied and express, with the former; applying the ratio of the ***GUVNL,*** would lead to the conclusion that the referral powers of the CERC under Section 79(1)(f) would preclude any other Court/authority, other than the CERC, from referring disputes involving generating companies or transmission licensee for arbitration; paragraph 59 of the judgment in ***GUVNL*** is not limited to an analysis of Section 86(1)(f); the express words "*or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it*" squarely apply to Section 79(1)(f); thus, by the sheer weight of precedent, it can safely be concluded that the referral powers of Section 79(1)(f) preclude the application of any provision of the Arbitration Act, including Section 11, which trigger arbitration or change the authority which is making the referral for arbitration.

The Delhi High Court clarified that the words used by APTEL in the DVC Judgement, ie "*disputes related to termination or breach of contract*", must be considered in the context of the preceding finding as well in conjunction with the following words in the same sentence, meaning thereby, the disputes related to termination or breach of contract, without impacting the tariff either directly or indirectly, would qualify as non-tariff disputes; and merely because a dispute has arisen from a breach of contract would not necessarily be determinative of the nature of dispute.

The Delhi High Court further held that the word 'regulation' is of wide amplitude, and Section 79(1)(f) of the Electricity Act would attract, not merely a strict regulation of tariff, but also disputes "*connected with*" the regulation of tariff; the test for determining whether Section 79(1)(f)'s adjudicatory powers are attracted is the requirement of a nexus between the dispute between the parties and the regulation of tariff; and the powers of the CERC under the said

provision are broad enough to cover disputes which affect considerations that had led to the fixation of tariff and further entitlements, charges, rights and obligations the determination of which utilises tariff as an input function.

C. ANALYSIS:

In the impugned order passed in Petition No. 107/MP/2023 and batch dated 19.11.2025, the CERC observed that the principal disputes, raised in the said batch of cases, pertained to alleged failure on the part of TPCL to fulfil its obligations under the PPA, in other words, breach of the contractual obligations; similarly, in the Petition filed by TPCL, the primary dispute pertained to the correct methodology for the calculation of Declared Capacity and levy of Penalty thereon; in some of these cases, the Procurers had prayed for directions for payment of the amount due and payable under the agreement and/or refund of the amounts already paid/deducted/withheld; in Petition No. 205/MP/2023, TPCL had itself prayed for a refund of the amounts deducted by the Procurers towards Penalty and refund of Capacity Charges; however, these prayers were ancillary or consequential in nature to the main dispute involved in the cases; in the **DVC** Judgement, DVC had, inter alia, prayed for a declaration that MPPMCL was liable to pay tariff (fixed charges and energy charges as well as deemed energy charges) in Petition No. 236/MP/2017, and that an amount of Rs. 437.32 crores was due and outstanding to it in Petition No. 78/MP/2017 (which primarily comprised of outstanding tariff under the monthly & supplementary bills (for ECR and AFC & revision thereof), and the applicable delayed payment charges thereof), in respect of the concerned generating station of DVC; however the **DVC** Judgment concluded that these prayers were only ancillary or consequential in nature, and the primary relief was the declaration that MPPMCL shall not be entitled to treat the PPAs as having been terminated; in the cases at hand also, although some of these cases contained the prayers of refund of the

amount already paid to/deducted by the other side including towards capacity charges/energy charges, such prayers did not amount to primary prayer(s), and were consequential or ancillary in nature; the main issues involved in these cases remained the alleged breach of contractual obligations, which did not appear to have any impact or bearing on the tariff; as per the ratio laid down in the **DVC** Judgment, such issues could not be termed as 'tariff disputes'; as a result, the adjudicatory jurisdiction of this Commission, under Section 79(1)(f) read Section 79(1)(b), did not extend to such disputes; the ratio of the **DVC** Judgment was examination of the nature of the primary dispute involved, and whether such primary dispute impacted tariff or regulation of tariff; in doing so, the prayers seeking direction of outstanding amount/payment, even though related to tariff, may not be a determinative factor, if found to be ancillary/consequential in nature to the main prayer/dispute; this scrutiny has to be undertaken in respect of the main/principal dispute only; and disputes relating to breaches of contractual obligations, that do not impact tariff directly or indirectly, should be considered as non-tariff disputes referable to the arbitration.

In this context it must be noted that the Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd,** has clarified the observations of APTEL in Para 25 of the **DVC** Judgement. The Delhi High Court held that the words used by APTEL, ie *"dispute related to termination or breach of contract"*, must be considered in the context of the preceding finding as well as in conjunction with the following words in the same sentence. Meaning thereby, that disputes related to termination or breach of contract, without impacting tariff either directly or indirectly, would qualify as non-tariff disputes; and merely because a dispute has arisen from a breach of contract would not necessarily be determinative of the nature of the dispute.

The claims of the Appellants-Procurers, in the batch of petitions before the Commission, appear to relate to tariff as detailed in Schedule 7 of the PPA. While we may not be understood to have expressed any conclusive opinion in this regard, it does appear that the dispute in the petitions before the CERC required detailed scrutiny, and the CERC was not justified in brushing it aside as a mere breach of contract and to be a non-tariff dispute; and in treating all other claims, even if it related to tariff, as consequential and ancillary to the main relief. What the CERC ought to have done is to undertake a detailed examination as to whether or not the alleged breach of contract by the Respondent-TPCL impacted tariff, directly or indirectly. While an order of remand would have been in order, so that the CERC could have undertaken such an exercise, it is unnecessary for us to do so in the present case, as the impugned order must be set aside for other reasons which are detailed later in this order.

D. CONSEQUENTIAL ISSUES:

Difficulties would arise as a result of the observations of the CERC, following the **DVC** judgment, that consequential issues, even if they touch upon the regulatory functions of the Commission or impact tariff directly or indirectly, should be referred to arbitration if the primary dispute is a non-tariff dispute. In the impugned order, the CERC has noted that, in some of the cases before it, the procurers had prayed for directions for payment of the amounts due and payable under the agreement or to refund the amounts already paid/ deducted/ withheld; and, in the petition filed by it, TPCL had also prayed for refund of the amounts deducted by the procurers towards penalty and refund of capacity charges. While not disputing that such prayers may impact tariff either directly or indirectly, the CERC proceeds to hold that these prayers are ancillary or consequential in nature to the main dispute involved in the case; and has, thereafter, referred the dispute to arbitration.

Questions which may arise for consideration, in an appropriate case, is what the Commission should do in cases where the consequential relief sought is with respect to a dispute which is non-arbitrable, and the primary dispute, which may be a non-tariff dispute, cannot be segregated from such a consequential dispute. Should the Commission leave the dispute, with respect to such consequential relief, open for adjudication by it in a separate proceedings while referring the primary dispute to arbitration? or should it refer only the primary dispute to arbitration and keep the ancillary issues pending before it, to be taken up for adjudication after the arbitration dispute is resolved? or should it, notwithstanding such consequential disputes being non-arbitrable, refer the consequential disputes, along with the primary dispute, for arbitration. As adjudication of these aspects may, possibly, require us to take a view, different from that taken by this Tribunal in the **DVC** judgment, we refrain from examining these questions in the present appeal, and leave such questions open for examination in appropriate proceedings in future.

VIII. SECTION 8 OF THE ARBITRATION & CONCILIATION ACT:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT PROCURERS:

It is contended, on behalf of the Appellant-Procurers, that in cases where electricity is directly supplied to end users (Section 49) or to merchant traders, without back-to-back supply to DISCOMs, and where consumers serviced by the DISCOMs are not affected, the CERC can exercise discretion to refer the matter to arbitration; the ***DVC*** *Decision* and the ***MB Power*** *Decision* fall in such category; the ***MB Power*** *Decision* specifically recognises that, in the case of operation of the PPA, such matters would fall under the jurisdiction of the CERC, which fortifies the above categorisation; in such cases of non-supply to DISCOM, if an arbitration clause exists, Section 8 of

the Arbitration & Conciliation Act would apply and bind the CERC, as a judicial body, to refer the dispute to arbitration, as per the ***DVC** Decision*; the term '*bound to refer*' used in Para 22 of the ***DVC** Decision* is in the context of Section 8 of the Arbitration & Conciliation Act and, if there is no arbitration clause, the CERC may, in its discretion, refer such matters to arbitration or adjudicate the dispute itself; such a decision is to be taken at the initial stage; Paras 58-60 of the ***Renew** Decision* of the Delhi High Court, referring to application of Section 8 of the Arbitration & Conciliation Act, is for any authority other than the CERC; the impugned Order cannot be said to follow the ***DVC** Decision*, as a binding precedent; if it had followed the ***DVC** Decision*, the CERC ought to have rejected TPCL's claim for reference to arbitration for their failure to satisfy the test, of Section 8(1) of the Arbitration & Conciliation Act, for an application seeking reference to arbitration being filed at the appropriate stage; there cannot be any reference of the Petition to arbitration, where TPCL itself is the Petitioner before the CERC; Section 158 is not a provision for referring disputes to arbitration; and it follows when reference is under other provisions, "by" the Act under Section 160(3), and "under" the Act under Sections 79(1)(f) & 86(1)(f), license conditions, other similar regulations etc.

It is submitted, on behalf of the Appellants-PSPCL and HPPC, that TPCL has belatedly, i.e. after 2 years of filing its reply on 11.07.2022, raised the issue of reference to arbitration on 07.10.2024, contrary to Section 8 of the Arbitration & Conciliation Act; and, in addition, CERC has failed to consider Regulation 48 of the CERC, (Conduct of Business) Regulations, 2023.

B. SUBMISSIONS URGED ON BEHALF OF RESPONDENT-TPCL:

In support of their submission that an application, under Section 8 of the Arbitration & Conciliation Act, is not a pre-requisite for the CERC to refer the matter to arbitration, it is submitted, on behalf of the Respondent-TPCL, that

Section 8 of the Arbitration & Conciliation Act applies only when the judicial authority otherwise has inherent jurisdiction over the dispute; in the present case, CERC does not have jurisdiction to adjudicate "*Non-Tariff*" disputes; in **K. Mangayarkarasi & Anr. vs. N.J. Sundaresan & Anr., (2025) 8 SCC 299,** the Supreme Court has held that the correct approach which the judicial authority has to adopt, when Section 8 is invoked, is not to ask whether the court still has jurisdiction, but whether its jurisdiction stands ousted by a special statute, as the general law must yield to the special law; under Section 79(1)(f), once the CERC classifies a dispute as "*Non-Tariff*", its jurisdiction is statutorily ousted; therefore, there was no occasion or necessity for TPCL to invoke Section 8; further, the Delhi High Court, in **Renew Wind Energy (AP2) Pvt. Ltd. vs. SECI (Judgment dated 03.11.2025 in O.M.P.(I) (COMM.) 213/2025),** *inter alia,* has held that the power to refer disputes to arbitration vests solely in the CERC, to the exclusion of Sections 8 and 11 of the Arbitration & Conciliation Act; in the **DVC APTEL** Judgement as well, there was no issue of interpretation of and applicability of Section 8 of the Arbitration & Conciliation Act; Section 8 was invoked in the DVC case, but it was in fact the interpretation and interplay of Section 79(1)(f) (and not Section 8) and its applicability to *Non-Tariff* dispute which was under consideration (**Order dated 23.07.2019 passed in Petition No. 236/MP/2017 passed by CERC titled as 'DVC vs. MPPMCL.');** and the stage of proceedings is immaterial once jurisdiction is found to be lacking **(*MA Murthy v. State of Karnataka, (2003) 7 SCC 517*** *and* ***P.V. George v State of Kerala, (2007) 3 SCC 557*)**.

It is further submitted, on behalf of the Respondent-TPCL, that Petition No. 205/MP/2023 filed by TPCL equally qualifies for arbitration; the reliefs sought under said Petition are purely contractual, and not a case of determination of tariff; it seeks declaration of certain deductions as illegal on the ground that they are contractually impermissible under the PPA; APTEL's judgment in **PTC India Ltd. v. Punjab SERC, 2024 SCC OnLine APTEL 124**

clearly holds that, where the statutory scheme allocates jurisdiction to a specific forum, parties' conduct cannot vest or confer jurisdiction in another forum.

It is also submitted, on behalf of the Respondent-TPCL, that Section 2(3) of the Arbitration & Conciliation Act expressly saves the operation of special statutes by providing that Part I shall not affect any law under which certain disputes may not be submitted to arbitration; the Electricity Act constitutes such a special statute, which statutorily governs both the classification of disputes and the manner of reference to arbitration under Section 79(1)(f) read with Section 158; Section 158 of the Electricity Act employs the expression '*by or under this Act'* and the phrase '*directed to be determined*', which makes it clear that arbitration is triggered only after the CERC, in the exercise of its power under Section 79(1)(f), directs such determination; reference to arbitration flows from Section 79(1)(f) and not independently of it [Ref: Pa 33 @ Pg. 24 of the Reply filed by TPCL in APL. 348]; the **DVC APTEL** Judgment, after expressly considering Section 2(3) of the Arbitration & Conciliation Act, held that, while *Tariff* disputes stand excluded from arbitration by virtue of the Electricity Act, disputes relating to termination or breach of PPAs, which do not impact tariff, are "*Non-tariff*" disputes, and are mandatorily referable to arbitration under Section 79(1)(f) read with Section 158 of the Electricity Act (Para 25); and this was affirmed by the Supreme Court.

C. JUDGEMENTS RELIED UPON BY THE RESPONDENT-TPCL UNDER THIS HEAD:

1. In **K. Mangayarkarasi v. N.J. Sundaresan, (2025) 8 SCC 299,** the Supreme Court held that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship

on the basis of the jurisdiction conferred by the arbitration agreement; once an application, in due compliance with Section 8 of the 1996 Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction; it should be to see whether its jurisdiction has been ousted; there is a lot of difference between the two approaches; once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms of or in compliance with the procedure under the special statute; the general law should yield to the special law — *generalia specialibus non derogant*; in such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law; such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court. (***A. Ayyasamy* [*A. Ayyasamy* v. *A. Paramasivam*, (2016) 10 SCC 386**); once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract; and there is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration.

2. In **M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517,** the Supreme Court held that the law declared by the Supreme Court is presumed to be the law at all times; normally, the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from the inception; the doctrine of prospective overruling is an exception to the normal principle of law, it is a part of the principles of constitutional canon of interpretation, and can be resorted to by the Supreme

Court while superseding the law declared by it earlier; it is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation; in other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest; the law as declared applies to future cases; it is for the Supreme Court to indicate as to whether the decision in question will operate prospectively; in other words, there shall be no prospective overruling, unless it is so indicated in the particular decision; it is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling; the doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions, and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs; and, that being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative, and not the review judgment in **Ashok Kumar Sharma case No. II: (1997) 4 SCC 18.**

3. Following its earlier decision, in **M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517,** and after noting that the effect of declaration of law, the rule of stare decisis, the consequences flowing from a departure from an earlier decision, and the doctrine of prospective over-ruling, had been considered in great detail by the House of Lords in **National Westminster Bank Plc. v. Spectrum Plus Ltd:** 2005 UKHL 41, the Supreme Court, in **P.V.George vs State of Kerala: (2007) 3 SCC 557,** observed that, in service matters, the Supreme Court, on a number of occasions, had passed orders on equitable consideration; but the same did not mean that, whenever a law is declared, it will have effect only because it has taken a different view from the earlier one; in those cases it is categorically stated that it would have prospective operation; and the law declared by a court will have retrospective effect if not otherwise stated to be so specifically.

4. In **PTC India Ltd. v. Punjab SERC, 2024 SCC OnLine APTEL 124, Para 108-111),** this Tribunal observed that, in **A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163, A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd., (2012) 2 SCC 315, and Inter Globe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463,** the Supreme Court held that any contractual clause which ousts the jurisdiction of courts having jurisdiction, and which confers jurisdiction on a court not otherwise having jurisdiction, would be invalid;' and parties cannot by agreement, confer jurisdiction on a court which does not have jurisdiction; in **Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136,** the Supreme Court held that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of parties nor by a superior court; if the court, having no jurisdiction over the matter, passes a decree, it would amount to a nullity as the matter goes to the root of the cause; such an issue can be raised at any stage of the proceedings; the finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction; similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of the party should not be permitted to perpetrate and perpetuate defeating the legislative animation; the court cannot derive jurisdiction apart from the statute, and in such eventuality the doctrine of waiver also does not apply; and the law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject-matter.

This Tribunal thereafter observed that conferment of jurisdiction is a legislative function; jurisdiction can neither be conferred on a court or tribunal with the consent of parties or by a Superior Court or Tribunal. (**Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136**); Consent does not confer jurisdiction (**Narendra S. Chavan v. Vaishali V. Bhadekar, (2009) 15 SCC 166**); nor can consent give a court jurisdiction if a condition which

goes to the root of the jurisdiction has not been performed or fulfilled; no consent can give a jurisdiction to a court of limited jurisdiction which it does not possess (**United Commercial Bank Ltd. v. Workmen, 1951 SCC 364**); the distinction clearly is between the jurisdiction to decide matters and the ambit of the matters to be heard by a tribunal having jurisdiction to deal with the same; in the second case, the question of acquiescence or irregularity may be considered and overlooked; when, however, the question is of the jurisdiction of the Tribunal, no question of acquiescence or consent can affect the decision (**United Commercial Bank Ltd. v. Workmen, 1951 SCC 364**); parties cannot by agreement give the courts' jurisdiction which the legislature has enacted they are not to have; and the court cannot give effect to an agreement whether by way of compromise or otherwise, inconsistent with the provisions of the Act. (**Barton v. Fincham [[1921] 2 K.B. 291; Peachey Property Corporation Ltd. v. Robinson, [1966] 2 All ER 981; Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193**).

D. ANALYSIS:

(a) CONTENTS OF THE IMPUGNED ORDER ON THE APPLICABILITY OF SECTION 8 OF THE 1996 ACT:

On Issue No. 2, ie whether timely invocation of Section 8 of the 1996 Act was an essential pre-requisite for the Commission to refer a dispute to arbitration under the Electricity Act, the CERC, in the impugned order passed in Petition No. 107/MP/2023 and batch dated 19.11.2025, observed that, in the present batch of matters, the parties had already filed their pleadings on merits and, thus, it was beyond dispute that one of the necessary ingredients of Section 8 of the 1996 Act, i.e. a Party being required to apply for an arbitration on or before submitting its first statement on the substance of the dispute, was not fulfilled; however, it was equally true that the jurisdiction of the CERC to adjudicate upon disputes under Section 79(1)(f) read with

Section 79(1)(b) of the Electricity Act did not extend over matters not related to the regulation of tariff of a generating company having a composite scheme; in other words, as explained by APTEL in the **DVC** Judgment, non-tariff disputes involving a generating company did not fall within the ambit of Section 79(1)(f) of the Electricity Act, not at least in the first part, and such disputes would then be arbitrable – falling within the scope of the expression *"and to refer any dispute for arbitration"* as appearing in the later part of Section 79(1)(f); and the Commission was required to refer to such disputes to arbitration.

After extracting Paras 21 and 22, Paras 30, 32, 36 and 37 of the **DVC** Judgment, the CERC observed that, in the **DVC** Judgement, the Appellant-MPPMCL had filed its statement of objections under Section 8 of the 1996 Act seeking a direction to the parties to get the disputes adjudicated through arbitration in accordance with the arbitration clause in the PPAs; in the said appeals, APTEL was, however, dealing with the issue(s) with regard to the arbitrability of the dispute between a generating company and distribution company, as well as the applicability of Section 8 of the 1996 Act to the Petition under Section 79(1)(f) of the Act; in the course of dealing with the above issue(s), the **DVC** Judgment clarified the scope of adjudicatory powers of the Commission under Section 79(1)(f) read with Section 79(1)(b) of the Electricity Act and, after examining as to what constitutes tariff and non-tariff disputes, specifically held that non-tariff disputes involving a generating company did not fall within the ambit of Section 79(1)(f) of the Act and were, thus, arbitrable (Paragraphs 25, 26 and 36); in the present case, they had already examined the nature of dispute(s) involved in this batch of matters as per the principles laid down by the **DVC** Judgment, and had found that the main/primary dispute(s) involved did not impact tariff or regulation of tariff of the generating company; as a corollary, it followed that the adjudicatory jurisdiction of the Commission did not extend to dispute(s) qua TPCL and the

Procurers as raised in these matters; and the only avenue left was to refer them to arbitration under Section 79(1)(f) of the Electricity Act.

The CERC then observed that it was settled law that a question relating to jurisdiction, which goes to the root of the matter, can always be raised at any stage; conferment of jurisdiction was a legislative function, and Courts/Tribunal cannot confer jurisdiction on itself which is not provided in the Law; a statutory tribunal, created by an Act of Parliament, has limited jurisdiction and must function within the four corners of the statute that created it; it was not open to it to travel beyond the provisions of the statute; the objection raised by TPCL, regarding lack of adjudicatory jurisdiction of the CERC to adjudicate upon the main dispute(s) involved in this batch of Petitions at this stage, in light of the **DVC** Judgment, could not be faulted; further, once having held that the main dispute(s) involved in this batch of Petitions did not relate to tariff or regulation of tariff and the Commission, therefore, lacked jurisdiction to adjudicate upon them, filing of the application under Section 8 of the 1996 Act, on or before submitting the first statement on substance of dispute, may not hold much significance in the present case; the Commission, being a creature of statute, enjoyed limited adjudicatory jurisdiction under Section 79(1)(f) read with Section 79(1)(b), and for matters not falling within such limited jurisdiction, i.e., non-tariff related matters, the Commission was, as laid down in the **DVC** Judgment, bound to refer such matters to arbitration; even if they were to accept the submission of the Procurers that non-filing of the application, in terms of Section 8 of the 1996 Act at the first instance by TPCL, was fatal to its argument to refer the matters to arbitration, it would result in a peculiar situation wherein, while the matters cannot be referred to arbitration, but at the same time the Commission also lacked jurisdiction to adjudicate upon the non-tariff issues involved in the cases before it; in such circumstances, such a non-tariff issue, involved in the generating station covered under Section 79(1)(b) of the Electricity Act, would

then have to fall under the scope of *"and to refer any dispute for arbitration"* as appearing in the later part of Section 79(1)(f); and the Commission was bound to refer such non-tariff disputes to arbitration in terms thereof, irrespective of the stage at which such reference was sought by the Party or even if none of the Parties had sought for such reference.

(b) JUDICIAL AUTHORITY: DOES IT INCLUDE THE CERC?

Section 8 of the 1996 Act relates to the power to refer parties to arbitration where there is an arbitration agreement. Under sub-section (1) thereof, a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement, shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgement, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

The 1996 Act does not define the term "judicial authority". In its ordinary parlance the words "judicial authority", as used in Section 8(1) of the 1996 Act, would comprehend a court defined under the 1996 Act but also courts which would either be a civil court or other authorities which perform judicial functions or quasi-judicial functions. The expression "judicial authority" must, therefore, be interpreted having regard to the purport and object for which the 1996 Act was enacted. **(Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd., (2006) 12 SCC 642; Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751).** As noted hereinabove, this Tribunal, in the **DVC** judgment, has held that the CERC is a judicial authority under Section 8(1) of the 1996 Act.

(c) SECTION 158 OF THE ELECTRICITY ACT: ITS SCOPE:

Section 158 of the Electricity Act stipulates that where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as the appropriate Commission may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration & Conciliation Act, 1996.

The words "by this Act", used in Section 158, would mean by the Electricity Act, and the words" under this Act" evidently refers to a matter which the Appropriate Commission directs to be determined by arbitration ie a dispute being referred to arbitration under Sections 79(1)(f)/86(1)(f) of the Electricity Act. Such a dispute can, in view of Section 158, only be determined by the person or persons nominated by the Commission. In other words, notwithstanding Section 11 of the 1996 Act, an arbitrator, to whom the dispute can be referred under Sections 79(1)(f)/86(1)(f), must necessarily be nominated by the Commission concerned, and none other.

There is nothing in the language of Section 158 which indicates that it is only after the stage of reference to arbitration would the provisions of the 1996 Act apply. In effect, the submission, urged on behalf of the Respondent-TPCL, is that it is only the provisions of the 1996 Act, after Section 11 thereof (which relates to the appointment of an arbitrator), which would apply to disputes referred to arbitration under Sections 79(1)(f)/86(1)(f), and not provisions prior thereto.

In this context, it is useful to note that the Supreme Court in the **GUVNL** Judgement, and this Tribunal in the **DVC** Judgement, have specifically referred to Section 158 of the Electricity Act.

The Supreme Court, in **GUVNL,** made it clear that it was only with regard to the authority, which can adjudicate or arbitrate disputes, that the Electricity Act, 2003 will prevail over Section 11 of the Arbitration and Conciliation Act, 1996; however, as regards, the procedure to be followed by the State Commission (or the arbitrator nominated by it), and other matters related to arbitration (other than appointment of the arbitrator), the Arbitration and Conciliation Act, 1996 will apply (except if there is a conflicting provision in the Act of 2003); the power to refer disputes to arbitration, under Section 86(1)(f), is only restricted to the authority which is to adjudicate or arbitrate between licensees and generating companies; and procedural and other matters relating to such proceedings will be governed by the Arbitration and Conciliation Act, 1996, unless there is a conflicting provision in the Electricity Act. [Para 59].

The Supreme Court, in **GUVNL,** referred to Section 158 of the Electricity Act, and then held that, except for Section 11, all other provisions of the 1996 Act would apply to arbitrations under Section 86(1)(f) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail). It is not even contended before us on behalf of the TPCL that, apart from Section 11, there is any other provision of the Arbitration and Conciliation Act, 1996, which is in conflict with the provisions of the Electricity Act. All provisions, apart from Section 11, would include Section 8 of the 1996 Act also. The submission that it is only provisions after Section 11, and not provisions of the 1996 Act prior thereto which would apply to arbitration proceedings under the Electricity Act, therefore necessitates rejection.

After extracting Sections 2(3) and 8(1) of the 1996 Act in Para 18, and Section 158 of the Electricity Act in Para 21, this Tribunal, in the **DVC** Judgement, observed that Section 79(1)(f) gives discretion to the Commission

to refer any such dispute for arbitration and, in this regard, Section 158 of the Electricity Act was relevant (Para 21); the concept of arbitration is not alien to the disputes arising under various provisions of the Electricity Act (Para 22); they saw no conflict or inconsistency between Section 8(1) of the 1996 Act and Section 79(1) of the Electricity Act; Section 8(1) of the 1996 Act made it mandatory for a judicial authority to refer the parties for arbitration where it finds that a valid arbitration agreement exists between the parties and a party to the arbitration agreement so applies (Para 30); the expression *"and to refer any dispute for arbitration"* , used at the end of clause (f) of both Sections 79(1) and 86(1) of the Electricity Act, definitely leaves scope for some disputes to be referred for arbitration; and this view was further strengthened by Section 158 of the Electricity Act which provided that arbitration, directed by the Commission, shall be subject to the provisions of the 1996 Act (Para 32). In other words, the law declared by this Tribunal, in the **DVC** judgment, is that, in the absence of any conflict, both the provisions, ie Section 8(1) of the 1996 Act and Section 79(1) of the Electricity Act, can co-exist. Consequently, the tests stipulated in Section 8(1) of the 1996 Act must be satisfied, before the CERC can refer the dispute to arbitration.

In the light of the law declared by the Supreme Court in **GUVNL,** and this Tribunal in the **DVC** Judgement, the submission, urged on behalf of the Respondent-TPCL, that it is only provisions after Section 11 of the 1996 Act, and not provisions prior thereto, which would apply to arbitration proceedings referred under clause (f) of both Sections 79(1) and 86(1), necessitates rejection. While the Supreme Court in **GUVNL** has held that all provisions of the 1996 Act, other than Section 11, would apply, this Tribunal, in the DVC Judgement, has held that Section 8(1) of the 1996 Act would apply to proceedings under the Electricity Act.

Curiously, while it is sought to be suggested on behalf of the Respondent-TPCL that it is only the provisions of the 1996 Act, which follow after an arbitrator is appointed under Section 11 of the said Act, which would apply to arbitrations under Section 86(1)(f)/ 79(1)(f), they themselves have relied on Section 2(3) which finds place in the 1996 Act prior to Section 11 thereof. It was the Respondent-TPCL which had placed heavy reliance before the CERC on the **DVC** judgement of this Tribunal wherein the Appellant-MPPCL had filed its statement of objections under Section 8(1) of the 1996 Act objecting to the maintainability of the petitions filed by the Respondent-DVC, and had sought a direction to the parties to get the dispute adjudicated through arbitration in accordance with the arbitration clause of the PPAs. Consequently, Section 8 of the 1996 Act would, in view of the **DVC** Judgement of this Tribunal, squarely apply even in cases where either the Central or the State Commission is inclined to refer the dispute to arbitration.

(d) SCOPE OF ENQUIRY IN PROCEEDINGS UNDER SECTION 8 OF THE 1996 ACT:

Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under Section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide: (*i*) whether there is an arbitration agreement among the parties; (*ii*) whether all the parties to the suit are parties to the arbitration agreement; (*iii*) whether the disputes which are the subject-matter of the suit fall within the scope of the arbitration agreement; (*iv*) whether the defendant had applied under Section 8 of the Act before submitting his first statement on the substance of the dispute; and (*v*) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration. (***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532).**

The first limb of Section 8(1) of the 1996 Act, for parties to be referred to arbitration, requires the Commission, as a judicial authority, to be satisfied firstly that the dispute raised before it is a matter which is the subject of an arbitration agreement or, in other words, the agreement executed between the parties to the dispute before it contains an arbitration clause. Secondly, the party to the arbitration agreement should apply, to the Commission to refer such a dispute to arbitration, not later than the date of submitting his first statement on the substance of the dispute. In other words, an application to the Commission to refer the dispute to arbitration can be made by the Respondent, in the Petition filed before the Commission, prior to filing its reply to the said Petition. On such an application being filed, the judicial authority (ie the Commission) is bound to refer the dispute to arbitration unless it finds that, prima facie, no valid arbitration agreement exists. For the judicial authority (in the present case the CERC) to examine, albeit prima facie, whether or not a valid arbitration agreement exists, Section 8(2) requires the application under Section 8(1) to be accompanied by either the original arbitration agreement or a duly certified copy thereof. Consequently, the CERC, under Section 8(1) of the 1996 Act, can, if the application under Section 8(1) is filed by the Respondent in the Petition before filing its reply, refuse to refer the dispute to arbitration only if no arbitration agreement exists between the parties to the dispute.

(e) ISSUE OF ARBITRABILITY IN THE CONTEXT OF A SECTION 8 APPLICATION:

Sub-section (1) of Section 8 provides that the judicial authority, before whom an action is brought in a matter, will refer the parties to arbitration of the said matter in accordance with the arbitration agreement. This, however, postulates that what can be referred to the arbitrator is only that dispute or matter which the arbitrator is competent or empowered to decide. (**Haryana**

Telecom Ltd. v. Sterlite Industries (India) Ltd: (1999) 5 SCC 688; Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532). Where the issue of "arbitrability" arises, in the context of Section 8 of the Arbitration & Conciliation Act, 1996, all aspects of arbitrability must be decided by the court seized of the suit, and cannot be left to the decision of the arbitrator. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd: (2011) 5 SCC 532).** If the cause/dispute is inarbitrable, the Court, where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd: (2011) 5 SCC 532).**

Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court (or judicial authority), where the proceedings are pending, will refuse an application under Section 8 of the 1996 Act, to refer the parties to arbitration, if the subject-matter of the proceedings is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532).** Section 8 (1) postulates that what can be referred to the arbitrator is only that dispute or matter which the arbitrator is competent or empowered to decide. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd: (2011) 5 SCC 532).**

Section 2(3) of the 1996 Act, as noted hereinabove, stipulates that Part-I of the 1996 Act shall not affect any other law, for the time being in force, by virtue of which certain disputes may not be submitted to arbitration. Part-I includes Sections 8(1) and (2) of the 1996 Act also. Consequently, reference to arbitration can be refused by the judicial authority (such as the Commission, both Central and State), if the dispute before it ought not to be submitted to arbitration. The Electricity Act, 2003 is a special enactment to consolidate the

laws relating to generation, transmission, distribution, trading and use of electricity, and for taking measures conducive to the development of electricity industries including promoting competition, protecting the interest of consumers and supply of electricity to all areas, rationalization of electricity tariff etc. The regulatory functions which the Commissions discharge, under Section 79(1) and 86(1) of the Electricity Act, are statutory functions under a special enactment. Such functions are discharged in larger public interest including protection of the interest of consumers, rationalization of electricity tariff etc. Consequently, disputes with respect to the regulatory functions of the Commission can only be adjudicated by a public forum such as the Regulatory Commission, and are not amenable to resolution by a private forum such as an Arbitrary Tribunal.

As held by this Tribunal, in the **DVC** judgment, disputes which concern the regulatory functions of the Commission (para 22), matters which have a bearing upon the tariff of a generating company, and matters which impact the tariff of a generating company either directly or indirectly (para 25), and disputes relating to tariff or regulation of tariff (para 26), cannot be referred to arbitration, evidently since such disputes are non-arbitrable and, in view of Section 2(3) of the 1996 Act, are matters which ought not to be referred to arbitration.

(f) TIME LIMIT FOR FILING AN APPLICATION UNDER SECTION 8 OF THE ARBITRATION & CONCILIATION ACT:

Though Section 8 of the 1996 Act does not prescribe any time-limit for filing an application under that Section, and only states that the application under Section 8 of the Act should be filed before submission of the first statement on the substance of the dispute, the scheme of the 1996 Act and the provisions of the section clearly indicate that the application thereunder

should be made at the earliest. A party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the court cannot subsequently turn around and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. Whether a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court, depends upon the conduct of such party in the suit. **(Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532).**

In terms of Section 8(1) of the 1996 Act, it is only if the Respondent-TPCL had applied, not later than the date of submitting its first statement on the substance of the dispute, could the dispute have been referred to arbitration. In the present case, not only did the Respondent-TPCL choose not to make any such request, for reference of the dispute for arbitration, prior to filing their reply to the Petitions filed by the Appellant procurers, they, in addition, had themselves filed a petition before the CERC on their own. Consequently, and in as much as they did not adhere to the conditions stipulation in Section 8(1) of the 1996 Act which, in view of the law declared by the Supreme Court in **Gujarat Urja Vikash Nigam Limited vs. Essar Power Ltd,** would apply to cases where reference to arbitration is sought before the Central/ State Commission, the CERC ought not to have referred the dispute to arbitration.

The contention of the Respondent-TPCL, that the interpretation and inter-play of Section 79(1)(f) was alone considered in the **DVC** Judgement, and Section 8 was not, is a contention only to be noted to be rejected. In the **DVC** case, the application under Section 8(1) was filed by MPPCL before it filed its reply to the Petitions filed by DVC before the Commission. It does not appear to have been in dispute, in the said case, that the conditions of Section 8(1) were fulfilled by the Appellant therein. What is however of relevance is that this Tribunal, in the **DVC judgment,** has held that the Commission was

bound to refer the dispute for arbitration evidently because Section 8(1) of the 1996 Act mandates reference of a dispute to arbitration when an application in terms of Section 8(1) is filed. Having itself filed a petition before the Commission, the Respondent-TPCL cannot be heard to contend that such a petition should also be referred to arbitration. As we have already rejected their contention regarding the jurisdiction of the Commission to refer disputes to arbitration where it lacks jurisdiction to adjudicate such disputes under Section 79(1)(f)/ 86(1)(f), reliance placed by them on the judgment of the Supreme Court in **Murthy and P V George,** and on the **PTC** Judgment of this Tribunal, is wholly misplaced. It is only with respect to matters where the Central/ State Commission have jurisdiction to adjudicate disputes, can they instead choose to refer such disputes to arbitration, provided there exists an arbitration agreement between the parties, the dispute does not suffer from the vice of non-arbitrability, and an application, complying with the requirements of Section 8(1) of the 1996 Act, is filed seeking reference to arbitration. Since the Respondent-TPCL did not choose to seek a reference to arbitration by filing a Section 8(1) application before filing its reply before the Commission to the Petitions filed by the Appellant-Procurers, and as they failed to fulfil the tests stipulated in Section 8(1) of the 1996 Act, the subject dispute could not have been referred by the CERC to arbitration on the erroneous premise that the CERC lacked jurisdiction to adjudicate such disputes, but could refer such disputes for arbitration, under Section 79(1)(f) of the Electricity Act.

(g) POSSIBLE CONFLICT BETWEEN MANDATORY REFERENCE UNDER SECTION 8(1) OF THE 1996 ACT AND THE DISCRETIONARY JURISDICTION UNDER SECTIONS 79(1)(f)/86(1)(f):

Yet another question which may arise for consideration, more so in the context of the observations of the Supreme Court in **GUVNL** (the relevant paragraphs of which were not brought to the notice of this Tribunal in the **DVC** judgment), is whether a mandatory reference to arbitration under Section 8(1) may not conflict with the discretionary power conferred on the Commission under Section 79(1)(f)/ 86(1)(f) of the Electricity Act to either adjudicate the dispute itself or to refer such a dispute to arbitration.

On the jurisdiction of the Commission to refer disputes to arbitration being discretionary, the Delhi High Court, in **Renew Wind Energy (AP2) (P) Ltd. v. Solar Energy Corpn. of India, 2025 SCC OnLine Del 8252,** observed that, as insistence of the parties to seek mandatory referral for arbitration on the strength of the arbitration clause, would conflict with the discretionary powers of the CERC, Section 79(1)(f) would serve as a statutory exclusion to the application of the 1996 Act, and the Electricity Act, being the special law, would de-operationalize the provisions of the 1996 Act to the extent they are inconsistent (generalia specialibus non derogant) as held in Paras 28 of **GUVNL.**

In the light of the afore-said observations of the Delhi High Court in **Renew Wind Energy (AP2) (P) Ltd,** in view of the observations of the Supreme Court in **GUVNL** that reference of disputes to arbitration is discretionary, and in the light of Sections 174 and 175 of the Electricity Act, it may be possible to hold that, since discretion is conferred on the Commission either to adjudicate or refer disputes under clauses (a) to (d) for arbitration, the provisions of Section 79(1)(f) and 86(1)(f) are in conflict with Section 8(1) of the 1996 Act and, therefore, the latter should yield to the former, meaning thereby that, notwithstanding the requirement of a dispute being mandatorily referred to arbitration if the tests stipulated in Section 8(1) are satisfied, the Commission, be it Central or State, would nonetheless have the discretion

either to adjudicate the dispute itself or to refer the disputes, other than those which are non-arbitrable, for arbitration.

We refrain from delving into this issue any further as that may, possibly, require a different view being taken contrary to the judgement of this Tribunal in the **DVC** judgment. Judicial discipline would, in such circumstances, require us to refer the dispute to a larger bench. In the facts of the present case, and in the light of what we intend to hold in conclusion, it is unnecessary for us to delve into this issue any further. We respectfully, follow the law laid down, in the DVC Judgement of this Tribunal, and hold that, if the tests stipulated in Section 8(1) of the 1996 Act had been satisfied, the CERC may have, then, been justified in referring the dispute to arbitration. As the test stipulated in Section 8(1) of the 1996 Act, of the Respondent-TPCL being required to file its application seeking reference before it filed its reply to the Petition filed by the Appellant-Procurers before the CERC, is not satisfied in the present case, the Commission was not justified in referring the dispute to arbitration.

IX. IS SPLITTING OF CAUSE OF ACTION, FOR REFERENCE OF DISPUTES TO ARBITRATION, PERMISSIBLE?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANTS-PSPCL AND HPPC:

While adopting the submissions of GUVNL, in Appeal No. 348 of 2025, on the common issues arising from the impugned Order of the CERC, it is submitted, on behalf of the Appellants-PSPCL and HPPC, that, in respect of issues concerning WRLDC, the CERC has impermissibly split the cause of action; PSPCL filed Petition 85/MP/2022 and HPPC filed Petition No. 123/MP/2022 before the CERC seeking directions to the effect that TPCL and WRLDC shall jointly and severally be liable to recompense PSPCL/HPPC for the period of non-supply; the same cannot be bifurcated i.e. for Prayers (a) &

(d) to be adjudicated by an Arbitral Tribunal (governed by the provisions of the Arbitration & Conciliation Act – Section 34, 37 etc) and for Prayers (b) & (e) to be adjudicated by the CERC (governed by the provisions of the Electricity Act, 2003 – Section 111, 125 etc); the proposed bifurcation is not in terms of the Grid Code, the PPA, Scheduling and Despatch, Availability etc; it may lead to the possibility of conflicting judgments on the same cause of action (Ref: **Sukanya Holding**: (2003) 5 SSCC 531, and **Booz Allen**: (2011) 5 SCC 532); TPCL's reliance, on **Tarun Meghani,** is misconceived; TPCL ceased supply to PSPCL and HPPC w.e.f. 18.09.2021 and declared availability only to the other procurers, as PSPCL and HPPC did not consent to the Supplementary PPA proposed by TPCL for higher tariff/ECR under Section 11 directions (Letter dated 29.12.2022); TPCL thereafter supplied power only under MoP Section 11 directions and discontinued supply entirely from 01.07.2025; PSPCL and HPPC have consistently contended before the CERC that WRLDC wrongly acted on such availability declarations, contrary to the PPA dated 22.04.2007 (Article 4.3.2) and the Grid Code; and WRLDC is therefore a necessary party, and has not been introduced with an attempt to 'thwart' reference to arbitration.

B. SUBMISSIONS URGED ON BEHALF OF RESPONDENT-TPCL:

In support of their submission that the reliefs qua WRLDC are the subject of an independent cause of action, it is submitted, on behalf of the Respondent-TPCL, that GUVNL has not made WRLDC a party in Petition No. 107/MP/2023; further, Prayer (c) of the said Petition itself demonstrates that the principal relief is sought against TPCL; consequently, this issue does not arise for consideration in the appeal filed by GUVNL; the common contractual reliefs sought, namely claims for refund of alleged excess payments, re-compensation for procurement of alternate power, damages for alleged breach, and specific performance of the PPA, are appropriately and

lawfully referable to arbitration for adjudication in accordance with law, while the alleged statutory violations concerning WRLDC may be examined independently before the competent forum; such a course of action neither prejudices nor impairs any rights of the Procurers; the relief sought against WRLDC by HPPC and PSPCL is governed by Section 28(3) and Section 29(5) of the Electricity Act; adding a prayer simpliciter, which altogether arises from a separate cause of action, does not confer jurisdiction on the court/tribunal which did not have jurisdiction over the subject-matter; the CERC has given liberty to the Procurers to file a separate Petition against WRLDC; the present case is squarely covered by the judgement of the Bombay High Court in **Tarun Meghani vs. Shree Tirupati Greenfield, 2020 SCC Online Bom 110,** wherein the Bombay High Court has exhaustively dealt with the applicability of **Sukanya Holdings,** and has held that arbitration cannot be thwarted by the presence of an additional prayer which has an equivalent remedy in law.

C. JUDGEMENTS RELIED UPON BY THE APPELLANTS-PROCURERS UNDER THIS HEAD:

1. After referring to Sections 5 and 8 of the Arbitration & Conciliation Act, 1996, the Supreme Court, in **Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531,** observed that there was no provision in the Arbitration & Conciliation Act that, when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration; there is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators; there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement; as against this, under Section 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters, in difference between them, be referred to arbitration and the court may refer the same to arbitration provided that the

same can be separated from the rest of the subject-matter of the suit; that Section also provided that the suit would continue so far as it related to parties who had not joined in such application; the relevant language used in Section 8 of the A & C Act was: "*in a matter which is the subject of an arbitration agreement*", the court is required to refer the parties to arbitration; therefore, the suit should be in respect of "*a matter*" which the parties have agreed to refer, and which comes within the ambit of arbitration agreement; where, however, a suit is commenced — "as to a matter" which lies outside the arbitration agreement, and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8; the words "*a matter*" indicate that the entire subject-matter of the suit should be subject to arbitration agreement.

On the question, even if there was no provision for partly referring the dispute to arbitration, whether such a course was possible under Section 8 of the A & C Act, the Supreme Court, in **Sukanya Holdings (P) Ltd.**, observed that it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible; this would be laying down a totally new procedure not contemplated under the A & C Act; if bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course; since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed; secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings; the whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure; it would also increase the cost of litigation and cause harassment to the parties; and, on

occasions, there is a possibility of conflicting judgments and orders by two different fora.

2. In **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532,** the Supreme Court held that the term "arbitrability" has different meanings in different contexts; the three facets of arbitrability, relating to the jurisdiction of the Arbitral Tribunal, are as under: (*i*) *Whether the disputes are capable of adjudication and settlement by arbitration*? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public fora (courts), (*ii*) *Whether the disputes are covered by the arbitration agreement*? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview of the arbitration agreement, and (*iii*) *Whether the parties have referred the disputes to arbitration*? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal; a dispute, even if it is capable of being decided by arbitration and falls within the scope of the arbitration agreement, will not be "arbitrable" if it is not enumerated in the joint list of disputes referred to arbitration or, in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the Arbitral Tribunal; Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country; every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunal is excluded either expressly or by necessary implication; adjudication of certain categories of

proceedings are reserved by the legislature exclusively for public fora as a matter of public policy; certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication, stand excluded from the purview of private fora; consequently, where the cause/dispute is inarbitrable, the Court, where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the A & C Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

After giving the well-recognised examples of non-arbitrable disputes, none of which may be directly applicable to the present case, the Supreme Court, in **Booz Allen & Hamilton Inc.**, observed that the afore-said examples related to actions in rem; a right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals; actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property; correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide *Black's Law Dictionary*.).

The Supreme Court, in **Booz Allen & Hamilton Inc.**, then referred to the observations of Mustill and Boyd, in their *Law and Practice of Commercial Arbitration in England* (2nd Edn., 1989), that, in practice, the question has not been whether a particular dispute is capable of settlement by arbitration, *but*

whether it ought to be referred to arbitration or whether it has given rise to an enforceable award.

The Supreme Court, in **Booz Allen & Hamilton Inc**, then observed that the types of remedies, which the arbitrator can award, are limited by considerations of public policy, and by the fact that he is appointed by the parties and not by the State; for example, he cannot impose a fine or a term of imprisonment, commit a person for contempt or issue a writ of subpoena; nor can he make an award *which is binding on third parties or affects the public at large, such as a judgment in rem* against a ship, an assessment of the rateable value of land, a divorce decree, a winding-up order.

After referring to the observations in **Mustill and Boyd** in their 2001 Companion Volume to the 2nd Edn. of ***Commercial Arbitration*,** that an arbitrator, whose powers are derived from a private agreement between *A* and *B,* plainly has no jurisdiction to bind anyone else by a decision, for no one else has mandated him to make such a decision, and a decision which attempted to do so would be useless, the Supreme Court, in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532**, relied on the observations in **Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya: (2003) 5 SCC 531,** that it would be difficult to give an interpretation to Section 8 of the A & C Act under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible; this would be laying down a totally new procedure not contemplated under the said Act; if bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course; and since there was no such indication in the language, it followed that bifurcation of the subject-matter of an action brought before a judicial authority was not allowed.

3. In **Taru Meghani v. Shree Tirupati Greenfield, 2020 SCC OnLine Bom 110,** the Supreme Court held that, in the facts of the case, the question which cropped up for consideration was whether there would be splitting of cause of action in the event the arbitration agreement in the MOU is given effect to; and there appears a fine distinction between splitting of a single cause of action into parts, each being made a subject matter of a distinct proceedings and the separation of causes of caution which are joined together, albeit in conformity with the provisions of the Code of Civil Procedure, 1908 ('the Code').

D. JUDGEMENTS RELIED UPON BY THE RESPONDENT-TPCL UNDER THIS HEAD:

1. In **Taru Meghani v. Shree Tirupati Greenfield, 2020 SCC OnLine Bom 110,** the plaintiffs' case was that, on the representation of the defendants that the handsome return could be earned in the event of making an investment in the projects which the defendant No. 1 was developing, the plaintiffs had collectively advanced a sum of Rs. 54 lakhs; the initial investment was of Rs. 35 lakhs; the defendants executed a Memorandum of Understanding, dated 22nd July 2014 ('MOU') and assured to repay the said amount along with interest @ 33% per annum at quarterly rest; the defendants, in order to instill a sense of confidence and security, had paid interest @ 33% per annum till December 2015; plaintiff Nos. 2 and 3 advanced a further sum of Rs. 19 lakhs to the defendants; the defendants had drawn bills of exchange in favour of plaintiff Nos. 2 and 3; the defendants had drawn cheques towards repayment of the said amount; however, the cheques were returned un-encashed on presentment; and, hence, the suit for recovery of the said amount along with interest.

The defendants preferred an interim application seeking reference of the dispute to arbitration, in view of an arbitration clause in the MOU,

contending that the transaction between the parties was of an investment in the project which was being developed by the defendants; the transaction was evidenced by the MOU; apart from the other terms, the MOU contained an arbitration clause; as the plaintiffs had approached the Court with a claim for recovery of an amount advanced thereunder and the dispute was clearly covered by the arbitration clause, the reference under section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') was warranted.

The plaintiffs resisted the application by filing an affidavit in reply contending that there was a series of transactions between the plaintiffs and the defendants; as of now, five suits had been instituted against the defendants by the plaintiffs and other investors; some of the transactions were not covered by the Memorandum of Understanding, though forming part of one and the same bargain; in the case at hand, the subsequent loan of Rs. 19 lakhs was not covered by the MOU; the said advance was against the bills of exchange, which fell out of the purview of the dispute covered by the arbitration clause in the MOU; thus, the subject matter of the suit could not be bifurcated; the application under Section 8 of the Act, therefore, becomes untenable; and, thus, the prayer for reference to arbitration be rejected.

While not disputing the execution of the MOU and the arbitration clause therein, it was contended, on behalf of the plaintiffs, that, as regards the first tranche of Rs. 35 lakhs, despite there being an arbitration clause, in the peculiar facts of the case, when there are multiple transactions between the parties, resulting in as many as five suits, reference of the dispute to arbitration would lead to conflicting decisions in diverse proceedings; it was impermissible to bifurcate the subject matter of the dispute for referring a part of the dispute to arbitration and adjudicating the rest by the Court as, in the case at hand, the plaintiffs had sought to recover an amount which was not

advanced under the MOU; the arbitration clause thus did not govern the dispute in respect of repayment of the said amount of Rs. 19 lakhs, advanced against the bills of exchange; resultantly, if the submission on behalf of the defendants of referral of the entire dispute to arbitration was accepted, it would necessarily involve reference of the dispute to arbitration, which was not covered by the arbitration clause; conversely, the dispute as regards the amount covered by the MOU also could not be referred to arbitration as it would entail the consequence of the bifurcation of the subject matter of the dispute, which was legally impermissible. Reliance was placed by the plaintiffs on the judgment of the Supreme Court in *Sukanya Holdings (P) Ltd.* v. *Jayesh H. Pandya*[1] wherein the Supreme Court repelled the submission on behalf of the appellant that a dispute which is covered by an arbitration agreement between the parties, can be referred to arbitration, despite the suit having been filed claiming certain reliefs in respect of a dispute, which was not subject matter of arbitration, and it having been instituted against the persons who were not parties to the arbitration agreement.

It is in this context that the Bombay High Court observed that the clauses of the MOU led to a legitimate inference that not only the amount was advanced, under the MOU, but the terms of repayment, including the interest at which the amount was to be repaid and the consequences, in the event of default in repayment, were explicitly provided therein; it was clear that the arbitration clause was comprehensive and covered all the disputes including the failure on the part of the defendants to repay the amount, as agreed; from the text of Section 8 of the Act, referral of the parties to arbitration becomes imperative, if the following conditions are satisfied: (i) there is an arbitration agreement; (ii) a party to the agreement brings an action in the court against the other party; (iii) subject-matter of the action is the same as the subject-matter of the arbitration agreement; and (iv) the opposite party applies to the

judicial authority for referring the parties to arbitration before it submits his first statement on the substance of the dispute.

The Bombay High Court noted that, in so far as the first transaction of advance of Rs. 35 lakhs was concerned, all the conditions appear to have been satisfied, in the sense that, there was an arbitration clause in the MOU; the plaintiffs, who were parties to the said agreement, had brought an action based thereon, the subject matter of the action was governed by the arbitration clause, and the defendants had sought referral of the parties to arbitration before the defendants had submitted their first statement on the substance of the dispute.

The Bombay High Court observed that the crucial question was whether the effect and force of the aforesaid arbitration clause gets diluted on account of inclusion in the suit, of a claim in respect of a dispute which is not governed the arbitration clause; in **Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya,** the Supreme Court had held that where a suit was commenced "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8, the words 'a matter' indicated that the entire subject matter of the suit should be subject to arbitration agreement, and there was no provision for splitting the causes or parties and referring the subject matter of the suit to arbitrators.

While holding that the language of Section 8 was peremptory in nature, in cases where there is an arbitration clause in the agreement, the Court is enjoined to refer the dispute to arbitration in terms of the arbitration agreement, and the Court would have no jurisdiction to adjudicate the dispute after such an application seeking a reference under section 8 of the Act, the Bombay High Court posed the question whether this salutary object of the Act

could be defeated by adding a claim over and above the claim in respect of the matter which is squarely covered by arbitration agreement?

The Bombay High Court held that, in the facts of the case, the question which crops up for consideration is whether there would be splitting of cause of action in the event the arbitration agreement in the MOU was given effect to; there appeared a fine distinction between splitting of a single cause of action into parts, each being made a subject matter of a distinct proceedings and the separation of causes of caution which are joined together, albeit in conformity with the provisions of the Code of Civil Procedure, 1908 ('the Code'); the plaintiffs were within their rights in joining multiple causes of action against the defendants; in fact, the provisions contained in the CPC envisaged such joining of several causes of action by the plaintiffs against the defendants.

After referring to Rules 3 and 6 of Order II of the Civil Procedure Code, the Bombay High Court observed that a conjoint reading of the aforesaid provisions would indicate that Rule 3 provides for joinder of causes of action and permits the plaintiffs to unite in the same suit, several causes of action against the same defendants; the remedy for any possible embarrassment, delay or inconvenience on account of the joinder of causes of action in one suit is provided in Rule 6; it authorizes the Court to order separate trials or make other order as may be expedient in the interest of justice, where the joinder of causes of action in one suit, though permissible under Rule (3)(1), would result in embarrassment, inconvenience or delay; this legal position was required to be considered coupled with the approach which was expected of the Court where an application seeking reference of the dispute to arbitration on the strength of an arbitration clause was preferred; such an application, in substance, constituted a plea of statutory exclusion of the jurisdiction of the court; in **Sundaram Finance Limited v. T. Thankam**[2]**,** the

Supreme Court delineated the approach expected of the Civil Court in dealing with an application under section 8 of the Act, and held that once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction; it should be to see whether its jurisdiction has been ousted; there is a lot of difference between the two approaches; once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statue, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute; the general law should yield to the special law - generalia specialibus non derogant; in such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law; and such approaches would only delay the resolution of disputes and complicate the redressal of grievance, and unnecessarily increase the pendency in the court."

In the light of the aforesaid exposition of the legal position, the Bombay High Court held that the broad submission on behalf of the plaintiffs, that the reference of the dispute to arbitration as regards the first transaction, would entail the bifurcation of the subject matter of the suit and, thus, it was impermissible in law, could not accepted in an unqualified manner; the submission was fraught with the danger of defeating an arbitration agreement by simply adding a cause of action the plaintiff may have against the defendants, which was not covered by the arbitration agreement; if such a course was readily accepted, it had the propensity to give a long leash to the plaintiff to circumvent the arbitration agreement by uniting a cause of action which was beyond the purview of the arbitration agreement; it would have the effect of denuding section 8 of the Act of its force and vigour; such an interpretation would also derogate from the object which the Arbitration and

Conciliation Act, 1996 is intended to achieve ie of minimum judicial intervention where parties have agreed to arbitrate the dispute.

The Bombay High Court observed that, in the peculiar facts of the case, the Court would be justified in referring the dispute to arbitration in respect of the first transaction, as it was squarely covered by the arbitration clause and all the conditions of Section 8 of the Act were fulfilled, and exercising its power under Order II Rule 6 of the Code to direct the plaintiffs to institute a separate suit in respect of the second tranche of Rs. 19 lakhs.

E. ANALYSIS:

(a) PETITION NO. 85/MP/2022 FILED BY PSPCL BEFORE THE CERC ON 10.02.2022:

In Petition No. 85/MP/2022, filed by them before the CERC on 10.02.2022, it was stated on behalf of PSPCL that, with effect from March, 2021, CGPL (now TPCL) has been declaring less availability and had finally ceased operations from 18.09.2021 onwards alleging financial distress owing to Indonesia Coal Regulations; till 18th September, 2021, though the declaration of availability was less in quantum, CGPL had been following the proportionate declaration of availability in terms of the provisions of the PPA read with the applicable provisions of law; however, with effect from 18th September, 2021, CGPL ceased to generate electricity, particularly when there was high demand (paddy season in Punjab) for electricity; thereafter, from 18.10.2021, CGPL, while undertaking generation of electricity and declaring availability to some of the Procurers, has not been declaring availability to PSPCL (Para 18). A statement of the monthly availability declared by CGPL w.e.f March,2020 till date was furnished by PSPCL, in the form of a table, giving details of the quantum declared available to PSPCL,

and the proportion of such quantum to the total declaration of availability (Para 19).

It was further stated, on behalf of PSPCL, that, while CGPL entirely stopped declaring availability to the extent of the contracted capacity of PSPCL effective from 18.09.2021, they continued to supply power to GUVNL clearly establishing that it had the requisite fuel stock to generate power and was still not declaring availability to PSPCL (Para 30); CGPL was yet to commence supply of the contracted capacity vis-à-vis PSPCL, though it had no cause, legal or in equity, to cease generation and supply of electricity to PSPCL; any interruption to supply of power would be contrary to the terms of the PPA as well as the decision of the Supreme Court in the **Energy Watchdog** Case; non-supply of power had already caused severe hardship to PSPCL during the peak paddy season, and was contrary to the interests of the consumers in the State of Punjab (Para 31); as a direct consequence of the deliberate action of CGPL, in not declaring and making available the contracted capacity to them, PSPCL was forced to arrange power from other sources at a much higher cost; PSPCL has been burdened with the requirement to procure 475 MW/11.4 Million Units (MUS) from alternate/more expensive sources, and the landed cost of such procurement has been in the range of Rs 3.45/kWH - Rs 11.41/kWH; and the day wise statement of such alternate purchases are given in the form of a table (Para 32).

After extracting Section 28(3)(a) of the Electricity Act, it is stated, on behalf of PSPCL, that Respondent No. 3 - WRLDC was not undertaking the schedule and dispatch functions vis-à-vis CGPL in accordance with the contract entered into with the Procurers including PSPCL; WRLDC was wrongly acting on the basis of the declaration of availability made by CGPL, contrary to the provisions of the PPA dated 22.04.2007; the Statement contained in Para 19 of the Petition showed the deviation from the contract in

the scheduling and dispatch allowed by Respondent No. 3, with more power being scheduled to GUVNL; thus, WRLDC has acted contrary to the statutory mandate of enforcing the declaration of proportionate availability to PSPCL as per the provisions of the PPA and Section 28 of the Electricity Act; WRLDC was also responsible to compensate PSPCL for the loss caused on account of such deliberate action on the part of WRLDC, and in not following the mandate under Section 28 of the Electricity Act (Para 34); further, PSPCL has been paying the PoC charges to CTU/POSOCO to the extent of the contracted capacity of 475 MW from 18.09.2021 onwards, even though CGPL had ceased all operations; PSPCL. has also been made liable to pay RLDC charges to the WRLDC to the extent of the contracted capacity with CGPL; details of the PoC Charges and/or RLDC charges paid by PSPCL for the period with effect from 18.09.2021 is also given in the form of a table (Para 35); the action of CGPL, in ceasing generation and supply of electricity from its Project, has caused serious prejudice to public interest and irreparable loss to the PSPCL; CGPL cannot be allowed to act in such a high-handed manner contrary to its legal obligations assumed under the PPA; and PSPCL had to resort to load shedding and blackouts on account of the deficit in power (Para 36).

PSPCL prayed that, in these facts and circumstances, the CERC should issue directions to CGPL to maintain, without interruption, the generation and supply of electricity from the Mundra Power Project to the extent of the contracted capacity of PSPCL; and to also adjudicate and determine the compensation by Respondents No 1, 2 and 3 to PSPCL for their respective actions mentioned above (Para 37); the claim of PSPCL qua TPCL and CGPL, in regard to their failure to ensure due supply of electricity to PSPCL for the period from September, 2021 till date, and further till resumption of supply in accordance with the provisions of the PPA are detailed in the form of a table; CGPL and TPCL are liable to pay the above compensation as

exemplary damages in view of their deliberate act, knowing fully well the likely consequences of their failure to make available the requisite quantum of electricity, against the quantum of 475 MW (Para 38); as mentioned above, PSPCL is also entitled to compensation from WRLDC for not ensuring that CGPL undertakes declaration of availability in terms of the proportion provided under the PPA dated 22.04.2007; and, in addition, WRLDC is also required to compensate PSPCL for the future period, namely till the resumption of supply to PSPCL as per the terms of the PPA (Para 39).

The reliefs sought by PSPCL, in Petition No. 85/MP/2022 filed by them before the CERC, were: (a). direct Respondent No 1 & 2 (TPCL and CGPL) to resume generation and supply in so far as PSPCL is concerned to the extent of contracted capacity of 475 MW in terms of the PPA dated 22.04.2007, maintaining the proportionality of the total generation between the Procurers; (b) direct WRLDC to schedule the quantum of power to the extent of 475 MW being the contracted capacity of PSPCL In terms of the PPA dated 22.04.2007; (d) direct Respondent No. 1 and 2 (TPCL and CGPL) to recompense PSPCL for the amount of Rs 289.0 crores as on 31.12.2021 as well as for the period from 1.01.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month; (e) direct that the Respondent No. 3 (WRLDC) shall be jointly and severally liable to recompense PSPCL for the amount of Rs 289.0 crores as on 31.12.2021, as well as for the period from 1.01.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month

(b) PETITION NO. 123/MP/2022 FILED BY HPPC BEFORE THE CERC ON 13.04.2022:

In Petition No. 123/MP/2022 filed by them before the CERC on 13.04.2022, it is stated on behalf of HPPC that, with effect from April, 2021,

CGPL has been declaring less availability and had finally ceased operations from 18.09.2021 onwards alleging financial distress owing to Indonesia Coal Regulations; till 18.09.2021, though declaration of availability was less in quantum, CGPL had been following proportionate declaration of availability in terms of the provisions of the PPA read with the applicable provisions of law; however, with effect from 18.09.2021, CGPL ceased to generate electricity; thereafter, from 13.10.2021, CGPL, while undertaking generation of electricity and declaring availability to some of the Procurers, had not been declaring availability to HPPC (Para 17); HPPC is filing herewith a Statement of the monthly availability declared by CGPL with effect from March, 2020 till February 2021, giving details of the quantum declared available to HPPC, the proportion of such quantum to the total declaration of availability was being filed in the form of the table (Para 18); the said request of CGPL was consented to and conveyed by WRLDC to all the Procurers of CGPL including HPPC on 13.10.2021; in response to the email dated 13.10.2021 from WRLDC, HPPC immediately intimated WRLDC that it was bound by the provisions of the Indian Electricity Grid Code and had to necessarily schedule power as per the PPA and the contracted share of each of the States; HPPC also expressly stated that the course proposed by CGPL was contrary to the MoP Guidelines and the provisions of the PPA, and that the Declared Capacity (DC) had to be proportionately allocated between the Procurer States; even in case of special dispensation for Gujarat and Punjab, 10% of the power had to be scheduled to HPPC (Para 26); on 14.10.2021, WRLDC wrote to CGPL seeking its comments on the HPPC response dated 13.10.2021; CGPL re-iterated its financial distress and went to the extent of alleging that HPPC has been acting imprudently by taking an adversarial position and insisting on the PPA tariff; and, further, CGPL stated that it would indemnify WRLDC against the legal consequences of such actions. (Para 27).

It is further stated, on behalf of HPPC, that, effective 18.09.2021, CGPL had entirely stopped declaring availability to the extent of the contracted capacity of HPPC; CGPL was however continuing to supply power to GUVNL, and for a period of time to the States of Punjab and Rajasthan, clearly establishing that it had the requisite fuel stock to generate power and was still not declaring availability to HPPC (Para 34); in spite of repeated requests to CGPL and WRLDC, CGPL was yet to commence supply of the contracted capacity vis-à-vis HPPC; CGPL had no cause, legal or in equity, to cease generation and supply of electricity to HPPC; any interruption to supply of power would be contrary to the terms of the PPA as well as the decision of the Supreme Court in Energy Watchdog; non-supply of power had already caused severe hardship to HPPC, and was also contrary to the interests of the consumers in the State of Haryana (Para 35); as a direct consequence of the deliberate action of CGPL, in not declaring and making available the contracted capacity to HPPC, HPPC has been forced to arrange power from other sources at a much higher cost; HPPC has been burdened with the requirement to procure 380 MW from alternate/more expensive sources, and the landed cost of such procurement has been worked out during the period from 18.09.2021 to 28.02.2021 to be in the range of Rs. 62,52,672/day to Rs. 8,65,08,672/day; further, the additional cost is being borne by HPPC till the date of filling of this Petition; the day wise statement indicating the cost borne for such alternate purchases are furnished in the form of a table (Para 36); had CGPL declared availability to the extent of its contracted capacity, and had abided by the terms of the PPA, the availability would have been within the merit order dispatch of HPPC, and would have been scheduled by HPPC; and a statement of the indicative position of the 380 MW contracted with CGPL (Month wise), in the Merit Order Dispatch of HPPC was attached. (Para 37).

After extracting Section 28(3)(a) of the Electricity Act, it is stated on behalf of HPPC that Respondent No. 3 - WRLDC was not undertaking the schedule and dispatch functions vis-à-vis CGPL in accordance with the contract entered into with the Procurers including HPPC; WRLDC has been wrongly acting on the basis of declaration of availability made by CGPL, contrary to the provisions of the PPA dated 22.04.2007; the Statement contained in Para 18 of the Petition clearly showed the deviation from the Contract in the scheduling and dispatch allowed by Respondent No. 3 (WRLDC) with more power being scheduled to GUVNL and other procurers; thus, WRLDC had acted contrary to the statutory mandate of enforcing the declaration of proportionate availability to HPPC as per the provisions of the PPA, the Indian Electricity Grid Code and Section 28 of the Electricity Act; WRLDC was also responsible to compensate HPPC for the loss caused on account of such deliberate action on the part of WRLDC, and in not following the mandate under Section 28 of the Electricity Act; this was particularly when HPPC had specifically called upon WRLDC to act in accordance with its statutory mandate (Para 38); further, HPPC was paying PoC charges to CTU/POSOCO to the extent of the contracted capacity of 380 MW from 18.09.2021 onwards, even though CGPL has ceased all operations; HPPC has also been made liable to pay RLDC charges to the WRLDC to the extent of the contracted capacity with CGPL; the details of the PoC Charges and/or RLDC charges paid by HPPC for the period with effect from 18.09.2021 in the form of table (Para 39); the action of CGPL, in ceasing generation and supply of electricity from its Project, had caused serious prejudice to public interest and irreparable loss to HPPC; and HPPC had to resort to load shedding on account of the deficit in power (Para 40).

In the light of the aforesaid averments, HPPC sought directions from the CERC to CGPL to maintain, without interruption, the generation and supply of electricity from the Mundra Power Project to the extent of the contracted

capacity of HPPC, as also to adjudicate and determine the compensation payable by Respondents No 1, 2 and 3 (TPCL, CGPL and WRLDC) to HPPC for their respective actions (Para 41); HPPC was also entitled to compensation from WRLDC for not ensuring that CGPL undertakes declaration of availability in terms of the proportion provided under the PPA dated 22.04.2007; in addition, the WRLDC was also required to compensate HPPC for the future period, namely till the resumption of supply to HPPC as per the terms of the PPA (Para 43).

In the light of the afore-said averments in Petition No. 123/MP/2022, HPPC sought the following reliefs from the CERC: (a) direct Respondent No 1 and 2 (TPCL and CGPL) to resume generation and supply in so far as HPPC is concerned to the extent of contracted capacity of 380 MW in terms of the PPA dated 22.04.2007, maintaining the proportionality of the total generation between the Procurers; (b) direct WRLDC to schedule the quantum of power to the extent of 380 MW being the contracted capacity of HPPC in terms of the PPA dated 22.04.2007; (d) direct Respondent No. 1 and 2 to recompense HPPC for the amount of Rs 316.42 crores as on 28.02.2022 as well as for the period from 01.03.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month; (e) direct that the Respondent No. 3 (WRLDC) shall be jointly and severally liable to re compense HPPC for the amount of Rs 316.42 crores as on 28.02.2022 as well as for the period from 01.03.2022 onwards till resumption of supply, on the same principles together with interest till payment at the rate of 1.25% per month;

(c) CONTENTS OF THE IMPUGNED ORDER WITH RESPECT TO BIFURCATION OF THE DISPUTE?

On Issue No.3, ie whether the relief as sought against WRLDC acts as a legal deterrent to any reference of the dispute to Arbitration?, the CERC, in

the impugned order passed in Petition No. 107/MP/2023 and batch dated 19.11.2025, observed that a few of the Petitions filed by the Procurers contained specific prayers against WRLDC and, on this basis, the Procurers had sought to argue that these Petitions could not be bifurcated between the parties who were parties to the arbitration agreement (Procurers and TPCL), and others (WRLDC), as Section 8 of the 1996 Act did not permit so, as held by the Supreme Court in **Sukanya Holdings**; however, the peculiar facts and circumstances involved in the present case could not be equated to those involved in the **Sukanya Holding** Judgement, and the ratio laid down by the Supreme Court regarding the scope and interpretation of Section 8 of the 1996 Act; in the present case, the disputes involved in this batch of the Petitions, being non-tariff disputes, as explained by the **DVC** Judgment, the adjudicatory jurisdiction of the CERC under Section 79(1)(f) read with Section 79(1)(b) of the Electricity Act did not extend to such disputes, and the only avenue left with the CERC, in dealing with such disputes, was to refer them to arbitration in terms of the latter part of Section 79(1)(f) of the Electricity Act; on the other hand, if the argument of the Procurers that, owing to the prayers sought against WRLDC, these cases cannot be split into two and be referred to arbitration, then this Commission would be embarking upon adjudication of non-tariff disputes qua the Procurers and TPCL, even in the absence of jurisdiction to this effect being vested in this Commission; and this would not only be impermissible but would also be against the principles laid down in the DVC Judgment.

(d) ANALYSIS

As held earlier in this judgement, in the light of the law declared by the Supreme Court in **Hindustan Zinc**, it is only such disputes which the CERC is entitled to adjudicate which can, if the Commission exercises its discretion so to do, be referred to arbitration. Consequently, if the CERC lacks

jurisdiction under Section 79(1)(f) to adjudicate the disputes before it, it would also lack jurisdiction to refer such disputes to arbitration.

While applying the tests to determine whether or not it has the power to adjudicate the dispute, in the petitions instituted before it, the Commission should ascertain whether the dispute involves a generating company, and whether the disputes are “in regard to matters” “connected with” clauses (a) to (d) of Section 79(1). It is only if the CERC was satisfied that it did, was it then entitled in law to adjudicate such disputes. It is not necessary that the dispute must relate exclusively to regulation of the tariff of the Respondent-Generator ie TPCL. So long as the dispute is in regard to matters connected with the regulation of tariff of the Respondent-TPCL, the CERC would have jurisdiction to adjudicate such disputes. If, on the other hand, the disputes do not fall within the scope and ambit of Section 79(1)(b), the Commission can then neither adjudicate such disputes nor refer them to arbitration. All that the CERC would then be required to do is to so declare that the petitions instituted before it can neither be adjudicated nor referred to arbitration as the Commission suffers from inherent lack of jurisdiction to do so.

It is not in dispute that the prayers sought by them, in the petition filed before the CERC seeking certain reliefs, disclose the grievance of both PSPCL and HPCC, among others, against WRLDC; and both the aforesaid procurers have sought compensation jointly and severally from WRLDC and TPCL for the stated sum, along with interest. They have also sought a direction to WRLDC to schedule the quantum of power to the extent of the contracted capacity of PSPCL i.e. for 475 MW in terms of the PPA, and 380 MW for HPPC.

Section 28 of the Electricity Act relates to the functions of the Regional Load Despatch Centre and, under Section 28(3), the Regional Load Despatch Centre shall (*a*) be responsible for optimum scheduling and despatch of

electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region; (*b*) monitor grid operations; (*c*) keep accounts of quantity of electricity transmitted through the regional grid; (*d*) exercise supervision and control over the inter-State transmission system; and (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code. The grievance of the Appellant-Procurers (PSPCL and HPPC) is that the WRLDC has failed to discharge its statutory functions under Section 28(3) of Electricity Act, and has not ensured that the Respondent-TPCL schedules the quantum of power to the extent of their (ie PSPCL and HPPC's) contract capacity.

The PPA, executed between the procurers on the one hand and CGPL (now TPCL) on the other, defines "allocated contract capacity" to mean the portion of the contracted capacity allocated to each of the procurers as provided in Schedule 13 of the PPA subject to adjustment as per the terms of the agreement. The PPA was executed between five procurers referred to in Schedule-1 of the PPA i.e. (i) GUVNL, (ii) MSEDCL, (iii) the Rajasthan Discoms, (iv) Punjab State Electricity Board (now PSPCL), and (v) Haryana Power Generation Corporation Limited (now HPPC) with CGPL (now TPCL). Clause 4.3.2 of the said PPA stipulates that, unless otherwise instructed by all the Procurers (jointly), the Seller shall sell all the Available Capacity up to the Contracted Capacity of the Power Station to each Procurer in proportion of each Procurer's then existing Allocated Contracted Capacity pursuant to Dispatch Instructions.

Schedule 13 of the PPA gives the break-up of the allocated contracted capacity both in terms of percentage and in MWs. While 47.5% of the allocated contracted capacity is for GUVNL, it is 10% for HPPC and 12.5% for

PSPCL. As against 1806 MW being the allocated contract capacity for GUVNL, it is 380 MW for HPPC and 470 MW for PSPCL. The grievance of both HPPC and PSPCL is that, while TPCL had diverted a part of their contracted capacity to GUVNL, the WRLDC had failed to discharge its statutory functions of ensuring that TPCL did not do so.

The dispute raised by these two procurers, in the petitions filed by them before the CERC, with respect to WRLDC could not have been, and was rightly not, referred by the CERC to arbitration in as much as (a) the dispute was not arbitrable since it related to the statutory functions of the WRLDC under the Electricity Act; and (b) WRLDC was not a party to the arbitration agreement (i.e. arbitration clause) of the PPA executed between the Appellants herein and TPCL. It is for this reason that the CERC has not referred this dispute to arbitration and, while referring the other parts of the dispute to arbitration, has granted liberty to the procurers to file separate petitions against WRLDC. In effect the CERC has bifurcated the petition.

It is settled law that, if there is no provision for partly referring a dispute to arbitration, such a course is not possible under Section 8 of the 1996 Act. Bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others, is not possible under Section 8 of the 1996 Act, as this would be laying down a totally new procedure not contemplated under the said Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed. (**Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532; Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya: (2003) 5 SCC 531).**

In **Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1,** a three-judge bench of the Supreme Court referred with approval to its earlier judgement in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532** wherein the earlier judgement in **Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531** was referred with approval. The Supreme Court, in **Vidya Drolia,** observed that **Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531**, was a decision upholding rejection of an application under Section 8, on the ground that there was no provision in the 1996 Act to bifurcate and divide the causes or parties, that is, the subject-matter of the suit/judicial proceedings, and parties to the arbitration agreement; the suit should be in respect of a "matter" which the parties had agreed to refer and which comes within the ambit of the arbitration agreement; the words "a matter" would indicate that the entire subject-matter of the suit should be subject to arbitration agreement; bifurcation of the subject-matter or causes of action in the suit is not permissible and contemplated; similarly, the parties to the suit should be bound by the arbitration agreement, as there is no provision in the 1996 Act to compel third persons who have not exercised the option to give up the right to have access to courts and be bound by the arbitration clause; this would violate party autonomy and consensual nature of arbitration; bifurcation in such cases would result in a suit being divided into two parts, one being decided by the Arbitral Tribunal, and the other by the court or judicial authorities; this would defeat the entire purpose and inevitably delay the proceedings and increase cost of litigation, cause harassment and on occasions give rise to conflicting judgments and orders by two different fora; cause of action, in relation to the subject-matter, relates to the scope of the arbitration agreement, and whether the dispute can be resolved by arbitration; and a second mandate relating to common parties exposits the inherent limitation of the arbitration process which is consensual and mutual.

As is evident from the contents of the said judgement as noted hereinabove, while the Bombay High Court, in **Tarun Meghani vs. Shree Tirupati Greenfield: (2020) SCC Online Bom 110** has, no doubt, referred to the judgment of the Supreme Court in **Sukanya Holding Private Limited**, its attention does not appear to have been drawn to the judgment of the Supreme Court in **Booz Allen.** The Supreme Court judgement in **Vidya Drolia** was, evidently, passed after the Bombay High Court had delivered its judgement in **Tarun Meghani**

Even otherwise, the judgment of the Bombay High Court, in **Tarun Meghani** as has been noted in the judgment itself, turned on the peculiar facts of the case; and the Bombay High Court has drawn a distinction therein between splitting of a single cause of action into parts, each being made the subject matter of distinct proceedings, and separation of causes of action which have been joined together, albeit in conformity with the CPC.

In **Tarun Meghani**, the Bombay High Court took note of the fact that, of a large number of disputes between the same parties, some were covered by the arbitration agreement, and some were not It is in this context that the High Court observed that the submission against bifurcation, if accepted, could well result in defeating the arbitration agreement by simply adding a cause of action which was not covered by the arbitration agreement. In the present case, no such allegation of deliberate adding of a cause of action has even been made by TPCL either in the reply filed by them to the petitions filed by the procurers or even in the petition they filed before the CERC. The dispute, under this head, relates to TPCL supplying power to GUVNL denying HPPC and PSPCL of their contracted share of the allocated capacity. Both these procurers have sought compensation jointly and severally from TPCL which is a party to the arbitration agreement, and WRLDC which is not. The grievance of the Appellants-PSPCL and HPPC, in the Petitions filed by them

before the CERC, is also of failure of WRLDC to discharge its statutory duties under Section 28(3)(a) of the Electricity Act, unlike in **Tarun Meghani** where the inter-se disputes were purely contractual. Disputes regarding failure of a statutory body to discharge its statutory functions under a special enactment is, in any event, non-arbitrable.

The dispute in the present case cannot, by any stretch of imagination, be said to be a deliberate act of adding a cause of action only to defeat the arbitration agreement. Further, the Bombay High Court has itself held that the directions, issued in **Tarun Meghani**, was in the peculiar facts of the case before it and, consequently, the said judgment would not also constitute a binding precedent. In any event, when confronted with the contrary judgments of the High Court, as against several judgements of the Supreme Court, this Tribunal is bound to adhere to the law declared by the Supreme Court, and not that of the High Court.

We must, therefore, express our inability to agree with submission, urged on behalf of TPCL, that the CERC was justified in bifurcating the petition filed by PSPCL and HPPC, and in permitting them to file a separate petition against WRLDC. Since both these procurers have sought compensation jointly and severally against TPCL and WRLDC, it does not stand to reason that, when their claim is for an identical sum which they hold both TPCL and WRLDC to be jointly and severally liable to pay them, their claim against TPCL should be referred to arbitration while their claim against WRLDC, for the very same amount, should be left open for adjudication by the CERC later.

We, therefore, hold that the CERC has erred in bifurcating the dispute on the erroneous premise that it would, otherwise, be required to adjudicate a non-tariff dispute which it does not have jurisdiction to adjudicate. We have not expressed any opinion on whether or not the dispute, apart from that which relates to the WRLDC, is a non-tariff dispute. All that we have held is that if

the CERC lacks jurisdiction to adjudicate such a dispute, it also lacks jurisdiction to refer the said dispute to arbitration under Section 79(1)(f) of the Electricity Act; and that the CERC was not justified in bifurcating the dispute between PSPCL and HPPC on the one hand and WRLDC on the other, from the other part of the dispute, as the disputes are integrally connected with each other. As the dispute, with respect to WRLDC was non-arbitrable and was therefore not referred to arbitration, the CERC could not have referred the remaining dispute to arbitration, as the disputes are integrally connected with each other.

X. REFERENCE TO SUBSEQUENT ORDERS OF THE CERC:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANTS-PSPCL AND HPPC:

It is submitted, on behalf of the Appellants-PSPCL and HPPC, that the Impugned Order lacks consistency and is contrary to the subsequent Order of CERC in Petition No. 71/MP/2023 dated 17.01.2026 (MB Power – Paras 11&12) which has held that issues of CIL and FM affecting tariff for contracted capacity and termination/breach issues are non-arbitrable.

On the other hand, reliance is placed, on behalf of the Respondent-TPCL, on the order of the CERC, in **'DVC vs. MPPMCL.',** (**Order dated 23.07.2019 passed in Petition No. 236/MP/2017 passed by CERC titled as Para 17,19, 23, 27, 33 and 36),** to contend that the DVC Judgement of this Tribunal dealt with the interpretation and interplay of Section 79(1)(f) (and not Section 8) and its applicability to *Non-Tariff* dispute.

B. ANALYSIS:

It would be wholly inappropriate for us to express any opinion on the other orders passed by CERC, on which reliance is placed by Learned

Counsel on either side, firstly as the order of the CERC dated 17.01.2026 may well be subjected to challenge before this Tribunal later. In any event, orders of the Regulatory Commissions, which are subordinate to APTEL are not orders which would constitute a binding precedent. We see no reason, therefore, to express any opinion on the submissions urged by Learned Counsel on either side on the afore-said orders of the CERC.

XI. CONCLUSION:

We summarize our opinion, which may be read along with what has been expressed earlier in this judgment. They are:

(i) The ratio of the **DVC** judgement, passed by a co-ordinate bench of this Tribunal, constitutes a binding precedent, and not a stray observation therein.

(ii) The jurisdiction of the Central Commission under Section 79(1)(f), with regards disputes involving generating Companies or transmission licensees, is restricted only to matters falling within clauses (a) to (d) of Section 79(1).

(iii) Section 86(1) empowers the State Commission to adjudicate any dispute between licensees and generating companies, apart from those disputes which fall within the ambit of clause (b) of Section 79(1), as the jurisdiction to adjudicate such disputes is conferred on the Central Commission alone.

(iv) Notwithstanding the wide language used in Section 86(1)(f), the State Commission lacks jurisdiction to adjudicate disputes under Section 79(1)(b) since the Electricity Act does not confer concurrent jurisdiction on both the Commissions.

(v) In view of the scheme of the Electricity Act, more particularly Sections 79 and 86 thereof, the State Commission cannot claim concurrent jurisdiction with the Central Commission in any dispute covered by clauses (a) to (d) of Section 79(1). Consequently, if any matter falls under the scheme of clauses (a) to (d) of Section 79(1), the provisions of Section 86(1)(f) are inapplicable.

(vi) The word *"and"* in Section 79(1)(f) must be read as *"or"*. As a result, the Central Commission must be held to have the discretion under Section 79(1)(f) either to adjudicate disputes in regard to matters connected with clauses (a) to (d) of Section 79(1) or to refer any dispute for arbitration.

(vii) Since the CERC is competent to decide (adjudicate) only disputes falling under clauses (a) to (d) of Section 79(1), its jurisdiction under Section 79(1)(f), to refer disputes to arbitration, must be confined only to such disputes which fall within clauses (a) to (d) of Section 79(1), and none other. In other words, the jurisdiction of the CERC to refer disputes to arbitration is confined to "any dispute" falling under clauses (a) to (d) of Section 79(1) of the Electricity Act.

(viii) Likewise, since the power conferred, by Section 86(1)(f), on the State Commission is to adjudicate disputes between a generator and a licensee within its jurisdiction, it can only refer such disputes for arbitration, and not any other dispute. In other words, the jurisdiction of the State Commission, to refer disputes to arbitration, is confined to any dispute between a generator and a licensee falling within its jurisdiction ie intra-state.

(ix) It is only disputes, which fall within the ambit of clauses (a) to (d) of Section 79(1), which can either be adjudicated by the CERC or, in the alternative, be referred to arbitration under Section 79(1)(f) of the Electricity Act.

(x) In the light of the law declared by this Tribunal, in the **DVC** Judgement, it must be held that disputes, including those which fall within the ambit of the regulatory functions of the Commission, or which impact tariff either directly or indirectly, are non-arbitrable and, not-withstanding an arbitration agreement in existence and the tests stipulated in Section 8(1) of the 1996 Act being satisfied, cannot be referred to arbitration.

(xi) Disputes which are in regard to matters connected with clauses (a) to (d) of Section 79(1), but which do not relate to the regulatory functions of the CERC or impact tariff either directly or indirectly, can, in the exercise of the discretionary jurisdiction of the CERC under Section 79(1)(f), either be adjudicated by the Central Commission or be referred to arbitration. One such instance would be valid termination of a PPA which does not impact tariff, which was referred, by the **DVC** Judgement of this Tribunal, to arbitration.

(xii) In the light of the law declared by the Supreme Court in **GUVNL,** and this Tribunal in the **DVC** Judgement, it cannot be said that only provisions after Section 11 of the 1996 Act, and not provisions prior thereto, which would apply to arbitration proceedings referred under clause (f) of both Sections 79(1) and 86(1) of the Electricity Act.

(xiii) Section 8 of the 1996 Act would, in view of the **DVC** Judgement of this Tribunal, apply in cases where either the Central or the State Commission is inclined to refer the dispute to arbitration.

(xiv) In terms of Section 8(1) of the 1996 Act, it is only if the Respondent-TPCL had applied, not later than the date of submitting its first statement on the substance of the dispute, could the dispute have been referred to arbitration.

(xv) In the present case, not only did the Respondent-TPCL choose not to make any such request, for reference of the dispute for arbitration, prior to filing their reply to the Petitions filed by the Appellant-Procurers, they, in addition, had themselves filed a petition before the CERC on their own.

(xvi) As the Respondent-TPCL failed to comply with the conditions stipulation in Section 8(1) of the 1996 Act, the CERC ought not to have referred the subject dispute to arbitration.

(xvii) Regulatory functions are assigned to, and the power to determine tariff is conferred on, an independent regulator (the Regulatory Commission, be it Central, State or Joint) by the Electricity Act, a special enactment. As discharge of the regulatory functions, and exercise of the power to determine tariff, would have a bearing on the public at large (for instance, the consumers), it is only the Regulatory Commissions which can discharge Regulatory functions and exercise the power to determine tariff, and such functions can neither be discharged nor can such power be exercised by a private forum such as an arbitral tribunal. Consequently, disputes which relate to the regulatory functions of the Commission, and those which impact tariff, both directly and indirectly, can only be adjudicated by the Regulatory Commissions and cannot be referred for arbitration by an arbitrary Tribunal.

(xviii) Bifurcation of the cause of action, that is to say, the subject-matter of the suit, or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others, is not possible under Section 8 of the 1996 Act, as this would be laying down a totally new procedure not contemplated under the said Act.

(xix) Since both PSPCL and HPPC have sought compensation jointly and severally against TPCL and WRLDC, it does not stand to reason that, when their claim is for an identical sum which they hold both TPCL and WRLDC to be jointly and severally liable to pay them, their claim against TPCL should be referred to arbitration while their claim against WRLDC, for the very same amount, should be left open for adjudication by the CERC later.

(xx) The CERC has erred in bifurcating the dispute on the erroneous premise that it would, otherwise, be required to adjudicate a non-tariff dispute which it does not have jurisdiction to adjudicate.

(xxi) If the CERC lacks jurisdiction to adjudicate a dispute, it also lacks jurisdiction to refer the said dispute to arbitration under Section 79(1)(f) of the Electricity Act.

(xxii) The CERC was not justified in bifurcating the dispute between PSPCL and HPPC on the one hand and WRLDC on the other, from the other part of the dispute, as the disputes are integrally connected with each other.

(xxiii) As the dispute, with respect to WRLDC was non-arbitrable and was therefore not referred to arbitration, the CERC could not have referred the remaining dispute to arbitration, as the disputes are integrally connected with each other.

As the CERC erred in referring the disputes raised by the Appellant-Procurers to arbitration, despite the Respondent-TPCL having failed to comply with the requirement of Section 8(1) of the 1996 Act of filing an application seeking reference to arbitration before filing its reply to the Petitions filed by the Procurers, and as the Petitions filed by PSPCL and HPPC could not have been bifurcated, the impugned order passed by the CERC must be, and is accordingly, set aside. As the CERC cannot refer a dispute for arbitration which it cannot adjudicate, reference of the Petition filed by the Respondent-TPCL to arbitration must also be set aside.

The CERC shall examine whether the subject matter of the disputes raised in the Petitions filed by the Appellant-Procures, and the Petition filed by the Respondent-TPCL falls within the ambit of clause (b) of Section 79(1) of the Electricity Act. If it does, then the CERC shall adjudicate the disputes in the exercise of its jurisdiction under Section 79(1)(f) of the Electricity Act. If it does not, then the CERC, after recording reasons, shall non-suit the parties on the ground that it lacks inherent jurisdiction to adjudicate the disputes raised in the said Petitions.

The impugned order passed by the CERC is set aside, and all the three Appeals are allowed. All the Petitions are restored to the file of the CERC which shall, with utmost expedition, decide whether it has jurisdiction to adjudicate the disputes raised in the Petitions instituted before it.

Pronounced in the open court on this the **25th day of February, 2026.**

(Ajay Talegaonkar) Technical Member (Electricity)	(Justice Ramesh Ranganathan) Chairperson

REPORTABLE / ~~NON-REPORTABLE~~