BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 2266 of 2023.

In the matter of:

Petition under Section 86 of the Electricity Act, 2003 read with Clause 16 of the Procedure for 'Grant of Connectivity to projects based on Renewable Sources to Intra-State Transmission System' approved by the Commission on 07.01.2023 and Connection Agreement dated 24.07.2023 executed between Enfinity Global Surya Vayu Energy Pvt. Ltd., and GETCO, seeking to quash and set aside the Letter dated 16.09.2023 issued by GETCO and for directions to restore the Stage-II Connectivity dated 31.05.2023 granted to Enfinity Global Surya Vayu Energy Pvt. Limited.

And

IA No. 41 of 2023 in Petition No. 2266 of 2023.

In the Matter of:

Application for seeking ad-interim ex-parte directions including direction to stay revocation letter dated 16.09.2023 issued by the Respondent GETCO.

And

IA No. 22 of 2024 in Petition No. 2266 of 2023.

In the Matter of:

Application filed on behalf of the Petitioner/Applicant seeking amendment in the Petition No. 2266 of 2023.

Applicant/Petitioner : Enfinity Global Surya Vayu Energy Pvt. Ltd.

Represented by: : Ld. Adv. Mr. Yashaswi Kant alongwith Mr. Upendra Sharma

Respondent : Gujarat Energy Transmission Corp. Limited

Represented By : Ld. Adv. Ms. Harsa Rao with Mr. Shobhraj Jayswal

CORAM:

Pankaj Joshi, Chairman
Hiren Shah, Member
Jatin N. Thakkar, Member

Date: 26/05/2026.

ORDER

1. Before we proceed, it is to note that the record of this Petition shows that the present Petition along with IAs, were heard on different dates and appropriate Daily Orders were passed by the previous Bench of the Commission. Subsequently, upon superannuation of the previous Members of the Commission, the present Bench of the Commission heard the matter and proceeded to dispose of the same by this Order.

2. This Petition has been filed by the Applicant/Petitioner, Enfinity Global Surya Vayu Energy Pvt. Limited, under Section 86 of the Electricity Act, 2003 read with Clause 16 of the Procedure for '*Grant of Connectivity to* projects *based on Renewable Sources to Intra-State* Transmission *System*' dated 07.01.2023 and Connection Agreement dated 24.07.2023 executed between the Applicant/Petitioner and Respondent seeking to quash and set aside the letter dated 16.09.2023 of the Respondent and for directions to restore the Stage-II Connectivity dated 31.05.2023 granted to the Applicant/Petitioner, Enfinity Global Surya Vayu Energy Pvt. Limited, *inter-alia* seeking following prayers:

(a) Quash and set aside the Impugned Letter dated 16.09.2023

issued by GETCO.

(b) *Direct GETCO to restore the Stage-II Connectivity dated 31.05.2023 to Enifinity.*

(c) *Grant the Petitioners an extension in timelines under the Connectivity Procedure and GERC OA Regulations 2011 from the date of cancellation of Stage-II connectivity i.e., 16.09.2023 till final orders of this Hon'ble Commission in the present Petition.*

(d) *In alternative, direct GETCO to return the Bank Guarantee dated 26.04.2023 and deposits amounting to Rs. 8,48,85,517/- submitted in pursuance of grant connectivity at the 220 kV Charkha S/s to Enfinity.*

(e) *Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case.*

3. The Applicant/ Petitioner has also filed IA No. 41 of 2023 in Petition No. 2266 of 2023, inter alia seeking following prayers:

(a) *Stay operation of Impugned Letter dated 16.09.2023 issued by GETCO to the Enfinity, pending adjudication of the present Petition;*

(b) *Injunct GETCO from taking any coercive steps against the Petitioners including invocation of Connectivity Bank Guarantee dated 26.04.2023 and encashment of deposits submitted by Enfinity;*

(c) *Pass any other order or further relief(s) as may be deemed fit in the present facts and circumstances of the case.*

4. The Petition No. 2266 of 2023 along with IA No. 41 of 2023 was kept for hearing on 23.02.2024. The Commission in its Daily Order dated

05.06.2024 *inter alia* observed that Applicant/ Petitioner has not pressed the restoration of the State-II Connectivity and seeking limited prayer with regard to direction to Respondent to return the Bank Guarantee dated 26.04.2023 and bay charges/ deposits paid pursuant to the grant of Stage-II connectivity without prejudice to the main contentions in the petition. In view of the connectivity being granted to some other 3rd party developer Applicant/ Petitioner has restricted prayers to the alternative relief of return of BGs and bay charges. Accordingly, Applicant/ Petitioner was directed to amend the prayers in the original petition and file the amended Petition in this regard.

5. In compliance of the directives of the Commission vide above daily order dated 05.06.2024. The Applicant/ Petitioner has filed IA No. 22 of 2024 in Petition No. 2266 of 2023, inter alia seeking following prayers.

   (a) Allow the present Application and pass an order granting permission to the Petitioner to amend the present Petition as provided in Annexure A of the present Application; and

   (b) Pass any other order or direction as this Hon'ble Commission may deem fit in light of facts and circumstances of the present Application.

6. The Applicant/ Petitioner filed IA No. 22 of 2024 and submitted the amended Petition No. 2266 of 2023, inter alia seeking following prayers:

   (a) Declare that Enfinity has not committed any fraud or misrepresentation in its application for grant of Stage-II Connectivity submitted to GETCO;

   (b) Quash and set aside the Impugned Letter dated 16.09.2023 issued by GETCO to the extent challenged herein above;

(c) *Alternatively, direct GETCO to return the Bank Guarantee dated 26.04.2023 and deposits amounting to Rs. 8,48,85,517/- submitted in pursuance of grant connectivity at the 220 kV Charkha S/s to Enifinity.*

(d) *Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case.*

7. The facts of amended Petition No. 2266 of 2023 are as under:

7.1. The present Petition is being filed by the Applicant/Petitioner Enifinity Global Surya Vayu Energy Pvt. Limited seeking to quash and set aside letter dated 16.09.2023 issued by Gujarat Energy Transmission Corporation Limited in terms of which the Stage-II Connectivity granted to Enifinity on 31.05.2023 was revoked. The basis of the revocation is Respondent's allegation that Applicant/ Petitioner is in non-compliance of the provisions of the Procedure for "*Grant of Connectivity to projects based on Renewable Energy Sources to Intra-State Transmission System*" dated 07.01.2023 approved by the Commission. The impugned letter was issued without granting a hearing to the Applicant/Petitioner and is contrary to applicable law.

7.2. The Applicant/Petitioner Enfinity Global Surya Vayu Energy Pvt. Limited is a company registered under the Companies Act, 2013 and is an independent power producer and is developing a 150 MW Hybrid Power Plant (Solar + Wind) situated at Village Charkha, Taluka- Babra, District- Amreli. Applicant/Petitioner is an Independent Power Producer involved in development, construction and operation of Solar, Wind-Solar Hybrid Projects and parks across the country.

7.3. The Respondent Gujarat Electricity Transmission Company is a transmission company in terms of Section 2(73) of the Electricity Act, 2003 and is operating in the State of Gujarat and also has been notified as the State Transmission Utility under the Electricity Act, 2003.

7.4. It is stated that on 31.05.2011, the Commission issued the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 (GERC OA Regulations 2011). The relevant provisions under the GERC OA Regulations 2011 are as follows: -

(a) Regulation 4 - Deals with Connectivity and *inter-alia* provides that a Generating Station having capacity of 4 MW and above is eligible to obtain connectivity to the intra-state transmission system.

(b) Regulation 5 - Deals with Application for Connectivity. An Applicant is to apply to State Transmission Utility ("STU") for connectivity in the form prescribed in the detailed procedure. An Application shall contain details including proposed geographical location, quantum of power to be interchanged and quantum of power to be drawn etc. and such other details as may be laid down by the State Transmission Utility in the detailed procedure.

(c) Regulation 6 - Processing of application and Grant of Connectivity – STU to process applications in consultation with other agencies and carry out necessary interconnection study as specified in CEA (*Technical Standards for Connectivity to the Grid*) Regulations 2007. The STU was to specify name of sub-

station/PSS/switchyard and indicate broad design features of Dedicated Transmission Line ("DTL"). Further, the Applicant was also required to execute and sign a connection agreement with the STU. The STU shall convey its decision on grant of connectivity or otherwise within a period of 60 days from the date of receipt of application.

(d) Regulation 20 - STU to prescribe detailed procedure**.** The STU shall submit detailed procedure which shall include the performance for application of connectivity and connection agreement and other issues including BG for construction, payment mechanism for application fee etc.

7.5. It is stated that on 07.01.2023, the Commission in pursuance to Clause 20 of the GERC OA Regulations 2011, approved the Detailed Procedure for "*Grant of Connectivity to Projects based on Renewable Sources to Intra-State Transmission System*" (Detailed Procedure)**.** The relevant provisions under the Detailed Procedure are as follows:

"2.2. Applications for connectivity under this procedure shall be process in two stages:

i) Stage-I Connectivity

- *All persons/ applicants who desire connectivity with the grid after approval of this procedure by GERC.*
- *RE projects who are already granted connectivity by GETCO/STU as on date of approval of this procedure by GERC but, yet to sign connectivity agreement and have not submitted applicable BG shall be considered as deemed Stage-I connectivity grantee only and they have to apply for Stage-II connectivity as per this procedure.*

ii) Stage-II Connectivity

- *All persons/ applicants who desire connectivity with the grid after approval of this procedure by GERC.*
- *RE projects who are already granted connectivity by GETCO/STU and have signed connectivity agreement and have submitted applicable BG/LC shall be considered as Stage-II connectivity grantee as per this procedure.*

[...]

6. Application for Stage-I Connectivity

6.1. Applications for grant of Connectivity to Intra-State transmission network shall be made as per the application form duly signed by authorized person of Applicant as per Format-2 of this procedure. Person/ Applicant has to select substation from the list available on GETCO/STU website as updated at 11 AM on 1st day of every calendar Month. Such list shall depict the name, capacity in terms of MW available for RE connectivity, geographical coordinates and other relevant details of existing as well as planned substations with targeted dated of commercial operationalization of such planned substations.

6.2. Documents to be submitted along with the Application:

i) Notarized affidavit as per Format-1.

ii) Application shall be accompanied by a non-refundable fee as per Clause 5(3) of OA Regulations, as amended from time to time + applicable taxes as Stage I Connectivity Fees.

Application fees is to be made to GETCO Account electronically through RTGS as per details given below:

a) *Payee: Gujarat Energy Transmission Corporation Limited*
b) *Name of Bank: Bank of India*
c) *Branch: Alkapuri*
d) *IFSC: BKID0002501*
e) *A/c No.: 250120100001167*

Proof of payment must be attached with application.

iii) *Board resolution for proposed project.*

iv) *Copy of Memorandum & Article of Association having provision to take up proposed business/project;*

Provided that on operationalization of online portal for grant of connectivity, scanned copy of all above documents shall be uploaded by person/ applicant on portal along with physical submission.

6.3. *The processing of applications for Stage-I Connectivity shall be in accordance with Regulation (4), (5) and (6) of the GERC Connectivity Regulations.*

[...]

7. *Grant of Stage-I Connectivity*

7.1. *Upon receipt of the application for grant of Connectivity, necessary study shall be carried out by STU to check about feasibility of connectivity demanded from the available margin in the upstream/ downstream existing network and/ or planned network envisaged for commissioning within six months from the date of application for Stage- I connectivity. Persons/ Applicants has to select Intra-State*

substation from the list of existing and/or planned substations available on STU website for connectivity applications.

……..

8. Application for Stage-II Connectivity

8.1. Applications for grant of Stage-II Connectivity to Intra-State shall be made as per the application form [FORMAT-3] along with affidavit as per FORMAT-1 attached with this procedure.

8.2. Eligibility for Stage-II Connectivity

Following shall be eligible for grant of Stage-II Connectivity:

8.2.1. An entity which (i) has been issued the Letter of Award (LOA)/LOI/PPA by, or (ii) has entered into a Power Purchase Agreement (PPA) with, a Renewable Energy Implementing Agency as notified by the Government or a distribution licensee or an authorized agency on behalf of distribution licensee, on submission of such Letter of Award/ Lol or PPA, as the case may be.

Provided that:

(a) All eligible Stage I grantee who have been awarded Stage 1 Connectivity shall be eligible for applying to Stage II connectivity with fulfilment of following criteria;

i) Tentative land location/map:

ii) Bank Guarantee (BG) that the grantee has to provide as per prevailing Regulations or as specified by the State Commission in relevant orders, as applicable time to time.

In case of non-feasibility of substation for granting Stage-II connectivity, STU shall return submitted BG/applicant along with rejection letter.

(b) An entity who has already applied for Stage-I connectivity prior to date of LoA/Lol/PPA or is applying Stage-I Connectivity and Stage-II Connectivity simultaneously.

(c) An entity implementing the Renewable Hybrid Generating Station(s) including Round the Clock Hybrid Project, shall be eligible to apply for Stage-Il connectivity at one location only in view of the Eligibility criteria for such Hybrid RE project as specified in the Regulations and/ or Orders of the Commission.

The Hybrid Projects set up by any person under the provisions of the Regulations and/or Orders of the Commission and Gujarat Wind-Solar Hybrid Power Policy - 2018 and desires Stage II connectivity shall apply for such connectivity at one location only with fulfilment of above criteria.

[...]

8.2.2. An entity who has already applied for Stage- I connectivity or is a grantee of Stage-I connectivity or is applying for Stage-I connectivity and Stage-II connectivity simultaneously and is not covered under Para 8.2.1 which has achieved the following milestones:

(i) *Ownership or registered lease agreement or registered land sale agreement for at least 50% of the land area required for the capacity for which Stage-II Connectivity is applied for along with a notarized undertaking as per Format -7 attached with this procedure;*

(ii) *Bank Guarantee (BG) that the grantee has to provide as per prevailing Regulations or as specified by the State Commission in relevant orders, as applicable time to time.*

In case of non-feasibility of substation for granting Stage-II connectivity, STU shall return submitted BG to person/ applicant along with rejection letter.

(iii) *Financial comfort letter/ financial closure issued by Financial Institution with supporting document, duly supported by Auditor's certificate along with a notarized undertaking as per Format -7 attached with this procedure and;*

(iv) *In case of third party sale, agreement / Contract specifying firm sale purchase of energy of 75% of connectivity applied by person/ applicant.*

8.3. Conditions to be met by Stage-II Connectivity Grantees

8.3.1. After grant of Stage-II Connectivity, the grantees covered under para 8.2.2 shall have to achieve the following milestones and submit the proof to STU within six months from the date of grant of Stage-II connectivity:

(i) *ownership or lease rights or land sale agreement for balance 50% of the land area,*

(ii) Agreement/ Contract specifying firm sale/ purchase of energy of 25% of connectivity applied by person/ applicant.

8.3.2. In the event of failure to achieve above milestones as listed in para 8.3.1 above, as applicable, Stage-II Connectivity shall stand revoked and canceled.

8.3.3. STU shall monitor the status of projects covered under Para 8.3.1 on quarterly basis as per Para 10 of this procedure."

7.6. It is stated that in terms of Detailed Procedure: -

(a) Applications are processed in two stages – Stage-I and Stage-II. (Clause 2.2).

(b) Applications for Stage – I requires applicant to select substation and depict inter-alia capacity, geographical coordinates etc. Applications are to be made in terms of the prescribed format along with requisite fee. (Clause 6-6.2).

(c) STU will carry our necessary studies on feasibility of connectivity demands and shall grant Stage – I connectivity within 60 days from receipt of application. A Stage-I Connectivity grantee is required to apply for Stage-II Connectivity within inter-alia 6 months from date of grant Stage-I Connectivity. (Clause 7,6.3)

(d) Eligibility for Stage-II Connectivity is under two routes – (i) Entities which have been issued Letter of Award ("LoA")/ Letter of Intent ("LoI")/ Power Purchase Agreement ("PPA")/ PPA with REIA (Clause 8.2.1); OR (ii) Entities which have inter-alia achieved the following milestones: -

(i) Ownership or registered lease agreement or registered land sale agreement for least 50% of the land area required

for the capacity for which Stage-II Connectivity ("Land route") (Clause 8.2.2);

(e) Post grant of Stage-II Connectivity, for Entities which applied under Clause 8.2.2, the following milestones are to be achieved within 6 months from date of grant of Stage-II Connectivity (Clause 8.3.1): -

(i) Ownership or lease rights or land sale agreement for balance 50% of the land area.

(ii) Agreement/ Contract specifying firm sale/ purchase of energy of 25%. Of connectivity applied by person/ applicant.

7.7. It is stated that on 07.02.2023, Applicant/Petitioner applied to Respondent for grant of Stage-I Connectivity for evacuation of power from its proposed 200 MW (Hybrid) power plant at the 220 kV Charkha S/s in terms of the GERC OA Regulations 2011. Further, on 05.04.2023, Respondent granted Stage-I Connectivity to Enfinity to evacuation of 200 MW (Hybrid) power at 200 kV Charkha S/s or under sharing with Project Twelve on 220 kV class for its Captive User in accordance with Regulation 4, 5 and 6 of GERC OA Regulations 2011.

7.8. It is stated that that Applicant/Petitioner's Project of 150 MW requires approximately 99 acres of land. As on 24.04.2023, Applicant/Petitioner had secured the following land measuring 129.72 acres, which was more than 50% of the land required for the Project: -

S.NO.	DISTRICT	TALUKA	LAND IN ACRES
1.	Amreli	Babra	93.18
2.	Botad	Gadhda	16.41

3.	Amreli	Lathi	20.13
		Total	129.72

7.9. It is stated that on 25.04.2023, on account of change in the Project size, Applicant/Petitioner submitted its application to Respondent for grant of Stage-II Connectivity for 150 MW (as compared to 200 MW under Stage-I) under Clause 8.2.2 of the Connectivity Procedure as under:

(a) Name of Applicant (Organization): Enfinity

(b) Criteria for applying Stage-II Connectivity: Eligibility as per para 8.2.2 of Detailed Procedure

(c) Date from which Stage II connectivity is required: 31.05.2023

(d) Location of Generating Projects/ Park: Charkhat, Amreli, Gujarat.

(e) Planned Capacity of the Generating Project/Park (Stage wise): 150 MW

(f) Expected timeline of completion of Generating Project / Park (Stage wise): 30.05.2025

(g) Details of documents enclosed with the application: -

(i) Notarized Affidavit as per FORMAT-1

(ii) Copy of authorization by the Government, as applicable

(iii) Copy of Board Resolution

(iv) Site(s) identification

(v) Documentary evidence of eligibility for applying for Stage –II Connectivity as per the Procedure

(h) As per FORMAT 7 under Clause No. II. B- point no III (Funding from Parent company): Board Resolution of Parent Company towards the amount to be funded by the parent company.

7.10. On 26.04.2023, Applicant/Petitioner submitted Bank Guarantee to

Respondent for an amount of Rs. 4,50,00,000/- having validity till 25.04.2025, for connecting the Project with 220 kV Charkha S/s of Respondent, towards security deposit for completing the Project before 25.04.2025 ("Bank Guarantee").

7.11. On 31.05.2023, Respondent, Respondent granted Stage-II Connectivity to Applicant/Petitioner for evacuation of 150 MW (Hybrid) power at the 220 kV Charkha S/s or under sharing with Project Twelve on 220 kV.

7.12. On 23.06.2023, Respondent wrote to Applicant/Petitioner, providing the provisional estimate of Rs. 3,98,85,517/- towards supervision charges for erection of 1 Nos. 220 kV feeder bay for evacuation of 150 MW Hybrid power at 220 kV Charkha S/s of GETCO from the Project. Further, Applicant/Petitioner was required to pay the estimated charges within 30 days and sign the Agreement for Connectivity to Transmission System in accordance with Clause 6(4) of the GERC OA Regulations 2011, within 5 days thereafter. In case of failure in payment of estimate or signing of the connectivity Agreement within the specified time above, Stage-II connectivity shall stand revoked and cancelled.

7.13. It is stated that on 19.07.2023, Applicant/Petitioner paid Rs. 3,98,85,517/- to Respondent towards supervision charges for erection of 1 Nos. 220 kV feeder bay for evacuation of 150 MW Hybrid power at 220 kV Charkha S/s of GETCO from the Project, in compliance of Letter dated 23.06.2023.

7.14. On 19.07.2023, Applicant/Petitioner executed an agreement with Respondent for erection of Nos. 220 kV feeder bay for evacuation of 150 MW Hybrid power at 220 kV Charkha S/s of GETCO from the

Project.

7.15. On 20.07.2023, a meeting was held between the Respondent and Applicant/Petitioner regarding willingness for development of Hybrid Power Project with connectivity at 220 kV Charkha (Babara) S/s of GETCO.

7.16. It is stated that on 24.07.2023, Applicant/ Petitioner executed a Connection Agreement ("Connection Agreement") with Respondent for establishing connectivity of 150 MW Hybrid Power Project at 220 kV level with 220 kV Charkha S/s of GETCO. In terms of the Connection agreement, Applicant/ Petitioner has undertaken to pay the following charges to Respondent: -

(a) Monthly Transmission Charges

(b) Additional Costs due to specific alteration or modification in existing evacuation infrastructure.

(c) Charges for construction of bays.

(d) O&M charges of dedicated bays to STU as per the applicable regulations.

7.17. On 25.07.2023, a Corrigendum to the Letter dated 23.06.2023 was executed between Applicant/Petitioner and Respondent, whereby the capacity of power evacuation inadvertently mentioned as 200 MW was to be read as capacity of 150 MW.

7.18. It is stated that on 16.09.2023 (letter received by Enfinity on 20.09.2023), Respondent revoked the Stage-II Connectivity granted to Applicant/Petitioner and *inter alia* stating that: -

(a) Enfinity while applying for the RE connectivity undertook that the details submitted along with the application are true and correct and nothing material has been concealed

and all the details entered / furnished are in conformity with the regulations.

(b) Accordingly, Stage-II Connectivity was granted on 31.05.2023.

(c) However, on verification of application and related documents, notarized agreement to lease documents have been submitted instead of registered lease agreement. Such inappropriate submission was in non-compliance with the Connectivity Procedure.

(d) Since Applicant/ Petitioner failed to comply with the Connectivity Procedure, the Stage-II Connectivity granted to Applicant/ Petitioner stands revoked.

7.19. On 22.09.2023, Applicant/Petitioner replied to Respondent 's Impugned Letter *inter alia* stating that the Impugned Letter has been issued by Respondent without putting Applicant/ Petitioner on notice about any alleged non-compliance. Further, Applicant/ Petitioner was neither provided with an opportunity of hearing nor was any time granted to Applicant/ Petitioner to address the alleged non-compliance. Further, the documentary evidence submitted along with the Application for grant of Stage-II Connectivity contained agreements pertaining to land. These Agreements to Lease were for land admeasuring 129.72 acres (being more than the 50% of the land required for the Project). Further, Applicant/ Petitioner also submitted a Title Report wherein it was categorically mentioned that the total land admeasuring 129.72 Acres in the State of Gujarat is under the control of Applicant/ Petitioner, through notarized Agreements to Lease. Applicant/ Petitioner has further agreed to procure by way of registered lease deeds the said lands for

a minimum of 30 years post clarification are received from the Land Revenue Department, Government of Gujarat, on applicability of relaxation of Section 65 B of the Gujarat Land Revenue Code, 1879 prior to execution of Lease Deed. Applicant/ Petitioner had validly submitted all the requisite documents along with the Application for grant of Stage-II Connectivity. The documents and Application clearly delineated the nature of the documents being submitted towards the application for grant of Stage-II Connectivity. Accordingly, there has been no concealment of facts by Applicant/ Petitioner. Post submission of the Application along with all documents, the same were duly verified and considered by Respondent in accordance with the Connectivity Procedure and Stage-II Connectivity was granted on 31.05.2023. Neither was any deficiency indicated nor any information/document sought from Enfinity. Furthermore, Respondent also communicated the estimated bay charges which were paid by Enfinity and both parties even executed the Connection Agreement on 24.07.2023. Therefore, any allegation of non-compliance by Enfinity of the Connectivity Procedure is wholly misconceived and erroneous.

7.20. It is stated that the Respondent was requested that Impugned Letter dated 16.09.2023, revoking Stage-II Connectivity granted to Applicant/Petitioner, be withdrawn and the connectivity be restored to Applicant/Petitioner. Further, Respondent was also requested to maintain *status quo* and not take any coercive action against Applicant/Petitioner including but not limited to invocation/encashment of Bank Guarantees submitted by Applicant/Petitioner.

7.21. It is stated that Applicant/Petitioner is constrained to approach the

Commission seeking directions to Respondent to return the amounts towards the Connectivity BG dated 26.04.2023 and Bay Charges incurred by Applicant/Petitioner pursuant to the Stage-II Connectivity.

7.22. It is stated that the Commission has the jurisdiction to adjudicate the present petition. The present case pertains to adjudication of disputes that have arisen due to unilateral and arbitrary conduct of Respondent *which* is contrary to law and without following the due process under the Connectivity Procedure.

7.23. In terms of Section 86(1)(c) read with Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003, the Commission has the jurisdiction to facilitate intra-state transmission of electricity, promote *co*-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and adjudicate upon disputes of the generating company or transmission licensees. In terms of Section 14 of the Electricity Act, 2003, Respondent is a deemed transmission licensee and has also been notified as the State Transmission Utility under Section 39 of the Electricity Act, 2003.

7.24. It is stated that in terms of Clause 16.2 of the Connectivity Procedure provides the adjudication of disputes between the parties as under: -

"16 Dispute Resolution Mechanism

[...]

16.2 In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Procedure, as stated above, the same shall be dealt as per the

provisions of the Electricity Act, 2003 and Hon'ble GERC shall adjudicate such dispute u/s. 86 of EA 2003 and if required may refer the same to arbitration."

7.25. It is further *stated* that Article 11 of the Connection Agreement executed between Applicant/Petitioner and Respondent *inter-alia* also provides jurisdiction to this Commission.

7.26. It is stated that Applicant/Petitioner has not committed any fraud or misrepresentation in its Application for grant of Stage-II Connectivity and to this extent the Impugned Letter ought to be set aside:

(a) Impugned Letter was issued in violation of principles of natural justice as Applicant/Petitioner was neither put on notice nor was any opportunity provided to Applicant/Petitioner to address Respondent.

(b) Impugned Letter was issued in violation of the due process and procedure prescribed by the Connectivity Procedure as approved by the Commission.

(c) Without prejudice, Applicant/Petitioner has validly submitted all documents at the time of submitting its application for grant of Stage-II connectivity. There was no concealment of facts by Applicant/Petitioner.

(d) Post submission of the Application by Applicant/Petitioner along with all documents, the same were duly verified and considered by Respondent in accordance with the Connectivity Procedure and Stage-II Connectivity was granted on 31.05.2023.

7.27. It is stated that the Impugned Letter was issued without putting

Applicant/Petitioner to notice about any alleged non-compliance. It was only vide Impugned Letter that Applicant/Petitioner was made aware about any alleged non-compliance with the Connectivity Procedure.

7.28. It is further stated that neither was Applicant/Petitioner provided with an opportunity of hearing nor was Applicant/Petitioner granted any time granted to address the alleged non- compliance averred by the Respondent.

7.29. It is stated that it is trite law that the person affected by a proposed action must have a reasonable opportunity of being heard. Reliance in this regard is placed on the following Judgments: -

(a) Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

(b) Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545.

(c) Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151.

7.30. It is stated that the issuance of Impugned Letter dated 16.09.2023 by Respondent is wholly contrary to the principals of natural justice and thus has to be set aside by the Commission to the extent challenged herein.

7.31. It is stated that the action by Respondent of issuing the Impugned Letter is arbitrary and contrary to the Connectivity Procedure and ought to be set aside by the Commission to the extent challenged herein.

7.32. It is stated that in terms of the Connectivity Procedure, Respondent (being STU) can cancel/revoke Connectivity already granted only under the following circumstances: -

Rule	**Particular**

Clause 6: Application for Stage I Connectivity	"6.4 The Stage-I Connectivity grantee needs to apply for Stage- II Connectivity within (i) 6 (six) months from the date of grant of Stage-I Connectivity or (ii) till the date the particular substation gets booked by Stage-II connectivity grantee, whichever is earlier. Thereafter, all the granted Stage-I connectivity at particular substation, if any, shall stand cancelled."
Clause 8.3: Conditions to be met by Stage II Connectivity Grantee	"8.3.1 After grant of Stage-II Connectivity, the grantees covered under Para 8.2.2 shall have to achieve the following milestones and submit the proof to STU within six months from the date of grant of Stage-II connectivity, (i) Ownership or lease rights or land sale agreement for balance 50% of the land area, (ii) Agreement/ Contract specifying firm sale/ purchase of energy of 25% of connectivity applied by person/ applicant. 8.3.2 In the event of failure to achieve above milestones as listed in Para 8.3.1 above, as applicable, Stage-II Connectivity shall stand revoked and cancelled."
Clause 9: Process for grant of Stage II Connectivity	"9.7 The STU/ Transmission Licensee shall issue the requisite estimate for the work like Bay construction and/ or other works of required to carry out at Connectivity Substation to the Stage-II Connectivity grantee within 30 days of issuance of Stage-II

	connectivity grant letter. The Stage-II Connectivity grantee shall pay the estimate within 30 days and sign the Agreement for Connectivity to Transmission system in accordance with Clause 6 (4) of the GERC Connectivity Regulations, as amended from time to time, within 5 days thereafter. Thus, the full process shall be completed within 65 days from the date of issuance of intimation of grant of Connectivity. No extension of time shall be granted for payment of estimate and signing of agreement for Connectivity to Transmission system. In case of failure in payment of estimate or signing of the Connectivity Agreement within specified time above, Stage-II Connectivity shall stand revoked and cancelled.”
Clause 10 – Process Monitoring of renewable project after grant of Stage – II Connectivity	"10.2(B): If a grantee fails to complete the dedicated transmission line(s), including require bays, busbar at transmission licensees' sub-station and/or generator pooling station(s) within the timeline stipulated under sub-Para Clause (A) above, Stage-II Connectivity shall be revoked, and BG shall be encashed. (C) The Stage-II grantee shall commission at least 10% of the allotment capacity within one month of charging of evacuation line, failing which, the Stage-II grantee shall be liable to pay long-term Transmission Charges for 10% of allotted capacity till such 10% of allotted capacity is commissioned Balance 90% capacity shall be required to be commissioned within two years

	failing which STU shall cancel the capacity allotment to the extent of capacity not commissioned and the developer shall have no claim on such capacity. Further, STU shall include such cancelled capacity in the list of spare capacity for RE integration to be published on their website for prospective consumers or as per the State Commission's Order, if any."

7.33. Therefore, in terms of the Connectivity Procedure, Respondent is entitled *cancel*/revoke Stage-II Connectivity granted to an Applicant/Petitioner, under the following circumstances: -

(a) Failure to meet requisite milestones prescribed under Clause 8.3.1 within six months from the date of grant of Stage-II Connectivity.

(b) Failure to pay estimate charges or sign the Connectivity Agreement within specified timeline prescribed under Clause 9.7.

(c) Failure to complete the dedicated transmission line(s), including bays, busbar at transmission licensees' sub-station and/or generator pooling station(s) within the timeline stipulated under Clause 10.2.

(d) Failure to commission 90% capacity within two years of charging of evacuation line failing which STU shall cancel the capacity allotment extent of capacity not commissioned.

7.34. It is stated that the Impugned Letter reveals that none of the grounds available to Respondent under the Connectivity Procedure have been established. Further, Respondent has also not alleged that Applicant/Petitioner has failed to meet the timeline for milestones

under the Connectivity Procedure.

7.35. It is stated that the post grant of Stage-II Connectivity by Respondent on 31.05.2023, Applicant/Petitioner has taken steps to ensure timely construction and commissioning of the Project including compliance with timelines under the Connectivity Procedure. In this regard, the following is noteworthy: -

(a) On 23.06.2023, Respondent provided the provisional estimate of Rs. 3,98,85,517/- towards supervision charges for erection of 1 Nos. 220 kV feeder bay for evacuation of power from to Project at the 220 kV Charkha S/s of GETCO. Applicant/Petitioner was required to pay the estimated charges within 30 days and sign the Agreement for Connectivity to Transmission System in accordance with Clause 6(4) of the GERC OA Regulations 2011, within 5 days thereafter.

(b) On 19.07.2023, Applicant/Petitioner paid Rs. 3,98,85,517/- to Respondent.

(c) On 19.07.2023, Applicant/Petitioner executed an agreement with Respondent for erection of 1 Nos. 220 kV feeder bay for evacuation of 200 MW Hybrid power at 220 kV Charkha S/s of GETCO from the Project.

(d) On 20.07.2023, a meeting was held between GETCO and Applicant/Petitioner regarding willingness for development of 200 MW Hybrid Power Project with connectivity at 220 kV Charkha (Babara) S/s of GETCO.

(e) On 24.07.2023, Applicant/Petitioner executed the Connection Agreement with Respondent for establishing

connectivity of 150 MW Hybrid Power Project at 220 kV level with 220 kV Charkha S/s of Respondent.

7.36. It is stated that the Applicant/Petitioner has been in compliance of the due process and timelines as laid down under the Connectivity Procedure. However, the Respondent in an arbitrary manner issued the Impugned Letter on alleged grounds of non-compliance and in violation of the provisions of the Connectivity Procedure. The Respondent has failed to establish how any of the conditions Permitted under the Connectivity Procedure had been satisfied for issuance of the Impugned Letter. The ground taken by Respondent in Impugned Letter is beyond the scope of power granted to it under the Connectivity Procedure.

7.37. It is stated that the Respondent, being STU, is a creature of the Electricity Act, 2003 and is bound by the four corners of the same including Regulations framed by the Commission including the Connectivity Procedure. It is settled law that regulations framed by the Commission including approval of the Connectivity Procedure (read Regulation 20 of the GERC OA Regulations) are forms of delegated legislation and qualify as law and are binding on the Commission and Respondent. This position is consistent with the findings of the Constitution Bench of the Hon'ble Supreme Court in PTC India Ltd. vs. CERC & Ors. Reported as (2010) 4 SCC 603.

7.38. It is also stated that being a public entity, it was incumbent upon Respondent to act in a reasonable manner as laid down by the Hon'ble Supreme Court in following judgements:

(a) ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.: (2004) 3 SCC 553

(b) UNITECH Ltd. & Ors. v. Telangana State Industrial Infrastructure Corporation & Ors: 2021 SCC OnLine SC 99

7.39. Further, it is settled law, that when a Statutory Authority is required to do a thing, in a particular manner, the same shall be done in that manner alone and not otherwise. This position is also consistent with the Judgment of the Hon'ble Supreme Court in Bhavnagar University Vs. Palitana Suger Mills reported as (2003) 2 SCC 511.

7.40. It is stated that Impugned Letter ought to be set aside to the extent challenged herein as the same has been passed by Respondent in wrongful and excessive exercise of power not granted under the Connectivity Procedure as: -

(a) None of the grounds permitted by the Connectivity Procedure for revocation of Stage-II Connectivity have been established by Respondent; and

(b) Respondent has not alleged any violation by Applicant/Petitioner in meeting the timelines prescribed under the Connectivity Procedure.

7.41. Accordingly, the impugned Letter has been issued in excess of the power granted to Respondent and is contrary to the provisions of the Connectivity Procedure and the GERC OA Regulations.

7.42. It is stated that even otherwise and without prejudice to the foregoing submissions, the Respondent's allegation that the Applicant/Petitioner is in non-compliance with the Connectivity Procedure is without any basis and incorrect. In this regard, the following is noteworthy: -

(a) In terms of Clause 6.1 read with Clause 15 of the Connectivity Procedure, GETCO/STU shall share the

available capacity of the Intra-State sub-station for RE integration on website on 1st day of every calendar month. Applicant/Petitioner became aware of the available capacity of the Intra-State sub-station (i.e., Charkha Sub-station) as provided on GETCO's website.

(b) On 07.02.2023, Applicant/Petitioner duly applied for grant of Stage-I Connectivity for its 200 MW (Hybrid) project at the 220 kV Charkha S/s in terms of the GERC OA Regulations 2011 and the Connectivity Procedure.

(c) On 05.04.2023, Respondent granted the Stage-I Connectivity to Applicant/Petitioner in accordance with Regulation 4, 5 and 6 of OA Regulations read with the Connectivity Procedure.

(d) On 26.04.2023, Applicant/Petitioner applied for grant of Stage-II Connectivity under Clause 8.2.2 of the Connectivity Procedure. The following documents were submitted along with our application:

(i) Notarized Affidavit as per FORMAT-1

(ii) Copy of authorization by the Government, as applicable

(iii) Copy of Board Resolution

(iv) Site(s) identification

(v) Documentary evidence of eligibility for applying for Stage -II Connectivity as per the Procedure

(vi) Board Resolution of Parent Company towards the amount to be funded by the parent company, as per FORMAT 7 under Clause no. II. B - point no III (Funding from Parent company).

(e) The documentary evidence submitted along with the Application contained agreements pertaining to land**.** These Agreements to Lease were for land admeasuring 129.72 acres (being more than the 50% of the land required for the Project).

(f) Pertinently, Applicant/Petitioner also submitted a Title Report wherein it was categorically mentioned that: -

(i) The total land admeasuring 129.72 Acres in the State of Gujarat is under the control of RE Developer (i.e., Enfinity), through notarized Agreements to Lease.

(ii) RE Developer (i.e., Enfinity) has further agreed to procure by way of registered lease deeds the said lands for a minimum of 30 years post clarification are received from the Land Revenue Department, Government of Gujarat, on applicability of relaxation of Section 65 B of the Gujarat Land Revenue Code, 1879 prior to execution of Lease Deed.

(iii) It was further clarified that the RE Developer (i.e., Enfinity) has secured control over the land of 129.72 acres.

7.43. It is stated that the Applicant/Petitioner had validly submitted all the requisite documents along with the Application dated 26.04.2023 for grant of Stage-II Connectivity. The documents and Application clearly delineated the nature of the documents being submitted towards the application for grant of Stage-II Connectivity. Accordingly, there has been no concealment of facts by Applicant/Petitioner.

7.44. It is stated that post submission of documents, Respondent examined and verified the same and only granted Stage-II Connectivity to Applicant/Petitioner post this exercise. Accordingly, there is a presumption that if Stage-II Connectivity has been granted, the application (along with documents) and the process are in order. Accordingly, the onus now lies on Respondent to establish otherwise.

7.45. It is stated that that there is no allegation of any illegality or wrongdoing. It is submitted that the Respondent has not been able to point out any misrepresentation or suppression.

7.46. It is stated that the Respondent is alleging concealment by Applicant/Petitioner on the same set of documents basis which Stage-II Connectivity was granted without establishing any misrepresentation. Thus, on the same set of documents, there has been a complete flip-flop by Respondent. It is submitted that the present scenario is a clear case of malice in law and cannot be countenanced by the Commission. It is submitted that Respondent has failed to establish any false suggestion or concealment of material particulars on behalf of Applicant/Petitioner and has without any substantial evidence alleged non-compliance by Applicant/Petitioner. It is submitted that on account of feigned ignorance about the nature of document, the Respondent cannot now be permitted to content fraud or misrepresentation on behalf of Applicant/Petitioner in its Application for grant of Stage-II connectivity, having granted the same post examination and verification of the documents and satisfaction of compliance of the Connectivity Procedure by Applicant/Petitioner.

7.47. It is stated that the Connectivity Procedure has adequate provisions which empower Respondent to seek clarification and additional information/documents in carrying out verification of applications for grant of Connectivity as detailed subsequently.

7.48. It is stated that Clause 9 of the Connectivity Procedure (which deals with process for grant of Stage-II Connectivity) states that the STU while processing the application for grant of Stage-II Connectivity, shall intimate the deficiency, if any, or may seek clarifications, additional information, confirmation, as may be required. The relevant provision is extracted below: -

9. Process for Grant of Stage-II Connectivity

9.1. Stage-II connectivity shall be processed in accordance with Regulations (4), (5) and (6) of the GERC Connectivity Regulations in force.

9.2. The person / applicant shall submit the application to STU through online portal for grant of connectivity. STU shall intimate the deficiency, if any, in writing to the person/applicant within three clear working days through online portal and email id provided by the person/applicant.

9.3. STU while processing the application for Stage-II Connectivity may seek such clarifications, additional information, confirmation, as may be required based on such clarification, decision of STU shall be final. In case of any dispute, Clause No. 16 of this procedure shall be applicable.

The STU shall intimate the person/applicant about grant of Stage-II connectivity or otherwise within a period of thirty days from 2400 hrs. of the last day of the month in which the application for Stage-II connectivity was received.

[...]

9.7 The STU/ Transmission Licensee shall issue the requisite estimate for the work like Bay construction and/ or other works required to carry out at Connectivity Substation to the Stage-II Connectivity grantee within 30 days of issuance of Stage-II connectivity grant letter. The Stage-II Connectivity grantee shall pay the estimate within 30 days and sign the Agreement for Connectivity to Transmission system in accordance with Clause 6 (4) of the GERC Connectivity Regulations, as amended from time to time, within 5 days thereafter. Thus, the full process shall be completed within 65 days from the date of issuance of intimation of grant of Connectivity. No extension of time shall be granted for payment of estimate and signing of agreement for Connectivity to Transmission system. In case of failure in payment of estimate or signing of the Connectivity Agreement within specified time above, Stage-II Connectivity shall stand revoked and canceled."

7.49. It is further stated that in case of any dispute while processing the application for grant of Stage-II Connectivity, the Respondent was bound to follow the procedure as prescribed under Rule 16 of the Connectivity Procedure, which states as follows: -

"16. Dispute Resolution Mechanism

16.1 All differences and admitted disputes between the parties arising out of or in connection with this Procedure shall be mutually discussed and amicably resolved within 90 days.

16.2 In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Procedure, as stated above, the same shall be dealt as per the provisions of the Electricity Act, 2003 and Hon'ble GERC shall adjudicate such dispute u/s 86 of EA 2003 and if required may refer the same to arbitration."

7.50. It is stated that therefore, if there existed any deficiency or additional information/ clarification which was required from Applicant/Petitioner as regards its application dated 26.04.2023 for grant of Stage-II Connectivity, Respondent was entitled to seek the same in terms of Clause 9 of the Connectivity Procedure. Further, in case of any dispute while processing the application for Stage-II Connectivity, parties are required to follow the process mentioned in Clause 16 of the Connectivity Procedure. It is evident from the factual matrix that no such clarification/additional information was sought by Respondent under Clause 9 of the Connectivity Procedure.

7.51. It is submitted that post submission of the Application dated 26.04.2023 by Applicant/Petitioner along with all documents, the same were duly verified and considered by Respondent in accordance with the Connectivity Procedure and Stage-II Connectivity was granted on 31.05.2023. This further corroborates the fact that all documents were validly submitted along with the Application dated 26.04.2023, and neither was any deficiency indicated nor any information/document was sought from Applicant/Petitioner.

7.52. It is stated that post grant of Stage-II Connectivity dated 31.05.2023, Respondent also communicated the estimated bay charges which

were paid by Applicant/Petitioner and both parties even executed the Connection Agreement on 24.07.2023, in compliance of the Connectivity Procedure within the prescribed timelines. Therefore, any allegation of non-compliance by Applicant/Petitioner of the Connectivity Procedure is arbitrary, misconceived and erroneous. The Respondent has acted in an arbitrary manner and failed to follow the due process under the Connectivity Procedure.

7.53. It is stated that Applicant/Petitioner that Applicant/Petitioner post grant of Stage-II Connectivity has undertaken substantial development towards the Project.

7.54. It is stated that Respondent being a state instrumentality is obligated to act in a fair and non-arbitrary manner. The Hon'ble Supreme Court in Shrilekha Vidyarthi (Kumari) v. State of Uttar Pradesh: (1991) 1 SCC 212, has observed that Article 14 does not permit arbitrariness, unfairness or unreasonableness in State actions in any sphere of its activity including contractual field. All actions of the State are meant for public good and expected to be fair and just.

7.55. It is stated that Applicant/Petitioner had a legitimate expectation of non-arbitrary State action which has been violated by Respondent. This position has been upheld by the Hon'ble Supreme Court in Food Corporation of India v. Kamdhenu Cattle Feed Industries: (1993) 1 SCC 71. Similar view has been upheld by the Hon'ble Supreme Court in UNITECH Ltd. & Ors. v. Telangana State Industrial Infrastructure Corporation & Ors., 2021 SCC OnLine SC 99.

7.56. It is stated that in view of Applicant/Petitioner's disclosure and Respondent's obligation, Respondent cannot be permitted to contend that there were fraud and misrepresentation at any stage.

All such claims are unfounded and without any basis. In view of above, the Commission ought to declare that there has been no fraud or misrepresentation on behalf of Applicant/Petitioner in its Application for grant of Stage-II Connectivity and to this extent quash and set aside the Impugned Letter.

7.57. It is stated that in compliance of Rule 8.2.2 of the Connectivity Procedure, Applicant/Petitioner had submitted the Connectivity Bank Guarantee dated 26.04.2023 to Respondent for an amount of Rs. 4,50,00,000/- having validity till 25.04.2025, for connecting the Project with 220 kV Charkha S/s of GETCO, towards security deposit for completing the Project Before 25.04.2025.

7.58. It is further stated that Applicant/Petitioner has also made substantial payments in terms of Connectivity Procedure, pursuant to grant of Stage-II Connectivity dated 31.05.2023 by Respondent, as under:-

Sr. No.	PARTICULAR	AMOUNT (INR)
1.	Connectivity Bank Guarantee	4,50,00,000/-
2.	Supervision charges for erection of 1 Nos. 220 kV feeder bay for evacuation of 150 MW Hybrid power at 220 kV Charkha S/s of GETCO from the Project.	3,98,85,517/-
3.	Payment made under the work order to the land aggregator, Dhrumik Land Developers Private Limited for execution for inter alia, facilitation of land agreements and securing approvals for	53,60,000/-

	the project	
4.	Payment made for technical studies	2,10,9257-
	TOTAL	9,04,56,442/-

7.59. It is stated that as part of the ongoing development process, Applicant/ Petitioner has made significant investments amounting to Rs. 9,04,56,442/- in the Project with the objective to ensure that the Project is constructed and commissioned in time including complying with the timelines required under the Connectivity Procedure.

7.60. It is stated that the aforesaid charges were paid by Applicant/Petitioner and accepted by Respondent, pursuant to treating the Stage-II Connectivity granted to Applicant/Petitioner as valid and subsisting. Retention of such amounts would amount to unjust enrichment by Respondent at the cost of Applicant/Petitioner, which ought not to be permitted by the Commission. Accordingly, it is submitted that the Connectivity Bank Guarantee dated 26.04.2023 as well as the deposits provided by Applicant/Petitioner to Respondent pursuant to grant of Stage- II Connectivity dated 31.05.2023, ought to be returned to Applicant/Petitioner. It is just and equitable in interests of law to grant directions for return/ refund of the BG and the charges paid to the Respondent.

7.61. It is stated that even assuming without admitting that Respondent committed an error in verification of the documents prior to grant of Stage-II Connectivity, Applicant/Petitioner cannot be penalized for the same. Accordingly, the monies paid by Applicant/Petitioner including deposits and Bank Guarantee ought to be returned in

terms of the alternate prayers, without prejudice to the contentions that the revocation of Stage-II Connectivity is bad in law. It is submitted that retention of the monies by Respondent would amount to unjust enrichment and be contrary to law in terms of Judgment of Hon'ble Supreme Court in Sahakari Khand Udyog Mandal Limited vs. CCEN & Customs (2005) 3 SCC 738.

7.62. It is stated that the purpose of requirement of Connectivity Bank Guarantee is to insulate or indemnify the transmission utility against any loss it might incur on account of defaults on the part of the entity in timely compliances till the commencement of evacuation of power. Further, Respondent is only entitled to encash/invoke Connectivity Bank Guarantee if a grantee fails to complete the dedicated transmission line(s), including require bays, busbar at transmission licensees' sub- station and/or generator pooling station(s) within the timeline stipulated under Rule 10 of the Connectivity Procedure.

7.63. It is stated that vide the Impugned Letter, Respondent has revoked the Stage - II Connectivity on account of alleged non-compliance of Clause 8.2.2(i) of the Connectivity Procedure. Therefore, the intended purpose of the Connectivity Bank Guarantee dated 26.04.2023 stands vitiated. It is submitted that, revocation of connectivity under Rule 8.2.2 of the Connectivity Procedure does not attract encashment of Bank Guarantee by Respondent.

7.64. It is stated that forfeiture of Bank Guarantee is an act of levying penalty. It is trite law that any penalty can only be imposed or carried out when a person is found guilty of committing an act which attracts such a penalty as provided under the law. Therefore, a penal

clause requires to be construed and enforced strictly. Reliance in this regard, is placed on the Judgment dated 20.01 2022 passed by the Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal") in Appeal No. 26-28 of 2020 titled Vaayu Renewable Energy (Kaveri) Pvt. Ltd. v. CERC & Ors, wherein the Hon'ble Tribunal held that since the requisite period of twenty-four months for construction of the dedicated transmission lined had not yet lapsed, the penalty of encashment of Bank Guarantee could not have been imposed.

7.65. It is stated that withholding/invocation of the bank guarantee as well as the deposits in question by Respondent will be illegal since the conditions provided in the Connectivity Procedure for such invocation are not satisfied.

7.66. It is stated that the Hon'ble Tribunal in Judgment dated 12.04.2022 in Appeal No. 53 of 2022 titled Shapoorji Pallonji Infrastructure Capital Company Pvt. Ltd. v. PGCIL and Anr., held that since no loss was suffered by the Respondent therein on account of either grant of Stage-II connectivity or its revocation, neither there was a cause to initiate action to encash Connectivity Bank Guarantee under the extant Detailed Procedure, the said amount shall be refunded forthwith to the Appellant therein.

7.67. It is stated that in the present case as well, the Connectivity Procedure does not provide any right to Respondent to withheld/encash the Bank Guarantee or the substantial deposits made by Applicant/Petitioner, post grant of Stage-II Connectivity dated 31.05.2023, for alleged non-compliance of Rule 8.2.2(i) of the Connectivity Procedure. Therefore, the Respondent has not satisfied any conditions for withholding/invocation of the Connectivity Bank

Guarantee dated 26.04.2023.

7.68. It is stated that the Hon'ble Supreme Court in Union of India Millenium Delhi Broadcast LLP (2022) 7 SCC 67, held that the invocation bank guarantee in question was illegal since the conditions provided in the parent instrument/ agreement for such invocation were not satisfied. It was observed that the bank guarantee in question was a performance bank guarantee intended to ensure the due performance of an agreement. Since, none of the conditions for invocation were fulfilled, such invocation was held to be illegal.

7.69. It is stated that Respondent has neither pleaded or established any loss caused to it on account of revocation of the Stage-II Connectivity nor have any of the ground's available invocation of Connectivity Bank Guarantee been satisfied. Accordingly, Respondent ought to be directed to return the Connectivity Bank Guarantee as well as the deposits made by Petitioner pursuant to grant of Stage-II Connectivity, amounting to Rs. 8,48,85,517/- forthwith.

7.70. It is stated that the relief for return of Connectivity Bank Guarantee as well as the deposits made by Applicant/Petitioner pursuant to grant of Stage-II Connectivity is in alternative and without prejudice to the submissions of Applicant/Petitioner, that revocation of Stage-II Connectivity by Respondent is arbitrary and contrary to law and due process under the Connectivity Procedure.

8. The Respondent GETCO filed its affidavit dated 16.08.2024 to the amended Petition filed by the Petitioner and as under:

8.1. It is submitted that the Applicant/Petitioner has filed the present

Petition in regard to the Letter dated 16.09.2023 issued by the Respondent, Gujarat Energy Transmission Corporation Limited (GETCO) seeking certain declaration and for the return of the Bank Guarantee and bay charges/deposits made by the Petitioner, pursuant to the grant of connectivity.

8.2. The Respondent is the State Transmission Utility under Section 39 of the Electricity Act, 2003 and a transmission licensee under the Electricity Act, 2003. As the State Transmission Utility, the Respondent discharges the functions as provided under sub-section (2) of Section 39 of Act.

8.3. The Commission has framed GERC (Terms and Conditions of Inter-State Open Access) Regulations 2011 where under it is provided that the Detailed Procedure may be approved by the Commission which would *inter alia*, include aspects on application for connectivity and open access and other issues (Regulation 20). In terms of the same, a Detailed Procedure was drafted in relation to the Grant of Connectivity to Projects based on Renewable Sources to Intra-State Transmission System and in terms of the Open Access Regulations, the draft had been placed on the website of the Respondent to invite comments and suggestions and thereafter the same was placed before the Commission. The Commission approved the Detailed Procedure for Grant of Connectivity to Projects based on Renewable Sources to Intra-State Transmission System on 07.01.2023.

8.4. It is submitted that there cannot be any dispute that the said Detailed Procedure is binding on the Applicant/Petitioner and the Application for connectivity in question in the present case had been filed under the regime of the said Detailed Procedure. The Detailed

Procedure provides for two stages of Connectivity – Stage-I and Stage-II. The Applicant/Petitioner was granted Stage-I Connectivity in terms of the Order dated 07.01.2023 vide Letter dated 05.04.2023 for 200 MW and was required to apply for Stage-II Connectivity which was intimated to the Applicant/Petitioner in the said Letter. The Applicant/Petitioner had thereafter in April 2023, filed the application for Stage-II Connectivity for 150 MW and the Applicant/Petitioner was required to comply with the requirements under the Detailed Procedure.

8.5. It is submitted that on discovery of the fact that the documents submitted by the Applicant/Petitioner did not fulfil the eligibility requirements under the Detailed Procedure and therefore the Stage-II Connectivity ought not to have been granted to the Applicant/Petitioner, the Respondent had cancelled/revoked the Stage-II Connectivity granted. It cannot be claimed that even though the grant of Connectivity was not in compliance with the Detailed Procedure, the Respondent cannot revoke the same. The power to grant includes the power to revoke.

8.6. It is submitted that the Applicant/Petitioner in the Amended Petition is not seeking any relief against the cancellation of Connectivity. The issue in the present case relates to the refund of the amounts paid by the Petitioner and the return of the Bank Guarantee dated 26.04.2023 submitted by the Applicant/Petitioner, in lieu of the Connectivity granted to the Applicant/Petitioner.

8.7. It cannot be disputed that the Applicant/Petitioner was not eligible for consideration of Stage-II Connectivity as per the Detailed Procedure approved by the Gujarat Electricity Regulatory

Commission. Admittedly, the Applicant/Petitioner had not submitted the registered lease agreement, as was specifically required, at the time of the application. Admittedly, the Applicant/Petitioner did not have the registered lease agreement at that time. It is not even the case of the Applicant/Petitioner that it had the registered agreements on the date of the application.

8.8. It is submitted that it cannot also be disputed that the Detailed Procedure as approved by the Commission which governs the consideration and processing of the applications and grant of Stage-II Connectivity specifically require the submission of registered lease agreement as part of the application under Clause 8.2.2 in order to be eligible for Stage II Connectivity.

8.9. It is submitted that the Applicant/Petitioner had applied for connectivity under Clause 8.2.2 of the Detailed Procedure and therefore had to be meet the eligibility conditions thereof. It is therefore clear that the Applicant/Petitioner was not eligible in terms of the Detailed Procedure. As per the Detailed Procedure it is clear that a registered lease/sale agreement was necessary, and it is not open to the Applicant/Petitioner or any applicant to seek any exemptions or exceptions or otherwise contravene the specific eligibility conditions.

8.10. It is submitted that the effect of the above is that the Applicant/Petitioner's application was not eligible and yet the Applicant/Petitioner had applied for the same. The Applicant/Petitioner should not have been considered for grant of connectivity. In case of such ineligibility, the application was required to be rejected as not fulfilling the requirements. There

would have been no need for any show cause notice as to why the application should not be rejected. The present action of the Respondent is only restoring the position as it would have been if the fact of non-submission of the registered lease deed was noted at the time of processing of the application instead of subsequently. Therefore, there is no need for any show cause notice.

8.11. It is submitted that even in the Letter dated 22.09.2023, the Applicant/Petitioner has not made any claim that it had the registered lease deed nor has by the Applicant/Petitioner, nor the Applicant/Petitioner made any such claim in the Petition. In fact, the Applicant/Petitioner has not even provided the current status of land as on the date of Letter dated 22.09.2023 or filing of the Petition. It is clear that the Applicant/Petitioner is delayed in respect of land availability

8.12. It is submitted that there cannot be any dispute on two aspects:

(a) The Detailed Procedure requires submissions of registered lease agreements with the Application.

(b) The Applicant/Petitioner did not have the registered lease agreements as on the date of the application.

8.13. It was impossible for the Applicant/Petitioner to cure its ineligibility, and the Petitioner could not have provided any satisfactory answer to the noncompliance with the Detailed Procedure.

8.14. It is submitted that since the Applicant/Petitioner is not pressing the relief for challenge to the Letter dated 16.09.2023 or challenge to revocation of connectivity, the issues being sought to raise on violation of principles of natural justice is not relevant. The claim of

violation is in context of letter dated 16.09.2023 and cancellation of connectivity and no relief has been sought in this regard.

8.15. It is submitted that even assuming but not admitting that any notice was required to be sent by the Respondent to the Applicant/Petitioner, besides no purpose would be served in as much as the Applicant/Petitioner could not have demonstrated its eligibility on the date of the application when admittedly there was no registered lease agreement, even in response to the cancellation, the Applicant/Petitioner has not been able to demonstrate anything contrary to action taken. Thus, no prejudice is caused to the Applicant/Petitioner due to absence of any show cause notice or alleged violation of principles of natural justice. Further any such opportunity of hearing would not have changed the result i.e. cancellation of the Connectivity. Thus, any such exercise would have been empty formality. In this reference the Respondent relied on the following decisions of the Hon'ble Supreme Court:

(a) *Ashok Kumar v. Union of India, (2007) 4 SCC 54.*

(b) *Dharampal Satyapal Ltd v. Deputy Commissioner of Central Excise, Gauhati and Others (2015) SCC 8 SCC 519.*

(c) *Rajeev Suri v. Delhi Development Authority and Others (2022) 11 SCC 1.*

8.16. It is submitted that the judgment of the Hon'ble Supreme Court in the matter between Ashok Kumar v. Union of India, (2007) 4 SCC 54) though related to service matter has similar factual scenario.

(a) The Appellant therein had been granted appointment, despite being ineligible as he did not have MD degree on

date of application which was an essential qualification for the post. Similarly, the Petitioner herein has been granted connectivity, despite being ineligible as it did not have registered land documents which is a requirement under detailed procedure.

(b) The Appellant had attached a certificate that he was a bona fide student and was admitted for degree of MD. The Petitioner herein is relying on the notarized land documents and title report referring to notarized documents (which were not registered).

(c) There was no opportunity of hearing granted to the Appellant therein which was raised by the Appellant. The Petitioner herein have also raised the issue of principles of natural justice.

8.17. It is submitted that the Hon'ble Supreme Court has upheld the cancellation of appointment on the basis that the same was illegal despite the non-grant of opportunity of hearing and recognized that principles of natural justice would not be insisted on when it would be a futile exercise, and no prejudice is caused. It was further recognized that no issues of equity can be considered.

8.18. It is submitted that as is clear from the above, the Applicant/Petitioner's application was ineligible for connectivity and at that stage of consideration, there would be no show cause notice. There is no need for such notice when Respondent is only correcting the inadvertent grant to an ineligible application. Even otherwise, it is clear that it was impossible for the Applicant/Petitioner to cure its ineligibility, and the

Applicant/Petitioner could not have provided any satisfactory answer to the non-compliance with the Detailed Procedure. Therefore even assuming but not admitting that any notice was required to be sent by the Respondent to the Applicant/Petitioner, besides no purpose would be served in as much as the Applicant/Petitioner cannot demonstrate its eligibility on the date of the application when admittedly there was no registered lease agreement, even in response to the cancellation, the Applicant/Petitioner has not been able to demonstrate anything contrary to action taken. Thus, no prejudice is caused to the Applicant/Petitioner due to absence of any show cause notice or alleged violation of principles of natural justice. Further any such opportunity of hearing would not have changed the result i.e. cancellation of the Connectivity. Thus, any such exercise would have been empty formality.

8.19. It is submitted that the Applicant/Petitioner was well aware of the requirements of the Detailed Procedure. The draft of the Detailed Procedure had been published on Respondent's website and comments had been invited from stakeholders and hence there was due diligence with the stakeholders at the draft stage and the Procedure was approved on 07.01.2023 and was made effective from 21.01.2023.

8.20. It is submitted that when the Applicant/Petitioner is ineligible, it cannot become eligible merely because it was granted the Connectivity inadvertently and on basis of incorrect statements of the Petitioner.

8.21. It is submitted that the Applicant/Petitioner was well aware that it

did not have the registered lease agreement which is a requirement under the Detailed Procedure and therefore the Applicant/Petitioner was not in a position at all to act in compliance with the Detailed Procedure and the application was not eligible. The Applicant/Petitioner had therefore made an incorrect statement and undertaking that it had complied with the Regulations/Detailed Procedure. The Applicant/Petitioner has not attached the lease agreements.

8.22. It is submitted that there can be no dispute that the said statement made by the Applicant/Petitioner was false to the knowledge of the Applicant/Petitioner and the Applicant/Petitioner had deliberately made such representation to induce the acceptance of the application and to gain connectivity to which the Applicant/Petitioner was otherwise in law not eligible.

8.23. The Applicant/Petitioner cannot be allowed to retain the undue gains obtained by means of fraud and misrepresentation. The Applicant/Petitioner cannot therefore claim any equity or otherwise any consideration for any steps taken by it in regard to the project. The Applicant/Petitioner cannot be allowed to take advantage of its own wrong.

8.24. It is submitted that the alleged progress of or action taken by the Applicant/Petitioner in regard to its project cannot be considered. The issue is only eligibility of the Applicant/Petitioner under Detailed Procedure and the relevant date for demonstration of eligibility was 25.04.2023 when the Applicant/Petitioner had applied online for Stage-II Connectivity, and it is not even the Applicant/Petitioner 's case that it can demonstrate the same. If the

Applicant/Petitioner was not eligible, then the grant is required to be cancelled. It is open to the Applicant/Petitioner to apply again subject to fulfilment of eligibility requirements and the same can be considered as per the available capacity and depending on the other applicants and inter se priority as per the Detailed Procedure.

8.25. The Applicant/Petitioner had taken the risk of applying for Stage-II Connectivity with incorrect documents and further took the risk of making alleged steps. The Applicant/Petitioner cannot claim any equity based on any alleged progress when the connectivity was not in accordance with the Detailed Procedure and in fact when it is clear that the Applicant/Petitioner had not acted in a bona fide manner. Even otherwise, it is submitted that the Applicant/Petitioner can apply for connectivity again and its application can be considered in terms of the Detailed Procedure.

8.26. It is submitted that even in the present Petition, the Applicant/Petitioner has not provided any legal ground for why its application should not have been considered ineligible. Even though the Applicant/Petitioner claims it had validly submitted land documents, it has not provided any explanation for the fact that the registered lease agreements as required under Clause 8.2.2 and FORMAT 7 of the Detailed Procedure were not submitted and were not even available as on date of application.

8.27. The Respondent as the nodal agency for grant of connectivity, having come to know that an application for Stage-II Connectivity had been considered despite being ineligible and contrary to the Detailed Procedure, is entitled to and in fact obliged to take corrective action. The Applicant/Petitioner cannot be allowed the continued benefit of

the Stage-II Connectivity which is not in accordance with the Detailed Procedure.

8.28. The Respondent as a State Transmission Utility under Section 39 and Transmission Licensee has to ensure development of efficient system of transmission for smooth flow of electricity and provide open access in a non-discriminatory manner.

8.29. The Applicant/Petitioner therefore could not have been allowed to continue with the grant of Stage-II Connectivity when the same was contrary to the Detailed Procedure. This would be discriminatory to other applicants who had to wait until the receipt of the registered lease deed or sale deed to apply for the connectivity. It cannot be that the Applicant/Petitioner is permitted an exemption from the application of rules.

8.30. It is stated that the transmission capacity available is not unlimited and applicants who apply earlier have a better chance of being granted stage-II connectivity and access. The applications received in a calendar month are processed in the next month. Therefore, an application filed in March 2023 would get processed before the application filed in April 2023. If the capacity is allocated to the applicant in March 2023, there may not be sufficient capacity available for the applicant in April 2023. Further even within the applications in the same calendar month, there is *inter se* priority provided:

> *"9.4 The priority for grant of stage-II connectivity to applications received during the same calendar month shall be given to (i) applicants who have been awarded LOI/LOA or have signed PPA with distribution licensees within the State*

followed by (ii) Other applicants. The inter-se priority for applicants within each category shall be based on date and time of receipt of complete application on the portal."

Thus, timing of filing an application may affect the chances of grant of connectivity to a particular sub-station.

8.31. It is stated that in the present case, there may be other applicants in the same area who are seeking connectivity and would have to be denied if the Applicant/Petitioner continues with its Connectivity obtained in a wrongful manner. Therefore, allowing the Applicant/Petitioner to continue with the Stage-II Connectivity would not only be discriminatory to other Applicants but also incentivize the prospective Applicants to attempt to contravene the Detailed Procedure and Regulations and seek connectivity even before they are eligible for the same. The Applicant/Petitioner cannot be permitted to jump the queue over other valid Applicants with valid land documents and gain undue priority.

8.32. It is submitted that once the connectivity is granted, the capacity at the sub-station is reserved for the grantee. If the Grantee's power project gets delayed, the transmission asset remains stranded and unutilized. This is contrary to the principles of efficient, coordinated and economical utilization under Section 30 and 39(2)(c) of the Electricity Act, 2003. The requirement of registered land documents and other provisions is to ensure that the developer is able to establish the power project in time and there aren't delays due to the delays in obtaining land. Thus, there is a clear rationale for requirement of registered land documents in order to apply for Stage-II Connectivity and in any case, once the Detailed Procedure

approved by the Commission provides for the same, there cannot be any issue raised in this regard.

8.33. It is submitted that the Petitioner has stated that it is only seeking the return of bank guarantee and charges of INR 3,98,85,517. One aspect to be considered is the conduct of the Applicant/Petitioner and whether the same necessitates consequences. It is submitted that the Commission may decide on what steps is to be taken *vis-à-vis* the estimate charges and bank guarantee Applicant/Petitioner in the facts and circumstances of the case and in view of the fact that the capacity was blocked for certain period at the said sub- station. Further the charges paid by the Applicant/Petitioner in response to the estimate charges are different than the bank guarantee.

8.34. The Applicant/Petitioner has made claim that there was no misrepresentation or fraud on its part and such contentions are not correct. The Applicant/Petitioner was well aware that it did not have the registered lease agreement which is a requirement under the Detailed Procedure and therefore the Applicant/Petitioner was not in a position at all to act in compliance with the Detailed Procedure and the application was not eligible. The Applicant/Petitioner had therefore made an incorrect statement and undertaking that it had complied with the Regulations/Detailed Procedure. As per FORMAT 3 of the Detailed Procedure, the Petitioner had stated as under:

> "…..
> *11. Details of Documents Enclosed with the Application*
> ….
> *vi. Documentary evidence of eligibility for applying for Stage II Connectivity asper the Procedure - Attached.*
> ……

I confirm that I am well aware of the GERC Regulations and Detailed Procedure, and all the details entered by me are in conformity with the Regulations."

Further as per FORMAT 1, the Applicant/Petitioner had on a non-judicial stamp paper made a statement duly attested by a Notary that:

3. I submit that all the details given in the enclosed application for grant of Connectivity along with necessary documents are true and correct and nothing material has been concealed thereof.

8.35. It is submitted that there can be no dispute that the said statement made by the Applicant/Petitioner was false to the knowledge of the Applicant/Petitioner and the Applicant/Petitioner had deliberately made such representation to induce the acceptance of the application and to gain connectivity to which the Applicant/Petitioner was otherwise in law not eligible.

8.36. It is stated that there was no disclaimer in this application and letter that the agreement to lease is only being filed and not the registered lease agreement. The Applicant/Petitioner has referred to title report which is one of the documents submitted; however, the same does not absolve Applicant/Petitioner of making incorrect statements in the Application.

8.37. It is submitted that in the present case, in fact it is clear that the Applicant/Petitioner had not acted in a bona fide manner. The Applicant/Petitioner despite being aware of the requirements of the Detailed Procedure and in an attempt to countermand the requirements submitted notarized lease agreement and submitted the above undertakings certifying that the details submitted are in

conformity. The actions of the Applicant/Petitioner appear to be attempt to confuse the Respondent and conceal the Applicant/Petitioner's ineligibility.

8.38. It is submitted that the action of the Applicant/Petitioner can be said to be in nature of fraud and misrepresentation in order to obtain the Stage-II Connectivity which it otherwise was not eligible to apply for. Despite being well aware of the requirement of the registered lease agreement in order to apply for Stage-II Connectivity and with full knowledge that it did not have registered lease agreement, the Applicant/Petitioner certified that it was in compliance with the Regulations.

8.39. It is submitted that the Indian Contract Act, 1872, defines fraud and misrepresentation as under:

> 17. "Fraud" defined. -
>
> *"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract: -*
>
> *(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;*
>
> *(2) the active concealment of a fact by one having knowledge or belief of the fact;*
>
> *(3) a promise made without any intention of performing it;*
>
> *(4) any other act fitted to deceive;*
>
> *(5) any such act or omission as the law specially declares to be fraudulent.*

.....

18. "Misrepresentation" defined. –

"Misrepresentation" means and includes-

(1) the positive assertion, in a manner not warranted by the information of the person making it,

of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

8.40. It is submitted that the acts of the Applicant/Petitioner of presenting notarized agreements of lease documents instead of registered lease deeds, when the detailed procedure of Commission, required the Applicant/Petitioner to provide registered lease agreements, clearly fall within the definition of fraud and misrepresentation. The Applicant/Petitioner knowingly provided incorrect documents to obtain connectivity, for which the Applicant/Petitioner was otherwise not eligible.

8.41. It is submitted that the Petitioner cannot be allowed to retain the undue gains obtained by means of fraud and misrepresentation. The Applicant/Petitioner cannot therefore claim any equity or otherwise any consideration for any steps taken by it in regard to the project. The Petitioner cannot be allowed to take advantage of its own

wrong.

8.42. It is further submitted that the Applicant/Petitioner had continued to confuse the issue. The perusal of the Letter dated 22.09.2023 by the Applicant/Petitioner only highlights the wrongful conduct of the Applicant/Petitioner in attempts to mislead and confuse the Respondent with regard to the documents in relation to land by incorrectly claiming that it had submitted valid documents for land. Even in the Petition, the Applicant/Petitioner is seeking to claim that it had validly submitted land documents though it has not provided any explanation for the fact that the registered lease agreements as required under Clause 8.2.2 and FORMAT 7 of the Detailed Procedure were not submitted and were not even available as on date of application. Therefore, clearly even in the Petition, the Applicant/Petitioner has made incorrect statements.

8.43. It is submitted that the action of the Applicant/Petitioner is also incorrect and there has to be some consequence for them same. The Applicant/Petitioner cannot be allowed to get away with such conduct. It is also not necessary to discourage such attempts by developers.

8.44. It is stated that the Applicant/Petitioner is claiming that there is no loss to Respondent which is not correct. The Applicant/Petitioner has failed to consider that due to the period of grant to the Petitioner, other applicants would have suffered. It is stated that one applicant was refused and since the capacity was not shown in available capacity, it cannot be known whether other prospective applications would have applied had capacity been available from May 2023 to September 2023. Such applicants would have made other arrangements since the capacity was not available.

8.45. It is submitted that even otherwise, the Petitioner has failed to consider that the timelines for the developer are considered from grant of the Stage-II Connectivity and therefore there is a difference between the grant on 31.05.2023 and grant on a later date. The utilization of the capacity and the transmission charges is therefore affected by the date of grant. Therefore, it is incorrect on part of the Petitioner to allege that merely because there is a subsequent grant at the said sub-station, there is no loss.

8.46. It is submitted that the Applicant/Petitioner has sought to rely on judgments on duty of state to act fairly, justly and reasonably which are rendered under the Writ a jurisdiction and considering Article 14 of the Constitution and on basis that writ court can issue suitable directions. The said consideration is not applicable to the present case. In any case, there is no arbitrary conduct. In fact, it is the Applicant/Petitioner who had acted unfairly and unjustly by deliberately seeking connectivity without being eligible and seeking to confuse Respondent officers by annexing notarized land agreements and incorrectly making declarations. The duty to act fairly does not mean that the Applicant/Petitioner is allowed to act in such a manner with no consequence at all.

8.47. It is submitted that the Petitioner has sought to rely on judgments in regard to its contention that retention of monies by Respondent would amount to unjust enrichment. It is submitted that there is no unjust enrichment for the Respondent. Admittedly unjust enrichment would only occur when a person retains money which belongs to another. However, in this case, the money does not belong to another. The Applicant/Petitioner had submitted the bank

guarantee and paid the amount as provided in the Detailed Procedure and thereafter the connectivity was cancelled. Such cancellation is due to the conduct of the Petitioner who therefore should suffer consequences.

8.48. It is submitted that even assuming but not admitting that the estimate charges and entire bank guarantee has to be returned in the present case for any reason, it may be necessary for the Commission to address such issues by way of appropriate orders/directions/amendments etc. so that in future there is consequences for such conduct of the Grantees/Applicants.

9. The Applicant/Petitioner vide affidavit dated 24.09.2024 filed rejoinder in response to the reply filed by the Respondent and submitted as under:

9.1. It is submitted that in terms of the amendment carried out by Applicant/Petitioner on 19.06.2024, the Applicant/Petitioner amended the petition and restricted the prayer i.e. to direct Respondent to return the Bank Guarantee dated 26.04.2023 and bay charges/deposits amounting to Rs. 8,48,85,517/-, incurred pursuant to the grant of Stage-II Connectivity.

9.2. It is submitted that the Connectivity Procedure is binding on Respondent. Accordingly, Respondent's contention that power to grant includes power to revoke is without basis. It is submitted that once the Connectivity Procedure prescribes how revocation is to take place, the power of revocation can be exercised only in that manner and not in the manner as done by Respondent in terms of letter dated 16.09.2023.

9.3. It is undisputed that in terms of the Impugned Letter dated 16.09.2023, none of the grounds permitted by the Connectivity Procedure for revocation of Stage-II connectivity are met in terms of letter dated 16.09.2023. It is submitted that neither was any deficiency intimated nor any clarification sought from Applicant/Petitioner *qua* the Stage-II Application by Respondent, as mandated under Clause 9 of the Connectivity Procedure. The Respondent did not raise any dispute in accordance with Clause 16 of the Connectivity Procedure. Therefore, the Respondent is now precluded from contending that the Stage-II Connectivity was granted due to inadvertence on behalf of its technical members and large volume of applications. Additionally, Respondent cannot be permitted to rely on the time period of 3 days to circumvent its duty to verify the documents and raise deficiencies/clarification. Pertinently, Clause 9.3 under which clarification is to be sought does not impose any time limit. It is submitted that having granted the Stage-II Connectivity Application and accepted the bank guarantees under the Connectivity Procedure, Respondent is precluded from raising such contentions and the same are untenable.

9.4. It is submitted that Respondent's contention that there was no requirement to issue show cause notice/follow Principles of Natural Justice as the same would not have changed the result, is erroneous and ought to be rejected by the Commission. It is submitted that admittedly, after grant of Stage-II Connectivity, the capacity at the sub-station is reserved for the grantee. Accordingly, Applicant/Petitioner had a right to get connected at the 220 kV Charkha Sub-Station. It is pertinent to note that any interference with this substantive right, including cancellation of the Connectivity, is a quasi-judicial exercise and is required to be done

in accordance with the procedure prescribed. Thus, Respondent's contention that principles of natural justice were not required to be followed, is misplaced and ought to be rejected by the Commission.

9.5. It is submitted that if the Stage-II Connectivity Application was deficient or incomplete in any aspect, Respondent could have rejected the said Application submitted by Applicant/Petitioner. Notably, post grant of Stage-II connectivity, Applicant/Petitioner has made substantial investment and undertaken project development activities in furtherance thereof. These investments and activities have been adversely impacted by the Letter dated 16.09.2023 and have caused severe prejudice to Applicant/Petitioner. Accordingly, Respondent cannot be permitted to rely on 'empty formality' to justify its non-compliance of Principles of Natural Justice and the process under the Connectivity Procedure more so when Respondent has admitted that Stage-II Connectivity was granted basis Respondent's error.

9.6. It is submitted that Respondent has contended that Applicant/Petitioner made misleading/incorrect submissions in its application for grant of Stage-II Connectivity and thus has misrepresented to GETCO and obtained connectivity by fraud. Further, Respondent has submitted that verification was done by technical officers and due to large volume of applications as well as documents being notarized, connectivity was inadvertently granted. Thus, Respondent was induced to grant Stage-II Connectivity. These contentions are incorrect, without any basis and ought to be rejected by the Commission.

9.7. It is submitted that that there was no concealment or incorrect

statements made by Applicant/Petitioner. It is submitted that Applicant/Petitioner had submitted the requisite documents, which clearly delineated their nature. Thus, there was neither any concealment nor misrepresentation qua the status of land and there can be no allegation of any misrepresentation/fraud on behalf of Applicant/Petitioner. As established above, the complete and full picture was given to the Respondent.

9.8. It is submitted that Applicant/Petitioner had submitted documents including the Title Report dated 26.04.2023, which as per Applicant/Petitioner demonstrated its firm right of ownership over the land and also contained a unilateral termination clause in favour of Applicant/Petitioner. Notably, the Title Report categorically mentioned that the land is under the control of Applicant/Petitioner, through notarized Agreements to Lease. Given this backdrop, Applicant/Petitioner had in bona fide submitted its Connectivity Application without any concealment and with full disclosure to Respondent, thereby meeting the threshold required under the Connectivity Procedure. Accordingly, Respondent's reliance on Applicant/Petitioner's Undertaking dated 24.03.2023 is misconstrued.

9.9. It is further submitted that the foregoing understanding was confirmed by Respondent inasmuch as the Stage-II connectivity was granted to Applicant/Petitioner on 31.05.2023. The grant was after examination and thorough verification and consideration of the documents in compliance with the Connectivity Procedure submitted by Applicant/Petitioner.

9.10. It is submitted that there is no new document or information either

in the Letter dated 16.09.2023 or otherwise to indicate that Applicant/Petitioner withheld or misrepresented any documents. Accordingly, there has been no concealment of facts by Applicant/Petitioner.

9.11. It is submitted that the Respondent has not made any submission nor disputed the fact that it was categorically informed that the land documents submitted along with the Application are Agreements to Lease.

9.12. It is submitted that Applicant/Petitioner had proceeded to submit it application for grant of Stage-II connectivity in compliance in terms of Clause 8.2.2 of the Connectivity Procedure. As established above, the documents submitted with the Stage-II Connectivity Application established Applicant/Petitioner's ownership/leasehold rights in the land acquired for the project. This further showed that Applicant/Petitioner was a serious participant in the process and will ensure that there is no squatting of connectivity.

9.13. Pursuant to receipt of the Stage-II Application dated 25.04.2023 by Respondent, it was Respondent's responsibility to review the submitted documents in terms of the Connectivity procedure and only then grant the Stage-II Connectivity. Respondent cannot be permitted to contend that Applicant/Petitioner's actions are in the nature of fraud and misrepresentation, having granted the Stage-II Connectivity dated 31.05.2023 post examination and verification of the documents and satisfaction of compliance of the Connectivity Procedure by Applicant/Petitioner.

9.14. It is submitted that Applicant/Petitioner had made an explicit disclosure regarding the nature of Land documents and thus, there

was no intention by Applicant/Petitioner to induce or mislead Respondent in any manner. It is submitted that it is trite law that to constitute fraud/misrepresentation the pre-requisite requirement is of "mens rea" i.e., fraudulent intent as held in the following judgments: -

(a) Sasikala Pushpa & Ors. v. State of Tamil Nadu (2019) 6 SCC 477

(b) Commissioner of Central Excise, Chandigarh v. Pepsi Foods Limited.

9.15. It is submitted that such intention is absent in light of Applicant/Petitioner's disclosure regarding the documents submitted. Further, Respondent has failed to place on record any prima facie evidence to show that Applicant/Petitioner had intended to cause injury or damage to Respondent. It is submitted that the occasion to contend fraud and misrepresentation does not arise.

9.16. It is submitted that Respondent has admitted that it granted the Stage-II connectivity was granted inadvertently. This admission itself establishes that there was no misrepresentation or fraud. In this regard reliance is placed on Judgment of Hon'ble Supreme Court in Commnr. of Customs (Preventive) vs. M/s Aafloat Textiles (I) Pvt.Ltd. and Ors. (2009) 11 SCC 18, wherein the Hon'ble Supreme Court held that 'Fraud' means an intention to deceive. Pertinently, Respondent has relied on the same set of documents to revoke the connectivity. Thus, the occasion to allege misrepresentation or fraud does not arise. Therefore, it is submitted that in light of this admission by Respondent, no submission against Applicant/Petitioner survives. The Applicant/Petitioner cannot be made liable for the lapse by Respondent.

9.17. It is submitted that as regards Applicant/Petitioner's claim for repayment of the bay charges along with the Bank Guarantee submitted, Respondent has contended that Applicant/Petitioner cannot be permitted to retain undue gains obtained by fraud and misrepresentation and cannot claim any equity or otherwise any consideration for any steps taken by it. Further Applicant/Petitioner cannot be permitted to take advantage of its own wrong as Applicant/Petitioner took the risk of applying for Stage-II Connectivity with incorrect documents. Therefore, even the alleged progress or action taken by Applicant/Petitioner cannot be considered. It is further contended that. The Forfeiture of BG and deposits made by Applicant/Petitioner are a consequence of making representation by fraud. Permitting Respondent to retain BG and other deposits would act as a deterrent to other developers from resorting to fraudulent means. It is submitted that the foregoing contentions placed by the Respondent are misplaced, incorrect and ought to be rejected by the Commission.

9.18. It is submitted that in terms of the foregoing submissions, it stands established that there was no misrepresentation or fraud by Applicant/Petitioner. Respondent having failed to comply with its statutory duties and follow the due procedure, cannot be permitted to justify its conduct under the garb of inadvertence on behalf of its technical officers and voluminous nature of the application. It is submitted that Respondent committed an error in verification of the documents prior to grant of Stage-II Connectivity. Therefore, it is submitted that Applicant/Petitioner cannot be penalized for errors and omissions on part of Respondent, having in a bona fide manner undertaken substantial steps towards timely construction and

development of the Project.

9.19. It is submitted that in terms of the Connectivity Procedure, which is binding, Respondent's right to encash BG arises only if Applicant/Petitioner fails to complete the transmission line(s) etc. within the stipulated time under the Connectivity Procedure. Further, if the Connectivity is found to be unfeasible, Respondent is obligated to return the BG.

9.20. It is submitted that post cancellation of Applicant/Petitioner's connectivity vide the Impugned Letter dated 16.09.2023, the question of Applicant/Petitioner's failure to construct the transmission line(s) etc. does not arise. Accordingly, there is no provision under the Connectivity Procedure which permits retention of BG provided by Applicant/Petitioner.

9.21. It is submitted that the Respondent has failed to substantiate its claim of fraud or misrepresentation on behalf of 20.01.2022. In contrast, in order to overcome its inadvertence and failure to follow due process, Respondent cannot be permitted to take advantage of its own wrong.

9.22. It is submitted that Respondent cannot be permitted to take advantage of its own wrong and unjustly enrich itself, for no fault of Applicant/Petitioner, who had applied for connectivity in full disclosure and without any concealment or fraud. In this regard, reliance is placed on Judgment of the Hon'ble Supreme Court dated 19.03.2007 in Kusheshwar Prasad Singh v. State of Bihar & Ors**.** (2007) 11 SCC 447, wherein the Hon'ble Supreme Court held that an entity cannot be permitted to take undue and unfair advantage of his own wrong to gain favorable interpretation of law.

9.23. It is submitted that Applicant/Petitioner has made substantial payments in terms of the Connectivity Procedure, pursuant to grant of Stage-II Connectivity dated 31.05.2023 by Respondent, amounting to Rs. 8,48,85,517/- (which included BG amounting to Rs. 4,50,00,000/-). The said charges were paid by Section 65 and accepted by Respondent, pursuant to treating the Stage-II Connectivity granted to Applicant/Petitioner as valid and subsisting.

9.24. It is submitted that the Respondent cannot be permitted to on one hand contend that Applicant/Petitioner's Stage-II Connectivity Application was invalid and on the other hand treat the BG submitted by Applicant/Petitioner pursuant thereto as subsisting and seek forfeiture of the same, despite admitted errors and omissions on behalf of Respondent. This position is further cemented post admission by Respondent that the Stage-II Connectivity was granted inadvertently.

9.25. Further, the subsequent charges including supervision and hay estimation charges are only paid by a successful grantee of connectivity. The Respondent has contended that vide the Impugned Letter dated 16.09.2023, it has merely restored Applicant/Petitioner to the same position prior to the grant of connectivity. Accordingly, Applicant/Petitioner also ought to be restored to the same position, i.e., prior to grant of connectivity. This will necessitate restoration to the same financial position and return of the charges paid by Applicant/Petitioner.

9.26. It is submitted that in terms of Section 65 of the Indian Contract Act, an agreement / contract which was originally enforceable, becomes void due to subsequent happenings, any person who has received

any advantage under such agreement or contract is bound to restore such advantage, or to make compensation for it to the person from whom he received it. Section 65 embodies and is an expression of the principle of restitution & of prevention of unjust enrichment. Reliance in this regard is placed on the following judgments: -

(a) Mirza Javed Murtaza v. U.P. Financial Corporation, Kanpur and Anr. 1982 SCC OnLine All 294.

(b) De-Smet (India) Private Limited v. B.P. Industrial Corporation (P.) Ltd. 1979 SCC OnLine All 940.

(c) Ram Nagina Singh v. Governor General in Council, AIR 1952 CAL 306

9.27. It is submitted that the Hon'ble Supreme Court in Union of India v. Millenium Delhi Broadcast LLP (2022) 7 SCC 67 has held that the invocation of the bank guarantee in question was illegal since the conditions provided in the parent instrument/agreement for such invocation were not satisfied. Since, none of the conditions for invocation were fulfilled, such invocation was held to be illegal. Accordingly, the deposits provided by Applicant/Petitioner to Respondent pursuant to grant of Stage-II Connectivity dated 31.05.2023, ought to be returned to Applicant/Petitioner.

9.28. The Respondent has contended that the Respondent has suffered loss as Applicant/Petitioner failed to consider that during the period of Stage-II Connectivity granted to Applicant/Petitioner, other applicants suffered as the capacity was not shown as 'available capacity'. Further, at least one application had been refused by Respondent. Further, the Applicant/Petitioner's contention that retention of monies by Respondent would amount to unjust enrichment is incorrect as in the present case, the money does not

belong to the other party. As cancellation was due to conduct of Applicant/Petitioner, Applicant/Petitioner should bear the consequences. These contentions are misplaced and ought to be rejected by the Commission.

9.29. It is submitted that the Applicant/Petitioner has been given to understand that the connectivity at the Charkha Sub-Station has already been granted to another entity and Respondent has also received the Connectivity BG and bay charges from said entity. Accordingly, no loss has been suffered by Respondent. The Respondent cannot be permitted to retain the Connectivity BG dated 26.04.2023 and Bay Charges from both Applicant/Petitioner and the developer, who has been allotted connectivity at the same 220 kV Charkha Sub-station, post revocation of Applicant/Petitioner's Stage II Connectivity.

9.30. It is submitted that Respondent's contention that since the 150 MW capacity was tied up under the connectivity granted to Applicant/Petitioner, at least one application for connectivity was refused, is erroneous and ought to be rejected. The Respondent has failed to provide any detail as to the applicant, quantum of capacity etc. and has made a bald submission without providing any subsisting proof. Accordingly, the same cannot be relied upon by the Commission. Thus, Respondent ought to be directed to pay back the entire amount invested by Applicant/Petitioner including return of the Bank Guarantees and refund of the Bay Estimation Charges paid to Respondent by Applicant/Petitioner.

9.31. It is submitted that even if Respondent's contention that Applicant/Petitioner was ineligible as on the date of its application

i.e., 25.04.2023, is accepted, the ineligibility will apply equally to all steps taken / payments made. Therefore, if Respondent's contention is accepted, then the payment of Rs. 8,48,85,517/- also cannot be treated as valid and ought to be returned to Applicant/Petitioner. Retention of such amounts would amount to unjust enrichment by Respondent at the cost of Applicant/Petitioner, which ought not to be permitted by the Commission.

9.32. The Respondent's contention that unjust enrichment would not be applicable as no monies are due to Applicant/Petitioner are contrary to the facts on record and ought to be rejected by the Commission. The Respondent cannot be permitted to retain BG and Charges for a connectivity which has been subsequently granted to another entity and from whom has received similar payment. Further, retention of BG and other amounts paid by Applicant/Petitioner would be contrary to the Connectivity Procedure and applicable law.

9.33. It is submitted that Respondent's reliance on undertaking dated 24.03.2023 to contend that the Project does not require 99 acres is incorrect. As per initial estimate, for the Hybrid Project of 150 MW (comprising 130 MW wind and 20 MW solar), the Applicant/Petitioner required 97 Acre and 60 Acre respectively. Basis this, Applicant/Petitioner executed agreements qua land amounting to 129 Acres, which was more than 50 percent of the land required for the project. However, as on date, the actual land required for the proposed project is 99 acres.

9.34. It is submitted that the present petition ought to be allowed and Respondent ought to be directed to return the Bank Guarantee dated 26.04.2023 and bay charges/deposits amounting to Rs.

8,48,85,517/-, incurred pursuant to the grant of Stage-II Connectivity.

10. The Applicant/Petitioner has filed its written submission vide affidavit dated 30.09.2024 and in pursuant to the directions of the Commission during the hearing held on 30.03.2026 has filed additional written submission on 03.04.2026, and has reiterated the facts mentioned in above para and further submitted as under:

10.1. It is submitted that the Respondent, vide its letter dated 18.10.2025, erroneously demanded an extension of the Connectivity BG dated 26.04.2023 under the threat of encashment, operating under the flawed assumption that the claim period expires on 25.04.2026.

10.2. The Applicant/Petitioner has responded to Respondent via letter dated 02.04.2026 stating that since the matter has been fully adjudicated and reserved for orders before the Commission, Respondent must refrain from any coercive or precipitative actions regarding the BG during the pendency of the final decision of the Commission.

11. The Respondent has filed its Written submission vide affidavit dated 30.09.2024 and has reiterated the facts mentioned in above para and further submitted as under:

11.1. It is submitted that there cannot be any other amount or deposit sought by the Petitioner. It is reiterated that the reference to Rs. 848,85,517 is only for BG of Rs. 4.5 crores and deposit of Rs. 3,98,85,517. In the Rejoinder contrary to the Amended Petition, the Petitioner has made erroneous statement that there was deposit of INR 8,48,85,517 on 31.05.2023. In terms of the Amended Petition, it is clear that there is only BG of Rs. 4.5 crores and deposit of Rs.

3,98,85,517. The other assertions made on amounts expended are not correct and cannot be considered.

11.2. It is submitted that the issue in the present case relates to the refund of the amounts paid by the Applicant/Petitioner and the return of the Bank Guarantee submitted by the Petitioner, in lieu of the Connectivity granted to the Petitioner. However, despite the limited relief, the Applicant/Petitioner had raised issues on the said Letter and that it is violative of Principles of Natural Justice and Detailed Procedure and referred to duty of Respondent to act fairly etc. and therefore Respondent had responded to the same in its Reply to Amended Petition. The claim of violation is in context of letter dated 16.09.2023 and cancellation of connectivity and no relief has being sought in this regard. When the Petitioner is not pressing its relief for setting aside of the Impugned Letter or seeking restoration of its connectivity, there is no purpose in the Petitioner seeking to raise claims that the said Letter or the revocation of connectivity was wrong. The Applicant/Petitioner in its rejoinder also notes that it has dropped the prayer challenging revocation/cancellation. Therefore, the submissions in this regard by the Applicant/Petitioner may not be relevant.

11.3. The Respondent has acted in compliance with the eligibility requirements of Detailed Procedure and to ensure that the requirements of law are fulfilled. The P Applicant/Petitioner had misrepresented its eligibility and obtained the connectivity by misrepresentation and fraud which was liable to be cancelled. The cancellation was valid. It would have been unreasonable, unfair and discriminatory to allow the Applicant/Petitioner to continue the Stage-II Connectivity when it was not eligible.

11.4. The Respondent in the Letter dated 16.09.2023 had stated that the Applicant/Petitioner had made inappropriate submissions, and it had failed to comply with Detailed Procedure. It was also pointed out that the Applicant/Petitioner had applied as per prescribed format and made undertaking, and such statements are clearly incorrect. Therefore, there is clearly wrongdoing on part of the Applicant/Petitioner.

11.5. It is submitted that there cannot be any exemptions or exceptions or otherwise any contravention of the specific eligibility conditions. Therefore, clearly the Applicant/Petitioner 's application was not eligible for connectivity and Respondent by its letter dated 16.09.2023 has only restored the position and ensured that the Applicant/Petitioner does not continue with the connectivity it had obtained despite its ineligibility and contrary to law. When the grant is not in accordance with the law, the same has to be revoked and cannot be allowed to continue.

11.6. The Respondent as the nodal agency for grant of connectivity, having come to know that an application for Stage-II Connectivity had been considered despite being ineligible and contrary to the Detailed Procedure, is entitled to and in fact obliged to take corrective action. The Petitioner cannot be allowed the continued benefit of the Stage-II Connectivity which is not in accordance with the Detailed Procedure.

11.7. It is submitted that even if the Respondent had incorrectly granted the Connectivity, the same does not mean that the same has to be continued. There cannot be any right of the Applicant/Petitioner

contrary to the law. There is no legitimate expectation in such cases and in fact Respondent is not an authority which can create any legitimate expectations, particularly when the same is contrary to law laid down by the Hon'ble Commission which is the regulatory authority for transmission activity including connectivity. Even otherwise, the Stage-II Connectivity having been obtained on basis of fraud and/or misrepresentation or at the very least deliberate concealment, the Applicant/Petitioner cannot claim any such legitimate expectation or equity or right. The judgments relied on by the Applicant/Petitioner are not applicable to the present case.

11.8. The Applicant/Petitioner could not have been allowed to continue with the grant of Stage-II Connectivity when the same was contrary to the Detailed Procedure. This would be discriminatory to other applicants who had to wait until the receipt of the registered lease deed or sale deed to apply for the connectivity. It cannot be that the Petitioner is permitted an exemption from the application of rules.

11.9. The Applicant/Petitioner itself relies on the principle that when a statue provides for something to be done in certain manner, it has to be done in that manner itself. However, the Applicant/Petitioner has failed to consider that the above principle would also mean that when the Applicant/Petitioner was not eligible for grant of Connectivity under Detailed Procedure, it cannot sustain the grant. When the Applicant/Petitioner is ineligible, it cannot become eligible merely because it was granted the Connectivity inadvertently and on basis of incorrect statements of the Applicant/Petitioner. The Applicant/Petitioner therefore could not have been allowed to continue with the grant of Stage-II Connectivity when the same was contrary to the Detailed Procedure.

11.10. The Applicant/Petitioner has sought to rely on judgments on duty of state to act fairly, which judgments are consideration by Writ Court under Article 14. It is submitted that Article 14 of the Constitution cannot be raised in the present proceedings. In any case, there is no arbitrariness, unfairness or unreasonableness. The Detailed Procedure is binding and if the grant of Stage-II Connectivity is contrary to the Detailed Procedure, it must be cancelled. Not cancelling or revoking such Stage-II Connectivity would be incorrect. In fact, it would be arbitrary and discriminatory to have allowed the Applicant/Petitioner to continue with the Connectivity despite its being ineligible on the date of application, even after Respondent had become aware of the facts.

(a) The Applicant/Petitioner has relied on decision in ABL International Ltd (2004) 3 SCC 553 which was in relation to writ jurisdiction which is not the case here and there cannot be any invocation of Article 14. Further, the facts of the said case were entirely different. The aspect under consideration was for the implementation of the guarantee given by the Respondent No. 1 therein and the same was to be considered in terms of the contract of insurance and export contract. This is not the case herein. Here, Respondent has acted validly to revoke the connectivity granted to an ineligible applicant.

(b) In Unitech Ltd. v. Telangana State Industrial Infrastructure Corporation and Others (2021) 16 SCC 35, once again the issue was considered under writ jurisdiction. Even otherwise, the issue therein was related to representations made by the State. However, in this case, there was no such representation made.

The Detailed Procedure was already in existence as approved by the Commission. Respondent did not and could not have held out any representation that the Connectivity can be granted contrary to the Detailed Procedure. The said judgment does not hold that an action made incorrectly and by mistake and contrary to the law, cannot be corrected by the State/Government Company.

(c) In Shrilekha Vidyaarthi (Kumari) v. State of Uttar Pradesh (1991) 1 SCC 212, again the issue was under writ jurisdiction and Article 14 of the Constitution. In any case, the issue there in was judicial review of the contractual matters which is not the case herein. The said judgment does not hold that an action made incorrectly and by mistake and contrary to the law, cannot be corrected by the State/Government Company.

(d) In Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71, the issue was related to contractual sphere. However therein, it was noted that whether the expectation of the claimant is reasonable or legitimate is a question of fact and it has been seen from larger public interest. In the present case, there cannot be any claim that the Applicant/Petitioner ought to have an expectation of continuing with the Connectivity despite its ineligibility. Such expectation is neither reasonable nor legitimate. Further larger public interest, including non-discrimination, would be in favour of not allowing the Applicant/Petitioner to continue the connectivity obtained through incorrect basis and contrary to law.

11.11. It is submitted that the Applicant/Petitioner had sought to rely on the clauses of Detailed Procedure and that the Respondent did not

raise any issue on the Application. The clauses for deficiencies and clarifications under Detailed Procedure cannot be used for overcoming the ineligibility of the Applicant. These are for minor issues in the online application and do not apply when the so-called deficiency is not capable of being rectified. It is the Applicant/Petitioner's responsibility to ensure that it is eligible on the date of application and there is no requirement for Respondent to write to the Applicant/Petitioner to point out its ineligibility. The fact that deficiencies have to be provided in three days demonstrate that they are not related to eligibility aspects of the Application. Further, the provision for seeking clarifications only enables Respondent to seek clarifications and there is no obligation on Respondent to seek clarifications.

11.12. It is submitted that Clause 16 is also not applicable to the present case. There is no amicable solution possible when the issue is of cancellation or revocation of the Grant. Further Respondent as nodal agency could not have agreed to any solution other than cancellation since the grant was contrary to the Detailed Procedure. There is no discretion with Respondent. Therefore, when the registered lease agreements were admittedly not available, no purpose would have been served even if the Respondent had acted as sought to be claimed by the Petitioner. The Petitioner cannot now blame the Respondent for its own failures and non-compliances.

11.13. It is stated that the Applicant/Petitioner has sought to rely on judgments on principles of natural justice. However, the Applicant/Petitioner has not addressed the aspects raised in the Reply and also on judgments relied by Respondent. These are also

decisions of the Hon'ble Supreme Court which recognize that the principles of natural justice are not straight jacket formula. In this regard, it may be noted that the Applicant/Petitioner has sought to rely on judgments rendered in cases of writ jurisdiction.

(a) The decision in Olga Tellis v. Bombay Municipal Corporation 1985 3 SCC 545 was in relation to fundamental rights under Article 21 claimed by the persons who were pavement dwellers and whose dwellings were demolished by the municipal corporation and in this context, it was considered that the power to act without notice should be exercised sparingly. This is a completely different factual scenario to the facts of the present case.

Even in the said para, it was noted that this was ordinary rule. Further in Para 51, the Hon'ble Court after considering the aspects referred to decision in SL Kapoor that where only one conclusion is possible, court may not issue writ because court does not issue futile writ. This is not a case of writ jurisdiction let alone involving fundamental rights but even in such a case it was noted that courts would not interfere in futile exercise.

(b) The Applicant/Petitioner has relied on decision in Sahara Case 2008 14 SCC 151 Para 19 for principles of natural justice but failed to consider Para 20 where it is held that there are no general rule of application and there can be exceptions to the doctrine. Further the said decision had noted that there was prejudice to the assessed and there was no consideration in the facts of the said case that this would be futile exercise. This is recognised in other decisions of the Hon'ble Supreme. In Para

37, it was noted that the same would apply prospectively and did not set aside the impugned order.

11.14. It is further submitted that forfeiture of the Bank Guarantee submitted, and the deposits made by the Applicant/Petitioner are a consequence of the Applicant/Petitioner taking connectivity on the basis of false statements and to discourage any other unscrupulous or careless applicant. The Commission may also consider accepting the contention of the Applicant/Petitioner would in effect mean ignoring the conduct of the Applicant/Petitioner with no consequences. It would incentivise the prospective Applicants to attempt to contravene the Detailed Procedure and Regulations and seek connectivity even before they are eligible for the same. The Bank Guarantee and the amount deposited by the Applicant/Petitioner cannot be refunded when the cancellation is due to the Applicant/Petitioner obtaining connectivity by fraudulent means. Allowing Respondent to retain the Bank Guarantee and deposits made by the Applicant/Petitioner would act as a deterrent to future applicants from resorting to such fraudulent means.

11.15. It is submitted that the reliance on Section 65 of the Contract Act and the judgment in this regard is also not correct. The issue here is not of contract per se but that the Applicant/Petitioner was not eligible in terms of the Detailed Procedure (law) and therefore the connectivity was cancelled. There is no provision for return of any charges or bank guarantee. Further as already submitted it is the Applicant/Petitioner who had acted wrongly, and Respondent has not taken any advantage nor received any benefit. This is particularly considering the regulatory nature of the issue whereby the issue is connectivity granted to transmission system and the

action of the Applicant/Petitioner had unnecessarily blocked the capacity for a certain period. There is no unjust enrichment to Respondent in this regard. The Applicant/Petitioner has relied on judgments on De-Smet (India) Private Limited v. B.P. Industrial Corporation (P) Ltd., 1979 SCC Online AP 940 Para 13 and 15 but has not shown that the said principle applies in the present case. The Applicant/Petitioner has not shown that there is excess of benefit to Respondent as stated therein.

11.16. In regard to the judgment of the Hon'ble Tribunal relied on by the Applicant/Petitioner, it is submitted that the said judgments only dealt with the encashment of bank guarantee on the basis that there was no provision in the Detailed Procedure and there was no consideration of any return of estimate charges. Further in Shapoorji Pallonji Infrastructure Capital Company Pvt Ltd v. PGCIL and Another dated 12.04.2022 in Appeal No. 53 of 2022, the Hon'ble Tribunal proceeded on the basis that there was no loss (Para 21). The Hon'ble Commission may consider the issue in the facts of the present case.

12. The matter was kept for hearing on 22.12.2023, 23.02.2024, 25.09.2024, 30.03.2026. Ld. Adv. appearing on behalf of the Applicant/ Petitioner have reiterated the submissions mentioned in above para and further argued as under:

12.1. Referred to the Daily Order dated 05.06.2023 passed by the Commission in the matter he submitted that as per the direction of the Commission in the aforesaid Daily Order, the Applicant/Petitioner has filed a IA being IA No. 22 of 2024 seeking amendment in the present petition along with amended memo of the

Petition. In the amended Petition, the Applicant/Petitioner has now limited prayers inter-alia (i) to declare that the Applicant/Petitioner has not committed any fraud or misrepresentation in its Application for grant of Stage-II connectivity submitted to Respondent (ii) to quash and set aside the impugned letter dated 16.09.2023 issued by Respondent; alternatively, (iii) to direct Respondent to return the Bank Guarantee dated 26.04.2023 and deposits amounting to Rs. 8,48,85,517/- submitted in pursuant to grant of connectivity at 220 KV Charkha S/S to the Applicant/Petitioner.

12.2. He submitted that the Applicant/Petitioner had validly submitted the requisite documents along with the Application for grant of Stage-II connectivity and the same was verified by the Respondent in accordance with Connectivity Procedure and Stage-II connectivity was granted to the Applicant/Petitioner on 31.05.2023. Therefore, even assuming that the Respondent committed an error in verification of the documents prior to grant of Stage-II connectivity, the Applicant/Petitioner cannot be penalized for the same and therefore the monies paid by the Applicant/Petitioner including deposits and bank guarantee is to be returned to the Applicant/Petitioner by the Respondent.

12.3. It is submitted that the purpose of connectivity Bank Guarantee is to insulate the Respondent against any loss it might incur on account of defaults on part of the entity in timely compliances till the evacuation of power. Since, the Respondent has revoked the Stage-II connectivity on account of non-compliance of clause 8.2.2 (i) of the connectivity procedure, the intended purpose of the connectivity Bank Guarantee stands vitiated. Even otherwise, the Clause 8.2.2 of the connectivity procedure does not attract encashment of bank

Guarantee by the Respondent.

12.4. It is submitted that withholding/invocation of bank guarantee and deposits by the Respondent is illegal since the conditions provided in the connectivity procedure are not satisfied in the present case as the connectivity procedure does not provide any right to the Respondent to withheld/encash bank guarantee or deposits made by the Petitioner/Applicant.

12.5. Based on the above submissions, he requested that the Commission may direct the Respondent to return the Bank Guarantee provided for connectivity as well as the bay charges deposited by the Applicant/Petitioner in respect to grant of Stage – II connectivity to them.

13. Ld. Adv. appearing on behalf of the Respondent have reiterated the submissions mentioned in above para and further argued as under:

13.1. It is submitted that the connectivity was obtained by the Applicant/Petitioner with misrepresentation and not submitting the documents in accordance with the Detailed Connectivity Procedure. Upon discovery of the fact that the documents submitted by the Applicant/Petitioner did not fulfil the eligibility requirements specified under the Detailed Procedure, the Stage-II Connectivity ought not to have been granted to the Applicant/Petitioner and accordingly, cancelled the said Stage-II Connectivity granted.

13.2. It is submitted that the Applicant/Petitioner had submitted the bank guarantee and paid the estimate amount as provided in the Detailed Procedure and thereafter, the connectivity was cancelled by Respondent upon discovery of the fact that the documents

submitted by the Applicant/Petitioner did not fulfil the eligibility requirements specified under the Detailed Procedure. It is submitted that there are no provisions in Detailed Procedure regarding the return of the Bank Guarantee and/or any estimate charges.

14. We have considered the submissions made by the parties. We note that the present Petition has been filed by the Applicant/Petitioner, Enfinity Global Surya Vayu Energy Pvt. Limited, under Section 86 of the Electricity Act, 2003 read with Regulations 80 and 82 of the GERC (Conduct of Business) Regulations, 2004, *inter-alia* seeking directions against Respondent No. 1, GETCO to refrain from invoking/encashing the Bank Guarantee dated 26.04.2023 amounting to Rs. 4,50,00,000/- furnished by the Applicant/Petitioner and further seeking refund of the amount of Rs. 3,98,85,517/- paid towards supervision charges for erection of evacuation line.

14.1. The Commission has carefully considered the pleadings filed by the parties, documents placed on record, oral submissions advanced during the course of hearing as well as the applicable provisions of the Electricity Act, 2003, the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and the Detailed Procedure for Grant of Connectivity to Projects based on Renewable Energy Sources to the Intra-State Transmission System.

14.2. The short controversy involved in the present Petition is not with regard to restoration of the Stage-II Connectivity, since the Applicant/Petitioner has not challenged the revocation/cancellation of the Stage-II Connectivity granted by

the Respondent GETCO. The limited issue for determination before the Commission is as to whether Respondent GETCO is entitled for encashment of the Bank Guarantee dated 26.04.2023 amounting to Rs. 4,50,00,000/- and retaining the supervision charges paid by the Applicant/Petitioner towards provisional line estimate for amount of Rs. 3,98,85,517/- despite the absence of provision as the Applicant/Petitioner has not executed any line works.

14.3. We note that the Applicant/Petitioner had applied for Stage-II connectivity pursuant to the Detailed Procedure approved by the Commission and had furnished the requisite Bank Guarantee and deposited the supervision charges on the provisional line estimate amount as required. The case of the Applicant/Petitioner is that the Applicant/Petitioner had submitted all documents along with its application for Stage-II Connectivity; the same were duly scrutinized and verified by GETCO in accordance with Clause 9 of the Detailed Procedure; thereafter Stage-II Connectivity was granted by GETCO; and therefore, even assuming that there was any deficiency in the land documents, the Applicant/Petitioner cannot subsequently be penalized by way of encashment of security Bank Guarantee for the negligence or omission on the part of the Respondent GETCO in scrutiny of the documents. The Applicant/Petitioner has further contended that the Detailed Procedure nowhere provides for encashment of the Bank Guarantee or forfeiture of estimate charges in a case where the connectivity itself is revoked on account of alleged deficiency in land documents.

14.4. On the other hand, the case of Respondent No.1 GETCO is founded on the contention that the Petitioner knowingly submitted notarized lease agreements instead of registered lease deeds despite specific requirement under Clause 8.2.2 of the Detailed Procedure. According to the Respondent GETCO, the Applicant/Petitioner made false declarations and undertakings regarding compliance with the Detailed Procedure and thereby obtained connectivity through fraud and misrepresentation. The Respondent GETCO has therefore contended that the Applicant/Petitioner cannot be permitted to take advantage of its own wrong and must suffer consequences including encashment of the Bank Guarantee.

14.5. The Commission notes that although the Respondent GETCO has contended that submission of registered lease deed was a mandatory requirement, but the fact remains that the application and documents submitted by the Applicant/Petitioner were processed, scrutinized and accepted by the Respondent GETCO itself before issuance of Stage-II connectivity.

14.6. The Commission is of the considered view that deficiencies which escaped scrutiny at the initial stage cannot subsequently become the basis for imposition of severe financial consequences upon the developer, particularly in the absence of any fraudulent suppression or misrepresentation established on record.

14.7. It is necessary to examine the provisions of the Detailed Procedure approved by the Commission. Clause 8.2.2 which prescribes submission of land documents including registered

lease deeds for eligibility of Stage-II Connectivity. Simultaneously, Clause 9 of the Detailed Procedure casts a corresponding obligation upon GETCO to scrutinize the applications and documents submitted by applicants before grant of connectivity. The said procedure further contemplates that if deficiencies are noticed, the same are required to be communicated to the applicant for rectification. Thus, the statutory framework cast obligations upon the applicant as well as upon GETCO as the nodal agency while processing connectivity applications. The Clause 9.7 of the Detailed Procedure contemplates completion of the connectivity process within a period of 65 days including payment of estimate amount and execution of connectivity agreement. The said provision further stipulates that in case of failure in payment of estimate or execution of connectivity agreement within the stipulated period, the Stage-II connectivity shall stand revoked and cancelled. The Clause 9.7 does not contain any provision for forfeiture or invocation of the Bank Guarantee furnished at the Stage-II connectivity stage. Further, Clause 10.2(B) of the Detailed Procedure contemplates encashment of Bank Guarantee in a different eventuality, namely failure of the connectivity grantee to complete the dedicated transmission line within the stipulated period after completion of the connectivity process.

14.8. We note the submissions of the Applicant/Petitioner that in the present case, the Applicant/Petitioner had submitted notarized lease documents and not registered lease deeds as required under the Approved Procedure for grant of connectivity.

However, despite submissions of these documents, the Respondent GETCO has granted Stage-II Connectivity in favour of the Applicant/Petitioner after scrutinizing the said documents. Therefore, the present case is not one where the Applicant/Petitioner subsequently changed or substituted documents after grant of connectivity. The documents on the basis of which GETCO later revoked the connectivity were the very same documents which had earlier been accepted by the Respondent GETCO while granting connectivity.

14.9. We note that the Detailed Procedure makes a clear distinction between (a) cases where the connectivity process remains incomplete and connectivity is rejected at a preliminary stage of scrutiny; and (b) cases where the connectivity agreement has already been executed and the developer thereafter defaults in performance obligations. In the present case admittedly no connectivity agreement was executed between the parties, and no dedicated evacuation infrastructure came to be constructed by the Applicant/Petitioner. Consequently, the triggering event contemplated under Clause 10.2(B) for invocation of Bank Guarantee does not arise. The Commission finds substance in the contention advanced by the Applicant/Petitioner that once the connectivity itself stood revoked before crystallization of contractual obligations, retention and invocation of the Bank Guarantee is not reasonable and proper.

14.10. The Commission finds considerable force in the contention of the Applicant/Petitioner that once the Detailed Procedure itself envisages scrutiny and verification of documents by the Respondent GETCO before grant of connectivity, the applicant

cannot subsequently be made liable for the failure of the Respondent GETCO to identify the alleged deficiency at the stage of scrutiny itself. If GETCO had discharged its obligations strictly in accordance with Clause 9 of the Detailed Procedure, the alleged deficiency could have been pointed out at the threshold stage itself, and the Application would have been rejected by the Respondent GETCO accordingly without requiring of submission of the Bank Guarantee by the Applicant / Petitioner. Instead, the Respondent GETCO granted connectivity, accepted the Bank Guarantee and estimate charges, permitted the Applicant/Petitioner to proceed further and thereafter abruptly revoked the connectivity. Such action cannot be viewed entirely in isolation from the procedural obligations cast upon GETCO itself.

14.11. We note that the Respondent GETCO has repeatedly alleged "fraud", "misrepresentation" and "false declarations" on the part of the Petitioner. However, the Commission is unable to accept such sweeping allegations in the facts of the present case. Mere submission of notarized lease agreements instead of registered lease deeds, though constituting non-compliance with the procedural requirement, cannot automatically be elevated to the level of fraud in absence of any material showing deliberate fabrication, suppression of documents or deceitful substitution of records.

14.12. It is pertinent to note that the notarized lease agreements were admittedly placed before the Respondent GETCO itself at the time of scrutiny. Therefore, the alleged deficiency was always apparent on the face of the record and within the knowledge of

the Respondent GETCO. In such circumstances, the allegation that the Applicant/Petitioner "concealed" facts or "deceived" GETCO does not merit acceptance. The present case is essentially one of procedural non-compliance coupled with deficient scrutiny on the part of the Respondent GETCO and not a case involving clandestine fraud or fabricated documents.

14.13. The Commission further notes that the Respondent GETCO has granted connectivity to the Applicant/Petitioner based on very same documents which were at later stage declared not to be in accordance with the approved procedure for grant of connectivity. In the given facts and circumstances, mere generalized assertions regarding blockage of transmission capacity cannot automatically justify invocation of Bank Guarantee and the contention of the Respondent GETCO regarding irretrievable loss or any prejudice would be caused to the Respondent GETCO, is without any merit and accordingly rejected.

14.14. The Commission further notes that the Detailed Procedure approved by this Commission does not contain any express provision either to return the Bank Guarantee or encash the Bank Guarantee merely because connectivity stands revoked on account of deficiency in eligibility documents. The provisions relating to Bank Guarantee under the Detailed Procedure are primarily intended to secure performance obligations relating to implementation of the project, timely completion of evacuation infrastructure and compliance with commissioning timelines. In the present case, the connectivity itself came to be revoked at a preliminary stage on account of alleged deficiency in land

documents. The revocation was not on account of failure of the Petitioner to complete evacuation infrastructure within stipulated timelines or breach of construction obligations after execution of connectivity related works. Therefore, the very purpose for which the Bank Guarantee was furnished never actually arose for invocation.

14.15. We note that the issue before the Commission is not revocation of connectivity but the demand of GETCO for encashment of the Bank Guarantee and retention of estimate charges. Even assuming GETCO possessed power to revoke the connectivity, it does not automatically follow that GETCO can also invoke the Bank Guarantee in absence of an express provision permitting the same in the circumstances of the present case.

14.16. The Commission is also persuaded by the principles laid down by the Hon'ble APTEL in case of *Vayu Renewable Energy (Kaveri) Pvt. Ltd. v. Central Electricity Regulatory Commission*. In the present case, the Detailed Procedure approved by the Commission does not contain any express stipulation authorizing invocation or forfeiture of Bank Guarantee because Stage-II connectivity came to be revoked owing to alleged deficiency in land documents. The Commission further notes that the Applicant/Petitioner had already paid non-refundable connectivity application fees under the applicable Regulations and Detailed Procedure. The said fees are intended to compensate the transmission utility for administrative processing and scrutiny of applications. Imposition of additional financial consequences beyond those expressly contemplated

under the regulatory framework would therefore be inequitable and disproportionate. The Commission accordingly holds that the action of Respondent No. 1 GETCO in proposing invocation and encashment of the Bank Guarantee furnished by the Applicant/Petitioner is not supported by the governing regulatory framework.

14.17. We also note that the Applicant/Petitioner has also sought refund of the amount of Rs. 3,98,85,517/- deposited towards provisional line estimate. The Commission notes that no material has been placed on record by the Respondent GETCO demonstrating execution of substantial transmission works against the aforesaid amount. The amount deposited by the Applicant/Petitioner was towards provisional estimate and not towards completed execution of works. In the absence of proof of actual expenditure, retention of the said amount by GETCO would amount to unjust enrichment. In absence of proof of actual expenditure incurred, retention of the said amount would be arbitrary and inequitable. The Commission is therefore of the view that the Applicant/Petitioner is entitled to refund of the aforesaid amount.

14.18. The Respondent GETCO has relied upon various judgments of the Hon'ble Supreme Court in supports of its contentions. However, the Commission is of the considered view that the reliance placed on the aforesaid judgments is distinguishable from the facts of the present case. The present matter concerns grant of connectivity by the Respondent GETCO itself on the very same documents which as per the respondent GETCO is found not to be in accordance with the approved connectivity procedure, at a

later stage. Accordingly, the reliance placed by GETCO on the aforesaid judgments is of no assistance to its case.

14.19. Considering the overall facts and circumstances of the case, the Commission decide to direct the Respondent GETCO not to encash the Bank Guarantee amounting to Rs. 4,50,00,000/- furnished by the Applicant/Petitioner and return the same to the Applicant/Petitioner. The Commission further directs that Respondent GETCO shall refund the provisional line estimate amount of Rs. 3,98,85,517/- deposited by the Applicant/Petitioner in the absence of proof of actual expenditure incurred against the said amount.

14.20. In view of the above discussion and findings, the Commission passes the following Order:

(a) The Commission directs the Respondent GETCO to return back the Bank Guarantee dated 26.04.2023 amounting to Rs. 4,50,00,000/- to the Applicant/Petitioner.

(b) The Respondent No. 1 GETCO is directed to refund the amount of Rs. 3,98,85,517/- deposited by the Applicant/Petitioner towards provisional line estimate.

15. Order accordingly.

16. With this Order, the present Petition and IAs, if any, stands disposed of.

Sd/-	**Sd/-**	**Sd/-**
[Jatin N. Thakkar]	**[Hiren Shah]**	**[Pankaj Joshi]**
Member	**Member**	**Chairman**

Place: Gandhinagar.
Date: 26/05/2026.