

Case Update

APPELLATE TRIBUNAL FOR ELECTRICITY UPHOLDS TERMINATION OF WIND ENERGY PPAS AND ALLOWS OPEN ACCESS FOR SALE OF WIND POWER



The Appellate Tribunal for Electricity (“APTEL”) dismissed appeals filed by Southern Power Distribution Company of Andhra Pradesh Limited (“APSPDCL”), Andhra Pradesh Power Coordination Committee (“APPCC”), and Transmission Corporation of Andhra Pradesh Limited (“APTRANSCO”) against orders passed by the Andhra Pradesh Electricity Regulatory Commission (“APERC”) dated 20.12.2023.

APTEL vide its judgment dated 19.12.2024 upheld APERC’s findings that persistent defaults in payment under Power Purchase Agreements (“PPAs”) by the Appellants justified their termination by Vaayu (India) Power Corporation Pvt. Ltd. (“VIPCPPL”) and Vishwind Infrastructure LLP (“Vishwind”). APTEL further directed that VIPCPPL and Vishwind (collectively referred to as “Respondents”) be permitted to sell power through Open Access.

The dispute arose from PPAs signed between APSPDCL and the Respondents for wind power projects with a combined capacity of 57.6 MW in Andhra Pradesh. The agreements stipulated a 20-year tenure with a tariff of ₹3.50/unit for the first 10 years. The Respondents alleged that APSPDCL repeatedly failed to make timely payments for power supplied, leading to substantial arrears. In response, the Respondents issued termination notices under the provisions of Article 9 of the PPAs. After APSPDCL failed to remedy the defaults despite being provided sufficient notice periods, the Respondents sought No Objection Certificates (NOCs) from APERC to sell power through Open Access.

APSPDCL contended that its subsequent payments cured any earlier defaults and that the termination of the PPAs was unwarranted. It also argued that APERC’s decision to validate the termination ignored the financial and operational difficulties faced by the appellants. However, APTEL rejected these claims, delivering key findings on several legal issues raised in the appeals.

APTEL held that APSPDCL’s persistent delays in payments, some exceeding 10 months, constituted clear breaches of the PPAs. APTEL also held that payments made after the expiry of the 30 days cure period did not retroactively cure the defaults, as the PPAs explicitly required timely monthly payments.

APTEL further held that APSPDCL’s conduct, including its reliance on interim payments after legal proceedings were initiated, failed to meet the high standard of “blemish-free conduct” required to enforce specific performance of the PPAs under Section 16(c) of the Specific Relief Act. Citing Sections 41(e) and 42 of the Specific Relief Act, APTEL also ruled that an injunction to prevent termination could not be granted because the Appellants’ breaches rendered the PPAs unenforceable.

APTEL also held that APSPDCL’s appeals, seeking a declaration that the termination notices were invalid, were unsustainable because they failed to seek consequential relief for specific performance of the PPAs. APTEL observed that the Appellants’ failure to request such relief reflected an attempt to circumvent their obligations under the PPAs. APTEL noted that equitable reliefs cannot be granted when one party persistently fails to honor its obligations, as doing so would undermine regulatory certainty in the renewable energy sector.

APTEL in its judgment also rejected the Appellants’ argument that the Respondents had waived their right to terminate the PPAs by continuing to supply power after issuing preliminary termination notices. It ruled that the continued supply of power was not voluntary but a necessity due to APSPDCL’s refusal to grant NOCs, leaving the Respondents with no practical alternative.

In light of the above findings, APTEL affirmed APERC’s direction to grant NOCs to the Respondents for Open Access power sales. APTEL emphasized that denying Open Access would unfairly disadvantage the Respondents, who had already suffered financial losses due to the Appellants’ defaults.

This decision underscores the importance of adherence to contractual obligations and not only validates the rights of renewable energy generators to enforce contract terms but also ensures a fair mechanism for addressing disputes. The ruling provides a strong precedent for upholding the sanctity of agreements in the energy sector, particularly in cases involving persistent breaches by power purchasers.

Vaayu (India) Power Corporation Pvt. Ltd. and Vish Wind Infrastructure LLP were represented before the Appellate Tribunal for Electricity by Shri Venkatesh, Managing Partner; Suhael Buttan, Counsel; Priya Dhankhar, Senior Associate; Nikunj Bhatnagar, Associate; and Drishti Rathi, Trainee Associate of the SKV Law Offices Team.