

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 79 of 2025

Date of Hearing : 07.04.2026

Date of Order : 22.04.2026

In the Matter of

Petition under Section 63, 86(1)(b), (e) & (k) of the Electricity Act, 2003 read with Regulation 65 to 67 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking approval of the Power Purchase Agreement (PPA) between the Petitioners and the Respondent-HPPC, in terms of the judgment dated 03.09.2024 passed by the Hon'ble APTEL in APL No. 208 of 2017 titled "Virender Rawal & Ors. Vs. Haryana Electricity Regulatory Commission and Anr.", read with the final order dated 13.05.2025 passed by the Hon'ble Commission in HERC/Petition No. 68 of 2024 titled "Haryana Power Purchase Centre Vs. Virender Rawal & Ors".

Petitioner (s)

1. Shri Narender Singh
2. Shri Yogender Chauhan

Respondent

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner (s)

1. Mr. Irshaan Singh Kakar, Advocate

Present on behalf of the Respondent

1. Mr. Lovepreet Singh, Advocate
2. Ms. Priya Ahluwalia, Advocate

Quorum

**Shri Nand Lal Sharma
Shri Mukesh Garg
Shri Shiv Kumar**

**Chairman
Member
Member**

ORDER

Brief Background of the case

1. The present petition has been jointly filed by Sh. Narender Singh & Shri Yogender Chauhan, with HPPC as the respondent seeking approval of the Power Purchase Agreement (PPA) in terms of the judgment dated 03.09.2024 passed by the Hon'ble APTEL in APL No. 208 of 2017 titled "Virender Rawal & Ors. Vs. Haryana Electricity Regulatory Commission and Anr.", read with the final order dated 13.05.2025 passed by the Hon'ble Commission in HERC/Petition No. 68 of 2024 titled "Haryana Power Purchase Centre Vs. Virender Rawal & Ors".
2. The petitioner has submitted as under:-
 - 2.1 That the Petitioner (s) are the Solar Power Developers (hereinafter "SPD") who had been issued a Letter of Intent for the supply of solar power of 5 MW each and the Respondent- Haryana Power Purchase Centre (hereinafter "Respondent" or "HPPC") is the procurement agency established for the purposes of procuring electricity from

- various sources for onward supply to the Distribution Licences/ Consumer of the State of Haryana. The LOI in the favour of Petitioners had been issued by HPPC.
- 2.2 That on 26.05.2016, HPPC had issued a Notice Inviting Tender (hereinafter "NIT") No. 54/CE/HPPC for procurement of 150 MW of Solar Power on Long Term Basis through a tariff based competitive bidding process, with a ceiling tariff of Rs.6.44/kwh, being the lowest discovered tariff in the last bidding process initiated by HPPC in the year 2014.
 - 2.3 That the Petitioners, alongwith with other SPDs, individually participated and succeeded in the bidding process for sale of solar power in pursuance of the NIT.
 - 2.4 That on 08.01.2016, separate Letters of Intent (hereinafter "LOI") were issued in the favour of the Petitioners for supply of 5 MW of solar each.
 - 2.5 That in furtherance of the LOI, the Petitioner No. 1 had incorporated a project company by the name of "M/s Bodhi Buildtech Pvt. Ltd". Similarly, the Petitioner No. 2 incorporated the company by the name of "M/s Chandersheel Coal and Energy Pvt. Ltd" The Petitioners had also furnished their unconditional acceptance and had also submitted the Performance Bank Guarantee ("PBG") for an amount of Rs.30 Lacs/MW each, in terms of Clause 2.12 of the NIT.
 - 2.6 That on compliance of the terms on the part of the Petitioner, HPPC had informed the Petitioners that issuance of LOI is subject to the adoption of tariff and approval of the draft PPA by this Hon'ble Commission. The Petitioners were also asked to extend the PBGs from time to time.
 - 2.7 That HPPC had filed a petition bearing Petition No. HERC/PRO-09 of 2016 for approval of the PPAs. It is pertinent to point out that the headnote of the Petition was – "Petition/ Application for approval of the Power Purchase Agreement (PPA) with 13 Solar Power Developers for procurement of 165 MW power in pursuance to a Competitive Bidding Process." The Petitioners herein were one of the 13 SPDs.
 - 2.8 However, the said petition was dismissed by this Hon'ble Commission vide order dated 19.09.2016/04.10.2026. In other words, the adoption of tariff and consequent approval of the PPA was rejected. It is submitted that a perusal of the order would shows that the Hon'ble Chairman of the Commission had vide the order held that the competitive bidding process was not conducted in terms of Section 63 of the Electricity Act, 2003 and by following the standard bidding guidelines of the Government of India. The Hon'ble Chairman held that there were deviations which had never been approved. Further, the price discovered was not aligned with the market prices. As such, the adoption of tariff and consequent approval of the PPA was rejected.
 - 2.9 That one of the Hon'ble Members of the Commission had also passed a dissenting order dated 04.10.2016, inter-alia stating that there are no Guidelines under Section

63 of the Electricity Act, 2003 for the renewable sources of energy as such the question of deviation from the guidelines does not arise. However, the Hon'ble Chairman, in exercise of casting vote held that the order of the Hon'ble Chairman would be operative. In view of the order dated 19.09.2016/ 04.10.2016 passed by this Hon'ble Commission, HPPC proceeded to cancel the LOI issued.

2.10 That certain SPD's i.e. 6 out of the total 13 Nos. of the successful SPDs, filed an appeal before the Hon'ble APTEL bearing APL No. 208 of 2017. The Appeal had been allowed by the Hon'ble APTEL vide its final order and judgment dated 03.09.2024 and the matter was remanded back to the Hon'ble HERC for approval of the draft PPAs. The relevant part of which is reproduced below for ready reference:

"1. The appellants are aggrieved by the order dated 19.09.2016 / 04.10.2016 passed by the 1st respondent Haryana Electricity Regulatory Commission (hereinafter referred to as "the Commission") in petition No. HERC/PRO-9 of 2016 wherein the Chairman of the Commission has, in exercise of casting vote, held that the competitive bidding process initiated by the 2nd respondent Haryana Power Purchase Centre (in short "HPPC") for procurement of 150MW of solar power on long term basis in the year 2015, is not in line with the competitive bidding guidelines for renewable energy generators under Section 63 of the Electricity Act, 2003 and also that the deviations were not approved by the Commission, and therefore, declined to approve the Power Purchase Agreements (PPAs) of the appellants.

.....

25. The submission of the learned counsel for 2nd respondent that since the appellants had not achieved any progress towards setting up of the solar power projects in the instant case, the judgment in appeal No.278 of 2016, cannot be applied, is found to be without any force. We have already noted hereinabove that the 2nd respondent had been enquiring from the appellant about progress in their respective projects vide letters dated 06.10.2016 and 21.10.2016. In replies to these letters, the appellants had given the requisite information and had also furnished documentary evidence showing that they had obtained the land on lease for setting up of the power projects and project financing had also been arranged from the bankers as well as private funding agencies. The 2nd respondent has nowhere disputed that the appellants had invested the huge amount in complying with the conditions of Lols and the NIT. In view of the same it does not lie in the mouth of the 2nd respondent to contend that the appellants had not made any significant or substantial progress towards setting up of the solar power projects.

26. Hence, we find the impugned order of the Commission absolutely erroneous which cannot be sustained. The same is hereby set aside. The appeal stands allowed. The case is remanded back to the Commission with the direction to issue a fresh order thereby approving the PPAs signed between the appellant and the 2nd respondent."

2.11 That the appeal had been filed by the Appellants being the similarly placed bidders for setting aside the order whereby the Bidding process and hence the draft PPAs were disapproved by the Hon'ble Commission. The Hon'ble APTEL had set aside the

said order. Thus, in effect, vide the judgment dated 03.09.2024, the Hon'ble APTEL had approved the bidding process.

- 2.12 That in view of the Hon'ble APTEL's order, this Commission, re-listed the HERC/Petition No. 9 of 2016 for hearing on 11.12.2024. A perusal of the order shows that the Respondent- HPPC had made a specific submission that – “...in case the project developers are agreeing to sign PPA with HPPC at the tariff discovered in the upcoming bidding process, then they will not press for stay on impugned order dated 03.09.2024.” Further, upon such a submission on the part of HPPC, Hon'ble Commission directed – “... the project developers present during the hearing to file undertaking to the effect that the applicable tariff shall be tariff discovered in the upcoming bidding process by HPPC.”
- 2.13 That the matter i.e. Case No. HERC/Petition No. 68 of 2024 (Remand back Petition No. 9 of 2016) was decided by the Hon'ble Commission vide final order dated 13.05.2025, that the said order the PPAs of the similarly placed SPDs were duly approved and the SPDs were permitted to match the lowest discovered tariff i.e. @Rs.2.99/kWh.
- 2.14 That the order dated 13.05.2025 was passed in the remand back HERC/Petition No. 9 of 2016 which had been preferred for “approval of the Power Purchase Agreements filed with 13 Nos. Solar Power Developers”.
- 2.15 That in view of the order dated 13.05.2025 coupled with the willingness shown by Respondent-HPPC to execute the PPAs at the discovered tariff @ Rs.2.99/kWh, equitable right to enter into PPA has also accrued in the favour of Petitioners. In fact, Respondent-HPPC ought to have made the same offer to the Petitioners as have been made to the similarly placed SPDs.
- 2.16 That separate representations both dated 19.05.2025 had been submitted by Petitioner (s) herein with the Respondent-HPPC. However, the representations have not been replied to by the Respondent till date.
- 2.17 That the Petitioners are constrained to approach the Hon'ble Commission by way of filing the present petition on the followings amongst other grounds:-
- 2.17.1 **BECAUSE** the denial of approval of PPA in the year 2016 equally affected the Petitioners, and no separate fault or deficiency is attributable to the Petitioners vis-à-vis the other bidders who obtained relief from the Hon'ble APTEL. However, the non-approval of the PPA of the Petitioners would amount to the denial of similar treatment to the Petitioners and would be discriminatory. Reliance in this regard is placed on the decision of the Hon'ble APTEL in the case of *M/s Gayatri Sugars Ltd. Vs. APNPDCL, Represented by its Chief General Manager & Anr.* [Appeal No. 310 of 2013. D/d. 20.11.2014, Law Finder Doc Id # 960067] wherein the Hon'ble held that the State Commission must ensure parity amongst similarly placed generators, while holding as under:

"9. Admittedly, by the Order dated 31.03.2009, the State Commission determined the tariff including variable cost admissible for Bagasse Non-Conventional Project at Rs. 950/- per MT as appropriate fuel cost. Similarly, by the Order dated 16.05.2014, the State Commission determined the revised variable cost for the period 2014-19. In the impugned Order, the State Commission has not permitted the Appellant's Project to be treated at par with other generators only on the ground that Schedule 1A of the Power Purchase Agreement entered into between the parties provided for a ceiling of tariff of Rs. 2.63 per KWh. This finding is not in line with the generic tariff determined by the State Commission in the earlier Orders.

10. It should be pointed out that the State Commission could not discriminate the Appellant on the ground that the Appellant has agreed to the ceiling tariff in the Power Purchase Agreement, which was entered into by the parties with mutual consent. The State Commission has got the regulatory powers to be exercised and it ought to have rectified the position in relation to the variable cost claimed by the Appellant."

Reliance is also placed on the decision of the Hon'ble Apex Court in the case of **Prem Chand Somchand Shah Vs . Union of India** reported in (1991) 2 SCC 48, wherein the Hon'ble Supreme Court held thus:

"8. As regards the right to equality guaranteed under Article 14 the position **is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment.** It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

2.17.2 **BECAUSE** a bare perusal of the interim order dated 12.12.2024 in HERC/Petition No. 9 of 2016 shows that the Respondent- HPPC had made a specific submission that – "...in case the project developers are agreeing to sign PPA with HPPC at the tariff discovered in the upcoming bidding process, then they will not press for stay on impugned order dated 03.09.2024."

Once HPPC has shown its acceptance and given an option of acceptance of tariff (now discovered to be @2.99/kWh) to the similarly placed generators, such a benefit was liable to be extended to the Petitioner herein as well.

Equity and fairness demand that the benefit of the HPPC's consent and submission be extended to the Petitioners as well. Non-approval of the PPA of the Petitioners would amount to discriminatory treatment. Despite being similarly placed, having participated in the same bid, having received an LoI, and having faced identical denial of PPA approval—would be arbitrary and violative of Article 14 of the Constitution of India.

2.17.3 **BECAUSE**, non-filing of the appeal by the Petitioners cannot be taken as a plea by HPPC, once HPPC has on its own made a submission that it would not press for stay of the order dated 03.09.2024. Such a plea would be hyper-technical and is liable to be rejected. Reliance in this regard is placed on the decision of the Hon'ble Apex Court in the case of Govind Ram Purohit v. Jagjiwan Chandra [Civil Appeal No. 556 of 1985. D/d. 10.05.1994, Law Finder Doc Id # 256943], the relevant part of which is reproduced below:

“3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition.

4. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule.

5. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.”

Similarly, in the present case, as the Hon'ble APTEL has approved the PPA, the benefit has to go to all those who qualified under the same PPA. It is humbly submitted that non-approval of the Petitioner's PPA would amount to adoption of pick and choose policy by the Respondents.

2.17.4 **BECAUSE** the Petitioners had filed a detailed representation before the Respondent-HPPC, however, no response to the said representation has been received till date.

2.17.5 **BECAUSE**, even otherwise, the development of a solar power project is not only in the interest of the undersigned's livelihood but also directly contributes to the broader policy objective of promoting renewable energy in the State, as mandated under Section 86(1)(e) of the Electricity Act, 2003, especially when the recent bids have resulted in unallocated/ unsubscribed capacity.

2.17.6 **BECAUSE** the approval of PPA of the undersigned, in terms of the order dated 13.05.2025, does not entail any financial prejudice or loss to HPPC, as the PPA is

proposed to be executed at the current market-discovered tariff of Rs.2.99/kWh, the same rate as has been approved for others by the Hon'ble HERC.

- 2.18 That the Petitioners are willing to abide by all the terms and conditions of the NIT and duly accepts the tariff of Rs.2.99/kWh.
- 2.19 That the following prayers have been made: -
- a) That the present petition may kindly be allowed and the PPA may kindly be approved and executed with the Petitioners herein at the tariff of Rs.2.99/kWh, in parity with similarly placed SPDs;
 - b) Pass any other order as the Hon'ble Commission may deem fit, keeping in view the facts of the matter submitted by Petitioner.

Proceedings of the Case

3. The case was first taken up for hearing on 15.10.2025, as scheduled. The Commission, vide its Interim Order dated 16.10.2025, allowed the respondent (HPPC) to file its reply on or before 23.10.2025 with copy to the petitioner (s). The petitioner (s) were also allotted to file their rejoinder within two weeks thereafter.
4. HPPC filed its reply under affidavit dated 14.10.2025, submitting as under:-
- 4.1 That the Respondent HPPC issued NIT No.54 dated 26.05.2015 for procurement of 150 MW of solar power through competitive bidding. Pursuant thereto, the Petitioners submitted bids and were each issued LOIs dated 08.01.2016 for development of 5 MW solar projects. The LOIs themselves expressly stipulated that the same were subject to approval of tariff and PPAs by this Hon'ble Commission and subject further to submission and maintenance of performance bank guarantees and fulfilment of all bid conditions.
- 4.2 That HPPC thereafter approached this Hon'ble Commission in Petition No. HERC/PRO-09 of 2016 for adoption of tariff and approval of draft PPAs with 13 selected bidders including the present Petitioners. After hearings, the Commission vide its order dated 19.09.2016 (supplemented on 04.10.2016) by the casting vote of the Ld. Chairman declined to approve the PPAs and rejected adoption of tariff. By operation of that order, the Petitioners' LOIs lost efficacy and no enforceable right survived, in their favour.
- 4.3 That 6 out of the 13 bidders, aggrieved by the Commission's decision, preferred Appeal No.208 of 2017 before the Hon'ble Appellate Tribunal for Electricity. Significantly, the present Petitioners were not among the Appellants. The Hon'ble Tribunal vide judgment dated 03.09.2024, allowed the appeal and remanded the matter back to this Hon'ble Commission for fresh consideration vis-à-vis the Appellants, therein. In compliance to the remand, this Commission passed interim order dated 12.12.2024 requiring developers present to file undertakings to accept the tariff discovered in upcoming bids and to place on record updated project status,

expenditure and relevant documents. Ultimately, by order dated 13.05.2025 in Petition No. 68 of 2024, this Hon'ble Commission permitted execution of PPAs in favour of the Appellants subject to their matching the latest discovered tariff of Rs.2.99/kWh and complying with all statutory and contractual conditions.

- 4.4 That the Petitioners, who were neither Appellants before the Hon'ble Tribunal nor parties to the remand proceedings, merely addressed a representation to HPPC on 19.05.2025 after the Commission's final order, and thereafter filed the present petition on 14.08.2025. The long inaction and belated invocation of jurisdiction demonstrate that the present petition is an afterthought seeking to appropriate the benefit of orders never intended for them.
- 4.5 That the Petitioners cannot derive benefit from the judgment dated 03.09.2024 passed by the Hon'ble Appellate Tribunal in APL No.208 of 2017 as they were admittedly not appellants therein. The relief flowing from the said appellate judgment was directed to the specific Appellants who had assailed the rejection of PPAs before the higher forum i.e. the Hon'ble APTEL. In appellate proceedings, the scope of relief is ordinarily confined to those who invoke jurisdiction and prosecute their remedies. The Petitioners, having not been parties before the Hon'ble Tribunal, cannot be treated as beneficiaries of directions passed in favour of others.
- 4.6 That Hon'ble Apex Court in *Chairman/Managing Director, Uttar Pradesh Power Corporation Limited and Others v. Ram Gopal (2021) 13 SCC 225* observed that-
" 11. ...*Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists.*"
- 4.7 That it is a settled principle of law that litigation binds only those who are parties to it, or those claiming under them, and strangers cannot seek to reap the fruits of a judgment in which they neither participated nor contributed. The Courts and Tribunals have consistently held that judgments *in personam* cannot be expanded to cover persons who chose to remain outside the *lis*. The present Petitioners, by their conscious abstention from appellate proceedings, fall squarely in the category of non-parties who cannot later claim the mantle of parity.
- 4.8 That the remand by the Hon'ble Tribunal was not a general declaration of law in the abstract but a specific direction to this Hon'ble Commission to reconsider the cases of only and only the Appellants before it. The consequential orders passed by this Hon'ble Commission, including the interim order dated 12.12.2024 and the final order dated 13.05.2025, were also framed with reference to the conduct and compliance of those Appellants, who deemed it proper to approach the Hon'ble APTEL. The Petitioners' attempt to import themselves into the scope of those proceedings is

legally unsustainable and amounts to expanding the ratio of the judgment beyond its intended parties.

- 4.9 That the plea of the Petitioners that they are “similarly situated” is misconceived. The law draws a clear distinction between those who actively pursue their remedies and those who acquiesce in an adverse order. The Petitioners, by their inaction since 2016, stand in a separate legal category altogether. In fact, their silence signified acceptance of the rejection order, and such acceptance forecloses any claim to equality with the Appellants who took the burden of litigation. Therefore, the Petitioners’ reliance on judicial precedents which lay down the principle of equality is wholly misplaced, as such rulings cannot be invoked by persons who, in law, are not similarly situated. The doctrine of equality cannot be stretched to obliterate the distinction between those who pursued their remedies and those who acquiesced in an adverse order. Further, to ignore this distinction would dilute the doctrine of finality of litigation and encourage indolence among parties who ought to be vigilant in protecting their rights.
- 4.10 That the Petitioners base their claim upon Letters of Intent (LOIs) issued to them in January 2016. However, those LOIs were never final or absolute in nature, rather they were expressly subject to adoption of tariff and approval of draft Power Purchase Agreements by this Hon’ble Commission. The conditional language of the LOIs makes it clear that no binding contractual right was intended to vest until regulatory approval was secured.
- 4.11 That once this Hon’ble Commission, by its orders dated 19.09.2016 and 04.10.2016, declined to approve the PPAs, the very condition precedent to the survival of the LOIs ceased to exist. As a result, the LOIs stood extinguished and lost all operative force. The Petitioners cannot now rely on instruments that, by operation of law and fact, had already lapsed nearly a decade ago.
- 4.12 That in these circumstances, the Petitioners’ present effort to revive or enforce such LOIs is legally unsustainable. It is a well-settled principle that a conditional LOI does not, by itself, create an enforceable contractual right, much less a vested interest that survives rejection by the competent regulatory authority. The Petitioners therefore, seek to breathe life into documents which have no legal efficacy, and this Hon’ble Commission ought not to entertain such a claim.
- 4.13 That in the Hon’ble Apex Court in a landmark judgement, ***Dresser Rand S.A. v. Bindal Agro Chem Ltd.***, Civil Appeal No’s. 8357 and 8358 of 2003 observed that neither the General Conditions of Purchase issued by Bindal nor the letters of intent issued constituted a binding arbitration agreement. Consequently, the appeal was dismissed, affirming that no arbitration agreement existed.

- 4.14 That the plea of discrimination under Article 14 advanced by the Petitioners is entirely misconceived. The constitutional guarantee of equality is available only among those who are “similarly situated” in law. Parties who actively challenged the 2016 order by pursuing their statutory remedies through the Appellate forum cannot be equated with those who remained silent and chose not to question the rejection at the appropriate stage.
- 4.15 That it was clearly held in *Eastern Book Company v. D.B. Mondak*, (2015) 1 SCC 347, that-
“22.2... *Those persons who did not challenge the wrongful actions in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence sitters and laches and delays, and /or the acquiescence, would be a valid ground to dismiss their claim.*”
- 4.16 That the distinction between diligent Appellants and acquiescent non-Appellants constitutes an intelligible differentia which fully satisfies the constitutional test of reasonable classification. This classification bears a direct nexus with the objective of ensuring regulatory certainty and protecting consumer interest. Petitioners, having acquiesced in the rejection order and failed to comply with subsequent directions, cannot in law be treated at par with those who secured relief through proper legal channels.
- 4.17 That the Petition suffers from gross and unexplained delay. The rejection of the Petitioners’ PPAs took place as far back as September/October 2016, yet no challenge was made at that stage. For nearly nine years thereafter, the Petitioners allowed the matter to rest, thereby permitting the Commission’s order to attain finality as against them.
- 4.18 That Hon’ble Apex court in *S.S. Balu v. State of Kerala* (2009) 2 SCC 479, observed that-
“17. ***It is also well-settled principle of law that “delay defeats equity”. ...It is now trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.*”**
- (Emphasis supplied)**
- 4.19 That during the pendency of Appeal No.208 of 2017 before the Hon’ble Appellate Tribunal, where similarly placed bidders had sought and pursued relief, the Petitioners remained conspicuously absent. The Petitioners, did not intervene, seek

impleadment or otherwise attempt to protect their alleged rights in the appellate proceedings, despite being fully aware of the litigation. Their inaction reflects a conscious choice to acquiesce in the rejection order.

4.20 That having failed to act with diligence, the Petitioners are now estopped from seeking revival of their claims. The doctrine of laches applies squarely, for equity does not assist those who sleep over their rights.

4.21 That this Hon'ble Commission, while exercising its jurisdiction under Sections 61 and 86 of the Electricity Act, 2003, carries a statutory obligation to safeguard the larger public interest by protecting consumer rights and ensuring least-cost procurement of electricity. Every decision of the Commission must therefore, be guided by considerations of efficiency, economy and transparency in power procurement, so that the burden of cost is not unfairly passed on to consumers.

4.22 That without prejudice to the preliminary objections already raised, it is respectfully submitted that the Petitioners, having slept over their rights and failed to avail of the statutory remedies at the appropriate stage, cannot now seek enforcement of the lapsed Letters of Intent or claim parity with those parties who diligently pursued their remedies by way of appeal. Furthermore, since the Petitioners consciously chose not to participate in the subsequent bidding process, no enforceable right presently survives in their favour. In law as well as in equity, the only remedy open to them is to participate in any future competitive bidding process, as and when notified, and to seek allocation strictly in accordance with the terms and conditions prescribed therein. Any attempt to secure a surreptitious or back-door entry, so as to claim benefits that were legitimately extended only to the Appellants who pursued their remedies in time, cannot be countenanced.

4.23 That in this backdrop, directing execution of PPAs in favour of the Petitioners, despite their non-compliance with essential conditions and without subjecting their projects to fresh evaluation, would undermine regulatory discipline. Such relief would be contrary to the statutory mandate entrusted to this Hon'ble Commission and, therefore, deserves to be declined outright. The Petitioners, however, can always participate in the bidding process directly to set up a solar power plant.

5. The case was subsequently heard on 04.12.2025, wherein Ms. Aerika Singh, the learned counsel appearing for the petitioner (s), sought liberty to file its rejoinder to the reply filed by HPPC, which was allowed. Accordingly, the petitioner (s) filed their rejoinder dated 04.12.2025. The petitioner (s) have submitted as under:-

5.1 That the present petition is maintainable in view of the settled law that where a common issue affecting an entire class of persons is adjudicated, the benefit of such adjudication must extend to all similarly placed persons, irrespective of whether they

individually preferred an appeal. Hon'ble Supreme Court in *Govind Ram Purohit & Anr. v. Jagjiwan Chandra and others*, [1999 SCC (L&S) 788; Law Finder Doc. ID No. 256943], has categorically held as follows:

“4. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule.

5. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.”

The above principle applies squarely to the facts of the present case, wherein all 13 SPDs, including the Petitioners, were governed by the same tender conditions, the same LOIs, the same rejection order, once the PPA stands approved by the Hon'ble APTEL, the benefit is liable to be granted to the Petitioners herein.

5.2 That Hon'ble Supreme Court in **Prem Chand Somchand Shah v. Union of India**, [(1991) 2 SCC 48], has laid down the principle that Article 14 mandates equal treatment among equals and prohibits arbitrary discrimination by the State. In the present case, HPPC seeks to treat identically placed SPDs differently without any intelligible differentia. It is reiterated that all SPDs had identical LOIs, participated in the same bidding process, suffered rejection by the same order, and were part of the same group of 13 developers. The Petitioners, therefore, cannot be arbitrarily excluded from the benefits granted to others, on the sole ground that no appeal was filed. The acceptance of the contention advanced by HPPC would imply that the Respondent seeks to encourage, rather than resolve, litigation. The conduct expected of a State instrumentality is to minimise disputes, not to compel each similarly placed party to undertake separate litigation for identical relief. To deny the Petitioners parity solely on the ground that they did not institute independent proceedings is an untenable and unreasonable proposition, contrary to principles of fairness and good governance. Such an objection is inherently absurd and liable to be rejected as wholly unsustainable.

5.3 That Hon'ble APTEL has also consistently held that similarly placed non-appellant parties are entitled to parity even if they did not file separate appeals. Reliance in this regard is placed on the decision in **Adani Power Maharashtra Ltd. v. Maharashtra Electricity Regulatory Commission** [DFR No. 2635 of 2014, Decided on 02.09.2016; Law Finder Doc Id # 957334], wherein the Hon'ble APTEL granted identical relief to non-appellants, observing inter alia:

“12. ... We have already noted that in the present appeal similar issues are involved. Adani Maharashtra is also claiming parity drawing support from the Supreme Court's Order dated 31/03/2015 and Full Bench judgment dated

07/04/2016. We see no reason why having regard to the Supreme Court's Order dated 31/03/2015 and Full Bench judgment of this Tribunal dated 07/04/2016, in the interest of justice, delay in filing the present appeal should not be condoned so as to give an opportunity to Adani Maharashtra to assail the findings on Force Majeure. Merely because CGPL had filed an application claiming parity and Adani Maharashtra had not filed such an application, we cannot deny the benefit of the Order dated 31/03/2015 passed by the Supreme Court and Judgment dated 07/04/2016 passed by the Full Bench of this Tribunal to Adani Maharashtra, when such a prayer is made before us.

13. **In our opinion, in the peculiar facts and circumstances of the case, when the issue involved in this appeal is important and is involved in other appeals which we have remanded, the delay needs to be condoned in the interest of the justice** after saddling Adani Maharashtra with costs. Hence, delay in filing the present appeal is condoned on the condition that Adani Maharashtra pays a sum of Rs. 1,00,000/- (Rupees One Lakh only) as costs to "Sai Deep Dr. Ruhi Foundation" A/c No.952663443, A-508, Sector- 19, Noida-201301 within two weeks from today."

Thus, HPPC's objection that the Petitioners did not file appeal is legally unsustainable as in the past the delay has been duly condoned by the Hon'ble APTEL to give the benefit of remand order to similarly placed parties.

- 5.4 That Hon'ble APTEL's judgment dated 03.09.2024 in Appeal No. 208 of 2017 set aside the rejection of PPAs resulting from the bidding process for 150 MW solar power. The remand order required this Hon'ble Commission to reconsider the approval of PPAs. As a matter of fact, the remand petition was itself captioned as pertaining to PPAs of "13 Solar Power Developers", reaffirming that the proceedings pertained to all 13 bidders, including the Petitioners. Even otherwise, as on date, the Bidding process stands approved by the Hon'ble APTEL, where the Petitioner was one of the Bidders, as such similar relief may kindly be granted to the Petitioners.
- 5.5 That a perusal of the interim order dated 12.12.2024 shows that the Respondent-HPPC had made a specific submission that in case the project developers are agreeing to sign PPA with HPPC at the tariff discovered in the upcoming bidding process, then they will not press for stay on impugned order dated 03.09.2024. Such a conduct on the part of Respondent-HPPC, creates an estoppel against HPPC.
- 5.6 That HPPC has preferred an appeal before the Hon'ble Apex Court challenging the judgment dated 03.09.2024 passed by the Hon'ble APTEL. A perusal of the said appeal reveals that HPPC was in fact of the view that the tariff of Rs. 5 per unit was approved by this Hon'ble Tribunal which is evident from its grounds in the civil appeal before the Hon'ble Supreme Court. Attention of this Hon'ble Commission is brought

towards certain paras of the appeal (C.A. No. 12223 of 2024) preferred by HPPC, whereby it is admitted that the tariff of Rs. 5.00/kWh has been fixed by the Hon'ble Tribunal vide its judgment dated 03.09.2024:

"7. GROUNDS OF APPEAL:

The Appellants are filing the present Appeal based on substantial questions of law and on the following amongst other grounds, which are taken without prejudice to each other:

... ..

*I. FOR THAT the Appellant Tribunal's directions to the State Commission to approve the PPAs (non-existent) between Appellant and Respondent Nos. 1 to 6 without deciding the tariff terms and conditions in the year 2024 when no progress has been made by the Respondent Nos. 1 to 6 to commission the Projects is erroneous. **It is submitted that the tariff of Rs. 5 per unit discovered and accepted by the Appellant qua Respondent Nos. 1 to 6 in the year 2015 cannot be considered as a market aligned tariff in the year 2024 when no progress had been made by the Respondent Nos. 1 to 6**. The same would amount to a windfall gain to the Respondent Nos. 1 to 6 at the cost of the consumers in the State of Haryana as the prevalent solar power tariff during the FY 2024-25 are in the range of Rs 2.55 to Rs 2.65 per unit discovered by SECI through competitive bidding."*

- 5.7 That in allowing the present petition, no adverse decision is being taken against HPPC. No loss would be caused to HPPC. The Petitioners herein accept the lowest discovered tariff of Rs. 2.99/kWh which has already been adopted for similarly placed SPDs. Approval of the Petitioners' PPAs, therefore, imposes no additional financial burden on HPPC or the consumers. Consequently, the plea of "public interest" raised by HPPC is ill-founded. On the contrary, approving PPAs promotes renewable energy obligations mandated under Section 86(1)(e) of the Electricity Act, 2003.

Commission's Analysis and Order

6. The case was finally heard on 07.04.2026, wherein the counsel present on behalf of the petitioner, i.e. Mr. Irshaan Singh Kakar as well as the counsel present on behalf of the respondent, i.e. Mr. Lovepreet Singh, primarily reiterated the averments and submissions set out in their Petition/reply/rejoinder/written submissions, which for the sake of brevity are not reproduced herein but shall be read as part of the record.
7. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the them. The principal issue that arises for determination is whether the judgment dated 03.09.2024 passed by the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 208 of 2017, can be extended to the present Petitioners, who were not parties to the said proceedings i.e. whether

the judgement of Hon'ble APTEL dated 03.09.2024, granting approval to the PPA of the appellants was judgment 'in personam' and not judgment 'in rem', so cannot be expanded to cover persons who chose to remain outside that list.

8. In this regard, the Commission takes note of the judgement of Hon'ble Appellate Tribunal for Electricity (APTEL) dated 03.09.2024 (Appeal No. 208 of 2017 in the matter of Virender Rawal, Karan Singh, Anita Singh, Geeta Rani, Deepak Goyal and Jile Singh Vs. HERC & HPPC). The relevant excerpt of the order is reproduced hereunder:-

25. The submission of the learned counsel for 2nd respondent that since the appellants had not achieved any progress towards setting up of the solar power projects in the instant case, the judgment in appeal No.278 of 2016, cannot be applied, is found to be without any force. We have already noted hereinabove that the 2nd respondent had been enquiring from the appellant about progress in their respective projects vide letters dated 06.10.2016 and 21.10.2016. In replies to these letters, the appellants had given the requisite information and had also furnished documentary evidence showing that they had obtained the land on lease for setting up of the power projects and project financing had also been arranged from the bankers as well as private funding agencies. The 2nd respondent has nowhere disputed that the appellants had invested the huge amount in complying with the conditions of Lols and the NIT. In view of the same it does not lie in the mouth of the 2nd respondent to contend that the appellants had not made any significant or substantial progress towards setting up of the solar power projects.

26. Hence, we find the impugned order of the Commission absolutely erroneous which cannot be sustained. The same is hereby set aside. The appeal stands allowed. The case is remanded back to the Commission with the direction to issue a fresh order thereby approving the PPAs signed between the appellant and the 2nd respondent."

At the outset, the Commission observes that the Hon'ble APTEL, vide its judgment dated 03.09.2024, set aside the earlier order of this Commission and remanded the matter with a specific direction to approve the Power Purchase Agreements (PPAs) executed between the appellants therein and the Respondent. It is an undisputed fact that the present Petitioners were not appellants before the Hon'ble APTEL. The relief granted by the Hon'ble Tribunal was confined to those parties who had invoked the appellate jurisdiction and pursued their remedies. It is a settled principle of law that relief in appellate proceedings is ordinarily limited to the parties before the court, unless expressly extended.

In appellate proceedings, the scope of relief is ordinarily confined to those who invoke jurisdiction and prosecute their remedies. The Petitioners, having not been parties before the Hon'ble Tribunal, cannot be treated as beneficiaries of directions passed in favour of others. In this regard, the Commission has also taken note of the judgement of Hon'ble Supreme Court in *Chairman/Managing Director, Uttar Pradesh Power Corporation Limited and Others v. Ram Gopal (2021) 13 SCC 225*, wherein it was observed as under:-

“ 11. ...*Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists.*”

The Commission's analysis emphasizes that the Petitioners, through their deliberate choice not to participate in appellate proceedings, are categorized as non-parties who are legally barred from claiming parity with successful litigants. The order dated 13.05.2025 was issued exclusively for the developers who actively appealed to the Hon'ble APTEL, and any attempt by the Petitioners to include themselves in that group is legally unsustainable as it improperly expands the judgment's scope beyond its intended parties. The law distinguishes between vigilant parties who pursue legal remedies and those who acquiesce to an adverse order. The Courts and Tribunals have consistently held that judgments *in personam* cannot be expanded to cover persons who chose to remain outside the *lis*. The present Petitioners, by their conscious abstention from appellate proceedings, fall squarely in the category of non-parties who cannot later claim the mantle of parity. The consequential order dated 13.05.2025, was passed by this Commission with reference to those Appellants who were appellants before the Hon'ble APTEL. The Petitioners' attempt to import themselves into the scope of those proceedings is legally unsustainable and amounts to expanding the ratio of the judgment beyond its intended parties. Therefore, the Petitioners' reliance on judicial precedents which lay down the principle of equality is wholly misplaced, as such rulings cannot be invoked by persons who, in law, are not similarly situated. The doctrine of equality cannot be stretched to obliterate the distinction between those who pursued their remedies and those who acquiesced in an adverse order. Further, to ignore this distinction would dilute the doctrine of finality of litigation and encourage indolence among parties who ought to be vigilant in protecting their rights.

The Commission finds that the reliance placed by the Petitioners upon the Letters of Intent (LOIs) issued in January, 2016, is fundamentally misplaced, as the issuance of said instruments was explicitly contingent upon the adoption of tariff and the

regulatory approval of the draft Power Purchase Agreements (PPAs). Given that these LOIs were expressly conditional, they remained subject to the successful execution of the PPAs by this Commission. Consequently, upon the rejection of the PPAs in 2016, the LOIs were rendered naught, losing their legal efficacy and failing to confer any vested or enforceable right upon the Petitioners. In reaching this determination, the Commission is further guided by the authoritative precedent established by the Hon'ble Supreme Court in *Dresser Rand S.A. v. Bindal Agro Chem Ltd.* (Civil Appeal Nos. 8357 and 8358 of 2003), wherein it was held that neither general conditions of purchase nor letters of intent constitute a binding agreement in the absence of fulfilled conditions. Accordingly, as the condition precedent for the LOIs failed to materialize, no binding contractual relationship survived, and the Petitioners' claim is devoid of legal foundation.

The plea of discrimination predicated upon Article 14 of the Constitution has been subjected to rigorous judicial scrutiny. The Commission is of the considered view that the constitutional guarantee of equality is available exclusively to those who are "similarly situated" in the eyes of the law. The distinction between vigilant litigants who actively pursued their statutory remedies and those who chose to acquiesce in an adverse decision constitutes a valid and intelligible differentia. Having failed to assail the orders dated 19.09.2016 and 04.10.2016 for a duration of approximately nine years, the Petitioners permitted said orders to attain finality in respect of their own interests. In this regard, the Commission relies upon the following authoritative pronouncements of the Hon'ble Supreme Court, operative part of which are reproduced:-

Eastern Book Company v. D.B. Mondak, (2015) 1 SCC 347:-

"22.2... Those persons who did not challenge the wrongful actions in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence sitters and laches and delays, and /or the acquiescence, would be a valid ground to dismiss their claim."

S.S. Balu v. State of Kerala (2009) 2 SCC 479:-

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

In light of the foregoing discussions, the Commission finds the Petitioners' contention regarding the violation of Article 14 to be wholly devoid of merit. The constitutional guarantee of equality cannot be invoked by parties who, through their own inaction, have placed themselves in a separate legal category from those who successfully prosecuted their appeals and bore the burden of litigation.

With regard to the contention of the Petitioners that the remand proceedings were captioned as pertaining to PPAs of "13 Solar Power Developers" and, therefore, extended to all such bidders, the Commission is of the considered view that the said caption merely reflects the subject matter of the original petition and cannot be construed to imply that the remand proceedings were intended to encompass all 13 bidders. The scope of the remand is confined strictly to the directions issued by the Hon'ble APTEL and cannot be expanded beyond the parties and extent contemplated therein.

The Commission has further examined the averments of the petitioner (s) that in allowing the present petition, no additional financial burden would be imposed on HPPC or the consumers loss as the lowed tariff discovered by HPPC is Rs. 2.99/kWh, at which the petitioner (s) herein have also agreed. In this regard, the Commission has taken note of the fact that in the recent bidding for procurement of solar power conducted by HPPC, the rates discovered varies from Rs. 2.86/- to Rs. 2.97/- (Petition no. 11 of 2026 filed by HPPC for 495 MW solar power). Therefore, arguments of the petitioner that approval of the power at Rs. 2.99/- will impose no additional financial burden on HPPC, is not tenable. The recent tariff discovery in subsequent bidding processes indicates lower prevailing rates, and therefore, approval at a higher tariff cannot be justified in the interest of consumers.

The Commission is also mindful of its statutory duty to ensure transparency, competitiveness, and least-cost procurement of electricity. Granting relief to the Petitioners at this stage would undermine regulatory discipline and the sanctity of competitive bidding.

The Commission is of the considered view that the judgment of the Hon'ble APTEL in the present context is a judgment 'in-personam' and not 'in-rem'. Consequently, the benefit of the said judgment cannot be automatically extended to persons who consciously chose not to challenge the earlier order of this Commission. Any endeavor to secure an oblique or impermissible entry, so as to clandestinely appropriate benefits that were lawfully and exclusively extended to the Appellants, is wholly untenable and bereft of legal foundation.

Such a course of action constitutes a transparent and surreptitious attempt to obtain a "back-door entry" into the adjudicatory process, with the manifest objective of garnering reliefs and advantages that were legitimately and specifically reserved for the Appellants alone. Any such speculative and opportunistic claim, being neither contemplated under the applicable framework nor grounded in the governing law, deserves to be rejected in limine.

For the foregoing reasons, as stated supra, the present petition is dismissed, being devoid of merits.

The Petitioners, however, shall be at liberty to participate in future competitive bidding processes, as may be notified, in accordance with law.

9. In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 22.04.2026.

Date: 22.04.2026
Place: Panchkula

Sd/-
(Shiv Kumar)
Member

Sd/-
(Mukesh Garg)
Member

Sd/-
(Nand Lal Sharma)
Chairman