

## SKV Law Offices Secures Landmark Decision from CERC as Mundra UMPP Order Reshapes Power-Sector Dispute Resolution: Non-Tariff Contractual Issues Now Squarely in Arbitration



Securing a landmark victory for its client Tata Power Company Limited, SKV Law Offices has successfully guided a significant and far-reaching order through the Central Electricity Regulatory Commission (**CERC**) on 19.11.2025. The Order in Petition No. 85/MP/2022 and a batch of connected matters arising from disputes under the Power Purchase Agreement dated 22.04.2007 governing supply of 3800 MW from Tata Power Company Limited's (**TPCL**) Mundra Ultra Mega Power Project.

The petitions, filed by multiple procurers including GUVNL, PSPCL, HPPC, MSEDCL, and RUVNL, sought wide-ranging reliefs such as specific performance directing TPCL to supply contracted capacity, compensation for alleged short-supply, refund of excess payments, and directions regarding calculation of availability, penalties, and scheduling. TPCL, however, argued that all such issues were fundamentally contractual performance disputes and therefore non-tariff in nature, requiring reference to arbitration as mandated by the Appellate Tribunal for Electricity (**APTEL**) in its judgment dated 28.08.2024 in Appeal No. 309 of 2019 (DVC v. MPPMCL).

In its detailed analysis, CERC reaffirmed the principle laid down in the DVC judgment that the true character of the primary dispute, not the incidental presence of monetary or tariff-linked prayers, determines whether a dispute is tariff or non-tariff.

The CERC noted that even where prayers incidentally seek tariff-related payments, such claims are merely ancillary and do not alter the essential nature of a dispute grounded in alleged breach of contractual obligations.

Applying this test, CERC concluded that the procurers' core grievances related to supply shortfalls, contractual performance, and obligations under the PPA. While tariff forms the consideration

flowing between parties, not every breach of the PPA impacts tariff or requires regulatory intervention. Since these disputes did not relate to the regulation of tariff under Section 79(1)(b) of the Electricity Act, they fell outside CERC's adjudicatory jurisdiction and squarely within the category of non-tariff disputes mandatorily referable to arbitration.

CERC further held that the absence of a timely application under Section 8 of the Arbitration and Conciliation Act, 1996 does not restrict its power to refer disputes to arbitration. Once the CERC determines that a dispute lies beyond its jurisdiction, the timing or maintainability of a Section 8 application becomes irrelevant. Section 79(1)(f) itself contains an independent legislative mandate empowering and obligating the Commission to refer non-tariff disputes to arbitration.

Treating Section 8 as a prerequisite would create an untenable situation in which CERC cannot adjudicate the matter, yet the dispute cannot be referred to arbitration, leaving it without any forum. CERC therefore rejected the procurers' contention that TPCL's alleged delay in invoking Section 8 bars reference to arbitration.

The procurers had also argued that because some petitions contain prayers against the Western Regional Load Despatch Centre (WRLDC), the disputes cannot be bifurcated between signatories and non-signatories to the arbitration agreement, relying on Sukanya Holdings. CERC found this reliance misplaced. Once the core dispute between TPCL and the procurers is held to be non-tariff, CERC's jurisdiction ends, and it cannot retain adjudicatory authority merely because peripheral reliefs involve WRLDC. Doing so would require CERC to adjudicate issues outside its statutory domain, contrary to the principles in the DVC judgment.

At the same time, the Commission acknowledged that procurers possess independent statutory rights against RLDCs under the Electricity Act and Grid Code; accordingly, they were granted liberty to file separate petitions on WRLDC-specific issues.

In concluding the matter, CERC reiterated that the primary disputes between TPCL and the procurers do not relate to tariff or regulation of tariff, and therefore must be referred to arbitration in terms of the latter part of Section 79(1)(f). It clarified that neither the absence of a Section 8 application nor the presence of WRLDC-related prayers can impede such reference. Invoking Regulation 49 of the CERC (Conduct of Business) Regulations, 2023, the Commission directed that the disputes be referred to a three-member arbitral tribunal, considering the complexity and value involved. Both TPCL and the procurers were directed to nominate their respective arbitrators within two weeks, following which the two nominees shall identify the presiding arbitrator, failing which CERC will appoint one. The matter has been listed for 16 December 2025 for finalisation of the arbitral panel.

Click [here](#) to read the order.

*Tata Power Company Limited was represented in this batch of matters by Mr. Shri Venkatesh (Founding Partner), Mr. Shryeshth Ramesh Sharma (Senior Partner), Ms. Manu Tiwari (Senior Associate), and Mr. Vedant Choudhary (Associate) from SKV Law Offices.*

**SKV Comment:**

*This Order has wide-ranging implications for the Indian power sector. It marks a decisive shift in the manner in which long-term PPA disputes, especially those involving performance, supply, scheduling, and commercial obligations, will be resolved going forward. By firmly applying the DVC framework, CERC has drawn a clear and binding distinction between tariff and non-tariff disputes and has reinforced that pure contractual disputes must be resolved through arbitration, even in large, multi-state power procurement arrangements. This enhances clarity and predictability in forum selection, strengthens the contractual architecture of PPAs, and signals that Section 79(1)(f) is not a catch-all jurisdiction for all disputes arising between generators and procurers. As a result, arbitration is likely to assume a more prominent role in the resolution of power sector disputes, prompting parties to re-examine their dispute-resolution clauses and contractual strategies.*