

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri G. Mohapatra, Officiating Chairperson
 Shri S. K. Ray Mohapatra, Member**

Case No. 50/2022

M/s. GRIDCO Ltd.

..... Petitioner

Vrs.

Department of Energy, GoO & Othes

..... Respondents

In the matter of: Application under Section 86 (1) (e) of the Electricity Act, 2003 read with Section 21 of the Odisha Electricity Reform Act, 1995 and other enabling provisions seeking approval with regard to the Power Purchase Agreement (PPA) dated 26.5.2012 and the amended Power Purchase Agreement (PPA) dated 26.5.2012 executed between GRIDCO and M/s. Alex Green Energy Pvt. Ltd. for procurement of 5 MW solar power from the station located at Patnagarh in Bolangir district of Odisha commissioned through OREDA State scheme in Batch-I, towards fulfilling the Renewable Purchase Obligation of GRIDCO Limited.

For Petitioner : Shri P.K. Das, CGM (PP), GRIDCO Ltd.

For Respondent : M/s. Alex Green Energy Pvt. Ltd., CEO, TPWODL, CEO, TPNODL, CEO, TPCODL, CEO, TPSODL, Chief Executive, OREDA & Others.

ORDER

Date of hearing: 27.12.2022

Date of Order: 01.02.2023

The Petitioner - GRIDCO Ltd. has filed the present Petition under Section 86 (1) (e) of the Electricity Act, 2003 read with Section 21 of the Odisha Electricity Reform Act, 1995 and other enabling provisions for approval of Power Purchase Agreement (PPA) dated 26.5.2012 and the amended Power Purchase Agreement (PPA) dated 26.5.2012 executed between GRIDCO and M/s. Alex Green Energy Pvt. Ltd. for procurement of power from 5 MW solar PV station located at Village-Chingiribandh, Patnagarh in Bolangir district of Odisha commissioned through OREDA State scheme in Batch-I, for fulfilling the Renewable Purchase Obligation of GRIDCO Limited.

2. The averments of the Petitioner-GRIDCO are briefly referred hereunder:

- a) Odisha Renewable Energy Development Agency (OREDA), the State Nodal Agency through its initiative took steps to set up Solar PV power project of 25 MW cumulative installed capacity in the State by selection of Independent Power Producers (IPPs) with the sole objective of fulfilling Solar Purchase Obligation (SPO) of GRIDCO.
- b) OREDA floated the Request for Selection (RFS) document, vide Notification dated 13.12.2011, where the Developer was free to identify land for the project anywhere within the State & OREDA through IDCO can facilitate acquisition of the said land.
- c) The total capacity offered under the RFS was 25 MW and each Bidder was allowed to bid in the capacity of 5 MW. After determination of L1 price, the successful Bidder was to be given the option to take additional four units at L1 price.
- d) Fifteen numbers of bidder submitted their response to the RFS floated by OREDA which included a 'Technical Bid' & a 'Tariff Bid'. Evaluation of the technical bids was carried out by a committee constituted by Chief Executive, OREDA with members from GRIDCO, OREDA. Statutory Auditors of OREDA are to check responsiveness of the bids, correctness/ validity of the submitted documents & eligibility of the bidders as per eligibility conditions given in the RFS.
- e) On opening of the 'Tariff bid' for the 12 nos. of shortlisted bidders on 22.02.2012, the L1 bidder was M/s. Alex Green Energy Pvt. Ltd. and the L1 price discovered was Rs.7.00/kWh. Letter of Intent issued by OREDA to M/s. Alex Green Energy Pvt. Ltd. for setting up 5 MW Solar PV power plant in the state & acceptance of the developer.
- f) As per terms & conditions of the Letter of Intent, GRIDCO executed Power Purchase Agreement (PPA) with M/s. Alex Green Energy Pvt. Ltd. on 26.05.2012 for setting up one unit of 5 MW Solar PV Power plant at village Beruan & Gokulpur, Arjunpur-Nalipada in Khurda district at an applicable tariff of Rs.7/kWh which was one of the lowest Solar tariff at that time.
- g) On change of location of the project from Khurda District to Chingribandh Village in Bolangir District, the PPA was amended and substituted later with the new location.

- h) On behalf of GRIDCO, Director (Commercial) signed the PPA with M/s. Alex Green Energy Pvt. Ltd. The PPA was executed with the terms & conditions as detailed below :
- i. Term of the Agreement shall be for 25 years from the date of Commercial Operation (CoD) of the station.
 - ii. GRIDCO at any time during a contract year shall not be obliged to purchase any additional energy from the developer beyond 1.6644 MU/MW/per Year (calculated at 19 % CUF) \pm 10 % variation.
 - iii. For any Contract year, if the Developer has not been able to generate minimum electricity of 1.6644 MU / MW/year less 10 % on account of any reasons not attributable to GRIDCO or Force Majeure events, the non-compliance by Developer shall make him liable to pay penalty to GRIDCO. Apart from this, in case there is any penalty imposed by OERC on GRIDCO due to any shortfall in supply of solar electricity to GRIDCO directly attributable by the Developer, such penalty will also be borne by the Developer.
 - iv. As per Clause 14.12 of the Policy Guidelines on Power Generation from Non-conventional Energy Sources, 2005, the Developer shall have to pay at a uniform rate of Rs.0.01/kWh on a quarterly basis to OREDA , which will be ensured by GRIDCO by deducting the amount from the tariff payable to the Developer and will be passed on to OREDA.
 - v. The quoted tariff for 25 years for Solar Power Plant shall be Rs.7/kWh as per tariff Bid submitted by the selected Bidder through OREDA. This tariff is inclusive of the charges and taxes to be paid by the selected Bidder.
 - vi. The Project Proponent shall bill to GRIDCO on monthly basis based on EBC data as per main meter installed at the generating station following the end of each month for the net energy supplied.
 - vii. A rebate of 2 % on the billed amount shall be deducted for payment made by GRIDCO within 7 working days from the receipt of the bill by GRIDCO and 1 %, if paid within 30 days of the receipt of the bill.
 - viii. For late payment beyond 60 days from the date of billing, a surcharge at the rate of 1.25 % per month or part thereof shall be levied on the outstanding billed amount by the Project Proponent.

- ix. As a security package, GRIDCO shall provide facilities of an irrevocable, revolving and confirmed Letter of Credit by any designated Nationalized Bank for a period of One year. The amount of LC shall be equal to the expected payment for one month billing.
 - x. The metering shall be at the Generator premises as provided in CEA Metering Regulation and also at the Grid Substation end as per Odisha Grid Code.
 - xi. The Solar power station shall be treated as MUST RUN and shall not be subject to Merit Order Dispatch Regulation.
 - xii. The interconnection with the distribution network shall be in accordance with Grid connectivity standard as may be stipulated by OERC or as per the guidelines framed by the CEA. OPTCL shall evacuate all the delivered energy.
 - xiii. The construction and setting up of dedicated transmission facility for evacuation of power from the Generating Station to the point of off take i.e. the nearest Grid Substation of OPTCL based on the System Study by OPTCL.
- i) Apart from the above, other terms and conditions like Other Charges, kVAh Charges, Indemnification & Insurance, Force Majeure, Change of law, Assignments and Transfer, Default and Termination, Confidentiality, Notices, Settlement of Disputes, Project Equipment Components, Licenses and Permits and Securities have been incorporated as per the prevailing Model PPA conditions.
 - j) The 5 MW Solar PV Project by M/s. Alex Green Energy Pvt. Ltd., selected through OREDA State Scheme, Phase-I located at Village- Chingiribandh, Patnagarh in Bolangir District got commissioned on 19.8.2014 and is exporting power to GRIDCO through the 33 kV transmission line connected to OPTCL 132/33 kV Patnagarh Substation.
 - k) The said 5 MW solar project got severely damaged due to heavy storm on 24.5.2018 and hence there was no generation since June'2018, for a prolonged period till July'2020.
 - l) Later the matter of M/s. Alex Green Energy Pvt. Ltd. was referred to National Company Law Tribunal (NCLT), Kolkata towards initiation of CIRP (Corporate Insolvency Resolution Process) under the provisions of Insolvency

& Bankruptcy Code, 2016. The Management of the 5 MW Alex Green Energy Pvt. Ltd. got changed with order of the NCLT, Kolkata.

- m) As per the order of NCLT M/s. Fortis Chemicals Pvt. Ltd. stepped in as new owner and has been managing 5 MW solar project of Alex Green Energy Pvt. Ltd. and the supply of power to GRIDCO is being continued since 29.8.2020.
3. The gist of the submissions made by Respondent-M/s. Alex Green Energy Pvt. Ltd. are as under :
- a) Initially OREDA issued a Letter of Intent (LoI) after “Request for Selection” (RFS) in favour of M/s. Alex Green Energy Pvt. Ltd. on 26.5.2012 for setting up of one 5 MW solar PV power plant at village Beruan & Gokulpur, Arjunpur-Nalipada in Khorda district @ 7.00/kWh, the lowest discovered price in the selection process for a period of 25 years.
 - b) Due to technical reasons later on the location of the 5 MW Solar PV Plant was changed from district Khorda to Village-Chingriband, Patnagarh in the district of Bolangir. The change of location was allowed by OREDA on 21.8.2013.
 - c) Accordingly the amended and substituted PPA was signed on 25.11.2013.
 - d) The 5 MW solar PV Plant was commissioned on 19.8.2014. The generated energy was being sold to GRIDCO through 33/132 kV Patnagarh grid of OPTCL at 33 kV.
 - e) On 24.5.2018 the plant got severely damaged due to a heavy storm and there was no generation since 24.5.2018 till July 2020.
 - f) M/s. Alex Green Energy Pvt. Ltd. was referred to National Company Law Tribunal by Ministry of Corporate Affairs towards initiation of Corporate Insolvency Resolution Process (CIRP) under the provision of insolvency and Bankruptcy Code 2016.
 - g) That during the CIRP process GRIDCO terminated the amended and substituted PPA with M/s. Alex Green Energy Pvt. Ltd. Under the provisions of Insolvency & Bankruptcy Code, 2016 by an order of NCLT with effect from 18th February 2019 the powers of the Board of Directors of Alex Green Energy Pvt Ltd was suspended and such powers were vested with Surya Kanta Satapathy (The insolvency professional), Kolkata. Surya Kanta Satapathy (The insolvency professional) intimated Director (Commercial) GRIDCO regarding approval of Resolution plan and closure of Corporate Insolvency Resolution Process of Alex Green Energy Pvt. Ltd. in favour of Fortis Chemical Pvt. Ltd. being selected as successful H-1 resolution applicant duly approved by NCLT.

- h) NCLT in their order dated 14.10.2019 mentioned that;
 “The application has been admitted, vide order dated 18.02.2019 and the termination notice has been issued by the respondent (GRIDCO) on 30.8.2019, which is in violation of section 14(1) of the Insolvency and Bankruptcy Code 2016. Accordingly we are of the view that termination of the PPA is in violation of the moratorium declared by the Adjudicating Authority in the case in hand, in view of the above said, we hereby direct the respondent (GRIDCO) to restore the PPA dated 26.5.2012 as if there is no termination of PPA, within one week of the date of the order”
 - i) GRIDCO had gone for appeal against the above order dated 14.10.2019 of NCLT before the National Company Law Appellate Tribunal, New Delhi (NCLAT) and on 24.7.2020 the Honorable National Company Law Appellate Tribunal dismissed the appeal of GRIDCO.
 - j) Since management of M/s. Alex Green Energy Pvt. Ltd. has been taken over by M/s. Fortis Chemical Pvt. Ltd. as successful L-1 resolution applicant duly approved by the Honorable NCLT, the PPA does not require to be changed.
 - k) Since the tariff of Rs.7/kWh was through a competitive bidding and as per the order of the NCLT the PPA is to continue, the question of variation of price does not arise.
 - l) The reason for delay in submission of the PPA (amended and substituted) by GRIDCO before OERC is not known to the respondent.
4. The Respondent OREDA has stated the following:
- a) Under Phase-1 of the OREDA State Bidding Scheme, a very competitive tariff of Rs.7/KWh was discovered which was one of the lowest solar tariff at that time, where the CERC benchmark tariff in 2011 was Rs 15.39/kWh.
 - b) The SPV project of 5 MW at Chingribandh district Bolangir got commissioned on 19.8.2014 and is exporting power to GRIDCO through 33 kV transmission line connected to OPTCL 132/33 kV Patnagarh substation.
 - c) The Commission may consider for approval of the PPA dated 26.05.2012 executed with Alex Green Energy Pvt. Ltd. for 25 MW Solar PV power stations for fulfilling the RPO of GRIDCO.
5. The Respondent TPSODL has stated the following :
- a) The GRIDCO proposes to seek the approval of the above PPA after a period of about 10 years from the Commissioning for the purpose of regularizing the same.

- b) The above project was not generating anything since 24th May 2018, as the plant was damaged due to heavy storm. M/s. Alex became bankrupt and the matter was referred to National Company Law Tribunal, Kolkata. After the proceedings, M/s. Fortis Chemicals Pvt. Ltd. has resumed the operations of the project from 29th August 2020.
 - c) The PPA is in vogue i.e. for the last many years, the power has been availed by the GRIDCO and same has been included in their ARR for the purpose of determination of the Bulk Supply Price (BSP) for DISCOMs.
 - d) Though the PPA has not been approved by the Commission, the impact of the same has been considered/approved by the Commission and included in the determination of Cost of power purchase in the Tariff Orders of GRIDCO by the Commission. In other words, the impact in terms of tariff on the DISCOMS has already been factored in and there will no change even if the PPA is approved at this point of time by the Commission.
 - e) The Tariff of the Solar Project has been discovered under a Competitive Bidding mechanism and the tariffs so discovered, though they are high as compared to the present tariff, were appropriate during the period at that point of time.
 - f) The energy generated from the solar project is about 7 MUs and the same is being used to meet the RPO of the state.
 - g) No objection to regularization of the PPA proposed by GRIDCO.
 - h) There was no generation for a prolonged period. Accordingly, the status of the generation since the recovery of the project from the storm damage and also after the NCLT proceedings may be informed by GRIDCO.
 - i) The plant is required to generate a minimum of 7.49 MUs as per the PPA. In case the same is not achieved, then there is a penalty for shortfall.
 - j) The initial stoppage of generation may be due to “Force Majeure” condition. Hence the period between 24th May 2018 to 29th August 2020 may be attributed to this Force Majeure Condition. However, since the resumption of the generation, M/s GRIDCO may ascertain the shortfall (if any) and work out the penalty and inform the Commission.
6. The Respondent TPWODL has stated the following :
- a) There has been a delay of more than 10 years in placing the said PPA dated 26.05.2012 for its approval before the Commission.

- b) The PPA was signed at the time when the business of distribution and retail supply was with erstwhile WESCO and the same PPA/contract was not placed before the Commission for approval.
- c) As per generator list enclosed with vesting order from whom GRIDCO is purchasing, M/s. Alex Green Energy Pvt. Ltd. is a part of it. The power purchase tariff as per existing term is Rs.7/kWh. As the applicant had signed the PPA at a time when the market rate of solar power was quite high and the PPA was yet to be approved by Commission, the Respondent is of the view that, for benefit of the stakeholders, the price as continuing may please be re-negotiated as per the current trends in the solar power market.
- d) Due to serious damage in the power plant M/s. Alex Green Energy Pvt. Ltd. could not supply the guaranteed generation for almost 2 years to the applicant. This inconvenience was caused by heavy storm which comes under clause no. 14 of the PPA 'Force Majeure' but it was mentioned in the clause that *"in the event of the force majeure conditions preventing the plant from resuming the commercial operations for a period in excess of one hundred days, the party shall consult in good faith as to the best course of action. If it is found that it is impossible to resume commercial operation of the plant, and then the party rendered unable to perform its obligations may serve a notice for termination of the PPA"*.
- e) As per the order of NCLT, Kolkata, the management of the 5 MW M/s. Alex Green Energy Pvt. Ltd. transferred to M/s. Fortis Chemicals Pvt. Ltd. but the PPA placed for approval of the Commission is with M/s. Alex Green Energy Pvt. Ltd. This aspect also needs to be addressed the revised PPA.
- f) The price of RE sources recently approved by the Commission for the State of Odisha for which GRIDCO has sought the consent are far below the rate of Rs.7/kW which has been tabulated below:

RE Sources	Nature of Power	Capacity (MW)	Rate (p/u)
Through ISTS connected Solar Projects from NTPC	Solar	200	250
500 MW Solar Projects from SECI	Solar	500	261
Wind Power from SECI under ISTS scheme	Wind	90	296-301
Ground Mounted Project by GEDCOL	Solar	10	284
Hybrid projects under ISTS scheme of SECI	Solar Wind	100	260

- g) The SECI auction concluded recently, the lowest bidder quoted a tariff of Rs.2/kWh for 600 MW capacity.
 - h) The reasons attributable to modified Tariff policy with various exemptions given to Renewable energy sector, Government subsidies, Government facilitated solar parks without any hassle to land acquisitions, mandatory RPO targets to be fulfilled by obligated entities, Technological advancement & low cost of financing solar projects have gradually and significantly reduced the solar power purchase cost in the range of 240 to 300 P/U.
 - i) With respect to availability of cheaper solar power in the market and for reducing the tariff burden on the consumers, the Respondent submitted to the Commission to provide appropriate direction to the Applicant to re-negotiate the tariff with the developer at par with the current market trend.
7. The Respondents TPNODL and TPCODL have submitted their response in line with TPSODL.
8. Shri R. P. Mohapatra, Learned Objector has compared the original PPA dated 26.5.2012 with the amended and substituted PPA signed on 25.11.2013 having effective date 26.5.2012 and submitted the following:
- The 5 MW SPV was commissioned on 19.8.2014 at Patnagarh in Bolangir district.
 - The generation during a contract year shall be 1.6644 MU/MW \pm 10%. The Commission had estimated 8 MU/year from 2015-16 upto FY 2021-22. However, for the FY 2022-23 the estimated energy was only 7.0 MU at normal tariff of Rs.7.0/kWh which has been allowed without penalty.
 - The supply of power was resumed to GRIDCO, after repairs, since 29.08.2020 with changed management of M/s. Fortis Chemicals Pvt. Ltd. Only 3 invertors each of 1 MW capacity were commissioned. Alex Green expected to resume 5 MW supply by 25.11.2020 as per the orders of NCLT and the date of supply at full capacity of 5 MW is not mentioned.
 - Change of location of the project from Khurda district to village Chingribandh in Bolangir district was due to some technical problem. Since the project location was changed the distribution licensee became WESCO which was originally mentioned as CESU.

- The project proponent and GRIDCO agree that the earlier agreement dated 26.5.2012 made between the parties shall not be given effect to and shall be substituted by this agreement.
- Even though the preamble of the amended and substituted agreement says that the agreement is entered at Bhubaneswar “on the day of 26th May 2012”, the witnesses from both the parties have signed the agreement indicating the date of the agreement as “25.11.13”. Therefore, it is incorrect to say that the agreement was executed on 26th May, 2012, rather would have stated that “the amendment made to the agreement dated 26.5.2012, by the agreement dated 25.11.2013 will be applicable with effect from 26.5.2012.
- There is no reply by the petitioner regarding whether a new PPA has been executed with M/s. Fortis Chemicals Pvt. Ltd. who had taken over the management of the company after the cyclone damage.
- The power drawn from the Solar PV Project of ALEX GREEN Energy Pvt. Ltd. from 2015-16 upto date without approval of PPA which was submitted by GRIDCO for approval by application dated 09. 9.2022 may be approved with amendments and the Commission may levy penalty on GRIDCO for violation of the provisions of Electricity Act, 2003 and OERC (Conduct of Business) Regulations, 2004.

9. The Petitioner - GRIDCO in its Rejoinder to the reply of the Respondents has submitted as under :

- a) The Petitioner is already availing the said power to meet the specified RPO target.
- b) TPWODL has proposed for re-negotiation of the tariff of Rs.7.00/kWh with the Solar Developer at par with the current market trend. The petitioner submitted that the applicable tariff of Rs.7.00/kWh is the levellised tariff for a period of 25 years towards procurement of this 5 MW solar power as discovered in the Bidding process conducted by OREDA. The said tariff was discovered through competitive bidding during FY 2011-12, when the solar tariff was quite high.
- c) In response to the Submission of Respondent Intervenor, Shri. R. P. Mahapatra, it is submitted that the PPA between GRIDCO & M/s. Alex Green Energy Pvt. Ltd. was executed on 26.5.2012 for procurement of 5 MW power

from the Solar PV Project located at Beruan & Gokulpur under Gram Panchayat- Arjunpur- Nalipada in Khurda District.

- d) M/s. Alex Green Energy Pvt. Ltd. vide letter dated 15.01.2013 requested GRIDCO for Amendment to the PPA dated 26.5.2012 with regard to change of the location of the proposed project from Khurda to Patnagarh, Balangir following some technical drawbacks.
- e) After the confirmation from OREDA, vide letter dated 12.3.2013, necessary amendment to the PPA dated 26.5.2012 was carried out with regard to the project site.
- f) Though, the amendment to the PPA dated 26.5.2012 by substitution with the new location was done on 25.11.2013, the effective date of the PPA remained the same i.e. 26.5.2012, as the date of signing of the PPA is the Zero date for financial closure as well as the commissioning of the Solar Project within the scheduled time.
- g) Hon'ble NCLT, Kolkata vide its Order dated 14.10.2019 passed in CA(IB) 1184/KB/2019 has mentioned that

“In view of the above said, we hereby direct the Respondent / GRIDCO to restore the PPA dated 26.5.2012 as if there was no termination of the PPA, within one week of the date of the Order”

10. We have carefully examined the written submissions and arguments of petitioner & respondents during hearing through virtual mode and observations are as under:

- a) OREDA, the State Nodal Agency had issued LoI in favour of M/s Alex Green Energy Pvt. Ltd. based on RfS through a competitive bidding process for installation of 5 MW solar PV power plant at village Beruan & Gokulpur, Arjunpur Nalipada in Khurda district of Odisha under OREDA State scheme Phase-I. Subsequently, the location of project was shifted to Chingribandh village in Bolangir District (Odisha) due to technical reasons and change of location was allowed by OREDA.
- b) The tariff discovered through a competitive bidding process was Rs.7/kWh, which was one of the lowest solar tariff at that time (CERC benchmark tariff was Rs.15.39/kWh in 2011).

- c) The Developer shall have to pay at a uniform rate of Rs.0.01/kWh to OREDA on a quarterly basis for various services to be rendered by OREDA.
- d) PPA was executed between GRIDCO & Alex Green Energy Pvt. Ltd. on 26.05.2012 for a period of 25 years from CoD (19.08.2014). Power is being exported to GRIDCO through 33 kV transmission line connected to OPTCL's 132/33 kV Patnagarh sub-station.
- e) The plant was out of service for almost 2 years and could not supply guaranteed generation to GRIDCO due to serious damage caused during cyclone/heavy storm. The commercial operation could not be resumed within 100 days as per Cl. No. 14 of PPA and PPA termination notice of GRIDCO was rejected by NCLAT on 24.07.2020.
- f) The Solar power station shall be treated as MUST RUN and shall not be subject to Merit Order Dispatch Regulation.
- g) The OREDA (State Nodal Agency) have favoured the approval of PPA. DISCOMs (TPNODL, TPSODL, TPCODL) has no objection to regularisation of PPA proposed by GRIDCO as the impact of the same has already been considered/factored by the Commission in ARR for determination of cost of power purchase in tariff order of GRIDCO.

11. We have noted some of the salient features of PPA which are as follows:

- a) GRIDCO at any time during a contract year shall not be obliged to purchase any additional energy from the 5 MW solar PV plant of Developer exceeding/more than 1.6644 MU/MW/ Year (calculated at 19% CUF) with $\pm 10\%$ variation.
- b) If for any contract year, it is found that the developer has not been able to generate minimum electricity of 1.6644 MU/MW/year less 10% on account of any reasons not attributable to GRIDCO or Force Majure events, the non-compliance by Developer shall make him/her liable to pay penalty to GRIDCO. Besides computation of shortfall will also account for the degeneration factor i.e. upto 10th year, there has to be 100% output i.e. 1.6644 MU/MW/year; and after ten years till end of 25th year there may be degradation of 10%. Such penalty shall only apply to quantum of shortfall in generation during the Contract year. However, for the purpose of calculation of shortfall for the 1st year, the Expected Commercial date of operation as

mentioned in the RFS document will be taken as the 1st day of the year irrespective of actual date of commissioning if the project is commissioned after due date.

- c) The shortfall in supply of electricity will be calculated as the difference between the guaranteed output i.e. 1.49796 MU/MW/Year and the actual output averaged over two consecutive year blocks i.e. 1st year and 2nd year, 3rd and 4th year and so on (up to 10th year). For the first year the actual will be calculated from the date of expected COD. The amount of compensation shall be computed by multiplying the shortfall for a block period of two years with the difference in quoted price and forbearance price of RECs. Penalty will be charged in the 3rd year, 5th, 7th year and so on and 25th year. Apart from those mentioned above, in case there is penalty imposed by OERC on GRIDCO due to any shortfall in supply of solar electricity to GRIDCO directly attributable by the Developer, such penalty will also be borne by the Developer.
- d) The Project Proponent shall bill to GRIDCO on monthly basis based on EBC data as per main meter installed at the generating station following the end of each month for the net energy supplied.
- e) A rebate of 2% on the billed amount shall be deducted for payment made by GRIDCO within 7 working days from the receipt of the bill by GRIDCO and 1%, if paid within 30 days of the receipt of the bill.
- f) For late payment beyond 60 days from the date of billing, a surcharge at the rate of 1.25% per month or part thereof shall be levied on the outstanding billed amount by the Project Proponent.
- g) As a security package, GRIDCO shall provide facilities of an irrevocable, revolving and confirmed Letter of Credit by any designated Nationalized Bank. The amount of LC shall be equal to the expected payment for one month billing.
- h) The metering shall be at the Generator premises as provided in CEA Metering Regulation and also at the Grid Substation end as per Odisha Grid Code.
- i) The Petitioner has stated that apart from the above, other terms and conditions like Other Charges, KVAh Charges, Indemnification & Insurance, Force Majeure, Change of law, Assignments and Transfer, Default and Termination, Confidentiality, Notices, Settlement of Disputes, Project Equipment

Components, Licenses and Permits and Securities have been incorporated as per the PPA conditions.

- j) Throughout the term of the PPA, the Project Proponent, at their own cost expenses, shall maintain insurance of power plant and interconnection facilities, public liability insurance, statutory workers compensation insurance and any other insurance as per statutory requirement.
 - k) No Courts, except the Courts in Bhubaneswar shall have jurisdiction to entertain any dispute arising out of the matters relating to this agreement.
12. We find that the 5 MW Solar PV Plant got severely damaged due to heavy storm on 24.05.2018 and there was no generation from the plant for a long period from 24th May 2018 to 29th August 2020. Later the matter of M/s. Alex Green Energy Pvt. Ltd. was referred to National Company Law Tribunal (NCLT), Kolkata by Committee of Creditors (CoC) for initiation of Corporate Insolvency Resolution Plan (CIRP) under the provision of Insolvency & Bankruptcy Code, 2016. The NCLT appointed Shri Surya Kant Satapathy as Insolvency Resolution Professional (IRP), vide order of NCLT dated 01.05.2019 and the appointment of IRP was accepted by the CoC to continue the CIRP process. The IRP intimated GRIDCO about approval of Resolution Plan and closure of corporate Insolvency process of Alex Green Energy Ltd. in favour of M/s. Fortis Chemicals Pvt. Ltd. The Resolution Plan submitted by the applicant M/s. Fortis Chemicals Pvt. Ltd. was approved by the Committee of Creditors making M/s. Fortis Chemicals Pvt. Ltd. to have control over the management of M/s. Alex Green Energy Pvt. Ltd. and to resume operation of the project from August 2020.
13. We also note that the original PPA was signed on 26.5.2012 between GRIDCO and M/s. Alex Green Energy Pvt. Ltd. for a period of 25 years and subsequently due to change in location on technical ground to Bolangir from Khurdha, the amended and substituted PPA was signed on 25.11.2013 between parties. However, it was agreed that the effective date will be 26.5.2012 in line with direction of NCLT, Kolkata, vide order dated 14.10.2019 passed in CA(IB) 1184/KB/2019. The Commission has observed that the operation of plant has been resumed from 29.8.2020 and power is being supplied to the Petitioner – GRIDCO with changed management by M/s Fortis Chemicals Pvt. Ltd.
14. Considering above observations and need for including solar generation in generation mix to meet RPO, the Commission grants post facto approval of the amended and substituted Power Purchase Agreement (PPA) dated 26.5.2012 signed between M/s.

Alex Green Energy Pvt. Ltd. (presently managed by M/s. Fortis Chemicals Pvt. Ltd.) & GRIDCO for procurement of power from 5 MW solar PV station located at Village- Chingiribandh, Patnagarh in Bolangir District of Odisha for a period of 25 years from the CoD (19.08.2014), at the agreed rate of @ 7.00/kWh on the same terms and conditions as laid down in original PPA for fulfilling the RPO of GRIDCO. The necessary agreement, if required, with M/s. Fortis Chemicals Pvt. Ltd. should be signed by GRIDCO to the effect that the rights and liabilities of M/s. Alex Green Energy Pvt. Ltd. in PPA and amended PPA dated 25.11.2013 are transferred to them by virtue of change of management.

15. The petitioner has prayed for post-facto approval of PPA executed between GRIDCO and M/s. Alex Green Energy Pvt. Ltd. on 26.5.2012, after a gap of more than 10 years. In this regard, the letter No.114 dated 19.01.2021 of the Commission should be meticulously followed.
16. The case is accordingly disposed of with the observations stated above.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Officiating Chairperson