Punjab Energy Development Agency ... vs Punjab State Electricity Regulatory ... on 18 May, 2026

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL NO. 280 OF 2017
APPEAL NO. 371 OF 2017 &
APPEAL NO.398 OF 2017

Dated: 18th MAY, 2026
Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

APPEAL NO. 280 OF 2017

IN THE MATTER OF:
PUNJAB ENERGY DEVELOPMENT AGENCY (PEDA)
Through its Director
Having office at Plot No.1-2,
Sector-33 D, Chandigarh- 160034 ... Appellant(s)

VERSUS

1. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION (PSERC)
   Through its Secretary,
   Having office at SCO No.220-221,
   Sector-34-A, Chandigarh-160022.

2. PUNJAB STATE POWER CORPORATION LIMITED(PSPCL)
   Through its Chairman-cum-Managing Director,
   Having office at The Mall, Patiala - 147001.

3. M/S MIHIT SOLAR PRIVATE LIMITED,
   Through its Authorised Signatory,
   Ms. Shefali Pawar,
   Manager,
   Having its office at Plot No.152,
   Sector-44, Gurgaon,
   Haryana - 122003. .... Respondent(s)

Counsel on record for the Appellant(s) : Mr. Aadil Singh Boparai

Counsel on record for the Respondent(s) : Mr. Sakesh Kumar for Res.1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri for Res.2

Mr. B.P. Patil, Sr.Adv.
Ms. Mannat Waraich
Ms. Ananya Goswami
Ms. Ashabari Basu Thakur
Ms. Himani Yadav for Res.3

APPEAL NO. 371 OF 2017

IN THE MATTER OF:
PUNJAB ENERGY DEVELOPMENT AGENCY (PEDA)
Through its Director
Having office at Plot No.1-2,
Sector-33 D, Chandigarh- 160034 ... Appellant(s)

VERSUS

1. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION (PSERC)
Through its Secretary,
Having office at SCO No.220-221,
Sector-34-A, Chandigarh-160022.

2. PUNJAB STATE POWER CORPORATION LIMITED(PSPCL)
Through its Chairman-cum-Managing Director,
Having office at The Mall, Patiala - 147001.

3. M/S MIHIT SOLAR PRIVATE LIMITED,
Through its Authorised Signatory,
Ms. Shefali Pawar,
Manager,
Having its office at Plot No.152,
Sector-44, Gurgaon,
Haryana - 122003. .... Respondent(s)

Counsel on record for the Appellant(s) : Mr. Aadil Singh Boparai

Counsel on record for the Respondent(s) : Mr. Sakesh Kumar for Res.1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg for Res.2

Mr. B.P. Patil, Sr.Adv.
Ms. Mannat Waraich
Ms. Ananya Goswami
Ms. Ashabari Basu Thakur
Ms. Himani Yadav for Res.3

APPEAL NO.398 OF 2017

PUNJAB ENERGY DEVELOPMENT AGENCY (PEDA)
Through its Director
Having office at Plot No.1-2,
Sector-33 D, Chandigarh- 160034 ... Appellant(s)

VERSUS

1. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION (PSERC)
Through its Secretary,
Having office at SCO No.220-221,
Sector-34-A, Chandigarh-160022.

2. PUNJAB STATE POWER CORPORATION LIMITED(PSPCL)
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Respondent(s)

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Ms. Neha Garg for Res.2

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Ms. Mannat Waraich
Ms. Ananya Goswami
Ms. Ashabari Basu Thakur
Ms. Himani Yadav for Res.3

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The present batch of Appeal has been filed by Punjab Energy Development Agency /PEDA ("the Appellant herein"), challenging the impugned orders dated 18.08.2016 passed by Punjab State Electricity Regulatory Commission (hereinafter referred to as "State Commission") in following petitions :-

Sl.	Appeal No.	Petition No.
1.	280 of 2017	06 of 2016
2.	371 of 2017	07 of 2016
3.	398 of 2017	10 of 2016

The issues involved in all these appeals are integrally connected and are therefore being disposed of by this Common Judgement.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 DESCRIPTION OF PARTIES:

2. Punjab Energy Development Agency ("PEDA"), the Appellant herein, is the nodal agency for the implementation of the NRSE Policy on behalf of the Government of Punjab.

3. Punjab State Electricity Regulatory Commission ("PSERC/State Commission"); Respondent No.1, is the State Regulatory Commission exercising the powers and discharging the functions under the provisions of Electricity Act, 2003.

4. Punjab State Power Corporation Ltd. ("PSPCL"); Respondent No 2, is the distribution licensee, under the Electricity Act 2003, supplying electricity to the consumers in the State of Punjab.

5. M/s Mihit Solar Pvt. Ltd., the Respondent No.3, is a company incorporated under the provisions of the Companies Act, 1956. Respondent No.3 is Developer of the Project under reference who had preferred the petition before the State Commission.

FACTUAL MATRIX OF THE CASE:-

6. In 2015, the Appellant floated a RFP inviting solar power project developers for setting up an aggregate capacity of 250 MW of grid-connected Solar Photovoltaic Power Projects in the State of Punjab. The RFP categorized the projects into three categories, namely: Category-I comprising projects ranging from 1 MW to 4 MW, with a total allocation of 50 MW; Category-II comprising projects ranging from 5 MW to 24 MW, with a total allocation of 100 MW; and Category-III comprising projects ranging from 25 MW to 50 MW, with a total allocation of 100 MW. Respondent No 3, i.e., Mihit Solar Power Private Limited had participated in the bidding process for various categories and declared Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 successful bidder; the capacity allocated to Respondent No.3 under category II & III is summarised as under: -

Appeal No 280 of 2017: Respondent No 3 was allocated 24 MW SolarPV Power Project under category II by Appellant and LOI was issued and Implementation agreement (IA) was signed on 24.03.2015. In terms of RFP and LOI, Respondent No. 3 deposited two unconditional Performance Bank Guarantees amounting to Rs. 9,60,00,000.00 with the Appellant on 18.03.2015.

Appeal No 398 of 2017 & Appeal No 371 of 2017: Respondent no 3 was allocated 50 MW Solar PV project under category III by the Appellant and LOI No 16278 dated 25.02.2015 was issued to them by PEDA. The capacity of 50 MW was split into two project of 25 MW on the request of Developer and two Implementation agreements (IA) qua 25 MW capacity each was signed on 24.03.2015. Respondent No. 3 deposited three unconditional Performance Bank Guarantees amounting to Rs 20,00,00,000.00 with the Appellant between 18.03.2015 to 10.04.2015.

7. For all the three projects allocated to Respondent No 3, as per the terms and conditions of the RFP/IA, the projects were to be commissioned on or before 31.01.2016. Respondent No 3, citing Force majeure conditions for the projects, approached the appellant requesting for extension in scheduled commissioning date up to 31.03.2016. However, Appellant, vide communication dated 24.02.2016, addressed to Respondent No 3 as well as to all other solar developers, informed about the penalties to be levied for non-commissioning/ short fall in commissioning of allocated capacity as per time line stipulated in the RFP/ IA i.e. 31.01.2016. There was delay in commissioning of projects on several accounts.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017

8. Respondent No 3 filed three separate Petition Nos 6 of 2016, 07 of 2016 and 10 of 2016, for all the three projects mentioned above before the State Commission under Section 86(1)(f) of the

Electricity Act, 2003, inter alia seeking setting aside of the Appellant's letters dated 18.01.2016 and 24.02.2016, extension of the COD of the projects till 30.06.2016, declaration of tariff at Rs 7.06/kWh in terms of the PPA, and a direction restraining the Appellant from invoking the Performance Bank Guarantee furnished by Respondent No. 3.

9. State Commission passed order dated 18.08.2016 in petition No 6 of 2016, which is impugned in the Appeal No 280 of 2017, and on the basis of this order, passed two more orders each dated 18.08.2016 in petition No 7 of 2016, which is impugned in the Appeal No 398 of 2017and in Petition No 10 of 2016, which is impugned in the Appeal No 371 of 2017.

10. In all the Impugned Orders passed on 18.08.2016, the extension of the SCOD for the projects is allowed by 90 days i.e., till 30.04.2016 and Appellant herein was directed to release the Performance Bank Guarantee (PBG) at the earliest and in case of delay beyond 7 days, it shall be liable to pay interest at the rate of .042 % per day (1.25 % per month) for each day of delay beyond seven working days. Being aggrieved by the extension of SCOD of the projects of Respondent No 3 from 30.01.2016 to 30.04.2016 and consequently return of PBG, the Appellant has filed present appeals assailing the orders dated 18.08.2016.

SUBMISSIONS URGED ON BEHALF OF APPELLANT

11. It is submitted that the delay in commissioning of the project was solely attributable to the Developer's own acts, omissions and defaults. Under the Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 contractual framework governing the projects, the obligation to procure and arrange land rests exclusively with the Developer. As per LOA dated 25.02.2015 issued by the Appellant to Respondent No. 3 for setting up a 24 MW Solar PV Power Project in Punjab, Developer was required to submit land documents within 90 days from the date of issuance of the LOA, i.e., by 25.02.2015. Same condition was reiterated in the Implementation Agreement (IA) dated 24.03.2015 executed between the Appellant and the Developer. Further, Article 6.2(VII) of the IA provided that the commissioning of the project (SCOD) is to be completed within 10 (ten) months from the date of signing of the Power Purchase Agreement (PPA), which was executed on 31.03.2015, thereby fixing the SCOD as 30.01.2016.

12. However, Respondent No. 3, submitted the land documents only on 04.09.2015, resulting in a delay of 101 days beyond the stipulated deadline and vide its letter dated 21.09.2015, admitted that during the course of due diligence it discovered that out of the land measuring 125 acres, certain portions were affected by litigation while other portions were encumbered by bank loans, due to which the Developer was unable to secure the land in accordance with the project requirements, and had to finalize an alternate parcel of land (125 acre) at nearby Village Jhandekalan, Mansa with the same grid connectivity. These admissions clearly demonstrate that the Developer had failed to undertake proper due diligence with respect to the originally identified land, and delay in land procurement is entirely attributable to the Developer's own lack of preparedness.

13. It is submitted that the State Commission in the Impugned Order granted extension in commissioning of the project on account of alleged force majeure events, namely: - connectivity at

66 kV on account of a purported variance between the RFP and PSPCL regulations (72 days); a stay order passed by the Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 Additional Civil Judge, Sardulgarh (11 days); and the Jat agitation (7 days), thereby granting a total extension of 90 days. However, developer's delay in submitting the land documents alone amounted to 101 days, i.e., from 25.05.2015 to 04.09.2015, which by itself exceeds the entire period of extension granted by the Commission.

14. It is further contended that the Respondent No. 3 failed to issue a Force Majeure notice within the mandatory period of five days as stipulated under the Implementation Agreement dated 24.03.2015. The Article 10.4 of the Implementation Agreement expressly provides that if a party is affected by any force majeure event, the affected party shall give the other parties written notice describing the particulars of such Force Majeure event as soon as practicable after its occurrence, but not later than five days from the date on which the party became aware of the commencement of such event or its effect. It is further submitted that general correspondences, letters discussing various issues, or representations seeking extension of time cannot be equated with a formal force majeure notice as contractually mandated, as the very purpose of such notice is to provide contemporaneous and explicit intimation to the other party regarding the occurrence of a Force Majeure event so as to enable it to verify the factual position and assess the validity of the claim.

15. It is further submitted that this Tribunal in "Ms. Swasti Power Engineering Ltd. v. PTC India Ltd." has categorically held that a mere narration of difficulties or "sharing of woes" with the counterparty does not, in law, constitute a valid contractual notice. The Tribunal rejected the attempt to retrospectively elevate such correspondence into a force majeure notice, observing that where the contract prescribes a specific form, content, and timeline for issuance of notice, a party cannot rely upon generic grievance sharing as a device to circumvent the Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 agreed contractual mechanism. Applying the same principle to the present case, it is submitted that letters which merely recount operational difficulties, strikes, agitation, or administrative hurdles, which neither purport to be notices under Article 10.4 nor identify themselves as force majeure notices and are not issued within the stipulated period of five days, cannot be construed as satisfying the mandatory contractual requirement. The contention of Respondent No.3 that the Appellant and Respondent No. 2 were otherwise aware of the connectivity issue cannot relieve the Developer from formally invoking Article 10.4, and acceptance of such a proposition would, in effect, amount to rewriting the contract and dispensing with an express contractual requirement agreed between the parties.

16. It is also submitted that the legal position regarding the mandatory nature of force majeure notice requirements and the consequences of non-compliance stands conclusively settled by binding precedents of this Tribunal and the Hon'ble Supreme Court. This Tribunal, in "Punjab State Power Corporation Ltd. v. Punjab State Electricity Regulatory Commission", while interpreting a notice clause materially similar to the present case, categorically held that in the absence of issuance of a force majeure notice in accordance with the contractual stipulation, no extension of the commissioning period or protection from contractual consequences can be granted. The Supreme Court has further reaffirmed the mandatory nature of such notice requirements in "Chamundeshwari Electricity Supply Company Ltd. v. Saisudhir Energy Chitradurga Pvt. Ltd.",

thereby reiterating that compliance with contractual notice provisions is indispensable for invoking force majeure. This Tribunal has consistently adopted the same position in several other decisions, including "Omega Infraengineers Pvt. Ltd. v. Punjab State Electricity Regulatory Commission & Ors.", 2019 SCC OnLine APTEL 8 and "Earth Solar Pvt. Ltd.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 v. Punjab State Electricity Regulatory Commission & Ors." 2019 SCC OnLine APTEL 41, wherein it has been held that extension of the SCOD is not a matter of equity or discretion but must be founded upon strict proof of a force majeure event as contemplated under the contract, coupled with a demonstrable causal nexus between such event and the delay in commissioning. It has further been held that non-compliance with mandatory force majeure notice requirements strikes at the root of the claim itself and constitutes a sufficient ground for rejection of the force majeure claim and the consequential relief of extension of SCOD.

17. The State Commission, in the impugned orders dated 18.08.2016, committed a grave error in law by diluting the mandatory force majeure notice requirement and granting relief to Respondent No. 3 despite admitted non- compliance, which approach is contrary to settled law and undermines the sanctity of contractual obligations.

18. Regarding the stay order passed by the Additional Civil Judge, Sardulgarh is concerned, the State Commission has erroneously granted the benefit of 11 days despite the undisputed position that no notice whatsoever was issued by Respondent No. 3 in terms of Article 10.4 of the IA seeking invocation of force majeure on this ground, and therefore, in view of the ex facie non-compliance with the mandatory contractual notice requirement, the grant of the said 11-day extension is liable to be set aside. State Commission has further erred in granting the benefit of 7 days on account of the Jat Agitation, as the SCOD of the project was 30.01.2016, whereas the letter notifying the Appellant of the alleged Jat Agitation is dated 22.02.2016, which is admittedly subsequent to the SCOD; consequently, such belated communication cannot form the basis for invocation Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 of Force Majeure or for grant of extension, rendering the said extension wholly unsustainable and liable to be set aside.

SUBMISSIONS URGED ON BEHALF OF RESPONDENT NO.2; PSPCL

19. At the outset, it is submitted that Respondent No.2 supports the Appellant on the merits of the challenge to the impugned Order, as the extension of the SCOD and the direction for release of the Performance Bank Guarantee are erroneous and adopts the submissions of Appellant. It is further submitted that IA was executed between the Appellant, being the nodal agency, and the developer, and any claim of Force Majeure is required to be examined strictly in terms of the provisions of the IA. However, the State Commission has granted extension of the SCOD on considerations alien to the contractual framework and in complete disregard of the settled legal position mandating issuance of a timely Force Majeure notice as a condition precedent.

20. Learned counsel for the Respondent No.2 submitted that it is an admitted position that no Force Majeure notice was issued by the project developer in accordance with the contractual stipulations.

The defense sought to be raised by the developer that it was in correspondence with the Appellant and Respondent No.2 and that the issue in question appears to have been addressed, and therefore such correspondences ought to be treated, in hindsight, as Force Majeure notices--is wholly untenable. It is further stated that IA, read conjointly with the PPA, contains no residual provision whereby general inter se correspondences between the parties can be construed as Force Majeure notices. Merely because an issue seems to have been addressed by the parties would not mean that the past correspondences would qualify to be deemed force majeure notices. There is no such deeming provision in the IA and the PPA.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017

21. The core issue, therefore, is not whether any steps were taken by the parties to cure the alleged defects, but whether, in the absence of compliance with the mandatory notice requirement, the State Commission was justified in holding that past correspondences would qualify as Force Majeure notices; in other words, whether issuance of a contemporaneous Force Majeure notice is mandatory. This issue stands conclusively settled by various judgements of this Tribunal and of Supreme court as referred by the Appellant.

SUBMISSIONS URGED ON BEHALF OF RESPONDENT NO 3; DEVELOPER

22. It is submitted that Appellant and Respondent No.2 had due notice and prior knowledge of the alleged force majeure event, namely the failure of Respondent No.2 to issue the letter indicating grid feasibility at the 66 kV substation on account of certain regulatory constraints. The communication and physical meeting held between the Appellant, Respondent No.2 and Respondent No. 3, conclusively demonstrate that both the Appellant and Respondent No.2 had adequate and contemporaneous knowledge of the alleged force majeure events and, in fact, undertook corrective and cooperative measures to address the same. The State Commission, at Para 15 of the Impugned Order, has specifically dealt with the objection raised by Respondent No.2 and the Appellant regarding non- compliance with Article 10.4 of the IA, and observed that Respondent No.2 and the Appellant were throughout aware of the force majeure events, particularly with respect to connectivity at the 66 kV substation and the Jat agitations, and further observed that the Respondents actively participated in resolving the connectivity issue, pursuant to which the Petitioner was able to connect the plant to the 66 kV substation. On such basis, it was concluded that the requirement under Article 10.4 of the IA stood satisfied. Article 10.4 mandates (i) issuance of a written notice Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 to the other party, (ii) setting out the particulars of the Force Majeure event, and

(iii) issuance of such notice as soon as reasonably practicable after its occurrence, but in any event not later than five (5) days from the date on which the party became aware of its commencement or its effect on the party. In this context it is submitted that the letter dated 12.05.2015 issued by Respondent No. 3 to the Appellant, followed by the meeting dated 14.05.2015 attended by the Appellant and Respondent No.2, satisfies the essential ingredients of Article 10.4 of the IA, inasmuch as a written notice was issued to the parties setting out the particulars of the alleged force majeure events. Respondent No. 3 had, in fact, apprised the Appellant of the requirement of

obtaining the grid feasibility letter as early as 11.03.2015 and again on 04.05.2015, and upon PSPCL informing for the first time on 06.05.2015 regarding connectivity to the 132/220 kV substation same was communicated on 12.05.2015 within five (5) days thereof, thereby purportedly satisfying the timeline prescribed under Article 10.4. As regards the objection that the letter dated 12.05.2015 was not expressly styled as a "Force Majeure Notice," Respondent No. 3 places reliance on the principle that it is the substance and not the nomenclature of a document which determines its true character, and further relies upon the decision of the Hon'ble Supreme Court in "Savita Chemicals v. Dyes and Chemical Workers' Union and Anr." (1999) 2 SCC 143, wherein it was held that where the contents of a notice substantively convey the grievance, strict adherence to the prescribed form is not mandatory even if such form is contemplated under the statute. Accordingly, the letter dated 12.05.2015 issued by Respondent No. 3, whereby the Appellant was duly informed of the alleged Force Majeure event, ought to be treated as a valid Force Majeure notice in compliance with Article 10.4 of the IA, particularly when PEDA had been kept apprised since 11.03.2015 regarding the issue of grid feasibility at the 66 kV level. It is further submitted that the term "notice" has been interpreted to mean communication of information not previously within the knowledge of the Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 recipient and subsequently conveyed through appropriate correspondence, and in this regard reliance is placed upon the judgment of the Hon'ble Supreme Court in "Commissioner of Sales Tax and Ors. v. Shubhash and Co." (2003) 3 SCC

454.

23. Accordingly, the ingredients of a "notice," as envisaged by the Hon'ble Supreme Court stand duly fulfilled by the letter dated 12.05.2015. It is further submitted that the purpose of a force majeure notice is to inform the counterparty of the occurrence of such event and to trigger steps for mitigation of its effects; significantly, pursuant to the letter dated 12.05.2015, a Joint Meeting was convened on 14.05.2015 to address and mitigate the alleged Force Majeure event, which itself reinforces the character of the said communication as a Force Majeure notice. Furthermore, it is a well-settled principle of contractual interpretation that a commercial document cannot be construed in a manner contrary to the original purpose and intendment of the parties; therefore, while interpreting Article 10.4 of the IA, due regard must be had to the underlying intent of the provision, which is further elucidated by Article 10.5(i) of the IA, setting out the obligations of the parties upon occurrence of a Force Majeure event.

24. Thus, on a conjoint reading of the contractual provisions, it is submitted that the true intent of Article 10.4 of the IA is to ensure that both parties are duly made aware of events that may impact performance under the Contract, thereby enabling cooperation and timely remedial measures to mitigate the effects of such Force Majeure events. In the present case, the letter dated 12.05.2015, read in conjunction with the earlier letters dated 11.03.2015 and 04.05.2015, followed by the physical meeting held on 14.05.2015, adequately apprised the parties of the circumstances affecting the performance of Respondent No. 3 and, in fact, culminated in corrective action, inasmuch as Respondent No.3, vide Commercial Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 Circular dated 08.06.2015, amended the relevant Instructions permitting projects up to 25 MW to be connected at the 66 kV substations.

25. It is further submitted that where the terms of a contract do not prescribe any consequences for non-compliance, such provisions cannot be construed as mandatory and would, at best, be treated as directory in nature. Applying the aforesaid principle, it is submitted that Article 10.4 of the IA does not prescribe any consequence whatsoever in the event of non-compliance with the requirement relating to issuance of notice of force majeure. In the absence of any stipulated consequence, the said provision cannot be treated as mandatory and would, at best, be directory in nature. Accordingly, non-compliance with such condition cannot result in denial of the substantive relief flowing from the terms of the Contract. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in "Administrator, Municipal Committee v. Ramji Lal Bagla and Ors.", reported in (1995) 5 SCC 272 and "State of U.P. v. Manbodhan Lal Srivastava" 1957 SCC OnLine SC 4, wherein it has been held that where a provision does not prescribe any consequence for non-compliance, the same cannot be construed as mandatory in nature.

26. In the present case, Article 10.4 of the IA stipulates that the affected party "shall" give the other parties written notice describing the particulars of the Force Majeure event. While the provision uses the term "shall" with respect to the issuance of such notice, it does not prescribe any consequence that would follow in the event of non-compliance with this requirement. Applying the principles laid down by the Hon'ble Supreme Court, the absence of any specified consequence renders the requirement of issuance of written notice "directory" and not "mandatory in nature", and consequently, non-compliance with the same cannot operate to vitiate or deny the Force Majeure relief available to the Respondent.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 With regard to the reliance placed by the Appellant on the decision of the Hon'ble Supreme Court in "Chamundeswari Electricity Supply Company Ltd. (CESC) v. Saisudhir Energy Pvt. Ltd. and Anr" 2025 SCC OnLine SC 1816, it is submitted that in the said judgment, the force majeure clause specifically prescribed the consequences of non-fulfilment of the requirement of issuance of notice, whereby failure to comply with the notice requirement would result in denial of force majeure relief. Thus, while the Appellant seeks to rely upon the said decision to contend that non-issuance of notice disentitles a party from claiming Force Majeure relief, the judgment in fact supports the case of the Respondent, inasmuch as it demonstrates that where the contract itself provides consequences for non-compliance, the requirement assumes a mandatory character; conversely, where the contract is silent as to such consequences--as in the present case--the requirement remains merely directory, and its non-compliance cannot result in denial of substantive contractual relief. Thus, in light of the forgoing, it is clear that interpreting the requirement of issuance of notice as contemplated under Article 10.4 of the IA as mandatory in nature, would be in complete disregard of the legal principles elucidated above and also result in reading in extraneous requirements in a contract which is impermissible in law.

27. Furthermore, reliance is placed on the judgment of the Hon'ble Supreme Court in "Oriental Insurance Co. Ltd. v. T. Mohammed Raisuli Hassan", (1993) 1 SCC 533, wherein, while interpreting the terms of an employment contract, the Court held that where a particular stipulation is not expressly provided as a "condition precedent", non-fulfilment of such stipulation cannot operate to vitiate the actions undertaken pursuant to the contract. The aforesaid proposition squarely supports

the case of Respondent No. 3 inasmuch as non- compliance with a contractual stipulation which has not been agreed upon as a condition precedent cannot be treated as fatal to the entitlement of relief Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 contemplated under the contract. In the present case, the notice for issuance of force majeure was not mentioned as a condition precedent and thus non- compliance thereof cannot lead to denial of the relief as entitled to under force majeure

28. Regarding the submissions of the Appellant during the course of the hearing, disputing the aforesaid communication and contending that the Force Majeure notices were issued by Respondent No. 3 only vide Letters dated 21.09.2015, 15.12.2015 and 25.01.2016, it is submitted that while issuance of the aforesaid letters is not disputed, it is pertinent to note that, prior thereto, Respondent No. 3 had already apprised the Appellant of the Force Majeure event concerning the grant of connectivity at the 66 kV Sardulgarh Substation through its Letters dated 11.03.2015, 04.05.2015 and 12.05.2015; which sufficiently conveyed the occurrence and particulars of the Force Majeure event and ought to be treated as constituting notice in compliance with Article 10.4 of the IA.

29. Regarding the reliance placed by Appellant on the decisions in "Earth Solar Pvt. Ltd. v. PSERC and Ors.", 2019 SCC OnLine APTEL 41, "Swasti Power Engg. Ltd. v. PSERC and Ors.", 2025 SCC OnLine APTEL 32, and "PSPCL v. PSERC", 2024 SCC OnLine APTEL 77, it is submitted that these judgments are clearly distinguishable and inapplicable to the facts of the present case. Firstly, in the present matter, Respondent no. 3 had adequately informed the Appellant regarding the force majeure event which is amply demonstrated vide letter dated 12.05.2015 read with Letter dated 11.03.2015 and 04.05.2015 and secondly, Article 10.4 of the IA merely indicates that the parties are required to be informed in writing regarding the force Majeure event and there are no consequences indicated for any non-compliance. The said clause does not state that such notice is a pre-condition to avail relief under force majeure.

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30. It is submitted that Respondent No.2 has not challenged the Impugned Order in the present appeals before this Tribunal and has merely been arrayed as a proforma Respondent supporting the case of the Appellant, without possessing any independent or subsisting rights in the present dispute. The dispute between the contesting parties, namely the Appellant and Respondent No. 3, arises solely from the alleged non-compliance with Article 10.4 of the Implementation Agreement (IA). It is an admitted position, as recorded in Article 19.4.0 of the PPA, that prior to the commissioning of the project, Respondent No. 3 is governed by the terms of the IA executed between the Appellant and Respondent No. 3, whereas subsequent to commissioning, the relationship between Respondent No. 3 and Respondent No.2 is governed by the PPA. Since the present dispute pertains to the delay in commissioning of the project of Respondent No. 3 allegedly on account of various Force Majeure events, the dispute is governed exclusively by the IA, in which Respondent No.2 has no role or contractual involvement. In these circumstances, the averments made by Respondent No.2 ought not to be taken into consideration by this Tribunal and deserve to be rejected at the threshold. Without prejudice to the aforesaid, it is further submitted that the

reliance placed on the judgment of the Hon'ble Supreme Court in "MSEDCL v. MERC and Ors." reported in (2022) 4 SCC 657 and "Omega Infraengineers Pvt. Ltd. v. PSERC and Ors.", (2019) SCC OnLine APTEL 8, is misplaced, as the said decision is clearly distinguishable and inapplicable to the facts and circumstances of the present case.

DISCUSSION AND ANALYSIS

31. Heard Mr B.P. Patil, learned senior counsel on behalf of Respondent No.3- developer, Mr Aadil Singh Boparai, learned counsel on behalf of Appellant, Mr Anand K. Ganeshan, learned counsel on behalf of the Respondent No2 -PSPCL, and Mr Sakesh Kumar, learned counsel on behalf of Respondent No.1, perused Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 the Impugned Orders, written submissions filed by the parties and other relevant document for adjudicating the issue involved in all the three appeals. In the Impugned Orders, an extension of 90 days in commissioning of the project has been granted, taking into consideration the following force majeure events.

Connectivity at 66 KV : 72 days Stay order by Additional Civil Judge, Sardulgarh: 11 days Jat Agitation: 7 days

32. It has been urged on behalf of the Appellant that, even assuming that a portion of the delay may be attributable to force majeure events, the delay occasioned by the project developer's land-related impediments far exceeds the permissible period under the force majeure clause. It is further submitted that the benefit of force majeure cannot be presumed in the absence of strict compliance with the contractual stipulation requiring issuance of a force majeure notice within the prescribed time. Respondent No. 2 has supported the Appellant on this aspect, contending that no such notice was ever issued by Respondent No. 3 in accordance with the contract. In these circumstances, the extension of the Scheduled Commercial Operation Date (SCOD) and the consequential direction for release of the Performance Bank Guarantee are assailed as being erroneous, contrary to the contractual framework, and unsustainable in law.

33. With regard to the delay in submissions of land documents, we note that, in terms of Letter of award (LOA) dated 25.02.2015 issued by the Appellant to Respondent No 3 for the projects referred above, besides other conditions, it has been stipulated that it is the responsibility of bidder to arrange land and submit the land documents to PEDA within 90 days from issue of LOA. It has been further mentioned in the LOA that in the event of non-achieving of the various conditions Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 including the land documents, it shall constitute sufficient ground for encashment of bank guarantee and LOA, IA and PPA shall stand cancelled by issuing one month's notice.

34. In the Implementation Agreement dated 24.03.2015, signed between the Appellant and Respondent No 3- the developer for various projects, it has been stated under article 6.2 (vi) that bidder is required to acquire project land for 30 years on ownership/ lease hold basis and is required to submit record of revenue rights/certified copy of title deeds showing ownership rights/ leasehold rights for stipulated period within 90 days from the date of signing of PPA. Under Article

9.0 (Termination) of Implementation agreement, there is a provision of termination of the IA, if land documents are not submitted within the prescribed period as stipulated, relevant extract is reproduced below :

> "ARTICLE 9: TERMINATION 9.1(a) This agreement may be terminated on serving a thirty days notice (Termination notice) by PEDA if,
>
> i) the Company does not submit the land details even after 90 days from the date of signing of PPA.
>
> ii) if the documents mentioned in Article no. 6.2 (vi) are not submitted by the Company even after 90 days from date of signing of PPA, then its entire (100%) performance security shall be forfeited and the LoA, IA and PPA shall stand cancelled."

35. Consequences of delay in commissioning of the project has been mentioned under article 7.0 of Implementation Agreement, which are reproduced hereunder:

> "7.0: CONSEQUENCES OF DELAY IN COMMISSIONING BY THE COMPANY A. Encashment of Performance Security:
>
> Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 The Solar PV Project shall be commissioned within 10 (Ten) months from the date of signing of PPA. In case of failure to achieve this time limit, PEDA shall encash the Performance Guarantee in the following manner:
>
> i) Delay upto one month: PEDA will encash 30% of the total Performance Bank Guarantee proportionate to the Capacity not commissioned.
>
> ii) Delay of more than one month and upto two months. PEDA will encash remaining 70% of the total Performance Bank Guarantee proportionate to the Capacity not commissioned."

36. The Power Purchase Agreement (PPA) was signed by the Respondent No 3- Developer and Respondent No 2- PSPCL on 31.03.2015. Admittedly, the land documents for entire land were not submitted by Respondent No 3 to the PEDA within the time period as stipulated in LOA/ IA. Respondent No. 3 vide its communication dated 04.09.2015, submitted the said documents and indicated change in location of the project from Village Ahalpur and Kauriwala to Jhandekalan as land identified earlier was found unsuitable. It has been contended on behalf of the Appellant that Developer was required to submit land documents within 90 days from the date of issuance of the LOA, i.e., by 25.05.2015, submission of land document on 04.09.2015, resulted in a delay of 101 days which is beyond the stipulated deadline and the State Commission erred in granting the relief to the developer without properly appreciating the land related defaults, which, according to the Appellant, constituted the root cause of the delay. As noted above, in terms of the Implementation

Agreement signed between PEDA & Respondent No. 3, the time line for the submission of land documents is within 90 days from the date of signing of PPA , which accordingly works out to 30.06.2015, The issue therefore in the present case is, can the delay in submissions of land documents override the impact of extension of SCOD granted on account of force majeure in the Impugned Orders pertaining to the projects of Respondent No 3.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017

37. The Impugned Orders have been passed in the Petitions filed by the Respondent No 3, in which condonation of delay of 190 days has been sought by Respondent No 3 on account of Force Majeure events, on the grounds set out here in below and Respondent No. 3 has further sought setting aside of the letters dated 18.01.2016 and 24.02.2016 issued by PEDA, along with a prayer for extension of the SCOD till 30.06.2016;

The petitioner claims delay under Force-Majeure clause as under: -

> Delay in granting connectivity permission by PSPCL = 134 days (from 05.03.2015 to 17.07.2015) Delay on account of change of land = 46 days Delay on account of re-mobilsation, due to change in location = 10 days Total = 190 days

38. As noted above, in the Impugned Orders, the State Commission has granted extension of SCOD by 90 days, i.e., up to 30.04.2016, after taking into consideration delay of 72 days on account of connectivity issues, 7 days on account of the Jat agitation, and 11 days on account of the Stay Order dated 20.11.2015 passed by the Additional District Judge, Sardulgarh. These delays were considered as force majeure events beyond the control of Respondent No. 3- the developer. However, the delay of 46 days claimed on account of change in land was not accepted by the State Commission. We have examined the Appellant's contention that the delay in submission of land documents by the Developer should override or negate the Force Majeure relief granted in the Impugned Orders. We are unable to accept this contention for the following reasons. First, as correctly noted above, the relevant deadline for land document submission under the LOA /IA was 25.05.2015/30.06.2015, and the actual Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 submission was made on 04.09.2015 resulted in a delay of 101 days if counted from 25.05.2015. The Implementation Agreement expressly stipulates that in case of delay in submission of land documents within the prescribed timeline, PEDA was entitled to invoke the Letter of Intent, cancel the Implementation Agreement and Power Purchase Agreement, and also entitle to encash the performance bank guarantee. Despite the default, the PEDA did not invoke the cancellation remedy as provided under Article 9 as reiterated above, and instead continued to deal with the Developer, accepted the change of land location, and ultimately invoked only the delay-in-commissioning remedy under Clause 3.23 of the RFP vide letter dated 28.02.2016. By this conduct, PEDA waived its right to rely upon land procurement defaults as a ground for resisting Force Majeure relief in these proceedings. It is settled principle that a party cannot take advantage of its own wrong under the contract law.

39. Having waived the contractual remedies as provided under the Implementation Agreement for delay caused due to the delay in submission of land documents by the Respondent No. 3, the

Appellant cannot now seek to displace the force majeure findings on other issues by relying upon land-related delay. In our view, the Appellant's contention that delay in submission of land documents should override the delay condoned on account of other force majeure events is devoid of merit and such contention is therefore rejected.

40. This tribunal's observation on the delay in land documents does not does not affect the independent merits of each Force Majeure claim, which fall to be examined on their own facts and in the context of the notice requirements under Article 10.4 of the Implementation Agreement. The extension of SCOD granted on account of the force majeure events identified in the Impugned Orders is accordingly deliberated on merit in the following paragraphs.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 GRID CONNECTIVITY; DELAY CONDONED 72 DAYS;

41. We note that as per clause 3.6 (D) of RFP, plant capacity from 2.5 MW up to 25 MW are permitted to be connected at 66 KV and Respondent No 3 vide its letter 05.03.2015 and 11.03.2015, shortly after issue of LOI, addressed to PSPCL sought connectivity from its projects at 66 kV to Sardulgarh 66 kv substation, and a copy of the letter was marked to PEDA, the Appellant herein. Respondent No 2, PSPCL vide its email/letter dated 16/17.03.2015 confirmed that three number 66 KV lines can be constructed at 66 kV Sardulgarh Substation for receiving entire 74 MW capacity, however there is severe right of way problem in laying the line. Respondent No 3 vide its letter dated 04.05.2015, addressed to PSPCL with a copy to PEDA, the Appellant herein, to issue grid feasibility letters for the referred projects and it was further intimated that the grid feasibility letters need to issues by PSPCL to PEDA as a compliance to RFP.

42. It was on 06.05.2015, that Respondent No 2 - PSPCL informed the Respondent No 3, that interface voltage level for any NRSE project above 20 MVA is 132 /220 kV, and accordingly asked the Respondent No 3 to indicate the location of 132/220 KV substation wherein power is to be injected. PSPCL vide its further letter dated 07.05.2015, addressed to Respondent No 3 sought submission of documents with regard to Synchronisation interconnection facilities. Respondent No 3, vide its communication dated 12.05.2015, addressed to PEDA citing earlier communication from PSPCL about confirming connection at 66 kV and RFS clauses, requested PEDA to allow them to connect their projects at 66 kV level as the land for their projects has been finalised considering connectivity at Sardulgarh substation at 66 kV. It is observed that a copy of said letter was marked to PSPCL. Soon thereafter, a joint meeting of Appellant-PEDA, Respondent No 2-PSPCL and the Respondent No 3 was held on 14.05.2015, Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 wherein it is stated that 24 MW solar projects can be connected at 66 kV. Respondent No 3 vide its letter dated 02.06.2015 addressed to PSPCL, with a copy to PEDA, referring to the discussion held on 14.05.2015 requested for grid feasibility letters/approval. Respondent No 3, vide letter dated 05.06.2015, sought help from PEDA in getting grid feasibility letter from PSPCL for 66 kV interconnection as there has been delay in getting the same from PSPCL. Subsequently, PSPCL, vide its circular dated 08.06.2015 amended its earlier circular permitting projects ranging from 2.5 MW to 25 MW to a 33/66 kV substation and vide its letter dated 17.07.2015, PSPCL granted technical feasibility clearance for 66 kV at Sardulgarh substation for Respondent No 3 projects.

43. The Respondent No 3, has sought condonation of delay of 101 days from 05.03.2015 when grid feasibility was requested till its grant by PSPCL on 17.07.2015, on account of force majeure. The Appellant herein does not dispute the above time lines, however, it has questioned the condonation of delay of 72 days as allowed by the State Commission on the non-compliance of the mandatory contractual obligations for claiming the relief on the basis of force majeure in terms of clause 10.4. It is apposite to reproduce, force majeure clause of Implementation agreement:

> "10.4 Notification obligations If a party is affected by any force Majeure event, the affected party shall give the other parties written notice describing the particulars of the Force Majeure event as soon as reasonably practicable after its occurrence but not later than five days after the date on which such party knew of the commencement of the Force Majeure event or of its effect on such party."

44. The Appellant has placed reliance on following judgements to advance the contention that Force Majeure Notice is mandatory and non-compliance is fatal:

> a) This Tribunal in its Judgement dated 22.08.2025 in Appeal No. 104 of 2019 titled as "Ms Swasti Power Engineering Ltd V PTC" has rejected the retrospective application of correspondence in to force majeure event, in which the notice dated 08.07.2009 was issued after a delay of 27 days from the commencement of force majeure event against the stipulated period of 7 days under the Agreement. In this case the force majeure event pertained to non-availability of inter-connection facility from UPCL and PTCUL, in view of order passed by the Uttrakhand Commission which prohibited the sale of electricity from the projects in Uttrakhand to any trader or distribution licensee outside the State which affected the Power Supply from Ms Swati Power under the PPA signed with PTC, to PSPCL from its project in Uttrakhand. This Tribunal held the notice issued by M/s Swati for termination of PPA with PTC failed to satisfy the mandatory requirement to invoke the force majeure, having been issued beyond the stipulated period, was not legally valid and could not be sustained.
>
> b) This Tribunal judgement dated 28.08.2024 in Appeal No 316 of 2018 in "Punjab State Power Corporation Ltd. v. Punjab State Electricity Regulatory Commission and Ors. - In this case the party has claimed force majeure events such as unrest in State, for delay in commissioning of the project. The Tribunal in this case observed that no notice has been issued for such force majeure event and in the absence of a force majeure notice no extension of commissioning period or other relief can be granted.
>
> c) The Supreme Court in "Chamundeshwari Electricity Supply Company Ltd. v. Saisudhir Energy Chitradurga Pvt. Ltd., 2025 SCC OnLine SC Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 1816", has held that the requirement of issuance of force majeure within stipulated time is not merely directory; it is a

condition precedent for invoking the clause as under proviso to Notification of Force majeure Event, it is specifically stated that "Provided that such notice shall be a precondition to the affected party's entitlement to claim relief under this Agreement". In this case no force majeure notice was ever issued. It is held that the jurisdiction of the regulatory bodies is to ensure compliance with law and to adjudicate disputes within the four corners of the contract. It does not extend to recasting the contractual framework by directing restitution of amount lawfully realised under the PPA, or by mandating alterations to tariff and timelines in a manner inconsistent with terms of the agreement.

45.

d) This Tribunal Judgements in "Omega Infraengineers Pvt. Ltd. v. Punjab State Electricity Regulatory Commission & Ors." 2019 SCC OnLine APTEL 8; held that in the absence of Force Majeure notice in compliance of the Implementation Agreement, the plea of Force Majeure is not sustainable in the eyes of law. In the other case, "Earth Solar Pvt. Ltd. v. Punjab State Electricity Regulatory Commission & Ors." 2019 SCC OnLine APTEL 41, the Tribunal observed that contractual provision with regard to the rendering of Force Majeure Notice was within 5 days of Force Majeure Event, however, in the present case the FM notice was served after the delay of 150 days as contrary to the Implementation Agreement read with PPA and hence, disqualified to avail the benefits on the ground of Force Majeure. The judgments relied by the Appellant deals with the issuance of a Force Majeure notice in accordance with the contractual stipulation is mandatory and that, in the absence thereof, the party claiming Force Majeure relief would not ordinarily be entitled to the benefit of such claim.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017

45. We may note here that the main purpose for requirement to issue notice regarding force majeure events by the affected party to the counterparty is to apprise the counterparty of such events which are preventing the affected party from fulfilling its obligations under the contract so that no surprise is sprung upon the counterparty later on when the affected party seeks mitigation of losses on account of those force majeure events. Generally, the force majeure clauses in the contracts explicitly state that notice must be given within the stipulated timeframe and in a specific manner. Failure to meet those conditions disentitle affected party from claiming benefit under the force majeure clause. A timely force majeure notice creates a contemporaneous record that the disruption was due to a force majeure event and not due to any default on the part of the affected party. A late or a vague notice weakens the credibility of the contentions of the affected party in this regard and provides the counterparty ground to reject the claim on the basis of force majeure events. A proactive notice indicates that the affected party is acting in good faith and is being transparent in the contractual relations with the other party.

46. In the above noted judgments of this Tribunal relied upon by the learned counsel for the appellant, it is found that claim of the affected party was with regards to the force majeure events which were totally external events entirely unconnected with the counterparty and in no manner

related to any act, omission or representation of the affected party. In these circumstances, since the counterparty would not have been aware of the occurrence of the force majeure events for which the affected party was claiming relief and consequently not in a position to take any mitigating steps, this Tribunal denied any relief to the affected party on the ground that no force majeure notice, as stipulated in the contract, had been issued by it. However, in the instant case, we have already noted hereinabove that in terms of the provisions of RFP, the power plants above Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 2.5MW of capacity and up to 25MW capacity were to be connected at 66kV substation and accordingly Respondent No.3 had taken up the matter with Respondent No.2 PSPCL since 05.03.2015 requesting evacuation at 66kV Sardulgarh substation. At every stage the appellant PEDA was made aware about the status of the connectivity. Vide letter dated 16.03.2015, PSPCL had in effect affirmed that three 66kV lines can be constructed to Sardulgarh but there was a serious right of way problem which was to be managed by the developer. It is only on 06.05.2015/07.05.2015 that PSPCL informed Respondent No.3 that interface voltage level for project above 25MW is 133/220kV and directed Respondent No.3 to submit the details accordingly, which was also brought to the notice of the appellant vide letter dated 12.05.2015 by the Respondent No.3. Accordingly, Respondent No.3, on the basis of clause 3.6(D) of RFP requested for connection of its power projects at 66kV substation. It is evident that after several rounds of discussion and modification of the commercial circular of PSPCL allowing interconnection of projects upto 25MW at 33/66kV, the Respondent No.2 PSPCL granted technical feasibility clearance for the project of Respondent No.3 at 66kV at Sardulgarh substation vide letter dated 17.07.2015.

47. It is a settled legal principle that an agency inviting tenders is bound by the assurances and representations set out in the bid documents. It is under an obligation to exercise due diligence while framing the bid specifications. In the present case, appellant PEDA had invited the bids and as per clause 3.6(D) of the bid document, the connectivity at 66kV level was applicable for projects above 2.5MW and up to 25MW. Accordingly, the bidder i.e. the Respondent No.3 proceeded with this assumption and submitted its bid for the project and was selected for the project site. Therefore, the delay in grant of connectivity on account of insistence of PSPCL to opt for 220kV instead of 66kV, which was in contravention of RFP document, cannot be attributed to the Respondent No.3.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 Therefore, the force majeure event put forth by the Respondent No.3 was clearly well within the knowledge of the appellant PEDA. It was not an external event of which the appellant PEDA can claim ignorance or had occasioned on account of any omission or misrepresentation of Respondent No.3. In such a case, the force majeure notice was only a formality and non-issuance of such notice within the stipulated time cannot be held against the affected party i.e. Respondent No.3 herein in order to disentitle them from claiming benefit out of the force majeure event. It was incumbent upon the appellant to ensure availability of connectivity to the power project of Respondent No.3 in accordance with the assurances held out in the bid documents and since it was completely aware about the reasons for delay in connectivity to the power projects of Respondent No.3, it cannot be now permitted to raise a technical issue of non-service of force majeure notice to deny relief to the Respondent No.3. The submission on behalf of the Appellant PEDA that force majeure notice was required by it to verify the factual position and assess the validity of the claim, is without any force for the reason that undeniably, PEDA was being made aware about the status of grid connectivity and impediments

faced by Respondent No.3 in getting the requisite connectivity at 66kV level in terms of the RFP document all along by way of various communications starting from 13.03.2015 to 12.05.2015, and in fact, PEDA had actively intervened in the matter to facilitate a resolution of the issue.

48. The chronology of events from the record conclusively establishes PEDA's continuous and contemporaneous awareness of the connectivity dispute. In these circumstances, the whole purpose underlying the Article 10.4 notice requirement enabling the counterparty to verify the event and take mitigation steps was entirely fulfilled through the series of communications and the meeting. PEDA was not merely aware; it was actively engaged in resolving the very dispute that constitutes the force majeure event. To permit PEDA to now rely upon the Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 absence of a formal notice styled as a "force majeure notice" under Article 10.4 when PEDA actively participated in addressing the connectivity issue, and when the connectivity dispute arose from PEDA's own RFP representation - would be to allow PEDA to take advantage of its own wrong. For these reasons, the ratio of the decisions of this Tribunal, as noted hereinabove, relied upon by the appellant's counsel cannot be made applicable to the instant case. In so far as the judgment of Hon'ble Supreme Court in Chamundeshwari Electricity Supply Company case (supra) is concerned, no force majeure notice had ever been issued by the affected party and accordingly, it was held by the Apex Court that requirement of issuance of force majeure notice within the stipulated time is not merely directory but is a condition precedent for invoking the force majeure clause. However, in that case also the force majeure events upon which the affected party had based its claims, were not of such nature about which the counter party could be attributed knowledge and awareness in spite of non- service of the force majeure notice.

49. In view of above deliberations, we hold this issue against the Appellant. Respondent No 3 had claimed a delay of 134 days in grant of connectivity under force majeure (from 05.03.2015 to 17.07.2015) in its petition before State Commission. The State Commission, in the Impugned Order has condoned the delay of only 72 days on this account (from 06.05.2015 to 17.07.2015). We find no error of law or fact apparent in the Impugned Order in this regard, for such condonation of delay on account of grid connectivity, and the same is hereby upheld.

JAT AGITATION; DELAY CONDONED 7 DAYS;

50. It has been contended on behalf of the Appellant that letter notifying the Appellant of the alleged Jat Agitation is dated 22.02.2016, which is admittedly Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 subsequent to the SCOD of 30.01.2016, and accordingly it cannot form the basis for invocation of Force Majeure or for grant of extension. We have already upheld above the condonation of delay of 72 days on account of delay in grant of connectivity and accordingly the SCOD of the project gets extended beyond 30.01.2016 by equivalent days and another force majeure on account of Jat agitation, which is stated to occur from 20.02.2016 and most part of the state put under curfew, would fall within this extended COD period.

51. We accordingly uphold the Impugned Order insofar as it grants condonation of 7 days on account of Jat agitation.

STAY ORDER BY ADDITIONAL CIVIL JUDGE SARDULGARH; DELAY CONDONED 11 DAYS;

It has been contended on behalf of the Appellant that the State Commission has erroneously granted the benefit of 11 days despite the fact that no notice was issued by Respondent No. 3 in terms of Article 10.4 of the IA seeking invocation of Force Majeure on this ground. It is noted from the Impugned Order that order for stay was granted by Additional Session Judge dated 20.11.2015, restraining the Respondent No. 3 to undertake tower erection work and such stay order was vacated on 01.12.2015. We find force in the submissions advanced on behalf of the Appellant, as admittedly no force majeure notice has been given by Respondent No 3, on occurrence of such Non-Political force majeure event and accordingly, Respondent No 3 is not entitled to relief on this account. Condonation of delay of 11 days on this account in Impugned Order is set aside.

Judgement in Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017 CONCLUSION In view of forgoing deliberations, the Impugned Orders dated 18.08.2016 in captioned appeals are modified to the limited extent that the condonation of delay of 11 days on account of stay order by Additional Civil Judge, Sardulgarh is disallowed and accordingly extension of SCOD is allowed for 79 days i.e. up to 19.04.2016. Since the projects under considerations have been commissioned before 19.04.2016, the remaining directions contained in the Impugned Orders are upheld.

The Captioned Appeals and pending IAs, if any, are disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 18th DAY OF MAY, 2026.

(Virender Bhat)	(Seema Gupta)
Judicial Member	Officiating Chairperson

REPORTABLE / NON-REPORTABLE

Pr/dk/ak