

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT  
PANCHKULA**

**HERC/Petition No. 14 of 2025**

**AND**

**IA No. 3 of 2025**

<b>Date of Hearing</b>	<b>:</b>	<b>22.04.2025</b>
<b>Date of Order</b>	<b>:</b>	<b>22.04.2025</b>

**In the Matter of**

Petitioner under Section 86(b) and Section 94 of the Electricity Act, 2003, read with Regulations 58, 65 to 67, and 69 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 and all powers enabling the Hon'ble Commission in this behalf, seeking clarification/interpretation of the order dated 04.05.2022 in RA No. 04 of 2022, as regards validity of Agreement for procurement of power from M/s MB Power (Madhya Pradesh) Ltd. ("the Generator") so as to enable the Generator to continue to receive coal from Coal India Limited and its subsidiaries for supply of power to the State of Haryana until the stated date.

**Petitioner**

Haryana Power Purchase Centre, Panchkula (HPPC)

**Respondent**

M/s MB Power (Madhya Pradesh) Ltd

**Present on behalf of the Petitioner**

1. Ms. Sonia Madan, Advocate
2. Shri Ajay Kumar Bansal, Xen, HPPC

**Present on behalf of the Respondent**

1. Shri Dinesh Batra, Head – Commercial, M/s. MB Power Madhya Pradesh Ltd

**Quorum**

**Shri Nand Lal Sharma**  
**Shri Mukesh Garg**

**Chairman**  
**Member**

**ORDER**

**Brief Background of the case**

1. The present petition has been filed by HPPC, a joint forum of Haryana Distribution licensees for power purchase/trading, seeking clarification and/ or removal of difficulty which has arisen in giving effect to the order dated 04.05.2022 passed by the Hon'ble Commission in the Review Petition bearing RA No. 04 of 2022 whereby the procurement of power from one M/s MB Power (Madhya Pradesh) Limited stands approved for a period of three years.
2. **HPPC's submissions: -**
  - 2.1 That a tender bearing no. 96/HPPC/MTPP/2022 for Round-the-Clock ("RTC") medium-term procurement of power for a period of three years commencing from 15.04.2022

to 14.04.2025, was issued. As per the Bidding Documents the LoA would be issued to the successful bidder once the approval is granted by the Hon'ble Commission. The brief particulars of the project as mentioned in the Bidding Document were as under:

Sr. No.	Requisition	Capacity Required (in MW)	Supply Period	Delivery Point
1.	RTC (Round the clock)	1000 MW	15 APRIL, 2022 to 14 APRIL 2025	Delivery Point shall be Interconnection Point of Central Transmission Utility (CTU) with Haryana STU network.

As such the "Supply Period" as mentioned in the bidding document commenced from 15.04.2022 up till 14.04.2025. Further, the relevant clauses of the draft APP appended with the Bidding Document are also reproduced below for ready reference of the Hon'ble Commission:

### **"3.1 The Procurement Contract"**

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein for supply thereof to the Utility (the "Procurement Contract") for a period of 3 (three) years commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

... ..

### **26.1 Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

... ..

"Appointed Date" means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

... ..

"Contract Period" means the period starting on and from the Appointed Date and ending on the earlier of the [3rd (third)] anniversary of the Appointed Date and the date of termination of the Agreement;" **[Emphasis Supplied]**

2.2 That Article 2 of the PPA defines the 'Scope of Project' as under:-

#### **"2.1 Scope of the Project"**

The scope of the Agreement (the "Scope of the Agreement") shall mean and include, during the Contract Period:

(a) ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement

(b) **supply of electricity to the Utility in accordance with the provisions of this Agreement; and**

(c) performance and fulfilment of all other obligations of the Supplier and the Utility, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.”

*[Emphasis Supplied]*

A perusal of the foregoing reveal that as per the terms of the Agreement between the parties, the supply of electricity had to be made for a complete period of 3 years.

2.3 That, following the bidding process, two bidders namely M/s MB Power (Madhya Pradesh) Ltd. (“the Generator”) (150MW) and M/s RKM Powergen Pvt. Ltd. were found eligible for procurement of 150 MW and 350 MW of power respectively i.e. a total of 500MW. As such, a Petition bearing No. HERC/PRO-17 of 2022 was filed by the Petitioner before the Hon’ble Commission seeking approval of source for procurement of 500 MW power on medium-term basis for three years, at the discovered tariff of Rs.5.7/kWh in terms of the Bid dated 21.03.2022. It is pertinent to mention here that since the approval was being sought in terms of the Bidding Document as such it had been specifically mentioned in the prayer clause of the said petition to – “Allow HPPC to issue LoA for purchase of 500MW RTC power from 15.04.2022 to 14.04.2025 to MB Power & RKM Powergen Ltd.”

2.4 That the said Petition bearing No. HERC/PRO-17 of 2022 was decided by Hon’ble Commission vide final order dated 27.04.2022. Vide the said order, though the Hon’ble Commission allowed the procurement of power from successful bidders including the Generator, however, the same was allowed only for a period from April to October each year, instead of continuous period of three years, in the following terms:

“Considering the above, as a special case in public interest, the Commission hereby accords its approval for procurement of power on an urgent basis from MB power at the tariff discovered. .... **The above approvals for procurement of power from MP Power and RKM is given for three years period starting from April to October, each year. It is between April to October each year, that demand for power in the State is at the highest.** For the balance of the year, i.e. November to March, there is surplus power and even the generators with low variable costs are backed down.”

*[Emphasis Supplied]*

- 2.5 That pursuant to the order dated 27.04.2022 passed by the Hon'ble Commission, the Petitioner approached the Generator for supply of power on the terms and conditions as directed by the Hon'ble Commission i.e. only for the months of April to October, each year. However, the Generator refused to supply power on the modified term, as such, left with no other option, the Petitioner had preferred a Review Petition bearing RA No.4 of 2022 against the order dated 27.04.2022 passed by the Hon'ble Commission in PRO-17 of 2022.
- 2.6 That the said Review Petition came up for hearing before the Hon'ble Commission on 04.05.2022, when the Hon'ble Commission was pleased to grant approval of source of procurement of power at the tariff discovered by way of bidding. The concluding para of the order dated 04.05.2022 is reproduced below:
- "Approval of source for procurement of power from M/s RKM Powergen Pvt. Ltd. (350 MW) and M/s MB Power Madhya Pradesh Ltd. (150MW) is granted under Section 86(1)(b) of the Electricity Act, 2003 in accordance with the terms of the tender documents (NIT-96/HPPC dated 21.03.2022 and the tariff so discovered is adopted u/s 63 of the Electricity Act, 2003."**
- [Emphasis Supplied]**
- The aforesaid order was also confirmed by the Hon'ble Commission by way of passing a detailed order dated 29.09.2022. Thus, vide order dated 04.05.2022 read with order dated 29.09.2022 the procurement of power from the Generator was duly approved by the Hon'ble Commission *"in accordance with the terms of the tender documents."* It may also be noted that the said approval was granted on 04.05.2022 i.e. after the date of commencement of "Supply Period" as mentioned in the Bidding Document being 15.04.2022 had already lapsed.
- 2.7 That subsequent to the approval granted by the Hon'ble Commission, the Petitioner executed the APP dated 18.05.2022 with the Generator for supply of 150MW of power for a period of three years @ tariff of Rs.5.70/kWh. Further, the Generator commenced the supply of power under the APP on 19.07.2022. As such, the "Appointed date" in terms of the APP was 19.07.2022. Accordingly, the "Contract Period" had to commence on 19.07.2022 and end on 18.07.2025.
- 2.8 That in view of the obligation of the Generator to continue to supply power under the APP, the Generator secured coal allocation under SHAKTI B (iii) Round-4 and executed Fuel Supply Agreement(s) ("FSA") with subsidiaries of Coal India Limited ("CIL") for the purposes of ensuring availability of linkage coal.
- 2.9 That as the "Supply Period" as specified in the Bidding Document being 15.04.2022 to 14.04.2025 was approaching, a letter bearing No. MBPMPL/ANP-I/COMML/24-25/HPPC/20082024 dated 20.08.2024 was addressed by the Generator to the

- Petitioner requesting issuance of suitable clarification confirming the validity of APP to be till 18.07.2025 as the supply of power commenced from 19.07.2022 in place of 15.04.2022, so that the Generator becomes eligible to receive coal under its FSA.
- 2.10 That in reply to the aforesaid letter dated 20.08.2024, a Memo No. 115/CE/HPPC/LTP-I/NIT96/MBPower dated 29.08.2024 was addressed by the Petitioner to the Generator duly informing that the –
- “... power supply by MB Power under the said APP dated 18.05.2022 commenced from 19.07.2022 (i.e. Appointed Date) and MB Power is obligated to supply power for a period of 3 years commencing from the Appointed Date i.e. till 18.07.2025.”*
- 2.11 That the cause of action for filing of the present petition arose when despite the issuance of letter dated 29.08.2024 by the Petitioner, clarifying the aspect with respect to the period of supply of power, a letter dated 04.01.2025 was addressed by one Mahanadi Coalfields Limited (“MCL”), being one of the subsidiaries of CIL, to the Generator stating that since the tender was floated for the “Supply Period” commencing from 15.04.2022 to 14.04.2025, the said period has been mentioned in the FSA as well. In view of which, MCL sought clarification regarding the validity of APP along with requisite documentary evidence. Similarly, South Eastern Coalfields Limited (“SECL”), being another wholly owned subsidy of CIL also addressed a letter bearing No. SECL/BSP/M&S/FSA/H-897 dated 23.01.2025, to the Generator while stating that the validity of the APP is being considered till 14.04.2025 and sought relevant approval from the Hon’ble Commission for extension of the validity of the APP under FSA.
- 2.12 That letters bearing ref. No. MBPMPL/ANP-I/COMML/24-25/HPPC/10012025 dated 10.01.2025 and MBPMPL/ANP-I/COMML/24-25/HPPC/06022025 dated 06.02.2025 was addressed by the Generator to the Petitioner, seeking that the clarification regarding the validity of the period of supply of power to the Petitioner be sought from the Hon’ble Commission. It has been informed vide the said letter that MCL and SECL are seeking approval from the Hon’ble Commission as valid evidence so as to continue the supply of fuel.
- 2.13 That in short, though as per the Bidding Document, HPPC had invited the bids for procurement of 1000 MW RTC power for a three-year term commencing from 15.04.2022 up till 14.04.2025, however, the APP dated 18.05.2024 was executed with the Generator only after the passing of the order dated 04.05.2022 by the Hon’ble Commission. The APP mandated the supply of power for a period of three years and the Generator commenced the supply of power w.e.f. 19.07.2022.
- 2.14 That in view of the discrepancy of the period of supply of power as mentioned in the Bidding Document vis-à-vis the actual supply period, it becomes necessary that

requisite clarificatory order confirming that the APP subsisting between the Petitioner and the Generator is valid up till 18.07.2025, may kindly be passed by the Hon'ble Commission, especially when the "Supply Period" as originally mentioned in the Bidding Documents is coming to an end. The requisite clarification is essential so as to enable the Generator to continue to receive coal from Coal India Limited and its subsidiaries for supply of power to the State of Haryana until the stated date.

- 2.15 That a memo bearing No. Ch-127/CE/HPPC/LTP-I/NIT96/MBPower dated 07.02.2025 was also addressed by the Petitioner to the Ld. Director Tariff, Hon'ble Haryana Electricity Regulatory Commission, whereby the Ld. Director (Tariff) was apprised about the need of clarification for continuity of supply of power.
- 2.16 That Hon'ble Commission has ample power to grant the relief sought i.e. pass a clarificatory order so as to ensure the continuity of supply of power to the State of Haryana. The relevant provisions conferring such enabling powers on the Hon'ble Commission are reproduced below:

*The Electricity Act, 2003*

**"Section 86. (Functions of State Commission):** --- (1) *The State Commission shall discharge the following functions, namely:*

... ..

*(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

...

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;*

...

*(k) discharge such other functions as may be assigned to it under this Act.*

... ..

**Section 94. (Powers of Appropriate Commission):** --- (1) *The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) discovery and production of any document or other material object producible as evidence;*

*(c) receiving evidence on affidavits;*

- (d) requisitioning of any public record;
  - (e) issuing commission for the examination of witnesses;
  - (f) reviewing its decisions, directions and orders;
  - (g) any other matter which may be prescribed.
- (2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.
- ... ..”

Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019:

**“Saving of inherent power of the Commission**

65 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

...

**General power to amend**

68 The Commission may, at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any Proceedings before it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the Proceedings.

...

**Power to remove difficulties**

69 If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, do anything not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty.”

Further, similar provisions relating to the power to amend/ remove difficulties etc. have been consciously added by the Hon'ble Commission in the various Regulations notified by it with the intention that, in case of difficulty, smooth functioning is ensured. In the present case, requisite clarifications are essential to ensure continuity of supply of power from the Generator. Even otherwise, this Hon'ble Commission has been conferred with inherent power to pass necessary orders as may be necessary for ends of justice, which may kindly be invoked in the present case.

- 2.17 That the Petitioner as well as the consumers of the State of Haryana may suffer irreparable financial loss and substantial injury, which cannot be compensated in any manner, in case the present application is not allowed.

2.18 That the following prayers have been made:-

- i. The present petition may be allowed.
- ii. The Hon'ble Commission may kindly be pleased to issue appropriate orders/directions removing the difficulty and clarifying that the period of supply duly approved by the Hon'ble Commission vide order dated 04.05.2022 commences from 19.07.2022 i.e. the date of actual supply of power to the Petitioner as well as the "Appointed Date" under the terms of the APP subsisting between the parties and continues for a period of three years up till 18.07.2025.  
AND/OR
- iii. The Hon'ble Commission may kindly pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case may kindly be passed, in the interest of justice.

3. The respondent i.e. M/s. MB Power (Madhya Pradesh) Limited, has filed its reply dated 14.04.2025, submitting as under:-

3.1 That the respondent is not contesting the clarification being sought by the Petitioner. The clarification being sought by the Petitioner is required by the CIL subsidiaries viz. MCL and SECL. Other than the above, the Respondent does not admit any of the assertions, including any assertion by the Petitioner whether implied or explicit, that the Respondent agrees with the averments and/ or interpretation put forth by the Petitioner.

3.2 That the respondent had on several occasions requested the petitioner to take appropriate steps with CIL Subsidiaries. On 20.08.2024 the respondent reiterated in writing to the Petitioner, thereby, requesting the petitioner to take appropriate steps with CIL Subsidiaries. However, despite lapse of approximately six months and with the letter of CIL Subsidiaries seeking the clarification in January 2025, the petitioner chose to file the Petition only on 12.03.2025, despite having knowledge of the fact that the coal supply under the FSA was only available till 14.04.2025.

3.3 That the FSA executed between the Respondent and the CIL subsidiaries is based on the support/inputs from the DISCOM. The delay so occasioned on the part of the Petitioner in filing the present Petition is despite the fact that the Respondent, as well as CIL subsidiaries well ahead in time reminded the petitioner to take appropriate action. Therefore, at present the respondent cannot at all be held liable for the delay and laches on the part of the petitioner in filing the present Petition.

3.4 That the respondent ensures to take diligent steps towards timely execution of the addendum to the FSA or any supplementary agreement, however, the execution of the



said addendum or agreement completely depends upon the time taken by the CIL subsidiaries in executing the same. Therefore, this Hon'ble Commission may appreciate that arranging coal at the Project site may take anywhere between 8-10 weeks.

- 3.5 That the respondent prays to issue appropriate directions/order, thereby either permitting the respondent to recover incremental cost of market coal being utilised by the Respondent for supply of power to the Petitioner under the APP or permit the Respondent to suspend the operation of the APP till the time the addendum to the FSAs are executed and the coal is made available at the Project site.
- 3.6 That the present Affidavit being filed by the Respondent is only stating the position of the Respondent and the said Respondent reserves the right to file more detailed response/ affidavit to the present petition, if required.

4. The petitioner (HPPC), has filed its rejoinder dated 18.04.2025 to the respondent's reply dated 14.04.2025. HPPC has submitted as under:-

- 4.1 That there was no dispute between the parties as regards the interpretation of the period of supply under APP, which shall be read as 3 years commencing from the Appointed Date i.e. 19.07.2022 in view of the Order of the HERC dated 04.05.2022 and the APP executed between the parties pursuant thereto. This understanding of the Respondent is further explicitly spelled out in their letter dated 10.01.2025, which reads as under –

*"4. It is apparent that MCL is solely relying on the Hon'ble HERC's orders dated 27.04.2022 and 29.09.2022, wherein the procurement of power was approved from MB Power in accordance with the terms of the Tender documents which provided the power/coal supply period as 15.04.2022 to 14.04.2025. However, **as per Article 3.1.1 read with Article 1.4.1 of the APP, MCL ought to have considered the supply period from the Appointed dated i.e., 19.07.2022 up to three years i.e., 18.07.2025.***

*5. It is noteworthy that **Article 1.4.1 of the APP itself provides that the APP shall prevail over any other documents (including the bid/ tender documents) in case there is any conflict between them.** Furthermore, it is well settled position of law that the terms of the agreement were to prevail in the event of any conflict with any other document which formed a part of the bidding process." (Emphasis supplied)*

- 4.2 That the interpretation of the supply period under the PPA cannot be disputed by the Respondent. The contention of the Respondent that the concurrence on the interpretation is irrelevant for consideration of the relief sought under the present petition also signifies that the said interpretation is not a subject matter of dispute

between the parties so as to adversely affect the issuance of appropriate order rendering such clarification, as is sought in the instant petition.

- 4.3 That the respondent is the signatory to the FSA and is fully responsible under the APP to ensure effective liasoning with the coal companies to ensure supply of coal throughout the power supply period. The APP was executed between the parties on 18.05.2022. It was incumbent upon the respondent to have clarified the supply period under the FSA in line with the APP at the time of execution of said FSA. If at all, there was any ulterior condition considered by the coal companies in the FSA, the same ought to have been notified by the Respondent at the same time. However, it was only on 20.08.2024 that the Respondent, for the very first time, notified the divergence in consideration of supply period under FSA and APP. The Respondent, through letter dated 20.08.2024, only requested the Petitioner to issue a suitable clarification to the coal companies. There was no reference as regards necessity of seeking any clarification from this Hon'ble Commission for continuation of coal supply under the FSA.
- 4.4 That in response to the letter of the Respondent dated 20.08.2024, the Petitioner, vide the letter dated 29.08.2024, duly clarified that the power supply under the APP has to continue for a period of three years commencing from the appointed date i.e. 19.07.2022 till 18.07.2025. There was no reference pursuant to letter of the Petitioner dated 29.08.2024 that there is any necessity of obtaining any clarification from the Hon'ble Commission. Needless to state, it was the responsibility of the Respondent to effectively liaison with the coal companies in this regard and communicate their stand earnestly.
- 4.5 That on 10.01.2025, the Petitioner forwarded the letters of Mahanadi Coalfields Limited and Southeastern Coalfields Limited and requested for approaching this Hon'ble Commission to settle the issue to the satisfaction of MCL. The categoric stand of the Respondent in the said letter has been referred hereinabove. Pursuant thereto, the Petitioner wrote a letter dated 07.02.2025 to the Hon'ble Commission seeking appropriate clarification, as was desired by the Respondent. However, Hon'ble Commission, vide letter dated 19.02.2025, intimated in response to the letter of the Petitioner that the Petitioner may file a petition under the provisions of the relevant Regulations. Pursuant thereto, earnest steps were taken to file the present petition which was filed in a reasonable time.
- 4.6 That it is wholly incorrect on the part of the Respondent to state that the Petitioner is responsible for the delay that may lead to interruption in the supply period. The facts, as projected by the Respondent, are not correct and aims to camouflage their own default and ineffective liasoning with the coal companies.

- 4.7 That the present petition has been filed only for the purpose of issuing clarification limited to the interpretation of the power supply period under the APP. The Respondent cannot be permitted to raise alternate prayers, which are not in line with the terms of APP in the instant petition. It is however, relevant to mention here that in a similar case of procurement of power by HPPC from Jindal India Thermal Power Limited through Tata Power Trading Company Limited, for the period the formal approval to PPA was not received, an undertaking was sought by the Coal Companies and on the basis of the same, the coal supply was commenced subject to approval of PPA. Such like arrangements for ensuring continued coal supply are feasible and can be done with effective liasoning. The Respondent ought to have made timely and diligent efforts to ensure continuation of coal supply throughout the supply period under the PPA. In view of the same, the contention of the Respondent as regards the necessity of execution of and addendum to FSA or a supplementary agreement for continuation of coal supply cannot be appreciated.
- 4.8 That the Petitioner prays to clarify that the period of supply duly approved by the Hon'ble Commission vide order dated 04.05.2022 commences from 19.07.2022 i.e. the date of actual supply of power to the Petitioner as well as the "Appointed Date" under the terms of the APP subsisting between the parties and continues for a period of three years up till 18.07.2025.

#### **Proceedings in the Case**

5. The case was heard on 09.04.2025 and on 22.04.2025, in the court room of the Commission, wherein the parties mainly reiterated the contents of their petition/submissions, which for the sake of brevity are not being reproduced here.

#### **Commission's Analysis and Order**

6. The Commission heard the arguments of the petitioner at length as well as perused the written submissions placed on record by the petitioner.
7. Succinctly, the facts leading to the filing of present petition are that although the petitioner (HPPC) had invited the bids and sought approval for procurement of 1000 MW RTC power for a three-year term commencing from 15.04.2022 up till 14.04.2025 (Petition No. 17 of 2022), but, the Agreement for Procurement of Power (APP) was executed on 18.05.2022 which mandated the supply of power for a period of three years commencing from the 'Appointed Date' and the Generator commenced the supply of power w.e.f. 19.07.2022. Accordingly, the petitioner has sought an order clarifying that the period of supply approved vide order dated 04.05.2022 commences from 19.07.2022 i.e. the date of actual supply of power to the Petitioner and continues for a

period of three years up till 18.07.2025. The respondent is not allowed to raise alternative prayer for recovery of incremental cost of market coal being utilised by the Respondent for supply of power to the Petitioner under the APP beyond 14.04.2025, which is not in line with the terms of APP.

8. The Commission has examined the bidding documents as well as the Agreement for Procurement of Power (APP) executed between the parties. The bidding document provides as under: -

<b>Sr. No.</b>	<b>Requisition</b>	<b>Capacity Required (in MW)</b>	<b>Supply Period</b>	<b>Delivery Point</b>
1.	RTC (Round the clock)	1000 MW	15 APRIL, 2022 to 14 APRIL 2025	Delivery Point shall be Interconnection Point of Central Transmission Utility (CTU) with Haryana STU network.

Thus, the "Supply Period" as mentioned in the bidding document commenced from 15.04.2022 up till 14.04.2025.

However, the "Supply Period" mentioned in clause 3.1 of the APP executed between the parties on 18.05.2022, is for a period of 3 years commencing from appointed date. The relevant clause is reproduced hereunder:-

**"3.1 The Procurement Contract**

**3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein for supply thereof to the Utility (the "Procurement Contract") for a period of 3 (three) years commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein."**

**(Emphasis supplied)**

Whereas, appointed date has been defined in clause 26.1 of ibid APP. The relevant clause is reproduced hereunder:-

**"26.1 Definitions**

*In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:*

... ..

**"Appointed Date" means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;**

... ..

**"Contract Period" means the period starting on and from the Appointed Date and ending on the earlier of the [3rd (third)] anniversary of the Appointed Date and the date of termination of the Agreement;"**

**(Emphasis supplied)**

Further, clause 4.1.3 of ibid APP, provides the conditions precedent; the date of fulfillment of which shall be the 'Appointed Date'. The relevant clause is reproduced hereunder:-

*"4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of 90 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:*

- a) provided Performance Security to the Utility;*
- b) delivered to the Utility a legal opinion from the legal counsel of the Supplier with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;*
- c) deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1;*
- d) submitted the Capacity Certificate and evidence of the capacity of the Power Station;*
- e) procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point.*

*Provided that upon request in writing by the Supplier, the Utility may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 or grant extension of time, not exceeding 90 (ninety) days, for fulfillment thereof, as the case may be. For the avoidance of doubt, the Utility may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit."*

In this regard, the Commission has also perused the letter addressed by M/s. MB Power (Madhya Pradesh) Ltd. to HPPC, dated 21.07.2022, reproduced hereunder:-

***"Sub: APP dated 18.05.2022: Regarding Satisfaction of Conditions Precedents.***

*Dear Sir,*

*This is with reference to the Agreement for Procurement of Power (APP) signed between MB Power & HPPC regarding supply of 150 MW. In terms of the clause no. 4.1.3 of the APP regarding satisfaction of Conditions Precedent to HPPC by MB Power, please find below the current status of fulfillment of the Conditions Precedent by MB Power.*

S.N	Condition Precedent	Status	Remarks
a	Provided Performance Security to the Utility;	Completed	Already submitted to your office vide letter dated 9 <sup>th</sup> June 2022

b	delivered to the Utility a legal opinion from the legal counsel of the Supplier....	Completed	Already submitted to your office vide letter dated 9 <sup>th</sup> June 2022
c	deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof....;	Completed	Acknowledgement received from WRLDC enclosed as Annexure-I
d	submitted the Capacity Certificate and evidence of the capacity....	Completed	Already submitted to your office vide letter dated 9 <sup>th</sup> June 2022
e	procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point....	Supply commenced	The Format LTA-3 is already submitted to you for your consent. In the meanwhile, we have started supply of power to I-PPC under STOA w.e.f. 19.07.2022.

Hence, we have successfully completed all the Conditions Precedent laid down in the Clause 4.1.3 of the PPA. However, consent on the LTA Application is pending at your end. We request you to please provide your consent at the earliest.”

9. In view of the above, the combined reading of clause 3.1.1, clause 4.1.3 and clause 26.1 of the APP dated 18.05.2022 duly executed between the parties read with the letter of M/s. MB Power (Madhya Pradesh) Ltd. dated 21.07.2022, intimating the satisfaction of the conditions precedent for commencement of the contract period, makes it amply clear that contract period commences from the ‘Appointed Date’ which in the present case is 19.07.2022 i.e. the date of commencement of supply of power or date of intimation of satisfaction of conditions precedent, whichever is earlier. Therefore, it is clarified that the APP forming part of the approval granted by the Commission vide its order dated 04.05.2022, shall be valid for the period of three years i.e. from 19.07.2022 to 18.07.2025.
10. The present petition brought before this Commission is disposed of in terms of the above order.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 22.04.2025.

Date: 22.04.2025  
Place: Panchkula

(Mukesh Garg)  
Member

(Nand Lal Sharma)  
Chairman