

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION SHIMLA**

In the matter of:-

M/s Goodwill Energy Enterprises  
Room No.3, H-35/3, Connaught Place,  
New Delhi-110001

.... ....**Petitioner**

Versus

1. The HP State Electricity Board Ltd. thro' its,  
Chief Engineer (Commercial)  
Vidyut Bhawan, Shimla-171004 **....Respondent No.1**
2. M/s Kut Energy Pvt. Ltd.  
H. No.99, Sector-3, New Shimla,  
Shimla-171009 **....Respondent No.2**
3. The Director of Energy, Himachal Pradesh,  
Shanti Bhawan, Phase-III, Sector-6,  
New Shimla-171009 **....Respondent No.3**

Petition No. 11 of 2019

(Decided on **10<sup>th</sup> June, 2019**)

**CORAM**

S.K.B.S NEGI

**CHAIRMAN**

BHANU PRATAP SINGH

**MEMBER**

Counsels: -

for Petitioner:	Sh. Parinay Deep Shah, Advocate
for Respondent No.1 :	Sh. Kamlesh Saklani (Authorised Representative)
for Respondent No.2 :	-----None-----
for Respondent No.3 :	Sh. Shanti Swaroop Bhatti (Legal Consultant)

**ORDER**

(Last heard on 6<sup>th</sup> April, 2019 and Orders reserved with the liberty to the parties to file their written submissions within two weeks)

This petition has been filed by M/s Goodwill Energy Enterprises, which is a partnership firm, having its head office at Room No.3, H-35/3, Connaught Place, New Delhi-110001 (hereinafter referred as “the petitioner”) under Regulations 68 and 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, seeking declaration of the Power Purchase Agreement dated 07.11.2017 executed between the Himachal Pradesh State Electricity Board Ltd.(hereinafter referred as “the Respondent No.1” or “the HPSEBL”) and M/s Kut

Energy Pvt. Ltd., H. No.-99, Sector-3, New Shimla (HP)(hereinafter referred as “the Respondent No.2”), as void ab-initio.

2. The factual matrix of the case is as under:-

- (a) The GoHP allotted Kut Hydro Electric Project in favour of M/s Polyplex Corporation Limited vide Letter of Allotment dated 09.04.2007 and entered into Memorandum of Understanding (MoU) on 28.04.2007 to carry out detailed investigation, Techno Economic Studies and submission of Detailed Project Report (DPR) for the implementation of the Kut Hydro Electric Project of 24 MW installed capacity, located in Shimla/Kinnaur Districts of Himachal Pradesh (hereinafter referred as “the project”) for which M/s Polyplex Corporation Limited incorporated a Special Purpose Vehicle and requested the GoHP to transfer all the assets, responsibilities, obligations, rights, privileges and benefits in favour of newly incorporated company namely M/s Kut Energy Pvt. Ltd. (Respondent No.2) for which Tripartite Memorandum of Understanding between GoHP, M/s Polyplex Corporation Ltd. and M/s Kut Energy Pvt. Ltd. (the Respondent No.2) was signed on 09.07.2007.
- (b) M/s Kut Energy Pvt. Ltd. (the Respondent No.2), after carrying out the necessary detailed investigations at project sites, submitted the Detailed Project Report (DPR) for an installed capacity of 24 MW and both the parties agreed about the Techno Economic Feasibility of the project.
- (c) The Implementation Agreement (IA), in respect of the project, between the GoHP and M/s Kut Energy Pvt. Ltd. (the Respondent No.2) was signed on 26.05.2008. Techno-Economic Clearance in respect of the project was accorded by the then HPSEB predecessor in interest of Respondent No.1, on 29.01.2009. The zero date for the implementation of the project was achieved by the project developer on 25.05.2010. The project was scheduled for commissioning on 26.11.2013, but the developer failed to achieve the commissioning of the project within the time stipulated in the Implementation Agreement and the same could not be completed even by 2017.
- (d) The Respondent No.2 was unable to repay its loan. The Punjab National Bank (PNB) under the provisions of the SARFAESI Act, 2002 conducted an open E-Auction on 06.10.2017 and sold the project i.e. Kut HEP (24MW) to the petitioner. The Auction Sale was challenged by the original allottee i.e. M/s Kut Energy Pvt. Ltd. (the Respondent No.2) at various legal forums of DRT, Hon’ble High Court of Himachal Pradesh and Hon’ble Supreme Court of India, but the original allottee could not get any relief in any Court/Forum. Although the symbolic possession of the project was taken over by the PNB vide letter dated 22.08.2017, and sale Notice was given vide letter dated 29.08.2017, confirmation of sale was made by the PNB vide letter dated 07.10.2017, however, after the Order dated 04.05.2018 from the Hon’ble Supreme Court, the possession of the project has been handed over by the order dated 23.05.2018 of the DM, Shimla in favour of the Bank, and the Bank has further issued possession Notice on

25.05.2018 in favour of M/s Goodwill Energy Enterprises, i.e. the auction purchaser.

- (e) Subsequently, the Supplementary Implementation Agreement, in respect of the project, between GoHP and M/s Goodwill Energy Enterprises the new developer/allottee, was executed on 27.09.2018. Its preamble and Clauses 1 to 5, reads as under:-

“WHEREAS, the Punjab National Bank under the provisions of the SARFAESI Act, 2002 had conducted an open E-Auction on 06.10.2017 and sold KUT HEP (24MW) to the Second Party. The Auction Sale was challenged by the original allottee i.e. M/s Kut Energy Pvt. Ltd. at various legal forums of DRT, Hon’ble High Court of Himachal Pradesh and Hon’ble Supreme Court of India. Finally after the Orders from Hon’ble Supreme Court, the possession of the project has been handed over by the Orders of DM, Shimla dated 23.05.2008 in favour of the bank and the Bank has further issued possession Notice in favour of the Second Party on 25.05.2018.

Now this Supplementary Implementation Agreement witnessed as under among the parties here to as follows:-

1. *The First Party hereby grants its consent to transfer/assign all the assets, liabilities, obligations, privileges, NOCs and the benefits of the project incurred by M/s Kut Energy Pvt. Ltd. to the Second Party, arising out of the Implementation Agreement signed on 26.05.2008 with the unequivocal acceptance of the Second Party of all the assets, rights, liabilities, obligations, privileges and benefits arising out of above mentioned Implementation Agreement.*
  2. *The First Party hereby releases M/s Kut Energy Pvt. Ltd. of all the obligations under the Implementation Agreement signed on 26.05.2008 mentioned above and agrees to bind Second Party in terms thereof.*
  3. *That the Second Party hereby agrees that it shall be bound and liable for all the liabilities, obligations and execution of the project on the terms and conditions as specified in the Implementation Agreement signed on 26.05.2008 to the First Party.*
  4. *All the terms and conditions of the Implementation Agreement signed on 26.05.2008 shall remain same and except as provided herein above and wherever the expression of Second Party appear in the Implementation Agreement, the same shall be read, construed, mean and deemed to be referred to as M/s Goodwill Energy Enterprises.*
  5. *That the Second Party agrees to perform under the Implementation Agreement signed on 26.05.2008 as if they were the original party to the aforesaid Implementation Agreement in the place of M/s Kut Energy Pvt. Ltd.”*
- (f) The project became commercially operative w.e.f. 19.12.2018 i.e. after the execution of the Supplementary Agreement dated 27.09.2018.
- (g) The petitioner M/s Goodwill Energy Enterprises applied for accreditation of project under REC mechanism under open access. The State Agency vide letter dated 05.12.2018 accredited the petitioner’s project i.e. M/s Goodwill Energy

Enterprises, 24 MW Kut HEP based on the documents submitted by them. On the above accreditation, this Commission vide letter dated 28.12.2018 pointed out that the Respondent No.2 i.e. M/s Kut Energy Pvt. Ltd. has already executed PPA with the HPSEBL (Respondent No. 1) on long term basis on preferential tariff and the petitioner i.e. M/s Goodwill Energy Enterprises is not eligible for accreditation with the State Agency. Subsequently a clarification was sought by the Directorate of Energy, GoHP (Respondent No.3) from the petitioner M/s Goodwill Energy Enterprises vide letter dated 03.01.2019, in response to which the petitioner vide letter dated 08.01.2019 stated that the said PPA dated 07.11.2017 is illegal and needs to be cancelled. Accordingly the matter was referred by the Director of Energy, Govt. of HP (Respondent No.3) to the HPSEBL (Respondent No.1) vide letter dated 23.01.2019 followed by a subsequent reminder dated 08.03.2019, seeking clarification on following two issues:-

- (i) Did the HPSEBL verify the ownership status of Kut HEP before signing the said PPA on 07.11.2017 with M/s Kut Energy Pvt. Ltd.?
- (ii) Whether the status of the Power Purchase Agreement referred above is valid as on date?

In response to above, the Respondent No.1 i.e. the HPSEBL's letter dated 22.03.2019, reads as under:-

*"In this context, it is intimated that initially short term PPA (under REC Mechanism) in respect of KUT HEP 24 MW was executed between Kut Energy Pvt. Ltd. and HPSEBL on 24.01.2015, the validity of which was extended upto 31.03.2018 through Supplementary PPAs signed after taking approval from HPERC. However, during August, 2017, M/s Kut Energy Pvt. Ltd. requested for Long Term PPA with HPSEBL. Accordingly joint petition for Long Term PPA was signed on 29.09.2017, which was approved by HPERC vide Order dated 16.10.2017 in petition No. 59 of 2017. Accordingly a long term PPA in respect of Kut HEP 24 MW was signed on 07.11.2017 with M/s Kut Energy Pvt. Ltd. The possession of Kut HEP 24 MW to new owner i.e. M/s Goodwill Energy Enterprises has been transferred on 25.05.2018 i.e. after execution of Long Term PPA with M/s Kut Energy Pvt. Ltd. however the new owner stated the PPA as illegal and requested to cancel the PPA signed with M/s Kut Energy Pvt. Ltd.*

*The HPSEBL vide letter dated 1<sup>st</sup> January, 2019 had clarified M/s Goodwill Energy Enterprises that the cancellation of PPA falls under preview of HPERC. Moreover, M/s Goodwill Energy Enterprises has filed petition No. 11 of 2019 before HPERC for cancellation of PPA signed with M/s Kut Energy Pvt. Ltd. and the same is under adjudication before HPERC.*

*In the mean time HPSEBL has allowed interim open access upto 31.03.2019 as per request of IPP, as litigation for the said Long Term PPA has been arisen and the sanctity of PPA of Kut HEP (24MW) shall be informed after the final outcome of petition No.11 of 2019."*

3. With the background, as set out in the preceding para 2 of this Order, the petitioner i.e. M/s Goodwill Energy Enterprises submits that-

- (a) the Respondent No.2 i.e. M/s Kut Energy Pvt. Ltd. was unable to repay its loan taken from the Consortium of banks (including PNB, CBI, and

Corporation Bank) and the said banks categorized its account as an NPA. The Punjab National Bank, being a Lead Bank, auctioned the project and the Petitioner Company participated in the auction conducted on 06.10.2017. The petitioner Company was the successful bidder and the sale confirmation Certificate was issued by the Lead Bank on 07.10.2017. The Respondent No.2, approached the Debt Recovery Tribunal (DRT) for stay on the auction sale, but the plea of the Respondent No.2 was rejected. Thereafter, the Respondent No.2 filed CWP No. 2274 of 2017 before the Hon'ble High Court of Himachal Pradesh, for staying the auction sale and the Hon'ble High Court vide an interim Order dated 11.10.2017 directed *“that subject to the petitioner’s depositing `140 Crores with the Punjab National Bank, in terms of their statement, no coercive action shall be taken against them, more so when they are still in actual physical possession of the assets, which fact is not disputed before us.”* The Lead Bank challenged before the Hon'ble Supreme Court the interim stay Orders passed by the Hon'ble High Court and the Hon'ble Supreme Court vide its Order dated 04.05.2018 set aside the High Court Order dated 11.10.2017. Subsequently Lead Bank issued a sale certificate in favour of the petitioner on 18.05.2018, and the CWP No. 2274 of 2017, pending before the High Court was dismissed on 30.05.2018;

- (b) since the Hon'ble Supreme Court has upheld the auction sale dated 06.10.2017 of the Kut HEP to the petitioner, the petitioner is the owner of the Kut HEP with effect from 07.10.2017, when the auction sale was confirmed by the Lead Bank;
- (c) the Respondent No.2 stopped having any rights related to the Kut HEP from 27.08.2017 i.e. from the date the Lead Bank took possession of the HEP under Section 13(4) of the SARFAESI Act, 2002;
- (d) the PPA dated 07.11.2017 is null and void as the project had already been auctioned to the petitioner on 06.10.2017. The Respondents No. 1 and 2 executed the PPA for sale of power on long term from the project on 07.11.2017. On that date the Respondent No.2 was not the owner of project;
- (e) in terms of section 2 (j) of the Indian Contract Act, 1872, a contract which ceases to be enforceable by Law becomes void. In the instant case PPA dated 07.11.2017 is a contract which could not be enforced since it was executed by the Respondent No.2, who had no authority to execute the same, for the reason that the Respondent No.2 as on the date of execution of the PPA was not the owner of the project and he had stopped having any rights related to the project from 27.08.2017;
- (f) if the PPA is not declared void ab-initio it would be a travesty of justice since that would amount to binding the petitioner to a PPA which was not validly agreed and the terms of which the petitioner did not agree to at the time of auction purchase.

The petitioner, therefore, has prayed that PPA dated 07.11.2017 be cancelled.

4. In response to the petition, the Respondent No.1 submits -
- (a) that a Supplementary Implementation Agreement (SIA) executed on 27<sup>th</sup> September, 2018, between the Government of Himachal Pradesh through the Directorate of Energy GoHP with M/s Goodwill Energy Enterprises, is to be read with Implementation Agreement dated 26.05.2008, wherein the ownership of the project has been transferred from M/s Kut Energy Pvt. Ltd. to the petitioner, the PPA in respect of Kut HEP 24 MW is linked with the project. In the SIA dated 27.09.2018, it has nowhere been mentioned that the PPA of the project i.e. Kut HEP 24 MW has been cancelled by the GoHP. The project has been purchased by the petitioner through e-auction under SARFAESI Act, 2002, and in SIA dated 27.09.2018, all the assets, liabilities, obligations, privileges, NOCs and the benefits of the project (including PPA) incurred by the Respondent No.2 have been transferred to the firm of the petitioner arising out of the Implementation Agreement dated 26.05.2008 along with all terms and conditions of IA;
  - (b) that the GoHP has granted its consent to transfer/assign all the assets, liabilities, obligations, privileges, NOCs and the benefits of the project as stated supra and the M/s Kut Energy Pvt. Ltd. (Respondent No.2) has been released by the GoHP of all the obligations under the Implementation Agreement signed on 26.05.2008 and the petitioner has agreed to bind by all the terms and conditions of the IA. The term "PPA" has been defined under the clause 1.2.43 of the Implementation Agreement signed between the parties the extract thereof is reproduced as under:-

*"1.2.43 Power Purchase Agreement (PPA) means a contractual agreement to be signed by the second party with a party for sale of power from the project to that party."*
  - (c) that the Power Purchase Agreement (PPA), as stands signed between the Respondent No.1 and Respondent No.2, flows from the Implementation Agreement dated 26.05.2008 and since all the assets, liabilities, obligations, whatsoever, of the Respondent No.2 have to be transferred to the petitioner by virtue of the e-auction made by the lead consortium bank, the terms and conditions of the PPA shall be ipso facto applicable to the petitioner;
  - (d) that the Respondent No.1 entered into agreement with the Respondent No.2 for the purchase of the power on the strength of the Implementation Agreement executed between the GoHP with the M/s Kut Energy Pvt. Ltd. Since the petitioner has agreed to adhere to the terms and conditions of the Implementation Agreement by way of signing the Supplementary Implementation Agreement dated 27.09.2018, the terms and conditions of

the PPA signed on dated 07.11.2017 shall be applicable to the petitioner in its letter and spirit;

- (e) that the PPA dated 07.11.2017 stands signed between the parties after having its approval from the Commission vide its Order dated 16.10.2017 in the petition No. 59 of 2017. Hence the agreement cannot be termed as illegal one. Further after receiving the correspondence from the petitioner, the Respondent No.1 without wasting no time, requested the petitioner to supply complete information qua the status of the project and vide letter dated 01.01.2019, the position of the Respondent No.1 has been conveyed to the petitioner accordingly;
- (f) that since the petitioner by virtue of the Supplementary Implementation Agreement with the GoHP is following all the terms and conditions of the Implementation Agreement dated 26.05.2008, the terms of the PPA signed between the parties are liable to be adhered to by the petitioner. The joint petition which was filed by the HPSEBL and M/s Kut Energy Pvt. Ltd. for the short term PPA under the REC mechanism stands approved by this Commission vide Order dated 07.01.2015 and thereafter, executed on 24.01.2015 which was initially valid up to 31.03.2016 and thereafter extended from time to time up to 31.03.2018. Hence, the agreement between the Respondents No. 1 and 2 cannot be termed as illegal one and keeping in view the strength of the Supplementary Implementation Agreement dated 27.09.2018, all the assets, liabilities and obligations stands transferred from M/s Kut Energy Pvt. Ltd. to the petitioner and the same agreement cannot be read in the piecemeal manner. As stated supra, the Power Purchase Agreement (PPA) has derived its strength from the Implementation Agreement and the plea of the petitioner cannot be sustainable in the eyes of law for declaring the PPA null and void;
- (g) that the petition filed by the petitioner is devoid of any merits and same is liable to be dismissed in the interest of justice and fair play.

5. In response to the petition, the Respondent No.3 i.e. the Directorate of Energy, Govt. of Himachal Pradesh submits that as for the validity of PPA, which has been signed between original allottee M/s Kut Energy Pvt. Ltd. i.e. Respondent No.2 and the HPSEBL i.e. Respondent No. 1, is concerned, the same is inter se between the parties to the PPA, as the Respondent No.3, i.e. the Directorate of Energy, GoHP, is not a party to the PPA and the copy of the PPA was never supplied to the Respondent No.3. The Respondent No.3 also submits that, however, after scrutiny of the documents showing various events that occurred in the current case, the position that emerges is that on the date of signing of PPA, the Respondent No.2 was neither the owner nor in possession of the project and hence the PPA signed on 07.11.2017 is not valid.

6. The petitioner Company has filed the rejoinder to the reply of the Respondent No.1 stating that-

- (a) the Respondent No.1 erroneously asserts that the petitioner is bound by the PPA on account of the Supplementary Implementation Agreement (SIA) dated 27.09.2018, executed between the petitioner and the Government of Himachal Pradesh. It is Respondent No.1's contention that in light of the SIA, linked to the Implementation Agreement dated 26.05.2008, the PPA stands transferred to the petitioner. The Respondent No. 1 erroneously reasons that since in terms of Clause 1 of the SIA all assets, liabilities, obligations, privileges, NOCs and the benefits of the project stand transferred to the petitioner from M/s Kut Energy Pvt. Ltd. (Respondent No.2), the PPA also stands transferred to the petitioner. These contentions of Respondent are denied;
- (b) the Respondent No.1 further contends that the Government of Himachal Pradesh has granted its consent to such transfer/assign. The Respondent No.1 is incorrectly relying on Clause 1.2.43 of the Implementation Agreement, which defines the term Power Purchase Agreement, to allege that the PPA, signed between Respondent Nos. 1 and 2, shall be ipso facto applicable to the petitioner. The Clause 1.2.43 of the IA merely defines the term "Power Purchase Agreement" and does not mention the PPA, executed between Respondents No. 1 and 2. In fact the said PPA is neither mentioned in the SIA nor in the Implementation Agreement;
- (c) Further, the PPA, between Respondents No. 1 and 2, was signed on 07.11.2017 much before the SIA dated 27.09.2018. While, the SIA clearly provides in Clause 4 that all terms and conditions of the Implementation Agreement signed on 26.05.2008 shall remain same, it makes no mention of the PPA dated 07.11.2017. In fact, the SIA makes no mention of the said PPA at all.

The PPA dated 07.11.2017, was signed subsequent to the Implementation Agreement, dated 26.05.2008, and, therefore if the parties to the SIA intended to bind the parties by the same PPA, they would have at least made a mention of the PPA. Further, Respondent No. 2 signed PPA on 07.11.2017, when Respondent No.2 was not even the owner of the project. The Punjab National Bank had already taken possession of the project from Respondent No.2 on 27.08.2017 and issued sale confirmation to the petitioner on 07.10.2017. Thus, it is submitted that since Respondent No.2 was not the owner of the project the PPA is void ab-initio and, therefore, there is no question of a null and void PPA attorning to any party i.e. when the PPA wasn't valid to begin with no party can attorn to it.

7. Despites giving the repeated opportunities, the Respondent No. 2 i.e. M/s Kut Energy Private limited has neither filed its response nor has put in its appearance in this matter.

8. The matter was heard at length on the 6<sup>th</sup> April, 2019. During the hearing, Shri Parinay Deep Shah, the Learned Advocate, appearing for the petitioner Company, by and large reiterated the contents of the petition and the rejoinder, submits: -

- (a) that petitioner, M/s Goodwill Energy Enterprises, herein is the owner of the project and became owner of the project by successfully bidding for it, at a sale held by e-auction on 06.10.2017 by the Punjab National Bank. The sale was confirmed by letter dated 07.10.2017 sent by the Punjab National Bank to the petitioner. The fact that the sale was confirmed by letter dated 07.10.2017 was further reiterated by Order dated 04/05/2018 passed by the Hon'ble Supreme Court of India;
- (b) that consequently, the petitioner applied for accreditation of the project under REC mechanism under open access. The petitioner was accredited vide certificate dated 05.12.2018. This Commission vide letter dated 28.12.2018 pointed out to the petitioner that M/s Kut Energy Pvt. Ltd; herein Respondent No. 2, had executed the PPA dated 07.11.2017 with the HPSEBL, herein Respondent No. 1. Subsequently, clarification was sought from the petitioner by the Directorate of Energy, herein Respondent No.3, vide letter dated 03.01.2019 through which the petitioner was informed that the project already has a long term PPA for its entire capacity of 24MW;
- (c) that, thereafter, it came to the petitioner's knowledge that after issuance of the Sale Confirmation Letter, dated 07.10.2017 to the petitioner, M/s KUT Energy Pvt. Ltd. had executed PPA dated 07.11.2017 with the HPSEBL. On the date of execution of the PPA, i.e. 07.11.2017, M/s Kut Energy Pvt. Ltd. had no locus to execute the said PPA, since it was not the owner of the project on that day. Therefore, the PPA dated 07.11.2017 is null and void ab-initio. It is a settled principal of law that no one can transfer a better title than he himself possesses thus, purchase of a property from someone who has no ownership right to it, also denies the purchaser any ownership title. The same has also been held by the **Hon'ble Supreme Court of India in V. Chandrasekaran and Anr. V/s Administrative Officer and Ors. Civil Appeals Nos. 6342-43 of 2012;**
- (d) that subsequently, the petitioner wrote letter dated 08.01.2019 to the Directorate of Energy, herein the Respondent No.3, requesting cancellation of the PPA. The petitioner also wrote letters dated 22.03.2018, 28.09.2018, 30.10.2018 and 30.11.2018 to the HPSEBL seeking cancellation of the PPA;
- (e) that the HPSEBL is resisting cancellation of the PPA on the erroneous ground that the petitioner has entered into a Supplementary

Implementation Agreement dated 27.09.2018 (“SIA”) by virtue of which the petitioner has been attorned to the PPA. It is germane to note that during the STU Coordination Committee meeting held on 20.09.2017 the HPSEBL was informed that the project was being auctioned. Minutes of Meeting dated 20.09.2017, sent to the HPSEBL, vide letter dated 26.09.2017, by the HPTCL Despite being fully aware of the fact that the project was under auction, the HPSEBL went ahead with the execution of the PPA with M/s KUT Energy Pvt. Ltd. It is further submitted that M/s KUT Energy Pvt. Ltd. had no locus to execute the PPA, since it was clearly not the owner of said project on the date of the execution of the PPA due to this the PPA is null and void ab-initio. Accordingly, it is impossible for the petitioner to attorn itself to the said PPA by virtue of SIA;

- (f) that further, Clause 1 of the SIA clearly provides “that the first party to the SIA consents to transfer/assign all the assets, liabilities, obligations, privileges, NOCs and the benefits of the project incurred by M/s KUT Energy Pvt. Ltd. to the Second Party, arising out of the Implementation Agreement signed on 26.05.2008 with the unequivocal acceptance of the Second Party of all the assets, rights, liabilities, obligations, privileges and benefits arising out of above mentioned Implementation Agreement.” Thus, it is evident that, by way of the said SIA, the petitioner attorned to and accepted only the rights and obligations arising out of the original Implementation Agreement dated 26.05.2008. The term PPA does not find even a reference in the SIA. Further Clause 5.3 of the Implementation Agreement dated 26.05.2008 (“IA”) states that “The Second Party shall be free to dispose of power from the project(s) after allowing royalty in the shape of free power to the First Party in any manner they like in accordance with the provisions contained in the Electricity Act, 2003 and the rules and regulations made thereunder.” Therefore, even the SIA gives complete freedom to the petitioner to dispose the power from the Project in any manner it deems fit i.e. the petitioner is not obligated under the IA or under the SIA to sell power to any particular party nor is the petitioner bound by any PPA. Further, the reference by the HPSEBL to the definition of the term “PPA” in Clause 1.2.43 of IA, is completely meaningless since it merely defines the term “PPA” without making reference to any specific PPA, also, Clause 5.3 of the IA makes it clear that the generator i.e. the petitioner, is not bound to sell power to HPSEBL and is free to sell power to any party;
- (g) that further apprehension expressed by the representative of the HPSEBL, before the Commission, during hearing dated 06.04.2019, that cancelling of the PPA will set a precedent of cancelling all PPAs where a new developer takes over, is completely unfounded. In the present matter, the PPA dated 07.11.2017 has been executed by a party not in ownership of the project as on the date of execution of the PPA. Therefore, the PPA

itself is void ab-initio. In other projects, the successor owner may be bound by the PPA, executed by the predecessor owner, as long as the PPA is a valid PPA. It is relevant to note that as on 06.10.2017, when the petitioner successfully bid for the project, there was no PPA in existence related to the project. Therefore, it would be nothing short of absurdity to bind the petitioner with the PPA, dated 07.11.2017, executed by an unauthorised party after the Sale Confirmation Letter was issued to the petitioner on 07.10.2017;

- (h) that it is germane to mention that the Directorate of Energy i.e. Respondent No. 3 in para 7 of its Reply to the present petition has stated that “However, after scrutiny of the documents showing various events that occurred in the current case, the position that emerges is that on the date of signing of the PPA, the Respondent No. 2 i.e M/s KUT Energy Pvt. Ltd. was neither the owner nor in possession of the project as is evident from Annexures P/1, P/2 & P/3 of the petition. Thus, it reflects that the PPA signed on 07.11.2017 is not valid.” The Directorate of Energy has also stated vide letter dated 23.01.2019, it inquired from the HPSEBL. “Did HPSEBL verify the ownership status of KUT HEP before signing the said PPA on 07.11.2017 with M/s Kut Energy Pvt. Ltd? It is pertinent to mention here that as per letter dated 07.10.2017 from the Asstt. General Manager, PNB Large Corporate Branch, Ludhiana it is seen that the sale of Immovable Property of 24MW Kut Hydro Electric project of M/s KUT Energy Pvt. Ltd. stood confirmed;
- (i) that, consequently, the HPSEBL responded to the Directorate of Energy, vide letter dated 22.03.2019 but failed to explain due diligence conducted by it before executing PPA dated 07.11.2017 vis-a-vis the ownership status of the project. Thus, it is evident that both the HPSEBL and M/s KUT Energy Pvt. Ltd., despite knowing the fact on the date of execution of the PPA the project had been auctioned, entered into the PPA dated 07.11.2017, the HPSEBL executed the said PPA without even conducting due diligence as to the ownership of the project and is now resisting cancellation of the said PPA on erroneous and incorrect ground. It is reiterated that the PPA dated 07.11.2017 was void ab-initio as M/s Kut Energy Private Limited was not the owner of the project as on the date of execution of the PPA.

9. Sh. Kamlesh Saklani, appearing for the Respondent No.1 i.e. HPSEBL argues in support of its defence as under:-

- (a) that this Commission may take stock of the situation that petitioner has very cleverly tried to twist the arm of law by not projecting the true picture before this Commission. This Commission may peruse Annexure P-5 appended alongwith the present petition wherein the Hon’ble High Court of H.P. was pleased to pass the Order dated 11.10.2017 and the relevant extract of that Order is reproduced as under:-

*“Mr. B.C. Negi learned Senior Advocate, states that without prejudice to the respective rights and contentions of the parties and subject to the outcome of the writ petition, pursuant to petitioner’s request, which is pending consideration with the lead Consortium Bank, in order to establish their bonafides, petitioners are ready and willing to deposit a sum of Rs.140 Crores with the lead consortium Bank (Punjab National Bank) in the following manner:-*

- i. Rs. 3 Crores already deposited alongwith communication, dated 7<sup>th</sup> October, 2017;*
- ii. Rs. 15 Crores on or before 16<sup>th</sup> October, 2017;*
- iii. Rs. 22 Crores on or before 1<sup>st</sup> November, 2017 and*
- iv. Rs. 100 Crores on or before 11<sup>th</sup> December, 2017.*

*We direct that subject to the petitioners depositing a sum of Rs. 140 Crores with the Punjab National Bank, in terms of their statement, no coercive action shall be taken against them, more so when they are still in the actual physical possession of the assets, which fact is not disputed before us. Also, such deposit shall be subject to further orders, which may be passed by the Court. Deposit with the Bank shall be treated to be a deposit of the Registry of this Court. Further, bank shall take a decision on the petitioners’ request, dated 7<sup>th</sup> October, 2017, which Mr. Ajay Kumar, learned Senior Advocate, states shall be taken within a period of four weeks from today. We further direct that in the event of petitioners’ succeeding in the present petition and/or the bank agreeing with the petitioners’ request, petitioners shall be liable to pay interest to the auction bidder on the amount already deposited pursuant to the auction. We further direct that till further orders, it shall not be obligatory on the auction purchaser to deposit the remaining balance amount.”*

The perusal of the order passed by the Hon’ble High Court cited (ibid) crystal clear protects the interest of M/s Kut Energy Pvt. Ltd. and the action succeeding to the passing order i.e. the approval of PPA by the Commission and execution of the same by the M/s Kut Energy Pvt. Ltd. with HPSEBL is purely bonafide one and within the purview of the law;

- (b) that now this Commission may advert to Power Purchase Agreement dated 07.11.2017 and take into consideration the fact that the present petitioner is also one of the contesting party before the Hon’ble High Court of H.P. in Civil Writ Petition No. 2274 of 2017 cited (supra). As such, this fact was very much in the knowledge of present petitioner that the Hon’ble High Court of Himachal Pradesh has passed this Order on 11.10.2017 and subsequent to passing of this Order, the Respondent Board entered into a Long Term Power Purchase Agreement with M/s Kut Energy Pvt. Ltd. who at that point of time by virtue of Order passed by the Hon’ble High Court of H.P. is the rightful owner of the project and Long Term Power Purchase Agreement (PPA) dated 07.11.2017 was rightly entered into with M/s Kut Energy Pvt. Ltd. The contention of the petitioner if it is tested at the touchstone of truth, the same will lead to the inference that knowingly the petitioner is trying to mislead this Commission with the averments that at the time of signing of

the Power Purchase Agreement M/s Kut Energy Pvt. Ltd. does not have any right to enter into a long term Power Purchase Agreement whereas, as a matter of fact, present petitioner being one of the contesting party in CWP No. 2274 of 2017, was well aware of this fact that Hon'ble High Court of H.P. has come to the rescue of M/s Kut Energy Pvt. Ltd. As such, the contention of the petitioner that M/s Kut Energy Pvt. Ltd. did not have the right to enter into the Power Purchase Agreement dated 07.11.2017 is not good as the stand taken by the petitioner has been falsified in view of Order dated 11.10.2017 passed by the Hon'ble High Court of Himachal Pradesh;

- (c) that on the one hand, present petitioner being one of the contesting parties in CWP No. 2274 of 2017 and further, the matter was taken over to Hon'ble Apex Court, there also the parties, who were contesting between each other in the Hon'ble High Court of H.P., contested the same before the Hon'ble Apex Court earlier and the SLP filed by the bank was allowed and Order dated 11.10.2017 passed by the Hon'ble High Court of H.P. was set aside. So, upto 04.05.2018, order passed by Hon'ble High Court of H.P. dated 11.10.2017 remained into operation, meaning thereby that M/s Kut Energy Pvt. Ltd. remained owner of the project by virtue of interim order dated 11.10.2017 passed by the Hon'ble High Court of H.P. As such, the petition as preferred by the petitioner is nothing but a clever attempt to mislead this Commission. Consequently, keeping in view the above stated facts and circumstances, the petition as preferred is liable to be rejected;
- (d) that when Supplementary Implementation Agreement (SIA) dated 27.09.2018 was executed between the Government of Himachal Pradesh and the present petitioner, the petitioner has agreed to take over the project alongwith its assets and liabilities, obligations, privileges, NOCs and the benefits of the project incurred by M/s Kut Energy Pvt. Ltd. arising out of Implementation Agreement (IA) signed on 26.05.2008 with the unequivocal acceptance of the petitioner of all the assets, rights, liabilities, obligations, privileges, benefits arising out of the above mentioned Implementation Agreement. Hence, that being so the PPA signed by M/s Kut Energy Pvt. Ltd. with the HPSEBL is ipso facts binding to the petitioner;
- (e) that one more vital aspect of the matter, which requires consideration of this Commission, is that only the ownership of the Hydel Project is changed as earlier the same was with M/s Kut Energy Pvt. Ltd. and now after the same being purchased by the present petitioner, the same is with the petitioner known as M/s Goodwill Energy Pvt. Ltd. and so far as the other terms and conditions are concerned, the same will remain unchanged keeping in view the fact that the ownership of the project has been taken over alongwith its assets and liabilities and at this particular time, it does not lie in the mouth of the petitioner to say that Power

Purchase Agreement dated 07.11.2017 is not applicable to the petitioner. Further relevant to submit here that the actual owner of the project is the Government of Himachal Pradesh and only through the MOU and the Implementation Agreement the same was leased to the project developer i.e. M/s Kut Energy Pvt. Ltd. and for the sake of the argument, the petitioner herein has entered in to the shoes of M/s Kut Energy Pvt. Ltd. and the through the Supplementary Implementation Agreement dated 27.09.2018 the project in issue stands leased out to the petitioner for the 40 years. Hence, the contention of the petitioner wherein it has been averred that at the time of the signing of the PPA, M/s Kut Energy Pvt. Ltd. was not having the ownership of the project is not accepted at any cost and is liable to be rejected out rightly;

- (f) that the Kut HEP stands transferred to the petitioner on and after signing of the Supplementary Implementation Agreement (SIA) and only assets of the project were transferred by the lead consortium bank. Hence the version of the petitioner that the project was transferred to it is not acceptable and is liable to be rejected.

Sh. Kamlesh Saklani representing the Respondent No.1, therefore, prayed that the keeping in view the aforementioned submissions, the present petition, as preferred by the petitioner, is devoid of merits, and the same may be dismissed, in the interest of justice and fair play.

10. With the background as delineated in the foregoing paragraphs, the main issue which has arisen for consideration and determination in this petition is whether M/s Kut Energy Pvt. Ltd. i.e. Original Developer/borrower was competent to execute the PPA dated 07.11.2017, in relation to KUT HEP (24MW) project after the issuance of the sale confirmation letter dated 07.10.2017?

11. The petitioner company is challenging the validity of the PPA dated 07.11.2017 executed by M/s Kut Energy Pvt. Ltd. with the HPSEBL, stating that since the Hon'ble Supreme Court has upheld the auction sale dated 06.10.2017 of M/s Kut Energy Pvt. Ltd. to the petitioner and on the date of execution of the PPA, i.e. 07.11.2017, M/s Kut Energy Pvt. Ltd. had no locus to execute the said PPA as it was not the owner of the project from 07.10.2017, when the auction sale was confirmed and M/s Kut Energy Pvt. Ltd. has already stopped having any rights in M/s Kut Energy Pvt. Ltd. w.e.f. 27.08.2017, when the lead Bank took the possession under section 13(4) of SARFAESI Act, 2002.

12. The SARFAESI Act is a special Act, which aims to accelerate the growth of economy of our country empowering the lenders namely Nationalised Banks, Private Sector Banks and other Financial Institutions to realise their dues from defaulted

borrowers who are very lethargic in repayment of the loans borrowed by them, by exercising their right of expeditious attachment and foreclosure for enforcement of security. As the bank is a trustee of public funds, it is not only entitled, but is duty bound to recover the amount by adopting all legally permissible methods, as held by the Apex Court in **Indian Bank Vs M/S Blue Jagers Estates Ltd. AIR 2010 SC 2980**. It is settled law that the borrower's rights to hold property is constitutional as well as human and he cannot be deprived of this right except in accordance with the provisions of the Statute.

13. Before we arrive at any definite conclusion in the matter, it is necessary to go through the statutory mechanism laid down for the recovery of secured assets under the relevant provisions of the SARFAESI Act, 2002.

(a) section 13 of the SARFAESI Act, 2002 provides that any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or Tribunal, by such creditor in accordance with the provisions of the said Act. Sub-section (2) of section 13 of the Act (ibid) stipulates that where any borrower, who is under a liability to a secured creditor under a Security Agreement, makes any default in repayment of secured debt or instalment thereof, and his account in respect of such debt is classified by the secured debtor as a Non Performing Asset (NPA), then the secured debtor may require the borrower, by notice in writing, to discharge in full his liabilities to the secured creditor within sixty days, failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4), which reads as under:-

*“(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--*

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*
- (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*

*Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:*

*Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.*

- (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;*
- (d) require at any time, by notice in writing, any person who has acquired any of the secured assets from the borrower and from*

*whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”*

- (b) The effect of taking of possession under sub-section (4) of section 13 is that the title of the debtor does not extinguish, the secured creditor merely gets right to sell property on behalf of the debtor and any sale made by the secured creditor is to be deemed to be a sale by debtor himself. Thus when the right and interest of a borrower is sold in exercise of power under section 13(4), the auction purchaser steps in shoes of the owner and he exercises the same right which the borrower has prior to the sale. Further under section 13(6) any transfer of secured asset, after taking possession thereof or takeover of management under sub-section (4) by the secured creditor, is to vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. Section 13(8) provides that where the amount of dues of the secured creditor is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting tender from public, the secured assets are not to be transferred by way of lease, assignment or sale by the secured creditor. The borrower has right to redeem property at any time before the date of publication of Notice for public auction or inviting tender from the public and property is transferred to auction purchaser by the secured creditor. Thus section 13(13) also clearly provides that *“No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.”*
- (c) Where the possession of any secured asset is required to be taken by the secured creditor, the secured creditor is to approach the D.M. of the area under section 14 of the Act, and the D.M., on such request being made to him, take possession of such assets and documents relating thereto and forward all such assets and documents to the secured creditor, within a period of thirty days from the date of the application.
- (d) Section 15 lays down the manner and effect of takeover of management by a secured creditor under Clause (b) of sub-section (4) of section 13. Sub-section (4) of section 15 provides that where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall on realisation of his debt in full, restore the management of the business of the borrower to him.
- (e) Any person aggrieved by any measures, referred to in sub-section (4) of section 13, taken by the secured creditor or his authorised officer, may make any application to the Debt Recovery Tribunals (DRT) within 45 days and the DRT is to dispose of the said application within 60 days. Under section 18, any person aggrieved by any Order made by the DRT under Section 17, may prefer an Appeal to the Appellate Tribunal within 30 days, on the deposit of 50% of the debt due. Further exhausting the above remedy, the aggrieved person has the

right to invoke the writ jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India.

14. It is amply clear that entire project assets of 24 MW Kut Hydro Electric Project, were sold to M/s Goodwill Energy Enterprises, the present petitioner, through e-auction sale conducted on 06.10.2017 by the PNB, lead Bank, a secured creditor, for sale in enforcement of security interest for recovery of debt due to the Bank from M/s Kut Energy Pvt. Ltd., the original allottee of the project. Sub-rule (6) of Rule 9 of the Security Interest (Enforcement) Rules 2002, made under the SARFAESI Act, 2002, specifically lays down that on the confirmation of sale by the secured creditor and also if the terms of payment have been complied with, the authorised officer of the Bank, shall issue a certificate of the confirmation of the sale of the immovable property in favour of the purchaser. In the instant case the sale was confirmed under section 13 of the SARFAESI Act, 2002 read with rule 9 of the Security Interest (Enforcement) Rules, 2002, in favour of the auction-purchaser on 07.10.2017, subject to the payment of the amount of ` 90,00,08250/- within 15 days thereafter.

15. Under the SARFAESI Act, any person aggrieved by any measures taken, under section 13 (4) of the Act, by the security creditor or his authorised officer, has remedy to make application to DRT under section 17, or file an Appeal to the Appellate Tribunal under section 18 or to invoke the writ jurisdiction under Article 226 of the Constitution of India. The auction sale was challenged by the original allottee i.e. M/s Kut Energy Pvt. Ltd. before the Debt Recovery Tribunal, but its plea was rejected. M/s Kut Energy Pvt. Ltd, approached the High Court of Himachal Pradesh under Article 226 of the Constitution of India, through CWP No. 2274 of 2017 for staying the auction sale and the Hon'ble High Court passed the interim Order dated 11.10.2017 stating that no coercive action shall be taken against M/s Kut Energy Pvt. Ltd., when they were still in physical possession of the assets. M/s Kut Energy Pvt. Ltd. continued to be in physical possession of assets till the Hon'ble High Court Order dated 11.10.2017 was set aside by the Hon'ble Apex Court on 04.05.2018 and the cheque by the auction purchaser for balance amount of sale price i.e. ` 90,00,08250/-, to comply with the condition laid down in the sale confirmation letter dated 07.10.2017, was encashed on 17.03.2018.

16. The Hon'ble Apex Court, while setting aside the High Court stay Order 11.10.2017, took note that in the instant case auction of the mortgaged property had already taken place, but, as no interim relief was granted by DRT by its Order dated 06.10.2017; M/s Goodwill Energy Enterprises, the present petitioner, the highest bidder,

had paid 25% of the bid amount, after which sale confirmation has taken place by a letter dated 07.10.2017 and subsequently on 18.10.2017, a cheque for balance of 75% was furnished by the auction purchaser, which was encashed on 17.03.2018. On account of the interim stay granted by the Hon'ble High Court on 11.10.2017, further action on the confirmation letter dated 07.10.2017 issued by the Lead Bank, remained, inoperative, till the same was set aside by the Hon'ble Apex Court on 04.05.2018 and secured creditor, as well as the auction purchaser could not proceed further.

17. It is the general principle that an Order, after its being set aside by the higher court, is completely effaced from the record as if it had never been passed and the parties, who suffer due to the wrong order of any Court are required to be restored to the same position to which they would have been but for that Order. Hence we do not find any difficulty to conclude that the auction conducted on 06.10.2017 and the confirmation letter dated 07.10.2017 issued by the PNB Lead Bank, was perfectly valid in the eye of Law. Further section 13(8) of the SAFRASI Act the borrower has right to redeem property at any time only before the publication of Notice for public auction or inviting tender from the public. In this case amount due was tendered before the Hon'ble High Court, after the auction had taken place and sale confirmation certificate was issued, and that too after the rejection of the claim before DRT. Section 13(6) of SARFAESI Act, clearly lays down that any transfer of the secured asset, after taking possession thereof under sub-section (4) of section (13) by the secured creditor, is to vest in the transfer in, or in relation to the secured assets transferred, as if the transfer has been made by the owner of the secured assets, Section 13(13) also prohibits the borrower, after receipt of notice referred to in sub-section (2), to transfer by way sale lease or otherwise any of the secured assets referred to in the notice, without prior written consent of the creditor. In this case in the possession notice, issued under section 13(4) of that Act (ibid), the authorised Officer of the PNB cautioned the public in general not to deal with the property and any dealing with the property shall be subject to the charge of the PNB Lead Consortium. All the foregoing provisions make it amply clear that M/s Kut Energy Pvt. Ltd., the borrower, after the issuance of the notice under section 13(4) of the SARFAESI Act, read with Rule 8 of the Security Interest Enforcement Rules, 2002, and the vestment of the secured assets transferred to the auction purchaser under section 13(6) of the Act (ibid), lacked competency to enter into any PPA dated 07.11.2017, without any written consent of the secured creditor. The PPA, so executed, without the

written consent of the second creditor being in violation of the law can have no sanctity to bind the third parties.

18. The execution of the PPA dated 07.11.2017, which is not valid in the eye law, cannot be contemplated to be within the scope of assets and liabilities transferred to the auction purchaser and release of obligations of M/s Kut Energy Pvt. Ltd., under the Supplementary Implementation Agreement (SIA) executed on 27<sup>th</sup> September, 2018, between the Government of Himachal Pradesh through the Directorate of Energy GoHP with M/s Goodwill Energy Enterprises, which is to be read with Implementation Agreement dated 26.05.2008, wherein the ownership of the project has been transferred from M/s Kut Energy Pvt. Ltd. to the petitioner. The PPA in respect of M/s Kut Energy Pvt. Ltd. is linked with 24 MW project, which has been purchased by the petitioner through e-auction under SARFAESI Act, 2002, and in SIA dated 27.09.2018, all the assets, liabilities, obligations, privileges, NOCs and the benefits of the project (including PPA) legally incurred by the Respondent No.2, arising out of the Implementation Agreement dated 26.05.2008 have been transferred/assigned to the firm of the petitioner. The GoHP granted its consent to transfer/assign all the assets, legally incurred liabilities, obligations, privileges, NOCs and the benefits of the project as stated supra and the M/s Kut Energy Pvt. Ltd. (Respondent No.2) has been released by the GoHP all the legally incurred obligations under the Implementation Agreement signed on 26.05.2008 and the petitioner has agreed to bind by the all the terms and conditions of the IA through a validly executed agreement in pursuance of the IA.

19. With the foregoing background, we agree with the contention of the Respondent No. 3 i.e. the Directorate of Energy that the Respondent No. 2 i.e. M/s Kut Energy Pvt. Ltd; was neither the owner nor in possession of the project, and that the PPA signed by it on 07.11.2017 is not valid.

20. In light of the above discussion, circumstances and facts of this case, we conclude that the PPA dated 07.11.2017, executed by M/s Kut Energy Pvt. Ltd. i.e. Original Developer/Borrower, in relation to KUT HEP (24 MW) Project is not valid, as the symbolic possession of the project had been taken over by the petitioner Company on 22.08.2017; auction was conducted on 06.10.2017; sale Certificate was issued by the Bank on 07.10.2017; and the secured assets stood vested in the auction purchaser, prior to the execution of the PPA dated 07.11.2017. In SIA dated 27.09.2018, where all assets, liabilities, obligations privileges, NOCs and the benefits of the project, incurred by the

Respondent No.2, arising out of the Implementation Agreement dated 26.05.2008 had been transferred/assigned to the firm of the petitioner, contemplated liabilities and obligation accrued under the validly executed agreements.

Having stock of the facts and the peculiar circumstance of this case and further taking into consideration the fact that the Respondent No.2 i.e. M/s Kut Energy Private Limited has neither filed its response nor has put in its appearance in this case, we withdraw the approval for the execution of impugned PPA and consequently cancel the PPA dated 11.10.2017, executed by the original developer with Respondent No.1 pursuant to the Implementation Agreement dated 26.05.2008, as prayed for by the petitioner Company i.e. M/s Goodwill Energy Enterprises in the present case. We further make it clear that this Order is being made keeping in view the peculiar facts and circumstance of this case, it may not be taken as precedent in future cases.

It is so ordered.

**--Sd--  
(Bhanu Pratap Singh)  
Member**

**--Sd/-  
(S.K.B.S. Negi)  
Chairman**