IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 323 of 2025 & IA No. 1467 of 2025

Dated: 08.01.2026

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Ajay Talegaonkar, Technical Member

IN THE MATTER OF:

Mokia Green Energy Private Limited
Through its Director,
Regd. Office 12A3/201,
2nd Floor, Ashok Vatika Residency,
Jaypee Green, G Block Surajpur,
Kasna Road, Greater Noida,
Gautam Budh Nagar, Uttar Pradesh-201306,
Project site Village Boha, Tehsil,
Budhlada, District Mansa, Punjab.

…Appellant(s)

Versus

1. Punjab State Power Corporation Ltd. Patiala
Through Chief Engineer/Power Purchase & Regulations,
P.S.E.B, Head office Patiala, Punjab-147001.

2. Punjab State Electricity Regulatory Commission
Through its Secretary,
Site No. 3, Block B,
Sector 18-A Madhya Marg, Chandigarh-160018.

…Respondent(s)

Counsel for the Appellant(s) : Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Suhael Buttan

Kanika Chugh
Akash Lamba
Nihal Bhardwaj
Priya Dhankar
Siddharth Nigotia
Abhishek Nangia
Mohit Mansharamani
Vineet Kumar
Indu Uttara
Manu Tiwari
Surbhi Kapoor
Kunal Veer Chopra
Shivam Kumar
Tanishka Khatana
Harsh Vardhan
Aashwyn Singh
Nikunj Bhatnagar
Vedant Choudhary
Aniket Kanhaua
Manav Bhatia
Adarsh Singh
Drishti Rathi
Ananya Dutta
Punyam Bhutani
Devishi Gupta

Counsel for the Respondent(s) : Poorva Saigal
Rishabh Saxena
Shubham Arya
Kaavya Madaan
Pallavi Saigal
Shirin Gupta
Reeha Singh
Shree Dwivedi for R-1

Gargi Kumar for R-2

INDEX

JUDGEMENT

PER HON'BLE MR. AJAY TALEGAONKAR, TECHNICAL MEMBER

1. This Appeal has been filed by Mokia Green Energy Private Limited ("Appellant") challenging the order dated 09.06.2025 ("Impugned Order") passed by the Punjab State Electricity Regulatory Commission ("PSERC" or "Respondent No. 2") in Petition No. 05 of 2025.

Description of the Parties

2. The Appellant i.e., Mokia Green Energy Private Limited is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 ("The Act") and has set-up the Project pursuant to being selected as one of the successful bidders in the competitive bidding conducted by Punjab Electricity Development Agency (PEDA).

3. The Respondent No. 1, i.e., Punjab State Power Corporation Ltd., Patiala (PSPSCL), carries on the activities of generation and distribution of electricity within the state of Punjab.

4. The Respondent No. 2, i.e., the PSERC, was constituted by the Government of Punjab under Section 17 of the Electricity Regulatory Commission Act, 1998 vide Notification dated 31.03.1999 to discharge the duties and perform the functions specified under Section 22 of the Electricity Regulatory Commission Act, 1998. The Respondent Commission continues to act as the Appropriate Commission for the State of Punjab in terms of section 82 of the Act.

Factual Matrix of the Case

5. A Request for Proposal ("RfP") was issued by PEDA in March 2013. Under the RfP, bidders were to be evaluated on the basis of the net availed tariff, determined by applying the discount offered by the bidder to the generic Solar PV tariff for FY 2013-14 notified by CERC and adopted by PSERC. The evaluation was to be carried out irrespective of whether the bidder availed normal or accelerated depreciation. Bidders were to be ranked in ascending order of the net availed tariff (₹/kWh), and capacity was to be allocated sequentially starting from the lowest-tariff bidder until the aggregate capacity specified in the RfP gets exhausted. Bids quoting tariffs above the benchmark tariff for FY 2013-14 were to be rejected.

6. The RfP inter-alia also required bidders to submit a price bid specifying the discount in paisa per kWh on the PSERC-approved applicable tariff and to exercise, at the price-bid stage, the option of availing either the normal rate or the accelerated rate of depreciation for accounting purposes. The RfP further required the selected project developers to furnish audited annual accounts, the tax audit report with depreciation computations and copies of income-tax returns for the first five years from the commissioning of the first unit of the project, enabling verification of the depreciation option availed. It was expressly stipulated that if, at any stage after commissioning, a project selected on the basis of the normal rate of depreciation was found to be claiming Accelerated Depreciation, the applicable tariff would stand revised to the PSERC tariff applicable for Accelerated Depreciation, with the corresponding discount, with effect from the date of commissioning.

7. Consequent to completion of the bidding process, the Appellant was declared as one of the successful bidders. Accordingly, the Appellant developed and now operates a 4 MW solar photovoltaic power project located at Village Boha, District

Mansa, Punjab (“The Project”). The Project was commissioned on 21.04.2015 and supplies electricity to Respondent No. 1 pursuant to a Power Purchase Agreement dated 30.12.2013 (“The PPA”). As required under RfP, the Appellant had declared that it will opt for normal depreciation. The tariff mentioned in the PPA is ₹ 8.59/kWh, as discovered through the aforesaid competitive bidding process.

8. By letter dated 30.01.2025, PSPCL reduced the applicable tariff for the Project by ₹0.88/kWh, revising it from ₹8.59/kWh to ₹7.71/kWh and raised a demand of ₹7,95,97,650/- comprising ₹4,89,69,360/- described as principal amount and ₹3,06,28,290/- described as penal interest. The basis for the revision and demand was stated to be availment of Accelerated Depreciation by the Appellant under the Income Tax Act, 1961.

9. In the proceedings before the PSERC, the Appellant placed on record various documents including a CA certificate dated 08.11.2023 and a clarificatory note dated 14.12.2023. These documents stated that depreciation was claimed under Section 32(1)(ii) of the Income Tax Act, 1961 and that no reduction of tax liability had occurred.

10. The PSERC by its order dated 09.06.2025 (“Impugned Order”) upheld the tariff revision and recovery initiated by PSPCL. The Impugned Order proceeded on the basis that depreciation reflected in the Appellant’s financial statements constituted availment of Accelerated Depreciation for the purposes of the PPA.

11. Aggrieved by the Impugned Order dated 09.06.2025 and the consequential tariff revision, the Appellant has preferred the present Appeal.

12. The Appellant has prayed for the following relief before us:

"21.1 Set aside the Impugned Order dated 09.06.2025 passed by the Ld. PSERC in Petition No. 05 of 2025, upholding PSPCL's recovery and tariff reduction on account of alleged availment of accelerated depreciation;

21.2 Set aside the Notice dated 30.01.2025 issued by the Respondent No. 2, i.e., PSPCL seeking refund of ₹7,95,97,650/- (comprising Principal Refund of ₹4,89,69,360/- and Penal Interest of ₹3,06,28,290/-), together with reduction of tariff from ₹8.59/kWh to ₹7.71/kWh with retrospective effect from 21.04.2015; and

21.3 Pass such further or other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, in the interest of justice."

13. The Appellant also filed an IA No. 1467 of 2025 with the following prayer:
   (a) Pass an ad-interim direction, staying the operation of the Impugned Order dated 09.06.2025 passed by the Respondent Commission/Ld. PSERC in Petition No.05 of 2025; and
   (b) Grant an ad-interim stay on the demand notice dated 30.01.2025 issued by PSPCL; and/or
   (c) Direct PSPCL to release the wrongfully withheld amounts in pursuance of the Impugned Order dated 09.06.2025; and/or
   (d) Pass any such order that this Hon'ble Tribunal may deem fit in the interest of justice.

14. As recorded in the daily order dated 12th December 2025, Learned Counsel, on both sides, stated that, since the submissions they have made at the interlocutory stage is the same as in the main appeal, this Tribunal may, if it considers it so appropriate, dispose of the main appeal itself. In view of the said submissions, we proceed to consider and dispose of the main appeal.

Framing of the Issues

15. Based on the submissions made, we understand that the broad contour of the Appellant's arguments is as under:

(i) The 80% rate of depreciation claimed by the Appellant is a normal rate and not the accelerated one, as claimed by the Respondent No. 1, and concluded by PSERC.

(ii) Even if it is concluded that the Appellant had claimed Accelerated Depreciation, the tariff cannot be revised in the absence of any specific provision for the same in the PPA. Further, the PPA contains an "Entire Agreement" clause, whereby now PSPCL cannot rely on prior understanding, if any, not specifically incorporated in the PPA.

(iii) Since the Appellant's is a loss-making unit, no benefit was derived from applying 80% rate of depreciation, and hence the question of sharing of benefit with Respondent No. 1 does not arise.

(iv) Relying upon the Impugned Order, PSPCL has withheld all payments due to the Appellant for electricity supplied since the month of May, 2025. This has a severe prejudicial interest on the

Appellant which is facing difficulty in servicing its debt repayment obligation of Rs. 60 lakhs per quarter.

16. Accordingly, we have framed following issues which need our consideration:

Issue No. 1: Whether the depreciation claimed by the Appellant under the Income Tax Act, 1961 amounts to availing of Accelerated Depreciation for the purposes of the PPA dated 30.12.2013?

Issue No. 2: If the answer to Issue No. 1 is in the affirmative, whether, in view of the “Entire Agreement” clause contained in the PPA, the tariff can be reset or revised by placing reliance on the provisions of the RfP?

Issue No. 3: If the issues Nos. 1 and 2 are answered against the Appellant, whether the Appellant can be directed to pass on or refund any alleged benefit on account of claimed depreciation in the absence of any financial benefit having accrued to it?

Issue No 4: If the issues Nos. 1 to 3 are held against the Appellant, will it be fair if we order not to deduct entire monthly billing amount against the dues and fix a reasonable percentage of billing amount to be adjusted so that the difficulty claimed by the Appellant in debt repayment gets alleviated?

17. We take up these issues one by one to deal with the submissions of the Appellant and the Respondents followed by our analysis and conclusion.

Issue No. 1:

Whether the depreciation claimed by the Appellant under the Income Tax Act, 1961 amounts to availing of Accelerated Depreciation for the purposes of the PPA dated 30.12.2013?

Submissions of the Appellant

18. The Appellant submits that the error committed by PSERC lies in its complete conflation of two distinct and legally separate depreciation regimes under the Income Tax Act, 1961. The Commission has proceeded on the assumption that the mere claim of depreciation at the rate of 80% amounts to claiming Accelerated Depreciation, and on this basis has upheld the tariff reduction. This assumption, which forms the sole foundation of the Impugned Order, is legally unsustainable and conceptually flawed.

19. It submits that the expression Accelerated Depreciation has a specific and well-defined meaning. It refers only to the special depreciation scheme provided under Section 32(1)(i) of the Income Tax Act read with Rule 5(1A) and Appendix-IA of the Income Tax Rules, 1962. The Hon’ble Supreme Court, in Gujarat Urja Vikas Nigam Ltd. vs. EMCO Limited (2016) 11 SCC 182 has held that the benefit of accelerated depreciation referred to in tariff orders is confined to the scheme contemplated under Section 32(1)(i) of the Income Tax Act read with Rule 5(1A) of the Income Tax Rules.

20. Even the Explanatory Note to the Finance Act, 2016, relied upon by PSPCL, expressly refers to Appendix-IA under Rule 5(1A) while discussing Accelerated

Depreciation[1]. This special scheme is available only to undertakings engaged in the generation and distribution of power and is linked to depreciation computed on the Straight-Line Method (SLM). It is wholly distinct from and cannot be equated with depreciation claimed under the normal Written Down Value ("WDV") method prescribed under Section 32(1)(ii) of the Income Tax Act read with Rule 5(1) of the Income Tax Rules.

21. The Appellant asserts that it has never opted for and nor availed of, the Accelerated Depreciation benefit under Section 32(1)(i) read with Rule 5(1A) of the Income Tax Rules. On the contrary, the Appellant has consistently claimed depreciation under Section 32(1)(ii) read with Rule 5(1), i.e., under the general WDV regime. The Income Tax Act itself recognizes and maintains these two depreciation systems as separate and mutually exclusive choices. While Section 32(1)(i) provides a special straight-line depreciation regime governed by Appendix-IA, Section 32(1)(ii) governs the normal WDV regime under Appendix-I.

22. In view of the above, choosing WDV method for claiming depreciation under Section 32(1)(ii) of the Income Tax Act is the default system for all businesses, including solar companies, and cannot be labelled Accelerated Depreciation.

23. <u>High statutory depreciation rate (80% for solar) ≠ Accelerated Depreciation</u>: The Appellant submits that the fact that solar power generating systems are entitled to depreciation at a high statutory rate of 80% under the Income Tax Act does not, in law, amount to availing Accelerated Depreciation. The statutory scheme under the Income Tax Act, 1961 clearly contemplates multiple and distinct

[1] We have checked the Explanatory Note to the Finance Act, 2016, and found that it mentions Appendix I under Rule 5, and not Appendix IA under Rule 5(1A) while discussing Accelerated Depreciation. So, this statement of Appellant is factually incorrect.

depreciation mechanisms, each operating in its own field and governed by separate provisions.

24. Firstly, normal depreciation is provided under Section 32(1)(ii) of the Income Tax Act. This is the default regime applicable to all business assets, unless expressly excluded. Depreciation under this provision is computed on the WDV method with rates prescribed in Appendix-I of the Income Tax Rules, 1962. The character of depreciation claimed under this provision does not change merely because a particular asset is assigned a higher rate. Assets such as solar power generating systems are prescribed an 80% rate, computers 40%, and buildings 10%.

25. Irrespective of the rate, depreciation claimed under Section 32(1)(ii) remains normal depreciation forming part of the standard WDV system applicable across businesses.

26. In contrast, Accelerated Depreciation in its strict legal sense refers only to the special and optional tax regime provided under Section 32(1)(i) of the Income Tax Act read with Rule 5(1A) and Appendix-IA of the Income Tax Rules. This special scheme is available exclusively to undertakings engaged in the business of generation or distribution of power and operates on the SLM of depreciation. Under this regime, depreciation is computed on the actual cost of each asset and allows front-loading of depreciation in the initial years.

27. Importantly, this benefit accrues only if the assessee consciously opts into the scheme before the due date for filing the return of income and once exercised, such option becomes permanent. It is only this specific statutory scheme that constitutes Accelerated Depreciation for the purposes of tariff related

determinations.

28. Separately, the Income Tax Act also provides for additional depreciation under Section 32(1) (iia), which permits an extra deduction of 20% on new plant and machinery acquired by manufacturing units and power generation undertakings. This incentive is independent of and distinct from the Accelerated Depreciation scheme under Section 32(1)(i). It applies irrespective of whether depreciation is computed under the WDV or SLM method and cannot be conflated with Accelerated Depreciation.

29. The Appellant submits that the confusion in the present case has arisen solely because solar assets carry a high statutory WDV rate of 80% under the normal depreciation schedule. Such a high rate, however, does not convert normal depreciation into accelerated depreciation. The two concepts are legally distinct and operate in separate statutory domains. Accelerated depreciation arises only when the assessee consciously and expressly exercises the optional regime under Section 32(1)(i) read with Rule 5(1A).

30. Accordingly, where depreciation is claimed under Section 32(1)(ii) at the prescribed WDV rate, even if such rate is as high as 80%, it cannot be classified as Accelerated Depreciation. This rate is neither optional nor concessional, nor does it constitute any special incentive; it is merely the statutorily prescribed rate for that class of asset.

31. In fact, the claim of depreciation at the applicable rate is not even optional. The Finance Act, 2001 inserted Explanation 5 to Section 32 of the Income Tax Act, mandating that depreciation shall be allowed whether or not it is claimed by the assessee in its return of income.

32. The Appellant further submits that PSERC has failed to examine or adjudicate upon the above legal distinction, despite the same having been specifically pleaded by the Appellant. Instead, the Impugned Order proceeds solely on the basis that the Appellant's Chartered Accountant's certificate allegedly *"admitted"* the claim of Accelerated Depreciation. Such a conclusion is factually incorrect and legally untenable. In any event, it is a settled principle of law that there can be no estoppel against statute or in matters of taxation where liability must be determined strictly in accordance with law.

33. Therefore, even assuming, without admitting, that the CA certificate contains such an admission, the same cannot form the sole basis for imposing a penal action of reduction of tariff against the Appellant.

Submissions of the Respondent No. 1

34. By the Impugned Order dated 09.06.2025, PSERC has concluded that the Appellant has been availing Accelerated Depreciation based on the following:

(i) CA certificate dated 08.11.2023 read with the CA clarification dated 14.12.2023 as furnished by the Appellant. Considering that Appellant's own CA certificate and clarification have confirmed receipt of Accelerated Depreciation, the Appellant is estopped from claiming to the contrary;

(ii) The plea that no benefit has accrued to the Appellant on account of Accelerated Depreciation has been rejected by this Tribunal in its Judgment dated 22.11.2024 in Appeal No. 206 of 2024 in the case of PSPCL vs. Chadha Sugar and Industries Limited. Further, the RfP/IA/PPA do not specify that reduction of tariff will apply only when the Accelerated Depreciation is adjusted against the profits generated by the Company;

(iii) The decision of the Hon'ble Supreme Court in the case of GUVNL vs. EMCO (2016)11 SCC 182 does not provide that depreciation claimed under Section 32 (1)(ii) of the Income Tax Act, 1961 read with Rule 5(1), cannot be Accelerated Depreciation. The Hon'ble Court only examined Section 32(1)(i) since *'it was admitted on all hands that the benefit of accelerated depreciation…. is the stipulation contained in Section 32(1)(i) ..".*

35. PSERC has upheld the Notice dated 30.01.2025 issued by PSPCL seeking a refund of Rs. 7,95,97,650/- (Principal Refund Amount Rs. 4,89,69,360/- and Penal Interest Rs. 3,06,28,290/-) along with Late Payment Surcharge.

36. Section 32 of the Income Tax Act, 1961 deals with Depreciation as under:

"1) In respect of depreciation of……

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;

(ii) in the case of any block of assets, such percentage on the WDV thereof as may be prescribed:"

37. The Appellant has admittedly availed (accelerated) depreciation under Section 32(1)(ii) as per Clause 12 of the ITR for FY 2015-16.

38. Rule 5 of the Income Tax Rules 1962 reads as under:

"5. (1) Subject to the provisions of sub-rule (2) the allowance under clause (ii) of sub- section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the WDV of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year:….."

39. Rule 5(1A) of the Income Tax Rules, 1962 reads as under:

"[(1A) The allowance under clause (i) of sub-section (1) of section 32 of the Act in respect of depreciation of assets acquired on or after 1st day of April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix IA of these rules on the actual cost thereof to the assessee as are used for the purposes of the business of the assessee at any time during the previous year……..

….. Provided further that the undertaking specified in clause (i) of sub-section (1) of section 32 of the Act may, instead of the depreciation specified in Appendix IA, at its option, be allowed depreciation under sub-rule (1) read with Appendix I, if such option is exercised before the due date for furnishing the return of income under sub-section (1) of section 139 of the Act"

40. Appendix 1 to the Income Tax Rules, 1962 is as under:

(*xiii*) Renewal energy devices being—			
(*a*) Flat plate solar collectors			
(*b*) Concentrating and pipe type solar collectors			
(*c*) Solar cookers			
(*d*) Solar water heaters and systems			
(*e*) Air/gas/fluid heating systems			
(*f*) Solar crop driers and systems			
(*g*) Solar refrigeration, cold storages and air-conditioning systems			
(*h*) Solar steels and desalination systems			
(*i*) Solar power generating systems			
(*j*) Solar pumps based on solar-thermal and solar-photovoltaic conversion			
(*k*) Solar-photovoltaic modules and panels for water pumping and other applications	80	80	40

41. Appendix 1A of the Income Tax Rules, 1962 provides as under:

(*o*) Communication equipment :	
(*i*) Radio and high frequency carrier system	12.77
(*ii*) Telephone lines and telephones	12.77
(*p*) Any other assets not covered above	7.69]

42. From the above provisions, the following can be inferred:

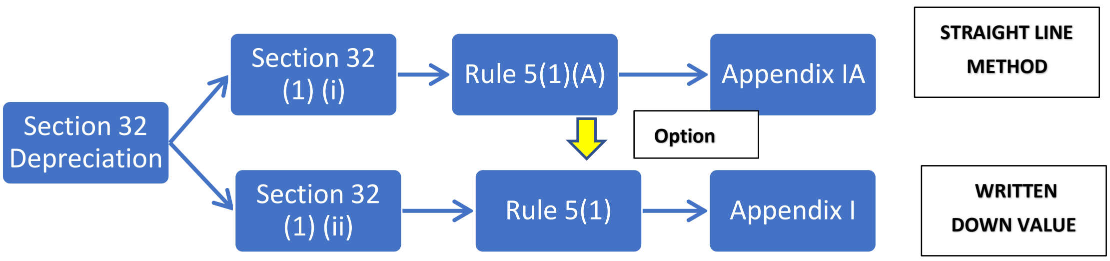
i. In the case of assets of an undertaking engaged in generation or generation and distribution of power as per Section 32(1)(i) of IT Act, 1961, the depreciation percentage shall be calculated on the actual cost according to Rule 5(1A) of the IT Rules, 1962.

ii. Rule 5(1A) of the IT Rules, 1962 provides that the depreciation allowed under Section 32 (1) (i) of the Act shall be calculated at the percentage specified in the second column of the Table in Appendix IA as per Straight Line Method

('SLM').

iii. As per the Proviso to Rule 5(1A), by default, the depreciation rate for an undertaking under Section 32(1)(i) of the Income Tax Act, 1961 shall be as specified in Appendix IA i.e., Straight Line Method is applicable, but the company at its option may avail Depreciation under Rule 5(1) at the rates as specified in Appendix I (based on WDV method).

43. Therefore, depreciation calculated in terms of Rule 5 of the Income Tax Rules, 1962 along with Appendix I, whether claimed in terms of Section 32 (1) (i) or Section 32 (1) (ii) would amount to Accelerated Depreciation. The same is also clear from the following flow chart:



44. The above is also in consonance with the findings of this Tribunal in the Chadha Sugar and Industries Limited case and the Hon'ble Supreme Court in the case of GUVNL vs. EMCO [(2016) 11 SCC 182].

45. The Respondent No 1 has cited the following judgements/orders/provisions make it clear that availing 80%/40% depreciation is Accelerated Depreciation:

i. Gujarat Urja Vikas Nigam Ltd. vs. Green Infra Corporate Wind Power Ltd. and others (2025) SCC Online SC 1601;

ii. Central Commission Order dated 25.10.2012 passed in Petition No.

243/SM/2012 (Suo-Moto) determining the levelized tariff for the FY 2013-14 in terms of the CERC RE Tariff Regulations, 2012;

iii. The Explanatory Note to the Finance Act, 2016 provides that Accelerated Depreciation is provided for under Section 32 of the Income Tax Act, 1961 read with Rule 5 along with Appendix I of Income Tax Rules, 1962. Inadvertently, PSPCL in its Reply has filed the explanatory notes to the Finance Bill, 2016 instead of the Finance Act, 2016. The relevant extracts from the Finance Act, 2016 provides as under:

Sl. No.	*Section*	*Incentive available in the Income-tax Act before amendment by Act,2016*	*Phase out of incentive vide Amendment of Income-tax Act by Act 2016*
1	*32 read with rule 5 of Income-tax Rules, 1962 – Accelerated Depreciation.*	*Accelerated depreciation is provided to certain Industrial sectors in order to give impetus for investment. The depreciation under the Income-tax Act is available up to 100% in respect of certain block of assets.*	*The New Appendix I read with rule 5 of Income-tax Rules, 1962 is amended to provide that highest rate of depreciation under the Income-tax Act shall be restricted to 40% w.e.f 01.4.2017. (i.e from previous year 2017-18 and subsequent years). The new rate shall be made applicable to all the assets (whether old or new) falling in the relevant block of assets.*

iv. The relevant extracts from the 29th Report of the Standing Committee of Energy (Ministry of New and Renewable Energy) reads as under:

“1.29…….The wind power projects are installed on commercial basis through private sector investments based on the techno

economic feasibility of the site. The Government provides various incentives for installation of wind power projects in the country including in the State of Maharashtra. These are fiscal incentive such as 80% accelerated depreciation…"

v. Judgement dated 22.11.2024 passed by this Tribunal in case of PSPCL vs. Chadha Sugar & Industries Ltd. & Ors. in Appeal No. 206 of 2024;

vi. Gujarat Electricity Regulatory Commission Order dated 08.08.2013 in Determination of Tariff [Order No. 4 of 2013];

vii. Maharashtra Electricity Regulatory Commission Order dated 30.03.2012 [Order No. 10 of 2012]; and

viii. Order dated 22.07.2025 passed by this Tribunal in the case of PSPCL vs. Chandigarh Distillery in Appeal No. 20 of 2025.

46. In the entire proceedings, the Appellant has been unable to provide the details of what constitutes as Accelerated Depreciation, if not the 80%/40% depreciation being availed in terms of Appendix 1 of the Income Tax Rules, 1962.

47. The Appellant has erroneously sought to make out a case that the depreciation under Appendix IA (7.69%) is Accelerated Depreciation. Such an interpretation would lead to an absurdity and defeat the very object of providing for incentives to renewable generators such as Accelerated Depreciation, since the rate of 7.69% is significantly lesser than 80%/40% stipulated in Appendix I.

48. As regards the Appellant's contention that WDV method is the default system for all businesses as stated hereinabove, it is open for the undertaking engaged in generation to opt for either the SLM or WDV. In fact, there are several other Solar power developers, who are availing 80% Accelerated Depreciation and availing the reduced tariff. Conversely, there are also Solar developers such as PN

Renewable Energy Limited which are not availing Accelerated Depreciation and have opted for the SLM under Appendix I.

Our Analysis and conclusion on Issue No. 1

49. We note that neither the Income Tax Act, 1961 nor the Rules made thereunder define or use the term "Accelerated Depreciation". This term has been used in the policy and regulatory context to describe special, higher depreciation rates allowed for specific categories of assets to serve fiscal incentive objectives[2].

50. We understand that for the first time to promote wind energy accelerated depreciation was introduced in early 1990's as policy measure. To illustrate policy perspective, we may refer para 34.2 of the Explanatory Note to the Finance Act, 2016, particularly column 2 with heading "Section" of the table, wherein the term "Accelerated Depreciation" has been used in the context of revised rate to be 40%. This has been quoted by the Respondent No. 1 and can be seen in paragraph 45 (iii) of this order and therefore we are not reproducing it again for the sake of brevity.

---

[2] Depreciation is an accounting expense, not an actual cash outflow. For example, when a company builds a solar plant, the cash is spent upfront, but depreciation is only a way of spreading that cost over time in the accounts. When a higher rate of depreciation is allowed for tax purposes, it reduces the reported accounting profit in the early years. Because tax is paid on profit, this lowers the tax payable in those early years, even though the company's actual cash flow from operations improves. In simple terms, a higher rate of depreciation makes accounting profit looks lower, leads to lower tax payment in initial years and yet cash retained in the business remain higher. This early improvement in cash flow is particularly valuable for capital-intensive projects like solar power, where most of the investment is made up-front and revenues come in gradually over many years. Accelerated Depreciation helps investors recover part of their investment earlier by deferring tax payments, thereby improving project viability and reducing financing stress in the initial years.

Even though accelerated depreciation improves early cash flow, some companies prefer normal depreciation. If they do not have enough taxable profits in the first few years, the extra depreciation does not help reduce taxes. Large depreciation also lowers reported profits, which can be a concern for lenders, investors, or just to show stable earnings. It only defers taxes, so in later years, they may have to pay more tax. In short, choosing the rate is a practical decision based on profits, cash flow, and business needs.

51. Also, the regulatory perspective can be seen from the CERC's Terms and Conditions for Tariff determination from Renewable Energy Sources Regulations, 2009, which was first such regulations on the issue of generic tariff for renewable energy sources. These regulations inter-alia stipulated as under:

> *"22. Subsidy or incentive by the Central / State Government The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including **accelerated depreciation** benefit if availed by the generating company, for the renewable energy power plants while determining the tariff under these Regulations.*
>
> *Provided that the **following principles shall be considered for ascertaining income tax benefit on account of accelerated depreciation**, if availed, for the purpose of tariff determination:*
>
> *i. Assessment of benefit shall be based on normative capital cost, accelerated depreciation rate as per relevant provisions under Income Tax Act and corporate income tax rate.*
> *ii. Capitalisation of RE projects during second half of the fiscal year.*
>
> *Per unit benefit shall be derived on levellised basis at discount factor equivalent to weighted average cost of capital." (Emphasis supplied)*

52. However, since the issue seems to have been raised by the Appellant as to what is normal vis-à-vis what is Accelerated Depreciation, we may look into its definition from accounting perspective as well. The Association of International Certified Professional Accountants (AICPA) in the Accounting Glossary (https://www.thiswaytocpa.com/glossary/) define Accelerated Depreciation as:

> *"Method that records greater depreciation than straight-line depreciation in the early years and less depreciation than straight-line in the later years of an asset's holding period."*

53. Ind AS 16 does not employ the term "Accelerated Depreciation" but allows the diminishing balance method of depreciation, which typically leads to higher depreciation in the initial years and is often regarded as an accelerated form of depreciation in accounting literature, including that of the AICPA.

54. The relevant part of Section 32 of the Income Tax Act, Rule 5 (1), Rule 5 (1A), Appendix 1 and Appendix 1A, which are necessary to analyse issue at hand have been reproduced by the Respondent No. 1 and can be perused in paragraph nos. 36, 38, 39, 40 and 41 of this order. Therefore, we are not reproducing them again.

55. The rates of depreciation operate through Rule 5 and the Appendices to the Income Tax Rules, 1962. Solar power plants are depreciable at the rate of 7.69% on the SLM under the residual category of "any other assets not covered above" in Appendix IA to the Income-tax Rules, 1962, read with Rule 5(1A) and Section 32(1)(i) of the Income-tax Act, applicable to undertakings engaged in generation or generation and distribution of power. In contrast, solar power generating systems were eligible for depreciation at a higher rate of 80% on the WDV method up to 31.03.2017, and at 40% with effect from 01.04.2017, under Appendix I to the Income-tax Rules, 1962, read with Rule 5(1) and Section 32(1)(ii) of the Income-tax Act. CERC and SERCs too have generally specified two distinct generic tariffs – one with standard depreciation and another with accelerated depreciation.

56. **Therefore, it flows from the common sense, from accounting angle as well as regulatory and policy prescriptions that a method which yield higher depreciation in initial years must be termed as Accelerated Depreciation**. If we take a hypothetical example of a solar project with capital cost of ₹ 100 crore, under Appendix I (depreciation @40% WDV method), depreciation recovery is ₹

40 crore in year 1 (cumulative 40%), ₹ 24 crore in year 2 (cumulative 64%), and reaches about 97% cumulative by year 7, the annual recovery becomes increasing low without ever reaching zero residual balance. On the other hand, under Appendix IA (depreciation @7.69% actual cost), it recovers a constant ₹ 7.69 crore annually, hitting cumulative value to almost ₹ 100 crore by year 13. **Thus, clearly Section 32 (1) (ii), read with Rule 5 (1A) and Appendix 1 must be treated as "Accelerated Depreciation".**

57. The Appellant has contended that The Hon'ble Supreme Court, in Gujarat Urja Vikas Nigam Ltd. vs. EMCO Limited (2016) 11 SCC 182 has held that the benefit of Accelerated Depreciation referred to in tariff orders is confined to the scheme contemplated under Section 32(1)(i) of the Income Tax Act read with Rule 5(1A) of the Income Tax Rules. The relevant extract of this judgement is reproduced below:

> *"16. We have already noticed that the first respondent did not commence generation of power within the "control period" stipulated under the First Tariff Order and also did not avail the "benefit of the accelerated depreciation" under the Income Tax Act. It is admitted on all hands that the "benefit of accelerated depreciation" mentioned in the First Tariff Order and the PPA is the stipulation contained in Section 32(1)(i) of the Income Tax Act read with Rule 5(1-A) of the Income Tax Rules. They provide for the method and manner in which depreciation of the assets of an assessee is to be calculated.*
>
> *17. Section 32 of the Income Tax Act (insofar as relevant) stipulates as follows:*
>
> *"32. Depreciation.—(1) In respect of depreciation of—*
>
> *(i) buildings, machinery, plant or furniture, being tangible assets;*

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets, acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;"

(emphasis supplied)

The prescription contemplated is found in Rule 5(1-A) of the Income Tax Rules, 1962 which reads as follows:

“5. (1-A) The allowance under clause (i) of sub-section (1) of Section 32 of the Act in respect of depreciation of assets acquired on or after 1st day of April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix I-A of these Rules on the actual cost thereof to the assessee as are used for the purposes of the business of the assessee at any time during the previous year:”

Under the second proviso to the said Rule, it is further provided;

“Provided further that the undertaking specified in clause (i) of sub-section (1) of Section 32 of the Act may, instead of the depreciation specified in Appendix I-A, at its option, be allowed depreciation under sub-rule (1) read with Appendix I, if such option is exercised before the due date for furnishing the return of income under sub-section (1) of Section 139 of the Act,

(a) for Assessment Year 1998-1999, in the case of an undertaking which began to generate power prior to 1st day of April, 1997; and

(b) for assessment year relevant to the previous year in which it begins to generate power, in case of any other undertaking:”

(emphasis supplied)

The prescription contemplated is found in Rule 5(1-A) of the Income Tax Rules, 1962 which reads as follows:

"5. (1-A) The allowance under clause (i) of sub-section (1) of Section 32 of the Act in respect of depreciation of assets acquired on or after 1st day of April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix I-A of these Rules on the actual cost thereof to the assessee as are used for the purposes of the business of the assessee at any time during the previous year:"

Under the second proviso to the said Rule, it is further provided;

"Provided further that the undertaking specified in clause (i) of sub-section (1) of Section 32 of the Act may, instead of the depreciation specified in Appendix I-A, at its option, be allowed depreciation under sub-rule (1) read with Appendix I, if such option is exercised before the due date for furnishing the return of income under sub-section (1) of Section 139 of the Act,

(a) for Assessment Year 1998-1999, in the case of an undertaking which began to generate power prior to 1st day of April, 1997; and

(b) for assessment year relevant to the previous year in which it begins to generate power, in case of any other undertaking:"

(emphasis supplied)

18. It can be seen from the above extracted proviso, an undertaking engaged in generation of power has an option to claim depreciation on its assets in accordance with the scheme under Section 32(1)(/) of the Income Tax Act. Such an option could be exercised at the relevant point of time as indicated in the said proviso."

58. While the above operative extract opens by referring to Section 32(1)(i) of the Income-Tax Act, it is merely to refer to assets inter-alia involving generation. Even otherwise, there is peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. **(*Padma Sundara Rao***

***(Dead)* v. *State of T.N.*, (2002) 3 SCC 533; *Herrington* v. *British Railways Board*, [1972] 2 WLR 537).** It is not a profitable task to extract a sentence here and there from a judgment and to build up on it. **(State *of Orissa* v. *Sudhansu Sekhar Misra*; AIR 1968 SC 647).** Judgments ought not to be read as statutes. **(*Sri. Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171; *Kanwar Amninder Singh* v. *High Court of Uttarakhand*, 2018 SCC OnLine UTT 1026).** A stray sentence in a judgment cannot be read out of context to contend that it is a declaration of law on the entire subject. **(*GUVNL* v. *GERC* : Judgement of Aptel in Appeal No. 371 OF 2023 Dated 09.11.2023).**

59. In **Gujarat Urja Vikas Nigam Ltd. v. Green Infra Corporate Wind Power Ltd: 2025 SCC OnLine SC 1602,** on which reliance is placed on behalf of the Respondent, the Supreme Court noted that Section 32 of the Income-Tax Act dealt with depreciation of buildings, machinery, plant or furniture, being tangible assets; Section 32(1) provided that, in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof would be allowed as depreciation to the assessee, as may be prescribed; and Rule 5 of the Income-tax Rules, 1962 dealt with depreciation. After extracting Rule 5(1) and 5(1A), the Supreme Court observed that the second and third provisos thereunder were of relevance in so far as “accelerated depreciation” is concerned and extracted the said provisos.

60. The Supreme Court further observed that Appendix I to the Income-Tax Rules, 1962 provided that, if a wind energy project which began power generation after April 1, 1997 wished to avail of accelerated depreciation of 80 percent, it was required to exercise such option before the due date for furnishing its return of income for the assessment year relevant to the previous year in which it began generation of power; and this was the scheme forming the backdrop of the case.

61. The Supreme Court then observed that its earlier decision, in **Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd: (2016) 11 SCC 182**, pertained to a solar energy project and determination of tariff for that project; the real question, per this court, was as to what would be the point of time at which the power producer can exercise the right to seek determination of a separate tariff ?; it was noted that the Income-Tas Act, 1961 gave the option to the power producer to avail of or not to avail of accelerated depreciation and also specified the point of time at which that option was to be exercised; however, the availability of such an option was held not to relieve the power producer of the contractual obligations incurred under the power purchase agreement; no finding was recorded in the said judgement as to whether EMCO Ltd. had given a commitment to Gujarat Urja Vikas Nigam Limited about availing of accelerated depreciation; It was also noted that the power purchase agreement contained a condition that, in case commissioning of the project was delayed beyond December 31, 2011, Gujarat Urja Vikas Nigam Limited would pay the tariff determined by Gujarat Electricity Regulatory Commission for solar energy projects effective on the date of commissioning of such project or the tariff mentioned in the power purchase agreement, whichever was lower; this stipulation, per this court, envisaged a situation where EMCO Ltd. was not able to commence generation of electricity within the control period stipulated in the first tariff order and dealt with that contingency; and it was, therefore, held that EMCO Ltd. could not seek tariff fixation under the second tariff order.

62. The Supreme Court, in **Gujarat Urja Vikas Nigam Ltd. v. Green Infra Corporate Wind Power Ltd: 2025 SCC OnLine SC 1602**, thereafter observed that certain observations, in **Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd: (2016) 11 SCC 182**, taken in isolation, undoubtedly support the Gujarat Urja Vikas Nigam Limited presently but the law laid down in the said decision would have to be understood in the factual context thereof, involving two tariff orders and a specific condition in the power purchase agreement; and this aspect was pointed out

in **Gujarat Urja Vikas Nigam Ltd. v. Tarini Infrastructure Ltd: (2016) 8 SCC 743**.

63. The Supreme Court, in **Gujarat Urja Vikas Nigam Ltd. v. Green Infra Corporate Wind Power Ltd: 2025 SCC OnLine SC 1602**, thereafter observed that the scheme of the Income-Tax Act,1961 and the Income-Tax Rules,1962 made it clear that an assessee is required to choose the option of either availing accelerated depreciation or normal depreciation only at the time it files its return for the assessment year relatable to the previous year in which it started generation of power, if the same was after April 1, 1997; this liberty and discretion given to an assessee could not be truncated or cut-short by Gujarat Urja Vikas Nigam Limited by fixing a binding price unilaterally in the power purchase agreement executed long before the assessee had to statutorily choose its option, i.e., at the time it filed its return of income for the assessment year relatable to the previous year in which it actually started generation of power; the conundrum in which a power producer is placed in this scenario was patent; unless it generated power and sold it to a distribution licensee under a power purchase agreement, the power producer would not file its return of income in relation thereto; it was only at that stage that it was required to exercise its option to choose the rate of depreciation, but it would have already signed a power purchase agreement as it could not sell the power generated by it without first entering into a power purchase agreement; in such circumstances, the tariff mentioned in the power purchase agreement would necessarily have to be conditional and dependent upon exercise of the statutory option by the power producer at the relevant point of time; and the situation would, however, be different if the power producer chooses its option at the time of entering into the power purchase agreement with the distribution licensee itself and gives a commitment to such distribution licensee that it would only avail of accelerated depreciation when the time comes and would, therefore, be bound by the tariff fixed for power producers availing of such benefit.

64. As the judgement, in **Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd: (2016) 11 SCC 182**, has been considered and explained in the subsequent judgement of the Supreme Court in **Gujarat Urja Vikas Nigam Ltd. v. Green Infra Corporate Wind Power Ltd: 2025 SCC OnLine SC 1602**, lower courts/Tribunals in the hierarchy, including this Tribunal, must follow the latter decision in **Gujarat Urja Vikas Nigam Ltd. v. Green Infra Corporate Wind Power Ltd: 2025 SCC OnLine SC 1602**. **(Refer: Sakinala Harinath vs State of A.P: 1993(6) SLR Page 1 (APHC FB)).**

65. In the present case the exception carved out by the Supreme Court, in **Gujarat Urja Vikas Nigam Ltd. v. Green Infra Corporate Wind Power Ltd: 2025 SCC OnLine SC 1602**, would apply as the appellant had exercised its option, even prior to the time of entering into the power purchase agreement with the Respondent, and had given a commitment to them that it would only avail normal depreciation. As they had, contrary to their earlier commitment, availed accelerated depreciation, the Appellant would be entitled only to the tariff fixed for accelerated depreciation as it had availed such a benefit.

66. The very scheme of Section 32, read with Rule 5 and its Appendices, provides two distinct and alternative depreciation regimes to entities, inter alia, engaged in generation of solar photovoltaic power. Section 32(1)(i), read with Rule 5(1A) and Appendix IA, prescribes depreciation on the basis of the actual cost of the assets at the rates specified therein for undertakings engaged in generation or generation and distribution of power, and is equally available to entities engaged in solar photovoltaic generation. In parallel, the statute expressly provides an alternative option whereby such undertakings may, instead of availing depreciation under Appendix IA, opt for depreciation under Section 32(1)(ii) read with Rule 5(1) and Appendix I, namely, the block-of-assets method based on written down value, under which higher rates of depreciation are prescribed. The proviso to Rule 5(1A)

makes it explicit that this option vests in the assessee and, once exercised, is final and binding for all subsequent assessment years.

67. **The Appellant admits availing depreciation under Section 32(1)(ii) as per Clause 12 of the ITR for FY 2015-16. The Appellant also admits that it has availed depreciation at the rate of 80%/ 40%; however, it merely takes exception to the characterisation of such depreciation as "Accelerated Depreciation". However, from our analysis in previous paragraphs, it is clear that the claimed depreciation by the Appellant is nothing but Accelerated Depreciation. Accordingly, we uphold the finding in the Impugned Order that the Appellant has availed Accelerated Depreciation.**

Issue No. 2:

If the answer to Issue No. 1 is in the affirmative, whether, in view of the "Entire Agreement" clause contained in the PPA, the tariff can be reset or revised by placing reliance on the provisions of the RfP?

Submissions of the Appellant

68. The Appellant submits that PSERC has misapplied the judgment of this Tribunal in Chadha Sugars (Appeal No. 206 of 2024) on which heavy reliance has been placed in the Impugned Order. The reliance is wholly misplaced as the said decision is clearly distinguishable.

69. In Chadha Sugars, Article 2.1.1(vi) of the PPA permitted revision of tariff in the event of the generator availing accelerated depreciation. In contrast, Article 2.1.1(iii) of the present PPA merely requires that the benefit accruing on account of claiming accelerated depreciation be passed on.

70. The Appellant highlights that Article 29 and Article 34.1.0 of the PPA dated 30.12.2013 explicitly provides that the PPA constitutes the entire understanding between the parties. Therefore, in terms of the law laid down by the Hon'ble Supreme Court in Joshi Technologies International Inc. v. Union of India & Ors., (2015) 7 SCC 728**,** it will be impermissible to refer to any provision of the RfP issued in March 2013 or the undertaking dated 27.09.2013 to override the terms of the PPA dated 30.12.2013. The Appellant submits that in case of any inconsistency, the terms of the RfP and the undertaking dated 27.09.2013 must be read down to give effect to the terms of the PPA.

Submissions of the Respondent No. 1

71. The PPA was entered into pursuant to the bidding conducted by PEDA under the RfP for setting up 300MW (under Phase I) Solar Photovaltaic (PV) power plants for direct sale of power to PSPCL. The said RfP clearly provided two types of tariffs, one for selected bidders claiming the benefit of Accelerated Depreciation (Rs. 7.87/kwh) and another without claiming the same (Rs. 8.75/kwh). The Appellant had quoted a Discount of Rs 0.16/kwh on a tariff of Rs 8.75/kwh (without availing Accelerated Depreciation) and was being paid a tariff of Rs 8.59/kwh.

72. The reliance on Article 29 (entire agreement) as read with Article 2.1.1(iii) of the PPA to contend that the PPA does not contemplate for any consequences of availing Accelerated Depreciation, is misconceived for the following reasons:

a) It would lead to an absurdity and unjust enrichment in as much as the Appellant would then be permitted to retain the amount on account of availing accelerated depreciation and yet be paid the higher tariff of Rs 8.59 [Rs 8.75 (generic tariff for projects not availing Accelerated Depreciation - Rs 0.16 (Discount)] instead of Rs 7.71 [Rs 7.87 (generic tariff for projects availing

Accelerated Depreciation - Rs 0.16 (Discount)];

It is open for the Hon'ble Courts to import words into a contract by application of the business efficacy test. In the present case also, the term Accelerated Depreciation can be inferred into Clause 2.1.1 (iii). Reference is made to Judgement dated 11.02.2025 passed by the Hon'ble Bombay High Court in Lords Inn Hotels and Resorts Vs. Pushpam Resorts LLP & Others (2025) SCC OnLine Bom 447.

b) The same would be contrary to the entire premise of the bid and the provisions of the RfP. Reference is made to Note (i) to Clause 3.8.1: Selection of Projects based on offering Lowest Net Availed Tariff ; the Punjab Commission Order dated 25.06.2013 determining the generic tariff for projects availing/not availing Accelerated Depreciation; the Undertaking dated 27.09.2013 providing that Appellant shall not claim/avail any Accelerated Depreciation Benefits;

c) Such an interpretation would be contrary to the contemporaneous understanding of the parties. Even the Appellant has understood and stated that Article 2.1.1 (iii) of the PPA would mean that *'if at any stage benefit of accelerated depreciation has been availed by the Company then it ought to share that benefit with PSPCL*". Reference is made to Letter dated 15.12.2023 from Appellant to PSPCL; and Pleadings in Petition 5 of 2025.

d) The deduction in case of availment of Accelerated Depreciation has been duly recognised in the governing orders of the PSERC as well as the CERC RE Regulations, 2012 (as adopted by the Punjab Commission). It is a settled principle that subordinate legislations are bindings and can make inroads into the PPA. Therefore, without prejudice to the other submissions, even if it is assumed without admitting that the PPA does not contemplate for any consequences of availing Accelerated Depreciation, the same has been statutorily recognised and is binding on Appellant; and

e) At no instance before the PSERC, either in the original proceedings or in the review proceedings did the Appellant make any prayer/pleading to the effect that the PPA does not provide for any reduction in tariff on account of Accelerated Depreciation. It is for the first time, and too in the stay application, that the Appellant is raising a hyper technical objection after having accepted the scope and ambit of the PPA, the RfP and the Undertaking furnished before the PSERC.

Our Analysis and conclusion on Issue No. 2

73. It is an admitted position that the RfP contained a provision for tariff revision in case a successful bidder, having submitted bids based on normal depreciation, subsequently opts for Accelerated Depreciation; however, this is not explicitly reflected in the PPA.

74. For the limited purpose of analysing the issue before us, we accept, *for the sake of argument*, the correctness of the Appellant's submission concerning the "entire agreement" clause, for which Appellant has relied on Article 29 and Article 34.1.0 of the PPA dated 30.12.2013. We are reproducing these Articles of PPA as under:

"***29.0.0 ENTIRE AGREEMENT***

29.1.0 This Agreement constitutes the entire understanding and Agreement between the Parties.

“***34.0.0. INTERPRETATION***

34.1.0 The headings used in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the respective clauses and paragraphs of this Agreement.

(a) This Agreement has been executed in the English language only and thus the English language shall be the controlling language for interpretation thereof.

This Agreement together with the Annexure constitutes the whole and only Agreement as at the date hereof between the Parties with respect to the subject matter described herein.”

75. However, we note from the material on record that the PPA contains following additional provisions in the preamble and other Articles as extracted below, which we feel are also relevant:

WHEREAS

(a)……...

(b) ***The Company has signed Implementation Agreement with PEDA on 20th September 2013 for setting up the allotted project with PEDA****.*

(c) ***This Power Purchase Agreement is being signed with M/s Mok Green Energy Pvt. Ltd 12/19 WEA, Saraswati Marg, Karol Bagh, New Delhi, pursuant to the signing of the Implementation Agreement with PEDA.***

(d) Implementation Agreement signed by M/s Mok Green Energy Pvt. Ltd 12/19 WEA, Saraswati Marg, Karol Bagh, New Delhi with PEDA. ***All the clauses and Regulatory Norms applicable to the Implementation Agreement shall be unequivocally applicable to the Power Purchase Agreement in letter and spirit****.*

(e)……..”

(emphasis supplied)

> ***"2.0.0 ENERGY PURCHASE AND SALE***
> *2.1.0 Sale of Energy by Generating Company.*
> *2.1.1 The PSPCL shall purchase and accept all energy made available at the Interconnection Point from the Generating Company's Facility, pursuant to the terms and conditions of this Agreement which is set out below:*
> *(i)* ***Rs. 8.59 per unit for Solar Photo Voltaic Power Project of 4.0 MW capacity as per competitive bidding done by PEDA****. This tariff shall be applicable for tariff period of 25 years from scheduled date of commercial operation.*
> *(ii) As per RE Regulations the tariff shall remain constant throughout the Tariff Period following the year of commissioning. No additional payment shall on any account be payable by PSPCL.*
> *(iii)* ***The Company has given undertakings that it,*** *i) has neither availed nor shall avail any grant / subsidy from GOI / GOP and ii)* ***will not be availing the benefit of Accelerated Depreciation for the project.*** *PSPCL shall confirm the same from PEDA. In case, the Company receives any such grant/subsidy, it shall pass on the amount to PSPCL within 20 days of its receipt through DD/RTGS/IPG payable at Patiala failing which the company shall pay the amount with penal interest as base rate of SBI plus 4.25% worked out on day to day basis.*
> *(iv)* ***The Company will submit Copies of the Annual Financial Reports and copies of the Income Tax Returns for 10 years from the Year of Commissioning as a token of proof and verification that it has complied with the Undertakings referred to in para (iii) above****."*
> *(emphasis supplied)*

76. We also note that the RfP inter-alia contained following note under para 3.8.1 (Selection of Projects based on Offering the Lowest Net Availed Tariff):

> ***"Note:***
> *i. The Selected Project Developers will be required to submit a copy of the audited annual accounts along with tax audit report supplemented with calculation of Depreciation and a copy of Income Tax return for the first 05 years from Commissioning of the 1st Unit of the Solar Power Project Company.* ***If at any***

stage after Commissioning it is found that instead of Normal Rate of Depreciation (based on which the Solar Power Project Company was selected) the Solar Power Project Company is claiming Accelerated Rate of Depreciation as per the Income Tax Act 1961, the applicable Tariff of the Solar Power Project shall stand changed to PSERC Tariff for Accelerated Rate of Depreciation from the Commissioning with applicable discount.

ii. …….”

(emphasis supplied)

77. As may be seen from previously extracted provisions of PPA that the Appellant had signed an Implementation Agreement (IA) with the PEDA. The draft of IA which was attached with the RfP and is on record, had provisions which inter-alia dealt with tariff and also provided for compliance to RfP conditions. The relevant extracts of IA are reproduced below:

“ARTICLE 3: Tariff for Sale of Power to PSPCL

A. ***The Company shall sell all energy generated at the Project at a tariff of Rs _______per kWh which is the net availed tariff as per bid submitted by the Company****. This tariff shall be applicable for tariff period of 25 years from Date of commercial operation. The tariff shall remain constant throughout the Tariff Period No additional payment shall on any account be payable to the Company. The Company will undertake that it shall not avail any grant / subsidy from GOI / GOP for the project and if availed, it will be passed on to the PSPCL.*

B. …..

C…….”

(emphasis supplied)

“4.1 General

i) The PEDA hereby grants permission to the Company to establish, operate and maintain the Solar PV Power Project on

*Build, Own and Operate (BOO) basis and **sell power from the project to PSPCL as per tariff arrived after competitive bidding process** under New Grid Connected Solar Photovoltaic Power Project of Phase - I.*

ii) …….

iii) …..”

(emphasis supplied)

6.2 Obligations of Company:

*i. **The Company shall act as per the terms and conditions of RfP**;*

ii. ……..

(emphasis supplied)

78. In our considered view, tariff is not a mere numerical figure but is intrinsically linked to, and inseparable from, the terms and conditions stipulated in the bid documents. It is beyond dispute that variations in the applicable terms and conditions can result in materially different numerical value in terms of ₹ per kWh, as such conditions have a direct bearing not only on project costs but also on the risk perception and commercial assessment of the bidders.

79. We note that the Respondent No. 1 has drawn our attention towards Article 2.1.1 (i) of the PPA. The same is extracted in paragraph 75 of this order and we note that the tariff of Rs. 8.59 per unit is qualified with the expression – “as per the competitive bidding done by PEDA”. Since competitive bidding was done based on RfP, it is implicit that the tariff mentioned is subject to terms and conditions mentioned in the RfP, even if it is not explicitly mentioned in the PPA.

80. We also take note of the fact that the preamble of the Power Purchase Agreement, extracted in paragraph 75 of this order, expressly recognises the IA executed between the Appellant and PSPCL and categorically provides that all clauses and regulatory norms applicable to the IA shall apply to the PPA in letter

and spirit; further, Articles 3 (A) of the IA stipulate that the tariff shall be in accordance with the bid submitted by the Company (i.e. Appellant in the present Appeal) and that the Company shall sell power to PSPCL at the tariff discovered through the competitive bidding process. We have already concluded in paragraphs 78 and 79 earlier that the numerical value of the tariff so discovered cannot be viewed in isolation from the terms and conditions of the bidding process contained in the RfP and, as a necessary corollary, the bid submitted by the bidder cannot be segregated or delinked from the RfP. Additionally, Article 6.2 (i) of the IA places a clear and binding obligation upon the Company to act strictly in accordance with the terms and conditions of the RfP. **In view of this contractual framework, we hold that the PPA treats the IA as an integral and inseparable part thereof and that the IA, in turn, expressly binds the Appellant to the terms and conditions of the RfP; consequently, notwithstanding the presence of an "entire agreement" clause in the PPA, the Appellant remains bound by the terms and conditions stipulated in the RfP with full force and effect.**

81. The Appellant also contends that in terms of the law laid down by the Hon'ble Supreme Court in Joshi Technologies International Inc. vs. Union of India & Ors., (2015) 7 SCC 728**,** it will be impermissible to refer to any provision of the RfP issued in March 2013 or the undertaking dated 27.09.2013 to override the terms of the PPA dated 30.12.2013. We have already dealt with one leg of above contention that provisions of RfP cannot override PPA and held it against the Appellant. On the issue of the undertaking dated 27.09.2013, we note that such an undertaking is also part of PPA as may be seen from Article 2.1.1 (iii) extracted in paragraph 75 above. An undertaking in the PPA cannot be rendered otiose or redundant merely because the explicit consequence of its breach is not reiterated therein. In such a lacuna, the consequences must be imported from the bidding documents (RfP) which form the basis of the contractual relationship.

82. **In view of the foregoing analysis and based on material on record, we conclude that in the present case, the terms and conditions of the RfP constitute an integral part of the PPA, and the presence of the "entire agreement" clause in the PPA does not detract from or impede this conclusion.**

<u>Issue No. 3:</u>

If Issue Nos. 1 and 2 are answered against the Appellant, whether the Appellant can be directed to pass on or refund any alleged benefit on account of depreciation in the absence of any financial benefit having accrued to it?

Submissions of the Appellant

83. The Appellant submits that in paragraph 7(c) of the Impugned Order, the PSERC has expressly recorded that it does not intend to examine or interpret the Appellant's Income Tax Returns. However, the very conclusion reached by the Commission that the Appellant has availed Accelerated Depreciation could not have been arrived at without a proper examination of the Appellant's ITRs.

84. Without analysing the Income Tax Returns, the Commission could not have determined whether the depreciation claimed by the Appellant fell under Section 32(1)(i) or Section 32(1)(ii) of the Income Tax Act; whether such depreciation, even if claimed, qualified as Accelerated Depreciation and most importantly, whether any actual benefit accrued to the Appellant on account of such claim.

85. Not only is this approach a complete non-application of mind by the PSERC, but also a dereliction of its statutory duty to adjudicate the dispute between the findings since the core issues in the present case remain unanswered.

Submissions of the Respondent No. 1

86. It is evident from the following documents/pleadings that the Appellant has in fact availed Accelerated Depreciation and that its only stand has been that since the Appellant has not been able to adjust its profits against the Accelerated Depreciation availed, no "benefit" has accrued to them, an issue which has already been decided by this Tribunal in the Chadha Sugar case:

i. The Appellant's ITR for FY 2015-16;

ii. CA Certificate submitted to PSPCL on 08.11.2023, provides that the Appellant has availed Accelerated Depreciation @80/40% in FY 2015-16;

iii. The clarification to the CA letter dated 14.12.2023 submitted by the Appellant states that while Accelerated Depreciation had been availed, it had not received the benefit of Accelerated Depreciation, as the company is operating at a loss;

iv. The Appellant issued a letter dated 15.12.2023 to PSPCL stating that since it has gotten no benefits, there is no question of sharing it further with PSPCL;

v. The Appellant in the Minutes of Meeting dated 28.11.2024 has admitted that they have claimed accelerated depreciation. However, they contended that the firm has not got any benefit on account of availing Accelerated Depreciation because it remains a loss making concern till today;

vi. Pleadings before the Punjab Commission: The Appellant in their Petition at Ground H has stated that *if in the future, petitioner company does avail the benefit of accelerated depreciation when it has profits on the books to set-off* *against carrying forward depreciation benefits then it is duty bound to share the same benefits with the PSPCL.* Similar contentions have been at Ground I and J.

The Appellant in their Rejoinder before the Punjab Commission at Para Q has stated that *Accelerated depreciation is thus simply being carried forward unutilized every year…* and

vii. Brief Note on behalf of the Appellant in Appeal No. 323 of 2025, Para 5: *the Appellant admittedly claimed depreciation under Section 32 (1) (ii) of the IT Act read with Rule 5 (1) of the IT Rules, i.e. the general WDV regime.*

Our Analysis and conclusion on Issue No. 3

87. It seems that the Appellant has placed reliance on Article 2.1.1 (iii), which was extracted in paragraph 75 above. In the aforesaid Article, the Appellant had given undertaking that it will not- (i) avail any subsidy or grant and, (ii) will not opt for Accelerated Depreciation. There is further stipulation that in case it avails benefit of any subsidy or grant, the same shall be passed on to the PSPCL with prescribed interest. The Appellant contends that even if it is concluded that it had availed Accelerated Depreciation, they did not benefit from it as it is a loss-making unit. We have noticed that the aforesaid Article deals with passing of the benefit in case of availment of subsidy or grant. There is no explicit provision regarding passing of the benefit in case of availment of Accelerated Depreciation. This, perhaps, was in view of the fact that RfP had clear provision regarding revision of tariff in such a situation. **We have already concluded earlier that even though there is no explicit provision in the PPA, in case of availment of Accelerated Depreciation, the tariff must be revised in accordance with condition stipulated in the RfP. Therefore, we are of the view that the question as to whether the Appellant benefitted from Accelerated Depreciation or not is**

immaterial.

<u>Issue No 4</u>:

If the issue Nos. 1 to 3 are held against the Appellant, will it be fair if we order not to deduct entire monthly billing amount against the dues as per Impugned Order and fix a reasonable percentage of billing amount to be adjusted so that the **difficulty claimed by the Appellant in debt repayment gets alleviated?**

Submissions of the Appellant

88. The Appellant submits that relying upon the Impugned Order, PSPCL has withheld all payments due to the Appellant for electricity supplied since the month of May, 2025. This has a severe prejudicial interest on the Appellant which is facing difficulty in servicing its debt repayment obligation of Rs. 60 lakhs per quarter.

Submission of the Respondent No. 1

89. The Respondent No. 1 submits that the recoverable amount as on date from the Appellant is to the tune of Rs. 6.47 crores (out of Rs. 7.95 crores). In addition, PSPCL is also entitled to recovery of Rs. 13.75 crores on account of delay in commissioning the project, as held by the Punjab Commission in its Order dated 15.01.2025 in Petition No. 29 of 2015. The terms of the PPA expires on 21.04.2040. PSPCL may not be in a position to recover the entire amount due from the Appellant if only 50% of the monthly bills are adjusted.

Our Analysis and conclusion on Issue No. 4

90. We understand that the issue regarding penalty for delay in commissioning is subject matter of another Appeal filled before this Tribunal, and is yet to be heard. Therefore, we are not in a position to consider the penalty amount mentioned by the Respondent No. 1, while deciding the issue at hand. We are also not inclined to verify the amount of Rs 60 lakh per quarter as debt repayment obligation mentioned by the Appellant. We cannot, however, ignore the fact that the Appellant is, as a result of the action of the Respondent (which act has been affirmed by the Impugned Order), operating its plant without being paid any amount whatsoever for a considerable period. Since the Respondent is claiming that it would not be in a position to recover the entire amount due if only 50% of the bills are adjusted towards past dues. We remand the matter to the PSERC to decide the appropriate percentage of billing amount that must be paid to the Appellant so that the project continues to operate. We direct PSERC to decide the matter within 2 months.

ORDER

For the foregoing reasons stated hereinabove, we have come to the conclusion that the captioned Appeal No. 323 of 2025 lacks merit, and is accordingly dismissed.

However, for deciding the minimum percentage of the monthly billing amount that must be paid by PSPCL to the Appellant till the overpayment made thus far along with applicable interest is recovered, we remand the matter to PSERC with the liberty to consider all the relevant factors and may seek further information as it may deem fit. The PSERC shall decide the matter within 2 months from receipt of this Order.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 08th DAY OF JANUARY, 2026.

(Ajay Talegaonkar)	**(Justice Ramesh Ranganathan)**
Technical Member	**Chairman**

REPORTABLE / ~~NON-REPORTABLE~~

kns/mkj/kks