

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 298 OF 2025 & IA NO. 1300 OF 2025 & IA NO. 1600 OF 2025
& IA NO. 1879 OF 2025 & IA NO. 1979 OF 2025 & IA NO. 1991 OF 2025**

Dated: 13.02.2026

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

INDIA ENERGY EXCHANGE LIMITED

Through its Vice President (Regulatory Affairs)

Plot No.C – 001/A/1, 9th Floor,

Max Towers, Sec – 16B,

Noida, Gautam Buddha Nagar,

Uttar Pradesh - 201301

... Appellant

VERSUS

**1. CENTRAL ELECTRICITY REGULATORY
COMMISSION**

Through its Secretary,

6th, 7th & 8th Floors, Tower B,

World Trade Centre,

Nauroji Nagar, New Delhi – 110029.

... Respondent No.1

2. GRID CONTROLLER OF INDIA LIMITED

Through its Chairman cum Managing Director

B-9 (1st Floor), Qutab Institutional Area,

Katwaria Sarai, New Delhi – 110016.

... Respondent No.2

3. POWER EXCHANGE INDIA LIMITED

Through its Managing Director

9th Floor, 901, Sumer Plaza,

Marol Maroshi Road,

Marol Andheri (East), Mumbai - 400059.

... Respondent No.3

4. HINDUSTAN POWER EXCHANGE LIMITED

Through its Managing Director

25th Floor, P. J. Towers, Dalal Street,
Fort Mumbai, Maharashtra - 400001.

... Respondent No.4

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Deepak Khurana
Vineet Tayal
Abhishek Bansal
Nishtha Wadhwa
Bhaskar
Shaurya Nirwal
Monalika Chaudhary for Res.4

J U D G M E N T

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

This Appeal is filed by Indian Energy Exchange Limited, under Section 111(1) of the Electricity Act, 2003, against the order dated 23.07.2025 passed

by the CERC in Petition No. 8/SM/2025 to implement market coupling for day ahead market together with directions to amend the regulations. The relief sought in this Appeal is to set aside the said order passed by the CERC in Petition No. 8/SM/2025 for implementation of market coupling as challenged in the present appeal.

The facts in issue, as referred to in Para 8(i) of the Appeal, are: (1) whether redistribution of market share from the Appellant exchange to the other exchange is the only objective for implementation of market coupling at present?; (2) whether the Impugned Order, by directing that market coupling be implemented, has violated Regulation 39 of the CERC (Power Market) Regulations, 2021 by pre-determining the outcome of the regulatory process?; (3) whether the Impugned Order has been passed with reasoned considerations and violates principles of natural justice?; (4) whether the Central Commission has considered all the concerns and objections of the stakeholders in directing implementation of market coupling?; (5) whether the miniscule benefits observed over a non-representative period of 4 months of shadow pilot are sufficient to justify upending the entire regulatory framework based on which the Appellants had invested in developing and operating a functioning and competitive power exchange?; (6) whether there was any change in the market structure between the Order dated 06.02.2024 and the Impugned Order justifying implementation of market coupling?; (7) whether the Central Commission erred in not disclosing Grid India reports dated 16.01.2025 and 30.06.2025 contrary to its own directions in the Order dated 06.02.2024?; (8) whether the Central Commission has considered irrelevant and frivolous reasons for passing the Impugned Order?; and (9) whether the Impugned Order directing implementation of market coupling in the current scenario is violative of the Electricity Act, 2003 as it is anti-competitive?”

The Questions of Law, as referred to in Para 8(ii) of the Appeal, are: (1) whether the impugned act is violative of and contrary to the Electricity Act, 2003?; (2) whether the Impugned Order is violative and contrary to the Power Market Regulations, 2021?; (3) by not considering stakeholder comments and addressing the questions raised by it in the Staff Paper, whether the Impugned Order has been passed in violation of principles of natural Justice?; (4) by not making the Reports dated 16.01.2025 and 30.06.2025 of Grid India publicly available for stakeholder comments, and relying on the selective outcomes of the above Reports, whether the Impugned Order has been passed in violation of principles of natural justice?; (5) whether the redistribution of market share towards other exchanges is a legitimate ground for implementation of market coupling at present?; and (6) whether the Central Commission can alter the fundamental basis of operation of power exchanges and initiate significant disruptions in the same only with marginal benefits observed in the shadow pilot study over a short and non-representative period of 4 months?

Para 9 of the Appeal are the grounds raised with legal provisions and, under Para 9(I), it is contended that the impugned order is arbitrary; in Para 9(II) that it is in violation of the Power Market Regulations, 2021 more particularly Regulation 39; in Para 9(III) that it is in violation of principles of natural justice as it lacks quasi-judicial transparency, lack of transparency in not dealing with the issues raised, and non-transparency in sharing Grid India feedback results; in Para 9(IV) that it suffers from non-application of mind since there is contradictory treatment of insignificant gains in simulation results, coupling despite the prevalence of the same market structure between Central Commission Order dated 06.02.2024 and 23.07.2025, violation of the previous Central Commission Order dated 06.02.2024, application of irrelevant considerations/ frivolous reasons, and there is no evidence of lack of faith in power exchanges; in Para 9(V) that expropriation

of business is not an objective/ rationale for market coupling under the power market Regulations, 2021, re-distribution of market share is the only outcome of market coupling, and redistribution of market share is without any consumer interest; in Para 9(VI) that the impugned proceedings are in violation of the Electricity Act; and in Para (VII) that the impugned proceedings are in violation of the legitimate expectation of the Appellants.

II. IMPUGNED ORDER:

By its order, in Petition No. 8/SM/2025 dated 23.07.2025, the CERC issued directions for Implementing Market Coupling in terms of the provisions of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (the “2021 Regulations” for short).

In the said order dated 23.07.2025, the CERC noted that it had, vide Order in Petition No. 1/SM/2024 (Suo-Motu) dated 6.2.2024, decided to implement a Shadow Pilot on Power System and Cost Optimization through Market Coupling, and had directed the Grid Controller of India (Grid-India) to implement the following on a shadow pilot basis: (a) coupling of the RTM of the three power exchanges; (b) separately coupling of the RTM at the three power exchanges along with SCED; and (c) coupling of DAM of the three power exchanges. After extracting paras 25 to 27 of the said Order dated 6.2.2024, the CERC observed that, subsequently, Grid-India, vide its letter dated 13.02.2024, had raised some concerns on the strict timelines provided for implementing the shadow pilot of market coupling, and had requested for constituting a Committee for harmonization of bid structure and other related issues; the Commission, after duly considering the concerns raised by Grid-India and the practical difficulties in adhering to the timelines, had decided to grant extension to Grid-India to develop and deploy the necessary software as required for running the shadow pilot, and had also decided to constitute a Committee to deliberate on various aspects relating to the shadow pilot of

market coupling; the Commission, vide its office order dated 19.04. 2024, constituted a Committee under the chairmanship of Member, CERC to oversee implementation of the shadow pilot of Market Coupling; the Committee held five meetings and deliberated on various aspects to ensure smooth implementation of shadow pilot of market coupling, including the timely development of in-house coupling engine by Grid-India and its validation, running of the coupled engine for RTM and DAM on D+1 basis, formulation of coupling of RTM with SCED, submission of data by the power exchanges through API, etc; Grid-India submitted a report on 16-01-2025, and also made submissions before the Commission regarding the progress made in the implementation of the shadow pilot of market coupling, including the experience gained by it in developing and validation of the coupling engine using historical data of about 29 months, results of the shadow pilot run based on historical data, and challenges in the formulation of RTM-SCED coupling; Grid-India had highlighted the need for bringing uniformity in clearing algorithms and bid structures across exchanges for rolling out market coupling, and had also suggested that *full-fledged roll-out of market coupling may be considered with the three power exchanges acting as the Market Coupling Operator (MCO) in a round-robin manner.*

The CERC noted that the above submissions of Grid-India were based on historical data, whereas the Commission, in its Order dated 6.2.2024 in Petition No. 1/SM/2024, had directed Grid-India to *“share the operational experience of running a shadow pilot in the form of a monthly report during the period of four months and a feedback report at the end of the four-month period”*; and accordingly, in pursuance of the directions of the Commission in the Order dated 6.2.2024, Grid-India on 30.06.2025 had submitted the *“Feedback Report on D+1 run of Shadow Pilot on Power System & Cost Optimization through Market Coupling for the four-month period from 1 December 2024 to 31 March 2025”*.

After summarizing the results of D+1 run of the Shadow Pilot for different market segments for the four month period from 1 December 2024 to 31 March 2025, the CERC noted that it had discussed and deliberated on the Feedback Report submitted by Grid India in compliance with the Commission's directions in its Order in Petition No. 1/SM/2024 dated 06.02.2024; the Commission had noted the results of the D+1 run of shadow pilot on the coupling of DAM segment of the power exchanges, separately the results of coupling of RTM segment of the power exchange, and separately the results of coupling of RTM with SCED for the four months from 1st December 2024 to 31st March 2025; and the Commission had also noted the issues and challenges to be addressed in implementing market coupling in different market segments.

After extracting Regulations 37 to 39 of the 2021 Regulations, the CERC observed that, based on the submissions made by Grid-India and the various consultations held, and as per the provisions of Market Coupling specified in Regulations 37 to 39 of the 2021 Regulations, the Commission had decided to initiate the process for implementing market coupling in a phased manner as under: (i) Implementation of the coupling of Day-Ahead Market (DAM) of the power exchanges in a round-robin mode by January 2026. Under the round-robin mode, the power exchanges may act as the Market Coupling Operator (MCO) on a rotational basis, with Grid-India being the fourth MCO for backup and audit purposes. This arrangement would facilitate an efficient functioning of the power exchanges and also help instil faith of the market participants in the power exchange operations; (ii) given the shorter time for bid submission and running the market clearing engine, the decision to implement the coupling of Real-Time Market (RTM) of the power exchanges shall be considered at a later stage after gaining operational experience from the coupling of DAM. (iii) there is a need to further examine the approach and methodology of the shadow pilot run of

coupling of RTM with SCED adopted by Grid-India. The Commission was of the view that some of the complexities involved in RTM-SCED coupling, as highlighted by Grid-India, could be addressed through suitable regulatory interventions and after stakeholder consultation; and (iv) the feasibility of coupling of the Term-Ahead Market (including Contingency Contracts) of the power exchanges also needs to be examined by running a shadow pilot.

The impugned order further records that, in view of the above, the staff of the Commission was directed to initiate the consultative process with Grid-India and power exchanges on various operational and procedural aspects for implementing the coupling of DAM, and also propose the regulatory amendments with respect to implementation of market coupling. The Commission also directed Grid-India to develop the necessary software for running the shadow pilot for coupling TAM (including Contingency Contracts) of the power exchanges; and post development of necessary software, Grid-India should implement the shadow pilot for coupling TAM (including Contingency Contracts) of the power exchanges for three months and share the operational experience of running the shadow pilot thereafter in the form of a feedback report to the Commission.

The CERC also directed all power exchanges to share the necessary data and other information as required by the staff of the Commission and Grid-India to analyse various operational and procedural aspects for implementing the coupling of DAM. The proceedings conclude by recording that the CERC shall issue further necessary orders at the appropriate time based on the assessment of the progress made in the implementation of the above directions.

III. CORRIGENDUM DATED 08.01.2026:

After hearing of the present Appeal had commenced, the CERC issued a Corrigendum to Petition No.1/SM/2024, on 08.01.2026, in the matter of directions by the Commission for Implementing a Shadow Pilot On Power System and Cost Optimization through Market Coupling. By way of the said corrigendum, the expression 'Order' in the heading below the above stated subject matter, and in the footer, in the publication dated 6.2.2024 in Petition No. 1/SM/2024, was to be read as 'Directions'; and any reference to Petition No. 1/SM/2024, dated 6.2.2024 as this order or 'order' within Petition No. 1/SM/2024 or any subsequent publication was also to be read as 'directions'. A similar corrigendum was issued with respect to the proceedings dated 23.07.2025.

IV. AFFIDAVIT OF CERC DATED 08.01.2026:

In the affidavit dated 08.01.2026, the Deputy Chief (Legal) CERC stated that, during the course of hearing of Appeal No. 298 on 06.01.2026, an issue arose on the nature/scope and nomenclature of Petition No. 8/SM/2025, dated 23.07.2025 which had been impugned by the Appellant in the present appeal; by way of background, they wished to state that (a) the Commission is an expert regulatory body and is empowered to regulate and issue regulations of Power Market/Exchanges in terms of Section 66 read with Section 178(2)(y) of the Electricity Act; (b) the National Electricity Policy, 2005 further mandates that such power markets be developed, and (c) the Commission, after extensive consultation with all stakeholders and receipt of comments from 57 of them, had proceeded to frame the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 which came into effect on 15.08.2021; (d) the said regulations enshrined the concept of market coupling and the market coupling operator; the said regulations under Section 2(1)(ai) defined market regulator to mean a market participant, and Regulation 8(2) made price discovery a function of the power exchanges

only for a transitory period till market coupling came into force; (e) the Commission, subsequently, has been engaged in a continuous consultative process on the administrative side to formulate the subsequent Regulations to implement market coupling as contemplated by Regulation 39 of the Power Market Regulations; (f) the Commission, after a communication from the Ministry of Power in June, 2023, had commissioned a staff paper on the concept in August, 2023 and the same received 127 comments; (g) vide Petition No. 1/SM/2024, directions were issued to Grid-India to implement shadow pilot for creating necessary regulatory framework for market coupling; and (h) the Commission further constituted a committee to oversee implementation of the shadow-pilot, and the said committee met five times.

It is thereafter stated that, on culmination of this process, on examination of the reports of Grid India, and in exercise of pure administrative and inquisitorial power that was not adjudicatory in any manner, the Commission reached a decision to frame regulations for market coupling and issued consequential directions for the same; and a cursory examination of both Petition No. 1/SM/2024 dated 06.02.2024 and Petition No. 8/SM/2025 dated 23.07.2025 would show that what has consistently been issued are directions that form the precursor steps of formulating Regulations under Regulation 39 of the Power Market Regulations.

After referring to the directions issued to Grid India, and the directions issued to power exchanges in Petition No. 1/SM/2024 dated 06.02.2024, the CERC then referred to the directions issued to the staff of the Commission, the directions to Grid India and the directions to the power exchanges in Petition No. 8/SM/2025 dated 23.07.2025; and that the directions referred to make a reference to the “round robin method”. It is further stated that Petition No. 8/SM/2025, like Petition No. 1/SM/2024 dated 06.02.2024, is not a judicial order but is purely an administrative order which is made apparent

by the fact that they are 'Directions by the Commission for Implementing Market Coupling in terms of the provisions of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021; further, the directions issued are contained in paragraphs 7,8 and 9 of the order; paragraph 6 only contains the administrative decision of the Respondent Commission to initiate the process of framing regulations in terms of Section 178(2)(y) on certain aspects, and defer the same on other aspects; issuing directions through suo-motu petitions is a well-defined mechanism for the Commission to conduct its business; the Commission, under its Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023, is empowered to register suo-motu petitions; Regulation 15(f) defines "suo motu petition ' to mean the petition initiated by the Commission on its own motion for ensuring compliance with the provisions of the Act or the Regulations notified by the Commission or orders or directions issued by the Commission, and shall include the petition for holding an inquiry by the Adjudicating Officer appointed under Section 143 of the Act; such proceedings are meant to 'decide issues of general importance and issue appropriate directions for compliance' [See Regulation 56 (2)]; further, the Commission can issue general practice directions under Regulation 57; in view of the Conduct of Business Regulations the term 'order', as used in Petition No. 1/SM/2024, dated 06.02.2024 and Petition No. 8/SM/2025 dated 23.07.2025, was required to be read synonymously with 'direction'; issuance of such directions would be only in exercise of powers which are administrative and inquisitorial in nature and, in the present context, are only precursors to the exercise of legislative regulation making power; the present Appeal is an attempt to only interdict the said process of subordinate legislation making, by attempting to manufacture a justiciable lis where none exists; the said actions are only designed to derail the process of regulation making, and create a regulatory gridlock to preserve the admitted dominant

position of the Appellant; usage of the term “Order”, in Petition No. 8/SM/2025 dated” 23.07.2025, has apparently given rise to some misapprehension that the said proceeding was a judicial or adjudicatory order; in these circumstances, the Commission had two choices, (1) withdraw Petition No. 8/SM/2025, dated 23.07.2025 and re-issue it as administrative directions, (2) issue an explicit corrigendum amending and clarifying that Petition No. 8/SM/2025 dated 23.07.2025 only constituted administrative Directions; it would be in the interests of sectoral certainty that the Commission followed the later path and issued a clarification in the nature of a corrigendum to both Petition No. 1/SM/2024 dated 06.02.2024 (which is not assailed) and Petition No. 8/SM/2025 dated 23.07.2025, clarifying that the same are not an 'Order' but only 'Directions'; in these circumstances, the Commission has issued Corrigendum to Petition No. 1/SM/2024 and Petition No. 8/SM/2025, dated 08.01.2026; the Commission will proceed with its function of regulation making, in terms of the previous publication rules as required in Section 178(3) of the Electricity Act, 2003; and the Commission hopes to bring into place the necessary regulatory framework of market coupling as early as possible, with the cooperation of all parties, including the Appellant, to whom the directions have been issued.

V. RELEVANT PROVISIONS OF THE ELECTRICITY ACT, 2003

Section 66 of the Electricity Act, 2003 relates to the development of market and, thereunder, the Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified, and shall be guided by the National Electricity Policy referred to in Section 3 in this regard. Section 3 of the Electricity Act relates to the National Electricity Policy and Plan. Section 3(1) requires the Central Govt, from time to time, to prepare the National Electricity Policy and Tariff Policy, in consultation with the State Governments and the Authority for

development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. Section 3(2) requires the Central Govt to publish the National Electricity Policy and Tariff Policy from time to time. Section 3(3) enables the Central Govt, from time to time, in consultation with the State Governments and the Authority, to review or revise the National Electricity Policy and Tariff Policy referred to in sub-section (1).

Section 79 of the Electricity Act relates to the functions of Central Commission and sub-section (3) thereof requires the Central Commission to ensure transparency while exercising its powers and discharging its functions. Section 178 of the Electricity Act confers powers on the Central Commission to make regulations and, under sub-section (1) thereof, the Central Commission may, by notification, make regulations consistent with the Electricity Act and the Rules generally to carry out the provisions of the Electricity Act. Section 178(2) provides that, in particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely, among others, (y) the manner by which development of market in power including trading as specified under Section 66. Section 178(3) stipulates that all regulations made by the Central Commission under this Act shall be subject to the conditions of previous publication.

VI. NATIONAL ELECTRICITY POLICY 2005: RELEVANT PARAS:

In compliance with Section 3 of the Electricity Act, 2003, the Central Government notified the National Electricity Policy in the Gazette on 12.02.2005. Para 5.7 of the said Policy relates to competition aimed at consumer benefits. Para 5.7.1 stipulates that, to promote market development, a part of new generating capacities, say 15%, may be sold outside long-term PPAs; as the power markets develop, it would be feasible

to finance projects with competitive generation costs outside the long-term power purchase agreement framework; in the coming years, a significant portion of the installed capacity of new generating stations could participate in competitive power markets; this will increase the depth of the power markets and provide alternatives for both generators and licensees/consumers, and in the long run would lead to reduction in tariff; for achieving this, the policy underscores the following, among others, :- (d) development of power market would need to be undertaken by the Appropriate Commission in consultation with all concerned; (e) the Central Commission and the State Commissions are empowered to make regulations under Section 178 and Section 181 of the Act respectively; these regulations will ensure implementation of various provisions of the Act regarding encouragement to competition and also consumer protection; and the Regulatory Commissions are advised to notify various regulations expeditiously; and (f) enabling regulations for inter and intra State trading and also regulations on power exchange shall be notified by the appropriate Commissions within six months.

VII. ELECTRICITY (PROCEDURE FOR PREVIOUS PUBLICATION) RULES 2005:

In exercise of the powers conferred by sub-section (1) and clause (z) of sub-section (2) of section 176 of the Electricity Act, 2003, the Central Government made the Electricity (Procedure for Previous Publication) Rules, 2005 (the “2005 Rules” for short). These Rules were notified on 09.06.2005. Rule 3 relates to the procedure of previous publication, and provides that, for the purpose of previous publication of regulations under sub-section (3) of Section 177, sub-section (3) of Section 178 and sub-section (3) of Section 181 of the Electricity Act, the following procedure shall apply:- (1) the Authority or the Appropriate Commission shall, before making regulations,

publish a draft of the regulations for the information of persons likely to be affected thereby; (2) the publication shall be made in such manner as the Authority or the Appropriate Commission deems to be sufficient; (3) there shall be published with the draft regulations, a notice specifying a date on or after which the draft regulations will be taken into consideration; and (4) the Authority or the Appropriate Commission having powers to make regulations shall consider any objection or suggestion which may be received by the Authority or the Appropriate Commission from any person with respect to the draft before the date so specified.

Rule 4 provides that the publication in the Official Gazette of the Regulations, made in exercise of a power to make regulations after previous publication, shall be conclusive proof that the regulations have been duly made.

VIII. EXPLANATORY MEMORANDUM TO DRAFT REGULATIONS, 2020:

An Explanatory memorandum was issued by the CERC to the Draft Power Market Regulations, 2020. Para 3.5 thereof related to 'Market Coupling'. Para 3.5.1 stipulated that multi-power exchange models, such as that exists in India, may result in scenarios in which (1) there is difference in the prices discovered on different power exchanges for a particular market of collective transactions; or (2) allocation of transmission corridor amongst the power exchanges is not optimal owing to skewed market share of various power exchanges or (3) over-all economic surplus is not maximized since buyers and sellers may be spread out on various power exchanges. Para 3.5.2 provides that, in addition to the above mentioned issues, the Commission expects that financial products in the electricity market (which are under the process of being approved by the competent authority) would require uniform price discovery in the day-ahead and Real-time markets. Para 3.5.3 stipulates that, in order to address the issues highlighted in Para

3.5.1 and 3.5.2 above, the Draft Regulations provide an enabling provision to introduce market coupling among the Power Exchanges, with the objective of discovering uniform clearing prices in the Day Ahead and Real Time markets, ensuring optimal utilization of resources and maximization of economic surplus. Further, the charges for deviation settlement are currently indexed to the Day-Ahead market clearing price. A uniform market clearing price, in the Day-Ahead market discovered by the market coupling process, would minimize the scope for any arbitrage between deviation settlement and the market. Para 3.5.4 refers to the definition of 'market coupling' in Regulation 2(1) (af) of the draft Regulations. Para 3.5.5 stipulates that the market coupling operator, designated by the Commission, shall collect and match bids from all the Power Exchanges, after taking into account all bid types, to discover the uniform market clearing price for the Day-Ahead market or Real-time market or any other market as notified by the Commission, subject to market splitting. Para 3.5.6 provides that market coupling has been envisaged as an enabling provision in the Draft Regulations to be introduced in the Day-Ahead market or Real-time market or any other market as may be notified by the Commission.

IX. 2021 REGULATIONS: RELEVANT PROVISIONS:

In the exercise of the powers conferred under Section 66 read with sub-section (1) of Section 178 and clause (y) of sub-section (2) of Section 178 of the Electricity Act, 2003, and paragraph 5.7.1(f) of the National Electricity Policy, the CERC made the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (the "2021 Regulations" for short) which was notified on 15.02.2021.

Regulation 2(aa) thereof defines "Insider Trading" by an Insider to mean: (i) communicating, providing, or allowing access to any unpublished price sensitive information, to any person including other Insiders except

where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations; (ii) recommending any person, on basis of unpublished price sensitive information, to acquire or dispose of any contract on the Power Exchange, to which that information relates. Regulation 2(af) defines “Market Coupling’ to mean the process whereby collected bids from all the Power Exchanges are matched, after taking into account all bid types, to discover the uniform market clearing price for the Day Ahead Market or Real Time Market or any other market as notified by the Commission, subject to market splitting. Regulation 2(ag) defines “Market Coupling Operator” to mean an entity as notified by the Commission for operation and management of Market Coupling. Regulation 2(ai) defines “Market Participants” to include (5) Market Coupling Operator.

Part-4 of the 2021 Regulations relates to Power Exchange, and Regulation 8 thereunder to Objectives of Power Exchange. Regulation 8 stipulates that the Power Exchanges shall be established and operated with the following objectives: (1) To design electricity contracts and facilitate transactions of such contracts; (2) To ensure fair, neutral, efficient and robust price discovery, till such time the responsibilities are transferred to the Market Coupling Operator in respect of Day Ahead Contracts or Real-time Contracts or any other contracts as notified by the Commission; (3) To facilitate extensive, quick and efficient price discovery and dissemination.

Regulation 23 relates to Power Exchange transaction fee and provides that no Power Exchange shall charge transaction fee exceeding 2 (two) paise/kWh from either party to the transactions covered under Clauses (1) to (3) of Regulation 5 of these regulations. Regulation 24 relates to Trading margin and service charge, and Regulation 24(1) thereunder stipulates that a Trader Member shall charge trading margin in accordance with the

provisions of Trading Licence Regulations, 2020 in respect of all transactions carried out through the Trader Member at the Power Exchange.

Regulation 25 relates to Approval or Suspension of Contracts by the Commission, and Regulation 25(2) provides that any Power Exchange seeking permission to introduce a new contract under clause (1) of this Regulation, shall submit to the Commission complete and detailed contract specifications including the following: (i) Type of contract; (ii) Price discovery and matching methodology proposed; (iii) Timelines, including commencement of bidding and duration of bidding session till delivery commences; (iv) Delivery mechanism and delivery duration i.e. whether delivery is for intra-day, daily, weekly, monthly, seasonal, yearly or beyond; (v) Risk management mechanism including margining and final price settlement mechanism. Regulation 25(3) enables the Commission, after granting the concerned Power Exchange the opportunity of being heard, by order, to suspend transactions of any contract for the period specified in the order or withdraw any contract from the Power Exchange.

Part-5 of the 2021 Regulations relates to market coupling. Regulation 37 thereunder relates to the objectives of market coupling and provides for (1) Discovery of uniform market clearing price for the Day Ahead Market or Real-time Market or any other market as notified by the Commission; (2) Optimal use of transmission infrastructure; and (3) Maximisation of economic surplus, after taking into account all bid types and thereby creating simultaneous buyer-seller surplus. Regulation 38, which relates to Designation of Market Coupling Operator, provides that, subject to provisions of these regulations, the Commission shall designate a Market Coupling Operator who shall be responsible for operation and management of Market Coupling. Regulation 39 stipulates that the provisions with regard to market coupling and Market Coupling Operator in these regulations shall come into

effect as and when decided by the Commission in accordance with the regulations to be specified separately.

X. STATEMENT OF REASONS TO THE 2021 REGULATIONS:

The CERC issued the Statement of Reasons to the Power Market Regulations, 2021 vide proceedings dated 23.03.2021. Para 25 thereof relates to the Objectives of Market Coupling (Part 5, Regulation 37 to 40). Thereunder, under the head '*Commission's proposal*', is Para 25.1 which records that the Commission has proposed the following under Regulations 37 to 40 of the Draft PMR:

"37. Objectives of Market Coupling: (1) "Discovery of uniform market clearing price for the Day Ahead Market or Real-time Market or any other market as notified by the Commission; (2) Optimal use of transmission infrastructure; (3) Maximisation of economic surplus, after taking into account all bid types and thereby creating simultaneous buyer-seller surplus."

38. Designation of Market Coupling Operator: "Subject to provisions of these regulations, the Commission shall designate a Market Coupling Operator who shall be responsible for operation and management of Market Coupling."

39. Functions of the Market Coupling Operator: (1) The Market Coupling Operator, with the approval of the Commission, shall issue a detailed procedure for implementing Market Coupling including management of congestion in transmission corridor, the timelines for operating process, information sharing mechanism with the Power Exchanges and any other relevant matters; (2) The algorithm for enabling Market Coupling shall be developed and managed by the Market Coupling Operator and implemented with

the approval of the Commission; (3) Market Coupling Operator shall create and maintain a document on its website providing detailed description of the algorithm used for price discovery. The description shall include bid types, details of how the algorithm results in maximisation of economic surplus taking into account various bid types and congestion in transmission corridor, which shall be updated with every new version of the price discovery algorithm; (4) The Market Coupling Operator shall use the algorithm to match the collected bids from all the Power Exchanges, after taking into account all bid types, to discover the uniform market clearing price, subject to market splitting; and (5) The Market Coupling Operator shall communicate the results of the auction to the Power Exchanges in a transparent manner.

40. The Power Exchanges shall inform the participating bidders about the results of the auction as communicated by the Market Coupling Operator."

The Statement of Reasons then records the Comments Received, and in Para 25.2 it is stated that some stakeholders had commented as under: (a) With the creation of Market Coupling Operator, the price discovery engine would be placed under a neutral body where the price of electricity would be discovered based on the bids from various exchanges, thereby allowing exchanges to concentrate on improving service qualities; (b) Market Coupling would lead to deepening of markets and market-wide Social Welfare Maximization; (c) Market Coupling would lead to optimum utilization of transmission capacity as there will be no requirement of Power Exchange-wise allocation; (d) Market Coupling would pave the way for implementation of Market Based Economic Dispatch and market based ancillary services; and (e) Market Coupling would provide a single and robust price benchmark

for launching Derivative Contracts and pave the way for integration of power markets from neighbouring countries.

Para 25.3 records that PTC had proposed that other products in Power Exchanges, where uniform price discovery takes place, such as Renewable Energy Certificates (REC) and Energy Saving Certificates (ESCerta), may be included under Market Coupling Operator. Para 25.4 notes that Manikaran Power Limited had commented that merging of bids typically occurs across various countries and regions where distribution of power across borders was very complex due to different types of production, varying demand, and bottlenecks on cross-border cables; therefore, coupling was done across Power Exchanges in different geographies i.e., different regions were coupled; however, the Commission had proposed to couple the bids of different Power Exchanges in India (i.e., coupling within region); the Indian power market is already integrated where the transaction volume in Power Exchanges is only 4% and one exchange already has a share of 99% in DAM and RTM; as majority of DAM and RTM transactions happen through a single Power Exchange, maximization of economic surplus is already taking place in the current scenario.

Para 25.5 notes that IEX had commented that market coupling will stifle competition amongst the power exchanges as they may not have any incentive to develop new products; this will also diminish the value proposition of Power Exchanges built over time; once Market Coupling Operator comes into play, and with Clearing & Settlement functions transferred to Clearing Corporation, Power Exchanges will lose all institutional capacity with reference to their key offerings i.e. Price Discovery and Financial Settlement and become mere bid aggregators, and hence won't be able to command any respectable fee.

Para 25.6 records that some stakeholders had commented that adequate transmission corridor was available as there had only been 0.4% congestion in transmission corridor during FY 2020; and, further, pro-rata allocation of transmission corridor does not leave any further scope for optimization in the surplus capacity scenario. Para 25.7 records that some stakeholders had sought more clarity on the procedure for appointment, the qualification criteria, the charges that will be levied and the timeline involved for setting up the Market Coupling Operator.

Para 25.8 records that PXIL had commented that the Commission may designate one or more Market Coupling Operator(s) from amongst the Power Exchanges; provided that, in the event more than one Power Exchange was found to be eligible to be designated as a Market Coupling Operator, the Commission should require such Power Exchanges to operate as the Market Coupling Operator on rotation basis on such terms and conditions it may deem fit.

Under the head "*Analysis and Decision*", the Statement of Reasons notes in Para 25.9 that the Commission had considered and analysed the views, suggestions/ comments of the stakeholders in detail; the Commission was of the view that the Market Coupling Operator would be introduced at an appropriate time; the Commission had accordingly decided that the provisions with regard to market coupling and Market Coupling Operator shall come into effect as and when decided by the Commission in accordance with the regulations to be specified separately; accordingly, Regulations 39 and 40 of the Draft PMR had been deleted and Regulation 39 has been inserted as under: "*The provisions with regard to market coupling and Market Coupling Operator in these regulations shall come into effect as and when decided by the Commission in accordance with the regulations to be specified separately.*"

XI. 2023 REGULATIONS: RELEVANT CLAUSES:

The Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 (“the 2023 Regulations” for short) came into force on its notification on 19.10.2023. Chapter III of the 2023 Regulations relates to Petitions and Pleadings. Regulation 15 relates to Classification of Petitions to be filed before the Commission. Regulation 15(1) stipulates that the Petitions to be filed before the Commission shall be categorized into the following: (a) ‘tariff petitions’; (b) ‘Petition for grant of license’; (c) ‘Petition for adoption of tariff’; (d) ‘Miscellaneous Petition’ which means the Petition filed before the Commission under any of the provisions of the Electricity Act or Regulations framed by the Commission, but does not include the Petitions for determination or adoption of tariff, or for grant of license, or for review of an order or suo-motu petitions as defined under these Regulations; (e) ‘Regulatory Compliance Petition’; (f) ‘suo-motu Petition’ which means the Petition initiated by the Commission on its own motion for ensuring compliance with the provisions of the Electricity Act or Regulations notified by the Commission or Orders or Directions issued by the Commission, and shall include the Petition for holding an enquiry by the adjudicating officer appointed under Section 143 of the Electricity Act; (g) ‘review petition’; (h) ‘interlocutory application’ or ‘IA’; (i) ‘revision petition’; and (j) any other petition with the prior approval of the Commission.

Chapter-IX of the 2023 Regulations relates to Suo-motu Proceedings. Regulation 56 thereunder relates to suo-motu petitions. Regulation 56(1) enables the Commission to initiate any proceedings suo-motu for ensuring compliance with the provisions of the Electricity Act, the Rules or the Regulations framed under the Electricity Act or directions of the Commission. Regulation 56(2) enables the Commission to initiate suo-motu proceedings to decide issues of general importance and issue appropriate directions for

compliance. Regulation 56(3) enables the notice of the initiation of the proceedings to be issued by the Commission, and for the Commission to give such orders or directions as may be deemed necessary for service of notices to the affected parties. Regulation 56(4) enables the Commission, in appropriate cases, to designate an officer of the Commission or any other person, whom the Commission considers appropriate, to present the matter in the capacity of a Petitioner in the case. Regulation 56(5) requires the Commission, to arrive at a just decision at any time during the proceeding, to seek necessary information from the parties in the matter in such form as it may direct. Regulation 56(6) requires the Commission, upon receipt of information as submitted by the parties within the stipulated time, to list the matter for hearing. Under the proviso thereto, if the information is not received by the Commission within the stipulated time, the case shall be listed for hearing before the Commission for appropriate directions. Regulation 56(7) enables the Commission, after hearing the affected party or parties and on being satisfied with the non-compliance of the Act, the Rules, the Regulations, or directions of the Commission is established, to issue such orders or impose such penalties as are considered appropriate in accordance with the provisions of the Electricity Act.

Chapter-X of the 2023 Regulations relates to the procedure for framing of Regulations. Regulation 58, thereunder, relates to the framing of Regulations. Regulation 58(1) provides that the Commission, under Section 178 of the Electricity Act, has been empowered so to make, by notification, relevant regulations consistent with the Act and the Rules to carry out the provisions of the Act; the Commission is required to follow the procedure prescribed in the Electricity (Previous Publication) Rules, 2005 while making the regulations. Regulation 58(2) provides that the Commission may decide, at any time it deems appropriate, to frame new regulations or amend or repeal the existing regulations on any subject in accordance with Regulation

178 read with other appropriate provisions of the Electricity Act. Regulation 58(3) enables the Commission, for the purpose of framing the regulations, to take the assistance of any institution, consultants, experts, and such other professional bodies as it may consider necessary and appoint them to assist the Commission in framing the regulations. Regulation 58(4) provides that, as part of the process of framing regulations, the Commission may decide to come up with a staff paper highlighting broad issues under consideration, invite comments from the stakeholders in writing through public notices issued in such manner as the Commission considers appropriate and upload such notices in the website. Regulation 58(5) enables the Commission to seek information and data from various stakeholders through letter(s) or order for the purpose of framing Regulations, and set a time limit for submission of information. Regulation 58(6) requires the Commission to issue draft regulations, upload the same on its website, and invite comments in writing from various stakeholders through public notices published in such manner as the Commission may decide and upload such notices on its website.

Regulation 58(7) enables the Commission, if deemed necessary, in addition to the draft regulations, to also upload an explanatory memorandum on its website explaining the provisions of the draft regulations. Regulation 58(8) provides that the Commission shall allow the stakeholders a minimum of 30 days from the date of such public notice to submit comments on the draft regulations. Under the first proviso thereto, the last day for such submission may be extended by the Commission if it feels it appropriate. The second proviso provides that the Commission may decide to consider such comments and suggestions upon expiry of the above period. Regulation 58(9) enables the Commission, upon receipt of such comments and on expiry of the period for receiving comments, to conduct a public hearing in the matter. Regulation 58(10) enables the Commission, based on the

analysis of the submissions of the stakeholders on the draft regulations, to issue the final regulations. Regulation 58(10) provides that the regulations shall be issued under the signature of the Secretary and, in his absence, the senior most Chief in the Commission. Regulation 58(12) provides that the Commission, if it deems appropriate, may also publish a Statement of Reasons elaborating the reasons and rationale behind the provisions of the Regulations. Regulation 58(13) provides that the staff of the Commission shall get the Regulations notified in the Gazette of India as soon as possible after they are issued. Regulation 58(14) provides that the Regulations shall come into effect from the date of notification in the Official Gazette or any other specific dates mentioned in the Notification.

Regulation 70 relates to the effect of non-compliance. Regulation 70(1) provides that failure to comply with any requirement of these regulations shall not invalidate any proceeding merely by reason of such failure, unless the Commission is of the view that such failure has resulted in miscarriage of justice. Regulation 70(2) stipulates that failure to comply with the provisions of the Act, the Rules, the Regulations issued under the Act or any directions or orders of the Commission shall invite appropriate action against the concerned party or person under Section 142 of the Act.

XII. STAFF PAPER ON MARKET COUPLING:

The Staff Paper on Market Coupling, prepared by the Staff of the CERC in August, 2023, starts with a disclaimer that the issues presented in this discussion paper do not represent the views of the CERC, its Chairperson or its individual members and are not binding on the Commission; the views are essentially those of the staff of the CERC, and are circulated with the aim of initiating discussions on various aspects of market coupling in the Indian Power Market and soliciting inputs from the stake-holders in this regard.

The Staff Paper records, in Para 1.1 to 1.2 , that the main objective of the Regulations was to help in creating a comprehensive market structure, and to enable the transaction, execution, and contracting of various types of products in the power market; at present, there were more than 50 inter-state trading licensees and three power exchanges, namely the Indian Energy Exchange Ltd. (IEX), the Power Exchange of India Ltd. (PXIL) and the Hindustan Power Exchange Ltd. (HPX), operating under the framework of the 2021 Regulations; various contracts were available for trading on these exchanges to meet the short-term needs of market participants; though the transactions, through power exchanges, constituted only about 7% of the total electricity generation, the volume transacted and the number of participants registered with the power exchanges had grown significantly.

Para 1.4 of the Staff Paper states that, while the present market structure has been designed to maximize efficiency gains, the power exchanges with lower volumes often point to the intrinsic nature of the collective transactions segment (DAM and RTM) which leads to a concentration of liquidity in one power exchange, due to which the benefits of competitive efficiency do not percolate to the market participants; in the case of collective transactions such as DAM and RTM, which are based on a double-sided closed auction, the decision of an electricity buyer/seller is influenced by the certainty of getting his bids/offer cleared, which depends on the level of liquidity in an exchange; thus, the liquidity on one exchange helps attract more liquidity over time; as such, these concerns do not arise in the case of other market segments, like the Term Ahead Market (TAM) and Day-ahead Contingency contracts which are based on continuous transactions.

Para 1.6 of the Staff Paper records that, considering the fact that collective transactions account for more than 70% of the electricity

transacted through power exchange and the share of only one exchange has been increasing, the power exchanges with lower liquidity have been advocating for market coupling; the Commission had provided enabling provisions in the 2021 Regulations to introduce market coupling among the power exchanges to enable uniform price discovery; these provisions, related to market coupling, are yet to be brought into effect and form the basis for discussion in this paper; and the paper, in the subsequent sections, discusses the regulatory provisions for market coupling, international experience, the objectives of market coupling in India, the issues and challenges in the implementation of market coupling, and the key points for discussion.

Para 2 details the present regulatory provisions, and Para 3 the international experience. Para 4 relates to market coupling in the Indian context and Para 5 relates to the points for discussion. Para 5.8.6 poses a query whether, considering the earlier paras, it was imperative that market coupling be introduced in collective transactions segment to begin with? Para 6 solicits comments. Para 6.1 states that, in view of the above discussions, the comments of the stake-holders were invited on the issues and questions highlighted in Section 5 of this discussion paper.

XIII. RIVAL CONTENTIONS:

Sri Kapil Sibal, Sri Mukul Rohtagi, Sri Sanjay Sen and Sri Sajan Poovayya, Learned Senior Counsel appeared on behalf of the Appellant. Sri N. Venkatraman and Sri Nikhil Nayyar, Learned Senior Counsel, appeared on behalf of the CERC. Sri Parag Tripathi, Sri Vikas Singh and Sri B.P. Patil, Learned Senior Counsel, appeared on behalf of the Respondent Power Exchanges. Elaborate oral submissions were put forth, and written submissions filed, on behalf of the parties to this Appeal. It is convenient to

examine the rival contentions, urged by Learned Senior Counsel on either side, under different heads.

XIV. IS THE IMPUGNED PROCEEDINGS AN “ORDER” UNDER SECTION 111(1) OF THE ELECTRICITY ACT?

(i) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

It is contended, on behalf of the Appellant, that, by the Impugned Order dated 23.07.2025 in suo-moto Petition No. 8/SM/2025, the CERC has decided the following: (a) implement market coupling for Day Ahead Markets of the power exchanges, on round-robin basis and from January, 2026 (paras 6 (i)); (b) coupling of Real-Time markets to be decided at a later stage (paras 6 (ii)); (c) the staff is directed to initiate a consultative process on operational and procedural aspects (para 7); and (d) power exchanges to share data as required by the staff and Grid-India to analyze operational and procedural aspects. (Para 9); and only Regulations notified under Section 178 are outside the scope of enquiry in an appeal.

(ii) SUBMISSIONS URGED ON BEHALF OF THE CERC:

Learned Additional Solicitor General would submit that an appeal, under Section 111(1) of the Electricity Act, lies only against an "order" under Section 111 of the Act, and not against actions of the Respondent CERC in the exercise of its legislative powers; and no appeal is maintainable against legislative/pre-legislative acts of the CERC.

(iii) ANALYSIS:

Section 111 of the Electricity Act relates to Appeal to the Appellate Tribunal. Under sub-section (1) thereof, any person aggrieved by an order made by the Appropriate Commission under the Act may prefer an appeal to the Appellate Tribunal for Electricity. The signification expressions used in

Section 111(1) are (i) “order” and (ii) “any person aggrieved”. The rival contentions urged under this head relate mainly to the expression “order” in Section 111(1).

The word “order” as appearing in Section 111 means a decision or adjudication on a certain right or liability or claim or regulatory act or adjudication by the appropriate commission, and only against such orders is an appeal is provided for. **(M/s Central Coalfields Limited V. Jharkhand State Electricity Regulatory Commission & Anr. (Judgment of Aptel in Appeal No. 166 of 2005 dated 11.05.2006); Techno Electric & Engineering Company Limited v. Andhra Pradesh Electricity Regulatory Commission ors. (Judgment of Aptel in Appeal No 99 of 2020 dated 20.08.2020).** However, the word “order”, in Section 111(1) of the Electricity Act, 2003 Act, would not include Regulations made under Section 178 of the said Act. **(PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).**

Section 79(1) of the Electricity Act, 2003 enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by orders (decisions). **(PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).** The CERC is enabled to exercise its regulatory powers by way of orders under Section 79 of the Electricity Act. The purview of Section 79 is not limited to only adjudicatory orders but includes within its scope administrative functions as well. **(Power Grid Corporation of India Limited vs. Madhya Pradesh power Transmission Company Limited: (2025) 8 SCC 705).** The power to make Regulations under Section 178 is, however, a legislative power and the notification issued under that Section amounts to a piece of subordinate legislation which has general application. Regulations, made under Section 178, would not fall within the ambit of the word “order” in Section 111 of the Electricity Act. **(PTC**

India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603), as “Orders” and “Directions” are not law, and are binding only on the authorities and entities under the Act. Such orders and directions are not required to be published. They are not kept for scrutiny by legislature. Such orders and directions do not impinge upon the rules enacted by the rule-making authority. (**Raman and Raman Ltd v. State of Madras: AIR 1959 SC 694; PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**)

The Constitution Bench of the Supreme Court, in **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**, held that determination of tariff, like the price fixation exercise, is legislative in character, though, by the terms of an order under Section 62, it is made appealable under Section 111 of the Electricity Act, 2003 and is therefore quasi-judicial. On the other hand, in the two judge bench judgement of the Supreme Court in **Energy Watchdog v. CERC, (2017) 14 SCC 80**), and in the three-judge bench judgement of the Supreme Court in **Tata Power Co. Ltd. Transmission v. Maharashtra Erc: (2023) 11 SCC 1**, it has been held that the source of power for determination of tariff under Section 62 of the Electricity Act is the general regulatory power of the Commission under Section 79(1)(b) (similar to 86(1)(b)); and “determination” of tariff is part of “regulating” tariff. Likewise, a three-judge bench of the Supreme Court, in **GUVNL v. Renew Wind Energy (Rajkot) Pvt. Ltd: 2023 SCC OnLine SC 411**, after referring to the Constitution Bench Judgement of the Supreme Court in **PTC (India) Ltd. v. CERC, (2010) 4 SCC 603**, has held that tariff determination comprehends the exercise of regulatory function; and Tariff fixation is a statutory function. In **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**, the Supreme Court held that Section 79(1) of the Electricity Act, 2003 enumerates the regulatory functions

of the Central Commission, in specified areas, to be discharged by orders (decisions).

An order passed by the Regulatory Commission, be it regulatory, administrative or a quasi-judicial, is an order under Section 111(1) of the Electricity Act, and it is only a Regulation, made under Section 178 thereof, which does not constitute an “order” falling within the ambit of Section 111(1) of the Electricity Act, rendering such Regulations immune from appellate scrutiny. Even quasi-legislative orders, such as tariff orders, fall within the expression “order” under Section 111(1) of the Electricity Act.

While we may not be understood to have held that the Commission is disabled from issuing orders, even in the absence of any such stipulation in the Regulations, what we are concerned with, in the present Appeal, is with the question whether a proceeding, issued without an express stipulation in this regard either in the Electricity Act or in the 2005 Rules or even in the Regulations made by the CERC, can be said to form part of the Regulation making exercise of the CERC rendering it non-appealable under Section 111(1) of the Electricity Act. It is necessary for us, therefore, to refer to what the impugned proceeding dated 23.07.2025 stipulates.

Firstly, the proceeding dated 23.07.2025 was passed in Petition No. 8/SM/20225, wherein ‘SM’ evidently refers to the expression “suo-motu”. It is clear, therefore, that the proceeding dated 23.07.2025 was issued in a suo-motu petition instituted by the CERC. Chapter-IX of the 2023 Regulation relates to suo-motu proceedings and, there-under, Regulation 56(1) enables the Commission to initiate any proceedings suo-motu for ensuring compliance with the provisions of the Electricity Act, the Rules or the Regulations framed under the Electricity Act or directions of the Commission, and Regulation 56(2) enables the Commission to also initiate suo-motu

proceedings to decide issues of general importance, and issue appropriate directions for compliance.

Consequently, a suo-motu proceeding can be initiated by the Commission under Regulation 56(1), for ensuring compliance with the provisions of the Electricity Act, the Rules or the Regulations, or the directions of the Commission, and under Regulation 56(2) to decide issues of general importance and issue appropriate directions for compliance.

The impugned proceedings dated 23.07.2025 bears the heading *“Directions by the Commission for implementing market coupling in terms of the provisions of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021”*. While the first paragraph refers to the earlier order of the Commission in Petition No. 1/SM/2024 (Suo-Motu) dated 06.02.2024, Para 2 records the concerns raised by Grid India, and the Commission having decided to grant extension to Grid India to develop and deploy the necessary software as required for running the shadow pilot, and to constitute a Committee to deliberate on various aspects relating to the shadow pilot of market coupling. It also records that Grid-India had submitted a report on 16.01.2025, and had made submissions before the Commission. Para 3 then refers to the directions of the Commission in its order dated 06.02.2024, and the feedback report submitted by Grid-India on 30.06.2025 and its contents. Para 4 takes note of the fact that the Commission had discussed and deliberated on the feedback report submitted by Grid-India, and that it had noted the issues and challenges to be addressed in implementing market coupling in different market segments. Para 5 then extracts Regulations 37 to 39 of the 2021 Regulations. While Regulation 37 details the objectives of market coupling and Regulation 38 relates to the designation of market coupling operator, Regulation 39 makes it clear that the provisions, with regard to market coupling and the market

coupling operator, in the 2021 Regulations shall come into effect as and when decided by the Commission in accordance with the Regulations to be specified separately. It is clear from Regulation 39 that the provisions regarding market coupling and market coupling operator in the 2021 Regulations shall come into force from the date to be decided by the Commission in terms of the Regulations to be specified separately. No such Regulations has as yet been made by the CERC. We are informed across the bar, by the Learned Counsel for the CERC, that the Commission has not yet issued even the draft Regulations.

Paragraph 6 of the impugned proceedings dated 23.07.2025 records that, on the basis of the submissions made by Grid-India and various consultations held, and as per the provisions of Market Coupling specified in Regulations 37 to 39 of the PMR 2021, the Commission had decided to initiate the process for implementing market coupling in a phased manner as detailed in sub-para (i) to (iv) there-under. What is of significance is that Para 6 records the Commission having decided to initiate a process for implementing market coupling in a phased manner. It is evident therefore, that in terms of Para 6, a *decision* has been taken by the Commission to initiate a process for implementing market coupling in a phased manner, albeit as per the provisions of Regulations 37 to 39 of the 2021 Regulations which relate to market coupling.

Para 6(i) of the impugned proceedings dated 23.07.2025 relates to the decision of the Commission to initiate the process of market coupling by implementation of the coupling of Day-Ahead Market (DAM) of the power exchanges in a round-robin mode by January, 2026. The said para then explains that, under the round-robin mode, the power exchanges may act as the Market Coupling Operator (MCO) on a rotational basis, with Grid-India being the fourth MCO for backup and audit purposes; and this arrangement

would facilitate efficient functioning of the power exchanges, and also help instill faith of the market participants in the power exchange operations. What is evident from Para 6(i) of the proceedings dated 23.07.2025 is the decision of the CERC to implement coupling of the Day-Ahead Market of the power exchanges (i) in a round-robin mode; and (ii) by January 2026. Since a decision has been taken by the Commission in Para 6(i), it is evidently an order within the meaning of Section 111(1) of the Electricity Act.

Suffice it to conclude our analysis under this head holding that the impugned proceedings dated 23.07.2025 satisfies the requirements of the expression “order” in Section 111(1) of the Electricity Act.

XV. EFFECT OF THE CORRIGENDUM AND THE AFFIDAVIT OF CERC BOTH DATED 08.01.2026:

(i) SUBMISSIONS URGED ON BEHALF OF CERC:

Learned Additional Solicitor General would submit that the corrigendum dated 08.01.2026 clarifies that the word “Order” must be read as “Directions” throughout, clarifying that these are process-directions in legislative activity; the CERC has in its affidavit dated 08.01.2026, while placing on record the corrigenda to the directions dated 06.02.2024 and 23.07.2025 in paragraph 4 & 7, used the term administrative and inquisitorial to describe the said directions; the CERC also said that they were precursors to legislation making; the Constitution Bench in **PTC**, while referring to Professor Wade, makes it clear that regulation making is part of the administrative process, and therefore the description in the affidavit is technically correct; however, to obviate any further confusion, it is requested that the term ‘administrative and inquisitorial’, in paragraphs 4 & 7 of the affidavit dated 08.01.2026, be read by the parties and the Tribunal as ‘pre-legislative’.

(ii) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

On the submission of the Respondents that the impugned order has now been amended to be 'Directions', it is submitted, on behalf of the Appellant, that this action in fact supports the case of the Appellant, as a direction is a decision and is always appealable.

(iii) ANALYSIS:

While it is true that the Commission issued a corrigendum on 08.01.2026 requiring the expression "order" in the proceeding dated 23.07.2025 to be read as "directions", it is evident, from the affidavit filed by the CERC on 08.01.2026, that they seek that the said word "order", referred both in the proceeding dated 06.02.2024 and 23.07.2025, be read synonymously with "directions", and they claim that issuance of such directions is in the exercise of power which are administrative and inquisitorial in nature and, in the present context, are only pre-cursors to the exercise of the Regulation making power.

As noted hereinabove, by the corrigendum dated 08.01.2026 the word "order" in the impugned proceedings dated 23.07.2025 is sought to be substituted by the word "directions". In the affidavit filed on the same day it is stated on behalf of the CERC that this expression must be understood to be administrative and inquisitorial in character. The words "administrative and inquisitorial" are now, by way of the written submissions filed on their behalf, sought to be read as "legislative".

Even if the expression "order" used earlier in the impugned proceedings dated 23.07.2025 were to be read as "directions", it would nonetheless fall within the ambit of the expression "order" under Section 111(1) of the Electricity Act, for the said proceedings dated 23.07.2025 records the decision of the CERC on certain aspects referred to

hereinabove. A decision taken by the CERC, coupled with the directions issued thereby, would undoubtedly amount to an “order” within the meaning of Section 111(1) and would be subject to appellate scrutiny provided of course, as shall be examined later in this order, the Appellant is aggrieved thereby, or in other words the Appellant is a “person aggrieved” by the said decision/directions.

While we can understand the CERC exercising its power to issue a corrigendum to its earlier order, and to explain what it means by way of an affidavit, it is indeed surprising that the meaning sought to be given to words “directions”, both in the corrigendum and the affidavit dated 08.01.2026, should now, that too in the written submissions, be sought to be read as “pre-legislative”. While written submissions are filed by Counsel, ordinarily to supplement the oral submissions made by the Learned Senior Counsel/Learned Counsel across the bar earlier, it is only a party, to the proceedings before this Tribunal, which is entitled to plead facts that too by way of an affidavit, and not their Counsel.

We refrain from delving into this aspect any further as firstly the word “pre-legislative”, referred to in the written submissions, presumably refers to a proceeding issued by the Commission prior to the making of the regulations, and as part of the regulation making exercise. As we are satisfied that the impugned proceedings contain the decision and directions of the CERC, it hardly matters what nomenclature is assigned to the said proceedings for even quasi-legislative orders (for instance a Tariff Order) have been held, by the Constitution Bench of the Supreme Court in **PTC India Ltd vs CERC**, to be appealable under Section 111(1) of the Electricity Act.

XVI. IS THE IMPUGNED PROCEEDINGS PART OF A LEGISLATIVE EXERCISE OR IS IT A QUASI-JUDICIAL ORDER?

(i) SUBMISSIONS URGED ON BEHALF OF CERC:

Learned Additional Solicitor General would submit that the impugned “directions” dated 23.07.2025 are merely consultative and, in substance, pre-legislative /legislative in character (precursors to a regulation-making exercise) aimed at market reform; the directions dated 23.07.2025 (‘the directions’ for short) are a continuation of a long consultative exercise that included consultations spanning various bodies including the Ministry of Power which, by letter dated 02.06.2023, also advocated for market coupling to be taken forward; the Staff paper issued by the CERC in August 2023, the earlier directions dated 06.02.2024 directing the shadow pilot by Grid India, meetings of a Committee headed by Member CERC, and Grid India Reports, along with the directions, are steps of a consultative and pre-legislative process; the said directions record the Commission’s consideration of shadow pilot results and challenges; they reproduce PMR 2021 Regulations 37–39 (including Reg 39’s “regulations to be specified separately” condition); in terms of the PMR Regulations, the CERC sought to only ‘initiate the process’ for implementing market coupling in phases, including DAM coupling in round-robin mode by January 2026; further, critically the directions direct the Commission staff to initiate a consultative process and propose regulatory amendments for implementation of market coupling, and towards this end also sought necessary data from Power Exchanges for analysis of operational and procedural aspects of market coupling; and the directions themselves contemplate future steps including framing of regulations; and they are not the terminal point of any adjudication.

Learned Additional Solicitor General would submit that the statutory and regulatory architecture is that the CERC is mandated, under Section 66/178(2)(y) of the Act read with the National Electricity Policy, to formulate regulations for the power market; the act of regulation making is required to

be seeded with a consultative and transparent process as mandated by Section 178(3) read with the Previous Publication Rules; further, the CERC has formulated its Conduct of Business Regulations that allow for suo-motu proceedings as well as the precursor steps to regulation making including widespread consultation and information gathering; the CERC PMR, 2021 already define both Market Coupling [Section 2(af)] and the Market Coupling Operator ('MCO') [Section 2(ag)]; the MCO is a mandatory market participant [Section 2(a)(i)], and further the price discovery function of the Power Exchanges was made transient only till the introduction of market coupling [See Regulations 5(1)(a)(i), 8(2), 19(1)(c), 28(9)]; and Regulations 37-39 set the objectives, scope and enabling provisions which require that the same would be introduced through Regulations as and when decided by the CERC.

Learned Additional Solicitor General would further submit that legislative actions are not appealable and even judicial review is not available prior to framing of legislation, the Constitution Bench of the Supreme Court, in **PTC India Ltd. v CERC, (2010) 4 SCC 603**, after noting that delegated legislative power is part of the administrative process, categorically held that Regulations under Section 178 are not appealable under Section 111 of the Act, and the validity of such Regulations can only be tested in a Court having the power of Judicial review; the Supreme Court, in **Cellular Operators Association of India v TRAI, 2016 7 SCC 703**, stresses that stakeholders should be consulted and transparency maintained in the regulation-making process; however, transparency can only be as prescribed by the statute; Section 79(3), Section 178(3), Regulation 58 of Conduct of Business Regulations and the principles laid down in *Cellular Operators* require that stakeholders be given the material features of the proposal; and, if the Commission concealed the algorithmic basis at the "directions" stage to avoid litigation, the later consultation could be

vulnerable as uninformed / unfair (**R v London Borough of Haringey 2014 UKSC 56**); the impugned directions would be incomplete without disclosing the material basis for the algorithm which was sought to be developed, and a timeline for the staff and stakeholders and the broader sector to work towards; the argument that a mere disclosure of the likely contents and timelines of a draft regulation and regulation making exercise could invite a judicial challenge is in fact perversely incentivising opacity; regulators would stop issuing public directions, and instead issue opaque, piecemeal communications, directly undermining Section 79(3) transparency, and the *Cellular Operators*' rationale; the transparent disclosure in the directions dated 23.07.2025 is evidence of compliance with regulatory law-making norms, not a jurisdictional trigger converting a pre-legislative step into an appealable adjudicatory "order"; and the steps contemplated under transparency cannot transform legislative process in the exercise of administrative power into appealable orders under Section 111 of the Act.

Learned Additional Solicitor General would also submit that in **Shri Sitaram Sugar Co. Ltd. v Union of India**, (1990) 3 SCC 223, it has been held that delegated legislation is legislative, natural justice does not automatically apply, and review is limited to vires/constitutional parameters; in **Union of India v Cynamide India Ltd.**, (1987) 2 SCC 720, it has been held that 'legislative/quasi-legislative determinations are not governed by the adjudicatory hearing requirements in the same way as quasi-judicial decisions'; and in **Mallikarjuna Rao v. State of A.P.**, (1990) 2 SCC 707, **Narinder Chand Hem Raj v. Lt. Governor & Administrator, H.P.**, (1971) 2 SCC 747, and **State of U.P. v. Mahindra & Mahindra Ltd.** (2011) 13 SCC 77, it has been consistently held that even a Constitutional Court, exercising judicial review, could not direct the creation of legislation or subordinate legislation in a particular way nor could a direction to make or not make subordinate legislation be given.

(ii) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

It is submitted, on behalf of the Respondent Power Exchanges, that CERC had issued the Power Market Regulations 2021 on 15th February 2021; Part 5 of the power market regulations deals with market coupling; Regulation 39 stipulates that the provisions, with regard to market coupling and market coupling operators, shall be given effect to in accordance with the regulations to be specified separately by the CERC, as and when decided by the CERC; to this end, the CERC has been carrying out various preparatory activities including stakeholder consultations, pilot studies, etc; implementation of Market Coupling through the Impugned Order is not a novel or abrupt development, but a culmination of sustained policy deliberation and regulatory planning for over more than a decade; the Ministry of Power, in its Report titled "*Report of the Committee on Manpower, Certification and Incentives for System Operation - Ring Fencing Load Dispatch Centers*" released in August 2008, identified Load Dispatch Centres as pivotal agents for achieving system-wide economy and efficiency; it is in alignment with this vision that Grid India has been designated as the fourth Market Coupling Operator (MCO) under the Impugned Order for audit and backup purposes; vide notification L-1/257/2020/CERC dated 28.07.2021 the CERC notified implementation of PMR 2021 from 15.08.2021; Part V of PMR 2021 expressly provided for implementation of Market Coupling at an appropriate time; the Ministry of Power, in its report titled '*Report of the Group on Development of Electricity Market in India*' dated 15.05.2023, had recommended evaluating price coupling to ensure uniform price discovery; the Ministry of Power issued letter dated 02.06.2023 wherein it urged the CERC to expedite implementation of Market Coupling for overall development of the power market; in August 2023, the CERC published a Staff Paper discussing

Market Coupling of power exchanges and invited stakeholder comments; in response thereto, 127 stakeholders submitted their comments on the staff paper; and the CERC subsequently issued directions dated 06.02.2024 to Grid India for undertaking shadow pilot for coupling of DAM of the power exchanges for the purpose of creating regulatory framework for market coupling.

It is further contended, on behalf of the Respondent Power Exchanges, that the CERC has, by the impugned order, directed initiation of regulation making process to give effect to Part 5 of the Power Market Regulations; the Impugned Order merely initiates and advances a consultative and procedural process for implementation of market coupling, as expressly envisaged under Regulation 39 of the Power Market Regulations, 2021; Regulation 39 of PMR 2021 unequivocally provides that the provisions relating to Market Coupling and the Market Coupling Operator “*shall come into effect in accordance with the regulations to be specified separately.*”; the Impugned Order does not, and indeed cannot, operationalize Market Coupling in the absence of such regulations; there is no impugned order either interim or final; it is a way forward process; and, in any case, the articulated conclusion of the process would be making of the regulations, challenge to which in any case is in another form *viz.* Article 226 under the Constitution of India.

The Respondent Power Exchanges would also submit that the *vires* of regulations cannot be challenged before this Tribunal; by necessary extension, any regulatory or administrative direction issued by the Central Commission in furtherance of, or incidental to, the exercise of its regulation-making power cannot be subjected to appellate scrutiny before this Tribunal; and an order / direction of the CERC, in the nature of an administrative direction or pertaining to regulation making exercise, is not amenable to

challenge before this Tribunal. Reliance is placed in this regard on (1) **Uttar Pradesh Sugar Mills Co-Gen Association v. UPERC and Ors**: 2015 SCC OnLine APTEL 28; (2) **MSEDCL v. CERC and Ors**: Judgement of Aptel in Appeal No. 92 of 2011; (3) **Uttar Haryana Bijili Vitran Nigam Ltd & Ors v. CERC & Ors**: (Judgement of Aptel in Appeal No. 383/2022).

(iii) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

On the contention of the Respondents regarding the impugned proceedings being a part of a legislative exercise, it is contended, on behalf of the Appellant, that the Impugned Order, deciding on market coupling, including time frame and the manner, is a quasi-judicial order being a proceeding initiated under Regulation 56(3) of the Conduct of Business Regulations; it is not a legislation or a part of legislation making exercise; and Regulation 58 of the Conduct of Business Regulations does not even provide for such an order to be passed, where a decision is taken even prior to Draft Regulations.

It is further submitted, on behalf of the Appellant, that the impugned order is liable to be set aside for the following reasons: (a) the Order is not reasoned; the CERC did not deal with any of the representations received from the 127 stakeholders including the detailed submissions made by Appellant; the CERC did not answer the issues and questions framed in the staff-paper, and in the order dated 06.02.2024; (b) the Order is passed in violation of principles of natural justice, and transparency as is provided in Section 79(3); while the order records in para 6 that it is “based on submissions made by Grid-India and various consultations held”, it is not understood when the submission were made and consultations held and with whom; Regulation 56 provides for notice to the affected parties; (c) the Reports, based on which the order was passed, were also not made public contrary to its own directions; the right of the Appellant to access the reports

of Grid-India and make out a case that the present market does not warrant market coupling by invoking the enabling provision is taken away; (d) the report dated 16.01.2025, with 29 month data, states that there is only 0.059% economic surplus; the Report dated 30.06.2025 with 4 month data states that there is only 0.3%; price impact is not disclosed in either report; if there is increase in price to consumers, this itself negates the justification for market coupling; it would mean consumers pay more for generators and other exchanges to benefit; all this has come out only from the Reports now filed; the conclusions made in the Impugned Order, passed behind the back of stakeholders, are wrong and not aligned with the findings of Grid-India; (e) even the negligible economic surplus of 0.3% is using software which is not industry grade and needs third party validation and cannot be used to upend the entire market design; (f) the only impact of the impugned order is expropriation of business and market distribution, which cannot be done; all exchanges are highly regulated and, without compelling evidence of public interest, there is no justification to re-design the entire market and convert the power exchange market into one exchange only; in the Staff Paper, it is specifically noted that power exchanges with lower liquidity have been advocating for market coupling to increase their share; (g) market coupling is not a tool for bailing out an underperforming exchange; Regulation 37 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 spells out the objectives of Market Coupling; the order dated 06.02.2024 in Petition 1/SM/2024; raises the issue that needs to be gone into before market coupling is introduced; and all this has been given a go-bye in the Impugned Order.

(iv) JUDGEMENTS RELIED UPON UNDER THIS HEAD:

(a) JUDGEMENTS RELIED ON BEHALF OF CERC:

(i) In **PTC India Ltd. v CERC, (2010) 4 SCC 603**, the Supreme Court observed that the decision-making and regulation-making functions are both assigned to CERC; according to Professor Wade, “between legislative and administrative functions we have regulatory functions”; a statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law (**Shri Sitaram Sugar Co. Ltd. v. Union of India: (1990) 3 SCC 223**); while deciding the nature of an order (decision) vis-à-vis a regulation under the Act, one needs to apply the test of general application; Regulations are in the nature of subordinate legislation; the word “order” in Section 111 of the 2003 Act cannot include Regulations made under Section 178 of the 2003 Act; the words “orders”, “instructions” or “directions” in Section 121 do not confer power of judicial review in the Tribunal; in the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by orders (decisions); the Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the Regulations framed by the Central Electricity Regulatory Commission under Section 178 of the Electricity Act, 2003; and the validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India.

(ii) In **Cellular Operators Association of India v TRAI, (2016) 7 SCC 703**, the Supreme Court besides relying on **Union of India v. Cynamide India Ltd., (1987) 2 SCC 720**, also noted that, in **M.R.F.**

Ltd. v. State of Kerala, (1998) 8 SCC 227 the Supreme Court had held that principles of natural justice cannot be imported in the matter of legislative action; if the legislature in exercise of its plenary power under Article 245 of the Constitution, proceeds to enact a law, those who would be affected by that law cannot legally raise a grievance that before the law was made, they should have been given an opportunity of a hearing; this principle may, in limited cases, be invoked in the case of subordinate legislation specially where the main legislation itself lays down that before the subordinate legislation is made, a public notice shall be given and objections shall be invited as is usually the case, for example, in the making of municipal bye-laws; but the principle of natural justice, including the right of hearing, cannot be invoked in the making of law either by Parliament or by the State Legislature.

(iii) In Union of India v Cynamide India Ltd., (1987) 2 SCC 720, the Supreme Court held that legislative action, plenary or subordinate, is not subject to rules of natural justice; in the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing—there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing, in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation; but, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity; occasionally, the legislature directs the subordinate legislating body to make “such enquiry as it thinks fit” before making the subordinate legislation; in such a situation, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body, and the

subordinate legislation is not open to question on the ground that the enquiry was not as full as it might have been; the provision for “such enquiry as it thinks fit” is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source and not intended to vest any right in anyone other than the subordinate legislating body; and it is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone.

In **Union of India v Cynamide India Ltd.**, the Supreme Court further observed that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion; administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity; any attempt to draw a distinct line between legislative and administrative functions is “difficult in theory and impossible in practice”; though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue; the distinction between the two has usually been expressed as “one between the general and the particular”; a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy”; “Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.”; “Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class” while, “an adjudication, on the other

hand, applies to specific individuals or situations”; but, this is only a broad distinction, not necessarily always true; administration and administrative adjudication may also be of general application and there may be legislation of particular application only; again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action; adjudication is determinative of the past and the present while legislation is indicative of the future; and the object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.

(iv) In **Shri Sitaram Sugar Co. Ltd. v Union of India**, (1990) 3 SCC 223, the Supreme Court referred to Griffith and Street which held an instruction may be treated as legislative even when they are not issued formally, but by a circular or a letter or the like, and what matters is the substance and not the form, or the name; to Kenneth Culp Davis which said that: “What distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it, and adjudication operates concretely upon individuals in their individual capacity”; and to **Prentis v. Atlantic Coast Line Co.**, 211 US 210, 226, wherein it was held that: “A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power”

While holding that the element of general application is often cited as a distinct feature of legislative activity, the Supreme Court quoted the words of Chief Justice Burger, that “rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class”, and Bernard Schwartz who said: “An adjudication, on the other hand, applies to specific individuals or situations. Rule making affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely affected; adjudication operates concretely upon individuals in their individual capacity”; and, according to Schwartz, the “time test” and the “applicability test” are workable in most cases, although in certain situations distinctions are indeed difficult to draw.

The Supreme Court then held that a statutory instrument (such as a rule, order or regulation) emanates from the exercise of delegated legislative power which is the part of the administrative process resembling enactment of law by the legislature; a quasi-judicial order emanates from adjudication which is the part of the administrative process resembling a judicial decision by a court of law; this analogy is imperfect and perhaps unhelpful in classifying borderline or mixed cases which are better left unclassified (See Davis, Administrative Law Text, p. 123); when the function is treated as legislative, a party affected by the order has no right to notice and hearing, unless, of course, the statute so requires; and it being of general application engulfing a wide sweep of powers, applicable to all persons and situations of a broadly identifiable class, the legislative order may not be vulnerable to challenge merely by reason of its omission to take into account individual peculiarities and differences amongst those falling within the class.

(v) In Mallikarjuna Rao v. State of A.P., (1990) 2 SCC 707, the Supreme Court noted that, in **Asif Hameed v. State of Jammu &**

Kashmir:1989 Supp (2) SCC 364, it had, relying on **Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh: (1971) 2 SCC 747** and **State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla: (1985) 3 SCC 169**, held that, when a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and, if not, the court must strike down the action; while doing so, the court must remain within its self-imposed limits; the court sits in judgment on the action of a coordinate branch of the government; while exercising power of judicial review of administrative action, the court is not an appellate authority; and the Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

The Supreme Court further observed that the power under Article 309 of the Constitution of India to frame rules is the legislative power; this power under the Constitution has to be exercised by the President or the Governor of a State as the case may be; the High Courts or Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India; the courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner; and the courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.

(vi) In **Narinder Chand Hem Raj v. Lt. Governor & Administrator, H.P, (1971) 2 SCC 747**, the Supreme Court held that the power to impose a tax is a legislative power; that power can be exercised by the Legislature directly or subject to certain conditions the Legislature may

delegate that power to some other authority; but the exercise of that power, whether by the Legislature or by its delegate is an exercise of a legislative power; the fact that the power was delegated to the executive does not convert that power into an executive or administrative power; no Court can issue a mandate to a Legislature to enact a particular law; similarly no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact; in reality the appellant wants this Court to direct the Government to delete the entry in question from Schedule A and include the same in Schedule B; Article 265 of the Constitution lays down that no tax can be levied and collected except by authority of law; hence the levy of a tax can only be done by the authority of law and not by any executive order; and no Court can give a direction to a Government to refrain from enforcing a provision of law.

(vii) In State of U.P. v. Mahindra & Mahindra Ltd. (2011) 13 SCC 77, the Supreme Court observed that, within the Constitution, is specifically demarcated the ambit of power and the boundaries of the three organs of the society by laying down the principles of separation of powers, which is being adhered to for carrying out democratic functioning of the country; so far as legislation is concerned, the exclusive domain is with the legislature; subordinate legislations are framed by the executive by exercising the delegated power conferred by the statute, which is the rule-making power; the judiciary has been vested with the power to interpret the aforesaid legislations and to give effect to them since the parameters of the jurisdiction of both the organs are earmarked; it is inappropriate for courts to issue a mandate to legislate an Act and also to make a subordinate legislation in a particular manner; and, in this particular case, the High Court had directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which is not a power vested in the High Court.

(viii) In R v London Borough of Haringey 2014 UKSC 56

(Paras 37-41), it has been held that the common law imposes a general duty of procedural fairness upon public authorities exercising a wide range of functions which affect the interests of individuals, but the content of that duty varies almost infinitely depending upon the circumstances; there is however no general common law duty to reasons; a duty of consultation will however exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation; this case is concerned with a statutory duty of consultation; such duties vary greatly depending on the particular provision in question, the particular context, and the purpose for which the consultation is to be carried out; the duty may, for example, arise before or after a proposal has been decided upon; it may be obligatory or may be at the discretion of the public authority, it may be restricted to particular consultees or may involve the general public; the identity of the consultees may be prescribed or may be left to the discretion of the public authority, the consultation may take the form of seeking views in writing, or holding public meetings; and so on and so forth; the content of a duty to consult can therefore vary greatly from one statutory context to another; the nature and the object of consultation must be related to the circumstances which call for it (**Port Louis Corporation v Attorney-General of Mauritius [1965] AC 1111, 1124**); a mechanistic approach to the requirements of consultation should therefore be avoided; depending on the circumstances, issues of fairness may be relevant to the explication of a duty to consult; in the present context, the statutory obligation is, "before making a scheme", to consult any major precepting authority, to publish a draft scheme, and, critically, to "consult such other persons as in considers are likely to have an interest in the operation of the scheme"; all residents of the local authority's area could reasonably be regarded as "likely to have an

interest in the operation of the scheme"; such wide-ranging consultation, in respect of the exercise of a local authority's exercise of a general power in relation to finance, is far removed in context and scope from the situations in which the common law has recognised a duty of procedural fairness; the purpose of public consultation in that context is not to ensure procedural fairness in the treatment of persons whose legally protected interests may be adversely affected, as the common law seeks to do; and the purpose of this particular statutory duty to consult must be to ensure public participation in the local authority's decision-making process.

It was further held that, in order for the consultation to achieve that objective, it must fulfil certain minimum requirements; meaningful public participation in this particular decision-making process, in a context with which the general public cannot be expected to be familiar, requires that the consultees should be provided not only with information about the draft scheme, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of the draft scheme; and that follows, in this context, from the general obligation to let consultees know "what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response".

The law declared, in **PTC India Limited vs CERC: 2010 (4) SCC 603**, is that a statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power; Regulations are in the nature of subordinate legislation and do not fall within the ambit of the expression "order" under Section 111(1); and the Regulations made under Section 178 can only be subjected to challenge in judicial review proceedings. As shall be detailed later in this order, the impugned proceeding is not a Regulation made under Section 178 of the Electricity Act, and the source of power to

pass the impugned proceeding is not referable to any statutory provision either in the 2005 Rules or in the 2023 Regulations.

The law declared by the Supreme Court, in **Cellular Operators Association of India vs TRAI: 2016 (7) SCC 703**, is that principles of natural justice cannot be imported in the matter of legislative action, including subordinate legislation. We see no reason to apply the principles of natural justice test, not because the impugned proceeding is a part of the legislative process of Regulation making, but because the said proceeding does not cause prejudice to any of the power exchanges in as much as neither does it adversely affect their rights nor does it fasten any liability on them. Reliance placed, on behalf of the CERC, on the judgement in **Cellular Operators Association** is misplaced.

In **Union of India vs Cynamide India Ltd: 1987 (2) SCC 720**, the Supreme Court held that legislative action, plenary or subordinate, is not subject to rules of natural justice except to the extent specifically provided by the legislation itself. As shall be detailed hereinafter, the impugned proceedings are not referable to any of the clauses in Part-X of the 2023 Regulations. Rules of natural justice would not apply as the Appellant cannot be said to suffered any prejudice as a result of the impugned proceedings. That does not, however, detract from the character of the said proceedings being an administrative order, and an 'order' falling within the ambit of Section 111(1) of the Electricity Act.

In **Shri Sitaram Sugar Company Ltd. v. Union of India (1990) 3 SCC 223**, reference was made by the Supreme Court to Griffith and Street which held that an instruction may be treated as legislative even when they are not issued formally, what matters is the substance and not the form, or the name; a statute emanates from the exercise of delegated legislative power; and

when a function is treated as legislative, the party affected by the order has no right to notice of hearing.

The question which arises for consideration in the present appeal is whether the impugned proceedings dated 23.07.2025 forms part of the legislative exercise of regulation making and, as Chapter X of the 2023 Regulations does not stipulate for proceedings, such as the one dated 23.07.2025, being issued prior to the making of the Regulations, the said proceedings, which contains the decision of the CERC to implement market coupling in the round robin mode, cannot be said to form part of the regulation making exercise.

In **Mallikarjuna Rao v. State of AP**, and the judgments referred to therein, the Supreme Court administered a word of caution to courts to remain within its self-imposed limits, and not to direct or advise the executive in matters of policy or to sermonize qua any matter. What we are required to consider in this appeal is whether or not the impugned proceedings is quasi legislative or quasi-judicial in character, or whether it is merely an administrative order falling within the ambit of the expression “order” referred to in Section 111 of the Electricity Act. Neither have we tendered any advise to the CERC regarding making of Regulations much less have issued sermons. Reliance placed on this judgment by the learned Additional Solicitor General is wholly misplaced.

The aforesaid judgment also holds that courts cannot direct the regulation making authority to make regulations. No such direction is being issued by way of the present judgement, conscious as we are that this Tribunal cannot direct the Commission either to make or to refrain from making regulations or to direct them to make regulations in a particular manner. The regulation making power under Section 178 must be exercise by the CERC alone, after complying with the statutory requirements in the

2005 Rules and the 2023 Regulations. All that is being held, under this head, is that the impugned proceedings do not form part of the statutorily prescribed (2005 Rules and the 2023 Regulations) procedure for making regulations, and cannot therefore be said to form part of the regulation making exercise to be undertaken by the CERC.

In **Narinder Chandra Hem Raj v. Lt. Governor and Administrator HP (1971) 2 SCC 747**, the Supreme Court held that the mere fact that legislative power has been delegated to the executive does not convert that power into an executive or administrative power, and that no court can issue a mandate to the subordinate legislative body to enact or not to enact law which it may be competent to enact. As observed earlier, in the context of the judgement in **Malikarjuna Rao v. State of AP**, we have not issued any such direction to the CERC with respect to the exercise of its power to make regulations. Reliance placed on this judgment is also misplaced.

In **State of UP v. Mahindra and Mahindra Ltd., (2011) 13 SCC 77**, the Supreme Court referred to the demarcated ambit of power and the boundaries of the three organs of the State by laying down the principles of separation of powers; and held that it was inappropriate for Courts to issue a mandate for subordinate legislation to be made in a particular manner. No such direction is being issued in the order now passed by us.

The judgment of the U.K. Supreme Court, in **R. v. London Borough of Haringey (2014) UKSC 56**, refers to the absence of a duty in the general common law to assign reasons, and that the duty of consultation exists which may vary depending on the particular provision in question. The process of consultation in the Regulation making exercise is as stipulated in in the 2005 Rules and the 2023 Regulations neither of which contemplate proceedings, such as the one dated 23.07.2025, being issued as a prelude to the making of Regulations.

(b) JUDGEMENTS RELIED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

(i) In **Uttar Pradesh Sugar Mills Co-Gen Association v. UPERC and Ors**: 2015 SCC OnLine APTEL 28 (para 18- 27), this Tribunal referred to **MSEDCL v. CERC** on which the Respondents had placed reliance; in that case the CERC had notified the Central Electricity Regulatory Commission(Sharing of Inter-State Transmission of charges and losses) Regulations 2010(ISTS Regulations), and the National Load Despatch Centre(NLDC) was designated as the Implementing Agency for implementing the ISTS Regulations; while implementing the ISTS Regulations, NLDC experienced some difficulties. NLDC filed a petition before the CERC praying for removal of the said difficulties; the CERC, by the impugned order, amended the ISTS Regulations; the Appellant challenged the said order by filing appeal in this Tribunal on the ground that the CERC had dispensed with the mandatory requirement of previous publication as contemplated under Section 178(3) of the Electricity Act, and there being violation of the procedure the impugned order was illegal; and the CERC had not followed principles of natural justice. Objecting to the maintainability of the appeals, the Respondents submitted that the impugned order amends the regulations made under Section 178 of the Electricity Act, as such the vires of the regulations framed by exercising regulatory power cannot be questioned before this Tribunal. Counsel for the Appellant, on the other hand, had urged that the impugned order was in the nature of determination arrived at after following quasi-judicial procedure which culminated in the issuance of an order; it was not in the nature of legislative exercise; it was issued by the CERC in the executive capacity, hence the appeal was maintainable; the Appellant had not assailed the vires of the regulations; they were merely questioning the manner of exercise of the power; and any order, purporting to remove difficulty, cannot be considered

as representing an exercise beyond that of determination of tariff under Section 62 of the Electricity Act.

While dealing with these submissions this Tribunal, in **MSEDCL v. CERC**, had held that the impugned order was passed by the CERC in exercise of its regulatory power and not adjudicatory power and hence the appeal was not maintainable; Regulation 21 of the ISTS Regulations confers power on the CERC to remove difficulties; CERC, under Regulation 21, may direct the Implementing Agency or other entities to take suitable action; hence, the nature of power under Regulation 21 is administrative while exercising the regulatory powers. Rejecting the contention that ISTS regulations in reality fix tariff and therefore exercise under Regulation 21 is necessarily an order, this Tribunal observed that the ISTS Regulations contain the principles and methodology for sharing ISTS charges and losses, and there is no determination of tariff thereby; therefore, the exercise of power while passing the impugned order was not under adjudicatory power of CERC but was under regulatory power; the directions given by the State Commission became integral part of the ISTS Regulations; when direction in relation to the amendment of regulations is given it cannot be said that it is an adjudicatory order which decides the disputes between the parties; the impugned order was not passed in exercise of adjudicatory power, but it is the outcome of the exercise of regulatory power and hence the appeal is not maintainable.

In **Uttar Pradesh Sugar Mills Co-Gen Association**, this Tribunal further held that, undoubtedly in **MSEDCL v. CERC**, a petition was filed for removal of difficulties in implementation of the ISTS Regulations; Regulation 21 of the ISTS Regulations conferred power on the CERC to remove difficulties and the CERC could under the said Regulations direct the Implementing Agency to take suitable action; hence, it was held that nature

of the power under Regulation 21 was regulatory in nature; in this case there is no provision in the original CRE Regulations, 2014 to remove difficulty; but in this case Regulation 7 of the CRE Regulations 2014 vests in the State Commission general power to amend; Regulation 8 contains the Commission's power to relax; in view of these provisions it cannot be said that the State Commission in this case lacked the power to amend regulations; power contained in Regulation 7 & 8 is a regulatory power; assuming the proceedings before the State Commission were under Section 94(1)(f) it is the case of the Appellants that under Section 94(1)(f), the State Commission cannot review a regulation, it can only review its decisions, directions and orders; it is the case of the Respondents that the State Commissions has exercised regulatory powers under Regulations 7 and 8 of the CRE Regulations 2014 and the amendment is carried out in exercise of powers conferred under Section 181 read with Sections 9, 61, 86(1)(a), 86(1)(b) & 86(1)(e) of the Electricity Act; if, by admitting the appeal, this Tribunal were to embark upon the task of deciding this issue, they would be undertaking judicial review of the amended regulation which they could not do; the fact that the CRE Regulations 2014 did not vest power to remove difficulties on the State Commission did not make this judgment inapplicable to the present case; pertinently, the Respondents are drawing support from the observations of this Tribunal in **MSEDCL v. CERC** that when direction in relation to the amendment of regulations is given it cannot be said that it is an adjudicatory order which decides the disputes between the parties and that this Tribunal can entertain the Appeal related to the orders passed by the Commission for determination of tariff and resolution of the disputes through the exercise of the adjudicatory power, but not against the orders passed under regulatory power.

This Tribunal, in **Uttar Pradesh Sugar Mills Co-Gen Association**, thereafter observed that, in **Madhya Pradesh Power, Generation**

Company, the Appellant generating company had filed a petition before the State Commission for relaxation of the operating norms of tariff determination by virtue of the power under the relevant regulations because the norms were impossible to be met with on the ground that the generating stations were old; the State Commission rejected the prayer; an appeal was filed under Section 111 of the Electricity Act by the generating company praying that the State Commission's order be set aside; this Tribunal observed that the regulations framed by the State Commission or the Central Commission partake the character of subordinate or delegated legislations having force of law. Referring to **PTC India**, this Tribunal held that it has no jurisdiction to examine the validity of the regulations; the validity of the regulations can be only challenged by seeking judicial review thereof.

It was argued, in **Madhya Pradesh Power, Generation Company**, that the Appellant therein was not challenging the regulations, nor was it asking for amendment of the regulations, and the Appellant was only asking for a direction to modify the norms in exercise of the Commission's power to relax or to remove difficulties or to apply inherent power; this submission of the Appellant was rejected by this Tribunal holding that relaxation of norms which was prayed for was possible only when the notified regulation is again notified by bringing about an amendment thereof; when it asks the State Commission to amend its regulations it virtually implies that the regulations framed by it are deficient and that would amount to exercising powers of judicial review which it does not possess as stated by the Constitution Bench in **PTC India**; if it asks the State Commission to exercise the power of removal of difficulty or to relax norms or to exercise inherent power, it would be giving directions indirectly which it cannot give directly; if it gives direction to the State Commission to amend the regulations, it would be required to observe that the norms set out in the regulations are unjust or improper or illegal and hence amendment is necessary; that would mean it would have

to undertake judicial review of the regulations which it cannot do; and hence the appeal was not maintainable.

This Tribunal, in **Uttar Pradesh Sugar Mills Co-Gen Association**, held that the judgment, in **Madhya Pradesh Power, Generation Company**, supported the Respondents' case on maintainability; here the Appellants wanted this Tribunal to set aside the impugned order which had directed that CRE Regulations 2014 be amended; in effect the Appellants wanted the amended regulations to be set aside; the Appellants' grievance was about the contents of the amendment, but it was sought to be set aside on the ground that proper procedure was not followed or the manner of exercise of power was not proper; if this Tribunal sets aside the impugned order, the amendment will be set aside; to set aside the amendment this Tribunal will have to come to a conclusion that the amendment was illegal as proper procedure was not followed; that would amount to undertaking judicial review of the amendment which is a part of CRE Regulations 2014; and the Appellants wanted this Tribunal to indirectly undertake judicial review of CRE Regulations 2014 which this Tribunal could not do directly.

This Tribunal, in **Uttar Pradesh Sugar Mills Co-Gen Association**, further held that, in **Madhya Pradesh Power Generating Company**, the State Commission was concerned with a petition praying for relaxation of norms; relaxation of norms would have required amendment of the regulations; that would have led to judicial review of the existing regulations, that is, this Tribunal would have had to come to a conclusion that existing regulations were deficient; hence, the appeal against the order rejecting the prayer was held not maintainable; similarly, in this case for setting aside the order directing that amendment be made to CRE Regulations 2014, this Tribunal will have to come to the conclusion that the amended regulation was not properly framed as the required procedure was not followed; that would

involve judicial review of the amended regulation which they could not undertake; examined from any angle, judicial review of the amended regulation was inevitable; pertinently, while the Appellants submit that the amendment had not come into effect, the Respondents had submitted that it has been given effect to; If they were to set aside the impugned order and consequently the amendment, they would have to return a finding that it was not properly framed; if they confirmed the impugned order, they would have to return a finding that it is properly framed; **PTC India** did not permit them to undertake judicial review; in the light of **MSEDCL v. CERC**, and **Madhya Pradesh Power Generating Company**, the present appeals were not maintainable; and the Appellant was free to adopt the remedy of judicial review if they were so advised.

(ii) In MSEDCL v. CERC and Ors: (Judgement of Aptel in Appeal No. 92 of 2011 (para 23-28), (2011 SCC OnLine APTEL 119), this Tribunal observed that the tariff of Inter State Transmission System, under Section 62 of the Electricity Act, is fixed in accordance with the principles and methodology laid down in Chapter 3 & 4 of the Tariff Regulations of the Central Commission; merely because the petition was submitted by NLDC (R 2), and the same was entertained by the Central Commission which heard NLDC and passed the impugned order amending the Regulations by giving reasons, it could not be held that this order has been passed by exercising the quasi-judicial powers conferred upon the Commission under Section-62 of the Electricity Act, 2003; a bare reading of the impugned order clearly showed that the directions given by the Commission became an integral part of the 2010 ISTS Regulations; when the direction in relation to the amendment of Regulations was given, it could not be said that it is an adjudicatory order which decides the disputes between parties; Section-61 is the enabling provision for framing of the Regulations by the Central Commission; as per this Section determination of terms and conditions of

tariff i.e. Regulations has been left to the Regulatory function of the Commission; Section 62 is the provision conferring powers to the Commission for actual tariff determination on the basis of Regulations framed under Section-61; as held by the Supreme Court, prescription of specific terms and conditions for determination of tariff are different from actual tariff determination in accordance with the provision of the Act for supply of electricity; in **PTC India Ltd vs CERC**: (2010) 4 SCC 603, the Constitution Bench of the Supreme Court held, in Para 53, that under the Electricity Act, the Central Commission is a decision-making as well as regulation-making authority, simultaneously; Section 79 delineates the functions of the Central Commission broadly into two categories – mandatory functions and advisory functions, Tariff regulation, licensing (including inter-State trading licensing), adjudication upon disputes involving generating companies or transmission licensees fall under the head “mandatory functions” whereas advising the Central Government on formulation of National Electricity Policy and tariff policy would fall under the head “advisory functions”; in this sense, the Central Commission is the decision-making authority; such decision-making under Section 79(1) is not dependent upon making of regulations under Section 178 by the Central Commission; therefore, the functions of the Central Commission enumerated in Section 79 are separate and distinct from functions of the Central Commission under Section 178; the former are administrative/adjudicatory functions whereas the latter are legislative (Para 66); while deciding the nature of an order (decision) vis-à-vis a regulation under the Act, one needs to apply the test of general application; on the making of Regulations, even the existing power purchase agreements (PPA) should be modified and aligned with the said Regulations; in other words, the Regulations make an inroad into even the existing contracts; this itself indicates the width of the power conferred on CERC under Section 178 of the 2003 Act. Regulations are in the nature of

subordinate legislation; such regulatory intervention into the existing contracts across the board could have been done only by making regulations under Section 178, and not by passing an order under Section 79(1) of the 2003 Act; and the word “order” in Section 111 of the 2003 Act cannot include the impugned 2006 Regulations made under Section 178 of the 2003 Act.

This Tribunal, in **MSEDCL v. CERC and Ors**, further observed that the ratio of **PTC India Ltd vs CERC**: (2010) 4 SCC 603 was as follows: (1) in the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas to be discharged by orders(decisions). (2) a Regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act; and (3) if a dispute arises in adjudication on interpretation of a Regulation made under Section 178, an appeal would certainly lie before the Appellate Tribunal under Section 111, however, no appeal to the Appellate Tribunal shall lie on the validity of a Regulation made under Section 178.”

This Tribunal, in **MSEDCL v. CERC and Ors**, summed up holding that, as per the ratio referred to above, laid down by the Supreme Court in **PTC India Ltd vs CERC**, this Tribunal, under Section 111 of the Act cannot interfere with the orders passed in the exercise of the Regulatory Powers vested with the Central Commission under Sections 61 and 178 of Electricity Act 2003; it could only entertain the Appeal in relation to orders passed by the Commission for determination of tariff and for resolution of the disputes

through the exercise of the adjudicatory power, but not against the orders passed under the Regulatory Power.

(iii) In **Uttar Haryana Bijli Vitran Nigam Ltd & Ors v. CERC & Ors: Judgement of Aptel in Appeal No. 383/2022 (para 55, 70-77) (2024 SCC OnLine APTEL 4)**, this Tribunal, after referring to **PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**, observed that the CERC has only undertaken the exercise of interpretation of Section 2(36) and (37) of the Electricity Act, besides holding that provisions of the 2010 Sharing Regulations were not attracted; the exercise undertaken by the CERC, of interpreting statutory provisions in a petition filed by the appellant, was undoubtedly an adjudicatory function, and the order passed by the CERC would consequently relate back to the date on which the 2003 Act and the 2010 Sharing Regulations came into force; the law declared by the CERC, in its order dated 04.05.2018, must be held to be the law prevailing from when the 2003 Act and the 2010 Sharing Regulations were made, and not from 04.05.2018 when it passed the earlier order; it is true, as held by the Supreme Court in *PTC India*, that the CERC, under the provisions of the Electricity Act, exercises legislative functions (i.e it has been conferred the power to make regulations under Section 178), regulatory functions (mainly under Section 79) and adjudicatory functions (also under Section 79) of the Electricity Act; the order passed by the CERC on 04.05.2018 is in a petition filed by the appellant seeking a declaration and raising a claim and, consequently, the CERC must be held to have exercised its adjudicatory powers to pass both the orders dated 04.05.2018 and 30.07.2022; in **Madhya Pradesh Power Generation Company Ltd. v. MPERC (Order in Review Petition No. 3 of 2011 dated 1st March, 2012)**, this Tribunal held that the Commission has manifold powers, namely, administrative, supervisory, legislative and adjudicatory, but each power must be exercised at the appropriate field; simply because a Commission

has many powers, it cannot be said that, while exercising one power, it oversteps its limit in that power and assumes another jurisdiction; applying the law declared by this Tribunal in the aforesaid judgment, would require us to hold that the CERC, while passing the adjudicatory order dated 04.05.2018, was disabled from exercising its regulatory powers; even if we were to proceed on the premise that the CERC can also exercise its regulatory powers, while adjudicating a dispute in the exercise of its adjudicatory functions, such exercise of regulatory power cannot fall foul of any regulations made by the CERC under Section 178 of the Electricity Act; and, consequently, the Commission cannot exercise its regulatory powers under Section 79 contrary to the statutory regulations, if any, made under Section 178 of the Electricity Act.

This Tribunal, in **Uttar Haryana Bijili Vitran Nigam Ltd**, further observed that there was nothing in the order dated 04.05.2018 to indicate that the CERC had exercised its regulatory power to make a regulation which was of general application; while the order dated 04.05.2018, no doubt, records that POSOCO had brought to its notice the regulatory provisions under which long term access for IGSTPS has been considered and the bills for PoC charges and losses were raised on the appellant, the CERC has not expressed any opinion on such submissions of POSOCO and has, instead, observed that they had granted relief to the appellant by virtue of interpretation of the various provisions of the Regulations; the conclusion of the CERC that its interpretation was a departure from the prevailing regulatory regime is not borne out by any reference either to a statutory regulation then in existence, or to any regulatory order of general application having been passed by the CERC prior to its jurisdiction being invoked by the appellant on 02.06.2017 by way of a petition which resulted in the order dated 04.05.2018 being passed; the fact that POSOCO and CTUIL were of the view that the subject Transmission Line was a Inter-State Transmission

Line, falling under the POC mechanism, did not amount to a regulatory regime being in existence, in as much as the regulatory power, permissible to be exercised in the absence of Statutory Regulations, is conferred by the Electricity Act only on the CERC, and not on POSOCO or CTUIL; in the light of the specific finding recorded by the CERC that the 2010 Sharing Regulations did not contain any specific provision in this regard, which is why it had directed its staff to take steps to have the 2010 Sharing Regulations amended to clarify the position, it is only if the CERC had passed a specific order of general application exercising its regulatory powers, could it then be said that a regulatory regime was then in existence; no such regulatory exercise, having been undertaken by the CERC, has been referred to either in the order passed by it on 04.05.2018 or even in the impugned order dated 30.07.2022; in its order in “**Steel Authority of India Limited v. Western Regional Load Despatch Centre (WRLDC)** (Order in Petition No. 211/MP/2011 dated 05.10.2017)”, the CERC held that the present case had implication to similarly placed entities, and States which draw power from the bus-bar of an ISGS through the transmission systems of STU without utilizing the ISTS; and the staff was directed to examine the issue and propose amendment to the Sharing Regulations for clarity; such instructions neither amounted to exercise of regulatory power nor exercise of the regulation making power by the CERC, since the Electricity Act requires the CERC to exercise such powers and not its staff; eventually the Regulations were amended in 2020, making a specific provision in this regard; and, as the 2020 amendment would only apply prospectively, there was neither a statutory regulation nor a regulatory order passed by the CERC to the contrary in force prior thereto.

The challenge, in **UP Sugar Mills Co-Generation Association v. UPERC: 2015 SCC OnLine APTEL 28**, was to the validity of the 2010 Regulations on the ground that the regulations were made dispensing with

the mandatory requirement of previous publication under Section 178. Since Regulations had already been made, this Tribunal observed that entertaining any challenge thereto would amount to exercising the power of judicial review, which power was not available to be exercised by this Tribunal. In the present case, the validity of Regulations, which are in the nature of subordinate legislation, is not under challenge. Reliance placed on the said judgment is therefore misplaced.

In **MSEDCL v. CERC (2011) SCC OnLine APTEL 119**, this Tribunal held that the order, amending the Regulations, could not be held to have been passed in the exercise of quasi-judicial powers nor could it be said to be an adjudicatory order; and this Tribunal, in an appeal under Section 111 of the Electricity Act, could not interfere with an order passed by the Commission under Sections 61 and 178 of the Electricity Act. As the impugned proceedings herein dated 23.07.2025 is not referable either to Section 61 or Section 178 of the Electricity Act, reliance placed on the aforesaid judgement is of no avail.

In **Uttar Haryana Bijli Vitran Nigam Ltd. v. CERC (2024) SCC OnLine APTEL 4**, this Tribunal observed that the CERC had itself recorded that the 2010 Sharing Regulations did not contain a specific provision; it was only if the CERC passed a specific order exercising its regulatory powers could it then be said that a regulatory regime was in existence; no such regulatory exercise was undertaken by the CERC; the instructions to its staff, to examine the issue and propose amendments to the sharing regulation, neither amounted to exercise of regulatory power nor the exercise of regulation making power by the CERC since the Electricity Act requires the CERC to exercise its powers, and not its staff. Reliance placed on behalf of the Respondent Power Exchange on this judgment is also wholly misplaced.

(v) ANALYSIS:

It is contented both by the Learned Additional Solicitor General appearing on behalf of the CERC and Shri Vikas Singh, Learned Senior Counsel appearing on behalf of the 3rd Respondent, that the impugned proceedings dated 23.07.2025 is a prelude to the making of Regulations, and is part of the Regulation making exercise, under Section 178 of the Electricity Act, and is therefore pre-legislative in character. On the other hand, the submission urged on behalf of the Appellant, by Mr. Sanjay Sen, Learned Senior Counsel, is that the said proceeding is a quasi-judicial order.

Legislative power is exercised by the legislature directly or, subject to certain conditions, by some other authority on such a power being delegated to them by the Legislature. But exercise of that power, whether by the legislature or by its delegate, is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. **(Dhananjay Verma versus State of Uttarakhand & others (Judgement of the Division Bench of the Uttarakhand High Court in Writ Petition (S/B) No. 45 of 2014 dated 21.05.2019).**

Rules and regulations are all comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the said policy. The

need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes. **(State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517; St. John's Teachers Training Institute v. Regional Director, NCTE: (2003) 3 SCC 321).**

The provisions in the primary legislation, which confer the power to enact subordinate legislation, are also called “enabling provisions”. Delegated legislation—otherwise known as secondary or subordinate legislation—is enacted by the administrative branch of the Government, usually under the powers conferred upon it by the primary legislation. Delegated legislation takes a number of forms and a number of terms—rules, regulations, bye-laws, etc. **(PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).**

A statutory instrument (such as a rule or regulation) emanates from the exercise of delegated legislative power which is a part of the administrative process resembling enactment of law by the legislature. **(Shri Sitaram Sugar Co. Ltd. and Ors. vs. Union of India (UOI) and Ors.: MANU/SC/0249/1990; PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).** As the rule/regulation making power is a species of delegated legislation, a delegate can make rules only within the four corners of the statute. **(West v. Gwynne (1911) 2 Ch. 1; Mahabir Vegetable Oils (P) Ltd. v. State of Haryana MANU/SC/8022/2006 : (2006) 3 SCC 620; Kothamaram Nagi Reddy vs. The Government of Andhra Pradesh: MANU/AP/0001/2013).** A statutory rule/regulation, while ever subordinate to the parent statute, is, otherwise, to be treated as a part of the

statute, and as effective. (**State of U.P. v. Babu Ram Upadhya MANU/SC/0312/1960 : (1961) 2 SCR 679; Maxwell; Interpretation of Statutes, 11th Edn. pp. 49-50; M/s. Hind Stone etc. MANU/SC/0394/ 1981 : AIR 1981 SC 711; The Prudential Cooperative Bank Ltd. vs. The A.P. Cooperative Tribunal: MANU/AP/2292/2014; West Bengal Electricity Regulatory Commission v. C.E.S.C. Ltd. MANU/SC/0859/ 2002 : AIR 2002 SC 3588; A.P. State Financial Corpn. vs. Magna Hard Tempt Ltd : MANU/AP/0392/2008**).

It is useful in this context to refer to Section 178 of the Electricity Act which relates to the powers of the Central Commission to make regulations. Section 178(1) stipulates that the Central Commission may, by notification, make regulations consistent with the Act and the rules generally to carry out the provisions of the Act. Section 178(2) provides that in particular, and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely (a) to (ze) thereunder. Section 178(3) stipulates that all regulations made by the Central Commission under this Act (ie the Electricity Act) shall be subject to the conditions of previous publication.

The power to make Regulations under Section 178 of the Electricity Act is a legislative power and the notification issued under that Section amounts to a piece of subordinate legislation. (**PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**). A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before Courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the Electricity Act. (**PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**)

The power of judicial review, of the validity of the regulations made under Section 178, is not conferred on the Appellate Tribunal for Electricity, under the Electricity Act, 2003. If a dispute arises in adjudication on interpretation of a regulation made under Section 178, an appeal would lie before the Appellate Tribunal under Section 111, however, no appeal to the Appellate Tribunal shall lie on the validity of a regulation made under Section 178. The validity of the Regulations may be challenged by seeking judicial review under Article 226 of the Constitution of India. **(PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).**

Section 178(1) is an enabling provision, and the Central Commission is conferred power thereby to make regulations. The power of the Central Commission to make regulations is subject to the following conditions stipulated in Section 178(1) ie (i) the said power must be exercised by way of a notification; (ii) the regulations to be made must be consistent with the provisions of the Electricity Act and the Rules (ie the Rules made under Section 176); and (iii) the regulations so made must be in order to carry out the provisions of the Electricity Act. Section 176(1) enables the Central Govt, by notification, to make rules for carrying out the provisions of the Electricity Act. Consequently, the regulations made by the Central Commission under Section 178(1) must be consistent with the Electricity Act and the Rules made by the Central Government under Section 176(1). The word “notification” is an expression defined in Section 2(46) of the Electricity Act to mean a “notification” published in the Official Gazette, and the expression “notify” to be construed accordingly. It is only on its publication in the Official Gazette would the Regulations, made by the Central Commission under Section 178, ordinarily come into force.

The submission, urged on behalf of the Respondents, is not that the impugned proceedings dated 23.07.2025 are “Regulations”, but that they are

a prelude to the making of regulations, and since they form part of the Regulation making exercise, they are immune from appellate scrutiny, and cannot be subjected to challenge by way of an appeal filed under Section 111(1) of the Electricity Act. Let us therefore take note of what is stipulated both in the 2005 Rules and the 2023 Regulations with respect to the steps to be taken before Regulations are made.

As noted hereinabove, in terms of Section 178(3), the regulation made by the Central Commission, under Section 178 of the Electricity Act, is subject to the conditions of previous publication. The Central Government made the Electricity (Procedure for Previous Publication) Rules, 2005 (the “2005 Rules” for short) which were notified in the Gazette of India on 09.06.2005. In view of Section 178(3), the power of the Central Commission, under Section 178 to make regulations, is subject to fulfilment of the conditions stipulated in the 2005 Rules. The detailed procedure, for previous publication under Rule 3(1) of the 2005 Rules, commences with a draft regulation being published for the information of persons likely to be affected thereby. The 2005 Rules do not require any proceeding, such as the impugned proceedings dated 23.07.2025, being issued before publication of the draft Regulations.

Regulation 58(4) of the 2023 Regulation enables the Commission to come up with a staff paper highlighting broad issues under consideration, and invite comments from the stakeholders through public notices after preparing a staff paper. Regulation 58(6) of the 2023 Regulations requires the Commission to issue draft regulation, upload the same on its website and invite comments in writing from various stakeholders. While issuing a staff paper under Regulation 58(4) is at the discretion of the Commission, and it is open to the Commission to straightaway issue draft regulations under Regulation 58(6) and invite comments thereupon, Chapter-X of the 2023

Regulation does not require the Commission to issue any other proceeding prior to or de hors the staff paper governed by Regulation 58(4). In the present case, the staff paper was issued by the Commission on market coupling in August 2023, and comments of the stakeholders were invited on issues and the questions highlighted in Section 5 of the said staff (discussion)paper.

As noted hereinabove, after a staff paper is issued in terms of Regulation 58(4), the 2023 Regulation requires the Commission only to issue draft regulations and invite comments thereupon in terms of Regulation 58(6). While Regulation 58(5), no doubt, enables the Commission to seek information and data from various stakeholders through letters or orders for the purpose of framing Regulations, and set a time limit for submission of information, the impugned proceeding dated 23.07.2025, as detailed hereinabove, was not confined merely to the Commission seeking information and data from the stakeholders.

The proceedings dated 23.07.2025 is an order as referred to in Section 111(1), and is not immune from challenge by way of an appeal, on the ground that it is a part of the legislative exercise/ Regulation making exercise, more so as neither the 2005 Rules nor Chapter X of the 2023 Regulations stipulate any such order being passed or such a proceeding being issued as part of the Regulation making exercise.

Section 66 of the Electricity Act requires the Commission to endeavour to promote development of a market for power, and the manner in which such a market should be developed is required to be specified by way of regulations. Guidance is required to be drawn by the appropriate Commission, in terms of Section 66, from the National Electricity Policy made under Section 3 of the Electricity Act. Para 5.7.1 (d) and 5.7.1 (f) of the National Electricity Policy dated 12.02.2025 emphasize that development of

power market is needed to be undertaken by the Appropriate Commission in consultation with all concerned, and for enabling regulations of power exchange to be notified by the Appropriate Commission within six months. Regulation 5 of the 2021 Regulations relates to contracts transacted on power exchanges and Regulation 5.1 relates to day ahead contracts and real time contracts. Regulation 5.1 (a) (i) stipulates that price discovery shall be done by the power exchanges or by market coupling operators as and when notified by the Commission. Part 4 of the 2021 Regulations relates to power exchanges and Regulations 8 thereunder prescribes the objectives of the power exchanges. Regulation 8(2) stipulates that the power exchanges shall be established and operated with the objective of assuring fair, neutral, efficient and robust price discovery till such time the responsibilities are transferred to the Market Coupling Operator in respect of Day Ahead Contracts or Real-time Contracts or any other contracts as notified by the Commission. Regulation 8.2 envisaged responsibility of ensuring fair, neutral, efficient and robust price discovery being transferred to market coupling operators in respect of day ahead contracts. Regulation 19 relates to Bye-laws, rules and business rules of Power Exchange. Regulation 19(1)(c) requires the power exchange to function according to its by-laws, rules and business rules as approved by the Commission which, among others, shall cover price discovery and matching mechanism, including market splitting to handle congestion in transmission corridor, till such time the responsibilities are transferred to the Market Coupling Operator in respect of Day Ahead Contracts or Real-time Contracts or any other contracts as notified by the Commission.

Part 4 of the 2021 regulations, as noted hereinabove, relates to market coupling and, while Regulation 37 details the objectives of market coupling and Regulation 38 to designation of the Market Coupling Operator, Regulation 39 makes it clear that the provisions with regard to market

coupling and market coupling operator in the 2021 Regulations shall come into effect as and when decided by the Commission in accordance with the Regulations to be specified separately. While Regulation 39 envisages a decision being taken by the Commission, such a decision must be by way of separate regulations to be made by the Commission. Any decision taken other than by way of Regulations, to effectuate the provisions of the 2021 Regulations with regard to market coupling and market coupling operator, is of little consequence, and can at best be tentative, for Regulation 39 of the 2021 Regulations requires the decision taken by the Commission to be specified not by way of an order or by issuing directions, but in the Regulations to be made by the Commission.

While Section 79(1) details the functions which the Central Commission is required to discharge and Section 79(2) details matters where the Central Commission is required to advise the Central Government, Section 79(3) requires the Central Commission to ensure transparency while exercising its powers and in discharging its functions.

It is no doubt true that, even while exercising its powers under Section 178 to make Regulations, the Central Commission is required to ensure transparency. In ***Cellular Operators Association of India v TRAI, (2016) 7 SCC 703***, the Supreme Court observed that, subject to certain well-defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be “transparent”; they would exhort Parliament to take up this issue and frame a legislation along the lines of the US Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation-making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly

takes into account what they have said and the reasons for agreeing or disagreeing with them; not only would such legislation reduce arbitrariness in subordinate legislation-making, but it would also conduce to openness in governance; it would also ensure redressal, partial or otherwise, of grievances of the stakeholders concerned *prior* to the making of subordinate legislation; this would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable; the finding of the High Court that a transparent process was followed by TRAI in making the impugned Regulation was only partly correct; while it was true that all stakeholders were consulted, but unfortunately nothing was disclosed as to why service providers were incorrect when they said that call drops were due to various reasons, some of which could not be said to be because of the fault of the service provider; and the Regulation, in assuming that every call drop is a deficiency of service on the part of the service provider, is plainly incorrect.

Transparency in making subordinate legislation would require prior consultations with all stakeholders, and due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Such a transparent process would also ensure redressal, partial or otherwise, of grievances of the stakeholders concerned *prior* to the making of subordinate legislation. The procedure prescribed in the 2005 Rules and Chapter X of the 2023 Regulations fulfils the afore-said transparency requirements. It is, however, not in dispute that the impugned proceedings dated 23.07.2025 is not referable to any provision of the 2005 Rules since the procedure prescribed in the 2005 Rules commences with a draft regulation being made and objections being invited thereto. Admittedly no such draft regulations have as yet been made by the

Commission in terms of Regulation 39 of 2021 Regulations. The impugned proceedings is also not referable to any of the clauses of Regulation 58 of the 2023 Regulations for the stage, prior to issuance of draft regulations under Regulation 58(6), is for a staff paper to be issued by the Commission, if it so chooses, in terms of Regulation 58(4). Between Regulation 58(4) which relates to the Commission coming out with a staff paper highlighting the broad issues under consideration and inviting comments of the stakeholders, and draft regulations being issued in terms of Regulation 58(6), all that Regulation 58(5) of the 2023 Regulations provides for is for the Commission to seek information and data from various stakeholders. The impugned proceedings neither falls within the ambit of Regulation 58(4) nor under Regulation 58(6) of the 2023 Regulations. The said proceedings dated 23.07.2025 is, therefore, not referable to any specific provision in the 2023 Regulations.

While absence of a specific provision in the Regulation may not disable the Commission from issuing orders/directions etc, either in the exercise of its regulatory or administrative power, that does not make the impugned proceedings dated 23.07.2025 a part of the legislative exercise of making Regulation under Section 178 of the Electricity Act. Whatever may have been the intention of the CERC in issuing the proceedings dated 23.07.2025, it is difficult for us to agree, with the submission urged on its behalf, that no appeal lies against such a proceeding on the ground that it is part of the legislative exercise of making Regulations.

While we are satisfied that impugned proceedings is not part of the legislative exercise of Regulation making, we are of the view, for reasons to be detailed hereinafter, that the impugned proceedings cannot also be held to be quasi-judicial in character. In order to decide whether the impugned proceedings dated 23.07.2025 was issued by the Commission in the

exercise of its quasi-judicial power, making the said proceedings a quasi-judicial order, we must first examine what constitutes a quasi-judicial order.

The dictionary meaning of the word 'quasi' is 'not exactly', and it is just in between a judicial and administrative function. In many cases, statutory authorities have been held to be quasi-judicial authorities and decisions rendered by them have been regarded as quasi-judicial, where there is a contest between two contending parties and the statutory authority is required to adjudicate upon the rights of the parties. (**Cooper v. Wilson - (1937) 2 KB 309; Indian National Congress (I) vs. Institute of Social Welfare and Ors.: MANU/SC/0451/2002**).

A quasi-judicial order emanates from adjudication which is the part of the administrative process resembling a judicial decision by a court of law. Quasi-judicial decisions are subject to some measure of judicial procedure. (**Shri Sitaram Sugar Co. Ltd. and Ors. vs. Union of India (UOI) and Ors: MANU/SC/0249/1990**). The three components of a "quasi-judicial order", in order to determine if a function is quasi-judicial, are: (a) there must be a legal authority; (b) the authority must determine questions affecting rights of subjects; and (c) the authority must have a duty to act judicially. (**Province of Bombay v. Khushaldas S. Advani: 1950 SCR 621; Shivji Nathubhai v. Union of India, 1960 SCC OnLine SC 32 : AIR 1960 SC 606; Indian National Congress (1) v. Institute of Social Welfare, (2002) 5 SCC 685; R. v. Electricity Commrs., (1924) 1 KB 171 (CA); and Airports Economic Regulatory Authority of India v. Delhi International Airport Ltd., (2024) 15 SCC 345**). An order will be quasi-judicial if issued by a person or an authority who is "legally bound or authorised to act as if he was a court or a Judge". In order to act as a Judge or a Court the following tests must also be fulfilled: (a) right to representation; and (b) inquiry, hearing and weighing of evidence. (**Province of Bombay v. Khushaldas S. Advani,**

1950 SCC 551 : 1950 SCR 621; Airports Economic Regulatory Authority of India v. Delhi International Airport Ltd., (2024) 15 SCC 345).

The legal principles laying down when an act of a statutory authority would be a quasi-judicial act are where (a) a statutory authority is empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial. (**Indian National Congress (I) vs. Institute of Social Welfare and Ors.: MANU/SC/0451/2002**).

If a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act. If a statutory authority has the power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially. In other words, while the presence of two parties besides the deciding authority will prima facie, and in the absence of any other factor, impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially. (**Province of Bombay v. Khushaldas S. Advani MANU/SC/0034/1950 : (1950) SCC 551;**

(Orissa Administrative Tribunal Bar Association vs. Union of India: MANU/SC/0276/2023; Airports Economic Regulatory Authority of India v. Delhi International Airport Ltd., (2024) 15 SCC 345).

The statute is not likely to provide, in so many words, that the authority passing the order is required to act judicially. That can only be inferred from the express provisions of the statute in the first instance in each case, and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute, where it is silent, has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the right affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. **(Board of High School and Intermediate Education v. Ghanshyam Das Gupta: AIR 1962 SC 1110; Orissa Administrative Tribunal Bar Association vs. Union of India: MANU/SC/0276/2023).**

An order will be quasi-judicial if it is made by some person or authority who is legally bound or authorized to act as if he was a court or a judge. To act as a Court or a judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a representation, making some kind of enquiry, hearing and weighing evidence, if any, and considering all the facts and circumstances bearing on the merits of the controversy before any decision affecting the rights of one or more parties is arrived at. The procedure to be followed may not be as elaborate as in a court of law and it may be very summary, but it must contain the essential elements of judicial procedure. **(The State of Maharashtra and Ors. vs. Saeed Sohail Sheikh and Ors.: MANU/SC/0931/2012).**

The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference and the real test is: Is there any duty to decide judicially. (**The State of Maharashtra and Ors. vs. Saeed Sohail Sheikh and Ors.: MANU/SC/0931/2012**). A quasi-judicial order comes from adjudication which is also a part of an administrative process resembling a judicial decision by a court of law. (**Surya Alloy Industries Limited v. West Bengal Electricity Regulatory Commission and Anr. : (Judgement of Aptel in Appeal 267 of 2023 dated 04.07.2025; Shri Sitaram Sugar Co. Ltd. v. Union of India: (1990) 3 SCC 223; PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**).

Neither was there a contest between two contending parties before the Commission nor did the CERC adjudicate upon the rights of parties by way of the impugned proceedings dated 23.07.2025. The impugned proceeding neither emanates from adjudication nor does it even remotely resemble a judicial decision by a court of law. In passing the impugned order, the CERC did not determine questions affecting the rights of power exchanges, and was not required to act judicially. The impugned proceedings dated 23.07.2025 is also not referable to any statutory provision, there is no lis therein between two contesting parties, and the said proceedings does not prejudicially affect any of the power exchanges. Further, the impugned proceedings neither declares nor enforces liability of the parties on the present or past facts. The mere fact that, by way of the impugned proceedings, the CERC decided to implement market coupling by the round-robin mode by January 2026, does not make such a decision either judicial or quasi-judicial in as much as the CERC, in issuing the said proceedings, had no duty to decide judicially. We are satisfied, therefore, that the impugned proceedings dated 23.07.2025 was neither issued in the exercise of the quasi-judicial power of the CERC nor is it a quasi-judicial order.

A statutory instrument (such as a rule, order or regulation) emanates from the exercise of delegated legislative power which is the part of the administrative process resembling enactment of law by the legislature. A quasi-judicial order emanates from adjudication which is the part of the administrative process resembling a judicial decision by a court of law. (**Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223**). A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. (**Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223**).

Rule/Regulation making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class". An adjudication, on the other hand, applies to specific individuals or situations. Rule/Regulation making affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely affected; adjudication operates concretely upon individuals in their individual capacity". (**Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223**).

Adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. (**Union**

of India v. Cynamide India Ltd., (1987) 2 SCC 720). What distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it; while adjudication operates concretely upon individuals in their individual capacity. **(Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223).** The impugned proceedings dated 23.07.2025 was neither issued in the exercise of the quasi-judicial power of the CERC nor is it either a prelude to or part of the legislative exercise of Regulation making.

The impugned proceedings dated 23.07.2025 is more in the nature of an administrative order. The distinction between legislative and administrative functions has usually been expressed as “one between the general and the particular”. “A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy”. “Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.” **(Union of India v. Cynamide India Ltd., (1987) 2 SCC 720).**

The impugned proceedings dated 23.07.2025 cannot be said to be a part of the legislative process of Regulation making, since the said proceedings does not change the existing conditions by making a new rule to be applied in future. It does not also affect the right of individuals, even in the abstract. It is only on and after Regulations are made and notified, and the said Regulations are applied in future proceedings, can any particular

individual then claim that they are adversely affected by the proceedings issued on application of the Regulations.

A test which distinguishes administrative function from a quasi-judicial function is that the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. **(Indian National Congress (1) v. Institute of Social Welfare, (2002) 5 SCC 685; Orissa Administrative Tribunal Bar Association vs. Union of India: MANU/SC/0276/2023)**. The impugned proceedings can be said to be an administrative order, as the said proceedings have been made for the purpose of issuing directions on implementing market coupling through the round-robin mode. Such an administrative order would, undoubtedly, fall within the ambit of an “order” under Section 111(1) of the Electricity Act.

We have no quarrel with the submission of the Learned Solicitor General that legislative/quasi legislative determination is not governed by the adjudicatory hearing requirements, in the same way as a quasi-judicial order is, and that principles of natural justice may not also apply to the making of subordinate legislation under Section 178 of the Electricity Act. The judicial pronouncements relied upon by him, and by Sri Vikas Singh, Learned Senior Counsel, are inapplicable to the present case. As already held earlier in this judgement, the impugned proceedings dated 23.07.2025 is neither part of any legislative exercise nor is it a quasi-judicial order.

Before concluding our analysis under this head, we must express our concurrence with the submissions of the Learned Additional Solicitor General that this Tribunal cannot direct the Central Commission to make regulations or to make it in a certain manner or to refrain from making regulations, as the power to make Regulations is conferred exclusively on the Regulatory Commissions and not on this Tribunal. It is settled law that a direction cannot

be issued to the Legislature to enact a particular law, or to the Rule making authority to make rules in a particular manner. (**Dhananjay Verma versus State of Uttarakhand & others (Judgement of the Division Bench of the Uttarakhand High Court in Writ Petition (S/B) No. 45 of 2014 dated 21.05.2019)**). Courts/Tribunals cannot also direct a legislature to enact a particular law or the Regulation making authority to make a particular Regulation. (**Supreme Court Employees' Welfare Association: (1989) 4 SCC 187; Indian Soaps and Toiletries Makers Association vs. Ozair Husain and Ors.43**). No court/ tribunal can direct a subordinate legislative body or the legislature to enact a law or to modify the existing law which it may be competent to enact, unless the power to annul or modify is expressly given to it. (**Narinder Chand Hem Raj v. Lt. Governor, H.P: (1971) 2 SCC 747; PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603**). No court/tribunal can direct a subordinate legislative body not to enact a law. (**Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187; A.R. Zakki36; State of Andhra Pradesh v. T. Gopalakrishna Murthi and Ors.40; Mangalam Organics Ltd.38 and Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory Himachal Pradesh41; Shilpi Lawrence Elenjikal v. Union of India, 2019 SCC OnLine Utt 634**). Similarly, no court can give a direction to a Government to refrain from enforcing a provision of law. (**State of U.P. v. Mahindra & Mahindra Ltd., (2011) 13 SCC 77; Bal Ram Bali v. Union of India: (2007) 6 SCC 805; Municipal Committee, Patiala v. Model Town Residents Assn: (2007) 8 SCC 669; Narinder Chand Hem Raj v. UT, H.P: (1971) 2 SCC 747**).

The CERC has exclusive jurisdiction, under Section 178 of the Electricity Act, to decide whether or not to make Regulations, as also to decide if and when such Regulations should be made. Interference with the Regulation making power of the Central Commission is wholly unjustified

and, in any event, is beyond the jurisdiction of this Tribunal both under Section 111 and under Section 121 of the Electricity Act.

While the respondent power exchange have detailed events which does appear to show that giving effect to market coupling, and the market coupling operator, has been in contemplation for a very long duration, and is not a decision taken for the first time by way of impugned proceedings dated 23.07.2025, it is unnecessary for us to delve on these aspects in the present appeal. Suffice it to note that the 2021 Regulations continues to remain in force, and these Regulations not only bind the Commission and the power exchanges including the Appellant herein, but also this Tribunal. While the 2021 Regulations contain provisions with respect to market coupling and market coupling operator, it also makes it clear (by way of Regulation 39) that the provisions in this regard in the 2021 Regulations will come into effect only on the Commission taking a decision to implement these provisions in the Regulations to be made separately.

While we must express our inability to agree, either with the submissions of the Additional Solicitor General urged on behalf of the CERC or of Shri Vikas Singh, Learned Senior Counsel appearing on behalf of one of the Respondent Power Exchanges, that the impugned proceeding dated 23.07.2025 does not fall within the expression “order” under Section 111(1) of the Electricity Act on the ground that it is a part of the legislative making exercise, or with the submission urged by Sri Sanjay Sen, Learned Senior Counsel, that the impugned proceedings is a quasi-judicial order, we are conscious that not every order, but only an “order”, by which a person is aggrieved by, which can be the subject matter of an appeal instituted under Section 111(1) of the Electricity Act. Consequently, it is only if the Appellant were to be held to be a “*person aggrieved*” by the proceedings dated 23.07.2025 can they then be held entitled to prefer an appeal, and to request

this Tribunal to examine the validity of the said proceedings on its merits. We shall examine, later in this order, whether the Appellant satisfies the test of being a “person aggrieved”.

The Appellant’s contention that the impugned proceedings is bereft of reasons is of no consequence in as much as the said proceedings is not quasi-judicial order. Their complaint with regard to the staff paper does not impinge on the validity of the impugned proceedings nor can the rules of natural justice be applied to the impugned proceedings in as much as no adverse consequences ensue to them thereby.

As Regulation 56(6) of the 2023 Regulations requires the Commission, upon receipt of the information as submitted by the parties within the stipulated time, to list the matter for hearing, and under the proviso thereto, if the information is not received by the Commission within the stipulated time, the case is required to be listed for hearing before the Commission for appropriate directions, it is evident that the impugned proceedings was issued at a stage prior thereto and, as the requirement of compliance with the rules of natural justice of affording a hearing does not arise at that stage, it is therefore not a quasi-judicial order.

Regulation 56(7) of the 2023 Regulations enables the Commission to issue such orders or impose other penalties as considered appropriate on non-compliance with the Act, the Rules, the Regulations, or the directions of the Commission after hearing the party or parties. Consequently, for imposition of a penalty, the affected party or parties are required to be heard. Regulation 70(2) of the 2023 Regulations stipulates that failure to comply with the provisions of the Act, the Rules, the Regulations issued under the Act or any directions or orders of the Commission, shall invite appropriate action against the concerned party or person under Section 142 of the Act. It is only if, and after, an order was passed, in terms of Regulation 56(7) or

70(2) of the 2023 Regulations, could the Appellant have claimed to have suffered adverse consequences, which may have entitled them to claim to be a “person aggrieved” entitled to file an appeal under Section 111(1) of the Electricity Act.

The impugned proceedings is not an order whereby the Appellant has been held not to have complied with the provisions of the Act, the Rules, or the Regulations or even the directions of the Commission obligating the CERC to comply with the hearing requirements under Regulation 56(7). In fact, the impugned proceeding contemplates the Commission issuing further necessary orders at an appropriate time based on the assessment of the progress made in the implementation of the directions in the impugned proceedings. Since the impugned proceedings does not result in any prejudice being caused to them, the Appellant’s complaint of violation of the rules of natural justice is wholly unjustified. The other contentions raised by the Appellant under this head can always be urged by them in appropriate legal proceedings after the CERC makes separate Regulations in terms of Regulation 39 of the 2021 Regulations.

In this context it is necessary to note that the reliefs sought by the Appellant in this Appeal is only to set aside the order passed by the CERC in Petition No. 8/SM/2025 dated 23.07.2025 to the extent challenged in the present appeal. As noted hereinabove, the decision taken in the impugned proceedings is as stipulated in Para 6(1) thereof, which is to implement coupling of day ahead market of the power exchanges (1) in the round robin mode, (2) by January, 2026. The decision to implement coupling of day ahead market of power exchanges by January, 2026, in terms of the impugned proceedings dated 23.07.2025, is evidently what the Commission expected to do and nothing more. Since the draft regulations have not been

issued till date despite the month of January, 2026 having come to an end, nothing turns on the period mentioned in Para 6(1).

The only other decision, taken by way of the impugned proceedings dated 23.07.2025, is to implement coupling of DAM of power exchanges in the round robin mode. When we asked Mr. Sanjay Sen, Learned Senior Counsel appearing on behalf of the appellant, during course of oral hearing, as to whether the round robin mode has been specifically subjected to challenge in the present appeal, learned Senior Counsel would submit that, while the round robin mode may not have been specifically subjected to challenge, the very implementation of market coupling in the day ahead market is under challenge in the present appeal and, even if it has not been specifically stated, the round robin mode must also be presumed to be under challenge in the present appeal. The impugned proceedings make no reference to any other aspect of market coupling, evidently because no Regulation, in terms of Regulation 39 of the 2021 Regulations, has as yet been made. Suffice it to protect the Appellant's interest to make it clear that the order now passed by us shall not disable them, on and after Regulations are made by the CERC, to raise all such contentions as are available to them in law, including those raised in the present appeal, in appropriate legal proceedings where a challenge is mounted by them to the validity of any such Regulations.

XVII. ABSENCE OF A CHALLENGE TO THE ROUND ROBIN METHOD:

(i) SUBMISSIONS URGED ON BEHALF OF CERC:

Learned Additional Solicitor General, appearing on behalf of the CERC, would submit that the Appellant has not raised any material challenge to either 'Round Robin' or 'January 2026'; on the corrigendum dated 08.01.2026 being read holistically with Regulation 39 (PMR 2021), the

round-robin / January 2026 direction is not self-executing “law”; it is (at best) a policy marker within a phased consultative/regulatory programme expressly tied to “regulatory amendments” and “regulations to be specified separately.”; and a transparent disclosure of the broad design choice- ‘Round Robin’ and an aspirational start date of January 2026 cannot, by itself, make the directions appealable.

(ii) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

It is contended, on behalf of the Respondent Power Exchanges, that reference to a round-robin mechanism in the Impugned Order is only suggestive and non-binding at this stage and does not, by itself, operationalize market coupling in a round robin manner; accordingly, even where the CERC has expressed its present regulatory intent, the actual implementation, including the precise architecture of the MCO, can only be effectuated through separate regulations; it is wrong and misleading to suggest that market coupling is being implemented *de hors* the regulation making process; and reference to round robin MCO is grounded in stakeholder consultations and expert inputs, particularly those received from Grid India in its Report dated January 2025.

(iii) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

It is submitted, on behalf of the Appellant, that the Round robin mode expropriates the business of the Appellant, including price discovery for a major part of the year; expropriation of business is a specific ground of challenge; further, the Appellant has specifically contended that it will be reduced to a bid collecting agency, which will be the consequence of market coupling and round robin mode; this contention is erroneous, and is also hyper-technical; the power of the CERC to implement market coupling, in the

manner as provided for by the Regulations, is not being hindered if the Impugned Order is set aside; and the Impugned Order having caused mischief, is liable to be set aside.

(iv) ANALYSIS:

As noted hereinabove, Para 6(i) of the impugned proceedings dated 23.07.2025 refers to the decision of the CERC to implement coupling of Day-Ahead Market of power exchanges in a round-robin mode by January 2026. In Para 6(i), the CERC further explains that, under the round-robin mode, the power exchanges may act as the Market Coupling Operator on a rotational basis, with Grid-India being the fourth Market Coupling Operator for backup and audit purposes. The rationale of such a decision is also explained in the said Paragraph wherein it is stated that this arrangement (round-robin mode) would facilitate an efficient functioning of the power exchanges and also help instill faith of the market participants in the power exchange operations.

It is true that the Appellant has contended, in the present Appeal filed by them, that implementation of Market Coupling of Day-Ahead Market would result in expropriation of business. However, there is no specific challenge to its implementation in a round-robin mode. Failure to specifically challenge the round-robin mode is sought to be justified by the Appellant submitting that this contention is a hyper-technicality. As noted hereinabove, what is under challenge in this Appeal is only the proceedings dated 23.07.2025 that too “as challenged in the present Appeal”. It would be difficult for us to agree with their submission, therefore, that their being faulted, for not challenging the round-robin mode in the present appeal, is a hyper-technicality.

Be that as it may, the proceedings dated 23.07.2025 itself makes it clear in Para 6 that the decision of the Commission is to initiate the process

for implementation of market coupling in a phased manner as per the provisions of market coupling specified in Regulations 37 to 39 of the 2021 Regulations. Since Regulation 39 explicitly provides that the provisions, with regard to market coupling and Market Coupling Operator in the 2021 Regulations, shall come into effect as and when decided by the Commission in accordance with the Regulations to be specified separately, it is only on and after separate Regulations are made and notified by the CERC, and the Commission stipulates therein the date from which the provisions with regard to market coupling and Market Coupling Operator in the 2021 Regulations shall come into effect, would such provisions come into effect and not prior thereto. Any decision taken by the Commission prior thereto would only be tentative, and not final. It is not as if the Commission, while framing separate Regulations, is disabled from stipulating a mode other than the round-robin mode for implementation of the coupling of Day-Ahead Market. Even in case the Regulations to be made by the Commission again specify the round-robin mode, it is what is specified in the said Regulations which would prevail notwithstanding any order made prior thereto. It is always open to the Appellant, notwithstanding the impugned proceedings having been passed by the CERC, to challenge the validity of the Regulations in appropriate legal proceedings. Even if the mode for implementation of coupling of Day-Ahead Market of the power exchanges is not specified in the Regulations, and the Commission chooses to place reliance on the impugned proceedings to apply the round-robin mode, the Appellant's rights can be adequately safeguarded by making it clear that, on and after any such Regulations are made by the CERC, it would be open to the Appellant to challenge implementation of the coupling of Day-Ahead Market of the power exchanges in a round-robin mode, as stipulated in the impugned proceedings dated 23.07.2025, along with the challenge mounted by them to the validity of the Regulations, if any, made by the Commission.

Having itself acknowledged that the power of the CERC to implement market coupling in a manner as provided for by the Regulations is not being hindered, the Appellant nonetheless contends that the impugned order is liable to be set aside as it has caused mischief. Apart from the allegations of insider trading which is based on the ex-parte interim order of SEBI, it is not known what other mischief the impugned proceedings have caused in as much as the Appellant has chosen not to detail what mischief the impugned proceedings has caused to them. We shall consider the consequences of the interim order passed by SEBI, later in this order.

XVIII. DOES THE APPELLANT'S GRIEVANCE, REGARDING IMPLEMENTATION OF MARKET COUPLING IN DAM, JUSTIFY INTERFERENCE WITH THE IMPUGNED PROCEEDINGS?

(i) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

It is contended, on behalf of the Appellant, that the Appellant is aggrieved by the decision in the impugned order to implement market coupling in DAM; the prejudice to the Appellant by Market Coupling, as has even been noted in the Staff Paper, is that power exchanges are reduced to simple bid aggregators; the difference between the power exchanges, which is the reason for one exchange performing better than the others, will disappear; Regulation 37 to 39 of the Power Market Regulations are only enabling provisions, as recognized by CERC itself; there is no mandate, but only an enabling provision for implementing market coupling at an appropriate time; the staff paper issued in August, 2023 for public consultation was to consider whether market coupling is required in the current market scenario; of the total 127 representations received, majority represented that market coupling in the current Indian scenario would not be beneficial; the CERC, thereafter, passed a Suo-motu order dated 06.02.2024, and reiterated the issues identified from the staff paper,

including (a) Does the current market scenario form a compelling case for Market Coupling? and (b) Effect of coupling on technological innovation and competition?; these issues have not been dealt with in the impugned order; results of simulations were provided and held that the overall gains in volume (0.08%) and economic surplus (0.013%) were insignificant; further, there is increase in price by 0.06% which is more than the increase in economic surplus; CERC held that, notwithstanding the results, more evidence based study is required to improve market depth, cost optimization, reliability, flexibility and other aspects; market coupling only contributed marginally, other alternatives need to be explored; CERC directed Grid India to implement shadow pilot and to provide feedback reports detailing various parameters including impact on price, volume and economic surplus & also publish its reports on its website; two reports were filed by Grid-India dated 16.01.2025 (covering 29 months) and 30.06.2025 (covering 4 months), neither of which were put in the public domain till 14.01.2026 when it was filed before this Tribunal; the impugned Order does not discuss any finding of the Report dated 16.01.2025; the social welfare increase for 29 months is only 0.059%; Grid-India, in fact, specifically stated that market coupling is not advisable, as the exchanges will only be bid collecting agencies, as in the case of TRAS market where there is no development; Grid-India also made recommendations for market development; on the Report dated 30.06.2025, the impugned order states that there is an overall welfare increase of only 0.3% and negligible impact on price; however, in the report dated 30.6.2025, there is no data or mention of price.

(ii) ANALYSIS:

As noted hereinabove, implementation of market coupling has been in contemplation by various authorities including the Central Government for a very long time, and it is not as if such an idea occurred to them only by way

of the impugned proceedings. While the Appellant may be justified in its submission that Regulation 39 of the 2021 Regulations is an enabling provision as it expressly provides that the provisions, with regard to market coupling and Market Coupling Operator in the 2021 Regulations, shall come into effect in accordance with Regulations to be specified separately, the fact remains that no such regulations have been made till date, and implementation of market coupling of the Day-Ahead Market has consequently not commenced. The Appellant's submission that a decision has been taken by the CERC to effectuate market coupling, by way of the impugned proceedings, does not merit acceptance since the impugned proceedings are, admittedly, not Regulations made by the Commission under Section 178 of the Electricity Act.

Para 7 of the impugned proceedings dated 23.07.2025 relates to the directions issued by the CERC to its staff to initiate the consultative process with Grid-India and power exchanges on various operational and procedural aspects for implementing the coupling of DAM, and to also propose regulatory amendments with respect to implementation of market coupling. Para 8, of the impugned proceedings dated 23.07.2025, is a direction to Grid-India to develop a software for running the shadow pilot for coupling TAM (including Contingency Contracts) of the power exchanges. Nothing turns on Para 8, since Para 6(iv) of the impugned proceedings dated 23.07.2025 itself recognizes that the feasibility of coupling of the Term Ahead Market (including the Contingency Contracts) of the power exchanges also needs to be examined by running a shadow pilot. It is evident, therefore, that the CERC has not, as yet, even taken a decision regarding implementation of coupling of the Term Ahead Market (including Contingency Contracts) of Power Exchanges.

Para 7 of the impugned proceedings dated 23.07.2025 is a direction to the staff of the Commission to initiate a consultative process, both with Grid-India and power exchanges (i.e. the Appellant and the Respondent Power Exchanges), on various operational and procedural aspects for implementing coupling of DAM which is in terms of Regulation 39 of the 2023 Regulations. The staff of the Commission have also been directed to propose Regulatory amendments with respect to implementation of market coupling. This direction by the CERC to its staff is, evidently, an internal matter within the Commission itself as, on and after regulatory amendments are proposed by the staff of the Commission with respect to implementation of market coupling, the Commission is required to examine the proposal and then take steps, if they so choose, to finalize the draft regulations and then publish it in the manner prescribed in the 2005 Rules and the 2023 Regulations.

The directions issued in Para 7, by the CERC to its staff, to undertake a consultative process cannot, by itself, be said to be an order or a direction with which the Appellant can claim to be aggrieved by. A mere consultative exercise, and a proposal to make regulatory amendments, does not, in any manner, affect the rights of any of the power exchanges as, after completion of the consultative process and a proposal being submitted regarding regulatory amendments, the CERC is then required to take a decision whether or not to approve the proposal of its staff to make regulatory amendments. It is only on and after the Commission approves the Draft Regulations, would the exercise of pre-publication, in terms of the 2005 Rules and the relevant provisions of the 2023 Regulations, commence; and the said exercise would stand concluded on publication of the Regulations in the Official Gazette.

Para 7 of the impugned proceedings dated 23.07.2025 is merely a direction to the staff and is not a decision of the CERC to implement market coupling of DAM. The Appellant's claim that a decision to implement market coupling has been taken by way of the proceedings dated 23.07.2025, even if presumed to have some basis, would only make any such a decision tentative, since Regulation 39 of the 2021 Regulations requires such a decision to be specified in the Regulations to be made by the Commission separately, and not by way of any proceedings issued prior thereto. Needless to state that the Appellant would undoubtedly have the remedy, on such Regulations being made and notified, to subject its validity to challenge in judicial review proceedings, in as much as the validity of Regulations made under Section 178 of the Electricity Act cannot be subjected to the appellate scrutiny of this Tribunal under Section 111 or in proceedings under Section 121 of the Electricity Act.

Even if Para 6(i) read with Para 7 of the impugned proceedings dated 23.07.2025 is understood as a decision of the Commission to implement market coupling in the Day-Ahead Market, such a decision is at present nebulous since the impugned proceedings itself acknowledges that such a decision must await Regulations to be specified separately in terms of Regulations 39 of the 2021 Regulations. Since what is under challenge in this Appeal is only the proceedings dated 23.07.2025, reference by the Appellant to the CERC not having considered the 127 representations received to the staff paper etc. is wholly extraneous to the present appellate proceedings. Likewise, the reports of Grid-India etc.

XIX. POWER OF CERC TO CALL FOR INFORMATION FROM POWER EXCHANGES:

(i) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

Regarding the power of the CERC to seek data from the Power Exchanges, it is contended, on behalf of the Respondent Power Exchanges that Regulation 58(5) of the CERC (Conduct of Business) Regulations, 2023 expressly empowers the Commission to call for information and data from stakeholders for the purpose of framing of regulations; Regulation 49(1) of PMR, 2021 creates a comprehensive market-oversight framework with the power available with the CERC to call for data from Market Participants (including Power Exchanges); Regulation 49(2) of the PMR, 2021 empowers the CERC to initiate inquiry or investigation for delay or non-submission of information sought; CERC was seeking information and input from power exchanges in order to bring about a workable robust regulations addressing all issues of implementation; and any other interpretation may cripple the functioning of the Market Regulation and defeat the purpose of the enactment itself.

(ii) ANALYSIS:

Para 9, of the impugned proceedings dated 23.07.2025, is a direction issued by the CERC to all the power exchanges to share the necessary data and other information as required by the staff of the Commission, and to Grid-India to analyze various operational and procedural aspects for implementing the coupling of DAM. Such a power to issue directions is referable to Regulation 58(5) which enables the Commission to seek information and data from various stakeholders (which would evidently include the Power Exchanges) through letter(s) or order for the purpose of framing Regulations, and to set a time limit for submission of information. Regulation 49 of the 2021 Regulations relates to the procedure for market oversight and, under Regulation 49(1) (c), (d) and (e), the market oversight shall include, but is not limited to (c) details of Market Participants or any other entities who shall furnish information; (d) details of information to be

furnished by the entities specified in clause (c); and (e) periodicity and formats for reporting of information.

The afore-said directions issued by the CERC, in Para 9 of the proceedings dated 23.07.2025, cannot be subjected to challenge on the ground of absence of jurisdiction. It is evidently on being made aware, during the course of oral arguments, that such a power is statutorily conferred on the CERC, that the Appellant appears to have refrained from challenging the validity, of Para 9 of the impugned proceedings dated 23.07.2025, in their written submissions.

XX. IS THE APPEAL AN INDIRECT CHALLENGE TO THE 2021 REGULATIONS?

(i) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

It is contended, on behalf of the Respondent Power Exchanges, that the challenge is, in substance, to the Market Coupling provisions under PMR 2021; the present Appeal is a disguised challenge to the validity of the PMR 2021 itself, which is impermissible in law before this Tribunal; and the apprehensions expressed by the Appellant regarding potential loss of business, reduction of market share, or speculative future impacts are commercial consequences, cannot be the basis to challenge the regulation making process undertaken by CERC.

(ii) ANALYSIS:

The 2021 Regulations were made by the CERC in the exercise of its powers under Section 178 of the Electricity Act. These Regulations are in the nature of subordinate legislation and have the force of law. A challenge to its validity, be it direct or indirect, can only be made in judicial review

proceedings, and not before this Tribunal either under Section 111 or Section 121 of the Electricity Act. We see no reason to dwell on this aspect any further.

XXI. IS THE APPELLANT A “PERSON AGGRIEVED” UNDER SECTION 111(1) OF THE ELECTRICITY ACT?

(i) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

It is contended, on behalf of Respondent Power Exchanges, that the Appellant is not a “*person aggrieved*” under Section 111 of the Electricity Act, 2003; the Appellant has failed to demonstrate any legal right that has been violated or any enforceable cause of action arising from the Impugned Order; and the said order merely initiates an administrative and consultative process for making regulations with regard to Market Coupling.

(ii) SUBMISSIONS URGED ON BEHALF OF THE CERC:

Learned Additional Solicitor General, appearing on behalf of the CERC, would submit that the present appeal, filed under Section 111 of the Electricity Act, 2003 (hereinafter, “the Act”), is premature, and is therefore not maintainable.

(iii) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

It is contended, on behalf of the Appellant, that market coupling is only enabling and, there being no mandate, there is serious prejudice to the Appellant by the decision taken in the impugned order; when there are adverse civil consequences, there is a need / duty to issue notice and consult the primary stakeholders; failure to issue notice is fatal; and, as the impugned order has an adverse civil consequence on them, the Appellant is a person aggrieved entitled to file an appeal under Section 111(1) of the Electricity Act.

(iv) ANALYSIS:

We must express our inability to agree either with the submissions urged on behalf of the CERC by the Additional Solicitor General and by Shri Vikas Singh, Learned Senior Counsel appearing on behalf of one of the Respondent Power Exchanges, that the impugned proceeding does not fall within the expression “order” under Section 111(1) of the Electricity Act as it is a part of and a prelude to the Regulation making exercise, or with the submission of Sri Sanjay Sen, Learned Senior Counsel for the Appellant, that the impugned proceedings is a quasi-judicial order.

The fact, however, remains that not every order, but only an “order” by which a person is aggrieved by, can be the subject matter of an appeal instituted under Section 111(1) of the Electricity Act. Consequently, it is only if the Appellant satisfies the test of being a “*person aggrieved*” by the proceedings dated 23.07.2025 would they be entitled to prefer an appeal under Section 111(1) of the Electricity Act.

A person can be said to be aggrieved by a decision if that decision is materially averse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled, in order to make one ‘a person aggrieved’. Again, a person is aggrieved if a legal burden is imposed on him. (**Bar Council of Maharashtra v. M.V. Dabholkar (1976) 2 SCC 291**; and **Jasbhai Motibhai Desai (1976) 1 SCC 671**). The scope and meaning of the expression “person aggrieved” depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. (**A. Subhash Babu v. State of A.P., (2011) 7 SCC 616: AIR 2011 SC 3031**; and **Ayaaubkhan Noorkhan Pathan (2013) 4 SCC 465**). The expression “person aggrieved”

means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive, a person who is injured or one who is adversely affected in a legal sense. (**M.S. Jayaraj (2000) 7 SCC 552; S. Khushboo v. Kanniammal (2010) 5 SCC 600**).

The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something. (**In Re Sidebotham (1880) 14 Ch.D., 458; Burton (1961) 1 QBD 278; and Jasbhai Motibhai Desai (1976) 1 SCC 671**). He, who has a proprietary right, which has been or is threatened to be violated, is an 'aggrieved person'. A legal injury creates a remedial right in the injured person. (**Vemula Prashanth Reddy v. Komati Reddy Venkat Reddy, 2018 SCC OnLine Hyd 142**).

The tests, to determine a "person aggrieved", are: whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission, of the authority, complained of; is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?; Was he prejudicially affected in the exercise of his right by the act of usurpation of jurisdiction on the part of the authority? (**Jasbhai Motibhai Desai (1976) 1 SCC 671**).

In relation to availing judicial remedies, the words "person aggrieved" corresponds to the requirement of locus standi. Where a right of appeal is provided against an administrative or a quasi-judicial decision by a statute,

such a right is invariably conferred on a person aggrieved or a person who claims to be aggrieved. A person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one “a person aggrieved”. Again, a person is aggrieved if a legal burden is imposed on him. The meaning of the words “a person aggrieved” is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. (**Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2 SCC 702 : 1975 SCC OnLine.SC 264; Noida Power Company Limited v. Uttar Pradesh Electricity Regulatory Commission and Anr. (Judgment of APTEL in Appeal No 98 if 2021 dated 28.11.2025)**). Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in some form or the other. (**Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484; Noida Power Company Limited v. Uttar Pradesh Electricity Regulatory Commission and Anr. (Judgment of APTEL in Appeal No 98 if 2021 dated 28.11.2025)**).

Section 111(1) of the Electricity Act enables “any person aggrieved”, by an order made the by the Appropriate Commission under the Electricity Act, to prefer an Appeal to this Tribunal. To satisfy the test of a “person aggrieved”, one is required to establish that one has been denied or deprived of something to which one is legally entitled. A person can be aggrieved if a legal burden is imposed on him. (**Mr. Rama Shanker Awasthi v. Uttar Pradesh Power Corporation Ltd. (UPPCL) and Ors. (Judgment of APTEL in Appeal No. 37 of 2018 dated 05.08.2024)**).

The important words in the definition of 'person aggrieved' are "a benefit which he might have received" "and" "a legal grievance" against the decision which "wrongfully deprives him of something" or affects 'his title to something'. He must be deprived of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. His legal grievance must have a tendency to injure him. That the order is wrong does not, by itself, give rise to a legal grievance. (**In Re Sidebotham Ex p. Sidebotham: (1880) 14 Ch D 458 [CA]; Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484**).

While the Appellant's disappointment, with the CERC making it clear that they intend to implement market coupling in the Day-Ahead Market, is evident, mere disappointment would not make the Appellant a "person aggrieved" by the said order. It is only if the impugned proceeding results in the Appellant being deprived of any legal right or if the said proceeding fastens a liability on them can the Appellant claim to have a grievance which would necessitate redressal in appellate proceedings under Section 111(1). In short, it is only if the Appellant has suffered civil consequences as a result of the impugned proceedings would they be justified in contending that they have suffered a grievance which necessitates redressal. 'Civil consequences' cover infraction of not merely property or personal rights but of material deprivations and non-pecuniary damages. (**State of Orissa v. Dr (Miss) Binapani Devi AIR 1967 SC 1269; Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405; Union of India v. E.G. Nambudiri (1991) 3 SCC 38; Suryodaya Infra Projects (I) Pvt. Ltd. v. National Mineral Development Corporation Limited, 2013 SCC OnLine AP 205**).

While the Appellant has, no doubt, contended that the impugned proceedings has resulted in adverse civil consequences to them, what is not specified and is glossed over is how and in what manner the Appellant has suffered civil consequences as a result of the impugned proceedings. All the power exchanges, including the Appellant, continue to carry on their operations under the Electricity Act as on date in the same manner as they did prior to the impugned proceedings dated 23.07.2025 being issued. The impugned proceeding does not disable the Appellant from carrying on its operations under the Electricity Act in the same manner it did prior to the impugned proceedings being issued. All that the impugned proceeding seems to indicate is that implementation of market coupling in the Day-Ahead Market is not far away.

The said proceeding dated 23.07.2025 does indicate the expectation of the CERC that market coupling in the Day-Ahead Market would be implemented, in a round-robin mode, by January 2026 ie within around six months from date on which the impugned proceedings were issued. In any event, such an expectation is belied by the fact that, by the time judgment in this Appeal was reserved on 05.02.2026, the CERC had not even issued draft Regulations and, consequently, implementation of market coupling in the Day-Ahead Market has not been effected in January 2026. Since the Appellant is entitled to, and is in fact carrying on its operations under the Electricity Act as it did prior to the impugned proceedings dated 23.07.2025, any grievance they can claim to have is only if, and after, Regulations are made by the CERC for implementation of market coupling in the Day-Ahead Market, for it is only then would such implementation actually commence. In any event, on such Regulations being made, the forum for challenging its validity is not before this Tribunal as this Tribunal has been held not have the power of judicial review either under Section 111 or under Section 121 of the Electricity Act **(PTC India Limited)**.

XXII. IS THE IMPUGNED PROCEEDINGS MERELY ACADEMIC AND WAS IT ISSUED UNNECESSARILY?

(i) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

It is submitted, on behalf of the Appellant, that no explanation why the Impugned Order was issued has been given; when implementation of Market Coupling could only be done in terms of Regulation 39, i.e., through an amendment in the Power Market Regulations, there was no reason to issue the impugned order behind the back of the stakeholders; the contention of the Respondents that the Order is academic, and implementation would only be by Regulations, is reason enough to set it aside; courts and Tribunals do not pass academic orders; there is no place, in law, for non-binding orders, more so when the order was the reason /basis of mischief; Regulations require pre-publication, considering objections and representations before finalization, including whether market coupling should be implemented; the impugned order has however pre-decided the issue; and pre-publication for making regulation would be an eye-wash.

(ii) ANALYSIS:

It is un-necessary for us to examine why the impugned proceedings were issued, except to hold that the Appellant has not suffered any civil consequences thereby. Whether or not such a proceeding ought to have been issued is best left to the wisdom of the CERC, for the impugned proceeding itself makes it clear that actual implementation of market coupling in the Day-Ahead Market must await separate Regulations being made by the Commission.

XXIII. IS THE APPELLANT SEEKING TO STALL THE MAKING OF REGULATIONS?

(i) SUBMISSIONS URGED ON BEHALF OF CERC:

The Learned Additional Solicitor General, appearing on behalf of CERC, would submit that the present appeal is a speculative and pre-emptive litigation aimed at stalling a delegated legislation exercise that is expressly consultative and statutorily grounded; and the remedy of an appeal cannot be used to stall the process for formulation of a delegated legislation.

(ii) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT EXCHANGES:

It is contended, on behalf of the Respondent Exchanges, that it has been clarified by CERC, during oral arguments, that Market Coupling cannot be operationalized without framing and notifying separate regulations; any challenge at this stage is therefore speculative and anticipatory; any procedural violation, if at all, can only be examined after the regulations are framed, notified, and made enforceable; and a speculative challenge at a preparatory stage is not maintainable and is liable to be rejected at the threshold.

(iii) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

On the contention of the Respondents that the Regulations mandate market coupling, which is being stalled by them, it is submitted, on behalf of the Appellant that the Regulations are only enabling, and not mandatory; it is the right of the Appellant to contend that, based on data, the current market scenario does not form a compelling case for Market Coupling, and it will have an adverse effect on technological innovation and competition (Issues framed by CERC itself).

(iv) ANALYSIS:

What is under challenge in this Appeal is only the validity of the proceedings dated 23.07.2025. The Appellant has not even contended that the CERC should be enjoined from making Regulations. On the contrary, they have specially stated that their endeavor is not to hinder the making of Regulations. In any event, no such contention could have been raised before this Tribunal in an Appeal under Section 111(1) of the Electricity Act for this Tribunal lacks jurisdiction either to direct the Commission to make Regulations or to direct them to refrain from doing so or even to stipulate the mode and manner in which such Regulations should be made. It is necessary in this context to also observe that while the present Appeal was filed on 28.08.2025, and the Appellant had sought an interim order of stay of the impugned order passed by the CERC in SM/8/2025 dated 23.07.2025 to the extent challenged in the main appeal, by way of IA No.1300 of 2025, no such interim relief was granted.

All that was noted by this Tribunal in its proceedings dated 28.11.2025, after taking note of the submissions made on behalf of the Appellant on the ex-parte interim order passed by SEBI dated 15.10.2025, is that it understood, from the submissions urged by the Learned Senior Counsel appearing on behalf of the CERC, that Regulations were unlikely to be notified before the first week of January 2026. Neither was any interim order passed nor could any such order, restraining the Commission from making Regulations, have been passed by this Tribunal, conscious as it is of its lack of jurisdiction to do so either under Section 111 or under Section 121 of the Electricity Act. Mere pendency of the present appeal did not disable the CERC from making appropriate Regulations, if it so considered it appropriate. The reasons for the CERC not doing so cannot be attributed to the pendency of the present Appeal. We must, therefore, express our reservation with respect to the submission urged by the Learned Additional Solicitor General that the remedy of an appeal is being used to stall the

process for formulation of delegated legislation, more so when Learned Additional Solicitor General has not stated as to how filing of an appeal disabled the CERC from making such Regulations.

XXIV. SEBI PRIMA-FACIE ORDER DATED 15.10.2025:

(i) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

On the SEBI Order dated 15.10.2025, it is submitted, on behalf of the Appellant, that three officials of the Economic Division of CERC, including the Chief, Economics Division (Ms. Yogeita Mehra) were part of the meetings where the decision to implement market coupling was taken; Ms. Mehra was in fact the Member Secretary of the Committee formed by the CERC to look into the issues of Market Coupling; as per the document properties, the author of the Impugned Order is from the Economics Division of CERC; Ms. Yogieta Mehra was in regular contact with external persons from January, 2025 onwards (6 months prior to the impugned order), minutes of the Committee meetings were regularly shared, including their visit to CERC office, discussions and access to live-streaming of internal CERC meetings; there was involvement of external persons with vested interest in the process, particularly with Ms. Yogeita Mehra; a total of Rs. 173 crores has been wrongfully made in the process; the staff of the CERC controlled the process; the staff, including the Member Secretary of the Committee constituted by the CERC to oversee implementation of the shadow pilot on Market Coupling, have been *prima facie* held to be involved in “*Insider Trading*” by the SEBI’s ex-parte interim order dated 15.10.2025; the SEBI Order cannot be ignored, for the process leading to the issuance of the interim order, which is a result of a suo-motu proceeding, without notice to the stakeholders, was entirely controlled by the staff; and the process controlled by the staff is tainted.

(ii) SUBMISSIONS URGED ON BEHALF OF CERC:

Learned Additional Solicitor General, appearing on behalf of the CERC, would submit that the Appellant's contention that the proceedings dated 23.07.2025 is tainted by fraud, in the light of SEBI prima-facie order dated 15.10.2025, is not tenable; the SEBI order dated 15.10.2025 is an *ex parte* interim order concerning alleged UPSI procured by third parties; it contains no material allegation against CERC's regulatory process or mala fides in issuance of the directions dated 23.07.2025; there are no allegations against Members of the Commission or their independent application of mind; CERC has, as detailed in its affidavit dated 16.01.2026, taken immediate steps, directing named/unnamed officers not to attend office, constituting an internal fact-finding committee, transferred/reassigned officers, pre-maturely repatriated one officer, and has further directed the implicated staff to be kept away from the process of amendment of Marketing Coupling Regulations.

Learned Additional Solicitor General would further submit that the CERC has also instituted suo motu Petition No. 11/SM/2025, invoking PMR 2021 Regulations 48-50, Section 128 of the Act, and Regulation 51 of the CERC Conduct of Business Regulations, 2023, to set up an investigation authority to look into the functioning of the regulated entity which has received funds from the alleged insider trading, and whose key management personnel are said to be involved; the Appellant's linking of its grievance, against prospective regulations of CERC to SEBI's securities-market fact finding, is "wholly specious" and an attempt to interdict CERC's regulation-making powers; and the submissions of the Appellant are based upon mere inferences without any actual factual basis and do not achieve the threshold of pleadings to establish 'fraud/taint'.

**(iii) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT
POWER EXCHANGES:**

In support of their contention that the SEBI Order dated 15.10.2025 is irrelevant to the present proceedings, it is submitted, on behalf of the Respondent Power Exchanges, that the SEBI order does not record any finding of illegality, mala fides, or misconduct against the CERC as an institution or against any of its members; in the absence of any such finding, the Appellant cannot rely on the SEBI proceedings to impute taint to a direction passed by the CERC; any suggestion that the Impugned Order was motivated by or influenced by any external factors is baseless; mere allegations or prima facie observations in the SEBI Order, with regard to involvement of a handful of CERC officials, cannot vitiate or render non-est a direction issued by the CERC; it is the Commission which is the author of the Impugned order; the involvement of some of the tainted officials in the preparation of the order cannot be the basis to question the intent and integrity of the Commission as an institution; consequently, the argument that fraud vitiates all acts has no application in the present case; it is established fraud that may unravel, not a mere allegation of fraud; and, in any case, the Appellant has expressed full confidence in the integrity of the Chairman and Members of the CERC.

(iv) ANALYSIS:

IA No. 1879 of 2025 was filed, in the present appeal, by the Appellant seeking permission to amend the Appeal to include the facts stated in Para 6, 7 and 8 of the application, the questions of law stated in Para 9 and the grounds raised in Para 10 of the application, and to take on record the amended Memorandum of Appeal.

In para 6 of the IA, it is stated that, after the impugned order was passed on 23.07.2025, involvement of the officers of the Central Commission, with other persons who had indulged in insider trading and profiting to the extent of Rs. 173 Crores on the share price volatility of the Appellant's shares, had come to light from the ex-parte interim order passed by the Securities and Exchange Board of India (SEBI), under Sections 11 and 11B of the SEBI Act, 1992 read with the relevant provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015, dated 15.10.2025. After extracting the brief findings of the preliminary examination by SEBI, it is stated in Para 8 of the IA that the following facts as stated in the SEBI order dated 15.10.2025, based on statements of the noticees and evidence obtained from the devices of such individuals, were evident: (a) the decision to implement market coupling and the timing of the decision was not publicly available information and constituted Unpublished Price Sensitive Information (UPSI); that this information was price sensitive is proved by the fact that the IEX (Appellant) stock price declined by 29.58% once the Impugned Order became public; (b) three officials of the Economic Division of the CERC took part in the meetings where the decision to implement market coupling was taken; (c) the document properties, of the Impugned Order file, revealed that the author was one of the persons named in the SEBI order, giving rise to a prima facie inference that the Impugned Order emanated from the Economics Division of the Central Commission; (d) the Central Commission's officials from the Economics Division shared the above UPSI, including the appeal filed by the Appellant, with other persons; they were aware of the decision and timing of the Impugned Order; internal documents were shared with external persons and meetings of high-ranking Central Commission officials were live streamed to such persons; (e) individuals, who received the UPSI and other connected individuals, made unusual trades in the examination period; put options were bought just

before the Impugned Order was published; (f) the above individuals made profits to the tune of Rs. 173 Crores and transferred the same to connected individuals; (g) the above acts of the individuals were prima facie in violation of Regulation 3(2) and 4(1) of the PIT Regulations, and Section 12A (d) and (e) of the SEBI Act; the impugned order constituted UPSI; the above individuals were insiders who had access to such UPSI; and the trading activities of the individuals, in the lookback or the examination period, had correlation to the UPSI.

Para 9 of the IA states that the total gain which SEBI has computed, based on the data available, till the passing of the above order, was about Rs. 173 Crores, which had been directed to be impounded. In Para 10 of the IA, it is stated that the facts set out above raised the following question of law, in addition to the other questions of law set out in the Appeal ie (a) Whether the Impugned Order is vitiated by the events as set out in the SEBI Order dated 15.10.2025?

In Para 11 of the IA, the Appellant craved leave to refer to the facts as narrated above and found in the interim order dated 15.10.2025 of SEBI, and raised the following grounds of challenge:

"II. Because the facts as set out in the order dated 15.10.2025 of SEBI made it evident that the entire process of decision making leading to the impugned order is vitiated and tainted; the impugned order of the Central Commission is liable to be quashed for the above reason alone.

JJ. Because the decision to implement market coupling through the Impugned Order is inherently flawed. Regulation 39 of PMR 2021 expressly stipulates that market coupling is to be implemented in accordance with regulations to be separately specified following the prescribed due process. In this context, the necessity of the impugned order remains unclear.

Therefore, it is apparent from the SEBI order that the impugned order might have been issued in the pursuit of unlawful gains rather than effectuating market coupling. After the passing of the order dated 06.02.2024 wherein the Central Commission came to a specific finding that there is insignificant increase in overall gains on account of market coupling (economic surplus of less than 0.013% and increase in Market Clearing Price), and also a specific direction for further studies to be carried out and the reports to be made available in public domain. The Central Commission thereafter decided to implement market coupling in DAM based on the two reports dated 16.01.2025 and 30.06.2025 which were not made public in spite of the fact that the Central Commission, in its earlier order dated 06.02.2024, had directed for making these report public. From the Impugned Order it is apparent that the Central Commission has ignored findings of the report dated 16.01.2025 having analysis of 29 months data, and decided to implement market coupling in DAM based on the report dated 30.06.2025 having data for a selective period of only 4 months. Even for the four month period, the increase in economic surplus is only 0.3%. The above raises serious questions over the decision-making process, which further coupled with the facts mentioned in the SEBI Order dated 15.10.2025 left no doubt about the sole purpose of issuance of the Impugned Order to implement market coupling.

KK. Because the contention of the Appellant, that the primary purpose of the market coupling being only expropriation of the business of the Appellant in favour of the other two exchanges, is reinforced by the facts narrated in the order dated 15.10.2025.

LL. Because the purported economic surplus computed in the impugned order is miniscule in nature to the extent of Rs. 38 Crores (0.3%), whereas there is no requirement for an order of this nature to be passed by the Central

Commission to implement market coupling, particularly when the conscious decision of the Central Commission, having been to adopt multi-exchange market over the past 17 years, is sought to be upended, dramatically altering the market conditions and affecting the power exchanges as authorized by the Central Commission. Even after the notification of the Power Market Regulations, 2021, the Central Commission took a conscious decision to grant authorization to one another power exchange to promote multiple exchanges in the market.

MM. Because the SEBI Order dated 15.10.2025, wherein it has found prima facie evidence of market manipulation and insider trading by utilizing the unpublished price sensitive information of the timing of the passing of the Order, creates a reasonable concern as to the legitimacy of the Impugned Order in as much as the circumstances in which the decision, to pass the Impugned Order, was taken by the Central Commission, on the basis of inputs and data which have not even been made available to all the stakeholders, even the data mentioned in the impugned order only states miniscule economic surplus, there is no mention on the impact on price etc.

NN. Because, from the facts narrated in the order dated 15.10.2025 of SEBI, there is a reasonable basis to conclude that the Central Commission passed the Impugned Order on inputs, advise and following a decision-making process, which is not only erroneous but also appears to be for extraneous considerations. As per the SEBI Order, right from January 2025, the parties involved in making illicit gains were aware of the developments and were frequently meeting the CERC officials. Certain high-ranking officials of the Central Commission staff have been named in the SEBI Order dated 15.10.2025 on the issue of insider trading. The Central Commission was evidently not considering the necessity and feasibility of implementing market coupling as is clear from the Order dated 06.02.2024, where it

observed that there were no significant benefits from coupling in the present market scenario. Taking a complete U-turn from the above order, and to implement market coupling without providing any background data to the stakeholders, not dealing with the specific questions as raised by the Central Commission itself, and in the background of the facts as stated in the order dated 15.10.2025, vitiates the impugned order and the same is liable to be set aside. The magnitude of the impact of the impugned order is evident from the fact that the gains as stated in the Order dated 15.10.2025 of SEBI is about Rs. 173 crores, whereas the economic surplus (taking the best case) stated in the impugned order is only Rs. 38 crore (0.3%).

00. Because, for the Central Commission working as a regulatory body and having an institutional framework, the order dated 15.10.2025 of SEBI raises legitimate concerns regarding the institutional and staff-level processes underlying the Impugned Order, that have been influenced by extraneous considerations. Consequently, the final decision stands vitiated by material irregularities affecting the integrity of the Impugned Order and making it liable to be set aside.”

In its reply to the said IA it is stated, on behalf of the Respondent Commission, that the IA seeks to bring on record grounds and questions of law that are wholly irrelevant to the case initially pressed by the Appellant and are unsupported by any underlying facts, including the prima facie order dated 15.10.2025 passed by the Securities and Exchange Board of India (SEBI); the present amendments essentially seek to plead a whole new case, and seek to rely on a wholly distinct cause of action; an amendment cannot be used to plead a wholly new case, and in the present case the same is being done by relying on suppositions, assumptions and innuendos in a manner solely designed to scandalize the Respondent Commission, and prejudice this Tribunal (Reliance is placed on **Renew Wind Energy Pvt. Ltd.**

Vs. CERC & Ors., Appeal No. 432 of 2019 dated 01.08.2025); even assuming that the SEBI prima facie order gave rise to a new cause of action to the Appellant, it ought to have sought amendment within the period of limitation; the appellant chose to not introduce the same at any stage, including at the stage of filing its rejoinder, and only attempted to introduce it across the bar in the course of arguments; in these circumstances, the said application is also barred by limitation; the SEBI order dated 15.10.2025 was communicated to the Respondent Commission by SEBI and, on 28.10.2025 vide suo-motu order, the Respondent Commission had, in exercise of its powers under Power Market Regulations, 2021 (PMR 2021), specifically Regulations 48-50, Section 128 of the Electricity Act, 2003 and Regulation 51 of the CERC (Conduct of Business) Regulations, 2023, set up an investigation authority to look into the actions of one OTC Platform-GNA Energy Private Limited, which is the entity, along with its key management personnel and other parties, that has, in the prima facie SEBI order, been found to be involved in insider trading in the Securities Market allegedly on information that originated from within the Respondent Commission; the said GNA Energy Private Limited had approached the High Court of Punjab and Haryana by filing WP No. 34031 of 2025; by its order dated 18.11.2025, the High Court had granted stay of further proceedings and the same is extended further vide order dated 16.12.2025; and, in this backdrop, the allegations being made by the Appellant are extremely prejudicial since the Respondent Commission is unable to independently proceed and obtain further information and facts.

It is further submitted that the SEBI order dated 15.10.2025 is titled as Ex Parte Interim Order, and the findings therein are prima facie, pending investigation; even in the prima facie order passed by SEBI there is no averment that the Respondent Commission was either involved in the activities of insider trading or that the Respondent Commission was acting

in any manner improperly; even the officers of the Respondent Commission, who have been noted in the prima facie order, have not been said to have profited from this alleged scheme of insider trading; the prima facie order is limited to allegations of certain regulatory discussions and deliberations of the Commission being utilized by certain entities for personal profits, which have been classified as 'Unpublished Price Sensitive Information', to the KMP of GNAEPL; the Respondent Commission takes very seriously the alleged actions of GNAEPL and is endeavoring to investigate the issue thoroughly, and is in the process of approaching the High Court of Punjab and Haryana.

It is also stated that the allegations of the sort that are sought to be made, if this amendment application is allowed, have been made without sincerity and seriousness; the Applicant ought to have provided precise particulars of the charge, and any inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture; the edifice of this new case, sought to be projected by the Appellant, is unsupported by its foundation ie the SEBI order dated 15.10.2025; the present appeal itself is not maintainable since the impugned order has only resolved to initiate the process for implementing market coupling, and the same is required to be done through a legislative regulation making exercise; the action of the Commission, in passing the impugned order, were only guided by transparency and the canons of best practices as laid down by the Supreme Court in **Cellular Operators Association of India and Ors. Vs. TRAI, (2016) 7 SCC 703**; the impugned order lays down the road map to market coupling, seeks requisite information, and directs the creation of suitable infrastructure to support a further regulation which would be passed as per law; the said regulatory procedure cannot be attempted to be hamstrung using unfounded allegations which are vague, in the realm of insinuation, surmise or conjecture, and therefore impossible to answer; and

if such a practice were to be allowed, the effective functioning of the Commission would become difficult (Reliance is placed on **E.P. Royappa v. State of Tamil Nadu and Anr., (1974) 4 SCC 3**).

By way of para-wise reply to the IA, it is stated on behalf of the Respondent Commission that the order dated 23.07.2025 is not in violation of principles of natural justice nor is it in violation of the doctrine of legitimate expectation and promissory estoppel; the Commission has, by its order dated 23.07.2025, only resolved to initiate the process for implementing market coupling and the same is required to be done through a legislative regulation making exercise; the impugned order is not amenable to challenge under Section 111 of the Electricity Act, 2003, and is in fact premature; the movement in the Appellant's stock price are matters solely within the Appellant's knowledge; the actions of the Respondent Commission are not in any manner influenced by any regulated entities stock price, and any insinuation to the contrary is vehemently denied; market coupling has been the pre-requisite of the PMR 2021 Regulations, and is therefore not a new concept. Reference is made therein to the steps taken in this regard commencing from the Staff Paper Published on 21.08.2023 till the order on market coupling got approval and was published on 23.07.2025.

It is thereafter stated that the Commission is committed to following the necessary regulatory and legislative steps to frame the regulations in a transparent manner and the Appellant, along with any and all interested parties, would be free to participate in the said process; it is improper for the Appellant to attempt to derail the process by making wild and unsubstantiated allegations, and obstruct the regulatory process for admitted financial gain of preserving market share; the contents of the SEBI order are a matter of record; the views/findings expressed therein are prima facie; the SEBI order does not cast any aspersion on any regulatory process followed

by the Respondent Commission; it only highlights that there is prima facie evidence of certain information obtained by third parties, related to certain deliberations and documents of the respondent Commission, who have indulged in insider trading and profiting; these third parties are not parties to the present appeal and the Respondent Commission's own investigation in this issue is stayed by the High Court of Punjab and Haryana.

The Respondent Commission further states that the SEBI order is prima facie, and any facts recorded therein would have to be seen in that context alone; the use of the term 'author' in the SEBI prima facie order cannot be used to make insinuations that are unsupported in law; an order whether it be regulatory or administrative or quasi-judicial, that is passed by a Court, Tribunal, Regulatory Commission or any other administrative body, cannot be said to be authored by any individual employee or officer of such a body, even if the said order was substantially typed, formatted or printed from the system of such an employee or officer; until the said order is pronounced and signed, the said order can at best be a draft and has no legal character; the decision of the Commission is taken after receiving inputs from a variety of sources including its officers, but the decision would ultimately be that of the Commission as defined under Section 76(5) read with Section 92(5) of the Electricity Act, 2003, and any assignment of authorship in contravention to law is impermissible; there is no whisper of implication of the Commission in the Ex Parte Interim order of SEBI; as per the prima facie report, the officers of the Respondent Commission are not noticees but entities; any profit or gain that had accrued to third parties cannot be commented upon by the Respondent Commission, especially since the Commission's own fact-finding and investigative order is stayed by the Punjab and Haryana High Court; the questions of law raised in Para 10 of the application are wholly divorced from the underlying foundational document which is the SEBI order dated 15.10.2025, and the said order does

not in any manner suggest any reasons for the Commission's' regulatory process to be vitiated; the said order only details a prima facie finding that certain deliberations/documents of the Commission were obtained by third parties who would have profited in the securities market; Grounds II, JJ, MM, NN and OO are scandalous, vague and wholly unsupported by the contents of the SEBI order dated 15.10.2025; use of the words extraneous reasons and extraneous considerations or unlawful gains are not only scandalous and unsupported by the SEBI order, but impossible to answer on account of their vagueness; they are only designed to browbeat and attempt to intimidate a statutory regulator; the only intention of the Appellant is to derail the regulatory exercise of regulation making, which it knows it cannot preempt under the constitutional framework by making scurrilous, scandalous allegations without even providing a perfunctory factual basis; the Commission as a regulatory is aware of its responsibilities, and its decisions are taken independently in terms of its composition under Section 76(5) read with Section 92(5) of the Electricity Act; its decision to disclose the initiation of a regulatory making exercise, and the directions to set up necessary and collateral infrastructure, cannot be brought into question by vague allegations; ground LL does not even state that it is in any manner related to the SEBI order dated 15.10.2025, and therefore the same certainly cannot be entertained at this stage; in any event the Appellant cannot assail a decision of the Commission to initiate a regulation making exercise; the amendments sought are only designed to prejudice, and are all in the realm of insinuation, surmise or conjecture; and the said application ought to be dismissed.

While a rejoinder is filed thereto by the Appellant and replies to the IA have been filed by the other Respondents, for reasons to be detailed later, it is wholly unnecessary to burden this judgment with a reference to its contents.

EX PARTE INTERIM ORDER PASSED BY SEBI:

An ex parte interim order was passed by SEBI under Section 11(1) and (4) and Section 11 B(1) of the Securities and Exchange of India Act, 1992. After giving a background of the case, Para 3 thereunder refers to the impugned order issued by the CERC for implementing market coupling, and records that market coupling, as announced by CERC, involves a centralized matching of bids from various power exchanges to arrive at a uniform market clearing price; this move was aimed at achieving price convergence across different electricity markets and streamlining the process of price discovery; and currently each power exchange determines its price based on demand and supply.

Under Part B, of the brief finding of the preliminary examination by SEBI, it is noted that, vide the impugned order dated 23.07.2025, implementation of market coupling in India's electricity markets, starting with the DAM segment, by January 2026 was announced by CERC; with the new framework of market coupling, it was prima facie observed that IEX was expected to lose control over price discovery in the DAM segment, due to market coupling, and smaller exchanges getting access to some volume of trade; accordingly, it was prima facie observed that implementation of market coupling mechanism was expected to negatively affect trading volume on IEX in the DAM segment; preliminary examination further revealed that there was a significant movement in the price and volume traded in the scrip of IEX on the next day after the CERC order i.e. on July 24, 2025; trading activity analysis was done in the scrip around the announcement date; the analysis focused on identifying suspects based on gross traded quantity, change in concentration and profit earned by them by trading in the period before and after the CERC order; the said order thereafter gives the origin of UPSI, connection among noticees wherein reference is made in para 16 to

official 1/O1, the Chief of Economics Division, Official 2/O2 and Official 3/O3 who were Deputy Chief and Assistant Chief respectively of the same division; it was revealed that they were attendees of the meetings of the aforesaid Committee wherein the UPSI was discussed, and they were actively involved in the process of framing the policy; the author of the order was O3, which gave a prima facie inference that the CERC Order emanated from the Economics Division in CERC. Para 17 seeks to outline the connection amongst the noticees, an analysis of their KYC details as well as social media profile, and the details of the relationship/connection amongst the noticees/other entities is summarized in the form of a table thereunder. Reference is made thereafter to a statement recorded of Noticee No.1 and to his having stated that he knew O1, and that O1 had shared her Bio data/CV with the Noticee No. 1. The report also refers to the frequent communication between the families of Noticee No.1 and O1 in their personal capacity. It is thereafter stated that the analysis and examination prima facie revealed that the Noticees were connected amongst themselves and other entities either through business/personal relationship or through frequent communication, and that Noticee No. 1 and Noticee No. 8 were suspected to have, prima facie, played pivotal roles in the entire scheme of obtaining the UPSI and dissemination of the same to other trading suspects. Reference is made thereafter to the communication of UPSI, including to the minutes of the 4th meeting of the Committee to oversee implementation of Shadow Pilot on Market Coupling of CERC held on January 22, 2025 and the 5th meeting of the Committee held on June 30, 2025, and that these documents were found in the device of Noticee No.1. Reference is made in Para 31 to instances where O1 had shared with Noticee No.1 a letter in relation to the Virtual Power Purchase Agreements; during the time when the search and seizure operation was conducted on September 20, 2025, Noticee No.1 had received from O1, a copy of the appeal filed by the

Appellant with the Appellate Tribunal for Electricity against the CERC order on market coupling on WhatsApp; multiple documents, emanating from CERC, were also stored in Noticee No. 1's device which suggested that he was privy to sensitive developments in the CERC pertaining to the CERC order, and other internal matters; it prima facie noted that Noticee No. 1 and his family members and Noticee No.8 were involved in regular communication with O1 and O2 during the examination period; Noticee No. 1 was found to be in possession of the minutes of the meeting of the Committee convened within the CERC in which the status and indicative timelines, with respect to the order on market coupling, was being discussed, and that O1 and O2 were providing sensitive information arising from the CERC, particularly its order on market coupling, with the Noticees particularly with Noticee No.1. Thereafter, the order refers to the trading by the Noticees, profit made by the Noticees which is said to be in excess of Rs. 173 Crores, and the fund flow analysis. Thereafter, the order details consideration of issues and prima facie findings.

The order records that, in its prima facie view, it was established that the CERC order was UPSI and had originated on or before July 01, 2025; O1 and O2 being officials of CERC belonging to the Economics division, from where the CERC order had emanated, were privy to the UPSI related to the CERC order to be issued on July 23, 2025, and were part of meetings of the committee constituted for this purpose; since they were in possession of the UPSI, and the UPSI was bound to materially affect the price of securities of IEX upon publication of the CERC order, they would also qualify to be insiders in terms of sub-clause (ii) of clause (g) of sub-regulation (1) of Regulation (2) of the PIT Regulations; there was enough concrete, prima facie, evidence on record where UPSI was conveyed in a meeting with O2 on July 15, 2025, and the fact that they were in constant touch with O1 and O2 who had access to UPSI from a very nascent stage, was sufficient to

draw a reasonable conclusion that UPSI was shared with Noticee No.1 by O1; there was sufficient evidence, apart from satisfaction of the principle of preponderance of probabilities, to hold prima facie that the Noticees were in possession of UPSI, and had traded based on that.

The order then refers to the need to pass an ex-parte interim order, and thereafter the interim order passed are detailed, which included impounding the bank accounts of the Noticees to the extent of around Rs. 173 Crores, and all Noticees being directed to open fix deposit in their accounts in their names so as to credit or deposit the aforesaid impounded amount as per the table with a lien marked in favour of SEBI, and the amount kept therein shall not be released without permission from SEBI. The Interim Order, thereafter, details various directions to the Noticees and others. Para 68 records that the interim order is passed against the Noticees who are held to be insiders in order to impound the alleged ill-gotten profits made by them from use of UPSI; a detailed investigation by SEBI with respect to insider trading (against these Noticees as well as against other suspects) as well as for other violations was already undergoing which may be completed expeditiously without being influenced by the findings in this order; the above directions shall take effect immediately, and shall be in force until further orders; the foregoing prima facie observations contained in this order are made on the basis of the material available on record; the Noticees and other entities named in the order may, within 21 days from the date of receipt of this Order, file their reply/objections, if any, to this order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed in that regard; this order is without prejudice to the right of SEBI to take any other action that may be initiated against the Noticees in accordance with law, including but not limited to levy of penalty and issuance of directions; and a copy of this order shall also be sent to the Central Electricity Regulatory Commission for their information.

AFFIDAVIT OF CERC DATED 16.01.2026:

In the affidavit, filed on behalf of the CERC dated 16.01.2026, it is stated that, on 16.10.2015, the two officers named in the SEBI's ex-parte interim order dated 15.10.2025 i.e. 01 and 02, as well as the un-named officer 03, were, vide office orders, directed to 'not attend office till further orders'; by office order dated 16.10.2025, the CERC constituted a Departmental Fact-Finding Committee in response to the SEBI Order dated 15.10.2025, comprising of Chief (Finance), CERC and the Joint Chief (Legal), CERC, to look into the role of the CERC officers mentioned in the SEBI Order; on 21.10.2025, the terms of reference of the said Committee was approved; the terms of reference required the Committee to ascertain (a) whether any confidential information of the CERC was allegedly leaked to outsiders; and the Committee shall also examine the role of the CERC officers named in the SEBI order, based on the available records; (b) whether any outsider had gained access to the Audio-Video room of the CERC located on the 7th floor (near the conference hall) and, if so, the Committee shall ascertain how such access was obtained; and (c) any other related issue that the Committee may consider relevant for inquiry.

The affidavit further states that the said Departmental Fact-Finding Committee issued notices to the officers named in the SEBI's ex-parte interim order dated 15.10.2025; notice was served upon one IT staff holding the post of Sr. IT Executive and the Deputy Chief (Management Information Systems); the Departmental fact finding is continuing, and an initial progress report was submitted to the Commission on 11.11.2025; the Committee had been examining the relevant records and awaiting further documentary evidence; and the proceedings were still in progress.

It is further stated in the said affidavit that, on 12.11.2025, O1, holding the post of Chief (Economics), CERC on deputation basis, was prematurely

repatriated and relieved and directed to report back to her parent office; as a matter of prudence, vide office order dated 13.11.2025, O2 was transferred, from the Economics Division to the Accounts Division, till further orders; O3 was also transferred from the Economics Division to the Finance Division till further orders vide an office order on the same date; the Sr. IT Executive was relieved from duties related to meetings on the 7th floor, and was directed to report to the Deputy Chief (MIS) for duties on the 6th or the 8th floor; the two officers of the Commission, referred to as O2 and O3 in the SEBI Order, vide emails dated 12.11.2025 and 14.11.2025 had intimated that SEBI had sent them summons for personal appearance before the investigating Authority in SEBI on 19.11.2025 and 18.11.2025 respectively; in view of the pending investigation by CERC, on 17.11.2025, O1 and O2 were directed not to attend office till further orders; on 19.11.2025, the same order was passed with respect to the above-mentioned Sr. IT Executive; and the aforesaid constitutes the status of investigation by the CERC with respect to its actions qua the officers named in the SEBI order dated 15.10.2025.

The affidavit further states that the Commission had also passed suo motu order in Petition No. 11/SM/2025 dated 28.10.2025, in the exercise of its powers under Regulation 48-50 of the Power Market Regulations, 2021, Section 128 of the Electricity Act, 2023 and Regulation 51 of the CERC (Conduct of Business) Regulations, 2023, to set up an investigation authority to look into the actions of one OTC Platform registered with the CERC – GNA Energy Private Limited which is the entity, along with its key management personnel and other Noticees, allegedly involved in insider trading in the Securities Market allegedly on information that was allegedly obtained from the CERC; the said suo-motu order in Petition No. 11/SM/2025 dated 28.10.2025 has been stayed by the Punjab & Haryana High Court in Writ Petition No. 34301/2025 vide ex-parte order dated 18.11.2025; on the next date of hearing on 16.12.2025, the counsel for the CERC could not appear

in Court because of a call for abstention of work being given by the Bar Council of the Punjab & Haryana High Court; the reply of the CERC was filed on 16.12.2025 and an application for vacation, of the ex-parte order dated 18.11.2025, was moved on 13.01.2026; and the said application was likely to be taken up for hearing on 20.01.2026. It was represented across the Bar on behalf of the CERC, during the course of hearing of this Appeal, that the matter was not taken up on 21.01.2026 and has been adjourned.

It is further stated that the alleged misuse of 'UPSI' and insider trading had no bearing on the CERC's consultative process and issuance of directions on 06.02.2024 and 23.7.2025, and the regulation making exercise to follow; O1 filed W.P. (C) 19247 of 2025 assailing the summons issued by SEBI dated 11.11.2025 and 01.12.2025; the CERC is arrayed as Respondent No.2 in the said Writ Petition wherein the prayer sought against them was to instruct the CERC to provide Respondent-SEBI with necessary clarification on facts, regulations, and conduct of its business; the Delhi High Court on 18.12.2025 passed an order directing that, till the next date of hearing, no further precipitative steps, by way of issuance of fresh summons, shall be taken by the respondent against the petitioner; the matter was listed again on 13.01.2026, and thereafter adjourned to 23.03.2026 to enable the petitioner to file rejoinder to the reply filed by SEBI, and the interim order of 18.12.2025 continues to hold the field; the proceedings in the Delhi High Court are concerned only with the investigation of SEBI into alleged insider trading and do not impinge on the consultative process followed by the CERC, or the directions issued on 06.02.2024 and 23.07.2025, which are precursors to the regulation making exercise being undertaken by the Respondent Commission; the scope and tenor of the SEBI order concerns the alleged disclosure/ leak of information that has, prima facie, been considered by SEBI to be UPSI; in the SEBI order, there exists no material allegation against the regulatory/ consultative process followed by the

Respondent-Commission or that there was any mala-fides in the passing of the directions dated 23.07.2025; the regulatory/ consultative process followed by the Respondent-Commission was several steps removed from the accusation of 'insider trading' or the alleged disclosure of any price sensitive information by certain officers of the Commission; the directions dated 23.07.2025, which were done fully in consonance with Section 92(3) read with Section 92(5) of the Electricity Act, 2003, are not the subject matter of the SEBI Order; at best certain circumstances or information, surrounding the said proceedings alleged to have been procured by the third parties and enquiries into the same, are pending before SEBI as well as before the Respondent Commission's two departmental committees; the Appellant's attempt to link its grievance against the prospective Regulations being framed, till a fact finding by SEBI in relation to actions in the Securities market, is to interdict the regulation making powers of the Commission which is outside the scope of Section 111 of the Electricity Act.

While serious allegations, based on the SEBI's ex-parte interim order dated 15.10.2025, have been leveled against certain officials of the CERC, what is evident is that the impugned order was passed and signed by the Chairperson and three other Members of the CERC. Whoever may have prepared the draft, the fact remains that the proceedings dated 23.07.2025 were passed by a quorum of the Chairperson and four Members of the Commission and the said order, in law, is an order passed by the CERC. No allegation of collusion, or even that of non-application of mind, has been leveled against the Chairperson and Members of the CERC, nor is it contended that the said proceedings were passed by them on the dictates of its subordinates. On the other hand, Shri Sanjay Sen, Learned Senior Counsel appearing on behalf of the Appellant fairly stated, during the course of oral submissions in the hearing of this Appeal, that they have the greatest respect and regard for the Chairperson and Members of the CERC; and their

submissions should not be understood as casting any aspersions on them, much less on their reputation and integrity.

While the findings (albeit prima facie) as recorded in the ex-parte interim order passed by SEBI on 15.10.2025 does reflect involvement of certain officials of the CERC in insider trading activities indulged in by certain others, that evidently does not have any bearing on the impugned proceedings, since the said order was passed not by the officers of the CERC allegedly involved, but by the Chairperson and three Members of the CERC who are neither referred to in the ex-parte interim order of SEBI dated 15.10.2025 nor has any allegation of their involvement even been made by the Appellant in the present Appeal.

While we may not be understood to have expressed any opinion on the guilt or otherwise of the three officers of the CERC, since the investigation by SEBI is still ongoing and the order relied upon is an ex-parte ad interim order, we must remind the CERC of the onerous responsibilities it must discharge as a market regulator, and that the Electricity Act, 2003 has mandated establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives, inter-alia, including protection of the consumers of electricity. **(PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).**

As an umpire, which an independent regulator is, the CERC must, like Caesar's wife, always remain above suspicion, for any taint or blemish on its integrity and independence, would adversely affect the power sector as a whole. It is but appropriate, therefore, that the CERC, till the proceedings initiated by SEBI and by the CERC itself are concluded, ensures that the officers, referred to in the ex-parte interim order dated 15.10.2025, are kept away from the Regulation making exercise with respect to market coupling. We refrain from saying anything more.

XXV. OTHER CONTENTIONS:

(a) IS THE APPELLANT A MONOPOLY:

(i) SUBMISSIONS URGED ON BEHALF OF CERC:

Learned Additional Solicitor General, appearing on behalf of the CERC, would submit that, in a market where the Appellant itself admits being a monopolistic player, the appeal is best understood as a strategic attempt to preserve entrenched market power by litigating every pre-legislative step; and this Tribunal should deal with such challenges strictly, so that the appellate forum does not become a mechanism to freeze regulatory reform, distort the transparency duties that govern modern regulators, and trigger docket explosion by incentivising deep-pocketed parties to appeal each incremental step that precedes legislation.

(ii) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

On the submission of the Respondents that the Appellant is a monopoly, it is submitted that the Appellant has built its market share over the last 17 years through efficiency and technology; all exchanges operate in the same market, under the same Rules and Regulations and same market forces; only abuse of dominant position is discouraged (Section 4: Competition Act and Section 60: Electricity Act); the Appellant is wholly regulated, including fees, the constitution of the Board, shareholding, products introduced etc; there is no allegation of abuse; and in **Competition Commission of India v. Schott Glass India P. Ltd. (2025) SCC Online SC 1097**, it is held that mere size or success cannot be treated as an offence and, if every dominant firm is exposed to sanction without tangible proof of competitive harm, the law would defeat itself.

(iii) JUDGEMENT RELIED ON BEHALF OF THE APPELLANT:

In **Competition Commission of India v. Schott Glass India P. Ltd. (2025) SCC Online SC 1097**, the Supreme Court observed that markets must remain contestable, no undertaking may extinguish rivalry by stratagems foreign to fair, merit-based competition, and genuine achievement whether expressed in scale, efficiency or technological advance, must be rewarded and not punished, for it is the impetus for investment, innovation and consumer welfare; the Competition Act, 2002 is the charter that secures both pledges; Competition law is not designed to humble the successful or to clip the wings of enterprises that have, through industry and innovation, secured a commanding share of the market; the true purpose of anti-trust laws is to preserve the process of competition, i.e., to ensure that rivals may challenge the incumbent on the merits, that consumers enjoy the fruits of efficiency, and that technological progress is not stifled by artificial barriers; if mere size or success were treated as an offence, and every dominant firm exposed to sanction without tangible proof of competitive harm, the law would defeat itself; and it would freeze capital formation, penalise productivity, and ultimately impoverish the very public it is meant to protect.

(iv) ANALYSIS:

The status of the Appellant as a monopoly is wholly irrelevant to the present Appeal, and we see no reason to delve on this aspect any further. Suffice it to observe that no entity can be denied its legal remedies, even if it be a monopolistic player.

(b) TRANSMISSION CONGESTION:

(i) SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

It is submitted, on behalf of the Appellant, that the contention regarding transmission congestion is misconceived since, as per Grid India report dated 16.01.2025, there is no transmission congestion; and there is no such finding in the impugned order also.

(ii) SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT POWER EXCHANGES:

It is submitted, on behalf of the Respondent Power Exchanges, that the CERC, in the matter of transmission corridor allocation on a pro-rata basis and by order dated 30.04.2015 in Petition 158/MP/2013, constituted an Expert Group to find an acceptable solution that may also achieve social welfare maximization; the Expert Group recommendations were discussed in the order dated 04.04.2016, that merging the bids (integrated market clearing or market coupling) of the two power exchanges would give the most optimal solution with social welfare maximization irrespective of congestion; and the Explanatory Memorandum to Draft PMR 2021 explicitly identified key inefficiencies arising from the multi-exchange model and proposed Market Coupling as a solution to ensure optimal price discovery, economic surplus maximisation, and transmission efficiency.

(iii) ANALYSIS:

This issue is again irrelevant to the present Appeal, and it is wholly unnecessary for us to express any opinion on the rival contentions urged under this head.

XXVI. CONCLUSION:

While we are satisfied that the impugned proceedings would fall within the ambit of the expression “order” in Section 111(1), we are also of the view that the Appellant is not “a person aggrieved” by the said order and is,

consequently, not entitled to any relief in the present Appeal. Suffice it to hold, with a view to protect their rights if any, that the order now passed by us shall not, in case they were to be aggrieved by the impugned proceedings dated 23.07.2025 after Regulations with respect to implementation of market coupling are made later, disable the Appellant from subjecting the said proceedings dated 23.07.2025 to challenge, along with a challenge to the Regulations, if any, made by the CERC, in appropriate legal proceedings.

As observed hereinabove, it is also appropriate that the CERC ensures, till the proceedings initiated by SEBI and by the CERC itself are concluded, that the officers, referred to in the ex-parte interim order of SEBI dated 15.10.2025, are kept away from the Regulation making exercise with respect to market coupling.

Subject to the aforesaid observations, the Appeal, and all the IAs therein, stand disposed of.

Pronounced in the open court on this the **13th day of February, 2026.**

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~