BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Petition No.:	**167 of 2025**
Instituted on:	25.06.2025
Heard on:	06.03.2026
Decided on:	**10.04.2026**

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum- CHAIRMAN.

SHASHI KANT JOSHI
MEMBER.

<u>In the matter of:-</u>

M/s Sai Eternal Foundation,
Sai Bhawan, Sector-4, New Shimla, HP-171009. through
Sh. Munish Sharma, Chief General Manager. ……..Petitioner

Versus

The HP State Electricity Board Limited.
through Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004. …….Respondent

Petition under Section 86 (1) (b) and (f) of the Electricity Act, 2003 read with the guidelines issued by the Himachal Pradesh Electricity Regulatory Commission for issuing directions to the Himachal Pradesh State Electricity Board Limited to execute the Power Purchase Agreement with Sai Eternal Foundation in respect of Garmang HEP (9.0 MW).

Present:-

Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1.
Sh. Arvind Kumar, Legal Consultant for the Respondent No. 2.

ORDER

This Petition has been filed by M/s Sai Eternal Foundation (Applicant/ Petitioner for short) under Section 86 (1) (b) and (f) of the Electricity Act, 2003 read with the Regulations issued by the Himachal

Pradesh Electricity Regulatory Commission for issuing direction to the Himachal Pradesh State Electricity Board Limited (the Respondent No. 1/ HPSEBL for short) for executing the Power Purchase Agreement with the Petitioner in respect of Garmang HEP (9.0 MW).

2. The Petitioner, a company engaged in the development, generation and sale of electricity, intends to develop a 9.0 MW Hydro Electric Project, named as Garmang Hydro Power Project situated/ located on Sarwari Khad, a tributary of Beas River in District Kullu, Himachal Pradesh (Project for short). As per the Petitioner, the Project was initially allotted to M/s Shobla Hydro Power Private Limited for 1.5 MW capacity. However, based on the detailed investigation and Techno Economic Clearance (TEC for short), the capacity of the Project was enhanced from 1.5 MW to 5.0 MW and an Implementation Agreement to this effect was signed on 12.06.2009 (Annexure P-1). Further, M/s Shobla Hydro Power Private Limited also signed a Power Purchase Agreement (PPA for short) with the Respondent No. 1 on 19.08.2010 (Annexure P-2) for the sale of power to the HPSEBL/ Respondent No. 1 @ tariff of Rs. 2.87 per kWh.

3. As per the Petitioner, the Project capacity was further enhanced from 5.0 MW to 9.0 MW based on detailed study and concurrence to this effect was granted by the Directorate of Energy (DoE), Government

of Himachal Pradesh (GoHP) (DoE/ Respondent No. 2 for short) vide letter dated 13.04.2017.

4. However, due to commercial non-viability of the Project under the old tariff of Rs. 2.87 per unit and the revised royalty structure (15.16%, 21.16% and 33.16% for different tariff blocks) the Petitioner expressed its inability to sign the IA for implementating the Project. In the meanwhile, the Project was transferred by the DoE to the HIMURJA.

5. As per the Petition, the GoHP notified the Swaran Jayanti Energy Policy, 2021 on 20.01.2022 and pursuant thereto, a fresh and independent IA for 9.0 MW capacity was signed between the Petitioner and the GoHP on 26.09.2022 (Annexure P-3) by superseding all earlier agreements and commitments. The Petitioner has procured the environmental and forest clearances, TEC in accordance with the prevailing policy framework and the Detailed Project Report (DPR).

6. As per the Petitioner, it requested the HPSEBL on 01.02.2024 (Annexure P-4) to execute a fresh PPA in respect of the Project for 9.0 MW capacity but the Respondent No. 1 has refused to enter into a fresh PPA and rather, insisted for execution of a Supplementary Power Purchase Agreement (SPPA for short) for 4.0 MW capacity, over and above the earlier PPA of 5.0 MW, which is contrary to law and facts as the previous IA and PPA have been extinguished by the new IA dated 26.09.2022. The Petitioner objected to the stand of the Respondent No.

1 and requested for signing fresh PPA for the whole 9.0 MW capacity vide letters dated 21.02.2025 and 07.04.2025 (Annexure P-5 Colly) but no response has been gathered from the Respondent No. 1 till date.

7. The Petitioner has made following grounds for the consideration of the Petition:-

> *"3.1 Doctrine of Novation (Section 62 of the Indian Contract Act, 1872)*
> - *The execution of a new IA dated 26.09.2022 for 9 MW capacity constitutes novation of the previous IA of 5 MW capacity dated 12.06.2009.*
> - *Under Section 62 of the Indian Contract Act, when a new agreement is substituted, the old agreement ceases to exist. Consequently, the old PPA for 5 MW capacity (2010) loses legal force.*
>
> *3.2 Contractual Termination Clause*
> *Clause 10.7.3 of the old PPA for 5 MW expressly provides:*
> *"The agreement shall be terminated in the event of termination of Implementation Agreement without any liability to either party..."*
> - *Therefore, the earlier PPA of 5 MW capacity stands terminated upon execution of the fresh IA for 9 MW capacity.*
> - *The fresh IA was signed on 26.09.2022 to make the Gramang project 9 MW commercially viable.*
>
> *3.3 Violation of Statutory and Regulatory Framework*
> *The refusal of HPSEBL to execute a fresh PPA violates the provisions of:*
> - *HPERC (Promotion of RE Sources and Tariff Determination) Regulations, 2017 (as amended up to date), which mandate compulsory procurement by distribution licensee from hydro projects up to 25 MW. It is pertinent to note that fresh IA has been signed on 26.09.2022 and not supplementary implementation agreement (SIA).*
> - *Swaran Jayanti Energy Policy, 2021: The IA for 9 MW capacity Gramang project was signed in accordance with Swaran Jayanti Energy Policy, 2021 which provides a framework for tariff, incentives and procurement for renewable projects, including hydro power. It is also worthwhile to mention that as per GoHP policy, it is mandatory to purchase power from the hydro-power projects up to 25 MW capacity.*
>
> *3.4 Jurisdictional and Institutional Shift.*

- *The original 5 MW IA fell under the purview of HIMURJA. The revised 9 MW capacity brought the Project under the domain of the Directorate of Energy. There are different terms and conditions in the implementation agreements of both the domains contradicting each other.*
- *The shift in capacity and policy regime mandates execution of a new PPA to reflect the applicable legal, technical and financial parameters to avoid contradiction/confusions.*

3.5 Legal and Operational Impossibility of Dual IAs

- *Coexistence of two IAs and two PPAs for the same project is impermissible in law and creates serious administrative and legal contradictions.*
- *The latest IA must be treated as a replacement, not an extension and therefore requires a corresponding fresh PPA.*

3.6 Arbitrary and Discriminatory Conduct

- *The Respondent's refusal to execute a new PPA is arbitrary, lacks reasoned justification and is contrary to the conduct expected of a statutory utility discharging public functions.*
- *The doctrine of legitimate expectation applies, as the Petitioner relied on the State's policy and approvals in good faith.*

3.7 Financial Prejudice

- *The non-execution of the PPA is causing irreparable loss and hardship to the Petitioner who is unable to secure financial closure and has already incurred substantial investment. The old tariff i.e. Rupees 2.87 per unit is not ensuring return on equity as stipulated in the Regulations.*

3.8 Public Interest

- *The Project will enhance Himachal Pradesh's renewable energy capacity, support grid stability, create local employment and contribute to environmental sustainability. Its implementation is in the larger public interest.*

3.9 Regulatory Jurisdiction

- *Section 86(1)(f) of the Electricity Act, 2003 empowers this Hon'ble Commission to adjudicate upon disputes between generating companies and licensees.*
- *Section 86(1)(b) authorizes the Commission to regulate power procurement processes, including approval and enforcement of PPAs.*

3.10 Mode of sale of Power

As per the fresh Implementation Agreement signed for 9 MW capacity, there is no mention of old PPA and as per Clause 5.33 of fresh IA, the Petitioner is free to dispose of the power from the Gramang Project 9 MW capacity in accordance with the provisions contained in Electricity

Act, 2003. However, as per the Policy of the GoHP, the purchase of power by the respondent from projects up to 25 MW capacity is mandatory. Accordingly, the Petitioner is willing to sell the power to the Respondent."

8. It has been prayed that the Respondent No. 1 is required to be directed to execute a fresh PPA for full 9.0 MW capacity in line with IA dated 26.09.2022.

REPLIES OF THE RESPONDENTS

9. Both the Respondents have filed separate replies to the Petition.

REPLY OF THE RESPONDENT No. 1

10. The Petition has been resisted by the Respondent No. 1/ HPSEBL by filing reply highlighting the chronology of events as under:-

Date	Event took place
03.11.2006	M/s Shobla Hydro Power Pvt. Ltd. entered into Memorandum of Understanding (MOU) with the Govt. of Himachal Pradesh to carry out detailed investigation of the Garmang Hydro Electric Project of 1.50 MW capacity, located in Distt. Kullu, Himachal Pradesh.
22.08.2008	Himachal Pradesh State Electricity Board (HPSEB) accorded Techno-Economic Clearance of the Project for 5.00 MW capacity.
12.06.2009	M/s Shobla Hydro Power Pvt. Ltd. entered into an Implementation Agreement with Govt. of Himachal Pradesh for the implementation of the Project.
August, 2009	M/s Shobla Hydro Power Pvt. Ltd. approached HPSEBL for signing of PPA for Garmang HEP (5.0 MW) and inter alia supplied a copy of construction schedule of the Project duly approved by the HIMURJA. As per Schedule, the Scheduled Commercial Operation Date (SCOD) of the Project was fixed as 30.09.2011.
04.11.2009	HPSEB and M/s Shobla Hydro Power Pvt. Ltd. filed a Joint Petition (No. 177 of 2009) before this HPERC for the approval of PPA in respect of Garmang HEP (5

	MW) at the tariff of Rs. 2.87 per kWh.
04.12.2009	The Commission pleased to approve the PPA for the Project subject to the provisions of the HPERC (Procurement of Power from Renewable Energy Sources and Co-generation by Distribution Licensee) Regulations, 2007 and Commission's Order on Small Hydro Project Tariff and Other Issues dated 18.12.2007.
19.08.2010	HPSEB and M/s Shobla Hydro Power Project Pvt. Ltd. executed PPA with HPSEBL pursuant to the approval accorded by this Commission vide order dated 04.12.2009.
13.04.2017	Directorate of Energy, GoHP issued revised Technical Concurrence to Garmang HEP for capacity of 9.00 MW.
17.01.2022	A Tri-Partite Agreement was executed among Govt. of Himachal Pradesh, M/s Shobla Hydro Power Pvt. Ltd. and M/s Sai Engineering Foundation, wherein the Government of Himachal Pradesh grants consent to transfer/ assign all the assets, liabilities, obligations, privileges, statutory/ non-statutory clearances obtained and benefits of the Project by M/s Shobla Hydro Power Pvt. Ltd. to M/s Sai Engineering Foundation arising out of consent dated 06.09.2006 and IA dated 12.06.2009 with the unequivocal acceptance of M/s Sai Engineering Foundation. The Government of Himachal Pradesh further releases M/s Shobla Hydro Power Pvt. Ltd. from all the obligations under IA dated 12.06.2009 and agreed to be bound to M/s Sai Engineering Foundation in terms thereof.
26.09.2022	M/s Sai Eternal Foundation and Govt. of Himachal Pradesh entered into fresh Implementation Agreement in respect of Garmang HEP for capacity of 9.00 MW in pursuance to Swaran Jayanti Policy.
13.03.2023	M/s Sai Eternal Foundation requested HPSEBL for issuance of comfort letter in respect of Garmang HEP (9 MW).
17.03.2023	HPSEBL issued comfort letter to M/s Sai Eternal Foundation.
01.02.2024	M/s Sai Eternal Foundation requested HPSEBL to sign joint petition for PPA in respect of Garmang HEP (9 MW).
22.03.2024	HPSEBL intimated M/s Sai Eternal Foundation that a

	long-term PPA already stands executed between HPSEBL and M/s Shobla Hydro Power Pvt. Ltd. in respect of Garmang HEP (5 MW on 19.08.2010 at the tariff of Rs. 2.87 per kWh with prior approval of this HPERC accorded vide its order dated 04.12.2006 in Petition No. 177 of 2009. HPSEBL further intimated that the terms and conditions of the PPA are legally applicable to M/s Sai Engineering Foundation and their successor(s) as M/s Sai Engineering Foundation has accepted all the assets, liabilities, obligations, privileges, statutory/ non-statutory clearances obtained and benefits of the project by M/s Shobla Hydro Power Pvt. Ltd. arising out of the MoU dated 06.09.2006 and IA dated 12.06.2009. Therefore, the PPA dated 19.08.2010 being an obligation and liability to M/s Shobla Hydro Power Pvt. Ltd. arising out of IA dated 12.06.2009 is considered to be transferred to M/s Sai Engineering Foundation that with respect to enhanced capacity of Project the tariff shall be governed under Regulation 17 of the HPERC (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, hence a Supplementary PPA to the extent of enhanced installed capacity and re-determination of tariff for Project as per the provisions given under Regulation 17 is to be executed. Accordingly, HPSEBL requested M/s Sai Engineering Foundation to provide a draft joint petition and SPPA in accordance with the provisions of RE Regulations, 2017.

11. According to the Respondent No. 1, the stand of the Petitioner that by virtue of a new IA dated 26.09.2022, the earlier IA dated 12.06.2009 as also PPA dated 19.08.2010 stand terminated, is contrary to the Tripartite Agreement dated 17.01.2022 (Annexure R-1) executed between the GoHP, M/s Shobla Hydro Power Private Limited and the Petitioner. Similarly, Clause 10.7.3 of the PPA dated 19.08.2010 is also

not attracted. According to the Respondent No. 1, the Petitioner has accepted and taken over all the assets, liabilities, obligations, rights, benefits, statutory and non-statutory clearances arising out of consent dated 06.09.2006 and the IA dated 12.06.2009 by signing the tripartite agreement dated 17.01.2022, relevant clauses whereof has been reproduced as under:-

> *"Clause (ii) of the said tripartite agreement, the government released the second party from all the obligations under the Implementation Agreement signed on 12.06.2009 mentioned above and agrees to be bound to third party in terms thereof.*
> *(iii) that the third 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 specified in the consent dated 06.09.2006 and implementation agreement signed on 12.06.2009 with first party.*
> *(iv) all the terms and conditions of the Implementation Agreement signed on 12.06.2009 shall remain the same save and except as provided herein above and wherever expression of "company" "generating company" or second party appear in the implementation agreement dated 12.06.2009, the same shall be read, construed, mean and deemed to be referred to as the Third party."*

12. It is submitted that by virtue of the agreement dated 17.01.2022, the mandate of the earlier IA dated 26.09.2022 and the PPA are not taken away, hence, the stand of the Petitioner is not tenable. Further, by virtue of the Tripartite agreement dated 17.01.2022, the tariff as per the PPA dated 19.08.2010 @ of Rs. 2.87 per kWh (further revised to Rs. 2.95 per kWh) shall be applicable for 5.0 MW, whereas the tariff for the enhanced capacity of 4.0 MW would be applicable as per the methodology provided as per proviso to Sub-Regulation (3) of

Regulation 17 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Regulations, 2017 for short) by working out a composite tariff.

13. On merits, the contents of the Petition have been denied that the Petitioner has intentionally concealed the execution of the tripartite agreement dated 17.01.2022 and the Petitioner has approached the Commission with unclean hands and thus, is not entitled for the equitable relief.

14. Further, the attempt of the Petitioner in invoking the Doctrine of Novation under Section 62 of the Indian Contract Act, 1872 is misconceived and not legally tenable as the dispute is governed under the Electricity Act, 2003 which is a special and comprehensive code overriding the general law of contract and the contractual agreement between the generating company and the Distribution Licensee are governed under the provisions of Sections 61, 62, 63, 79 and 86 of the Electricity Act, 2003 as well as the Regulations framed by the Commission thereunder. Thus, the modification or substitution of the terms of the PPA, are regulated as prescribed under the Electricity Act, 2003. Further, mutual consensus between the parties without prior approval of the Commission cannot be construed as valid when such

change impact the tariff, commercial operation date or other statutory obligations under the Electricity Act, 2003 and the regulations framed thereunder. Thus, any change or amendment to the existing PPA or regulatory framework requires express approval of the Commission.

15. It is averred that the Tripartite Agreement (17.01.2022) was voluntarily entered into by the original developer (M/s Shobla Hydro Power Private Limited) and the Petitioner reconstituting its legal foundation and does not reflect any unilateral act of termination by the Government which is necessary for invocation of Clause 10.7.3 of the PPA dated 19.08.2010. In the circumstances, the PPA dated 19.08.2010 continues to be valid and binding.

16. According to the HPSEBL, it has never denied execution of the PPA but the only stipulation of the HPSEBL is that the tariff for the entire 9.0 MW i.e. the original 5.0 MW and enhanced 4.0 MW capacity is required to be determined in accordance with the mechanism provided under Regulation 17 of the RE Regulations, 2017 which provides for a composite tariff where the capacity enhancement is undertaken after execution of earlier PPA. The aforesaid provision mandates that in such cases, a blended or composite tariff shall be applicable, taking into account both the pre-existing and the additional capacity thereby avoiding unjust enrichment or regulatory arbitrage.

17. Regarding the Swaran Jayanti Energy Policy, 2021, it is submitted that while the policy promotes renewable energy generation and outlines certain incentives but do not create an absolute right to claim a fresh or higher tariff. The allegations of arbitrariness and biasness have been denied that there is no refusal on part of the HPSEBL to purchase the power. According to it, the blind procurement of power at perpetual or unregulated tariff would adversely affect the consumers.

REPLY OF RESPONDENT NO. 2

18. The Respondent No. 2 in its separate reply has submitted that as per the Swaran Jayanti Energy Policy, the entire power generated from the Project having capacity upto 25 MW will be mandatorily purchased by the HPSEBL as the HPERC determined tariff. According to the Replying Respondent, the IA between the GoHP and the Petitioner has been signed on 26.09.2022 and Clause 5.33 whereof has been reproduced as under:-

> *"Mode of Sale of Power: M/s Sai Eternal Foundation shall be free to dispose of power from the Garmang HEP, after allowing royalty in the shape of free power to the State Government in any manner in accordance with the provisions contained in the Electricity Act, 2003, as amended and rules and regulations made thereunder."*

REJOINDER

19. In rejoinder, the contents of reply of the Respondent No. 1 have been denied and those of the Petition have been re-affirmed. It is averred that the Tripartite Agreement dated 17.01.2022 relied upon by

the HPSEBL was executed prior to IA dated 26.09.2022 and the legal obligations between the parties are governed as per the new IA dated 26.09.2022 which expressly supersedes and novates any and all prior commitments or agreements including the earlier IA dated 12.06.2009 in accordance with Section 62 of the Indian Contract Act, 1872. Further, fresh IA (26.09.2022) extinguishes all liabilities under the previous agreements arising out of Tripartite Agreement dated 17.01.2022. It is further submitted that while the Petitioner by the Tripartite Agreement, has agreed to undertake the assets, obligations, liabilities etc. of the earlier IA dated 12.06.2009, there was no specific or implied assumption of unrelated third-party contractual agreements, including the old PPA dated 19.08.2010 executed between HPSEBL and M/s Shobla Hydro Power Pvt Ltd. The Tripartite Agreement was limited in scope to matters inter se GoHP, the outgoing developer, and the Petitioner, focused primarily on enabling the transfer of project development rights and not binding the Petitioner to subsequent commercial arrangements with HPSEBL. The relevant clause of the Tripartite Agreement dated 17.01.2022 is reproduced as under:

> *"iii) That the third 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 specified in the consent dated 6.9.2006 and Implementation agreement signed on dated 12.06.2009 with First Party to the Government."*

20. It is averred that the HPSEBL was not a signatory or party to the Tripartite Agreement dated 17.01.2022 and that it is a settled position in law that a non-signatory to a contract cannot enforce terms under that contract against a party who is not privy to the same. The obligations under the Tripartite Agreement flow between the Government, the transferor and the Petitioner only, with HPSEBL's rights and liabilities strictly governed by any PPA or any other agreement to which it is a party. Consequently, HPSEBL's reliance on the Tripartite Agreement to fasten any liability or obligation upon the Petitioner is legally untenable.

21. It is averred that the old PPA dated 19.08.2010 was entered into between HPSEBL and M/s Shobla Hydro Power Pvt Ltd, and not with the Petitioner (M/s Sai Eternal Foundation). The Petitioner has never been a signatory or successor-in-interest to this agreement nor have any rights under the said PPA vested with or been assigned to the Petitioner. The legal fiction introduced by the Tripartite Agreement cannot substitute or create a binding contractual relationship with respect to the PPA, particularly when HPSEBL was not a party to the Tripartite transfer and no tripartite PPA novation occurred.

22. Further, the Directorate of Energy (DOE), GoHP, in its formal reply before the Commission, has categorically admitted that a fresh IA was signed on 26.09.2022 with the Petitioner and that, as per Clause 5.33 of the new IA, the Petitioner is at liberty to sell power to any party,

subject to compliance with law. This clear admission negates the HPSEBLs contention that the prior contractual matrix remain operative and supports the position that all previous obligations and liabilities, including the old PPA, stand extinguished upon the execution of the fresh IA.

23. It is also averred that the PPA dated 19.08.2010 was executed between HPSEBL and M/s Shobla Hydro Power Pvt. Ltd. in pursuance of the old IA dated 12.06.2009 but upon execution of the fresh IA in 2022 (26.09.2022), all rights and obligations under the earlier IA have lapsed, and the project stands governed by new and distinct conditions (including capacity, tariff regime, and regulatory parameters) and at no point, the Petitioner has accepted the transfer of the PPA liability from the outgoing developer, nor is such a transfer is supported in law or by the conduct of the parties.

24. As per the Petitioner, the Respondent No. 1/ HPSEBL has been wrongly relying upon the applicability of Regulation 17 (Capacity enhancement) of the RE Regulations, 2017 in the matter in hand as the said regulation is only applicable in the situations of capacity enhancement of a particular project, however, present is the case wherein a fresh IA has been executed between the petitioner and the Govt. of H.P as also admitted by the Respondent No.2 DoE in its reply to the present Petition. Moreover, without prejudice and admission on

the part of the Petitioner, the said Regulation 17 or the earlier PPA dated 19.08.2010 executed between the predecessor in interest of the petitioner i.e. M/s Shobla Hydro Pvt. Ltd. and the respondent HPSEBL would only had been applicable/binding in case the Petitioner had executed a Supplementary Implementation Agreement qua the capacity enhancement of Gramang HEP or a Tripartite Agreement with the Respondent no.1 HPSEBL and its predecessor M/s Shobla Hydro Pvt. Ltd. in terms of Clause 15.18 of the PPA dated 19.08.2010 which is reiterated as under:

> *"15.18 TRIPARTITE AGREEMENT*
>
> *Both the parties agree that if the Company, in terms of the provisions under Implementation Agreement, considers necessary to incorporate a new public / private limited company or the implementation and operation of the Project and a tripartite agreement is entered amongst the Government, Company and the newly formed company, whereby all the rights and obligations of the Company under the Implementation Agreement are transferred to such newly formed company, a similar tripartite agreement shall also be entered into amongst the Board, the Company and the newly, formed company in respect of this Agreement."*

25. Therefore, the said Regulation 17 and the PPA dated 19.08.2010 (between HPSEBL & M/s Shobla Hydro Power Pvt. Ltd.) shall not be applicable/binding upon the petitioner as in the given matter, there is no Tripartite Agreement between the Petitioner, M/s Shobla Hydro Power Pvt. Ltd. and HPSEBL, whereby all the rights and obligations under the PPA dated 19.08.2010 have been transferred to the Petitioner.

SUBMISSIONS OF THE PARTIES

26. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner, Sh. Kamlesh Saklani, Authorised Representative for the Respondent and Sh. Arvind Kumar, Legal Consultant for the Respondent No. 2.

27. Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that by executing the IA dated 26.09.2022, the GoHP has expressly terminated the previous IA dated 12.06.2009. Further submitted that the PPA dated 19.08.2010, which was signed on the basis of IA dated 12.06.2009, has also extinguished in view of the IA dated 26.09.2022 which has superseded all the previous agreements. He has also submitted that the Tripartite Agreement dated 26.09.2022 which was signed by the GoHP with the original developer M/s Shobla Hydro Power Private Limited and the new developer (Petitioner) also stand superseded with the execution of IA dated 26.09.2022 and thus, the tariff is required to be determined for the entire 9.0 MW capacity of the Project and the question of working out the composite tariff by taking into consideration the distinct capacities of 5.0 MW and 4.0 MW does not arise. He has also submitted that the old PPA dated 19.08.2010 has not been signed by the Petitioner with the HPSEBL and being not a privity to the previous PPA dated 19.08.2010, the said PPA is not binding on the Petitioner.

28. According to him, the Respondent No. 2/ DoE has categorically mentioned in the compliance affidavit dated 03.03.2026 that with the execution of the IA dated 26.09.2022, the previous IA dated 12.06.2009 stands terminated including the royalty slab. He has also submitted that the Regulation 17 of RE Regulations, 2017 has no application to the facts and circumstances of the case as with the supersession of fresh IA dated 26.09.2022, the PPA dated 19.08.2010 also stands superseded and since, the Petitioner was not a party to the PPA dated 19.08.2010, the tariff for the entire 9.0 MW capacity is liable to be determined.

29. Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1, on the other hand has submitted that by virtue of the Tripartite Agreement dated 17.01.2022 executed between the GoHP with M/s Shobla Hydro Power Private Limited and the Petitioner, the Petitioner/ Sai Engineering Foundation has agreed to accept and take over all the assets, liabilities, obligations, rights, benefits, statutory and non-statutory clearances arising out of consent dated 06.09.2006 and the IA dated 12.06.2009. In the circumstances, the PPA executed on 19.08.2010 is valid for all intents and purposes and binding upon the Petitioner. According to him, as per Regulation 17 of the RE Regulations, 2017, when the tariff is to be determined for the original capacity and the enhanced capacity, a composite tariff is to be worked

out and, therefore, the HPSEBL cannot be directed to purchase the power at higher tariff which would have direct impact on the consumers of the State and the financial health of the HPSEBL. He has also submitted that the Petitioner has concealed the vital particulars including the tripartite agreement dated 17.01.2022 under which the Petitioner and the GoHP has assigned all the assets and liabilities of consent dated 06.09.2006 and IA dated 12.06.2009, therefore, Clause 10.3.7 is not attracted to facts and circumstances of the case.

30. We have carefully gone through the submissions of Sh. Vikas Chauhan, Ld. Counsel for the Petitioner, Sh. Kamlesh Saklani, Authorised Representative for the Respondent and carefully gone through the record. The following points arise for determination in the Petition:-

Point No. 1: Whether the Respondent No. 1/ HPSEBL has illegally refused to sign the PPA in respect of the whole 9.0 MW capacity of Garmang HEP as per IA dated 17.01.2022?

Point No. 2: **Final Order**

31. For the reasons to be recorded hereinafter in writing, our point wise findings are as under:-

Point No. 1: No.

Point No. 2: The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

32. It is evident from the record that the Project was initially allotted to M/s Shobla Hydro Power Private Limited and an IA dated 12.06.2009 (Annexure P-1) was signed by M/s Shobla Hydro Power Private Limited with the GoHP in respect of the implementation of the Project for 5.0 MW capacity and based on the IA dated 12.06.2009, M/s Shobla Hydro Power Private Limited signed a PPA on 19.08.2010 with the HPSEBL for supplying power from the said Project of 5.0 MW capacity at the tariff of Rs. 2.87 per kWh. The said Project of 5.00 MW was, however, not implemented.

33. The record further shows that the Project capacity was enhanced from 5.0 MW to 9.0 MW by adding 4.0 MW (5.0 MW + 4.0 MW) and the concurrence thereto was accorded by the DoE, GoHP vide letter dated 13.04.2017 and the Project was allotted to the Petitioner. A tripartite Agreement dated 17.01.2022 was signed by the GoHP with the erstwhile developer M/s Shobla Hydro Power Private Limited and new developer i.e. the Petitioner whereby, the Petitioner accepted all the assets and liabilities etc. arising out of consent dated 06.09.2006 and IA dated 12.06.2009. However, initially on allotment of Project the Petitioner declined to sign the IA but pursuant to the Swaran Jayanti Energy Policy, 2021, a fresh independent IA for 9.0 MW capacity of the

Project was signed by the Petitioner with the GoHP on 26.09.2022 (Annexure P-3).

34. It is the case of the Petitioner that pursuant to IA dated 26.09.2022, it approached the Respondent No. 1/ HPSEBL for signing fresh PPA vide letters dated 01.02.2024, 21.02.2025 and 07.04.2025 for supplying net saleable energy from the Project (9.0 MW) but the HPSEBL instead of signing the PPA for the whole 9.0 MW capacity, insisted for signing of Supplementary Power Purchase Agreement (SPPA for short) in respect of the enhanced capacity of 4.0 MW, over and above the earlier 5.0 MW capacity, which is contrary to the law and facts of the case as the previous IA dated 12.06.2009 and the PPA dated 19.08.2010 stand extinguished with the signing of the fresh IA dated 26.09.2022 for implementation of the 9.0 MW Project.

35. The Petitioner has relied upon the Clause 10.7.3 of the old PPA dated 19.08.2010 in respect of 5.0 MW capacity that in the event of termination of IA, the PPA shall also stand terminated. Clause 10.7.3 of the PPA dated 19.08.2010 has been reproduced by the Petitioner as under:-

> *"The agreement shall be terminated in the event of termination of Implementation Agreement without any liability to either party………"*

36. On the strength of the aforesaid Clause, Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that since a fresh IA in respect

of 9.0 MW capacity has been signed by the GoHP with the Petitioner, the earlier PPA for 5.0 MW capacity stands terminated without any liability to either party. He has also submitted that the fresh IA dated 26.09.2022 for 9.0 MW capacity constitute novation of the previous IA dated 12.06.2009 in terms of Section 62 of the Indian Contract Act, 1872, as the new agreement has substituted the old agreement which has rendered the old PPA inoperable and, therefore, the old PPA is not a valid document and the HPSEBL can't refuse to sign the PPA for the whole 9.0 MW capacity as the HPSEBL is under a mandate to purchase the entire power from Hydro Electric Projects upto 25.00 MW capacity on the rates determined by the HPERC.

37. Sh. Vikas Chauhan, Ld. Counsel has also submitted that the Commission vide order dated 23.01.2026 directed the DoE (Respondent No. 2) to file the detailed affidavit about the status of previous IA whether or not the same has been superseded with the IA dated 26.09.2022. Pursuant to the directions of the Commission, the Respondent No. 2 has filed the compliance affidavit on 03.03.2026 averring as under:-

> *"That in this regard, it is submitted that there is no specific provision in the Swaran Jayanti Energy Policy of the State dealing with supersession of a previous Implementation Agreement (IA). However, upon enhancement of the Project capacity of 5.0 MW to 9.0 MW and execution of the fresh Implementation Agreement dated 26.09.2022, the terms and conditions of the earlier Implementation Agreement*

including the applicable royalty slab stand superseded and are governed by the provisions of the subsequent IA.

It is also pertinent to mention here that since there is a significant difference between the terms and conditions applicable for Project falling under the category upto 5.0 MW viz-a-viz projects falling under the category above 5.0 MW capacity, a fresh Implementation Agreement is being signed for all cases where there is a change in category.

As such, the earlier Implementation Agreement signed for 5.0 MW capacity is not in force, once a fresh IA for 9.0 MW capacity is signed."

38. According to him, once the IA dated 26.09.2022 has superseded all the previous agreements, the refusal of the HPSEBL to sign the PPA in respect of the entire capacity of 9.0 MW capacity power is uncalled for and the HPSEBL is required to be directed for signing the PPA for the whole 9.0 MW capacity.

39. We have given a considerable thought to the submissions of Sh. Vikas Chauhan, Ld. Counsel for the Petitioner and we are of the considered opinion that the submissions have been raised to be rejected for the reasons that before signing the IA on 26.09.2022 with the Petitioner, the GoHP signed a Tripartite Agreement dated 17.01.2022 with M/s Shobla Hydro Power Private Limited and the Petitioner wherein it is clearly stipulated that the third party (Petitioner) has agreed to accept and take over all the assets, liabilities, obligations, rights, benefits, statutory and non-statutory clearances arising out of consent dated 06.09.2006 issued by the GoHP to the second party (M/s Shobla Hydro Power Private Limited) and the IA signed on 12.06.2009

by the first party (GoHP) with the second party i.e. M/s Shobla Hydro Power Private Limited. It was further stipulated in the tripartite agreement dated 17.01.2022 that the GoHP accorded the consent to the change in name from M/s Shobla Hydro Power Private Limited to M/s Sai Engineering Foundation with transfer of all assets, liabilities, obligations, rights, benefits, statutory and non-statutory clearances arising out of consent dated 06.09.2006 and IA dated 12.06.2009. Not only this, by signing the tripartite agreement dated 17.01.2022, the GoHP has released the second party/ M/s Shobla Hydro Power Private Limited of all the obligations under the IA dated 12.06.2009 that the third party (Petitioner) shall be bound and liable for all the liabilities, obligations and execution of the project on the terms and conditions specified in the consent dated 06.09.2006 and IA dated 12.06.2009 with the GoHP (First Party). It is also stipulated in the tripartite agreement dated 17.01.2022 that all the terms and conditions of the IA dated 12.06.2009 shall remain the same save and except wherever the expression “Company” “Generating Company or Second Party appear in the IA dated 12.06.2009 shall be read, construed, mean and deemed to be referred to as the Third Party (Petitioner) and that the third party (Petitioner) agreed to perform the IA as if they were the original party of the IA dated 12.06.2009 in place of the Second party.

40. It is, therefore, apparent from the aforesaid terms and conditions of the tripartite agreement that the GoHP has released the Second Party (M/s Shobla Hydro Power Private Limited) of all the liabilities, obligations under IA dated 12.06.2009, once the same were agreed to be performed by the third party i.e. the Petitioner. Once, the Petitioner has agreed to abide by all the terms and conditions, liabilities and obligations of the consent dated 06.09.2006 and IA dated 12.06.2009, certainly the PPA dated 19.08.2010 has not ceased to exist and is valid and binding upon the Petitioner for all intents and purposes.

41. No doubt in the compliance affidavit dated 03.03.2026, the DoE/ Respondent No. 2 has mentioned that the earlier IA dated 12.06.2009 in not in force once the fresh IA dated 26.09.2022 has been signed but a careful perusal of the compliance affidavit dated 03.03.2026 shows that it does not contain even an iota of the Tripartite Agreement dated 17.01.2022 signed by the GoHP, the erstwhile developer of the Project M/s Shobla Hydro Power Private Limited and the Petitioner whereby, the erstwhile developer has been discharged from all the liabilities under the previous IA once the Petitioner had agreed to take over all the assets and liabilities of the previous IA dated 12.06.2009 and consent dated 06.09.2006. Hence, neither the IA dated 12.06.2009 has been superseded nor the PPA dated 19.08.2010 has extinguished. Thus, the averments in the compliance affidavit that the earlier IA dated

12.06.2009 had superseded on execution of fresh IA dated 26.09.2022 or the earlier IA for 5.0 MW had not remained in force are not correct.

42. Further, the aforesaid IA dated 26.09.2022 does not in any manner constitute any novation of contract as projected in view of clear stipulations in Tripartite Agreement dated 17.01.2022 vide which the Petitioner has agreed to take over all the obligations and liabilities under the consent dated 06.09.2006 and IA dated 12.06.2009.

43. No doubt, the Clause 10.7.3 of the PPA dated 19.08.2010 provides that the PPA shall be terminated in the event of termination of the IA but said Clause clearly provides that termination will happen in the event of termination of IA without any liability to either party. Since, all the terms and conditions of the IA dated 12.06.2009 have been saved by virtue of the tripartite agreement dated 17.01.2022, certainly the PPA dated 19.08.2010 is not terminated and binding on the parties and reliance on Clause 10.7.3 of the PPA dated 19.08.2010 is misplaced.

44. No doubt, in the rejoinder, the Petitioner has submitted that in the old PPA dated 19.08.2010, the Petitioner is not a party and that no agreement has been signed between the HPSEBL, M/s Shobla Hydro Power Private Limited and the Petitioner but said assertion is of no consequence in view of clear stipulations in the Tripartite Agreement dated 17.01.2022 wherein the Petitioner has agreed to abide by all the

terms and conditions of consent dated 06.09.2006 and IA dated 12.06.2009.

45. Apparently, the PPA dated 19.08.2010 was for the capacity of 5.0 MW which capacity has now been enhanced to 9.0 MW. Regulation 17 of the RE Regulations, 2017 provides for determination of such tariff for respective energy quantum by providing a composite tariff. Clause (i) and (ii) of Sub-Regulation (3) of Regulation 17 of the RE Regulations, 2017 provides as under:-

> *"**17. Capacity enhancement.—**(1) Where, after the allotment of the original project, the capacity of a small hydro project is enhanced, with the approval of the State Government, the tariff for sale of net saleable energy from such projects, shall be governed by the relevant provisions of sub-regulations [1][(2) to (8)], as applicable.*
>
> *(2) Where, prior to commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017,—*
>
> *(a) any part of the original capacity as well as that of the additional capacity has been synchronized with the grid at least once; or*
>
> *(b) joint petition(s) for the approval, whether under the REC mechanism or on long term basis, of PPA(s) in relation to the original capacity as well as of the supplementary PPA in relation to additional/enhanced capacity, has/have been filed before the Commission; or*
>
> *(c) PPA(s), or the supplementary PPA, whether under the REC mechanism or on long term basis, for purchase of net saleable energy from the original capacity and the additional capacity or the enhanced capacity has/have been signed by the concerned developer with Distribution Licensee;*
>
> *the tariff(s) for the original capacity and the additional capacity, or the composite rate for the enhanced capacity, as the case may be, and the associated conditions for each of such tariffs, shall be regulated as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012.*

(3) Where, prior to commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017,—

(a) in relation to the original capacity of the project or a part thereof,- (i) either synchronization of the same with the Grid has taken place at least once, or (ii) a joint petition for the approval of PPA for purchase/sale of net saleable energy has been filed before the Commission, or (iii) the PPA for the sale/purchase of net saleable energy from the same, whether under REC mechanism or on long term basis, has been signed by the developer of the concerned project with the Distribution Licensee; and

(b) in relation to the additional capacity of the project or a part thereof,—(i) neither any synchronization of the same, with the Grid has taken place even once, nor (ii) any joint petition for approval of any PPA (or supplementary PPA), in relation for such additional/enhanced capacity, whether under REC mechanism or long term basis, has been filed before the Commission, nor (iii) any PPA, or supplementary PPA, for such additional/enhanced capacity has been signed by the developer of the concerned project with the distribution licensee for such additional/enhanced capacity;

the tariff for the net saleable energy in relation to the original capacity shall be determined as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012 and the same for the additional capacity shall be determined as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as applicable on the date on which the joint petition for approval of PPA in relation to the additional capacity/enhanced capacity is filed before the Commission or on the date on which such additional capacity, or a part thereof, is synchronized with the grid for the first time, whichever is earlier.

(4) Where, prior to commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017,—

(a) no part of the original or enhanced capacity has been synchronized with the grid even once; and
(b) no joint petition for the approval of PPA(s), whether under REC mechanism or long term basis, in relation to any part of the enhanced capacity of the project, i.e. the original capacity and/or for the additional capacity and/or for the enhanced capacity, has been filed before the Commission; and

(c) no PPA, whether under the REC mechanism or on long term basis, for the original capacity or for the additional capacity or for the enhanced capacity or any part thereof has/have been signed by the developer of the concerned project developer with the Distribution Licensee; and

(d) the joint petition(s) for approval of PPA(s) or for the supplementary PPA, in relation to of the original capacity as well as for the additional capacity or for the enhanced capacity is filed before the Commission for the first time only after the commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017;

the tariff for the net saleable energy for the relevant capacity/capacities for which PPA, or supplementary PPA, is sought to be approved shall be fixed in accordance with the norms and Generic Levellised rate and other conditions as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as applicable on the date(s) of filing such petition(s) or on the corresponding date(s) of synchronization of any such part capacity(ies) with the Grid for the first time, whichever is/are earlier:

Provided that if separate joint petitions are filed on or after the commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, for approval of PPAs, or the supplementary PPA, before the Commission in relation to the original capacity and the additional capacity, the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, as applicable on the respective dates of filing such petitions, or the respective dates of synchronization of the corresponding capacities, whichever are earlier, shall apply.

(5) Where different sets of Commission's regulations as per sub-regulation 3 of this regulation, or different sets of provisions/norms of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as per the provisions under sub-regulations (4) of this regulation, are applicable for the net saleable energy corresponding to the original capacity and for the additional capacity, a composite rate shall be worked out, on normative basis, for the net saleable energy corresponding to the enhanced capacity, as follows, namely:—

(i) the generic levellised tariff applicable for the net saleable energy in relation to the original capacity as per the sub-regulation (3) or sub-regulation (4) as applicable, shall be considered for the net saleable energy in relation to the annual energy generation corresponding to 75% dependable year as per the Detailed Project Report for the original capacity, irrespective of the date of signing of the power purchase agreement for the original capacity;

(ii) for the net saleable energy in relation to the annual incremental energy generation due to enhancement of capacity i.e. the annual additional energy generation which is expected to take place in the 75% dependable year as per the detailed project report for the enhanced capacity, the generic levellised tariff applicable for the net saleable energy in relation to the additional capacity as per the provisions of sub-regulation (3) or sub-regulation (4), of this regulation, as applicable, shall be considered:

Provided that the tariffs considered for the respective energy quantums as per clauses (i) and (ii) of this sub-regulation shall be governed by the respective associated terms and conditions as per the respective power purchase agreements and the applicable provisions for respective capacities."

46. Therefore, once the PPA had been signed in respect of the 5.0 MW capacity on 19.08.2010 and the Project capacity has subsequently been enhanced to 9.0 MW, the SPPA is required to be signed in respect of 4.0 MW capacity (enhanced capacity) and not for the whole 9.0 MW capacity in terms of Regulation 17 of the RE Regulations, 2017. Moreover, the issue of applicability of Regulation 17 was also considered by the Hon'ble High Court in LPA No. 492 of 2024 titled as Himachal Pradesh Electricity Board Ltd. v. Kundan Hydro (Luni) Pvt. Ltd. & another decided on 09.01.2026. Thus, there are no merits in the submissions of Sh. Vikas Chauhan, Ld. Counsel for the Petitioner that the Regulation 17 has no application to the facts and circumstances of the case.

47. In view of the aforesaid, the Petitioner has not been able to substantiate that the Respondent No. 1 has illegally refused to sign the PPA or is required to be directed to sign the PPA for the whole 9.0 MW capacity. Point No. 1 is accordingly decided against the Petitioner and in favour of the Respondent No. 1.

Final Order

48. In view of the aforesaid discussions and findings, the Petition fails and is accordingly dismissed. The pending applications, if any, are also deemed to have been disposed off.

49. Let a copy of this order be supplied to the parties forthwith.

The file after needful be consigned to record.

Announced
10.04.2026

-Sd-
(Shashi Kant Joshi)
Member

-Sd-
(Yashwant Singh Chogal)
Member (Law)-cum-Chairman